

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09

Date: 10 February 2014

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

Public

Defence response to the “Observations en réponse des représentants légaux communs à la soumission ICC-02/05-03/09-529 de la Défense du 10 Janvier 2014”

Sources: Defence for Abdallah Banda Abakaer Nourain

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms. Fatou Bensouda
Mr. James Stewart
Mr. Julian Nicholls

Counsel for the Defence

Mr. Karim A. A. Khan QC

Legal Representatives of the Victims

Ms. Hélène Cissé
Mr. Jens Dieckmann

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The defence for Abdallah Banda Abakaer Nourain (“Defence”) respectfully requests that the Trial Chamber dismiss the *Observations en réponse des représentants légaux communs à la soumission ICC-02/05-03/09-529 de la Défense du 10 Janvier 2014* which includes 8 annexes (“Observations”).¹ The Observations were filed out of time and, crucially, concern an issue – disclosure of material under Rule 77 of the Rules of Procedure and Evidence – unrelated to the personal interests of the victims.

II. Submissions

2. Applying the time limits set out in Regulations 33 and 34 of the Regulations of the Court (“Regulations”), any response to the *Public redacted version of “Defence Observations on the Annexes to Prosecution filing ICC-02/05-03/09-517-Red”*² should have been filed on 3 February 2014. Instead, the Observations were circulated by the Registry on 5 February 2014 having been received after 4 pm on 4 February 2014. No explanation for the late filing was provided nor any request to vary the applicable time limit pursuant to Regulation 35 of the Regulations made. Accordingly, the Observations should be dismissed as out of time.
3. Notwithstanding the above procedural defect, the Observations should also be dismissed for substantive reasons. The matter at issue – the Defence request for disclosure of the Al Bashir Material³ – does not engage the personal interests of the victims. The Common Legal Representatives’ lack of standing in this matter is clearly evident from the Appeals Chamber’s finding that:

“the issues on appeal concern the scope of the Prosecutor’s obligations under rule 77 of the Rules of Procedure and Evidence to disclose the Requested Material to Mr Banda.... The Appeals Chamber considers that these issues are, as such, unrelated to the personal interests of the Victims because they relate solely to the relationship

¹ ICC-02/05-03/09-537.

² ICC-02/05-03/09-529-Red.

³ As defined in ICC-02/05-03/09-507, para. 2(a).

between the accused and the Prosecutor. The Appeals Chamber recalls further that the Requested Material is from another case entirely - that of Prosecutor v. Omar Hassan Ahmad Al Bashir – and there is no suggestion that potentially disclosing material from that case affects the personal interests of the Victims in the present case.”⁴

4. The Appeals Chamber’s comments apply equally to the present continuation of the disclosure request before the Trial Chamber.
5. In light of the foregoing, the Common Legal Representatives fail to assert any credible basis as to why their intervention is warranted at this late stage in the litigation of the disclosure issue. Thus, the Observations should be dismissed.

III. Relief Requested

6. For the reasons set out above, the Defence respectfully requests that the Trial Chamber dismiss the Observations.

Respectfully Submitted,



Mr. Karim A. A. Khan QC
Lead Counsel
for Abdallah Banda Abakaer Nourain

Dated this 10th day of February 2014
At Nairobi, Kenya

⁴ ICC-02/05-03/09-470, para. 12. See also paragraph 13 where the Appeals Chamber underlined that: “its eventual decision on the present appeal will ... address whether or not the Prosecutor must disclose the Requested Material. Therefore, the outcome of the appeal will not affect the status of the Victims.”