

1 International Criminal Court
2 Trial Chamber IV
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Abdallah Banda Abakaer Nourain - ICC-02/05-03/09
5 Presiding Judge Kimberly Prost, Judge Keebong Paek and
6 Judge Nicolas Guillou
7 Ex Parte Status Conference (Defence and Registry) - Courtroom 1
8 Monday, 8 December 2025
9 (The hearing starts in closed session at 11.21 a.m.)
10 THE COURT USHER: [11:21:13] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE PROST: [11:21:45] Court officer, I don't think it's actually
14 necessary to re-call the case because we're still in basically the same session, so we'll
15 jump to the substance.
16 So this is an ex parte session, Defence and Registry, requested by the Defence, for the
17 purposes of issues related to its investigation that they wanted to discuss. I just
18 want to make clear, and I think it's already clear from the Chamber's ruling, that
19 when it comes to questions of allotment of resources, legal aid, the policy is very clear
20 and we will not be taking submissions on those issues. That is to be dealt with, first,
21 by the Registry and, of course, the Chamber plays a role in due course if necessary.
22 But we appreciate there may be other issues that the Defence wishes to discuss and,
23 so, we'll open the floor, starting with -- and there's no changes in composition, so we'll
24 proceed. You can proceed, Chief Taku.
25 MR TAKU: [11:22:50] Yes, your Honours. For several years, at least 27 in

1 international courts, I personally, as lead counsel have hardly ever handled these
2 things directly. I always ask a colleague who will spend time, either in all the cases
3 here and elsewhere, and also if need be, to discuss with the Registry, because my role
4 is not to write petitions and protest. I'm a lawyer and what matters is when I come
5 before you and I talk to you.

6 We brought one application to you with regard to when Mr Banda came to (Redacted)
7 and (Redacted) was about to cooperate, and he was there for three days. We got
8 three months' notice but, unfortunately, that didn't occur. I myself, I got involved in
9 that even though (Redacted) went, but later on. Now that I have these disclosures to
10 me now, I can see that there were other procedures that were going on that, probably,
11 your Honours had prioritised that in order to wait, but I will not -- probably
12 depending on your ruling, will know the whole picture.

13 For this particular purpose I will let (Redacted) address the issue. I don't
14 want to start a new habit now. I'm a lawyer, I'm not an administrator, even though I
15 am a supervisor. Thank you, your Honours.

16 PRESIDING JUDGE PROST: [11:24:17] Please proceed.

17 (Redacted): [11:24:19] Thank you, your Honour. To give you a little bit of my
18 background. I've been licensed since January 2010, and before that, after taking my
19 Bar exam, I worked as an investigator in my local public defender's office before
20 coming here to the ICC.

21 I have conducted investigations in the General Ali case, Uhuru Kenyatta's case.

22 I trained the investigators for the Blé Goudé case. I conducted investigations for
23 Ongwen; also for (Redacted). So when I say about timing and how long it takes,
24 I have been doing this for the better part of a decade and a half.

25 So, essentially our situation is still similar to what it was back in the late fall of 2022

1 when we made a petition to the Chamber in filing 718. At that time, we had between
2 (Redacted) and a possible (Redacted) potential witnesses to meet (Redacted). It
3 took us about two months - six, seven weeks - in order to be able to contact them all
4 and get everything ready before we actually filed for a mission request on (Redacted).
5 But, unfortunately, we were never able to call back -- call them
6 back. We had some severe limitations placed on it. The Registry thought the
7 emphasis should have been on a different way, (Redacted)
8 (Redacted), where he had said that as long as everything turned out well, he was
9 going to fly up to the court in November 2022.
10 But that's no matter. It's in the past.
11 But for the investigations, it would take about the same time, because it's been two
12 and a half years almost since we've talked to these people. We would need the help
13 of both a Zaghawan and a Sudanese Arabic interpreter for most of them. But, as I
14 said before, there are between (Redacted), so it's not too much. And the
15 (Redacted), so it might cut
16 the time down to about a month.
17 The witnesses, the interviews would be conducted over a two to three-day period,
18 and I would do my darnedest to try to have them completed in one full mission. I
19 would go down there. (Redacted)
20 (Redacted)
21 (Redacted)
22 So, I just wanted to give a general time frame to the Chamber, no matter how they
23 decide everything else, about what it would take for the Defence to be trial ready.
24 It's roughly two to three months depending upon (Redacted)
25 (Redacted). So we still have their names; we have their old

1 phone numbers.

2 That really is the gist of what we wanted to discuss to give the Chamber all the
3 information, procedurally, that they may need.

4 Thank you, your Honours.

5 PRESIDING JUDGE PROST: [11:27:41] Thank you. So, if I can just clarify. You're
6 speaking about period of time you would need from any decision to proceed, in
7 accordance with what the Defence has requested, until being trial ready, that that's
8 the period for your evidentiary work that you're talking about? Am I correct in that?
9 (Redacted): [11:28:06] That is correct, your Honour. It's similar to what we did in
10 our filing, I think it was 742, about how we said we wanted to start a trial quickly and
11 that we would need about three months, but at the most six months. But we feel that,
12 having a good defence and knowing what our witnesses are going to say would also
13 help in a Prosecution case as well.

14 PRESIDING JUDGE PROST: [11:28:25] Great. Thank you very much.

15 Mr Dubuisson, first of all, sorry, there was a change of composition and I missed it, so
16 perhaps you can, just for the record, clarify the composition of the Registry at this
17 point in time.

18 MR DUBUISSON: [11:28:45](Interpretation) Yes, thank you.

19 Your Honour, I'm accompanied here by Marie Lucas, but also Pieter Vanaverbeke,
20 who is responsible for Defence counsel but also for the defence, the victims -- victim
21 defence. So he is the chief legal representative. We have taken note of what
22 Defence has said today and we understand their difficulty, because we already have a
23 Sudan case and we understand the difficulty both for the victims and the Defence to
24 work in such a situation; namely, Sudan.

25 Right now, without knowing where we are heading, we have limited -- a lump sum

1 which we can allocate to a reduced team - it's not the normal team - in the new
2 policies and given the complexities of the case. As I have already pointed out, if you
3 go faster, we could optimise the Defence capacity by giving it a higher degree of
4 complexity so that more people would be in the Defence team so that they could work
5 appropriately.

6 There are witnesses that should be met in the preceding phase, depending on what
7 the Prosecution will say, and also during the preparatory phase when we present
8 Defence evidence. And, generally speaking, between the two phases, we have time
9 reserved for the Defence. So when we say we have to find our witnesses, that is
10 shared a little bit before the beginning of the presentation of evidence by the
11 Prosecution and before the evidence submitted by Defence. So, once we have the
12 go-ahead from the Chamber, we will release all the funds for a complete team so that
13 they can work appropriately.

14 I don't have much more to say on this subject.

15 The difficulties which we face is languages, and there indeed since we have more
16 clarity on the language which the Prosecution want to use on its witnesses, there,
17 I understand there will be Zaghawa spoken for the Defence, so do we have the time to
18 prepare a team for a booth or, whilst waiting, are we going to do whispering
19 interpreting or consecutive until we have a team that's established. I think no one
20 can really decide that right now. The will is there. If we have the go-ahead we will
21 do our utmost to be ready in the next four to six months, depending on the
22 evidentiary blocks and the witnesses that appear.

23 We need to have the evidence of the parties. It doesn't depend on the language.
24 We might make an exception to, say, if we could change the list of witnesses so that
25 we could look at specific linguistic demands.

1 PRESIDING JUDGE PROST: [11:32:28] Thank you, Mr Dubuisson. And as was
2 said earlier in the other proceeding, I think what would be helpful though -- we're all
3 talking in hypotheticals here which I appreciate is challenging, but I think in the
4 circumstances necessary. So if you can continue the conversation with ideas of how
5 that best could be facilitated for the actual investigative mission should that come into
6 play, I think that would be helpful in the discussions that you're going to have.

7 (Redacted): [11:32:59] Thank you your Honour. Just so you know, I did talk to
8 the director during the break and we're going to try to schedule a meeting tomorrow
9 after I get some sleep in order to deal with this. Of course, we'll talk to our client
10 about the -- and pardon me if I mispronounce it -- it's the *chuchotage* -- the whispering,
11 the type of whispering that Director Dubuisson talks about. We will try to get ahold
12 of the client this week, hopefully maybe when we have our meeting tomorrow, we
13 might be able to get an interpreter to call him to find out about that as well. And we
14 can submit that through an email just to the Chamber to update everybody through
15 the (Redacted)
16 problems. So we can do that informally just so everybody knows that or, if the
17 Chamber prefers, we can submit a formal document in the case record.

18 MR TAKU: [11:33:55] Your Honours, also -- may I?

19 PRESIDING JUDGE PROST: [11:33:56] Chief Taku.

20 MR TAKU: [11:33:59] Yes. I took note about something Marc Dubuisson said,
21 which is important, about the current situation in Darfur, in their other domains at
22 the level of the Africa -- African. I'm somehow involved about the current regime
23 that's going on now in Darfur. But they briefed us and everyone else, even though I
24 have briefings from other sources which are not necessarily here so I can't bring them
25 into the case. And, therefore, if some other information comes up, the Registry will

1 advise the Chamber, will advise us, everyone, like they have done consistently, and
2 that will help your Honours to know exactly -- you have this at the back of your
3 minds, your Honours, that that situation he raises is actually important.
4 Nevertheless, Mr Banda, as the case be, as you will see from our filings, has always
5 wanted to clear his name. Now this application is before you, and the Appeals
6 Chamber left it open also that you could make the application to come by summons
7 so it is not something that is coming from the blue. We have been effective to say
8 that he was now cooperating. No, we were there, working, working, even though
9 we were not being paid, but we did not complain because we honour the obligation to
10 the mandate given by the Court. And as a senior lawyer, I have to respect the Court.
11 I then have to put my consideration to both respecting the mandate given by the
12 Court. I kept it. It's not as though I did have any way to give updates because you
13 ended the first facilitative mandate. But, nevertheless, now that we are aware, we
14 look forward from now hence.

15 PRESIDING JUDGE PROST: [11:35:46] Well, thank you very much.
16 Thank you for those submissions. And I take it that's what the Defence wanted to
17 discuss, and I think that's very helpful because I think we have a clearer picture
18 than -- and also the Chamber has a clearer picture as, if we get to that stage, then
19 we're going to have a good idea of what needs to be done and we can do preparations
20 even now. So that is very helpful and we appreciate the input from the Defence and
21 from the Registry.

22 (Redacted): [11:36:17] I'm sorry.

23 PRESIDING JUDGE PROST: [11:36:19] Please proceed.

24 (Redacted): [11:36:20] I just thought about this and I really apologise. Tomorrow,
25 we will also talk with the Registry, because we originally spoke with the Prosecution

1 about (Redacted)

2 General Banda, so we will discuss this tomorrow with the Registry as well, about the
3 summaries of the Prosecution pleadings and the Chamber's decisions so we can try to
4 get that out to him as soon as possible even before any decision is rendered about the
5 modalities.

6 PRESIDING JUDGE PROST: [11:36:50] Okay. Thank you very much. That's
7 helpful to know as well.

8 I don't believe we have anything else, so I think that concludes all of our matters for
9 this session as well.

10 So, once again, my thanks to the interpreters, to the court reporters, to our Registry
11 staff and to the parties and participants, and of course our security.

12 And this session is adjourned.

13 THE COURT USHER: [11:37:16] All rise.

14 (The hearing ends in closed session at 11.37 a.m.)