

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 27 October 2026

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

Public Redacted Version of 'Defence response to "Public Redacted Version of 'Consolidated Prosecution Application for Redactions' filed on 25 June 2014 (ICC-02/05-03/09-588-Conf-Exp)'" filed on 22 July 2014

Sources: Defence Team of 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



Counsel for the Defence



Legal Representatives of the Victims



Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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I. Introduction

1. In the "Public Redacted Version of 'Consolidated Prosecution Application for Redactions' filed on 25 June 2014 (ICC-02/05-03/09-588-Conf-Exp)" ("Application"),¹ submitted on 30 June 2014, the Prosecution seeks the Trial Chamber's retroactive authorisation for certain redactions applied to the materials the Prosecution disclosed to the Defence between May 2013 and 25 June 2014. The redactions that are the subject of the Application fall into the below categories:
 - i. Personal and contact information of Prosecution witnesses;
 - ii. Identifying and contact information of certain third parties;
 - iii. Identifying information of OTP field staff and one former OTP investigator;
 - iv. Locations where the Prosecution has interviewed witnesses; and
 - v. Internal work product.

2. In the Application, the defence for Mr Abdallah Banda Abakaer Nourain ("Defence") submits that the Prosecution fails to satisfy the high bar justifying the application of redactions. Instead, the Prosecution relies upon impermissible general references to security concerns without any attempt to put forward specific submissions as to why objectively justifiable security risks might arise from disclosure of the information in question to Mr Banda. Nevertheless and consistent with its prior position,² the Defence does not object to the redactions applied to the information falling under categories (i)³ and (iii)⁴. The Defence

¹ ICC-02/05-03/09-588-Red.

² See Decision establishing simplified proceedings related to future applications for non-disclosure, 19 November 2013, ICC-02/05-03/09-524, paras. 9-10 ("[T]he defence indicated that it did not oppose the prosecution's Application" for redactions to "the place of residence of Witness P-467, the identities of the witnesses' family members and the names, signatures and initials of two prosecution investigators and one prosecution and Registry interpreter.").

³ In particular, these are the redactions identified in the following annexes to the Application: Annex A, Row 2; Annex E; Annex F, Rows 1-4; Annex G, Row 1; Annex H, Rows 1, 3; Annex I; Annex J; and Annex L.

⁴ In particular, these are the redactions identified in the following annexes to the Application: Annex B, Row 1, 4, 5, 7, 8, 9 and 10; Annex C; Annex D; Annex K, Row 1; Annex M, Row 6; and Annex N.

similarly does not object to the redactions applied under category (iv).⁵ The Defence defers to the Trial Chamber regarding whether the redactions sought under category (v)⁶ properly fall within the definition of internal work product.

3. The Defence opposes, and submits the Prosecution has patently failed to establish, a specific and objective necessity for the redactions applied to the information falling under category (ii) – identifying and contact information of certain third parties.⁷
4. Pursuant to Regulation 23bis(2) of the Regulations of the Court, this response is classified as confidential as it refers to information in the confidential redacted annexes attached to the Application.

II. Applicable Law

- ⁵ As reiterated by the Trial Chamber in its 19 November 2013, “Decision establishing simplified proceedings related to future applications for non-disclosure” (“Decision”),⁸ disclosure, “[i]n principle, [...] should be provided in its *entirety* and *original form*”.⁹
- ⁶ In order for a Chamber to authorise the withholding of information from the Defence, the following elements and conditions must be satisfied: “(i) the existence of an ‘objectively justifiable risk’ to the safety of the person concerned or which may prejudice further or on-going investigations; (ii) the risk must arise from disclosing the particular information to the accused; (iii) the infeasibility or insufficiency of less restrictive protective measures; (iv) an assessment as to whether the redactions sought are ‘prejudicial to or inconsistent with the rights

⁵ In particular, these are the redactions identified in the following annexes to the Application: Annex A, Row 3; Annex B, Row 6; and Annex K, Row 2.

⁶ In particular, these are the redactions identified in the following annexes to the Application: Annex B, Rows 2 and 3; and Annex G, Row 2.

⁷ In particular, these are the redactions identified in the following annexes to the Application: Annex A, Row 1; Annex F, Row 5; and Annex M, Rows 1, 2, 4 and 5.

of the accused and a fair and impartial trial”¹⁰. Additionally, a Chamber is “obligat[ed] to periodically review the decision authorizing the redactions should circumstances change”¹¹.

7. Trial Chamber V has also relevantly held, in considering whether to grant specific requested redactions in the *Ruto et al.* case, that “general references to security concerns were insufficient to establish an objectively justifiable risk to a person's security”¹². Authorising redactions on the basis of generalised statements of claimed risk is clearly improper as “the inevitable result would be that the identities of all such persons would never be disclosed”¹³.

III. Submissions

8. While in no way conceding that the Prosecution has established an objectively justifiable risk specifically arising from disclosure to Mr. Banda of the information covered by categories (i), (iii) and (iv), the Defence does not object to these imposed redactions. The Defence also defers to the Trial Chamber's determination as to whether the redactions falling under category (v) properly qualify as internal work product pursuant to Rule 81 of the Rules of Procedure and Evidence.
9. With the exception of the redactions applied to the passport information of the third party detailed at Annex H, Row 2 and the third parties identified at Annex M, Row 3 to the Application, the Defence opposes the redactions applied by the Prosecution under category (ii). With respect to these redactions¹⁴ the

⁸ ICC-02/05-03/09-524.

⁹ Decision, para. 22 (emphasis in original) (citing ICC-02/05-03/09-265-Red, para. 20).

¹⁰ Decision, para. 23, fn. 22 (citing to ICC-02/05-03/09-265-Red, para. 29).

¹¹ *Ibid.*

¹² Public Redacted Version of Decision on Defence request to be provided with screening notes and Prosecution's corresponding requests for redactions, 20 May 2013, ICC-01/09-01/11-743-Red, para. 26 (emphasis added) (citing to ICC-01/09-01/11-695-Conf-Red, paras. 33-36).

¹³ *Ibid.*, para. 26(iii).

¹⁴ In particular, these are the redactions identified in the following annexes to the Application: Annex A, Row 1; Annex F, Row 5; and Annex M, Rows 1, 2, 4 and 5.

Prosecution relies upon impermissible general references to security concerns without any attempt to put forward specific submissions as to why objectively justifiable security risks might arise from disclosure of the information in question to Mr. Banda.

10. Indeed, the Prosecution admits that it “does not have any information about the current whereabouts or the specific security status of the[] individuals”¹⁵ covered by these redactions.
11. With regard to the redaction applied in DAR-OTP-0188-1049 to the name and position of the individual “who appears to have facilitated contact with the witness [0419] for purposes of his initial screening by the Prosecution”,¹⁶ this information is material to the preparation of the defence in view of the Defence’s consistent position throughout these proceedings as to the failure of the Prosecution to properly investigate this case, contrary to its Article 54 Rome Statute obligations. As indicated above, the Prosecution can cite to no specific information as to the existence of an objectively justifiable risk to this individual arising from disclosure of the redacted information to Mr. Banda.
12. With respect to the redactions applied to document DAR-OTP-0191-0043 (see Annex F, Row 5 to the Application) – in particular the phone numbers and email addresses of Nigerian army officers [REDACTED] these individuals may clearly have information relevant to the preparation of the Defence. Accordingly, the Defence is entitled to the phone numbers and email addresses of these individuals in order that it might contact such individuals as part of the Defence’s investigations. This is especially necessary in circumstances where the Defence’s efforts to seek assistance from the Nigerian government have been met with a markedly different response in comparison to the

¹⁵ Application, para. 21.

¹⁶ Annex A, Row 1 to the Application.

extensive and continuing assistance extended by the Nigerian government to the Office of the Prosecutor.

13. The redactions applied to the identifying information of third parties appearing in the statement of Witness P-0002 (DAR-OTP-0070-0002), as set out at Annex M to the Application at Rows 1, 2, 4 and 5, likewise cannot be justified on the basis of the general, non-specific risks alleged by the Prosecution. The redactions in question have been applied to the names and/or identifying information of third parties interviewed [REDACTED] concerning these third-parties' first-hand accounts of atrocities and crimes perpetrated by the Government of Sudan in Darfur. The Defence, of course, has submitted that information pertaining to the crimes and campaign of violence perpetrated by the Sudanese government in Darfur are relevant to the preparation of the Defence. The identifying information of these individuals is therefore relevant to the preparation of the Defence and the Prosecution has provided no specific information as to the existence of an objectively justifiable risk to these individuals arising from disclosure of this redacted information to Mr. Banda.

IV. Relief Requested

14. For the foregoing reasons, the Defence respectfully requests that the Trial Chamber decline to grant authorisation for the redactions specified in Section III above and order the Prosecution to expeditiously lift these redactions vis-à-vis the Defence.

Respectfully Submitted,



Chief Charles Achaleke Taku

Lead Counsel
for Abdallah Banda Abakaer Nourain

Dated this 27th day of October, 2026

At Maryland, United States of America