

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **27 October 2026**

TRIAL CHAMBER IV

Before:

**Judge Kimberly Prost, Presiding Judge
Judge Reine Alapini-Gansou
Judge María del Socorro Flores Liera**

SITUATION IN DAFUR, SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. ABDALLAH BANDA ABAKAER NOURAIN***

PUBLIC

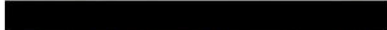
With Confidential, *ex parte*, Defence and Registry only Annexes 1-2

**Public Redacted Version of "Defence Request Pursuant to Regulation 83(4) of the
Regulations of the Registry", filed on 19 July 2023**

Source: 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

Counsel for the Defence


Legal Representatives of the Victims

Common Legal Representative for Victims

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


Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

External Operations

I. INTRODUCTION

1. Pursuant to Regulation 83(4) of the Regulations of the Court ('RoC'), the Defence for Abdallah Banda Abakaer Nourain ('Defence' or 'Defence Team') hereby requests Trial Chamber IV ('Chamber') to review the Decision of the Registry of 8 June 2023 denying the request for an increase in its budget for three months.¹
2. The Defence asks the Chamber to grant its request for full funding for three months for a full-strength effort to communicate with its client and aid in bringing him to the Court for trial now that the violence in his area is settling, which includes funding for a field mission [REDACTED] IN addition, the Defence requests an increase in the remunerated number of hours granted by the Registry from four hours per month to 45 hours per month, split between 10 hours for Counsel and 35 hours for the case manager. This would be in addition to any hourly remunerated work directly related to field missions.
3. The Defence also requests the Chamber to order the Registry for nominal funding related to speaking with its client five times per month with the use of an interpreter.

II. CONFIDENTIALITY

4. Pursuant to Regulation 23 *bis*(1) of the RoC, the Defence files this notification as CONFIDENTIAL, *ex parte*, Defence and Registry only as it deals with financials of the Defence and are not subject to disclosure.

III. HISTORY

5. On 30 September 2022, the Defence requested a mission to [REDACTED] for the purpose of meeting with 7-8 potential Defence witnesses for the Defence's case-in-chief and to meet with its client.²
6. On 7 October 2022, the Registry denied the Defence's request for a field mission [REDACTED]³

¹ See email from CSS to Defence, *RE: Banda Defence – Reconsideration of Legal Aid Budget*, received on 8 June 2023 at 13h52 CET (attached as Confidential, *ex parte*, Annex 1).

² Email from [REDACTED] to CSS, *Banda Defence – Mission Request*, sent on 30 September 2022 at 21h37 CET.

³ Email from [REDACTED] to [REDACTED] *RE: Banda Defence – Mission Request*, received on 7 October 2022 at 11h47 CET.

7. On 7 October 2022, the Defence gave a more detailed description of the mission and its purpose, relaying confidential and privileged information for the purpose of giving the Registry more information so the mission [REDACTED] be granted.⁴
8. On 11 October 2022, the Registry denied the Defence's request for reconsideration of the mission [REDACTED].⁵ At the end of the email, the Registry noted, "[s]hould there, however, be any proof on Mr Banda's intentions (i.e. concrete negotiations on a specific date for surrender,...) [sic], the Registry may be in a position to review the above-mentioned decision."⁶
9. On 15 November 2022, the Registry informed the Defence it was cutting the Defence's budget from €6,500 per month to €5,000 per three months.⁷ The Registry also told the Defence that it was limiting the access to interpretations (but not translations) to two days per month.⁸ Finally, the Registry stated that it would be amendable to reconsider its decision in three months.⁹
10. On 28 April 2023, the Defence requested full funding for three months for the purpose of making a strong effort during the summer months to have the client appear before the Chamber.¹⁰
11. On 8 June 2023, the Registry denied the Defence's request for full funding for three months.¹¹ Moreover, the Registry removed all funding except for the possibility of four remunerated hours for counsel per month for telephone calls.¹² The Registry told the Defence that it had the right to appeal the decision to the Chamber.¹³

⁴ Email from [REDACTED] to CSS, *Re: Banda Defence – Mission Request*, sent on 7 October 2022 at 15h27 CET.

⁵ Email from [REDACTED] to [REDACTED] *RE: Banda Defence – Mission Request*, received on 11 October 2022 at 11h33 CET.

⁶ *Ibid.*

⁷ Email from CSS to Defence, *Change in remuneration - the Prosecutor v. Abdallah Banda Abakaer Nourain (ICC-02/05-03/09)*, received on 15 November 2022 at 14h49 CET.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Email from Defence to CSS, *Banda Defecne – Reconsideration of Legal Aid Budget*, sent on 28 April 2023 at 15h09 CET (see Confidential, *ex parte*, Annex 2).

¹¹ Confidential, *ex parte*, Annex 1,

¹² *Ibid.*

¹³ *Ibid.*

12. Since the Registry's decision, the Defence was only able to make contact with its client for a brief period during July 2023.¹⁴
13. On 10 July 2023, the client sent the Defence Team two messages informing his Defence that he would be in location during the next week with strong internet and that he would be available to be apprised of everything since the fighting broke out in Sudan.

IV. APPLICABLE LAW

14. Pursuant to Regulation 83(4) of the RoC, a defence or victim team may appeal a decision by the Registrar on requests for funding.

V. SUBMISSIONS

15. At the eve of the most significant advancement in the process of having the client appear before the Chamber, the Registry took detrimental actions towards the Defence in its endeavours to have the client appear before the Chamber. The Registry was apprised of the situation, and still failed to appreciate its significance. Over the past eight months, the Registry has removed funding to approximately €221 per month, with very limited access to interpretations, but with continued access to translations.¹⁵

A. The Defence's strategy and Registry's rejection of the Defence's strategy

16. In the late summer and fall of 2022, the Defence gained significant grounds with its client on appearing before the Chamber. The Defence held a series of phone calls with the client and collected 11 names of potential witnesses for the client's case-in-chief.¹⁶ Per the client's instructions, [REDACTED] was to fly [REDACTED] in the beginning of November 2022 to meet with 6-8 potential witnesses and General Banda himself towards the end of the mission, all of whom were contacted by the Defence and agreed to be interviewed.¹⁷ After the meeting

¹⁴ The Defence notes that it spoke with the Client at the beginning of June 2023 for about five minutes, but was only able to give him a brief update. During its contact with the client on 1 July 2023, the Defence was only able to speak with him for approximately five minutes because of network issues on both the internet and mobile phone carriers.

¹⁵ It must be noted also that [REDACTED] has worked nearly free of charge since December 2019. His only remuneration was as a result of his field mission in July 2021 and activities because of that mission and was restricted to 954 of remuneration.

¹⁶ The Defence collected these names during discussions with its client at the end of August and the beginning of September 2022 with the use of a Registry approved interpreter. The potential witnesses are designated I-0001 through I-0013, with two designations skipped.

¹⁷ The Registry was apprised of some of the potential interviewees on 30 September 2022. See email from [REDACTED] to CSS, *Banda Defence – Mission Request*, sent on 30 September 2022 at 21h37 CET. See also email from [REDACTED] to CSS, *Re: Banda Defence – Urgent – Request for further Interpretations*, sent of 25 August 2022 at 17h40 CE

with the client, the client wished to have another group meeting with the Prosecution and External Operations. The Defence surmises that the meeting was to apprise the Prosecution and External Operations of his plans to travel to The Hague to appear before the Chamber, as alluded by the client.

17. The strategy was decided by the Defence and the client after a series of contacts with him during the summer of the 2022. The Defence and its client determined that by having its case-in-chief ready, it would create a stronger case to start trial in a relatively short period of time once the client arrived (approximately three to four months after his arrival). Further modalities were to be discussed during November 2022 when ██████████ met with the client, a meeting which never took place even though the Registry was informed of it.
18. After submitting a mission request for the trip, the Registry promptly rejected the request. The Defence immediately replied, giving more information to the Registry about the proposed mission, and it was rejected for a second time. Shortly after rejecting the Defence's mission, the Registry proceeded to significantly reduce the funding to the Defence.¹⁸ The Defence avers that this cut relates both the Registry's inappropriate determination against the Defence's strategy and lack of funding by the ASP.
19. The purpose of this strategy was to be case-ready. The client told his Defence recently that he would be in a secure location soon,¹⁹ and the Defence has made a request for an interpreter for 20-22 July 2023.²⁰ The Registry rejected the three-day request, telling the Defence that per its decision on 15 November 2022, the Defence was only allowed one more telephone conversation with its client during the month of July 2023.²¹ The Defence requested Thursday, 20 July 2023 from 13h00 to 17h00 CET. The Defence asserts that the Registry's limitations to interpretation services not only stifles the Defence from completing the Chamber's order to attempt to have the client appear before the Chamber but violates Article 67(1) (b) and (f) of the Rome Statute.

¹⁸ Email from CSS to Defence, *Change in remuneration - the Prosecutor v. Abdallah Banda Abakaer Nourain* (ICC-02/05-03/09), received on 15 November 2022 at 14h49 CET.

¹⁹ Messages received from the client on 10 July 2023.

²⁰ Email from ██████████ to CSS, *Banda Defence – Interpretation Request – 20-22 July 2023*, sent on 14 July 2023 at 14h27 CET.

²¹ Email from CSS to Defence, *RE: Banda Defence – Interpretation Request – 20-22 July 2023*, received on 17 July 2023 at 14h47 CET.

20. Since the outbreak of violence in Sudan, the Defence has had limited contact with its client²² and no contact, until 13 July 2023, with the intermediary. The Defence still reads the updates from the ICC and the United Nations about the security situation in Sudan, and specifically Darfur, but the Registry has stated in communications that this does not count for remunerated work as it determined this action is not necessary to have the client appear before the Chamber.²³

B. The Registry's refusal to fund properly an interpreter violates the clients right to an interpreter.

21. As noted above, during the week starting 10 July 2023, the Defence received two messages from the client and five messages from the intermediary.²⁴ These messages informed the Defence that the client's family is safe, and that the client wishes to talk for the purpose of discussing his case and figuring out the best route to take for trial considering the Registry's actions. The Defence can only do that with the assistance of an interpreter, something which is severely limited because of the Registry actions.
22. Article 67(1)(f) of the Rome Statute gives the accused the right to have, free of costs, the assistance of a competent interpreter to speak with his or her counsel as its client has been determined indigent.²⁵ The Appeals Chamber decided that this right must be borne from the legal aid policy pursuant to Regulation 83(1) of the RoC.²⁶ This right expressly concerns rights found in Article 67(1)(b) and (d).²⁷
23. The Defence argues that its client is distinguishable from Mr Abd-Al-Rahman. The Defence's client speaks and understands one language, Zaghawan. This is not a written language, and the Defence is unaware of anyone who speaks Zaghawan on the List of Counsel.²⁸ The client cannot choose a counsel from the List of Counsel who speaks his own language.

²² Since the outbreak of violence, the Defence has spoken with its client three times, all of which were between 2-5 minutes long because of network issues in and around Darfur.

²³ Confidential, *ex parte*, Annex 1 (*noting* that even though not remunerated for this work, it still reads the security reports).

²⁴ The Defence received four messages on 13 July 2023 and one message on 15 July 2023 from the intermediary.

²⁵ See Appeals Chamber, *Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 10 July 2020 entitled 'Decision on Defence request under article 67(1)(f) of the Rome Statute'*, [ICC-02/05-01/20-199](#), para. 31.

²⁶ *Ibid*, para. 32.

²⁷ *Ibid*.

²⁸ Last check on 17 July 2023. The Defence notes that only one person is listed as from Sudan on the list, and six persons [REDACTED] but languages are not on the list.

24. Considering the security situation in Sudan, and specifically Darfur, it is absolutely necessary and vital that counsel be able to schedule more than two days to attempt to contact his client. By severely limiting the Defence's access to an interpreter, the Registry has nearly cut the client off from his counsel.
25. The Defence notes that the Registry still provides routine access to translation services for the purpose of sending and receiving messages between the client and intermediary. While this may seem to be a viable solution to speaking on a much more frequent basis, this mode of communication has come to a standstill as of late. The Defence's recent conversation with and messages from its client relayed some chilling information. While the Defence sends messages to its client, and can hear the messages on its mobile phone, the client told the Defence this month that he is unable to download or hear the messages being sent to him by the Defence.²⁹ This was also confirmed by the intermediary.³⁰ The Defence Team member sending the communication ran a system scan on his mobile phone and no problems were detected. The Defence can only surmise that something on the client's end is causing the problem, and with the increase in violence in Sudan over the past few months, it is hard to tell from where the problem stems.
26. As such, the only reliable mode of communication between the client and counsel is through direct telephone communication. The use of an interpreter more than twice a month is necessary in the Defence Team's endeavours to have its client appear before the Chamber. As such, the Defence requests the Chamber to order the Registry to allow five days per month for the Defence use of an interpreter. The Defence asserts that this is the minimum time needed monthly to assure that it can speak with its client to complete the Chamber's order to have the client appear before it.

C. The Chamber should order reasonable funds for the Defence to implement its strategy for three months with reconsideration at the end of that time.

27. Just four months after the Chamber's decision, the entire world shut down. The COVID-19 Pandemic severely hampered the Defence's mission, but it made headway even after the Chamber determined, during the COVID-19 Pandemic, to cease the order requiring the Registry to work with the Defence. During the past two years, the Defence has kept the Prosecution updated, and even had a conference call between the Client, Registry and Prosecution. While

²⁹ Telephone communication with the client on 30 June 2023 and translated messages from 10 July 2023.

³⁰ Translated messages from the intermediary on 13 July 2023.

this did not initial prove fruitful, it eventually led to further progress. As the world began to open towards the end of the pandemic, the Defence sought to use this opportunity to complete its strategy.

28. In October and November 2022, the Registry choked the Defence's efforts to bring the client before the Chamber in the last third of 2022, the Defence contends that these gains are not lost. Contrary to the Registry's opinion, the Defence defends its strategy as being the best available one, especially now that violence is ongoing in Sudan. From the most recent contacts with the client and intermediary, persons are still willing, available and able to meet with the Defence [REDACTED] Similarly, the client still wishes to meet with his Defence Team in the near future, which further demonstrates his resolve to appear before the Chamber.
29. With the restrictions emplaced on the Defence by the Registry, this is an impossible task. The Registry erroneously discounted the Defence's strategy, and the Defence requests the Chamber to grant the Defence's request for funding to fulfil this strategy. The Defence is ready to dedicate its attention to the fulfilment of the Chamber's instructions to have the client appear before it, but it must be given some time and proper resources to do so.

VI. REQUESTED RELIEF

30. The Defence requests Trial Chamber IV to review the Defence's request for full funding for a period of three months, which includes field missions, to make a strong effort post-pandemic to have its client appear before Trial Chamber IV to start trial and grant the amount requested, including a review of funding after the three months (if necessary).
31. The Defence also requests the Chamber to order the funding of an interpreter for five days per month for the purpose of speaking with its client in attempts to fulfil its strategy to have the client appear before Trial Chamber IV.

Respectfully submitted,



.....
Chief Charles Achaleke Taku
On behalf of Abdallah Banda Abakaer Nourain

Dated this 27th day of October, 2026
At Maryland, United States of America