

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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 the Prosecution application to add documentary and witness material to its list of evidence", filed on 9 September 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
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I. Introduction

1. The defence for Mr. Abdallah Banda Abakaer Nourain ("Defence") objects in part to the *Prosecution's application to add documentary and witness material to its list of evidence* ("Application").¹
2. Contrary to the Prosecution's assertion, the Defence's objection to the addition of: (i) documents which have been in the Prosecution's possession since 2008² and 2009;³ (ii) a UN document published in 2008⁴ and relied upon by Pre-Trial Chamber I in the *Abu Garda* confirmation of charges decision in February 2010;⁵ and (iii) material relating to a witness, P-0441,⁶ whose addition to the witness list the Defence has argued previously is premature and prejudicial,⁷ is not borne out of "unnecessary procedural rigidity".⁸ Such a claim lacks merit and transparently seeks to deflect attention away from Prosecution failings⁹ by unfairly blaming the Defence.
3. It is eminently reasonable for the Defence to expect additions to the list of evidence made three and a half years after confirmation to be properly justified,¹⁰ particularly when they form part of a series of applications made in the last 6 months which indicate that significant changes are being made to the case which Mr. Banda is to face.¹¹ However, save in respect of two documents,¹² the simple

¹ ICC-02/05-03/09-599-Conf, 20 August 2014. *See also* the public redacted version ICC-02/05-03/09-599-Red2.

² DAR-OTP-0154-0387.

³ DAR-D05-0001-0044.

⁴ DAR-OTP-0192-0357.

⁵ Application, para. 39 citing to *Prosecutor v. Abu Garda*, Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red, para. 71, fn. 99.

⁶ *See* Application, fns. 2, 3 and 4.

⁷ Public redacted version of the "Defence response to 'Prosecution application to amend its lists of witnesses and evidence'", 6 May 2014, ICC-02/05-03/09-574-Red2, paras. 5-9.

⁸ Application, para. 19. *See also* Application, paras. 16 and 18.

⁹ Application, para. 2. The Prosecution concedes that "some of the items could have been included on its May 2013 list of evidence".

¹⁰ The Defence advised the Prosecution by email dated 4 August 2014 of its concern that it not been provided with any justification for the addition of any of the documents originally proposed to be added to the list of evidence. *See* Application, Annex F.

¹¹ *See, e.g.*, Prosecution request for notice to be given of a possible recharacterisation under Regulation 55, 31 March 2014, ICC-02/05-03/09-549-Red; Prosecution application to amend its lists of witnesses and evidence, 11 April 2014, ICC-02/05-03/09-557-Red; Prosecution request for partial reconsideration of decision ICC-

fact is that the addition of the remaining thirteen documents is neither justified nor necessary to the determination of the truth in this case.¹³

II. Submissions

Transcripts of P-0439's interview with the Defence

4. As noted in the Application,¹⁴ the Defence does not object to the addition of the two transcripts of the Defence's interview with P-0439.¹⁵

Documents issued by the Movements & UN's "Principles and Guidelines"

5. The plain fact is that there is no reason why the two documents issued by SLA-Unity¹⁶ and JEM¹⁷ which have been in the Prosecution's possession since 2008 and 2009 respectively could not have been added to the list of evidence at a much earlier stage of proceedings. The same criticism can be made of the request to add the UN's "Principles and Guidelines" document which was published in 2008 and relied upon by Pre-Trial Chamber I in the *Abu Garda* confirmation of charges decision in February 2010.¹⁸
6. The fact that all three documents have been in the Prosecution's possession and available to it for years undermines the claim that any of these documents is truly necessary to the determination of the truth. It also undermines the Prosecution's reliance on the decisions from the *Katanga* and *Ruto* trials,¹⁹ all of which concern evidence which had newly come into the Prosecution's possession through the completion of transcripts for videos already on the list of

02/05-03/09-227, 29 April 2014, ICC-02/05-03/09-572; Confidential redacted version of the Second Prosecution application to amend its lists of witnesses and evidence and request for authorisation of redactions, 7 July 2014, ICC-02/05-03/09-589-Conf-Red.

¹² DAR-D07-0439-001 and DAR-D07-0439-057.

¹³ *Contra* Application, paras. 2, 16, 18 and 19.

¹⁴ Application, para. 15.

¹⁵ DAR-D07-0439-001 and DAR-D07-0439-057.

¹⁶ DAR-OTP-0154-0387.

¹⁷ DAR-D05-0001-0044.

¹⁸ Application, para. 39 citing to *Prosecutor v. Abu Garda*, Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red, para. 71, fn. 99.

¹⁹ Application, paras. 10-12.

evidence,²⁰ the acquisition of maps²¹ or the conduct of interviews with existing witnesses.²² None of the examples relied upon concern prosecution failures to properly assess and identify material of which it was already aware.

7. Of additional concern is the Prosecution acknowledgement that the two documents produced by the Movements are cumulative of material which is already on the list of evidence.²³ The Prosecution's attempt to justify the addition of this duplicative material by reference to minor issues such as "language, dates, recipients, and authors" does not bare scrutiny.²⁴ The simple fact is the Prosecution can make the argument it seeks to make using existing material.
8. Given the foregoing, the inevitable conclusion is that these three documents are not necessary for the determination of the truth and there is no proper basis for their addition to the list of evidence.

P-0441's [REDACTED] Interview

9. The request to add the transcript and related materials arising from [REDACTED] interview of P-0441 is effectively an extension of the Prosecution's original request concerning P-0441 which it filed on 11 April 2014.²⁵ Accordingly, the Defence relies on its arguments submitted in response to this request.²⁶ In short, the Defence submits that the request to add P-0441 and his material to the list of witnesses and list of evidence is premature, fails to satisfy the requirements of

²⁰ In *Katanga*, the Prosecution sought to add transcripts for 25 videos and translations for 14 of these. See ICC-01/04-01/07-1336, para. 2.

²¹ ICC-01/09-01/11-762, para. 48 ("the Prosecution submits that it was only in March 2013 able to obtain interactive maps of the locations where the alleged attacks occurred").

²² The statements which the Prosecution sought to add to its list of evidence arose out of the re-interviews of four existing witnesses. See ICC-01/09-01/11-762, para. 42.

²³ Application, para. 28.

²⁴ Application, para. 29.

²⁵ Prosecution application to amend its lists of witnesses and evidence, 11 April 2014, ICC-02/05-03/09-557-Red.

²⁶ Defence response to "Prosecution application to amend its lists of witnesses and evidence", 5 May 2014, ICC-02/05-03/09-574-Conf, paras. 5-9.

Regulation 35(2) of the Regulations of the Court ("Regulations") and is prejudicial to the Defence.

III. Classification

10. Pursuant to Regulation 23*bis* of the Regulations, this filing is submitted confidentially. A public redacted version will be filed in due course.

IV. Requested relief

11. For the reasons set out above, the Defence respectfully requests that the Trial Chamber:

- a. grants the Prosecution's request to add the two transcripts of the Defence interview with P-0439 (i.e. DAR-D07-0439-001 and DAR-D07-0439-057) to the Prosecution's list of evidence; and
- b. dismisses the remainder of the Application.

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