

**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 for leave to reply to the "Defence response to 'Confidential redacted version of the Second Prosecution application to amend its lists of witnesses and evidence and request for authorisation of redactions'", filed on 1 August 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**

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

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**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The defence for Mr. Abdallah Banda Abakaer Nourain ("Defence") respectfully submits that the Prosecution's *Application for leave to reply to the "Defence response to 'Confidential redacted version of the Second Prosecution application to amend its lists of witnesses and evidence and request for authorisation of redactions'"* ("Application")¹ should be dismissed.² Neither of the two issues proposed by the Prosecution in the Application is "new and distinct"³ and the Trial Chamber will be able to determine the issues on the basis of the material before it (which includes the complete interview transcripts of P-0477)⁴ without the need for further submissions. In any event, the Defence observes that the Prosecution advances (albeit improperly) the core of the arguments it wishes to make in reply in the Application.

II. Submissions

2. Considering the Application broadly, both issues proposed by the Prosecution concern the evidentiary value of P-0477.⁵ This is an obvious issue to address in an application to add a witness after the deadline set by the Trial Chamber. It is also an issue which the Prosecution did address in its application to, *inter alia*, add P-0477 to its list of witnesses.⁶ Indeed, the source material on which the arguments of both the Prosecution and the Defence rely regarding "the nature and value of the evidence of Witness P-0477"⁷ is annexed to the Application.⁸

¹ ICC-02/05-03/09-594-Conf.

² The Defence notes with concern that in recent months applications by the Prosecution for leave to reply are becoming routine in a manner not contemplated under the Court's legal instruments. See Application for leave to reply to the "Defence response to 'Prosecution request for notice to be given of a possible recharacterisation under Regulation 55'", 25 April 2014, ICC-02/05-03/09-570-Conf, Prosecution application for leave to reply to Defence filing ICC-02/05-03/09-581, 23 May 2014, ICC-02/05-03/09-582.

³ *Contra* Application, para. 3.

⁴ ICC-02/-5-03/09-589-Conf-Red-AnxA.

⁵ Application, paras. 4, 6.

⁶ 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, paras. 19-21.

⁷ Application, para. 1.

⁸ *Supra*, fn. 4.

Accordingly, there is sufficient material before the Trial Chamber on which to determine both proposed issues.

3. As regards the first issue, as the Prosecution concedes, the Defence argument was that “much of P-0477’s evidence boils down to hearsay”.⁹ While the Prosecution argues that this assertion was “incorrect”,¹⁰ nothing in the Application directly challenges it. Instead, the Prosecution uses the unfounded allegation as a spring board to provide it with another opportunity to highlight other non-hearsay aspects of P-0477’s evidence.¹¹ These submissions are clearly not “new and distinct” and do not satisfy the test for the grant of leave to reply.¹² Accordingly, the Prosecution’s arguments – including those which effectively argue the terms of the proposed reply¹³ – should be dismissed.

4. The second issue is also without merit and fails to show good cause for the grant of leave to reply. Contrary to the Prosecution’s assertions, the evidence regarding motive is duplicative.¹⁴ [REDACTED] does not detract from the fact that at trial the Prosecution will be able to lead evidence relevant to this part of its narrative. Further, this ability will not be at the Defence’s expense or prejudice due to the late addition of a witness without proper justification. Indeed, of note is the fact that the Prosecution was content to rely on “victim witnesses” and “overview witnesses”¹⁵ for years and did not seek to obtain this evidence from other sources until earlier this year. Again, the Defence observes that the Prosecution’s submissions on the second issue effectively argue the substance of the proposed reply. In any event, it is clear that the second issue simply boils down to a dispute between the parties

⁹ ICC-02/05-03/09-592-Conf, para. 8 (emphasis added).

¹⁰ Application, para. 4.

¹¹ Application, para. 4, 5.

¹² Effectively, at paragraphs 4 and 5 of the Application, the Prosecution seeks to flesh out its original submissions at ICC-02/05-03/09-589-Conf-Red, paras. 19-21.

¹³ See Application, paras. 4 and 5 which set out the various aspects of P-0477’s evidence (complete with transcript references) the Prosecution consider demonstrate his value.

¹⁴ Application, para. 6.

¹⁵ Application, para. 6.

which the Trial Chamber can properly resolve on the basis of the arguments and materials before it and without the need for additional submissions.

III. Classification

5. Pursuant to Regulation 23bis of the Regulations, this filing is submitted confidentially.

IV. Requested relief

6. For the reasons set out above, the Defence respectfully submits that the Application should be dismissed. The Defence also submits that the submissions contained in the Application which effectively and impermissibly argue the substance of the reply should be disregarded by the Chamber.

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