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Criminal
Court

Original: **English**

No.: **ICC-02/05-03/09**
Date of redactions: 3 November 2026
Date of original: 29 October 2019

TRIAL CHAMBER IV

Before: **Judge Kimberly Prost, Presiding Judge**
Judge Robert Fremr
Judge Reine Alapini-Gansou

SITUATION IN THE DARFUR, SUDAN

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

Public
with two confidential annexes

Public redacted version of "Registry's observations on "Request for Review of Registry's Decision on legal assistance" (ICC-02/05-03/09-668-Conf-Exp)"

Source: **The Registry**

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 of Mr Banda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. Introduction

1. Following Trial Chamber IV's ("Chamber") email instruction on 24 October 2019,[1] the Registrar hereby submits his observations on the "Request for Review of Registry's Decision on legal assistance" ("Request") submitted by Mr Charles Achaleke Taku, Lead Counsel for Mr Abdallah Banda Abakaer Nourain.[2]

2. The Request is premature for the reasons explained below.

II. Procedural history

3. On 10 March 2016, the Registrar granted "a limited amount (capped at [six thousand and five hundred euros] per month) to the [defence team of Mr Banda] in order to cover the needs for the Defence" ("10 March 2016 Decision").[3]

4. On 27 June 2018, Mr Karim Khan requested the Registry that "upon [redacted] appointment as Associate Counsel, that [the latter] receive the full monthly legal aid remuneration allotment that is presently allotted to the Banda Defence"[4] as per the 10 March 2016 Decision. In the same communication, Mr Khan also requested that he himself [redacted]"[5]

5. On 16 July 2018, following the agreement that "[his] appointment to the Defence Team shall be on a *pro bono* (non-remunerated basis)",[6] Mr Taku was appointed to represent Mr Banda as Associate Counsel for Mr Banda.[7]

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[1] Email from Trial Chamber IV to Registry on 24 October 2019 at 15.10.
[2] Banda Defence, "Request for Review of Registry's Decision on legal assistance", 24 October 2019, ICC-02/05-03/09-668-Conf-Exp ("Request").
[3] Banda Defence, "Request for Review of Registry's Decision on legal assistance", 24 October 2019, ICC-02/05-03/09-668-Conf-Exp-Anx2 ("Annex 2").
[4] Annex I, Email from Karim Khan to Registry on 27 June 2018 at 17.05 ("Annex I").
[5] *Ibid.*
[6] Annex II, Declaration of Acceptance of the Position of Associate Counsel on the Defence Team of Abdallah Banda Abakaer Nourain in case ICC-02/05-03/09 before the International Criminal Court, 13 July 2018 ("Annex II").
[7] Registry, "Registration of the appointment of Mr Charles Achaleke Taku as Associate Counsel for Mr Abdallah Banda Abakaer Nourain", 16 July 2018, ICC-02/05-03/09-653.

6. On 23 July 2018, the Chamber authorised the withdrawal of Mr Karim Khan as counsel for Mr Banda with the condition that it "shall only take effect once new counsel has been appointed for Mr Banda".[8]

7. On 27 August 2019, Mr Taku requested the Chamber to "appoint him as lead counsel for Mr Banda" pursuant to regulation 76(1) of the Regulations of the Court ("RoC").[9]

8. On 9 and 12 September 2019, Mr Taku filed the updates[10] on the progress in obtaining the power of attorney from Mr Banda and requested the Chamber to "act under its own authority to acknowledge [his] appointment as Mr. Banda's lead counsel before the Court in the interests of justice".[11]

9. On 25 September 2019, the Chamber appointed "Mr Taku as Lead Counsel pursuant to Regulation 76(1) of the Regulations" ("Appointment Decision").[12]

10. On 22 October 2019, the Registry formalised the Appointment Decision by sending Mr Taku a communication informing of the change in his title to lead counsel for Mr Banda ("22 October Letter").[13]

11. On 24 October 2019, the lead counsel requested the Chamber "to review the Registry's decision, dated 22 October 2019 […], in which the Registry confirms lead counsel's appointment [redacted][14]

[8] Trial Chamber IV, "Decision on withdrawal of counsel", 23 July 2018, ICC-02/05-03/09-654, para. 5.
[9] Banda Defence, "Associate Counsel's Request to be appointed as Lead Counsel pursuant to Regulation 76 of the Regulations of the Court", 27 August 2019, ICC-02/05-03/09-658-Conf-Exp, para. 1.
[10] Banda Defence, "Update to "Associate Counsel's Request to be appointed as Lead Counsel pursuant to Regulation 76 of the Regulations of the Court"", 9 September 2019, ICC-02/05-03/09-659-Conf-Exp. Banda Defence, "Second Update to "Associate Counsel's Request to be appointed as Lead Counsel pursuant to Regulation 76 of the Regulations of the Court"", 12 September 2019, ICC-02/05-03/09-661-Conf-Exp ("Second Update").
[11] Second Update, para. 18.
[12] Trial Chamber IV, "Decision on Associate Counsel's Request to be appointed as Lead Counsel pursuant to Regulation 76 of the Regulations of the Court", 25 September 2019, ICC-02/05-03/09-664-Conf-Exp ("Appointment Decision"), para. 12.
[13] Banda Defence, "Request for Review of Registry's Decision on legal assistance", 24 October 2019, ICC-02/05-03/09-668-Conf-Exp-Anx1 ("Annex 1").

III. Classification

12. In accordance with regulation 23 *bis* (2) of the RoC, the present observations and Annexes I and II are classified as confidential *ex parte* only available to the Defence, Registry and the Office of the Prosecutor because they refer to the Request with the same level of classification.

IV. Applicable Law

13. The following provisions are of particular relevance to the present observations: regulations 76, 83 and 85 of the RoC and regulations 123 and 130 of the Regulations of the Registry ("RoR") and Registry's single policy document on the Court's legal aid system ("Legal Aid Policy").[15]

V. Submissions

14. The Request is submitted pursuant to regulation 83(4) of the RoC, which states: "[d]ecisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance."

15. The Registry has made no decision on the scope of legal assistance paid by the Court in the present case for the following reasons.

16. First, the 22 October Letter formalising the Appointment Decision is not a Registrar's decision for the purposes of regulation 83(4) of the RoC. It does not modify Mr Taku's terms of appointment in the team, and does not have any indication on the changes in the regime established in the 10 March 2016 Decision.[16] It follows that the 10 March 2016 Decision remains unchanged, and in particular:

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[14] Request, para. 1.
[15] Registry's single policy document on the Court's legal aid system, ICC-ASP/12/3, 4 June 2013 ("Legal Aid System").
[16] Annex 2.

(i) the conditions under which the defence team operates have not changed, including the [redacted] of counsel for Mr Banda, to which his predecessor had agreed upon;[17] and

(ii) the scope of legal assistance paid by the Court in the present case remains unchanged, namely the monthly amount of six thousand five hundred euros to cover the needs of the defence remains available to the defence team, should it be requested by Mr Taku.

17. Second, in the present case, following the withdrawal of former counsel for Mr Banda, Mr Taku never raised with the Registry:

(i) the issue of the scope of the legal assistance paid by the Court, or

(ii) the availability of financial resources following the withdrawal of the other Associate Counsel,[18] who was receiving [redacted] as per the request of Mr Khan on 27 June 2018.[19]

18. At this juncture, the Registry wishes to clarify that in relation to financial resources available under the Legal Aid Policy, it applies the flexibility principle. According to this principle governing the administration of the Legal Aid System, "[t]he payment system must provide for mechanisms that are flexible enough to adapt to situations as they arise in order to preclude any paralysis prejudicial to the interests of the due administration of justice."[20] Accordingly, counsel is allowed to "utilize the resources provided to structure the team in a manner that both best serves the interests of the indigent client and is compatible with the judicious financial use of legal aid funds."[21] Save for his Request before the Chamber, Mr Taku did not inform the Registry on how he would wish to "utilize the resources provided

[17] Annex I.
[18] Trial Chamber IV, "Decision on Associate Counsel's Request pursuant to Regulation 78 of the Regulations of the Court", 11 October 2019, ICC-02/05-03/09-667.
[19] Annex I.
[20] Legal Aid System, para. 9.
[21] *Ibid.*, para. 44.

to structure the [defence] team (…)". In the absence of such information, the Registry is not in a position, at this time, to amend the 10 March 2016 Decision.

19. In light of the above, since there is no decision that the Chamber may review pursuant to regulation 83(4) of the RoC, the Request is premature and should be dismissed accordingly.

Marc Dubuisson, Director, Division of Judicial Services
on behalf of
Osvaldo Zavala Giler, Registrar

Dated this 3 November 2026

At The Hague, The Netherlands