

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **29 April 2014**

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

Defence response to the Prosecution application for leave to reply to the Defence response to the Prosecution request for notice to be given of a possible recharacterisation under Regulation 55

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

Ms. Fatou Bensouda
Mr. James Stewart
Mr. Julian Nicholls

Counsel for the Defence

Mr. Karim A. A. Khan QC

Legal Representatives of the Victims

Ms. Hélène Cissé
Mr. Jens Dieckmann

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. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 25 April 2014, the Prosecution filed its *Application for leave to reply to the "Defence response to 'Prosecution request for notice to be given of a possible recharacterisation under Regulation 55'"* ("Request").¹
2. The defence for Mr. Abdallah Banda Abakaer Nourain ("Defence") rejects the Prosecution's assertions² that it misstated the law, mischaracterised the Prosecution's submissions and wrongly accused the Prosecution of being "disingenuous" in its response³ and submits that the erroneous nature of these assertions is apparent from a review of the jurisprudence and a plain reading of the submissions filed by the parties to date. Nevertheless, the Defence defers to the Trial Chamber's discretion as to whether a reply is warranted in the circumstances on any or all of the purported "new and distinct issues of law and fact" which the Prosecution claims it could not have anticipated in its original motion.
3. In the Request, the Prosecution states that the filing is classified as "confidential" because "it is a request for leave to reply to a confidential document".⁴ A public redacted version of the Defence response was filed on 24 April 2014.⁵ Accordingly, this filing is classified as "public" as it does not contain any confidential information and responds to a filing in respect of which the Defence submits there is no existing basis for its confidential classification.

Conclusion

4. The Defence defers to the Trial Chamber's discretion as to whether a reply to the Defence response is warranted.

¹ ICC-02/-05-03/09-570-Conf.

² *Ibid.*, para. 1.

³ ICC-02/05-03/09-568-Conf. See also the public redacted version of the response ICC-02/05-03/09-568-Red.

⁴ Request, para. 2.

⁵ ICC-02/05-03/09-568-Red.

Respectfully Submitted,



Mr. Karim A. A. Khan QC
Lead Counsel
for Abdallah Banda Abakaer Nourain

Dated this 29th day of April 2014

At The Hague, Netherlands