

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09
Date: 29 September 2014

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

SITUATION IN DARFUR, SUDAN

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

Public

**Public Redacted Order on the Defence Application for Leave to Reply to
"Prosecution response to the Defence application for leave to appeal the 11
September 2014 arrest warrant decision or for reconsideration of the same"**

Order to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Julian Nicholls

Counsel for the Defence

Mr Karim A.A. Khan

Mr David Hooper

Legal Representatives of Victims

Ms H el ene Ciss e

Mr Jens Dieckmann

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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 H ebel

Deputy Registrar

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber IV (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain*, pursuant to Regulations 24(5), 28 and 34(c) of the Regulations of the Court (“Regulations”), issues the following “Order on the Defence Application for Leave to Reply to ‘Prosecution response to the Defence application for leave to appeal the 11 September 2014 arrest warrant decision or for reconsideration of the same’”.

1. On 14 July 2014, the Chamber issued the “Decision as to the Further Steps for the Trial Proceedings” (“Decision of 14 July 2014”)¹ and, on 15 August 2014, the Registry filed a report thereon.²
2. On 11 September 2014, the Chamber issued a warrant of arrest, vacated the trial date of 18 November 2014, and “suspend[ed] preparatory measures for the trial as well as rulings for pending filings until Mr Banda's arrest or voluntary appearance before the Court” (“Arrest Warrant”).³
3. On 17 September 2014, the defence of Mr Banda (the “defence”) requested leave to appeal the Arrest Warrant (“Request”).⁴ On 22 September 2014, the Prosecutor filed its response (“Response”).⁵ On 23 September 2014, the Common Legal Representative filed her observations.⁶

¹ Decision as to the Further Steps for the Trial Proceedings, 14 July 2014, ICC-02/05-03/09-590-Conf. (Judge Eboe-Osuji partly dissenting).

² Report of the Registry on the “The Decision as to the Further Steps for the Trial Proceedings”, 15 August 2014, ICC-02/05-03/09-598-Conf.

³ Warrant of arrest for Abdallah Banda Abakaer Nourain, 11 September 2014, ICC-02/05-03/09-606, p.12 (Judge Eboe-Osuji dissenting).

⁴ Defence Application for Leave to Appeal the Decision on “Warrant of arrest for Abdallah Banda Abakaer Nourain” and in the alternative Request for Reconsideration, 17 September 2014, ICC-02/05-03/09-608-Conf-Exp.

⁵ Prosecution response to the Defence application for leave to appeal the 11 September 2014 arrest warrant decision or for reconsideration of the same, 22 September 2014, ICC-02/05-03/09-609-Conf-Exp.

⁶ Observations des Représentants légaux Communs sur la Version Confidentielle Expurgée de la « Requête de la Défense aux fins d’être autorisée à faire appel de la Décision concernant le mandat d’arrêt contre Abdallah Banda Abakaer Nourain, et dans l’alternative, requête demandant la reconsidération de la décision », 23 September 2014, ICC-02/05-03/09-610-Conf.

4. On 24 September 2014, the defence applied for leave to reply to the Response (“Application”).⁷ The defence requests leave to reply to the prosecution submission that the defence “advanced for the first time in the Defence application” that Mr Banda: (i) [REDACTED]; and (ii) [REDACTED].⁸
5. The Chamber considers that the defence should be given an opportunity to clarify its position on the factual issues raised in the Response, to the extent set out above.
6. The Chamber considers that in order to remove any possible ambiguity or uncertainty as regards the appearance of the accused at his trial, it is important that in its reply to the Response the defence also confirms in a straight forward and unequivocal way whether Mr Banda will or not appear for his trial in circumstances in which:
 - a) the cooperation of the Government of Sudan in facilitating Mr Banda’s appearance before the Court is not forthcoming;⁹ *and*
 - b) the Court is not in a position to [REDACTED].
7. For the foregoing reasons, the Chamber hereby:
 - (i) **Grants** the Application of the defence for leave to reply.
 - (ii) **Orders** the defence to include in its reply a clarification on the specific issues described in paragraph 6 above.
 - (iii) **Orders** the defence to file its reply no later than 16.00 on 6 October 2014.

⁷ Defence Application for Leave to Reply to “Prosecution response to the Defence application for leave to appeal the 11 September 2014 arrest warrant decision or for reconsideration of the same”, 24 September 2014, ICC-02/05-03/09-611-Conf-Exp.

⁸ Application, paragraph 7.

⁹ ICC-02/05-03/09-606, paragraphs 20-21; ICC-02/05-03/09-590-Conf., paragraphs 35-36, p.16; ICC-02/05-03/09-598-Conf.


Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch



Judge Silvia Fernández de Gurmendi



Judge Chile Eboe-Osuji

Dated this 29 September 2014

At The Hague, The Netherlands