

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09
Date: 11 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

**Public redacted version of “Registry’s observations on the “Second Update to
“Associate Counsel’s Request to be appointed as Lead Counsel pursuant to
Regulation 76 of the Regulations of the Court””, (ICC-02/05-03/09-661-Conf-Exp)”,
17 September 2019, ICC-02/05-03/09-662-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

Mr Charles Achaleke Taku

Mr Anand Shah

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 Peter Lewis

Counsel Support Section

Mr Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. Following Trial Chamber IV's instruction ("Chamber") of 13 September 2019,¹ the Registry hereby transmits its observations on the "Second Update to 'Associate Counsel's Request to be appointed as Lead Counsel pursuant to Regulation 76 of the Regulations of the Court'" ("Second Update").²

II. Procedural history

2. On 27 August 2019, Mr Charles Achaleke Taku, Associate Counsel for Mr Abdallah Banda Abakaer Nourain, requested the Chamber to "appoint him as lead counsel for Mr Banda, at the very least on an interim basis" ("Request").³

3. On 9 September 2019, Associate Counsel for Mr Banda further updated his Request and informed the Chamber that during a phone call between Mr Banda and his legal team on 7 September 2019 "Mr. Banda provided his verbal consent and authorisation for Associate Counsel to be appointed as his lead counsel in case ICC-02/05-03/09 with immediate effect" ("Updated Request").⁴

4. The same day, the Registry submitted its observations on the Updated Request stating that "in absence of [a power of attorney or a notarised document appointing a new counsel], the Registry is not in a position to [...] confirm the appointment."⁵

5. On 12 September 2019, Associate Counsel for Mr Banda subsequently updated the Chamber on the progress of obtaining the power of attorney from Mr Banda and

¹ Email from Trial Chamber IV to Registry on 13 September 2019 at 10.29.

² 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").

³ 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.

⁴ 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 ("Update on the Request"), para 2.

⁵ Registry, "Registry's observations in relation to the legal representation of Abdallah Banda Abakaer Nourain", 9 September 2019, ICC-02/05-03/09-660-Conf-Exp, para. 11.

requesting the Chamber to “act under its own authority to acknowledge Associate Counsel’s appointment as Mr. Banda’s lead counsel before the Court in the interests of justice” (“Second Update”).⁶

III. Classification

6. This submission is classified as confidential *ex parte* Defence for Mr Banda and Registry only in accordance with regulation 23bis(2) of the Regulations of the Court (“RoC”) as it refers to documents that bear the same classification.

IV. Applicable Law

7. The present submission is based on article 67(1)(d) of the Rome Statute, rule 21(2) of the Rules of Procedure and Evidence (“RPE”), regulation 76(1) of the RoC and regulations 13 and 123 of the Regulations of the Registry (“RoR”).

V. Submissions

8. The Registry takes note of the Second Update,⁷ in particular of the video in which an individual, that the defence identifies as Mr Banda, [REDACTED].⁸ Associate Counsel further submits that the video “should be considered to meet the requirements of regulation 123(1) of the [RoR] in respect of a validly executed and authenticated power of attorney and/or appointment of counsel.”⁹

9. The Registry recalls that, in principle, a power of attorney must be given in written form. The Registry notes though the particular circumstances of this case and the fact that the Zaghawa language only exists in oral form. [REDACTED].¹⁰

10. While for the purpose of fulfilling the requirements of regulation 123(1) of the RoR, the video would have to be authentic and the consent expressed therein valid,

⁶ Second Update, para. 18.

⁷ *Ibid.*, para. 2.

⁸ [REDACTED].

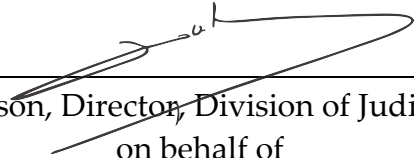
⁹ *Ibid.*, para. 3.

¹⁰ [REDACTED].

there is no information available to the Registry at this stage that would suggest that said consent has been vitiated.

VI. Conclusion

11. Although the Registry notes that, at this juncture, the requirements of regulation 123(1) of the RoR are not met, cognisant of the particular circumstances of the case at hand, it has no reason to believe that Mr Banda did not freely appoint Mr Taku as his Lead Counsel. In light of this, the Registry respectfully suggests that it is for the Chamber to decide, in accordance with regulation 76(1) of the RoC, whether to appoint Mr Taku as Lead Counsel in the interests of justice.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of
Peter Lewis, Registrar

Dated this 11 October 2019

At The Hague, The Netherlands