

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **14 August 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

Order on the Prosecution's application for leave to reply to filing

ICC-02/05-03/09-592-Conf

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 James Stewart
Mr Julian Nicholls

Counsel for the Defence

Mr Karim A.A. Khan
Mr David Hooper

Legal Representatives of Victims

Ms Hélène Cissé
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 Hebel

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 Regulation 24(5) of the Regulations of the Court (“Regulations”), issues the following “Order on the Prosecution’s application for leave to reply to filing ICC-02/05-03/09-592-Conf”.

1. On 7 July 2014, the Office of the Prosecutor (“prosecution”) filed the “Second Prosecution application to amend its lists of witnesses and evidence and request for authorisation of redactions” (“Application”),¹ whereby it seeks leave, under Article 69(3) of the Rome Statute and Regulation 35(2) of the Regulations, to add an additional witness — P-0477, and related exhibits — to its list of trial witnesses and evidence.²
2. On 29 July 2014, the Defence for Mr Banda (“defence”) filed its response (“Response”)³ to the Application, requesting that the Application be dismissed.⁴
3. On 31 July 2014, the prosecution filed “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 for leave to Reply”),⁵ in which the prosecution requests the Chamber to grant leave to reply to the Response, pursuant to Regulation 24(5) of the Regulations, in order to address “new and distinct” facts.⁶
4. The prosecution seeks leave to reply to two issues that, it is claimed, the prosecution has not had the opportunity to address. *First*, the prosecution

¹ ICC-02/05-03/09-589-Conf-Exp with Annex A. The confidential redacted version was filed as ICC-02/05-03/09-589-Conf-Red and the public redacted version as ICC-02/05-03/09-589-Red2.

² ICC-02/05-03/09-589-Red2, paragraph 37.

³ 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”, ICC-02/05-03/09-592-Conf. The redacted version of this document was filed as ICC-02/05-03/09-592-Red.

⁴ ICC-02/05-03/09-592-Red, paragraph 17.

⁵ ICC-02/05-03/09-594-Conf.

⁶ ICC-02/05-03/09-594-Conf, paragraph 3.

seeks leave to reply to the defence's allegedly incorrect claim that "much of P-0477's evidence is 'hearsay about what was said at a meeting he did not attend'".⁷ *Second*, the prosecution seeks leave to reply to the allegedly incorrect claim that P-0477's evidence on the motive for the attack is "duplicative; that the same narrative is provided by 'no less than eight current Prosecution trial witnesses' and hence, is not 'unique'".⁸ The prosecution submits that a reply would clarify the nature and value of the evidence of Witness P-0477 and hence assist in the proper determination of the Application.⁹

5. On 1 August 2014, the defence filed its response¹⁰ to the Application for leave to Reply. The defence submits that that Application for leave to Reply should be dismissed given the issues proposed by the prosecution are not "new and distinct".¹¹ Further, the defence submits that the Application for leave to Reply advances the arguments the prosecution wishes to make in the reply and therefore the defence requests that the substance of the Application for leave to Reply be disregarded by the Chamber.¹²
6. As to the *first* issue identified by the prosecution, the Chamber is of the view that it has received enough material to understand whether P-0477's evidence is requested as eyewitness evidence of certain events or as "hearsay about what was said at a meeting that he did not attend".¹³ The Application for leave to Reply is rejected in this respect.

⁷ ICC-02/05-03/09-594-Conf, paragraph 4.

⁸ ICC-02/05-03/09-594-Conf, paragraph 6.

⁹ ICC-02/05-03/09-594-Conf, paragraph 1.

¹⁰ 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'", ICC-02/05-03/09-595-Conf.

¹¹ ICC-02/05-03/09-595-Conf, paragraph 6.

¹² ICC-02/05-03/09-595-Conf, paragraph 6.

¹³ ICC-02/05-03/09-592-Red, paragraph 8.

7. By contrast, as to the *second* issue, the defence's Response raises certain issues of fact that the prosecution should be given the opportunity to reply to. Indeed, it would be of assistance to the Chamber to receive the prosecution's reply on whether, by proposing the addition of P-0477 to the witness list, the prosecution intends to obtain duplicative evidence which will reflect a narrative that is already supported by "no less than eight Prosecution trial witnesses".¹⁴

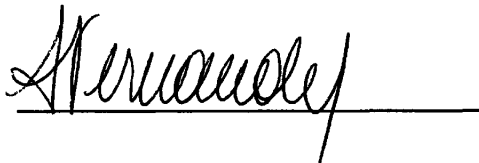
8. For the foregoing reasons, the Chamber hereby:

- i. **Grants** the prosecution's Application for leave to Reply, only in relation to the issue identified in paragraph 7 above;
- ii. **Orders** the prosecution to file its reply no later than 16:00 on 25 August 2014.

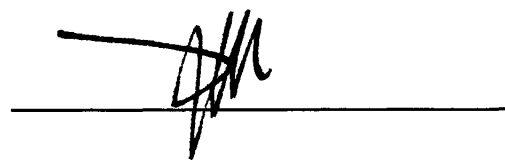
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch



Judge Silvia Fernández de Gurmendi



Judge Chile Eboe-Osuji

Dated this 14 August 2014

At The Hague, the Netherlands

¹⁴ ICC-02/05-03/09-592-Red, paragraph 8; ICC-02/05-03/09-594-Conf, paragraph 6.