

Situation in Darfur, Sudan

ICC-PIDS-CIS-SUD-04-006/15_Eng

The Prosecutor v. Abdallah Banda Abakaer Nourain

Updated: 23 March 2015

ICC-02/05-03/09

Abdallah Banda Abakaer Nourain (Abdallah Banda)

Accused of three counts of war crimes committed in an attack against the African Union Peacekeeping Mission at the Haskanita Military Group Site in Darfur (Sudan). Trial opening vacated and arrest warrant issued to ensure the accused's presence. Not in ICC custody.



Date of birth: In or around 1963

Place of birth: Wai, Dar Kobe, North Darfur

Tribe: Zaghawa

Situation: Commander-in-Chief of the Justice and Equality Movement (JEM) Collective-Leadership, one of the components of the United Resistance Front

Summons to appear: Issued under seal on 27 August 2009 | Unsealed on 15 June 2010

First voluntary appearance: 17 June 2010

Confirmation hearing: 8 December 2010

Decision on the confirmation of charges: 7 March 2011

Warrant of arrest: 11 September 2014

Opening of the Trial: Vacated

Proceedings against Saleh Mohammed Jerbo Jamus were terminated by Trial Chamber IV on 4 October 2013 after receiving evidence pointing towards his death.

Charges

Pre-Trial Chamber I considers that there are substantial grounds to believe that Abdallah Banda is criminally responsible as co-perpetrator for three war crimes under article 25(3)(a) of the Rome Statute:

- violence to life within the meaning of article 8(2)(c)(i) of the Statute;
- intentionally directing attacks against personnel, installations, material, units and vehicles involved in a peacekeeping mission within the meaning of article 8(2)(e)(iii) of the Statute; and
- pillaging within the meaning of article 8(2)(e)(v) of the Statute.

Alleged crimes (non-exhaustive list)

Pre-Trial Chamber I found that there are substantial grounds to believe that:

- An armed conflict not of an international character existed in Darfur. In this context, an attack was carried out on the evening of 29 September 2007, against African Union Mission in Sudan (AMIS) at the Haskanita Military Group Site (MGS Haskanita), in the Umm Kadada locality of North Darfur, Sudan.
- The attack on the MGS Haskanita was allegedly carried out by forces of the Justice and Equality Movement (JEM) – Splinter Group, Sudan Liberation Army (SLA) – Unity and SLA-Abdul Shafie, lead by Abdallah Banda and other commanders.
- The attackers, armed with anti-aircraft guns, artillery guns and rocket-propelled grenade launchers, killed 12 and attempted to kill 8 additional AMIS personnel which were not taking active part in the hostilities. Various items of property belonging to AMIS, its personnel or individuals otherwise working at the compound, were appropriated by the attackers during the attack on the MGS Haskanita without the consent of the legitimate owner and were not returned.
- The attack was directed at personnel, installations, material, units and vehicles involved in a peacekeeping mission in accordance with the Charter of the United Nations. The Chamber also found that the AMIS personnel were entitled to the protection afforded to civilians and the AMIS installations, material, units and vehicles stationed at the MGS Haskanita were entitled to the protection afforded to civil objects.

The Chamber also found substantial grounds to believe that Abdallah Banda took part in a common plan to attack the MGS Haskanita and carried out essential contributions in a coordinated manner – namely designing and planning the attack, ordering and providing

the necessary troops, equipment and materials and personally participating in leading the attack and looting property from the MGS Haskanita.

Key judicial developments

REFERRAL AND OPENING OF THE INVESTIGATION

The International Commission of Inquiry on Darfur was established by former United Nations Secretary-General Kofi Annan pursuant to the Security Council resolution 1564. The Commission reported to the UN in January 2005, that there was reason to believe that crimes against humanity and war crimes had been committed in Darfur and recommended the referral of the situation to the International Criminal Court (ICC).

Using its authority under the Rome Statute, the United Nations Security Council referred the situation in Darfur since 1 July 2002, to the Prosecutor of the ICC in resolution 1593 on 31 March 2005.

Following the referral from the United Nations Security Council, the Prosecutor received the conclusion of the International Commission of Inquiry on Darfur. In addition, the Office of the Prosecutor requested information from a variety of sources, leading to the collection of thousands of documents. The Prosecutor concluded that the statutory requirements for initiating an investigation were satisfied and decided to open the investigation on 6 June 2005.

SUMMONSES TO APPEAR

On 20 November 2008, the Prosecutor submitted an application under article 58 of the Statute for the issuance of warrant of arrest or, alternatively, summonses to appear for Abdallah Banda who allegedly participated to the attack on MGS Haskanita.

On 23 February 2009, the Prosecutor filed a "submission of information on the Prosecutor's Application Pursuant to article 58 and request for summonses to appear", partially modifying his original application and requesting the Chamber to issue a summonses to appear against Abdallah Banda.

On 27 August 2009, the Pre-Trial Chamber I issued a summons to appear under seal against Abdallah Banda, which was unsealed on 15 June 2010.

INITIAL APPEARANCE AND CONFIRMATION OF CHARGES

The suspect appeared voluntarily before Pre-Trial Chamber I on 17 June 2010. The Chamber informed him of the crimes which he is alleged to have committed and of his rights under the Rome Statute.

The suspect waived his rights to be present at the confirmation of charges hearing which took place on 8 December 2010.

On 7 March 2011, Pre-Trial Chamber I unanimously decided to confirm the charges of war crimes brought by the ICC's Prosecutor against Abdallah Banda and committed him to trial.

ISSUANCE OF ARREST WARRANT AND VACATION OF TRIAL DATE

On 11 September 2014, Trial Chamber IV issued a [warrant of arrest](#) against Abdallah Banda Abakaer Nourain. The Chamber also vacated the trial date - previously scheduled for 18 November 2014 - and directed the ICC Registry to transmit the new requests for arrest and surrender to any State, including the Sudan, on whose territory Mr Banda may be found.

Trial Chamber IV had requested the Government of Sudan's cooperation to facilitate the accused's presence at trial. This cooperation, according to the information provided by the Registry, is not forthcoming. By way of consequence, the Chamber considered that there are no guarantees that, in the current circumstances, he will be in an objective position to appear voluntarily, regardless of whether he wishes to be present at trial or not. The Chamber concluded that an arrest warrant is now necessary to ensure the accused's presence.

On 3 March 2015, the Appeals Chamber [rejected](#) Abdallah Banda's [appeal](#) against Trial Chamber IV's decision replacing the summons to appear by an arrest warrant.

PARTICIPATION OF VICTIMS

Pre-Trial Chamber I granted 103 persons the status of victim authorised to participate in this case.

Composition of Trial Chamber IV

Judge Joyce Aluoch
Judge Chile Eboe-Osuji
Judge Geoffrey A. Henderson

Representation of the Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Adebowale Omofade, Trial lawyer

Defence Counsel for Abdallah Banda

Karim Asad Ahmad Khan, Principal Counsel
David Hooper, Associate Counsel

Legal Representatives of the Victims

Hélène Cissé
Jens Dieckmann