

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original. English

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

Date: 27 August 2009

PRE-TRIAL CHAMBER I

Before: **Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser**

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR V. ABDALLAH BANDA ABAKAER

NOURAIN AND SALEH MOHAMMED JERBO JAMUS

Confidential

SUMMONS TO APPEAR FOR 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
Mr Luis Moreno-Ocampo, Prosecutor
Mr Essa Faal, Senior Trial Lawyer

Counsel for the Defence

Legal Representatives of Victims

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
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (the "Chamber" and the "Court", respectively),

1. HAVING EXAMINED the "Prosecutor's Application under Article 58",¹ filed by the Prosecutor on 20 November 2008 in the record of the Situation in Darfur, Sudan, whereby it requested the Chamber to issue a warrant of arrest or, alternatively, a summons to appear for Abdallah Banda Abakaer Nourain ("Banda") and others;

2. HAVING EXAMINED the "Submission of information on the Prosecution's Application Pursuant to Article 58 and request for summonses to appear",² filed by the Prosecutor on 23 February 2009, whereby he requested the Chamber to issue a summons to appear for Banda and others,

3. HAVING EXAMINED all other supporting material and information submitted by the Prosecutor,³

4. NOTING the "Report of the Prosecution Submitted pursuant to Request of the Chamber contained in the Confidential Annex to its decision convening a hearing of 19 August", filed by the Prosecutor on 25 August 2009",⁴

¹ ICC-02/05-163-Conf-Exp, ICC-02/05-163-Conf-Exp-Anxs1-5 38

² ICC-02/05-194-Conf-Exp, ICC-02/05-194-Conf-Exp-Anx1

³ ICC-02/05-165-Conf-Exp and ICC-02/05-165-Conf-Exp-Anxs1-8, ICC-02/05-172 and ICC-02/05-172-Conf-Exp-AnxsA-B24, ICC-02/05-173 and ICC-02/05-173-Conf-Exp-AnxsB25-B26, ICC-02/05-203 and ICC-02/05-203-Conf-Exp-Anx1, ICC-02/05-211-Conf-Exp and ICC-02/05-211-Conf-Exp-Anxs1-2, ICC-02/05-212-Conf-Exp, ICC-02/05-214-Conf-Exp and ICC-02/05-214-Conf-Exp-Anx1, ICC-02/05-216-Conf-Exp

⁴ ICC-02/05-229 ICC-02/05-229-Anxs-A-B

5. **NOTING** the submissions of the Prosecutor in the *ex parte* hearing before the Chamber, held in closed session on 26 August 2009,⁵

6. **NOTING** the "Second Decision on the Prosecutor's Application under Article 58",⁶ in which the Chamber explains the reasons why it is satisfied that there are reasonable grounds to believe that Banda is criminally responsible under article 25(3)(a) of the Statute of the Court (the "Statute") for war crimes and that the issuance of a summons to appear is sufficient to ensure his appearance before the Court under article 58(7) of the Statute of the Court;

7. **CONSIDERING** that, on the basis of the material provided by the Prosecutor in support of his Application and without prejudice to any subsequent determination that may be made under article 19 of the Statute, the case against Banda falls within the jurisdiction of the Court,

8. **CONSIDERING** that, on the basis of the material provided by the Prosecutor, there is no ostensible cause or self-evident factor impelling the Chamber to exercise its discretion under article 19(1) of the Statute to determine the admissibility of the case against Banda at this stage,

9. **CONSIDERING** that there are reasonable grounds to believe that at the time relevant to the charges alleged in the Prosecutor's Application, a protracted armed conflict not of an international character within the meaning of article 8(2)(f) of the Statute existed in Darfur between the Government of Sudan and several organised armed groups, including the Justice and

⁵ ICC-02/05-T-7-CONF-EXP-ENG

⁶ ICC-02/05-03/09-1-Conf

Equality Movement ("JEM") and that Banda was aware of the factual circumstances establishing the existence of the said armed conflict,

10. CONSIDERING that there are reasonable grounds to believe that, in the context of, and in association with, the said armed conflict, on 29 September 2007 an attack was carried out against the African Union Mission in Sudan ("AMIS") personnel, installations, material, units and vehicles that were stationed at the Military Group Site (MGS) Haskanita (Sector 8) ("MGS Haskanita"), Umm Kadada Locality, North Darfur, Sudan,

11. CONSIDERING that there are reasonable grounds to believe that the attack on the MGS Haskanita was carried out by splinter forces of JEM, under the command of Banda and Bahar Idriss Abu Garda ("Abu Garda"), jointly with the troops belonging to SLA-Unity, which had broken away from the SLMA/A, under the command of Saleh Mohammed Jerbo Jamus ("Jerbo"),

12. CONSIDERING that, on the basis of the material provided by the Prosecutor, there are reasonable grounds to believe that during and after the above-mentioned attack, the attackers. (i) killed twelve AMIS soldiers, (ii) severely wounded eight AMIS soldiers, (iii) destroyed communication installations, dormitories, vehicles and other materials belonging to AMIS, and (iv) appropriated property belonging to AMIS,

13. CONSIDERING that there are reasonable grounds to believe that (i) the victims of the attack were entitled to the protection afforded to civilians not taking active part in the hostilities, (ii) Banda, as well as Abu Garda and Jerbo, was aware of this circumstance and, therefore, (iii) the war crime of violence

to life in the form of murder, within the meaning of article 8(2)(c)(i) of the Statute was committed or attempted during the attack,

14. CONSIDERING that there are reasonable grounds to believe that (i) the object of the attack can be considered personnel, installations, material, unit or vehicles involved in a peacekeeping mission "in accordance with the Charter of the United Nations" within the meaning of article 8(2)(e)(iii) of the Statute, (ii) as not actively participating in the hostilities, the AMIS troops – as well as the installations, material, units and vehicles involved in the AMIS mission – were entitled to the protection given to civilians or civilian objects under the international law of armed conflict within the meaning of article 8(2)(e)(iii) of the Statute, (iii) Banda, Abu Garda and Jerbo were aware of the protection to which AMIS personnel, installations, material, unit and vehicles were entitled, (iv) therefore, the war crime of intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission within the meaning of article 8(2)(e)(iii) of the Statute was committed;

15. CONSIDERING that there are reasonable grounds to believe that after the attack the attackers appropriated numerous items belonging to AMIS, with the specific intent to deprive the owner of such items and to appropriate them for private or personal use, and, therefore, that the war crime of pillaging within the meaning of article 8(2)(e)(v) of the Statute was committed,

16. CONSIDERING that there are reasonable grounds to believe that (i) there was a common plan to attack the MSG Haskanita between Banda, Abu Garda and Jerbo; and (ii) the common plan included the commission of the above-mentioned war crimes,

17. CONSIDERING that there are reasonable grounds to believe that the contribution of Banda – who was the military commander of JEM by May 2006 and who, on 4 October 2007, together with Abu Garda, declared the formation of a new armed faction called JEM Collective Leadership (“JEM-CL”) – was essential insofar as there are reasonable grounds to believe that he participated in the design of the common plan and was in command of the splinter forces of JEM during the attack to MSG Haskanita,

18. CONSIDERING that, on the basis of the material provided by the Prosecutor in support of his Application, there are reasonable grounds to believe that Banda is criminally responsible as a co-perpetrator or as an indirect co-perpetrator under article 25(3)(a) of the Statute;

19. BEING SATISFIED that, for the above reasons, there are reasonable grounds to believe that Banda is criminally responsible under article 25(3)(a) of the Statute, for

- i the war crime of violence to life, in the form of murder, whether committed or attempted, within the meaning of article 8(2)(c)(i) of the Statute,
- ii the war crime of intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission, within the meaning of article 8(2)(e)(iii) of the Statute,
- iii the war crime of pillaging, within the meaning of article 8(2)(e)(v) of the Statute

20. CONSIDERING that (i) the issuance of a warrant of arrest does not appear necessary for the purposes of article 58(1)(b) of the Statute, and (ii)

there are reasonable grounds to believe that a summons to appear for Banda is sufficient to ensure his appearance before the Court within the meaning of article 58(7) of the Statute, without prejudice to the Chamber's power to review its determination under articles 58(1) and 58(7) of the Statute, respectively,

FOR THESE REASONS,

ORDERS

ABDALLAH BANDA ABAKAER NOURAIN, a male, member of the Zaghawa tribe of Sudan, born in or around 1963 in Wai, Dar Kobe, North Darfur, current Commander-in-Chief of JEM Collective-Leadership, one of the components of the United Resistance Front, **TO APPEAR BEFORE THE COURT** on Tuesday, 17 November 2009 at 10.00 hours,

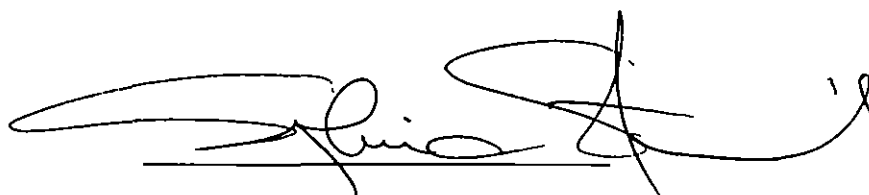
ORDERS

ABDALLAH BANDA ABAKAER NOURAIN, without prejudice to further decisions of the Chamber in this respect:

- (i) to refrain from discussing issues related to either the charges which form the basis of the present summons or the evidence and information presented by the Prosecutor and considered by the Chamber,

- (ii) to refrain from making any political statements while within the premises of the Court, including the location assigned to him,
- (iii) not to leave, without specific permission of the Chamber and for the whole period of his stay in the Netherlands, the premises of the Court, including the location assigned to him,
- (iv) to comply, in any case, with all the instructions of the Registrar for the purposes of his appearance before the Court.

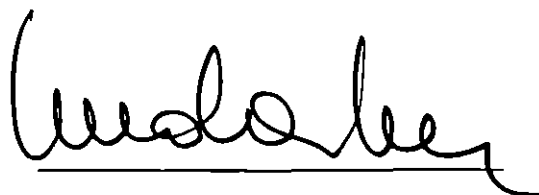
Done in both English and French, the English version being authoritative



Judge Sylvia Steiner
Presiding Judge



Judge Sanji Mmasenono Monageng



Judge Cuno Tarfusser

Dated this Thursday, 27 August 2009

At The Hague, the Netherlands