

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 July 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***

URGENT

Public Redacted

Decision as to the Further Steps for the Trial Proceedings

Decision 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

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*, issues the following “Decision as to the further steps of the Trial Proceedings”, pursuant to Articles 57(3)(c), 58(1) and (7), 64(6)(a) and 97 of the Rome Statute (“Statute”); Rule 176(2) of the Rules of Procedure and Evidence (“Rules”) and Resolution 1593 of 31 March 2005 of the Security Council of the United Nations.

I. BACKGROUND

1. On 20 November 2008, the Office of the Prosecutor (“prosecution”) filed its application under Article 58 of the Statute.¹
2. On 27 August 2009, the Pre-Trial Chamber I considered that a warrant of arrest did not appear necessary for the purposes of Article 58(1)(b) of the Statute and found that a summons to appear was sufficient to ensure the appearance of Abdallah Banda Abakaer Nourain (“Mr Banda”) at trial, without prejudice to the Chamber’s power to review its determination under Articles 58(1) and 58(7) of the Statute.²
3. On 7 March 2011, the Pre-Trial Chamber confirmed the charges.³
4. On 6 March 2013, this Chamber issued the “Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings”, in which it set the trial date for 5 May 2014.⁴
5. Following the establishment of the trial date, this Chamber received a number of written submissions related to the feasibility of Mr Banda’s

¹ ICC-02/05-163-Conf-Exp.

² Summons to appear for Abdallah Banda Abakaer Nourain, 27 August 2009, ICC-02/05-03/09-3, paragraph 20.

³ Corrigendum of the “Decision on the Confirmation of Charges”, 7 March 2011, ICC-02/05-03/09-121-Corr-Red.

⁴ Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings, 6 March 2013, ICC-02/05-03/09-455, paragraph 25(ii).

voluntary appearance before the Court⁵ and convened a Status Conference on 7 April 2014 with the parties and the Registry, whereby it received oral submissions on the topic.⁶ At the request of the Chamber,⁷ the defence⁸ and the prosecution⁹ filed additional written submissions.

6. On 15 April 2014, the defence requested that: (i) the trial start date of 5 May 2014 be vacated, (ii) a status conference be scheduled for September 2014 and (iii) a trial start date be set for March 2015.¹⁰
7. On 16 April 2014, the Chamber decided [REDACTED] that the 5 May 2014 commencement date was clearly no longer feasible.¹¹ As a result, it decided to vacate the trial date. In addition, in order to decide what further steps to take, it requested legal and factual submissions from the Registry and the prosecution [REDACTED].¹²
8. On 6 May 2014, the prosecution and the Registry filed their submissions.¹³ On 23 May 2014, the defence filed a consolidated response addressing the submissions of the prosecution and the Registry.¹⁴

⁵ Submission of the Registry pursuant to regulation 24*bis* of the Regulations of the Court on the trial preparation, 3 April 2014, ICC-02/05-03/09-543-Conf-Red only available to the defence and the prosecution and the Second Submission of the Registry pursuant to regulation 24*bis* of the Regulations of the Court on the trial preparation, 3 April 2014, ICC-02/05-03/09-550-Conf-Red only available to the defence and the prosecution.

⁶ Order scheduling a status conference, 4 April 2014, ICC-02/05-03/09-551 (with confidential annex), ICC-02/05-03/09-551-Conf-Anx and transcript of public hearing on 7 April 2014, ICC-02/05-03/09-T-24 and transcript of confidential hearing on 7 April 2014, ICC-02/05-03/09-T-25-CONF-EXP-ENG.

⁷ Decision subsequent to the status conference of 7 April 2014, 10 April 2014, ICC-02/05-03/09-553-Conf, paragraph 14.

⁸ Defence Submissions pursuant to "Decision subsequent to the status conference of 7 April 2014" (ICC-02/05-03/09-553-Conf), 14 April 2014, ICC-02/05-03/09-560-Conf; ICC-02/05-03/09-561-Conf.

⁹ Prosecution Response to "Defence Submissions pursuant to *Decision subsequent to the status conference of 7 April* (ICC-02/05-03/09-553-Conf)", 15 April 2014, ICC-02/05-03/09-562-Conf.

¹⁰ Defence Request to Vacate the Trial Commencement Date, 15 April 2014, ICC-02/05-03/09-563-Conf-Red (confidential redacted version notified 16 April 2014), ICC-02/05-03/09-563-Conf-Red, paragraph 17.

¹¹ Decision vacating the trial date of 5 May 2014, 16 April 2014, ICC-02/05-03/09-564, paragraphs 10 to 13. A public redacted version of this decision has been filed on the same date.

¹² ICC-02/05-03/09-564-Conf, paragraphs 11 to 13.

¹³ ICC-02/05-03/09-576-Conf; ICC-02/05-03/09-577-Conf.

¹⁴ ICC-02/05-03/09-583-Conf.

II. THE SUBMISSIONS

a. Submissions related to the trial date

Prosecution

9. The prosecution indicates that recent disclosure and pending translations constitute a valid basis to delay the start of trial. Since 1 January 2014, the prosecution has disclosed 100 documents, totaling 394 pages, and five audio/video files.¹⁵ The materials include statements [REDACTED].¹⁶ In addition, the material includes [REDACTED], which were included in the documents requested by the defence. The prosecution submits that none of this additional material fundamentally changes the prosecution's case against the accused and argues that disclosure of this material will save time for the defence, both in terms of investigations and in-court questioning.¹⁷
10. The prosecution submits that the trial date should be 1 October 2014.¹⁸ It indicates that the time between now and October 2014 will enable the remaining disclosure and translation issues to be resolved while providing the defence with adequate time to process the newly disclosed and translated materials. It submits that, in addition, such time would enable the Registry to resolve [REDACTED].¹⁹

Defence

11. The defence also requests an adjournment, in order to: (i) review the newly disclosed materials; (ii) [REDACTED]; (iii) continue its investigations; and

¹⁵ ICC-02/05-03/09-576-Conf, footnote 31.

¹⁶ ICC-02/05-03/09-563-Conf, paragraph 5. [REDACTED]

¹⁷ ICC-02/05-03/09-576-Conf, paragraph 20.

¹⁸ ICC-02/05-03/09-576-Conf, paragraph 7.

¹⁹ ICC-02/05-03/09-576-Conf, paragraph 7.

(iv) prepare its case prior to the start of trial.²⁰ As indicated, it requests that the trial start date be set for March 2015.²¹

b. [REDACTED]

Registry

12. [REDACTED]²² [REDACTED]²³ [REDACTED]²⁴ [REDACTED]²⁵

13. [REDACTED]²⁶ [REDACTED]²⁷ [REDACTED]²⁸ [REDACTED]²⁹
[REDACTED]³⁰ [REDACTED]³¹

14. [REDACTED]³²

15. [REDACTED]³³ [REDACTED]³⁴ [REDACTED]³⁵

16. [REDACTED]³⁶ [REDACTED]³⁷ [REDACTED]³⁸ [REDACTED]³⁹
[REDACTED]⁴⁰

Prosecution

²⁰ ICC-02/05-03/09-563-Conf-Red, paragraph 7.

²¹ ICC-02/05-03/09-563-Conf-Red, paragraph 17.

²² ICC-02/05-03/09-577-Conf, paragraphs 2-9.

²³ ICC-02/05-03/09-577-Conf, paragraph 2.

²⁴ ICC-02/05-03/09-577-Conf, paragraph 4.

²⁵ ICC-02/05-03/09-577-Conf, paragraph 6.

²⁶ ICC-02/05-03/09-577-Conf, paragraph 7.

²⁷ ICC-02/05-03/09-577-Conf, paragraph 11.

²⁸ ICC-02/05-03/09-577-Conf, paragraphs 13 and 14, 17.

²⁹ ICC-02/05-03/09-577-Conf, paragraph 12.

³⁰ ICC-02/05-03/09-577-Conf, paragraphs 13-17.

³¹ ICC-02/05-03/09-577-Conf, paragraphs 10; see also [REDACTED] ICC-02/05-03/09-559-Conf.

³² ICC-02/05-03/09-577-Conf, paragraph 18.

³³ ICC-02/05-03/09-577-Conf, paragraphs 21-24.

³⁴ ICC-02/05-03/09-577-Conf, paragraph 22.

³⁵ ICC-02/05-03/09-577-Conf, paragraphs 19-20.

³⁶ ICC-02/05-03/09-577-Conf, paragraph 26.

³⁷ ICC-02/05-03/09-577-Conf, paragraph 25.

³⁸ ICC-02/05-03/09-577-Conf, paragraph 27.

³⁹ ICC-02/05-03/09-577-Conf, paragraph 25.

⁴⁰ ICC-02/05-03/09-577-Conf, paragraph 28.

17. [REDACTED]⁴¹

18. [REDACTED]⁴²

Defence

19. [REDACTED]⁴³ [REDACTED]⁴⁴

20. [REDACTED]⁴⁵ [REDACTED]⁴⁶ [REDACTED]⁴⁷ [REDACTED]⁴⁸

21. [REDACTED]⁴⁹ [REDACTED]⁵⁰ [REDACTED]⁵¹ [REDACTED]⁵²
[REDACTED]⁵³

22. [REDACTED]⁵⁴

III. ANALYSIS BY THE CHAMBER

a. *Trial date*

23. The Chamber notes the arguments put forward in the submissions of the parties related to the date to be set for trial and accepts that a postponement of some months of the trial date is warranted.

⁴¹ ICC-02/05-03/09-576-Conf, paragraphs 4, 10-11.

⁴² ICC-02/05-03/09-576-Conf, paragraphs 5, 12-19.

⁴³ ICC-02/05-03/09-583-Conf, paragraphs 2, 10-15.

⁴⁴ ICC-02/05-03/09-583-Conf, paragraphs 3, 16-17.

⁴⁵ ICC-02/05-03/09-583-Conf, paragraphs 4-5, 18-37.

⁴⁶ ICC-02/05-03/09-583-Conf, paragraphs 18-32.

⁴⁷ ICC-02/05-03/09-583-Conf, paragraphs 33-35.

⁴⁸ ICC-02/05-03/09-583-Conf, paragraph 21.

⁴⁹ ICC-02/05-03/09-543-Conf-Red, paragraph 8.

⁵⁰ ICC-02/05-03/09-543-Conf-Red, paragraph 8.

⁵¹ ICC-02/05-03/09-543-Conf-Red, annex 1 page 3.

⁵² ICC-02/05-03/09-553-Conf, paragraphs 9 and 10.

⁵³ ICC-02/05-03/09-560-Conf, paragraph 4.

⁵⁴ ICC-02/05-03/09-583-Conf, paragraph 40.

24. However, the Chamber is not persuaded that the defence requires the amount of time it indicated to conduct its investigations and prepare for trial. It considers, instead, that the trial commencement date may be set for 18 November 2014. The parties should inform the Chamber of any difficulties regarding the feasibility of this date at the earliest available opportunity.

b. [REDACTED]

25. The Chamber's analysis and conclusions in this section are by Majority, Judge Eboe-Osuji dissenting.

26. [REDACTED]

27. [REDACTED]⁵⁵

28. [REDACTED]⁵⁶ [REDACTED]⁵⁷ [REDACTED]⁵⁸

29. [REDACTED]⁵⁹

[REDACTED]⁶⁰

30. [REDACTED]

31. [REDACTED]⁶¹

32. [REDACTED]⁶²

33. [REDACTED]

⁵⁵ ICC-02/05-03/09-577-Conf, paragraphs 13-17.

⁵⁶ ICC-02/05-03/09-583-Conf, paragraph 31. [REDACTED]

⁵⁷ ICC-02/05-03/09-583-Conf, paragraph 35.

⁵⁸ ICC-02/05-03/09-583-Conf, paragraphs 32 and 35.

⁵⁹ ICC-02/05-03/09-577-Conf-Anx, 1 page 6.

⁶⁰ ICC-02/05-03/09-577-Conf-Anx, 1 page 6.

⁶¹ ICC-02/05-03/09-T-22-CONF-ENG.

⁶² ICC-02/05-03/09-577-Conf, paragraph 19.

c. Summons to appear and cooperation from Sudan

34. The Chamber recalls that Pre-Trial Chamber I considered that a warrant of arrest did not appear necessary to ensure Mr Banda's appearance before the Court and issued instead a summons to appear on 27 August 2009.⁶³ On 6 March 2013, this Chamber decided that Mr Banda continued to be bound by the summons to appear.⁶⁴ The Chamber confirms that: (i) the summons continues to be valid; (ii) for purposes of his trial, the accused is bound by the existing summons to appear;⁶⁵ and (iii) a summons continue to appear sufficient to ensure his appearance at trial under the conditions specified in the previous decision on the matter.

35. [REDACTED]⁶⁶

36. [REDACTED] the Chamber considers it necessary to ensure the cooperation of Sudan with the trial proceedings against Mr Banda. Hence, this Chamber considers it appropriate to notify the GoS of the summons to appear against Mr Banda and to request its cooperation to facilitate his presence at the trial, including by providing him with all necessary travel documents and making all other necessary arrangements as may be appropriate.

IV. ORDERS OF THE CHAMBER

⁶³ Summons to appear for Abdallah Banda Abakaer Nourain, 27 August 2009, ICC-02/05-03/09-43, paragraph 20.

⁶⁴ Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings, 6 March 2013, ICC-02/05-03/09-455, paragraphs 21 and 25.

⁶⁵ Summons to appear for Abdallah Banda Abakaer Nourain, 27 August 2009, ICC-02/05-03/09-3; ICC-02/05-03/09-455, paragraph 21.

⁶⁶ ICC-02/05-03/09-560-Conf, paragraph 4(a).

37. For the foregoing reasons, the Chamber hereby:

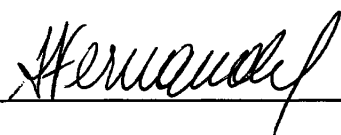
- (a) **decides** that the trial in the Banda case shall commence on 18 November 2014;
- (b) **decides** that, on the basis of the existing summons to appear, Mr Banda is to be present at his trial on 18 November 2014;
- (c) **orders** the Registrar to inform the Government of Sudan of the summons to appear against Mr Banda and to transmit to them, through the proper channels of communication a cooperation request to take all necessary steps to facilitate Mr Banda's presence for his trial, including by providing him with travel documents and making all other necessary arrangements as may be appropriate;
- (d) **orders** the Registrar to report back to the Chamber on the implementation of the cooperation request by 1 September 2014.

Judge Eboe-Osuji appends a partly dissenting opinion.

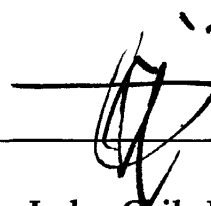
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch



Judge Silvia Fernández de Gurmendi



Judge Chile Eboe-Osuji

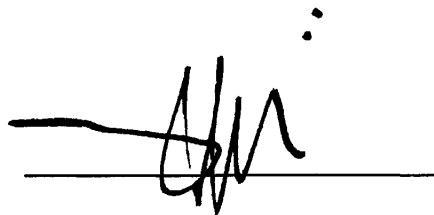
Dated this 14 July 2014

At The Hague, the Netherlands

PARTLY DISSENTING OPINION OF JUDGE EBOE-OSUJI

1. I concur with the decision of the Chamber, except for the [REDACTED] analysis appearing in paragraphs 27 to 32.
2. In paragraph 27, the following observation appears:
[REDACTED].
3. In my view, that observation either underpins or colours the [REDACTED] analysis that ensued in the decision. Effectively, that [REDACTED] analysis is a second-guessing of the [REDACTED]. I have difficulty.
4. My difficulty is not to be understood to the effect that the Chamber must always accept the [REDACTED] assessment lock-stock-and-barrel. Indeed, there may be occasions when it will be correct to second-guess—even reject—the [REDACTED] assessments. I am not convinced that the occasion is afforded in the present instance.
5. [REDACTED].
6. [REDACTED].

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Chile Eboe-Osuji
Judge

Dated 11 September 2014

At The Hague, The Netherlands