

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **27 October 2026**

TRIAL CHAMBER IV

Before:

**Judge Kimberly Prost, Presiding Judge
Judge Reine Alapini-Gansou
Judge María del Socorro Flores Liera**

SITUATION IN DAFUR, SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. ABDALLAH BANDA ABAKAER NOURAIN***

PUBLIC

**Public Redacted Version of “Defence Request for the Conversion of the Arrest Warrant
against Mr Banda into a Summons to Appear”, filed on 12 November 2021**

Source: Defence 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

[REDACTED]

Counsel for the Defence

[REDACTED]

Legal Representatives of the Victims

[REDACTED]

Common Legal Representative for Victims

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

[REDACTED]

States' Representatives

Amicus Curiae

REGISTRY

Registrar

[REDACTED]

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

[REDACTED]

I. INTRODUCTION

1. The Defence for Abdallah Banda Abakaer Nourain ('Defence') hereby requests Trial Chamber IV ('Chamber') to rescind the arrest warrant issued on 11 September 2014 against Mr Abdallah Banda Abakaer Nourain¹ ('Mr Banda'). Considering the current situation in Sudan and the legalities involved with Mr Banda's travel, the Defence asserts that this is the most prudent and legal manner to have Mr Banda travel to The Hague, Netherlands for the purpose of appearing before the Court.

II. CONFIDENTIALITY

2. Pursuant to Regulation 23 *bis*(1) and (2) of the Regulations of the Court, the Defence files this request as CONFIDENTIAL, *ex parte*, Defence, Prosecution, Registrar and External Operations only. This request is filed *ex parte* as the information below deals [REDACTED]. The Defence files contemporaneously a confidential redacted version for the purview of the Legal Representatives.

III. PROCEDURAL SUMMARY

3. On 7 March 2011, Pre-Trial Chamber I confirmed charges against Mr Banda.²
4. On 11 September 2014, the Chamber issued an arrest warrant for Mr Banda.³
5. On 3 March 2015, the Appeals Chamber upheld the arrest warrant against Mr Banda.⁴
6. On 13 November 2019, the Chamber issued its *Order following status conference on 30 October 2019*.⁵
7. On 17 December 2019, the Chamber issued its *Second Order following Status Conference on 30 October 2019*.⁶

¹ Trial Chamber IV, *Warrant of arrest for Abdallah Banda Abakaer Nourain*, [ICC-02/05-03/09-606](#).

² Pre-Trial Chamber I, *Corrigendum of the "Decision on the Confirmation of Charges"*, ICC-02/05-03/09-121-Conf-Corr (public redacted version is found [here](#)).

³ Trial Chamber IV, *Warrant of arrest for Abdallah Banda Abakaer Nourain*, [ICC-02/05-03/09-606](#).

⁴ Appeals Chamber, *Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain against Trial Chamber IV's issuance of a warrant of arrest*, ICC-02/05-03/09-632-Conf (public redacted version is found [here](#)).

⁵ Trial Chamber IV, *Order following status conference on 30 October 2019*, ICC-02/05-03/09-671-Conf-Exp (public redacted version is found [here](#)).

⁶ Trial Chamber IV, *Second Order following Status Conference on 30 October 2019*, ICC-02/05-03/09-675-Conf-Exp.

8. From January 2019 to the present, the Defence has worked within the confines of the Pandemic to [REDACTED].⁷
9. On 24 August 2021, the Defence held a meeting *via* WebEx with External Relations.
10. On 30 August 2021, [REDACTED] from the Defence⁸ met with Julian Nicholls of the Prosecution.
11. On 21 September 2021, the Defence, Prosecution and Registry held a meeting *via* WebEx.
12. On 12 October 2021, the Prosecution informed the Defence that it would not support a request to convert the arrest warrant to a summons.⁹
13. On 21 October 2021, after weeks of planning and one missed opportunity, the Defence, Prosecution and Registry conducted a conference call with Mr Banda for approximately one hour.
14. On 29 October 2021, the Prosecution emailed the Defence and stated for a second time in 17 days that it would not support a request to have the arrest warrant converted into a summons.¹⁰

IV. SUBMISSIONS

A. Progressive meetings between the Defence, Prosecution and Registry about Mr Banda appearing before the Chamber

i. Prior recent actions have reinforced the willingness of Mr Banda to appear before the Court

15. Mr Banda appeared before the Court at all required times before the [REDACTED] confiscated his passport and refused him from entering the country at the scheduled start of trial in [REDACTED].
16. Since the Chamber's orders in late 2019,¹¹ the Defence, along with the Registry, have made great strides in its discussions with Mr Banda. During the first two months of 2020, the

⁷ [REDACTED].

⁸ Under instructions from Counsel Taku.

⁹ Email from Julian Nicholls of the Prosecution to [REDACTED], *Re: Update as to Prosecution Decision*, received on 12 October 2021 at 17h22 CET. Prosecutor Nicholls wrote, "I apologise for the late reply. We have discussed internally and cannot support such a request."

¹⁰ Email from Julian Nicholls to the Defence and Registry, *RE: Conference call meeting with General Banda*, received on 29 October 2021 at 13h41 CET.

¹¹ See paras 6-7 above.

Defence had continuous contact with Mr Banda and [REDACTED]. Unfortunately, travel became restricted, and what appeared to be an expedited process unravelled into a long wait amidst the downfalls and travel restrictions of the 2020-21 Pandemic. Even so, [REDACTED].

17. On 1 July 2021, the Defence [REDACTED].¹²

18. Since this time, the Defence has been in contact with both Mr Banda and [REDACTED].

ii. Current discussions between the Registry and Parties have demonstrated further willingness of Mr Banda to appear before the Court

19. From 24 August 2021 to 21 October 2021, the Defence held several meetings with the Registry and Prosecution, one of which Mr Banda communicated with the Prosecution and Registry for nearly one hour.¹³

1. 30 August 2021 Meeting between the Prosecution and Defence

20. On 30 August 2021, the Defence and Prosecution met to discuss issues related to Mr Banda appearing before the Court. The meeting consisted of three (3) main points: 1) [REDACTED], 2) the potential signing of a waiver once Mr Banda arrives in The Hague to appear before the Chamber and 3) the lifting of the arrest warrant against Mr Banda.

21. [REDACTED].¹⁴ [REDACTED].

22. Secondly, the Defence proffered to the Prosecution that if the Prosecution supported a request to lift the arrest warrant, Mr Banda would sign a guarantee to appear before the Chamber whenever required or requested by the Chamber, and if he failed to appear for *reasons within his control*, the trial could proceed without his presence. Mr Banda would make this declaration before the Chamber, Parties and Participants. The Defence notes that even with the Prosecution's answer on 12 October 2021 about the third point,¹⁵ Mr Banda stills holds this true.

¹² [REDACTED].

¹³ Telephone conference call between the Defence, Prosecution, External Relations and Mr Banda, 21 October 2021.

¹⁴ [REDACTED].

¹⁵ Email from Julian Nicholls of the Prosecution to [REDACTED], *Re: Update as to Prosecution Decision*, received on 12 October 2021 at 17h22 CET. Prosecutor Nicholls wrote, "I apologise for the late reply. We have discussed internally and cannot support such a request." This was in relation to lifting the arrest warrant.

23. Thirdly, the Defence requested the Senior Trial Attorney to take this information to the Office of the Prosecutor to determine whether it would support a request to have the arrest warrant lifted. On 12 October 2021, in the midst of coordinating a joint telephone call with the Prosecution, Defence, Registry and Mr Banda, the Prosecution replied to the Defence stating that it could not support a request to lift the arrest warrant.¹⁶
24. Even with this answer, the Defence and Mr Banda pressed on to hold the meeting between the Defence, Prosecution, Registry and Mr Banda. Between the initial meetings on 30 August and 21 September 2021, and the meeting on 21 October 2021, Mr Banda continued to press on about appearing before the Chamber.

2. 21 September 2021 Meeting between the Defence, Prosecution and Registry

25. The Defence held a meeting with the Prosecution and Registry on 21 September 2021. The purpose of the meeting was to have a question-and-answer session with the Prosecution and Registry about the topics discussed during the meeting on 30 August 2021. The Defence reiterated its three (3) points from 30 August 2021. The Defence ended the meeting with a request to the Prosecution to consider its proposal. As written above, the Prosecution was disinclined to acquiesce to the request.

3. 21 October 2021 Meeting between the Defence, Prosecution, Registry and Mr Banda

26. On 21 October 2021, the Defence, Prosecution, Registry and Mr Banda convened a conference call. Mr Banda spoke and answered questions for approximately one (1) hour. Mr Banda relayed several points during the discussion.
27. Firstly, Mr Banda stated that should his arrest warrant be lifted, he would be prepared to meet his Defence in [REDACTED] within 72 hours of the acknowledgement that the arrest warrant was converted to a summons. Mr Banda stated that [REDACTED]. After holding a meeting with his Defence, Mr Banda stated that he would be ready and willing to travel to The Hague, Netherlands to appear before the Chamber and set a trial date.
28. When asked by the Prosecution why Mr Banda could not turn himself into a national jurisdiction and come to The Hague how others have – like Bosco Ntaganda¹⁷ – Mr Banda

¹⁶ *Ibid.*

¹⁷ The Defence notes that this was an actual example given by the Prosecution during the conference call meeting of 21 October 2021.

asked the Prosecution to name a country. It goes without saying that even before the overthrow of the Sovereignty Council a few weeks ago, Mr Banda could not turn himself into the Sudanese Government. The Prosecution stated that it could not make a firm recommendation and that this was something for the Defence Counsel to discuss with the Registry.¹⁸ The Defence notes that should Mr Banda travel across an international border while an arrest warrant exists, he would be violating national law of that country, thus exposing himself to further prosecution and possible ASP sanctions against that nation. If the arrest warrant was converted, Mr Banda would be free to travel with proper documentation across international borders (or be granted access by a country), and thus be able to meet with his Defence and travel to The Hague to appear before the Chamber.

29. Mr Banda invited the Prosecution and Registry to travel with the Defence to the location of the meeting. After the meeting with his Defence, Mr Banda would freely speak with the Prosecution and Registry about his travel arrangements to The Hague. As told to the Prosecution by Mr Banda himself, he will fly to the Netherlands after his meeting with the Defence. He merely requests that his Defence accompany him with the Registry and Prosecution for the travel to the Netherlands.
30. Furthermore, [REDACTED].
31. Mr Banda stressed to everyone present at the conference call that he has not been hiding these past seven (7) years. He has helped with the Juba Peace process, worked for peace with the United Nations and given interviews to newspapers.¹⁹ Mr Banda has been in contact with his Defence this whole time, and has repeated his desires to appear before the Chamber [REDACTED]. Mr Banda is a man of honour, not a coward, and he fears no Court or justice. [REDACTED].
32. Finally, on 29 October 2021, the Prosecution emailed the Defence in relation to its request to support this request. The Prosecution stated, “[w]e have considered the situation carefully and I must inform you that we would not support a request for the lifting or suspension of the arrest warrant issued for Mr Banda.”²⁰

¹⁸ [REDACTED].

¹⁹ These specific acts were not named by Mr Banda during the 21 October 2021 conference call. Mr Banda stated that he was not in hiding, and these acts are ones which the Court is aware.

²⁰ Email from Julian Nicholls to the Defence and Registry, *RE: Conference call meeting with General Banda*, received on 29 October 2021 at 13h41 CET.

B. The Arrest Warrant against Mr Banda should be lifted

33. The Defence asserts that changed circumstances justify the conversion of the arrest warrant against Mr Banda into a summons, at least for a minimum of two weeks, to allow him to meet the Defence and travel to The Hague to appear before the Chamber. The Defence reiterates that regardless of whether the Prosecution ultimately requests the Chamber to reject the conversion of the arrest warrant to a summons, the Prosecution and Registry are both invited to the meeting place where the Defence will meet with Mr Banda under the terms outlined during the 21 October 2021 conference call.
34. Firstly, the Defence highlights that Mr Banda has not been ordered to appear before the Court for attacking civilians. In the 12 years since the issuance of the summons, there have been no substantiated allegations of attacks on civilians by Mr Banda. The Defence implores the Chamber to consider this highly pertinent issue when considering the Defence's request.
35. On 21 October 2021, during the conference call meeting with the Defence, Prosecution, Registry and Mr Banda, Mr Banda renewed his commitment to appear before the Chamber. Mr Banda is willing, able and ready, should the arrest warrant be temporarily converted into a summons, to meet in person with his Defence Team immediately. Mr Banda assured all those attending the meeting that he could meet in [REDACTED] immediately – within 72 hours – should the arrest warrant be converted into a summons.
36. To demonstrate his goodwill and intentions, after the conclusion of the meeting between Mr Banda and his Defence Team, the Registry and Prosecution are free to meet with Mr Banda (in the presence of his lawyer) thereafter, and then accompany Mr Banda to The Hague, Netherlands to appear before the Chamber. Mr Banda is willing to travel to The Hague [REDACTED]²¹ [REDACTED].
37. As a further demonstration of Mr Banda's intent to appear before the Chamber, after the initial status conferences with the Chamber, Mr Banda is willing to declare before the Chamber that should he not appear before the Chamber *for reasons within his control* when required, the Chamber may proceed with the trial, thereby waiving his right to be present for trial.

²¹ [REDACTED].

38. Mr Banda desires to come to the Court to clear his name. He wishes what anyone wants – to move forward with his life. The Chamber must seize this opportunity now by converting the arrest warrant to a summons for a period of two weeks to allow Mr Banda legally to cross an international border to meet his Defence. Mr Banda assured all those present during the 21 October 2021 conference call meeting that should the arrest warrant be converted to a summons, he would be able to travel legally to [REDACTED] and meet his Defence Team within 72 hours, and thereafter travel to the Court – with or without the Registry and Prosecution²² – to appear before the Chamber. While Mr Banda can physically cross borders to meet with his Defence Team, he does not do so because of the legality of this while the arrest warrant is present. He assured to everyone that should the arrest warrant be converted into a summons, he would be able to cross the border legally with the ultimate goal of an expedited trip to the Court.
39. Ultimately, and because of the assurances of the waiver at paragraph 37 above, when Mr Banda appears before the Chamber as a result of converting the arrest warrant to a summons, the Defence requests that the summons remain permanent so long as conditions of the summons are followed.²³
40. The Defence continues to assert that Mr Banda is not and has not acted like a fugitive from justice. He has not been hiding, and in fact, he was very active and vocal in the Juba Peace Process. He has maintained his innocence and desire to clear his name before the Court and the international community.
41. The Defence is perplexed and confused with lack of reception from the Office of the Prosecutor in trying to bring Mr Banda to the Court. With respect, the Defence cannot fathom why the Prosecution has been less than receptive as of late. Even with its first refusal to support this request,²⁴ Mr Banda still extended an olive branch to talk with the Prosecution on 21 October 2021 and still invites the Prosecution and Registry to meet him even after the Prosecution's second refusal to support this request.²⁵ The Defence can only postulate that the

²² The Defence stresses again that the Prosecution and Registry are welcome to travel with the Defence during this time and meet Mr Banda before travelling to the Court.

²³ The Defence realises and is prepared to make an additional application when Mr Banda appears before the Chamber.

²⁴ Email from Julian Nicholls of the Prosecution to [REDACTED], *Re: Update as to Prosecution Decision*, received on 12 October 2021 at 17h22 CET. Prosecutor Nicholls wrote, "I apologise for the late reply. We have discussed internally and cannot support such a request."

²⁵ Email from Julian Nicholls to the Defence and Registry, *RE: Conference call meeting with General Banda*, received on 29 October 2021 at 13h41 CET.

Prosecution does not desire to have Mr Banda appear before the Chamber and wishes for this arrest warrant to hover over Mr Banda in perpetuity.

42. Finally, the Defence requests the Chamber to think about one final issue when determining whether to convert the arrest warrant into a summons for a short two-week period to allow the Defence, Prosecution and Registry to meet with Mr Banda in [REDACTED] for the ultimate purpose of accompanying him to the Court. What does the Court have to lose? Mr Banda has told the Prosecution and Registry of his intentions, both himself and through his Defence Team, and the Court stands to lose nothing by making this attempt. Should Mr Banda not appear in [REDACTED], the summons goes back to an arrest warrant, and we carry on. When Mr Banda appears though in [REDACTED], and then appears before the Chamber shortly thereafter, the Court stands to gain a lot. Again, what does the Court have to lose?
43. For the abovementioned reasons, the Defence asserts that changed circumstances justify the Chamber to convert the arrest warrant against Mr Banda into a summons, if only temporarily, to allow him to meet with his Defence, the Prosecution and Registry in [REDACTED] for meetings with the end-goal being that he travels to The Hague, Netherlands to appear before the Chamber and the Court continues with the trial proceedings.

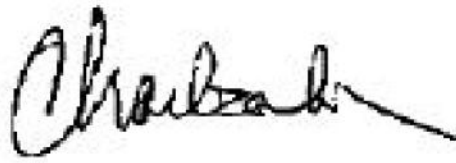
C. Trial in *absentia*

44. The Defence takes this time to restate its position on the Chamber holding a trial *in absentia*. Mr Banda asserts his innocence against the charges levied against him and does not waive his right to be present in person for trial. The Defence re-asserts that holding such a trial without Mr Banda's consent would violate his rights, a position shared by the Office of the Prosecutor.

V. REQUESTED RELIEF

45. For the abovementioned reasons, the Defence for Abdallah Banda Abakaer Nourain requests Trial Chamber IV to convert the arrest warrant for Mr Banda into a summons for a period of two weeks for Mr Banda to cross international borders legally and meet with his Defence Team, the Prosecution and Registry, with the ultimate goal of travelling to the Court to appear before the Chamber so the trial proceedings can continue.
46. Furthermore, once Mr Banda appears before Trial Chamber IV, it is requested that the summons be continued permanently so long as the terms of the summons are followed.

Respectfully submitted,



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Chief Charles Achaleke Taku

On behalf of Abdallah Banda Abakaer Nourain

Dated this 27th day of October, 2026

At Maryland, United States of America