

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/05-03/09**
Date: **29 October 2026**

TRIAL CHAMBER IV

Before: Judge Kimberly Prost, Presiding Judge
Judge Keebong Paek
Judge Nicolas Guillou

SITUATION IN DARFUR, SUDAN

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

Public

Public redacted version of “Confidential Redacted Version of “Prosecution’s response to the “Defence Request for the Conversion of the Arrest Warrant against Mr Banda into a Summons to Appear”, 12 November 2021, ICC-02/05-03/09-710-Conf-Exp”, 19 November 2021, ICC-02/05-03/09-711-Conf-Exp”, ICC-02/05-03/09-711-Conf-Red, dated 22 November 2021

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The “Defence Request for the Conversion of the Arrest Warrant against Mr Banda into a Summons to Appear”¹ (“Defence Request”) should be rejected. The claims made in the Defence Request are inaccurate and unsubstantiated. Mr Banda continues to be a fugitive from justice, and there has been no change of circumstances since the issuance of the last ruling of Trial Chamber IV (“Chamber”). The conversion of the warrant of arrest for any period into a summons to appear is unnecessary, unjustified and there is no impediment shown to Mr Banda’s immediate surrender.

II. CLASSIFICATION

2. Pursuant to Regulation 23*bis*(2) of the Regulation of the Court, the Prosecution files its observations under “Confidential” classification.

III. SUBMISSIONS

Preliminary observations

3. The Prosecution notes as a preliminary observation that the Defence Request is, in effect, a request for the indefinite suspension of the warrant for the arrest of Mr Banda. This is evident from the Defence’s request that “the summons be continued permanently so long as the terms of the summons are followed.”²

4. Contrary to the Defence assertion,³ and as communicated directly to Mr Banda by the Prosecution on 21 October 2021,⁴ the Prosecution maintains its clear position that Mr Banda should surrender himself to The Hague to appear before the Chamber to answer the serious charges he faces. Based on Mr Banda’s prior conduct, as well as discussions with the Defence and Mr Banda, the Prosecution does not believe converting the warrant of arrest to a summons will achieve this aim.

¹ICC-02/05-03/09-710-Conf-Exp.

²ICC-02/05-03/09-710-Conf-Exp, para. 46.

³Defence Request, para. 41.

⁴Telephone call with Defence, Registry, Prosecution and Mr Banda on 21 October 2021.

5. To the contrary, lifting the arrest warrant and allowing Mr Banda to cross international borders more freely, risks making his appearance before the Chamber even less likely. As discussed below, there is nothing preventing Mr Banda from immediately surrendering to the Court, however, he simply persists in refusing to do so. Under these circumstances allowing Mr Banda greater freedom of movement is not appropriate.

6. The Prosecution also takes this opportunity to clarify that, contrary to the Defence assertion, Mr Banda is not [REDACTED].⁵

Mr Banda is a fugitive from justice

7. The Defence continues to assert that Mr Banda “is not and has not acted like a fugitive from justice.”⁶ This is inaccurate. Mr Banda has been absconding since 11 September 2014.⁷ In the words of the Chamber, “Mr Banda, as the subject of a warrant of arrest, is a fugitive from justice.”⁸

8. The final report of the Panel of Experts on the Sudan found that:

Abdallah Banda, a prominent ex-JEM commander indicted by the International Criminal Court, gave up his goldmining activities in the Kouri-Bougoudi area in 2019, after being expelled from there by the Chadian authorities, and in March 2020 officially launched his own rebel group, the Assembly of the Justice and Equality Movement forces [...]. Banda, who now had about 45 vehicles, recruited mostly among former JEM veterans [...] including [...] Jibril Abdulkarim Ibrahim Mayu (Tek) [...] a designated individual on the sanctions list, number three of the group.⁹

⁵ Defence Request, para. 21.

⁶ ICC-02/05-03/09-710-Conf-Exp, para 40.

⁷ ICC-02/05-03/09-606.

⁸ ICC-02/05-03/09-705-Conf-Exp, para. 12.

⁹ United Nations Security Council, “Letter dated 13 January 2021 from the Panel of Experts on the Sudan addressed to the President of the Security Council”, S/2021/40, 13 January 2021 https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2021_40.pdf (“UNSC Report on the Sudan of 13 January 2021”), para. 60.

9. The panel added that “[v]arious reliable sources indicated that, throughout the reporting period, Jibril Abdulkarim Ibrahim Mayu “Tek” was based in Libya, where he was participating in the conflict on the side of the Libyan National Army in Abdallah Banda’s group.”¹⁰

10. The panel also found that from:

late 2019 to June 2020, most of the Darfurian rebel groups supporting the Libyan National Army (GSLF, SLA/TC, SLA/AW, SRAC, *Abdallah Banda*) joined the Libyan National Army Tripoli operations, some of them fighting in the southern neighbourhoods of Tripoli, such as Ain Zara and Qasr Bin Ghasir.¹¹ [Emphasis added].

11. Similarly, a co-publication of the Small Arms Survey’s Human Security Baseline Assessment for Sudan and South Sudan (HSBA) and Security Assessment in North Africa (SANA) noted in June 2020 that the “main Darfurian combatants in Libya, early 2020” included “Abdallah Banda and Jibril Abdelkarim Bari ‘Tek.’”¹² The authors include the following summary regarding Mr Banda’s forces under the heading “Force strength and notes”:

30–40 vehicles; signed the Doha Document for Peace in Darfur with Khartoum in 2011; involved in gold mining, smuggling of cars, banditry, attacks on drug traffickers, and escorting of drug convoys.¹³

12. Moreover, as recently as 21 July 2021, the Chamber held that it was “of the view that the totality of the record demonstrates that no substantive effort has been made by Mr Banda or his Defence team to [...] advance discussions regarding an appearance before the Court to face trial.”¹⁴ Also as per the Chamber, the “interaction to date shows

¹⁰ UNSC Report on the Sudan of 13 January 2021, para. 140.

¹¹ UNSC Report on the Sudan of 13 January 2021, para. 50.

¹² “Diaspora in Despair, Darfurian Mobility at a Time of International Disengagement”, A co-publication of the Small Arms Survey’s (“SAS”) Human Security Baseline Assessment for Sudan and South Sudan (HSBA) and Security Assessment in North Africa (“SANA”), June 2020 (“SAS and SANA Report”), page 24, <https://smallarmssurvey.org/resource/diaspora-despair-darfurian-mobility-time-international-disengagement>.

¹³ SAS and SANA Report, pages 24-24.

¹⁴ ICC-02/05-03/09-705-Conf-Exp, para.8.

no intention on the part of Mr Banda to propose ‘reasonable and realistic solutions in light of the Court’s limitations’ to facilitate his appearance for trial.”¹⁵

There has been no change of circumstances

13. Nor has there been any change of circumstances since the Chamber made the above findings. Indeed, when the Defence sought reconsideration of, *inter alia*, the above finding, the Chamber found on 24 August 2021 that “the Defence has not made any submissions or raised any new facts or arguments that would warrant the exceptional remedy of reconsideration.”¹⁶ While the Defence makes several references to “changed circumstances” in the Defence Request,¹⁷ at no point does the Defence explain the nature, extent, or impact of these changes.

14. To the contrary, recent communication with Mr Banda and his Defence team suggests a likelihood that Mr Banda will abscond again if he considers his liberty at risk.

15. During the recent call between Mr Banda, the Defence, Registry and the Prosecution, Mr Banda was asked directly by the Prosecution if he would surrender without the arrest warrant being lifted. In response, he said it was unfair to ask a “misleading question.”¹⁸ To the contrary, Mr Banda is well aware of his obligation to surrender himself to the Court, but simply chooses not to do so as he pursues his other interests.

16. The Defence Request refers to Mr Banda’s willingness to “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.”¹⁹

¹⁵ ICC-02/05-03/09-705-Conf-Exp, para. 10.

¹⁶ ICC-02/05-03/09-709-Conf-Exp, para. 12.

¹⁷ ICC-02/05-03/09-710-Conf-Exp, para 33, 43.

¹⁸ Telephone call with Defence, Registry, Prosecution and Mr Banda on 21 October 2021.

¹⁹ Defence Request, para. 22.

17. This “guarantee” is simply not credible. Mr Banda has failed to appear before the Chamber since 2014 despite being able to do so. Mr Banda now also asserts that his failure to appear for his trial in September 2014 was because the [REDACTED] [REDACTED] confiscated his passport and refused him from entering the country at the scheduled start of trial in September 2014.”²⁰ No reasons are offered for why this new argument was not previously raised.

18. Furthermore, during a telephone call between Defence, Registry and the Prosecution on 21 September 2021, the Defence stated that Mr Banda did not wish to be detained in The Hague while waiting for his trial.²¹ This position, added to Mr Banda’s previous conduct towards the Chamber, strongly suggests that Mr Banda would not appear for trial in any circumstances where he considered his liberty at risk.

19. Finally, a trial *in absentia* should Mr Banda abscond again, would not be in the interests of justice, nor of the victims.

Inappropriate trivialisation of charges

20. The Defence claims, *inter alia*, that Mr Banda “has not been ordered to appear before the Court for attacking civilians”²² and “implores the Chamber to consider this highly pertinent issue.”²³ The Prosecution rejects this attempt to trivialise the charges. Mr Banda is charged with three counts of war crimes (violence to life, intentionally directing attacks against personnel, installations, material, units and vehicles involved in a peacekeeping mission in accordance with the UN Charter, and pillaging). Twelve peacekeepers were killed during the attack by Mr Banda on the Haskanita AMIS base, or in its immediate aftermath, as confirmed by the Pre-Trial Chamber.²⁴

21. The Prosecution’s case is that these victims were entitled to the protections afforded civilians in armed conflicts. As noted by the Chamber, “[t]he adjudication of

²⁰ Defence Request, para. 15.

²¹ Telephone call with Defence, Registry, Prosecution and Mr Banda at approximately 1600-1700 on 21 September 2021, *see also*, Defence Request, para. 11.

²² ICC-02/05-03/09-710-Conf-Exp, para 34.

²³ *Ibid.*

²⁴ ICC-02/05-03/09-121-Corr-Red, para. 93.

hese charges, related to an international peacekeeping mission, is *an important matter of concern not only for the victims or the situation country but for the entire international community.*"²⁵[footnotes omitted, emphasis added].

The conversion of the warrant is not necessary to facilitate appearance

22. The Defence also claims that "[w]hile Mr Banda can physically cross borders [...] he does not do so because of the legality of this while the arrest warrant is present."

²⁶ This claim does not hold water. Where is Mr Banda now? The Defence do not say. However, [REDACTED]. [REDACTED] and there is nothing preventing Mr Banda from surrendering there, [REDACTED].

23. Moreover, assuming Mr Banda is [REDACTED], nothing would prevent him from surrendering at [REDACTED]. Furthermore, it is clear that the supposed confiscation of his passport has not prevented Mr Banda from traversing borders to pursue his business interests or for other reasons.

24. In this context, the Prosecution remains ready to facilitate by any manner (within its capacities and mandate) the surrender of Mr Banda, should he finally decide to comply with his legal obligations.

IV. CONCLUSION

25. In light of the foregoing, the Prosecution respectfully requests that the Chamber reject the Defence Request.



Mame Mandiaye Niang, Acting Prosecutor

Dated this 29th day of October 2026

At The Hague, The Netherlands

²⁵ ICC-02/05-03/09-705-Conf-Exp, Para 12.

²⁶ ICC-02/05-03/09-710-Conf-Exp, para 38.