



Original: English

No. **ICC-02/05-03/09**
Date: **17 September 2021**
Date of original: **21 July 2021**

TRIAL CHAMBER IV

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

SITUATION IN DARFUR, SUDAN

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

Public

Public redacted version of ‘Decision to end mandated facilitation discussions and reports by the Registry’

Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Mr James Stewart

Counsel for the Defence
Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER IV ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain*, issues this 'Decision to end mandated facilitation discussions and reports by the Registry'.

I. Procedural history

1. On 7 March 2011, Pre-Trial Chamber I confirmed the charges against Mr Banda ('Confirmation Decision').¹
2. On 11 September 2014, the Chamber in its previous constitution issued a warrant of arrest against Mr Banda,² which was confirmed by the Appeals Chamber on 3 March 2015³ and remains to be executed ('Warrant of Arrest').
3. On 30 October 2019, the Chamber in its previous constitution held a status conference with the Defence, Registry and Prosecution to discuss the status of the case and the way forward to ensure Mr Banda's appearance for trial.⁴ During the status conference, the Chamber heard submissions from the Defence, Prosecution and Registry.⁵ Subsequent to the status conference, the Chamber issued follow-up orders on 13 November ('First Order')⁶ and 17 December 2019 ('Second Order').⁷

II. Issue

4. Since the status conference held in October 2019, the Chamber has sought to identify ways to facilitate Mr Banda's appearance for trial. Notably, in its First Order, in response to submissions made by Counsel for Mr Banda, the Chamber

¹ Corrigendum of the "Decision on the Confirmation of Charges", ICC-02/05-03/09-121-Conf-Corr (a public redacted version was filed on 8 March 2011, ICC-02/05-03/09-121-Corr-Red).

² Warrant of arrest for Abdallah Banda Abakaer Nourain, ICC-02/05-03/09-606.

³ 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 (a public redacted version was filed on the same date, ICC-02/05-03/09-632-Red).

⁴ Transcript of hearing, 30 October 2019, ICC-02/05-03/09-T-027-CONF-ENG, p. 2, lines 14-21. *See also* Scheduling Order for Status Conference, 8 October 2019, ICC-02/05-03/09-666.

⁵ For a summary of the submissions, *see* Order following Status Conference on 30 October 2019, ICC-02/05-03/09-671-Conf-Exp, paras 3-5 (a public redacted version was filed on 19 November 2019).

⁶ Order following status conference on 30 October 2019, ICC-02/05-03/09-671-Conf-Exp (a public redacted version was filed on 19 November 2019, ICC-02/05-03/09-671-Red).

⁷ Second Order following Status Conference on 30 October 2019, ICC-02/05-03/09-675-Conf-Exp (confidential *ex parte*, only available to the Defence, the Registry, and the Prosecution).

inter alia ordered the Defence to provide specific additional information on [REDACTED]; concrete proposals [REDACTED]; and information on Mr Banda's whereabouts and activities.⁸ The Defence submissions pursuant to this order⁹ did not provide the specific information sought and it remains outstanding to this date.

5. In its Second Order, the Chamber reiterated the request for specific information from the Defence and also issued an order requiring the Registry to initiate discussions with [REDACTED] Defence Counsel and to report on these discussions every two months.¹⁰ Between 18 February 2020 and 18 June 2021, the Registry submitted eight reports in compliance with this order ('Registry Reports').¹¹
6. The Chamber initiated these discussions with [REDACTED] the Defence for the sole, express purpose of finding 'reasonable and realistic solutions in light of the Court's limitations' to facilitate Mr Banda's appearance for trial.¹²
7. Over a year and a half later, little progress has been made through these discussions despite extensive efforts on the part of the Registry to prompt conversations and to facilitate telephone and, in some instances, live meetings. The Chamber acknowledges that some issues have arisen because of communication difficulties¹³ and the complications of the COVID-19 pandemic.¹⁴ However, this does not account for the majority of the delay and problems encountered. [REDACTED],¹⁵ [REDACTED],¹⁶ [REDACTED],¹⁷

⁸ First Order, ICC-02/05-03/09-671-Conf-Exp, paras 7-10.

⁹ Defence Submissions pursuant to the Trial Chamber's Order of 13 November 2019 (ICC-02/05-03/09-671-Conf-Exp), 29 November 2019, ICC-02/05-03/09-672-Conf-Exp.

¹⁰ Second Order, ICC-02/05-03/09-675-Conf-Exp.

¹¹ [REDACTED].

¹² Second Order, ICC-02/05-03/09-675-Conf-Exp, para. 7.

¹³ *See, for instance*, Fifth Report, ICC-02/05-03/09-697-Secret-Exp, para. 5; Seventh Report, ICC-02/05-03/09-701-Secret-Exp-Red, paras 4, 6-10.

¹⁴ *See, for instance*, Second Report, ICC-02/05-03/09-682-Secret-Exp, para. 3; Third Report, ICC-02/05-03/09-688-Secret-Exp, paras 4, 9; Sixth Report, ICC-02/05-03/09-699-Secret-Exp-Red, paras 4-5.

¹⁵ *See, for instance*, Second Report, ICC-02/05-03/09-682-Secret-Exp, paras 4-5; Fifth Report, ICC-02/05-03/09-697-Secret-Exp.

¹⁶ *See, for instance*, Fourth Report, ICC-02/05-03/09-695-Secret-Exp, para. 4; Fifth Report, ICC-02/05-03/09-697-Secret-Exp, paras 4-5, 8, 10-11.

¹⁷ Fifth Report, ICC-02/05-03/09-697-Secret-Exp, paras 4-5.

[REDACTED].¹⁸ [REDACTED].¹⁹ It is also clear to the Chamber that the main focus of the discussions on the part of Defence Counsel has been on [REDACTED], rather than the development of realistic proposals or plans to facilitate his appearance before the Court.

8. [REDACTED].
9. The Chamber also notes that the significant time and effort which has been expended to facilitate discussions and to keep the Chamber updated, has placed a strain on the resources of the Registry.
10. In these circumstances, the Chamber is of the view that it is futile to continue with this formal engagement with [REDACTED] Defence Counsel [REDACTED]. [REDACTED].²⁰ The Chamber has therefore decided to revoke its previous order requiring the Registry to engage with [REDACTED] Defence Counsel and to report back to the Chamber.
11. However, the Chamber notes that this decision does not in any way preclude future communication between the Registry and/or the Prosecution directly [REDACTED] with Defence Counsel. The Registry and the Prosecution should continue to pursue all necessary measures aimed at executing the Warrant of Arrest or facilitating the voluntary surrender or voluntary appearance of Mr Banda before the Court. This can include the initiation of any discussions they consider helpful or responding to requests or proposals initiated by [REDACTED] Defence Counsel. The Registry and/or Prosecution may also report to, or call upon, the Chamber, as considered appropriate, to advance efforts in this regard. [REDACTED].
12. The Chamber emphasises that Mr Banda, as the subject of a warrant of arrest, is a fugitive from justice. The Chamber urges enhanced efforts to execute the Warrant of Arrest and calls upon States Parties to the Rome Statute to cooperate fully with those efforts. The Chamber recalls the allegations in this case as set out

¹⁸ See Fourth Report, ICC-02/05-03/09-695-Secret-Exp; Fifth Report, ICC-02/05-03/09-697-Secret-Exp; Sixth Report, ICC-02/05-03/09-699-Secret-Exp-Red; Seventh Report, ICC-02/05-03/09-701-Secret-Exp-Red.

¹⁹ Eighth Report, ICC-02/05-03/09-703-Secret-Exp-Red-Corr, paras 5, 7, 9.

²⁰ Second Order, ICC-02/05-03/09-675-Conf-Exp, para. 7.

in the Confirmation Decision. 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), allegedly committed during an attack carried out on 29 September 2007 in Darfur, Sudan.²¹ The adjudication of these 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. The Chamber calls for renewed efforts on the part of States to locate and arrest Mr Banda.

13. Finally, the Chamber will also consider what further action can be taken to advance the proceedings against Mr Banda.

²¹ Confirmation Decision, ICC-02/05-03/09-121-Corr-Red.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES to revoke that aspect of its previous order of 17 December 2019 requiring the Registry to initiate and pursue discussions with [REDACTED] the Defence and to report to the Chamber with respect to the same.

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



Judge Kimberly Prost
Presiding Judge



Judge Reine Alapini-Gansou



Judge María del Socorro Flores Liera

Dated this 21 July 2021

At The Hague, The Netherlands