



ICC Weekly Update

21 June 2010 #38



Situation in Darfur, Sudan

In the situation in Darfur, Sudan, four cases are being heard: *The Prosecutor v. Ahmad Muhammad Harun* (Ahmad Harun) and *Ali Muhammad Ali Abd-Al-Rahman* (Ali Kushayb); *The Prosecutor v. Omar Hassan Ahmad Al Bashir*; *The Prosecutor v. Bahar Idriss Abu Garda*; and *The Prosecutor v. Abdallah Banda Abakaer Nourain* (Banda) and *Saleh Mohammed Jerbo Jamus* (Jerbo). Three warrants of arrest have been issued by Pre-Trial Chamber I for Harun, Kushayb and Al Bashir for crimes against humanity and war crimes. The three suspects remain at large. A summons to appear was issued for Abu Garda who appeared voluntarily before the Chamber on 18 May, 2009. Abu Garda is not in the custody of the ICC. After the hearing of confirmation of charges, on 8 February, 2010, Pre-Trial Chamber I declined to confirm the charges. Two other summonses to appear were issued against Mr Banda and Mr Jerbo who appeared voluntarily on 17 June, 2010.

New suspects in the situation in Darfur, Sudan arrive voluntarily at the ICC

Abdallah Banda Abakaer Nourain (Banda) and Saleh Mohammed Jerbo Jamus (Jerbo), both suspected of having committed war crimes in Darfur, Sudan, arrived voluntarily at the International Criminal Court (ICC) following summonses to appear issued first under seal on 27 August, 2009, by Pre-Trial Chamber I. Both suspects stayed at the location assigned to them by the Court, until their first appearance before the Chamber, scheduled for 17 June, 2010, at 10:00 a.m. (The Hague local time).

Mr Banda and Mr Jerbo are charged with three counts of war crimes allegedly committed during an attack carried out on 29 September, 2007, against the African Union Mission in Sudan (AMIS), a peace-keeping mission stationed at the Haskanita Military Group Site (MGS Haskanita) in the locality of Umm Kadada, North Darfur.

Pre-Trial Chamber I considered that there are reasonable grounds to believe that the attack against AMIS occurred in the context of an armed conflict of non-international character between the Government of Sudan and several organised armed groups at the time of the attack. It was allegedly carried out by the troops belonging to the Sudanese Liberation Army-Unity (SLA-Unity), which had broken away from the Sudanese Liberation Movement-Army (SLM/A), under the command of Mr Jerbo, jointly with splinter forces of the Justice and Equality Movement (JEM), under the command of Mr Banda.

It is alleged that the attackers, numbering approximately 1,000, were armed with anti-aircraft guns, artillery guns and rocket-propelled grenade launchers and that they killed 12 AMIS soldiers and severely wounded eight others. During and after the attack, they allegedly destroyed AMIS communications installations, dormitories, vehicles and other materials and appropriated AMIS property, including refrigerators, computers, cellular phones, military boots and uniforms, 17 vehicles, fuel, ammunition and money.

Pre-Trial Chamber I, composed of Presiding Judge Sylvia Steiner (Brazil), Judge Sanji Mmasenono Monageng (Botswana) and Judge Cuno Tarfusser (Italy) considered that there are reasonable grounds to believe that Mr Banda and Mr Jerbo are criminally responsible for the following war crimes:

- violence to life, in the form of murder, whether committed or attempted, within the meaning of article 8(2)(c)(i) of the Statute;
- 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; and,
- pillaging, within the meaning of article 8(2)(e)(v) of the Statute.

The judges held that, on the basis of information provided by the Office of the Prosecutor, a summons to appear for Mr Banda and Mr Jerbo would be sufficient to ensure their appearance before the Court. Accordingly, the issuance of a warrant of arrest did not appear necessary.

Bearing in mind the need to preserve public order and ensure the orderly conduct of the proceedings, the Chamber attached a number of conditions to the summonses to appear. In particular, it ordered Mr Banda and Mr Jerbo to refrain from discussing issues related to the charges or evidence considered by the Chamber and from making any political statements.

Until their first appearance before the Chamber, Mr Banda and Mr Jerbo stayed at the location assigned to them. This location remains confidential. They were ordered not to leave the premises of the Court, including that location, for the whole period of their stay in the Netherlands, without the specific permission of the Chamber.

During the hearing they were informed of the crimes which they are alleged to have committed and of their rights under the Rome Statute. A confirmation hearing will be held within a reasonable time to determine whether or not there are substantial grounds to believe that they committed the crimes charged.

Ongoing proceedings in the situation in Darfur

This case is the fourth in the situation in Darfur after the cases of *The Prosecutor v. Ahmad Muhammad Harun* (Ahmad Harun) and *Ali Muhammad Ali Abd-Al-Rahman* (Ali Kushayb), *The Prosecutor v. Omar Hassan Ahmad Al Bashir* and *The Prosecutor v. Bahar Idriss Abu Garda*.

The suspects (Harun and Kushayb, and Al Bashir) in the first two cases remain at large. Abu Garda appeared voluntarily before the ICC on 18 May, 2009. The confirmation of charges hearing took place from 19 to 29 October, 2009. On 8 February, 2010, Pre-Trial Chamber I declined to confirm the charges against him.

The situation in Darfur was referred to the International Criminal Court by United Nations Security Council resolution 1593 on 31 March, 2005, under article 13(b) of the Rome Statute.

To date, five investigations are opened before the ICC. Three States Parties to the Rome Statute – Uganda, the Democratic Republic of the Congo and the Central African Republic – have referred situations occurring on their territories. The situation in Darfur, Sudan, was referred by the United Nations Security Council. Sudan is not State party to the Rome Statute. On 31 March, 2010, Pre-Trial II judges granted the Prosecutor's request to open an investigation *proprio motu* in the post-election violence in Kenya.

Confirmation of charges hearing in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* is scheduled to start on 22 November, 2010

On 17 June, 2010, Pre-Trial Chamber I set the date of the beginning of the confirmation of charges hearing in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain* (Banda) and *Saleh Mohammed Jerbo Jamus* (Jerbo) for 22 November, 2010.

Presiding Judge Sylvia Steiner declared that this scheduled date is without prejudice for the Chamber to review this date for advancement or postponement after being informed of specific information on disclosure of evidence to the Defence and on witness protection.



Left to right: Karim Khan, Defence Counsel for Mr Banda and Mr Jerbo ©ICC-CPI/Toussaint Kluiters

The decision was announced at the voluntary, initial appearance of Mr Banda and Mr Jerbo before the International Criminal Court in compliance with the summonses to appear issued by Pre-Trial Chamber I. Both are suspected of having committed three war crimes during the attack against the peacekeeping mission of the African Union in North Sudan in September 2007.

During the initial appearance hearing, Pre-Trial Chamber I ensured that the two suspects were informed of the crimes that they are alleged to have committed and that they understood their rights under the Rome Statute.

Defence Counsel for the suspects, Karim Khan, stated that at this stage his clients do not waive their right to attend the confirmation of charges hearing, and that their final decision on that matter will be taken in due course. Article 61 of the Rome Statute provides that a confirmation hearing may be held in the absence of a suspect when the person has “waived his or her right to be present,” or “fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges, and that a hearing to confirm those charges will be held.” In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

A confirmation hearing is held to determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. If the charges are confirmed, the Pre-Trial Chamber commits the case for trial before a trial chamber, which will conduct the subsequent phase of the proceedings: the trial.

After their initial appearance, Mr Banda and Mr Jerbo left the Netherlands. They had arrived on 16 June at the premises of the Court and stayed in a location assigned to them by the ICC.

Mr Banda and Mr Jerbo are charged with three war crimes: (violence to life, in the form of murder, whether committed or attempted, intentionally directing attacks against personnel, installations, materials, units, and vehicles involved in a peacekeeping mission, and pillaging) allegedly committed during an attack carried out on 29 September, 2007, against the African Union Mission in Sudan (AMIS), a peace-keeping mission stationed at the Haskanita Military Group Site, in the locality of Umm Kadada, North Darfur. It is alleged that the attackers killed 12 and severely wounded eight soldiers, destroyed communications facilities and other materials and appropriated property belonging to the AMIS.

Questions and answers on the summonses to appear issued for Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus – [English](#) | [Français](#) | [عربي](#)

Case information sheet - [English](#) | [Français](#) | [عربي](#)

As Darfur rebel commanders surrender to the Court, ICC Prosecutor “welcomes compliance with the Court’s decisions and with resolution 1593 (2005) of the Security Council.”

As Darfur rebel commanders Abdallah Banda and Saleh Mohammed Jerbo Jamus arrived in The Hague for their 17 June voluntary appearance at the International Criminal Court, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita, ICC Prosecutor Moreno-Ocampo stressed the significance of such co-operation. “It shows the importance of co-operation by all parties to the conflict, as required by United Nations Security Council resolution 1593.”

“This is the culmination of months of efforts to secure the co-operation of Mr Banda and Mr Jerbo” said the Prosecutor. “The Security Council, when it referred the Darfur situation to the Court, requested Sudan and all parties to the conflict to fully co-operate with my office. As I reported to the Security Council last week, the rebel groups have shown respect for the Court’s decisions”, he said.

“The appearance of the two suspects means that all the persons we wish to prosecute in connection with the Haskanita attack have now appeared before the Court.”

“My office had also offered the option of a voluntary surrender to Ahmad Harun and Ali Kushayb”, said the Prosecutor. “However, they refused to co-operate and the judges issued arrest warrants against them. The Government of the Sudan has refused to execute the warrants and has been found in non compliance of UNSC orders.”

“The rebel commanders will now face justice. Their attack on the Haskanita African Union camp in 2007 caused the death of 12 African Union peacekeepers - and worsened the plight of the thousands of civilians they came to help by leaving them without protection.”

Mr Banda and Mr Jerbo are the second and third persons respectively, to appear before the Court voluntarily in response to a summons. They were initially charged together with rebel commander Bahar Idriss Abu Garda, who voluntarily appeared before the Court on 18 May, 2009. Following his confirmation hearing on 19 October, 2009, ICC judges found that the attack constituted a crime under the Statute but that the evidence was insufficient to establish his individual criminal responsibility. The Prosecutor will therefore present additional evidence in a new confirmation hearing.

Source: Office of the Prosecutor

Decisions taken between 14 - 19 June, 2010

Banda and Jerbo case

Decision Scheduling a Hearing on Issues relating to Disclosure

Issued by Pre-Trial Chamber I on 18 June, 2010

Harun and Kushayb case

Decision on 6 Applications for Victims' Participation in the Proceedings

Issued by Pre-Trial Chamber I on 17 June, 2010

Relevant Links

Courtroom proceedings can be followed on the ICC website: www.icc-cpi.int

You can also consult the **hearing schedule**.

Video summaries can be found on our **Youtube channel**.

Interacting with communities

ICC Outreach Unit facilitates children's dialogue in Uganda

Thousands of children who have suffered and are still suffering crimes of an international nature during armed conflicts were honoured by their Ugandan peers during events organised by the ICC Outreach Unit in the district of Gulu, on 16 June, to commemorate the Day of the African Child, observed across Africa. The commemorative acts included an outreach session and a one hour radio talk show.

The outreach session was attended by 1,600 children, aged 13 to 19, from four secondary schools in the Gulu district namely, Awere Secondary School, Sacred Heart Secondary School, Lukome Secondary school and Bishop Negri College. The radio talk show, hosted by Mega FM, Gulu, enabled a dialogue between children and listeners calling into the radio station.



Outreach staff explain the mandate of the Court to children in the district of Gulu, northern Uganda ©ICC-CPI

Schools Outreach Session

During the interactive session, Outreach officials made presentations on the Court's mandate and its current cases, followed by a question and answer session. Discussions focused in the provision that the Court does not prosecute people who were below the age of 18 when

alleged crimes were committed; and the rights of victims to participate voluntarily in ICC proceedings, and the distinct roles of victims before the Court that can be participants or witnesses to render testimonies in the courtroom if they are called by the Prosecutor or by the Defence.

Key statements were also delivered by the Head Teachers of the participating schools, who denounced all forms of abuse against children and reiterated their commitment to the promotion of children's rights as provided in the national constitution, as well as other international instruments that govern the rights of children. They called for the immediate release of children who are still in captivity and urged that the perpetrators of such atrocious crimes are made accountable 'before a transparent and credible judicial system'.



Radio talk show with children on the occasion marking the Day of the African Child ©ICC-CPI

Pupils and teachers asked questions pertaining to the enforcement of arrest warrants, ICC mechanisms to protect victims and witnesses, justice and peace process, and decisions adopted during a Conference of States Parties of the ICC, concluded recently in Kampala.

Radio talk show

Thousands of people in the Acholi sub-region listened to the voices of children invited to the popular talk-show that specialises in promoting respect for human rights and the rule of law. In a dialogue between the special guests and the audience, several abuses allegedly committed by different armed actors during conflicts were highlighted. Issues related to war crimes of an international nature were also discussed. People asked questions about heinous acts such as murder, conscription, abduction, slavery, torture and rape. Several children called the radio station and thanked the ICC Outreach Unit for the initiative that enabled the 'children to talk to children' on issues that affect their well-being.



Children participate in a radio panel discussion to talk about their rights ©ICC-CPI

In the coming weeks, the Outreach Unit will replicate similar programmes in the affected communities of the Teso, Lango and Madi sub-regions of north and north-eastern Uganda, in order to raise awareness about the plight of children in armed conflicts.

Background

The ICC has jurisdiction over genocide, crimes against humanity and war crimes. The definition of these crimes includes various references to children. For example, the definition of 'enslavement' as a crime against humanity makes particular mention of children. One of the violations cited as a war crime is the conscription or enlistment of children under the age of 15 or using them to participate actively in hostilities (article 8). The Rome Statute was also the first legal instrument to codify sexual violence as both a crime against humanity and a war crime.

In the past the ICC has also broken new ground, prosecuting crimes against children in cases heard before the Court in situations in the Democratic Republic of the Congo and Uganda in relation to recruitment and using children in hostilities.

JUNE 2010						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
21	22	23	24	25	26	27
28	29	30				
JULY 2010						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
			1	2	3	4
5	6	7	8	9	10	11
Trial of Jean-Pierre Bemba Gombo is scheduled to start.						
12	13	14	15	16	17	18
					Day of International Criminal Justice	
19	20	21	22	23	24	25
Future events: 17 July - 8 August: Judicial recess 22 November, 2010: Pre-Trial Chamber I has set the date for the beginning of the confirmation of charges hearing in the case of <i>The Prosecutor v. Abdallah Banda Abakaer Nourain (Banda) and Saleh Mohammed Jerbo Jamus (Jerbo)</i>						

The calendar is subject to last minute changes.