



Cour
Pénale
Internationale

International
Criminal
Court

ICC-PIDS-PIS-SUD-04-001/10_Eng

Questions and Answers

Situation: Darfur, Sudan

Case: *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*

No. ICC-02/05-03/09

Questions and answers on the summonses to appear issued for Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus



Who is Abdallah Banda Abakaer Nourain?

Abdallah Banda Abakaer Nourain ("Banda") is a member of the Zaghawa tribe of Sudan, and is believed to be in his mid-forties. He was born in Wai, Dar Kobe, in North Darfur, and is the current Commander-in-Chief of the Justice and Equality Movement (JEM) Collective-Leadership, one of the components of the United Resistance Front.

He was allegedly in command of the splinter forces of the JEM during an attack carried out on 29 September, 2007, on the African Union Mission in Sudan ("AMIS") stationed at the Haskanita Military Group Site ("MGS Haskanita") in the locality of Umm Kadada in North Darfur, Sudan.

Who is Saleh Modahmmed Jerbo Jamus?


Saleh Modahmmed Jerbo Jamus (Jerbo), is a member of the Zaghawa tribe of Sudan, aged 33. He was born in the village of Shagag Karo, North Darfur, and currently integrated into the Justice and Equality Movement.

He was allegedly former Chief-of-Staff of the Sudan Liberation Army-Unity (SLA-Unity),

What crimes are Banda and Jerbo alleged to have committed?

Pre-Trial Chamber I considers that there are reasonable grounds to believe that a protracted armed conflict not of an international character existed in Darfur between the Government of Sudan and several organised armed groups, including the JEM and the Sudanese Liberation Movement/Army (SLM/A). In this context, an attack was carried out on 29 September, 2007, on AMIS personnel, installations, material, units and vehicles stationed at MGS Haskanita.

The attack was allegedly carried out by splinter forces of the JEM, under the command of Banda, jointly with 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



Jerbo. 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.

The judges considered that there are reasonable grounds to believe that there was a common plan to attack MGS Haskanita between Banda and Jerbo. The Chamber also considers that there are reasonable grounds to believe that the AMIS personnel, installations, material, units and vehicles stationed at MGS Haskanita were the intended object of the attack. The judges also consider that the contributions of Banda and Jerbo were essential and that they were respectively in command of the splinter forces of the JEM and of the SLA-Unity during the attack on MGS Haskanita.

Pre-Trial Chamber I, composed of Presiding Judge Sylvia Steiner (Brazil), Judge Sanji Mmasenono Monageng (Botswana) and Judge Cuno Tarfusser (Italy), reviewed the Prosecution application and evidence submitted on 20 November, 2008, as well as its other supporting material and information. Based on that review, the Chamber considers that there are reasonable grounds to believe that Banda and Jerbo are criminally responsible as co-perpetrators or as an indirect co-perpetrators on three counts of war crimes under article 25(3)(a) of the Rome Statute:

- 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;
- pillaging, within the meaning of article 8(2)(e)(v) of the Statute.

Why did the Court issue summonses to appear for Banda and Jerbo?

On 23 February, 2009, partially amending his original application, the Prosecutor submitted a request stating that the issuance of summonses to appear would be sufficient to ensure Banda and Jerbo's appearance because they had expressed willingness to appear before the Court. The Prosecutor has continued to provide additional information to the Chamber in that regard. The Chamber was satisfied that summonses to appear were sufficient to ensure the suspects' appearance, and ordered Banda and Jerbo to appear before the Court on 17 June, 2010.


What is a summons to appear?

A summons to appear is an order issued by a Pre-Trial Chamber for a person to appear before the Chamber on a specified date. After reviewing the application and evidence or other information submitted by the Prosecution, the Chamber issues a summons to appear if it is satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court and that a summons is sufficient to ensure the person's appearance.

As provided by article 58 of the Rome Statute, the summons has to contain:

- (a) the name of the person and any other relevant identifying information;
- (b) the specified date on which the person is to appear;
- (c) a specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and,
- (d) a concise statement of the facts which are alleged to constitute the crime.

A summons to appear is served on the suspect and does not prejudice the final decision on his or her guilt.



What is the difference between an arrest warrant and a summons to appear?

Article 58 of the Rome Statute allows a Pre-Trial Chamber to issue either an arrest warrant or a summons to appear for persons who have allegedly committed crimes within the jurisdiction of the Court. To issue a summons to appear, the Pre-Trial Chamber must be satisfied that the suspect will appear voluntarily before the Court.

A warrant of arrest is issued when there are grounds to believe that a suspect will not appear voluntarily before the Court or that he or she will obstruct or endanger the investigation or proceedings. It is also issued to prevent the further commission of the crime for which the suspect is charged or other crimes within the jurisdiction of the Court.

Did the Chamber impose any conditions on Banda and Jerbo?

According to the Rome Statute, the Pre-Trial Chamber may impose conditions restricting liberty (other than detention). Bearing in mind the need to preserve public order and to ensure the orderly conduct of the proceedings, the Chamber attached a number of conditions to the summons to appear. In particular, it ordered Banda and Jerbo to refrain from discussing issues related to the charges or evidence considered by the Chamber and from making any political statements.

What will happen if a suspect does not appear before the Court on 17 June?

If a suspect does not appear before the Court or fails to comply with the Pre-Trial Chamber's orders, the Chamber may review its determination and decide to issue an arrest warrant.

Arrival at the seat of the Court and first appearance

During their stay in the Netherlands, will they be placed in detention?

No. The Chamber is satisfied that Banda and Jerbo can and will appear voluntarily before the Court, without the need to arrest them.

Upon arrival in The Hague, Banda and Jerbo will stay at the location assigned to them by the Court. This location will remain confidential. They are 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.

What will happen next?

At the first appearance, the judges of Pre-Trial Chamber I will inform them 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.

Where will Banda and Jerbo stay until the confirmation hearing?

In the summonses to appear, the Chamber did not impose any travel restrictions on the suspects. The Chamber reserves the right to review this determination either *proprio motu* or at the request of the Prosecutor.



Investigations in Darfur

Does the ICC have jurisdiction over the situation in Darfur even though Sudan has not ratified the Rome Statute?

The situation in Darfur was referred to the International Criminal Court by United Nations Security Council resolution 1593 on 31 March, 2005. This referral is lawful under article 13(b) of the Rome Statute. The resolution also applies to United Nations Member States, including Sudan, as it was adopted under Chapter VII of the Charter of the United Nations.

Is the ICC independent of the United Nations and the Security Council?

The ICC is an independent body whose mission is to try individuals for crimes within its jurisdiction, without the need for a special mandate from the United Nations. On 4 October, 2004, the ICC and the United Nations signed an agreement governing their institutional relationship.

Are there other cases related to alleged crimes in Darfur?

In the situation in Darfur, warrants of arrest have already been issued for Omar Al Bashir (President of Sudan), Ahmad Harun (former Minister of State for the Interior and former Minister for Humanitarian Affairs of the Government of Sudan) and Ali Kushayb (alleged commander of the *Janjaweed* militia), all suspected of having committed war crimes and crimes against humanity. A summons to appear was also been issued for Bahar Idriss Abu Garda (current Chairman and General Co-ordinator of Military Operations for the United Resistance Front), who was suspected of having committed war crimes; however, Pre-Trial Chamber I declined, on 8 February, 2010, to confirm the charges against Abu Garda.

Why did the Chamber issue warrants of arrest rather than summonses to appear for Omar Al Bashir, Ahmad Harun and Ali Kushayb?


The issuance of a summons to appear, rather than an arrest warrant, is restricted to cases in which the Prosecution application and its supporting material provide sufficient guarantees that the person can and will appear voluntarily before the Court without the need to arrest and surrender him or her.

Pre-Trial Chamber I considered that a summons to appear is meant to be used only for persons who are not already in detention, which is not the case for Ali Kushayb, who, according to the Prosecution's supporting material, is "in the custody of the Sudanese police". His detention prevents him from willingly and voluntarily appearing before the Court, therefore his arrest was considered necessary to ensure his appearance at trial.

As for Ahmad Harun, the Chamber was not satisfied that he will appear voluntarily before the Court, especially because he has a previous record of concealing evidence in the case. The Chamber considered that his arrest appears necessary to ensure that he will not obstruct or endanger the investigation.

Furthermore, on 25 May, 2010, Pre-Trial Chamber I informed the United Nations Security Council about the lack of co-operation by the Republic of Sudan in the case against Harun and Kushayb, in order for the Security Council to take any action it may deem appropriate.

With respect to Omar Al Bashir, the Chamber noted that the Government of Sudan has systematically refused to co-operate with the Court since the issuance of the arrest warrants for Ahmad Harun and Ali Kushayb on 2 May, 2007. Furthermore, it noted that, since the filing of the public summary of the Prosecution's application for a warrant of arrest for Omar Al Bashir on 14 July, 2008, it appears that Omar Al Bashir himself has been particularly defiant towards the jurisdiction of the Court in several of his public statements. The Chamber found that the arrest of Omar Al Bashir appears necessary at this stage to ensure (i) that he will appear before the Court;



(ii) that he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Statute; and (iii) that he will not continue with the commission of the crimes against humanity and war crimes alleged against him.