

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

N° : ICC-02/05-03/09

Date : 22 July 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 redacted version

Submissions of the Legal Representatives for Victims on 'Defence's Request for the
Conversion of the Arrest Warrant into a Summons to Appear' filed on 3 October
2025

Source : Common Legal Representatives of Victims

Documents to be notified in accordance with regulations 31 of the Regulations of the Court to :

☒ Office of the Prosecutor

☒ Counsel for the Defence

D07

☒ Legal Representatives of Victims

☐ Legal Representatives of the Applicants

V23

☐ Unrepresented Victims

☐ Unrepresented Applications
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Counsel Support Section

Mr Zavala Giler, Osvaldo

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. PROCEDURAL BACKGROUND

1. On 27 August 2009 Pre-Trial Chamber I summoned Abdallah Banda Abakaer Nourain (hereinafter ‘the Accused’ or ‘Mr Banda’) to appear before the court on Tuesday 17 November 2009.¹
2. On 15 March 2010 Pre-Trial Chamber I scheduled the Initial Appearance Hearing for 17 June 2010.²
3. On 17 June 2010, the Initial Appearance Hearing took place. Mr Banda and Mr Saleh Mohammed Jerbo Jamus were both present in court.³
4. On 29 October 2010, the Chamber issued its “Decision of Victims’ Participation at the Hearing on the Confirmation of the Charges”. Eighty-nine victims were recognized and authorised to participate in the confirmation hearing, the Registry was ordered to notify victims, and a deadline for legal representatives was set for 12 November 2010.⁴
5. On 7 March 2011, Pre-Trial Chamber I confirmed the charges against Messrs. Banda and Jerbo and committed them to a Trial Chamber pursuant to article 61(7) of the Rome Statute.⁵ Messrs. Banda and Jerbo previously had waived their right to be present at the Confirmation of Charges in accordance with rule 124 of the Rules.

¹ Summons to Appear for Abdallah Banda Abakaer Nourain, 15 June 2010, ICC-02/05-03/09-3.

² Decision Setting the Date for the Hearing of First Appearance, 15 March 2010, ICC-02/05-03/09-30.

³ Transcript of hearing, ICC-02/05-03/09-T-004-ENG.

⁴ Decision on Victims’ Participation at the Hearing on the Confirmation of the Charges, 29 October 2010, ICC-02/05-03/09-89.

⁵ Corrigendum of the “Decision on the Confirmation of Charges”, 8 March 2011, ICC-02/05-03/09-121-Corr-Red.

6. On 28 September 2011, Trial Chamber IV decided that the trial would only proceed on the basis of the contented issues and the parties would not present evidence or make submissions other than on the issues that were contested.⁶
7. On 6 March 2013, the trial start date was set for 5 May 2014.⁷
8. On 30 January 2014 Trial Chamber IV rejected the defences request to terminate the proceedings.⁸
9. On 7 April 2014, the Chamber held a status conference regarding feasibility of Mr Banda's appearance before the Court.
10. On 15 April 2014, the Defence requested that trial start date of 5 May be vacated, and trial start date be set for March 2015.⁹
11. On 16 April 2014 the Chamber decided to vacate the date of the commencement of the trial.¹⁰
12. On 14 July 2014 Trial Chamber IV decided that the trial would start on 18 November 2014 with Mr Banda present.¹¹

⁶ Decision on the Joint Submission regarding the contested issues and the agreed facts, 28 September 2011, ICC-02/05-03/09-227.

⁷ Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings, 6 March 2013, ICC-02/05-03/09-455.

⁸ Public redacted "Decision on the 'Defence request for termination of proceedings', 30 January 2014, ICC-02/05-03/09-535-Red.

⁹ Defence Request to Vacate the Trial Commencement, 15 April 2014, ICC-02/05-03/09-563-Conf-Red.

¹⁰ Public redacted Decision vacating the trial date of 5 May 2014, 16 April 2014, ICC-02/05-03/09-564-Red.

¹¹ Public redacted Decision as to the Further Steps for the Trial Proceedings, 14 July 2014, ICC-02/05-03/09-590-Red.

13. On 11 September 2014, the Chamber issued an arrest warrant for Mr Banda.¹²
14. On 13 January 2015, the Chamber rejected the defences request for reconsideration of the Arrest Warrant.¹³
15. Following Sudan's failing to arrest Mr Banda, the Chamber found Sudan to be non-compliant, pursuant to Article 87(7) of the Statute on 26 June 2015.¹⁴
16. On 8 October 2019, the Chamber issued an order scheduling a status conference.¹⁵
17. 30 October 2019, the Chamber held an *ex parte* status conference with Defence, Registry and Prosecution regarding the status of the case and the way forward to ensure Mr Banda's appearance for trial.¹⁶
18. On 13 November 2019, the Chamber invited the Defence and the Office of the Prosecutor to make submissions on trials *in absentia*.¹⁷
19. On 13 May 2020, the Common Legal Representative of the Victims ('CLRV') was granted request to make observations on a trial *in absentia* and Chamber directed the CLRV to file such observations.¹⁸

¹² Warrant of arrest for Abdallah Banda Abakaer Nourain, 11 September, ICC-02/05-03/09-606.

¹³ Public Redacted Version of the Corrigendum to Decision on defence application for leave to appeal the decision on 'Warrant of arrest for Abdallah Band Abakaer Nourain' and, in the alternative, request for reconsideration; 13 January 2015, ICC-02/05-03/09-619-Red-Corr.

¹⁴ Decision on the Prosecutor's Request for a finding of non-compliance against the Republic of the Sudan, 26 June 2015, ICC-02/05-01/12-33.

¹⁵ Scheduling Order for Status Conference, 8 October 2019, ICC-02/05-03/09-666.

¹⁶ Transcript of hearing, 30 October 2019, ICC-02/05-03/09-T-027-CONF-ENG.

¹⁷ Order following the Status Conference on 30 October 2019, 19 November 2019, ICC-02/05-03/09-671-Conf-Exp.

¹⁸ Decision on the Legal Representative of Victim's request for leave to make submissions, 13 May 2020, ICC-02/05-03/09-686.

20. On 19 June 2020, the CLRV submitted observations regarding a trial *in absentia*.

According to the CLRV, the victims considered the Government of Sudan's non-cooperation with the Court, and the United Nations Security Council's inaction, had left the arrest warrant against Mr Banda unexecuted. The majority of the victims therefore considered that proceeding with a trial *in absentia* could assist towards establishing if Mr Banda committed the alleged crimes and, in uncovering the truth, provide reparations to the victims and allow them to express their grief.¹⁹

21. On 22 June 2020, the Prosecution responded to the CLRV's observations and stated that Mr Banda's trial cannot be held *in absentia* while he remains at large, given that holding trials *in absentia* and allowing temporary absences from attending trial are distinguishable and human rights law requires safeguards in the event of a conviction *in absentia*.²⁰

22. On 15 September 2023, Trial Chamber IV ordered the Registry and the Prosecution to provide updates. The Prosecution should update regarding the suspected whereabouts of Mr Banda and outline the efforts being made to secure his arrest. The Registry should also update the Chamber regarding Mr Banda's whereabouts and efforts being made to secure his arrest.²¹

23. On 5 October 2023, the Prosecution requested to withdraw the charges against Mr Banda, as following the loss of key insider witnesses P-0441 and P-0477 it believed

¹⁹ Version publique expurgée: « Observations sur un procès *in absentia* dans la perspective des victimes » (ICC-02/05-03/09-687-Conf), 10 juin 2020, ICC-02/05-03/09-687-Red.

²⁰ Prosecution's Response to the Legal Representative of Victims' "Observation sur un procès *in absentia* dans la perspective des victimes", 22 June 2020, ICC-02/05-03/09-690.

²¹ Order directing the Registry and the Prosecution to provide updates, 15 September 2023, ICC-02/05-03/09-723-Conf.

the evidence against Mr Banda did not present a reasonable prospect of conviction.²²

24. On 13 October 2023, Trial Chamber IV rejected the Prosecution's request in its entirety and directed the Prosecution to comply with the update order.²³

25. On 23 October 2023, the Prosecution updated the Chamber regarding Mr Banda's whereabouts. Mr Banda was located in the northeast of Libya and moves between Libya and Chad. At this point no efforts were being made by the Prosecution to secure Mr Banda's arrest.²⁴ On the same day the Prosecution applied for leave to appeal the "Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain".²⁵

26. On 28 November 2023, the Chamber rejected the Prosecution's Application, with Judge Alapini Gansou dissenting.²⁶ On the same day the Chamber scheduled an *ex parte* status conference with the Prosecution and the Registry.²⁷

27. On 7 February 2024, the Trial Chamber IV held an *ex parte* status conference with the Prosecution and Registry.²⁸

²² Prosecution request to withdraw the charges against Abdallah Banda Abakaer Nourain and Response to Order directing the Registry and the Prosecution to provide updates, 5 October 2023, ICC-02/05-03/09-727-Conf.

²³ Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain, 13 October 2023, ICC-02/05-03/09-728-Conf.

²⁴ Update, 23 October 2023, ICC-02/05-03/09-729-Conf.

²⁵ Prosecution's application for leave to appeal the "Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourian", 23 October 2023, ICC-02/05-03/09-730-Conf.

²⁶ Decision on the Prosecution's application for leave to appeal the 'Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain', 28 November 2023, ICC-02/05-03/09-731-Conf.

²⁷ Order scheduling a status conference, 28 November 2023, ICC-02/05-03/09-732-Conf.

²⁸ Transcript of hearing of 7 February 2024, ICC-02/05-03/09-T-028-CONF-Red-ENG.

28. On 6 March 2024, Trial Chamber IV reconsidered the decision on the Prosecution's request to withdraw the charges against Mr Banda and reached the same conclusion. Furthermore, the Chamber directed the Prosecution and Registry to secure the arrest of Mr Banda.²⁹
29. On 22 September 2025, the Prosecution confidentially updated the Chamber regarding the status of its investigation and evidence against Mr Banda.³⁰ More specifically, the Prosecution office argued that it was collecting new evidence and that it was not putting emphasis executing Mr. Banda's arrest. In this regard, CLRV wish to highlight that more than 12 years have passed since the conversion of the summon to appear into Warrant of arrest, as the unique means to guarantee Mr Banda's appearance.
30. On 3 October 2025, the Defence requested the Chamber to convert the arrest warrant against Mr Banda into a Summons to Appear ("Defence Request").³¹ The Defence presented following grounds, namely : (i) the isolated nature of the alleged crimes were isolated incidents, (ii) Mr Banda now works for the Sudanese government, making the commission of similar offenses are unlikely (iii) Mr Banda maintains his innocence, and no new charges have been brought since the original ones (iv) the Sudanese government is willing and able to keep Banda in Sudan when he is not required at the Court, adding that since he works for the government, his location will always be known (v) the Defence is unaware of any claims that Mr Banda has intimidated or harassed witnesses. Therefore, allowing him to remain under Sudanese government supervision poses no risk to witnesses or the trial (vi) Mr Banda has also agreed to waive certain rights if he fails to appear

²⁹ Reconsideration of the Decision on the Prosecution's request to withdraw the charges against Abdallah Banda Abakaer Nourain 6 March 2024, ICC-02/05-03/09-734-Conf.

³⁰ Update on investigative steps, 22 September 2025, ICC-02/05-03/09-741-Conf.

³¹ Defence Request for the Conversion of the Arrest Warrant against General Banda into a Summons to Appear, 3 October 2025, ICC-02/05-03/09-742-Conf-Exp.

as required (vii) finally, the Defence argues that Banda's position with the Sudanese government is linked to his personal security, an issue he has previously raised with the Court's Registry and the Prosecution. Essentially, the Defence argues that Banda should be allowed to stay in Sudan under government oversight while proceedings continue.³²

31. On 16 October 2025, the Prosecution filed its response to the Defences Request, indicating that it does not object to the relief sought by the Defence 'subject to the relevant assurances being placed on the record by the Government of Sudan'.³³

32. On 23 October 2025, the Defence requested the Chamber to invite observations from the Government of the Republic of Sudan on the Defence's Request.³⁴

33. On 24 October 2025, the Chamber invited the competent authorities of the Republic of Sudan to provide observations.³⁵

34. On 4 November 2025, the Registry submitted a report to the Court in the context of the implementation of the "Order inviting the competent authorities of the Republic of Sudan to provide observations" issued by the Chamber on 24 October 2025.³⁶ On 2 November 2025, the Registry received an email from the designated focal point ('Focal Point') of the Republic of Sudan, in which the observations indicated *inter alia* that the Government "takes positive note of the proposal submitted by [Mr Banda] and his Defence Counsel concerning the conversion of

³² *Ibid*, paras. 24-27.

³³ Prosecution's response to "Defence Request for the Conversion of the Arrest Warrant against General Banda into a Summons to Appear", 25 November 2025, ICC-02/05-03/09-743-Conf.

³⁴ Defence Request for Observations from the Government of the Republic of the Sudan od Defence Request ICC-02/05-03/09-742-CONF-EXP; 25 November 2025, ICC-02/05-03/09-745-Conf.

³⁵ Order inviting the competent authorities of the Republic of Sudan to provide observations, 24 October 2025, ICC-02/05-03/09-746-Conf.

³⁶ Transmission of Observations from the Republic of Sudan pursuant to Order, ICC- 02/05-03/09-746-Conf-Exp, 4 November 2025, ICC-02/05-03/09-747-Conf -Exp.

the arrest warrant into a summons to appear”. Furthermore, the Focal Point indicated in its observation that the “Government supports the efforts of the Court and the Defence aimed at facilitating the continuation of judicial proceedings in an orderly and cooperative manner”, further confirming the Government’s “willingness, within its available means and in coordination with the relevant authorities, to provide Mr Banda with the necessary facilitation and administrative support to enable his travel to The Hague whenever requested by the Court”.³⁷

35. On 6 November 2025, the Chamber issued an Order scheduling an *ex parte* status conference with the Prosecution, the Defence, the Registry, and the competent authorities of the Republic of Sudan.³⁸

36. On 12 November 2025, the Prosecution urgently requested Trial Chamber IV to reconsider its Second Decision not to withdraw the charges against Mr Banda and authorise the withdrawal of the charges against Mr Banda pursuant to article 61(9) or article 64(2) of the Rome Statute.³⁹

37. On 18 November 2025, the Office of the Prosecutor updated the Chamber on investigative steps following the completion of two interviews in accordance with article 55(2) of the Rome Statute.⁴⁰ On the same day the Prosecution also updated the Chamber regarding the whereabouts of Mr Banda, stating that on 2 October

³⁷ *Ibid*, Annex II, Conf-Exp.

³⁸ Order scheduling a status conference, 6 November 2025, ICC-02/05-03/09-749-Conf-Exp.

³⁹ Urgent Prosecution request for the reconsideration of the “Reconsideration of the Decision on the Prosecution’s Request to withdraw the charges against Abdallah Banda Abakaer Nourain”, 12 November 2025, ICC-02/05-03/09-752-Conf-Exp.

⁴⁰ Confidential Redacted version of “Additional update on investigative steps”, ICC-02/05-03/09-744-Conf-Exp, 16 October 2025, ICC-02/05-03/09-744-Conf-Red .

2024 Mr Banda was reported [REDACTED] as having become a leader [REDACTED].⁴¹

38. On 8 December 2025, a status conference with the Prosecution, the Defence, the Registry, and the CLRV took place.⁴²

39. On 12 December 2025, the Chamber then urged the Registry to ensure that adequate resources are augmented and made available to the CLRV to facilitate its effective compliance with the Chamber's Order. The Chamber accordingly authorised the CLRV to share information with her clients, though the shared information could only be directly and specifically necessary for the preparation of its submissions and the CLRV was instructed to explain to her clients that the information is confidential. The Chamber further ordered the LRV to file her submissions on (i) the Defence's Request for the Conversion of the Arrest Warrant into a Summons to Appear and (ii) the Prosecution's Request of Reconsideration to withdraw the charges by 26 March 2026. The Chamber ordered the Office of the Prosecution and the Defence to file their replies to the CLRV submissions by 2 April 2026.⁴³

40. On 2 April 2026, The Chamber granted⁴⁴ the OTP⁴⁵ and CLRV's⁴⁶ requests, and sated a new deadline for the submissions and responses for all the parties.

⁴¹ Confidential Redacted version of "Prosecution's response to Order instructing the Prosecution and the Registry to provide updates", ICC-02/05-03/09-739-Conf-Exp, 8 October 2024, ICC-02/05-03/09-739-Conf-Red.

⁴² Transcript of hearing, 8 December 2025, ICC-02/05-03/09-T-029-CONF-ENG.

⁴³ Order on matters arising from the status conference of 8 December 2025, 12 December 2025, ICC-02/05-03/09-758-Conf.

⁴⁴ Decision on the Prosecution's request for an extension of time to provide access to witnesses statement, 2 April 2026, ICC-02/05-03/09-769-Conf.

⁴⁵ Prosecution request for a partial extension of time pursuant to Regulation 35(2), 2 April 2026, ICC-02/05-03/09-768-Conf.

⁴⁶ Requête des Représentants Légaux Communs aux fins d'accéder aux éléments de preuve confidentiels cités par le Bureau du Procureur au soutien de ses requêtes aux fins de retrait des charges

Accordingly, the Chamber extends the deadline for CRLV to file her submission on the 01 May 2026, COB and for the Prosecution and Defence to file any responses thereto to Friday, 8 May 2026, COB.

II. CONFIDENTIALITY

41. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this submission is classified as confidential as it refers to filings which bear the same classification.

III. APPLICABLE LAW

42. Article 58(1) of the Rome Statute gives the Chamber the power to issue an arrest warrant if two conditions are fulfilled:

- (a) First, the chamber handling the case must be satisfied that “there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
- (b) The arrest of the person appears necessary:
 - (i) To ensure the person’s appearance at trial;
 - (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or
 - (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.”

(ICC-02/05-03/09-727) et en réexamen (ICC-02/05-03/09-752), 18 March 2026, ICC-02/05-03/09-764-Conf (notified on 19 March 2026).

43. Article 58(7) of the Rome Statute gives the Chamber the power to issue a summons to appear if:

“[T]he Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person’s appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear...”

IV. SUBMISSIONS

A) There are still reasonable grounds to believe that the Accused has committed a crime within the jurisdiction of the court.

44. The Court must be satisfied that there are ‘reasonable grounds to believe’ that the person has committed these crimes in the jurisdiction of this court. The ‘reasonable ground to believe’ threshold is to ensure that the Prosecution fulfils its role in conducting proper investigations and that the human rights of the accused are respected.⁴⁷ The evidentiary threshold applies in considering whether crime has been committed and whether the defendant is criminally liable.⁴⁸ The threshold in article 58 should not reach that of later proceedings (‘beyond reasonable doubt’),⁴⁹ but should not be confused with ‘reasonable suspicion’ (article 5(1)(c) of the European Convention of Human Rights). Article 5(1)(c) is meant to serve as a guide in accordance with article 21(3) of the Statute,⁵⁰ not as a separate threshold.

⁴⁷ Michael Ramsdem and Cecilia Chung, ‘Reasonable Grounds to Believe (2015) 13 *Journal of International Criminal Justice* 555-577 at 576.

⁴⁸ ‘Reasonable Grounds to Believe’ JICJ 13 (2015), 557.

⁴⁹ Amrutanshu Dash and Dhruv Sharma, ‘Arrest Warrants at the International Criminal Court: Reasonable Suspicion or Reasonable Grounds to believe’ (2016) 16 *International Criminal Law Review* 158-176 at 160.

⁵⁰ Triffterer/Ambos/Hall/Ryngaert Article 58 Rn. 11.

45. A confusion of the two standards would push the necessary threshold down.⁵¹ The jurisprudence of the Inter-American Court of Human Rights on the fundamental right to personal liberty under article 7 of the American Convention on Human Rights serves as a further guide to determine that the ‘reasonable grounds to believe’ threshold is fulfilled.⁵²

46. On 12 November 2025 the Office of the Prosecutor requested Trial Chamber IV to reconsider its Second Decision not to withdraw the charges against Mr Banda and authorise the withdrawal of the charges against Mr Banda pursuant to article 61(9) or article 64(2) of the Rome Statute (hereafter the ‘OTP Request’)⁵³. At present, Trial Chamber IV has still not ruled on this OTP Request. As a consequence, the Decision on the Confirmation of Charges⁵⁴ from 7 March 2011 is still in place, since the Trial Chamber dismissed a the OTP’s requests to withdraw the charges against the Accused as well as respective OTP Requests to reconsider their decisions.⁵⁵

47. The CLRV refer to ICC Pre-Trial Chamber II’s “*Decision on the Prosecutor’s request to vacate the effect of the Warrant of Arrest issued against Ms Simone Gbagbo*” from 19 July 2021⁵⁶, where Arrest Warrant for Ms Gbagbo was vacated in the light of the Trial Chamber ruling regarding her husband in his case.

Pre-Trial Chamber II ruled in para. 13:

“... *In the view of the Chamber, the Request must be granted. Whilst the judgments issued by*

⁵¹ ‘Reasonable Grounds to Believe’ JICJ 13 (2015), 576.

⁵² Triffterer/Ambos/Hall/Ryngaert Article 58 Rn. 11.

⁵³ Urgent Prosecution request for the reconsideration of the “Reconsideration of the Decision on the Prosecution’s Request to withdraw the charges against Abdallah Banda Abakaer Nourain”, 12 November 2025, ICC-02/05-03/09-752-Conf-Exp.

⁵⁴ Corrigendum of the “Decision on the Confirmation of Charges”, 7 March 2011, ICC-02/05-03/09-121-Corr-Red.

⁵⁵ Reconsideration of the Decision on the Prosecution’s request to withdraw the charges against Abdallah Banda Abakaer Nourain, 6 March 2024, ICC-02/05-03/09-734-Conf.

⁵⁶ *Prosecutor v Simone Gbagbo*, Decision on the Prosecutor’s request to vacate the effect of the Warrant of Arrest issued against Ms Simone Gbagbo, 19 July 2021, ICC-02/11-01/12-90.

Trial Chamber I and the Appeals Chamber have obviously not addressed the guilt or innocence of Simone Gbagbo, both the ‘case theory’ and the ‘supporting material’ underpinning the allegations against her have been largely tested in the trial against Laurent Gbagbo and Charles Blé Goudé, including in particular the contextual elements of the crimes against humanity pleaded, which underpin the allegations against both Mr and Ms Gbagbo equally[...]’.

48. In the light of this ICC jurisprudence, any determination on the Arrest Warrant would be premature at this stage of proceedings as long as the pending OTP Request has not been effectively and finally decided.

B) The arrest of the Accused still appears necessary to ensure appearance of the Accused at trial.

49. An arrest warrant must be necessary. Therefore, an arrest warrant issued against a suspect to ensure that the person appears at trial, does not endanger or obstruct the investigation or the court proceedings or, where applicable, prevent the person from continuing with the commission of that crime or a related crime (article 58(1)(b) of the Rome Statute).⁵⁷ If these criteria are not met, a summons to appear may be issued when there are reasonable grounds to believe that the defendant will voluntarily appear before the Court (article 58(7). Nevertheless, restrictions on the person's liberty (apart from detention) may be imposed (article 58(7) of the Statute).⁵⁸

50. Trials in absentia do not take place at the International Criminal Court. The Rome Statute does not permit trials if the accused is not available.⁵⁹ Therefore an Arrest

⁵⁷ ICC, ‘Arresting ICC suspects at large: Why it matters, What the Court does, What States can do’, p. 11.

⁵⁸ ICC, ‘Arresting ICC suspects at large: Why it matters, What the Court does, What States can do’, p. 11.

⁵⁹ Triffterer/Ambos/Hall/Ryngaert Article 58 Rn. 16.

Warrant is the most decisive safeguard of this court to ensure that the Trial can take place.

51. In its case law, the Court has found it necessary to issue an arrest warrant due to the suspect's political position, international contacts, and financial resources,⁶⁰ e.g. in *Bemba*.⁶¹ Here, the Accused claims to be now in a position of a General in Sudan, implying that he would have all means to continue in avoiding justice.

52. CLRV recall the decision in *Ngudjolo*:

*"The Chamber finds that there are reasonable grounds to believe that by virtue of his current position as a Colonel of the Forces Armées de la République Démocratique du Congo ("FARDC") in Bunia and as the advisor to the Operational Zone Commander in the Ituri district, Mathieu Ngudjolo is able to make use of "the services" of former FNI and FRPI members who have integrated into the ranks of FARDC, and that he might use his connections and the means at his disposal in order to flee as soon as he would become aware of the warrant of arrest issued against him."*⁶²

53. A further reason for issuing an Arrest Warrant has been the seriousness of the crimes and the length of the likely to receive sentence,⁶³ what would be also the case here for the Accused, as decided in the *Gbagbo et al.* Case,

"... The Appeals Chamber has determined that in order to "justify arrest [...] under Article 58(1)(b) of the Statute [...] it must 'appear' to be necessary. The question revolves around the possibility, not the inevitability, of a future occurrence" (when addressing the risk of further offending). The Appeals Chamber has held that the seriousness of the

⁶⁰ Triffterer/Ambos/Hall/Ryngaert Article 58 Rn. 16.

⁶¹ *Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo, 10 Jun 2008, ICC-01/05-01/08, paras. 87, 89

⁶² *Prosecutor v. Mathieu Ngudjolo Chui*, Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Mathieu Ngudjolo Chui, 06 July 2007, ICC-01/04-02/12, para. 64.

⁶³ Triffterer/Ambos/Hall/Ryngaert Article 58 Rn. 16.

crimes allegedly committed is a relevant factor, given this may make a person more likely to abscond."⁶⁴,

54. Furthermore, in *Hussein*, the Chamber stated that:

*"The Prosecutor submits that there are reasonable grounds to believe that Mr Hussein 'will not appear for trial unless compelled to do so by arrest.' In this respect, the Prosecutor refers to the seriousness of the charges and the potential for a lengthy imprisonment in the event of a conviction. Moreover, the Prosecutor asserts that there is no indication that either Mr Hussein or the [Government of Sudan] will cooperate in facilitating his appearance before this Court'."*⁶⁵

55. Furthermore, the Court has issued arrest warrants based on the State's history if non-cooperation with the Court in executing warrants of arrest,⁶⁶ especially, with regard to Sudan where the Chamber stated:

"The Chamber notes the history of non-cooperation by the Republic of the Sudan in executing warrants of arrest of suspects within its territory and transferring them to the seat of the Court. To date, warrants of arrest have been issued against three Sudanese suspects, namely Omar Al-Bashir, Ahmad Harun, and Ali Kushayb. None of these individuals have been surrendered to the Court and, according to material provided by the Prosecutor, they continue to carry out administrative and military functions for the [Government of Sudan]. The Chamber notes that Mr Hussein currently serves as Minister of National Defence for the [Government of Sudan] and the Chamber considers it to be unlikely that the [Government of Sudan] will

⁶⁴ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the Prosecutor's Application pursuant to article 58 for a warrant of arrest against Charles Blé Goudé, 6 January 2012, ICC-02/11-02/15, para. 39

⁶⁵ *Prosecutor v. Abdel Raheem Muhammad Hussein*, Public redacted version of 'Decision on the Prosecutor's application under article 58 relating to Abdel Raheem Muhammad Hussein', 1 March 2012, ICC-02/05-01/12, para. 43.

⁶⁶ Triffterer/Ambos/Hall/Ryngaert Article 58 Rn. 16.

cooperate.”⁶⁷;

56. Pre-Trial Chamber I further added that :

*“The Chamber observes firstly that, according to the materials provided by the Prosecution, the [Government of Sudan], presided over by Omar Al Bashir, has systematically refused any cooperation with the Court since the issuance of an arrest warrant for Ahmad Harun and Ali Kushayb on 2 May 2007.”*⁶⁸,

*“As indicated in its 14 July Decision by Majority, the Chamber is neither in a position to effectively prevent or mitigate the risks associated with particular circumstances of the case nor is it able to find an appropriate solution to problems derived from such risks. For that reason, the Chamber pursued the cooperation of Sudan and requested its government to facilitate Mr Banda's presence at the trial. This cooperation, according to the information provided by the Registry, is not forthcoming. The Chamber will determine [...] the appropriate course of action in order to ensure compliance with the request of the Court.”*⁶⁹ *In light of the above, the Chamber concludes that, regardless of whether Mr Banda wishes or not to be present at trial, there are no guarantees that in the current circumstances, he will be in an objective position to appear voluntarily.*⁷⁰ *[...] In the view of the Chamber, an individual can be obstructed in his willingness or freedom to appear at trial by means other than detention. If these obstacles are such that there are no longer guarantees that he will appear, the Chamber may issue a warrant of arrest.”*⁷¹

⁶⁷ *Prosecutor v. Abdel Raheem Muhammad Hussein*, Public redacted version of ‘Decision on the Prosecutor’s application under article 58 relating to Abdel Raheem Muhammad Hussein’, 1 March 2012, ICC-02/05-01/12-1-Red, para.

⁶⁸ *Prosecutor v. Omar Hassan Ahmed Al Bashir*, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, ICC-02/05-01/09, para. 228.

⁶⁹ Warrant of Arrest for Abdallah Banda Abakaer Nourain, 11 September 2014, ICC-02/05-03/09-606, para. 20.

⁷⁰ *Ibid*, para. 21.

⁷¹ *Ibid*, para. 23.

57. Accordingly, the CLRV submit that neither the declaration of the Defence on the willingness of the Accused to appear voluntarily in the pending Defence Request nor the respective statements of the GoS from 2025 are trustworthy and credible. The Accused as a General of the Sudanese Military Forces has all practical, logistical and financial means and all motivation to escape justice in the light of the severe sentence he is facing in the case of a conviction.

58. Regarding the motive, CLRV recall the Defence's statements during the status conference held on 30 October 2019 according to which:

"[Banda] would be pleased to appear by video link via a mobile telephone application so that he can directly address your Honours and answer any questions your Honours may have for him. [Banda's] consistent position is that he stands for justice and wishes to appear before the Court to stand trial. [H]e and his fellow members of the rebel movements are fighting for justice to this day and that he will continue fighting for justice until the last day of his life and that this Court represents for him and the people of Darfur and all the victims and accused the only independent and impartial judicial institution that he supports [...]. Mr Banda also recalled his cooperation with the court. Mr Banda confirmed again his consistent position that he is willing to immediately appear before your Honours, do long as the security and safety of his immediate family of about 30-plus persons can be guaranteed by the Court".⁷²

59. This statement of the Defence shows the attitude of the Accused. In fact, the Accused never expressed an unconditional willingness to surrender. He continually tried to negotiate with the Court – asking e.g. for support of his broader family - and formulated conditions which should have been fulfilled before his travel to the court.

⁷² Transcription of hearing, 30 October 2019, ICC-02/05-03/09-T-027-CONF-Red-ENG, p. 3-5

60. This interpretation and understanding of the attitude of the Accused is supported by the fact that the Accused has been obviously able to travel during the last years wherever he wanted. In this regard, the CLRV refer to OTP Update-Submission from 8 October 2024, demonstrating that:

“... WHEREABOUTS OF MR BANDA

On 24 November 2023, [REDACTED] Mr Banda arrived in [REDACTED], at the head of what was described as sizable military reinforcements. Mr Banda reportedly announced [REDACTED].

On 2 October 2024, Mr Banda was reported [REDACTED] as having become a leader [REDACTED]. A video of Mr Banda addressing his troops [REDACTED].⁴ confirmed, in October 2024, that Mr Banda had joined the ranks of the [REDACTED].”⁷³

61. On the other hand, GoS is – despite their official statements in the context of this procedure from 2025 - evidently still not willing to accept the legal authority of the ICC since they instructed the Accused as General of its Sudanese Military Forces despite being aware that he is under an international arrest warrant. There is not any explanation as to why the GoS did not simply arrest the Accused due to the current ICC International Arrest Warrant which is binding for the GoS by virtue of resolution 1593 of the Security Council.

⁷³ Confidential Redacted version of “Prosecution’s response to Order instructing the Prosecution and the Registry to provide updates”, 8 October 2024, ICC-02/05-03/09-739-Conf-Red.

62. The CLRV recall the ICC's Trial Chamber Decision on the Prosecutor's Request for a finding of non-compliance against the Republic of the Sudan on 26 June 2015, which is still not executed and ignored by GOS.⁷⁴
63. Finally, the CLRV submit that the Defence submission in para 23 (c) of the Defence Request shows, that the Accused is already planning for a situation where he will not appear or not come back to trial after start of the trial proceedings. Since there are no *in absentia* trials at the ICC under the Rome Statute, the offer of the Accused to waive his right to be present is without any merit and legal substance but shows that that he is already envisaging scenarios when he will not appear in court again and therefore obstruction justice.
64. Finally, CLRV submits that it is just surprising that both the Defence and the Prosecution are supporting the conversion of the warrant arrest into a summon to appear, on the fact that Banda is now a "General", having a pivotal role in supporting the Government of Sudan, as "a hero", as specified by the Defence during the status conference on 8 December 2025⁷⁵, while during more than 15 years (2010) the Defence was arguing that the government of Sudan was committing crimes against humanity , against the Sudanese population, pretending which was assisted by AMIS MGS, to affirm that AMIS MGS had become a legitimate military target.
65. Even if former president Al-Bashir was overthrown by a military coup, many former officials in the Sudanese army were still in position, this fact being presented by Mr Banda to refuse to appear in Court.

⁷⁴ *Prosecutor v. Abdel Raheem Muhammad Hussein*, Decision on the Prosecutor's Request for a finding of non-compliance against the Republic of the Sudan, 26 June 2015, ICC-02/05-01/12-33.

⁷⁵ Transcription of hearing ,ICC-02/05-03/09-T-029, 8 December 2025, CONF-ENG ET 08-12-2025 2/31 T, p.28

66. For these reasons, the right of the participating victims represented by CLRV to have justice delivered has been delayed since 2014 without any justification.

RELIEF SOUGHT

67. In the light of these submissions LRW respectfully request Trial Chamber IV

- (i) to dismiss the Defence Request,
- (ii) alternatively, to suspend its decision on the Defence Request to convert the Arrest Warrant into a Summon to appear until after having delivered its decision on the Prosecution Request for a withdrawal of charges, and until a sufficient period of time may test the effective willingness of Mr. Banda to obey a summon to appear before the Court.




Me Helene Cisse, Principal Counsel

Me Jens Dieckmann, Associate Counsel

Dakar (Senegal)

Bonn (Germany)

Common Legal Representatives of Victims

Date this 22 July 2026