



THE CASE OF THE PROSECUTOR V. ABDALLAH BANDA ABAKAER NOURAIN AND SALEH MOHAMMED JERBO JAMUS AT THE INTERNATIONAL CRIMINAL COURT

On June 16, 2010 Abdallah Banda Abakaer Nourain (Banda) and Saleh Mohammed Jerbo Jamus (Jerbo), appeared voluntarily at the International Criminal Court to answer a court summons. Both men are suspected of committing war crimes during an attack on a peacekeeping military base in Haskanita in September 2009 which led to the killing of 12 African Union Mission in Sudan (AMIS) peacekeeping soldiers. The confirmation of charges hearing for both men is scheduled to start on November 22, 2010.

Abdallah Banda Abakaer Nourain

Banda is 47 years old, and is a member of the Zaghawa tribe of the Sudan, one of three tribes in conflict with the government. He is the Commander-in-Chief of the Justice and Equality Movement (JEM) Collective-Leadership, and was allegedly in command of the attack on the Haskanita Site. He is suspected of committing three counts of war crimes in relation to events at Haskanita: violence to life, attacks on peacekeeping personnel and pillage.

Mohammed Jerbo Jamus

Jerbo is 33 years old and is also a member of the Zaghawa tribe. He is believed to be integrated into the JEM, but was previously Chief of Staff of the Sudan Liberation Army-Unity (SLA-Unity), another group implicated in the attack on the Haskanita site.¹ Jerbo is also suspected of committing three counts of war crimes in relation to the attack: violence to life, attacks on peacekeeping personnel and pillage.

The Attack on the Haskanita Military Group Site

The attack on the Haskanita Site took place on September 29, 2007, and targeted AMIS personnel, supplies and equipment stationed at the site.² The attack was allegedly made up of around 1,000 troops combining several splinter forces of the JEM under the control of Banda, and troops belonging to SLA-Unity under Jerbo's control. These attackers, armed with anti-aircraft guns, artillery guns and rocket-propelled grenade launchers allegedly killed 12 AMIS soldiers and injured eight others. It is also alleged that in addition to this attack on the soldiers themselves, the attackers destroyed AMIS communication installations, vehicles, ammunition and supplies.

Attacking peacekeepers is considered to be an especially grave crime because it undermines international efforts to protect civilians and to maintain peace and security. It is thus one of the serious war crimes included in the Rome Statute of the ICC.

¹ ICC, Questions and answers on the summonses to appear issued for Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus, June 16, 2010, available at

http://www.icc-cpi.int/NR/rdonlyres/D95F7090-CAB6-4856-9A10-250912D487C3/282173/QABandaSUD_Eng_2_.pdf

² Id.





Reaction from the International Criminal Court

Banda and Jerbo are two of the three Darfuri rebel commanders who were subject of a sealed case which ICC Prosecutor Luis Moreno Ocampo submitted to the Court on November 20, 2008 concerning events at the Haskanita site. The third rebel leader, Bahar Idriss Abu Garda (Abu Garda) voluntarily appeared before the ICC in May 2009 for war crimes carried out in this attack on the Haskanita site. However, on February 8, 2010 Pre-Trial Chamber I ruled that there was insufficient evidence to charge Abu Garda with these war crimes. Pre-Trial Chamber I then rejected an appeal by the Prosecutor against this decision. Yet, in a statement before the United Nations Security Council on June 11, 2010 concerning the situation in Darfur, the Prosecutor announced that there is additional evidence against Abu Garda. The Prosecutor anticipates that a new confirmation hearing will take place in the near future.³

The Summons to Appear

On August 27 2009 Pre-Trial Chamber I issued a summons for Banda and Jerbo to appear before the Court. Pre-Trial Chamber I considered that there were reasonable grounds to believe that Banda and Jerbo had planned this attack together and that AMIS personnel and equipment were intended to be the direct targets of this plan. The Chamber also believed that the contributions of Banda and Jerbo, in acting in their roles as heads of the JEM and the SLA-Unity, were essential to the attack. The Chamber therefore found that there were reasonable grounds to hold Banda and Jerbo criminally responsible for three counts of war crimes: violence to life, attacks on peacekeeping personnel, and pillage.⁴ Several conditions were attached to the summonses to appear: Banda and Jerbo were to refrain from discussing issues relating to the charges or evidence, and also to refrain from making political statements.⁵ The appearance of Banda and Jerbo before the Court on June 17 was their first.

Issues

All three rebel leaders who were subject of the original sealed case submitted by the Prosecutor have now appeared before the Court. This is an important development if justice is to be achieved for the events which occurred at Haskanita. However, Banda and Jerbo's appearance at the ICC could be seen as a means to elevate their status while also exonerating themselves. There has been speculation that they only submitted themselves to the Court because the charges against Abu Garda were dropped due to insufficient evidence. Banda and Jerbo may believe that evidence against them is equally insufficient, which would prevent a conviction. They may, therefore, have waited for developments in the Abu Garda case to materialize before deciding how to

³ ICC Office of the Prosecutor press release, 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," June 16, 2010, available at <http://www.icc-cpi.int/NR/exeres/8880041B-E951-4860-B058-CE5BE7F9CC23.htm>.

⁴ ICC press release, New suspects in the situation in Darfur, Sudan arrive voluntarily at the ICC: First appearance scheduled for tomorrow, June 16, 2010, available at

<http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/news%20and%20highlights/pr547?lan=en-GB>.

⁵ Id.





respond to the court summons. The JEM had suspended its participation in peace negotiations with the Government of Sudan.⁶

However, on February 23 2009, the Prosecutor informed the Court that Banda and Jerbo had expressed their willingness to appear before the Court.⁷ They were therefore willing to appear at the Court before the charges against Abu Garda were dropped. The fact that a summons was issued for Banda and Jerbo, rather than an arrest warrant, shows that the Pre Trial Chamber was satisfied that the suspects would appear voluntarily before the Court. In this light, perhaps Banda and Jerbo's consciences had not been affected by the Abu Garda trial and appeared before the Court because they respect the ICC as an institution. This is certainly the opinion of the Prosecutor, who argued that Banda and Jerbo's appearance before the Court is a sign of the respect that some rebel groups have for the Court.⁸

*Researched and drafted by John Groom
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⁶ JEM rebels freeze peace talks with Sudanese government, May 3, 2010, available at <http://www.sudantribune.com/spip.php?article34954>.

⁷ Questions and answers, *supra* note 1.

⁸ ICC Office of the Prosecutor press release, *supra* note 3.

