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No.: ICC-02/05-03/09

Date: 27 October 2010

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Sylvia Steiner
Judge Sanji Mmasenono Monageng

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

&

SALEH MOHAMMED JERBO JAMUS

Public

**Defence Request pursuant to Rule 124(1) of the Rules of Procedure and Evidence,
waiving the right of the persons concerned to be present at the hearing on the
confirmation of charges and request that the hearing be held in their absence,
pursuant to Article 61(2)(a) of the Rome Statute**

Sources: Defence Team of Abdallah Banda Abakaer Nourain
Defence Team of Saleh Mohammed Jerbo Jamus

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Mr Essa Faal

Counsel for the Defence

Mr Karim A. A. Khan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Background

1. On 27 August 2009, Pre-Trial Chamber I issued its Second Decision on the Prosecutor's Application under Article 58¹, in which it issued summonses to appear for Mr. Abdallah Banda Abakaer Nourain ("Banda") and Mr. Saleh Mohammed Jerbo Jamus ("Jerbo").
2. Messrs Banda and Jerbo voluntarily submitted to the jurisdiction of the Court in answer to the summonses issued. This led to their first appearance before the Court on 17 June 2010. On that occasion, the Pre-Trial Chamber decided that the confirmation of charges hearing would start on 22 November 2010.
3. On 28 September 2010, the Registrar filed a "Report of the Registrar on Zaghawa interpretation to be provided during the Confirmation of Charges Hearing" ("Report").² This Report indicated that that Registrar had encountered "major obstacles" in the search for qualified Zaghawa interpreters for use at the confirmation hearing.
4. The Report specified that the training of Courtroom interpreters would only commence at the beginning of November 2010 and that this training would continue for six months.³
5. At the Status Conference held on 6 October 2010 ("Status Conference"), the Single Judge pointed out that these difficulties "would entail the postponement of the confirmation hearing currently still scheduled to begin on Monday, 22 November 2010 of this year"⁴ for a period of six months.
6. On 20 October 2010, the Prosecution and the Defence teams of Messrs Banda and Jerbo (jointly the "Defence") filed their Joint Submission by the Office of the Prosecutor and the Defence as to Agreed Facts and submissions regarding modalities for the conduct of the Confirmation hearing⁵ ("Joint Submissions").

¹ ICC-02/05-03/09-1.

² ICC-02/05-03/09-73 29-09-2010 2/6 RH PT.

³ Report, para. 5.

⁴ ICC-02/05-03/09-T-8-ENG, p. 2, lines 18-20.

⁵ ICC-02/05-03/09-80.

7. On 22 October 2010, Pre-Trial Chamber I issued its Decision⁶, postponing the commencement of the confirmation hearing from 22 November 2010 to 8 December 2010. The Defence were given until 8 November 2010 to submit a written request pursuant to Rule 124 of the Rules of Procedure and Evidence ("the Rules") regarding the willingness of each suspect to waive their attendance at the confirmation hearing and to request that the hearing be allowed to proceed in their absence, pursuant to Rule 125(1) of the Rules.

II. Messr Banda and Jerbo's request to waive their rights to be present at the confirmation hearing

8. Pursuant to Rule 124(2) of the Rules, a confirmation hearing shall be held in the absence of a suspect only "when the Pre-Trial Chamber is satisfied that the person concerned understands the right to be present at the hearing and the consequences of waiving this right."
9. At the Status Conference, Defence Counsel indicated that he had recently held discussions with his clients on a number of issues.⁷ These included the difficulties being experienced by the Registrar in finding suitably qualified interpreters, his clients' rights to be present at the confirmation hearing and to be tried without undue delay, the consequences entailed by any waiver of their rights to be present at the confirmation hearing, along with the substance of the Joint Submissions. These material averments are supported by the affidavit of Andrew John Burrow, Defence Legal Assistant, appended to this Request as "Annexure A".⁸
10. As is apparent from Annexure A, Messrs Banda and Jerbo, are fully cognisant of their rights under Article 67 of the Statute, and specifically understand their rights to be present at the confirmation hearing and the consequences of waiving these rights.

⁶ ICC-02/05-03/09-81.

⁷ ICC-02/05-03/09-T-8-ENG, p. 7, lines 17-20.

⁸ The verbatim notes of the telephone conference calls referred to in Annexure A are subject to legal professional privilege, involve additional discussions and are neither disclosable nor required for the purpose of the present filing.

11. The Defence respectfully submits that in light of the Joint Submissions filed on 20 October 2010, the right contained in Article 67(1)(c), to be tried without undue delay, and given the contents of the affidavit appended to this request, there is cause to hold the confirmation hearing in the absence of the persons concerned, in accordance with Rule 125(1).
12. For the sake of clarity, the Defence also wish to make it clear that Messrs Banda and Jerbo will not require, and do not request, the use of communications technology to enable them to observe the hearing from outside the courtroom.

Request:

- (i) Based on the above submissions, Messrs Banda and Jerbo hereby waive their rights to be present at the confirmation of charges hearing, and respectfully request that the Pre-Trial Chamber authorise that the confirmation hearing be held in their absence pursuant to Article 61(2)(a) of the Statute and 125(1) of the Rules of Procedure and Evidence.

Respectfully Submitted,



Mr. Karim A. A. Khan

Defence Counsel for Abdallah Banda Abakaer Nourain and
Saleh Mohammed Jerbo Jamus

Dated this 27th Day of October 2010

At The Hague, The Netherlands