



Original: English

No.: ICC-02/05-03/09
Date: 4 November 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 Document

With confidential *ex parte* annexure available only to the Prosecution

Defence's Submission of Saleh Mohammed Jerbo Jamus's request pursuant to Rule 124(1) of the Rules of Procedure and Evidence, waiving his right to be present at the hearing on the confirmation of charges and requesting that the hearing be held in his 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

1. On 22 October 2010, Pre-Trial Chamber I issued its Decision¹, postponing the commencement of the confirmation hearing to 8 December 2010. The Decision also set a deadline of 8 November 2010 for the Defence 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 right to attend the confirmation hearing and to request that the hearing take place in their absence, pursuant to Rule 125(1) of the Rules.
2. On the morning of 27 October 2010, the Defence submitted its Request² with an annexed affidavit³ from a legal consultant on the Defence team. The Request and affidavit averred that the suspects had granted authorisation to counsel to inform the Chamber of the waiver of their rights to attend the confirmation hearing and to request that it be held in their absence.
3. On the afternoon of 27 October 2010, the Chamber issued its Second decision setting a deadline for the submission of the suspects' written request to waive their right to attend the confirmation hearing⁴, in which it held that a suspect must “personally execute” a written request pursuant to Rule 124(1) of the Rules and extended the deadline for the submission of any such request to 15 November 2010.
4. In accordance with the Chamber’s decisions of 22 and 27 October 2010, the Defence hereby submits as “Confidential *ex parte* Annexure A” Saleh Mohammed Jerbo Jamus’s (“Jerbo”) personally executed request pursuant to Rule 124(1) of the Rules. The annexure is submitted as confidential, *ex parte* available only to the Prosecution, out of a concern for the security and at the request of the person who witnessed Mr Jerbo’s signing of the document and affixed their name and signature to page 5 of the document.

¹ Decision postponing the confirmation hearing and setting a deadline for the submission of the suspects' written request to waive their right to attend the confirmation hearing, ICC-02/05-03/09-81.

² 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, ICC-02/05-03/09-86.

³ ICC-02/05-03/09-86-AnxA.

⁴ ICC-02/05-03/09-87.

5. The Defence expresses its thanks to Registry officials in The Hague and in Chad for their efficient and professional assistance to the Defence team and Mr Jerbo in the execution of this request.
6. The Defence informs the Chamber that it is in the process of arranging for a similar personally executed request from Mr Banda, who is currently in the field, and therefore without access to fax or email facilities through which he can conveniently execute such a request. The Defence shall file Mr Banda's request as soon as possible.

Respectfully Submitted,



Mr Karim A. A. Khan

Defence Counsel for Abdallah Banda Abakaer Nourain and

Saleh Mohammed Jerbo Jamus

Dated this 4th Day of November 2010

At The Hague, The Netherlands