

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 October 2010

PRE-TRIAL CHAMBER I

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

SITUATION IN DARFUR, SUDAN

***CASE THE PROSECUTOR V. ABDALLAH BANDA ABAKAER
NOURAIN AND SALEH MOHAMMED JERBO JAMUS***

Public

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

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 Khan

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court;

1. **NOTING** the hearing held on 17 June 2010, during which the suspects Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus first appeared before the Chamber and the date of 22 November 2010 was set for the beginning of the hearing on the confirmation of the charges;
2. **NOTING** that, in light of developments that have occurred in the composition of Chambers and of the Court schedule, as well as of the number of courtrooms which are available to the Court, it is no longer possible to hold the hearing on the confirmation of the charges on the date originally set;
3. **CONSIDERING** that, accordingly, there is a need to postpone the confirmation hearing, pursuant to rule 121(7) of the Rules of Procedure and Evidence (“Rules”);
4. **NOTING** the “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 hearing”, filed by the Office of the Prosecutor and the Defence Counsel of the suspects on 20 October 2010 (“Joint Submissions”), whereby, *inter alia*, the Defence informed the Chamber that the suspects “are willing to waive their right to be present at the confirmation hearing and request[ed] that it be held in their absence”;¹
5. **NOTING** article 61(2)(a) of the Statute, which provides that the Pre-Trial Chamber may hold the hearing on the confirmation of charges in the

¹ ICC-02/05-03/09-80.

absence of the person charged when the said person has waived his right to be present;

6. **NOTING** that, according to rule 124(1) of the Rules, “if the person concerned wishes to waive the right to be present at the hearing on the confirmation of charges, he or she shall submit a written request to the Pre-Trial Chamber”;
7. **NOTING** that, pursuant to the provision of rule 125(1) of the Rules, the Chamber must decide whether there is cause to hold the confirmation hearing in the absence of the suspects;
8. **NOTING**, in particular, that, according to rule 124(2) of the Rules, the confirmation hearing may be held in the absence of the suspect only if “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. **NOTING** that in the Joint Submissions the Defence only expressed the willingness of the suspects to waive their right to be present at the confirmation hearing without submitting any written request pursuant to rule 124(1) of the Rules nor anticipating the submission of any such request;
10. **CONSIDERING**, therefore, that in order for it to decide on whether the confirmation hearing may be held *in absentia*, the Chamber shall receive the written request on the basis of which it must satisfy itself that the suspects are fully aware of (i) the rights they are entitled to pursuant to article 67 of the Statute; (ii) the right to be present at the confirmation hearing; (iii) the content of the Joint Submissions; (iv) the consequences of waiving their

right to attend the confirmation hearing as well as of what was agreed by the Defence in the Joint Submissions;

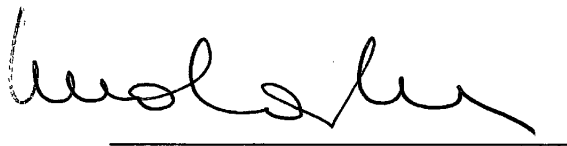
11. **CONSIDERING** that, with a view to making it possible to put in place the necessary arrangements for the suspects to attend the Confirmation hearing, should the Chamber decide not to authorize that the said hearing be held in their absence, it is necessary to set a deadline by which the Defence shall submit the suspects' written request pursuant to rule 124(1);

FOR THESE REASONS

DECIDES to postpone the commencement of the hearing on the confirmation of the charges to Wednesday 8 December 2010;

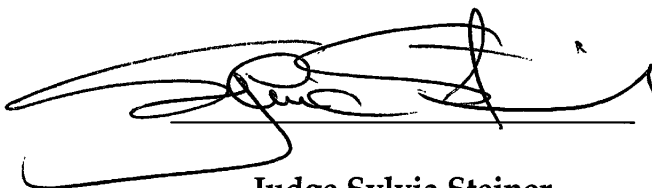
DECIDES that, should the suspects intend to waive their right to be present at the confirmation hearing according to rule 124 of the Rules, the written request to the Chamber must be submitted no later than Monday 8 November 2010.

Done in both English and French, the English version being authoritative.

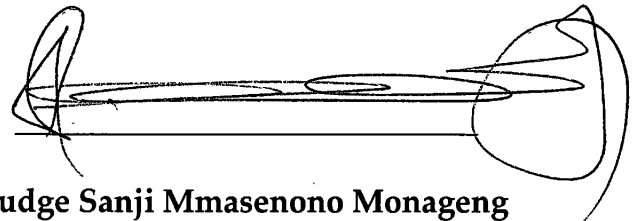


Judge Cuno Tarfusser

Presiding Judge



Judge Sylvia Steiner



Judge Sanji Mmasenono Monageng

Dated this Friday, 22 October 2010
At The Hague, The Netherlands