

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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 DARFUR, SUDAN

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

URGENT

Public

**Second decision 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 made their first appearance 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** 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
3. **NOTING** the “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”, issued on 22 October 2010 (“Decision”), whereby, *inter alia*, the Chamber requested the Defence to submit the written request required under rule 124(1) of the Rules of Procedure and Evidence (“Rules”) by no later than Monday 8 November 2010, if the suspects intended to waive their right to be present at the confirmation hearing;
4. **NOTING** the “Defence Request pursuant to Rule 124(1) of the Rules of Procedure and Evidence, waiving the right of the person 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)” and the annex attached thereto, filed by the Defence Counsel of the suspects on 27 October 2010 (“Request”);

5. **NOTING** that rule 124(1) of the Rules states that “[i]f the person concerned is available to the Court but wishes to waive the right to be present at the hearing on confirmation of charges he or she shall submit a written request to the Pre-Trial Chamber”;
6. **CONSIDERING** that the wording of the rule 124(1) makes it clear that the written request must be personally executed by the suspect intending to waive his or her right to be present at the confirmation of charges and, as such, cannot be delegated to the Defence Counsel;
7. **NOTING** that the Request, which was presented by the Defence on behalf of the suspects, does not fulfil the formal requirements provided for by rule 124(1);
8. **CONSIDERING** it necessary to reiterate the order to the Defence to provide the Chamber with the written request executed by the suspects in accordance with the requirements of rule 124(1), should they intend to waive their right to be present at the confirmation of charges;
9. **NOTING** that, in the Decision, the Chamber also stated that the written request must include sufficient information to satisfy the Chamber that the suspects are fully aware of (i) the rights to which they are entitled pursuant to article 67 of the Statute; (ii) their 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 and the agreement between the Defence and the Prosecution contained in the Joint Submissions;

¹ ICC-02/05-03/09-80.

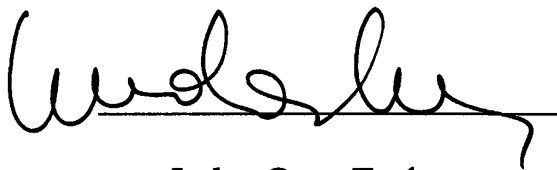
FOR THESE REASONS**DECIDES**

that the suspects' written request to waive their right to be present at the hearing on the confirmation of the charges, in accordance with the requirements provided for by rule 124(1) and established in the present decision, shall be submitted not later than Monday 15 November 2010.

REQUESTS

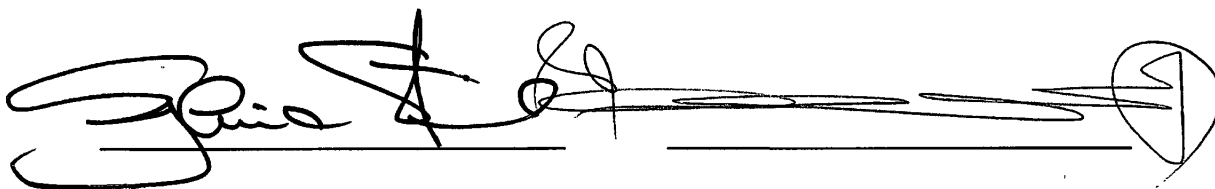
the Registrar to provide such assistance as may be required by the Defence in complying with the present decision.

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 Wednesday, 27 October 2010

At The Hague, The Netherlands