

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09
Date: 17 November 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***

Public

Decision on issues related to the hearing on the confirmation of charges

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

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

Colonel Frank Adaka

Sir Geoffrey Nice & Mr Rodney Dixon

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 renders the present decision with respect to the conduct of the hearing on the confirmation of the charges presented by the Prosecutor against the suspects Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo.

I. Whether the confirmation hearing could be held in the absence of the two suspects

1. On 20 October 2010, the Prosecutor and the Defence Counsel of the suspects 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 hearing”¹, (“Joint Submission”), whereby, *inter alia*, the Defence informed the Chamber that the suspects were “willing to waive their right to be present at the confirmation hearing and request[ed] that it be held in their absence”.²

2. On 22 October 2010 the Chamber issued a decision whereby it (i) postponed the commencement of the hearing on the confirmation of the charges to Wednesday 8 December 2010 and (ii) requested the Defence to submit the written request provided for in rule 124(1) of the Rules of Procedure and Evidence (“Rules”) by Monday 8 November 2010, in the event that the suspects intended to waive their right to be present at the confirmation hearing.³

3. On 27 October 2010, having received from the Defence Counsel written requests purporting to fulfil the requirements of rule 124(1) of the Rules, 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

¹ ICC-02/05-03/09-80.

² *Ibid* at para 9.

³ ICC-02/05-03/09-81.

hearing”,⁴ wherein it (i) held that, in order for a written request to fulfil the formal requirement provided for in rule 124(1) of the Rules, it must be personally executed by the suspect and (ii) extended the deadline for the submission of any such request to 15 November 2010. Pursuant to this decision, the Defence filed the requests under rule 124(1) of the Rules personally executed by Saleh Mohammed Jerbo Jamus and Abdallah Banda Abakaer Nourain on 4 November 2010 and on 15 November 2010 respectively, (collectively, “Requests”).⁵

4. In the Chamber’s view the information included in the Requests is sufficient for it to be satisfied 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 Submission; (iv) the consequences of waiving their right to attend the confirmation hearing. The requirements provided for by rule 124(2) of the Rules – namely that there is sufficient information in order for the Chamber to be “satisfied that the suspects understand their right to be present at the confirmation hearing as well as the consequences of waiving this right” – are accordingly fulfilled. The Chamber is therefore satisfied that, in the present case, the hearing on the confirmation of charges may be held in the absence of the suspects pursuant to article 61(2) of the Statute.

II. On the conduct of the confirmation hearing

5. In their Joint Submission, the parties proposed to make all submissions “as to the merits at the confirmation hearing, including the presentation of evidence,

⁴ ICC-02/05-03/09-87.

⁵ ICC-02/05-03/09-93-Conf-Exp-AnxA and ICC-02/05-03/09-99-Conf-Exp-AnxA.

in writing only”, without prejudice to the Prosecutor’s “right to make a short presentation aimed at clarifying the various aspects of the case”⁶.

6. While article 61 of the Statute states that the Prosecutor *shall* make oral submissions no such obligation is imposed upon the Defence, which *may* decide not to make any oral submission during the hearing.

7. With respect to the participation at the hearing of the five legal representatives of the 89 authorized victims, on 12 November 2010, three of them filed their observations on the Joint Submission of the Prosecutor and the Defence⁷ requesting, *inter alia*, the Chamber’s authorisation to make oral submissions at the confirmation hearing.

8. Regarding this request, the Chamber notes that, in its decision on victims’ participation at confirmation hearing, it already found it “appropriate, within the meaning of article 68(3) of the Statute and rule 89(1), that victims’ legal representatives be entitled to present their views and concerns at the confirmation hearing, by way of oral submissions”⁸. This finding applies true in respect of all legal representatives of victims authorised to participate at the confirmation hearing, regardless of whether they have specifically requested the Chamber’s leave to make oral submissions. Such oral submissions are, however, permitted only insofar as they relate to the personal interests of the victims.

9. In light of the Court schedule, as well as the number of courtrooms available to the Court, the confirmation hearing will be held on Wednesday 8 December 2010 with two afternoon sessions (from 14h30 to 16h30 and from 17h00 to

⁶ ICC-02/05-03/09-80 par. 7

⁷ ICC-02/05-03/09-96 and ICC-02/05-03/09-97.

⁸ ICC-02/05-03/09-89, par. 66.

19h00). Should it become necessary, the confirmation hearing will continue the following day at the same times.

FOR THESE REASONS

DECIDES

that the hearing on the confirmation of charges will be held in the absence of the two suspects;

DECIDES

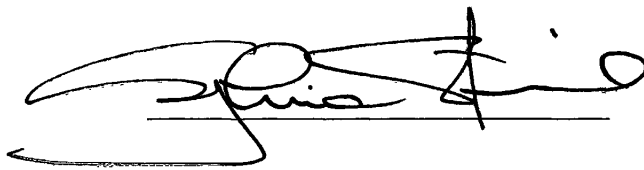
that the hearing on the confirmation of charges will commence on 8 December 2010 at 14:30 hours.

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

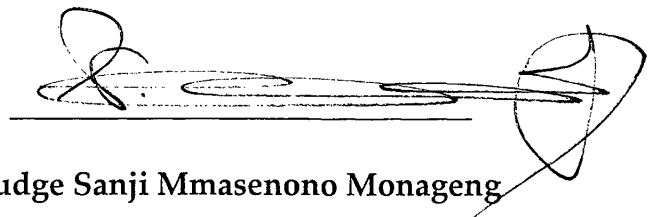


Judge Cuno Tarfusser

Presiding Judge



Judge Sylvia Steiner



Judge Sanji Mmasenono Monageng

Dated this Wednesday, 17 November 2010

At The Hague, The Netherlands