

1 International Criminal Court  
2 Pre-Trial Chamber I  
3 Presiding Judge Sylvia Steiner,  
4 Judge Sanji Monageng and Judge Cuno Tarfusser  
5 Situation in Darfur, Sudan - ICC-02/05-03/09  
6 In the case of The Prosecutor v. Abdallah Banda  
7 Abakaer Nourain and Saleh Mohammed Jerbo Jamus  
8 Initial Appearance Hearing  
9 Thursday, 17 June 2010  
10 (The hearing starts at 10.06 a.m.)  
11 (Open session)

12 THE COURT USHER: All rise. The International  
13 Criminal Court is now in session. Please be seated.

14 PRESIDING JUDGE STEINER: Good morning. This hearing  
15 is opened. I would please ask the court officer to call the  
16 case.

17 THE COURT OFFICER: Situation in Sudan, Darfur. The  
18 case, the Prosecutor versus Abdallah Banda Abakaer Nourain and  
19 Saleh Mohammed Jerbo Jamus, ICC-02/05-03/09.

20 PRESIDING JUDGE STEINER: Thank you very much, court  
21 officer. Before we start, the Chamber has decided that  
22 photographers, as is the practice of this Court, may take  
23 pictures for one minute, no longer. Therefore, I'll ask the  
24 court officer to call the photographers, please.

25 MR KHAN: And, Madam President, while that is being

1 done, perhaps your Honours could request that the Zaghawa  
2 interpretation be looked into. My clients are not getting a  
3 translation of what your Honour is saying.

4 PRESIDING JUDGE STEINER: Court officer, could you  
5 please check whether there is any problem with interpretation.

6 (Pause in proceedings)

7 MR KHAN: Madam President, it may be obvious, but what  
8 is -- what is being heard on channel 4 is Arabic, not Zaghawa.

9 PRESIDING JUDGE STEINER: I am informed by the court  
10 officer that channel 4 now is correctly linked to the Zaghawa  
11 interpretation and channel 3 for the Arabic interpretation. I  
12 would like the Defence, please, to check.

13 MR KHAN: Well, Madam President, I was giving the  
14 interpreters a chance to translate, but I was listening on  
15 channel 4, and I heard silence. And when I heard translation  
16 previously, it was in Arabic.

17 THE COURT OFFICER: Mr Khan, it's consecutive  
18 interpretation, so we have to allow a little break, and then the  
19 interpretation into Zaghawa will start. So it doesn't go  
20 simultaneously as for regular interpretation. Thank you.

21 PRESIDING JUDGE STEINER: If Mr Khan allows me, I, on  
22 behalf of the Chamber, I was going to inform all the  
23 participants that interpretation into Arabic and into Zaghawa as  
24 well will be provided during this hearing. As the  
25 interpretation to Zaghawa will be done consecutively, I would

1 kindly ask all the participants, the patience of all the  
2 participants, and the Bench will of course do the same, to pause  
3 for approximately five to ten seconds between every sentence  
4 they speak. In this way, we can allow the interpreters to fully  
5 translate what's being said and thus to have a complete record  
6 of today's hearing.

7           So maybe, Mr Khan, we are having just a problem of  
8 delay in the Zaghawa interpretation. I would like you to check  
9 whether after this reasonable delay interpretation into Zaghawa  
10 is being provided.

11           Well, on behalf of my colleagues, Judge Sanji Monageng  
12 on my right and Judge Cuno Tarfusser on my left, I would like to  
13 welcome you all to this hearing.

14           I would please start asking first the Prosecution and  
15 then the Defence to introduce themselves and their teams.  
16 Prosecution, please.

17           MS BENSOUA: Madam President, honourable Judges. The  
18 Office of the Prosecutor is represented this morning by Mr Essa  
19 Faal, senior trial lawyer; Adebowale Omofade, trial lawyer;  
20 Jennifer Schense, cooperation adviser; Shyamala Alagendra, trial  
21 lawyer; Victor Baiesu, associate trial lawyer; Pubudu  
22 Sachithanandan, associate trial lawyer; Desiree Lurf, associate  
23 trial lawyer; and Biljana Popova, case manager.

24           PRESIDING JUDGE STEINER: And yourself? And yourself?

25           MS BENSOUA: Madam President, your Honours, I am

1 leading the Prosecution's team. I am Fatou Bensouda, Deputy  
2 Prosecutor.

3 PRESIDING JUDGE STEINER: Thank you very much.  
4 Mr Khan, please.

5 MR KHAN: Madam President, your Honours, good morning.  
6 Mr Abdallah Banda and Mr Saleh Jerbo are represented by Andrew  
7 Burrow, legal assistant, and he sits at the back of the Court;  
8 by Abeer Hasan, legal assistant, who sits behind me; and with  
9 the assistance of our case manager, Mr Anand Shah. My name is  
10 Karim Khan.

11 PRESIDING JUDGE STEINER: Thank you very much. Now, I  
12 would turn to the representatives of the Registry.

13 MR DUBUISSON: (Interpretation)\* Your Honour, thank  
14 you. On the Registry bench today we have Anne Aurore Bertrand,  
15 who is a legal Officer at the immediate office of court  
16 services; Cyril Laucci, who is a legal officer within the  
17 immediate office of the Registrar; and myself, Marc Dubuisson,  
18 Director of Court Services, representing Silvana Arbia,  
19 Registrar

20 PRESIDING JUDGE STEINER: Thank you very much. I also  
21 would like to inform all the participants that at the seats  
22 behind the representatives of the Registrar, and at the seats on  
23 my left, are the legal officers, assistant legal officers and  
24 interns of Pre-Trial Chamber I and of Pre-Trial Division.

25 I would like now to turn to Mr Khan. The Chamber is

1 going to request some details regarding the identity of  
2 Mr Abdallah Banda Abakaer Nourain and of Mr Saleh Mohammed Jerbo  
3 Jamus. So with your permission, Mr Khan, I would like to ask  
4 Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo  
5 Jamus, who we know, we understand that have a very hard travel  
6 to the seat of the Court, long and tiring travel, but I would  
7 like both of them, please, to confirm that they are able to  
8 answer the questions the Chamber is going to ask them.

9 First, Mr Abdallah Banda Abakaer Nourain.

10 MR BANDA: (Interpretation) Yes, I will answer, God  
11 willing.

12 PRESIDING JUDGE STEINER: Thank you. First, I would  
13 like to -- first, Mr Abdallah Banda Abakaer Nourain, I would  
14 like to answer a number of questions to ascertain your identity.  
15 These are basic questions. To answer these questions, please  
16 use the microphone before you and speak please very slowly in  
17 order to allow the interpreters to make the proper  
18 interpretation.

19 You may speak in the language which you fully  
20 understand and speak. Please, can you confirm that you speak  
21 Zaghawa?

22 THE INTERPRETER: We can't hear the interpretation  
23 into Arabic. I'm sorry.

24 PRESIDING JUDGE STEINER: We are having problems with  
25 the interpretation from Zaghawa into Arabic. I can hear. Could

1 I please be informed if the problem has been solved.

2 MR KHAN: Madam President, until it's solved, perhaps  
3 your Honours may be so kind as to allow my client to take a  
4 seat.

5 PRESIDING JUDGE STEINER: Please.

6 (Pause in proceedings)

7 PRESIDING JUDGE STEINER: Court officer.

8 (Pause in proceedings)

9 PRESIDING JUDGE STEINER: Mr Khan, can we -- they try,  
10 please.

11 THE INTERPRETER: Do you hear us in Arabic?

12 PRESIDING JUDGE STEINER: On behalf of the Court and  
13 the Chamber, I apologise to all those present here for this  
14 hearing. I was informed even that yesterday Trial Chamber II  
15 had to suspend a hearing because similar problems. In order to  
16 avoid the parties and participants to this hearing to just wait  
17 silently here, I'm going to suspend this hearing for 15 minutes.  
18 Mr Khan, can you confirm that now it's working properly?

19 MR KHAN: Madam President, it is.

20 PRESIDING JUDGE STEINER: The apologies still stand.  
21 So I will turn again to Mr Saleh -- sorry, to Mr Abdallah Banda  
22 Abakaer Nourain. I would like to ask you whether you confirm  
23 you speak, you fully understand and speak Zaghawa.

24 MR BANDA: (Interpretation) Yes, I do speak Zaghawa.

25 PRESIDING JUDGE STEINER: Thank you. Could you please

1 inform the Chamber whether you speak and understand Arabic?

2 MR BANDA: (Interpretation) No, I speak Zaghawa.

3 PRESIDING JUDGE STEINER: Thank you. Could you please  
4 confirm your name, your date of birth and your occupation.

5 MR BANDA: (Interpretation) I will tell you my date of  
6 birth first. Are you ready?

7 PRESIDING JUDGE STEINER: Yes.

8 MR BANDA: (Interpretation) My date of birth is 1963.  
9 I was born in Tina, north of Darfur.

10 THE INTERPRETER: Can -- I think the Arabic  
11 interpreter, the interpreter could not get what he said. If you  
12 can ask him to repeat, please?

13 PRESIDING JUDGE STEINER: Could you repeat, please,  
14 the last part of what you said. I think the interpreter had  
15 difficulties in translating. If you don't mind, please.

16 THE INTERPRETER: Please ask them to release the  
17 Arabic booth, so that we can go from English into Arabic.

18 MR BANDA: (Interpretation) I was born in 1963 in  
19 Tina. I am a revolutionary. I am now based in north of Darfur.

20 PRESIDING JUDGE STEINER: Thank you. Could you please  
21 confirm your name.

22 MR BANDA: (Interpretation) My name is Abdallah Banda  
23 Abakaer Nourain.

24 PRESIDING JUDGE STEINER: Thank you very much.  
25 Mr Banda, you appear before this Chamber in compliance with a

1 summons to appear issued by the Chamber. Have you anything to  
2 say about the conditions of your travel and the assistance you  
3 received from the Court in order to facilitate your appearance?

4 MR BANDA: (Interpretation) Yes, I would like to say  
5 something in this regard. I was summoned by this Court because  
6 the Court has rights and duties, and I am with right and justice  
7 because I believe in justice. I came here voluntarily in  
8 response to the summons of the ICC, and I call upon everyone who  
9 have been summoned by this Court to come here to exonerate  
10 themselves, and I thank this Court and for everything that they  
11 have given to me to enable me to come here.

12 PRESIDING JUDGE STEINER: Thank you very much. A last  
13 question, just one last question. As a matter of fact, two.  
14 First, whether the Court can address you from now on as "Mr  
15 Banda"?

16 MR BANDA: (Interpretation) Yes, yes.

17 PRESIDING JUDGE STEINER: Thank you very much. You  
18 may sit. Mr Khan?

19 MR KHAN: Madam President, before your Honour turns to  
20 Mr Jerbo, perhaps I could suggest that some clarification be  
21 sought, because we've seen that there's been a little difficulty  
22 with the interpretation, as of course may be expected at the  
23 first hearing. And at page 7, my client is asked if he  
24 understands Arabic, and he said, "No, I understand Zaghawa." I  
25 just wanted to make it clear whether or not the question that



1 was translated, or that was interpreted, was "whether you  
2 understand Arabic or do you prefer Arabic?" And I wonder if  
3 Mr -- if that could be clarified and perhaps put again to  
4 Mr Banda.

5 PRESIDING JUDGE STEINER: The question of the Chamber  
6 is whether Mr Banda fully speaks and understands Arabic.

7 MR KHAN: Madam President, it's completely my fault,  
8 not Mr Banda's, because whilst your Honour was speaking I was  
9 quite discourteous, and I was having my assistant speak to  
10 Mr Banda. So perhaps, your Honour, do forgive me, could put the  
11 question once again.

12 PRESIDING JUDGE STEINER: The same way the Chamber  
13 asked Mr Banda whether he fully speaks and understands Zaghawa,  
14 the Chamber asks Mr Banda whether Mr Banda fully speaks and  
15 understands Arabic, as well.

16 MR BANDA: (Interpretation) Yes, I understand.

17 PRESIDING JUDGE STEINER: Now I have to insist, since  
18 in accordance with Article 67 of the Statute, the person  
19 appearing before the Court has the right to be informed promptly  
20 and in detail of the nature, cause and content of the charge in  
21 a language which the accused - or the suspect in this case -  
22 fully understands and speaks.

23 Mr Banda, may I ask you if you fully understand and  
24 speak Arabic?

25 MR BANDA: (Interpretation) I do not speak Arabic

1 very well.

2           PRESIDING JUDGE STEINER: Thank you very much,  
3 Mr Banda, you may sit. So I would like now to ask Mr Saleh  
4 Mohammed Jerbo Jamus to stand up and to answer a number of  
5 questions to ascertain his identity. These are, again, the same  
6 basic questions I just asked Mr Banda. To answer these  
7 questions, please use the microphone before you and please speak  
8 very slowly in order to allow interpreters to make the proper  
9 interpretation.

10           You may speak in the language which you fully  
11 understand and speak. Please, can you confirm that you fully  
12 speak and understand Zaghawa?

13           MR JERBO: (Interpretation) Yes, I speak Zaghawa very  
14 well, and I understand it as well.

15           PRESIDING JUDGE STEINER: Thank you. Please, could  
16 you inform the Chamber whether you fully speak and understand  
17 Arabic?

18           THE INTERPRETER: Could you please repeat the  
19 question.

20           MR JERBO: (Interpretation) I don't -- I don't  
21 understand Arabic very well, but I speak it.

22           PRESIDING JUDGE STEINER: Meaning that I don't need to  
23 repeat the question, then. Thank you, Mr Saleh Mohammed Jerbo  
24 Jamus. Could you please confirm your name, your date of birth  
25 and your occupation.

1           MR JERBO: (Interpretation) My name is Saleh Mohammed  
2 Jerbo Jamus. I am a revolutionary member of the Revolutionary  
3 Movement in Darfur. I was in born in 1977 in Shiga Karo area in  
4 Kutum, in the north of Darfur.

5           PRESIDING JUDGE STEINER: Thank you very much.

6           Mr Jerbo, would you agree that the Chamber from now on  
7 address you as Mr Jerbo?

8           MR JERBO: (Interpretation) Yes, it's my family name,  
9 so I don't have a problem with that.

10          PRESIDING JUDGE STEINER: Thank you very much.

11 Mr Jerbo, you appear before this Chamber in compliance with a  
12 summons to appear issued by the Chamber. You appear  
13 voluntarily. Have you anything to say about the conditions of  
14 your travel, your trip or the conditions given by the Court in  
15 order to allow your appearance before this Chamber today?

16          MR JERBO: (Interpretation) I would like to thank the  
17 Court, with all of its departments. I am here, because I  
18 received this summons to appear and I would like to thank those  
19 who brought the summons to appear to me. I would like to thank  
20 everyone involved. We are here to achieve justice, and I call  
21 on everyone who is wanted for justice to come to this Court in  
22 order to achieve justice for everyone, God willing.

23          PRESIDING JUDGE STEINER: Thank you, Mr Jerbo.

24          JUDGE MONAGENG: I would just like clarification on  
25 your year of birth. Is it 1977, or 1967?

1 MR JERBO: (Interpretation) 1 January 1977.

2 PRESIDING JUDGE STEINER: Thank you, Mr Jerbo. You  
3 may sit.

4 Mr Banda and Mr Jerbo, thank you very much for  
5 confirming your identities. This hearing will continue now with  
6 the matters provided for in Article 60 of the Statute, the  
7 purpose of which is for the Chamber to satisfy itself that you  
8 both, Mr Banda and Mr Jerbo, have been informed of the crimes  
9 you are alleged to have committed and of your rights under the  
10 Statute. Therefore I ask the parties, the participants to  
11 today's hearing, not to go beyond the purpose and scope of this  
12 hearing.

13 I would also like to inform you that Article 58(7) of  
14 the Statute provides for the issuance of a summons to appear  
15 when the Chamber is satisfied that there are reasonable grounds  
16 to believe that the person committed the crimes alleged and that  
17 the summons to appear is sufficient to ensure the person's  
18 appearance before the Court.

19 In your case, Mr Banda and Mr Jerbo, the Chamber's  
20 assessment of the Prosecution's request and supporting material  
21 provided with reasonable grounds to believe that both of you,  
22 Mr Banda and Mr Jerbo, have committed crimes within the  
23 jurisdiction of the Court.

24 At the same time, the Chamber was satisfied that a  
25 summons was sufficient for you to appear before the Court.

1 However, the Chamber wants to remind you both, Mr Banda and  
2 Mr Jerbo, that its decision can be always reviewed and at any  
3 time the Chamber can issue a warrant of arrest against any of  
4 you if it appears necessary to ensure that you don't obstruct or  
5 endanger the investigation, or the Court proceedings, for  
6 instance by way of contacting or intimidating witnesses.

7 In order for the Chamber to ascertain whether you have  
8 been informed of the crimes which you are alleged to have  
9 committed, I would now like to ask the court officer to read the  
10 relevant excerpts of the "Second Decision on the Prosecutor's  
11 Application under Article 58" issued by the Chamber on 27 August  
12 2009.

13 Court officer, please.

14 THE COURT OFFICER: "On the basis of the evidence and  
15 information provided by the Prosecutor, the Chamber is satisfied  
16 that there are reasonable grounds to believe that (i) the MGS  
17 Haskanita was attacked by a group of approximately 1,000 persons  
18 armed with anti-aircraft guns, artillery guns and  
19 rocket-propelled grenade launchers on 29 September 2007, (ii)  
20 the above-mentioned attack was carried by splinter forces of JEM  
21 under the command of Banda and Abu Garda, jointly with the  
22 troops belonging to SLA-Unity which had broken away from the  
23 SLMA/A under the command of Jerbo.

24 The Chamber is further satisfied that there are  
25 reasonable grounds to believe that, during the attack, the

1 attackers killed 12 and severely wounded eight AMIS personnel.

2 In the view of the Chamber, there are reasonable  
3 grounds to believe that, during the attack on the MGS Haskanita,  
4 in addition to attacking AMIS personnel, the attackers destroyed  
5 the communications installations, dormitories, vehicles and  
6 other materials belonging to AMIS. The Chamber further finds  
7 that there are reasonable grounds to believe that the AMIS  
8 personnel, installations, material, units and vehicles stationed  
9 at the MGS Haskanita were the intended object of the attack.

10 Furthermore, the material submitted by the Prosecutor  
11 provides reasonable grounds to believe that after the attack,  
12 the attackers appropriated certain AMIS property, including  
13 approximately 17 vehicles, as well as refrigerators, computers,  
14 cellular phones, military boots and uniforms, fuel, ammunition  
15 and money. The Chamber is satisfied that there are reasonable  
16 grounds to believe that the attackers intended to appropriate  
17 the above-mentioned AMIS property for private or personal use,  
18 and that such appropriation was without the consent of the owner  
19 or owners.

20 (...) the Chamber finds that there are reasonable  
21 grounds to believe that Mr Banda and Mr Jerbo are criminally  
22 responsible as co-perpetrators or as indirect co-perpetrators  
23 under Article 25(3)(a) of the Statute for:

24 (i) The war crime of violence to life in the form of  
25 murder, whether committed or attempted, under Article 8(2)(c)(i)

1 of the Statute.

2 (ii) The war crime of attacking personnel or objects  
3 involved in a peacekeeping mission, under Article 8(2)(c)(iii)  
4 of the Statute.

5 (iii) The war crime of pillaging under Article  
6 8(2)(e)(v) of the Statute."

7 Thank you, your Honour.

8 PRESIDING JUDGE STEINER: Thank you, court officer.

9 Now we have to turn to Mr Banda and Mr Jerbo and ask  
10 you both whether you have understood what has just been read to  
11 you by the court officer. Mr Banda?

12 MR BANDA: (Interpretation) Yes, we did. We  
13 understood.

14 PRESIDING JUDGE STEINER: Thank you. You may sit.

15 Mr Jerbo?

16 MR JERBO: (Interpretation) Yes, I understood what  
17 was said very well.

18 PRESIDING JUDGE STEINER: Thank you very much. You  
19 may sit. In the same decision, the Chamber has also imposed on  
20 Mr Banda and Mr Jerbo a number of conditions. I would like the  
21 court officer to read out these conditions.

22 Court officer, please.

23 THE COURT OFFICER: The conditions set out in the  
24 decision are as follows:

25 "(i) to refrain from discussing issues related to

1 either the charges which form the basis of the summons or the  
2 evidence and information presented by the Prosecutor and  
3 considered by the Chamber;

4 (ii) to refrain from making any political statements  
5 while within the premises of the Court, including the location  
6 assigned to them;

7 (iii) not to leave, without specific permission of the  
8 Chamber and for the whole period of their stay in The  
9 Netherlands, the premises of the Court, including the location  
10 assigned to them;

11 (iv) to comply, in any case, with all the instructions  
12 of the Registrar for the purposes of their respective  
13 appearances before the Court."

14 Thank you, your Honour.

15 PRESIDING JUDGE STEINER: Thank you, court officer.

16 The Chamber now asks Mr Banda: Have you understood the  
17 questions imposed on you by the Chamber's decision?

18 MR BANDA: (Interpretation) I commit myself to that.

19 PRESIDING JUDGE STEINER: Thank you, Mr Banda. You  
20 may sit. Mr Jerbo, have you understood the conditions imposed  
21 upon you by the Chamber's decision?

22 MR JERBO: (Interpretation) Yes, God willing.

23 PRESIDING JUDGE STEINER: Thank you very much. You  
24 may sit. The Chamber and the Court need to ensure that of as  
25 your arrival on Dutch territory, that is to say 16 June 2010,



1 you were indeed informed of all your rights as set out under  
2 Article 67 of the Statute. I would summarise your rights for  
3 you.

4 It is stated in Article 67(1), that applies also to  
5 this pre-trial stage of a case, you both, Mr Banda and Mr Jerbo,  
6 have the right:

7 (a) to be informed promptly and in detail of the  
8 nature, cause and content of the charge, in a language which you  
9 fully understand and speak; (b) to have adequate time and  
10 facilities for the preparation of your Defence and to  
11 communicate freely with your counsel; (c) to be tried without  
12 undue delay; (d) to be present at trial, to conduct the Defence  
13 in person or through legal assistance of your choosing or a  
14 legal assistance assigned by the Court, and without payment if  
15 you lack of sufficient means to pay for it; (e) to examine, or  
16 have examined, the witnesses against you and to obtain the  
17 attendance and examination of witnesses on your behalf, to raise  
18 defences and present other evidence admissible under the  
19 Statute; (f) to have, free of any cost, the assistance of a  
20 competent interpreter and such translations as are necessary to  
21 meet the requirement of fairness; (g) not to be compelled to  
22 testify or to confess guilt and to remain silent; (h) to make an  
23 unsworn oral or written statement in your Defence; and (i) not  
24 to have imposed on you any reversal of the burden of proof or  
25 any onus of rebuttal.

1           The Chamber would like to turn to both of you,  
2 Mr Banda and Mr Jerbo, and ask you whether you have understood  
3 your rights or whether you need any further clarification.  
4 Mr Banda.

5           MR BANDA: (Interpretation) Yes, God willing, we have  
6 understood and we had been also informed previously.

7           PRESIDING JUDGE STEINER: Thank you, Mr Banda. You  
8 may sit. Mr Jerbo?

9           MR JERBO: (Interpretation) I understood everything  
10 in full detail.

11          PRESIDING JUDGE STEINER: Thank you very much,  
12 Mr Jerbo. You may sit.

13          These rights I have just mentioned are enumerated in  
14 the Statute in relation to the trial but, according to Rule 121  
15 of the Rules of Procedure and Evidence, you enjoy them also at  
16 your first appearance and during the proceedings leading to and  
17 at the confirmation hearing. Your counsel is also aware of them  
18 and you can also discuss any of these issues with him.

19          Going back to the statutory provisions, and by virtue  
20 of Rule 121 of the Rules of Procedure and Evidence, the Chamber  
21 shall set a date for a hearing to confirm the charges. As  
22 mentioned before, one of the rights that you, Mr Banda, and you,  
23 Mr Jerbo, enjoy at this stage is to have adequate time and  
24 facilities for the preparation of your Defence. Therefore, the  
25 Chamber decided to set the date for the start of the

1 confirmation of the charges hearing on 22 November 2010.

2           Of course, of course as you may know, and as it is  
3 regulated by the texts which apply, the hearing may be  
4 postponed. However, with the experience of previous cases, the  
5 Judges are confident that the date set is to be respected as it  
6 gives enough time for the Prosecutor to disclose of all the  
7 evidence and for the Defence to be prepared for the case. Such  
8 date also gives time to the Chamber and to Victims and Witnesses  
9 Unit to put in place all the necessary measures for the  
10 protection of victims and witnesses.

11           I now ask the Prosecutor whether this date is  
12 agreeable for the Prosecution.

13           MR FAAL: Madam President, your Honours, at this stage  
14 the Prosecution can say that this date is suitable. It's fine.  
15 But undoubtedly, Madam President, there are certain issues we  
16 may need to come for discussion on a status conference such that  
17 the parties can explore the possibility of addressing those  
18 problems. During such conference, the Prosecution would be able  
19 to give a firmer commitment to the date that your Honours have  
20 just announced.

21           The reason why the Prosecution is taking such position  
22 at this time, your Honours, is the problem of language under  
23 Rule 76, because we would be required to disclose the statements  
24 of witnesses in a language that the suspects fully understand  
25 and speak.

1           Now, your Honours, that it is clear that the suspects  
2 only speak and understand Zaghawa, this poses a completely  
3 different problem, but I have had initial discussions with  
4 counsel for the suspects, and we have agreed, your Honours, that  
5 this is a subject that can be addressed at the first status  
6 conference.

7           In the meantime, your Honours, we will make our best  
8 endeavour to respect the date your Honours have just indicated.  
9 Thank you, Madam President.

10           PRESIDING JUDGE STEINER: Thank you very much,  
11 Mr Faal. I now turn to Mr Khan, and I ask whether the date set  
12 by the Chamber is agreeable to the Defence.

13           MR KHAN: Madam President, your Honours, of course I'm  
14 always grateful for the opportunity to address the Bench on this  
15 issue. It -- whilst we are of course in your hands entirely, it  
16 does seem to us that this is a rather -- a rather generous  
17 amount of time that is unnecessary in the circumstances of this  
18 case.

19           Your Honour has already detailed the provisions of  
20 Article 67 and the right to trial - the right to an expeditious  
21 trial - and it is our respectful submission that it may assist  
22 in focussing the minds of my learned friends opposite if an  
23 earlier confirmation date was set. I had in mind, perhaps,  
24 October; the first half of October.

25           Your Honour, what one wishes to avoid is a generous

1 confirmation date that's been of course set in complete good  
2 faith on 22 November and there be slippage by the Prosecution  
3 for whatever reason; whether it's translation issues, or whether  
4 it's other issues. Often it may help matters to -- for all  
5 parties to work to an earlier date and, if there are problems,  
6 if they are reasonable, if they are unavoidable, if they have  
7 merit, the Bench of course retains the inherent discretion to  
8 vary or adjourn the confirmation date.

9           Your Honour, I must also clarify one issue. I'm not I  
10 hope being pedantic, but my learned friend said at page 20 - I  
11 think it was the first line - that now it's clear that my  
12 clients do not speak Arabic. They only speak Zaghawa. Of  
13 course, that was not the question put. Their understanding is  
14 incomplete. It varies between the two of them. They are not  
15 comfortable following complicated and novel judicial proceedings  
16 here in this courtroom in a language that they are not familiar  
17 with.

18           So I don't want it to be said at any stage that my  
19 clients have been other than absolutely candid as to what their  
20 proficiency is in the Arabic language. Some kinds of  
21 communication can take place, but the point is, as your Honour  
22 was clear to highlight, whether or not my clients fully  
23 understand and are fully conversant in that language of the  
24 courtroom.

25           Put shortly, your Honours, any issues of translation

1 can of course be dealt with, with your Honours' leave, in a  
2 future confirmation hearing. There may be modalities that could  
3 be put in place, for example Mr Jerbo does not read, so one has  
4 to be flexible and other methods can be put in -- can be put in  
5 place.

6 But, put shortly, it is our respectful submission that  
7 an earlier confirmation date would be useful, because we are  
8 particularly desirous to get disclosure and start preparing this  
9 case without delay, and what we don't want to happen is to wait  
10 an awfully long time and then have another delay hoisted upon us  
11 for these types of reasons.

12 Your Honours, that's all I have to say, with your  
13 leave. I'm grateful.

14 PRESIDING JUDGE STEINER: Mr Faal?

15 MR FAAL: Madam President, the Prosecution is of the  
16 view that these matters should be the subject of discussion at  
17 the first status conference. There is no point trying to bring  
18 out these issues in the expectation that they could be addressed  
19 fully in this type of a hearing. The Prosecution, however,  
20 maintains its position that the date set by your Honours is a  
21 reasonable one, born out of the experience of this Chamber and  
22 also this Court, and we would urge your Honours not to change  
23 the date. Thank you, Madam President.

24 PRESIDING JUDGE STEINER: Thank you, Mr Faal.

25 I recall the parties that Rule 121(2)(b) of the Rules

1 of Procedure and Evidence stipulates that the Chamber shall hold  
2 status conferences to ensure that disclosure takes place under  
3 satisfactory conditions. To do so, a Judge of the Chamber shall  
4 be appointed to organise such status conferences. I inform the  
5 parties and participants that Judge Cuno Tarfusser is the Single  
6 Judge for the case, including for the disclosure proceedings.  
7 I'm sure that after first, second, third status conferences, the  
8 parties and the Chamber will be in a better position to  
9 re-evaluate the date of the confirmation hearing, if this is the  
10 case.

11 We must remind the parties that during the preparation  
12 of the confirmation of charges hearing, not only disclosure of  
13 evidence is at stake. Witnesses' and victims' protection are at  
14 stake as well, and the Registrar and Victims and Witnesses Unit  
15 must be ensured -- must be given time enough to provide  
16 protective measures, if needed.

17 Therefore, the date for the start of the confirmation  
18 of the charges hearing continues to be scheduled for 22 November  
19 2010, without prejudice for the Chamber to review such date for  
20 an anticipation or postponement of the confirmation of the  
21 charges hearing after the Chamber be provided with more specific  
22 information related to disclosure and to witnesses' protection.

23 I would also seize the opportunity to remind the  
24 Prosecutor that, according to Article 61(3) of the Statute,  
25 within reasonable time before the hearing Mr Banda and Mr Jerbo

1 should be provided with a copy of the document containing the  
2 charges on which the Prosecutor intends to bring them to trial  
3 and be informed of the evidence on which the Prosecutor intends  
4 to rely at the hearing.

5 By the same token, according to Article 67(2) of the  
6 Statute, the Prosecutor must disclose to the Defence the  
7 exculpatory evidence in his possession or control regarding  
8 Mr Banda and Mr Jerbo.

9 Finally, according to Article 61 of the Statute, the  
10 suspects have the right to participate in the confirmation  
11 hearing. Thus I would like the Defence to clarify, if the  
12 Defence already knows, whether or not Mr Banda and Mr Jerbo are  
13 intending to be present, or if they would like to waive their  
14 right to be present at the confirmation hearing and/or at any  
15 hearing to be scheduled before it.

16 Mr Khan, are you in a position to give the Chamber any  
17 information in this respect?

18 MR KHAN: Madam President, perhaps in part. My  
19 clients waive their right to attend the status conferences. We  
20 do not waive their right to attend the confirmation hearing, if  
21 they so wish, and a decision on that particular matter will be  
22 taken in due course and your Honours of course informed  
23 immediately.

24 PRESIDING JUDGE STEINER: Thank you, Mr Khan. I would  
25 like to ask first the representative of the Registry whether



1 there are any observations on the Registry's side in relation to  
2 this hearing, or the date for the start of the confirmation  
3 hearing, or any other issue that Registry would like to raise  
4 during this hearing.

5 Mr Dubuisson, please.

6 MR DUBUISSON: (Interpretation) Thank you, Madam  
7 President. As regards the date, I think it would indeed be  
8 wise, giving what has to be done by the Registrar, as well as  
9 the victims and witness protection unit, it would be wise,  
10 therefore, for us to be given sufficient amount of time to do  
11 our job.

12 As regards the language, as regards the Zaghawa  
13 language, the difficulty as regards our official texts is that  
14 this is not a written language and, therefore, our texts require  
15 written transmission of a document. We do have a problem.

16 As regards the notification of the summons to appear  
17 that is -- that was in the various decisions regarding the  
18 suspects that were handed down in March and in May, the  
19 Registrar proceeded in such a way that the document was  
20 interpreted orally, recorded and a CD was sent to the suspects  
21 so that they be able to fully understand the purpose of said  
22 notification. And, as you can see today, we are working with a  
23 special language. It's very difficult for the Registrar to find  
24 interpreters who are able to work in legal proceedings. So  
25 again, the timeline that you have mentioned for the confirmation

1 of changes is most welcome from the point of view of the  
2 Registrar, in order to give us the necessary time and to  
3 facilitate communication during the hearings.

4 Thank you, Madam President.

5 PRESIDING JUDGE STEINER: Thank you, Mr Dubuisson. I  
6 would like to ask the Prosecution whether he wants to make any  
7 observations to the Chamber at this point.

8 MS BENSOUDA: No, Madam President.

9 PRESIDING JUDGE STEINER: Thank you, Ms Bensouda. I  
10 would like to ask the Defence whether there's something further  
11 to be said.

12 MR KHAN: I'm grateful. No, your Honours.

13 PRESIDING JUDGE STEINER: I would like to ask Mr Banda  
14 and Mr Jerbo, any of you have anything to add?

15 MR BANDA: (Interpretation) No, we do not have  
16 anything to add. Thank you.

17 MR JERBO: (Interpretation) Thank you.

18 PRESIDING JUDGE STEINER: I would like now to ask my  
19 colleagues if they want to add anything.

20 So this ends the hearing on the initial appearance on  
21 the case the Prosecutor versus Mr Abdallah Banda Abakaer Nourain  
22 and Mr Saleh Mohammed Jerbo Jamus.

23 I would like to thank very much to our interpreters,  
24 court recorders, the court officer and all participants for  
25 being here. I would like to again welcome Mr Banda and

1 Mr Jerbo, and the Chamber wishes both of them a safe journey  
2 back to their countries.

3 Thank you very much. This hearing is adjourned.

4 THE COURT USHER: All rise.

5 (The hearing ends at 11.42 a.m.)

6 CORRECTIONS REPORT

7 The following correction has been made in the transcript:

8 Page 4 lines 13 to 19:

9 "MR DUBUISSON: (Interpretation) Your Honour, thank  
10 you. On the Registry today we have Anne Aurore Bertrand, who is  
11 a legal adviser with the Court; Cyril Laucci, who is a legal  
12 officer within the Registrar; and myself, Marc Dubuisson,  
13 Director of CMS, representing Sylvia Arbia. "

14 Is corrected by

15 "MR DUBUISSON: (Interpretation) Your Honour, thank  
16 you. On the Registry bench today we have Anne Aurore Bertrand,  
17 who is a legal Officer at the immediate office of court  
18 services; Cyril Laucci, who is a legal officer within the  
19 immediate office of the Registrar; and myself, Marc Dubuisson,  
20 Director of Court Services, representing Silvana Arbia,  
21 Registrar "

22