

1 International Criminal Court

2 Pre-Trial Chamber I - Courtroom 1

3 Single Judge Cuno Tarfusser

4 Situation: Darfur, Sudan - ICC-02/05-03/09

5 In the case of The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed

6 Jerbo Jamus

7 Status Conference

8 Wednesday, 6 October 2010

9 (The hearing starts at 9.59 a.m.)

10 (Open session)

11 THE COURT USHER: All rise. The International Criminal Court is now
12 in session.

13 JUDGE TARFUSSER: Good morning to everybody. First of all I would
14 ask the courtroom officer to call the case, please.

15 THE COURT OFFICER: Good morning, your Honour. The situation in
16 Darfur, Sudan. The Prosecutor v Abdallah Banda Abakaer Nourain and Saleh
17 Mohammed Jerbo Jamus. ICC-02/05-03/09. Thank you.

18 JUDGE TARFUSSER: Thank you very much. As always and for the
19 record I would invite now the parties and participants to present their teams starting from
20 the OTP, please.

21 MR OMOFADE: Good morning, your Honour. Good morning to all the
22 parties and participants in Court. Your Honour, this morning the Prosecution is
23 represented by Ms Shyamala Alagendra, trial lawyer, Pubudu Sachitanandan, associate
24 trial lawyer, Biljana Popova, case manager, and myself, Adebowale Omofade, trial lawyer.

25 JUDGE TARFUSSER: Thank you. Thank you very much. The Defence

1 please.

2 MR KHAN: Good morning, your Honour. Good morning everybody in
3 and around the courtroom. My name is Karim Khan and I am assisted today by Andrew
4 Burrow, legal assistant, Anand Shah, case manager, a new member of my team, Aidan
5 Ellis, legal assistant and for the last time in fact in this Courtroom before her
6 well-deserved promotion to the OTP of the ICTY Abeer Hasan.

7 JUDGE TARFUSSER: Thank you. The Registry please.

8 MS DAHURON-JACOBY: (Interpretation) Yes, good morning, your
9 Honour. For the Registry today, Dahirou Sant-Anna, legal coordinator in the situation.
10 Vera Wang, legal assistant. For the Director of Court Services myself, Charlotte
11 Dahuron-Jacoby, Chief of Court Management Section.

12 JUDGE TARFUSSER: Thank you very much. Myself, I am Judge Cuno
13 Tarfusser, and I am assisted by Federica Gioia and Sylvester Stazzone. So, this hearing is
14 aimed at gathering the parties' views as to the issues raised by the report by the Registrar
15 dated 28 September 2010. In particular, the report suggests that ensuring the availability
16 of properly qualified and trained interpreters from and into the Zaghawa language, the
17 language indicated by both the suspects as a language of their choice for the purpose of
18 Article 67(1)(a) would require, the report says, several months. This would entail the
19 postponement of the confirmation hearing currently still scheduled to begin on Monday,
20 22 November of this year.

21 I would propose we proceed as follows: The Registry provides us with an
22 updated overview of the issue, including any significant additional information which
23 might have been gathered since the filing of the report, and then the Prosecutor and the
24 Defence will have the floor to submit their views.

25 I wish to clarify since yet that the final decision will be taken not on the spot,

1 but by the decision of the Chamber in a few days after this hearing.

2 So, please, the floor to the Registry to give their oral report on this issue.

3 Thank you.

4 MS DAHURON-JACOBY: (Interpretation) Yes, thank you, Mr President.

5 Indeed, as set out in filing 74 filed by the Registry, a number of difficulties specific to the
6 Zaghawa language do not allow the Registry to have available simultaneous interpreters
7 that are fully qualified by the date of 22 November.

8 Now, without revisiting the details that are exposed in this filing, which
9 does respond to specific details, I would like now to address two other relevant points for
10 the proposal of the postponement of the confirmation of charges hearing; notably that just
11 before 22 November, that is 16 or 17 November, a very important El-Kebir, that is a very
12 important festivity in the Muslim faith, will be taking place. Of course, this means that
13 there will be a great upheaval in the organisation of the transport of the suspects and any
14 associated logistics. Furthermore, on 28 November there are national elections planned
15 in Chad.

16 So those two additional elements really play against us holding, or having
17 the opportunity of holding, the confirmation of charges hearing on that date. If you have
18 any further more specific questions, I am ready to answer them, Mr President.

19 JUDGE TARFUSSER: No, the only thing is about the language. If
20 you -- at what stage are you in this moment about the translating them into Zaghawa?
21 Have you found somebody? How good are they? How many times you think it will
22 take to train them properly and -- thank you.

23 MS DAHURON-JACOBY: (Interpretation) Yes, as indicated in the
24 Registry's report, we need six months in order to fully train interpreters for the booth.

25 Now, in order to do that, we need to be able to identify suitable candidates.

1 We are up against a number of difficulties in this regard; notably, the number of
2 individuals who actually speak Zaghawa, a very limited pool, and the number of
3 individuals who not only speak Zaghawa, but who also have a sufficient command of
4 English and French in order to follow training.

5 Also we have problems associated with security, because of course they
6 need to be systematically vetted in order to come and work for the Court, and at this
7 juncture there is a preliminary vetting in place, with the complete vetting procedure only
8 to be conducted upon the actual recruitment of individuals.

9 Now, in order to launch the training stage, we have to identified -- we have
10 to identify a minimum of six individuals. There are four people per booth and, as
11 training is not a foregone conclusion in terms of guarantee that they can function, we have
12 to have six candidates in order to make sure that we have four candidates who might then
13 pass the test. At this juncture we have not yet identified a sufficient number of
14 candidates and, as a result, the training has not yet commenced.

15 If the Chamber were to decide that, nevertheless, we were to go ahead with
16 programming the confirmation of charges hearing within four months, instead of the six
17 months programmed, then the hearings would have to be limited in their duration. The
18 first appearance lasted one hour and 30 minutes, and those interpreters who have not
19 received proper training might therefore provide us with an hour-and-a-half of
20 interpreting even if they had not received sufficient training.

21 JUDGE TARFUSSER: Then let me put another question. Is it feasible to
22 train them -- well, the intermediary solution would be the chuchotage. We hear
23 afterwards the parties about that, but is this feasible? Without having a simultaneous
24 translation, but the chuchotage is it -- could it be an intermediary position between the
25 simultaneous and nothing, I would say? Is the time we need to train them, is this less

1 than the six months you indicated before, as I think? Thank you.

2 MS DAHURON-JACOBY: (Interpretation) Indeed. First and foremost,
3 it would seem that the training is less lengthy. However, we have to have identified
4 candidates for whom the level of English and Arabic is sufficient. We have to also train
5 them in the specific terminology of the Court. What is more Zaghawa is, as we know, an
6 oral language, it is not written and legal concepts have to sometimes be coined in the
7 language and for some concepts we have envisaged that we use Arabic and also -- in
8 order to fill these gaps. So, it is very unlikely that chuchotage would actually last -- in
9 terms of training last less, or be shorter.

10 Now I am sure that you are also aware of the fact that, were we to use
11 chuchotage, it would also increase the time of the hearings, because every time it is
12 consecutive interpretation and it is lengthier than simultaneous interpretation.

13 JUDGE TARFUSSER: Thank you very much to the Registry.

14 Before giving the floor to the OTP and the Defence, I tried to identify the
15 three, I think, possibilities we have. If you have some others, I would be grateful to
16 anybody to -- if this fourth or fifth possibility could be spoken of.

17 The first one I see is that that was suggested by the Registry, quite a long
18 postponement, because in this case the suspects do not waive their rights and the
19 confirmation hearing is obviously in this case postponed at least for six months until the
20 training is completed.

21 The second possibility I see is that the suspects waive their rights under
22 Article 61(7) and agree that the confirmation hearing take place in another language,
23 namely English or in Arabic translation for them, but a postponement of some time would
24 in any case be needed because of the festivity and the elections, the Registry would say,
25 and I would suggest a postponement of a couple of months at the beginning of the new

1 year.

2 And the third possibility, I think, is the suspects waive their right to benefit
3 from simultaneous interpretation, from and into Zaghawa, and agree to only have
4 chuchotage. This would be, in my eyes, an intermediate solution.

5 This said, I will give the floor now to the OTP so they can say their views
6 upon these issues. Thank you very much.

7 MR OMOFADE: Your Honour, I am grateful. I am also grateful for the
8 update provided for -- to the Chamber by the representatives of the Registry.

9 Your Honour, the difficulties regarding Zaghawa translation are ones that
10 we at the OTP have already highlighted before this Chamber and they are
11 well-documented. We appreciate the efforts that the Registry appears to be putting into
12 this, and these difficulties we also in the language services unit of the OTP have
13 encountered similar -- similar constraints.

14 That said, I think a large part of the decision that your Honour has to make
15 as regards whether or not the confirmation hearing is able to proceed on 22 November, as
16 scheduled, depends on whether or not the suspects decide to waive their right to attend
17 and to monitor proceedings.

18 So, with some degree of reluctance, I would suggest that maybe the Defence
19 is able to give us some input on this and, depending on what position the Defence are able
20 to take, I bear in mind that my friend at an earlier status conference decided to hold fire
21 for now and not determine whether or not the intent to waive their right to attend. So,
22 depending on what the response of the Defence is in this regard, we may be able to come
23 to some form of amicable solution that informs everyone.

24 Those are the Prosecution's observations for now, your Honour.

25 JUDGE TARFUSSER: Did someone say that we have to be grateful in any

1 case to the Defence for what they have done until now in waiving rights of translation?

2 Mr Khan, the floor is yours.

3 MR KHAN: I am most grateful, your Honour. It is well-known in this
4 Court that there have been and there are problems in relation to the Zaghawan language,
5 and I accept from what the Registrar has said that from the time of the initial appearance
6 efforts have been made to address this issue.

7 Now, I must apologise at the outset. I have, prior to this hearing this
8 morning, had some brief discussions with the Prosecution regarding my thinking, and I
9 should have -- in fairness, I should have spoken to the Registry and intimated my
10 approach, and it simply escaped me. So I apologise for that.

11 Your Honour, there are the three options you detailed, which are contingent
12 upon the Defence asserting their right to attend. Rule 124 of course makes it clear that
13 suspects can waive their rights to be physically present in the courtroom, provided that an
14 application in writing is lodged with the Pre-Trial Chamber, and your Honour is satisfied
15 that the suspects understand the nature and the consequence of their waiving their right
16 to attend.

17 Over the weekend, I had -- I managed to speak to both Mr Banda and
18 Mr Jerbo and explained various issues to them including the issue of translation, but not
19 confined to that, and my instructions are that we are willing to waive the suspects' rights
20 to attend unless either your Honours or the Prosecution require their attendance.

21 I must say that there was nothing in any discussions from either of my
22 clients that broached any danger of delay based upon the Muslim festival apparently
23 being held on 16th or 17th or contingent upon the elections in Chad, but these are matters
24 of course for the Registry. But should either suspect or both suspects be required to
25 attend, they remain willing to attend and submit to the jurisdiction of the Court at any

1 time that your Honours would require it. But they are willing to waive their rights to
2 physically be here and content to be represented by counsel and we could proceed on that
3 basis.

4 I will say that both suspects want to get this over with. They have a right to
5 an expeditious trial. That's one of the motivations for us to cut to the chase, not to delay
6 matters, and for your Honours to ultimately determine whether or not this case should go
7 for trial or not.

8 So your Honours, I hope I'm helpful. I'm happy to put something in
9 writing in relation to Rule 124, but your Honour that is our position and it will not change,
10 that our clients are happy to waive their attendance. That would address completely the
11 Zaghawan interpretation problem at the hearing because of course the official languages
12 then will simply be the default position.

13 I would say as a marker for any future effective hearings, particularly if it
14 gets to trial, that personally I'm loathe to agree to consecutive translation. One hopes
15 that if one deals with this, if we get to that point, simultaneous interpretation can be the
16 usual practice. But consecutive not only delays matters, consecutive translation also
17 results in quite a lot being lost in relation to the evidence that is elicited, in my respectful
18 submission.

19 So, your Honour, I hope that assists and sheds some light on the Defence
20 position on this issue. Your Honour, put shortly, we would ask that the confirmation
21 date not be delayed at all.

22 JUDGE TARFUSSER: Well, this depends also on the other matters, because
23 it's a matter of collaboration with the Judge and authorities as well. This is a matter more
24 of the Registrar, the decision on the delaying of the hearing at all, or not, but --

25 MR KHAN: Well, your Honour, the only basis of delay with the Chadian

1 authorities would be if my clients wished to attend The Hague or if there were any
2 Prosecution witnesses that needed to attend The Hague through Chad. If that is not the
3 case, and there's no indication that it is the case, then there seems to be no reason to delay
4 the date that was originally set.

5 JUDGE TARFUSSER: The Registrar I think wants the floor.

6 MS DAHURON-JACOBY: (Interpretation) Yes, indeed, Mr President.
7 The issues raised with regard to the festival and the elections are really contingent upon
8 the logistics and the transportation of the suspects. Were they not to be present, then
9 these difficulties of course disappear.

10 JUDGE TARFUSSER: Okay. Thank you. The OTP has something to add
11 to what he said already.

12 MR OMOFADE: Your Honour, there is nothing to add, save to say that my
13 friend did allude to Rule 124 and the possible waiver of the -- by the suspects of their
14 physical presence. One bears in mind, however, that 124(3) actually entitles the suspects
15 to monitor proceedings in a language that they understand from wherever they are. I do
16 hope and I'm sure my friend in his usual attentive way will bear this in mind in any
17 written waiver that's -- is produced before the Court.

18 MR KHAN: Yes, your Honour. Rule 124(3) is permissive. A Chamber
19 may order; it's not mandatory. And there's no application that facilities be provided by
20 video link or by way of simultaneous translation to the suspects wherever they are. Of
21 course, that would defeat the whole purpose of what's being proposed. I'm grateful to
22 my friend.

23 JUDGE TARFUSSER: Well, thank you very much to the parties and
24 participants. I would say that myself and I think the Chamber is now quite aware on
25 what we are going to decide, and we will decide on the written decision in the next few

1 days. Okay.

2 Thank you. Thank you very much.

3 (The hearing ends at 10.21 a.m.)