

ANNEXURE A

THE PROSECUTOR V. ABDALLAH BANDA ABAKAER NOURAIN & SALEH MOHAMMED
JERBO JAMUS (ICC-02/05-03/09)

AFFIDAVIT

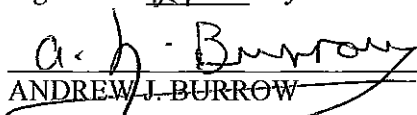
I, the undersigned, ANDREW JOHN BURROW, state the following:

1. I am an attorney admitted on 15 May 2003 in South Africa and have previously worked in the Office of the Prosecutor of the ICTY (July 1996-April 1998) and in the Iran-United States Claims Tribunal (May 1998-October 2000). I am currently engaged as a Legal Assistant on the Defence Team of Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamous ("the clients") before the International Criminal Court, as part of the team led by Karim A. A. Khan.
2. I have read the "Defence Request pursuant to Rule 124(1) of the Rules of Procedure and Evidence, waiving the right of the persons 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) of the Rome Statute" ("Defence Request"). This affidavit is appended as "Annexure A" to that Request. I note the references in the Defence Request to the instructions provided to Mr Khan by both Mr. Banda and Mr Jerbo and to the summary of discussions Mr. Khan had with each client with regards to their rights under the Statute and consequences of waiving these rights.
3. I confirm that the recitation of those instructions and the summary of the discussions held with the clients are accurate and correct. I am able to do so on the basis of my clear recollection of events, supported additionally by two memorialised telephone conference calls with the clients, which I describe further below. These issues were further reiterated, with respect to Mr. Jerbo, in discussions Mr. Khan had with him during a recent trip to N'Djamena, Chad, that I also attended.
4. On Friday 1 October 2010, I participated in a telephone conference call Mr. Khan held with Mr. Abdallah Banda Abakaer Nourain. Also on the line in The Hague was Ms. Abeer Hasan, Defence Legal Assistant. The client was assisted by an interpreter who interpreted the discussions from English into Zaghawa and vice versa. I could hear everything Mr. Khan said and everything that was told to him by the client, through interpretation, by dint of the available conference call facilities.
5. On Saturday, 2 October, I participated in a second telephone conference call. Mr. Khan spoke with Mr. Saleh Mohammed Jerbo Jamous through an interpreter, who interpreted the discussions from English into Zaghawa and vice versa. Also on the line was the Defence Legal Assistant Ms. Abeer Hasan and myself. I could hear everything Mr. Khan said and everything that was told to him by the client, through interpretation, by dint of the available conference call facilities. The two conference calls were substantially the same and I will relate the substance of them together below. I am very confident from what was said, and from how the discussions progressed, that

both Messrs Banda and Jerbo understood whatever was said by Mr. Khan and that the interpretation was effective. This belief is buttressed by previous conversations with the clients (using the same interpreters), and by the subsequent face to face discussions between Mr. Khan and Mr. Jerbo, that I was present at. In short, there is no doubt in my mind that both clients understood Mr. Khan and what they said was also effectively conveyed to Mr. Khan.

6. In the cases of both Mr. Banda and Mr. Jerbo notes were kept of the discussions that took place and I have refreshed my memory of the discussions using these notes.
7. In the telephone calls, Mr. Khan explained the proposals that later were contained in 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 parties on 20 October 2010 ("Joint Submissions"). Mr. Khan explained, that these proposals would likely result in the confirmation hearing being very significantly shortened and, that if this was the case, detailed instructions from the client would not be necessary during the hearing itself and that the hearing could, from the Defence point of view, take place without necessitating their attendance. Mr. Khan also conveyed to the clients that there were serious difficulties in finding qualified interpreters in time for the start date then envisaged for the confirmation hearing, 22 November 2010 with the result that the hearing could be delayed.
8. Mr. Khan explained to each of the clients that it was their right to attend the confirmation hearing if they so wished. That if they wished to attend, they should, but that there may be advantages, in the circumstances of this case, if they chose not to. He explained that if they chose not to, he would represent them in the hearing. He explained that one of the benefits of the proposals contained in the Joint Submissions, was that any potential trial would likely take place sooner than would be the case if these proposals were not made.
9. On the basis of the discussions outlined above, both clients indicated that they understood what had been explained to them and agreed with the proposals contained in the Joint Submissions, including that they would waive their right to attend the confirmation hearing and not travel to The Hague.
10. The clients expressly agreed that Mr. Khan proceed to make the proposals in the Joint Submissions. Specifically, they authorised him to convey their waiver of their rights to attend the confirmation hearing and to request that the hearing be held in their absence. They both expressed a willingness to attend the hearing should the Pre-Trial Chamber prefer them to attend.
11. I confirm that the contents of this affidavit are within my personal knowledge and confirm that, to the best of my knowledge and belief, they are true and correct.

Signed this 27th day of October 2010 at THE HAGUE.


 ANDREW J. BURROW