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PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Sylvia Steiner
Judge Sanji Mmasenono Monageng

SITUATION IN THE DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN

AND

SALEH MOHAMMED JERBO JAMUS

Public Document

Defence Application to restrain legal representatives for the victims a/1646/10 & a/1647/10 from acting in proceedings and for an order excluding the involvement of specified intermediaries

Sources: Defence Team of Abdallah Banda Abakaer Nourain
Defence Team of Saleh Mohammed Jerbo Jamus

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**The Office of Public Counsel for the
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States' Representatives

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I. Introduction

1. This filing raises a stark issue that falls for consideration in this case: the use of victims as a front for the Government of Sudan and President Al Bashir in order to advance an agenda which is wholly inconsistent with the purpose of victim participation and the proper focus of the confirmation hearing. It also alleges a conflict of interest in the case of the legal representatives for victims a/1646/10 & a/1647/10 and the intermediaries being used by them. It seeks an order excluding both from acting in this case.
2. The confirmation of charges hearing is intended to determine whether or not this case should proceed to trial. It is not intended as an opportunity for ulterior motives and political objectives to be pursued. Nor is it an opportunity for those that defy the jurisdiction of the Court, to raise irrelevant matters or generally attempt to undermine the purpose of the Court including its aim to “guarantee lasting respect for and the enforcement of international justice.”¹
3. The Court shall permit the views and concerns of victims “to be presented and considered...in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”² This is the touchstone for the participation of every victim before the Court and for every aspect of that participation. It is unsurprising that the Defence will refer to this provision repeatedly in the submissions that follow.
4. On 6 December 2010, the Single Judge ordered the Defence to respond to the “Prosecution Objection to the Continued Representation of Victims a/1646/10 & a/1647/10 by Messrs Geoffrey Nice and Rodney Dixon”³ (“the Prosecution Objections”). At the time of receipt of this Order,⁴ the Defence was finalising the present Application. In compliance with the Order of the Single Judge , the

¹ Preamble, Rome Statute

² Article 68(3) of the Statute.

³ ICC-02/05-03/09-110.

⁴ ICC-02/05-03/09-111.

Defence hereby informs the Chamber that it supports the Prosecution Objections to the extent that they are not otherwise inconsistent with the present application.

II. Background

5. On 29 October 2010, applicants a/1646/10 and a/1647/10 were recognized as victims (“the victims”) in the present case and allowed to participate in proceedings.⁵ Without any indication on the face of their applications that they wanted legal representation at all, and nothing to suggest that they had appointed Messrs Nice and Dixon (“the legal representatives”) as their counsel, the legal representatives filed, on 12 November 2010 “Observations”⁶ on the Joint Submission.⁷ The Observations, purport to represent the views of the victims themselves.
6. It is plain from the fourth paragraph of the Observations that the Sudan International Defence Group (“SIDG”) and the Sudan Workers Trade Unions Federation (“SWTUF”) (together, “the intermediaries” or “the organisations”) are the driving force behind this intervention. That they act as intermediaries of a sort⁸ between the victims and their legal representatives as is evidenced by the following factors:
 - i. The SIDG assisted the two victims in the preparation of their applications for victim status;
 - ii. The SWTUF “supported and funded” such applications, including funding and paying the fees of the legal representatives; and
 - iii. The SIDG is the primary means of contact with the victims and, therefore, the primary source of instructions for the legal representatives. Indeed, the legal representatives have only met the

⁵ Decision on Victims’ Participation at the Hearing on the Confirmation of the Charges, 29 October 2010, ICC-02/05-03/09-89.

⁶ Observations on behalf of victims a/1647/10 and a/1648/10, 12 November 2010, ICC-02/05-03/09-96.

⁷ 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, 19 October 2010, ICC-02/05-03/09-80.

⁸ The Defence use the term “intermediary” for convenience. Use of this term does not exclude the possibility that SIDG and SWTUF may act in other capacities as well.

victims on one occasion, and without the benefit of relevant documentation (such as the DCC) (Observations, paras. 4 & 6).

7. The Defence has serious concerns about the involvement of these intermediaries and their legal representatives in this case. It is clear that the legal representatives intend to make submissions beyond the proper scope of confirmation and the personal interest of their clients (for the avoidance of doubt, by “clients”, the Defence refers to victims a/1646/10 and a/1647/10).

II. Objections to involvement and role of intermediaries

8. That the legal representatives do intend to make such superfluous submissions at confirmation is clear from the Observations. The legal representatives explain that:
 - i. The two victims applied to be accorded victim status “*inter alia*, because of the harm and suffering that they endured in the attack on the AMIS base in Haskanita on 29 September 2007” (para. 7, emphasis added);
 - ii. The two victims allegedly claim that “nothing had been done to investigate and acknowledge what had happened to them and other ordinary villagers at the hands of rebel forces in Haskanita on that day” (para. 7, emphasis added);
 - iii. The two victims have “raised questions about the legitimacy and true motivations of the proceedings when those who reside in Haskanita had seemingly been completely overlooked” (para. 7); and
 - iv. “They had hoped that the authorities in Darfur would provide a remedy in the courts or through traditional methods of offering compensation, and questioned whether it was appropriate for an international court to be involved, particularly for a case of this kind” (para. 7).
9. These submissions are irrelevant to the question of whether or not the charges will be confirmed, which issue represents the limit of the personal interests of

the two victims at this stage⁹. In particular, and taking the above submissions in order:

- i. The only factor qualifying the two victims for participation in this case is the harm they allegedly suffered in the course of the attack on the AMIS base in Haskanita on 29 September 2007; no other considerations are of any relevance in according them this status.
- ii. The case against Messrs Banda and Jerbo concerns only the attack on the MGS Haskanita; the temporal and spatial limits of the case are defined by this attack and do not encompass allegations relating to the town of Haskanita. Any attempt to adduce evidence of such extraneous events, particularly if allied to allegations that so-called “rebels” were involved is vigorously opposed as being “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial” (Article 68(3)) and entirely irrelevant.
- iii. The victims have no standing or right to raise the “legitimacy” of the proceedings. In any event, they evidently view them as sufficiently legitimate to choose to participate in the proceedings and enjoy the rights attached to such participation. The Defence is compelled to note that questioning the “legitimacy and true motivations” of these proceedings is cynical in circumstances where the true motivations of SIDG and SWTUF fail to withstand the barest scrutiny.
- iv. Their apparent disappointment with the authorities in Darfur would perhaps be better, and more relevantly, addressed to organisations other than the Court. Again, the appropriateness of the Court’s involvement in this matter is simply irrelevant as far as the personal interests of the victims are concerned. The legal representatives would

⁹ Decision on victims' modalities of participation at the Pre-Trial Stage of the Case, 6 October 2009, ICC-02/05-02/09-136, at para. 5. In the present case, the Pre-Trial Chamber has already held that the legal representatives’ “oral submissions are, however, permitted only insofar as they relate to the personal interests of the victims”, Decision on issues related to the hearing on the confirmation of charges, 17 November 2010, ICC-02/05-03/09-103, para. 8.

do well not to confuse their roles in this case and in the *Al Bashir* case: legal representatives of victims are not *amicus curiae* and cannot give evidence.¹⁰

10. Thus, in the space of one, brief initial submission, the legal representatives have given notice that they intend using these proceedings to further objectives that have nothing to do with the question of whether this case should go to trial, by making at least four entirely irrelevant points. In so doing, the legal representatives presage what their approach will be throughout the proceedings.
11. Not only are the submissions dealt with above well beyond the scope of the personal interests of the victims; worryingly, they appear to mirror the position of the intermediaries in key respects. As an example, the references to “authorities in Darfur”¹¹ and “traditional methods” providing for redress, together with concerns about the appropriateness of an international court’s involvement will seem familiar to the Pre-Trial Chamber, because this position has been conveyed previously, by these intermediaries, through these legal representatives, in the guise of “friends of the court”, in the *Al Bashir* case.
12. In a filing to the Appeals Chamber, the intermediaries explained that one of the reasons for their original application under Rule 103, was their preference for “the initiatives taken in Sudan to ensure justice for the crimes committed in Darfur by processes constituting and/or leading to African solutions for African problems.”¹² In a similar vein, these organisations later refer to the

¹⁰ Oral decision of the *Lubanga* Trial Chamber, p. 8 of transcript, 24 March 2009.

¹¹ In this regard, the Defence would note that the apparently preferred domestic solution, in the guise of the Special Courts for Darfur, fall well below international standards, including the imposition of the death penalty on children: <http://www.sudantribune.com/test/spip.php?article36737>

¹² Application under Rule 103 in respect of Prosecution Appeal against “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 21 July 2009, ICC-02/05-01/09-27, at para. 8, p. 9.

Prosecutor's apparent disdain for "the broader 'political' merits of other methods of resolution of present problems."¹³

13. Regardless of whether or not these submissions have any fathomable meaning, it is revealing, to say the least, that similar sentiments are now being expressed apparently on behalf of two victims.
14. It is perhaps not surprising that the alleged views of the victims mirror the views of the two organisations, given the central role of these organisations in having "supported and funded" these applications. A proper understanding of this matter, and of the role of the SIDG and SWTUF leads to one irresistible conclusion: Namely that they are mere fronts for the Sudanese government and its President, Omar Hassan Ahmad Al Bashir.
15. The founding statement of the SIDG¹⁴, dated 24 July 2008, makes it clear that the organisation was established in direct response to the Prosecutor's decision to prosecute President Al Bashir. The website of the organisation provides scant information as to the identity of its founders or members. What does emerge from the website, however, is that its focus is not the situation in Sudan as a whole, nor is it the Court's handling of the Darfur situation in general, nor, surprisingly, even the assertion that the Court has allegedly ignored the plight of ordinary Darfuri citizens. Its sole preoccupation is the case against President Al Bashir, a man who, with the full backing of his government, continues to defy the Court.
16. This makes the involvement of SIDG in this case all the more puzzling, unless one views the organisation as a conduit for the views of the Sudanese government and its President. The ability to maintain a watching brief over, and to intervene in, this case, against rebels and enemies of the Sudanese government, represents a significant success for SIDG. It allows them a further

¹³ Application for Leave and Reply to the Prosecution's Response to the Application under Rule 103 in respect of Prosecution Appeal against "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir", 24 August 2009, ICC-02/05-01/09-33, at para. 10.

¹⁴ <http://sidgsudan.org/founding-statement/>

opportunity to lead evidence and present views prejudicial to Mr. Banda and Mr. Jerbo and to seek their removal via the courtroom, something the Government of Sudan has hitherto not been able to achieve on the battlefield. It also provides SIDG with a further platform to advance the views of President Al Bashir.

17. The SWTUF, on the other hand, is what remains of Sudan's once vibrant trade union movement after the effective banning of all independent trade unions after the 1989 coup.¹⁵ The clearest evidence of the close relationship between the Sudanese government and the SWTUF is the fact that its chairman is Ibrahim Ghandour, who is variously described as "a senior NCP official"¹⁶, the Secretary General¹⁷ or the Secretary for Political Affairs¹⁸ of President Al Bashir's NCP.

18. The intermediaries may not like being characterised as "proxies" of Khartoum.¹⁹ But that label is apposite. The Defence is content, however, to also use the term "front for the Government of Sudan" or "surrogates for President Al-Bashir" as alternatives. Put in straightforward terms, these descriptions precisely define the role of these intermediaries. The Defence submits that it is imperative for the orderly and fair progress of this case that victims' participation achieves what it was intended to, and that victims do not become surrogates or pawns for other parties in the court room in a bid to advance other agendas.

19. The notion that these two organisations can be considered honest brokers who will ensure that there is a "steady and reliable flow of information about the proceedings to the victims and that there is real involvement by the victims in

¹⁵ <http://www.hrw.org/legacy/reports/1996/Sudan.htm>

¹⁶ <http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%208%20Nov%2010.pdf>

¹⁷ <http://www.sudanecides.com/2010/03/14/sudan-press-summary-14-march-2010/#more-74>

¹⁸ <http://www.voanews.com/english/news/africa/Senior-NCP-Official-says-Party-Committed-to-Sudans-Unity--104825479.html>

¹⁹ Application for Leave and Reply to the Prosecution's Response to the Application under Rule 103 in respect of Prosecution Appeal against "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir", 24 August 2009, ICC-02/05-01/09-33, at para. 11.

terms of instructing the legal representatives on how their interests should be represented”²⁰, is absurd.

20. The present filing is meant to ensure that they have no further opportunity to distort the views of the victims and to deflect the Court’s attention away from the real issues. In proceedings in which the interests of Messrs Banda and Jerbo are intimately and fundamentally involved, these stratagems represent an abuse of the Court’s processes that the Defence cannot countenance.

III. Objections to involvement and role of the legal representatives

21. The legal representatives purport to act for the victims in the present matter, with the assistance and support of, and by virtue of the funding provided by, the SIDG and the SWTUF. The legal representatives have acted and continue to act for SIDG and SWTUF in the *Al-Bashir* matter.
22. The position of the intermediaries has been unremittingly critical of the Court’s role in the Sudan situation. More than that, the intermediaries openly advance an agenda which is materially identical to that which the Government of Sudan espouses.²¹ In these circumstances, the position of the intermediaries in this case is all but untenable. Indeed it is dangerous. As the primary point of contact with the victims, the Defence submit that these intermediaries simply cannot be safely relied upon to convey the concerns of victims accurately to the legal representatives.
23. It is conceivable that the victims may wish to express points of view critical of the Sudanese government or inimical to the organisations’ interests or obvious agenda. The likelihood of this may be increased if the victims receive disclosure, or are informed of Defence submissions or filings addressing, for example, the role played by the Government of Sudan in precipitating the attack which is the subject of the charges. In such circumstances, there is simply no reasonable chance at all that these organisations would be a reliable

²⁰ *Katanga*, Trial Chamber II, Order on the organisation of common legal representation of victims, 22 July 2009, ICC-01/04-01/07-1328, at para. 10(a).

²¹ See paragraphs 11 and 12 above.

conduit. There is every reason to be concerned about whether the victims would feel confident or even able to safely articulate any concerns they may have to intermediaries that are so closely allied to the State. This is especially so when the State concerned is one that has been so roundly condemned for egregious and widespread human rights abuses.²²

24. In the event there is a conflict, the legal representatives would then have to choose whether to continue to advance the case of the organisations as vigorously as possible, or to do the same for the victims; they could not, in good faith, do both.
25. That the SIDG and SWTUF not only have paid and continue to pay the legal fees of the legal representatives in relation to the Al-Bashir case is one matter. But that they pay the fees in relation to the Banda and Jerbo case, is a serious cause of concern.
26. The Code of Professional Conduct for counsel (“Code of Conduct”), in Article 21(1), provides that “counsel shall not accept remuneration, in cash or in kind, from a source other than the client unless the client consents thereto in writing after consultation and counsel’s independence and relationship with the client are not thereby affected.”
27. This provision creates an absolute bar to the continued involvement of the legal representatives in relation to this matter *unless* such written consent has been obtained from the victims. The Defence have not had sight of any such written consent. If it has not been provided, then the continued representation would run foul of the Code of Conduct.
28. Even if it transpires that such written consent has been obtained, the Defence submits that payment of legal fees by the intermediaries would nevertheless constitute a breach of counsels duty under Article 6 of the Code of Conduct. Article 6 requires counsel to “act honourably, independently and freely”; to

²² Human Rights Council, A/HRC/4/80, 9 March 2007, Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101, paras. 38-43.

not permit their “independence, integrity or freedom to be compromised by external pressure”; and, importantly, to not do “anything which may lead to any reasonable inference that [their] independence has been compromised.”

29. The SIDG and SWTUF instructed Sir Geoffrey Nice QC and Mr. Rodney Dixon to act as their legal representatives in relation to matters arising out of the Sudan situation some time ago.²³ They were the original client of Sir Geoffrey Nice, QC and Mr. Rodney Dixon before the ICC. They *continue* to act for these clients.²⁴ Their legal fees are paid for by them by these clients in relation to other cases arising out the Situation in Darfur, Sudan.²⁵ Their legal fees enabling them to represent victims in the *present* matter are also paid for by SIDG and SWTUF, who now purportedly play the role of intermediary.²⁶ The Defence submits that the original clients (SIDG & SWTUF) now use victim participation as a device to allow them to intervene in court proceedings to pursue the same goals, and raise the same points that they have sought to raise in other cases arising out of the Situation in Darfur.²⁷

30. The Defence submit that the legal representatives subject to the present application should be refrained from continuing to act in these proceedings. At least three reasons exist to support this submission. Firstly, because such continued representation is contrary to the rights of the Defence; Secondly, such participation runs contrary to Article 6 of the Code of Conduct and amounts to an abuse; and Thirdly their continued representation runs foul of what may be termed the “no inhibition” principle.

31. Article 68(3) of the Statute circumscribes the involvement of victims. Their views must be presented in a manner “which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.” The rights of the Defence to a fair trial are well known and provided for in article

²³ ICC-02/05-170.

²⁴ Observations, para 4.

²⁵ Ibid.

²⁶ Ibid. at para. 6.

²⁷ ICC-02/05-170, para. 8.

67 of the Statute. The right to a fair trial includes equality of arms between those that accuse and those accused. This principle pertains to the Defence and any other party or participant in the court room.²⁸

32. The legal representatives of the victims have had the singular benefit of having been to Sudan, met at least two victims there, and have the support and assistance of SIDG and SWTUF to facilitate such missions and to communicate with them. They have the possibility to enter Sudan again and are planning to do so.²⁹ None of these rights are afforded to the Defence.
33. The reality of the present situation is that the legal representatives of the victims are allowed into Sudan because they are viewed as advancing the agenda of President Al Bashir and furthering the interests of his Government, whilst the same Government will not even receive a letter from the Defence, never mind allow them to cross the border into Sudan or to conduct investigations in its territory.³⁰ It will be a blatantly unfair if the “victims” a/1646/10 and a/1647/10 are permitted to make submissions, and have their views presented, by dint of being assisted by two organisations which are surrogates for the Government, whilst that same Government denies the Defence entry in order to test and counter the evidence led, including any views and concerns purportedly coming from the victims.
34. The jurisprudence of European Court of Human Rights concerning the impartiality of judges in criminal trials is summarized in *Incal v. Turkey*.³¹ In that case, the court held that

appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above

²⁸ See ICC-02/05-02/09-136 where, at para. 22, where the Pre-Trial Chamber held that the principle prohibiting anonymous accusations applied not only to witnesses brought by the Prosecution but encompassed victims who had been granted anonymity. This is an important safeguard, consistent with Article 67 and Article 68(3) of the Statute, given that victims may be permitted to present their views and concerns at any stage of the proceedings.

²⁹ Observations, at para. 6.

³⁰ ICC-02/05-03/09-95, at paras. 9-10.

³¹ 29 EHRR 449.

*all, as far as criminal proceedings are concerned, in the accused [citations omitted]. In deciding whether there is a legitimate reason to fear that a particular court lacks independence or impartiality, the standpoint of the accused is important without being decisive. What is decisive is whether his doubts can be held to be objectively justified.*³²

35. For the reasons detailed in this application generally, and in paragraph 29 above, in particular, the Defence submit that its concerns are objectively justified.

36. As far as Strasbourg jurisprudence is concerned, Article 6 of the European Convention of Human Rights enshrines the right to be tried by an independent and impartial tribunal. Article 6 provides a right to an independent and impartial tribunal. The Defence acknowledges that this principle has not been expressly extended by the European Court of Human Rights beyond the independence and impartiality of the decision maker. That gap has, however, been filled by the Code of Conduct applicable to all counsel before the ICC. Article 6 of the Code requires counsel not to do anything that may lead to a reasonable inference that their independence has been compromised.

37. Accordingly, the case law dealing with situations where the disqualification or recusal of a judge is sought may be instructive when determining whether there is a reasonable inference that the independence of counsel has been compromised.³³ The Defence submit that the test is whether a fair and informed observer, having considered the facts, would conclude that there is a real possibility that the legal representative was not independent.

38. The Defence is aware that a party has no right *per se* to object to an advocate representing an opponent. That party has no free standing right even to object based solely upon the Code of Conduct. The Defence is cognisant of the

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<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=incal&sessionid=63140198&skin=hudoc-en>, at para. 71.

³³ See, for example, *Incal v. Turkey*, cited above, and *Ciraklar v. Turkey*, (2001) 32 EHRR 23.

provisions of Article 34 of the Code of Conduct and that such matters are to be filed with the Registry. But the Defence is *not* filing a complaint for misconduct. It will not do so and that is not the purpose of the present application. The Defence submit, however, that the Pre-Trial Chamber will always be concerned with the duty of the advocate to the court and the integrity of proceedings before it. The Court has the inherent power³⁴ to prevent abuse of its procedure and accordingly has the power to restrain an advocate from representing a party if it is satisfied that there is a real risk that the continued participation would prejudice or may prejudice the proper administration of justice.³⁵

39. The Defence also submits that the continued representation of the victims by the current legal representatives runs foul of what may be termed the “no inhibition” principle. Namely a risk that counsel will be unable to represent his client without his conduct consciously or unconsciously being influenced by the relationship said to give rise to the conflict. In this instance, this conflict is the relationship between the SIDG and SWTUF and the legal representatives and the dual and intertwined role as client and funder of the legal representatives in other proceedings and funder of the legal representatives and “intermediary” in the present case.

40. Counsel may be professionally embarrassed if, for instance, his professional duty to the victims would require them to argue that the attack against Haskanita was precipitated in important respects by the Government of Sudan. The Defence submit that on any proper view of the various relationships at play in this matter (SIDG-SWTUF (Government of Sudan) – Legal representatives and victims) there is a serious risk that consciously or

³⁴ The existence of inherent powers has already been determined by this Pre-Trial Chamber. See ICC-02/05-01/07-57, at p. 6. The Court clearly has the power to prevent an abuse of process: ICC-01/04-01/06-2517-Red, at para. 30.

³⁵ It is important that the Court has the power to prevent a conflict of interest before it arises. The ICTY Appeals Chamber decision in *Prlic* is instructive in this regard. The Appeals Chamber held that “[...] safeguarding the interests of justice requires not only the existence of a mechanism for removing conflicts of interests after they have arisen but also the prevention of such conflicts before they arise.” “Decision on Appeal by Bruno Stojic against Trial Chamber’s Decision on Request for appointment of counsel, 24 November 2004 at para 25.

unconsciously the legal representatives will not be able to act without being influenced by the pre-existing and continuing relationship.

41. The Defence submits this is a matter for the Pre-Trial Chamber to determine as it threatens the administration of justice, the integrity of the proceedings as well as the fair trial rights of Messrs Banda and Jerbo.

IV. Relief requested

42. In the light of the above, the Defence requests:

- i. The Pre-Trial Chamber restrain Sir Geoffrey Nice, QC and Mr Rodney Dixon from acting in relation to this matter and that the Pre-Trial Chamber order any such alternative legal representation as may be necessary;

And/or in the alternative,

- ii. That the Pre-Trial Chamber prohibit Sir Geoffrey Nice, QC and Mr Rodney Dixon (or any alternative legal representatives that may be appointed) from using the services of SIDG and SWTUF in relation to this matter;
- iii. That the Pre-Trial Chamber prohibit Sir Geoffrey Nice, QC and Mr Rodney Dixon (or any alternative legal representatives that may be appointed) from directly or indirectly receiving any funds or support from SIDG and SWTUF.

In the alternative:

43. The Defence respectfully prays:

- i. that the Pre-Trial Chamber order Sir Geoffrey Nice, QC and Mr Rodney Dixon to produce their powers of attorney and the requisite written waiver authorising them to accept payment from one or both of SIDG and/or SWTUF, for examination by the Court;

- ii. In the absence of the authorisation referred to in paragraph (i) above, that Sir Geoffrey Nice, QC and Mr Rodney Dixon be excluded from all further participation or representation in this case.

44. Until such time as the present application is finally determined, the Defence further pray “that in order to ensure the rights of the Defence, protect the interests of the victims and preserve the integrity of the proceedings”,³⁶ the Chamber provisionally exclude Sir Geoffrey Nice, QC and Mr Rodney Dixon from their functions as legal representatives of victims a/1646/10 and a/1647/10, and appoint the Office of Public Counsel for Victims in their stead.

Respectfully Submitted,



Mr. Karim A. A. Khan

Defence Counsel for Abdallah Banda Abakaer Nourain and
Saleh Mohammed Jerbo Jamus

Dated this 6th Day of December 2010

At The Hague, The Netherlands

³⁶ ICC-01/04-01/07-660, at pp. 9-10.