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TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Silvia Fernandez de Gurmendi

SITUATION IN DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR*

v.

ABDALLAH BANDA ABAKAER NOURAIN
&
SALEH MOHAMMED JERBO JAMUSG

Public Document

Observations by the Legal Representatives for Victims a/1646/10 and a/1647/10 on the “Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons” and the “Agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence between the Defence of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus and the Office of the Prosecutor”

Source: Victims represented by Sir Geoffrey Nice QC and Rodney Dixon

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

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Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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Observations of Victims a/1646/10 and a/1647/10

1. The Legal Representatives for Victims a/1646/10 and a/1647/10 hereby submit observations on behalf of Victims a/1646/10 and a/1647/10 (“the victims”) on the Joint Submissions filed on 16 May 2011¹ and the redacted version of the Agreement of Facts filed on 29 June 2011.² These observations are submitted pursuant to the Order of the Trial Chamber of 22 June 2011³ and pursuant to the Chamber’s authorisation to file observations in respect of the public redacted version of the Agreement of Facts granted on 28 July 2011.⁴
2. As the public version of the Agreement of Facts is heavily redacted it does not permit the victims to make observations on the details of the Agreement of Facts at this stage. The victims reserve their rights to make observations on the Agreement of Facts if they are granted access to the de-redacted version once the modalities of victim participation in the trial are decided by the Trial Chamber.
3. The Joint Submissions of 16 May 2011 make it clear that the Prosecution and Defence have agreed that the key issues to be contested at trial are (i) whether the attack on the MGS Haskanita on 29 September 2007 was unlawful and (ii) if the attack is deemed unlawful, whether the Accused were aware of the factual circumstances that established the unlawful nature of the attack.⁵ Based on this filing and the very limited information available from the redacted Agreement of Facts, the victims have three observations to make at this stage:
4. *First*, given the extensive redactions, the victims do not know whether the parties have agreed any facts about the local Sudanese civilians who were present in the camp when it was attacked, and who included the two victims. The Prosecution had stated in the Document Containing Charges that local Sudanese civilians in the

¹ “Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons”, ICC-02/05-03/09-148, 16 May 2011 (hereinafter “Joint Submission”).

² “Joint Submission by the Office of the Prosecutor and the Defence Regarding the Contested Issues at the Trial of the Accused Persons”, Annex A, ICC-02/05-03/09-148-AnxA-Red, 29 June 2011 (hereinafter “Redacted version of the Agreement of Facts”).

³ “Order requesting observations from the legal representatives on the agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence”, ICC-02/05-03/09-165, 22 June 2011 (hereinafter “Order of 22 June 2011”).

⁴ Authorisation granted via email communication from the Trial Chamber by Maria Mathiaud on 28 July 2011.

⁵ Joint Submissions, para. 3.

camp may have collaborated with the rebel forces who attacked the camp.⁶ The victims deny any such allegation and will show at trial that there is no evidence at all to support such an allegation. The victims reserve the right to submit observations on this topic in the event that it is covered in the Agreement of Facts, once de-redacted.

5. Second, as the central issue that the Prosecution and Defence propose to contest at the trial is the lawfulness of the attack and the Accuseds' knowledge of whether the attack was unlawful or not, the victims submit that they may be of assistance to the Trial Chamber in finding the truth and adjudicating these issues. The victims were both present in the camp when it was attacked and were themselves attacked as civilians working in the camp. For example, in their victim applications they state that:

- Shots during the attack were not directed only at AMIS personnel but at everyone in the camp.
- Both victims were shot at and thought that they would be killed.
- The attackers were shouting orders to "shoot those on the floor" of the washing area of camp who were both AMIS soldiers and civilians.⁷
- One of the victims was threatened, blindfolded and taken by the rebel forces "as a prisoner from the camp" for three days.⁸
- The civilian "workers in the kitchen ... were injured in the attack."⁹

6. The redacted version of the Agreement of Facts covers the damage committed against the property looted and destroyed within the camp at MGS Haskanita. It specifies that the attackers "appropriated items belonging to AMIS and some personal property of AMIS personnel"¹⁰ and "also damaged or destroyed AMIS

⁶ Public Redacted Version of Document Containing the Charges Submitted pursuant to Article 61(3) of the Statute filed on 19 October 2010, ICC-02/05-03/09-79-Red, 11 November 2010, para. 79.

⁷ Victim Application a/1646/10.

⁸ Victim Application a/1646/10.

⁹ Victim Application a/1647/10.

¹⁰ Redacted Version of Agreement of Facts, para. 25.

armoured personnel carriers and other AMIS equipment and property.”¹¹ Victim a/1647/10 provides information about the attackers “taking cars and fuel” and “open[ing] the stores and loot[ing] them” within MGS Haskanita, and can also provide information that his own civilian belongings were stolen in the camp and about his house and belongings in the village of Haskanita being burnt and destroyed.¹² Victim a/1646/10 similarly states that he “lost all [his] belongings” as a result of the attack and that in Haskanita village his “house was burnt”.¹³

7. Furthermore, there are three new victim applicants from Haskanita whose applications have been submitted to the Registry in May 2011.¹⁴ Their applications have not as yet been transmitted to the Trial Chamber by the Registry despite repeated requests by the Legal Representatives to submit them as expeditiously as possible. Two of these victims were present in the camp when it was attacked. They state that they were attacked as civilians in the camp, that the armed rebel forces “just attacked everyone”¹⁵, and that “shots were being fired from every direction.”¹⁶ The third victim applicant’s husband was also attacked in the camp. He was severely traumatised by this incident and as a result is currently unable to apply to participate as a victim before the ICC.¹⁷
8. Third, the Legal Representatives have represented in their applications to be considered as victims other persons from Haskanita who were present in Haskanita when the camp was attacked.¹⁸ They described in their victim applications to the ICC how the attack on the camp spread to the village. They all state that the rebel forces attacked the camp and the area surrounding the camp, shooting at the civilian villagers, threatening them and instilling fear, destroying the village and burning houses, and looting houses and shops. For example in their victim applications they state that:

¹¹ Redacted Version of Agreement of Facts, para. 26.

¹² Victim Application a/1647/10.

¹³ Victim Application a/1646/10.

¹⁴ Victim Applications a/6000/11, a/6001/11 and a/6002/11/

¹⁵ Victim Application a/6001/11.

¹⁶ Victim Application a/6002/11.

¹⁷ Victim Application a/6000/11.

¹⁸ The Legal Representatives initially represented six victim applicants in the *Abu Garde* case (a/0581/09, a/0582/09, a/0583/09, a/0584/09, a/0585/09, a/0586/09). Three of these victims also applied in the present case (a/0582/09, a/0584/09, a/0585/09), together with two further victim applicants (a/1648/10 and a/1649/10).

- The rebel forces attacked the “village of Haskanita and the camp of the African Mission in Sudan.”¹⁹
- Gunfire was heard from the camp and villagers thought that they were going to be shot.²⁰
- The attackers entered the village with “cars from the AU (about 5 cars) and there was a vehicle from the rebels behind them.”²¹
- After attacking the camp “the rebel forces sought to take whatever they could from our village.”²²
- Many houses and shops in Haskanita were destroyed by this attack.²³
- The “rebels looted the belongings of the citizens, like the mills, and they looted the market ... food mills and water pumps.”²⁴
- Many villagers had to flee in fear when the attack occurred, and they did not feel safe because AMIS had been attacked.²⁵

9. Even though the Pre-Trial Chambers rejected these applications on the basis that the harm the victims suffered was not directly linked to the charges²⁶, the evidence of these victims may be relevant at trial given the agreement reached between the parties as to the issues in dispute. The evidence that they could provide may assist the Trial Chamber in determining whether the attack as charged was directed at civilians. The evidence could be relevant to the intentions and conduct of the rebel forces at the time of the attack and what the Accused must have known about the nature of the attack. This may be evidence that the Trial Chamber would want to call in light of the agreed facts and issues that remain in dispute. The Legal

¹⁹ Victim Application a/0582/09. See also Victim Application a/0584/09, a/0585/09, a/0586/09.

²⁰ Victim Application a/0582/09, a/0585/09, a/0586/09.

²¹ Victim Application a/1648/10.

²² Victim Application a/0581/09.

²³ Victim Application a/1646/10, a/1647/10, a/1648/10, a/1649/10, a/0581/09, a/0584/09, a/0585/09, a/0586/09.

²⁴ Victim Application a/0584/09.

²⁵ Victim Application a/1646/10, a/1647/10, a/1648/10, a/1649/10, a/0581/09, a/0583/09, a/0584/09, a/0585/09, a/0586/09.

²⁶ Decision on Victims' Participation at the Hearing on the Confirmation of the Charges, ICC-02/05-03/09-89, 29 October 2010, Public Redacted Version of "Decision on the 52 Applications the Pre-Trial Stage of the Case, ICC-02/05-02/09-147-Red, 9 October 2009.

Representatives could certainly assist the Trial Chamber in making these victims available to provide evidence during the trial, or the victims who are recognised could call this evidence in accordance with the modalities of victim participation, once ordered, if the Trial Chamber so prefers.

10. As noted above, the victims do request that they be given an opportunity to make further observations on the Agreement of Facts on the basis of their personal interests if granted access to the de-redacted Agreement of Facts.



Sir Geoffrey Nice QC
Rodney Dixon
Legal Representatives of the Victims

Dated 8th August 2011
London, United Kingdom