

CONFIDENTIAL ANNEXURE "A"

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

The Defence of Messrs Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus AND the Office of the Prosecutor hereby stipulate their agreement, pursuant to Rule 69 of the Rules of Procedure and Evidence, that the below stated alleged facts are not contested by any of the parties, and that the Chamber may therefore consider such alleged facts as being proven for the purposes of the trial of Messrs Banda and Jerbo.

Background relating to Mr. Banda

1. Mr. Banda was born in 1963 in Basao, 14km east of Tine, near the Chadian border in North Darfur, the Sudan.
2. Mr. Banda received some limited Qu'aranic education in AI Geneina, West Darfur. Before he joined the revolution he was a trader, buying and selling goods in Darfur, Nigeria and Libya.
3. Mr. Banda decided to participate in the revolution because the Janjaweed and the Government of Sudan (GoS) forces attacked the area where he lived. He joined the Justice and Equality Movement (JEM) in Jebel Si on 15 March 2003.
4. He became General Commander of JEM in July 2004. The chairman of JEM, Dr. Khalil Ibrahim, dismissed Mr. Banda from this position on 1 July 2007.
5. Mr. Banda did not accept this decision and, at the suggestion of [REDACTED], agreed to meet with Dr. Ibrahim to discuss the issue. After one abortive attempt to meet Dr. Ibrahim in late July 2007, Mr. Banda made his way to Haskanita in late September 2007, arriving in the Haskanita area early on the morning of 29 September 2007.

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6. Whereas the purpose of coming to Haskanita had been to meet Dr. Ibrahim and discuss the conflict between him and Mr. Banda, upon arrival it became apparent that Dr. Ibrahim had in fact left the area a few days before.

Background relating to Mr. Jerbo

7. Mr. Jerbo was born on 1 January 1977 in Shigeg Karo, near Ambro, in North Darfur, the Sudan.
8. Mr. Jerbo received no formal education. Before he joined the revolution, he was a camel breeder in North Darfur.
9. From 1999 to 2003 Mr. Jerbo was a chief in the youth association of Shigeg Karo. The purpose of the association was the protection of the livestock and businesses of local families in the Shigeg Karo area against the Janjaweed. This was an informal association covering several villages in the area, with each sub-area responsible for its own protection. Mr. Jerbo was elected to this position by the people for whom he would be responsible, including the local Umda. The association was family-based in that it was responsible for the area where the extended families of those in the association lived. Mr. Jerbo fought the Janjaweed throughout his time in the association.
10. Mr. Jerbo joined the Sudan Liberation Army/Movement (SLA/M) in 2003. A distinct faction of the SLA/M formed in April 2007, which came to be known as "SLA-Unity". Mr. Jerbo was appointed as the group's chief of operations at that time.

Jurisdictional elements

11. At all times relevant to the charges brought by the Prosecution, an armed conflict of a non-international character has been and continues to be waged in Darfur, the Sudan, between the Government of Sudan (GoS) and forces under its control on the one hand and various armed rebel groups, including the JEM and the SLA/M, on the other.
12. Mr. Banda and Mr. Jerbo were aware of the factual circumstances that established the existence of an armed conflict.

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The events of 29 September 2007

13. On 29 September 2007, Mr. Jerbo was in command of the SLA-Unity forces in eastern Darfur, which forces were stationed in the Haskanita area. He had just returned to the Haskanita area after completing a mission. In the early morning hours of 29 September 2007 Mr. Jerbo was located approximately 5 kilometres west of Haskanita when a battle between GoS forces and the forces of SLA-Unity broke out in nearby Dalil Babikir.

14. [REDACTED] this battle which lasted from about 9am to 1pm. After that time, rebel forces continued being bombed by a GoS Antonov aircraft until about 4pm.

15. Mr. Banda arrived in the Haskanita area on the morning of 29 September 2007 [REDACTED]. [REDACTED] came to meet Mr. Banda about 10 km north of Haskanita. Mr. Banda had remained outside Haskanita village as he did not know whether GoS forces were in the village and because a GoS Antonov was circling overhead. As they were talking, they heard shelling which presaged the battle of Dalil Babikir.

16. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17. [REDACTED]
[REDACTED]

18. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Mr Banda agreed [REDACTED]
[REDACTED] to participate in the attack [REDACTED]
[REDACTED].

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19. [REDACTED]
[REDACTED]
[REDACTED]

20. At around 7pm the [REDACTED] rebel forces [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] attacked the MGS Haskanita [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21. Mr. Jerbo [REDACTED]
[REDACTED]
[REDACTED] attack the MGS
Haskanita pursuant to the plan that was agreed upon between Mr. Jerbo, [REDACTED]
[REDACTED] Mr. Banda [REDACTED].

22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23. The attackers [REDACTED]
[REDACTED] overran the MGS Haskanita. During the
course of the attack these attackers shot and killed 10 AMIS peacekeepers. Two
other peacekeepers later died from injuries sustained during the attack. The
attackers killed the following AU personnel: Major Gaolatine Tiro (Botswana),
Bala Mohammed (Nigeria), Duniya Audu (Nigeria), Samuel Orokpo (Nigeria),
John Dogara (Nigeria), Tayo Alawo (Nigeria), Usman Saleh (Nigeria), Danjuma
Madaki (Nigeria), Martin Matthias (Nigeria), Haruna Peter (Nigeria), Mayoro
Kebe (Senegal) and Ibrahim Diagne (Mali).

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24. During the course of the attack the attackers also severely injured about eight AU personnel, including [REDACTED]

[REDACTED]
[REDACTED]

25. The attackers, [REDACTED]
[REDACTED] appropriated items belonging to AMIS and some personal property of AMIS personnel [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26. The attackers also damaged or destroyed AMIS armoured personnel carriers and other AMIS equipment and property in the course of the attack. [REDACTED]

[REDACTED]
[REDACTED]
