

# ANNEX 3



temple garden  
chambers

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30 May 2011

Dear Ms McKay,

Thank you for organising the meeting on Friday 20 May 2011 and for raising all issues in such a constructive way.

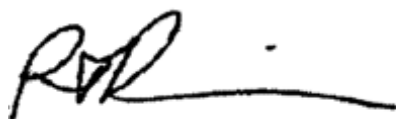
Our arguments for continuing separate representation of the clients we represent (who may be joined by a three others whose application are in process, and possibly by a few others) include that:

1. There may well be a conflict of interest as our victims were civilians living in Haskanita while other victims were peace keepers or claim through the suffering of peace keepers. Our victims suffered as part of the local civilian community. With this in mind, they may need, through us, to broaden the factual base of the case within the limits of victim participation before the ICC. There are specific issues that our victims wish to raise (some of which are identified below) which the non-Sudanese peace keeper victims may simply not be prepared to submit before the court. We, as counsel, have developed an understanding of these issues, and of the sensitivities of the victims, through our meetings with our victim clients and our trips to Darfur.
2. The Prosecution and Defence have filed a document indicating that they will agree everything apart from whether the attack was a lawful strike on the military peace keepers. Our instructions from our Victim clients that the attack was general and included attacking civilians in the camp and in Haskanita may not be one that the representatives of other victims may need, want or be in a position to take and, in the result, the basis on which our victims could properly participate (and even be compensated) might never be made out or could be neglected.
3. There are other victims from Haskanita who we have met and represented who may wish to participate in the proceedings as witnesses or as victims in light of the focus of the trial being now on the lawfulness of the attack. Their evidence or participation may become vital depending on the direction the trial takes.

4. We are currently investigating whether the accused in this case do in fact understand Arabic and thus may not require translation of all materials into Zaghawa, which could save much court time. These investigations are being made in Sudan on behalf of our victims who have a real and legitimate interest in having an early and concise trial. These are matters (among others) that are being undertaken by us as counsel which other counsel may not wish to pursue or which it may not be possible for them to pursue.
5. Our victims live in Sudan and other victims do not. They are the only victims from within Sudan represented in the case. It may seem inappropriate for the ICC to deny these Sudanese victims, who are willing to come forward and participate before the ICC, the representation of their choice when Sudan as a country has been heavily criticised by the ICC for not recognising the court in respect of the cases before the ICC.
6. We as counsel have access to Sudan to visit our victims; that ease of access may not be available to other counsel if they were to be imposed on our victims – we simply do not know the answer to this and are not in a position to forecast or determine the outcome of any visa applications made by other counsel.
7. A site visit to Haskanita by us and our victims is planned in order to take our victims' instructions and photographs/video of the scene. Such materials may be of assistance to the Trial Chamber and the parties in the trial. These are arrangements (among others) that have been made with us as counsel in consultation with SWTUF and SIDG and our victims which would be most effectively implemented by us continuing as counsel, and which may not be possible if other counsel were imposed.
8. We are privately funded and represent no possible drain on ICC financial resources.

Without wishing to interfere in the representation of the other victims, but since we have been asked the question by the VPRS, we would be willing to consider being appointed to represent the other victims in this case in some form of common representation model or to lead a co-ordinated Victims team. As we are privately funded, work for other Victims would have to be separately accounted for or performed *pro bono*.

Yours sincerely,



Sir Geoffrey Nice QC  
Rodney Dixon

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