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**PRE-TRIAL CHAMBER I**

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

**SITUATION IN DARFUR, THE SUDAN**

**IN THE CASE OF THE PROSECUTOR**

**V.**

**ABDALLAH BANDA ABAKAER NOURAIN**

**&**

**SALEH MOHAMMED JERBO JAMUS**

**PUBLIC DOCUMENT**

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**The Office of the Prosecutor**

**Counsel for the Defence**

Karim A. A. Khan

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

Colonel Frank Adaka

Mr Brahim Koné

Ms Hélène Cissé

Mr Akin Akinbote

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

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**REGISTRY**

**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

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Section**

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The Prosecutor of the International Criminal Court (“the Court”) pursuant to his authority under Article 61(3) (a) of the Rome Statute (“the Statute”) charges:

**ABDALLAH BANDA ABAKAER NOURAIN**  
**AND**  
**SALEH MOHAMMED JERBO JAMUS**

with **WAR CRIMES** as set forth below:

**I. THE PERSONS CHARGED**

**A. ABDALLAH BANDA ABAKAER NOURAIN**

1. **ABDALLAH BANDA Abakaer Nourain (“BANDA”)** is a Sudanese citizen of Zaghawa ethnicity. He was born in or around 1963 in Tine, North Darfur, the Sudan.
2. In or around 2003, BANDA joined the Justice and Equality Movement (JEM). In 2004, Dr. Khalil Ibrahim appointed BANDA as Commander in Chief (also referred to as General Commander) of the JEM. On 1 July 2007, Dr. Khalil Ibrahim dismissed **BANDA** from his position as Commander in Chief of the JEM forces.
3. Between July 2007 and 4 October 2007, **BANDA** was the Commander in Chief of a splinter group from the main JEM (“JEM Splinter Group”).
4. On 4 October 2007, the JEM Splinter Group was formalized in Jebel Adola by way of an announcement of the JEM Collective Leadership (“JEM-CL”) rebel movement, effective from 3 October 2007. **BANDA** was appointed as the Commander in Chief of JEM-CL from its inception.

5. On 18 January 2008, JEM-CL and other rebel factions established a coalition called the United Resistance Front ("URF"). Bahr Idriss Abu Garda ("Abu Garda") became its Chairman and General Coordinator of Military Operations, and **BANDA** was appointed as General Supervisor of military operations.

## **B. SALEH MOHAMMED JERBO JAMUS**

6. **Saleh Mohammed JERBO Jamus ("JERBO")** is a Sudanese citizen of Zaghawa ethnicity. He was born on 1 January 1977 in Shegag Karo village, North Darfur.

7. **JERBO** was a member of the Sudan Liberation Army in the Minni Minawi faction (SLA/MM) until the signing of the Darfur Peace Agreement ("DPA") on 5 May 2006. During the Um Rai Conference in May 2007, the Sudan Liberation Movement-Unity Command ("SLA-Unity") was created and **JERBO** was appointed as its "Operations Room Commander."

8. Between May 2007 and 30 September 2007, **JERBO** was based in the Haskanita area in South Darfur and was the highest ranking military commander of the SLA-Unity in the area.

9. On or about 1 December 2008, the SLA-Unity Leadership issued a public statement dismissing **JERBO** from his position of Operations Room Commander of the SLA-Unity.

10. In 2009, **JERBO** joined the JEM group under the leadership of Dr. Khalil Ibrahim.

## **II. STATEMENT OF FACTS**

### **A. BACKGROUND**

11. The Darfur region is located at the western border of the Sudan and is comprised of the three Sudanese States: North Darfur, West Darfur and South Darfur.

12. From about August 2002 to the date of filing of the Document Containing the Charges (“DCC”), and thus 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 Sudan Liberation Army/Movement (SLA/M), on the other.

13. From at least 1989 to 2002, the GoS pursued policies aimed at further control of the three largest Darfurian tribes, in particular the Fur, Zaghawa and Masalit. These tribes are traditionally dominant in Darfur with strong links to the land. During those years, members of these groups engaged in different armed rebellions against the GoS.

14. One such rebellion started in or around August 2000. Members of the Fur and Zaghawa tribes, joined by some Masalit, organized an armed group called the Darfur Liberation Army/Front (“DLA”) under the leadership of Abdul Wahid El Nour. The DLA changed its name to the Sudan Liberation Army/Movement (“SLA/M”) in or around February/March 2003.

15. The JEM, a predominantly Zaghawa group, was established in or about August 2001 under the chairmanship of Dr. Khalil Ibrahim. From 3 January 2005, Abu Garda served as Vice President/Secretary General and was the second in command of JEM. Abu Garda was also the Head of JEM Western Sector and Advisor to the President of JEM.

16. From August 2002 to sometime in March 2003, while the parties continued to fight militarily, the GoS negotiated with the SLA/M and the JEM. The military campaign of the Sudanese Armed Forces was unsuccessful and the rebels continued to launch attacks against GoS military installations, including police stations and garrisons. The negotiations eventually broke down in March 2003.

17. From March 2003, the Sudanese People's Armed Forces ("GoS Armed Forces"), supplemented by the Popular Defence Force (PDF), the Popular Police Force (PPF), the Border Intelligence Unit (BIU), and members of the Militia/Janjaweed who were integrated into these forces, began implementing the GoS' massive campaign of killings, rapes, tortures and forced displacement of the local population throughout the Darfur region that was considered to support the armed groups opposing the GoS.

18. Since at least March 2003, the various factions of the SLA/M and the JEM were involved in numerous military operations against the GoS forces.

19. The SLA/M and the JEM entered into several peace agreements with the GoS, most notably: (i) the Peace Agreement signed on 3 and 4 September 2003 between the GoS and the SLA/M; (ii) the Humanitarian Ceasefire Agreement ("HCA") signed on 8 April 2004 between the GoS, JEM and SLA/M; and (iii) the Agreement on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in Darfur, signed on 28 May 2004. Pursuant to this latter agreement, the African Union Observer Mission in Sudan (AMIS) was deployed in Darfur and given the responsibility to monitor the implementation of the HCA.

20. During a conference in Haskanita around October-November 2005, the original SLA/M split into two factions: the SLA/MM under the leadership of Minni Arko Minawi, and the SLA/AW under the leadership of Abdul Wahid El-Nour.

21. The Darfur Peace Agreement ("DPA") was signed in Abuja, Nigeria on 5 May 2006. While all parties to the conflict participated in the talks, only the GoS and the SLA/MM signed the DPA. After signing the DPA, SLA/MM aligned itself with the GoS. Some of the factions that did not sign the DPA signed the Declaration of Commitment to the DPA with the Government of Sudan. The SLA/AW and the JEM did not sign the Agreement. After the DPA, fighting continued and is still ongoing, between the GoS and the SLA/MM on the one hand, and the other non-signatory rebel forces on the other.



These peace agreements were never fully implemented, and the hostilities between the GoS, and the SLA/M, the JEM and other opposition armed groups have continued in the Darfur region.

## **B. THE DEPLOYMENT AND MANDATE OF THE AFRICAN UNION MISSION IN SUDAN (AMIS) TO DARFUR**

22. The African Union Mission in Sudan (AMIS) was set up by the Peace and Security Council of the African Union (AU) in response to the situation in Darfur, the Sudan. The catalyst for its formation was the signing of the HCA on 8 April 2004 by the GoS, SLA/M and JEM. This agreement provided for the establishment of the Ceasefire Commission (CFC) mandated to operationalize the ceasefire mechanisms put in place by the HCA, as well as to monitor and submit reports of alleged ceasefire violations to a Joint Commission (JC).

23. On 25 May 2004, the AU Peace and Security Council decided to deploy AMIS at the request of the parties. AMIS had a civilian component and a protection force element “to support the work of the Ceasefire Commission (CFC)” in ensuring the effective monitoring of the HCA. The mandate of AMIS was “(a) to monitor and observe compliance with the Humanitarian Ceasefire Agreement of 8 April 2004 and all such agreements in the future; (b) to assist in the process of confidence building; and (c) to contribute to a secure environment for the delivery of humanitarian relief and, beyond that, the return of IDPs and refugees to their homes [...]”

24. On 26 May 2004, the UN Security Council issued a Presidential statement expressing “*its full and active support for the efforts of the African Union to establish the ceasefire commission and protection units*” and called on the opposition groups and the GoS “*to facilitate the immediate deployment of monitors in Darfur.*” In several statements, the Council also called on the parties to cooperate fully with AMIS.

25. The deployment of AMIS troops began in June 2004. On 20 October 2004, the AU enhanced AMIS’ size and mandate, to transform it into “a full-fledged peacekeeping

mission” to ensure effective implementation of the HCA. The enhanced mission included military, civilian police and civilian personnel.

26. AMIS consisted of eight sectors. Sector 8 was located in Al Deain, South Darfur and had four military observer group sites (MGS) including MGS Haskanita, and one military observer team site (MTS), which reported to the Al Deain Headquarters. Each MGS, including MGS Haskanita, consisted of Military Observers (MILOBs), Civilian Police (CIVPOLs), the Protection Force (PF), interpreters and representatives of the parties to the conflict (GoS and rebels). When these two groups went out to the field to conduct their activities, the Protection Force (PF) was responsible for their protection.

27. On 9 November 2004, the GoS, SLA/M and JEM signed a Protocol on the Enhancement of the Security Situation in Darfur in accordance with the HCA. In the Protocol, the parties agreed to “*extend[.] unreserved cooperation to AMIS to enable it discharge its mandate and operational tasks*” as set out in 20 October 2004 AU Peace and Security Council Communiqué.

28. On 31 July 2007, the UN Security Council adopted Resolution 1769 authorizing the establishment of the AU/UN Hybrid operation in Darfur (UNAMID) which would “incorporate AMIS personnel and the UN Heavy and Light Support Packages to AMIS” and assume authority from AMIS “as soon as possible and no later than 31 December 2007.”

### **C. BACKGROUND OF THE REBEL GROUPS WHICH PARTICIPATED IN THE ATTACK ON THE MGS HASKANITA**

#### **i. The JEM Splinter Group under the command of [Redacted] BANDA**

29. Between May 2004 and May 2007, several top JEM officials left JEM to establish their own rebel factions such as the National Movement for Reform and Development (NMRD), the Field Revolutionary Command (FRC), and the JEM Peace Wing.

30. From its inception, JEM Chairman Dr. Khalil Ibrahim had been absent from the field. The power for running the affairs of the movement in Darfur accumulated in the hands of Abu Garda and **BANDA**, as Vice President and Commander in Chief respectively. During this period, **BANDA** reported to Abu Garda.

31. At the end of May 2007, some JEM troops, [Redacted] moved from Wadi Hawar to Haskanita [Redacted].

32. Around June 2007, Dr. Khalil Ibrahim returned to Darfur to reassert his authority over the JEM forces in the field. During this period internal tensions were brewing within the JEM leadership. **BANDA** was conspiring with Abu Garda to depose Dr. Khalil Ibrahim and to collectively lead the movement. On 1 July 2007, Dr. Khalil Ibrahim issued a decree (Decree No. 27 of 2007), dismissing **BANDA** from his position as Commander in Chief of the JEM forces.

33. **BANDA** left Wadi Hawar with vehicles, weapons and JEM soldiers loyal to him, and moved towards Wadi Sayra in South Darfur. Abu Garda sided with **BANDA** and the two commanders started the process of forming a new group under a collective leadership.

34. The JEM Interim Military Council was opposed to **BANDA**'s dismissal and issued several statements to that effect. The statement of 3 July 2007 declared Dr. Khalil Ibrahim's dismissal of **BANDA** as unconstitutional and called on the Legislative and Executive Councils of the JEM to review the decision within 48 hours. The statement of 27 July 2007, signed by 74 commanders, purported to relieve Dr. Khalil Ibrahim of his position as Chairman of JEM and to hand over his responsibilities to the Interim Military Council headed by **BANDA** as Commander in Chief, pending an extraordinary general conference.

35. On 29 July 2007, the JEM Eastern Sector Command of the Interim Military Council issued a statement signed by 10 JEM commanders denouncing the dictatorial leadership of Dr. Khalil Ibrahim and contested the removal of **BANDA** as Commander General. The

spokesperson of the group also announced the group's removal of Dr. Khalil Ibrahim from his position as Chairman /President of JEM.

36. Sometime at the end of August 2007, **BANDA** contacted the JEM troops based in the Haskanita area, [Redacted] and instructed that JEM commanders and troops stationed there should leave the area and join the JEM forces under the command of Abu Garda and himself. This was reported to Dr. Khalil Ibrahim, who then moved with about 30 vehicles and troops, [Redacted] to the Haskanita area to withdraw the troops and prevent them from joining forces with Abu Garda and **BANDA**, while others remained in Haskanita.

37. When Dr. Khalil Ibrahim arrived in the Haskanita area in early September 2007, he found that some of his JEM troops and vehicles had already moved to join forces with **BANDA** and Abu Garda. After some negotiations, most of the troops rejoined Dr. Khalil Ibrahim's JEM movement. The remaining JEM troops moved with vehicles towards Dar es Salaam (also known as Kattal) to join forces with Abu Garda and **BANDA**.

38. Around 20 September 2007 Dr. Khalil Ibrahim left the Haskanita area with his troops, [Redacted] and moved towards the North.

39. In the meantime, on or about 18 September 2007, **BANDA**, with two vehicles and some troops, met Abu Garda in Wadi Andour. Abu Garda was with some of his troops, [Redacted]. The two commanders then travelled together to Wadi Sayra and from there to Dar es Salaam and eventually to Haskanita area. There, more commanders and troops, [Redacted], joined the JEM Splinter Group.

40. Dr. Khalil Ibrahim continued to lead the JEM troops in the North while Abu Garda and **BANDA** had effective command and control over forces of the JEM Splinter Group, including the JEM Splinter Group that participated in the later attack – the subject of these charges - on the MGS Haskanita on 29 September 2007.

41. On 26 September 2007, Dr. Khalil Ibrahim issued another decree (Decree No. 28 of 2007), terminating the appointment of Abu Garda as Head of JEM Western Sector and Advisor to the President of JEM.

42. The JEM Splinter Group thus effectively came into existence as an armed rebel group, in or around July 2007, when Dr. Khalil Ibrahim dismissed **BANDA** from mainstream JEM. When he was dismissed, **BANDA** left with troops and vehicles from the mainstream JEM and joined forces with Abu Garda. This group operated independently of the main JEM group.

43. Abu Garda and **BANDA** continued to present their own group as the real JEM and continued to operate under the name of “Justice and Equality Movement”. This group was also variously referred to by a number of other names such as “Justice and Equality Movement”, “JEM-Bahr”, “Justice and Equality Movement-Branch of Abu Garda”, “JEM-CELL”, “Abdallah Banda’s JEM Group”, “BAHR Abu Garda’s people”, “BAHR’s Group”, “Bahr Abu Garda Group”, “the splinter group” and “JEM splinter Group” (hereinafter referred to in this DCC as the “JEM Splinter Group”). They still carried on military operations using JEM vehicles and the JEM troops that had joined forces with them and continued to maintain that *they* had dismissed Dr. Khalil Ibrahim from JEM. Abu Garda still carried on as “Chairman,” while **BANDA** continued to carry out his functions as Commander in Chief of this JEM splinter group.

44. Abu Garda and **BANDA** continued to operate as leaders of this JEM Splinter Group until 4 October 2007, when it was formalised through a “Founding Declaration” announcing a new collective leadership for the Sudanese Justice and Equality Movement consisting of fifteen members headed by Abu Garda. Abu Garda and **BANDA** called their group JEM-Collective Leadership (JEM-CL). In the Declaration, Abu Garda decreed the reinstatement of **BANDA** as commander-in-chief of the Movement, effective from 4 October 2007.

## ii. SLA Unity

45. After the signing of the DPA on 5 May 2006, further divisions appeared in SLA/AW. These divisions culminated in the further split of the SLA/M into various rebel factions including the SLA-Free Will, the SLA-Classic, the Transitional Revolutionary Council (a Coalition which later became the Group of 19 (G-19)), and the SLA/AW.

46. In May 2007, commanders from the breakaway factions from SLA/AW and SLA/MM formed a new faction called the Sudan Liberation Movement-Unity Command (“SLA-Unity”) under the Chairmanship of Abdallah Yahya. [Redacted] and **JERBO** was appointed as “Operations Room Commander” and given responsibility for military operations. [Redacted].

47. Between May 2007 and about 30 September 2007, **JERBO** was based in the Haskanita area in South Darfur and was the highest ranking military commander of the SLA-Unity in the area. The other commanders who were based in the area under the command of **JERBO** [Redacted].

## iii. SLA-Abdul Shafie faction

48. On 25 July 2006, there was a further split in SLA/AW, and some troops joined a new faction headed by Abdul Shafie as the Chairman (“SLA-Abdul Shafie”).

49. Sometime in September 2007, the SLA-Abdul Shafie forces based in eastern Jebel Marra were attacked by the GoS and SLA/AW. They fled the area on or about 17 September 2007 and asked **JERBO** for assistance. SLA-Unity troops led by **JERBO** moved from Haskanita and rescued between 200 to 280 of the SLA-Abdul Shafie troops. **JERBO** and the leaders of the SLA-Abdul Shafie reached an agreement for joint operations.

50. From the time the SLA-Abdul Shafie troops joined the SLA-Unity until immediately after the attack on the MGS Haskanita on 29 September 2007, the two groups operated jointly under the *de facto* operational leadership of SLA-Unity and its Operations Room Commander **JERBO**.

**iv. Cooperation and Joint Military operations between SLA-UNITY and JEM**

51. Since its creation in May 2007, SLA-Unity collaborated with JEM in joint military operations. As early as 21 June 2006, **BANDA** (the Commander in Chief of JEM), seven other JEM officers, and representatives of SLA including Adam Bakhit (the Chief of the Staff Council) signed a military and political agreement in Bir Markhiy for coordination of military operations. Further, on 30 July 2007, JEM and SLA-Unity issued a joint declaration affirming their political cooperation and partnership in the Darfur conflict. JEM and SLA-Unity carried out numerous joint military operations, including, in Wadbanda in Kordofan on 29 August 2007, in Adila on 1 August 2007, and in Haskanita on 10 September 2007. During this time, the Commanders and soldiers who participated in these joint operations joined the JEM Splinter Group, under the command of Abu Garda and **BANDA**.

52. The JEM Splinter Group and SLA-Unity (together with troops from the SLA-Abdul Shafie) also participated jointly in the fighting that took place in Dalil Babiker against the GoS and the attack on the MGS Haskanita – both on 29 September 2007.

**D. EVENTS LEADING UP TO THE ATTACK ON THE MGS HASKANITA ON 29 SEPTEMBER 2007**

**i. The Events of 10 September 2007**

53. As described in paragraph 36 above, Dr. Khalil Ibrahim went to the Haskanita area to prevent his JEM forces from joining Abu Garda and **BANDA**'s JEM splinter Group. On the morning of 10 September 2007, GoS forces in the Haskanita area attacked JEM troops under the command of Dr. Khalil Ibrahim and SLA-Unity troops under the command of **JERBO**. The fighting continued till around 6pm when the rebels defeated the GoS forces. SLA-Unity Commanders who participated in the fighting included **JERBO**, [Redacted] [Redacted]. During the fighting, the rebel forces captured some GoS soldiers, vehicles and equipment and some of the GoS soldiers fled on foot in the direction of the MGS Camp in Haskanita.

54. After the fighting was over, some JEM forces, [Redacted] went to the MGS Haskanita where they met with AMIS personnel, [Redacted].

55. During this meeting, [Redacted] informed the AMIS personnel of the details of the attack and of their suspicions that Captain Bashir (the GoS representative in the camp) may have provided coordinates of the location of the rebel forces to the GoS forces that morning. [Redacted] demanded that Captain Bashir be removed from the camp. He further stated that Captain Bashir's continued presence in the camp was unfair since there had been no corresponding rebel representatives in the camps since the end of 2006 and the rebel movements were requesting the removal of all GoS representatives from all AU bases. He also demanded that any GoS soldiers that may have sought refuge in the camp be handed over to them as prisoners of war. [Redacted] threatened that if the GoS attacked them again, the rebel forces would attack the MGS Haskanita.

56. The AU informed the rebel group that they were not harboring any GoS soldiers. The complaint of the rebels was communicated to the AMIS Sector Headquarters in Al Dein. Soon afterwards, an AMIS helicopter was dispatched and Captain Bashir was removed from the MGS Haskanita in the presence of rebel troops.

**ii. Departure of Dr. Khalil Ibrahim and his forces from & the arrival of the JEM Splinter Group under the command of Abu Garda and BANDA to the Haskanita area.**

57. On or about 17 September 2007, Dr. Khalil Ibrahim and the JEM troops [Redacted] left the Haskanita area in South Darfur and moved towards the North of Darfur.

58. [Redacted].

59. On or about 21 September 2007, as Dr. Khalil Ibrahim and his loyal JEM forces were crossing Al Fashir heading towards North Darfur, **BANDA**, Abu Garda, and their troops moved in the opposite southward direction towards Dar es Salaam.



60. On or about 25 September 2007, **BANDA** and Abu Garda arrived in Dar es Salaam with some of the JEM Splinter Group troops. In the meantime, **JERBO**, his SLA-Unity forces [Redacted] moved to Dar es Salaam, where they met **BANDA** and Abu Garda. **JERBO** spoke with **BANDA** and Abu Garda briefly. The other SLA-Unity and SLA Abdul Shafie troops continued on to Haskanita where some of the JEM splinter group and SLA-Unity troops were based, and spent the night there. The same day, **JERBO** and **BANDA** also moved to Haskanita and joined the JEM splinter group and SLA-Unity forces there.

61. On or about 27 September 2007, Dr. Khalil Ibrahim's JEM forces, [Redacted], arrived in Kuma, North Darfur. There, they were attacked by the combined GoS and Janjaweed forces. [Redacted].

62. On 28 September 2007, some members of the JEM splinter group, SLA-Unity and the SLA-Abdul Shafie [Redacted] went to Dalil Babiker, where other JEM splinter group and SLA-Unity troops were already based. **BANDA** remained in Haskanita. The same day, Abu Garda joined **BANDA** in the Haskanita area with some JEM splinter group forces and commanders, [Redacted].

63. With the departure of Dr. Khalil Ibrahim's JEM forces to the North, the JEM Splinter Group under the command of Abu Garda and **BANDA**, the SLA-Unity and SLA-Abdul Shafie groups under the command of **JERBO** were the only rebel forces in Haskanita prior to the attack on the MGS Haskanita on 29 September 2007.

64. [Redacted].

### iii. Events of 29 September 2007

65. In the morning of 29 September 2007, some SLA-Unity Commanders, [Redacted], went to meet with Abu Garda and **BANDA**. While together, [Redacted] received a phone call informing him that the GoS was launching an attack in the area. The GoS forces had in fact attacked the joint JEM Splinter Group, SLA-Unity and SLA-Abdul Shafie forces

near their camp in Dalil Babiker. **JERBO** was with the rebel troops and participated in the fighting in Dalil Babiker.

66. Having sustained heavy losses, including to personnel and equipment, the JEM Splinter group and the combined SLA-Unity and SLA-Abdul Shafie forces withdrew from their camp in Dalil Babiker and moved to another location nearby.

**iv. Planning of the Attack on MGS Haskanita on 29 September 2007**

67. Shortly after the fighting ended, **BANDA**, [Redacted] and some JEM Splinter Group troops headed in the direction of the SLA-Unity base in Dalil Babiker. [Redacted] went to the base while **BANDA** [Redacted] carried on to a location where a meeting later took place. The other commanders started to arrive at the meeting location.

68. At this location, [Redacted] **BANDA** and **JERBO** held a meeting with commanders and troops of JEM Splinter Group and SLA-Unity [Redacted]. The other JEM Splinter Group and SLA-Unity commanders and troops were scattered around the meeting place, observing and waiting for the commanders to finish their meeting.

69. [Redacted]. These commanders agreed amongst themselves to attack the MGS Haskanita Camp. As the meeting ended, the commanders clapped and then moved towards their vehicles and troops that were waiting around in the area. **BANDA**, **JERBO**, [Redacted] ordered their troops to board their vehicles and to “move” with them. As the troops were preparing to board their vehicles, **JERBO** [Redacted] told some of the troops that the JEM Splinter Group and the SLA-Unity forces were going to attack the MGS Haskanita. After the attack **JERBO** told some of his troops that at all times the intended target of their attack was the MGS Camp.

70. As the forces were moving towards the MGS Haskanita, **JERBO** instructed some of the rebel troops to position themselves at an access road close to the AU MGS Haskanita, and to block the area to prevent vehicles from entering or leaving.

71. **BANDA, JERBO** [Redacted] led the rebel convoy in the direction of the MGS Haskanita. [Redacted].

#### **E. THE ATTACK ON THE MGS HASKANITA ON 29 SEPTEMBER 2007**

72. At about 7 pm on 29 September 2007, about 1000 troops from the JEM Splinter Group and the SLA-Unity and SLA-Abdul Shafie forces, led by **BANDA, JERBO** and other unit commanders, launched a surprise attack on the MGS Haskanita. The rebel forces moved in a convoy of approximately 30 vehicles and were armed with various types of weapons including 106 calibre weapons, dushkas, AK-47's, anti aircraft weapons and rocket propelled grenades (RPGs).

73. There were about 157 AMIS personnel based at the MGS Haskanita comprising 7 MILOBS, 10 CIVPOLs and 140 PF soldiers. There were also civilian personnel in the MGS, [Redacted] working for Pacific Architects and Engineers ("PAE"), a company that provided logistic support to peacekeeping operations and a local interpreter. Only the members of the protection force were armed.

74. At the time the attack took place, the AMIS personnel were getting ready to pray and break their Ramadan fast. The rebel forces deliberately timed their attack so that the AMIS personnel in the camp would be taken by surprise and be unable to effectively defend themselves.

75. Once they got close to the camp, the JEM Splinter Group and the SLA-Unity and SLA-Abdul Shafie, forces including **BANDA** and **JERBO**, started firing at the MGS Haskanita compound. Then they attacked and destroyed the communication installations in the compound, killing one radio operator and causing injury to another.

76. At the northern entrance gate, the JEM Splinter Group, SLA-Unity and SLA-Abdul Shafie forces shot and killed the AMIS guards stationed there. In response to the

attack, the AMIS protection force fired shots in the air to warn off the attackers. This did not deter the attackers, and they persisted in their attack on the camp. The AMIS personnel maneuvered an Armed Personnel Carrier (APC) towards the front gate. [Redacted].

77. Accordingly, the JEM Splinter Group continued to attack. The SLA-Unity and SLA-Abdul Shafie fired at and destroyed the APC. L.Cpl Danjuma Madaki, who was manning the APC, was shot by the attackers and killed. His body was found ridden with shrapnel. Once the APC was destroyed, the attackers led by **BANDA, JERBO**, [Redacted] also entered the camp. Once they entered, the JEM Splinter Group, SLA-Unity and the SLA-Abdul Shafie forces headed in different directions around the camp. One group headed straight for the logistics area where the vehicles, fuel tanks and food stores were located, and another group headed towards the living quarters.

78. When the attack started, the AMIS personnel ran in all directions. Some, [Redacted], hid in the trenches around the MGS Haskanita Compound, while others like [Redacted] and Major Ibrahim Diagne hid in their tents.

79. During the attack, some of the local Sudanese staff members assigned to the MGS Haskanita, [Redacted] who was working with PAE, collaborated with the attacking rebel forces.

80. The attackers pursued the AMIS personnel in the trenches and in their tents and shot at them, killing some and causing severe injury to others. The attacking forces repeatedly demanded that the AMIS personnel hand over their weapons. Those who refused were shot and killed or severely injured. [Redacted], a CIVPOL Officer, took cover in one of the trenches with a Protection Force (PF) member. Some of the attackers approached where they were and demanded their weapons, shouting “gun...gun”. The PF member did not respond, and one of the attackers shot him. The attacker then repeated the words “gun, gun”. [Redacted], who was unarmed, also did not respond. The attacker shouted “Allahu Akbar” and then shot him in the back. These attackers then moved to

another part of the camp, still demanding weapons. Shortly afterwards, they returned to where [Redacted] was lying and lifted him up to see if he was dead. When they saw that he was covered in blood, they assumed that he was dead and dropped him back to the ground. Although [Redacted] survived, he sustained severe injuries as a result of being shot. The PF member died from the gunshot injury that he sustained.

81. Sgt. Mayoro Kebe (CIVPOL) left his hiding place and returned to his tent to retrieve his money. While he was in the tent, he heard one of the attackers approaching and hid under his bed. The attacker saw him under the bed and shot and killed him there.

82. Major Gaolatine Tiro, a military observer (MILOB), was shot twice during the attack. First he was shot in the back as he came out of the MILOB Office. He managed to reach the MGS clinic where the medics dressed his wound. When he left the clinic and headed towards the PAE Office, he was shot again and killed.

83. During the attack, some of the local Sudanese staff including [Redacted] collaborated with the attacking rebel forces. During the attack he was armed with an AK-47 rifle and dressed like the attackers. Aided by local civilian contractors in the camp, the attackers then conducted a methodical search of the camp for property that they could loot. Major Ibrahim Diagne, a MILOB from Mali, hid in his tent with a local Sudanese man [Redacted]. [Redacted] led the attackers to Major Ibrahim Diagne's tent. The attackers found Major Ibrahim Diagne. The local interpreter warned him not to say much to the attackers because they were dangerous and could be on drugs. One of the attackers hit the interpreter on the head and back with the butt of a gun, causing him to faint. The attackers demanded money. Major Ibrahim Diagne explained that he had no money as he had just returned from holiday. The attackers shot him more 30 times and killed him on the spot. His body was found in a pool of blood covered with gunshot wounds including to his ankle, arm, chest and the back of his head.

84. The JEM Splinter Group and the SLA-Unity forces led by **BANDA** and **JERBO** shot and killed 10 AMIS peacekeepers. Two (2) other peacekeepers later died from

injuries sustained during the attack. The attackers also shot many AU personnel, [Redacted]. All sustained severe gunshot injuries as a result of the attack. One officer went missing after the attack and to date remains unaccounted for.

85. During the attack the JEM Splinter Group troops and the SLA-Unity troops also engaged in large-scale looting of the MGS Haskanita camp. The attackers looted both property belonging to AMIS and the personal property of the AMIS personnel, including about 17 vehicles belonging to AMIS, ammunition and weapons from the armory, large quantities of fuel, food, refrigerators, laptops, cell phones, thuraya satellite phones, video cameras, uniforms, jewellery, mattresses, suitcases, tents and money belonging to the AMIS personnel. They also looted money belonging to PAE from their safe deposit box. **BANDA** and **JERBO** also looted fuel from inside the MGS Haskanita camp.

86. In addition to the destroying the APC, the attackers vandalised AMIS' equipment and property and set fire to some of the installations, armory and residential tents in the Camp, destroying them completely.

87. [Redacted]. When they got to the camp they looted fuel and other personal property belonging to the AMIS personnel, including clothing, suitcases and a camera. As [Redacted] and others were leaving the MGS Haskanita Camp, they saw a broken-down AU vehicle that had been left behind by the attackers. [Redacted].

88. After **BANDA** and **JERBO** together with their respective JEM Splinter Group and the SLA-Unity forces left the MGS they too converged at the location [Redacted]. From that location [Redacted], **BANDA**, **JERBO** and their forces moved to another location where they joined more of their troops. The commanders then inspected their troops who had sustained injuries during the attack. From this second location, [Redacted], **BANDA**, **JERBO** and their forces, moved to Isban and then on to Jebel Adola.

89. In the area around Jebel Adola, [Redacted], **BANDA**, **JERBO** and their unit commanders, [Redacted], held a meeting after which **BANDA** ordered some of the JEM

Splinter Group troops to cover the looted vehicles with mud so that they would be unidentifiable.

90. In Jebel Adola, [Redacted], **BANDA**, **JERBO** and other JEM Splinter Group and SLA Unity commanders agreed amongst themselves on how the looted vehicles would be shared. [Redacted], **BANDA** and **JERBO** shared the looted vehicles between their respective groups. [Redacted] **BANDA** group took eight of the looted AU vehicles and the rest went to the SLA-Unity forces. Some of these vehicles were subsequently sold, while some, [Redacted], were exchanged with vehicles belonging to the Chadian Armed Forces. **BANDA** was involved in the sale and exchange of these looted vehicles.

91. Some of the items looted were also used personally by the attackers. Some attackers were seen later wearing uniforms and jewellery that had been looted during the attack. Other items, including telephones and computers, were sold by the rebel fighters. Some of the money that was looted during the attack was also used by the rebel fighters to buy personal items, including alcohol. Sometime in December 2007, [Redacted], was seen in Ba'hai using an AU vehicle.

#### **F. FACTS RELEVANT TO ARTICLE 8 *CHAPEAU* ELEMENTS**

92. The war crimes alleged in Counts 1, 2, and 3 of this DCC occurred in the context of and were associated with a protracted period of armed conflict of a non-international character between the Government of Sudan (GoS) together with forces under its control and the various armed rebel groups that operated in the Darfur region including the JEM Splinter Group and the SLA-Unity as described in paragraphs 12 to 21 and 53 and 65 above.

93. As at the time of the attack at the MGS Haskanita, both the JEM Splinter Group and the SLA-Unity forces under the command of [Redacted], **BANDA** and **JERBO** had the ability to carry out sustained military operations for a prolonged period of time. At the relevant time, the SLA-Unity and the JEM Splinter Faction controlled certain areas of the

territory in the Darfur region, including much of Jebel Marra, North Darfur, Dalil Babikir, and in particular, the Haskanita area.

94. The armed conflict played a substantial part in the ability of the suspects to commit the crimes charged in this DCC, as well as the manner in which and the purpose for which the attack was led.

95. On 29 September 2007 the JEM Splinter Group troops under the command of [Redacted] **BANDA** and the SLA-Unity troops under the command of **JERBO** were engaged in the conflict against the GoS, JEM and SLA-Unity on the one hand fought the GoS and forces under its control, on the other to gain control over the Haskanita area. Since the arrival of the rebel alliance (JEM/SLA-Unity) in the area in the period leading up to the attack the GoS was continually bombing Haskanita village with a view to forcing the rebels' alliance to withdraw. Therefore, throughout the time that they were present in Haskanita area, the JEM Splinter Group under the command of [Redacted] **BANDA** and the SLA-Unity under the command of **JERBO** were actively involved in the conflict and were fighting the GoS. It was in this context that the plan to attack the MGS Haskanita was devised and subsequently executed by the commanders of the JEM Splinter Group and the SLA-Unity forces.

96. **BANDA** and **JERBO**, together with other commanders from both the JEM Splinter Group and SLA-Unity [Redacted], planned the attack on the MGS Haskanita and led their troops in the attack as part of JEM's and SLA-Unity's military campaign, and in the context of their roles as commanders of their respective rebel factions.

97. On 21 June 2006, JEM signed a military and political agreement with SLA, effectively recognising that they were both fighting a war against the GoS. **BANDA** signed the agreement on behalf of the JEM. [Redacted]. JEM-CL subsequently participated in the Juba Conference (aimed at harmonizing the positions of the rebel factions), and the peace conference in Sirte, Libya on 27-30 October 2007.



98. **BANDA** and **JERBO** were well aware of factual circumstances that established the existence of an armed conflict in Darfur at the time they planned and led the troops to attack the MGS Haskanita. At the time of the attack, **BANDA** was the Commander in Chief of the JEM Splinter Group forces that attacked the MGS Haskanita, and continued to exercise authority in this position as overall commander and commander in chief of the JEM-CL, and later in the URF - both parties to the armed conflict. As regards **JERBO**, at the time of the attack he was the highest ranking military commander for the SLA-Unity in the Haskanita area. **BANDA** and **JERBO** have occupied top positions in their respective rebel groups, and they have carried out such important functions which necessarily required that they were aware of the existence of the armed conflict.

99. Therefore, there is sufficient evidence to establish substantial grounds to believe that the crimes committed during the attack on the MGS Haskanita on 29 September 2007 and the alleged conduct of **BANDA** and **JERBO** took place in the context of and was associated with an armed conflict not of an international character. Furthermore, **BANDA** and **JERBO** were fully aware of the factual circumstances that established the existence of the armed conflict at the time relevant to the crimes charged in this DCC.

## **G. FACTS RELEVANT TO INDIVIDUAL CRIMES CHARGED**

### **i. Facts relevant to Count 1: Violence to Life - Murder (Article 8(2) (c) (i)) and Attempted Murder (Article 25(3) (f))**

100. On 29 September 2007, **BANDA** and **JERBO** together with other senior commanders of JEM Splinter Group and SLA-Unity planned and carried out the attack on AMIS personnel at the MGS Haskanita Camp.

101. During the attack, the rebels 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), Martin Matthias (Nigeria), Haruna Peter (Nigeria), Duniya Audu (Nigeria), Samuel Orokpo (Nigeria), John Dogara (Nigeria), Tayo Alawo (Nigeria), Usman Saleh (Nigeria),

Danjuma Madaki (Nigeria), Mayoro Kebe (Senegal) and Ibrahim Diagne (Mali). Some of those killed were shot in blatant execution style murders, in particular Mayoro Kebe and Ibrahim Diagne.

102. As a result of the attack, about eight AU personnel, [Redacted] sustained severe injuries. These individuals survived the attack only as a result of assistance they received after the departure of the JEM Splinter Group and SLA Unity forces.

103. At all times relevant to the charges, AMIS personnel, installations, material, units and vehicles stationed at MGS Haskanita camp were involved in a peacekeeping mission in accordance with the UN Charter. Through a number of UN Security Council resolutions (including Resolution 1556 of 30 July 2004 and Resolution 1564 of 18 September 2004) and Presidential Statements (including those issued on 26 May 2004 and 13 October 2005), the Security Council encouraged and endorsed the deployment of AMIS, and demanded that parties to the conflict cooperate fully with AMIS. In a statement by the UN on 2 October 2007 condemning the ‘murderous attack’ on MGS Haskanita, the UN also confirmed that the AMIS were peacekeepers.

104. As a peacekeeping force, AMIS was deployed to Darfur with the consent of the GoS and the rebel factions. The AMIS mission, in particular in Haskanita, was a neutral and impartial force. They did not involve themselves in the fighting between the GoS forces and the various rebel groups. AMIS personnel took no active part in hostilities; according to the AMIS Rules of Engagement, use of deadly force was authorized for self-defence of AMIS personnel. Therefore AMIS personnel and installations at MGS Haskanita were entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

105. At all material times, **BANDA**, **JERBO**, and the other commanders and troops of the JEM Splinter Group and SLA-Unity forces under their command knew the mandate of AMIS, and that AMIS personnel were protected and could not be subjected to any attacks.

106. At all times relevant to this DCC, **BANDA, JERBO** and the other commanders and troops from the JEM Splinter Group and the SLA-Unity forces under their command, knew of the existence of the MGS in Haskanita through their prior interactions with AMIS generally and the AMIS personnel based in the MGS Haskanita prior to the attack. Many of the JEM Splinter Group commanders and troops had operated in the Haskanita area as part of JEM under Dr. Khalil Ibrahim from about May 2007, while the SLA-Unity commanders and troops had operated in Haskanita for over a year prior to the attack. In fact both groups had established a base in Dalil Babiker, just about an hour's drive from Haskanita. The rebel commanders and troops knew the exact location of the MGS Haskanita and knew, for instance, that there was no GoS military base in Haskanita. Leaders of JEM, including [Redacted] **BANDA**, and SLA-Unity had had significant dealings with AMIS and had even made statements recognising the neutrality of the AMIS forces and the need to ensure the protection of its personnel.

**ii. Facts relevant to Count 2: Intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a peacekeeping mission (Article 8(2)(e)(iii))**

107. The violent attack on the MGS Haskanita on 29 September 2007 by **BANDA, JERBO**, [Redacted] and troops of the JEM Splinter Group and SLA-Unity under their command and control, was directed against the AMIS personnel, installations, material, units and vehicles involved in a peacekeeping mission in accordance with the UN Charter. AMIS personnel and objects were entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

108. **BANDA, JERBO** and the other commanders from the JEM Splinter Group and SLA-Unity had intended to direct their attack of 29 September 2007 against the AMIS personnel and objects in the MGS Haskanita. At the time of the attack, the attackers knew that they were attacking AMIS in the MGS Haskanita Compound.

109. **BANDA, JERBO** and the other commanders and troops from the JEM Splinter Group and SLA-Unity knew that the MGS Haskanita Camp was an AMIS Camp and not a GoS Camp. [Redacted]. After the meeting and before the attack, **JERBO** also told his troops that they were going to attack the MGS Haskanita. Additionally, the layout and markings of the MGS Haskanita were clear, distinct and markedly different from GoS camps.

110. At all times relevant to the charges, the attackers also knew that the personnel in the MGS Haskanita were AMIS personnel and not GoS soldiers. Even in the course of the attack, the attackers had direct contact with the AMIS personnel when they were demanding their possessions and attempting to disarm them. Some of the AMIS personnel that were attacked were dressed in AMIS military fatigues which were clearly distinguishable. During the attack, the rebels looted at least seventeen (17) AMIS vehicles, all of which were marked with the sign “AMIS”. They also pillaged military uniforms which bore emblems and symbols of the countries of their owners.

### **iii. Facts relevant to Count 3: Pillaging (Article 8(2)(e)(v))**

111. **BANDA, JERBO** and the other commanders and troops of the JEM Splinter Group and the SLA-Unity forces under their command and control appropriated numerous items from the MGS Haskanita described in paragraphs 85 and 87 above, belonging to AMIS and the AMIS personnel, without the consent of the owners and with the intention of depriving AMIS and its personnel of the property. The pillaging of the MGS Haskanita was accompanied by violence causing death and injury to peacekeepers and the destruction of AMIS property as described in paragraphs 75 to 84, and 86 above.

112. The attack and pillaging had a significant negative impact on the ability of AMIS to discharge its mandate. As a result of the attack, AMIS initially suspended and subsequently reduced all of its activities in the Haskanita area.

113. **BANDA** and **JERBO** intended to deprive the AMIS and the peacekeepers of the properties pillaged from Camp. None of the pillaged items were returned to AMIS.

**BANDA** and **JERBO** and troops under their command and control, appropriated the property for their private or personal use, as described in paragraph 89 to 91 above.

### **III. INDIVIDUAL RESPONSIBILITY: ARTICLE 25(3)(a) OF THE ROME STATUTE**

114. Without excluding any other applicable mode of liability, **BANDA** and **JERBO** are individually criminally responsible as co-perpetrators or as indirect co-perpetrators under Articles 25(3) (a) and/or 25(3) (f) for the war crimes referred to in Article 8 of the Rome Statute, and as described in this DCC, which they committed jointly and with other forces from SLA-Unity and JEM.

#### **A. OBJECTIVE ELEMENTS OF JOINT COMMISSION OF A CRIME**

##### **i. Existence of an Agreement or Common Plan between **BANDA** and **JERBO****

115. There existed a common plan between **BANDA**, **JERBO** and other senior commanders of the JEM Splinter Group and the SLA-Unity [Redacted], who participated in the meeting in which they agreed amongst themselves to attack the MGS Haskanita as described in paragraphs 68 and 69 above, pursuant to which the crimes charged in this DCC were committed in the course of the attack on the MGS Haskanita on 29 September 2007.

116. Thus, the attack on the MGS Haskanita was executed in furtherance of the plan and orders given by **BANDA** and **JERBO** directly and through other members of the common plan, [Redacted].

117. The above demonstrate the coordinated and pre-planned nature of the attack. The meeting held before the attack was followed by the orders of the commanders to their respective troops to board their vehicles and move forward. Therefore, the events immediately resulting from these orders (i.e. the actual attack on the MGS Haskanita) further demonstrate the pre-planned and coordinated nature of the attack.

118. The organised and co-coordinated manner in which the attack was executed, the involvement of the two rebel groups, the timing of the attack, the attack itself, and the sequence of the events prior to, during and immediately following the attack, all demonstrate that **BANDA** and **JERBO** and their respective forces were acting pursuant to a common plan agreed upon by them and their subordinate commanders. The active collaboration of some of the local staff working at the MGS Haskanita during the attack demonstrate that the attack was pre-planned by **BANDA** and **JERBO** among others and their respective forces and that they were acting pursuant to a common plan agreed upon by them and their subordinate commanders.

**ii. The Coordinated Essential Contribution by Co-Perpetrators  
Resulting in the Realization of the Objective Elements of the Crime**

119. **BANDA**, **JERBO** and commanders [Redacted] exercised joint control over the commission of the crimes. Each was assigned essential tasks in the implementation of the plan to attack the MGS Haskanita and each had the ability to frustrate the commission of crimes by not performing his assigned tasks **BANDA** and **JERBO** contributed by :

- (1) by taking part in the planning meeting and agreeing on the common plan;
- (2) by ordering their respective troops directly and through their subordinate commanders to attack the MGS;
- (3) by providing needed troops, equipment and materials to carry out the attack;
- (4) by personally leading and participating in the attack together with commanders and troops, and looting of the MGS Haskanita;
- (5) by participating personally in the distribution and/or disposal of some of the property looted from the MGS Haskanita; and
- (6) by failing to punish any of the perpetrators from their respective groups involved in the attack.

**B. OBJECTIVE ELEMENTS OF COMMISSION OF THE CRIME  
THROUGH ANOTHER PERSON, REGARDLESS OF WHETHER THAT  
OTHER PERSON IS CRIMINALLY RESPONSIBLE**

**i. BANDA and JERBO had command and control over their  
respective organizations**

120. **BANDA** and **JERBO** committed the crimes charged in this DCC through the JEM Splinter Group and the SLA Unity respectively, over which, together with other commanders, they exercised joint command and control.

121. **BANDA** was the overall Commander in Chief of JEM and was perceived as a leader [Redacted] of JEM from about 2004. **BANDA** [Redacted], purporting to have dismissed Dr. Khalil Ibrahim from JEM, continued to exert [Redacted] leadership roles in JEM as [Redacted] Commander in Chief [Redacted]. **BANDA** continued to exercise military authority in the same manner as he had previously done as Commander in Chief and/or General Commander of the mainstream JEM.

122. **BANDA** had direct military command and control over the JEM Splinter group forces that carried out the attack on MGS Haskanita, as he did whilst he was Commander in Chief of mainstream JEM. In his capacity as commander-in-chief, **BANDA** issued operational orders directly and through the Operations Commander. He also personally led the JEM troops (some of who joined the JEM Splinter Group) during various missions while staying at Sayra, Kariary and Wadi Hawar camps, in the months preceding the attack. Their military efforts included the battles of Kulbus 1 and 2 at the end of 2003, the battle of Abu Gamra at the end of 2003, the Um Sidr Battle in 2006, the Kariyari battle and the Gadir Battle in 2006. **BANDA** together with Abu Garda also personally led some of the JEM Splinter Group forces from Wadi Sayra to Dar es Salaam and then to Haskanita from about at least one month prior to the attack.

123. **BANDA** thus had effective command and control over the JEM Splinter Group forces that were with him during this time by virtue of his position within the JEM and the JEM Splinter Group as described in paragraphs 36 to 43 above.

124. **JERBO** had effective command and control over the SLA-Unity forces based in the Haskanita area at the time, by virtue of his position in the SLA-Unity as described in paragraphs 45 to 49 above. In his capacity as Operations Commander, **JERBO** took part in the planning of operations, issued operational orders and personally led the SLA-Unity troops during various missions while in the Haskanita area including the fighting that took place in Haskanita on 10 September 2007 and in Dalil Babiker on 29 September 2007.

## ii. Organised and hierarchical apparatus of power

125. Both organizations that participated in the attack on the MGS Haskanita (the JEM Splinter Group and the SLA Unity) were hierarchically organized.

126. Before the attack on the MGS Haskanita on 29 September 2007, the JEM Splinter Group effectively existed as an organised and hierarchical apparatus of power.

127. As stated in paragraph 44 above, the JEM Splinter Group commanders who carried out the attack later formalized the splinter group. On 4 October 2007 they announced the new JEM Collective Leadership (“JEM-CL”). The dismissal of **BANDA** from his position as Commander in Chief, and of Abu Garda from his position of Secretary General and the ensuing Founding Declaration of JEM-CL marked the process of institutionalization of JEM-CL as a separate entity, which bore the organizational features of the mainstream JEM, including the adherence to military discipline (those rebel troops that refused to obey orders were punished), militarily structured organisation with hierarchical subordination between the commanders and the soldiers and organization of the movement into camps headed by a commander.

128. Members of the JEM Splinter Group continued to obey [Redacted] **BANDA** as they previously did. At all times prior to this formalization, **BANDA** [Redacted] continued to operate as “JEM” and maintained the structure as it was. As explained above, the group



that formalized itself as JEM-CL shortly after the attack claimed to represent the main JEM prior to the attack.

129. The SLA-Unity was a militarily structured organization which was divided into a military and political wing and which had elaborate positions and reporting structures. The SLA-Unity was organized into bases headed by a commander where its troops were located and carried out operations, for instance in the Haskanita area under the command of **JERBO**. The organisation within the SLA-Unity created hierarchical subordination between the commanders and the soldiers.

130. The circumstances surrounding the attack clearly show that the troops over which **BANDA** and **JERBO** had command and control formed part of hierarchically organised groups. Specifically relations between superiors and subordinates were hierarchically organized, the hierarchical structure of power ensured that orders given by the recognised leadership would generally be complied with by the subordinates. The organized structure of power was composed of sufficient subordinates to guarantee that superiors' orders would be carried out, if not by one subordinate, then by another.

### **iii. Execution of the crimes secured by compliance with the senior authority's orders**

131. **BANDA** and **JERBO** in their respective positions mobilised their authorities and control over the apparatus to execute crimes charged in this DCC by securing compliance with their orders.

132. The hierarchically organized groups under the command and control of **BANDA** and **JERBO** respectively was characterized by the interchangeability of the lowest level soldiers that sought to ensure that the successful execution of the plan would not be compromised by any particular subordinate's failure to comply with an order. The circumstances surrounding the attack indeed show that the soldiers were following their commanders' orders without knowing much of the details of the upcoming attack. They did not know of the other participants in the operation; they only knew of their leaders

whose orders they had to pursue. Nor were all of them told in advance of the intended target of the attack. The automatic compliance with orders of commanders including **BANDA** and **JERBO** by their respective forces was further reinforced with strict discipline.

### **C. BANDA AND JERBO ACTED WITH THE REQUIRED MENS REA**

#### **i. BANDA AND JERBO fulfilled the subjective elements of the crimes**

##### **a) BANDA and JERBO intended to attack the personnel, installations, materials and units or vehicles involved in the peacekeeping mission**

133. The attack on the MGS Haskanita was deliberate and intentional. Prior to the attack and specifically on 10 September 2007, JEM and SLA-Unity members in Haskanita had interactions with the AMIS personnel in the camp. [Redacted]. Also JERBO told some of the troops that they were going to attack the African Union forces. Furthermore, the MGS was also easily distinguishable from the GoS camps. Specifically, (a) there was the AU flag at the MGS which was visible from afar; (b) all the AMIS dormitories and vehicles in Haskanita were white (AMIS being the only force that used white dormitories); (c) the MGS was fenced with barbed wire through which the activities going on inside were visible from the outside. Significantly, **BANDA** and **JERBO** and their respective troops as well as other members of the common plan, [Redacted], were aware of the location of the Camp.

134. The manner in which the attack on the MGS Haskanita was executed suggests that the attackers targeted the personnel, installations, materials, units and vehicles of AMIS. In the first wave of the attacks, JEM Splinter Group and SLA Unity forces specifically targeted and destroyed the AMIS communication platform rendering it difficult for the AMIS forces to communicate with each other or the outside during the attack. That the attackers were able to identify exactly where the communication platform was located shows their prior knowledge of the lay-out and arrangement of the Camp, and hence demonstrates the intention of the group to attack the AMIS Forces. As soon as the attack

started, the AMIS peacekeepers fired flares in the air to warn off the attackers. The JEM Splinter Group and SLA Unity forces were undeterred by these warnings and persisted with the attack.

135. The conduct of the attackers during the operation itself also manifests their intention to target the AMIS personnel and installations as the object of the attack. Having entered the Camp, JEM Splinter Group and SLA Unity forces were not deterred by these signs and markings. Nor were they prevented from driving all AMIS vehicles away after the attack, which all had prominent markings showing that they belonged to the AMIS peacekeeping forces. The looted military uniforms similarly showed that they belonged to the personnel of the AMIS peacekeeping force.

**b) BANDA AND JERBO had knowledge of the protected status of the AMIS personnel and objects**

136. The peacekeeping nature of AMIS was generally known to the public at large. JEM and SLA-Unity also had detailed knowledge of the mandate and activities of AMIS by virtue of their participation in the agreements on the basis of which the AMIS was deployed to Darfur. JEM also had its own representatives in the mission and JEM soldiers received regular updates on the nature and activities carried out in the AMIS camps.

137. Further, on various occasions, the AMIS personnel explained the nature of their mandate to the representatives of the rebels visiting the Camp, including at the demonstrations instigated by the rebels in August 2007.

138. AMIS was widely perceived as a neutral and impartial force, refraining from being involved in the fighting, or otherwise promoting the military cause of any of the parties to the conflict. Indeed, when the JEM and SLA-Unity rebel forces complained about Captain Bashir and demanded his removal from the Camp, AMIS immediately took measures to evacuate him. This evacuation was carried out in the presence of representatives of the rebel forces.

139. JEM was fully cognizant of the protected nature of the AMIS personnel and objects. Leaders of JEM including [Redacted] **BANDA** and SLA-Unity have had significant dealings with AMIS and made statements recognising the neutrality of the AMIS forces prior to the attack on MGS Haskanita on 29 September 2007 as well as after the attack.

140. The senior positions that **BANDA** and **JERBO** occupied in their respective rebel groups required them to be aware of the protected status of AMIS. They belonged to groups that had signed the Agreement on Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in Darfur of 28 May 2004. In that agreement, both JEM and SLA (from which groups the factions that attacked the MGS emanated) committed to ensuring the safety and security of AMIS personnel.

141. In order to reinforce AMIS neutrality and non-combatant status, the UN Security Council in Resolution 1769 demanded an immediate cessation of hostilities and attacks on AMIS and expressly reaffirmed the protected status of the mission for the parties. On 20 August 2006, among other parties to the conflict, JEM was unequivocally called on to respect the “neutral and impartial status of AMIS”.

142. **BANDA** and **JERBO** were thus aware of the factual circumstances that established the protected status of AMIS personnel and objects which he and others targeted in the attack. In particular, **BANDA** and **JERBO** were aware that AMIS personnel, installations, material, units and vehicles remained entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

**c) **BANDA** and **JERBO** intended to deprive the owner(s) of the property and to appropriate it for private or personal use.**

143. Some of the loot was first collected in one place and subsequently shared among the perpetrators. The evidence of subsequent use of the looted vehicles by the perpetrators, including **JERBO**, [Redacted] establishes substantial grounds to believe that **BANDA**

and **JERBO** intended to deprive the owners of the property and to appropriate it for private or personal use.

144. Some of the looted vehicles were subsequently sold, while others were exchanged with vehicles belonging to the Chadian Armed Forces. Further, JEM and SLA-Unity attackers set up a committee to sell some of the vehicles that were pillaged from MGS Haskanita. Several vehicles were sold in Chad and the Sudan.

145. The above constitute sufficient evidence to establish substantial grounds to believe that **BANDA** and **JERBO** intended to deprive the owners of the property and to appropriate it for private or personal use.

**ii. BANDA, JERBO and the other commanders were all mutually aware and mutually accepted that implementing their common plan may result in the realization of the objective elements of the crime**

146. **BANDA, JERBO** and the other commanders were mutually aware and mutually accepted that implementing their common plan would result in the realisation of the objective elements of the crimes charged in this DCC.

147. **BANDA, JERBO** and the other commanders were aware of the substantial risk/likelihood that the implementation of their Common Plan would result in the realization of the objective elements of the crime. When they planned, ordered and led the attack on MGS Haskanita on 29 September 2007, **BANDA** and **JERBO** knew that as a consequence of their common plan (a) the attack on the personnel and objects involved in the peacekeeping mission; (b) killings of those not taking active part in hostilities; and (c) pillaging of the property at the MGS Haskanita would occur in the ordinary course of events.

148. Moreover, the main objective of the plan by **BANDA, JERBO** and the other JEM Splinter Group and SLA-Unity commanders was to (a) carry out an attack against the personnel and objects involved in the peacekeeping mission; (b) violence to the lives of

persons not taking any active part in hostilities; (c) pillaging of the properties in the MGS Haskanita. Therefore, by making a decision to implement the Common Plan, **BANDA, JERBO** and the other commanders individually accepted that, in the ordinary course of events, implementation of their Common Plan would lead to the commission of the aforementioned crimes, condoned their commission, and ordered and led their respective troops to participate in the attack, ensuring that these outcomes in fact occurred.

**iii. BANDA, JERBO and the other commanders were aware of the factual circumstances enabling them to jointly control the crime**

149. At all material times, **BANDA, JERBO** and the other commanders were aware of the factual circumstances which enabled them as co-perpetrators to jointly control the crimes committed by the JEM and SLA-Unity troops under their command during the attacks on Haskanita.

150. After their planning meeting, **BANDA, JERBO** and the other commanders briefed their respective groups. In addition, as they approached the MGS Haskanita, they issued the order for the troops to attack.

151. The above demonstrates that **BANDA, JERBO** and the other commanders, were further aware of their respective roles as commanders who controlled the troops that participated in the attack. As such, they were aware that by virtue of their positions of command, they had joint control over the commission of crimes charged in this DCC.

**IV. OTHER INDICIA SHOWING INVOLVEMENT OF THE SUSPECTS IN THE ATTACK**

152. Aside from the direct evidence detailed above, there are a significant number of factual circumstances from which an inference may properly be drawn - from all the evidence taken together - that the suspects committed the crimes charged in this DCC. While each of these indicia, on its own, may not warrant such an inference, taken

together they establish substantial grounds to believe that the suspects committed the crimes charged.

**A. THE JEM SPLINTER GROUP COMMANDED BY BANDA, AND THE SLA UNITY AND ABDUL SHAFIE FORCES COMMANDED BY JERBO HAD THE MEANS TO COMMIT THE CRIMES CHARGED.**

153. Together, the JEM Splinter Group under the command and control of [Redacted] **BANDA** and the SLA-Unity and SLA Abdul Shafie under the command and control of **JERBO** possessed up to 1000 troops which is around the same number alleged by the victims to have carried out the attack. These two groups also possessed the weapons and vehicles type described by the victims to have been used by their attackers, (some of the vehicles had JEM written on them). The suspects and members of their forces bore characteristics that are similar to the description of the attackers by the victims. Some of the victims were able to identify some of the attackers including [Redacted] of the SLA Unity and a subordinate of **JERBO**. Both the JEM Splinter Group and SLA Unity had sufficient military expertise and capability to carry out the type of organized attack as the one on the MGS Haskanita.

**B. THE JEM SPLINTER GROUP AND THE SLA UNITY AND SLA ABDUL SHAFIE FORCES HAD MOTIVES TO LAUNCH AN ATTACK ON THE MGS HASKANITA.**

154. The JEM splinter group and the SLA Unity and SLA Abdul Shafie forces had a number of motives to launch an attack on the MGS Haskanita:

- (i) to obtain vehicles and materials needed for the newly created rebel group (JEM Splinter Group);
- (ii) to obtain vehicles and materials for the SLA Abdul Shafie Group that **JERBO** had recently rescued;
- (iii) to replenish resources that had been lost during battle in Dalil Babiker earlier that day and in earlier fighting against GoS;
- (iv) to obtain much needed food and fuel to sustain the rebel groups in the harsh terrain;

- (v) to punish the AMIS for the inability and/or failure to prevent the GoS attack in Dalil Babiker on 29 September 2007. Indeed, Mohammed Osman, one of the commanders of the SLA Unity who participated in the attack under the command of **JERBO** had previously threatened the AMIS forces in the MGS Haskanita that "*if there is further bombing, it will really cost you*".

155. In addition, [Redacted] **BANDA**'s new JEM Splinter Group needed some form of public recognition as a newly emerging rebel group; their attack on the MGS Haskanita announced their arrival on the scene as a new group to be reckoned with. Notwithstanding that they subsequently denied responsibility publicly for the attack, the fact that they indeed achieved their aim of receiving recognition is evidenced by the fact that soon after the attack they were invited to the peace talks in Juba along with other rebel groups.

**C. THE JEM SPLINTER GROUP COMMANDED BY BANDA AND THE SLA UNITY AND ABDUL SHAFIE FORCES COMMANDED BY JERBO WERE THE ONLY REBEL GROUPS IN THE VICINITY OF HASKANITA THAT WERE CAPABLE OF CARRYING THE ATTACK ON THE MGS.**

156. By reason of the facts stated in paragraphs 57-63, it is clear that the JEM Splinter group commanded by **BANDA** and the SLA Unity and the SLA-Abdul Shafie forces commanded by **JERBO** were the only rebel groups that remained in of Haskanita area at the time of the attack on the MGS. As such, these were the only groups that had the opportunity to carry out the attack.

**D. BANDA AND JERBO'S COMMAND AUTHORITY OVER THE TROOPS**

157. As described in paragraphs 120 to 132 above, **BANDA** and **JERBO** were perceived as the leaders of the JEM Splinter Group and SLA-Unity group based in the Haskanita area, and exercised effective command and control over the groups that carried out the attack.



### **E. PRESENCE OF BANDA AND JERBO AT STRATEGIC LOCATIONS AND AT CRITICAL TIMES**

158. The fact that both **BANDA** and **JERBO** were present at strategic locations within the critical time period is additional indicia that they carried out the attack on the MGS. First, their troops suffered a GoS attack in nearby Dalil Babiker. During that attack **JERBO** led the rebel troops. At this time, **BANDA** was also in the Haskanita area. **BANDA** and **JERBO** were present and participated in the planning meeting. After their planning meeting, **BANDA** and **JERBO**, as military commanders, led their troops to Haskanita where they positioned their troops in preparation for the attack. After the attack **BANDA** and **JERBO** converged at a location [Redacted]. Both **BANDA** and **JERBO** together with their forces then moved on to Izban. From there, both **BANDA** and **JERBO**, together with their respective forces, moved to Jebel Adola where most of the rebels who participated in the attack congregated and where the loot from the MGS was shared.

### **F. BENEFITS WHICH ACCRUED TO THE SUSPECTS FROM THE ATTACK**

159. Significant benefits accrued to **BANDA**, **JERBO** and to the rebel groups that they commanded soon after the attack on the MGS Haskanita. These included (a) much needed weapons, ammunition, food, vehicles and fuel; (b) public recognition of the new JEM Splinter group, culminating in an invitation to participate in the negotiations in Juba; and (c) punishing the AMIS forces in the MGS Haskanita as the SLA Unity forces had threatened to do; and It is no coincidence that all these benefits accrued to the suspects all at the same time. Rather, it was the desired result of their common plan to attack the MGS Haskanita.

### **G. STATEMENTS ATTRIBUTED TO THE SUSPECTS**

160. The statements made by the suspects can also shed light on their roles during the attack. As described in paragraph 69 above, commanders from the JEM Splinter Group and the SLA Unity including **JERBO** made it explicit that the groups were going to

attack the MGS Haskanita. Additionally, when some of the rebels attempted to escape whilst in Jebel Adola after the attack, BANDA prevented them from doing so and told them that they cannot take away a vehicle which his people had given their lives for. These statements clearly show that the **BANDA** and **JERBO** participated in the attack on the MGS Haskanita.

#### **H. CONDUCT OF THE SUSPECTS BEFORE AND AFTER THE ATTACK**

161. [Redacted] of SLA Unity threatened the AMIS personnel at the MGS Haskanita before that attack. Forces under the command of both **BANDA** and **JERBO** were in possession of AMIS vehicles and property soon after the attack. [Redacted].

#### **V. CHARGES**

162. Based on the facts described above - that:

(i) Up to and including 29 September 2007, **BANDA** and **JERBO** together with JEM Splinter Group, SLA Unity and SLA Abdul Shafie forces under their command and control made a common plan to attack the African Union forces on the MGS Haskanita; Both **BANDA** and **JERBO** personally participated, ordered and led their respective forces in attacking the MGS Haskanita on 29 September 2007;

(ii) During the attack, the JEM Splinter group, SLA Unity and SLA Abdul Shafie forces under the command and control of **BANDA** and **JERBO** killed twelve (12) AMIS peacekeeping personnel, attempted to kill eight (8) AMIS peacekeeping personnel, and looted property belonging to AMIS;

(iii) The attackers knew that the personnel attacked and the looted items were personnel/materials involved in a peacekeeping mission established in accordance with

the UN Charter and were taking no active part in hostilities and thus entitled to the protection given to civilians under the international law of armed conflict;

the Prosecution charges **BANDA** and **JERBO** as follows:

**Count 1: Violence to Life and Attempted Violence to Life (Article 8(2) (c) (i) and Article 25(3) (a) and Article 25(3) (f) of the Rome Statute)**

On 29 September 2007, at the MGS Haskanita in Haskanita Village, Um Kadada Locality in North Darfur, the Sudan, in the context of and associated with an internal armed conflict, **BANDA and JERBO** together with JEM Splinter Group, SLA Unity and SLA Abdul Shafie forces under their command and control, acting pursuant to a common plan and orders issued by them, jointly with their forces, attacked the MGS Haskanita and killed twelve (12) AMIS peacekeeping personnel and attempted to kill eight (8) AMIS peacekeeping personnel, with the knowledge that they were (1) personnel involved in a peacekeeping mission established in accordance with the UN Charter; and (2) taking no active part in hostilities and thus entitled to the protection given to civilians under the international law of armed conflict, thereby committing a crime in violation of Articles 8(2)(c)(i) and 25(3)(a) and 25(3)(f) of the Rome Statute.

**Count 2: Intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission (Articles 8(2)(e)(iii) and 25(3)(a) of the Rome Statute)**

On 29 September 2007, at the MGS Haskanita in Haskanita Village, Um Kadada Locality in North Darfur, the Sudan, in the context of and associated with an internal armed conflict, **BANDA and JERBO** together with JEM Splinter Group, SLA Unity and SLA Abdul Shafie forces under their command and control, acting pursuant to a common plan and orders issued by them, jointly with their forces, intentionally directed attacks against AMIS peacekeeping personnel, installations, materials, units and vehicles involved in a peacekeeping mission established in accordance with the Charter of the United Nations, which were entitled to the protection given to civilians and civilian objects under the

international law of armed conflict, with the knowledge of the factual circumstances that established that protection, thereby committing a crime in violation of Articles 8 (2)(e)(iii) and 25(3)(a) of the Rome Statute.

**Count 3: Pillaging (Article 8(2) (e) (v) and Article 25(3) (a) of the Rome Statute)**

On 29 September 2007, at the MGS Haskanita in Haskanita Village, Um Kadada Locality in North Darfur, the Sudan, in the context of and associated with an internal armed conflict, **BANDA and JERBO** together with JEM Splinter Group, SLA Unity and SLA Abdul Shafie forces under their command and control, acting pursuant to a common plan and orders issued by them, jointly with their forces, attacked the MGS Haskanita and appropriated property belonging to AMIS and its personnel including vehicles, refrigerators, computers, cellular phones, military boots and uniforms, fuel, ammunition and money, without the consent of the owners and for their private or personal use, thereby committing a crime in violation of Articles 8(2)(e)(v) and 25(3)(a) of the Rome Statute.



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Luis Moreno-Ocampo

Prosecutor

Dated this 11<sup>th</sup> day of November 2010

The Hague, The Netherlands