

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09
Date: 12 November 2010

PRE-TRIAL CHAMBER I

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

SITUATION IN DARFUR, SUDAN

IN THE CASE OF PROSECUTOR

v.

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

Public Document

Observations on behalf of Victims a/1647/10 and a/1648/10

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:

The Office of the Prosecutor

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Legal Representatives of Victims

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

A. Introduction

1. Pursuant to the Trial Chamber's order of 29 October 2010 requesting the legal representatives of the victims to file by 12 November 2010 any observations in relation to the "Joint Submission by the Office of the Prosecutor and the Defence as to Agreed Facts and submissions regarding modalities for the conduct of the Confirmation hearing", the legal representatives for victims a/1647/10 and a/1648/10 submit these observations for consideration by the Trial Chamber.
2. There are two matters to be addressed. First, as this is the first opportunity that the legal representatives have to make submissions on behalf of these two victims before the Trial Chamber, they wish to place on record the background to, and circumstances of, the representation of the two victims.
3. Second, the legal representatives note the agreement reached between the parties that the charges as set out in the Document containing the Charges (DCC) of 19 October 2010 will not be contested at the Confirmation hearing scheduled for 8 December 2010, and that the parties may thus only make very limited oral submissions at the hearing. In light of these agreed modalities, the legal representatives wish to request on behalf of the two victims that they are permitted to submit short written submissions and make very brief oral submissions at the Confirmation hearing for the reasons and in the terms set out below.

B. Background to legal representation of two victims

4. As the Trial Chamber will be aware from the covering letter submitted with the applications of these two victims for participation in the present case, they were assisted in the preparation of their applications by the Sudan International Defence Group (SIDG) and this work has been supported and funded by the Sudan Workers Trade Unions Federation (SWTUF). The legal representatives of the two victims have acted and continue to act on behalf of these two organisations and victim applicants who they have assisted, in other cases in the Sudan Situation before the ICC.
5. The two victims currently reside in the Haskanita area, and as far as the legal representatives are aware, these two victims are the only persons who reside in Darfur

who are currently authorised to participate in these proceedings, and indeed in any of the cases in the Sudan Situation before the ICC.

6. The legal representatives have met in person with both victims on one occasion in Darfur for the purpose of consulting with them about their possible victim applications to the ICC. At this time, instructions were taken from them as to the issues that they might wish to raise before the ICC in the event that they were granted the right to participate as victims. The legal representatives have not been able to meet with the two victims since the Chamber's decision of 29 October 2010 in which they were recognised as victims in the present case. In light of this decision, SIDG members are now assisting them and will be advising them about the documentation in the case, including the DCC, and the procedural steps in relation to participation, including the Confirmation hearing. Further detailed instructions are awaited from the victims of the issues that they may wish to raise in light of the Confirmation hearing and in any further proceedings. Members of SIDG are planning to meet the two victims with the relevant court documents next week in the Haskanita area for this purpose, this being the earliest opportunity that the necessary travel arrangements could be made to visit the victims in a very remote part of Darfur. Further meetings will be arranged with Counsel as necessary and when possible.

7. From the first meeting with the victims, both of them sought to apply to be recognised as victims in the case, *inter alia*, because of the harm and suffering that they endured in the attack on the AMIS base in Haskanita on 29 September 2007. On the basis of the initial instructions taken from them about what issues they might wish to raise before the ICC, they stated that nothing had been done to investigate and acknowledge what had happened to them and other ordinary villagers at the hands of rebel forces in Haskanita on that day. They raised questions about the legitimacy and true motivations of the proceedings when those who reside in Haskanita had seemingly been completely overlooked. Put in straightforward terms, they wanted the ICC Judges to be informed of their concerns, for the truth to be known, and for appropriate action to be taken. They had hoped that the authorities in Darfur would provide a remedy in the courts or through traditional methods of offering compensation, and questioned whether it was appropriate for an international court to be involved, particularly for a case of this kind.

8. These issues are stated here as relayed in general terms by the victims. As their legal representatives, Counsel acknowledge that there are limitations in the Statute, Rules and developing jurisprudence of the ICC on the scope of the participation of victims in ICC proceedings. These are matters which the two victims have been, and will be further, advised about, but the main thrust of their concerns and interests are outlined here so that the Chamber and parties are fully informed of the background of these victim participants.

C. Request in respect of the Confirmation hearing

9. The legal representatives for the two victims make no observations at this stage about the terms of the agreement between the Prosecution and Defence as recorded in the joint submission of 19 October 2010 to which the DCC is annexed.
10. The only issue arising from the joint submission concerns the modalities of the Confirmation hearing. Although the parties do not object to the victims making an oral submission at the hearing, they suggest that written observations may be sufficient. The legal representatives wish to request on behalf of the victims that they are permitted to submit short written submissions and that they are afforded an opportunity to make very brief oral submissions at the hearing (1) to reflect within the limits of the ICC's rules on victim participation, the issues outlined above that the victims are anxious to highlight before the court and publicly, (2) to deal with the particular issues outlined in paragraph 11 below, and (3) to raise any further related matters that might arise as a result of further detailed instructions being taken from the victims in the Haskanita area next week.
11. While appreciating that these submissions may have little direct bearing on the outcome in general of the hearing in light of the agreement reached by the parties that the charges as alleged will not be challenged for the purposes of confirmation, the victims' submissions may assist the Chamber in respect of certain details of the charges which have a direct bearing on the personal interests of the victims, and there are other reasons that justify this request:

- (i) The DCC alleges that there were "civilian personal" at MGS Haskanita at the time of the attack (para. 73) and that during the attack "some of the local

Sudanese staff members ... collaborated with the attacking rebel forces” (paras. 79 and 83). Both of the victims worked at MGS Haskanita and were present there at the time of the attack. It is essential for the record that the two victims can explain through their legal representatives what their role at the camp was and, most importantly, that they did not collaborate in any way in the attack. The Prosecution has already reserved its position in respect of these two victims and whether they may have collaborated with the attackers in the Prosecution’s Observations on 8 Victims’ Applications for Participation in the Proceedings filed on 10 September 2010, and it is thus an issue that needs to be addressed by the victims.

- (ii) Other than these references to “Sudanese staff” there is no mention in the DCC to Sudanese citizens who were affected by the attack on international soldiers (let alone who came under attack themselves given that the focus of the allegations falls solely on the international soldiers). This is a factual matter that is directly related to the allegations made in the DCC and of direct relevance to the personal interests of the two victims which they wish to raise before the Chamber, and which may assist the Chamber in its understanding of the events on the day of the attack.
- (iii) The Prosecution and Defence will be making written submissions and may make oral submissions at the hearing. The victims as participants in the proceedings as a matter of fairness should be given an opportunity to be present and respond to any issues raised by the parties in their submissions that directly impact upon the personal interests of the victims. The parties have not identified any specific reasons in their joint submission that could justify barring the victims from any form of participation in the proceedings if the parties themselves are permitted to make both written and oral submissions.

12. For these reasons, the Trial Chamber is invited to grant the request of the two victims to participate in the Confirmation hearing by making short written and oral submissions on the issues outlined above, and in accordance with any orders made by the Chamber.



For Sir Geoffrey Nice QC
Rodney Dixon
Counsel and Legal Representatives of the Victims

Dated this 12th day of November 2010
London, United Kingdom