

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
INTERNATIONAL AND ORGANISED CRIME COURT AT NAIROBI
CRIMINAL CASE NO. 1 OF 2024
(MOCK TRIAL)

RULING

1. The Office of the Director of Public Prosecutions (ODPP) has brought charges before this court against the accused, a national from the State of Nadus, Lieutenant Mohammed Juma. The accused was arrested by Kenyan police on 1st November 2023, while attending a meeting at the Tribe Hotel in Nairobi. The police acted pursuant to an arrest warrant prepared by the ODPP in concert with local and international civil society actors at the behest of two Kharfourian survivors currently residing in Kenya as refugees.
2. The accused is charged with two counts of crimes against humanity.

Count 1 - The accused is charged with murder as a crime against humanity contrary to section 6 (1) (b) of the International Crimes Act and Article 7 (1)(a) of the Rome Statute.

Particulars of offence are that on or about 15th June 2023, in Al Jamima town within the Republic of Nadus, individually or acting with a common purpose, he wilfully and unlawfully murdered a group of civilians. The murder was committed as part of a widespread or systematic attack involving the multiple commission of acts directed against a civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack, and the defendant knew of that attack.

Count 2 - The accused is charged with forcible transfer as a crime against humanity contrary to section 6 (1) (b) of the International Crimes Act and Article 7 (1)(d) and 7 (2) (d) of the Rome Statute.

Particulars of offence are that on or about the 15 June 2023, in Al Jamima town within the Republic of Nadus wilfully and unlawfully contributed to the forcible transfer of approximately 10,000 primarily Nasalid civilians from the Al Jamima town and surrounding areas, resulting in the desertion of the town. This forcible transfer was committed as part of a widespread or systematic attack involving the multiple commission of acts directed against a civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack, and the defendant knew of that attack.

3. The prosecution's case, supported by five witnesses and reports from Human Rights Watch and the United Nations, alleges a brutal civil war in Nadus starting April 15, 2023, between the Nadusian Armed Forces (NAF) and the Quick Attack Forces (QAF). The conflict centred in Al Jamima, where atrocities against the Nasalid community, including executions and hate speech, occurred. Witnesses testified to a massacre on June 15, 2023, with over 1,000 Nasalid civilians killed as they attempted to flee. The Nadusian Red Crescent, allegedly under orders from Lieutenant Juma, participated in cleaning up the aftermath. The prosecution presented evidence, including witness testimonies, photographs, satellite imagery, and videos, implicating the accused in orchestrating or condoning the violence and its aftermath.
4. The Defence has however raised an interlocutory objection to the admissibility of the open source and digital evidence in Annexes A to F. They argue that Annexes A to F have not met the criteria for admissibility as provided in law,

and that this court should thus reject their admission as evidence in support of the prosecution's case.

Submissions of the Parties.

5. Both the prosecution and the defence have submitted towards the interlocutory objection, which submissions I have considered. Mr. James Stewart for the prosecution began by submitting that digital evidence is a new and emerging form of evidence in courts and that such evidence can be used in the pursuit of justice. He continued that evidence properly obtained in the legal manner can be reliable and credible.
6. Regarding annexes A and B, Mr. Stewart submitted that as per the expert witness, the images can be verified and relied upon as no evidence has been tendered before this court that the same have been manipulated. He further submitted that annex C has not been disputed at all by the defence, while annex D was posted by the QAF themselves, which lends to their credibility.
7. On the legal basis for admissibility of annexes A to F, Mr. Owiti for the prosecution relied on section 7(2)(a) of the International Crimes Act (ICA), which provides that for the purpose of the application of the ICA, the provisions of Kenyan law and the principles of criminal law applicable to the offence under Kenyan law shall apply. He further relied on Rule 68 of the Rules of Procedure of Evidence of the Rome Statute, which allows the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that this would not be prejudicial to or inconsistent with the rights of the accused. To this end, the prosecution urged this court to admit annexes A to F, which include documented evidence that was previously recorded, as the said evidence corroborates the witness testimonies.

8. In rebuttal, Mr. Jamin Yamina and Ms. Kirsty Sutherland for the defence began by submitting that annexes A to F should not be admitted as evidence as it is impossible to tell who prepared the same. She further submitted that no certificates have been availed before court, which raises doubt on the credibility of the said evidence. The defence relied on the Prosecutor v Jean Pierre Bemba¹, where the ICC declined to admit a Facebook post as its authentication and reliability were not ascertained.
9. I have extensively considered the submissions of both parties and find that the issue arising for determination is *whether the forms of Open Source and/or Digital Information relied upon by the Prosecution in Annexes A to F can be tendered as Evidence and if so, the weight that should be attributed to each.*

I. THE APPLICABLE LAW

10. Before considering the issue for determination posed before this court, I will first lay down the general principles, rules and the law governing admissibility of open source and/or digital evidence.
11. In considering whether the forms of Open Source and/or Digital Information relied upon by the Prosecution can be tendered as evidence, the court must assess the legal basis for admitting such evidence under Kenyan law. It is not in dispute that the crimes in question are international in nature. Section 7 (2) (a) of the ICA provides that for such proceedings, the provisions of Kenyan law and the principles of criminal law applicable to the offence under Kenyan law shall apply. In this case, therefore, the applicable law is the Evidence Act, Cap 80, which governs the admissibility of evidence in court proceedings.

¹ *Prosecutor v. Jean Pierre Bemba*, Case No. ICC-01/05-01/08, para 9

12. Section 3 of the Evidence Act provides a broad definition of evidence, including statements, documents, and electronic records. Sections 35 and 36 outline the admissibility of documentary evidence as to facts in issue. Section 35 states that statements made by a person in a document **tending to establish a fact** shall be admissible if certain conditions are satisfied, including whether the maker of the statement had personal knowledge of the matters dealt with by the statement. Furthermore, section 36 discusses the **weight** to be attached to such statements, taking into account all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.
13. Section 78A of the Evidence Act, on the other hand, outlines the admissibility of electronic and digital evidence in legal proceedings. It stipulates that such evidence is admissible, **regardless of whether it is in its original form**. When evaluating the weight of electronic and digital evidence, the court must consider factors such as the **reliability** of the manner in which the said evidence was generated, stored and communicated; the **integrity** of its maintenance; the manner in which the originator was identified and any other relevant factor.
14. With respect to the admissibility of electronic and/or digital evidence, Ngugi, J, in **R v Mark Lloyd Stevenson [2016] eKLR** emphasised the importance of **authentication** of electronic and/or digital evidence, as well as other tangible exhibits, in legal proceedings. Authentication is a crucial step in the process, **separate from the provisions outlined in section 78A of the Evidence Act**. The court delineated the following four steps in the admission and consideration of tangible exhibits:

1. Relevancy Test: The court determines if the proposed evidence is relevant to the case.
 2. Authentication Test: The proponent of the evidence must authenticate it, proving that it is what they claim it to be.
 3. Exclusion Test: The court considers any other rules of evidence that may exclude the proposed evidence, such as constitutional rights or hearsay rules.
 4. Weight Consideration: The court evaluates the weight to be accorded to the admitted evidence, taking into account any opposition to its authenticity presented by the opponent.
15. Ultimately, the court highlighted that authentication lays the foundation for the admission of evidence. However, the final decision on its acceptance and weight rests with the trial court as the fact finder.
16. From the foregoing, my understanding of the provisions of section 78A, as well as the general principles of admissibility set out in Mark Lloyd Stephenson's (supra), is that Open Source and/or digital information from inter alia Twitter (now X), Facebook and Instagram are admissible provided that the following requirements are satisfied:
- a) **The information must be relevant to the matter before the court.**
This means that the said information/evidence must have any tendency to make a fact more or less probable than it would be without the same.
 - b) The proponent of the evidence must prove that the information is **authentic** (what it is claimed to be).

- c) **The court must be satisfied that the information is reliable.** This means that there must be some guarantee of trustworthiness associated with the information.
- d) If an objection is raised regarding the admissibility of Open Source information, **it is up to the proponent of the evidence to satisfy the court that it meets the above requirements.**

17. I have laid down the law governing admissibility of open source and digital evidence in Kenya. But, the case being one of universal jurisdiction and of international character, I will consider the rules governing the admissibility of such evidence at the international plane.

18. Digital evidence is highly probative and is considered evidence of criminal intent and acts. Its compelling presentation of reality (through sound and video) that can convincingly establish both *actus reus* and *mens rea*. At its best, digital evidence, such as material found on social media, can provide a unique glimpse into the intent of an accused. **When used in conjunction with traditional forensic evidence and witness testimony, digital evidence can helpfully diversify the bases for factual claims brought before the Court.**

19. Despite this growing tribute, however, it is appreciated there is an urgent need to safeguard the rights of an accused person. **As a result, there is a compelling call that the court must confirm the credibility of the digital evidence being produced as well as verify its authenticity.**

20. Article 69(4) of the Rome Statute provides for a three-tiered test for the admission of every evidence. The ICC in Prosecutor v Jean Pierre Bemba² considered this three tier test at length and held that:

² *Prosecutor v. Jean Pierre Bemba*, Case No. ICC-01/05-01/08, para 9

“9. it must be (i) be relevant to the case; (ii) have probative value (as determined by factors including reliability; trustworthiness; credibility; and authenticity); and (iii) be sufficiently relevant and probative as to outweigh any prejudicial effect its admission may cause. Further, the Chamber underlines once more that its determination on the admissibility into evidence of an item has no bearing on the final weight to be afforded to it, which will only be determined by the Chamber at the end of the case when assessing the evidence as a whole.”

21. When it comes to the admission of digital evidence, ICC has adopted extra factors to be considered in addition to the three tier test above:

Digital evidence and material must conform to an “e-court Protocol”.³ The Protocol is designed to “ensure authenticity, accuracy, confidentiality and preservation of the record of proceedings.”⁴ The Protocol requires metadata to be attached, including the chain of custody in chronological order, the identity of the source, the original author and recipient information, and the author and recipient’s respective organizations.

22. From this, the court has come with a test. **First is authentication.** The Court has noted several indications for authenticity, for example, “self-authentication” within the evidence, such as **geolocation data⁵ and metadata, mainly using expert witnesses⁶ and external validation or corroboration from**

³ *Prosecutor v. Callixte Mbarushimana*, Case No. ICC-01/04-01/10, Decision Amending the e-Court Protocol, 4 (28 April 2011).

⁴ International Criminal Court e-Court Protocol at para. 1, ICC01/04-01/10-87-Anx 30-03-2011

⁵ *The Prosecutor versus Ahmad Al Faqi*, ICC-01/12-01/15-T-4-Red-ENG WT 22-08-2016 1/119 SZ at p. 113

⁶ *The Prosecutor V. Mahmoud Mustafa Busayf Al-Werfalli* No. ICC-01/11-01/17 Arrest warrants at para 18

additional documentation or testimony⁷. Second is the chain of custody and third is preservation.

23. At this point, allow me to rely on the pronouncement of the ICC in *Bemba*:

The Rome Statute created a system that eschew[s] generally the technical formalities of the common law system of admissibility of evidence in favour of the flexibility of the civil law system.⁸

Having laid down the rules, principles and law governing admissibility of open source and digital evidence, I will now proceed to consider the contested annexes

II. ANALYSIS AND DETERMINATION

24. In this case, the prosecution sought to tender various forms of digital evidence. The defence has raised an objection to the admissibility of the said evidence. This court shall assess the admissibility of each piece of evidence and ascertain the weight to be attached in seriatim.

ANNEX A

The photograph was taken on 16 June 2023, showing bodies in the street near houses in the West Kharfour capital, AL Jamima.

25. During the proceedings, witness 1 confirmed that he is the one who took the photograph in the course of his business as a local humanitarian worker. He subsequently posted the same on X (formerly Twitter), where it was shared hundreds of times.

⁷*The Prosecutor V. Bosco Ntaganda* No.: ICC-01/04-02/06 at para 99-60

⁸ *Prosecutor v. Bemba Gombo*, Case No. ICC-01/05-01/08, Decision on the admission into evidence of materials contained in the prosecution's list of evidence, para. 17 (19 November 2010).

26. It is therefore my considered view that the prosecution has laid a proper foundation for the admission of the said exhibit under section 78A for the following reasons:

- a) The maker/originator of the exhibit in question has been properly identified before this court.
- b) The maker has confirmed that he was physically present at the scene of crime on the material date.
- c) The physical (tangible) exhibit (Annex A) has been availed before the court for verification by the witness.
- d) The image on the photograph corresponds with the oral testimony of the witness.

27. At the international plane, photographs can be admitted into evidence if prima facie authenticity is demonstrated by **providing information about the date, the location, the events depicted, the author, the source, and/or the chain of custody.**

28. The ICC Trial Chamber in Ntaganda noted that since six photographs brought by the Prosecution were not dated, their relevance and probative value surrounding issues in the case could not be determined.⁹ It added that when photographs are dated, the parties seeking admission should provide evidence from which the Court can conclude that the dates are correct and fall within the temporal scope of the charges.¹⁰

29. At the international plane, is the photograph admissible? Put differently, does the photograph meet the test laid down in Ntaganda? I think yes. **Firstly, the photographs have been accompanied by reliable information on their date,**

⁹ *Prosecutor v Ntaganda* (Decision on Prosecution's request for admission of documentary evidence) ICC-01/04-02/06-1838 (28 March 2017) (TC VI) [68].

¹⁰ *Prosecutor v Ntaganda* (Decision on Prosecution's request for admission of documentary evidence) ICC-01/04-02/06-1838 (28 March 2017) (TC VI) [68].

location and events depicted. Secondly, a witness (W1) has testified to have taken the photo and clearly explained the chain of custody.

30. I, however, hasten to state that the admission of annex A does not mean that it has been accepted as being credible evidence. What, therefore, is the weight or probative value to be attributed to the exhibit?

31. W1 stated that more than 1000 people were killed on the said date and that he collected a huge number of bodies. The dead were buried in mass graves. A close analysis of Annex A shows houses and bodies lying on the ground. Indeed, the photographic evidence corroborates the testimony of W1. Moreover, the date of the metadata associated with annexe A is 15 June 2023, which date corresponds with the date of the alleged attack in Al Jamima.

32. For the foregoing reasons, I have no doubt in my mind that annexe A was taken at Al Jamima by W1 and shared on Twitter. I accordingly find that the photograph depicts the true record of the happenings in Al Jamima on 15th June 2023, hence, annex A is persuasive and of high probative value.

33. I therefore dismiss the objection raised by the Defence and order that Annex A be admitted as part of prosecution's evidence.

ANNEX B

The source of the Satellite Imagery (Annex B) was UN Commission of Inquiry Report & Google, which was shared on Twitter (now X) on 16 January 2023. Geolocation verification methods demonstrate that the location is within Al Jamima.

34. Satellite imagery is admissible as evidence if the court can examine its authenticity, method of creation, probative value, relevance, testimony, corroboration and experts. This position was endorsed by the ICTY in

Prosecutor v Tolimir (Judgement) IT-05-88/2-T (12 December 2012) (TC II)
from paragraphs 69-70 as follows.

“69. The Chamber acknowledges that there is a lack of evidence on the method of creation of these images.

70. However, this does not impair the credibility of aerial images in general. Dean Manning and Jean-René Ruez—both former OTP investigators—have extensively testified about their use. Aerial images have often complemented forensic archaeological or anthropological reports. The fact that Manning, Ruez, and Richard Wright, an archaeologist, first identified and then indeed located gravesites by aerial images points to their authenticity and utility as evidence. In addition, the interpretation or authenticity of an aerial image has often been corroborated by witnesses’ testimony. The Chamber thus finds aerial images generally to be reliable and of probative value.”

35. In the case at hand, the Geospatial analysis, as highlighted in the expert report, is a valuable method for verifying satellite imagery. The points on google earth view correspond to witness testimonies by providing visual evidence of the locations described. W4 testified that several people were shot at while crossing a river. The satellite imagery pinpoints the river in which the people were shot at. Further, W1 stated that the attack occurred at Al Jamima. The geolocation verification methods confirm the accuracy of the location being within Al Jamima thus corroborating his testimony.

36. It is my finding that the sequence of events as captured in the satellite imagery is well corroborated by the events narrated by the witnesses and I therefore find annex B to be authentic and not manipulated.

37. Considering the weight to be attached to Annex B, the corroborative nature of the satellite imagery to the witness testimony enhances its probative value. The comparison of the locations and the aftermath, along with the geological verification, which demonstrates that the location is within Al Jamima, strengthens its reliability. Furthermore, the source of the imagery is in the UN Commission of Inquiry Report which enhances credibility.
38. For the foregoing reasons, I dismiss the objection raised by the defence and allow the admission of Annex B as part of the prosecution evidence.

ANNEX C

Video (Annex C) was shared on Twitter (now X) on 15 June 2023, showing hundreds of refugees fleeing from Al Jamima towards Khad.

39. The ICTR in Prosecutor v Karemera held that videos are admissible if the prosecution provides information about the date, the author, the source, and/or the chain of custody.¹¹ In authenticating video evidence, it is imperative to ascertain both the source and content of the video, as well as its relevance to the matter under consideration.
40. In this case, the original source of the video has not been identified, hence the objection by the defence. Even so, the court has carefully considered the video, and the best description I can give this video is that it is a visual replay of what was described by W2 in his testimony, that he was among the people who fled from Al Jamima to Khad in order to evade execution. His evidence was corroborated by W3, who confirmed that Khadian Army and police

¹¹ *Prosecutor v Karemera et al* (Decision on the Prosecutor's Motion for Admission of Certain Exhibits into Evidence) ICTR-98-44-T (25 January 2008) (TC) [22].

vehicles took patients to the hospital while others were taken on carts pulled by donkeys.

41. It is, therefore, my view that notwithstanding that the maker of the video is anonymous, the video is authentic, having been corroborated by the testimonies of W1, W2 and W3 who informed the court that the attacks in Al Jamima occurred on 15 June 2023 and positively described the events of the material day.
42. With respect to credibility or weight, the video clearly captures the mass exodus from Al Jamima to Khad as described by W2. It is unusual that such a huge number of people would flee from their homes at the same time unless they are in dire distress. While video evidence can be subject to manipulation, the fact that the contents of annex C corroborate the testimony of W2 lends to its reliability.
43. I therefore find that annex C is relevant to the proceedings herein, and I will proceed to admit it as an exhibit without hesitation.

ANNEX D

The video (Annex D) was shared on Twitter (now X) by the QAF on 16 June 2023 showing Lieutenant Juma, the accused, supervising a clean-up operation in Al Jamima with members of the Nadusian Red Crescent present, some in Hazmat suits and gloves.

44. As already stated above, to authenticate video evidence, it is imperative to verify its source and content, and determine its relevance to the prosecution's case. It is not in dispute that the said video was shared on Twitter (now X) by QAF, a rebel armed group, in which the accused holds the rank of lieutenant and "area commander" in West Kharfour. It is my view that the

video is relevant to the prosecution's case because it corroborates the events that occurred on 15th and 16th June 2023, as narrated by the prosecution witnesses as follows;

“W5 told the court that a day after the massacre (16 June 2023) life came to a standstill in Al Jamima. “The city had fallen to the QAF, bodies littered the street from Jamima to the South City, it was a ghost town, there was nothing except for corpses and horrific scenes, the accused ordered the local Red Crescent to ‘clean up’ the mess of dead bodies.”

45. The video clearly gives life to the testimony of W5 above. It shows the accused person, surrounded by armed soldiers, addressing the Nadusian Red Crescent personnel wearing Hazmat suits and blue gloves. The evidence of W5 was corroborated by W3. Additionally, at the scene, there is debris strewn all over the place and a destroyed building.

46. **From the foregoing analysis, I find the information contained in the video to be relevant, reliable and authentic.**

47. The next question is the weight to be attributed to the said evidence. The video clearly shows the aftermath of Al Jamima area after the attack as evidenced by debris and destroyed buildings. Secondly, the accused is captured at the scene giving instructions to the Red Crescent. This corroborates the evidence of W2 and W5 that the accused was the commander of the QAF in Jamima. The Red Crescent are seen wearing gloves, an indication that indeed there were dead bodies to be collected, as stated by W1.

48. Finally, the fact that the video was shared on Twitter (now X) by the QAF rebels, as a celebration of their victory lends to its credence. It is my finding therefore that the evidence is credible hence admissible. Accordingly, I dismiss the objection by the defence.

ANNEX E

Human Rights Watch report, “A Day in hell”. Submitted in order to support contextual elements of the incident. Only information presented above.

49. The test regarding the admissibility of this kind of reports was set out by the ICC trial chamber III in Situation in The Central African Republic in The Case of Prosecutor V. Jean-Pierre Bemba Gombo¹² while finding that UN reports were admissible, the court held as follows:

“12. The Chamber notes that the Mambasa UN Report - although referring to events which occurred in a different territory - describes another intervention by the MLC troops during the timeframe covered by the charges. In particular, it refers to the role of the accused in this intervention, allegations of abuses committed by the MLC troops, and the response to those allegations by the MLC leadership and the accused. As such, the Chamber is satisfied that the Mambasa UN Report relates to matters that are properly to be considered by the Chamber, inter alia, the item may be relevant to a determination of the accused's ability to impose disciplinary measures and his power to prevent and repress the commission of crimes. In addition, the document may be of

¹² Decision on the admission into evidence of items deferred in the Chamber's "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" (ICC-01/05-01/08-2299)

relevance to the Chamber's determination of the accused's relevant mens rea in accordance with Article 28(a) of the Statute.

13. In terms of probative value, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, is satisfied that the Mambasa UN Report offers sufficient indicia of authenticity and reliability to warrant its admission into evidence. The Majority notes that the UN Report is publicly available from official UN sources. In addition, the Majority is satisfied, based on a review of the document, that it provides sufficient details of its sources of information and methodology. In terms of potential prejudice, the Majority is satisfied that the UN Report is sufficiently relevant and probative to outweigh any potential prejudice that its admission may cause.”

In summary, the Court set out the test for the admissibility of these reports as follows;

1. It must refer to the role of the accused in the attacks
2. Refer to the allegations
3. The excerpt relates to matters that are properly to be considered by the Chamber, inter alia, the item may be relevant to a determination of the accused's ability to impose disciplinary measures and his power to prevent and repress the commission of crimes.
4. The document may be of relevance to the Chamber's determination of the accused's relevant mens rea in accordance with Article 28(a) of the ICC Statute.
5. Its authenticity and reliability to warrant its admission into evidence (availability on official websites and whether the document provides sufficient details of its sources of information and methodology).

50. Does the Human rights watch excerpt meet the test laid above? I think yes for the following reasons. First, the entire excerpt gives information on matters that are for determination in this court. For instance, due to the nature of the events as depicted in the excerpt, can it be said that the offence of crimes against humanity was committed? Or can it be said that the accused person bears command responsibility for the offences described in the excerpt? Second, can the excerpt be used to determine the accused's mens rea? Third, the excerpt provides sufficient details to determine its source and methodology. Fourth, the information is publicly available on their website as it was in Bemba (Supra).
51. I accordingly dismiss the defence's objection and find that annex E is admissible.

ANNEX F

United Nations Commission of Inquiry Report (15 September 2023), submitted in order to support contextual elements of the incident.

52. I hold that the report is admissible. I rely on the holding of ICC trial chamber III in Situation in The Central African Republic in the Case of the Prosecutor V. Jean-Pierre Bemba Gombo ¹³

“19. The Chamber notes that the FIDH Report is the result of an investigative mission carried out by the FIDH in Bangui between 5 and 22 July 2001....

20. The Chamber is of the view that both the FIDH Report and the AI Report may be of relevance to the Chamber's determination of the

¹³ Decision on the admission into evidence of items deferred in the Chamber's "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" (ICC-01/05-01/08-2299)

accused's relevant mens rea in accordance with Article 28(a) of the Statute.

21. In terms of probative value, the Majority of the Chamber, Judge Kuniko Ozaki partially dissenting, reiterates its view that NGOs Reports can be considered prima facie reliable, provided that they offer sufficient guarantees of impartiality. Based on its review of the content of the FIDH Report and the AI Report, the Majority is satisfied that they offer satisfactory information on their sources of information and methodology, providing sufficient indicia of reliability to warrant their admission into evidence.

22..... Moreover, the Majority reiterates its view that NGO reports may be admitted for the limited purpose that the information contained therein may serve to corroborate other pieces of evidence."

53. Borrowing from the finding of the trial chamber III above, the report was prepared as part of the investigative functions of the UN Commission's. The inquiry report equally gives sufficient information with regards to the methodology adopted. For instance, the inquiry notes that it was prepared after analysing videos, photographs, satellite imagery and recording statements from witnesses and survivors of the violence, aid workers who collected the bodies and a surgeon who treated the wounded in Al Jamima on 15 June 2023. Further, this report is therefore relevant to the court's determination of the accused *mens rea*.

54. Additionally, since the inquiry report is solely based on the testimonies of witnesses and survivors as well as aid workers and medical personnel, there is no reason to believe that all of them could have fabricated their testimonies so as to render the report impartial.

55. It is therefore my view that the report be and hereby admitted into evidence as the information contained therein corroborates the evidence of the witnesses who testified before this court.

56. In the upshot, I find that the objection raised by the defence lacks merit and is dismissed. Accordingly, Annexes A, B, C, D, E and F are hereby admitted into evidence.

Orders accordingly.

Ruling dated and delivered in open court at Nairobi this 8th March, 2024

DIANA KAVEDZA - MOCHACHE
JUDGE

In the presence of:

The Office of the Prosecutor

Mr. James Stewart, Lead Prosecutor

Mr. Victor Owiti, Prosecutor

Ms. Tabitha Owuya, Prosecutor

Counsel for the Defence

Ms. Kirsty Sutherland, Defence Counsel

Ms. Jamin Yamina, Defence Counsel

Court Assistant

Mr. Mikel Delagrang