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CRIMES AGAINST HUMANITY

The Case of Juma

Ruling on submission of insufficiency of evidence

The defence have argued that this court should acquit the defendant at this stage, now that the prosecution has closed its case.

The defence submission is that the evidence in this case, taken at its highest, could not satisfy any reasonable tribunal of fact beyond reasonable doubt that the acts of the defendant, whatever they may have been, were committed as part of a “widespread or systematic attack directed against a civilian population”. The defence point to article 7(2)(a) of the Rome Statute which defines an attack against a civilian population as a ‘course of conduct involving the multiple commission of the acts’ (such as murder and the forcible transfer of civilians). The defence further submit that there is no evidence from which a reasonable tribunal of fact could conclude to the necessary standard that any such attack was carried out pursuant to an organisational policy to commit such an attack.

The court must therefore carefully consider the evidence it has heard in the course of the prosecution case which may be relevant to these issues. We do not, in the course of that consideration, dwell upon evidence which may personally implicate the defendant in any wrongdoing, since that is not the issue we are addressing in this ruling.

The court has received into evidence the report published by the NGO Human Rights Watch entitled “A Day in Hell”. The court considers with caution those parts of the report for which there is no corroboration from the witnesses whom the prosecution has called to give evidence. With regard to the acts of conduct of the defendant himself the court would not consider that such unsupported parts of the report to be of any real weight. However the court is satisfied that it is appropriate to take such parts of the report into account when considering whether the prosecution has proved what are sometimes referred to as the ‘chapeau’ or ‘contextual elements’ of the crimes against humanity which are alleged against the defendant.

The report records that, following weeks of fighting, the city of Al Jamima fell to the forces of the QAF on 1 June. It is not disputed that the defendant was the area commander of the QAF forces in Kharfour at all material times. The report further records that, following the fall of the city. There were persistent reports of the ethnic targeting and killing of the civilian Nasalid population and of persistent hate speech towards them, including calls to kill and expel them from the city.

The report also records that, by 15 June, hundreds of Nasalid families had gathered at a location in the city to plan their escape from the city. They decided to make the journey to the border of the neighbouring country of Khad, 35 kilometres from Al Jamima.

The report relates that, on 15 June, the Nasalids who left the city were attacked in the streets as they did so, attacked again as they attempted to cross a river resulting in mass drownings, and

finally ambushed as they reached the border. 10,000 people are said to have arrived in that Khadian border town of Cadre that day with over 250 people having to be treated in hospital.

The court has received evidence from 5 individuals who have testified that they witnessed some of these events.

Witness 2, a human rights lawyer, told the court that he had fled Al Jamima with other Nasalids on 15 June. He spoke of two separate attacks on the group. They were immediately ambushed by QAF troops equipped with heavy machine guns near the hospital, before they had left Al Jamima. . Escaping this attack Witness 2 was repeatedly challenged at checkpoints along the way and had to conceal his Nasalid identity to avoid being killed. Near the border the group of which he was part was captured by QAF forces and then told to run. As they did so Witness 2 saw a boy of about 8 years shot in the head and killed.

Witness 5 corroborated witness 2's account of an attack near the hospital. His account that was, the day after the massacre, bodies littered the street from the hospital all the way to the south of the city.

Witness 4, a woman's right's activist from Al Jamima, observed QAF fighters attack a group of about people near the Wadi Caga river valley and was herself part of a group of about 300 people who fled towards the river and attempted to cross it. She told the court that because the river was running higher than normal many of those who did so drowned, while others were shot by QAF forces while attempting to cross. Witness 4 did not give a date for the events which she related to the court, but we note the photographic evidence, part of which consisted of satellite imagery which confirm the witness's testimony and relate to the Wadi Caga location. We are satisfied that the incident she referred to occurred on 15 June.

Witness 1, a humanitarian worker in Al Jamima, was collecting bodies on 15 June. His testimony was that there were a more than a 1,000 of them in and around the city and that they were buried in mass graves nearby. He did not relate the ethnicity of those who had been killed, but we are satisfied that some, at least, were of Nasalid civilians attempting to flee the city on that day.

Witness 3, a doctor at the hospital in the Khadian town of Cadre which received the survivors of the various attacks treated numerous patients, many of them women and children, who had gun shot wounds which indicated they had been shot while running away from the shooters. He treated a 2 year old child who died from gunshot wounds and recorded that, by the end of 15 June 112 women were being treated in the hospital for gun shot wounds, half of whom were pregnant.

Witnesses 2, 4 and 5 all testified that it was the same QAF commander who was directing the attacks near the hospital, the checkpoints and the river.

Most of the photographic evidence submitted to us is of little real value in determining the issue currently before us. The video contained in prosecution Annex C corroborates the prosecution assertion that large numbers of people were fleeing Al Jamima in the direction of the Khadian border on 15 June.

On the basis of the evidence summarised above we are satisfied that a reasonable tribunal of fact could be satisfied beyond reasonable doubt that any unlawful acts that may have been committed

by the defendant on that day were committed as part of a systematic attack directed against a civilian population.

A key argument in the defence's argument that we should not do so has been that such an attack must be a 'course of conduct' and that this legal requirement cannot be satisfied by the events of a single day.

We reject this argument.

First, the evidence makes it clear that the events of 15 June cannot be seen in isolation. It would be a perfectly reasonable, perhaps inevitable, conclusion that the very reason large numbers of people were leaving Al Jamima on 15 June was because a civilian population, the Nasalid inhabitants of that city, had already been subject to significant and sustained attacks over the two week period since the city had fallen to QAF fighters. This conclusion is supported by the evidence we received in the form of the Human Rights Report, in particular the accounts over that period of the ethnic targeting and killing of the civilian Nasalid population and of persistent hate speech towards them, including calls to kill and expel them from the city.

Second, even if we were inclined to discount any such conclusions, and to dwell only on the events of 15 June, the evidence we have received clearly supports the finding that the events of that day alone amounted to a 'course of conduct'. Leaving aside events at checkpoints, there were three quite separate attacks on the civilian population as it made its way along the 35 kilometre route from Al Jamima to the Khadian border. The first was near the hospital in Al Jamima, the second was at the river and the third was close to the border, when Nasalid civilians were captured and then shot after being told to run. There is no magic to a period of 24 hours, nor any limitation in the Rome Statute to the duration of the period of time over which the 'course of conduct' which constitutes the attack takes place. We are quite satisfied that the events about which we have heard evidence amount, in the words of the Bemba Trial Chamber's judgment, to a "series or overall flow of events as opposed to a mere aggregate of random acts"

Equally we reject the defence's submissions that the evidence is insufficient to satisfy the requirement that the attack was systematic. A reasonable tribunal of fact would be perfectly entitled to conclude, to the necessary standard, that repeated lethal violence over a distance of 35 kilometres, aimed at the same group of civilians, by fighters of the same armed force, commanded by the same officer was a systematic attempt to kill large numbers of those civilians.

Lastly we are equally satisfied, by the same evidence, that this repeated lethal violence was being carried out pursuant to an organisational policy to commit such an attack. No other conclusion, on the evidence we have heard, would be reasonable.

For all these reasons we reject the defence submissions that there is no case to answer on either of the two charges which the defendant faces. The trial must proceed on both those counts.