Cour
Pénale
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International
Criminal
Court

Original: English

No. **ICC-02/05-01/20**
Date: **6 October 2025**

TRIAL CHAMBER I

Before: **Judge Joanna Korner, Presiding Judge**
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

IN THE CASE OF
THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ('ALI KUSHAYB')

Public
With public Annexes A, C and D, and confidential and public redacted Annex B

Trial Judgment

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

☒ **The Office of the Prosecutor**	☒ **Counsel for the Defence**
☒ **Legal Representatives of the Victims** Common Legal Representative of Victims	☐ **Legal Representatives of the Applicants**
☐ **Unrepresented Victims**	☐ **Unrepresented Applicants (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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Registrar Mr Osvaldo Zavala Giler	☒ **Counsel Support Section**
☒ **Victims and Witnesses Unit**	☒ **Detention Section**
☒ **Victims Participation and Reparations Section**	☐ **Other**

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SECTION 1. OVERVIEW

I. INTRODUCTION

1. This case relates to crimes against humanity and war crimes which took place between August 2003 and March 2004, in Darfur, Sudan. The Sudan situation was referred to the International Criminal Court by the UN Security Council (Resolution 1593) on 31 March 2005. During the time relevant to the charges, an armed conflict, not of an international character, took place between the Government of Sudan ('GoS') using primarily an irregular force, the *Janjaweed*, on the one side, and the Sudan Liberation Movement/Army ('SLM/A') and the Justice and Equality Movement ('JEM') (collectively, 'the rebels'), on the other.

2. Following an attack on the Al Fasher airport by the SLM/A on 25 April 2003, the GoS decided to quash the rebellion by force. In December 2003, the GoS issued an Emergency Plan designed to achieve that objective and further to impose control over areas inhabited by, or belonging to, perceived 'rebellious' non-Arab tribes (including the Fur, Masalit and Zaghawa). To this end, the GoS decided to make use of already existing and well-known tensions between Arabs and the Fur tribe in particular by creating an irregular force 'from Arab tribes' which would be supported by the GoS. This force was known as the *Janjaweed*.

3. Acting on the GoS's instructions, the *Janjaweed* carried out armed operations against several predominantly Fur and non-Arab villages in Darfur. Some of these operations were carried out jointly with GoS Forces. During these operations, villages were pillaged and civilians were murdered, raped, persecuted, mistreated, and forcibly displaced. Whilst many more villages were targeted, the operations charged in this case concern Kodoom, Bindisi, Mukjar and Deleig. Fur men, (of all ages), who had fled with their families to Mukjar and Deleig from the ravaged villages, were detained, tortured and subsequently taken to areas outside the towns where they were executed, largely by members of the *Janjaweed*.

4. Within this context, this case concerns the alleged individual criminal responsibility for those crimes of the **Accused**, as leader of the *Janjaweed*.

5. In the view of the Chamber, in particular because during the course of the trial, conflict erupted again - and still continues - in Darfur, it is important that the issues which arose during the course of the trial (both legal and factual) are clearly set out in this judgment. The Chamber is of the opinion that public accessibility to a judgment is a salient aspect of the work of this

court.

6. Accordingly, whilst the relevant facts and circumstances underpinning the Chamber's decision are set out in further detail in the body of this judgment, the witness credibility assessments which are fundamental to the factual and legal findings have been placed into an annex.[1] That annex, together with others, forms an integral part of the judgment.

II. THE ACCUSED

7. **The Accused** is a Sudanese citizen.[2] His personal identification card records that he was born in Rahad Al-Berdi, South Darfur, in 1949.[3] He is Muslim and speaks Arabic.[4] He belongs to the Ta'aisha tribe, which is generally considered to be an Arab tribe in Sudan.[5]

8. The full name of **the Accused** is formed of a series of names corresponding to his descent, it being a common practice in Sudan for names to be composed in this manner.[6] It is a matter of dispute between the parties whether, during the charged period, **the Accused** was the man known by the nickname '**Ali Kushayb**' (the 'Identification Issue').[7] The Chamber will make factual findings hereinafter to this Identification Issue.[8]

9. **The Accused** is a former member of the Medical Corps of the Sudanese Armed Forces, from which he retired in early to mid-1990s.[9] A certificate from the Council of Medical Assistance and Technical Professions of Sudan states that 'Ali Muhammad Ali' qualified as a medical assistant in 1984.[10] The highest rank held by **the Accused** while in the Sudanese Armed Forces was that of *musa'id* (warrant officer).[11]

10. Upon his retirement from the Sudanese Armed Forces, **the Accused** lived mainly in Garsila,[12] a town located in the Wadi Salih area of West Darfur.[13] He opened a shop in Garsila market from which he sold medication, which was one among many shops situated near the

[1] *See* Annex B to the present Judgment.
[2] Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 2.
[3] Third Joint Submission on Agreed Facts, Annex A, Agreed Facts 1, 7.
[4] Third Joint Submission on Agreed Facts, Annex A, Agreed Facts 3, 6.
[5] Third Joint Submission on Agreed Facts, Annex A, Agreed Facts 4-5.
[6] Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 8.
[7] *See* Prosecution's Final Brief, para. 3; Defence's Final Brief, para. 759.
[8] *See* Section 5.I. The Accused, Abd-Al-Rahman, was known as 'Ali Kushayb' *below*.
[9] Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 10.
[10] Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 9.
[11] Prosecution's Final Brief, para. 53; Defence's Final Brief, paras 3-4, 30.
[12] Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 15.
[13] *See* para. 273 *below*.

Agricultural Bank.[14] As of 10 April 2012, **the Accused** was in possession of a licence from the Federal Council for Pharmaceuticals and Toxicology of Sudan to sell medicine.[15]

11. It is a matter of dispute between the parties whether, during the charged period**, the Accused** was a leader of the *Janjaweed*.[16] The Chamber will make factual findings regarding whether **the Accused** held the position of authority alleged by the Prosecution hereinafter in this judgment.[17]

12. An Order for Assignment of police recruits dated 28 July 2005, signed by the Commander of the Central Reserve Forces, states that '**Abd-Al-Rahman**' was a member of a group of the Central Reserve Police.[18]

13. In July 2013, **the Accused** was the subject of an assassination attempt in Nyala.[19]

III. THE CHARGES

14. For ease of reference, the Chamber considers it appropriate to provide below a brief overview of the charges in the present case.

15. The confirmed charges concern 31 counts of war crimes and crimes against humanity allegedly committed in the Wadi Salih and Mukjar localities of West Darfur, Sudan between August 2003 and March 2004. These charges can be sub-divided into three categories: crimes committed (i) in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003 (Counts 1-11);[20] (ii) in Mukjar and surrounding areas between the end of February 2004 and the beginning of March 2004 (Counts 12-21);[21] and (iii) in Deleig and surrounding areas between 5 and 7 March 2004 (Counts 22-31).[22]

[14] Third Joint Submission on Agreed Facts, Annex A, Agreed Facts 11, 14.
[15] Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 12.
[16] *See* Prosecution's Final Brief, para. 128; Defence's Final Brief, paras 793-794.
[17] *See* Sections 5.I. The Accused, Abd-Al-Rahman, was known as 'Ali Kushayb' and 5.IV The Accused's position of authority and influence in 2003 and 2004 *below*.
[18] Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 13.
[19] *See* Prosecution's Final Brief, para. 55; Defence's Final Brief, para. 729.
[20] Confirmation Decision, pp. 54-58, paras 27-57.
[21] Confirmation Decision, pp. 58-63, paras 58-95.
[22] Confirmation Decision, pp. 63-67, paras 96-132.

16. With respect to the crimes committed in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, the charges are as follows:

> **COUNT 1: Intentionally directing attacks against the civilian population of Kodoom and Bindisi and surrounding areas as such, as a war crime**, between 15 and 16 August 2003, pursuant to article 8(2)(e)(i) and article 25(3)(b) (ordering[23] and/or inducing) of the Statute.
>
> **COUNT 2: Murder as a crime against humanity**, concerning the *non-exhaustive*[24] list of persons in Annex 1, who were killed in Kodoom, Bindisi and surrounding areas, between 15 and 16 August 2003, pursuant to article 7(1)(a) and article 25(3)(b) (ordering and/or inducing) of the Statute.
>
> **COUNT 3: Murder as a war crime**, concerning the *non-exhaustive* list of civilians not taking direct part in hostilities, or persons *hors de combat* who were at the material time in the power of the Militia/*Janjaweed* or GoS Forces (in Annex 1), between 15 and 16 August 2003 in Kodoom, Bindisi and surrounding areas, pursuant to article 8(2)(c)(i) and article 25(3)(b) (ordering and/or inducing) of the Statute.
>
> **COUNT 4: Pillaging as a war crime**, in Kodoom and Bindisi, between 15 and 16 August 2003, pursuant to article 8(2)(e)(v) and article 25(3)(b) (ordering and/or inducing) of the Statute.
>
> **COUNT 5: Destruction of the property of an adversary, without military necessity, as a war crime**, in Kodoom and Bindisi, between 15 and 16 August 2003, pursuant to article 8(2)(e)(xii) and article 25(3)(b) (ordering and/or inducing) of the Statute.
>
> **COUNT 6: Other inhumane acts as a crime against humanity**, in Bindisi and surrounding areas, between 15 and 16 August 2003, pursuant to article 7(1)(k) and article 25(3)(b) (ordering and/or inducing) of the Statute.
>
> **COUNT 7: Outrages upon personal dignity as a war crime**, in Bindisi and surrounding areas, between 15 and 16 August 2003, pursuant to article 8(2)(c)(ii) and article 25(3)(b) (ordering and/or inducing) of the Statute.
>
> **COUNT 8: Rape as a crime against humanity**, concerning the *non-exhaustive* list of Fur women and girls, in Annex 1, in Bindisi and surrounding areas, between 15 and 16 August 2003, pursuant to article 7(1)(g) and article 25(3)(b) (ordering and/or inducing) of the Statute.
>
> **COUNT 9: Rape as a war crime**, concerning the *non-exhaustive* list of Fur women and girls, in Annex 1, in Bindisi and surrounding areas, between 15 and 16

[23] *See* Regulation 55 Decision, para. 25. *See also* Addendum to Prosecution's Trial Brief.

[24] In its Decision on the Prosecution's Application to Amend Charges, the Pre-Trial Chamber clarified that the list of victims for the charged crimes of murder and rape (Counts 2-3, 8-9, 17-18 and 27-28) was *non-exhaustive* (Decision on Prosecution's Application to Amend Charges, paras 15, 22-24). Additionally, the Prosecution has provided, by way of annexes to its Final Brief, revised lists of alleged victims for the charged crimes of murder and rape (Annexes 11, 12, 17 and 23 to Prosecution's Final Brief).

August 2003, pursuant to article 8(2)(e)(vi) and article 25(3)(b) (ordering and/or inducing) of the Statute.

COUNT 10: Forcible transfer as a crime against humanity, concerning the expulsion of Fur persons lawfully present in Kodoom and Bindisi, between 15 and 16 August 2003, pursuant to article 7(1)(d) and article 25(3)(b) (ordering and/or inducing) of the Statute.

COUNT 11: Persecution as a crime against humanity, on political and ethnic grounds, concerning the predominantly Fur population of Kodoom, Bindisi and surrounding areas perceived as belonging to, or being associated with, or supporting the rebel armed groups, by way of the criminal acts listed in Counts 1-10, between 15 and 16 August 2003, pursuant to article 7(1)(h) and article 25(3)(b) (ordering and/or inducing) of the Statute.

17. In relation to the crimes committed in Mukjar and surrounding areas between the end of February 2004 and the beginning of March 2004, the charges are as follows:

COUNT 12: Torture as a crime against humanity, concerning a large number of Fur men in Mukjar Police Station, between late February and early March 2004, pursuant to article 7(1)(f) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Statute.

COUNT 13: Torture as a war crime, concerning Fur men in Mukjar Police Station, between late February and early March 2004, pursuant to article 8(2)(c)(i) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Statute.

COUNT 14: Other inhumane acts as a crime against humanity, concerning Fur men in Mukjar Police Station, between late February and early March 2004, pursuant to article 7(1)(k) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Statute.

COUNT 15: Cruel treatment as a war crime, concerning Fur men in Mukjar Police Station, between late February and early March 2004, pursuant to article 8(2)(c)(i) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Statute.

COUNT 16: Outrages upon personal dignity as a war crime, concerning Fur men in Mukjar Police Station, between late February and early March 2004, pursuant to article 8(2)(c)(ii) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Rome Statute.

COUNT 17: Murder as a crime against humanity, concerning the *non-exhaustive list of* persons in Annex 1, outside of Mukjar, between late February and early March 2004, pursuant to article 7(1)(a) and article 25(3)(a) (co-perpetration) and article 25(3)(b) (ordering and/or inducing) of the Rome Statute.

COUNT 18: Murder as a war crime, concerning the *non-exhaustive list of*

persons in Annex 1, outside of Mukjar, between late February and early March 2004, pursuant to article 8(2)(c)(i) and article 25(3)(a) (co-perpetration) and article 25(3)(b)(ordering and/or inducing) of the Rome Statute.

COUNT 19: Attempted murder as a crime against humanity, concerning two detained Fur males, outside of Mukjar, between late February and early March 2004, pursuant to article 7(1)(a) and articles 25(3)(f) and 25(3)(a) (co-perpetration) and articles 25(3)(f) and 25(3)(b) (ordering and/or inducing) of the Statute.

COUNT 20: Attempted murder as a war crime, concerning two detained Fur males, outside of Mukjar, between late February and early March 2004, pursuant to article 8(2)(c)(i) and articles 25(3)(f) and 25(3)(a) (co-perpetration) and articles 25(3)(f) and 25(3)(b) (ordering and/or inducing) of the Statute.

COUNT 21: Persecution as a crime against humanity, on political, ethnic and gender grounds, concerning Fur males perceived as belonging to, or being associated with, or supporting rebel armed groups, by way of the criminal acts listed in Counts 12-20, in Mukjar and surrounding areas, in late February/early March 2004, pursuant to article 7(1)(h) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing and/or ordering) of the Statute.

18. Finally, regarding the crimes committed in Deleig and surrounding areas between 5 and 7 March 2004, the charges are as follows:

COUNT 22: Torture as a crime against humanity, concerning between 100 and 200 Fur males in Deleig, between 5 and 7 March 2004, pursuant to article 7(1)(f) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Statute.

COUNT 23: Torture as a war crime, concerning between 100 and 200 Fur males in Deleig, between 5 and 7 March 2004, pursuant to article 8(2)(c)(i) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Statute.

COUNT 24: Other inhumane acts as a crime against humanity, concerning between 100 and 200 Fur males in Deleig, between 5 and 7 March 2004, pursuant to article 7(1)(k) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Statute.

COUNT 25: Cruel treatment as a war crime, concerning between 100 and 200 Fur males in Deleig, between 5 and 7 March 2004, pursuant to article 8(2)(c)(i) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (inducing) of the Statute.

COUNT 26: Outrages upon personal dignity as a war crime, concerning between 100 and 200 Fur males in Deleig, between 5 and 7 March 2004, pursuant to article 8(2)(c)(ii) and article 25(3)(a) (direct perpetration and co-perpetration), and article 25(3)(b) (inducing) of the Statute.

COUNT 27: Murder as a crime against humanity, concerning the *non-*

exhaustive list of persons in Annex 1, in Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to article 7(1)(a) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (ordering and/or inducing) of the Statute.[25]

COUNT 28: Murder as a war crime, concerning the *non-exhaustive list of* persons in Annex 1, in Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to article 8(2)(c)(i) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (ordering and/or inducing) of the Statute.

COUNT 29: Attempted murder as a crime against humanity, concerning four[26] detained Fur males, in Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to article 7(1)(a) and articles 25(3)(f) and 25(3)(a) (co-perpetration) and articles 25(3)(f) and 25(3)(b) (ordering and/or inducing) of the Statute.

COUNT 30: Attempted murder as a war crime, concerning four detained Fur males, in Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to article 8(2)(c)(i) and articles 25(3)(f) and 25(3)(a) (co-perpetration) and articles 25(3)(f) and 25(3)(b) (ordering and/or inducing) of the Statute.

COUNT 31: Persecution as a crime against humanity, on political, ethnic and gender grounds, concerning Fur males perceived as belonging to, or being associated with, or supporting rebel armed groups in Deleig and surrounding areas, between 5 and 7 March 2004, by way of the criminal acts listed in Counts 22-30, pursuant to article 7(1)(h) and article 25(3)(a) (direct perpetration and co-perpetration) and article 25(3)(b) (ordering and/or inducing) of the Statute.

19. The Chamber notes the references to the terms 'surrounding areas' in the charges. The Pre-Trial Chamber clarified that the geographical scope of the crimes committed in Kodoom and Bindisi extends 'to the roads and fields surrounding Kodoom and Bindisi insofar as the victims were present in these locations when initially targeted'.[27] In respect of the charged crimes committed in Mukjar and Deleig, the geographical scope of these charges 'extends beyond the boundaries of these two towns only insofar as some of the victims were transported from there to other locations where they were allegedly executed'.[28]

[25] The Chamber notes that for Counts 27-28, the Pre-Trial Chamber confirmed the murder of three Fur men in Deleig under direct perpetration. However, the Prosecution in its Final Brief refers only to the murder of two Fur men. *See* Confirmation Decision, pp. 64, 70; Prosecution's Final Brief, paras 548-559, 642.
[26] The Chamber notes that for Counts 29-30, the Prosecution in its Final Brief refers to four detained Fur men instead of the twelve that were charged in the Pre-Trial confirmation decision (*see* Confirmation Decision, p. 70; Prosecution's Final Brief, para. 620).
[27] Confirmation Decision, para. 25.
[28] Confirmation Decision, para. 25.

SECTION 2. JURISDICTION

20. The Chamber accepts the Defence's submission that the Chamber has 'the primary jurisdiction' to carry out the 'definitive assessment' as to whether the principle of *nullum crimen sine lege* has been violated in the present case.[29]

21. The Chamber finds that it has the authority and obligation arising from Article 19(1) of the Statute to satisfy itself that it has jurisdiction in any case brought before it.[30] In the instant case, the Chamber recalls the Appeals Chamber's statement in the *Abd-Al-Rahman* OA8 Judgment that 'only once a link is drawn with the charges in this case can the question of the legality of the charges be definitely answered'.[31] It also notes that the Appeals Chamber, in the *Abd-Al-Rahman* Decision on Request for Reconsideration of OA8 Judgment, found that, pursuant to the procedure for challenging the Court's jurisdiction set out in Article 19(4) and (6) of the Statute, 'the alleged existence of new facts or evidence', which had emerged since the *Abd-Al-Rahman* OA8 Judgment was issued, 'would have to be considered first by the Trial Chamber'.[32]

I. RELEVANT BACKGROUND

22. On 17 May 2021, the Pre-Trial Chamber issued a decision in which it rejected the Defence's jurisdictional challenge pursuant to Article 19(2)(a) of the Statute and affirmed that the Court had jurisdiction over the present case.[33]

23. On 1 November 2021, the Appeals Chamber confirmed the aforementioned decision of the Pre-Trial Chamber.[34] The Appeals Chamber found that: (i) 'the risk of international criminal liability was acute to such a degree that it was foreseeable to an officer of Mr Abd-Al-Rahman's rank';[35] and that (ii) the charges brought against **the Accused** 'draw upon norms that were recognised globally, including in Sudan, and were fully ascertainable at the time of the conflict in Darfur'.[36] In reaching this conclusion, the Appeals Chamber took into account 'the framework of laws applicable to the conflict in Darfur, the undertakings of the parties to

[29] Defence's Final Brief, para. 21.
[30] *See* *Ntaganda* OA2 Judgment, para. 18.
[31] *Abd-Al-Rahman* OA8 Judgment, para. 91.
[32] Decision on Request for Reconsideration of OA8 Judgment, para. 36.
[33] Decision on Defence's Jurisdictional Challenge.
[34] *Abd-Al-Rahman* OA8 Judgment.
[35] *Abd-Al-Rahman* OA8 Judgment, para. 90.
[36] *Abd-Al-Rahman* OA8 Judgment, para. 77. *See also* para. 78, *referring to* International Commission of Inquiry on Darfur Report.

the conflict, and the appreciation for those laws and undertakings that would reasonably belong to a commander in the militia'.[37]

24. On 10 March 2023, the Chamber issued a decision on the Defence's application for leave to file a motion for acquittal, in which it rejected the Defence's challenge against the legality of all charges and thus of the Court's jurisdiction, noting that '[a] motion for acquittal is not the appropriate avenue to decide on [a jurisdictional legal issue]', and that 'the Defence [would] have the opportunity to make legal submissions on this issue at the conclusion of the trial'.[38]

25. On 17 July 2023, the Appeals Chamber issued a decision in which it, by majority, dismissed *in limine* the Defence's request for review of the *Abd-Al-Rahman* OA8 Judgment in light of the allegedly new facts that had emerged.[39]

26. In its Final Brief, the Defence seeks, again, a dismissal of the case on the basis that the Court lacks jurisdiction to prosecute **the Accused**, pursuant to Article 22(1) of the Statute.[40] In support of its submission, the Defence argues that '[a] holistic consideration of the entirety of the evidence' presented at trial indicates that the test of foreseeability and accessibility with respect to the principle of *nullum crimen sine lege* has not been met in the present case.[41]

27. The Chamber will review the submissions of the Defence and the Prosecution, as well as the observations of the CLRV, in this regard below.

II. TEST UNDER ARTICLE 22(1) OF THE STATUTE

28. The Chamber recalls that the principle of *nullum crimen sine lege*, found in Article 22(1) of the Statute, provides as follows:

> A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

[37] *Abd-Al-Rahman* OA8 Judgment, para. 90.
[38] Decision on Leave for Motion for Acquittal.
[39] Decision on Request for Reconsideration of OA8 Judgment. The Appeals Chamber, by majority, found, *inter alia*, that there is no legal basis within the legal framework of the Court to request the review of judgments issued under Rule 158 of the Rules (Decision on Request for Reconsideration of OA8 Judgment, para. 35).
[40] Defence's Final Brief, paras 8, 35.
[41] Defence's Final Brief, paras 8, 22-35.

29. The Appeals Chamber, in the *Abd-Al-Rahman* OA8 Judgment, noted that:

> [T]he principle of *nullum crimen sine lege* generally requires that a court may exercise jurisdiction only over an individual who could have reasonably expected to face prosecution under national or international law. […] [C]ourts place particular emphasis on the concepts of "foreseeability" and "accessibility". As to foreseeability, the European Court of Human Rights uses the standard of "reasonableness" in assessing the foreseeability of prosecution, taking into account factors such as the "flagrantly unlawful nature" of the crimes charged and the circumstances of the accused. As to accessibility, the relevant laws must have been ascertainable, in the sense that the laws were sufficiently clear and accessible to the accused.
>
> In the context of this Court, this test is satisfied if the State in which the conduct occurred is a Party to the Statute or the accused is a national of a State that is a Party to the Statute, which describes the prohibited conduct clearly and defines the crimes entering into force in July of 2002. However, for conduct that takes place on the territory of a State that is not a Party to the Statute, it is not enough that the crimes charged can be found in the text of the Statute. In interpreting article 22(1) of the Statute in a manner consistent with human rights law, a chamber must look beyond the Statute to the criminal laws applicable to the suspect or accused at the time the conduct took place and satisfy itself that a reasonable person could have expected, at that moment in time, to find him or herself faced with the crimes charged.[42]

30. In light of the above, the Chamber considers that, in the context of the present case, the foreseeability and accessibility test is satisfied if: (i) the criminal laws, national or international, applicable to **the Accused**, at the time the conduct took place, described the prohibited conduct clearly and defined the crimes charged; and (ii) a reasonable person in **the Accused's** position could have expected, at that moment in time, to find himself faced with the crimes charged, either nationally or internationally. The Chamber emphasises that, as the relevant jurisprudence of the Extraordinary Chambers in the Courts of Cambodia ('ECCC'), the European Court of Human Rights ('ECtHR') and the International Criminal Tribunal for the former Yugoslavia ('ICTY') confirm,[43] a chamber's assessment of the second limb of the test is objective, on the basis of a reasonable person in **the Accused's** position, and not **the Accused's** subjective understanding of the law, or his belief in the lawfulness of his conduct.[44]

31. The Chamber will now examine whether the foreseeability and accessibility test has

[42] *Abd-Al-Rahman* OA8 Judgment, paras 85-86 (footnotes omitted). *See also* CLRV's Final Brief, para. 38.
[43] *Hadžihasanović et al.* Jurisdiction Decision, para. 34; *Duch* Appeal Judgment, para. 96; *Jorgić v. Germany* Judgment, para. 113; *Vasiliauskas v. Lithuania* Judgment, paras 154, 157.
[44] *Contra* Defence's Final Brief, para. 15. *See also* CLRV's Final Brief, para. 40.

been met in the case at hand.

A. The criminal laws applicable to the Accused at the time of his conduct

32. The Chamber notes that it assessed the relevant Sudanese laws submitted in the case record which were in force at the time of the charged events between August 2003 and March 2004, and thus, were applicable to **the Accused**.

33. First, Part II, chapter 1 of the 1998 Sudanese Constitution provided fundamental rights and freedoms to the citizens of Sudan, including life and liberty, freedom of movement, minority and cultural rights, right to property, security of person, and fair trial rights.[45] Specifically, Article 20 of the 1998 Sudanese Constitution provided for the right to life, liberty and 'security of person', and further stated that no one shall be 'degraded or tortured'. Article 21 prohibited 'discrimination based on race, sex or religion'. Article 23 guaranteed every citizen the right to freedom of movement and residence which cannot be restricted except in accordance with law. Article 28 stated that no one can be deprived of their right to property, 'except by law to enforce public sharing, for the public interest and only in exchange for just compensation'. Article 30 stated that nobody shall be 'arrested, detained or imprisoned except in accordance with law which shall prescribe the charge'.

34. Second, the 1991 Criminal Act of Sudan unambiguously described the prohibited conduct and defined the crimes of, *inter alia*, provoking hatred against or amongst sects by reason of ethnic, colour or language differences; murder; semi-intentional homicide; causing serious bodily injury; causing pain or disease; use of force on another person without their consent; intimidation; rape; gross indecency (acts contrary to another person's modesty and sexual acts with another person not amounting to adultery or sodomy); insult, abuse and humiliation; kidnapping; unlawful confinement or detention; invasion of privacy; theft; robbery; armed robbery (*hiraba*); criminal misappropriation; destruction of property; and defiling and disturbing places of worship.[46] These crimes are analogous to the crimes charged

[45] 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0005-0007.
[46] 1991 Criminal Act, DAR-D31-0003-0177, Translation, DAR-OTP-0021-0296, Articles 64 ('Provoking hatred against or amongst sects'), 127 ('Defiling and disturbing places of worship'), 130 ('Murder'), 131 ('Semi-intentional homicide'), 138 ('Wounds and their types'), 139 ('Penalty for causing intentional wounds'), 140 ('Penalty for causing semi-intentional wounds'), 142 ('Hurt'), 143 ('Criminal force'), 144 ('Intimidation'), 149 ('Rape'), 151 ('Gross indecen[c]y'), 160 ('Insult and abuse'), 162 ('Kidnapping'), 164 ('Unlawful confinement'), 165 ('Unlawful detention' and 'Invasion of privacy'), 167 ('Armed robbery (*Hiraba*)'), 168 ('Penalty for armed robbery (*Hiraba*)'), 174 ('Theft'), 175 ('Robbery'), 180 ('Criminal misappropriation'), 182 ('Criminal mischief').

in the present case.

35. In this regard, D-0016, referring to Article 79 of the 1986 People's Armed Forces Act, explained that acts of violation of international humanitarian law which constituted crimes under the 1991 Criminal Act could be prosecuted under the latter, even if they were committed by military personnel in the context of military operations.[47] Referring to Articles 4 and 5 of the 1986 People's Armed Forces Act, D-0016 stated that members of the Central Reserve Forces ('CRF'), the Popular Defence Forces ('PDF') and people who worked with the Sudanese Armed Forces ('SAF'), during emergency periods and temporary operations, were subject to its provisions.[48] D-0016 also clarified that commission of a crime under the 1986 People's Armed Forces Act did not exempt from incrimination under the 1991 Criminal Act, as the two statutes applied concomitantly.[49]

36. The Chamber notes that Sudan confirmed the aforementioned legal framework in its 9 March 2000 periodic report to the Committee on the Elimination of Racial Discrimination of the United Nations ('UN'),[50] and its April 2003 periodic report to the African Commission on Human and Peoples' Rights.[51]

37. On the basis of the foregoing findings, the Chamber assesses the Defence's specific challenges.

38. First, the Defence alleges that there were 'positive obligations to violate international humanitarian law',[52] as there were 'obstacles' to the prosecution of the aforementioned crimes in Sudan, such as the 'legal notion of *Ghanima*', 'amnesties, immunities, the doctrine of military necessity, and the absence of the definition of lawful order'.[53]

39. In respect of the Defence's submissions pertaining to the purported legality of '*ghanima*',[54] the Chamber notes that '*ghanima*' or 'capture of equipment' has its basis in the *Sharia* law and means 'taking the loot', 'stealing from the spoils' and 'bounties' of war,

[47] D-0016: T-130, pp. 41, 70, *referring to* 1986 People's Armed Forces Act, DAR-OTP-00005984, Translation, DAR-OTP-00006136, Article 79. *See also* D-0016: T-131, pp. 87-88.
[48] D-0016: T-131, p. 20, *referring to* 1986 People's Armed Forces Act, DAR-OTP-00005984, Translation, DAR-OTP-00006136, at 0007, Articles 4-5.
[49] D-0016: T-131, p. 88.
[50] CERD Report, DAR-OTP-00006618.
[51] ACHPR Report, DAR-OTP-00005133.
[52] Defence's Final Brief, paras 256-262.
[53] Defence's Final Brief, para. 27.
[54] Defence's Final Brief, paras 27, 256-261, 810, 813, 815.

including 'money, instruments, weapons, vehicles and so on, whether military or civilian equipment', from the 'camps and sites of the enemies'.[55] The 1986 People's Armed Forces Act defined 'enemy' as 'includ[ing] external enemies, outlaw rebels and armed gangs in a state of readiness for combat operations'.[56]

40. The Chamber further notes that Article 52(b) of the 1986 People's Armed Forces Act prohibited 'attacking any house or other place in order to plunder, damage or destroy any crops, gardens or any other such property',[57] and that such acts would have also constituted 'armed robbery (*Hiraba*)' under the 1991 Criminal Act.[58] D-0016 confirmed that '*ghanima* does not apply unless the armed forces attack an enemy camp',[59] that it is a crime for someone to take this property for himself or herself,[60] and that taking away properties from a locality that was attacked would amount to the crime of *hiraba* or 'stealing'.[61]

41. Moreover, contrary to the Defence's argument that Ahmad Muhammad Harun ('Minister Harun') declared the properties of the Fur as *ghanima* during his speech in Mukjar in August 2003,[62] the evidence in the present case does not demonstrate, nor does any applicable provision of the Sudanese law, that Minister Harun had the legal authority to make such a general declaration.[63] The Chamber finds that there is no evidence that *ghanima* can be equated to pillaging. Equally, there is no evidence that *ghanima* created a positive legal obligation or provided a justification for the commission of the acts constituting the crimes charged.

42. With respect to the Defence's submissions alleging the absence of a definition of unlawful order in the Sudanese domestic laws,[64] the Chamber notes the evidence of D-0016 that Articles 28 and 60 of the 1986 People's Armed Forces Act 'stipulated indirectly the

[55] D-0016: T-131, pp. 65-68; P-0029: T-029, pp. 47-48; P-0986: DAR-OTP-0222-0437-R01, at 0448-0449, para. 55 ('rewards'); P-0757's Statement, DAR-OTP-0211-0003-R02, at 0017, para. 57 ('prize').
[56] 1986 People's Armed Forces Act, DAR-OTP-00005984, Translation, DAR-OTP-00006136, p. 6.
[57] 1986 People's Armed Forces Act, DAR-OTP-00005984, Translation, DAR-OTP-00006136.
[58] D-0016: T-131, pp. 65-67.
[59] D-0016: T-131, p. 67.
[60] D-0016: T-131, pp. 66-67, 69. According to D-0016, *ghanima* is 'collected in a legal manner' only when 'the armed forces takes all that it can take, including money or weapons' following 'an attack on the enemy camp and entering such camp', and if 'this is used for the armed forces'.
[61] D-0016: T-131, p. 67.
[62] Defence's Final Brief, paras 256-257, 815-816.
[63] *Contra* Defence's Final Brief, paras 256-257, 815-816.
[64] Defence's Final Brief, paras 27, 258-261, 807-808, 813.

definition of lawful order'.[65] These provisions clearly indicated that 'the order coming from any leadership has to be lawful' and 'no unlawful order shall be executed'.[66] Article 28 of this Act, in particular, '[bound] the […] armed forces personnel to execute any lawful order issued by higher officers and […] to do their work lawfully', in accordance with the 1986 People's Armed Forces Act, the Sudanese 1998 Constitution and 'in virtue of any other applicable law'.[67]

43. The Chamber further notes that Article 60 of the 1986 People's Armed Forces Act provided that disobedience to a lawful order is punishable by a term of imprisonment of 10 years or less.[68] In this regard, the Defence claims that there was a general knowledge that the disobedience of any orders in operation 'incurred [the] death penalty and possibly summary execution without trial'.[69]

44. However, the Chamber takes note of D-0016's evidence that '[i]n all cases, there [was] no crime if a person disobey[ed] an unlawful order, it ha[d] to be a lawful order',[70] and that when 'an officer […] issue[d] an unlawful order', 'the person who's receiving the order [could] refuse to obey this order because it's unlawful'.[71] According to D-0016, while execution of an unlawful order could incur criminal responsibility,[72] in practice, 'people [didn't] get referred to court straight away as soon as they refuse[d] obeying an order', and they were 'usually given information and an explanation about the importance of obeying the order and the consequences of disobeying it'.[73] In addition, the Chamber notes Article 32 of the 1998 Sudanese Constitution, which specified that the death penalty may only be imposed as punishment for the most serious crimes, in accordance with the law, and that it cannot be imposed on persons below the age of 18, 'on pregnant or lactating women, except two years after the birth' and those above the age of 70, 'except when they have committed the crimes of *qisas* [*i.e.* retribution] or *hudud* [prescribed penalties]'.[74]

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[65] 1986 People's Armed Forces Act, DAR-OTP-00005984, Translation, DAR-OTP-00006136, Articles 28, 60; D-0016: T-130, pp. 79, 81-83, 86; T-131, pp. 4-8.
[66] D-0016: T-130, pp. 79, 81-83, 86; T-131, pp. 4-8.
[67] D-0016: T-130, pp. 79, 81-83, 86; T-131, pp. 4-8.
[68] 1986 People's Armed Forces Act, DAR-OTP-00005984, Translation, DAR-OTP-00006136, Article 60.
[69] Defence's Final Brief, paras 808-809, 813.
[70] D-0016: T-131, p. 6.
[71] D-0016: T-130, p. 82.
[72] D-0016: T-130, p. 82.
[73] D-0016: T-131, p. 7. *Contra* Defence's Final Brief, paras 27, 260.
[74] 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0007; CERD Report, DAR-OTP-00006618, at 0012. *Contra* Defence's Final Brief, paras 27, 260.

45. Accordingly, the Chamber rejects the Defence's arguments in relation to the definition of unlawful order in the Sudanese domestic laws.

46. As regards the Defence's assertion that 'the possible application' of the doctrine of military necessity 'contributed to strengthening an overall perception that everything was permissible while on operations on account of the GoS',[75] the Chamber notes that there is no evidence in this respect. The Chamber further notes that D-0016 provided a general overview of the use/abuse of the doctrine of military necessity in international humanitarian law and in Sudan.[76] In any event, the Chamber notes that, as discussed below in this judgment, military necessity does not provide justification for the commission of the crimes with which **the Accused** is charged in the present case.[77] Therefore, the Chamber rejects the Defence's arguments in this regard.

47. In respect of the Defence's suggestion that 'amnesties [and] immunities […] created many obstacles' to the prosecution in Sudan of the crimes with which **the Accused** is charged, the Chamber notes that there is no evidence before it which suggests that **the Accused** was granted any immunity or amnesty, in any form, by the Government of Sudan prior to or during the time of commission of the acts constituting the crimes charged, to render inapplicable the legal provisions discussed earlier *vis-à-vis* **the Accused**.[78] In this regard, the Chamber notes that, when questioned by the Presiding Judge on whether there was an actual grant of an amnesty given by the GoS to its forces for any crimes that they may have committed during the period of 2003 and 2004, P-0120 responded '[n]o'.[79] Accordingly, the Chamber rejects the Defence's submissions in this respect.

48. Second, the Defence submits that in 2003 and 2004: (i) human rights were disregarded and the international human rights treaties were not implemented in Sudan, based on the evidence of the instances of torture, arbitrary arrests and detentions, as well as extrajudicial executions;[80] (ii) international humanitarian law was not implemented domestically into the legal system of Sudan, as customary international law, as well as the relevant international treaties and conventions, did not directly become part of the domestic laws of Sudan;[81] and

[75] Defence's Final Brief, paras 27, 262, 812-814.
[76] D-0016: T-130, pp. 75-76.
[77] *See* paras 851, 857-858 *below*.
[78] *Contra* Defence's Final Brief, para. 27.
[79] P-0120: T-037, p. 44. *See also* CLRV's Final Brief, para. 40.
[80] Defence's Final Brief, paras 27, 238-269, 811.
[81] Defence's Final Brief, paras 245-247.

(iii) the definition of international crimes was absent in the domestic laws of Sudan.[82]

49. The Chamber finds that none of these issues impact or undermine the authority and applicability of the provisions of the 1991 Criminal Act, the 1986 People's Armed Forces Act and the 1998 Sudanese Constitution. In this respect, the Chamber recalls D-0016's evidence that 'the acts described in the [Four] Geneva Conventions and the Rome Statute are crimes prohibited by the [1991 Criminal Act], even if [the 1991 Criminal Act used] different names for these acts and crimes'.[83] In respect of the alleged disregard for human rights and prevalence of extrajudicial executions,[84] the Chamber notes the evidence of D-0016 that it was 'completely unacceptable, as the military criminal act is very clear about such offences and a person should have all the rights to a fair trial, especially when it comes to passing death sentences'.[85] Non-compliance does not in and of itself vitiate the applicability of the law.

50. In the context of the present case, the test under Article 22(1) of the Statute does not require that the rules of international humanitarian law were implemented in the domestic legal system or that the definition of 'international crimes' was adopted in domestic law with respect to the acts constituting the crimes charged. The first limb of the test is met when criminal laws applicable to **the Accused**, at the time the conduct took place, described the prohibited conduct clearly and defined the crimes charged such that a reasonable person in **the Accused's** position could have expected, at that moment in time, to find himself faced with the crimes charged, domestically.[86]

51. Therefore, the Chamber is satisfied that the criminal laws applicable to **the Accused**, at the time of commission of the charged acts between August 2003 and March 2004, clearly described the prohibited conduct and defined crimes comparable to the crimes charged.

B. Whether a reasonable person in the Accused's position could have expected, at the time of his conduct, to find himself faced with the crimes charged

52. The Chamber recalls that, at his first appearance before the Court, **the Accused**

[82] Defence's Final Brief, paras 248-250.
[83] D-0016: T-130, p. 70, *referring to* 1991 Criminal Act, DAR-D31-0003-0177, Translation, DAR-OTP-0021-0296; 1986 People's Armed Forces Act, DAR-OTP-00005984, Translation, DAR-OTP-00006136, Article 79.
[84] *See* Defence's Final Brief, paras 27, 238-269, 811.
[85] D-0016: T-130, p. 75.
[86] *Contra* Defence's Final Brief, para. 27.

indicated that he fully understands and speaks Arabic.[87] It also notes that, prior to the charged events in 2003 and 2004, **the Accused**: (i) spent a career as medical assistant in the Medical Corps of the SAF;[88] (ii) could read and write, since it was a minimum requirement under Article 23 of the 1986 People's Armed Forces Act for anyone who joined the SAF,[89] as confirmed by D-0016;[90] (iii) received a degree from a training school for general medical assistants in November 1984;[91] (iv) was registered with the Council of Auxiliary and Technical Medical Professions of Sudan;[92] (v) held the rank of *musa'id* or *sol* (warrant officer), the highest possible rank for a non-commissioned officer, at the time of his retirement from the SAF, around the early to mid-1990s;[93] and (vi) opened a pharmacy in Garsila from which he sold medication, after retirement from the SAF.[94]

53. The Chamber further notes that, as discussed in detail below in this judgment, during the period of the charged events in 2003 and 2004, **the Accused**: (i) was the leader of the *Janjaweed* in the Wadi Salih and Mukjar localities, exercising oversight in relation to recruitment, distribution of ammunition, weapons, supplies and salaries of the *Janjaweed*, and commanding the *Janjaweed* (and in some instances GoS Forces) during operations; (ii) was the head of the *Mujahidin* Committee, a sub-committee of the Mobilisation Committee in Wadi Salih; and (iii) had access to high-level GoS officials, such as Hamdi Sharaf-Al-Din Sid Ahmad ('Lt Hamdi'), Minister Harun, Ali Karti, Major General Suleiman Abdullah ('Maj Gen Suleiman Abdullah') and Abdullah Al-Tayyib Muhammad Torshein ('Torshein'), and attended meetings with them.[95]

54. The facts outlined above demonstrate **the Accused's** level of literacy and exposure to the rules and institutions of the State. Concerning the required degree of **the Accused's** knowledge with respect to the relevant domestic laws of Sudan, the Chamber finds that, at the time of his conduct, **the Accused** was able to appreciate that his conduct was criminal 'in the

[87] T-001, p. 20. *See also* Decision on Defence's Article 67(1)(f) Request, para. 5; *Abd-Al-Rahman* Defence's Appeal Brief against Decision on Defence's Article 67(1)(f) Request, para. 20 ('[i]t is not disputed' that the Accused fully understands and speaks Arabic).
[88] *Contra* Defence's Final Brief, paras 30-32. *See* para. 9 *above*. *See also* Third Joint Submission on Agreed Facts, Annex A, Agreed Facts 9-10; CLRV's Final Brief, para. 41; D-0039: T-159, pp. 23-24, 32.
[89] 1986 People's Armed Forces Act, DAR-OTP-00005984, Translation, DAR-OTP-00006136, at 0014, Article 23.
[90] D-0016: T-131, p. 14.
[91] Licence, DAR-D31-0001-0001, Translation, DAR-D31-0001-0007.
[92] Licence, DAR-D31-0001-0001, Translation, DAR-D31-0001-0007.
[93] *See* para. 9 *above*.
[94] Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 11. *See also* para. 266 *below*.
[95] *Contra* Defence's Final Brief, paras 30-32. *See* Section 5.IV. The Accused's position of authority and influence in 2003 and 2004. *See also* CLRV's Final Brief, para. 41.

sense generally understood', without reference to any specific provision.[96]

55. Therefore, on the basis of the evidence presented at trial and in light of the above, the Chamber is satisfied that a reasonable person in **the Accused's** position could have expected, at the time of his conduct, to find himself faced with the crimes charged.

56. In this context, and on the basis of the foregoing findings, the Chamber addresses the specific challenges raised by the Defence.

57. First, the Defence contends that **the Accused** never received any training in international humanitarian law.[97] In this regard, the Chamber recalls that the second limb of the test under Article 22 of the Statute is met when a reasonable person in **the Accused's** position could have expected, at the time of his conduct, to find himself faced with the crimes charged, either nationally or internationally. As noted above, the Chamber has found that this requirement has been met in the present case, as a reasonable person in **the Accused's** position, at the relevant time, would have been aware of the domestic criminal laws applicable to him.[98] Therefore, it follows that it is immaterial to the Chamber's current assessment whether **the Accused** received any training in international humanitarian law.

58. Second, the Defence alleges that the GoS officials invoked *Sharia* law in a deceptive manner to encourage the members of the GoS Forces and the *Janjaweed* to commit crimes in the context of the armed operations.[99] In particular, the Defence submits that Minister Harun 'invited' the members of GoS Forces and the *Janjaweed* to resort to the concept of *hiraba* against the Fur people in Darfur,[100] and that the chanting of '*Allahu Akbar*' during armed operations led the GoS Forces and the *Janjaweed* to believe that they were pleasing God even when committing crimes in the course of the operation.[101]

59. The Chamber also recalls that the domestic laws of Sudan applicable to **the Accused**, at the time of his conduct, clearly described the prohibited conduct and crimes comparable to the crimes charged, including armed robbery (*hiraba*).[102] Considering that, as noted above, **the**

[96] *See* *Hadžihasanović et al.* Jurisdiction Decision, para. 34; *Duch* Appeal Judgment, para. 96; *Jorgić v. Germany* Judgment, para. 113; *Vasiliauskas v. Lithuania* Judgment, paras 154, 157.
[97] Defence's Final Brief, paras 251-255, 806.
[98] The Chamber notes that D-0016 gave extensive evidence on the training in international humanitarian law in the SAF (*see* D-0016: T-131, pp. 14-19).
[99] Defence's Final Brief, paras 263-269.
[100] Defence's Final Brief, paras 264-266.
[101] Defence's Final Brief, paras 267-269.
[102] *See* paras 34, 40 *above*.

Accused held a high-ranking position as a senior *Janjaweed* leader with a substantial set of responsibilities and powers, and that he spent a considerable part of his career in the SAF, the Chamber is satisfied that a reasonable person in the position of **the Accused** would not have been 'deceived' into believing that his acts and conduct during the charged events were legal or justified.[103] In addition, the Chamber emphasises that a mere suggestion, without support of any witnesses or documents, does not become part of the evidence to be taken into account for the purposes of this judgment.[104]

III. CONCLUSION

60. On the basis of the evidence before it, and having rejected all of the Defence's challenges, the Chamber is satisfied that the requirement of *nullum crimen sine lege*, found in Article 22(1) of the Statute, is met in this case.

SECTION 3. DEFENCE'S ALLEGATIONS CONCERNING THE FAIRNESS OF THE PROCEEDINGS

61. The Defence raises a number of allegations concerning the fairness of the proceedings.[105] In particular, the Defence submits that the fairness of the trial was 'irremediably compromised' by: (i) Sudan's non-cooperation with the Court,[106] and the Court's failure to accord appropriate remedies to ensure the fairness of the proceedings in this regard;[107] (ii) difficulties in the Defence's investigations and presentation of its case, as a result of Sudan's lack of cooperation;[108] (iii) the Prosecution's failure to uphold its statutory obligations;[109] and (iv) the Court's failure to provide appropriate measures to protect the safety and well-being of witnesses.[110] The Defence, in essence, argues that these issues, individually and cumulatively,

[103] *Contra* Defence's Final Brief, paras 263-269.
[104] *See* para. 203 *below*.
[105] The Defence submits in paragraph 7 of the Final Brief that it 'makes its final submissions on […] TCI's interference with the right to a fair hearing (Chapter 2), Sudan's non-cooperation with the Court (Chapter 3) and the OTP's failure to discharge its disclosure obligations […] (Chapter 4)'. However, the Chamber notes that the Defence submits its arguments on 'Sudan's Non-Cooperation with the Court' in Chapter 2, and 'Serious Breach of the Prosecution's Disclosure Obligations' in Chapter 3 of the Final Brief, without presenting any submissions on 'TCI's interference with the right to a fair hearing'. Therefore, the Chamber will address only the Defence's arguments set out in Chapters 2 and 3 of the Final Brief.
[106] Defence's Final Brief, paras 38, 41-42, 47-48, 49-50, 54-55, 62-63, 66, 688-689.
[107] Defence's Final Brief, paras 5, 37-38, 40-43, 47-50, 62-66, 688.
[108] Defence's Final Brief, paras 49-50, 61, 64.
[109] Defence's Final Brief, paras 51-60, 67-71.
[110] Defence's Final Brief, paras 49, 53-56, 65.

warrant a permanent stay of the proceedings.[111]

62. While the statutory framework does not explicitly provide for a permanent stay of proceedings, the jurisprudence of the Court confirms the availability of this remedy.[112] In relation to the application of Article 21(3) of the Statute to alleged breaches of the accused person's rights, the Appeals Chamber has held that '[w]here fair trial becomes impossible because of breaches of the fundamental rights of the suspect or the accused by his/her accusers, it would be a contradiction in terms to put the person on trial', and that '[i]f no fair trial can be held, the object of the judicial process is frustrated and the process must be stopped'.[113] Not every infraction of the statutory framework justifies the granting of a request for stay of proceedings: the violation must be of such importance as to make a fair trial permanently impossible.[114] The unfairness in the treatment of the accused person must be of such a nature that it 'rupture[s] the process to an extent making it impossible to piece together the constituent elements of a fair trial'.[115] As such, a stay of proceedings is a 'drastic remedy' of an exceptional nature.[116]

63. Accordingly, the Chamber has considered each of the Defence's allegations with respect to the fairness of the proceedings and assessed whether they, individually or cumulatively, warrant a permanent stay of the proceedings.

64. As explained in detail below, the Chamber finds that the Defence's submissions are unfounded. It also notes in this regard the Prosecution's submission and the CLRV's observation that the Defence has misrepresented the relevant facts and submitted 'specious and repeated claims' throughout the proceedings to 'create an illusion of unfairness'.[117]

65. As a preliminary matter, the Chamber notes the Defence's submission that it 'does not

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[111] Defence's Final Brief, paras 39, 66.
[112] *See* *Ongwen* Trial Judgment, para. 44; *Al Hassan* Decision on Request for Termination of Proceedings, para. 50; *Ntaganda* Decision on Request for Stay of Proceedings, para. 20; *Kenyatta* Decision on Application for Permanent Stay of Proceedings, para. 14; Decision on Defence's First Request for Postponement, para. 30. *See also* Article 21(3) of the Statute.
[113] *Lubanga* OA4 Judgment, para. 37. *See also* *Ongwen* Trial Judgment, para. 44; *Al Hassan* Decision on Request for Termination of Proceedings, para. 50; *Kenyatta* Decision on Application for Permanent Stay of Proceedings, para. 14.
[114] *Ongwen* Trial Judgment, para. 44, fn. 91 and the jurisprudence cited therein.
[115] *Ongwen* Trial Judgment, para. 44; *Lubanga* OA4 Judgment, para. 39.
[116] *Ongwen* Trial Judgment, para. 44; *Al Hassan* Decision on Request for Termination of Proceedings, para. 51; *Kenyatta* Decision on Application for Permanent Stay of Proceedings, para. 14; Decision on Defence's First Request for Postponement, para. 30.
[117] Prosecution's Closing Statement: T-160, pp. 39, 46-47; CLRV's Final Brief, para. 78.

relitigate as part of [the] Final Brief' the 15 issues pertaining to 'Sudan's non-cooperation with the Court', which are listed in Annex I to its Final Brief,[118] since these issues have been the 'topic of many exchanges and much litigation throughout the proceedings'.[119] While the Defence characterises the 15 issues as 'unresolved',[120] the Chamber confirms that, on the basis of the relevant submissions of the parties and participants, the Pre-Trial Chamber and this Chamber have already ruled upon these issues.[121] Moreover, as the Defence acknowledges, the Chamber's 'rulings thereon are final until considered by the Appeals Chamber'.[122] As such, the Chamber understands the Defence's submission to be that these 15 issues are 'on record' for the Appeals Chamber's consideration later on appeal.[123] Therefore, the Chamber has reviewed only the Defence's submissions that are set out in the Final Brief and those made under Rule 64 of the Rules in relation to witness statements throughout the duration of the trial. For the purposes of making the Chamber's position clear and in order to prevent any misunderstanding, the Chamber, in this section of the judgment, repeats its prior determinations where necessary, in addition to addressing the additional arguments raised by the parties.

I. COOPERATION OF SUDAN

66. The Chamber notes that the Defence re-litigates in the Final Brief the following issues which have already been adjudicated upon and are also listed as such in Annex I to its Final Brief: (i) the alleged absence of a 'special agreement' with Sudan as required under Article 4(2)

[118] The Defence submits that the following 15 'unresolved legal and procedural issues' impacted on the fairness of the trial: (i) 'The absence of any special agreement concluded with the [GoS] authorizing the Court to exercise its functions and powers on the territory of Sudan, pursuant to Article 4(2) of the Statute'; (ii) 'The [GoS]'s systematic denial of all Defence requests for judicial assistance'; (iii) 'Absence of support for Defence field missions in Sudan from the United Nations'; (iv) 'Registry's denial of security support for Defence's field missions in Sudan'; (v) 'Non-disclosure of the Memorandum of Understanding concluded between the [GoS] and the Office of the Prosecutor for its exclusive needs'; (vi) 'Inadmissibility of evidence not complying with the Court's Information Security Policies'; (vii) 'Inadmissibility of evidence collected in Sudan'; (viii) 'Various procedural, material and legal flaws impacting on the validity of the Confirmation Decision'; (ix) 'Non-disclosure of applications submitted by Group A and Group B victims'; (x) 'Impossibility of protecting victims, witnesses and other persons at risk on account of the activities of the Court in Sudan'; (xi) 'Prohibition of cooperation with the Court under Sudanese criminal law'; (xii) 'Inadmissibility of evidence of the nickname Ali Kushayb collected after the Confirmation Hearing'; (xiii) 'Undue restriction on the right to a public hearing'; (xiv) 'Disclosure of identity of Defence witnesses to third parties with no protection'; and (xv) 'Inadmissibility of Facebook documents' (*see* Annex I to Defence's Final Brief).
[119] Defence's Final Brief, paras 6, 36.
[120] Defence's Final Brief, paras 6-7.
[121] *See* Decision on Defence's Request concerning MoU; Decision on Defence's Second Request concerning MoU; Decision on Defence's Procedural Challenges; Confirmation Decision; T-017, pp. 47-48; Decision on Defence's Requests for Leave to Appeal Decisions on Inadmissibility of Evidence and Victims' Participation; Decision on Defence's Submissions on Cooperation with Sudan; T-020, pp. 83-86; Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan; Decision on Defence's Article 67(1)(e) Motion.
[122] Defence's Final Brief, paras 6-7.
[123] Defence's Final Brief, paras 6, 36.

of the Statute';[124] (ii) Sudan's denial of all requests for cooperation submitted by the Defence;[125] and (iii) the purported 'incrimination of cooperation with the Court under Sudanese law'.[126]

67. The Chamber recalls that, pursuant to Article 64(2) of the Statute, a chamber of the Court is obliged to ensure that the proceedings before it are conducted with full respect for the rights of the accused, including the rights of an accused enshrined in Article 67 of the Statute, and to guarantee the interests of justice and the fairness of the proceedings.[127] In light of this obligation, the Chamber will address the aforementioned challenges of the Defence in order to assess whether there was unfairness or undue prejudice to **the Accused's** rights.

A. Allegations concerning a special agreement pursuant to Article 4(2) of the Statute

68. The Defence has asserted throughout the proceedings that specific reference to Article 4(2) of the Statute is necessary in the text of an agreement concluded between the Court and a State for that agreement to be considered a 'special agreement' within the meaning of Article 4(2) of the Statute.[128] In its Final Brief, the Defence attempts to re-litigate the issue of the 'absence of a special agreement with Sudan authorising the Court to exercise its function and powers on its territory, as required under Article 4(2) of the Statute'.[129]

69. Article 4(2) of the Statute provides that the Court may exercise its functions and powers, as provided in the Statute by way of a special agreement on the territory of any other State. In the present case, the Chamber recalls Article 1 of the 'Agreement on Cooperation between the International Criminal Court and the Republic of the Sudan (the 'Cooperation Agreement'), which states its purpose as the establishment of mechanisms to operationalise and enhance cooperation between the Court and Sudan, and to facilitate the expeditious fulfilment of the Court's mandate within the territory of Sudan in the context of the instant case.[130]

70. The Pre-Trial Chamber and this Chamber previously rejected the Defence's repeated

[124] Defence's Final Brief, paras 38, 48.
[125] Defence's Final Brief, paras 38, 41-42, 47, 49-50, 62-63, 66.
[126] Defence's Final Brief, paras 54-55.
[127] *Abd-Al-Rahman* OA13 Judgment, para. 50.
[128] *See* Decision on Defence's Submissions on Cooperation with Sudan, paras 22-23; Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 23. *See also* Annex I to Defence's Final Brief, p. 1.
[129] *See* Defence's Final Brief, paras 38, 46, 48.
[130] Cooperation Agreement, p. 4.

submissions in relation to the meaning of the term 'special agreement', as set out in Article 4(2) of the Statute,[131] as well as the Defence's requests for reconsideration of, and leave to appeal, the decisions on this matter.[132] The Chamber has specifically held that the Cooperation Agreement was a 'special agreement' within the meaning of Article 4(2) of the Statute.[133] In reaching this conclusion, the Chamber noted that the Defence provided no reason for its assertion that specific reference of Article 4(2) of the Statute is necessary in the text of an agreement entered into by the Court and a State for that agreement to be considered a 'special agreement' within the meaning of the Article 4(2) of the Statute.[134] The Chamber found that, 'despite the absence of a reference to Article 4(2) of the Statute in its text[,] the purpose, scope and contents of the Cooperation Agreement clearly qualify it as a "special agreement" within the meaning of Article 4(2) of the Statute'.[135]

71. The Chamber notes that there is no evidence or information before it which indicates otherwise. Furthermore, the Defence, in its Final Brief, merely recalls its previous submissions that were rejected and does not present any new arguments. Accordingly, the Chamber finds that the Court's previous decisions on this issue stand and will not further adjudicate upon this issue.

B. Allegations regarding the Defence's requests for cooperation from Sudan and the measures undertaken by the Chamber

a) The measures undertaken by the Chamber in respect of the Defence's requests for cooperation from Sudan

72. As a preliminary matter, the Chamber recalls that, contrary to the Defence's assertion,[136] it duly considered and ruled upon the Defence's repeated submissions in relation to the requests for **the Accused's** civil, criminal and military records from Sudan,[137] as set out

[131] *See* Decision on Defence's Procedural Challenges, paras 27-28, 38-40; Decision on Defence's Submissions on Cooperation with Sudan, para. 23; Decision on Prosecution's Second and Third Rule 68(3) Request, paras 9-17; Decision on Defence's Request for Postponement of Resumption, para. 23.
[132] Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 23.
[133] Decision on Defence's Submissions on Cooperation with Sudan, paras 22-23; Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 23.
[134] Decision on Defence's Submissions on Cooperation with Sudan, para. 22.
[135] Decision on Defence's Submissions on Cooperation with Sudan, para. 23.
[136] *See* Defence's Final Brief, paras 37, 40, 43, 66.
[137] Decision on Defence's Second Article 87(5)(b) Request; Addendum to Decision on Defence's Second Article 87(5)(b) Request; Decision on Defence's Request for Leave to Appeal Decision on Defence's Second Article 87(5)(b) Request; Decision concerning Documents Requested on 11 February 2022; Decision on Defence's Modified Request for Legal Assistance; Decision on Defence's Request for Leave to Appeal Two Decisions Requesting Cooperation from Sudan; Decision on Defence's First Request for Postponement; Decision

below.

73. On 11 February 2022, the Chamber issued its Decision on Defence's Article 57(3)(b) Request,[138] seeking assistance from Sudan in providing the following documents relating to **the Accused's** background and identity for the preparation of his defence: (i) birth certificate; (ii) certificate of civil status; (iii) certificate of registered place of residence, specifically as regards the period between 1 August 2003 and 31 July 2004; (iv) records of service in the police and/or army of the GoS including, insofar possible, specific dates and places of enrolment, training, deployment and retirement, specifically as regards the period between 1 August 2003 and 31 July 2004; and (v) full criminal record, including details relating to any arrest, detention, prosecution, conviction or acquittal (the 'Requested Documents', collectively).[139]

74. On 24 May 2022, the Chamber partially rejected the Defence's first request for a finding of non-cooperation by Sudan with respect to the requests for cooperation, which was filed on 22 April 2022,[140] and invited Sudan to submit observations on any issue(s) that may have impeded or prevented the execution of the Decision on Defence's Article 57(3)(b) Request.[141] In their observations of 30 June 2022, the Sudanese authorities apologised for the delay in providing the Requested Documents, clarified the conditions that prevented the provision of said documents, and promised to provide the requested documents on a rolling basis.[142]

75. On 4 November 2022, the Chamber issued the Decision on Defence's Second Article 87(5)(b) Request in which it deferred its decision on the Defence's second request for a finding of non-cooperation, filed on 11 October 2022,[143] until after 13 January 2023, and required the Sudanese authorities to provide the Requested Documents no later than 13 January 2023.[144] On 8 November 2022, the Chamber issued an addendum to this decision, requiring the Sudanese authorities to provide the Defence with additional documents (the 'Additional Documents') by the same deadline.[145] It also invited the Sudanese authorities to file

on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement.
[138] Decision on Defence's Article 57(3)(b) Request; Defence's Article 57(3)(b) Request.
[139] Decision on Defence's Article 57(3)(b) Request, para. 9.
[140] Defence's First Article 87(5) Request.
[141] Decision on Defence's First Article 87(5)(b) Request.
[142] Sudan's Observations of 30 June 2022, p. 4.
[143] Defence's Second Article 87(5)(b) Request.
[144] Decision on Defence's Second Article 87(5)(b) Request.
[145] Addendum to Decision on Defence's Second Article 87(5)(b) Request, para. 5 ('[F]urther to the documents

observations on these documents by 1 December 2022.[146] On 29 November 2022, the Chamber rejected the Defence's request of 11 November 2022 for leave to appeal the Decision on Defence's Second Article 87(5)(b) Request.[147]

76. On 16 January 2023, the Defence filed a third request for a finding of non-cooperation by Sudan.[148] In their communication of 12 January 2023, the Sudanese authorities stated that they were unable to respond to the Court's requests 'as it endangers the National Security of the State'.[149] Following this communication, the Chamber scheduled a status conference on 17 January 2023 in which the Prosecution, Registry and Defence made oral submissions.[150]

77. On 20 January 2023, the Chamber issued the Decision concerning Documents Requested on 11 February 2022, requesting Sudan to provide specific reasons as to why they consider that the Requested Documents relate to the national security of Sudan within 21 days of notification of said decision.[151] Following notification of the Arabic translation of this decision to the Sudanese authorities on 25 January 2023, Sudan was requested to provide the documents by 15 February 2023.[152]

78. On 27 January 2023, the Chamber issued a decision, instructing the Defence to clarify and modify its request in respect of the Additional Documents.[153] On 1 February 2023, upon the request of the Chamber,[154] the Defence filed a modified request for legal assistance in

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listed in paragraph 19 of the Decision of 4 November 2022, the Chamber requires that the Sudanese authorities provide the following documents as soon as possible, and no later than 13 January 2023: A copy of the rules of engagement applicable to Sudanese Armed Forces' operations in Darfur in 2003-2004, including any amendment thereto over that period; A copy of all reports, daily or otherwise, received or issued in 2003-2004 by the Direction of National Analysis – Darfur Files, Information Authority "Hayaat al-Maalomaat", National Intelligence Security Service ("NISS") of Sudan; A copy of the full log of messages and reports addressed by the Western Command Area of the Sudanese Armed Forces to the NISS or any of its services in 2003-2004 with respect to Darfur; All information and documents detailing prospectuses, curricula, and the provision of any education or training in the Law of Armed Conflicts (and/or International Humanitarian Law) provided in Sudan Military Academies before 2003, including full details of the targeted trainees audience; and Should Mr Ali Muhammad Ali Abd-Al-Rahman have ever attended any such education or training mentioned at (iv) *above*, the exact date(s) and place(s) of his attendance, and any copy of related certificates/diplomas delivered to him and/or any documentation providing evidence of his attendance' (the 'Additional Documents', collectively).

[146] Addendum to Decision on Defence's Second Article 87(5)(b) Request, para. 6.

[147] Decision on Defence's Request for Leave to Appeal Decision on Defence's Second Article 87(5)(b) Request.

[148] Defence's Third Article 87(5)(b) Request.

[149] Sudan's Communication of 12 January 2023, p. 2.

[150] T-107, pp. 26-47.

[151] Decision concerning Documents Requested on 11 February 2022.

[152] Email from the Registry, 27 January 2023, at 18:17.

[153] Decision concerning Documents Requested on 8 November 2022.

[154] T-111, pp. 88-92.

respect of the Additional Documents.[155]

79. On 6 February 2023, the Chamber issued the Decision concerning Documents Requested on 8 November 2022, requesting Sudan to provide the documents listed in the Defence's modified request within 21 days, or if Sudan still considered these documents to fall under Article 72 of the Statute, to provide specific reasons for that decision within the same deadline.[156] Following notification of the Arabic translation of this decision to the Sudanese authorities on 9 February 2023, Sudan was requested to provide the documents by 2 March 2023.[157]

80. On 16 February 2023, the Chamber dismissed the Defence's request of 3 February 2023 for leave to appeal the two decisions requesting cooperation from Sudan with respect to the Requested Documents and the Additional Documents.[158]

81. On 17 April 2023, the Chamber issued the Decision on Defence's First Request for Postponement, in which it rejected the Defence's request seeking the postponement *sine die* of the presentation of its case and therefore of all deadlines, but nonetheless amended the deadlines set out in the Second Directions on Conduct of Proceedings to provide more than four months to the Defence.[159] On 11 May 2023, the Chamber rejected the Defence's request seeking reconsideration or alternatively leave to appeal this decision.[160]

82. On 31 May 2023, noting that none of the documents requested by the Chamber were provided by the Sudanese authorities,[161] the Chamber issued the Decision on Defence's Requests for Finding of Non-Compliance in which it found that 'Sudan ha[d] failed to comply with the Chamber's requests for cooperation', pursuant to Article 87(7) of the Statute,[162] and requested the representatives of Sudan to appear at the status conference to provide submissions in respect of the documents requested by the Chamber.[163]

83. On 30 October 2024, the Chamber issued the Decision on Defence's Request for

[155] Defence's Modified Request for Legal Assistance.
[156] Decision on Defence's Modified Request for Legal Assistance.
[157] Email from the Registry, 9 February 2023, at 14:15.
[158] Decision on Defence's Request for Leave to Appeal Two Decisions Requesting Cooperation from Sudan.
[159] Decision on Defence's First Request for Postponement.
[160] Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement.
[161] *See also* Registry's Tenth Report on Status of Cooperation with Sudan; Registry's Report on Implementation of Decision on Defence's Modified Request for Legal Assistance.
[162] Decision on Defence's Requests for Finding of Non-Compliance, paras 24-25, 31-32.
[163] Decision on Defence's Requests for Finding of Non-Compliance, paras 31-32.

Additional Evidence, accepting the submission of Sudan's *note verbale* of 23 October 2024 into evidence.[164]

b) The Chamber's determination

84. The Chamber first notes the Defence's general assertion that the Chamber 'systematically denied the remedies to ensure a fair trial at its disposal', in violation of Article 64(2) of the Statute, and that the only remedy provided to the Defence was additional time, which was 'not enough to redress fair trial shortcomings' arising from 'the security situation in Sudan'.[165]

85. In this regard, the Chamber recalls that '[g]iven the nature of this Court, neither an ongoing conflict nor a lack of State cooperation are exceptional in nature and should not be insurmountable, nor lead to impunity, nor prevent achieving justice for victims'.[166] In the present case, in light of the ongoing armed conflict in Sudan, the Court has taken necessary steps required by the Statute in a timely manner to ensure Sudan's cooperation and the fairness of the proceedings.[167]

86. This Chamber, in particular, acknowledged the impact of Sudan's failure to comply with its requests for cooperation on the Defence's ability to prepare its defence 'in accordance with its *chosen* line of investigation',[168] and, upon the Defence's requests, authorised adjournments in the proceedings on 17 April 2023,[169] 7 July 2023,[170] 11 December 2023,[171] and 23 January 2024,[172] which accorded reasonable time for the Defence to investigate and present its case, and to call witnesses from Darfur and outside Sudan.[173] Moreover, the Chamber authorised the Defence to disclose evidence on a rolling basis, which was a facility not given to the Prosecution.[174] In this respect, the Chamber recalls its previous finding that 'it

[164] Decision on Defence's Request for Additional Evidence, para. 6.
[165] Defence's Final Brief, para. 5.
[166] Prosecution's Closing Statement: T-160, p. 45, *referring to* Decision on Defence's Second Request for Postponement, para. 12.
[167] *Contra* Defence's Final Brief, para. 37. *See* Prosecution's Closing Statement: T-160, p. 45. *See also for example Abd-Al-Rahman* OA11 Judgment, para. 37; *Abd-Al-Rahman* OA13 Judgment, paras 49-56.
[168] Decision on Defence's Requests for Finding of Non-Compliance, para. 27 (emphasis added).
[169] Decision on Defence's First Request for Postponement, paras 40-42. *See also* Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 16.
[170] Decision on Defence's Second Request for Postponement, paras 10, 12.
[171] Third Directions on Conduct of Proceedings, para. 6.
[172] Decision on Defence's Request for Postponement of Resumption, paras 39-40, 43.
[173] The Chamber notes the eight months between the Prosecution's completion of the presentation of its evidence on 28 February 2023 (*see* Prosecution's Conclusion Notice), and the Defence's opening statement on 19 and 20 October 2023 (*see* T-128; T-129). *See also* Prosecution's Closing Statement: T-160, p. 43.
[174] T-125, p. 35; T-150, pp. 17-20.

has granted the Defence a remarkable degree of latitude and flexibility in the preparation and presentation of its evidence', and that '[t]he Defence's assertion that the Chamber's decisions according more time to the Defence are of limited value, is not borne out by the evidence'.[175]

87. The Chamber further notes that, even without the Chamber's specific instruction to do so, it was 'incumbent on the Defence to identify and put in place alternative measures to continue the presentation of its case'.[176] Instead, the Defence focused almost exclusively on discussions and arguments with the Registry and repeated requests that the Chamber make a finding of non-compliance pursuant to Article 87(7) of the Statue.[177] The Chamber's conclusions in this regard remain unchanged, in particular that 'many of the delays' in the preparation and investigation of the Defence case were attributable to the Defence'.[178]

88. Second, in respect of the Requested Documents, the Chamber notes that, as noted above, it has applied its best efforts to obtain cooperation from Sudan by setting reasonable deadlines and providing open channels of communication with the Court.[179] Namely, the Chamber addressed each request of the Defence in a timely manner and issued four decisions, on 24 May 2022, 4 November 2022, 8 November 2022 and 6 February 2023, respectively, in which it required that the Sudanese authorities provide the documents requested by the Defence.[180] Following Sudan's communication of 12 January 2023 invoking the national security of the State, the Chamber duly engaged in the process set out in Article 72 of the Statute in respect of the requested documents, and took all reasonable steps to resolve the matter by cooperative

[175] Decision on Defence's Request for Reconsideration of Decision on Defence's Renewed D-0028 Request, para. 23. *See also* CLRV's Final Brief, para. 80.
[176] Decision on Defence's Request for Postponement of Resumption, para. 37.
[177] T-123, pp. 25-26; Decision on Defence's First Request for Postponement, para. 41; Decision on Defence's Second Request for Postponement, para. 10. *Contra* Defence's Final Brief, paras 40-41.
[178] Decision on Defence's First Request for Postponement, paras 39-40; Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 16; Decision on Defence's Second Request for Postponement, paras 10, 12; Decision on Defence's Request for Postponement of Resumption, paras 34-35. *See also* Prosecution's Closing Statement: T-160, pp. 44-45; CLRV's Final Brief, para. 81.
[179] *See* Decision on Defence's Article 57(3)(b) Request; Decision on Defence's First Article 87(5)(b) Request; Decision on Defence's Second Article 87(5)(b) Request; Addendum to Decision on Defence's Second Article 87(5)(b) Request; Decision on Defence's Request for Leave to Appeal Decision on Defence's Second Article 87(5)(b) Request; Decision concerning Documents Requested on 11 February 2022; Decision on Defence's Modified Request for Legal Assistance; Decision on Defence's Request for Leave to Appeal Two Decisions Requesting Cooperation from Sudan; Decision on Defence's First Request for Postponement; Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement.
[180] Decision on Defence's First Article 87(5)(b) Request, paras 11-13, p. 7; Decision on Defence's Second Article 87(5)(b) Request, para. 19, p. 7; Addendum to Decision on Defence's Second Article 87(5)(b) Request, para. 5; Decision on Defence's Modified Request for Legal Assistance.

means.[181] The Chamber also issued two decisions, on 20 January 2022 and 6 February 2023, respectively, requiring that the Sudanese authorities present specific reasons why they considered that the requested documents related to Sudan's national security.[182]

89. Moreover, as noted above, given the circumstances in the present case, the Chamber accepted the submission of Sudan's *note verbale* of 23 October 2024 into evidence.[183] The Chamber recalls that this *note verbale* contains information that the parties, particularly the Defence, and the Registry exerted considerable efforts to obtain, including excerpts of a document requested by the Chamber, pursuant to Article 57(3)(b) of the Statute, and a detailed explanation as to the Sudanese authorities' inability to provide the other documents requested by the Chamber.[184]

90. In this context, the Chamber maintains its finding that the Defence's disagreement with the Chamber's exercise of its trial management powers does not automatically make the trial unfair, and that the alternative measures sought by the Defence would have neither contributed to the reception of the documents the Defence requested nor expedited the proceedings.[185]

91. Third, having before it the entirety of the evidence presented at trial, the Chamber adheres to its view that 'it is not readily apparent […] how these documents may be considered to be so essential as to [have] prevent[ed] the [D]efence from putting forward any kind of a case'.[186] It reiterates that there is a difference between 'necessary' and 'essential'.[187] The suggested possibility that these documents *may* have included exculpatory information is too hypothetical, without more, to lay a basis for a finding of unfairness.[188]

92. Specifically, as regards **the Accused's** civil records, the Chamber notes that the Defence merely speculates and does not explain how and why these documents 'would likely

[181] *See* Decision concerning Documents Requested on 11 February 2022; Decision concerning Documents Requested on 8 November 2022.
[182] Decision concerning Documents Requested on 11 February 2022, paras 23-24; Decision on Defence's Modified Request for Legal Assistance, paras 21-26.
[183] Decision on Defence's Request for Additional Evidence, para. 6.
[184] Decision on Defence's Request for Additional Evidence, para. 6.
[185] Decision on Defence's Request for Leave to Appeal Two Decisions Requesting Cooperation from Sudan, paras 28-29, *referring to* Prosecution's Response to Request for Leave to Appeal Two Decisions Requesting Cooperation from Sudan, paras 13-14.
[186] Decision on Defence's First Request for Postponement, para. 33.
[187] Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 28.
[188] *See* paras 168, 203 *below*. *See also* *Yekatom and Ngaïssona* Trial Judgment, para. 129, *referring to* *Ongwen* Trial Judgment, para. 229; *Al Hassan* Trial Judgment, para. 20.

have confirmed whether Mr Abd-Al-Rahman was ever known as Ali Kushayb'.[189] Nor does the evidence or information before it suggest that the civil documents in Sudan would usually include nicknames of individuals, or that the absence of a nickname on such documents would be proof that the person does not have a nickname.[190]

93. With respect to **the Accused's** military records, the Defence asserts that these documents 'would likely have provided decisive support for its intended notice of partial alibi regarding the events in Deleig'.[191] In this regard, the Chamber recalls the Defence's submission of 22 June 2023, in which it indicated that while it was 'not in a position to submit a proper notice of alibi' due to the lack of Sudan's cooperation, it intended to raise an alibi defence in respect of the Mukjar and Deleig incidents.[192] Subsequently, the Chamber instructed the Defence to 'provide all further details of its alibi defence, pursuant to Rule 79(1)(a) of the Rules, as and when it receives them'.[193] However, during the trial, the Defence did not submit an alibi notification in accordance with Rule 79(1) of the Rules, nor has the Defence presented any credible evidence which would support the alibi defence it intended to raise.[194]

94. The Chamber - in line with its approach set out in the section of Evidentiary Principles and Considerations,[195] and as detailed later in this judgment - has assessed the evidence on the criminal responsibility of **the Accused** for the crimes alleged in Mukjar and Deleig on the basis of the requisite standard of whether the Prosecution has been able to convince it of **the Accused's** guilt beyond reasonable doubt.[196] The Chamber notes that the evidence presented at trial, including the evidence provided by Defence witnesses, indicates that **the Accused** was not encamped in a CRF training facility in Al Obeid in late February or early March 2004, and was instead in Mukjar and Deleig.[197] In particular, D-0031 gave evidence that **the Accused** 'wouldn't have been in El Obeid joining the RSF at the time of [the] Deleig incidents'.[198]

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[189] *Contra* Defence's Final Brief, para. 62. *See also* CLRV's Final Brief, para. 79.
[190] *See also* Prosecution's Closing Statement: T-160, pp. 45-46.
[191] Defence's Final Brief, para. 62.
[192] Defence's Rule 79(1)(a) Submission, paras 1-2.
[193] Decision on Defence's Second Request for Postponement, paras 6, 16.
[194] *See also* Prosecution's Closing Statement: T-160, p. 46; Prosecution's Final Brief, para. 685.
[195] *See* Section 4. Evidentiary principles and considerations.
[196] *See* Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004; Section 5.III.C. Operation in Deleig between 5 and 7 March 2004; Section 5.IV. The Accused's position of authority and influence in 2003 and 2004.
[197] *See* Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004; Section 5.III.C. Operation in Deleig between 5 and 7 March 2004; Section 5.IV. The Accused's position of authority and influence in 2003 and 2004.
[198] Prosecution's Closing Statement: T-160, p. 46, *referring to* DAR-D31-00000274, at 0005-0006.

95. In respect of **the Accused's** criminal record, the Chamber notes the Defence's submission that this document 'would eventually have proved' that the '6 November 2006 Note of interview of Mr Abd-Al-Rahman (noting Ali Kushayb as an alias) is not authentic'.[199] The Chamber notes that this submission is premised on the Defence's speculation that: (i) if **the Accused** had been investigated by the Sudanese authorities, 'that information would appear in his criminal record'; and that (ii) if there is no mention of such investigation in his criminal record, '[t]he absence […] would have been proof that he was never investigated'.[200] There is no evidence or information before the Chamber which supports the Defence's assertion. Accordingly, the Chamber finds that this submission of the Defence is speculative and unsubstantiated.[201] In any event, the Chamber, for reasons set out below, has decided not to rely on the '6 November 2006 Note of interview' of **the Accused**.[202]

96. In light of the foregoing considerations, the Chamber finds that the measures undertaken by it in respect of the Defence's requests for cooperation from Sudan did not raise an issue of the fairness of the proceedings, and thus rejects the Defence's allegations in this regard.

C. Allegations concerning the Defence's requests for the Chamber's finding of non-cooperation pursuant to Article 87(7) of the Statute

97. The Chamber recalls that it has previously considered and ruled upon the Defence's requests for a finding of non-cooperation by Sudan with respect to requests for cooperation.[203] In its Final Brief, the Defence repeats its prior submission concerning the Decision on Defence's Requests for a Finding of Non-Compliance that the Chamber's 'reasons denying referral to the [UN Security Council] were flawed'.[204] According to the Defence, '[o]nce [the Chamber] had exercised its discretion and found that Sudan was not cooperating, it no longer had discretion to refer the matter to the [UN Security Council]'.[205]

98. The Chamber finds that the Defence's submission is based on its misunderstanding of the relevant legal framework. In this regard, the Chamber recalls Article 87(7) of the Statute,

[199] Defence's Final Brief, para. 62 (footnote omitted).
[200] Defence's Final Brief, para. 62.
[201] *See also* CLRV's Final Brief, para. 79.
[202] *See* para. 269 *below*.
[203] Decision on Defence's First Article 87(5)(b) Request; Decision on Defence's Second Article 87(5)(b) Request.
[204] Defence's Final Brief, para. 42, *referring to* Decision on Defence's Requests for a Finding of Non-Compliance, para. 27.
[205] Defence's Final Brief, para. 42.

which provides that where the Security Council referred the matter to the Court, as in the present case, 'the Court *may* make a finding [of non-compliance] and refer the matter to […] the Security Council', when 'a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute'.[206] As the Appeals Chamber noted, the use of the term 'may', as opposed to the term 'shall', in this provision indicates that 'a Chamber has discretion to make or not to make a finding of non-compliance'.[207] The Chamber also recalls that this provision 'consists of two cumulative conditions', namely that (i) the State concerned failed to comply with a request to cooperate; *and* that (ii) this non-compliance is grave enough to prevent the Court from exercising its functions and powers under the Statute.[208] It is only when a chamber has established that *both* conditions are met that it may proceed to consider whether to refer the State to the UN Security Council, following a finding of non-compliance.[209] The Chamber emphasises that:

> [T]he decision to refer a State is not an "automatic consequence" of failure to avail cooperation to the Court, but rather a "determination [that] falls within the discretion of the Chamber seized of the article 87(7) application" and a response "that may be sought when the Chamber concludes that it is the most effective way of obtaining cooperation in the concrete circumstances at hand".[210]

99. In the extant case, noting that the Sudanese authorities failed to provide the documents requested by the Chamber and did not provide the requested information on their invocation of Article 72 of the Statute, the Chamber found that 'Sudan ha[d] failed to comply with the Chamber's requests for cooperation'.[211] Following this finding of non-compliance, the Chamber carefully examined whether circumstances were such that a referral of the matter to the UN Security Council within the meaning of Article 87(7) of the Statute was warranted.[212] It found that it could not 'exercise its discretion to refer Sudan to the UN Security Council', since it could not conclude that 'Sudan's non-compliance ha[d] prevented the Court from exercising its functions and powers under the Statute'.[213] It also found that, '[c]onsidering the

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[206] Emphasis added.
[207] *Kenyatta* OA5 Judgment, para. 41.
[208] Decision on Defence's Requests for Finding of Non-Compliance, para. 26, *referring to* *Al-Bashir* OA2 Judgment, para. 184 (emphasis added).
[209] Decision on Defence's Requests for Finding of Non-Compliance, para. 26, *referring to* *Al-Bashir* OA2 Judgment, para. 184 (emphasis in original).
[210] Decision on Defence's Requests for Finding of Non-Compliance, para. 28, *referring to* *Al-Bashir* OA2 Judgment, para. 183; *Kenyatta* OA5 Judgment, paras 51, 53.
[211] Decision on Defence's Requests for Finding of Non-Compliance, paras 24-25.
[212] Decision on Defence's Requests for Finding of Non-Compliance, paras 26-27.
[213] Decision on Defence's Requests for Finding of Non-Compliance, para. 27.

complex and transitional political situation in Sudan and the fact that the object and purpose of Article 87(7) of the Statute is to foster cooperation',[214] 'such a referral may not be an effective means to address the lack of cooperation in the specific context of the case'.[215]

100. In light of the above, the Chamber is satisfied that it exercised its discretion properly in accordance with Article 87(7) of the Statute. Accordingly, the Chamber rejects the Defence's submissions in this regard.

D. Alleged incrimination of cooperation with the Court under Sudanese law

101. Among the 15 adjudicated issues listed in Annex I its Final Brief, the Defence repeats in its Final Brief its prior submissions on the purported 'incrimination of cooperation with the Court under Sudanese law'.[216]

102. The Chamber recalls that it previously dismissed as 'unfounded' the Defence's allegation that Sudan criminalised cooperation with the Court under Sudanese law.[217] In reaching this conclusion, the Chamber considered the detailed information provided by the Registry,[218] and found that '[n]o evidence ha[d] been put before the Chamber to suggest that the confirmation of decriminalisation [provided by the Sudanese authorities on 11 October 2021] is open to doubt'.[219]

103. The Chamber also recalls that it rejected the Defence's request to reconsider the aforementioned finding.[220] The Chamber found that the facts provided by the Defence '[did] not directly have any bearing on the actual issue of criminalisation by [Sudan]' and '[did] not demonstrate any error of reasoning or injustice *vis-à-vis* the Chamber's finding that the cooperation with the Court is not criminalised under Sudanese law'.[221]

104. The Chamber notes that no further evidence or information was presented to the

[214] Decision on Defence's Requests for Finding of Non-Compliance, para. 29.
[215] Decision on Defence's Requests for Finding of Non-Compliance, paras 29-30.
[216] The Chamber notes that the Defence lists this issue as issue '(ii)' in the Final Brief, and '(xi) Prohibition of cooperation with the Court under Sudanese criminal law' in the Annex I to Final Brief.
[217] Decision on Defence's Submissions on Cooperation with Sudan, para. 40. *See also* Decision on Defence's Article 67(1)(e) Motion, para. 16.
[218] Decision on Defence's Submissions on Cooperation with Sudan, para. 40, *referring to* Registry's Second Report on Status of Cooperation with Sudan, para. 23.
[219] Decision on Defence's Submissions on Cooperation with Sudan, para. 40.
[220] Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 17.
[221] Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 17.

Chamber which supports the Defence's claim. Nor has the Defence, in its Final Brief, provided any new arguments beyond its prior submissions.[222] Therefore, the Chamber rejects the Defence's submission in this regard.

E. Conclusion

105. In light of the foregoing considerations, and having rejected all of the Defence's challenges concerning Sudan's cooperation with the Court, the Chamber finds that **the Accused** did not suffer any prejudice that would justify the exceptional remedy of a permanent stay of the proceedings.

II. IMPACT OF SUDAN'S LACK OF COOPERATION

A. Alleged classification of the Defence's investigation as a threat to Sudan's national security

106. The Chamber recalls that it has rejected the Defence's prior submissions alleging that Sudan classified the Defence's investigation on Sudan's territory as a threat to its national security.[223] The Chamber found that the Defence failed to support this claim with 'any kind of evidence', and that 'there [were] no indications suggesting that Sudan regards a Defence mission as something which endangers Sudan's national security'.[224]

107. In its Final Brief, the Defence appears to mischaracterise Sudan's specific response to the Court's requests for the provision of the Requested Documents as a blanket classification of all Defence investigations as a threat to its national security. Specifically, the Defence asserts that the fact that there is no mention of 'Sudan's earlier position that the Defence's investigation was a threat to its national security' in Sudan's *note verbale* of 23 October 2024 confirms 'how unfounded [Sudan's earlier position] always was'.[225]

108. However, there is no evidence or information before the Chamber which demonstrates that Sudan, at any point of the proceedings, classified the Defence's investigation as a threat to its national security. Furthermore, the Chamber recalls that, as noted below, the GoS granted the Defence multi-entry visas with six months validity, and that the Defence went on an

[222] *See* Defence's Final Brief, paras 54-55.
[223] Decision on Defence's First Request for Postponement, para. 35.
[224] Decision on Defence's First Request for Postponement, para. 35.
[225] Defence's Final Brief, para. 50.

investigative mission in Sudan in June 2022.[226] Accordingly, the Chamber rejects the Defence's arguments in this regard.

B. Delays caused in the investigation and the presentation of the Defence's case, as a result of difficulties in contacting and protecting witnesses in Sudan

109. In its Final Brief, the Defence submits, again, that as a result of Sudan's 'non-cooperation with the Court', it had difficulties in conducting investigations in Sudan, namely in contacting and obtaining protection services for its witnesses in Sudan.[227] The Defence avers that the loss of potential witnesses caused prejudice to **the Accused**.[228]

110. The Chamber recalls that it has rejected the Defence's repeated submissions pertaining to the 'impossibility of protecting witnesses on the territory of Sudan', and its requests for leave to appeal the decisions in this regard.[229] Moreover, as regards the Defence's request during the trial to 'order a halt on all field activities in Sudan', the Chamber reiterated that 'it does not have the power to prohibit 'parties and participants in the case from undertaking investigative measures and missions in Sudan'.[230] In particular, the Chamber found as follows:

> Although the Chamber 'has powers under Article 64(2) of the Statute to regulate matters that impact the conduct of the trial, these, however, do not extend to interfering with the Registry's security assessments, the timing and procedure of conducting such assessments, actions taken in respect of defence missions. This non-interference extends to the witness protection measures and related activities undertaken by the VWU outside of the Court.[231]

111. The Chamber notes that the aforementioned finding does not indicate that the Registry is not subject to judicial control, but rather 'security is a matter for the Registry and not the parties, to assess'.[232] In this regard, the Chamber recalls the Registry's submission that it had undertaken substantial efforts to assist the preparation of the Defence's missions to third

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[226] Decision on Defence's First Article 87(5)(b) Request, para. 18. *See also* Prosecution's Closing Statement: T-160, p. 39.
[227] Defence's Final Brief, paras 50, 64.
[228] Defence's Final Brief, para. 64.
[229] Decision on Defence's Submissions on Cooperation with Sudan; T-020, pp. 83-86; Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan; Decision on Defence's First Request for Postponement, para. 38.
[230] Decision on Defence's Submissions on Cooperation with Sudan, para. 51; Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 26.
[231] Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 27.
[232] Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 41.

countries,[233] and that existing security arrangements were sufficient to carry out missions as requested by the Defence.[234] The Registry further confirmed that it could facilitate video-link for the Defence's interview of the witnesses living in Darfur and the witnesses travelling from Sudan to the Central African Republic.[235] The Chamber also recalls that the Prosecution made repeated offers to assist the Defence in the preparation of its case, including the facilitation of missions,[236] and that the Defence affirmed the Prosecution's cooperation had proved to be effective.[237]

112. In this context, the Chamber has noted that the Defence: (i) allocated significant time and resources to litigate before the Chamber the issues which were already adjudicated by the Pre-Trial Chamber; (ii) had been aware of possible difficulties in securing cooperation from Sudan since 2020 and should have planned accordingly; (iii) recruited its resource person 14 months after the charges against **the Accused** were confirmed; (iv) postponed missions to Sudan, without proper justification, on the basis of non-transmission of security-related documents by the Registry; (v) requested assistance for missions to third countries only in 2023; and (vi) had provided no information in respect of its exploration of other avenues to obtain evidence, notwithstanding it had been aware of the factual contours of the case since the confirmation of charges against **the Accused** in 2021.[238] The Chamber further recalls that the Appeals Chamber also cautioned the Defence to 'represent the client expeditiously with the purpose of avoiding unnecessary expense or delay in the conduct of the proceedings', in accordance with Article 24(5) of the Code of Professional Conduct for counsel.[239]

113. Notwithstanding the strategy adopted by the Defence which caused delays in the present case,[240] the Chamber nevertheless acknowledged and took into account, on a number of occasions, the fact that the ongoing armed conflict in Sudan had created further challenges

[233] Registry's Observations on Request for Finding of Non-Compliance, paras 46-48.
[234] T-115, p. 22.
[235] Decision on Defence's Second Request for Postponement, para. 13.
[236] Decision on Defence's Second Request for Postponement, para. 13. *See also* Prosecution's Response to Request for Finding of Non-Compliance, para. 23; Prosecution's Response to Defence's Request for Status Conference, para. 9.
[237] Decision on Defence's Second Request for Postponement, para. 13.
[238] Decision on Defence's First Request for Postponement, para. 41. *See also* CLRV's Final Brief, para. 81.
[239] *Abd-Al-Rahman* OA13 Judgment, para. 55.
[240] *See* Decision on Defence's First Request for Postponement, para. 40; Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 16; Decision on Defence's Second Request for Postponement, paras 10, 12; Decision on Defence's Request for Postponement of Resumption, para. 34.

concerning the Defence's on-site investigations in Sudan.[241] As noted above, the Chamber authorised several adjournments in the proceedings, allowing the Defence adequate time to obtain evidence and continue with the presentation of its case.[242] The Chamber reiterates that it is under no obligation to validate the limitations which the Defence imposed on itself.[243]

114. Lastly, the Chamber notes that, contrary to the Defence's assertion, the Prosecution did not acknowledge in the Prosecution's Response to Defence's Request for Status Conference that the Defence's inability to visit Darfur, Kodoom, Bindisi, Mukjar, Deleig and Rahad Al-Berdi was 'a major obstacle in the conduct of its investigation'.[244] Rather, the Prosecution submitted that the Defence 'fail[ed] to specify in concrete terms how its inability to visit Sudan ha[d] in fact impacted its preparations', and that, notwithstanding this failure of the Defence, it 'accepts that the Defence may have legitimate reasons to visit Sudan to *assist with* its investigations' and that 'Sudan's cooperation may be important in facilitating these investigations'.[245] The Chamber further notes that the Prosecution, in this submission, offered to 'assist the Defence insofar as reasonable' and 'to use its contacts within the [GoS] to facilitate Defence requests for assistance where appropriate'.[246] Therefore, the Chamber considers that the Defence's submission is misleading and taken out of context.

115. The Chamber emphasises that, as can be seen in the foregoing and the record of the case, it duly took into consideration the difficulties encountered by the Defence arising from the circumstances in Darfur and in Sudan in general, when weighing the entirety of the evidence and information before it on this issue, in order to prevent any unfairness or undue prejudice towards **the Accused**. In light of the above, the Chamber rejects the Defence's arguments in this regard.

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[241] Decision on Defence's Second Request for Postponement, para. 12; Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 55; Decision on Defence's Request for Reconsideration of Decision on Defence's Renewed D-0028 Request, para. 19.
[242] *See* Decision on Defence's First Request for Postponement, paras 40-42; Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 16; Decision on Defence's Second Request for Postponement, paras 10, 12; Decision on Defence's Request for Postponement of Resumption, paras 39-40, 43. *See also* Prosecution's Closing Statement: T-160, p. 43.
[243] *See also* Decision on Defence's Procedural Challenges, para. 46.
[244] *See* Defence's Final Brief, para. 60, *referring to* Prosecution's Response to Defence's Request for Status Conference, para. 9. As the Defence accepts in its Final Brief, the Prosecution was also unable to investigate in any location in Darfur (*see* Defence's Final Brief, para. 57).
[245] Prosecution's Response to Defence's Request for Status Conference, paras 8-9 (emphasis added).
[246] Prosecution's Response to Defence's Request for Status Conference, para. 9.

C. Alleged non-delivery of visas to the Defence

116. The Chamber notes that the Defence attempts to mislead the Chamber in claiming that it 'was granted visas for only one mission, in June 2022, and to Khartoum only',[247] and that '[a]ll its other visa applications were ignored'.[248]

117. This is a misrepresentation of the relevant facts, as the Defence was granted multi-entry visas with a six months validity on 3 February 2022.[249] In respect of the delay in obtaining visas, the Chamber previously noted that it was 'partly due to the Defence's own inaction from the time it was informed that the Sudanese authorities had granted the request for the issuance of visas of three members of the Defence',[250] and found that 'the Sudanese authorities [had] complied with their obligation under Article 28 of the Cooperation Agreement in relation to the granting of visas to the Defence team'.[251]

118. The Chamber also recalls that the Defence carried out one investigative mission to Sudan in June 2022 and unilaterally cancelled other investigative missions,[252] refusing to accept the GoS' visa requirements and engaging in interminable arguments with the Registry.[253] By contrast, the Prosecution and Registry accepted the GoS' visa requirements and were able to conduct multiple missions to Sudan during the course of the trial.[254] In this regard, the Chamber further notes the Prosecution's submission that, contrary to the Defence's argument that the month of Ramadan presented 'an insurmountable obstacle to carrying out investigative missions',[255] the Prosecution interviewed many witnesses during its investigation, including during Ramadan.[256]

119. In light of the above, the Chamber finds that it was the Defence's own decision to go on only one mission during the period of 2021-2023, instead of making use of its six-month

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[247] Defence's Final Brief, paras 49, 61.
[248] Defence's Final Brief, para. 49.
[249] Decision on Defence's First Article 87(5)(b) Request, para. 18. *See also* Prosecution's Closing Statement: T-160, p. 39.
[250] Decision on Defence's First Article 87(5)(b) Request, para. 18. *See also* Prosecution's Closing Statement: T-160, p. 39.
[251] Decision on Defence's First Article 87(5)(b) Request, para. 19.
[252] Decision on Defence's Second Article 87(5)(b) Request, para. 15; Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 34.
[253] Decision on Defence's First Request for Postponement, para. 34; Decision on Defence's Request for Reconsideration or Leave to Appeal Decision on Defence's First Request for Postponement, para. 34.
[254] Prosecution's Response to Request for Finding of Non-Compliance, para. 19.
[255] *See* Defence's Request for Finding of Non-Compliance, paras 10, 21.
[256] Prosecution's Response to Request for Finding of Non-Compliance, para. 20, fn. 34 ('For example, since 2015, the Prosecution […] interviewed at least 11 witnesses during Ramadan (P-0547, P-0585, P-0651, P-0657, P-0756, P-0757, P-0755, P-0724, P-0926, P-0935, P-1074)').

multi-entry visa by, for example, staggering six 30-day missions as the Prosecution did, or going on 12 two-week missions.[257] Accordingly, the Chamber rejects the Defence's submissions concerning its visa applications.

D. Conclusion

120. In light of the foregoing, the Chamber finds that **the Accused** did not suffer prejudice as a result of Sudan's non-cooperation with the Defence to the extent that would justify the exceptional remedy of a permanent stay of the proceedings.

III. ALLEGED FAILURE OF THE PROSECUTION TO UPHOLD ITS STATUTORY OBLIGATIONS

121. The Chamber notes that whenever issues in respect of the Prosecution's statutory obligations were raised and demonstrated during trial, it evaluated whether, and to what extent, these alleged violations affected the reliability of the evidence to which they relate. In each instance, the Chamber addressed these issues in a manner that ensured **the Accused's** right to a fair trial.[258]

A. Alleged violation of Article 42(1) of the Statute

122. The Defence submits that the Prosecution 'failed to act independently' from the GoS in violation of Article 42(1) of the Statute, '[b]y falling for the GoS' […] inducement to focus its investigation on [**the Accused**]'.[259]

123. According to Articles 42(1) and 54 of the Statute, the Prosecutor enjoys discretion, entailing the power to select and investigate cases, which is a matter that falls within the mandate of the Prosecutor, with the exception of the powers granted to a pre-trial chamber under Article 53(3) of the Statute.[260] The Chamber also notes that the statutory framework of the Court is resolute in requiring that the Prosecutor shall exercise his or her functions 'impartially and conscientiously' at all times.[261] In particular, Article 42(7) of the Statute instructs that '[n]either the Prosecutor or the Deputy Prosecutor shall participate in any matter

[257] *See* Prosecution's Closing Statement: T-160, p. 39; CLRV's Final Brief, para. 81.
[258] *See for example* Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 15; Decision on Defence's Article 67(1)(e) Motion, para. 24; Decision on Defence's Application for Immediate Disclosure.
[259] Defence's Final Brief, para. 52.
[260] *Muthaura et al.* Decision on Amicus Curiae Request, para. 13.
[261] *See* Article 45 of the Statute.

in which their impartiality might reasonably be doubted on any ground'.

124. In the present case, the Chamber is not persuaded by the Defence's speculation, without any substantiation, that the GoS '[i]nduc[ed] the Court to investigate and prosecute Mr Abd-Al-Rahman […] as an obvious attempt to deflect the [Prosecution's] attention from perpetrators with senior positions within its government and/or army', or that the Prosecution 'blindly follow[ed] this thread handed to them by the GoS'.[262] There is no evidence or information before the Chamber which supports these claims. Moreover, as a matter of public record, the Prosecution also carried out investigations and applied for arrest warrants with respect to other individuals in relation to the conflict in Darfur, Sudan.[263] Accordingly, the Chamber rejects the Defence's arguments in this regard as purely speculative and unfounded.

B. Alleged failure to investigate exculpatory evidence pursuant to Article 54(1)(a) of the Statute

125. The Defence submits that, as a result of Sudan's non-cooperation with the Court, the Prosecution failed to investigate in Darfur, notably in the places where the alleged offences took place', 'the town where Mr Abd-Al-Rahman lived at the relevant time of the charges, Garsila',[264] or 'the places where witnesses most likely to provide exculpatory evidence […] live'.[265] According to the Defence, this failure amounts to a breach of the Prosecution's obligations under Article 54(1)(a) of the Statute.[266]

126. The Chamber notes that paragraphs (a) and (b) of Article 54(1) of the Statute must be read in conjunction with each other.[267] While paragraph (a) of Article 54(1) of the Statute mandates that '[i]n order to establish the truth', the Prosecutor '[s]hall […] extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under the Statute, and, in doing so, investigate incriminating and exonerating circumstances equally', paragraph (b) of the provision requires the Prosecutor to '[t]ake appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court'. Consequently, should it be determined that there are reasonable grounds to believe that information not in possession of the Prosecution may be potentially exculpatory, Article 54(1) of the Statute obliges the Prosecution to make reasonable

[262] Defence's Final Brief, para. 52.
[263] *See for example* *Al Bashir* Arrest Warrant; *Harun* Arrest Warrant.
[264] Defence's Final Brief, para. 57.
[265] Defence's Final Brief, para. 59.
[266] Defence's Final Brief, para. 59.
[267] *See also* *Kenya* Decision on Request for Review of Prosecution's Decision to Cease Investigation, para. 13.

efforts to obtain that information.[268] The Chamber's assessment under this provision is case specific.[269]

127. In the present case, the Chamber first finds the Defence's submission to be generalised and speculative, in that it does not specify how the Prosecution failed to effectively investigate incriminating and exonerating circumstances equally. The Defence does not specify nor even attempt to characterise the areas in which the Prosecution had failed to carry out its obligation to investigate exculpatory matters. Nor does the Defence substantiate how the alleged failure of the Prosecution caused prejudice to **the Accused**. The Chamber notes that Article 54 of the Statute does not impose on the Prosecution an infinite duty to investigate in the abstract.

128. Moreover, the Chamber recalls that, subsequent to the issuing of the first warrant of arrest against **the Accused** in 2007, the Prosecution carried out further investigations and gathered sufficient evidence to obtain a second warrant of arrest in 2018, in respect of crimes committed in Deleig and surrounding areas.[270] While the standard of proof with respect to a warrant of arrest is different from and lower than that at trial, the Chamber takes note of the fact that the Prosecution was able to carry out investigations between 2007 and 2017, even though the GoS at the time refused all forms of cooperation.[271] The Chamber further notes that although the Prosecution had 'never been able to go to Darfur to investigate', due to the circumstances in Sudan,[272] it brought witnesses from Darfur to, and conducted witness interviews in Khartoum, as well as in third countries,[273] including individuals who later provided evidence as Defence witnesses.[274] Accordingly, the Chamber is satisfied that the Prosecution has fulfilled its obligations under Article 54(1) of the Statute, and therefore rejects the Defence's arguments in this regard.

129. Lastly, the Defence, by selective citation and misrepresentation of the remarks made by the Presiding Judge, attempts to mislead the Chamber in arguing that the Prosecution made a 'surprisingly candid admission at trial' to the effect that '[i]t conducted its whole investigation under the blinkered assumption that Mr Abd-Al-Rahman was *Ali Kushayb*, without ever asking itself the question of whether this really was one and the same person', and that this admission

[268] *See also* *Ruto et al.* Decision on Application for Further Prosecution Investigation, para. 32.
[269] *See also* *Ruto et al.* Decision on Application for Further Prosecution Investigation, para. 33.
[270] *See also* Prosecution's Response to Request for Finding of Non-Compliance, para. 15.
[271] *See also* Prosecution's Response to Request for Finding of Non-Compliance, para. 15.
[272] Prosecution's Closing Statement: T-160, p. 44.
[273] Prosecution's Closing Statement: T-160, p. 44.
[274] Witnesses D-0017, D-0022 and D-0026.

'was commented [upon] as "a good one"' by the Presiding Judge.[275] The Chamber first notes that the Prosecution did not make such an admission. When the Defence questioned whether the Prosecution was 'suggesting that the identity of the person indicted was not an important information', the Prosecution responded that 'we knew that Mr Abd-Al-Rahman was Ali Kushayb at that point and that issue [*i.e.* the Defence's allegation that **the Accused** is not Ali Kushayb] had not been raised'.[276] It was in this context that the Presiding Judge commented that the point which the Prosecution made was 'a good one', because 'until [**the Accused**] appeared and [the Defence counsel] appeared, nobody knew that he was going to deny that he was one and the same person'.[277] Accordingly, the Chamber rejects the Defence's submission.

C. Alleged breach of the Prosecution's disclosure obligations under Article 67(2) of the Statute and Rule 77 of the Rules

130. The Defence submits that the Prosecution's failure to conserve and disclose to the Defence any information with respect to its meeting with 'a man named Ali Kushayb' during its visit in Khartoum in June 2006 amounts to a breach of its disclosure obligations.[278] The Defence avers that the record of such a meeting 'creates extensive doubt surrounding the Prosecution's allegation that Mr Abd-Al-Rahman is Ali Kushyab',[279] considering that the man named '**Ali Kushayb**' with whom D-0016 said he met was 'around his late 30s' and 'a member of the PDF', whereas **the Accused** was '57 years old in 2006' and 'has never been in the PDF'.[280]

131. The Prosecution submits that '[t]here was, and is, nothing to disclose about [a] meeting which never happened'.[281] The Prosecution adds that it 'never met with the [A]ccused in Khartoum or any other phantom Ali Kushayb'.[282]

132. The Chamber notes that the Defence's allegation of non-disclosure is premised on mere speculation that a meeting with a person named '**Ali Kushayb**' '*probably* took place with the Prosecution delegation in Khartoum in June 2006'.[283] No evidence was presented at trial which supports the Defence's claim that 'the "introductory meeting" mentioned in the Road-Map

[275] Defence's Final Brief, para. 60, *referring to* T-102, pp. 15-16.
[276] T-102, p. 15.
[277] T-102, p. 16.
[278] Defence's Final Brief, paras 68-69, 71-72.
[279] Defence's Final Brief, para. 72.
[280] Defence's Final Brief, paras 68-69, 71.
[281] Prosecution's Closing Statement: T-160, p. 42.
[282] Prosecution's Closing Statement: T-160, pp. 41-42.
[283] Defence's Final Brief, para. 72 (emphasis added).

must have been the meeting with Ali Kushayb mentioned by D-0016'.[284] The Chamber reiterates that a mere suggestion, without support of any witnesses or documents, does not become part of the evidence to be taken into account for the purposes of this judgment.[285] In the absence of any evidence in support of the Defence's allegation, the Chamber accepts the Prosecution's submissions that the alleged meeting never took place and that there is therefore no record of such a meeting in its possession or control within the meaning of Article 67(2) of the Statute. Considering that the Prosecution's disclosure obligations under Article 67(2) of the Statute relate to material in its possession or control, the Chamber rejects the Defence's arguments in this regard.

133. In respect of the Defence's submission alleging the Prosecution's failure to challenge the relevant evidence of D-0016,[286] the Chamber recalls that the Court's legal framework combines adversarial and inquisitorial elements, including with respect to the role of the Prosecution.[287] On the one hand, the Prosecution's disclosure obligations under Article 67(2) of the Statute and Rule 77 of the Rules continue to apply throughout the trial, and Article 54(1)(a) of the Statute makes it clear that the Prosecution is conceived of as an 'objective truth seeker and not as a partisan lawyer' during the investigation phase.[288] However, the Prosecution's duty to investigate both incriminating and exonerating circumstances is limited to the investigation stage, and thereafter at trial, the Prosecution is expected to focus on proving the confirmed charges.[289] The Chamber also recalls that the procedure does not require the non-calling party to put questions relating to every area of disagreement, but only those which relate to real issues in the case.[290] Therefore, the Prosecution cannot be reprimanded for limiting its witness examinations to questions in support of its own case theory.[291] Rather, it was the obligation of the calling party, the Defence, to put forward its case and include the accuracy or veracity of the evidence given by D-0016, in its questioning of the witness.[292]

134. Accordingly, the Chamber rejects the Defence's arguments in this regard. In the same vein, the Chamber also rejects the Defence's submissions relating to the Prosecution's reliance

[284] *Contra* Defence's Final Brief, para. 70 (emphasis added).
[285] *See* para. 203 *below*.
[286] Defence's Final Brief, para. 68.
[287] *See also* *Yekatom & Ngaïssona* Decision on Request for Exclusion of Evidence, para. 28.
[288] *See also* *Yekatom & Ngaïssona* Decision on Request for Exclusion of Evidence, paras 27-28.
[289] *See also* *Yekatom & Ngaïssona* Decision on Request for Exclusion of Evidence, paras 27-28.
[290] *See* para. 201 *below*.
[291] *See also* *Yekatom & Ngaïssona* Decision on Request for Exclusion of Evidence, para. 28.
[292] *See* para. 199 *below*.

on witnesses from the Sudanese diaspora and 'some witnesses [who] were living in refugee structures'.[293] In particular, the Chamber finds speculative and without merit the Defence's blanket argument that 'the chances of finding exculpatory evidence among such a class of witnesses [diaspora] has inherently always been minimal', or that the fact that they were refugees increased their risk of contamination.[294]

D. Allegations concerning the Prosecution's collection of evidence after the confirmation of charges hearing

135. The Chamber notes that the issue of '[i]nadmissibility of evidence of the nickname *Ali Kushayb* collected after the Confirmation Hearing' is listed as one of the 15 adjudicated issues in Annex I to the Final Brief.[295] In this regard, the Chamber recalls that, earlier in this case, it rejected the Defence's general submission that *any* evidence obtained after the confirmation of charges hearing should automatically be excluded, finding that the statutory framework and the relevant jurisprudence of the Court do not bar the Prosecution from continuing its investigation after the confirmation of charges hearing or from seeking to rely, at trial, on evidence so obtained.[296] In that decision, the Chamber noted that its rejection of the Defence's objection is 'without prejudice to the Chamber's eventual determination on the formal submission and admissibility of individual items of evidence'.[297]

136. The Chamber notes that the Defence systematically raised this issue in its submissions under Rule 64 of the Rules, challenging the admissibility of numerous witness statements.[298]

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[293] Defence's Final Brief, para. 58.
[294] Defence's Final Brief, para. 58.
[295] Annex I to Defence's Final Brief, p. 1.
[296] Decision on Prosecution's Application to Rely on Recently Collected Evidence, para. 19. S*ee also* paras 12-18, *referring to* *Lubanga* OA3 Judgment, para. 2; *Ruto et al.* Decision on Prosecution's Article 61(9) Request, para. 34. *See also* T-013, pp. 13, 34-35; T-024, pp. 24-30; T-025, pp. 48-54; T-026, pp. 88-94.
[297] Decision on Prosecution's Application to Rely on Recently Collected Evidence, para. 19.
[298] The Chamber notes that the Defence made submissions under Rule 64 of the Rules with respect to the statements of the following witnesses: P-0007 (Email from the Defence, 10 October 2022, at 10:04), P-0011 (Email from the Defence, 17 October 2022, at 10:32), P-0012 (Email from the Defence, 8 June 2022, at 9:40), P-0015 (Email from the Defence, 8 November 2022, at 9:01), P-0020 (Annex 1 to Defence's Rule 64 Submission, p. 11), P-0029 (Annex 1 to Defence's Rule 64 Submission, p. 2), P-0119 (Annex 1 to Defence's Rule 64 Submission, p. 8), P-0120 (Annex 1 to Defence's Rule 64 Submission, p. 7), P-0129 (Email from the Defence, 5 September 2022, at 15:27), P-0131 (Email from the Defence, 13 February 2023, at 13:36), P-0547 (Email from the Defence, 15 June 2022, at 10:56), P-0581 (Email from the Defence, 18 July 2022, at 13:36), P-0584 (Email from the Defence, 4 November 2022, at 12:18), P-0585 (Email from the Defence, 15 November 2022, at 17:22), P-0651 (Annex 1 to Defence's Rule 64 Submission, p. 4), P-0671 (Email from the Defence, 14 November 2022, at 17:48), P-0697 (Email from the Defence, 17 November 2022, at 15:17), P-0712 (Annex 1 to Defence's Rule 64 Submission, p. 6), P-0718 (Email from the Defence, 13 June 2022, at 18:48), P-0720 (Email from the Defence, 3 June 2022, at 16:32), P-0726 (Email from the Defence, 29 June 2022, at 17:34), P-0736 (Annex 1 to Defence's Rule 64 Submission, p. 5), P-0769 (Email from the Defence, 14 November 2022, at 11:08), P-0850 (Email from the Defence, 6 June 2022, at 8:11), P-0874 (Email from the Defence, 27 September 2022, at 17:45), P-0877 (Email

To the extent that the Defence repeats its argument, without the addition of any further factual or jurisprudential support, that any evidence obtained after the confirmation of charges hearing should automatically be excluded, the Chamber confirms its previous decision on this issue and therefore rejects this submission. Moreover, the Chamber emphasises that it has duly assessed individually the admissibility of each item of evidence, including the witness statements. Accordingly, the Chamber reiterates that the Prosecution's collection of evidence after the confirmation of charges hearing did not raise an issue of the fairness of the proceedings.

E. Conclusion

137. In light of the reasons set out above, the Chamber rejects the Defence's allegations concerning the Prosecution's statutory obligations.

IV. ALLEGATIONS REGARDING WITNESS PROTECTION

A. Evidence which allegedly is not in compliance with the Court's Information Security Policies

138. First, the Chamber notes that the Defence, in its Final Brief, repeats its submission that the evidence in the present case 'proves the Court's numerous failures to protect the integrity of its evidence against [**the Accused**] and the occurrence of actual interference on behalf of the Sudanese authorities'.[299] The Chamber also notes in this regard that the Defence systematically raised this issue in its submissions under Rule 64 of the Rules, challenging the admissibility of a number of witness statements.[300]

139. In accordance with Article 68(1) of the Statute, a chamber of the Court shall take appropriate measures to protect the safety and well-being of witnesses, while preserving the

from the Defence, 1 July 2022, at 10:26), P-0878 (Email from the Defence, 8 September 2022, at 10:28), P-0883 (Email from the Defence, 26 August 2022, at 17:39), P-0892 (Email from the Defence, 10 June 2022, at 17:10), P-0903 (Annex 1 to Defence's Rule 64 Submission, p. 3), P-0905 (Email from the Defence, 5 October 2022, at 20:30), P-0907 (Email from the Defence, 8 November 2022, at 18:46), P-0913 (Email from the Defence, 24 August 2022, at 14:25), P-0916 (Email from the Defence, 2 September 2022, at 17:08), P-0918 (Email from the Defence, 6 September 2022, at 10:00), P-0919 (Email from the Defence, 8 July 2022, at 16:12), P-0921 (Email from the Defence, 29 January 2023, at 17:06), P-0922 (Annex 1 to Defence's Rule 64 Submission, p. 11), P-0931 (Email from the Defence, 13 July 2022, at 17:07), P-0932 (Email from the Defence, 21 July 2022, at 18:50), P-0935 (Email from the Defence, 13 October 2022, at 12:04), P-0955 (Email from the Defence, 14 July 2022, at 17:25), P-0980 (Email from the Defence, 6 June 2022, at 17:19), P-0984 (Email from the Defence, 19 July 2022, at 18:09), P-0986 (Email from the Defence, 18 July 2022, at 14:53), P-0990 (Annex 1 to Defence's Rule 64 Submission, p. 10), P-0994 (Email from the Defence, 3 October 2022, at 11:39), P-1073 (Email from the Defence, 21 November 2022, at 10:22), P-1074 (Email from the Defence, 21 November 2022, at 10:23) (collectively, 'Defence's Rule 64 Submissions').

[299] Defence's Final Brief, para. 56.

[300] *See* Defence's Rule 64 Submissions (*see* fn. 298 *above*).

rights of **the Accused** and a fair and impartial trial. With this obligation duly in mind, the Appeals Chamber and this Chamber have already considered and ruled upon the Defence's submissions alleging the interference of the Sudanese authorities with the evidence and the difficulty of protecting witnesses in Sudan.[301]

140. The Appeals Chamber previously found that the Defence failed to demonstrate that the measures taken by the Registry and assessed by the Chamber were unreasonable, given the various relevant factors at hand.[302] In particular, the Appeals Chamber noted the Chamber's consideration of the following factors: (i) the wishes of the witnesses; (ii) the fact that the risk to the witness 'could actually be greater if the witness testifies at the seat of the Court or from another video link location'; (iii) the Defence's misunderstanding of 'the role of the [VWU], its ability to operate in Sudan, and the fact that witness protection is a confidential matter between the calling party and the [VWU]'; and (iv) the fact that arrangements had 'been made with the UN allowing the Registry to facilitate the video link from Sudan from UN premises'.[303] The Appeals Chamber also noted the Defence's misrepresentation of the information set out in the email from the Registry dated 22 September 2022, which provided that the Court utilises 'proportionate compensating controls and measures' to reduce the risk of interference to 'an acceptable level', such as encrypting the 'content of the confidential information', and that, therefore, even if a communication were intercepted, the data could not be read.[304]

141. On the basis of the entirety of the evidence and information before it, the Chamber finds that the Defence's assertion pertaining to the purported interference of Sudan is not supported by evidence.[305] Accordingly, the Chamber rejects the Defence's submissions in this regard.

142. Second, the Chamber recalls that the Pre-Trial Chamber previously rejected the Defence's request for the exclusion of witness statements that are improperly marked as ICC 'Restricted' instead of 'Confidential', in violation of the rules of protection of confidentiality of information.[306] It considered the purported risk of interference by the Sudanese authorities to be 'largely speculative', and found as follows:

[301] T-080, pp. 8-12; *Abd-Al-Rahman* OA11 Judgment. *Contra* Defence's Final Brief, para. 55.
[302] *Abd-Al-Rahman* OA11 Judgment, para. 37.
[303] *Abd-Al-Rahman* OA11 Judgment, para. 37.
[304] *Abd-Al-Rahman* OA11 Judgment, paras 38-39.
[305] *Contra* Defence's Final Brief, paras 53-54.
[306] Decision on Defence's Procedural Challenges, para. 43.

> The Court's practice over the years certainly does not suggest that the Prosecutor's failure to expressly *mark* witness statements as confidential – as opposed to *classifying* them as such – has been a major risk factor. Indeed, all parties and participants involved in the proceedings are bound by the confidentiality level assigned by the Prosecutor as it is registered in the meta-data. Moreover, confidential information may, in principle, only be disclosed in the context of an investigation under specific and strict conditions. Under these circumstances, the Chamber is not convinced that the Prosecutor's failure to mark witness statements as confidential has elevated the risk that any of the witnesses in this case may have been subjected to interference, threats or corruption.[307]

143. The Chamber further recalls that, earlier in this case, the Defence submitted before it the same request, arguing that protecting the confidentiality of witness statements is central to the fairness of the proceedings.[308] The Chamber rejected this request, agreeing with the aforementioned reasoning of the Pre-Trial Chamber. In this regard, it noted the Defence's acceptance that the witnesses statements are marked and that all parties regard and treat the statements as confidential, as well as the absence of any evidence indicating the alleged interference.[309] The Chamber also rejected the Defence's request for leave to appeal this decision, finding that, contrary to the Defence's claim that it placed a burden on the Defence to prove interference with the witnesses or the risk of interference, the Chamber merely requested the Defence to clarify the factual basis for alleging such interference.[310]

144. While the Defence does not make any submissions in this regard in its Final Brief, the Chamber notes that the Defence has systematically raised this issue in its submissions under Rule 64 of the Rules, challenging the admissibility of numerous witness statements.[311]

145. In the absence of any evidence or information before the Chamber in support of the Defence's claim or any substantiation by the Defence as to the factual basis of the alleged interferences by the Sudanese authorities, the Chamber finds that the Prosecution's practice of marking the contested witness statements as 'Restricted' instead of 'Confidential' does not raise an issue of the fairness of the proceedings for the reasons set out in the above-mentioned previous decisions of the Court.

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[307] Decision on Defence's Procedural Challenges, para. 42 (emphasis in original, footnotes omitted).
[308] Defence's Rule 64(1) Motion.
[309] T-017, pp. 47-48.
[310] Decision on Defence's Requests for Leave to Appeal Decisions on Inadmissibility of Evidence and Victims' Participation, para. 18.
[311] *See* Defence's Rule 64 Submissions (*see* fn. 298 *above*).

B. Allegations concerning protective measures

146. With respect to the Defence's argument that the VWU 'never had any opportunity of setting up protection programmes on Sudan territory',[312] the Chamber finds that it is not accurate. The Chamber recalls the Registry's confirmation in this respect that 'the VWU [had] resumed operations in Sudan, and ongoing efforts to secure the cooperation of the Sudanese authorities, especially in witness protection arrangements, [was] continuing unabated', and that, despite the operational environment in Sudan, the VWU was able 'to receive protection referrals from the parties and participants, conduct the necessary assessments, and decide upon and implement protection measures'.[313]

147. Given the circumstances of the present case, the Chamber also granted, without any objection of the Defence, in-court protective measures to several witnesses to mitigate any risk for their safety should their testimonies become known to the Sudanese authorities.[314] Further, the Chamber specifically instructed that '[w]henever possible, the VWU should provide remote assistance and support to Defence witnesses, particularly for those that ha[d] already been referred to the VWU or ha[d] expressed security concerns'.[315]

148. In light of the above, the Chamber rejects the Defence's submissions in this regard.

C. Alleged breach of equality of arms in the conditions of appearance of the Defence witnesses

149. The Defence alleges a breach of equality of arms in the conditions of appearance of the Defence witnesses at trial, in violation of Article 61(7) of the Statute and the fairness of the proceedings. According to the Defence, its witnesses had to travel, by their own means and without support, to third countries, whereas '[n]one of the OTP witnesses was submitted to such level of hardship'.[316]

150. The Chamber notes that the principle of equality of arms 'does not require the creation of a situation of absolute equality'.[317] Rather, what it does require is that 'each party has a

[312] Defence's Final Brief, para. 49.
[313] Decision on Defence's Request for Reconsideration of Decision on Defence's Submissions on Cooperation with Sudan, para. 14.
[314] Decision on Defence's Article 67(1)(e) Motion, para. 13, *referring to* T-080, p. 11; Decision on In-Court Protective Measures; Second Decision on In-Court Protective Measures.
[315] Decision on Defence's Request for Postponement of Resumption, para. 41.
[316] Defence's Final Brief, para. 65.
[317] Decision on Defence's Procedural Challenges, para. 45; *Lubanga* Decision on Request for Leave to Appeal, para. 19.

reasonable opportunity to adequately prepare for and present its case to the Court, without being placed at a substantial disadvantage *vis-à-vis* the opposing party'.[318]

151. In the present case, the Chamber recalls that travel arrangements had been made for the Defence witnesses to travel to and testify from the Court's field office outside of Sudan, and that the Defence did not put forward any information warranting a change to those arrangements.[319] Moreover, upon the Defence's requests, seeking an exceptional measure of facilitating and acquiring video-link testimony from Darfur, Sudan, the Chamber carefully considered all of the circumstances surrounding the proposed method.[320] On the basis of the relevant submissions of the parties and the participants and in full knowledge of the information before the Chamber on the conditions of the witnesses' appearance before the Court, the Chamber found that 'the inconvenience to witnesses of lengthy travel and absence from their place of residence' in the instant case 'fall well short of amounting to exceptional circumstances'.[321]

152. In this regard, the Chamber further notes the Prosecution's submission that it 'assisted the Defence in getting their witnesses to [the] place where they could testify from'.[322] Specifically, the Prosecution submits that it had to travel to the same place as the Defence witnesses and establish the following: (i) 'that it was possible to travel there by public transport, that it could be done in just a few days, [and] that it was reasonably safe'; and (ii) 'that the government of that third country would issue permits and would cooperate and assist'.[323] The Prosecution adds that '[t]o the best of [its] understanding, every witness who came on that route returned home safely and was not harmed there or back', and that 'there wasn't fiery active combat at the time' in the area where these witnesses had to travel.[324]

153. Accordingly, the Chamber is satisfied that its previous determination on this issue stands, in that the arrangements made for the appearance of 23 Defence witnesses from locations outside of Sudan provided for an environment which, as required under Rule 67(3)

[318] Decision on Defence's Procedural Challenges, para. 45; Decision on Defence's Procedural Challenges, p. 7.
[319] Decision on Defence's Request concerning D-0001, D-0002, D-0003, D-0005, D-0028, D-0029, D-0038 and D-0039, para. 8.
[320] Decision on Defence's Request concerning D-0001, D-0002, D-0003, D-0005, D-0028, D-0029, D-0038 and D-0039, paras 6, 9; Decision on Defence's D-0028 Request, para. 23.
[321] Decision on Defence's Request concerning D-0001, D-0002, D-0003, D-0005, D-0028, D-0029, D-0038 and D-0039, para. 9; Decision on Defence's D-0028 Request, para. 23.
[322] Prosecution's Closing Statement: T-160, p. 41.
[323] Prosecution's Closing Statement: T-160, p. 41.
[324] Prosecution's Closing Statement: T-160, p. 41.

of the Rules, was conducive to the giving of truthful and open testimony, and ensured the witnesses' safety, security and well-being.[325] Moreover, as noted by the Prosecution above, no issues were reported in relation to the safety and well-being of any of these witnesses upon returning to their homes.

154. Lastly, the Chamber notes that the Defence does not substantiate how the conditions of appearance of the Prosecution witnesses were different from that of its witnesses, other than merely stating that a number of the Prosecution witnesses were admitted to the Court's Protection Programme.[326]

155. On the basis of the circumstances of the present case and in light of the above, the Chamber finds that the Defence was not placed at a substantial disadvantage *vis-à-vis* the Prosecution in the conditions of its witnesses' appearance before the Court, and that the arrangements made for the appearance of the witnesses from locations outside of Sudan did not raise an issue of the fairness of the proceedings.

D. Conclusion

156. Therefore, the Chamber finds that **the Accused** did not suffer any prejudice in respect of witness protection in the present case that would justify the exceptional remedy of a permanent stay of the proceedings.

SECTION 4. EVIDENTIARY PRINCIPLES AND CONSIDERATIONS

I. THE EVIDENCE IN THE CASE

157. Pursuant to Article 74(2) of the Statute, the decision of a trial chamber on the guilt or innocence of the accused shall be based on 'evidence submitted and discussed before it at trial'.[327]

158. In the present case, according to Article 64(8)(b) of the Statute, and pursuant to the Chamber's Directions on Conduct of Proceedings,[328] the parties and participants have

[325] *See also* Decision on Defence's Request concerning D-0001, D-0002, D-0003, D-0005, D-0028, D-0029, D-0038 and D-0039, para. 10.
[326] *See* Defence's Final Brief, para. 65. In this regard, the Chamber notes that one Defence witness was admitted to the Court's Protection Programme.
[327] *Ntaganda* Appeal Judgment, para. 122; *Bemba et al.* Appeal Judgment, paras 105, 576, 579, 599. *See also Ongwen* Trial Judgment, para. 233.
[328] *See* Directions on Conduct of Proceedings, paras 31-33.

requested the formal submission of evidence during the trial proceedings. In accordance with Rule 64(1) of the Rules, the parties and participants were required to raise issues as to the admissibility of evidence, on any of the standard evidentiary criteria, at the time of submission of the evidence to the Chamber or immediately after such an issue became known to a party or participant.[329]

159. The Chamber also recognised that specific issues could arise necessitating a ruling on an evidentiary challenge at the time it was raised in order to provide clarity to the parties and participants, to avoid the calling of unnecessary evidence, or to otherwise advance the fairness or efficiency of the trial proceedings.[330] When the Defence raised issues regarding the admissibility of an item of evidence, where appropriate, the Chamber rendered a separate ruling or an interlocutory decision on it, prior to its deliberation on the evidence for the present judgment.[331]

160. When no procedural bars to the submission of an item of evidence were found to exist – or none were raised – the Chamber recognised the formal submission of that evidence within the meaning of Article 74(2) of the Statute. This was the formal action taken by the Chamber to indicate that such an item of evidence could be considered and relied upon in its determination of the accused's guilt or innocence.[332] Thereafter, the fact that an item of evidence had been 'submitted' within the meaning of Article 74(2) of the Statute was placed on the record of the case, and this status was reflected in the metadata of each item of evidence.[333]

161. Consistent with the above considerations and aware that the 'submission' of evidence is a procedural act performed by the parties and participants,[334] the Chamber, in the present trial, has been deferential to the parties in terms of the documentary evidence they submitted for the Chamber's consideration for the ultimate determination on the guilt or innocence of the accused.

162. During its deliberation, the Chamber assessed the standard evidentiary criteria for each

[329] *See* Directions on Conduct of Proceedings, para. 27.
[330] *See* Directions on Conduct of Proceedings, para. 30. *See also* *Bemba et al.* Appeal Judgment, para. 603.
[331] *See* Directions on Conduct of Proceedings, para. 29. *See also* Rules 63(3), 68, 71, 72 of the Rules.
[332] *See* *Bemba et al.* Appeal Judgment, paras 578-579.
[333] The Chamber notes that 1861 items were formally submitted into evidence in the case.
[334] *Bemba et al.* Appeal Judgment, para. 576.

item of evidence 'submitted',[335] and any arguments raised by the parties and participants in the course of the trial, as part of its holistic assessment of all evidence. The Chamber however does not refer to its assessment of each and every submitted item of evidence in the present judgment.[336] The Chamber notes that Article 74(5) of the Statute requires that the judgment under Article 74 of the Statute must 'contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions'. As confirmed by the Appeals Chamber, while trial chambers have a degree of discretion as to what to address explicitly in their reasoning, they must 'explain with sufficient clarity' the reasons for their determinations.[337]

163. In the present case, the Chamber observes that the parties and participants submitted items of documentary evidence following the procedure set out by the Chamber, and had equal opportunity to make oral and/or written arguments, including on the standard evidentiary criteria, on any item of evidence submitted in the course of the trial. Such arguments have been duly considered as part of the Chamber's determination of **the Accused's** guilt or innocence, and addressed and disposed of in the present judgment as appropriate.

164. The Chamber hereby clarifies that where documents have been submitted, but were not referred to in this judgment, this signifies that they were either irrelevant or considered to be of insufficient probative value in light of the totality of the evidence on the record. In addition, the parties and participants availed themselves of their statutory right to make arguments in relation to the evidence submitted at trial, *inter alia*, during the submission of individual items of evidence, and in their final briefs and closing statements. These arguments have been considered by the Chamber for the purpose of the present judgment and are addressed herein as appropriate.

165. Other general allegations made by the Defence in relation to the admissibility of evidence are dealt with separately in the present judgment.[338]

II. GENERAL EVIDENTIARY PRINCIPLES

A. The burden and standard of proof

166. Article 66(1) of the Statute provides that everyone is presumed innocent until proved

[335] *See* Directions on Conduct of Proceedings, para. 25.
[336] *See* Directions on Conduct of Proceedings, para. 25.
[337] *Ongwen* Appeal Judgment, para. 506; *Bemba* Appeal Judgment, paras 54-55; *Bemba et al.* Appeal Judgment, paras 106-107, 597.
[338] *See* Section 3. Defence's allegations concerning the fairness of the proceedings *above*.

guilty before the Court in accordance with the applicable law. The onus is on the Prosecution to prove the guilt of the accused.[339] Pursuant to Article 66(3) of the Statute, in order to convict an accused person, the Court must be convinced of the guilt of the accused person beyond reasonable doubt.

167. Accordingly, the 'beyond reasonable doubt' standard is to be applied to the facts that are indispensable for entering a conviction, namely those constituting the elements of the crimes or modes of liability charged.[340] It follows that each and every fact in a decision on conviction need not be proved beyond reasonable doubt.[341] Towards this end, the Chamber must make a clear distinction between facts constituting the elements of the crime and the mode of liability, and any other set of facts introduced by the different types of evidence.[342]

168. Reasonable doubt must be grounded in reason. The 'reasonable doubt' standard cannot consist of imaginary or speculative doubt. Accepting such a proposition is akin to requiring proof beyond all doubt, whereas the Statute requires proof beyond reasonable doubt.[343] Such doubt must have a rational link to the evidence, lack of evidence or inconsistencies in the evidence.[344] The reasonable alternative hypothesis should be compatible with at least some of the facts or evidence of the case.[345]

169. The Chamber notes that the standard of 'beyond reasonable doubt' has been applied throughout its findings, where applicable and even when not specifically stated.

B. Indirect evidence

170. Under Article 69 of the Statute, indirect evidence (also known as hearsay), is admissible.[346] Moreover, the fact that evidence is indirect does not necessarily deprive it of probative value.[347] The indirect evidence in this case primarily falls into three separate categories: (i) witness evidence recounting what the witness had been told, rather than what

[339] Article 66(2) of the Statute. *See also* *Ntaganda* Appeal Judgment, para. 12.
[340] *Ongwen* Appeal Judgment, para. 321; *Ntaganda* Appeal Judgment, para. 37; *Bemba et al.* Appeal Judgment, para. 96; *Ngudjolo* Appeal Judgment, paras 124-125; *Lubanga* Appeal Judgment, para. 22.
[341] *Ongwen* Appeal Judgment, para. 321. *See also* *Bemba et al.* Appeal Judgment, para. 868; *Lubanga* Appeal Judgment, para. 22.
[342] *Ongwen* Appeal Judgment, para. 321; *Bemba et al.* Appeal Judgment, para. 868.
[343] *Ongwen* Trial Judgment, para. 229. *See also* *Yekatom and Ngaïssona* Trial Judgment, para. 129.
[344] *Yekatom and Ngaïssona* Trial Judgment, para. 128; *Ongwen* Trial Judgment, para. 228; *Ngudjolo* Appeal Judgment, para. 109, *referring to* *Rutaganda* Appeal Judgment, para. 488.
[345] *Ongwen* Trial Judgment, para. 229.
[346] *Bemba et al.* Appeal Judgment, para. 874; *Yekatom and Ngaïssona* Trial Judgment, para. 135.
[347] *Yekatom and Ngaïssona* Trial Judgment, para. 135; *Ngudjolo* Appeal Judgment, para. 226; *Bemba et al.* Appeal Judgment, para. 874.

they saw or heard themselves; (ii) evidence contained in reports, *e.g.*, from UN agencies, the GoS; and (iii) circumstantial evidence.[348]

171. The weight to be attributed to indirect evidence depends on the infinitely variable circumstances which surround it. As such the Chamber has assessed indirect evidence on a case by case basis. The Chamber has carefully assessed the relevance, probative value and potential prejudice of indirect evidence. It has considered the arguments made by the parties and participants during the course of the trial, as part of its holistic assessment of all evidence, in accordance with Rule 63(2) of the Rules when deciding on the guilt or innocence of **the Accused**.[349] Whenever factors rendered it unsafe so to do, the Chamber has not relied upon indirect evidence.[350]

172. The Chamber has considered 'renown' as a form of indirect evidence in this case. It is one of the ways witnesses learned the identity of **the Accused** from other people, who recognised **the Accused** because of his 'renown', which was derived from numerous factors such as **the Accused's** personal history and attributes. Whilst this component of a witness's evidence did not amount to the decisive factor in assessing the credibility and reliability of the identification of **the Accused** by the witness, it was nonetheless an aspect to be taken into account when assessing the quality – and therefore probative value – of that identification.[351]

C. Circumstantial evidence

173. Circumstantial evidence is evidence which does not directly prove a fact in dispute, but which allows the Chamber to draw a reasonable inference about the existence or non-existence of a fact based on the evidence. Its cogency depends on the unlikelihood of coincidence–events which can be explained rationally only by the existence of that fact. It is different from direct evidence, which establishes the existence or non-existence of a fact on its own.

174. Nothing in the statutory framework prevents a trial chamber from drawing inferences based on circumstantial evidence nor does the standard of proof beyond reasonable doubt or the principle of *in dubio pro reo* require that such evidence be excluded.[352] Circumstantial evidence is not less powerful because it is circumstantial, rather than eye-witness, documentary,

[348] *See* Section 4.II.C. Circumstantial evidence *below*.
[349] *Bemba et al.* Appeal Judgment, para. 583.
[350] An example of such a factor is when indirect evidence is from a totally anonymous source.
[351] *See* the credibility assessments of the witnesses in the present case in Annex B.
[352] *Yekatom and Ngaïssona* Trial Judgment, para. 136; *Bemba et al.* Appeal Judgment, para. 1386. *See also* para. 868.

or scientific evidence; as it is evidence of surrounding circumstances which, by undesigned coincidence, are capable of proving a proposition.

175. The above-mentioned principles are reflected in the general introduction to the 'Elements of Crimes' which (after re-asserting the obvious point that a finding of criminal responsibility for crimes is only possible with intent and knowledge of the material elements thereof), states that '[e]xistence of intent and knowledge can be inferred from relevant facts and circumstances'.[353]

176. The Chamber has assessed circumstantial evidence, and in appropriate instances, has drawn inferences on the basis of the same.[354] In making findings based on circumstantial evidence, the Chamber has borne in mind that it needs to be examined taken as a whole and with care, to ensure that it leads to the inescapable conclusion that the fact has been established beyond reasonable doubt. Therefore, the Chamber has only made a finding adverse to **the Accused**, on the basis of circumstantial evidence, when it was convinced that it was the only reasonable conclusion that could be drawn from the relevant evidence. When the Chamber has made an essential finding based on an inference, such as with respect to the elements of charged crimes and modes of liability, the Chamber has explained in detail how it reached the factual conclusion in question.[355]

177. The final aspect of this type of evidence relates to some witnesses who in one or more respects gave evidence which could be seen as not being in their own interests, in that it suggested actions taken by the witness, which at best could harm their reputation, or at worst potentially expose them to criminal prosecution. The core principle is that, as a general rule, persons typically do not give evidence which harms their own interests unless those statements are true. This therefore provides a circumstantial basis for judges to find the evidence credible and place reliance thereon.

178. However, the Chamber, carefully examined, not only the context in which this evidence was given, but also all factors relating to the witness's account of events, before concluding that it was both credible and reliable.

[353] Elements of Crimes, General Introduction, para. 3
[354] *Ntaganda* Trial Judgment, para. 69, *referring to* *Bemba et al.* Appeal Judgment, para. 1386.
[355] *See also* *Ntaganda* Trial Judgment, para. 70, *referring to* *Bemba et al.* Appeal Judgment, para. 870.

D. Corroboration

179. The principle of corroboration is the provision of evidence which supports and confirms other evidence. In accordance with Rule 63(4) of the Rules, there is no legal requirement for corroboration.[356] The Defence, on a number of occasions in its Final Brief, asserts that certain parts of witness evidence lacked corroboration and therefore the Chamber should place no reliance on that evidence.[357] The Chamber recalls that the Appeals Chamber has endorsed the proposition that trial chambers enjoy a broad discretion in assessing inconsistencies in the evidence and deciding whether corroboration is necessary.[358]

180. In respect of the category of witness who have, or may have, their own interests to serve in reducing their culpability for the crimes and ascribing blame thereof to others, great caution was exercised by the Chamber before concluding that their evidence was in any respect credible and reliable.

181. These assessments have been made on a case-by-case basis, taking into account the circumstances of the facts to be proven and the evidence presented. However, the Chamber rejects the Defence's over-arching argument that evidence, unless corroborated, should be deemed unreliable. In the present judgment, the Chamber reached certain findings on the basis of a single account, if satisfied that the witness is both credible and reliable.

E. Standard of proof for alibi or grounds excluding criminal responsibility

182. As will be seen in the section dealing with **the Accused's** individual criminal responsibility,[359] the Defence raised the question of a potential alibi defence in respect of the charges relating to Mukjar and Deleig.[360] Whilst the Defence accepted that no evidence was adduced to lay the foundation for such a defence,[361] the Chamber, nonetheless, deems it

[356] *See also* *Yekatom and Ngaïssona* Trial Judgment, para. 138; *Ongwen* Appeal Judgment, fn. 1249; *Lubanga* Appeal Judgment, para. 218.
[357] *See for example* Defence's Final Brief, paras 452, 498, 621.
[358] *See* *Ongwen* Appeal Judgment, para. 853; *Ntaganda* Appeal Judgment, paras 18, 672, 805; *Gbagbo and Blé Goudé* Appeal Judgment, para. 357. *See also* *Bemba et al.* Appeal Judgment, para. 95; *Lubanga* Appeal Judgment, para. 23, *referring to* *Kupreškić et al.* Appeal Judgment, para. 31.
[359] *See* Section 7.III. Commission as an individual (direct perpetration); Section 7.IV Commission 'jointly with another' (co-perpetration); Section 7.V Accessorial liability for ordering *below*.
[360] The Defence confirmed during the closing statements that alibi was not being advanced as a reason for excluding **the Accused's** criminal responsibility. *See* Defence's Final Brief, paras 62, 64, 66, 786; T-152, p. 87. However, for the reasons set out in this judgment in Section 3. Defence's allegations concerning the fairness of the proceedings *above*, the Chamber has made a finding thereon.
[361] *See* Defence's Final Brief, paras 62, 64, 66.

appropriate to set out the principles which it has taken into account.

183. The Chamber notes that there is no specific provision in the Statute regulating the burden and standard of proof with respect to alibi or grounds excluding criminal responsibility. However, the Appeals Chamber has held that in the absence of a specific provision in the Statute regulating the burden and standard of proof with respect to grounds excluding criminal responsibility, the general provisions of Article 66 of the Statute apply.[362]

184. The Appeals Chamber concluded that 'in all circumstances, including when a ground for excluding criminal responsibility is raised, the onus is on the Prosecutor to prove the guilt of the accused (article 66(2) of the Statute) and in order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt (article 66(3) of the Statute)'.[363] While generally, the Prosecution does not bear the burden *per se* of disproving each element of a ground excluding an accused's criminal responsibility,[364] the Appeals Chamber held that it must establish the guilt of the accused beyond reasonable doubt, even when a ground for excluding criminal responsibility is raised.[365] It follows that the Prosecution may address and rebut any Defence's evidence adduced in support of the alleged ground for excluding criminal responsibility.[366]

185. The Chamber notes that the so-called 'evidentiary burden' of the Defence *vis-à-vis* the existence of an alibi or grounds purporting to exclude criminal responsibility does not mean that there is a shift in the burden of proof.[367] This is because the Prosecution is not relieved of its burden to establish the elements of the charged crimes and the modes of liability beyond reasonable doubt.[368]

F. Agreed facts

186. In accordance with Rule 69 of the Rules, the parties may agree that an alleged fact which is contained in the charges, the contents of a document, and the expected evidence of a witness or other evidence is not contested. In such circumstances, the Chamber may consider

[362] *Ongwen* Appeal Judgment, para. 337, *referring to* *Ongwen* Trial Judgment, para. 231.
[363] *Ongwen* Appeal Judgment, para. 337.
[364] *Ongwen* Appeal Judgment, para. 338.
[365] *Ongwen* Appeal Judgment, para. 338.
[366] *Ongwen* Appeal Judgment, para. 338.
[367] *See* *Ongwen* Appeal Judgment, para. 340.
[368] *See* *Ongwen* Appeal Judgment, para. 340.

such an alleged fact as being proven.[369]

187. In the present case, the Prosecution and the Defence submitted five documents containing 134 agreed facts. These facts related to matters such as **the Accused's** personal information and professional background, the Republic of Sudan, the conflict in Darfur in 2003 and 2004, names of weapons and equipment, geographical locations in West Darfur, and a map of West Darfur.[370] The Chamber notes in particular that the parties have agreed on important facts related to the existence of an armed conflict.[371]

188. The Chamber further notes that the reference to such facts in the present judgment is in itself indicative that the Chamber considers those facts to be accurate, having conducted its own review of the evidence.[372]

III. WITNESS EVIDENCE

189. Out of the total of 74 witnesses who gave evidence either at the seat of the Court or via video-link,[373] 36 had their prior recorded statement introduced under Rule 68(3) of the Rules.[374] The prior recorded statements of 19 witnesses were introduced under Rule 68(2)(b) of the Rules, and nine under Rule 68(2)(c) of the Rules.

190. As regards the witnesses whose prior recorded statement was introduced under Rule 68(3) of the Rules, both parties and the participants had the opportunity to examine them in court. In these instances, the prior recorded statement complements and forms an integral part of the witness's *viva voce* evidence and the Chamber has accordingly considered the prior recorded statement together with and in light of the witness's in-court evidence, and *vice versa*.

191. The calling party was afforded the opportunity to speak to its witnesses in advance of

[369] *Yekatom and Ngaïssona* Trial Judgment, para. 143; *Ngudjolo* Trial Judgment, para. 38; *Katanga* Trial Judgment, para. 72.
[370] First Joint Submission on Agreed Facts, Annex A; Second Joint Submission on Agreed Facts, Annex A; Third Joint Submission on Agreed Facts, Annex A, Annex B and Annex C; Fourth Joint Submission on Agreed Facts, Annex A; Fifth Joint Submission on Agreed Facts, Annex A. *See also* Decision on Joint Submissions on Agreed Facts.
[371] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 1 ('From at least April 2003 until at least April 2004, a protracted armed conflict not of an international character was ongoing in Sudan, including Darfur').
[372] *See Babić* Sentencing Appeal Judgment, para. 18.
[373] 56 were called by the Prosecution, 17 by the Defence, and 1 by the participating victims through their legal representatives.
[374] Throughout the judgment, when the Chamber refers to 'statements' of Rule 68(2) and (3) witnesses, it is referring to prior recorded testimonies submitted on the record.

their evidence being presented in court.[375] Any changes made to their statements or additional information provided were recorded in writing and signed by the witness. From 13 June 2022 (by agreement between the parties), in the interests of efficiency, rather than each change or addition being dealt with orally by the witness in the course of evidence, a document containing the alterations was entered into evidence.[376]

192. As regards the witnesses whose prior recorded statements were introduced pursuant to Rule 68(2)(b) and (c) of the Rules, the Chamber has assessed their written statements and related material for the purpose of the present judgment. As with any other type of evidence submitted in the course of the trial, arguments made in the course of the trial by the parties and participants, concerning the relevance and probative value of the prior recorded statements of witnesses (introduced under Rule 68(2) of the Rules), have been taken into account for the purpose of the present judgment and are explicitly addressed as appropriate. The Chamber in its evaluation of this type of witness evidence, in addition to the considerations set out below, also took into account that the witnesses concerned did not appear before the Chamber, were not subject to cross-examination, and therefore had more limited probative value.

A. Assessment of credibility and reliability

193. The Chamber has assessed the credibility and reliability of the testimony of each witness and has evaluated on a case-by-case basis the weight to be given to the testimony in relation to the relevant issues.[377] The individual assessments are found in Annex B to this judgment.

194. The Chamber has taken into account a variety of factors in its assessment of witness evidence. This includes: (i) the richness of details and internal consistency of the narrative provided by the witness, as well as the coherence of the testimony with other evidence before the Chamber; (ii) the individual circumstances of the witness, including their relationship to **the Accused**, age, the provision of assurances against self-incrimination, any relationship with parties to the conflict, indication of bias against **the Accused** – or the lack thereof – and if appropriate, motives for giving evidence;[378] (iii) the unexpected or traumatic nature of the events, considering the context and specific impact/effect on the witness; and (iv) the fact that,

[375] Directions on Conduct of Proceedings, para. 54, Annex A.
[376] T-048, p. 7.
[377] *See* *Ongwen* Appeal Judgment, para. 810; *Ntaganda* Appeal Judgment, para. 40; *Gbagbo and Blé Goudé* Appeal Judgment, para. 69.
[378] *See similarly* *Bemba et al.* Trial Judgment, para. 202.

given the significant passage of time in this case, the memory of some witnesses may have faded with regard to certain detail.[379]

195. In this regard, the Chamber notes that many witnesses were unclear about issues such as dates, time and distance. As a general rule, mistakes or inconsistencies in respect of dates, time, distance, exact sequence of events, numbers, etc. have not negatively affected the Chamber's assessment of the credibility of the witnesses. The Chamber reiterates that this is a non-exhaustive list of factors considered by the Chamber in its assessment of witness evidence.

196. The Chamber further notes that the Defence challenges the credibility and reliability of 'insider witnesses', stating generally that their evidence should be disregarded due to their testimony containing lies, inconsistencies and contradictions, as well as their personal motives to shift blame.[380] As noted above, the Chamber has assessed the credibility of these witnesses individually bearing in mind any specific challenges raised by the Defence.

197. Any assessment of witness evidence (as with other types of evidence) is fact dependent on the particular circumstances. Each statement made by a witness, whether written or oral, is assessed individually – while, at the same time, taking into account, holistically, the entire body of evidence available to the Chamber.[381] When faced with competing versions of events, the Chamber has assessed the totality of the evidence to determine which it considers most probative. In its discretion, it has evaluated any inconsistencies to consider 'whether the evidence taken as a whole is reliable and credible and to accept or reject the "fundamental features" of the evidence'.[382]

198. As set out in Annex B, with particular witnesses, the Chamber has relied on 'certain aspects of a witness's evidence, while considering other aspects unreliable'.[383] The Chamber has principally focused its assessments on the parties' submissions, both during the trial, as well as in their final briefs and closing statements. However, the Chamber has considered all aspects of the witness evidence even if they have not been specifically referred to in its

[379] *See similarly* *Bemba et al.* Trial Judgment, para. 203.
[380] Defence's Final Brief, paras 106-157.
[381] *Ngudjolo* Appeal Judgment, para. 168.
[382] *See* *Ongwen* Appeal Judgment, para. 524, *referring to* *Ngudjolo* Appeal Judgment, para. 168. *See also* *Ntaganda* Appeal Judgment, para. 806; *Bemba et al.* Appeal Judgment, para. 95, *referring to* *Lubanga* Appeal Judgment, para. 23, *quoting* *Kupreškić et al.* Appeal Judgment, para. 31.
[383] *See also* *Ongwen* Appeal Judgment, para. 524, *referring to* *Ngudjolo* Appeal Judgment, para. 168; *Popović et al.* Appeal Judgment, para. 132.

credibility assessment (or in the parties' submissions).

199. During trial, the Chamber adopted the procedure that if the non-calling party challenged the accuracy or veracity of the evidence being given by a witness, then this challenge should be included in the questioning of the witness.

200. The procedure was based on the following reasoning delivered in appeals at both the ICTY and the ICTR: '[It] seeks to facilitate the fair and efficient presentation of evidence whilst affording the witness being cross-examined the possibility of explaining himself on those aspects of his testimony contradicted by the opposing party's evidence, so saving the witness from having to reappear needlessly in order to do so and enabling the Trial Chamber to evaluate the credibility of his testimony more accurately owing to the explanation of the witness or his counsel'.[384] The central purpose of this rule is to 'promote the fairness of the proceedings by enabling the witness […] to appreciate the context of the cross-examining party's questions, and to comment on the contradictory version of the events in question'.[385]

201. As indicated in the judgment of the ICTR Appeals Chamber in *Karera*, the procedure does not require the non-calling party to put questions relating to every area of disagreement, but only those which relate to real issues in the case, *e.g.*, the identification of the accused person. The witness credibility assessments reflect the most relevant areas in which suggestions of inaccuracy, mistake or untruthfulness were made.[386]

202. In some cases, the witness accepted the suggestion that they had, or may have been inaccurate or mistaken or untruthful. However, for the most part, the witnesses to whom such suggestions were made rejected them, maintaining that their accounts were not inaccurate, mistaken nor untruthful.

203. The Chamber makes it clear that only if the content of a suggestion was accepted by the witness, or other witnesses or documents lent credence or support thereof, did it become part of the evidence to be taken into account for the purpose of this judgment. If no such credence or support was forthcoming then consideration of that suggestion, *e.g.* alleged motive for giving evidence, was limited to scrutiny of any impact it had on the witness's credibility

[384] *See* *Karera* Appeal Judgment, para. 24, *referring to* *Brđanin and Talić* Decision on Interlocutory Appeal, p. 4.
[385] *See* *Karera* Appeal Judgment, paras 22-26.
[386] *See for example* the Chamber's assessment of the evidence of P-0012, P-0129, P-0547, P-0878, P-0931, P-0984, and P-1021, Annex B, Sections I.A.3, I.A.9, I.A.11, I.A.28, I.A.40, I.A.45 and I.A.49.

and reliability.

204. The Chamber has also assessed the coherence between the testimony given by a witness and their account in relation to the same facts given in other contexts as emerging from the evidence presented at trial. In this regard, the Chamber notes that throughout the trial, witnesses who gave in-court evidence were asked questions in relation to prior accounts they gave in other contexts.

205. Prior accounts were typically put to witnesses in three distinct situations: (i) when a witness declared himself/herself unable to respond to a question, in which case a prior account was used to refresh his/her memory; (ii) in cases where there existed, in the assessment of the examining party, a discrepancy between the statement given in court and a prior account; and (iii) where the non-calling party, sought to challenge the reliability or the veracity of the witnesses' evidence in whole or in part. In all cases the witness was then given an opportunity to explain the accuracy and truthfulness of the prior account, and veracity of his/her evidence in light of the challenge. By virtue of his/her in-court evidence, the relevant part of the prior account was incorporated into the evidentiary record. In case of apparent discrepancy between in-court evidence and a prior account, the Chamber has carefully considered the content and all circumstances in which such prior account had been made – *inter alia*, its context, purpose and the (expected) level of detail – as well as any explanation for such discrepancy provided by the witness during their in-court evidence.

206. Throughout the judgment, the Chamber, as already stated, has evaluated the relevant witness evidence, individually, including the credibility and reliability of witnesses, based on the particular and specific circumstances at hand, while, at the same time, taking into account, holistically, the entire body of evidence available to the Chamber. Indeed, certain aspects relating to the credibility of a number of witnesses, the reliability of their evidence and the relevance of their evidence to the Chamber's disposal of the charges against **the Accused** are addressed, as appropriate, in the Chamber's evidentiary analysis of the findings of facts of the present judgment.

B. Identification evidence

207. The issue of identification has been adjudicated upon by this Court and other international criminal courts and tribunals. Identification evidence does not need to be of any

particular type,[387] but caution is required in assessing it due to 'the vagaries of human perception and recollection', in particular, where identification is made in 'turbulent and traumatising circumstances'.[388] After having examined a number of domestic criminal law systems in relation to the question of identification evidence, the ICTY Appeals Chamber in *Kupreškić et al.* set out a list of evidential factors which the Chamber has taken into account as guidance when deciding on the reliability of an identification.[389]

208. In light of the above, the Chamber finds that where the case against the accused person depends, to a large extent, on the correctness of one or more identifications of the accused and the case for the defence is that the witness(es) purporting to identify the accused are mistaken, the Chamber must be convinced beyond a reasonable doubt of the correctness of the identification.

209. Accordingly, the Chamber has taken into consideration, the overriding principles applicable to such evidence, *inter alia*, that: there is a need for caution to avoid the risk of injustice because a witness who is convincing based on his or her own honest belief may still be mistaken.

210. The Chamber has considered a number of factors in order to assess the circumstances and hence the reliability of identification evidence given by a witness. These include, but are not limited to:

- the state of the light;
- the duration of time during which the witness had the person, he or she says was the accused, under observation including in particular, the time during which the witness could see the accused's face;
- the distance between the witness and the accused;
- whether anything physically impeded the observation;
- whether the witness had ever seen the accused before and if so, the number of times and in what circumstances;

[387] *Ntaganda* Trial Judgment, para. 71, *Bemba* Trial Judgment, para. 241, *referring to* *Kamuhanda* Appeal Judgment, para. 298; *Lukić and Lukić* Appeal Judgment, para. 140.
[388] *Ntaganda* Trial Judgment, para. 71; *Bemba* Trial Judgment, para. 241, *quoting* *Kunarac et al.* Trial Judgment, para. 561 and *referring to* *Kupreškić et al.* Appeal Judgment, paras 34, 39, 134-135. The trial chamber in *Ntaganda* noted that there is 'no recognised rule of evidence that traumatic circumstances necessarily render a witness's evidence unreliable' (*see* *Ntaganda* Trial Judgment, fn. 158, *referring to* *Kunarac et al.* Appeal Judgment, para. 324).
[389] *Kupreškić et al.* Appeal Judgment, paras 34, 39-40, 134-135.

- on the occasion(s) in which the witness had seen the person he or she said was the accused before, had he or she any reason to recognise him;
- the length of time that had elapsed between the original observation of the accused and the subsequent observation during the event; and
- any discrepancy between the description of the accused given by the specific witness and that given by other witnesses and/or the physical appearance of the accused in court (taking into account that more than 20 years have elapsed since the events).
- the nature of the incident at which the identification was made *i.e.* was it unexpected/ fast-moving/shocking and/or involved a large number of persons.

211. Where there are several witnesses to an incident who purport to identify the accused, the Chamber has considered the quality of each witness's evidence of identification separately and the possibility that more than one person may be mistaken, as well as any suggestion that a witness had been influenced by another. Having made a careful assessment, the Chamber is satisfied that it is entitled to use one witness's evidence of identification (if it is sure that that witness's account is independent, honest, credible and reliable) to support the evidence of identification given by another independent, honest, credible and reliable witness.

212. In a number of instances, a witness gave what may be characterised as 'recognition' evidence rather than that of 'identification'. As regards recognition evidence, the Chamber notes that, whilst recognition of a person known to the witness may be more reliable than identification of a stranger, the Chamber must still exercise caution because mistakes may still be made by witnesses who purport to recognise the accused person. Accordingly, even in instances where a witness purports to recognise **the Accused**, the Chamber has taken this aspect into account in its consideration of the quality of the identification evidence.

213. These principles and considerations are only applicable to witnesses where the Defence's suggestion is that they are mistaken; they are not pertinent where the suggestion is that a witness has deliberately lied.

a) In-court identification

214. Generally, little weight is attached to in-court identification (sometimes called 'dock identification'), and virtually no weight is attached to it if it is a first-time in-court identification of a stranger. Although the Chamber did not allow questions which directly sought in-court

identifications,[390] some witnesses spontaneously made such identifications.[391] In such instances, in-court identification has not been used to shore up a weak identification or to support a tenuous identification, nor has it been used if the witness did not know **the Accused** before the charged events.

215. However, in-court identifications made by witnesses who gave credible and reliable evidence to explain their recognition/identification of the accused are admissible, but solely with a view to assessing whether the person the witness purports to recognise before the events, and identified during the events, is the accused.

b) Use of video evidence for identification

216. A witness who was previously acquainted with a person may be able to identify the accused's image on a video. Several witnesses, called by both parties, purported to identify **the Accused** on video footage.[392] The Chamber did not ascribe any probative value to the purported identification of **the Accused**'s image on a video when there was no evidence that the witness knew **the Accused** before the events. However, as reflected in the credibility assessments, the Chamber has only relied on evidence of witnesses who made identifications of **the Accused** on video footage and provided convincing and reliable evidence of their prior knowledge of **the Accused**. The Chamber notes that in relation to the videos shown to witnesses, the Defence conceded that **the Accused** was the person so identified.[393]

c) Use of photographs for identification

217. Several witnesses were shown a single photograph of **the Accused** either before giving evidence and/or in court. The witnesses were asked if they recognised the person depicted therein. The Chamber disparages the use of a single photograph in such an exercise and finds that the Prosecution ought to have compiled an array of photographs of similar size, colour and background lighting. Further, such an array of photographs should have been comprised of a number of photographs of persons having a resemblance to **the Accused**.[394] This procedure was not followed in this case.

[390] T-039, p. 28.
[391] *See for example* the Chamber's assessment of the evidence of P-0585, P-0878 and P-0986, Annex B, Sections I.A.14, I.A.28 and I.A.46.
[392] *See for example* the Chamber's assessment of the evidence of P-0643, P-0883, P-0905, D-0001, D-0003, D-0005, D-0008 and D-0039, Annex B, Sections I.A.15, I.A.29, I.A.32, I.B.1, I.B.3, I.B.4, I.B.6 and I.B.17.
[393] Defence's Final Brief, para. 193.
[394] *See* T-057, p. 36.

218. The danger with a single photograph is that the witness may feel obliged to say that the person depicted is the accused person. In these circumstances, the Chamber has not relied upon the evidence of any single showing of a photograph bearing the likeness of **the Accused**, unless the Chamber is satisfied that the witness had given credible and reliable evidence on their knowledge of – and thus their ability to recognise – **the Accused** in a prior statement or in court, before being shown the photograph.

C. Allegations of lies told by witnesses

219. A number of witnesses, called by both parties, were directly, or by implication, alleged to have told lies either in the course of their evidence, or in hearings or documents outside – but connected – to the events which are the subject of this case.[395] Some of the witnesses called by the Prosecution admitted they had lied – largely in respect of information provided when, having fled Sudan as refugees, they sought asylum in other States. The Chamber affirms that self-evidently, an allegation – whether accepted or not – that a witness has lied about any matter is one which has to be examined with care when considering the credibility of that witness. When the allegation is denied, the Chamber has rigorously scrutinised the evidence relevant to that allegation, before making a finding that a lie is or may have been told and if so what effect that finding has on the overall credibility of that witness's evidence on an issue in the case. The Chamber has also borne in mind the general principle, as reiterated in other cases,[396] that witnesses may be truthful in some respects and untruthful in others.

220. It is incumbent upon judges to examine the evidence as a whole to ascertain whether there is a reason revealed for untruthful evidence. When a witness admitted that he/she had lied, the Chamber considered the following circumstances:

- was the lie deliberate, rather than accidental;
- did it relate to a significant issue; and
- what reason was given for the lie. *e.g.*, fear or gaining an advantage which might otherwise be denied.

221. As already stated, some witnesses, in their asylum applications, provided false information or did not mention certain facts about which they testified in court. Whilst the Chamber considered the individual reasons provided by each witness for the lies, the evidence,

[395] *See for example* witnesses mentioned in Annex B, Sections I.A and II.B.
[396] *See* *Ongwen* Appeal Judgment, para. 524, *referring to* *Ngudjolo* Appeal Judgment, para. 168.

taken as a whole, demonstrated that in their asylum applications, witnesses provided information that they considered would make the best case for asylum in their respective host States.[397] Hence, the Chamber considered whether the witnesses had lied or withheld information in their asylum applications with an intention to make the best case for asylum.

222. The Chamber also notes that asylum authorities of host States do not find asylum claims to be unfounded simply on the basis that the applicant lied or acted in bad faith.[398] Consequently, the Chamber finds that the fact that witnesses had provided false information or did not mention certain facts about which they gave evidence in court in their asylum applications is not in itself – without additional factors – material to, or determinative of, the Chamber's assessment of their credibility.[399]

D. Discrepancies between evidence in court and previous statements

223. A substantial number of witnesses were first contacted via telephone by investigators acting on behalf of the Prosecution.[400] A 'Screening Note' was compiled by the investigator, which was not shown to, or signed by the witness, nor read back to him/her until a later stage.[401] Subsequently, a signed statement was taken by the Prosecution. Additionally, as already stated, before giving in-court evidence, witnesses giving evidence under Rule 68(3) of the Rules had the opportunity to correct, alter or add to their statements.

224. In court, the witnesses would sometimes be questioned by the parties about discrepancies in their accounts, *e.g.*, a failure to mention '**Ali Kushayb**' in the original screening notes, differences in dates or details of events, particularly those relating to attacks,

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[397] *See* credibility assessments in Annex B, Section I.A.
[398] *See for example* GM (Eritrea), YT (Eritrea) and MY (Eritrea) Judgment (UK), paras 29-31. *See also* A v Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform Judgment (Ireland), paras 13-20.
[399] *See* Popović et al. Appeal Judgment, para. 132 ('The Appeals Chamber is mindful that when exercising its broad discretion, a trial chamber has to consider relevant factors on a case-by-case basis, including […] whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence; any prior examples of false testimony; any motivation to lie […]. The application of these factors, and the positive or negative impact they may have on the witness's credibility, varies according to the specific circumstances of each case.'). *See also* UNHCR, Beyond Proof: Credibility Assessment in EU Asylum Systems, p. 215 ('That an applicant has told a lie(s) or concealed a fact(s) is not necessarily decisive in the assessment of credibility'); EASO, Evidence and credibility assessment in the context of the Common European Asylum System, p. 75 ('The fact that an applicant has told lies or even extensive lies does not mean by itself that they are material to or determinative of the outcome of the application without additional factors which indicate that the applicant's claim is unfounded').
[400] *See for example* the Chamber's assessment of the evidence of P-0007, P-0011, P-0905, P-0913, P-0919 and P-0980, Annex B, Sections I.A.1, I.A.2, I.A.32, I.A.34, I.A.37 and I.A.44.
[401] *See for example* P-0905's Screening Note, DAR-OTP-0215-5256-R02; P-0919's Screening Note, DAR-OTP-0215-8491-R02.

conditions of incarceration, or actions taken by '**Ali Kushayb**'.

225. The Chamber, as with the allegations of lies told by witnesses, has rigorously scrutinised the relevant evidence of each instance where such discrepancies appear when assessing the credibility and reliability of the individual witness. However, it has also identified a number of explanations common to the witnesses, namely:

- the length of time which has elapsed since the events;
- the unexpected and traumatic nature of the events; this is particularly relevant to witnesses who gave evidence of sexual assault upon themselves or others;
- the age of the witness at the time of the events; and
- in respect of Screening Notes, the fact that witnesses were unexpectedly contacted; could not see or verify the identity of the person questioning them; and connection and interpretation issues.

226. The Chamber is satisfied that the consistency of such explanations reflect the reality of the process involved in obtaining evidence of witnesses to events such as these, and as a general rule, absent any other factors specific to an individual witness, the Chamber does not find that the identified discrepancies are a bar to assessing the witness as credible.

E. Interpretation

227. A number of witnesses spoke only the Fur language. This required a two-stage interpretation, namely from the language of the questioner (English or French) into Arabic and then Fur and vice-versa. Some witnesses who gave evidence in Arabic were doing so in their second language.

228. Whilst generally interpretation was of an appropriate standard, on some occasions concerns were expressed as to its accuracy. In such instances, steps were taken at the time to mitigate the problems and overall the parties and participants did not express concern, either at the time or in their final submissions, that the evidence of the witnesses was being misrepresented.

229. The Chamber intervened at various stages, particularly when the evidence directly implicated **the Accused**, to ensure that any possible ambiguity or misunderstanding was clarified with the witness. Further, in its assessment of the credibility and reliability of such witnesses, the Chamber has taken this factor into account before drawing any inferences

adverse to **the Accused**.

IV. NON-TESTIMONAL EVIDENCE

A. Documentary evidence

230. The Chamber has relied on a limited amount of evidence submitted through the bar table.[402] The Chamber's assessment of these items of evidence has been done on a case-by case basis and is noted at the relevant parts of this judgment. Generally, when deciding to rely on an item submitted through the bar table, the Chamber has taken into consideration whether the evidence goes to a key issue in dispute and whether it is corroborative of other evidence before it.

231. The Chamber notes the Defence's challenges to the Prosecution's lists of victims, as well as the lists of victims of the three operations created by various witnesses.[403] Generally, the Chamber has not relied on the lists created and provided by the witnesses as the sole source for a finding. It has only relied on some of these lists when: (i) it was part of and completed a witness' in-court testimony, when the parties would have had the opportunity to question the witness on the list(s) in question; or (ii) when it was supported by the evidence of other witnesses.

B. 'Facebook' evidence

232. During its examination of some Defence witnesses,[404] the Prosecution, to a greater or lesser extent, used material downloaded from Facebook designed to counter the defence being advanced that **the Accused** had never used or been known by the nickname '**Ali Kushayb**'. That use was kept within strict parameters by the Chamber.[405]

233. As a result, the Defence called an expert.[406] This enabled the Prosecution to place on the evidential record a substantial number of Facebook accounts allegedly linking the nickname with the purported sons of **the Accused**. The expert was not given any advance notice by the Prosecution of the accounts he was asked to examine nor the questions which would be

[402] When the Chamber does not mention an item of evidence in its Factual Findings, it means it has not relied on it.
[403] Defence's Final Brief, paras 177, 415-416, 536-538.
[404] *See* the Chamber's assessment of the evidence of D-0011, D-0032 and D-0037, Annex B, Sections I.B.7, I.B.13 and I.B.16.
[405] T-138, pp. 42-43.
[406] D-0037.

asked.[407]

234. The Chamber finds that the method by which the Prosecution introduced this evidence was unsatisfactory. First, as set out in its original ruling,[408] it is incumbent on the party which wishes to introduce such evidence to lay a proper foundation for seeking to question a witness thereon, as opposed to inviting the witness to comment thereon. Second, if an expert is to be asked to express an opinion on documents, the questioning party has a duty to give advance notice of those documents to the expert.

235. Accordingly for the purpose of this judgment, the Chamber has not relied on the content of the Facebook material, so produced in evidence in respect of the issue of whether **the Accused** was in fact the person also known as '**Ali Kushayb**'. The only relevance of the evidence relates to the credibility of some of the Defence witnesses.[409]

SECTION 5. FACTUAL FINDINGS

236. In this section, the Chamber establishes the facts and circumstances of the case on the basis of the evidence submitted and examined at trial. These findings constitute the foundation for the Chamber's decision under Article 74 of the Statute. The reasoning for the Chamber's determination in this regard is provided in Annex B, where the Chamber addresses the credibility and reliability of the evidence which, directly or by way of inference, supports each of these findings on the facts and circumstances. The Chamber clarifies that, pursuant to Article 74(2) of the Statute, it has ensured that its findings of fact do not exceed the facts and circumstances described in the charges against **the Accused** as confirmed by the Pre-Trial Chamber.[410]

237. The Chamber begins by addressing the contested issue of **the Accused's** identification. It then provides background on the conflict in Darfur in 2003 and 2004, and subsequently sets out, in chronological order, the facts and circumstances related to the three charged operations namely, (A) Kodoom and Bindisi, (B) Mukjar, and (C) Deleig. This section concludes with an examination of **the Accused's** position of authority and influence during the period covered by the charges.

[407] *See* the Chamber's assessment of the D-0037's evidence, Annex B, Section I.B.16.
[408] T-153, pp. 2-6.
[409] *See* the Chamber's assessment of the evidence of D-0011 and D-0032, Annex B, Sections I.B.7 and I.B.13.
[410] *See* Confirmation Decision.

I. THE ACCUSED, ABD-AL-RAHMAN, WAS KNOWN AS 'ALI KUSHAYB'

A. Introduction and analysis

238. The core issue before the Chamber is whether **the Accused**, **Ali Muhammad Ali Abd-Al-Rahman**, was the same person known to people (including witnesses), by the nickname '**Ali Kushayb**' between 2003 and 2004 in the Wadi Salih and Mukjar localities of Darfur.[411]

239. The Prosecution's case against **the Accused** is premised on the basis that, during the charged period, **the Accused** was indeed widely known as '**Ali Kushayb**'.[412] It is therefore the Prosecution's case that the Chamber should be satisfied that even when witnesses gave evidence of criminal acts of '**Ali Kushayb**'—without making any link to **the Accused**—they were referring to **the Accused**.

240. The Defence contends that the Prosecution evidence falls short of proving beyond reasonable doubt that **the Accused** is '**Ali Kushayb**' therefore, the Prosecution's case fails.[413] The Chamber further notes that the Defence also argued during trial that '**Ali Kushayb**' is a fictitious figure invented to conceal the identity/identities of those actually responsible for the commission of the crimes.[414]

241. The Chamber has considered six categories of evidence in its assessment of the Prosecution's position that **the Accused**, **Ali Muhammad Ali Abd-Al-Rahman**, was the same person known to people in the Wadi Salih and Mukjar localities of Darfur by the nickname '**Ali Kushayb**' between 2003 and 2004. The evidence assessed includes: (a) the pre-surrender video recording of **the Accused**; (b) the analysis of the evidence of eight witnesses purporting to link **the Accused** with the name '**Ali Kushayb**'; (c) recognition of **the Accused** in photographs and videos; (d) agreed facts between the parties; (e) circumstantial evidence; and (f) contemporaneous documentary evidence and other material referred to by the Prosecution.

a) The pre-surrender video recording

242. On 9 June 2020, **the Accused** surrendered himself to the Court following the issuing of two arrest warrants which included both his full name, **Ali Muhammad Ali Abd-Al-Rahman**,

[411] Prosecution's Final Brief, paras 3-8.
[412] *See* Prosecution's Final Brief, para. 3.
[413] Defence's Final Brief, paras 73, 691.
[414] Defence's Pre-Trial Brief, para. 5.

and the nickname '**Ali Kushayb**'.[415] Three months before **the Accused's** surrender, the Prosecution received a video recording of **the Accused** in which he is viewed saying the following: 'I'm Ali Muhammad Ali Abd-al-Rahman, and my nickname is Kushayb' (the 'pre-surrender video recording').[416]

243. The Chamber recalls that the pre-surrender video recording was obtained following interaction between the Prosecution (via P-1049, an investigator for the Prosecution) and an intermediary (P-0869, the 'Intermediary') who was in contact with **the Accused** and who subsequently became a member of the Defence team representing **the Accused**.[417]

244. During the trial, the Chamber decided that the pre-surrender video recording had not been obtained in violation of Article 55(2) of the Statute, or of any rule of customary international law, human rights treaty or Article 21(1)(b) of the Statute.[418] The Chamber therefore declined to exclude the pre-surrender video recording from the proceedings under Article 69(7) of the Statute.[419] The Appeals Chamber, by majority, confirmed the Chamber's decision, determining that Article 55(2) of the Statute did not apply to the circumstances in which the pre-surrender video recording was obtained (the '*Abd-Al-Rahman* OA12 Judgment').[420]

245. In its Final Brief, the Defence first argues that the pre-surrender video recording cannot be retained and used as evidence that **the Accused** had the nickname of '**Ali Kushayb**' since the Identification Issue 'goes to the very heart of the litigation' on **the Accused's** guilt or innocence.[421]

246. The Chamber notes that the Appeals Chamber clearly established that the Identification Issue is factual and preliminary in nature.[422] As noted by the Appeals Chamber, specifically in the context of proceedings under Articles 55(2) and 60 of the Statute, discussions on the alleged crimes only take place *after* the identity of the person concerned has been established.[423] The

[415] Report on Arrest and Surrender, paras 14-23. *See* First Arrest Warrant; Second Arrest Warrant.
[416] Pre-surrender Video Recording, DAR-OTP-0216-0119, Transcript, DAR-OTP-0220-3010, Translation, DAR-OTP-0220-3015. *See also* Confirmation Decision, para. 54.
[417] Decision on Admissibility of Video and Telephone Calls Records, paras 20-27. *See* T-104, pp. 27-28; T-109, p. 76.
[418] Decision on Admissibility of Video and Telephone Calls Records, para. 51.
[419] Decision on Admissibility of Video and Telephone Calls Records, paras 52, 63.
[420] *Abd-Al-Rahman* OA12 Judgment, paras 91-96, 107.
[421] Defence's Final Brief, paras 181-182. Defence's Closing Statement: T-162, pp. 36-37.
[422] *Abd-Al-Rahman* OA12 Judgment, para. 91.
[423] *Abd-Al-Rahman* OA12 Judgment, paras 92-94.

Chamber is satisfied that its finding that the pre-surrender video evidence is admissible does not go to the guilt or innocence of **the Accused**, nor does it diminish the prosecutorial burden and standard of proof in relation to **the Accused's** liability. Moreover, the finding that **the Accused** had the nickname '**Ali Kushayb**' does not equate to a finding that **the Accused** is responsible for any of the alleged crimes. Accordingly, the Chamber rejects the Defence's argument.

247. Second, the Defence argues that 'no evidentiary weight can properly be attached to Mr Abd-Al-Rahman's statement in the video that he is *Ali Kushayb*'.[424] It submits that, because the Prosecution investigator would have referred to **the Accused** as '**Ali Kushayb**' throughout his communications with the Intermediary, the latter and - by extension - **the Accused** would have been under the impression that the Prosecution expected **the Accused** to identify himself as '**Ali Kushayb**'.[425] The Defence further argues that **the Accused** was motivated to do so, even if he did not recognise the nickname, in order to establish his innocence and avoid arrest by the Sudanese authorities.[426] The Defence invites the Chamber to infer that **the Accused** 'operated under the belief that both the Prosecution and the wider public thought him to be **Ali Kushayb**',[427] and this 'is why he referred to himself as such […] in the video'.[428]

248. In order for the Chamber to draw the requested inference, there must be evidence, as opposed to suggestions, from which such an inference may be made. The Chamber finds none. Moreover, as previously determined by the Chamber (and confirmed by the Appeals Chamber), the idea of sending the video originated with the Intermediary, who was not acting on behalf of the Prosecution, but on behalf of **the Accused**.[429] Further, as determined by the Appeals Chamber, 'the Prosecution did not influence the contents of the [v]ideo' and '[t]he Prosecution was not present when the [v]ideo was recorded'.[430] Accordingly, the Chamber rejects the Defence's third argument.

249. The Chamber notes that in the pre-surrender video recording, **the Accused** unequivocally and clearly stated 'I'm Ali Muhammad Ali Abd-al-Rahman, and my nickname

[424] Defence's Final Brief, para. 180.
[425] Defence's Final Brief, paras 184-186.
[426] Defence's Final Brief, para. 187.
[427] Defence's Final Brief, para. 188.
[428] Defence's Final Brief, para. 188.
[429] *Abd-Al-Rahman* OA12 Judgment, paras 48-54, *referring to* Decision on Admissibility of Video and Telephone Calls Records, paras 21-23, 25, 44-46. *See* T-104, pp. 66-69.
[430] *Abd-Al-Rahman* OA12 Judgment, para. 87.

is Kushayb'.[431] The Chamber is satisfied that this video constitutes direct evidence of **the Accused** identifying himself as '**Ali Kushayb**' and indicates that his voluntary surrender to the Court was made on the basis that the arrest warrants issued against him correctly identified him by both his full name and his nickname.

b) The analysis of evidence of eight witnesses purporting to link the Accused with the name 'Ali Kushayb'

250. The Chamber considers the evidence given by eight Prosecution witnesses to be particularly instructive in relation to the Identification Issue. These are witnesses who: (i) knew the full name of '**Ali Kushayb**' to be 'Ali Muhammad Ali Abd-Al-Rahman' (or a variant thereof); (ii) had a credible and reliable basis for their knowledge of his name and nickname; (iii) whose identification evidence contained credible indices of reliability; and (iv) gave evidence of interacting with, and/or seeing or being in the presence of '**Ali Kushayb**' during the charged period. These witnesses are P-0012, P-0643, P-0883, P-0905, P-0935 and P-1021.[432] The Chamber also relies on P-0874 and P-0878, who, despite not having a close personal relationship with '**Ali Kushayb**', provided credible and reliable evidence that is relevant to the Identification Issue.[433] The Chamber has thoroughly discussed their evidence in relation to the Identification Issue in its assessment of their respective evidence in Annex B.[434]

251. P-0012, P-0643, P-0883, P-0905, P-0935 and P-1021 all gave evidence that they knew **the Accused** as both: '**Ali Kushayb**' or 'Kushayb' and '**Ali Muhammad Ali Abd-Al-Rahman**' or a variant of **Abd-Al-Rahman's** legal name.[435] P-0643, P-0883, P-0905 and P-0935 provided particularly specific explanations for understanding '**Ali Kushayb**' to be the nickname of **Abd-Al-Rahman**.[436] P-0643 and P-0905 knew **the Accused's** full name as a result of their positions in the Wadi Salih administration and the Garsila SAF base.[437] Thus, P-0643 gave evidence that, in his capacity as a political leader in Wadi Salih, he would invite

[431] Pre-surrender Video Recording, DAR-OTP-0216-0119. *See* Transcript, DAR-OTP-0220-3010, Translation, DAR-OTP-0220-3015. *See also* Confirmation Decision, para. 54.
[432] *See* the Chamber's assessment of the evidence of P-0012, P-0643, P-0883, P-0905, P-0935 and P-1021, Annex B, Sections I.A.3, I.A.15, I.A.29, I.A.32, I.A.42 and I.A.49.
[433] *See* the Chamber's assessment of the evidence of P-0874 and P-0878, Annex B, Sections I.A.26 and I.A.28.
[434] *See* the Chamber's assessment of the evidence of P-0012, P-0643, P-0874, P-0878, P-0883, P-0905, P-0935 and P-1021, Annex B, Sections I.A.3, I.A.15, I.A.26, I.A.28, I.A.29, I.A.32, I.A.42 and I.A.49.
[435] *See* the Chamber's assessment of the evidence of P-0012, P-0643, P-0883, P-0905, P-0935 and P-1021, Annex B, Sections I.A.3, I.A.15, I.A.29, I.A.32, I.A.42 and I.A.49. The Chamber notes that P-0905 referred to the name 'Ali Abd-Al-Rahman Kushayb', and P-0012 referred to the name 'Ali Muhammad Ali'.
[436] *See* the Chamber's assessment of the evidence of P-0643, P-0883, P-0905 and P-0935, Annex B, Sections I.A.15, I.A.29, I.A.32 and I.A.42.
[437] *See* the Chamber's assessment of the evidence of P-0643 and P-0905, Annex B, Sections I.A.15 and I.A.32.

'**Ali Kushayb**' to events using his full name '**Ali Muhammad Ali Abd-Al-Rahman**',[438] and when he was stationed at the Garsila SAF base, P-0905 heard '**Ali Kushayb**' being referred to as 'Ali Abd-Al-Rahman Kushayb'.[439] P-0883 and P-0935, on the other hand, both knew **the Accused's** full name (*i.e.* '**Ali Muhammad Ali Abd-Al-Rahman**') as a result of the relationships they had with members of his family: P-0883 was a former colleague of '**Ali Kushayb's**' younger brother, whose full name was Hassan Muhammad Ali Abd-Al-Rahman, while P-0935 worked with '**Ali Kushayb's**' son, whose full name was Muhammad Ali Abd-Al-Rahman.[440]

252. The inferences drawn by P-0883 and P-0935 to reach the conclusion that the legal name of '**Ali Kushayb**' was '**Abd-Al-Rahman**' were reasonable and are supported by other evidence.[441] The Chamber is satisfied that these two witnesses, on credible and reliable grounds, and based on their personal experiences, knew that the full name of **the Accused** (whom they knew as '**Ali Kushayb**') was **Ali Muhammad Ali Abd-Al-Rahman**.

253. The Chamber is satisfied that credible testimonial evidence supports the allegation that **the Accused** was known in the Wadi Salih and Mukjar localities, by his civil name, Ali Muhammad Ali Abd-Al-Rahman, and by his nickname '**Ali Kushayb**' before, during and after the charged period. The witnesses drew both direct and indirect links between Abd-Al-Rahman and '**Ali Kushayb**'.[442]

c) Recognition of the Accused in photographs and videos

254. The Chamber notes that several of the witnesses purported to identify **the Accused** in court either directly or by dint of video evidence. As set out in the its Evidentiary Principles and Considerations,[443] the Chamber has ascribed no probative value to the purported identification of **the Accused's** image on a photograph or video when there was no evidence that the witness knew **the Accused** before the events. However, when a witness was previously acquainted with **the Accused**, the Chamber has assessed their ability to recognise **the Accused's** image on a video or photograph. In this regard, the Chamber has assessed the

[438] *See* the Chamber's assessment of P-0643's evidence, Annex B, Section I.A.15.
[439] *See* the Chamber's assessment of P-0905's evidence, Annex B, Section I.A.32.
[440] *See* the Chamber's assessment of the evidence of P-0883 and P-0935, Annex B, Sections I.A.29 and I.A.42.
[441] As referenced *above*, P-0883, P-0905 and P-0935 each gave evidence that '**Ali Kushayb**' had a son named 'Muhammad Ali' who was killed during an operation in Jebel Marra in around 2004 to 2006 (*see* P-0883: T-074, p. 8; P-0905: T-084, pp. 24, 26-29; P-0935: T-090, pp. 13, 15-16, 91-93).
[442] *See* the Chamber's assessment of the evidence of P-0012, P-0643, P-0874, P-0878, P-0883, P-0905, P-0935 and P-1021, Annex B, Sections I.A.3, I.A.15, I.A.26, I.A.28, I.A.29, I.A.32, I.A.42 and I.A.49.
[443] *See* Section 4. Evidentiary principles and considerations *above*.

evidence of P-0643, P-0874, P-0883, P-0905 and P-1021 in the light of the fact that they were all previously acquainted with **the Accused**.[444]

255. These witnesses were shown either one or a combination of the following: (i) a passport photograph of **the Accused** from 2006 (the 'Passport Photo');[445] (ii) a video of **the Accused** purportedly speaking in Rahad Al-Berdi in relation to teachers (the 'Teachers Video');[446] and (iii) a video of **the Accused** purportedly speaking in Um-Sory (the 'Um-Sory Video').[447] The Chamber notes that the Defence acknowledges that **the Accused** is depicted in the Passport Photo, and he is the speaker in the Teachers Video and the Um-Sory Video.[448]

256. P-0643, who had also interacted with **the Accused** regularly,[449] was shown the Um-Sory Video and recognised '**Ali Kushayb**' wearing the uniform of the CRF.[450] When P-0643 was shown the Passport Photo, he also recognised the person in the photograph as 'Ali Muhammad Ali Abd Al-Rahman', '**Ali Kushayb**'.[451] Following '**Ali Kushayb's**' arrest in 2020, P-0643 said he also saw him on television and when shown an image in court, he recognised the person in the red shirt as Ali Muhammad Ali Abd Al-Rahman, '**Ali Kushayb**'.[452] P-0643 also gave evidence about seeing images of '**Ali Kushayb**' in court at The Hague, and when shown an image during his testimony, he confirmed that the person in the image was 'Ali Muhammad Ali Abd Al-Rahman', '**Ali Kushayb**'.[453]

[444] *See* the Chamber's assessment of the evidence of P-0643, P-0874, P-0883, P-0905 and P-1021, Annex B, Sections I.A.15, I.A.26, I.A.29, I.A.32 and I.A.49.
[445] Passport Photo, DAR-OTP-0222-0037, DAR-OTP-0221-0891.
[446] Teachers Video, DAR-OTP-0215-2697, DAR-OTP-00000236 (subtitled), Translation, DAR-OTP-0220-3199. The Chamber notes that Defence witnesses D-0001, D-0005 and D-0008 identified **the Accused** as the speaker in this video, and that D-0008 was present at the meeting depicted in the video. *See* D-0001: T-155, pp. 19-27; D-0005: T-158, pp. 74-81; D-0008: T-139, pp. 82-85.
[447] Um-Sory Video, DAR-OTP-0220-4835 (subtitled), DAR-OTP-00012474 (corrected, subtitled), DAR-OTP-00006452, Translation, DAR-OTP-00012491-R01. The Chamber notes that Defence witnesses D-0001, D-0003, D-0005, D-0032 and D-0039 identified **the Accused** as the speaker in this video. Further that D-0003, D-0005 and D-0039 were present at the meeting depicted in the video. D-0039 also addressed the crowd during this meeting. *See* D-0001: T-155, pp. 19-27; D-0003: T-156, pp. 8-15; D-0005: T-158, pp. 74-81; D-0032: T-141, pp. 39-41; D-0039: T-159, pp. 89-91.
[448] Defence's Final Brief, paras 190, 754.
[449] *See* the Chamber's assessment of P-0643's evidence, Annex B, Section I.A.15.
[450] P-0643: T-057, pp. 37-38, *referring to* Um-Sory Video, DAR-OTP-0220-4835.
[451] P-0643: T-057, p. 43, *referring to* Passport Photo, DAR-OTP-0222-0037.
[452] P-0643: T-057, pp. 43-44.
[453] P-0643: T-057, p. 45.

257. P-0874, who had closely observed '**Ali Kushayb**' regularly and over a long period of time,[454] was shown the Passport Photo and he identified the person depicted as '**Ali Kushayb**'.[455]

258. P-0883, who had interacted with '**Ali Kushayb**' regularly and over a long period of time,[456] was shown the Passport Photo and identified the person he saw as 'Ali Muhammad Ali Abd-Al-Rahman', nicknamed 'Kushayb'.[457] P-0883 was also shown the Teachers Video,[458] and recognised the main speaker in the video as 'Ali Muhammad Ali Abd-Al-Rahman'.[459]

259. P-0905, who knew **the Accused** well before the charged period and had closely observed **the Accused** during the charged period,[460] was shown the Passport Photo, which he recognised to be of '**Ali Kushayb**'.[461]

260. P-1021, who also knew '**Ali Kushayb**' very well and had had significant close encounters with him over a long period time,[462] was shown the Passport Photo, which he recognised to be of '**Ali Kushayb**'.[463]

261. Taken together with the other evidence that these witnesses have provided in relation to the Identification Issue, this recognition evidence supports the Prosecution's position that **the Accused** is the man these witnesses knew during the relevant period as both '**Ali Kushayb**' and 'Ali Muhammad Ali Abd-Al-Rahman' (or a variant of **Abd-Al-Rahman's** full name).

d) Agreed facts

262. The Chamber has also taken into consideration the fact that the witnesses' description of '**Ali Kushayb**' corresponds to some of the facts agreed between the parties in relation to **the Accused's** background.[464] These include:

[454] *See* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26.
[455] P-0874: T-083, pp. 46-47, *referring to* Passport Photo, DAR-OTP-0221-0778.
[456] *See* the Chamber's assessment of P-0883's evidence, Annex B, Section I.A.29.
[457] P-0883: T-072, pp. 39-40, *referring to* Passport Photo, DAR-OTP-0222-0037. The Chamber notes that the transcript misstates the ERN as DAR-OTP-0220-0037.
[458] P-0883: T-072, p. 40, *referring to* Teachers Video, DAR-OTP-0215-2697.
[459] P-0883: T-072, p. 43, *referring to* Teachers Video, DAR-OTP-0215-2697.
[460] *See* the Chamber's assessment of P-0905's evidence, Annex B, Section I.A.32.
[461] P-0905: T-086, p. 59, *referring to* Passport Photo, DAR-OTP-0222-0037.
[462] *See* the Chamber's assessment of P-1021's evidence, Annex B, Section I.A.49.
[463] P-1021: T-081, pp. 24-25, *referring to* Passport Photo, DAR-OTP-0221-0891.
[464] *See* Third Joint Submission on Agreed Facts, Annex A.

a) Both P-0643 and P-0883 stated that '**Ali Kushayb**' belonged to the Ta'aisha tribe.[465] The Prosecution and the Defence agree that **the Accused** belongs to this tribe.[466]

b) P-0643, P-0883, P-0935, P-0905, P-1021, P-0012, P-0878 and P-0874 all gave evidence that '**Ali Kushayb**' had a shop in Garsila from which he sold medication, with P-0883, P-0935, P-0905, P-1021 and P-0012 specifying that the shop was situated near the Agricultural Bank in Garsila.[467] The Prosecution and the Defence agree that, upon retirement in around the early to mid-1990s, **the Accused** opened a shop in Garsila near the Agricultural Bank from which he sold medication.[468]

c) P-0905 estimated that, between 2000 and 2004, '**Ali Kushayb**' was approximately 50 to 60 years old.[469] P-0012 similarly estimated that '**Ali Kushayb**' was in his fifties in the early 2000s.[470] **The Accused** was in his mid-50s in 2003-2004.[471]

d) P-0643, P-0883, P-0935, P-0878 and P-0874 gave evidence that '**Ali Kushayb**' previously had a medical role in the military.[472] P-1021 and P-0012 also specified that '**Ali Kushayb**' had previously been in the military.[473] The Prosecution and the Defence agree that before retiring, **the Accused** had been part of the Medical Corps of the SAF.[474]

e) P-0643, P-0935, P-0905 and P-0874 stated that '**Ali Kushayb**' had attained the military rank of *musa'id* or 'warrant officer'.[475] The Prosecution and the Defence agree that **the Accused** held the rank of *musa'id*.[476]

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[465] P-0643: T-056, p. 28; P-0883: T-071, p. 17.
[466] *See* Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 4. *See also* P-0769: T-097, pp. 30-31.
[467] P-0643: T-056, p. 26; P-0883: T-071, p. 20; T-074, pp. 15, 19; P-0935: T-090, pp. 16-17; P-0905: T-085, pp. 17-21, 30; T-087, pp. 21-23; P-1021: T-081, pp. 2-4; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0512, para. 38; T-045, pp. 8-9; P-0878: T-079, pp. 20-22; P-0874: T-082, pp. 64, 71-74.
[468] *See* Third Joint Submission on Agreed Facts, Annex A, Agreed Facts 11, 14.
[469] P-0905: T-087, p. 29.
[470] P-0012: T-045, p. 10.
[471] Defence's Final Brief, para. 740; Abd-Al-Rahman's Civil Status Record, DAR-D31-00000355, Translation, DAR-D31-00000356.
[472] P-0643: T-056, pp. 26-27; P-0883: T-071, p. 17; P-0935: T-090, p. 13; P-0878: T-079, pp. 20-21, 60; P-0874: T-082, p. 65.
[473] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0512, para. 38; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000001, para. 6; P-1021: T-081, pp. 3, 91-92.
[474] *See* Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 10.
[475] P-0643: T-057, pp. 40-41; P-0935: T-090, p. 67; P-0905: T-085, p. 17-18; P-0874: T-082, p. 65.
[476] Prosecution's Final Brief, para. 33; Defence's Final Brief, paras 3-4, 301, 313.

f) P-0935, P-0883, P-0643, P-0905 and P-0874 all stated that '**Ali Kushayb**' became a member of the CRF.[477] The Prosecution and the Defence agree that **the Accused** was recorded as being a member of the CRF in 2005.[478]

263. The Defence argues that the above information has largely existed in the public domain since 27 February 2007, when the Prosecution's Article 58(7) Application was published,[479] thereby suggesting that the witnesses' evidence on this point may have been 'contaminated' by what they had heard in the media and on the news.[480]

264. As regards the Defence's broader 'contamination' argument, and the other overarching objections made by the Defence in respect of the evidence, the Chamber has addressed (and dismissed) these in its assessment of the witnesses' evidence.[481] The Chamber also notes that the Prosecution's Article 58(7) Application did not include any reference to the fact that '**Ali Kushayb**' had previously had a medical role in the SAF, that he had attained the rank of *musa'id*, and that he had become a member of the CRF.[482] Moreover, the degree of contextual and descriptive detail provided by the evidence referred to above, such as P-0883, P-0935 and P-0905's observations that people would drink tea in the vicinity of '**Ali Kushayb's**' pharmacy,[483] and their evidence that '**Ali Kushayb**' had a son named Muhammad who was in the SAF and was killed during an operation in Jebel Marra in around 2004 to 2006,[484] is credible evidence of the fact that the witnesses, in their description of '**Ali Kushayb's**' personal background and profession, were speaking from their own experiences of living in Garsila and frequenting the marketplace there. All these factors add credence to the witnesses' evidence and further support the Prosecution's allegation that **the Accused**, **Ali Muhammad Ali Abd-Al-Rahman**, was '**Ali Kushayb**'.

[477] P-0935: T-090, p. 66; P-0883: T-073, pp. 47-50; P-0643: T-057, p. 41; P-0905: T-088, p. 94; P-0874: T-083, pp. 11-12.
[478] *See* Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 13.
[479] *See* Prosecution's Article 58(7) Application.
[480] Defence's Final Brief, paras 501-503, 697-698, 706, 714-715, 722, 734; Defence's Closing Statement: T-162, pp. 29-30.
[481] *See specifically* the Chamber's assessment of the evidence of P-0012, P-0643, P-0874, P-0878, P-0883, P-0905, P-0935 and P-1021, Annex B, Sections I.A.3, I.A.15, I.A.26, I.A.28, I.A.29, I.A.32, I.A.42 and I.A.49.
[482] *See* Prosecution's Article 58(7) Application.
[483] P-0883: T-071, pp. 22-23; P-0935: T-090, p. 17; P-0905: T-085, pp. 17-20.
[484] P-0905: T-087, pp. 23, 27-30; P-0883: T-071, p. 22; T-074, p. 8; P-0935: T-090, pp. 13-15; P-0905: T-087, pp. 29-31.

e) Circumstantial evidence

265. The Chamber refers to its general approach to circumstantial evidence in its Evidentiary Principles and Considerations.[485] None of the pieces of evidence listed below is capable, taken on its own, of allowing the Chamber to draw an inference adverse to **the Accused** in respect of the Identification Issue. However, when combined, the Chamber is satisfied that it has before it evidence which lends support to witness evidence proving that **the Accused** was known by the name '**Ali Kushayb**' during the relevant period.

266. In addition to the eight witnesses referred to above, several witnesses gave credible and reliable evidence about a man they knew who was named '**Ali Kushayb**'.[486] For some, this was the only name they knew him by.[487] Although their evidence, taken in isolation, does not make the link between **the Accused** and the nickname '**Ali Kushayb**', the Chamber is satisfied that, in its holistic assessment of the totality of the evidence, these witnesses gave circumstantial evidence to prove the following facts, some of which have been agreed upon by the parties, and as a result, further support the allegation that **the Accused** had the nickname '**Ali Kushayb**':

a) '**Ali Kushayb**' is originally from Rahad Al-Berdi;[488]
b) '**Ali Kushayb**' was from the Ta'aisha tribe;[489]
c) '**Ali Kushayb**' had a house in Garsila (built of red bricks);[490]
d) '**Ali Kushayb**' had a pharmacy at the Garsila market near the Agricultural bank;[491]
e) '**Ali Kushayb**' used to be in the SAF as a medical personnel;[492]
f) '**Ali Kushayb**' was also known as 'Abu Nasser or Nasir' because it was the name of one of his sons;[493] and

[485] *See* Section 4.II.C. Circumstantial evidence *above*.
[486] *See for example* the Chamber's assessment of the evidence of P-0007, P-0011, P-0029, P-0129, P-0769, P-0877, P-0903, P-0913, P-0921, P-0931, P-0955, P-0984, P-0986, P-0990 and P-1073, Annex B, Sections I.A.1, I.A.2, I.A.6, I.A.9, I.A.24, I.A.27, I.A.31, I.A.34, I.A.38, I.A.40, I.A.43 I.A.45, I.A.46 and I.A.52.
[487] *See for example* the Chamber's assessment of the evidence of P-0007, P-0129, P-0913, P-0955 and P-1073, Annex B, Sections I.A.1, I.A.6, I.A.34, I.A.43 and I.A.52.
[488] *See* P-0921: T-110, p. 25; P-0012: T-046, p. 10; P-0883: T-072, p. 43; P-0905: T-088, p. 94.
[489] P-0769: T-097, pp. 30-31, 36-37. *See also* P-0643: T-056, p. 28; P-0883: T-071, p. 17.
[490] P-0011: T-091, pp. 10-13, 18-19, 45-49; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0633, para. 53. *See also* P-0883: T-071, p. 22; P-0905: T-085, pp. 28-29; T-087, pp. 24-27; T-088, pp. 90-91.
[491] P-0877: T-054, pp. 45-47; P-0931: T-062, pp. 52-53, 65; T-063, pp. 19-20; P-0990: T-040, pp. 15-16. *See also* P-0012: T-045, pp. 8-9; P-0905: T-085, pp. 17-21; P-0935: T-090, p. 12; P-1021: T-081, pp. 2-4. *See* Defence's Final Brief, paras 720-727.
[492] P-0769: T-097, pp. 30-31, 36-37; P-0921: T-110, pp. 23-24. *See also* P-0878: T-079, pp. 20-21; P-0883: T-071, p. 18; P-0935: T-090, p. 13.
[493] P-0874: T-082, p. 71. Multiple Defence witnesses confirmed the same (D-0002: T-156, pp. 50-51; D-0003:

g) '**Ali Kushayb**' was often seen with a long axe during the charged incidents.[494]

267. The Chamber is satisfied that the only reasonable and logical inference to be drawn from the stark confluence between the agreed facts, the evidence of other witnesses linking the nickname '**Ali Kushayb**' to **the Accused**, and the evidence of the witnesses who only knew the name '**Ali Kushayb**' is that those witnesses who only gave evidence of someone named '**Ali Kushayb**' were referring to **the Accused**.

268. During its examination of some of the Defence witnesses, the Prosecution placed into evidence media reports of a conflict which took place in 2013 in the Rahad Al-Berdi area, between the Ta'aisha and Salamat tribes.[495] The fact that this conflict took place was confirmed by a number of Defence witnesses.[496] In the aftermath of this conflict, **the Accused** was the subject of an assassination attempt in Nyala,[497] which was reported by the media.[498] The Defence does not contest that **the Accused** was the subject of an assassination attempt in July 2013 in Nyala, and acknowledges that P-0883 was referring to this incident when he gave evidence of visiting '**Ali Kushayb**' in hospital.[499] One such report identified **the Accused** by both his real name and his nickname '**Ali Kushayb**'.[500] The Chamber finds that, given the date of the reports (*i.e.* 2013), they have limited probative value *vis-à-vis* the Identification Issue. However, the reports add some support for the Prosecution's case that **the Accused** was at all times known by this nickname and undermines the Defence case that at no time was **the Accused** known by that nickname or that '**Ali Kushayb**' was an invented figure and did not actually exist.[501]

T-155, pp. 46-47; D-0005: T-158, p. 20; D-0007: T-149, p. 11; D-0008: T-139, p. 21; D-0011: T-138, pp. 54-55, 58).

[494] P-0029: T-030, pp. 35-40; P-0877: T-053, pp. 88-91; P-0903: T-032, p. 42; P-0984: T-066, pp. 60-61; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0448, para. 52; P-0986: T-065, p. 13; P-1073: T-103, p. 11. *See also* P-0643: T-057, pp. 40-41; P-0883: T-072, p. 27; P-0935: T-090, pp. 18-19; P-1021: T-081, p. 4.

[495] Media Reports, DAR-OTP-00005650, DAR-OTP-00005648, DAR-OTP-00005652, DAR-OTP-00005676, DAR-OTP-00005646, Translations, DAR-OTP-00006582, DAR-OTP-00006585, DAR-OTP-00006587, DAR-OTP-00006589.

[496] D-0001: T-154, pp. 20-21; D-0003: T-155, pp. 87-91; T-156, pp. 10, 61-68; D-0039: T-159, pp. 47-49.

[497] P-0883: T-072, p. 38. Multiple Defence witnesses confirmed the same (D-0001: T-155, pp. 2-9; D-0003: T-155, pp. 51-53, 87; T-156, pp. 4-5; D-0005: T-158, pp. 40-42; D-0007: T-149, pp. 31-33, 42-43, 48-49; D-0008: T-139, pp. 53, 73-74; D-0011: T-138, pp. 73-74, 84-87; D-0039: T-159, pp. 45-46, 79-84).

[498] Media Reports, DAR-OTP-00005660, Translation, DAR-OTP-00006581, DAR-OTP-00010624, DAR-OTP-00006171, Translation, DAR-OTP-00006771.

[499] Defence's Final Brief, paras 729-730.

[500] Media Report, DAR-OTP-00006171, Translation, DAR-OTP-00006771.

[501] *Contra* Defence's Closing Statement: T-161, p. 69; T-162, pp. 41-42; Defence's Pre-Trial Brief, para. 5.

f) Contemporaneous documentary evidence and other material referred to by the Prosecution

269. The Chamber notes that the Prosecution refers to contemporaneous documentary evidence,[502] and other material in support of its position that **the Accused** was known as '**Ali Kushayb**', including: (i) items found among **the Accused's** possession following his surrender to the Court, specifically an audio recording of a poem referring to '**Ali Kushayb**';[503] (ii) excerpts from Facebook accounts which the Prosecution alleges belong to **the Accused's** sons;[504] and (iii) the alleged interview of **the Accused** by the GoS authorities in 2006.[505] Considering the limited probative value of these items and in the light of the abundant evidence analysed above, the Chamber does not rely upon any of these items to determine the Identification Issue.[506]

B. Conclusion

270. The evidence discussed above amounts to compelling and coherent evidence in support of the Prosecution's allegation that **the Accused**, **Ali Muhammad Ali Abd-Al-Rahman**, was known as '**Ali Kushayb**' during the relevant period. Several of the key witnesses provide convincing explanations for the basis of their understanding the full name of the man they knew

[502] Prosecution's Final Brief, paras 28-51.
[503] Recording of Poem, DAR-OTP-0216-0792, Transcript, DAR-OTP-00011550, Translation, DAR-OTP-00011553. The Chamber finds that the audio recording of a poem extracted from an SD card found amongst **the Accused's** possessions following his surrender to the Court lacks any probative value, specifically in relation to the Identification Issue. *Contra* Prosecution's Final Brief, para. 57.
[504] Prosecution's Final Brief, paras 58-60. For the Chamber's considerations on the reliability and probative value of the 'Facebook' evidence, *see* Section 4.IV.B. 'Facebook' evidence *above*.
[505] Alleged GoS Interview of the Accused, DAR-OTP-0218-0386 (typed), DAR-OTP-0218-0231 (handwritten), Translations, DAR-OTP-0219-6910 (typed), DAR-OTP-0219-7007 (handwritten). The Chamber notes that the relevant documents were given to the Prosecution by the Attorney General's Office of Sudan on 11 March 2011, and that this alleged interview of **the Accused** was purportedly conducted by the GoS in November 2006. The Chamber further notes that the evidence of other Prosecution witnesses support the fact that interviews were indeed conducted by the GoS with relevant actors/observers in the aftermath of the conflict in Darfur. However, as noted by the Defence, the specific circumstances under which **the Accused** was purportedly interviewed are unclear, namely the extent to which his rights were safeguarded throughout the process. Based on the evidence at hand, the Chamber is not in a position to assess the reliability of this item and according decides not to rely on it in this judgment. Thus, it is not necessary for the Chamber to rule on the Defence's challenge pursuant to Article 69(7) of the Statute. *See* Prosecution's Final Brief, paras 32-41; Defence's Final Brief, paras 219-227; Darfur Investigation File Report, DAR-OTP-0218-0404, Translation, DAR-OTP-0219-6935; Investigation Report, DAR-OTP-00001013-R01. *See also* the Chamber's assessment of the evidence of P-0878 and P-0883, Annex B, Sections I.A.28 and I.A.29.
[506] The Chamber has discussed and considered a few discrete documents which were used with witnesses in court—and relied upon by the Prosecution to support its position on the Identification Issue—in the context of its assessment of witnesses in Annex B of this judgment. *See* the Chamber's assessment of the evidence of P-0131, P-0547 and P-0769, Annex B, Sections I.A.10, I.A.11 and I.A.24.

as '**Ali Kushayb**' was 'Ali Muhammad Ali Abd-Al-Rahman', and all describe '**Ali Kushayb's**' personal background in a manner consistent with that of **the Accused**.

271. For the reasons explained above, the Chamber is not persuaded by the Defence's objections to the evidence discussed above; which does not cast reasonable doubt on the Prosecution's position. Therefore, based on its holistic assessment of evidence of the witnesses discussed above, supported by the agreed facts, the pre-surrender video recording and other circumstantial evidence, the Chamber is satisfied beyond a reasonable doubt that **the Accused** was called/known as '**Ali Kushayb**' throughout the charged events.

II. THE ARMED CONFLICT IN DARFUR IN 2003 AND 2004

272. In this section, the Chamber refers to several facts agreed by the parties. The Chamber recalls its general approach to the agreed facts as set out above.[507]

273. In 2003 and 2004, Darfur was divided into three states: North, South and West Darfur.[508] Between at least August 2003 and at least April 2004, Wadi Salih and Mukjar were localities of West Darfur State.[509] The population of West Darfur was largely composed of the Fur and Masalit tribes, which were considered to be 'non-Arab tribes'.[510] The Beni Halba, Salamat, Ta'aisha, Misseriya, and Rizeigat were amongst the Arab tribes in West Darfur, including in Wadi Salih.[511]

274. The Fur tribe had a three-tiered tribal administration system consisting of a *sheikh*, *umdah* and *shartay*.[512] The *sheikh* was the lowest in the tribal hierarchy and referred to as the chief of a village.[513] The *umdah* was the local administrative head and tax collector.[514] Finally, the *shartay* was the senior chief or administrator of the Fur.[515]

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[507] *See* Section 4.II.F. Agreed facts *above*.
[508] Second Joint Submission on Agreed Facts, Annex A, Agreed Facts 2-4; P-1042's Report, DAR-OTP-0220-1623, at 1627, para. 5.
[509] Second Joint Submission on Agreed Facts, Annex A, Agreed Facts 2-4.
[510] P-1042's Report, DAR-OTP-0220-1623, at 1666, para. 108; P-0547: T-052, p. 58; P-0007's Statement, DAR-OTP-0088-0060-R02, at 0064, para. 14. *See also* Defence's Final Brief, paras 236, 276; Prosecution's Final Brief, para. 66.
[511] P-0643: T-058, p. 12; P-1042's Report, DAR-OTP-0220-1623, at 1648-1649, paras 66-67; P-1042: T-027, p. 46. *See also* Defence's Final Brief, paras 236, 276, 277; Prosecution's Final Brief, para. 66, fn. 367.
[512] P-1042's Report, DAR-OTP-0220-1623, at 1644, para. 56.
[513] P-1042: T-027, p. 58.
[514] P-1042's Report, DAR-OTP-0220-1623, at 1644, para. 56; P-1042: T-027, p. 58.
[515] P-1042: T-027, p. 59.

275. Whenever problems arose, the matter would first be raised with the *sheikh*.[516] The *sheikh* served as a magistrate for minor offences, adjudicated disputes according to customary and Islamic law, and collected taxes.[517] If the *sheikh* could not resolve a problem, it would be brought before the *umdah* and lastly before the *shartay*.[518] These leaders were selected by the local population and the selected persons were automatically approved by the government, as it delegated the collection of taxes to these leaders.[519]

276. In 2003 and 2004, Omar Ahmad Zarruq was the *shartay* of the Fur.[520] He was in charge of all the people in Dar Kobra, which had 107 villages.[521] Issa Harun Nour was the *umdah* of Mukjar town and some of the surrounding villages like Nyerli, Indry, Deimbo, Korofota, Eberla and Sigirgir.[522] Yahya Ahmad Zarruq was the *umdah* of the area east of Mukjar, which included Sindu, Tendy and Dimbi.[523] There were also a number of *sheikhs*, including Idriss Abdul-Bashir, Khalid Umar, Muhammad Torjok and Musa.[524]

277. The primary livelihood of the Fur people of the Wadi Salih and Mukjar localities was farming,[525] although some persons also raised livestock and carried out small-scale trade.[526] The fabric of people's daily lives was intertwined with different seasons,[527] market days[528] and land ownership.[529] During the charged period, most houses were built using grass, mud, straws and other earthen materials.[530]

A. The main features of the conflict

278. From at least April 2003 until at least April 2004, the Sudan Liberation Movement/Army (SLM/A) and Justice and Equality Movement (JEM) carried out armed

[516] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0426, para. 12.
[517] P-1042's Report, DAR-OTP-0220-1623, at 1645, para. 58.
[518] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0426, para. 12.
[519] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0426, para. 12.
[520] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0295, para. 31; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0176, para. 12; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0426, para. 10.
[521] P-0990: T-041, p. 52.
[522] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0426, para. 10; P-0028's Statement Corrections, ICC-02/05-01/20-872-Conf-Exp-AnxIV, p. 4.
[523] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0295, para. 32; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0426, para. 10.
[524] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0176, para. 12; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0426, para. 11.
[525] P-1042: T-027, pp. 41-42.
[526] P-1042: T-027, p. 42; P-0907: T-095, p. 5; P-0651: T-034, p. 40.
[527] P-1042: T-027, p. 41.
[528] P-0007: T-089, p. 13; P-0651: T-034, p. 72.
[529] P-1042: T-028, p. 21.
[530] P-0878: T-078, p. 46; P-0874: T-082, pp. 47-51.

operations against the forces of the Government of Sudan, which included the Sudanese Armed Forces (SAF), the Popular Defence Forces (PDF), the Central Reserve Forces (CRF), the Popular Police Forces ('PPF'), and the National Police ('Police') (collectively, the 'GoS Forces'), in Darfur, Sudan.[531] On 25 April 2003, the SLM/A attacked the airport in Al Fasher, North Darfur,[532] destroying several military aircraft and causing multiple casualties.[533] This event was a turning point in the Government's policy towards the rebels in Darfur, causing it to decide that the rebels, namely the SLM/A and JEM, should be defeated militarily (through an 'all-out military campaign').[534] This goal was reflected in the public speeches of several governmental officials and *Janjaweed* leaders.[535]

279. On 18 December 2003, the National Security Council, which was the highest executive authority in charge of the security and military operations throughout the whole of Sudan, headed by the President of Sudan, Omar Al-Bashir ('President Al-Bashir'),[536] adopted the 'National Security Council 2004 plan for ending the rebellion in the states of Darfur' (the 'National Security Plan' or 'Emergency Plan'),[537] directing the recruitment of Arab militias

[531] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 11.
[532] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 6.
[533] P-1042: T-027, pp. 77-78; P-1042's Report, DAR-OTP-0220-1623, at 1671, para. 121; UNCOI Final Report, DAR-OTP-0209-0593, at 0615-0616, paras 65-66. The report is the outcome of investigations on the ground in Darfur during the relevant time, and clearly indicates the methodology of information collection and the sources for the facts. The Chamber is satisfied that the report is reliable and probative and notes in this regard that, in its Final Brief, the Defence also relied upon the findings made in the report (*see* Defence's Final Brief, paras 316-317, 349, 543, 674). *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 24-25. *See also* P-0026's Statement, DAR-OTP-0095-0151-R02, at 0168, para. 83; P-0769: T-097, p. 4.
[534] P-0769: T-097, pp. 4, 7; P-0547: T-050, pp. 59-60; T-051, pp. 5-6; P-0142's Report, DAR-OTP-0220-1623, at 1672, para. 126; P-1042: T-027, pp. 77-78; P-0020's Statement, DAR-OTP-0095-0002-R02, at 0017, para. 58; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0333, paras 72-75; P-0020: T-041, p. 86.
[535] *See* Section 5.II.E. Public speeches by GoS officials and Janjaweed leaders.
[536] The National Security Council was created by the 'National Security Forces Act', dated 1999, and adopted by the National Assembly and assented by the President of the Republic (National Security Forces Act, DAR-OTP-0197-0017, Translation, DAR-OTP-0021-0412, at 0424); P-0769: T-097, pp. 5-6. The National Security Council was composed of a chairman, the President of the Republic, and several members: the competent Minister, the President advisor on security affairs, the Minister of Defence, the Minister of Foreign Relations, the Minister of Internal Affairs, the Director of the Internal Security Organ and the Director of the Sudanese Intelligence Organ (Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 14. *See also* National Security Forces Act, DAR-OTP-0197-0017, Translation, DAR-OTP-0021-0412, at 0424; P-0547: T-050, pp. 73-74; P-0769: T-097, pp. 5-7; P-0020's Statement, DAR-OTP-0095-0002-R02, at 0027, para. 102). It was in charge of the 'security plan of the country', and the implementation of such measures, which included, among others to : '(a) plan for the progress of the security plan of the country; (b) generally supervise, over the progress of security work; (c) coordinate between security organs; (d) follow-up the implementation of the security policy programme, and receive [relevant] reports' concerning the security plan (Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 13. *See also* National Security Forces Act, DAR-OTP-0197-0017, Translation, DAR-OTP-0021-0412, at 0424); P-0547: T-050, p. 62; P-0769: T-097, pp. 5-9, *commenting on* Diagram, DAR-OTP-00000433; P-0020's Statement, DAR-OTP-0095-0002-R02, at 0027, para. 102; P-0087's Statement, DAR-OTP-0222-0631-R01, at 0640-0641, paras 68, 71. Noting the lack of any objection in relation to text and translation of the National Security Forces Act, the Chamber is satisfied that these documents are reliable and probative.
[537] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795); P-0769: T-097, pp. 7, 24.

into the GoS Forces to fight the SLM/A and JEM.[538]

280. As a result of this plan, members of the *Janjaweed* were trained and armed by the GoS,[539] and some were partly integrated into the GoS Forces, namely the SAF, PDF, CRF, PPF or the Border Intelligence Unit ('Border Guards').[540] The *Janjaweed* were then used by the Government in counter-insurgency attacks, they were integrated or partly integrated into the GoS Forces, or used to fight alongside the GoS Forces.[541] Military attacks were carried out against several localities, including in Kodoom, Bindisi,[542] Mukjar[543] and Deleig.[544]

281. As noted by P-1042, the armed conflict's impact on the civilian population (where the number of civilian casualties considerably exceeded the combatant casualties) was foreseeable in light of prior large-scale military campaigns in Sudan.[545] The attacks on villages were marked by large-scale destruction of property and pillage.[546] Large numbers of people were forced out of their homes.[547] Sexual violence was also widespread,[548] and women were systematically raped,[549] throughout the charged period in various locations in Darfur, including, *inter alia*, in Gausir (on 15-16 August 2003),[550] Forgo (August/September/October 2003),[551] Taringa (November 2003),[552] Arawala (December 2003),[553] Mindo (December 2003 and

[538] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795). *See also* P-0769: T-097, pp. 25-26; P-0547: T-050, p. 80; T-052, p. 56.
[539] *See* Section 5.II.D. The use of government resources to recruit, train, arm, and fund the Janjaweed. *See also* P-0142's Report, DAR-OTP-0220-1623, at 1672-1673, para. 126.
[540] *See* paras 333, 342 *below*. *See also* P-0769: T-097, p. 63; T-098, p. 64; P-0547: T-052, p. 70; P-0142's Report, DAR-OTP-0220-1623, at 1672-1673, para. 126.
[541] *See* para. 333 *below*. *See also* P-1042's Report, DAR-OTP-0220-1623, at 1672-1673, para. 126; P-0769: T-097, pp. 27-28.
[542] *See* Section 5.III.A. Operation in Kodoom, Bindisi and the surrounding areas between 15 and 16 August 2003 *below*.
[543] *See* Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004 *below*.
[544] *See* Section 5.III.C. Operation in Deleig between 5 and 7 March 2004 *below*.
[545] P-1042's Report, DAR-OTP-0220-1623, at 1677, para. 143; P-1042: T-028, pp. 3-4.
[546] P-1042's Report, DAR-OTP-0220-1623, at 1681, para. 156.
[547] P-1042's Report, DAR-OTP-0220-1623, at 1677, para. 143.
[548] P-1042's Report, DAR-OTP-0220-1623, at 1680, para. 151; P-1042: T-028, p. 25.
[549] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0203, paras 82-86; P-0757's Statement, DAR-OTP-0211-0003-R02, at 0019, para. 64.
[550] P-0867's Statement, DAR-OTP-0217-0173-R02, at 0179, 0183, paras 32-34, 51-52.
[551] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0634, paras 57-59; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0355-0356, paras 34-35, 38; P-0726: T-053, pp. 15, 27, 30; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0125, para. 27.
[552] P-0718's Statement, DAR-OTP-0209-2004-R02, at 2007, paras 15-17.
[553] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0624, para. 16; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0174, para. 35.

March 2004),[554] Tendy (January to February 2004),[555] Gaba (in February 2004),[556] Arawala (early 2004),[557] Mukjar (early 2004),[558] and Deleig (March 2004).[559]

282. Nonetheless, these crimes were underreported and unpunished. In early 2003, the Chief Prosecutor of Al Geneina received an oral directive from Khartoum not to prosecute certain crimes, including killing of civilians, rape, looting of property and destruction of homes.[560] Victims could not file complaints with the Police or access medical care in hospitals.[561] Moreover, rapes were not reported as this was considered taboo.[562] As stated by P-0584, the Fur did not have the ability to report crimes:

> We didn't have a chance to go to the police stations […] to go to the police stations and report about rape incidents that had happened to our daughters and sisters and wives. We didn't have that opportunity. The police did not recognise our reports. They did not recognise us as human beings, we the Fur. They saw us as insects. So many women were raped. They were ashamed to […] disclose what had happened to the public or to report it -- to report anything about the rape.[563]

283. On 8 April 2004, the GoS signed the Humanitarian Ceasefire Agreement on the Conflict in Darfur with the JEM and SLM/A.[564] On 28 May 2004, the African Union signed the Agreement with the Sudanese Parties on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in the Darfur.[565] The UN Security Council, acting under Chapter VII of the UN Charter and determining that 'the situation in Sudan constitute[d] a threat to international peace and security', issued several resolutions in 2004 and 2005 on the situation in Darfur. In those resolutions, the UN Security Council called upon the GoS to disarm the *Janjaweed*, and all parties, to comply with international humanitarian

[554] P-0585: T-100, pp. 8-9; P-0026's Statement, DAR-OTP-0095-0151-R02, para. 87; P-0584: T-092, p. 28.
[555] P-0903: T-032, pp. 79-80.
[556] P-0617's Statement, DAR-OTP-0202-1496-R02, at 1518, para. 64.
[557] P-0905: T-088, p. 27.
[558] P-0675's Statement, DAR-OTP-0206-0173-R02, paras 119-120.
[559] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0073, para. 87; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0026, para. 38; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2012, para. 54.
[560] P-0120: T-037, p. 17; P-0120's Statement, DAR-OTP-0124-0816-R02, at 0828, para. 61.
[561] P-0984: T-067, pp. 19-20. *See also* P-0020's Statement, DAR-OTP-0095-0002-R02, at 0030, para. 115; P-0029: T-029, p. 46; P-0083's Statement, DAR-OTP-0110-0002-R02, para. 179.
[562] P-0585: T-100, p. 8; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1518, para. 64; P-0903: T-033, p. 41; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1557, para. 61; P-0726: T-053, pp. 28-29; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0355-0356, para. 34.
[563] P-0584: T-092, pp. 71-72.
[564] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 7. *See also* Ceasefire Agreement, DAR-OTP-0171-0579, at 0579-0580. Noting the lack of any objection, the Chamber is satisfied that this document is reliable and probative. *See* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 48-49; UNCOI Final Report, DAR-OTP-0209-0593, at 0616, para. 70.
[565] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 8.

law and prevent ongoing violations of the peace agreements.[566] On 31 March 2005, it referred the Situation in Darfur to the ICC.[567]

284. During the time of the charges, a state of emergency was in force in Darfur, giving special powers to the President and temporarily modifying the legislation and restricting individual rights.[568]

B. The Emergency Plan

285. The attack on Al Fasher airport on 25 April 2003 by the SLM/A was a turning point in the Government's policy, in which it was decided that the rebels should be defeated militarily through an 'all-out military campaign'. On 18 December 2003, the National Security Council headed by President Al-Bashir, adopted the Emergency Plan, directing the recruitment of Arab militias into the GoS Forces to fight against the rebels.[569] The Emergency Plan was to be implemented from 1 January to 31 December 2004.[570] This Emergency Plan was implemented in part through the State's Security Committee of West Darfur.[571]

286. The Emergency Plan was encapsulated in a high level top-secret document.[572] The

[566] *See for example* UNSC Resolution 1556 (2004), adopted on 30 July 2004, DAR-OTP-0152-0189; UNSC Resolution 1564 (2004), adopted on 18 September 2004, DAR-OTP-0080-0024, at 0026; UNSC Resolution 1591 (2004), adopted on 29 March 2005, DAR-OTP-0080-0041, at 0043. The Chamber is satisfied that these copies of the UNSC resolution are reliable and probative.
[567] UNSC Resolution 1593 (2005), adopted on 31 March 2005, DAR-OTP-0080-0047. The Chamber is satisfied that this copy of the UNSC resolution is reliable and probative.
[568] Sudan's UNHRC Submissions, DAR-D31-0006-0032, at 0068-0070, paras 164, 167, 176; D-0016: T-131, pp. 25, 27; P-0020: T-042, p. 21; P-0120: T-036, p. 67; T-037, p. 18; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0323, 0343, paras 23, 121; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0509, para. 26. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0025, para. 90.
[569] *See* para. 279 *above*.
[570] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795).
[571] *See* Decisions of the State's Security Committee, DAR-OTP-0034-0260, Translation, DAR-OTP-0219-8825. *See also* different (partial) version of the same document DAR-OTP-0027-0271, Translation, DAR-OTP-0219-3573. The Chamber notes that a version of this document was used in court during P-0547's testimony, who commented upon it (P-0547: T-050, pp. 63-75), and that, at the time, the Defence confirmed that it did not challenge its authenticity (P-0547: T-050, p. 63). On that basis, and having reviewed the document's content and related evidence from P-0547, the Chamber is satisfied of its relevance and probative value and accordingly rejects the Defence's related challenges. The Chamber also notes that this document is a compilation of decisions taken by the State's Security Committee of West Darfur, between March 2003 and November 2004 (*see also* P-0643: T-056, p. 15). Under the National Security Council, there were security committees at the States' level (here, the State of West Darfur), headed by the Governor of each state and in charge of the implementation of the decisions of the National Security Council (*see* P-0547: T-050, p. 62; P-0769: T-097, pp. 8-9, *referring to* Darfur Security Committee Chart, DAR-OTP-00000433); P-0883's Extract of Statement, DAR-OTP-00000065, at 000007, para. 270. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0022-0023, paras 73, 76, 78, 80.
[572] P-0547: T-050, p. 75; National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4649-4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795).

political strategy elaborated therein by the National Security Council was based on the understanding that 'non-Arab tribes', in particular the 'Fur, Zaghawa, [and] Masalit' tribes, were 'leading the Rebellion' in Darfur.[573] The objectives of the plan were to '[r]estor[e] security in the states of Darfur and [end] the rebellion through military and security decisiveness', fight the SLA and JEM, and 'impos[e] control over all the villages and the regions to which rebel leaders belong (Fur, Zaghawa, Masalit)' and 'the areas inhabited by the rebellious tribes'.[574] The plan stated that this aim was to be achieved through the creation of semi-regular forces 'from Arab tribes', which were to be provided with training and arms, assigned to a commander, and be assisted by the Armed Forces with 'fire support and air assets during military operations'.[575] The National Security Council decided to resort to Arab tribes in part because it considered that the regular forces in Darfur were composed of members of non-Arab tribes who would not be reliable.[576] The Ministry of Interior was also ordered to 'draft young men from Arab tribes in Darfur into the Central Reserve Police'.[577]

287. Based on the evidence, the Chamber is satisfied that in the Emergency Plan, non-Arab tribes, in particular the Fur, the Zaghawa and the Masalit, were targeted, on the basis that they were perceived to be associated with the rebels, and thus as the enemy.[578] The Emergency Plan defined the field of operations as being 'the rebel movements' camps' and 'the villages of the leaders and the soldiers […] because they offer them shelter and hide-out after they carry out

[573] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4650-4651 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795); P-0769: T-097, p. 60, *referring to* National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4650 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795).
[574] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4651-4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795). *See also* P-0547: T-050, p. 80.
[575] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795). *See also* para. 279 *above*.
[576] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4650-4651 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795); P-0769: T-097, pp. 25-26, 63-64; P-0547: T-052, p. 56; P-0020: T-041, p. 86. *See also* para. 339 *below*. The Chamber also notes that P-0547 gave evidence that some members of the police and the army belonging to African tribes from Darfur were 'forced to retire' (P-0547: T-051, pp. 5-6; T-052, pp. 58, 77). In his report, P-1042 states that '[the rebels] were swelled by volunteers who were enthused by the spectacular victories of the rebels and by men whose communities had been attacked by their adversaries. Local PDF units and police deserted their posts and joined. In May and June 2003, the SAF commanders in Al Fasher distributed arms to PDF units, for self-defence and to join the counter-insurgency, but many of the non-Arab PDF (*e.g.* Tunjur, Berti and Birgid) promptly defected to the rebels' (P-1042's Report, DAR-OTP-0220-1623, at 1671, para. 122).
[577] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795).
[578] *See also* P-0769: T-097, pp. 61-63, 69; P-1042: T-027, pp. 78-79; P-0547: T-052, p. 58. *See further* P-0720's Statement, DAR-OTP-0210-0291-R02, at 0298, para. 49.

their operations against government targets'.[579]

288. According to P-0547, this meant that 'they [were] all considered rebels and the village would be attacked without distinguishing between people indiscriminately, whether it was someone at his home or whether it's someone working on a farm'.[580] In addition, this plan stated that one of the purposes of creating semi-regular forces from Arab tribes was to 'assassinat[e] […] sympathisers from among community leaders (*umdahs*) and local administration officials'.[581]

289. Several witnesses gave evidence that 'all African tribes' and the 'entire communities of Fur, Zaghawa, Masalit' were targeted because, in the eyes of the Government, they were 'all rebels'.[582] P-0547, stated that the GoS considered all members of these tribes to be 'rebels'.[583] P-0769 explained that at the beginning of the Emergency Plan, there is an excerpt of the *Qur'an* which shows that the Government considered that the 'residents of Darfur became *kufar* or infidels', that they are 'against the Islamic State that was in Sudan at that […] point' and 'that's why they have to be fought' and 'killed'.[584] '[T]aking control' of the areas inhabited by the 'rebellious tribes', as mentioned in the Emergency Plan, was interpreted by witnesses as considering those villages 'as an operation area',[585] 'occupy and get all its population out',[586] monitoring and driving civilians out.[587] During his in-court testimony, P-0769 was asked whether he was aware of any operations launched 'in furtherance of the Emergency plan'. He replied that on the basis of signals and reports received and stating that the SLM/A were posted in Mukjar and Bindisi, it was considered 'imperative to purify and to cleanse' these areas and therefore, '[Arab] militias were used for this purpose', making a clear link between the Emergency Plan, and the military operations involving the *Janjaweed* in Mukjar and Bindisi.[588]

[579] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795).
[580] P-0547: T-052, p. 66.
[581] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4651 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795). *See also* P-0769: T-097, pp. 66-67, 76; T-098, p. 62. *See further* P-0769: T-097, p. 66.
[582] P-1042: T-027, pp. 78-79; P-1042's Report, DAR-OTP-0220-1623, at 1656-1657, para. 84; P-0547: T-052, pp. 66, 77; P-0769: T-097, p. 61.
[583] P-0547: T-052, pp. 55-58.
[584] P-0769: T-097, pp. 61-63.
[585] P-0769: T-097, p. 69.
[586] P-0769: T-098, p. 61 ('It means attacking these regions, getting the inhabitants of those regions out and controlling the whole area. […] I mean by that, that when the soldiers arrive in a specific region, they occupy it and get all its population out. That's what I mean.').
[587] P-0547: T-052, pp. 70, 79.
[588] P-0769: T-097, pp. 27-28.

C. The parties to the conflict

a) GoS Forces

290. During the time relevant to the charges, the Head of State, the President of Sudan, was President Al-Bashir. The Minister of Interior was Abdel Raheem Muhammad Hussein ('Minister Hussein'),[589] and his deputy was the State Minister for the Ministry of the Interior, Ahmad Muhammad Harun.[590] The Minister of Defence was Bakri Hassan Salih.[591] Major General Suleiman Abdullah was the Governor or *wali* of West Darfur state.[592]

i. Regular forces

The Sudanese Armed Forces (SAF)

291. From at least April 2003 until at least April 2004, the SAF, also known as the 'People's Armed Forces',[593] were the regular armed forces of Sudan.[594] According to Article 11(1) of the People's Armed Forces Act of 1986, the President of the Republic, President Al-Bashir,[595] was the Supreme Commander of the People's Armed Forces,[596] with a line of command set out by Sudanese law.[597] The SAF were subordinate to the Minister of Defence.[598] Lieutenant General Abbas Arabi was the Chief of Staff of the SAF.[599] The SAF were a disciplined force with an

[589] Second Joint Submission on Agreed Facts, Annex A, Agreed Fact 6; Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 11.
[590] Second Joint Submission on Agreed Facts, Annex A, Agreed Facts 6-7.
[591] Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 11.
[592] P-0878: T-077, p. 63; T-078, p. 11; P-0643: T-056, p. 14; T-058, p. 3. *Contra* Defence's Final Brief, para. 142.
[593] Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 2; 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0026. The Defence, at the time of the document's submission, argued that it is an unofficial translation, and thus not reliable. However, there nothing is before the Chamber to suggest that this translation is either incorrect or inaccurate. Rather, the Chamber notes that, during the presentation of its case, the Defence used this document with D-0023, and also relied on it in its Final Brief (Defence's Final Brief, para. 241, n. 736). Therefore, the Chamber is satisfied that this document is reliable and probative. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, p. 47; 1986 People's Armed Forces Act, DAR-OTP-0103-0564, Translation, DAR-OTP-0118-0075, at 0083.
[594] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 9; 1986 People's Armed Forces Act, DAR-OTP-0103-0564, Translation, DAR-OTP-0118-0075, at 0083; 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0026.
[595] Second Joint Submission on Agreed Facts, Annex A, Agreed Fact 5.
[596] Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 7; 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0009; 1986 People's Armed Forces Act, DAR-OTP-0103-0564, Translation, DAR-OTP-0118-0075, at 0084.
[597] 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0009, 0026; 1986 People's Armed Forces Act, DAR-OTP-0103-0564, Translation, DAR-OTP-0118-0075, at 0084-0086.
[598] P-0883's Extract of Statement, DAR-OTP-00000065, at 000001, para. 218.
[599] P-0020's Statement, DAR-OTP-0095-0002-R02, at 0029, para. 112; P-0643: T-059, p. 11; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0513, para. 42; P-0935: T-090, p. 21.

organised hierarchy.[600]

292. The SAF headquarters was in Khartoum.[601] The Western Area Command of the SAF was located in Al Fasher, North Darfur,[602] and was responsible for West, North and South Darfur.[603] General Ismat Abd-Al-Rahman Zain Al-Abidin ('Gen Ismat al Zain') was the Commander of the Western Command during the time of the charges.[604] At the time of the conflict in 2003 and 2004, there were five SAF Divisions in Darfur: Nyala, Al Fasher, Zalingei, Al Da'in and Al Geneina.[605]

293. During the time of the charges, the Garsila Battalion was under the command of the 87th Brigade, based in Zalingei[606] and headed by Brigadier General Kamal.[607] The 87th Brigade was under the command of the 21st Division, based in Zalingei.[608] The Garsila Battalion, headed by Major Muhammad Musa Adam Khatir Bakhit ('Maj Bakhit')[609] and his deputy, Qasim Adam Dawoud,[610] had a presence in Um Dukhun, Mukjar, Bindisi, Garsila, Deleig (commanded by Al Hedi Salem Jed Al Sid), Tanako (commanded by Staff First Sergeant and Military Intelligence officer Muqaddam Idriss), Sodija, and Arawala.[611] Mukjar, Bindisi, Deleig and Kodoom were under the authority of Maj Bakhit.[612]

294. Each regiment included one intelligence officer deployed by the Garsila Military Intelligence Office.[613] The head of the Military Intelligence branch in Garsila was First

[600] P-0087's Statement, DAR-OTP-0133-0573-R02, at 0614, para. 159; P-0883: T-073, p. 11. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0040, para. 161.
[601] Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 8.
[602] Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 3.
[603] Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 4; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0581, para. 47.
[604] P-0087's Statement, DAR-OTP-0133-0573-R02, at 0605, para. 122; P-1042: T-027, p. 77.
[605] P-0883's Extract of Statement, DAR-OTP-00000065, at 000001, para. 219; D-0026's Statement, DAR-OTP-0109-0111-R01, at 0119, para. 47.
[606] P-0883's Extract of Statement, DAR-OTP-00000065, at 000002, para. 222; P-0883: T-072, p. 55.
[607] P-0935: T-090, pp. 21-22.
[608] P-0883: T-072, pp. 55-56.
[609] P-0883: T-071, p. 8; T-072, p. 56; P-0935: T-090, pp. 6-7; P-0643: T-056, pp. 12, 56; P-0905: T-085, p. 31.
[610] P-0905: T-085, p. 31.
[611] P-0883's Extract of Statement, DAR-OTP-00000065, at 000002, paras 222-223; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0633, para. 54; P-0955 clarifying that 'the "5th brigade garrison" was known as the "5th company"' (P-0955's Statement Corrections, DAR-OTP-0225-0053, at 0053, para. 5); P-0935: T-090, p. 38; P-0013's Statement, DAR-OTP-0088-0129-R03, at 0134-0135, paras 23, 26, *referring to* Sketch, DAR-OTP-0088-0146, Translation, DAR-OTP-0153-1344.
[612] P-0883: T-072, p. 58.
[613] P-0883's Extract of Statement, DAR-OTP-00000065, at 000002, para. 224.

Lieutenant[614] Hamdi.[615]

295. The 6th Division of the SAF was under the command, first, of Colonel Ali Adam Harun,[616] subsequently of Brigadier Ya'qub Ibrahim Manzul[617] and, lastly, of Major General Muhammad Fa'iz ('Maj Gen Fa'iz').[618]

296. In February 2004, all deployed SAF forces had been moved to Garsila, except for the one in Deleig.[619]

297. The SAF had military police and intelligence arms.[620] The military police were in charge of military security. Its members wore a military uniform and had the authority to carry out arrests.[621] The Military Intelligence was in charge of political security.[622] Its members wore civilian clothing[623] and had no authority to carry out arrests.[624]

298. SAF members wore a camouflage uniform[625] and drove Land Cruiser vehicles.[626]

[614] P-0883: T-072, pp. 17-18; P-0905: T-085, p. 33; P-0883: T-072, pp. 17-18.
[615] P-0883: T-071, pp. 8, 30; P-0935: T-090, p. 7; P-0931: T-062, pp. 13-14; P-0905: T-085, pp. 32-33; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0216, para. 123. *See also* P-0643: T-056, pp. 54-55; T-059, p. 49.
[616] Minutes of meetings of the State's Security Committee, DAR-OTP-0051-0205, Translation, DAR-OTP-0219-4294, at 4333. On the discrete point of who commanded the 6th Infantry Division of the SAF during the relevant time, the Chamber finds these meeting minutes to be reliable and probative. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 17-18.
[617] Minutes of meetings of the State's Security Committee, DAR-OTP-0051-0205, Translation, DAR-OTP-0219-4294, at 4344, 4351.
[618] P-0883: T-071, p. 73; T-073, p. 6; P-0883's Extract of Statement, DAR-OTP-00000065, at 000001, para. 220; Minutes of meetings of the State's Security Committee, DAR-OTP-0051-0205, Translation, DAR-OTP-0219-4294, at 4353.
[619] P-0883's Extract of Statement, DAR-OTP-00000065, at 000002, para. 225; P-0013's Statement, DAR-OTP-0088-0129-R03, at 0134, para. 21; P-0016's Statement, DAR-OTP-0088-0150-R02, at 0154, paras 16, 18.
[620] P-0905: T-087, pp. 6-7; P-0935: T-090, pp. 21, 36; P-0883's Extract of Statement, DAR-OTP-00000065, at 000001-000002, paras 217, 224; D-0017's Statement, DAR-OTP-0088-0262-R01, at 0273, para. 61.
[621] P-0905: T-087, p. 6.
[622] P-0905: T-087, p. 6.
[623] P-0905: T-087, p. 6.
[624] P-0905: T-087, p. 6.
[625] P-0013's Statement, DAR-OTP-0088-0129-R03, at 0133-0134, para. 18; P-0905: T-087, p. 6; P-0016's Statement, DAR-OTP-0088-0150-R02, at 0154-0155, para. 19; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0039, para. 20; D-0017's Statements, DAR-OTP-0088-0262-R01, at 0273, 0281, paras 60, 127; DAR-D31-00000146, at 0005, para. 18.
[626] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1554, para. 50; P-0584's Statement Corrections, DAR-OTP-00000419, at 000001, para. 9; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0063-0064, para. 36.

299. Some members of the SAF were seconded to the PDF to provide administration, communication, training and general services support, and to coordinate between the SAF and the PDF, and the *Janjaweed*.[627]

The National Police

300. During the time of the charges, the Police in Wadi Salih had its headquarters in Garsila, with local offices in Mukjar, Bindisi, Um Dukhun, and Deleig.[628]

301. Lieutenant Colonel Al-Jilli ('Lt Col Al-Jilli') was the commander for the Police in Garsila.[629] The chain of command in Wadi Salih was as follows in descending order: Khartoum, Al Fasher, Zalingei and Garsila.[630] Most of the non-commissioned officers in Garsila were Fur, but some were from the Masalit, Zaghawa, Tama and Arab tribes.[631]

302. The Police wore light and dark blue camouflage uniforms.[632]

ii. Semi-regular and other forces

The Popular Defence Forces (PDF)

303. The PDF were a paramilitary entity comprised of volunteer citizens, created to assist the SAF and other regular forces with civil and military activities when required.[633] According to the 1989 Popular Defence Forces Act, the PDF's functions included, among others, to 'support the People's Armed Forces and all other government forces whenever necessary' and to 'participate in the Nation's defence'.[634]

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[627] P-0954's Statement, DAR-OTP-0221-0571-R01, at 0575, 0576, 0580 paras 24 (admitted excerpt only), 27, 46; P-0883's Extract of Statement, DAR-OTP-00000065, at 000003-000004, para. 237; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0350, para. 163. *See further* para. 343 *below*.
[628] P-0883's Extract of Statement, DAR-OTP-00000065, at 000006, para. 262. The police forces in Tanako, however, were withdrawn at the outset of the conflict.
[629] P-0931: T-062, p. 9.
[630] P-0883's Extract of Statement, DAR-OTP-00000065, at 000006, para. 265.
[631] P-0883's Extract of Statement, DAR-OTP-00000065, at 000006, para. 266.
[632] P-0883's Extract of Statement, DAR-OTP-00000065, at 000007, para. 269; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0393-0394, paras 44, 49.
[633] Fourth Joint Submission on Agreed Facts, Annex A, Agreed Fact 1; 1989 PDF Act, DAR-OTP-0103-0559, Translation, DAR-OTP-0116-0889, at 0891, articles 5 -6; 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0027, article 125. *See also* P-1042's Report, DAR-OTP-0220-1623, at 1661-1662, para. 96; P-1042: T-027, p. 54; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209, para. 72; D-0036's Report, DAR-D31-00000312, at 0004, para. 9; P-0954's Statement, DAR-OTP-0221-0571, at 0574, para. 19.
[634] 1989 PDF Act, DAR-OTP-0103-0559, Translation, DAR-OTP-0116-0889, at 0891, article 6.

304. The PDF were under the authority of the Ministry of Defence[635] and under the command of the SAF.[636] It was considered a 'reserve force' of the SAF.[637] They were armed and trained by the SAF, including in the use of weapons.[638] The PDF provided intelligence to the SAF and the National Intelligence and Security Service ('NISS'),[639] and operational support to the SAF[640] and the *Janjaweed*.[641] PDF members were mobilised temporarily, according to the needs of the regular army.[642]

305. In 2003 and 2004, the PDF's headquarters was in Khartoum.[643] The PDF's headquarters in the Wadi Salih area was in Al Fasher, with branches in Zalingei, Garsila and Nyala.[644] The PDF chain of command in the Wadi Salih area was similar to that of the National Police.[645]

306. Major General Mohamed Abbas Ahmed Al-Saad was the head of the PDF at the central level in Khartoum.[646] Ali Karti was the general commander of the PDF for the whole of Sudan.[647] In 2003 and 2004, the PDF coordinator in Garsila was Adam Abd-Al-Rahman, a Fur

[635] P-0883's Extract of Statement, DAR-OTP-00000065, at 000002, paras 226-227; P-1021: T-081, p. 49. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0034, para. 130; 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0027, article 125.
[636] 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0027, article 125; P-0643: T-058, pp. 30-32; P-0883's Extract of Statement, DAR-OTP-00000065, at 000002, para. 227; P-0547: T-052, p. 73; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0039, para. 21; D-0026's Statement, DAR-OTP-0109-0111-R01, at 0119, para. 48; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0208-0209, para. 69. *See also* D-0016: T-133, pp. 34-35; P-0643: T-058, pp. 32-33.
[637] P-0119's Statement, DAR-OTP-0124-0196-R03, at 0208-0209, paras 69, 72; P-1042: T-027, p. 54; D-0036's Report, DAR-D31-00000312, at 0004, para. 9; P-0643: T-058, pp. 30-32; P-0020: T-041, p. 82.
[638] P-0954's Statement, DAR-OTP-0221-0571-R01, at 0575, para. 24 (admitted excerpt only); P-0116's Statement, DAR-OTP-0127-0318-R01, at 0350, para. 163; P-0643: T-058, p. 34; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209, para. 70; P-1021: T-081, p. 55; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0203, para. 79; P-0984: T-067, p. 27; P-0986: T-065, pp. 36-37. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0034, para. 130.
[639] P-0883: T-073, p. 38; P-0883's Extract of Statement, DAR-OTP-00000065, at 000002-000003, paras 228, 230; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0580, para. 45.
[640] P-0883's Extract of Statement, DAR-OTP-00000065, at 000002-000003, paras 227, 228, 237; P-0020: T-041, pp. 81-82; UNCOI Final Report, DAR-OTP-0209-0593, at 0620, para. 83. *See also* P-0119's Statement, DAR-OTP-0124-0196-R03, at 0208-0209, para. 69; P-1021: T-081, p. 55; P-0041's Statement, DAR-OTP-0206-0033, at 0039, para. 21; P-0769: T-096, pp. 59-60.
[641] P-0883's Extract of Statement, DAR-OTP-00000065, at 000002-000003, para. 237.
[642] P-1021: T-081, p. 57; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0041, para. 133; P-0986: T-065, pp. 36-37.
[643] P-0883's Extract of Statement, DAR-OTP-00000065, at 000002, para. 226; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0574, para. 17. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0034, para. 130.
[644] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 231; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0633, para. 54; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0270-0271, para. 82; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0573, para. 15.
[645] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 232.
[646] P-0954's Statement, DAR-OTP-0221-0571-R01, at 0574, para. 22.
[647] P-0020's Statement, DAR-OTP-0095-0002-R02, at 0007, para. 18; P-0878: T-077, p. 63; T-078, pp. 10-11.

man nicknamed Jenif ('Jenif'), and, following his death,[648] he was replaced by Abd-Al-Rahman Dawud Hammudah, nicknamed Hassaballah ('Hassaballah').[649] The PDF commander in Nyala at the time of the charges was Lieutenant Colonel Al Hirika,[650] and his deputy was Al Sharif.[651] Lt Hamdi was also in charge of supervising weapons distribution to the PDF members.[652] The PDF had an office in the Mukjar locality,[653] and its coordinator was Al-Sadiq Ahmad Uthman Zakariya, nicknamed Al-Sadiq Solonga ('Solonga').[654]

307. At the locality level, the PDF consisted of a civilian coordinating body, headed by a PDF coordinator, responsible for, in particular, the selection and mobilisation of civilians into the PDF. It also consisted of a military body, headed by a PDF commander, whose duties included, leading military operations and trainings.[655]

308. In addition to PDF commanders, *emirs*, traditional Arab tribe leaders, also led the fighters during military operations.[656]

309. PDF members wore military uniforms,[657] except during reconnaissance missions when

[648] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 234; P-0883: T-071, p. 61; P-0905: T-086, p. 46; P-0643: T-056, p. 88; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0066, para. 50. *See also* P-0931: T-062, p. 51.
[649] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 234; P-0883: T-071, pp. 32-33, 40, 60; P-0643: T-056, pp. 52-53, 88; T-058, p. 28, 35; T-059, p. 64; P-0931: T-062, p. 14, 51; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0512, 0520-0521, paras 39, 78; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 4710, para. 7; P-0878: T-078, p. 19; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0070, para. 69; P-1021: T-081, p. 71.
[650] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 235; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0575, para. 23. In respect of the latter, the Chamber accepts the Prosecution's clarification that 'the similarities with other evidence regarding the spelling, his affiliation and presence during the armed operations' indicate that 'Abu Al Ghassim Ali Hariga Hamed' and 'Al Hirika' are the same person (Prosecution's Final Brief, para. 189, n. 665).
[651] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 235.
[652] P-0643: T-056, p. 45; T-058, pp. 21, 34, 87.
[653] P-0984: T-066, p. 43.
[654] P-1021: T-080, p. 22; P-0984: T-066, p. 41; P-0878: T-077, pp. 58-59; T-078, p. 18; P-0986: T-065, p. 38; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0039, para. 21; P-0720: T-043, pp. 39-40; P-0877: T-054, p. 12; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0459, para. 103.
[655] P-0883: T-071, pp. 60-61; T-073, p. 34; P-0547: T-052, p. 10; P-0643: T-058, p. 21; P-0769: T-096, pp. 58-60; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0576, para. 27; P-1021: T-080, pp. 22-25; T-081, pp. 38, 48-51, 94-95; P-0720: T-043, p. 39; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0350, para. 164; D-0017's Statement, DAR-D31-00000146, at 0006, para. 23. *See also* D-0036's Report, DAR-D31-00000312, at 0006, paras 16-17.
[656] P-0954's Statement, DAR-OTP-0221-0571-R01, at 0575-0576, paras 24 (admitted excerpt only), 25; P-0643: T-058, pp. 77-78.
[657] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 230; P-0041's Statement, DAR-OTP-0206-0033-R02, at 0039, para. 21; P-1021: T-081, pp. 54-55; P-0040's Statement, DAR-OTP-0094-0165-R02, at 0173, para. 40; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0203, para. 79; P-0720: T-043, p. 39; P-0007: T-089, pp. 31-32; P-0020: T-041, p. 84; P-0955: T-064, p. 18.

they wore civilian clothing.[658] PDF members had their own vehicles.[659]

The Central Reserve Forces (CRF)

310. The CRF were subordinated to the Ministry of Interior. Civilians were recruited among the population to join the CRF and were trained by the Police.[660] The CRF were an 'integral part' of the police forces[661] and as such were governed by the Police Act.[662] However, after the state of emergency was declared in Darfur, the CRF in said region were subject to military law.[663] Although the CRF were independent of the SAF,[664] they provided operational support to the latter[665] and received military training.[666] The CRF were also known as the '*Abu Teira*'[667] and wore the insignia of an eagle on their uniforms.[668]

311. The official functions of the CRF included escorting and securing convoys.[669] The CRF were deployed during riots and other emergency situations.[670]

312. The CRF had bases in Zalingei, Nyala, Al Fasher and Garsila.[671] The chain of command was organised as follows: Khartoum - Nyala - Mukjar.[672] The CRF in Khartoum reported to Minister Harun.[673]

[658] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 230.
[659] P-1021: T-081, p. 54; P-0020: T-041, p. 84.
[660] P-0883's Extract of Statement, DAR-OTP-00000065, at 000004, para. 244; P-0874's Statement, DAR-OTP-00000221, at 000001, paras 2, 7; P-0874: T-082, p. 69; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0335, para. 87; P-0547's Sketch, DAR-OTP-0224-0724, Translation, DAR-OTP-0224-0733, at 0734; P-0547: T-050, pp. 82-83. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0037, para. 145; P-0769: T-097, pp. 15-16.
[661] P-0720: T-043, p. 70; P-0547: T-050, p. 47; D-0016: T-131, p. 25.
[662] P-0874's Statement, DAR-OTP-00000221, at 000001, para. 3. *See also* D-0016: T-131, pp. 25-26.
[663] D-0016: T-131, pp. 25-26.
[664] P-0874's Statement, DAR-OTP-00000221, at 000001, para. 2.
[665] P-0874's Statement, DAR-OTP-00000221, at 000001-000002, para. 8; P-0547: T-050, p. 83.
[666] P-0874's Statement, DAR-OTP-00000221, at 000002, para. 11; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0335, para. 87; P-0547: T-050, p. 83.
[667] P-0874's Statement, DAR-OTP-00000221, at 000001, para. 1; P-0547: T-050, pp. 48, 80; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0198, para. 89.
[668] P-0986: T-065, p. 35, *referring to* Insignia, DAR-D31-0010-0003; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0063-0064, para. 36.
[669] P-0883's Extract of Statement, DAR-OTP-00000065, at 000004, para. 243.
[670] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0335, para. 87; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0038, para. 17. *See* P-1042's Report, DAR-OTP-0220-1623, at 1657, para. 86. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0037, para. 144.
[671] P-0883's Extract of Statement, DAR-OTP-00000065, at 000004, para. 245; P-0921: T-110, pp. 56-57; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0271, para. 84.
[672] P-0874's Statement, DAR-OTP-00000221, at 000001, paras 5-6; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0060-0061, para. 24.
[673] P-0874's Statement, DAR-OTP-00000221, at 000001, para. 7.

313. The commander of the CRF in Bindisi in early 2003 was Marko Gar Ater ('Marko'),[674] who was then transferred to Mukjar around May 2003.[675]

314. The CRF had a camp in Bindisi,[676] and between July and August 2003, the CRF was moved from Bindisi to Mukjar.[677]

315. The CRF were stationed in a school building located in the south of Mukjar.[678] After the Sindu Operation in February 2004,[679] the CRF relocated to the police station in Mukjar.[680]

316. From at least July or August 2003 until January or February 2004, Lieutenant Colonel Abdallah Himeidan ('Lt Col Himeidan') was the commander of the CRF in Mukjar.[681] Lt Col Himeidan was replaced by Lieutenant Colonel Mustafa Ahmad Al-Tayyib ('Lt Col Al-Tayyib').[682] John Koj, a CRF Master Sergeant, was under Lt Col Al-Tayyib's authority.[683]

317. The CRF wore uniforms in several different colours which changed over time.[684] In 2003 and 2004, these colours included khaki, beige, blue and camouflage green.[685] CRF members wore different caps depending on the type of operation they performed.[686]

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[674] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0724-0725, para. 19; P-0921: T-110, pp. 15-19.
[675] P-0921: T-110, p. 18; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0060-0061, para. 24.
[676] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0724-0725, para. 19; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0191, para. 18; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0024, para. 21.
[677] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0025, para. 25; P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 19.
[678] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0299, 0301-0303, paras 56, 70, 77; P-0720's Sketches, DAR-OTP-0210-0317-R01, Translation, DAR-OTP-0219-1386-R01; DAR-OTP-0210-0315-R01, Translation, DAR-OTP-0219-1382-R01; P-0878: T-077, p. 53; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0038, para. 17; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392-0393, para. 43; P-0921: T-110, p. 19.
[679] *See* paras 465-479 *below*.
[680] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0303, para. 79; P-0720: T-043, p. 41. *See also* P-0675's Statement, DAR-OTP-0206-0173-R02, at 0200, para. 99, *referring to* P-0675's Annotated Satellite Image, DAR-OTP-0206-0227, who annotated a satellite image of Mukjar at the time he was detained there around February 2004. According the satellite image, the CRF was not located in the same building as the school.
[681] P-0874's Statement, DAR-OTP-00000219, at 000001-000002, para. 8; P-0874's Statement, DAR-OTP-00000221, at 000001, para. 4; P-0874's Statement, DAR-OTP-00000225, at 000002; P-0921: T-110, p. 18; P-0877: T-054, p. 6; P-0984: T-067, p. 26. *See also* P-0643: T-056, pp. 38, 40; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0325-0326, para. 53.
[682] P-0874's Statements, DAR-OTP-00000219, at 000001-000002, para. 8; DAR-OTP-00000221, at 000001, para. 4; P-0877: T-054, p. 6; P-0990: T-040, pp. 29-30; P-0984: T-067, pp. 49-51; P-0878: T-077, p. 52; T-078, pp. 10, 67-68; T-079, p. 10. *See also* P-0913's Statement, DAR-OTP-0218-0021-R04, at 0033, para. 79.
[683] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0038, para. 111; P-0990: T-040, pp. 30, 50-51.
[684] P-0874's Statement, DAR-OTP-00000221, at 000003, para. 14.
[685] P-0883's Extract of Statement, DAR-OTP-00000065, at 000004, 000007, paras 246, 269. *See also* P-0675's Statement, DAR-OTP-0206-0173-R02, at 0198, para. 89; P-0129: T-076, p. 33; P-0874's Statement, DAR-OTP-00000221, at 000003, para. 14; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0335, para. 87. *See also* P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209, para. 76.
[686] P-0874's Statement, DAR-OTP-00000221, at 000003, para. 15.

318. CRF members drove Land Cruisers and Mitsubishi military vehicles with open backs – a weapon was sometimes mounted at the back of the vehicles.[687] CRF officers were heavily armed[688] with weapons, including Kalashnikovs, *DShK* and GM3.[689]

The Popular Police Forces (PPF)

319. The PPF were established as a reserve force for the regular police when President Al-Bashir came to power.[690] The PPF consisted of civilians who were recruited by the Police[691] in the local communities.[692] They were trained for regular police duties and combat operations by the Police and the SAF, respectively,[693] and received a salary.[694]

320. The head of the PPF reported to the Director of the regular police.[695] In relation to operational matters, such as training, arming and deployments, the PPF were under the command of its headquarters in Khartoum,[696] and, ultimately, of the Minister of the Interior.[697] However, during the state of emergency declared in Darfur in 2003 and 2004, all police forces as a whole, including the PPF, became part of the SAF.[698] The PPF were considered a backup force of the Police.[699]

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[687] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302-0303, para. 77; P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 19; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0038, para. 17; P-0816's Statement, DAR-OTP-0214-0721-R02, at 0724-0725, para. 19; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0060-0061, 0063-0064 paras 24, 36; P-0917's Statement, DAR-OTP-0217-0071-R03, at 0076, para. 22.
[688] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302-0303, para. 77; P-0874's Statement, DAR-OTP-00000221, at 000001, para. 1.
[689] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302-0303, para. 77; P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 19.
[690] P-0883's Extract of Statement, DAR-OTP-00000065, at 000005-000006, paras 256, 258; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209, para. 74; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0301, para. 67; D-0016: T-131, p. 25; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0038-0039, para. 18. *See also* D-0017's Statement, DAR-OTP-0088-0262-R01, at 0274, para. 70; P-0083's Statement, DAR-OTP-0110-0002-R02, at 0037, para. 141.
[691] P-0883's Extract of Statement, DAR-OTP-00000065, at 000005, para. 257.
[692] P-0012: T-045, p. 27.
[693] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0058, para. 14; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0041, para. 133; P-0883's Extract of Statement, DAR-OTP-00000065, at 000005, para. 257. *See also* P-0892's Statement, DAR-OTP-0217-0384-R02, at 0394, para. 49.
[694] D-0017's Statements, DAR-OTP-0088-0262-R01, at 0274, para. 70; DAR-D31-00000146, at 0008, para. 29.
[695] P-0083's Statement, DAR-OTP-0110-0002-R02, at 0036, para. 139.
[696] P-0083's Statement, DAR-OTP-0110-0002-R02, at 0036, para. 139.
[697] P-0883's Extract of Statement, DAR-OTP-00000065, at 000005, para. 256; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0045, para. 45. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0036, para. 139.
[698] D-0016: T-131, p. 25. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0037, para. 143.
[699] D-0016: T-131, p. 25; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0301, para. 67; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0023-0024, para. 18; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209, para. 74; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0038-0039, para. 18; P-0883's Extract of Statement, DAR-OTP-00000065, at 000006, para. 258. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0037, para. 141; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0064, para. 37; D-0017's Statement, DAR-OTP-0088-0262-R01, at 0274, para. 70.

321. The PPF in Garsila were under the command of Lt Col Al-Jilli.[700] The commander of the police in Bindisi, Mohamed Hassan Deleib, was also exceptionally in charge of the PPF in Bindisi.[701]

322. The PPF had an office in the Mukjar locality building.[702] Ibrahim Sharaf-Al-Din was the commander of the PPF in Mukjar.[703] Hassan Muhammad Joma ('Hassan Joma'), nicknamed Hassan Carter, was the PPF coordinator in Mukjar.[704] Jamal Adam Abdelrahim, Khalid Omer Ahmed Zarouq, Jamel Abdulrahim Mohammed, Haroun Bashir (nicknamed Al-Sadiq Bashar), Bakhit Naheed, Abakar Salih (nicknamed Korein) and Adil Mustafa were PPF officers in Mukjar.[705]

The *Janjaweed*

323. The term *Janjaweed*, the use of which pre-dates the conflict in Darfur in 2003 and 2004,[706] refers in the popular language to horsemen from Arab tribes, carrying weapons and attacking villages.[707] Etymologically, it combines the terms 'devil', or 'bad spirit', and 'horse', meaning 'devil on a horse'.[708] During the relevant period of the case, it was used to refer to

[700] P-0931: T-062, p. 9.
[701] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0023-0024, paras 17-18. *See also* at 0041, para. 134.
[702] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0301, para. 69. On the locality building in Mukjar, *see* para. 499.
[703] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0301, para. 67; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0038-0039, para. 18.
[704] P-0877: T-054, p. 4; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0036-0037, para. 102; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003, para. 28; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, para. 42.
[705] P-0877: T-054, pp. 4, 6; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, para. 42; P-0892's Statement Corrections, DAR-OTP-0224-0658, at 0659, para. 10; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0036-0037, para. 102; P-0990: T-040, p. 27; P-0903: T-069, p. 24.
[706] P-1042: T-027, pp. 82-83; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1888, para. 16; D-0036's Report, DAR-D31-00000312, at 0005, para. 11.
[707] P-0883: T-071, pp. 13-14; T-073, pp. 8-9; T-074, pp. 28-29; P-0547: T-050, p. 55; T-052, p. 71; P-0878: T-077, p. 50; P-0935: T-090, p. 11; P-0712: T-036, p. 9. *See also* P-1042: T-027, pp. 82-83; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0506, para. 14; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1888, para. 16; P-0712: T-036, pp. 9-10; D-0016: T-131, p. 68; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0296, para. 34; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0253, para. 24; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0108, para. 13; P-0671: T-099, p. 11; P-0816's Statement, DAR-OTP-0214-0721-R02, at 0726, para. 24; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, para. 13, *referring to* Headdress Board, DAR-OTP-0220-0755-R01; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0154-0155, para. 102; D-0036's Report, DAR-D31-00000312, at 0005, para. 11; UNCOI Final Report, DAR-OTP-0209-0593, at 0624, para. 100.
[708] P-1042: T-027, pp. 82-83; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, para. 26; D-0036's Report, DAR-D31-00000312, at 0005, para. 11; UNCOI Final Report, DAR-OTP-0209-0593, at 0624, para. 100. *See also* Defence's Final Brief, para. 312.

irregular forces fighting on the side of the GoS.[709] **The Accused's** position within the *Janjaweed* will be addressed in Section 5.IV. below.[710]

324. The members of the *Janjaweed* came from Arab tribes,[711] including the Ta'aisha,[712] Misseriya, Nawaiba, Salamat, Tarjam, Beni Halba, Al Khozam, Awlad Edd, and Masalit

[709] P-0671: T-099, p. 11; P-0883: T-071, pp. 13-14; T-074, pp. 28-29; P-0547: T-052, p. 71; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0506, 0509-0510, paras 14, 28; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1888, para. 16; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0192, para. 22; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 34; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0128, para. 43; D-0036's Report, DAR-D31-00000312, at 0005, para. 11; P-0874: T-083, pp. 82-83; P-0905: T-085, p. 72; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, para. 27; UNCOI Final Report, DAR-OTP-0209-0593, at 0623-0624, 0626, 0628, paras 99, 103, 111, 112, 120. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0032, para. 117.

[710] *See* Section 5.IV. The Accused's position of authority and influence in 2003 and 2004 *below*.

[711] P-0547: T-052, p. 71; P-0878: T-077, p. 50; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, para. 26; P-0935: T-090, p. 11; P-0712: T-036, p. 9; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0296, paras 34-35; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0253, para. 24; P-0736: T-035, p. 36; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0450-0451, para. 64; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 34; Video, DAR-OTP-0124-0715, Transcript, DAR-OTP-0219-2365, Translation, DAR-OTP-0219-2354, at 2367; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0192, para. 22; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0624, para. 17; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0128, para. 43; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, para. 13, *referring to* Headdress Board, DAR-OTP-0220-0755-R01. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0032, para. 117. The Chamber notes that according to P-0736 and P-0015 members of non-Arab tribes joined the *Janjaweed*. More generally, P-0878 stated that members of the *Janjaweed* usually came from Arab tribes. Considering the circumstances in which they acquired knowledge of this fact, the Chamber finds that these are limited instances of members of the *Janjaweed* being perceived as coming from/originating from non-Arab tribes.

[712] The Chamber notes the Defence's submission that as the Ta'aisha tribe had a neutral position, they refused to join the counter-insurgency (*see* Defence's Final Brief, paras 319, 768; Defence's Closing Statement: T-162, p. 47). The Chamber notes that to substantiate this allegation, the Defence refers to the evidence of D-0036, P-0020, P-0585, P-1042, D-0001, D-0002, D-0003, D-0007, D-0008, D-0029 and D-0039. In respect of witnesses D-0001, D-0002, D-0003, D-0007, D-0008, D-0029 and D-0039, the Chamber recalls its concerns regarding their credibility and reliability (*see* the Chamber's assessment of the evidence of D-0001, D-0002, D-0003, D-0007, D-0008, D-0029 and D-0039, Annex B, Sections I.B.1, I.B.2, I.B.3, I.B.5, I.B.6, I.B.12 and I.B.17), and thus finds that their evidence lacks any probative value in this regard. In respect of P-0585, the Chamber notes that in the excerpt identified by the Defence, the witness merely referred to some of the tribes that were represented in the *Janjaweed* in his area (*see* P-0585: T-099, p. 62). In respect of D-0036, the Chamber notes that in the excerpt relied upon by the Defence, the expert conceded the limits of his knowledge in this respect. In relation to P-0020 (P-0020: T-042, p. 26), the Chamber notes that the witness nuanced his testimony as he recounted that whilst some Ta'aisha remained neutral, others decided to respond to the call for mobilisation. The Chamber observes that P-0020's evidence is corroborated by P-1042 (P-1042's Report, DAR-OTP-0220-1623, at 1676, para. 141), the expert jointly appointed by the parties in this case, and by P-0085, who referred to some Ta'aisha joining the counter-insurgency (P-0085's Statement, DAR-OTP-0110-0054-R02, at 0057, para. 10). Whilst the Defence relies upon P-1042's in-court testimony on this point (*see* Defence's Final Brief, fn. 2876, *referring to* P-1042: T-028, p. 59), the Chamber considers that this statement is not internally inconsistent with the aforesaid conclusion in his Report. In light of the foregoing, the Chamber finds that the *Janjaweed* were also comprised of members of the Ta'aisha tribe.

tribes.[713] The *Janjaweed*[714] were also referred to as the *Fursan*,[715] the *Mujahidin*,[716] the Arab militias,[717] and the *Bashmerga*.[718]

325. In Arab tribes, the *emir* was the leader of the tribe and was in charge of all its affairs.[719] *Umdahs*,[720] followed by *agids*, were under the authority of the *emir*.[721] The *agid al-ogada*,

[713] P-0883: T-071, pp. 16-17; P-1042: T-028, p. 52; P-0585: T-099, p. 62; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0057, para. 10.
[714] Noting that witnesses predominantly refer to the *Janjaweed* (*see for example* fns 179-181 *above*; UNCOI Final Report, DAR-OTP-0209-0593, at 0623-0624, para. 99, and the parties' use of this designation, Prosecution's Final Brief, para. 80; Defence's Final Brief, para. 312), the Chamber decides to henceforth refer to them as the *Janjaweed*.
[715] P-0883: T-074, p. 72; P-0643: T-056, p. 77; P-0547: T-050, p. 55; T-052, p. 72; P-1021: T-080, p. 41; P-0905: T-085, p. 66; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0057, paras 10-11, *referring to* Sketch, DAR-OTP-0110-0071, Translation, DAR-OTP-0153-1577; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0509-0510, 0512, paras 28, 39; P-1042's Report, DAR-OTP-0220-1623, at 1674, para. 130. The Chamber notes that the fact that the *Fursan* were considered to be *Janjaweed*, is not contested by the Defence (*see* Defence's Final Brief, paras 344-349).
[716] P-0643: T-056, p. 77; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0576, para. 27. The Chamber notes that the fact that the '*Mujahidin*' were considered as being *Janjaweed*, is not contested by the Defence (*see* Defence's Final Brief, paras 344-349) nor by the Prosecution (*see* Prosecution's Final Brief, para. 80).
[717] P-0547: T-051, p. 28; P-0986: T-065, pp. 35-36; P-0769: T-098, p. 65; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1544-1545, para. 13; P-0041's Statement, DAR-OTP-0206-0033-R02, at 0039, 0042, paras 22, 34; D-0026's Statement, DAR-OTP-0109-0111, at 0119, para. 43; P-1042's Report, DAR-OTP-0220-1623, at 1674, para. 130. The Chamber notes that the fact that the members of the Arab militias were considered to be *Janjaweed*, is not contested by the Defence (*see* Defence's Final Brief, paras 336-342, 349).
[718] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, para. 26; P-0120: T-036, p. 58; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1544-1545, para. 13; P-0547: T-052, p. 73; P-1042's Report, DAR-OTP-0220-1623, at 1674, para. 130.
[719] P-0643: T-058, pp. 7, 77. The Chamber notes that there are three different kinds of *emir*: the son of a sultan, the tribal leader, and the PDF commander (P-0643: T-058, pp. 77-79). The *Emir* as a tribal leader was a civilian position, not a military title (P-0643: T-058, pp. 7, 77-79), who was appointed by the tribes concerned (P-0643: T-058, p. 13. The Chamber notes that the Defence accepts that this meaning of the word '*emir*' was in use at the time relevant to the charges (*see* Defence's Final Brief, para. 295).
[720] *See* para. 274 *above*.
[721] P-0643: T-058, pp. 7, 9.

meaning 'colonel of colonels', managed and directed the *agids* of several tribes.[722] The *agid* was in charge of the warfare of the tribe and led a group of *Janjaweed*.[723]

326. Some of the leaders of the *Janjaweed* included Al-Dayf Samih ('Samih'),[724] Musa Abdulrahman,[725] Garang,[726] Musa Jalombo,[727] Musa Hilal,[728] Sandal,[729] *Umdah* Dawd Dahab,[730] *Umdah* Abdullah Dahab,[731] *Umdah* Husayn Sakin,[732] *Umdah* Abdullah Madhi,[733]

[722] P-0547: T-050, p. 38; P-0585: T-099, pp. 41, 57-58; P-0643: T-056, pp. 21-22; P-0984: T-066, p. 64; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0509-0510, para. 28. The Chamber notes that the term *agid al-ogada* is composed of *agid*, meaning colonel in Arabic, and *ogada*, which corresponds to its plural form (P-1042's Report, DAR-OTP-0220-1623, at 1646, para. 61). *Contra* Defence's Final Brief, para. 782. The Chamber notes the Defence's submission that the function of *agid al-ogada* was not one of 'coordination between people from different tribes', but was rather 'a tribal title of a person in charge of coordinating the *Agids* within a tribe' (*see* Defence's Final Brief, paras 288-296; Defence's Closing Statement: T-162, p. 49). To substantiate its allegation, the Defence relies upon the evidence of P-1042, D-0001, D-0003, D-0005, D-0023, D-0029, P-0012, P-0877 and P-0585. In respect of D-0001, D-0003, D-0005, D-0023 and D-0029, the Chamber recalls its concerns regarding their credibility and reliability (*see* the Chamber's assessment of the evidence of D-0001, D-0003, D-0005, D-0023 and D-0029, Annex B, Sections I.B.1, I.B.3, I.B.4, I.B.9, and I.B.12), and is therefore not persuaded that their evidence has any probative value in this regard. Whilst, as submitted by the Defence, P-1042 refers to the etymology of the terms *agid* (meaning 'commander') and *ugada* (the plural form of '*agid*'), the Chamber is not persuaded that this provides any basis for establishing that the 'authority of the *Agid-Al-Ogada* is limited to the coordination of the *Agids* of his tribe' (*see* Defence's Final Brief, para. 288). On this point, the Chamber notes that in addition to describing its etymology, P-1042 described the role of the *agid al-ogada* as 'a coordinator of lower level commanders' (P-1042's Report, DAR-OTP-0220-1623, at 1646, para. 61). P-1042 did not suggest, let alone state, that such role was limited to certain tribes. To the contrary, as pointed out by the Prosecution (Prosecution's Closing Statement: T-160, pp. 61-62), P-1042 stated that when irregular militia were formed at the time of the counter-insurgency, 'they [*i.e.* the GoS] would enlist wherever possible people who had prior military experience to organise and lead their forces' and that the tribe of that leader 'would not matter' (P-1042: T-029, pp. 22-23). Moreover, contrary to the Defence's submission (*see* Defence's Final Brief, para. 290), the Chamber considers that the evidence of P-0012, P-0877 and P-0585 rather supports the conclusion that the *agid al-ogada* was not necessarily limited to a role of coordination of *agids* of the same tribe. For the foregoing reasons, the Chamber rejects the Defence's submission on this point.

[723] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0509-0510, para. 28; P-0083's Statement, DAR-OTP-0110-0002-R02, at 0031, para. 114; P-0120: T-037, p. 55; P-0129: T-076, p. 20; P-0585: T-099, p. 41; P-0643: T-058, p. 79; P-0874: T-083, p. 77; P-0986: T-066, p. 15; P-1021: T-080, p. 31; P-1042: T-027, pp. 61-62; P-1042's Report, DAR-OTP-0220-1623, at 1646, para. 61.

[724] P-0029: T-029, p. 72; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302, paras 72, 74; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 34; P-0581's Statement, DAR-OTP-0216-0560-R02, at 0571, para. 54; Video, DAR-OTP-0124-0715, Translation, DAR-OTP-0219-2365, at 00:21:20 to 00:25:01. *See also* P-0015's Statement, DAR-OTP-0088-0187-R04, at 0192, para. 22; P-0816's Statement, DAR-OTP-0214-0721-R02, at 0727, para. 28; P-0984: T-067, p. 26.

[725] P-0581's Statement, DAR-OTP-0216-0560-R02, at 0563, para. 15; P-0581's Statement Corrections, DAR-OTP-0220-5656, at 5656, para. 1.

[726] P-0581's Statement, DAR-OTP-0216-0560-R02, at 0571, para. 55; Video, DAR-OTP-0124-0715, Translation, DAR-OTP-0219-2365, at 00:21:20 to 00:25:01; P-0984: T-067, p. 26.

[727] P-0984: T-067, p. 26.

[728] D-0036: T-153, p. 29. *See also* para. 333 *below*.

[729] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0727, para. 29.

[730] P-0878: T-078, p. 20; T-079, p. 87.

[731] P-0878: T-078, p. 20; T-079, p. 87.

[732] P-0878: T-078, p. 20; T-079, p. 87.

[733] P-0878: T-078, p. 20; T-079, p. 87.

Umdah Abakr;[734] Adam Meris, the brother of *Umdah* Abakr,[735] Issa Mardom,[736] Hassan Daloum,[737] Muhammad Adam Bonjouse ('Bonjouse')[738] and *Emir* Hessine Sayyid Al Helu.[739]

327. The *Janjaweed* wore a mix of military uniforms, regular clothes and *jallabiyas*,[740] and turbans or *kadamols*.[741] The *Janjaweed* were armed with Kalashnikovs and GIMs.[742]

328. The *Janjaweed* acted and participated in military operations at the Government's request and on its side, and collaborated with GoS Forces during military operations on an *ad hoc* basis.[743]

329. The mobilisation and arming of Arab tribes started after a meeting in September 2002.[744] This meeting, which gathered members of all Arab tribes in Darfur, was prompted by

[734] P-0878: T-078, p. 64.
[735] P-0029: T-029, p. 72; P-0878: T-078, p. 64.
[736] P-0029: T-029, p. 72; P-0878: T-078, p. 64.
[737] P-0878: T-078, p. 64.
[738] *See* para. 674 *below*.
[739] P-0643: T-058, pp. 77-78; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0040, para. 25; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0183, para. 70. *See* para. 672 *below*.
[740] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0066-0067, para. 26; P-0007: T-089, p. 32, *referring to* Photograph, DAR-D31-00000005, Translation, DAR-D31-00000007 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1); P-0011: T-091, p. 39; P-0029: T-029, p. 71; P-0085's Statement, DAR-OTP-0110-0054-R01, at 0062, para. 29; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1544-1545, para. 13; P-0671: T-099, p. 11; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302, para. 72; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0254, para. 25; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0320, para. 29; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 42; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0624, para. 17; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, para. 42; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, para. 27; P-1073: T-103, pp. 26-27; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26, *referring to* P-1074's Colour Chart, DAR-OTP-0224-0458.
[741] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0192, para. 22; P-0671: T-099, p. 11; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2008, para. 23; P-0718: T-049, p. 55 *see* Headress Board, DAR-OTP-0216-0584. According to P-0718 this turban is called *ima, see* P-0718: T-049, pp. 63-64; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302, para. 72; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0127-0128, paras 40, 42, *referring to* List, DAR-OTP-0210-0138; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0254, para. 26; P-0883's Extract of Statement, DAR-OTP-00000065, at 000007, para. 269; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0320, para. 29, *referring to* P-0922's Table, DAR-OTP-0222-0341-R01; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 42; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, para. 13, *referring to* Headdress Board, DAR-OTP-0220-0755-R01; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0444, para. 36; P-1073: T-103, p. 26; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26, *referring to* Colour Chart, DAR-OTP-0222-5037; P-1074: T-103, pp. 48-49.
[742] P-0029: T-029, pp. 44, 66, 71; T-031, pp. 23-24; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0154-0155, para. 102; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302, para. 72; P-0874: T-082, p. 37; P-0878: T-079, p. 62; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 42; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, para. 42; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26. *See also* P-0015's Statement, DAR-OTP-0088-0187-R04, at 0192, para. 22; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0624, para. 17.
[743] *See* paras 285-286 *above* and 396, 466-467, 555 *below*. *Contra* Defence's Final Brief, paras 313-314.
[744] P-0643: T-057, p. 80; Report, DAR-OTP-0095-0246, Translation, DAR-OTP-0153-1515, at 1517; P-0020: T-041, p. 85; P-0087's Statement, DAR-OTP-0133-0573-R02, at 0580, para. 27.

'security violations and tribal conflicts' and had, among its objectives, to eradicate 'tensions, malpractices and direct or indirect causes of security issues'.[745]

330. The GoS, exploiting existing tribal tensions,[746] used the *Janjaweed* to assist them in countering the rebels.[747] The *Janjaweed* had little training,[748] and would attack their enemy in 'an unexpected way'.[749] In the context of these joint operations in particular, the *Janjaweed* acted pursuant to instructions received from the GoS, through the *Janjaweed* leaders.[750] In the early stages of the conflict the *Janjaweed* used camels, horses, and donkeys as their mode of transport. The Government later provided them with more military equipment and they started using Land Cruisers and trucks mounted with a *DShK* on the back.[751] The PDF 'assisted' the *Janjaweed* in operations in 2003 and 2004, notably during the attacks on Bindisi, Mukjar, Tanako and Silik.[752]

331. During the period of the charges, the *Janjaweed* received funding, training and weapons from the GoS.[753]

332. The *Janjaweed* had camps in Korto and Al Mangaya (both in the vicinity of Garsila),[754] and near Mukjar.[755]

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[745] P-0643: T-058, p. 14; Report, DAR-OTP-0095-0246, Translation, DAR-OTP-0153-1515, at 1520.
[746] P-0020: T-041, p. 86; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1544, para. 12; P-0883: T-073, pp. 9-12.
[747] National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4651-4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795); P-0883: T-071, p. 14; T-072, p. 25; T-074, p. 37; P-0020: T-041, pp. 85, 87; P-0012: T-045, p. 67; P-1042's Report, DAR-OTP-0220-1623, at 1672-1673, para. 126; P-0935: T-090, pp. 10-11; P-0769: T-097, pp. 25-26; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0155, para. 107; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0039, para. 22; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0633, para. 54; D-0026's Statement, DAR-D31-00000279, at 0007, para. 33; P-1021: T-081, p. 89. *See also* P-0083's Statement, DAR-OTP-0110-0002, at 0041-0042, para. 173.
[748] P-0883: T-073, pp. 8-9; P-0874: T-083, p. 85; P-0905: T-085, p. 72; P-0935: T-090, p. 10; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 34. *See also* P-0015's Statement, DAR-OTP-0088-0187-R04, at 0192, para. 22; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0510, para. 29; D-0017's Statement, DAR-OTP-0088-0262-R01, at 0271, paras 47-49; P-0984: T-067, p. 27.
[749] P-0883: T-073, pp. 8-9.
[750] P-0547: T-050, p. 55; T-052, p. 75; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0512-0513, para. 40; P-0883: T-073, pp. 9-12. *See also* P-0087's Statement, DAR-OTP-0133-0573-R02, at 0614, para. 161; and paras 368-651 *below*.
[751] P-0883: T-073, pp. 8-9; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0154-0155, para. 102; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, para. 27.
[752] P-0883's Extract of Statement, DAR-OTP-00000065, at 000003-000004, para. 237; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0155, para. 107. *See also* para. 482 *below*.
[753] *See* Section 5.II.C.a).ii. The use of government resources to recruit, train, arm, and fund the Janjaweed *below*.
[754] P-0883: T-072, p. 26.
[755] P-0643: T-056, p. 29; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302, paras 72, 74; P-0720's Sketch, DAR-OTP-0210-0317; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0040, para. 27; P-0984: T-066, p. 44.

333. As a result of growing scrutiny by international organisations,[756] many *Janjaweed* were semi-regularised and gradually incorporated into the GoS Forces,[757] including the PDF,[758] the CRF,[759] the PPF,[760] the SAF,[761] and the Border Guards. The Border Guards, or 'Border Intelligence' Brigade, headed by Musa Hilal, was one of the irregular groups within the Arab militia which had been semi-formalised by the GoS.[762] As a result, it was at times difficult to distinguish between the *Janjaweed* and the GoS Forces, particularly the PDF.[763] Members of

[756] P-0874: T-083, pp. 79-80.
[757] P-0874: T-083, pp. 3-4, 78-80, 85; P-0769: T-097, p. 63; T-098, p. 64; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0040, para. 28; UNCOI Final Report, DAR-OTP-0209-0593, at 0625, 0627, paras 108, 116; National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4651-4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795); P-0547: T-050, p. 39; T-052, pp. 20-21; P-0769: T-097, p. 16; P-1042's Report, DAR-OTP-0220-1623, at 1658, para. 88(c); P-1042: T-028, pp. 28-29; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209, para. 71; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0575, para. 24 (admitted excerpt only); P-0116's Statement, DAR-OTP-0127-0318-R01, at 0343, para. 122. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0034, para. 127. *Contra* Prosecution's Closing Statement: T-160, p. 55 and Prosecution's Final Brief, para. 81.
[758] P-0878: T-078, pp. 11-12; P-0984: T-067, p. 24; P-0874: T-083, pp. 3-4, 79-80, 85; P-0986: T-065, pp. 36-38; P-0008's Statement, DAR-OTP-0088-0085-R02, at 0090, para. 18; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209, para. 71; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0574-0576, 0578-0580, paras 19, 24 (admitted excerpt only) 26, 37, 40, 42; P-0643: T-058, pp. 20-21; UNCOI Final Report, DAR-OTP-0209-0593, at 0625, 0627, paras 108, 116; P-0040's Statement, DAR-OTP-0094-0165-R02, at 0172-0173, paras 36, 40; P-0096's Statement, DAR-OTP-0113-0138-R02, at 0140, 0153, paras 9, 101; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0270-0271, para. 82; D-0017's Statement, DAR-D31-00000146, at 0006-0008, paras 23, 25-27, 32; P-0007: T-089, p. 32; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0302, paras 72, 73, 75.
[759] P-0547: T-050, pp. 48, 50; T-051, p. 27; P-0769: T-097, pp. 16, 65- 66, *referring to* National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648; National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4651-4652 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795). *See also* P-0874's Statement, DAR-OTP-00000221, at 000002, para. 9.
[760] D-0017's Statements, DAR-OTP-0088-0262-R01, at 0274, para. 71; DAR-D31-00000146, at 0008, para. 32.
[761] P-0935: T-090, p. 10; P-0547: T-052, pp. 70-71; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0212, para. 97; UNCOI Final Report, DAR-OTP-0209-0593, at 0625, 0627, paras 108, 116.
[762] P-0769: T-097, p. 65, *referring to* National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795); UNCOI Final Report, DAR-OTP-0209-0593, at 0625, para. 108; P-1042's Report, DAR-OTP-0220-1623, at 1672-1673, para. 126; P-1042: T-027, pp. 80-81; P-0120: T-036, p. 54; P-0547: T-052, p. 70; D-0017's Statement, DAR-D31-00000146-0001, at 0008, para. 30; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0213, paras 101-102. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0034, para. 127. The Border Guards are described in the evidence as Arab nomad herders who were armed by the Government to end the Rebellion (P-0883: T-073, pp. 56, 58-59). They replaced a former group previously also called 'Border Guards' but which was disassembled (D-0016: T-131, pp. 24-25; *see also* P-0883: T-073, pp. 55, 58-59). The Border Guards were also called 'Rapid Support Forces' (P-0986: T-065, pp. 35-36; P-0935: T-090, p. 65; *see also* P-0883's Extract of Statement, DAR-OTP-00000065, at 000003-000004, paras 247-248). The Border Guards were reporting to the NISS and worked closely with the SAF (P-0883: T-073, p. 56; P-1042's Report, DAR-OTP-0220-1623, at 1673, para. 28). The Border Guards were considered as *Janjaweed* (P-0120: T-036, p. 55; P-0905: T-085, p. 72; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0450-0451, para. 64; P-0986: T-065, pp. 35-36; P-0883: T-073, p. 56; P-0120's Statement, DAR-OTP-0124-0816-R02, at 0821, para. 26; P-0935: T-090, p. 64; P-0935: T-090, p. 65). The Border Guard forces had a strong presence in the Wadi Salih area (P-0986's Statement, DAR-OTP-0222-0437-R01, at 0450-0451, para. 64; *see also* P-0883's Extract of Statement, DAR-OTP-00000065, at 000005, para. 250).
[763] *See for example* P-0892's Statement, DAR-OTP-0217-0384-R02, at 0393, para. 45; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0041, para. 133; P-0874's Statement, DAR-OTP-00000221, at 000002, para. 9; P-1042's Report, DAR-OTP-0220-1623, at 1670, para. 118; P-0883: T-071, pp. 40-41; P-0905: T-085, p. 67; D-0036:

the *Janjaweed* subsequently received a salary,[764] and monetary compensation in case of death or injury on the battlefield.[765] They were also provided with weapons,[766] uniforms,[767] and ID cards,[768] and training camps were opened.[769]

b) Opposing forces

334. At the material time, two main groups – namely, the SLM/A and the JEM – opposed the GoS Forces.[770]

335. On 14 March 2003, the Darfur Liberation Front announced its transformation into the SLM/A.[771] In a declaration issued that same day, the SLM/A presented itself as a political movement and 'army' representing the 'popular resistance' from marginalised areas, in response to the 'ethnic and tribal wars, with the governments in Khartoum providing military assistance to some Arab tribes and organizations to fight against their non-Arab brethren'.[772] They added that 'brutal oppression, ethnic cleansing and genocide sponsored by the Khartoum Government left the people of Darfur with no other option but to resort to popular political and military resistance for purposes of survival'.[773] The SLM/A was divided into a political wing,

T-153, pp. 45-46; P-0040's Statement, DAR-OTP-0094-0165-R02, at 0172, para. 36; P-0736's Statement, DAR-OTP-0210-0248, at 0270-0271, para. 82. *See* paras 342-343 *below*. The Chamber notes that the Defence accepts that the 'Popular Defence Forces were generally perceived to be Janjaweed' (Defence's Closing Statement: T-162, p. 42).

[764] P-0874: T-083, pp. 79-80; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0578-0580, paras 36, 42; D-0017's Statement, DAR-D31-00000146, at 0008, para. 29.

[765] D-0017's Statements, DAR-OTP-0088-0262-R01, at 0274, para. 68; DAR-D31-00000146, at 0008, paras 26, 29, 32; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0578-0579, para. 37.

[766] P-0874: T-083, pp. 79-80; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0154-0155, para. 102; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0578-0580, paras 36, 42.

[767] P-0725's Statement, DAR-OTP-0210-0122-R02, at 0127, paras 40-41, *referring to* Lists, DAR-OTP-0210-0138, DAR-OTP-0210-0139; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0578-0580, para. 42.

[768] P-0954's Statement, DAR-OTP-0221-0571-R01, at 0579-0580, para. 42.

[769] P-0874: T-083, pp. 79-80; P-0878: T-077, p. 65; D-0017's Statement, DAR-OTP-0088-0262-R01, at 0274, para. 68; UNCOI Final Report, DAR-OTP-0209-0593, at 0625, 0627, paras 108, 116. *See* para. 343 *below*.

[770] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 3. *See also* UNCOI Final Report, DAR-OTP-0209-0593, at 0618-0619, para. 75. The report is the outcome of 'on the ground' investigations in Darfur during the relevant time, and clearly indicates the methodology of information collection and the sources for the facts on this point. The Chamber further notes that, in its Final Brief, the Defence relied upon the findings made in the report (*see* Defence's Final Brief, paras 316-317, 349, 543, 674). The Chamber is therefore satisfied that the report is reliable and probative on this discrete point. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 24-25. *See further* Ceasefire Agreement, DAR-OTP-0171-0579, at 0579-0580.

[771] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 12. *See also* UNCOI Final Report, DAR-OTP-0209-0593, at 0629, para. 127; SLM/SLA Press Release, DAR-OTP-0118-1135, at 1135. Noting that the Defence did not object to this item of evidence, the Chamber finds this press release reliable and probative on this discrete point.

[772] SLM/SLA Press Release, DAR-OTP-0118-1135, at 1135.

[773] SLM/SLA Press Release, DAR-OTP-0118-1135, at 1135.

the 'Movement', and a military wing, the 'Army'.[774] From at least April 2003 until at least April 2004, Abd-Al-Wahid Muhammad Nur and Minnie Arkawi Minawi were the leaders of the SLM/A.[775]

336. In or around August 2001, the JEM was founded as a political movement,[776] and had an armed wing from at least April 2003 until at least April 2004. The JEM's Chairperson was Dr Khalil Ibrahim.[777]

337. The rebels recruited members from different non-Arab tribes, mainly from the Fur, Zaghawa and Masalit tribes.[778] However, the traditional authorities of those tribes were not involved in deciding whether their members would join the rebels.[779] New recruits received military training.[780] Some members of the rebels wore uniforms while others did not.[781] They nonetheless carried weapons and used Land Cruiser type vehicles.[782] The rebels had armed presence in localities including Sindu, Jebel Marra, Garsila, and Silik.[783] Their presence was

[774] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 13. *See also* UNCOI Final Report, DAR-OTP-0209-0593, at 0630, para. 131; SLM/SLA Press release, DAR-OTP-0118-1135, at 1135.
[775] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 14. *See also* P-0769: T-097, p. 25; UNCOI Final Report, DAR-OTP-0209-0593, at 0630, para. 131.
[776] First Joint Submission on Agreed Facts, Annex A, Agreed Fact 15.
[777] First Joint Submission on Agreed Facts, Annex A, Agreed Facts 16-17; P-0769: T-097, p. 26; UNCOI Final Report, DAR-OTP-0209-0593, at 0631, para. 134.
[778] P-0935: T-090, p. 59; P-1042: T-029, p. 10; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0526, para. 105; P-0087's Statement, DAR-OTP-0133-0573-R02, at 0577, para. 14; P-0020's Statement, DAR-OTP-0095-0002-R02, at 0014, para. 44; P-1042's Report, DAR-OTP-0220-1623, at 1671, para. 120. *See further* UNCOI Final Report, DAR-OTP-0209-0593, at 0629, 0631, paras 127, 136. *See also* CLRV's Final Brief, paras 124-125. The Chamber notes that the Defence submits that the rebels also recruited among members of the 'self-defence groups', stating that those groups 'most often fought on the side of the rebellion' and were 'largely called upon to join in the SLA' (*see* Defence's Final Brief, para. 350). The Chamber finds that the evidence referred to by the Defence does not sustain this allegation (*see* Defence's Final Brief, para. 350, *referring to* P-1042: T-028, p. 40). Since this is the only way the Defence is broadly linking the presence of self-defence militia to the three attacks forming the basis of the charges, the Chamber sees no reason to entertain the rest of its arguments in this regard (*see* Defence's Final Brief, paras 350-351).
[779] P-1042: T-028, p. 89. *See* CRLV's Final Brief, para. 125.
[780] P-0584: T-092, p. 33; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1558-1559, paras 66, 70; P-0816's Statement, DAR-OTP-0214-0721-R02, at 0725, para. 21.
[781] P-0905: T-088, pp. 26-27; P-0584: T-092, p. 34; P-0547: T-052, p. 66; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0034, para. 49. *Contra* Defence's Final Brief, para. 308.
[782] P-0584: T-092, p. 34; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0273, para. 92; P-1042's Report, DAR-OTP-0220-1623, at 1671, para. 120. Bearing this evidence in mind, the Chamber rejects the Defence's blank statement that '[t]he SLM/A rebellion did not wear uniform and did not distinguish from the rest of the Fur population' (*see* Defence's Final Brief, para. 308). In addition, the Chamber finds that the Defence misrepresents the testimonies of witnesses P-0547, P-0877 and P-1042 referred to in support of its argument (*see* Defence's Final Brief, para. 308).
[783] P-0883: T-071, pp. 10-11; P-0643: T-058, p. 52; P-0935: T-090, p. 10; P-0905: T-085, pp. 80-82; P-0026's Statement, DAR-OTP-0095-0151-R02, at 0178, para. 142; P-0918's Statement, DAR-OTP-0218-0120-R04, at 0130, para. 37; P-0769: T-097, p. 27; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0067, para. 52; P-0020's Statement, DAR-OTP-0095-0002-R02, at 0031, para. 123; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1559, para. 69. *See* CLRV's Final Brief, para. 148.

also reported in other villages, mainly in isolated mountainous areas.[784] It is estimated that by the end of 2003, the SLM/A had between 6,000 and 7,000 fighters while the JEM had nearly 1,000.[785] It was difficult to distinguish members of the two groups in the field.[786]

338. The Defence refers to the Fur 'self-defence groups' as the 'final category of protagonists of the armed conflict', which it alleges, 'most often fought on the side of the Rebellion'.[787] The Chamber is satisfied that on the basis on the evidence, the only conclusion that can be drawn is that those groups of armed men, formed in the villages, had a very local and circumscribed agenda: they were created, in some cases decades before the charged events,[788] to defend their own villages from the attacks and lootings by the *Janjaweed*, who wanted to steal their cattle.[789] Therefore, the Chamber is satisfied that the evidence referred to by the Defence does not support its contention. Indeed, the Chamber is satisfied that according to P-1042, the villagers were not even 'organized' in the sense of 'something that is formalised and registered' but rather as 'a crowd of adult men who are armed and are mobilizing themselves'.[790] They were armed with rifles but also at times only with sticks and swords.[791]

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[784] P-0020's Statement, DAR-OTP-0095-0002-R02, at 0031, para. 123; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0067, para. 52; P-0087's Statement, DAR-OTP-0133-0573-R02, at 0613, para. 158; P-0547: T-052, p. 67; P-0581: T-064, p. 38; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1559, para. 70; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0273, para. 92; P-1042: T-028, p. 94. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0039, para. 160.

[785] P-1042's Report, DAR-OTP-0220-1623, at 1671, para. 122.

[786] P-1042's Report, DAR-OTP-0220-1623, at 1671, para. 120; P-0547: T-052, p. 67; P-0877: T-055, p. 35. *See also* UNCOI Final Report, DAR-OTP-0209-0593, at 0631, para. 133.

[787] Defence's Final Brief, paras 350-351. The Chamber notes that the Defence contends that, as a general rule, self-defence groups 'fought on the side of the Rebellion'. In this respect, the Chamber in particular rejects the Defence's submissions that P-1042, in his testimony, meant that the self-defence groups 'took up arms against the GoS' (Defence's Final Brief, para. 350, *referring to* P-1042: T-029, p. 9). The Chamber notes the evidence of P-1042, according to whom '[t]here [was] a blurry line between the village defence militia and the regular forces'. P-1042 stated that it is a 'reasonable supposition' that 'village defence militias may, from time to time, join together with the more regular forces to support a specific attack'. However, he also stated that the attacks he was aware of all involved 'the regular forces of the rebels', meaning the SLM/A and the JEM, and not the self-defence groups (P-1042: T-029, pp. 6-7). P-1042 also conceded the limits of his knowledge concerning the nature of 'the defence in villages' (P-1042: T-029, pp. 34-35). The Chamber notes that P-0617 stated that he first thought that there was a group made of 'volunteers to protect their villages'. He later realised that they were linked to the rebels. The Chamber finds that this has to be put in balance with the rest of the evidence according to which the self-defence groups existed to defend their villages in case of attacks (*see* Defence's Final Brief, para. 350, *referring to* P-0617's Statement, DAR-OTP-0202-1496-R02, at 1520, para. 70). In this respect, *see* the evidence referred to in fn. 553 *above*.

[788] These groups were also known as *agada* led by *agid*, who generally was a person with previous military experience. *See* P-0026's Statement, DAR-OTP-0095-0151-R02, at 0176, para. 127; P-1042: T-028, pp. 39-40; P-1042: T-029, pp. 6, 22.

[789] P-1042: T-029, pp. 5, 12; P-0120's Statement, DAR-OTP-0124-0816-R02, at 0820-0821, para. 22; P-0120: T-036, pp. 56-57; T-037, pp. 23-24; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1520, para. 70; P-0026's Statement, DAR-OTP-0095-0151-R02, at 0176, paras 127-128; P-0720: T-043, p. 9; P-0119: T-038, p. 49. *See also* CLRV's Final Brief, paras 133-135.

[790] P-1042: T-029, pp. 11-12.

[791] P-0029: T-030, pp. 90-91; P-0905: T-086, pp. 75-76, 81. *See also* P-0119: T-038, p. 49.

D. The use of government resources to recruit, train, arm, and fund the Janjaweed

339. In its counter-insurgency efforts, the GoS selectively recruited and armed members of Arab tribes.[792] Indeed, during the period of the charges, calls to join the GoS Forces were discriminatory and based on one's 'ethnic belonging' to these tribes.[793] The *Mujahidin* Committee in Wadi Salih and the SAF in Garsila provided weapons exclusively to members of Arab tribes.[794] Governmental authorities at the locality and state levels received complaints from members of non-Arab tribes regarding the distribution of weapons 'on an ethnic basis'.[795] Moreover, members of non-Arab tribes were dismissed or excluded from public service, including from the SAF, Police and NISS.[796] Their requests for weapons were denied by GoS officials at the SAF base in Garsila.[797]

340. GoS officials participated in the recruitment, training, arming, funding, and distribution of supplies to the *Janjaweed*. Senior GoS officials, including Ministers Hussein and Harun,

[792] P-0954's Statement, DAR-OTP-0221-0571-R01, at 0574, para. 20; P-0883: T-071, p. 35; P-0120's Statement, DAR-OTP-0124-0816-R02, at 0821-0823, paras 27, 31; P-0120: T-036, p. 57; T-037, pp. 26, 28; P-0712: T-036, pp. 20-21; P-0011: T-091, pp. 14-15; P-0008's Statement, DAR-OTP-0088-0085-R02, at 0089, para. 15; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0338-0340, paras 103, 110; P-0643: T-056, pp. 34-35, 55, 77; T-058, p. 63; P-0020: T-042, pp. 24-25; P-0087's Statement, DAR-OTP-0222-0631-R01, at 0648, para. 131; P-1042's Report, DAR-OTP-0220-1623, at 1673, para. 129; UNCOI Final Report, DAR-OTP-0209-0593, at 0616, para. 68; P-0547: T-052, pp. 71-72; D-0017's Statement, DAR-D31-00000146, at 0006-0007, para. 24. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0032, 0035-0036, paras 118, 132, 138; P-0585: T-099, pp. 60-61; T-101, p. 35; T-102, pp. 23-26. The Chamber notes that 291 Fur policemen graduated in Mukjar in February 2004 (*see* P-0913's Statement, DAR-OTP-0218-0021-R04, at 0031-0032, paras 69-73; P-0913's Statement Corrections, DAR-OTP-00000012, at 000002, paras 17-18; P-0913: T-069, pp. 40-41; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0301, para. 66). The Chamber further notes that the Fur men that graduated during that ceremony had been forcibly recruited into the PPF (*see* P-0913's Statement, DAR-OTP-0218-0021-R04, at 0030-0031, paras 62-64; P-0913's Statement Corrections, DAR-OTP-00000012, at 000002, paras 17, 19). The Chamber nonetheless considers that this one instance of forced recruitment of Fur men does not detract from the overall tenor of the evidence establishing that the Sudanese government selectively recruited and armed members of Arab tribes. Importantly, the Chamber notes that the recruitment of these Fur men is consistent with one of the objectives of the Emergency Plan forces, of non-Arab elements, into the Armed Forces system and the other regular forces to disprove ethnic cleansing and genocide accusations (National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648, at 4651 (Duplicate version: National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795)).

[793] P-0020: T-042, pp. 24-25; P-1042's Report, DAR-OTP-0220-1623, at 1673, para. 129; UNCOI Final Report, DAR-OTP-0209-0593, at 0616, para. 68; P-0547: T-052, pp. 71-72; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0574, para. 20; D-0017's Statement, DAR-D31-00000146, at 0006-0007, para. 24.

[794] P-0643: T-056, pp. 31-32, 55; P-0883: T-071, p. 35; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0338-0340, paras 103, 110.

[795] P-0087's Statement, DAR-OTP-0222-0631-R01, at 0648, para. 131; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0338-0340, paras 103, 110; P-0120's Statement, DAR-OTP-0124-0816-R02, at 0821-0823, paras 27, 31; P-0120: T-036, p. 57; T-037, pp. 26, 28; P-0643: T-056, pp. 34-35, 55, 77; T-058, p. 63. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0032, 0035-0036, paras 118, 132, 138.

[796] P-0547: T-051, pp. 5-6; T-052, pp. 58, 77.

[797] P-0643: T-056, pp. 31-32, 55; P-0883: T-071, p. 35; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0338-0340, paras 103, 110.

publicly acknowledged the GoS' support to the *Janjaweed*.[798] P-0878 heard Minister Harun telling a crowd of *Janjaweed*: 'You have […] stood by the side of the government, you have supported the government, and you have supported the armed forces. This is why, today, you are our forces and you are considered, as of today, governmental forces. We would train you. We would organise camps for you, for training. We would provide you with weapons and we would be giving you wages, or salaries, and we would also be feeding your horses.'[799]

341. Arab tribal leaders, such as *sheikhs*, *umdahs* and *agids*,[800] also assisted in some of these efforts, particularly in the recruitment and arming of the *Janjaweed*.[801] *Janjaweed* leaders like Musa Hilal[802] and **the Accused**[803] provided such assistance.

342. In early 2002, members of Arab tribes were recruited through the PDF.[804] When fighting in Darfur increased, members of these tribes were also recruited into the SAF, CRF, NISS and the PPF.[805] Between March 2003 and November 2004,[806] the State Security Committee of West Darfur ordered the mobilisation and deployment of large numbers of *Janjaweed* to units of the GoS Forces across West Darfur, which included the Police, the SAF, PDF and the PPF.[807] One such decision resulted in the creation of a Mobilisation Committee for Wadi Salih Locality,[808] which was tasked with mobilising the *Janjaweed* to fight the rebels.[809] Arab tribal leaders participated in meetings of the State Security Committee of West

[798] P-0878: T-077, p. 65; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0613, para. 59; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0518, para. 65; P-0029: T-029, pp. 47-48; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0047, para. 53.
[799] P-0878: T-077, p. 65.
[800] On the different kinds of tribal leaders, *see* para. 325 *above*. *See also* P-0643: T-058, p. 7.
[801] P-0643: T-056, p. 54; T-057, pp. 80-81; T-058, p. 9; P-0883: T-071, pp. 27-28; T-072, p. 66; P-0011: T-091, p. 14; P-1042's Report, DAR-OTP-0220-1623, at 1673, para. 129; D-0017's Statement, DAR-D31-00000146, at 0006-0007, para. 24; P-0547: T-050, p. 40; P-0020: T-042, pp. 24-25; P-0769: T-097, p. 28; UNCOI Final Report, DAR-OTP-0209-0593, at 0616, para. 68; P-0905: T-085, p. 44; P-0011: T-091, pp. 14-15; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0325, para. 29; Decisions of the State's Security Committee, DAR-OTP-0034-0260, Translation, DAR-OTP-0219-8825, at 8835, no. 1 (14/8/2003).
[802] P-0547: T-052, p. 19.
[803] P-0547: T-052, p. 19. *See also* paras 669-672 *below*.
[804] P-0547: T-050, p. 39.
[805] P-0547: T-050, pp. 39-40; T-052, pp. 20-21; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0324, 0350, paras 28, 163; P-1021: T-080, p. 26; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0212, para. 96; P-0119: T-038, pp. 61-62; D-0017's Statements, DAR-OTP-0088-0262-R01, at 0274, para. 71; DAR-D31-00000146, at 0008, para. 32.
[806] *See* para. 285 and fn. 571 *above*.
[807] Decisions of the State's Security Committee, DAR-OTP-0034-0260, Translation, DAR-OTP-0219-8825, at 8827, no. 1, 8830, no. 7, 8833, no. 4 (2/8/2003), 8834, no. 1 (4/8/2003), 8835, no. 1 (14/8/2003), 8842, no. 1 (29/1/2004), 8843, no. 1 (02/1/2004), 8844, no. 4, 8847, no. 1, 8849, no. 5. On this point, the Chamber notes that State Security Committees could resort to security forces. *See for example* P-0643: T-058, pp. 32-33, 40.
[808] P-0643: T-056, p. 17, *referring to* Decisions of the State's Security Committee, DAR-OTP-0034-0260, Translation, DAR-OTP-0219-8825, at 8833, no. 4 (2/8/2003).
[809] P-0643: T-056, p. 18.

Darfur and/or were tasked with implementing its decisions.[810]

343. PDF coordinators were in charge of the selection and recruitment of *Janjaweed* into the PDF.[811] Regular SAF personnel were seconded to the PDF in order to train the *Janjaweed* in West Darfur.[812] Training was conducted in Mukjar, Khartoum, Al Geneina, and the 'Jiebat camp'.[813] Recruits were trained in the use of heavy weapons, such as RPGs, Goryunov, *DShK*, and Katyushas,[814] and were briefed on their '*jihad* duties'.[815]

344. SAF (including Military Intelligence), CRF and PDF officers also participated in the distribution of weapons, including by overseeing, storing and handing them over to the *Janjaweed*.[816] Weapons and ammunition, such as Goryunovs and Kalashnikovs, were distributed.[817] For example, between August 2003 and March 2004, on a regular basis, aircraft originating from Khartoum delivered boxes with weapons to different locations in Mukjar.[818] In early 2004, the delivery of such weapons increased significantly.[819] Weapons arriving in these aircraft were received by the GoS Forces, who then provided them to the *Janjaweed*.[820]

345. In addition, PDF coordinators, including Solonga and Hassaballah, disbursed salaries

[810] Decisions of the State's Security Committee, DAR-OTP-0034-0260, Translation, DAR-OTP-0219-8825, at 8835, no. 1 (14/8/2003), 8839, no. 3 (3/11/2003), 8840, no. 5 (8/11/2003), 8843, no. 1 (02/1/2004).
[811] *See* para. 307 *above*.
[812] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0350, para. 163; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0576, para. 27.
[813] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0350, para. 163; P-0984: T-066, p. 44; P-1021: T-080, p. 25.
[814] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0350, para. 163.
[815] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0350, para. 165. P-0116 commented that in the sermons given to the *Janjaweed* on their '*jihad* duties', African tribes were depicted as infidels, despite being fellow Muslims, because they had rebelled against the will of the Government.
[816] P-0883: T-071, pp. 27-29, 33-34; T-072, pp. 68-69; P-0905: T-085, pp. 44-45; P-0643: T-056, pp. 54-55; T-057, pp. 80-81; P-0874: T-082, pp. 43-44; P-0984: T-066, p. 45; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 40; P-1042's Report, DAR-OTP-0220-1623, at 1671, para. 122. *See* paras 458-459 *below*.
[817] P-0883: T-071, pp. 28-29. *See also* fn. 820 *below*.
[818] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, paras 75-76; P-0913: T-069, pp. 16-18, 57-58; T-070, p. 5; P-0020's Statement, DAR-OTP-0095-0002-R02, at 0021-0022, paras 75, 76; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0516, para. 58; P-0029: T-030, pp. 23-25; P-0029: T-031, p. 36; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0331, para. 78; P-0874: T-082, pp. 43-44; P-0874: T-082, p. 45; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 40; P-0757's Statement, DAR-OTP-0211-0003-R02, at 0018, para. 58. *See also* paras 458-463 *below*.
[819] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0516, para. 59.
[820] P-0883: T-071, pp. 28-29; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0515-0516, paras 55, 57; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0331, para. 78; P-0874: T-082, p. 46; P-0020's Statement, DAR-OTP-0095-0002-R02, at 0021-0022, paras 75, 76.

to the *Janjaweed*[821] through Arab leaders.[822] Salaries were frequently transferred from the Ministry of Defence and the Ministry of Interior to the *Janjaweed*.[823] Grain and money were also provided to the *Janjaweed* through regional *zakat* offices.[824]

346. GoS officials also provided supplies to the *Janjaweed* such as uniforms and equipment, ID cards, weapons, ammunitions, and food for their horses. This took place on government premises, including the *muhafiz*, the *zakat* office, the CRF and PDF bases.[825]

347. The *Janjaweed* received other benefits from the Government,[826] such as medical treatment,[827] compensation for death and injury, and confiscated lands,[828] and had access to GoS Forces' bases for their armed operations, including the police station in Bindisi, and the PDF and SAF bases in Garsila.[829]

348. It was widely known that the *Janjaweed*, and other paramilitary forces like the PDF, were more likely to commit crimes (like killing and raping women, looting and burning villages) than regular forces, whose actions were governed by law.[830]

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[821] P-0984: T-066, p. 45; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 40; P-0877: T-053, pp. 75-76; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 61; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 4711, paras 15, 16. *See also* para. 460 *below*.
[822] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 61; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 4711, para. 16; P-0547: T-052, pp. 5-6; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0212, para. 97; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0331-0332, para. 65; UNCOI Final Report, DAR-OTP-0209-0593, at 0616, para. 68. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0030, para. 112.
[823] P-0547: T-052, pp. 86-87; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0212, para. 97; P-1021: T-080, pp. 35-36; T-081, p. 90; P-0116's Statement, DAR-OTP-0123-0039-R01, at 0048, para. 46; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0578, para. 36.
[824] P-0922's Statement, DAR-OTP-0222-0312-R01, at 0316-0317, 0319-0320, paras 17, 27, 29; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0506-0508, paras 15, 18, 19; P-0878: T-078, p. 21. On the meaning of a '*zakat* office', *see* para. 375 *below*.
[825] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 60; P-0922's Statement, DAR-OTP-0222-0312, at 0331, para. 79; P-0119's Statement, DAR-OTP-0124-0196-R03, at 0212, paras 93-95; P-0954's Statement, DAR-OTP-0221-0571-R01, at 0579-0580, para. 42; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0155, para. 104; P-0096's Statement, DAR-OTP-0113-0138-R02, at 0152, para. 94; P-0883: T-071, pp. 27-28; P-1021: T-081, p. 89; P-0905: T-085, p. 47; P-0874: T-082, p. 43; P-0643: T-056, pp. 34-35, 55, 77; P-0643: T-058, p. 63; P-0547: T-052, p. 86; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, para. 75; P-0878: T-077, p. 65; D-0026's Statement, DAR-OTP-0109-0111-R01, at 0119, para. 45. *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0036, para. 138. *See* para. 461 *below*.
[826] P-0020: T-042, pp. 27-28.
[827] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0351, para. 168.
[828] *See* para. 333. *See also* P-0954's Statement, DAR-OTP-0221-0571-R01, at 0578, para. 37.
[829] P-0712's Statement, DAR-OTP-0209-1884-R04, at 1888, para. 17; P-0935: T-090, pp. 14, 17-18; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0270-0271, para. 82; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0064-0066, paras 38-41, 45.
[830] P-0020: T-041, pp. 81-82; P-0883: T-073, pp. 9-12; P-1042: T-028, pp. 3-4; P-0547: T-051, pp. 6-7; T-052, pp. 60-62, 74; Decisions of the State's Security Committee, DAR-OTP-0034-0260, Translation, DAR-OTP-0219-

E. Public speeches by GoS officials and Janjaweed leaders

349. Between at least August 2003[831] and March 2004,[832] senior GoS officials travelled throughout West Darfur holding preparatory meetings and giving speeches to promote and encourage attacks by the *Janjaweed* and GoS Forces on towns and villages.

350. Minister Harun, in particular, frequently visited the *Janjaweed* and GoS Forces in the Wadi Salih region, including in the Garsila, Al Geneina, and Mukjar localities.[833] He usually travelled to these localities by helicopter.[834] He organised meetings to discuss the mobilisation of the *Janjaweed*.[835] As part of these efforts, he met with members of the GoS Forces[836] and **the Accused**.[837]

351. P-0020 was present during a PDF graduation ceremony in Kass held on 23 July 2003, where Minister Harun told the audience that there was a need 'to teach the rebels a lesson', that the conscripts had to do the 'remaining cleaning job' and that he had provided 'enough soap', which the witness understood as referring to arms and funding.[838] P-0020's interpretation of the speech was that Minister Harun had given 'full authorisation for destruction', and P-0020 added that '[a]fter this meeting the whole area was attacked'.[839]

352. In early August 2003, P-0916 saw and heard Minister Harun give a speech in which he stated 'wipe out and sweep away the Fur do not keep anyone alive'.[840] The witness added that

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8825, at 8839 (Task Geneina's commissioner with inviting *Umdah* Ya'qub Muni and instructing him to take action and work on finding solutions to curb the behaviour of the *fursan*). *See also* P-0083's Statement, DAR-OTP-0110-0002-R02, at 0041, para. 172.

[831] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0613, paras 55, 58-59. *See also* P-0922's Statements, DAR-OTP-0220-2864-R01, at 2871-2872, paras 46-50; DAR-OTP-0222-0312-R01, at 0316, 0321, paras 16, 37 (related to the date of the attack and to the approximate time of his release from detention).

[832] *See* paras 516-519 *below*.

[833] P-0120: T-037, p. 39; P-0883: T-071, pp. 36-37; P-0120's Statement, DAR-OTP-0124-0816-R01, at 0824, paras 34-35; P-1021: T-080, p. 36; P-0984: T-066, p. 60; P-0877: T-053, p. 79; P-0643: T-057, pp. 81-82. *See also* paras 381-386 *below*.

[834] P-1021: T-080, p. 36; P-0984: T-066, p. 60; P-0877: T-053, p. 79; P-0892's Statement, DAR-OTP-0217-0384-R01, at 0397, para. 62; P-0883: T-071, p. 37.

[835] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0324-0325, 0338-0339, paras 28-29, 103.

[836] P-0878: T-077, p. 63; T-078, p. 10.

[837] P-0878: T-078, p. 8. *See also* P-0643: T-056, p. 41.

[838] P-0020's Statement, DAR-OTP-0095-0002-R02, at 0020-0021, paras 69-71.

[839] P-0020's Statement, DAR-OTP-0095-0002-R02, at 0021-0022, para. 71.

[840] P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, paras 39-40. *See* paras 381-391 *below*. *See also* Minister Harun using these terms while addressing troops in 2012 in Videos, DAR-OTP-0193-0530, Transcript, DAR-OTP-0219-9258, Translation, DAR-OTP-0219-9344, at 9346-9347. (This is a clip from a broadcast of Al Jazeera news channel. The video is clear and no specific objections were made in relation to what it depicts and its audio content. The Chamber is therefore satisfied that the video and its contents are reliable and probative. *See* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 93-94).

following the speech, Minister Harun left by helicopter, and 'the attacks started' and 'Kushayb and his men started looting'.[841]

353. P-0932 saw Minister Harun in August 2003 giving a speech near the intermediary school located north of Mukjar which was attended by 'many' *Janjaweed* and senior government officials, such as Abdullah Al-Tayyib Muhammad Torshein ('Torshein'), the *mu'tamid* or commissioner of Mukjar, and Minister Hussein.[842] He heard Minister Harun telling them: 'at this instant, you deliver this land to us with not a single Fur on it' and claiming that if an Arab kills a Fur 'then he will have killed a [*Kafir*] [non believer]' and if he takes their money then it is 'a war gain for the Arabs'.[843]

354. As described in more detail below, on or around 9 August 2003, **the Accused** addressed a crowd of *Janjaweed* and their leaders in Mukjar and said, 'on behalf of the *Janjaweed*', that 'the *Janjaweed* were there to defend the property of the government and that they were alongside the armed forces'.[844] Minister Harun told the crowd to 'wipe out and sweep away the Fur do not keep anyone alive'.[845] In his speech, Minister Harun referred to the Fur as *ghanima* and said that the Fur and their money were war booty or a 'prize' for the *Janjaweed*.[846] He added that the people of Mukjar must return the 'property of the State' that has been looted by their 'children' and that, if they did not return the property, 'you will be looted, you will be killed, you will be raped'.[847] Ali Karti also gave a speech on that occasion, and said that the *Janjaweed* were 'part of the PDF', and that the GoS would train them, and give them weapons, wages and other assistance.[848]

355. P-0757 recalled Minister Harun's speech in front of Mukjar police station in mid-August 2003, in which he reiterated before several soldiers that 'all the assets and belongings

[841] P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, paras 39-40. *See* para. 381 *below*.
[842] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0613, paras 58-59. The Chamber notes that P-0932 describes Minister Hussein as the 'Minister of Defence', while it is an agreed fact between the Parties that Minister Hussein was the Minister of Interior '[b]etween at least August 2003 and at least April 2004' (*see* Second Joint Submission on Agreed Facts, Annex A, Agreed Fact 6). It is noted that other pieces of evidence (P-0883's Statement, DAR-OTP-0218-0059, at 0101, para. 226; Letter, DAR-OTP-0200-0054-R02) suggest that Minister Hussein might have also held the position of Minister of Defence at some point in time. The Chamber considers that this would explain why P-0932 referred to him as Minister of Defence, and considers that it does not affect his credibility.
[843] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0613, paras 59, 61.
[844] *See* para. 383 *below*.
[845] *See* para. 386 *below*.
[846] *See* para. 386 *below*.
[847] *See* para. 387 *below*.
[848] *See* para. 388 *below*.

of that Fur people can be considered our prize'.[849] The witness interpreted Minister Harun's speech as an indication to remove the Fur from Mukjar.[850]

356. P-0020 provided evidence that President Al-Bashir gave a speech during a meeting at his residence in Khartoum at the end of 2003, attended by several senior GoS officials, such as Minister Hussein,[851] 22 members of the Sudan National Assembly, and the head of the Western Command.[852] P-0020 gave evidence that during this meeting, President Al-Bashir stated that as the 'supreme commander of the armed forces', he had issued his orders that 'no stone, no trees, no plant, no human beings [would] be left safe and that he [did not] want any prisoner or casualties or wounded in the Darfur war'.[853]

357. During a meeting of local representatives at the house of the *shartay* in Mukjar in November 2003, P-0012 heard Torshein inform the attendees that 'if the rebels did not return from the mountains, the *Janjaweed* had the power to destroy the area' and that 'the children of the Fur had become rebels'.[854]

358. On 1 February 2004, during a graduation ceremony of Fur police officers in Mukjar, Minister Harun stated that he wanted them to completely wipe out the whole area, that they could take all the belongings of the Fur and consider them as 'a war prize', and that he wanted them to demolish the whole area from Artala to Andi Koti.[855] He also said that not even a single tree should be standing there.[856] P-0913, who attended the speech, added '[w]hich indeed happened, they did take all belongings of the Fur'.[857] On the same occasion, Torshein stated that 'all rebels around Sindu ha[d] to surrender otherwise air force and ground force will be used to defeat them'.[858]

[849] P-0757's Statement, DAR-OTP-0211-0003-R02, at 0016-0018, paras 52, 57.
[850] P-0757's Statement, DAR-OTP-0211-0003-R02, at 0018-0019, para. 61.
[851] The Chamber notes that P-0020 describes Minister Hussein as being the 'Minister of Defence', while it is an agreed fact between the Parties that Minister Hussein was the Minister of Interior '[b]etween at least August 2003 and at least April 2004' (*see* Second Joint Submission on Agreed Facts, Annex A, Agreed Fact 6). For the same reasons mentioned *above* (*see* fn. 842 *above*) the Chamber considers that it does not affect his credibility.
[852] P-0020: T-042, pp. 47-48.
[853] P-0020: T-042, pp. 29, 47-48, 50.
[854] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0523, para. 88.
[855] *See* para. 464 *below*.
[856] *See* para. 464 *below*.
[857] P-0913: T-069, pp. 53-54.
[858] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, para. 73.

359. P-0903 gave evidence that, in February or March 2004,[859] he was at the Mukjar market and saw Minister Harun arrive in a military helicopter and give a speech to the public, stating 'the Fur people and their money are your prize',[860] 'the Fur and the money of the Fur are booties and you may target anything you want […] on their land, including trees'.[861]

360. Between February and March 2004, **the Accused** addressed the *Janjaweed* in Arawala, used the term *amsah aksah*,[862] and said that everybody should be killed.[863] On the same occasion, five male prisoners with their hands tied behind their backs were brought before **the Accused**, who was told 'we caught them alive', to which he answered '[w]hy did you bring them to me? So there's no discipline here? […] I didn't say bring me anyone. I said execute the operation straightaway'.[864] The men were then executed.[865]

361. **The Accused** also used the term *amsah aksah* when he gave orders and instructions to the *Janjaweed* before or during attacks. In Arawala, **the Accused** told his men *amsah aksah* and '[a]nything you see, you have to kill or wipe. So no man has to stay alive'.[866] Similarly, in Dembow Kabdy, **the Accused** said '[w]e have one major fight, the Sindu fight. You don't – don't be cowards, move forward. Don't be afraid. *Amsah aksah*, and never bring someone alive.'[867] In Um Jameina, **the Accused** told his men '[w]henever you encounter a man, you have to kill them'.[868] During the Kodoom and Bindisi Operation, **the Accused** shouted chants such as '*Allahu Akbar*', '*amsah aksah*' and '[w]ipe out, sweep away, *amsah aksah*' when instructing the *Janjaweed* to commence their attacks during the operation.[869] **The Accused** was heard saying that the 'motto' used during the Kodoom and Bindisi attack was '[c]ut the straw, eat it raw. Don't leave anyone behind, and bring no one alive'.[870]

[859] P-0903: T-032, p. 69; P-0903's Statement, DAR-OTP-0221-0436-R02, at 0443, para. 33.
[860] P-0903's Statement, DAR-OTP-0221-0436-R02, at 0448, para. 59.
[861] P-0903: T-032, pp. 68-70.
[862] On the meaning of '*amsah aksah', see* paras 363-366 *below*.
[863] *See* para. 467 *below*.
[864] P-0905: T-085, pp. 54-55.
[865] P-0905: T-085, pp. 54-55.
[866] P-0905: T-085, p. 54. *See* para. 467 *below.*
[867] *See* para. 475 *below*.
[868] P-0905: T-085, pp. 60-61.
[869] *See also* para. 397 *below.*
[870] P-0921: T-110, p. 61.

362. Those gatherings and speeches sometimes coincided with the distribution of equipment, weapons or money by the GoS.[871] Sometimes they immediately preceded attacks and lootings.[872]

Use of the term '*amsah aksah*'

363. The term '*amsah aksah*' is a well-known expression used in the context of armed conflicts in Sudan.[873]

364. This expression was used by the GoS senior officials and field commanders,[874] as well as by **the Accused**,[875] during their speeches when addressing their fighters and when giving orders to attack, to 'encourage' them 'into action', and 'boost [their] morale'.[876] This expression was used by the fighters, the GoS Forces and the *Janjaweed* alike, when they 'carried out the work' on the battleground.[877]

365. According to the evidence, this expression meant 'killing',[878] 'with no limit',[879] or 'relentlessly',[880] or, in a more metaphorical way, 'wipe out', 'clean', 'sweep away'[881] and '[d]o not leave behind any trace'.[882] 'Not leaving any trace behind' also included 'burning'.[883] Witnesses further explained that the expression *amsah aksah* meant the following:[884] 'that

[871] P-0878: T-077, p. 65; T-079, pp. 36-38. *See also* para. 351 *above*.
[872] *See* paras 351-352, 358 *above*. *See also* paras 381-391, 464, 467 *below*. *See also* P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, paras 39-40.
[873] P-0547: T-051, p. 2; T-052, p. 63; P-0878: T-078, pp. 34-35. *See also* D-0016: T-132, pp. 88-89.
[874] *See* paras 351-359 *above. See also* P-0131: T-112, p. 22; P-0547: T-052, p. 63; D-0016: T-132, pp. 88-89. *See further* Video, DAR-D31-00000001, Transcript, DAR-D31-00000002, Translation, DAR-D31-00000003, posted on 15 April 2013. The Chamber notes that even though, as mentioned, the term '*amsah aksah*' was a well-known expression used in the context of armed conflicts in Sudan, the Chamber emphasizes (*see* paras 365-366), that for the purpose of this judgment, it analyses the precise and accurate meaning this expression had when it was used during the time of the charges, and in particular in the context of the charged operations.
[875] *See* paras 360-361 *above*, and para. 467 *below*.
[876] P-0547: T-052, p. 63. *See also* D-0016: T-132, pp. 88-89.
[877] P-0547: T-051, pp. 2-3, 23, 102-103; T-052, p. 63; P-0878: T-078, pp. 34-35; P-0874: T-082, pp. 67, 70; P-0905: T-085, p. 77.
[878] P-0547: T-051, pp. 2-3, 102-103; T-052, p. 63; D-0016: T-132, pp. 88-89.
[879] P-0547: T-051, pp. 2-3, 102-103; T-052, p. 63.
[880] P-0547: T-051, pp. 2-3.
[881] P-0547: T-052, p. 63; P-0878: T-078, pp. 34-35; P-0874: T-082, pp. 67, 70; Video, DAR-D31-00000001, Transcript, DAR-D31-00000002, Translation, DAR-D31-00000003, posted on 15 April 2013; P-0905: T-085, p. 54.
[882] P-0878: T-078, pp. 34-35.
[883] P-0878: T-078, pp. 34-35; P-0905: T-087, p. 66.
[884] The Chamber notes the contradicting evidence of D-0016 on this issue, when he gave evidence that '[t]he expression *aksah amsah* cannot at all be understood as an order to violate the rights of civilians.' (D-0016: T-132, p. 89). The Chamber notes that generally, it finds D-0016 credible, *see* the Chamber's assessment of D-0016's evidence, Annex B, Section I.B.08. However, this put in balance with the evidence of the other witnesses, which contradicts D-0016's personal views on this issue, and recalling that a Chamber can rely on certain aspects of a

killing and horrific aggressions can be carried out to justify that';[885] '*amsah aksah*, never bring someone alive';[886] '*amsah aksah*, and not to leave anybody alive. So *amsah aksah* and nobody stays alive. So I would wipe everything and kill everybody. […] no man has to stay alive.';[887] '*aksah amsah* wipe it. Bring him alive, eat him alive, fresh.';[888] 'the fighters should be, of course, free to do what they do. There are no limits, so they can do what they like. So kill and kill without taking into account any other thing';[889] that 'there are no restrictions or limits that govern military and combat operations, and there is no regard for any other consideration';[890] and that 'these words mean genocide and killing prisoners. And [that] this contradicts with the war -- the war laws based on the Geneva Convention'.[891] P-0547 explained that when civilians heard this expression, 'they [were] scared to death'.[892]

366. The Chamber is therefore satisfied that the expression '*amsah aksah*', in its common use and by a common and tacit understanding shared by all on the battlefield (*Janjaweed* and GoS Forces members alike), meant that fighters shall kill and destroy without any limits.[893]

F. Conclusion

367. The Chamber is therefore satisfied that, following the attack on the Al Fasher airport on 25 April 2003 by the SLM/A, the GoS decided to implement an 'all-out military campaign' to defeat the rebels, and that the *Janjaweed*, which were made up of members of Arab tribes, would be recruited to help the GoS forces in its counter-insurgency efforts. This materialised when a formal Emergency Plan was issued in December 2003. To this end, exploiting existing tribal tensions, and with knowledge of the *Janjaweed*'s past history of committing crimes, the GoS recruited, armed, trained and funded the *Janjaweed*. The GoS, in particular senior GoS officials such as Minister Hussein, Minister Harun, and Ali Karti, expressed their public support for the *Janjaweed*. These officials, together with **the Accused**, publicly encouraged the

witness's evidence, while considering other aspects unreliable, the Chamber disregards D-0016's evidence on this discrete aspect. The Chamber therefore rejects the Defence's arguments in this respect (*see* Defence's Final Brief, para. 272).
[885] P-0547: T-052, p. 63.
[886] P-0905: T-085, p. 77.
[887] P-0905: T-085, p. 53. *See also* P-0769: T-097, p. 16.
[888] P-0874: T-082, pp. 67, 70.
[889] P-0547: T-051, pp. 2-3.
[890] P-0547: T-051, pp. 2-3.
[891] P-0769: T-097, pp. 18-19.
[892] P-0547: T-051, p. 3 ('When the civilians, of course, heard this expression, they, of course, are scared to death and they will try, of course, to flee the area in which there was operations. So they are scared to death when they hear this expression.). *See also* Defence's Final Brief, para. 270.
[893] *Contra* Defence's Final Brief, para. 272.

Janjaweed and GoS fighters to carry out attacks on towns and villages.

III. THE CHARGED OPERATIONS

A. Operation in Kodoom, Bindisi and the surrounding areas between 15 and 16 August 2003

368. In this section, the Chamber relies primarily on the evidence of P-0874, P-0878, P-0921 and P-1021 all of whom closely followed the Kodoom and Bindisi Operation from their respective proximate positions.[894] The Chamber also relies on the evidence of P-0029 and P-0986, who were present in Kodoom at the relevant time[895] and on the evidence of P-0011, P-0012, P-0015, P-1073 and P-1074, who were present in Bindisi at the relevant time.[896]

a) Relevant background

369. In 2003, Kodoom and Bindisi were administrative regions located in the Wadi Salih Locality,[897] West Darfur,[898] Sudan.[899] Kodoom was situated west of Mukjar and Bindisi was further westwards from Kodoom.[900] As regards other relevant villages: Nyerli and Tiro were situated between Mukjar and Kodoom; Merly and Drangal were situated further westwards, between Kodoom and Bindisi; and Seder was situated south of Kodoom.[901]

i. Kodoom

370. The neighbourhoods of Kodoom were Kodoom Derliwa, Kodoom Ronga Tass (also called Kodoom Wosta), Kodoom Tineh, and Kodoom Jureh.[902] *Wadis* Arowa and Jurijarang, and the main north-south road that passed through Kodoom, demarcated the various

[894] *See* the Chamber's assessment of the evidence of P-0874, P-0878, P-0921 and P-1021, Annex B, Sections I.A.26, I.A.28, I.A.38 and I.A.49.
[895] *See* the Chamber's assessment of the evidence of P-0029 and P-0986, Annex B, Sections I.A.6 and I.A.46.
[896] *See* the Chamber's assessment of the evidence of P-0011, P-0012, P-0015, P-1073 and P-1074, Annex B, Sections I.A.2, I.A.3, I.A.4, I.A.52 and I.A.53.
[897] P-0986: T-066, p. 14.
[898] Second Joint Submission on Agreed Facts, Annex A, Agreed Fact 3.
[899] Third Joint Submission on Agreed Facts, Annex C, Agreed Facts 1-2. *See* P-0029: T-029, pp. 41-42.
[900] Second Joint Submission on Agreed Facts, Annex B; P-0012: T-046, p. 17; P-0029: T-029, pp. 41, 51; P-0029: T-030, p. 27; P-0913's Statement, DAR-OTP-0218-0021, at 0025, para. 31; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0316, 0324-0325, paras 15, 50; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0605, para. 14; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 1; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 21.
[901] P-0874's Annotated Map, DAR-OTP-00000232; P-0878's Annotated Map, DAR-OTP-00000099.
[902] P-0029: T-029, pp. 44, 48, 65-66; T-030, p. 82; P-0878's Annotated Map, DAR-OTP-00000100; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 21.

neighbourhoods of Kodoom.[903] The school, the hospital, the police station and the mosque were in the neighbourhood of Kodoom Ronga Tass.[904] A cemetery and an open field separated the neighbourhoods of Kodoom Tineh and Kodoom Jureh.[905]

371. There was a police presence in Kodoom.[906] Members of the police patrolled Kodoom on foot.[907] The police in Kodoom did not have any equipment or means of transportation.[908] The police of Kodoom and Bindisi withdrew to Mukjar after the rebels attacked Bindisi.[909]

372. In August 2003, approximately 1,600 families were residing in Kodoom.[910] Most of the people residing in Kodoom belonged to non-Arab tribes,[911] who were predominantly Fur,[912] but there was also a small number of people from the Tama and Misseriya Jabal tribes.[913] In August 2003, there were no rebels or armed group present in Kodoom to defend it,[914] and its

[903] P-0029: T-030, pp. 78-81, *referring to* Map, DAR-OTP-0220-3705; P-0878: T-078, pp. 43-44, *referring to* P-0878's Annotated Map, DAR-OTP-00000100. *See also* P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 21.
[904] P-0029: T-030, p. 81, *referring to* Map of neighbourhoods of Kodoom, DAR-OTP-0220-3705; P-0878's Annotated Map, DAR-OTP-00000100.
[905] P-0029: T-030, p. 81.
[906] P-0029: T-030, p. 85.
[907] P-0029: T-030, p. 85.
[908] P-0029: T-030, p. 85.
[909] P-0029: T-030, pp. 85-86. The Chamber notes that witnesses used the term 'attack' in its common language meaning, to describe the events preceding and during the Kodoom and Bindisi Operation. Consequently, in the forthcoming factual findings, the Chamber has also adopted the term 'attack' to describe the events evidenced by these witnesses. The Chamber's use of the term 'attack' to describe the events does not *per se* carry any legal implication within the premise of these factual findings (*see* P-0007: T-089; P-0011: T-091; P-0012: T-045; T_046; P-0015: T-093; P-0029: T-029; T-030; T-031; P-0643: T-056; T-057; P-0874: T-082; T-083; P-0878: T-077; T-078; T-079; P-0903: T-032; P-0913: T-069; P-0916: T-075; P-0921: T-110; T-111; P-0922: T-039; P-0932: T-068; P-0984: T-066; P-0986: T-065; P-1021: T-081; P-1073: T-103. *See also* P-0007's Statement, DAR-OTP-0088-0060-R02; P-0012's Statement, DAR-OTP-0119-0503-R01; P-0015's Statement, DAR-OTP-0088-0187-R04; P-0028's Statement, DAR-OTP-0094-0423-R01 (admitted excerpts only); P-0041's Statement, DAR-OTP-0206-0033-R03 (admitted excerpts only); P-0085's Statement, DAR-OTP-0110-0054-R02; P-0129's Statement, DAR-OTP-0128-0128-R04; P-0720's Statement, DAR-OTP-0210-0291-R02; P-0757's Statement, DAR-OTP-0211-0003-R02 (admitted excerpts only); P-0816's Statement, DAR-OTP-0214-0721-R02; P-0913's Statement, DAR-OTP-0218-0021; P-0916's Statement, DAR-OTP-0224-0023-R01; P-0922's Statement, DAR-OTP-0222-0312-R01; P-0932's Statement, DAR-OTP-0222-0602-R02; P-0986's Statement, DAR-OTP-0222-0437-R01; P-1074's Statement, DAR-OTP-0224-0441-R02).
[910] UNHCR Report, DAR-OTP-0145-0237, at 0305-0306 (The report is the outcome of research on the ground in Darfur during the relevant time, and clearly indicates the methodology of information collection and the sources. The Chamber notes that, in its Final Brief, the Defence relied upon the findings made in the report (*see* Defence's Final Brief, paras 543, 652). Therefore, the Chamber is satisfied that the report is reliable and probative. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 31-32). *See* P-0932's Statement, DAR-OTP-0222-0602-R02, at 0605, para. 15; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 21.
[911] P-0874: T-082, p. 23.
[912] P-0878: T-078, p. 43; P-0913's Statement, DAR-OTP-0218-0021, at 0026, para. 34; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0605, para. 15; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 21; P-1021: T-081, p. 15.
[913] P-0878: T-078, p. 43.
[914] P-0029: T-030, pp. 85-87. *See* the Chamber's assessment of P-0029's evidence, Annex B, Section I.A.6; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 23. *Contra* Defence's Final Brief, para. 352.

inhabitants were not armed with weapons such as Kalashnikovs and machine guns (although some may have possessed hunting rifles, as this was the only 'weapon' the GoS allowed people to carry).[915]

ii. Bindisi

373. Bindisi was the headquarters of the local administration.[916] Bindisi was divided into two parts by the *wadi* Salih: South (or Old) Bindisi and North (or New) Bindisi.[917] Old or South Bindisi was located between *wadi* Salih in the north and *wadi* Baro in the south.[918] New or North Bindisi included the area called Daguina.[919] Eastwards of Bindisi, *wadi* Arowa flowed from the north to the south into the *wadi* Salih,[920] and further eastwards *wadi* Jurijarang also flowed from the north to the south into the *wadi* Salih.[921]

374. The town of Bindisi had a court, a town hall, police stations, a veterinary office, a *zakat* or Islamic tax office, a government pharmacy, an agricultural office, a health centre, two schools and a big market.[922] There was no military base in Bindisi, but there was a PDF office.[923]

375. *Zakat* is one of the pillars of Islam and the *zakat* office was a religious humanitarian organisation which, according to the principles of Islam, collected money, grain or cattle from

[915] P-0029: T-031, pp. 18-19, 86. *See* the Chamber's assessment of P-0029's evidence, Annex B, Section I.A.6. *Contra* Defence's Final Brief, para. 352.
[916] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0060, para. 9; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0505, para. 11; P-0012: T-045, p. 54; P-0029: T-029, p. 50; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0316, para. 15.
[917] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0506, para. 11; P-0012: T-045, p. 58; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0190, para. 10; P-0913's Sketch, DAR-OTP-0218-0044, Translation, DAR-OTP-0219-8119; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0324-0325, para. 50.
[918] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0060, para. 9; P-0029: T-031, p. 32, *referring to* Map of Bindisi Town, DAR-OTP-0220-3702.
[919] P-0874's Annotated Map, DAR-OTP-00000232; P-0874: T-082, pp. 32-33. *See also* P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 27, *referring to* P-0085's Sketch, DAR-OTP-0110-0071-R01, Translation, DAR-OTP-0153-1577-R01; P-1073: T-103, p. 25; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0444, para. 12.
[920] P-0029: T-031, p. 31, *referring to* Map of Bindisi Town, DAR-OTP-0220-3702.
[921] P-0029: T-031, pp. 31-34, *referring to* Map of Bindisi Town, DAR-OTP-0220-3702.
[922] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0064, para. 13; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0506, para. 12; P-0012: T-045, pp. 50, 54-55; P-0012's Annotated Image, DAR-OTP-0220-4713-R01; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0191, para. 18, *referring to* P-0015's Sketch, DAR-OTP-0088-0211-R01; P-0913's Sketch, DAR-OTP-0218-0046, Translation, DAR-OTP-0219-8107; P-0029: T-029, p. 50; P-0878: T-078, pp. 56-57, *referring to* P-0878's Annotated Map, DAR-OTP-00000099; T-079, p. 9; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0445, para. 17. *See also* P-0012's Annotated Images, DAR-OTP-0220-4713-R01; DAR-OTP-0220-4715-R01.
[923] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0506, para. 12.

people based on their earnings and wealth, and allocated the same to the poor and destitute.[924] In August 2003, Muhammad Abd-Al-Jabbar ('Abd-Al-Jabbar'), a Fur man, was a director of the *zakat* office for Mukjar and Bindisi.[925]

376. In August 2003, approximately 1,800 families were residing in Bindisi,[926] and its population was predominantly Fur.[927] There were no rebels or armed group to defend Bindisi (although some 'herders' possessed 'basic weapons' to protect their cattle).[928]

377. Close to Bindisi town, within the Bindisi locality, were *inter alia* the villages of Jartaga, Rasowli, Juguma Al-Gharbiya, Juguma Al-Sharqiyya, Seder, Merly, Drangal and Gausir.[929]

b) Events leading up to the Kodoom and Bindisi Operation

i. Rebel attacks on Bindisi and Mukjar

378. On or around 1 August 2003,[930] the rebels attacked Bindisi.[931] The rebels attacked the

[924] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0507, paras 16-17; P-0012: T-045, pp. 51-54; T-046, pp. 19-20; P-0878: T-077, pp. 46-47; T-078, pp. 23-24; T-079, p. 47; P-0921: T-111, p. 37. *See* the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38.
[925] P-0878 stated that Abd-Al-Jabbar was Fur and the 'deputy director' of the *zakat* office (P-0878: T-077, pp. 45, 47; T-079, p. 85). P-1021 stated that Abd-Al-Jabbar was Fur and was the 'head of the *zakat* office' (P-1021: T-080, pp. 44-45; T-081, pp. 5, 7). *See* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0508, para. 21; P-0012: T-045, p. 14. P-0012, P-0877 and P-0921 referred to Abd-Al-Jabbar as 'the director' of the *zakat* office (P-0012's Statement, DAR-OTP-0119-0503-R01, at 0508, para. 21; P-0012: T-045, p. 14. P-0877: T-053, p. 73; P-0921: T-111, p. 39). *See* the Chamber's assessment of the evidence of P-0012, P-0878, P-0921 and P-1021, Annex B, Sections I.A.3, I.A.28, I.A.38 and I.A.49. *See also* P-0877: T-053, p. 73; P-0921: T-111, p. 39.
[926] UNHCR Report, DAR-OTP-0145-0237, at 0300; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0506, para. 11; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0316, para. 15; P-0922: T-039, p. 36; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0190, para. 10. P-0007 stated that the population of Bindisi town was 17,000 (P-0007's Statement, DAR-OTP-0088-0060-R02, at 0063, para. 10).
[927] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0505, para. 11; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0190, para. 11; P-0878: T-077, p. 47; P-0913's Statement, DAR-OTP-0218-0021, at 0027, para. 43; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0444, para. 14. *See also* P-0007's Statement, DAR-OTP-0088-0060-R02, at 0064, para. 14; P-1021: T-081, p. 20.
[928] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0071, para. 45; P-0015: T-093, pp. 25-26; P-0297's Statement, DAR-OTP-0221-0523-R01, at 0527, para. 18; P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729, para. 35; P-0913: T-069, p. 32; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447, para. 30.
[929] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0063, para. 10; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0316, para. 15.
[930] The Chamber has already stated that it is satisfied that P-0878 provided reliable dates for the events. Therefore, for this event, the Chamber is satisfied that the specific date provided by P-0878 is reliable (P-0878: T-077, p. 48). The Chamber also notes that the dates or time range provided by other witnesses are generally congruent with the date provided by P-0878 (*see* P-0029: T-029, pp. 50-52; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0514, para. 46; P-0921: T-110, p. 20). *See* the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38.
[931] P-0012: T-045, pp. 76-77; P-0878: T-077, p. 48; P-0921: T-110, p. 20. *See also* P-0029: T-029, pp. 49-50; P-1021: T-081, p. 59. Witnesses stated that the rebels who attacked Bindisi belonged to the Sudan Liberation Movement: (P-0029: T-031, p. 82; P-0878: T-077, p. 48). *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49.

police stations and the prison, and stole some vehicles belonging to the GoS.[932] The rebels also attacked the locality building, the finance office of the locality, the *zakat* office, and accommodation belonging to the municipality.[933] The rebels 'kidnapped' around three individuals who were later killed or released.[934]

379. On or around 8 August 2003,[935] the rebels attacked Mukjar.[936] The attack targeted the CRF base in the primary school.[937] The rebels also attacked a police station in the north of Mukjar and took a vehicle and some weapons.[938] A number of CRF members, policemen and rebels were killed in the attack.[939]

ii. Arrival of the Accused and the *Janjaweed* in Mukjar

380. **The Accused** and a large contingent of *Janjaweed* arrived in the northern outskirts of Mukjar to support the CRF against the rebel attack.[940] Some members of the *Janjaweed* were on horseback or camelback while others were on foot.[941] The *Janjaweed* were under the

[932] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0514, para. 46; P-0029: T-029, pp. 49-50. *See also* P-0916's Statement, DAR-OTP-0224-0023-R01, at 0026, para. 12.
[933] P-0878: T-077, p. 48; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0026-0027, para. 13.
[934] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0514, para. 47; P-0874: T-082, pp. 10, 12; P-0878: T-077, pp. 48-49; T-079, p. 16; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0026, para. 9; P-0916: T-075, p. 27 (*see* the Chamber's assessment of P-0916's evidence, Annex B, Section I.A.35); P-0921: T-110, p. 20; T-111, pp. 20-21; P-1021: T-081, p. 59. *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49.
[935] The Chamber has already stated that it is satisfied that P-0878 provided reliable dates for the events. Therefore, for this event, the Chamber is satisfied that the specific date provided by P-0878 is reliable (P-0878: T-077, p. 53). The Chamber notes that the dates or time range provided by other witnesses are generally congruent with the date provided by P-0878 (s*ee* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 62; P-0921: T-111, p. 21; P-1021: T-081, p. 60. *See* the Chamber's assessment of the evidence of P-0012, P-0878, P-0921 and P-1021, Annex B, Sections I.A.3, I.A.28, I.A.38 and I.A.49.
[936] P-0878: T-077, p. 53; P-0921: T-110, pp. 20-21. *See also* P-0029: T-029, pp. 49-50. P-0029 stated that rebels that attacked Mukjar belonged to the SLA (P-0029: T-031, p. 82); P-0720's Statement, DAR-OTP-0210-0291-R02, at 0299, para. 53.
[937] P-0878: T-077, pp. 53, 55; P-0921: T-110, pp. 20-21; T-111, p. 21. *See* the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 62; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0027-0028, paras 19-20; P-0916's Statement Corrections, DAR-OTP-00000060, at 000001, para. 5.
[938] P-0029: T-029, pp. 49-50; P-0878: T-077, pp. 54-55; P-0916: T-075, p. 26. *See also* P-0041's Statement, DAR-OTP-0206-0033-R03, at 0044, paras 40-41.
[939] Based on the evidence, the Chamber is satisfied that a number of members of the CRF, the police and the rebels were killed in the attack, even though witnesses' evidence on the exact numbers of casualties vary (P-0878: T-079, p. 31. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 5017, para. 62; P-0921: T-110, pp. 20-21; T-111, p. 23). *See also* the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38.
[940] P-0874: T-082, pp. 12-23; T-083, p. 34 (*see* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26); P-0878: T-077, pp. 56-57, 59. *See also* P-0643: T-056, pp. 38-40.
[941] P-0878: T-077, pp. 56-57.

command of **the Accused**.[942] **The Accused** was accompanied by Bonjouse and Samih.[943] Around this time, some members of the *Janjaweed* arrested people in Mukjar, destroyed shops and looted cattle from its market.[944]

iii. GoS delegation's visit to Mukjar

381. On or around 9 August 2003, a GoS delegation arrived in Mukjar.[945] Their helicopter landed east of the primary school in Mukjar.[946] The delegation was comprised of: Minister Harun;[947] Ali Karti;[948] Maj Gen Suleiman Abdullah;[949] Gen Ismat al Zain;[950] the director of security of South Darfur state;[951] and the director of the police of West Darfur state.[952] P-0878, who was present in the vicinity,[953] stated that the delegation first attended a 'secret meeting' at the Mukjar locality building.[954] Minister Harun presided over this meeting,[955] which was also attended by Torshein, Lt Col Himeidan, **the Accused** and some of **the Accused's** deputies.[956]

382. After this 'secret meeting', the delegation and the other attendees, including Torshein,

[942] P-0878: T-077, pp. 49-51, 56-57, 59; T-078, pp. 8-9. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. This is also in line with the evidence and the Chamber's findings in relation to **the Accused's** role as 'commander' of the *Janjaweed* force that undertook the Kodoom and Bindisi Operation (*see* paras 658-678 *below*).
[943] P-0878: T-077, pp. 57-58.
[944] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0299, paras 54-55; P-0874: T-082, pp. 14-15; P-0878: T-078, pp. 12-14; P-0921: T-110, p. 21. *See* the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38.
[945] The Chamber has already stated that it is satisfied that P-0878 provided reliable dates for the events. Therefore, for this event, the Chamber is satisfied that the specific date provided by P-0878 is reliable (P-0878: T-077, pp. 63-64). The Chamber notes that the dates or time range provided by P-0012 and P-0984 are generally congruent with the date provided by P-0878 (*see* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, paras 62-63; the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3; P-0903: T-032, p. 69; P-0984: T-066, p. 40). *See* the Chamber's assessment of P-0878, Annex B, Section I.A.28.
[946] P-0878: T-077, p. 63; P-0903: T-032, p. 69; P-0984: T-066, p. 40.
[947] P-0878: T-077, p. 63; P-0984: T-066, pp. 40-41. *See also* P-0029: T-029, pp. 52-53; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, paras 62-63 (*see* the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3); P-0643: T-056, pp. 40-44; T-057, pp. 82-83; P-0903: T-032, p. 69; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, para. 39). *See also* P-0581: T-064, pp. 40-41; P-0916: T-075, pp. 41-42. *Contra* Defence's Final Brief, para. 142.
[948] P-0878: T-077, p. 63; T-078, pp. 10-11.
[949] P-0878: T-077, p. 63; T-078, p. 11.
[950] P-0087's Statement, DAR-OTP-0133-0573-R02, at 0605, para. 122; P-0878: T-077, p. 63; T-078, p. 11; P-1042: T-027, p. 77.
[951] P-0878: T-077, p. 64; T-078, p. 11.
[952] P-0878: T-077, p. 64; T-078, p. 11.
[953] P-0878: T-078, pp. 9-10; T-079, pp. 36, 40. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 368.
[954] P-0878: T-077, pp. 63-64; T-078, p. 8; T-079, p. 35. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 64.
[955] P-0878: T-079, p. 35.
[956] P-0878: T-077, p. 64; T-078, pp. 8, 10; T-079, p. 35. P-0878 stated that no one else was allowed to attend this meeting (P-0878: T-077, pp. 64-65; T-079, p. 35).

Samih, Solonga and **the Accused**, attended a public gathering right outside the Mukjar locality building and addressed the crowd.[957] Most of the persons attending were members of the *Janjaweed* or their leaders – including Samih and Bonjouse.[958] Other attendees included P-0012, P-0878, *Sheikh* Muhammad Atim, and Suleiman Musa.[959]

383. P-0878 heard **the Accused** address the crowd: **the Accused** spoke, 'on behalf of the *Janjaweed*', said that 'the *Janjaweed* were there to defend the property of the government and that they were alongside the armed forces'.[960] P-0012 stated that throughout this meeting **the Accused** stood 'very close' to Minister Harun.[961]

384. Minister Harun addressed the crowd on behalf of the delegation.[962] P-0878's notes were based on recollection of Minister Harun's address to members of the *Janjaweed*:

> [Y]ou have stood by the side of the government, you have supported the government, and you have supported the armed forces. This is why, today, you are our forces and you are considered, as of today, governmental forces. We would train you. We would organise camps for you, for training. We would provide you with weapons and we would be giving you wages, or salaries, and we would also be feeding your horses.[963]

385. P-0012 heard Minister Harun tell the crowd that he was going to contribute 10 million Sudanese pounds to the *Janjaweed* and reassured them that the GoS would continue to help

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[957] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 64; P-0029: T-029, pp. 52-53; P-0878: T-077, pp. 64-65; T-079, p. 36; P-0984: T-066, pp. 42-43; T-067, p. 28. *See* the Chamber's assessment of the evidence of P-0012, P-0029 and P-0878, Annex B, Sections I.A.3, I.A.6 and I.A.28. *Contra* Defence's Final Brief, paras 367-370.
[958] P-0029: T-029, pp. 52-53; T-030, p. 16; T-031, pp. 39-40; P-0878: T-078, p. 9.
[959] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 64; P-0878: T-078, pp. 9-10; T-079, pp. 36, 40. *See* the Chamber's assessment of the evidence of P-0012 and P-0878, Annex B, Sections I.A.3 and I.A.28. *Contra* Defence's Final Brief, para. 368.
[960] P-0878: T-077, p. 65; T-078, p. 9; T-079, pp. 36-38, 41-42. *See* the Chamber's assessment of P-0878, Annex B, Section I.A.28. The Chamber notes that, according to P-0643, three days after the *Janjaweed* operation in Bindisi, P-0878 told him about this open meeting in Mukjar and about **the Accused's** presence at this meeting (P-0643: T-056, pp. 41-44; T-057, pp. 82-83). This contemporaneous transmission of facts about the open meeting by P-0878 to P-0643, further bolsters P-0878's evidence on this point. Consequently, the Chamber is satisfied that P-0878's evidence on **the Accused's** presence and speech at this meeting is reliable. *See also* P-0029: T-029, pp. 52-53 (*see* the Chamber's assessment of P-0029's evidence, Annex B, Section I.A.6). *Contra* Defence's Final Brief, paras 142, 365-366, 369; Defence's Closing Statement: T-161, p. 85.
[961] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0518, para. 67. *See* the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3.
[962] P-0878: T-079, p. 37.
[963] P-0878: T-077, p. 65 (*see* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28). *See* P-0878: T-079, p. 38. P-0643 stated that P-0878 contemporaneously – a few days after the Kodoom and Bindisi Operation – communicated to him facts about Minister Harun's visit and his speech to the public in Mukjar (P-0643: T-056, pp. 40-44; T-057, pp. 82-83). *See also* Defence's Final Brief, para. 327. *Contra* Defence's Final Brief, para. 142; Defence's Closing Statement: T-161, pp. 74-77, 85.

them.[964]

386. Minister Harun was also heard telling the crowd to 'wipe out and sweep away the Fur do not keep anyone alive'.[965] In his speech, Minister Harun referred to the Fur as *ghanima* and was heard saying that the Fur and their money were war booty or 'prize' for the *Janjaweed*.[966] P-0903, who is from the Fur tribe, interpreted Minister Harun's statements as 'dangerous', felt 'afraid' and 'immediately' left the place.[967]

387. During this gathering, *Sheikh* Suleiman Musa, a tailor in Mukjar urged Minister Harun from among the crowd to stop the *Janjaweed* from looting the houses and properties of the inhabitants of Mukjar.[968] P-0878 recalled Minister Harun replying that the people of Mukjar must return the 'property of the State' that has been looted by their 'children' and that, if they did not return the property then, 'you will be looted, you will be killed, you will be raped'.[969] According to P-0878, Minister Harun was referring to the rebels as the 'children' of the people of Mukjar.[970] As mentioned earlier, **the Accused** was present at this meeting.[971]

388. Ali Karti addressed the *Janjaweed* and their leaders gathered in the crowd after Minister Harun.[972] P-0878 recollected Ali Karti telling the *Janjaweed* that they were 'part of the PDF', and that the GoS would train them, give them weapons, wages and other assistance.[973] In

[964] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0518, para. 66. *See* the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3.
[965] P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, para. 40. *See* the Chamber's assessment of P-0916's evidence, Annex B, Section I.A.35. *See also* P-0922's Statement, DAR-OTP-0220-2864, at 2872, para. 48; P-0922: T-039, p. 13; P-0984: T-066, pp. 41-42.
[966] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517-0518, paras 64-65; P-0012: T-046, pp. 39-40 (*see* the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3); P-0029: T-029, p. 48 (*see* the Chamber's assessment of P-0029's evidence, Annex B, Section I.A.6); P-0903: T-032, pp. 69-70. *See also* P-0984: T-066, pp. 41-42. P-0029 defined *ghanima* as: 'I will explain it in its Arabic sense. It is difficult to lay out. What it means is that you are of no value in the eyes of the government. If you are killed, plundered -- anything that happens to you means nothing to the government. They can do whatever they wish with you' (P-0029: T-029, p. 47).
[967] P-0903: T-032, pp. 69-70. *See* Chamber's assessment of P-0903's evidence, Annex B, Section I.A.31.
[968] P-0878: T-078, pp. 12, 14. The Defence put to P-0878 that in the handwritten document (not submitted into evidence) which he had provided to the Prosecution, he stated that this person is called *Sheikh* Muhammad Muhammad Atim, not *Sheikh* Suleiman Musa, and that it was he who urged Minister Harun to stop the looting; to which P-0878 responded that *Sheikh* Muhammad Muhammad Atim and *Sheikh* Suleiman Musa were members of the same family and that P-0878 got the names confused, and that both these persons were present there (P-0878: T-079, p. 40). The Chamber is satisfied that P-0878's explanation is reasonable, and his evidence on this point is reliable. *Contra* Defence's Final Brief, para. 438.
[969] P-0878: T-078, p. 14. *See* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517-0518, paras 64-65; P-0012: T-046, pp. 39-40 (*see* the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3). *Contra* Defence's Final Brief, para. 438.
[970] P-0878: T-078, p. 14.
[971] *See* para. 354 *above*.
[972] P-0878: T-078, p. 11.
[973] P-0878: T-078, pp. 11-12. *See also* P-0878: T-079, p. 38. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28.

response to Ali Karti's speech, the members of the *Janjaweed* chanted, '*Allahu Akbar.* Down with the traitors'.[974]

389. P-0012 stated that Torshein was introduced as the new commissioner of Mukjar at this public meeting.[975] P-0012 recollected Torshein's address to the gathered crowd.[976] Torshein told them that President Al-Bashir had appointed him as the commissioner and that he and the GoS 'would do everything to clear the area of rebels'.[977] He further said that they, *i.e.* the GoS, had the *Janjaweed* to defeat the rebels.[978]

390. Finally, Samih recited a poem, in which he praised the GoS.[979] During this visit, the delegation gave the *Janjaweed* uniforms and 10,000 Sudanese Dinars.[980] Thereafter, the GoS delegation departed from Mukjar in the same helicopter.[981]

391. Soon after the gathering, members of the *Janjaweed* began arresting people, looting the market and the homes of the inhabitants of Mukjar.[982] This caused many to flee their homes and seek refuge at the locality building, the mosque and the school.[983] P-0012 recollected that, when some of the inhabitants sought the assistance of the CRF, Lt Col Himeidan told them that the *Janjaweed* could do whatever they want as they were acting on the orders of Minister Harun.[984]

iv. Operation in the north and east of Mukjar

392. Soon after the departure of the GoS delegation on or around 9 August 2003,[985] **the Accused** and the *Janjaweed* under his command initiated an operation to attack villages in the

[974] P-0878: T-078, p. 12.
[975] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517-0518, para. 64. *See* the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3.
[976] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0518, para. 64.
[977] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0518, para. 64.
[978] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0518, para. 64.
[979] P-0878: T-078, p. 9; T-079, pp. 36-37.
[980] P-0878: T-077, p. 65; T-078, p. 12. *See also* P-0878: T-079, p. 38.
[981] P-0878: T-078, pp. 14-15.
[982] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0519, para. 69; P-0012's Statement Corrections, DAR-OTP-0136-0009-R01, at 0010, para. 3; P-0012: T-045, pp. 32-33; T-046, p. 40; P-0581's Statement, DAR-OTP-0216-0560-R02, at 0566-0567, paras 29, 31, 34; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, para. 41.
[983] P-0581's Statement, DAR-OTP-0216-0560-R02, at 0566-05667, para. 31; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, para. 41.
[984] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0519, para. 70.
[985] P-0878: T-079, pp. 43-44.

east and north of Mukjar.[986] All GoS forces, including the SAF, PDF and the CRF participated in this operation.[987] Nine villages were 'burned down' in the operation.[988] The operation lasted until 14 August 2003,[989] after which **the Accused** and the *Janjaweed* returned to Mukjar,[990] camping in the north-western outskirts of the town.[991]

v. Events in Mukjar on the morning of 15 August 2003

393. A convoy of three vehicles was dispatched by Lt Col Himeidan from the Mukjar CRF base early in the morning of 15 August 2003.[992] P-0878 was informed about this convoy later on that same day.[993] P-0878 was also told that the purpose of this convoy was to inform the villages and towns about the movement of **the Accused's** convoy and the *Janjaweed* towards Bindisi, and to reassure the inhabitants of the towns and villages that they would not be harmed.[994]

394. Some time later on 15 August 2003,[995] Abd-Al-Jabbar was given a letter.[996] The letter, dated 13 August 2003,[997] was addressed to the director, or the deputy director of the *zakat* office, *i.e.* Abd-Al-Jabbar, and signed by Ja'afar Abd-Al-Hakam Ishaq Adam ('Abd-Al-Hakam'), who was the Commissioner of Garsila in the Wadi Salih Locality.[998] It instructed Abd-Al-Jabbar to give **the Accused** and the *Janjaweed* 90 sacks of corn as food for the

[986] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0519-0520, paras 72-74; P-0878: T-078, p. 15; T-079, pp. 43-44; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, paras 42-43 (*see* the Chamber's assessment of P-0916's evidence, Annex B, Section I.A.35); P-0984: T-066, pp. 46-47, 65.
[987] P-0874: T-083, pp. 58-59.
[988] P-0878: T-078, p. 15; T-079, pp. 43-44, 50; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, paras 42-43; P-0984: T-066, pp. 46-48, 50.
[989] P-0878: T-078, p. 15; T-079, pp. 43-44; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, paras 42-44. *See also* P-0984: T-066, p. 47.
[990] P-0878: T-078, pp. 15 -16; T-079, pp. 43-44, 50; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0033, paras 42-44 (*see* the Chamber's assessment of P-0916's evidence, Annex B, Section I.A.35); P-0921: T-110, p. 21; T-111, p. 24. The Chamber relies upon P-0921 in this instance only to the extent that P-0921 supports P-0878. *See* the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38. *See also* P-0984: T-066, p. 47.
[991] P-0878: T-078, p. 16; P-0921: T-110, pp. 21-22; T-111, pp. 38-39. *See* the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38.
[992] P-0878: T-078, pp. 17-18; T-079, pp. 48-50.
[993] P-0878: T-078, pp. 47, 58; T-079, pp. 48, 50.
[994] P-0878: T-078, pp. 47, 58; T-079, pp. 48, 50.
[995] *See* P-0878: T-079, p. 45.
[996] P-0878: T-078, pp. 18-19; T-079, pp. 21, 45-46; P-1021: T-080, p. 45. *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49. *Contra* Defence's Final Brief, paras 384-386.
[997] P-0878: T-078, p. 22; T-079, p. 90. *See* P-0921: T-110, p. 28. *See* the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38. *Contra* Defence's Final Brief, paras 384, 386.
[998] P-0041's Statement, DAR-OTP-0206-0033-R03, at 0037-0038, para. 16; P-0643: T-056, p. 11. *See also* Defence's Final Brief, para. 303; Prosecution's Final Brief, para. 66.

horses.[999] According to P-0878, the letter and the instruction to provide resources from the *zakat* office to the *Janjaweed* to feed their horses was unusual and said it was in fact 'laughable' to provide food meant for human consumption to horses.[1000]

395. Thereafter, **the Accused** took Abd-Al-Jabbar with him and set out from Mukjar towards Bindisi, with Hassaballah and Solonga, all in the same vehicle.[1001] The *umdahs*, who led the *Janjaweed*, travelled with this group, and according to P-0878 their role was to 'observe their own people, their subordinates who were participants in the mission' to ensure their and their tribe's active participation, and 'to observe the displacement of those people with their own eyes so that they are reassured that the plan is being executed, and also in order to get the money and belongings and animals of those citizens so that they can share it together at the end'.[1002] During the journey to Bindisi the *umdahs*, except *Umdah* Dawd Dahab, engaged in discussions with one another and with **the Accused** at some locations.[1003]

c) Forces involved

396. The operation in Kodoom, Bindisi and the surrounding areas took place over the course of two days. Kodoom was attacked on 15 August 2003 and Bindisi was attacked on 15 and 16 August 2003.[1004] The *Janjaweed* contingent that took part in the operation[1005] was comprised

[999] P-0878: T-078, p. 21; T-079, p. 51; P-0921: T-110, p. 28; T-111, pp. 41-42; P-1021: T-080, pp. 45-46. *Contra* Defence's Final Brief, para. 384. *See also* P-0643: T-056, pp. 41-44; T-057, pp. 82-83. *Contra* Defence's Final Brief, para. 142; Defence's Closing Statement: T-161, p. 85.
[1000] P-0878: T-078, pp. 23-24. P-0012 stated that although it was wrong and it violated the principles of Islam, it was common practice for state-level officials in West Darfur to instruct in writing the Bindisi *zakat* office to disburse the collected resources to the *Janjaweed* (P-0012's Statement, DAR-OTP-0119-0503-R01, at 0507-0508, paras 18-20). P-0012 stated that Abd-Al-Hakam sometimes gave orders to the Director of the *zakat* office, and '[h]e could do this because he was an Islamist, and anyone who had a constitutional post higher than *Muhafiz* could interfere and give orders to the Director [of the *zakat* office]' (P-0012's Statement, DAR-OTP-0119-0503-R01, at 0509, para. 24). *See also* P-0913's Statement, DAR-OTP-0218-0021, at 0024, para. 23.
[1001] P-1021: T-080, p. 46; T-081, pp. 5, 13-14, 20. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520-0521, para. 78; P-0012: T-045, pp. 14-16; T-046, pp. 49-52, *referring to* P-0012's Annotated Image, DAR-REG-0001-0010; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 39; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 6. *Contra* Defence's Final Brief, paras 388, 391-392.
[1002] P-0878: T-079, pp. 64-65.
[1003] P-0878: T-079, pp. 64-65, 87.
[1004] P-0029: T-029, pp. 42-43, 60-61; T-030, p. 14; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0056-0057, para. 8; P-0878: T-078, p. 47; T-079, p. 85; P-0903: T-032, pp. 70-71; P-0921: T-110, pp. 49-50 (*see* the Chamber's assessment of P-0921's evidence, Annex B, Section I.A.38). *See* P-0816's Statement, DAR-OTP-0214-0721-R02, at 0728, para. 34; P-0874's Annotated Map, DAR-OTP-00000232. *See also* paras 404, 420-421 *below*.
[1005] P-0029: T-029, pp. 42-43; T-030, p. 14; P-0878: T-079, p. 85. *See* the evidence of the witnesses who were in Kodoom during the *Janjaweed* attack: P-0029: T-029, pp. 44, 48, 61, 66-67, 71; T-030, p. 12; T-031, pp. 23-24; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 42; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, paras 42-43; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, para. 2. *See* the evidence of the witnesses who were in Bindisi during the *Janjaweed* attack: P-0007: T-089, p. 35 (*see* the

of thousands of members,[1006] on horses, camels, donkeys, on foot,[1007] and in vehicles.[1008] **The Accused** commanded this contingent.[1009] Samih was the 'second person in command'.[1010] There were at least three Land Cruiser vehicles in the convoy of this contingent.[1011] The *Janjaweed* were armed with various types of weapons, including assault rifles.[1012] P-0878 and P-0874 noticed that **the Accused** was also armed.[1013] Some *Janjaweed* wore khaki uniforms,

Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1); P-0012's Statement, DAR-OTP-0119-0503-R01, at 0521, para. 78; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0062, para. 29; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0320, para. 29; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26.

[1006] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 78; P-0012: T-045, p. 15; T-046, pp. 49-52, *referring to* P-0012's Annotated Image, DAR-REG-0001-0010; P-0029: T-029, pp. 43-44, 48; P-0878: T-078, pp. 31, 58; T-079, p. 46; P-0921: T-110, p. 22; T-111, p. 24. *See also* P-0874: T-082, pp. 37-38. *Contra* Defence's Final Brief, para. 392.

[1007] P-0029: T-029, pp. 44, 65; P-0878: T-078, pp. 31, 58; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0319, para. 23; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, para. 42; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26. *See also* P-0007's Statement, DAR-OTP-0088-0060-R02, at 0067, para. 27.

[1008] P-0029: T-029, p. 61; T-030, p. 12; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, paras 42-43; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, para. 2; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26. *See also* P-0007's Statement, DAR-OTP-0088-0060-R02, at 0067, para. 27.

[1009] P-0874: T-082, pp. 19, 40 (*see* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26); P-0878: T-079, pp. 66, 84-85; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0457-0458, paras 97-98; P-1021: T-081, p. 65. The Chamber notes that the Garsila and Mukjar civilian PDF coordinators Hassaballah and Solonga (*see* Defence's Final Brief, paras 330-331), respectively, were present in the convoy of the *Janjaweed* contingent that conducted the Kodoom and Bindisi Operation. The Chamber also notes that during the operation Solonga protected P-0878 (*see* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49). The Chamber further notes that, throughout the Kodoom and Bindisi Operation, **the Accused** issued instructions to Hassaballah, held meetings with Solonga and members of the *Janjaweed*, subdued the dissent and protestations of the Mukjar PDF coordinator; *Umdah* Dawd Dahab; Issa Mardom, a *Janjaweed aqid*; and P-0874 (*see* paras 416, 436-441 *below*). Therefore, even if individuals like the PDF coordinators and other *Janjaweed* leaders may have exercised a degree of authority during the Kodoom and Bindisi Operation – such as Solonga (P-1021) protecting P-0878 from harm – the Chamber is satisfied that **the Accused** exercised the highest authority over personnel who were present and participated in the Kodoom and Bindisi Operation. (*Contra* Defence's Final Brief, paras 423-424). Additionally, **the Accused** was one of many local or regional leaders or prominent people on whom the *Jihaz* had files (P-0769: T-098, p. 44). Furthermore, P-0769 recalled seeing signal communications stating that '**Ali Kushayb**' led the *Janjaweed* in operations in Bindisi (P-0769: T-097, pp. 28-29; T-098, p. 42). P-0769 stated that he remembered this signal about **the Accused** because he had to regularly look at **the Accused's** file and hence, it stuck in his mind (P-0769: T-098, pp. 44-45; *see* the Chamber's assessment of P-0769's evidence, Annex B, Section I.A.24). *Contra* Defence's Final Brief, paras 118, 387, 389, 404, 410, 420-423; Defence's Closing Statement: T-161, pp. 74-77.

[1010] P-0029: T-029, p. 72; T-030, pp. 15-16.

[1011] P-0007: T-089, p. 35 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1); P-0029: T-029, pp. 48, 67; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0521, para. 78; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, paras 42-43; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, para. 2. The Chamber notes that witnesses provided varying number of vehicles in the forces' convoy. This was based on their respective perspectives and vantage points. Considering the aforesaid, the Chamber is satisfied that at least three Land Cruiser vehicles were part of the *Janjaweed* contingent in this operation.

[1012] P-0029: T-029, pp. 44, 66, 71; T-031, pp. 23-24; P-0874: T-082, p. 37; P-0878: T-079, p. 62; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 42; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, para. 42; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26.

[1013] P-0874: T-082, pp. 36-37; P-0878: T-079, p. 62 (*see* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26).

some wore *jallabiyas* and other 'civilian clothing'.[1014] Some *Janjaweed* wore turbans or *kadamols*.[1015] There were 15 to 20 *agids* or colonels in the *Janjaweed* contingent, with each leading a group of about 150 to 250 members of the *Janjaweed*.[1016] The names of some of the *agids* were *Umdah* Abakr, the *umdah* of the Awatif;[1017] Adam Meris, the brother of *Umdah* Abakr;[1018] Issa Mardom;[1019] and Hassan Daloum.[1020]

d) Attacks on Nyerli and Tiro, on the way to Kodoom

397. P-0878 heard **the Accused** shout, '*Allahu Akbar*, *Allahu Akbar*. Wipe out, sweep away. *Amsah aksah*', as he ordered the *Janjaweed* to move towards Nyerli.[1021] Some time after leaving Mukjar, on or around 15 August 2003, the *Janjaweed* reached Nyerli,[1022] a predominantly Fur village.[1023] In Nyerli, **the Accused** instructed the *Janjaweed* to start attacking with rallying calls, instructing them to 'wipe out and sweep away'.[1024] Throughout the operation, **the Accused** chanted '*Allahu Akbar*', '*Amsah aksah*' and '[w]ipe out, sweep away, *amsah aksah*' to instruct the *Janjaweed* to start attacking.[1025] P-0878 heard **the Accused** say that, 'I will kill whoever I want and leave whoever I want to live',[1026] and saw **the Accused** issuing instructions to Hassaballah throughout the operation.[1027]

398. The attack on Nyerli lasted two and a half to three hours,[1028] during which the

[1014] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0066, para. 26; P-0007: T-089, p. 32, *referring to* Photograph, DAR-D31-00000005, Translation, DAR-D31-00000007 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1); P-0011: T-091, p. 39; P-0029: T-029, p. 71; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0062, para. 29; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0320, para. 29; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 42; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, para. 42; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26, *referring to* P-1074's Colour Chart, DAR-OTP-0224-0458.
[1015] P-0922's Statement, DAR-OTP-0222-0312-R01, at 0320, para. 29, *referring to* P-0922's Table, DAR-OTP-0222-0341-R01; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 42; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0444, para. 36; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446, para. 26, *referring to* Colour Chart, DAR-OTP-0222-5037; P-1074: T-103, pp. 48-49.
[1016] *See* P-0878: T-078, pp. 60, 63.
[1017] P-0878: T-078, p. 64.
[1018] P-0029: T-029, p. 72; P-0878: T-078, p. 64.
[1019] P-0029: T-029, p. 72; P-0878: T-078, p. 64.
[1020] P-0878: T-078, p. 64.
[1021] P-0878: T-078, pp. 34-35 (*see* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28). *See also* P-0874: T-082, pp. 18-19. *Contra* Defence's Final Brief, para. 267.
[1022] P-0878: T-078, p. 33. For location of Nyerli, *see* P-0874's Annotated Map, DAR-OTP-00000232.
[1023] P-0878: T-078, p. 33; P-0921: T-110, p. 37; P-1021: T-080, p. 50. *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49.
[1024] P-0878: T-079, p. 49. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28.
[1025] P-0878: T-078, pp. 21, 26-27. *Contra* Defence's Final Brief, para. 267.
[1026] P-0878: T-078, pp. 20-21, 26-27. *Contra* Defence's Closing Statement: T-161, pp. 74-77.
[1027] P-0878: T-078, pp. 30-31, 36, 41-42, 45, 48, 57-59, *referring to* P-0878's Annotated Map, DAR-OTP-00000099; T-079, p. 52.
[1028] P-0878: T-078, p. 36.

Janjaweed fired at and chased away the inhabitants, looted properties and burned down houses.[1029] P-0878 later heard that three to four women were raped during this attack.[1030] P-1021 stated that, upon seeing Nyerli being burned down, he asked **the Accused** why he did this and remembered **the Accused** answering that it was none of P-1021's business.[1031]

399. From Nyerli the *Janjaweed* moved south-west towards Tiro.[1032] Before entering Tiro, **the Accused** instructed Abd-Al-Jabbar to point out a route that the *Janjaweed* could take into Tiro where the vehicles would not get stuck in the mud.[1033] As a director of the *zakat* office of the region, it was understood that Abd-Al-Jabbar knew the area well, and thus could do as instructed.[1034] Soon after that, the *Janjaweed* arrived in Tiro.[1035] The *Janjaweed* fired at and chased its inhabitants, who were predominantly Fur,[1036] and burned down their houses.[1037] People were killed during the attack.[1038]

400. During this attack, *Shartay* Omar Ahmad Zarruq and his bodyguard, Suleiman Harris,[1039] were stopped by members of the *Janjaweed*.[1040] They were both armed but they did not resist the *Janjaweed*. They handed over their weapons to the *Janjaweed* and they were not

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[1029] P-0878: T-078, pp. 31-34, *referring to* P-0878's Annotated Map, DAR-OTP-00000099; T-079, pp. 7, 49; P-0921: T-110, pp. 35-37. *See also* P-0916's Statement, DAR-OTP-0224-0023-R01, at 0034, paras 46-47; P-0916's Statement Corrections, DAR-OTP-00000060, at 000002, para. 15 (*see* the Chamber's assessment of P-0916's evidence, Annex B, Section I.A.35); P-1021: T-080, pp. 46-47. *See also* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49.
[1030] P-0878: T-078, pp. 35-36. *See* Defence's Final Brief, para. 436.
[1031] P-1021: T-080, pp. 48-49. *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49.
[1032] P-0878: T-078, p. 36, *referring to* P-0878's Annotated Map, DAR-OTP-00000099; T-079, p. 51; P-1021: T-081, p. 5. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49. *Contra* Defence's Final Brief, para. 394.
[1033] P-0878: T-078, pp. 36-37.
[1034] P-0878: T-078, pp. 36-37.
[1035] P-0878: T-078, p. 37. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 394. For location of Tiro, *see* P-0874's Annotated Map, DAR-OTP-00000232.
[1036] P-0878: T-078, p. 37; P-0913's Statement, DAR-OTP-0218-0021, at 0026, para. 34; P-1021: T-081, p. 9. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49.
[1037] P-0029: T-029, pp. 41, 43-44, 55, 60-61, 64; T-030, pp. 11-12; T-031, p. 21; P-0878: T-078, pp. 37-38; T-079, p. 7; P-1021: T-081, pp. 5, 7. P-1021 stated that Tiro was completely burned down (P-1021: T-081, p. 10). *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 77; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 25, *referring to* P-0085's Sketch, DAR-OTP-0110-0071-R01, Translation, DAR-OTP-0153-1577-R01; P-0757's Statement, DAR-OTP-0211-0003-R02, at 0009-0010, paras 25-32; P-0913's Statement, DAR-OTP-0218-0021, at 0025, para. 28; P-0916's Statement, DAR-OTP-0224-0023-R01, at 0034, paras 46-47; P-0916's Statement Corrections, DAR-OTP-00000060, at 000002, para. 15 (*see* the Chamber's assessment of P-0916's evidence, Annex B, Section I.A.35).
[1038] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0434, para. 41; P-0878: T-078, p. 42. *See also* P-0757's Statement, DAR-OTP-0211-0003, at 0013, paras 42-43. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49.
[1039] P-0878: T-078, p. 40.
[1040] P-0878: T-078, p. 38.

harmed.[1041] During the attack on Tiro, P-0878 also saw the burning hut of *Al Faqih* Adam'Izz-al-Din, who was a trader, an inhabitant of Tiro and a relative of Suleiman Harris. Some 45 days later *Shartay* Omar Ahmad Zarruq and Suleiman Harris told P-0878 that *Al Faqih* Adam'Izz-al-Din had tried to defend his shop with a weapon and members of the *Janjaweed* had killed him.[1042] P-0878 did not see anyone else in possession of a weapon or use a weapon.[1043]

401. Soon after the event in Tiro, **the Accused** was giving instructions to Hassaballah, when he was interrupted by *Umdah* Dawd Dahab.[1044] P-0878 recalled *Umdah* Dawd Dahab telling **the Accused**:

> Ali, what you are doing here does not please God and doesn't please his prophet. And you said that you're not going to hit any person, nor kill any person, nor burn any house. You said that you will only do that to anybody who's carrying a weapon and resisted you. But what you're doing now is not right.[1045]

402. P-0878 recalled **the Accused's** response:

> *Umdah*, this is our business. You can't tell us how to do our own work. If you don't like what we're doing, choose one of these horses. Can you see all of these horses in front of you? Choose one, ride it and go back to your house in Garsila.[1046]

403. After this exchange and following **the Accused's** instructions, the *Janjaweed* moved towards Kodoom.[1047]

e) Attack on Kodoom

404. Sometime in the morning of 15 August 2003, a convoy of three CRF Land Cruisers from Mukjar arrived in Kodoom.[1048] Marko, a CRF officer of the rank of *musa'id* (Master

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[1041] P-0878: T-078, pp. 38-40.
[1042] P-0878: T-078, pp. 38-40.
[1043] P-0878: T-078, p. 40.
[1044] P-0878: T-078, pp. 38, 41. *Contra* P-1021: T-081, pp. 78-79. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49. *Contra* Defence's Closing Statement: T-161, pp. 74-77.
[1045] P-0878: T-078, p. 41; T-079, pp. 57, 65.
[1046] P-0878: T-078, p. 41; T-079, pp. 57-58, 65.
[1047] P-0878: T-078, pp. 41-42; P-1021: T-081, pp. 9-10. *See also* P-0029: T-029, p. 55; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 25, *referring to* P-0085's Sketch, DAR-OTP-0110-0071-R01, Translation, DAR-OTP-0153-1577-R01. In line with its assessment of P-1021, the Chamber is satisfied that P-1021's evidence that he saw **the Accused** step out of the vehicle in Tiro and give instructions to Samih and Bonjouse is not reliable (P-1021: T-081, pp. 6-7). Similarly, in line with its assessment of P-0921, the Chamber is satisfied that the evidence of P-0921 that he and **the Accused** did not stop at Tiro, but rather they went straight to Kodoom is not reliable (P-0921: T-111, p. 64). *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49.
[1048] P-0029: T-029, pp. 43, 60-61, 63-64; T-030, p. 11 (*see* the Chamber's assessment of P-0029's evidence,

Sergeant) who was travelling in the convoy,[1049] told the people of Kodoom that a large *Janjaweed* contingent was going to the *zakat* office in Bindisi to obtain food for the horses and that they would pass through Kodoom.[1050] Marko's message was meant to reassure the inhabitants of Kodoom so that they would stay home and not flee the forthcoming attack.[1051] From Kodoom, Marko's CRF convoy went on to Seder and then Bindisi, where inhabitants were given the same message.[1052]

405. **The Accused**, Hassaballah and Solonga held an open-air meeting in the eastern outskirts of Kodoom Derliwa.[1053] P-0878 then heard **the Accused** instruct Hassaballah to 'move on'.[1054] The *Janjaweed*'s attack in Kodoom began sometime in the early afternoon on 15 August 2003.[1055]After entering Kodoom, members of the *Janjaweed* spread out all across the town, and moved through the neighbourhoods, from east to west.[1056] P-0878, who was travelling in the convoy of the *Janjaweed*, stated that Kodoom was attacked in the same way as Nyerli.[1057]

406. P-0874 followed the *Janjaweed* from Mukjar to Bindisi,[1058] and stated that 'some

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Annex B, Section I.A.6); P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 36; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 5; P-0932: T-068, p. 24 (*see* the Chamber's assessment of P-0932's evidence, Annex B, Section I.A.41). *See* P-0878: T-079, p. 48. P-0878 was later informed about the journey of the convoy and its purpose: P-0878: T-078, p. 47; T-079, p. 50. *See also* Defence's Final Brief, para. 399.

[1049] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 76; P-0029: T-029, pp. 43, 46, 60-61, 63; P-0921: T-110, p. 17. *See also* P-0903: T-032, pp. 70-71; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 36; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 5.

[1050] P-0029: T-029, pp. 43, 60-61, 63-64; T-030, p. 11; T-031, pp. 20-21; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 36; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 5. *See also* P-0878: T-079, p. 48. *See also* P-0028's Statement, DAR-OTP-0094-0423-R01, at 0433, para. 39.

[1051] P-0029: T-029, p. 43; T-031, pp. 20-21. *See also* P-0028's Statement, DAR-OTP-0094-0423-R01, at 0433, para. 39; P-0878: T-078, pp. 47, 58; T-079, pp. 48-50.

[1052] P-0029: T-029, pp. 60-61; T-030, p. 11. *See also* P-0878: T-079, p. 48. P-0878 was later informed about the journey of the convoy and its purpose (P-0878: T-078, pp. 47, 58).

[1053] P-0878: T-078, p. 44, *referring to* P-0878's Annotated Map, DAR-OTP-00000100. In line with its assessment of P-1021, the Chamber is satisfied that P-1021's evidence that, while in Kodoom, he and **the Accused** never stepped out of the vehicle to speak with members of the *Janjaweed*, is not reliable (P-1021: T-081, pp. 11, 80). *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49. *Contra* Defence's Final Brief, para. 397.

[1054] P-0878: T-078, p. 45.

[1055] P-0029: T-029, pp. 44, 64; T-031, pp. 21-23; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 35 (*see* the Chamber's assessment of P-0932's evidence, Annex B, Section I.A.41); P-0986's Statement, DAR-OTP-0222-0437-R01, at 0444, para. 34; P-0986: T-065, pp. 54-55. *See* P-0903: T-032, pp. 70-71; P-0913's Statement, DAR-OTP-0218-0021, at 0025, paras 26-27; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, paras 4-5. *See also* P-0878: T-078, p. 43. *Contra* Defence's Final Brief, para. 397.

[1056] P-0029: T-029, pp. 41, 43-44, 48, 61-62, 64-65; T-030, p. 12; T-031, pp. 23-24; P-0878: T-078, p. 45; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609-0610, paras 35, 41; P-0932: T-068, pp. 22-23 (*see* the Chamber's assessment of P-0932's evidence, Annex B, Section I.A.41); P-1021: T-081, pp. 10-11. *See* the Chamber's assessment of the evidence of P-0029, P-0878 and P-1021, Annex B, Sections I.A.6, I.A.28 and I.A.49.

[1057] P-0878: T-078, p. 47. *See* paras 397-398 *above*.

[1058] P-0874: T-083, pp. 34-35. *See* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26.

citizens and some armed individuals' with rifles resisted the *Janjaweed* in Kodoom.[1059] P-1021, who travelled in the convoy of the *Janjaweed* during the operation, stated that he could 'hear the *Janjaweed* firing, but no one was firing back from within the town or the locality'.[1060] P-1021 also stated that, at some point during the attack on Kodoom, two injured members of the *Janjaweed* were brought to their vehicle, but he could not tell how they got injured.[1061] P-0932, who was residing in Kodoom at that time, stated that the *Janjaweed* faced 'no resistance' in Kodoom.[1062]

407. As they moved through the neighbourhoods of Kodoom, the *Janjaweed* fired at and chased people, killing many. They also looted the houses and livestock, set fire to the houses, beat P-0986 and used derogatory expressions against the victims.[1063] Witnesses also gave evidence that they were told that members of the *Janjaweed* raped women during the attack on Kodoom.[1064]

i. Shooting and killings

408. Members of the *Janjaweed* shot and killed many people.[1065] Some people were burned to death inside their homes.[1066] P-0029 recounted that 'they [*i.e.* the *Janjaweed*] started firing ammunition in the town and people started running away' and that '[t]he members of the *Janjaweed* were firing at the citizens'.[1067] P-0878 saw the *Janjaweed* 'chasing the men and women of the village'.[1068] P-0986 explained that 'whenever [the *Janjaweed*] found anyone, they would shoot'.[1069] Not all victims have been identified, but those killed include: Abdullah Hassan; [1070] Bakhit Ibrahim; [1071] Dafalla Abdelaziz Hassan; [1072] *Faqih* Abd-Al-Rahman

[1059] P-0874: T-083, p. 64.
[1060] P-1021: T-081, pp. 11-12.
[1061] P-1021: T-081, p. 12.
[1062] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609-0610, para. 38.
[1063] P-0029: T-029, pp. 61, 71-72; T-030, p. 21; P-0878: T-078, pp. 45, 48; T-079, p. 7; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0445-0446, paras 39, 42; P-1021: T-081, pp. 11-12. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49. *See* paras 408-415 *below*.
[1064] P-0878: T-078, p. 55; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0611-0612, paras 49-50; P-0932: T-068, pp. 30-31. *Contra* Defence's Final Brief, paras 436-438.
[1065] P-0878: T-078, pp. 48, 53-54; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 41; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 7.
[1066] P-0874: T-082, pp. 23-25.
[1067] P-0029: T-029, pp. 61, 71-72; T-030, p. 21.
[1068] P-0878: T-078, pp. 45, 48; T-079, p. 7.
[1069] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0046, para. 45.
[1070] P-0878: T-078, p. 55.
[1071] P-0029: T-029, pp. 48, 61, 65; T-030, p. 12.
[1072] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0445, para. 40.

Abdullah ('Abd-Al-Rahman Wassaba');[1073] *Faqih* Umar Ya'qub (the *imam* of Kodoom Tineh mosque);[1074] Hasan Muhammad Hasan;[1075] Isa Ahmad Bakhit,[1076] Isa Ahmad Khalil;[1077] Muslim Mohammed Ibrahim;[1078] Saddiq Yahya Umar;[1079] Sadiq Mahmad Ahmad;[1080] and Ya'qub Muhammad Ahmad.[1081] P-0932 stated that approximately nine people were killed in the attack, but could not recall their names.[1082] Unidentified victims include two corpses seen by P-0874.[1083] P-0921 gave evidence that he saw approximately 64 corpses in Kodoom, but did not specifically identify the corpses.[1084] During the attack, some people had sought refuge in the mosque in Kodoom.[1085] According to P-0932, these people were not attacked or harmed.[1086]

ii. Fleeing and displacement

409. Many inhabitants fled Kodoom with their families, children and livestock, and hid in the nearby forest, brooks and valleys.[1087] P-0029 fled with his family and hid in the nearby forest.[1088] P-0932 fled to Merly with his two children.[1089] P-0986's mother, father and three younger siblings fled to the nearby forest.[1090] The attack forced many people, including P-0029, P-0932, P-0986 and P-0757, to leave Kodoom, and seek refuge in Mukjar and elsewhere.[1091] Many of them could not return to Kodoom after this attack because there was nothing left

[1073] P-0878: T-078, p. 54.
[1074] P-0029: T-029, pp. 48, 73, 75; T-030, p. 13. *See* P-0878: T-078, pp. 53-54.
[1075] P-0878: T-078, p. 55.
[1076] P-0029: T-029, pp. 48, 61, 65, 74-77; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0612, para. 51; P-0932: T-068, p. 8. P-0029 referred to 'Isa' as among those who were killed; the Chamber is satisfied that P-0029 is referring to his friend 'Isa Ahmad Bakhit' not 'Isa Ahmad Khalil' and P-0029's use of the first name 'Isa' demonstrates P-0029's familiarity with 'Isa Ahmad Bakhit' (P-0029: T-030, pp. 12-13).
[1077] P-0029: T-029, p. 73.
[1078] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0445-0446, para. 41.
[1079] P-0029: T-029, p. 65; P-0878: T-078, p. 55.
[1080] P-0878: T-078, p. 55.
[1081] P-0878: T-078, p. 55.
[1082] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 41; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 7.
[1083] P-0874: T-083, p. 65. *See* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26.
[1084] P-0921: T-111, p. 67. *See* the Chamber's assessment of P-0921's evidence, Annex B, Section I.A.38.
[1085] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0611, paras 47-48.
[1086] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0611, paras 47-48.
[1087] P-0029: T-029, pp. 60-61, 64; T-031, pp. 22-23; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609-0611, paras 38, 43; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0444-0446, paras 37, 39, 45. On the displacement of the population, *see* CLRV's Final Brief, paras 274-342.
[1088] P-0029: T-031, pp. 22-23, 25.
[1089] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610-0611, para. 43.
[1090] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0444, para. 37.
[1091] P-0029: T-029, pp. 42, 47; P-0757's Statement, DAR-OTP-0211-0003-R02, at 0015, para. 49; P-0874: T-082, pp. 24-25; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610-0611, 0613, paras 43, 55; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0046, 0450-0451, paras 45, 60-61, 66; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, paras 6-7.

there.[1092] P-0874 recollected that '[a]ll that was left was the fire burning', 'we found nothing left in the village', and that 'those who survived did not stay there', '[t]hey moved elsewhere' and 'were displaced'.[1093]

iii. Looting

410. During the attack, members of the *Janjaweed* looted property belonging to the inhabitants, such as beds, cattle and money.[1094] P-0029 recounted that '[t]hey [*i.e.* the *Janjaweed*] collected the animals […] and the money'.[1095] P-0874 saw the *Janjaweed* taking beds and 'other things', and a *Janjaweed* member, whom he recognised, taking a camel and a horse.[1096] P-0878 recounted seeing members of the *Janjaweed* 'looting the houses'.[1097] P-0932 stated that the *Janjaweed* took 'all of the money', and 'all of the livestock, cows, sheep, camels, donkeys and house contents'.[1098] P-0986 saw the *Janjaweed* 'searching through the houses and running after livestock, such as goats and sheep'.[1099] P-0986 saw members of the *Janjaweed* competing to see who would be the first one to get the loot from houses and take the looted livestock and items with them.[1100] Members of the *Janjaweed* looted: P-0029's two houses in Kodoom,[1101] and two camels and a horse;[1102] P-0932's house;[1103] and four sheep, 12 goats and 16 cows belonging to P-0986's family.[1104]

iv. Burning of houses and property

411. During the attack, members of the *Janjaweed* burned down houses all across Kodoom.[1105] P-0029 recounted that 'they [*i.e.* the *Janjaweed*] surrounded the houses, they

[1092] P-0029: T-029, p. 42; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0046, 0451, paras 45, 66.
[1093] P-0874: T-082, pp. 24-25. *See* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26.
[1094] P-0029: T-029, pp. 48, 65, 71-72; T-030, p. 12; P-0874: T-082, pp. 24-25; P-0878: T-078, p. 48; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 41; P-0932: T-068, p. 7; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0046, paras 44, 46.
[1095] P-0029: T-029, pp. 61, 71-72; T-030, p. 21.
[1096] P-0874: T-082, pp. 24-25.
[1097] P-0878: T-078, pp. 45, 48; T-079, p. 7.
[1098] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 41; P-0932: T-068, p. 7.
[1099] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0046, paras 44, 46.
[1100] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0445-0446, paras 39, 42, 44.
[1101] P-0029: T-030, p. 15.
[1102] P-0029: T-030, p. 15.
[1103] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0611, para. 47; P-0932: T-068, p. 24.
[1104] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, para. 46.
[1105] P-0029: T-029, pp. 44, 48, 61; T-030, pp. 12, 15, 21; P-0874: T-082, pp. 23-25; P-0878: T-078, p. 48; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0612, para. 53; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0046, paras 45, 46; P-1021: T-081, p. 12. *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49. *See also* P-0757's Statement, DAR-OTP-0211-0003-R02, at 0012-0013, para. 41.

burnt down the houses'.[1106] P-0878 recounted seeing members of the *Janjaweed* 'burning the village'.[1107] Members of the *Janjaweed* burned down: the house of *Sheikh* Adam Dawi, a well-known religious leader in the region;[1108] P-0986's house, with his furniture and grain.[1109] P-0029's two houses in Kodoom;[1110] and P-0932's house.[1111]

v. Beating and mistreatment

412. In the course of the attack, a member of the *Janjaweed* discovered P-0986 – who was pretending to be dead among two corpses – when a member of the *Janjaweed* stabbed him on his right foot with a bayonet.[1112] A Land Cruiser with a mounted gun and some people on board stopped close to P-0986's location.[1113] A man in civilian clothes – who P-0986 subsequently recognised as **the Accused** – got off the vehicle and approached P-0986 and the *Janjaweed* standing around him.[1114]

413. P-0986 recalled that **the Accused** asked the gathered *Janjaweed*, '[w]hy are you standing here?'[1115] One of them answered, '[w]e came and found these people. We tried to see if he is alive or dead, and found that he is alive.'[1116] **The Accused** then approached P-0986, put his foot on P-0986's neck, called him an *abid*, and asked '[w]here are the people of this village?'[1117] At that moment, P-0986 looked up and recognised **the Accused**.[1118] As he looked up, one of the members of the *Janjaweed* standing alongside **the Accused** hit P-0986 in the face with the stock of a rifle.[1119] P-0986 stated that he was in a 'great deal of pain' and was too terrified to answer, as the *Janjaweed* continued to kick him, hit him with rifle stocks and whip

[1106] P-0029: T-029, pp. 61, 71-72; T-030, p. 21. *See* CLRV's Final Brief, paras 274-342.
[1107] P-0878: T-078, pp. 45, 48; T-079, p. 7.
[1108] P-0878: T-078, p. 46.
[1109] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0446, para. 46.
[1110] P-0029: T-030, p. 15.
[1111] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0611, para. 47; P-0932: T-068, p. 24.
[1112] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0444-0447, paras 38-39, 43, 47-48; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, para. 2; P-0986: T-065, pp. 46-47. *See* the Chamber's assessment of P-0986's evidence, Annex B, Section I.A.46.
[1113] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, paras 49, 52; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, para. 2; P-0986: T-065, pp. 10, 51-53; T-066, pp. 6-7. *See* P-0984: T-067, p. 36.
[1114] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 49; P-0986: T-065, p. 10. *Contra* Defence's Final Brief, para. 418.
[1115] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 49; P-0986: T-065, p. 52.
[1116] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 49; P-0986: T-065, p. 52.
[1117] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 49; P-0986: T-065, pp. 9, 10, 47-48. '*Abid*' means 'slave' in Arabic (P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 49).
[1118] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447-0448, paras 50-52; P-0986: T-065, pp. 10, 47-51; T-066, pp. 23, 25. P-0986 estimated that this encounter to have lasted 10 to 20 minutes; P-0986: T-066, p. 24.
[1119] P-0986: T-065, pp. 10, 47-48.

him with leather horse whips.[1120] Some members of the *Janjaweed* told P-0986, '[y]ou slaves, it is your year, this year you will all die!'[1121]

414. One of the members of the *Janjaweed* pointed his gun at P-0986, addressed **the Accused** in words meaning 'Excellency Ali' or 'Commander Ali', and asked the latter to permit him to kill P-0986 and go after the livestock that was running away.[1122] P-0986 recalled that **the Accused** responded, '[n]o, do not shoot him. We have information that people from surrounding villages came to this village and we want him to tell us where these people are. First let him tell us where the other people are, all of them will die.'[1123] **The Accused** then instructed, '[d]o not kill him, just torture him until he tells where the other people are'.[1124] Thereafter, the *Janjaweed* – with **the Accused's** foot still on P-0986's neck – tied P-0986 hands and feet together behind his back, tied up his testicles with a plastic rope, and beat him.[1125] **The Accused** then instructed the *Janjaweed*, '[d]on't kill him. Let's catch the livestock running away and get the other people. After that, we can come back and ask where the people are. If after that you want to kill him, then kill him. If he tells where the people are, then you can kill him'.[1126] After which, **the Accused** then got back on the Land Cruiser and left.[1127] The *Janjaweed* did as they were instructed, but did not return to P-0986 to question him since at some point it began to rain.[1128] P-0986 was left tied up in the rain, and screaming in agony until he eventually lost consciousness.[1129] He lay there until the night, when he was found by some inhabitants who were returning to Kodoom to search for food for their children, and was carried to the forest.[1130]

[1120] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, paras 49-50; P-0986: T-065, p. 10; T-066, p. 23.
[1121] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 50.
[1122] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0448, para. 53; P-0986: T-065, p. 51. P-0986 explained that '*Jenabu*' is a way of referring to someone senior in a force, to the boss or a superior in the police or the military (P-0986's Statement, DAR-OTP-0222-0437-R01, at 0448, para. 53).
[1123] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0448, para. 53; P-0986: T-065, pp. 11, 50-51; T-066, pp. 25-26.
[1124] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0448, para. 53; P-0986: T-065, pp. 11, 48-49; T-066, pp. 25-26.
[1125] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0448, para. 54; P-0986: T-065, pp. 48-49, 55-56.
[1126] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0448, para. 55; P-0986: T-065, p. 53.
[1127] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0448, para. 55; P-0986: T-065, p. 49.
[1128] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0449, para. 56; P-0986: T-065, p. 53.
[1129] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0449, para. 56. P-0986's injuries took a long time to heal, and he suffered long-term effects due to the physical violence and pain inflicted upon him (P-0986: T-065, p. 18; T-066, pp. 24-25).
[1130] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0449-0450, paras 58, 60-61; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, paras 6-7.

vi. Use of derogatory expressions

415. During the attack, P-0986 saw and heard members of the *Janjaweed* approach on horses, firing their guns and shouting '*Nuba*! *Nuba*!'[1131] During their encounter, **the Accused** called P-0986 an *abid*.[1132] Around this time, in the presence of **the Accused**, some members of the *Janjaweed* told P-0986, '[y]ou slaves, it is your year, this year you will all die!'[1133]

vii. The Accused's actions

416. **The Accused** was present in Kodoom during the attack.[1134] P-0878 stated that around Kodoom Ronga Tass, **the Accused** scolded some members of the *Janjaweed* for not taking the medicines he found scattered around a dead body.[1135] While in Kodoom, **the Accused** asked a CRF officer to give him the ammunition he was carrying. The CRF officer initially refused and contacted Lt Col Himeidan, who then instructed him to handover the ammunition to **the Accused**, which he did.[1136]As described earlier,[1137] during his encounter with P-0986, **the Accused** mistreated P-0986 and *inter alia* instructed the *Janjaweed* to the same effect.

f) Attacks on Merly, Seder and Drangal, on the way to Bindisi

417. After Kodoom,[1138] the *Janjaweed* attacked Merly, Seder and Drangal; starting with Merly in the south-west.[1139] Merly, Seder and Drangal were predominantly inhabited by the

[1131] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0445, 0447, paras 39, 47; P-0986: T-065, p. 46. According to P-0986, the term '*Nuba*' means black; members of the *Janjaweed* were referring to people of the Fur ethnicity by using this term as 'there were no other black people there', and P-0986 considers the term to have a negative connotation because it is also used to refer to slaves (*see* P-0986's Statement, DAR-OTP-0222-0437-R01, at 0445, para. 39. *See also* P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 21; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0197, para. 47).
[1132] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 49; P-0986: T-065, pp. 9, 10. '*Abid'* means 'slave' in Arabic (P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 49).
[1133] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0447, para. 50.
[1134] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, para. 39; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 6. *See* the Chamber's assessment of P-0932's evidence, Annex B, Section I.A.41. *See* paras 412-414 *above*. *Contra* Defence's Final Brief, para. 400.
[1135] P-0878: T-078, p. 48.
[1136] P-0921: T-110, pp. 45-47; T-111, pp. 68-71. *See* the Chamber's assessment of P-0921's evidence, Annex B, Section I.A.38. *See also* Defence's Final Brief, para. 376.
[1137] *See* paras 412-414 *above*.
[1138] P-0029: T-029, pp. 42, 55, 61-62, 69-70, 72; T-030, pp. 12-13; P-0878: T-078, p. 56, *referring to* P-0878's Annotated Map, DAR-OTP-00000099.
[1139] P-0029: T-029, pp. 41, 61-62, 73; T-030, p. 13; P-0878: T-078, p. 56, *referring to* P-0878's Annotated Map, DAR-OTP-00000099; P-0913's Statement, DAR-OTP-0218-0021, at 0025-0026, paras 32-33; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, paras 7-8; P-0913: T-069, p. 33; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0611, paras 44-45; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0450, para. 62; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, para. 8. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 77. For the location of Merly, *see* P-0874's Annotated Map, DAR-

Fur.[1140] In Merly, members of the *Janjaweed* shot and killed people, looted property, and burned down houses.[1141]

418. Some *Janjaweed* split from the main contingent in Kodoom,[1142] went south and attacked Seder.[1143] From Seder, that group moved east and rejoined the main contingent near Drangal.[1144] Around this time, members of the *Janjaweed* also attacked Drangal, killed some of its inhabitants and burned down houses.[1145]

419. The *Janjaweed* then moved towards Bindisi.[1146]

g) Attack on Bindisi

420. Sometime in the afternoon of 15 August 2003, Marko's CRF convoy arrived in Bindisi.[1147] Like in Kodoom,[1148] the inhabitants of Bindisi were told that **the Accused** and the *Janjaweed* were coming to Bindisi to collect grain from the *zakat* office and the villagers were reassured that they would not be harmed.[1149] P-0012 and other inhabitants were also told that

OTP-00000232. Seder was located south of Kodoom, about 30 minutes on foot (P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 22). Seder and Merly were located very close to each other, about 7 to 10 minutes on foot (P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 22).

[1140] P-0913's Statement, DAR-OTP-0218-0021, at 0026, para. 34; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0441, para. 22. *See also* P-0986's Statement, DAR-OTP-0222-0437-R01, at 0450, para. 62; P-0986's Statement Corrections, DAR-OTP-0220-5673, at 5673, para. 8.

[1141] P-0029: T-029, p. 62; T-030, p. 13; P-0874: T-082, p. 31; P-0878: T-078, p. 57.

[1142] P-0878: T-078, p. 48, *referring to* P-0878's Annotated Map, DAR-OTP-00000100.

[1143] P-0029: T-030, pp. 12-13; P-0878: T-078, p. 56, *referring to* P-0878's Annotated Map, DAR-OTP-00000099; P-0029: T-029, pp. 73-74. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 77. For location of Seder, *see* P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 25, *referring to* P-0085's Sketch, DAR-OTP-0110-0071-R01, Translation, DAR-OTP-0153-1577-R01; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061-0062, para. 28; P-0874's Annotated Map, DAR-OTP-00000232.

[1144] P-0878: T-078, p. 56, *referring to* P-0878's Annotated Map, DAR-OTP-00000099. *See also* P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 27, *referring to* P-0085's Sketch, DAR-OTP-0110-0071-R01, Translation, DAR-OTP-0153-1577-R01.

[1145] P-0029: T-029, pp. 55, 62, 73-74; T-030, p. 13; P-0878: T-078, p. 57, *referring to* P-0878's Annotated Map, DAR-OTP-00000099. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 77; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0317, paras 19-20, 23-24. *See also* P-0913's Statement, DAR-OTP-0218-0021, at 0026, para. 35.

[1146] P-0029: T-029, pp. 55, 62; T-030, p. 13; P-0878: T-078, p. 57.

[1147] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 76; P-0012: T-046, pp. 44-45; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0060-0061, para. 24; P-0913's Statement, DAR-OTP-0218-0021, at 0024, para. 21; P-0913: T-069, pp. 12-13, 28-29. The Chamber notes that P-0012 stated that the convoy had four vehicles, whereas P-0029, P-0878 and P-0913 stated that this CRF convoy which left Mukjar early in the morning of 15 August 2003 had three vehicles (*see* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 76; P-0029: T-029, pp. 43, 63 (*see* the Chamber's assessment of P-0029's evidence, Annex B, Section I.A.6); P-0878: T-079, p. 50; P-0913's Statement, DAR-OTP-0218-0021, at 0024, para. 21. Based on the mutually supportive evidence of P-0913, P-0029 and P-0878 on this point, the Chamber is satisfied that the convoy was indeed composed of three vehicles).

[1148] *See* para. 404 *above*.

[1149] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 76; P-0012: T-045, p. 12; P-0913's Statement, DAR-OTP-0218-0021, at 0024, paras 21, 23; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001,

the Accused had obtained authorisation from Abd-Al-Hakam to obtain grain from the *zakat* office.[1150] Soon after, P-0012 and other inhabitants of Bindisi saw smoke rising from Tiro and then from Kodoom.[1151] P-0012 stated that, at this point, he realised that Marko's message was false.[1152] Around this time, a man on horseback arrived in Bindisi, having escaped the attack in Kodoom, and told the inhabitants of Bindisi to flee.[1153]

421. The *Janjaweed* attacked North and South Bindisi over the course of two days, 15 and 16 August 2003. The attack began in North Bindisi sometime in the late afternoon of 15 August 2003,[1154] and continued into South Bindisi on 16 August 2004.[1155] P-0011 saw the *Janjaweed* separate themselves across North Bindisi when they arrived there.[1156] Sometime around sunset on 15 August 2003, it began to rain,[1157] which led to a pause in the attack.[1158] **The Accused**, Hassaballah, Abd-Al-Jabbar, Solonga and the majority of the *Janjaweed* spent the night of 15 August 2003 encamped in Daguina, which was around the north of Bindisi.[1159] The attack on

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para. 1; P-0913: T-069, pp. 12-13, 28-31, 33-34. *See also* P-0028's Statement, DAR-OTP-0094-0423-R01, at 0433, para. 39; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0060-0061, para. 24. The Chamber notes that evidence, specifically that of P-0012, P-0085 and P-0913, differs in terms of the exact time of arrival of Marko's convoy (*see* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 76; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0060-0061, para. 24; P-0913: T-069, pp. 33-34). The Chamber is satisfied that: differences in the recollection of the exact time is insignificant; the crux of the evidence of the witnesses is the same, that Marko's convoy arrived in Bindisi sometime in the afternoon on Friday, 15 August 2024; and reassured the inhabitants that they would not be harmed by the *Janjaweed* forces. *Contra* P-0921: T-110, pp. 47-49; T-111, pp. 76-77. *See* the Chamber's assessment of P-0921's evidence, Annex B, Section I.A.38.

[1150] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 76; P-0012: T-045, p. 12. *See also* P-0085's Statement, DAR-OTP-0110-0054-R02, at 0060-0061, para. 24.

[1151] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 77; P-0012: T-045, p. 12; T-046, pp. 45-46.

[1152] P-0012: T-045, pp. 11-12.

[1153] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 77; P-0913's Statement, DAR-OTP-0218-0021, at 0025, paras 26-27; P-0913: T-069, p. 42; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0317, para. 18. *See also* P-0816's Statement, DAR-OTP-0214-0721-R02, at 0728, para. 34.

[1154] P-0011: T-091, pp. 17, 38, 40; P-0029: T-029, p. 62; T-030, p. 13; T-031, pp. 35-36; P-0878: T-077, pp. 62-63; T-078, pp. 57-58; T-079, p. 85; P-0913's Statement, DAR-OTP-0218-0021, at 0026, paras 35-37; P-0913: T-069, pp. 12-13; P-1021: T-081, p. 19. *See* the Chamber's assessment of the evidence of P-0029, P-0878 and P-1021, Annex B, Sections I.A.6, I.A.28 and I.A.49. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520, para. 78.

[1155] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83; P-0012: T-045, p. 17; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195, para. 37, *referring to* P-0015's Sketch, DAR-OTP-0088-0211-R01; P-1073: T-103, p. 26; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447, para. 32. *See also* P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061-0062, para. 28; P-0029: T-031, pp. 34-36.

[1156] P-0011: T-091, pp. 17-19. *See* P-0012's Annotated Image, DAR-OTP-0220-4713-R01.

[1157] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0521, para. 80; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0449, para. 57. *See also* P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 27, *referring to* P-0085's Sketch, DAR-OTP-0110-0071-R01, Translation, DAR-OTP-0153-1577-R01.

[1158] P-0012: T-046, p. 52; P-0029: T-029, p. 62; T-030, p. 13; P-0878: T-078, pp. 57-58; P-0913: T-069, pp. 12-13; P-1021: T-081, pp. 18-19. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0521, para. 80.

[1159] P-0029: T-030, pp. 13, 47; T-031, pp. 35-36; P-0874: T-082, pp. 32-34; P-0878: T-078, pp. 59-60, *referring to* P-0878's Annotated Map, DAR-OTP-00000099; P-1021: T-081, pp. 20-21. *See* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49. *See also* P-0012's

South Bindisi began in the morning of 16 August 2004,[1160] P-0012 saw the *Janjaweed* divide into three groups as they dispersed across North Bindisi: 'one [group] burned the village; one collected animals and broke into houses; and the third chased the people who were running away'.[1161] After entering South Bindisi, members of the *Janjaweed* briefly exchanged fire with the police based at the police station there.[1162] After which, they destroyed the police station.[1163]

422. During the attack, the *Janjaweed* fired at and killed many inhabitants; chased them out of Bindisi; looted the market, livestock, and houses; burned down houses and property; beat people; made derogatory remarks; and raped women.

i. Shooting and killings

423. During the attack, the *Janjaweed* fired at the inhabitants of Bindisi, and at people trying to flee the attack, including women,[1164] and killed people.[1165] P-0129 stated that the *Janjaweed* 'killed the inhabitants of the town indiscriminately'.[1166] The *Janjaweed* searched the fields around *wadi* Salih for people hiding there.[1167] P-0007's brother,[1168] and P-0015's father (shot in the head) were among the persons shot by the *Janjaweed* while they were trying to flee the attack.[1169] P-0015 stated, '[a]s we turned back to carry my father, he told us that we should

Statement, DAR-OTP-0119-0503-R01, at 0521, para. 80; P-0913's Statement, DAR-OTP-0218-0021, at 0026-0027, para. 39; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, para. 10; P-0913: T-069, pp. 12-13. *Contra* Defence's Final Brief, para. 403.

[1160] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83; P-0012: T-045, p. 17; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195, para. 37, *referring to* P-0015's Sketch, DAR-OTP-0088-0211-R01; P-1073: T-103, p. 26; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447, para. 32. *See also* P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061-0062, para. 28; P-0029: T-031, pp. 34-36.

[1161] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83. *See* P-0007's Statement, DAR-OTP-0088-0060-R02, at 0066, para. 23 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1); P-0029: T-030, pp. 13-14, 19, 21-22; T-031, pp. 31-33, 34-36, *referring to* Map of Bindisi Town, DAR-OTP-0220-3702.

[1162] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83; P-0012: T-046, pp. 58-59, *referring to* P-0012's Annotated Image, DAR-OTP-0220-4715-R01. *See also* P-0913's Statement, DAR-OTP-0218-0021, at 0027, para. 41; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, para. 11; P-0913: T-069, pp. 42-44.

[1163] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83.

[1164] P-0029: T-030, pp. 19-21; T-031, pp. 35-36; P-0913's Statement, DAR-OTP-0218-0021, at 0027, para. 41; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, para. 11.

[1165] P-0012: T-045, pp. 18-19, 34; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 85. In line with its assessment of P-1021, the Chamber is satisfied that P-1021's evidence, that he did not see or hear that anyone was killed or injured in attack on Bindisi, is not reliable (P-1021: T-081, p. 20). *See* the Chamber's assessment of P-1021's evidence, Annex B, Section I.A.49.

[1166] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0136, para. 32.

[1167] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83.

[1168] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0066, para. 22. *See* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1).

[1169] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0193, paras 26-27. *See* the Chamber's assessment of P-0015's evidence, Annex B, Section I.A.4.

leave him behind as he was already dead and we should save ourselves'.[1170] The *Janjaweed* also shot one of P-0015's neighbours, who P-0015 saw lying 'on the ground struggling'.[1171] During the attack, P-0011 saw a member of the *Janjaweed* on horseback strike with a sword a woman who was carrying certain objects while she was trying to flee the attack and another woman who was raped while being questioned for carrying a suitcase.[1172] P-0012 stated that injured people did not receive any treatment and died due to this lack of care.[1173]

424. After capturing P-0011 and some other people when they were trying to flee the attack,[1174] the *Janjaweed* separated the men, numbering around 20, including Rashid Issa, Adam Bosch and Abd-Al-Nasir Ibrahim, tied their hands behind their backs, beat them with rifle stocks, and then opened fire, killing all of them.[1175] The following individuals were identified as some of the people killed during the attack: P-0015's father;[1176] Abakar Abd-Al-Kabir; [1177] Abd-Al-Gadir Abdalla; [1178] Abd-Al-Nasir Ibrahim; [1179] Abdu Muhammad Abdulrahman (nickname 'Truck'); [1180] Abubakar Harun; [1181] Adam Abdalla; [1182] Adam Abdallah Imam;[1183] Adam Bosch;[1184] Adam Suleiman;[1185] Ahmed ('Gebna');[1186] Baher Harun Atim (*Imam* of the mosque in South Bindisi);[1187] Daoud Ali Yusif;[1188] Darasalam Husayn;[1189]

[1170] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0193, paras 26-27.
[1171] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0193, paras 26-27.
[1172] P-0011: T-091, p. 23.
[1173] P-0012: T-045, p. 34.
[1174] P-0011: T-091, p. 23.
[1175] P-0011: T-091, pp. 23, 27-30, *referring to* Anatomical Sketch, DAR-OTP-00000363; P-0011's List, DAR-OTP-00000356, at 000002.
[1176] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0193, paras 26-27. *See* the Chamber's assessment of P-0015's evidence, Annex B, Section I.A.4.
[1177] P-0011: T-091, p. 16; 21-23; P-0011's List, DAR-OTP-00000356, at 000002.
[1178] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105.
[1179] P-0011: T-091, p. 27; P-0011's List, DAR-OTP-00000356, at 000002.
[1180] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, para. 38.
[1181] P-1074: T-103, p. 41.
[1182] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105.
[1183] P-0913's Statement, DAR-OTP-0218-0021, at 0029, paras 52-53; P-0913's List, DAR-OTP-00000013; P-0913: T-069, pp. 13, 22.
[1184] P-0011: T-091, pp. 23, 27-30.
[1185] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105.
[1186] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, para. 38.
[1187] P-0913's Statement, DAR-OTP-0218-0021, at 0029, paras 52-53; P-0913's List, DAR-OTP-00000013; P-0913: T-069, pp. 13, 22.
[1188] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, para. 38.
[1189] P-0007: T-089, pp. 8-9, 11, *referring to* P-0007's Annotated Map, DAR-OTP-00000312 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1).

Hadg Baher;[1190] Halima Isa;[1191] Harun Bahar Al-Din;[1192] Hawa;[1193] Hussein ('Jourgi');[1194] Hussein Mohamed Abdulrahman;[1195] Ibrahim Gibna;[1196] Ismail Abdulkaram;[1197] Ismail Muhammad Abdulrahman;[1198] Kaltuma;[1199] Khaltouma Yahia Ahmed;[1200] Khamis;[1201] Khamis Adam Idris (a tailor);[1202] Kony Harun;[1203] Mohammed Khamiss;[1204] Mudeser Ibrahim;[1205] Omar;[1206] Rashid Issa;[1207] Zakariya Isaac;[1208] and Zakariya Isaaq Adam.[1209]

425. When P-0007 returned to Bindisi around 15 days after the attack, he saw 17 rotting corpses.[1210] P-0012 saw eight to ten bodies, which he could not identify, of which: '[f]ive of the bodies were of old men, two were young men (about 17 or 19 years), one was a little girl and one was a woman'.[1211] P-0913 stated that during the burial of the corpses, he was told about the killings of Abd-al-Qadir Abdallah Sulayman, Mohammed Khamiss, Mudathir Ibrahim Yusuf, and Omar Suleiman Muhammad.[1212] P-1074's father told her the names of 7 persons who were killed during the attack on Bindisi.[1213]

[1190] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105.
[1191] P-0007: T-089, pp. 7-8, *referring to* P-0007's Annotated Map, DAR-OTP-00000312.
[1192] P-1074: T-103, p. 41.
[1193] P-0029: T-029, p. 74; T-031, pp. 35-36.
[1194] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105.
[1195] P-0913's Statement, DAR-OTP-0218-0021, at 0029, paras 52-53; P-0913's List, DAR-OTP-00000013; P-0913: T-069, pp. 13, 22.
[1196] P-0029: T-029, p. 74; T-030, pp. 13, 18-19, 22; T-031, pp. 35-36.
[1197] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, para. 38.
[1198] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, para. 38.
[1199] P-0029: T-030, p. 22; T-031, pp. 35-36.
[1200] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105; P-0085's statement, DAR-OTP-0110-0054-R02, at 0062, para. 31 ('Kaltuma Daiya'); P-0913's Statement, DAR-OTP-0218-0021, at 0029, paras 52-53; P-0913: T-069, pp. 13; P-0913's List, DAR-OTP-00000013; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447, para. 29.
[1201] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105.
[1202] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 85; P-0874: T-082, p. 35; P-0913's Statement, DAR-OTP-0218-0021, at 0029, paras 52-53; P-0913's List, DAR-OTP-00000013; P-0913: T-069, pp. 13, 22.
[1203] P-0007: T-089, p. 8, *referring to* P-0007's Annotated Map, DAR-OTP-00000312 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1).
[1204] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, para. 38.
[1205] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105.
[1206] P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, para. 38.
[1207] P-0011: T-091, pp. 23, 27-30.
[1208] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0207, para. 105.
[1209] P-0913's Statement, DAR-OTP-0218-0021, at 0029, paras 52-53; P-0913's List, DAR-OTP-00000013; P-0913: T-069, pp. 13, 22. *See* the Chamber's assessment of P-0913's evidence, Annex B, Section I.A.34.
[1210] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0068, paras 32, 41-42; P-0007: T-089, p. 16. *See* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1. *Contra* Defence's Final Brief, para. 425.
[1211] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 85.
[1212] P-0913's List, DAR-OTP-00000013, at 000002. P-0913 also provided another list of 46 victims killed and wounded during the *Janjaweed*'s attack on Bindisi (P-0913's List, DAR-OTP-0218- 0054, Translation, DAR-OTP-0219-8114). This list simply lists the names without any mention of the time, location or the nature of the casualty (killed or wounded). The Chamber finds this list vague and therefore, unreliable.
[1213] P-1074: T-103, pp. 40-41, *referring to* P-1074's List, DAR-OTP-00000506.

ii. Fleeing and displacement

426. When the attack started, P-0015 (with her mother, brothers and sister, and 15 others), P-0913 and P-1074 (with her mother, brother and sister) fled to South Bindisi and the nearby forests and fields.[1214] The Chamber considers that the forest south of Bindisi falls within the meaning of 'surrounding areas' as indicated in the Confirmation Decision.[1215] The attack and the resulting destruction forced many inhabitants, including P-0012, P-0015, P-0085, P-1073 and P-1074, to leave Bindisi, and seek refuge in Mukjar and elsewhere.[1216] P-0913 and his brother fled Bindisi and sought refuge in Jartaga.[1217] Many of the inhabitants did not return to Bindisi and were displaced across the region.[1218] P-0874 gave evidence that people 'ran for their lives'.[1219] P-0878 gave evidence that people 'ha[d] no other choice than to leave their territory and their heritage'.[1220] P-0012's family first fled to Mukjar and then to Chad.[1221] P-0085 fled to Um Dukhun and then to Chad, and his family is scattered all across Darfur and neighbouring Chad.[1222] P-0129's second wife and her children sought refuge in Mukjar.[1223]

iii. Looting

427. During the attack on Bindisi, the *Janjaweed* looted houses, shops and property belonging to the inhabitants.[1224] The households of P-0878, P-0012, P-0129 and P-0913 were

[1214] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0521, para. 79; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0193, 0197, paras 27-28, *referring to* P-0015's Sketch, DAR-OTP-0088-0211-R01 (*see* the Chamber's assessment of P-0015's evidence, Annex B, Section I.A.4); P-0913's Statement, DAR-OTP-0218-0021, at 0026, paras 35-37; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, para. 9; P-0913: T-069, pp. 12-13, 36, 45; P-1073: T-103, pp. 9-10; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446-0447, paras 25, 31.
[1215] *See* Confirmation Decision, p. 15, para. 25.
[1216] P-0012: T-045, pp. 34-35; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0197, para. 48; P-0015: T-093, pp. 47-48 (*see* the Chamber's assessment of P-0015's evidence, Annex B, Section I.A.4); P-0085's Statement, DAR-OTP-0110-0054-R02, at 0056-0057, para. 8; P-0874: T-082, p. 35 (*see* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26); P-1073: T-103, p. 17; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447-0449, paras 31-43. *See also* P-0029: T-031, pp. 35-36. On the displacement of the population, *see* CLRV's Final Brief, paras 274-342.
[1217] P-0913's Statement, DAR-OTP-0218-0021, at 0027, para. 41; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, para. 11.
[1218] P-0012: T-045, pp. 35-36; P-0874: T-082, p. 35; P-0878: T-079, pp. 12-13; P-1074: T-103, p. 40. *See also* P-0012: T-045, pp. 33-34. *See* CLRV's Final Brief, paras 274-342.
[1219] P-0874: T-082, p. 35.
[1220] P-0874: T-082, p. 35.
[1221] P-0012: T-045, pp. 35-36.
[1222] P-0085's Statement, DAR-OTP-0110-0054-R02, at 0056-0057, paras 8-9.
[1223] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0136, para. 32; P-0129: T-075, p. 64.
[1224] P-0007: T-089, p. 16 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1); P-0029: T-029, p. 62; T-030, p. 21; P-1073: T-103, pp. 12-13, 25-26. *See also* P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 27.

looted.[1225] The *Janjaweed* looted property and documents from P-0129's house.[1226] P-0878's house was 'pillaged' and he was only able to recover 'two beds'.[1227] The *Janjaweed* took away camels, horses, cattle and livestock belonging to P-0878, P-0913, P-1073, P-1074, and the other inhabitants of Bindisi.[1228] They also looted the Bindisi cattle market.[1229] They broke into and looted supplies from the shops and warehouses in Bindisi market, including the shops belonging to P-0012 and P-0913.[1230] They stole sugar, tea and other things from P-0012's shop in the market.[1231] P-1073's family had a 'donkey cart' which was stolen by the *Janjaweed*.[1232] They particularly targeted and looted the shops and stores belonging to people of non-Arab tribes.[1233] Some shops in the market with special markings were not looted.[1234] The *Janjaweed* looted the police station in North Bindisi.[1235] P-0878 and P-1021 gave evidence that members of the *Janjaweed* broke into and looted the *zakat* office and stores.[1236] *Umdah* Hamdan Umar, a *Janjaweed agid*, took away the generator from the Bindisi *zakat* office.[1237] The *Janjaweed* kept everything they looted from the houses and shops for themselves.[1238] After capturing

[1225] P-0012: T-046, pp. 48-49; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0136, para. 32; P-0129: T-075, pp. 63-64; P-0878: T-079, p. 14; P-0913: T-069, pp. 21-22 (*see* the Chamber's assessment of P-0913's evidence, Annex B, Section I.A.34).
[1226] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0136, para. 32; P-0129: T-075, pp. 63-64.
[1227] P-0878: T-079, p. 14.
[1228] P-0878: T-079, p. 14; P-0913: T-069, pp. 21-22; P-1073: T-103, p. 19; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0446-0447, paras 27-28; P-1074: T-103, p. 44. *See* P-0029: T-030, pp. 19, 21, 26; T-031, pp. 35-36; P-0129's Statement Corrections, DAR-OTP-00000084, at 000001, para. 12; P-0874: T-082, pp. 32-34, 57.
[1229] P-0029: T-030, pp. 19, 26; P-0029: T-031, pp. 35-36; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0136, para. 32.
[1230] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520-0521, paras 78-79; P-0012: T-046, pp. 49-52, 54, *referring to* P-0012's Annotated Image, DAR-REG-0001-0010; P-0029: T-029, p. 62; T-030, pp. 13, 18-19, 21; T-031, pp. 35-36; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0136, para. 32; P-0129's Statement Corrections, DAR-OTP-00000084, at 000001, para. 12; P-0874: T-082, pp. 32-34, 57; P-0878: T-078, pp. 57-59, *referring to* P-0878's Annotated Map, DAR-OTP-00000099; T-079, pp. 9-10; P-0913: T-069, p. 14; P-1021: T-081, pp. 19-20. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49. *See also* P-0007: T-089, p. 16 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1); P-0012's Annotated Image, DAR-OTP-0220-4713-R01; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 27; P-0921: T-110, pp. 55-56 (*see* the Chamber's assessment of P-0921's evidence, Annex B, Section I.A.38).
[1231] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520-0521, paras 78-79.
[1232] P-1073: T-103, p. 19.
[1233] P-0874: T-082, p. 57; P-1073: T-103, p. 19.
[1234] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0521, para. 79.
[1235] P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, para. 11. *See* the Chamber's assessment of P-0913's evidence, Annex B, Section I.A.34.
[1236] P-0878: T-078, pp. 58-59; P-1021: T-081, pp. 17-19. The Chamber is satisfied that in this instance, while some details and the perspective/focus of each witness differ, P-0878 and P-1021 nonetheless support each other's evidence and are equally reliable. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49. *Contra* Defence's Final Brief, paras 402, 426.
[1237] P-0878: T-079, p. 9.
[1238] P-1021: T-081, p. 20; P-0874: T-082, pp. 32-34; T-083, pp. 66-67. *See* the Chamber's assessment of the evidence of P-0878 and P-1021, Annex B, Sections I.A.28 and I.A.49.

P-0015 and some other people,[1239] a member of the *Janjaweed* took their belongings including their jerrycans, sacks and shoes.[1240] P-0878 saw the *Janjaweed* pile up the looted property around the fires in their camps on the night of 15 August 2003.[1241]

iv. Burning of houses and properties

428. During the attack, the *Janjaweed* set fire to and burned down the houses of the inhabitants of Bindisi.[1242] P-0012, P-0085 and P-1073 saw the *Janjaweed* set fire to houses during the attack.[1243] The households of P-0878, P-0012, P-0129, P-1073 and P-0913 were burned down.[1244] The 'big mosque' with its collection of Islamic books was burned down and destroyed.[1245] The *Janjaweed* destroyed the police station in South Bindisi and burned all the documents, and also burned down the house of the chief of police.[1246]

v. Beatings and mistreatment

429. Members of the *Janjaweed* beat people during the attack.[1247] After capturing P-0011 and other people,[1248] the *Janjaweed* restrained and beat them 'willy-nilly' with rifle stocks. There were about 20 men in a group that was beaten, including Rashid Issa, Adam Bosch and Abd-Al-Nasir Ibrahim.[1249] A member of the *Janjaweed* hit P-0011 with a rifle stock, then another said to the rest '[d]on't beat this person, we need this person to tell us where their folk are'.[1250] A member of the *Janjaweed* held on to P-0011's neck while questioning her about the

[1239] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195, para. 38; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002, para. 12, P-0015: T-093, p. 45.
[1240] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195, paras 38-39. *See* the Chamber's assessment of the evidence of P-0015 and P-1073, Annex B, Sections I.A.4 and I.A.52.
[1241] P-0878: T-079, p. 10.
[1242] P-0012: T-045, pp. 18-19; P-0029: T-029, p. 62; T-030, pp. 13, 18-19, 21; P-0913: T-069, pp. 13-14 (*see* the Chamber's assessment of P-0913's evidence, Annex B, Section I.A.34). *See also* P-0007: T-089, p. 16 (*see* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1); P-1073: T-103, pp. 12-13; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061, para. 27; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0319, paras 25-26; P-0922's Sketch, DAR-OTP-0222-0359-R01, Translation, DAR-OTP-0220-1234-R01; P-0922: T-039, p. 36. *See* CLRV's Final Brief, paras 274-342.
[1243] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0061-0062, paras 28, 29; P-1073: T-103, pp. 12-13, 25-26.
[1244] P-0012: T-046, pp. 48-49; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0136, para. 32; P-0129: T-075, pp. 63-64; P-0878: T-079, p. 14; P-0913: T-069, pp. 21-22 (*see* the Chamber's assessment of P-0913's evidence, Annex B, Section I.A.34); P-1073: T-103, p. 13.
[1245] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0068, paras 32, 41-42; P-0007: T-089, p. 16. *See* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1.
[1246] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83.
[1247] P-0029: T-030, p. 19; T-031, pp. 35-36; P-0913's Statement, DAR-OTP-0218-0021, at 0027, para. 41; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001, para. 11.
[1248] P-0011: T-091, p. 23.
[1249] P-0011: T-091, pp. 23, 27-30; P-0011's List, DAR-OTP-00000356, at 000002.
[1250] P-0011: T-091, p. 24.

tora bora.[1251] Members of the *Janjaweed* also dragged and beat an elderly woman who was raped by several of them,[1252] and whipped Halima Hassan.[1253]

430. After capturing P-1073 and her sister,[1254] members of the *Janjaweed* whipped and beat P-1073 and her sister.[1255] Later, they tied P-1073's hands,[1256] and continued to beat and whip P-1073.[1257] They beat P-1073's sister with such force that she injured her back,[1258] resulting in a scar which P-1073's sister still bears.[1259] P-1073 also has a scar on her back where members of the *Janjaweed* whipped her.[1260] After capturing P-0015 and other people,[1261] members of the *Janjaweed* hit P-0015 and the others with rifle stocks and whipped them, one at least 15 times.[1262] A member of the *Janjaweed* asked a woman to put down the infant she was carrying.[1263] When she refused to do so, he snatched the infant from her and threw the infant in the air.[1264] The infant fell to the ground and stopped breathing for some time.[1265]

[1251] P-0011: T-091, p. 24. The term '*tora bora'* in the context of the conflict in Darfur was used to signify (and meant) the rebels, *see* P-0007's Statement, DAR-OTP-0088-0060-R02, at 0071, para. 45; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261, para. 50; P-0757's Statement, DAR-OTP-0211-0003, at 0015, 0019, paras 49, 63; P-0990: T-040, pp. 51-52; T-041, p. 37; P-1042: T-027, p. 51.
[1252] P-0011: T-091, p. 24.
[1253] P-0011's Report, DAR-OTP-00000367, at 000002.
[1254] P-1073: T-103, pp. 13-14, 28-29. The Chamber is satisfied that P-1073's description of the perpetrators wearing 'civilian shirts, trousers and shirts' and *jallabiya* match that of the *Janjaweed* (*see* para. 327 *above*). *See* the Chamber's assessment of the evidence of P-0015 and P-1073, Annex B, Sections I.A.4 and I.A.52.
[1255] P-1073: T-103, p. 14.
[1256] P-1073: T-103, p. 14.
[1257] P-1073: T-103, pp. 14-15, *referring to* P-1073's Report, DAR-OTP-00000500; P-1073's Anatomical Drawing, DAR-OTP-00000492.
[1258] P-1073: T-103, p. 14.
[1259] P-1073: T-103, pp. 14-15, *referring to* P-1073's Report, DAR-OTP-00000500, at 000004.
[1260] P-1073: T-103, pp. 14-15, *referring to* P-1073's Report, DAR-OTP-00000500, at 000004; P-1073's Anatomical Drawing, DAR-OTP-00000492.
[1261] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195, para. 38; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002, para. 12, P-0015: T-093, p. 45.
[1262] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195, para. 39; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002, para. 14.
[1263] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, para. 40.
[1264] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, para. 40.
[1265] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, para. 40; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002, para. 15.

vi. Rape of women

431. Members of the *Janjaweed* raped numerous women.[1266] During the attack on Bindisi, the *Janjaweed* chased people[1267] and took some of the captured women and girls aside.[1268] P-0921 gave evidence that some 50 women from Bindisi came to his house after the attack on Bindisi. He said at least three of them had been raped either in Bindisi or on their way to Mukjar.[1269] Some of the victims who have been identified and who recounted what happened to them include witnesses P-0011,[1270] P-1073[1271] and P-1074.[1272] Ten victims, including P-1073's two sisters, were identified by various witnesses.[1273] Witnesses identified victims as young as 13 to 15 years old,[1274] and another witness was identified as an elderly victim.[1275]

[1266] P-0085's Statement, DAR-OTP-0110-0054-R02, at 0062, para. 31. *See also* P-0007's List, DAR-OTP-0088-0081, Translation, DAR-OTP-0119-0480, at 0481 (this list refers to 24 women who were raped during the attack on Bindisi). *See* the Chamber's assessment of the evidence of P-0007 and P-0085, Annex B, Sections I.A.1 and II.A.10.

[1267] *See* the Chamber's findings on the shooting, killing and chasing of people in Bindisi, para. 408 *above*. P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195, para. 38; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002, para. 12; P-0015: T-093, p. 45; P-1073: T-103, pp. 13-14, 28-29. The Chamber is satisfied that P-1073's description of the perpetrators wearing 'civilian shirts, trousers and shirts' and *jallabiya* match that of the *Janjaweed* (*see* para. 327 *above*). *See* the Chamber's assessment of the evidence of P-0015 and P-1073, Annex B, Sections I.A.4 and I.A.52. *See also* P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447, paras 33-34. The Chamber is satisfied that P-1074's description of the perpetrators wearing 'civilian shirts and trousers' and *kadamols* match that of the *Janjaweed* (*see* para. para. 327 *above*). *See* the Chamber's assessment of P-1074, Annex B, Section I.A.53; Prosecution's Closing Statement: T-160, pp. 78-79.

[1268] P-0011: T-091, pp. 23-24; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195-0196, paras 38, 41; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 12, 16-17; P-0015: T-093, p. 44; P-1073: T-103, pp. 13-14, 28-29. The Chamber is satisfied that P-1073's description of the perpetrators wearing 'civilian shirts, trousers and shirts' and *jallabiya* match that of the *Janjaweed* (*see* para. 327 *above*). *See* the Chamber's assessment of P-0011's evidence, Annex B, Section I.A.2.

[1269] P-0921: T-110, pp. 50-51. The Defence asked P-0921 whether any women told him that they had been raped in Bindisi, to which P-0921 responded: 'The women who came from Bindisi to Mukjar, they were relatives of my wife. They came to our house. They were half naked, and they spoke to my wife. Three of them, Halima, Khadidja, and Miriam, those were their names, among them, and they said that they were raped.' P-0921 confirmed that he does not know whether these women were raped in Bindisi or on their way from Bindisi to Mukjar: 'I do not know. Might have happened along the way or inside of Bindisi, I don't know. I was not able to ascertain such information.' When asked whether the women could identify the men who raped them, P-0921 responded: 'They just said Janjaweed. They were not able to identify a particular person. They were not able to identify a man. They just said it was the Janjaweed who did it.' When it was put to him, P-0921 accepted that he does not know with certainty that the rapes actually took place. *See* P-0921: T-111, p. 79.

[1270] P-0011: T-091, pp. 23-30.

[1271] P-1073: T-103, pp. 13-16, 28-29.

[1272] P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447-0448, paras 33-37. *See* the Chamber's assessment of P-1074, Annex B, Section I.A.53.

[1273] P-0007: T-089, pp. 7-9, *referring to* P-0007's Annotated Map, DAR-OTP-00000312; P-0011: T-091, pp. 23-24; P-0011's List, DAR-OTP-00000356, at 000001; P-0011's Report, DAR-OTP-00000367; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, paras 41-43, *referring to* P-0015's Sketches, DAR-OTP-0088-0211-R01, DAR-OTP-0088-0216-R01; P-1073: T-103, pp. 13-16, 28-29.

[1274] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195-0196, paras 38, 41-42, *referring to* P-0015's Sketches, DAR-OTP-0088-0211-R01, DAR-OTP-0088-0216-R01; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002, paras 12-13, 16-17; P-0015: T-093, pp. 44-45.

[1275] P-0011: T-091, p. 24.

432. Some witnesses gave details of penetration and some did not. For example, P-1073 stated that the three *Janjaweed* who raped her were not wearing a condom and two of them ejaculated inside her vagina.[1276] Further, P-0011 recalled that none of the members of the *Janjaweed* had condoms on.[1277] While some witnesses explicitly stated that they and/or others were subjected to vaginal or oral penetration (such as P-0011, P-0015, P-0007, P-1073 and P-1074),[1278] the Chamber is satisfied that when the evidence generally states that women were 'raped', even if this detail is not explicit in the evidence, the only reasonable conclusion that can be made is that the witnesses meant that the *Janjaweed* penetrated the women's vaginas with their penises (and in some instances such as P-1074,[1279] the mouth).

433. The Chamber also notes that on some occasions, the *Janjaweed* worked in unison during the rapes and the women were raped multiple times.[1280] For example, P-0011 and P-0015 described how the *Janjaweed* acted together, some members undressed the women, others threatened and held the women down, while others penetrated them.[1281] Members of the *Janjaweed* stripped the women of their clothes and used this to stuff the women's mouths to stop them from screaming.[1282] Moreover, in some instances, the *Janjaweed* used their weapons or exerted violence upon the victims; for instance, a girl resisting would be held down by two men, one on her legs and another on her chest, so that the third man could penetrate her.[1283] Similarly, an elderly woman was dragged by her neck, beaten and then held down and raped by two members of the *Janjaweed*.[1284] P-0011, for example, described how the *Janjaweed* tore off her clothes with a knife and how she saw another woman being beaten and whipped at least

[1276] Forensic Physician Report, DAR-OTP-00000500 at 000001-000002.
[1277] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, para. 43.
[1278] P-0011's Reports, DAR-OTP-00000366, DAR-OTP-00000367, at 000001-000002, 000003; P-0011's Anatomical Drawing, DAR-OTP-00000357. *See* P-0011: T-091, pp. 25-26; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, paras 41-43, *referring to* P-0015's Sketches, DAR-OTP-0088-0211-R01, DAR-OTP-0088-0216-R01; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 16-17; P-0015: T-093, pp. 44-45; P-1073: T-103, pp. 14-15, *referring to* P-1073's Report, DAR-OTP-00000500, at 000003, P-1073's Anatomical Drawing, DAR-OTP-00000492; P-0007: T-089, pp. 7-12, 36-40; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0448, para. 36.
[1279] P-1074's Statement, DAR-OTP-0224-0441-R02, at 0448, para. 36.
[1280] P-0011: T-091, p. 25; P-0011's Report, DAR-OTP-00000366; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, para. 42; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0448, para. 36.
[1281] P-0011: T-091, pp. 24-25; P-0011's Report, DAR-OTP-00000366, at 000001-000002; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, paras 41-43, *referring to* P-0015's Sketches, DAR-OTP-0088-0211-R01, DAR-OTP-0088-0216-R01; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 16-17; P-0015: T-093, pp. 44-45.
[1282] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195-0196, paras 38-39, 42; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002, paras 13-14.
[1283] P-0011: T-091, pp. 24-26; P-1073: T-103, p. 14; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447-0448, paras 33-36; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, para. 42, *referring to* P-0015's Sketches, DAR-OTP-0088-0211-R01, DAR-OTP-0088-0216-R01.
[1284] P-0011: T-091, p. 24.

10 times whilst being dragged roughly 10 metres away where she was raped.[1285] Other women were killed after being raped.[1286] The *Janjaweed* also used violent and derogatory language when raping the victims.[1287] The *Janjaweed* threatened the victims, for example, P-0011 who was threatened by a *Janjaweed* who put his sword on her neck and threatened to kill her if she uttered a word.[1288] Some women were penetrated in public view and their rape was witnessed by others, including children.[1289] The members of the *Janjaweed* forced some of the women and children at gunpoint to watch as they committed these acts.[1290]

434. Many of the victims suffered injuries immediately after.[1291] Some of the women who were penetrated were heavily bleeding or could not stand up or walk.[1292] For some of the women, the effects of the penetrations they suffered have been long-lasting, as they report that they still suffer physically and psychologically.[1293] For example, P-0011 suffers from long-term pain in her legs and genital area.[1294] P-1073 suffers from long term social and physiological consequences, particularly as she was only 15 years old when the *Janjaweed* penetrated her multiple times and humiliated her after members of the *Janjaweed* threw her out of the door and called her mother to come and collect her.[1295] As a result of the rapes, P-1073 has a split in her vagina that is still open and has increased after childbirth.[1296] P-1074 still

[1285] P-0011's Interview, DAR-OTP-00000367, at 000001; P-0011's List of Victims, DAR-OTP-00000356, at 000001; P-0011: T-091, pp. 23-24, 30.
[1286] P-0007's Statement, DAR-OTP-0088-0060-R02, at 0071, para. 43; P-0007: T-089, pp. 6-12, 51-52.
[1287] P-0011: T-091, pp. 24-25; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, para. 43.
[1288] P-0011: T-091, p. 25; P-0011's Report, DAR-OTP-00000366, at 000002.
[1289] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, paras 41-43, *referring to* P-0015's Sketches, DAR-OTP-0088-0211-R01, DAR-OTP-0088-0216-R01; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 16-17; P-0015: T-093, pp. 44-45; P-0007's Statement, DAR-OTP-0088-0060-R02, at 0071, para. 43; P-0007: T-089, pp. 6-12, 36-41, 51-52, *referring to* P-0007's Annotated Map, DAR-OTP-00000312; P-0007's List, DAR-OTP-00000311, at 000001. *See also* P-0007: T-089, pp. 47-48; P-0011's Interview, DAR-OTP-00000367, at 000001.
[1290] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, paras 41-42; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, para. 16.
[1291] P-1073: T-103, pp. 14-15, *referring to* P-1073's Report, DAR-OTP-00000500, at 000003; P-1073's Anatomical Drawing, DAR-OTP-00000492; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0448, paras 35, 37.
[1292] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0197, para. 46; P-0011's Interview, DAR-OTP-00000367, at 000002.
[1293] P-1073: T-103, p. 21; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0448-0449, paras 35-39; P-0011's Anatomical Drawing, DAR-OTP-00000357; P-0011's Report, DAR-OTP-00000366, at 000004-000006; P-0011: T-091, pp. 25-26.
[1294] P-0011's Anatomical Drawing, DAR-OTP-00000357; P-0011's Report, DAR-OTP-00000366, at 000004-000006; P-0011: T-091, pp. 25-26.
[1295] P-1073: T-103, pp. 15-16, 21.
[1296] Forensic Physician Report, DAR-OTP-00000500, at 000003-000004.

suffers from pain in her ribs and has scars on her hip and chest from the injuries she sustained when the members of the *Janjaweed* beat and penetrated her.[1297]

vii. Use of derogatory expressions

435. Members of the *Janjaweed* hurled derogatory remarks at the inhabitants of Bindisi, such as '*Nuba*, *Nuba*', '[w]e are going to kill you or we will exterminate you, we do not want slaves here' and '[t]he land is ours and not yours';[1298] insulted women by calling them wives and mothers of *tora bora* and *nuba*;[1299] and threatened to wipe out the people of Bindisi, declaring that the people of Bindisi were of no benefit to the *Janjaweed*.[1300] After capturing P-0011 and some other people,[1301] members of the *Janjaweed* questioned the women, including P-0011, '[w]here are your *tora bora* men? Where did they go?'[1302] A member of the *Janjaweed* held on to P-0011's neck and asked her about the *tora bora*.[1303] Another member of the *Janjaweed* told P-0011, '[w]e want to kill you, but we need you to tell us where the *tora bora* are'.[1304] After raping P-0011, a member of the *Janjaweed* declared 'I'm not going to kill this person, I'm taking this person away with me, because we don't want these people to stay alive',[1305] and thanked President Al-Bashir for giving them this 'opportunity'.[1306] Others, while raping other women, praised God as they had 'taken *[t]ora [b]ora*'s wives' and fire their guns and shout 'I have found a virgin woman'.[1307] P-0012 heard members of the *Janjaweed* chant 'holy war against the slaves'.[1308] P-0012 understood 'slaves' as a demeaning and discriminatory term referring to the Fur inhabitants of Bindisi.[1309] After capturing P-1073 and her sister,[1310] members of the *Janjaweed* threatened them with their weapons and told P-1073,

[1297] P-1074's Statement, DAR-OTP-0224-0441-R02, at 0448, para. 36.
[1298] P-0007: T-089, p. 15; P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 21. *See* the Chamber's assessment of P-0007's evidence, Annex B, Section I.A.1.
[1299] P-0007: T-089, p. 15; P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 21; P-0015's Statement, DAR-OTP-0088-0187-R04, at 0197, para. 47. *See* the Chamber's assessment of the evidence of P-0007 and P-0015, Annex B, Section I.A.1 and I.A.4.
[1300] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0197, para. 47. *See* the Chamber's assessment of P-0015's evidence, Annex B, Section I.A.4.
[1301] P-0011: T-091, p. 23.
[1302] P-0011: T-091, p. 23.
[1303] P-0011: T-091, p. 24.
[1304] P-0011: T-091, pp. 24-25.
[1305] P-0011: T-091, p. 25; P-0011's Report, DAR-OTP-00000366.
[1306] P-0011: T-091, p. 25.
[1307] P-0015's Statement, DAR-OTP-0088-0187-R04, at 0196, para. 43.
[1308] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, para. 83; P-0012: T-045, p. 19.
[1309] P-0012: T-045, pp. 19, 31.
[1310] P-1073: T-103, pp. 13-14, 28-29. The Chamber is satisfied that P-1073's description of the perpetrators wearing 'civilian shirts, trousers and shirts' and *jallabiya* match that of the *Janjaweed* (*see* para. 327 *above*). *See* the Chamber's assessment of the evidence of P-0015 and P-1073, Annex B, Sections I.A.4 and I.A.52.

'[y]ou're the sister of *tora bora*', to which P-1073 replied, 'I don't know what that means'.[1311]

viii. The Accused's actions

436. **The Accused** was present in Bindisi during the attack on 15 and 16 August 2003.[1312] While in North Bindisi on the first day of the attack, P-0874 expressed his revulsion for the violent attacks on the villages and town in the presence of **the Accused** and Samih, and **the Accused** dismissively waved off P-0874.[1313] During the attack on South Bindisi, P-0012 saw **the Accused** and Samih with the *Janjaweed* from his hiding place.[1314] From his vantage point, P-0012 could see **the Accused** making hand gestures, which P-0012 interpreted as **the Accused** giving instructions to members of the *Janjaweed*.[1315]

437. On the night of 15 August 2003, **the Accused** blew his whistle and convened the leaders (*i.e.* the *agids*) of the *Janjaweed*.[1316] P-0878 recollected **the Accused's** address to the group:

> Listen, people, thank you. You've taught the enemy a lesson that the enemy will never forget. The Fur will never forget this lesson. And, God willing, tomorrow, which shall be a Saturday, August 16 of 2003, we will go to Garsila where a big celebration will be held for us by Governor Ja'afar Abd-Al-Hakam Ishaq, in addition to his governmental representatives. A big celebration to --for this achievement. And afterwards we will get to rest for three days, and afterwards the new direction that we will take will be decided for us to carry on our programme. It might be the Arawala-Garsila route and it might be the Garsila-Tanako route, or sector.[1317]

438. **The Accused** then instructed the gathered *Janjaweed* to go back to their positions, have

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[1311] P-1073: T-103, p. 14. *See* the Chamber's assessment of the evidence of P-0015 and P-1073, Annex B, Sections I.A.4 and I.A.52.
[1312] P-0011: T-091, pp. 17-20, 44-45; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520-0522, paras 78, 84, 86; P-0012: T-045, pp. 14-17; T-046, pp. 49-52, 59-61, *referring to* P-0012's Annotated Image, DAR-REG-0001-0010, P-0012's Annotated Image, DAR-OTP-0220-4715-R01; P-0874: T-082, pp. 36-37; T-083, p. 20; P-0878: T-078, pp. 58-59. *See* the Chamber's assessment of the evidence of P-0011, P-0874 and P-0878, Annex B, Sections I.A.2, I.A.26 and I.A.28. *Contra* Defence's Final Brief, paras 405, 697-698.
[1313] P-0874: T-082, pp. 38-40. *See* the Chamber's assessment of P-0874's evidence, Annex B, Section I.A.26. *Contra* Defence's Final Brief, para. 407.
[1314] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0522, paras 84, 86; P-0012: T-045, p. 17; T-046, pp. 59-60, *referring to* P-0012's Annotated Image, DAR-OTP-0220-4715-R01; P-0085's Statement, DAR-OTP-0110-0054-R02, at 0063, para. 33. *See* P-0012: T-046, pp. 60-61. *See* the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3. *Contra* Defence's Final Brief, para. 406.
[1315] P-0012: T-045, pp. 17-18. *See* the Chamber's assessment of P-0012's evidence, Annex B, Section I.A.3. *Contra* Defence's Final Brief, para. 406.
[1316] P-0878: T-078, p. 60. The gathered *agids* included *Umdah* Abakr, the *umdah* of the Awatif; Adam Meris, the brother of *Umdah* Abakr; Issa Mardom; and Hassan Daloum: P-0878: T-078, p. 64. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 403; Defence's Closing Statement: T-161, pp. 74-77.
[1317] P-0878: T-078, pp. 60-61. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 403; Defence's Closing Statement: T-161, pp. 74-77.

dinner and sleep early, and told them that he would speak to them again the next morning.[1318] During the night, while sitting around a fire, Issa Mardom and some members of the *Janjaweed* spoke about the acts, such as the rapes, that they had committed against the women of the villages they attacked earlier that day.[1319] The Chamber notes that P-0878 gave evidence that **the Accused** was in close proximity to him when he overheard Issa Mardom and other members of the *Janjaweed* discussing the matter. However, the Chamber is not satisfied that this in and of itself proves that **the Accused** actually overheard this conversation.[1320]

439. Early in the morning of 16 August 2003, **the Accused** blew his whistle again,[1321] and asked the *agids* to gather up, which they did.[1322] P-0878 recollected **the Accused's** address to the gathered *Janjaweed*:

> The things I said the previous night no longer count, are no longer valid, because today the word is different. Because I have received instructions to continue this operation and that we should move from this location and destroy the remainder of the villages of Bindisi and Mukjar, south of Bindisi and then eastward of Bindisi all the way to Mukjar.[1323]

440. Issa Mardom, one of the *agids*, opposed **the Accused's** new plan, and said, '[w]hat we have done is an unforgettable lesson and we ask you now that we don't go to the remainder of the villages and that we go instead to Garsila',[1324] which angered **the Accused**. P-0878 recollected **the Accused's** response:

> Any colonel who backs down and who refuses to join us, to continue this operation, should go back to his family. We will continue our operation anyway. And once we finish, all the Janjaweed who are here in front of us and who have been gathering hour after hour, we will bring with us the *hakamat*, the women who chant heroic songs. So we will take those ladies, the *hakamat*, and we'll go to the colonel who backed down and we'll take his belongings, we will destroy his assets and we'll

[1318] P-0878: T-078, p. 61. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 403.
[1319] P-0878: T-078, p. 63. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28.
[1320] *See* Defence's Final Brief, para. 437; Prosecution's Final Brief, para. 389. However, P-0585 gave evidence that, more generally, *agids* under **the Accused's** authority were aware of rapes being committed by members of the *Janjaweed* during military operations (P-0585: T-100, p. 12).
[1321] P-0878: T-078, p. 61. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 403.
[1322] P-0878: T-078, p. 61. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 403.
[1323] P-0878: T-078, p. 61 (*see* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28). *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0521-0522, para. 82. *Contra* Defence's Final Brief, para. 403.
[1324] P-0878: T-078, p. 62 (*see* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28). *See* P-0029: T-030, pp. 13, 47; T-031, pp. 35-36. *Contra* Defence's Final Brief, para. 403.

have the *hakamat* ladies chant to vent our spleen.[1325]

441. **The Accused**, in effect, threatened the *agids* who refused to follow his instructions.[1326] Issa Mardom did not respond to **the Accused**.[1327] At around this time, **the Accused** instructed Hassaballah to return to Garsila with Abd-Al-Jabbar, Solonga, *Umdah* Dawd Dahab, and four other injured persons.[1328] Hassaballah did as he was instructed.[1329]

B. Operation in Mukjar between the end of February and the beginning of March 2004

a) Introduction

i. Relevant background

442. From 2003 to 2004, Mukjar was located in Mukjar Locality in West Darfur.[1330] Mukjar was located approximately 49 kilometres south-east of Garsila, approximately 59 kilometres south of Deleig, and approximately 19 kilometres east of Bindisi.[1331] To the south of Mukjar, there was a mountainous area; to the north there was the *wadi* Salih; to the west, there was mainly land and villages which extended as far as Bindisi, and to the east there were villages such as Arada and Inderi.[1332]

443. The population of Mukjar was predominantly Fur.[1333] According to a report from the UN High Commissioner for Refugees, there were around 1,800 households in Mukjar before 2003. During the events of 2003 and 2004, this number increased to over 4,100.[1334]

444. In 2003, an administrative reorganisation converted all districts in Wadi Salih, Um

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[1325] P-0878: T-078, p. 62. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 403.
[1326] P-0878: T-078, p. 62.
[1327] P-0878: T-078, pp. 62-63. *See* the Chamber's assessment of P-0878's evidence, Annex B, Section I.A.28. *Contra* Defence's Final Brief, para. 403.
[1328] P-0878: T-078, pp. 63-64. *See also* P-1021: T-081, pp. 23, 81. *See also* the Chamber's assessment of the evidence of P-0878, P-0921 and P-1021, Annex B, Sections I.A.28, I.A.38 and I.A.49. *Contra* Defence's Closing Statement: T-161, pp. 74-77.
[1329] P-0878: T-078, p. 64; T-079, pp. 10, 85.
[1330] Confirmation Decision, p. 58, para. 59; Third Joint Submission on Agreed Facts, Annex C, Agreed Fact 3. *See also* P-0720's Statement, DAR-OTP-0210-0291-R02, at 0295, paras 25-26.
[1331] Second Joint Submission on Agreed Facts, Annex B.
[1332] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0294, para. 25 (the Chamber notes that north and south are inverted in the witness' statement, but accepts his evidence nonetheless). *See also* West Darfur Administrative Map, DAR-OTP-0219-3235.
[1333] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0295, para. 30; UNHCR Report, DAR-OTP-0145-0237, at 0317, p. 81.
[1334] UNHCR Report, DAR-OTP-0145-0237, at 0317, p. 81.

Dukhun, Bindisi and Mukjar into localities headed by a commissioner or *mu'tamid*.[1335] The locality of Mukjar became the Municipality/Locality of Mukjar and was headed by Torshein.[1336] He reported to the *wali* or governor of West Darfur – who was Maj Gen Suleiman Abdullah at the time–,[1337] who in turn reported to the President of Sudan.[1338] However, Torshein also received orders from Minister Harun.[1339]

445. The villages of Artala, Jalkasim, Kirarow, Sindu, Rumaliya, Balda and Gorolla were part of Mukjar Locality.[1340]

446. In Mukjar, there was a locality building, a police station that included a prison,[1341] a small medical centre, a primary school, a secondary school, a mosque and a market.[1342] There was also a CRF base.[1343]

ii. Attacks on villages and displacement between early 2003 and early 2004

447. Between early 2003 and February 2004, predominantly Fur people [1344] from approximately 88 surrounding villages fled to Mukjar.[1345] Between August 2003 and March 2004, the *Janjaweed* and GoS Forces launched operations in numerous villages in the area surrounding Deleig,[1346] which resulted in thousands[1347] of civilians from predominantly Fur

[1335] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0295, para. 26.
[1336] P-0008's Statement, DAR-OTP-0088-0085-R02, at 0088, para. 12; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0177, para. 12; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0295, para. 27.
[1337] *See* para. 290 *above*. *Contra* Defence's Final Brief, para. 303.
[1338] P-0877: T-055, pp. 84-85.
[1339] P-0877: T-055, p. 85.
[1340] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0295, para. 27.
[1341] *See* para. 504 *below*.
[1342] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0295, para. 28.
[1343] *See* para. 315 *above*.
[1344] P-0986's Statement, DAR-OTP-0222-0437-R01, at 0451, para. 69.
[1345] P-0932's Statement, DAR-OTP-0222-0602, at 0616, para. 77. For example, P-0867 fled from Gausir to Mukjar, P-0867's Statement, DAR-OTP-0217-0173-R02, at 0185, para. 59; P-0008 fled from Ramalia to Mukjar, P-0008's Statement, DAR-OTP-0088-0085-R02, at 0092, para. 27. *See also* UN Report, DAR-OTP-0038-0060, at 0065, para. 18. (The report emanates from an entity present on the ground in Darfur during the relevant time, and clearly indicates the methodology of information collection and the sources for the facts and statistics. Therefore, the Chamber is satisfied that the report is reliable and has sufficient probative value. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 2-3). On the displacement of the population, *see* CLRV's Final Brief, paras 274-342.
[1346] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0060, para. 22.
[1347] Darfur Humanitarian Profile, DAR-OTP-0162-0042, at 0074 (the WFP estimated there were 16,345 IDPs as of March 2004). The report emanates from an entity present on the ground in Darfur during the relevant time, and clearly indicates the methodology of information collection and the sources for the facts and statistics. Therefore, the Chamber is satisfied that the report is reliable and has sufficient probative value. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 9-10. *See also* P-0955: T-064, p. 7; P-0726: T-053, p. 49.

villages[1348] being displaced to Deleig, Garsila and other towns.[1349]

448. For example, in early 2003, Artala was attacked by the *Janjaweed* and the villagers fled to Mukjar.[1350] Around the same time, displaced persons from Gorolla, Abirla, Old Mukjar and Nyerli arrived in Mukjar following attacks on their villages.[1351]

449. Similarly, members of the *Janjaweed* and GoS Forces attacked Arawala,[1352] Forgo,[1353] Taringa,[1354] Andi,[1355] Fere,[1356] Kaskeidi,[1357] Um Jameina[1358] and other villages.[1359] During

[1348] *See for example* UNHCR Report, DAR-OTP-0145-0237, at 0270 (Um Jameina (spelled Amjemena), Andi), 0271 (Arawala), 0275 (Fere), 0276 (Forgo), 0278 (Kaskeidi, spelled Kaskildo), 0285 (Taringa) and 0285 (Taringa); P-0718's Statement, DAR-OTP-0209-2004-R02, at 2006, para. 12; P-0769: T-098, pp. 81-82; P-0907: T-094, p. 6; T-095, p. 7; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0623, para. 13.

[1349] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1563-1564, paras 84, 86-88; P-0584's Statement Corrections, DAR-OTP-00000419, at 000002, paras 21-22; P-0907's Statement, DAR-OTP-0220-0668-R02, at 0674, para. 34; P-0907: T-094, pp. 22, 24; T-095, pp. 6-7; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0627-0628, paras 28, 30-31; P-0955: T-064, p. 7; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0110, para. 20; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2010-2012, paras 35, 45, 51; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0175, paras 37, 39; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0130, paras 63-64; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0741, paras 22-24; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1890-1891, paras 23-26; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0025, para. 34; P-0651: T-034, pp. 13-14; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0363-0364, paras 59-60, 62; UNHCR Report, DAR-OTP-0145-0237, at 0273 (Deleig, spelled Deleij), 0277 (Garsila). *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0060, para. 22; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0259-0261, paras 44-47, 49.

[1350] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0296, para. 36.

[1351] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0296, para. 38.

[1352] *See for example* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0624, 0627, paras 15, 29, 30; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2012, para. 51; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1512, para. 50; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0363, para. 59; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0256, para. 33; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0128-0130, paras 48-62; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0168-1074, paras 16, 20-32, 34-36; P-0850's Statement, DAR-OTP-0216-0002-R04, at 0008, 0015-0016, paras 23, 55; P-0013's Statement, DAR-OTP-0088-0129-R03, at 0135-0136, 0138, paras 26-27, 41; P-0016's Statement, DAR-OTP-0088-0150-R02, at 0156-0157, paras 28-38. *See also* para. 467 *below*.

[1353] *See for example* P-0907: T-094, pp. 7-13, 21; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0124-0130, paras 15-38, 44-63; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0624-0625, paras 15-16, 18-27; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0351-3562, paras 20-55.

[1354] *See also* P-0718's Statement, DAR-OTP-0209-2004-R02, at 2007-2009, paras 16-32; P-0651: T-035, pp. 12-13, *referring to* P-0651's Statement, DAR-OTP-0205-0015-R02, at 0023-0024, para. 30; P-0651's Sketch, DAR-OTP-0224-0496-R01; P-0697's Statement, DAR-OTP-0209-0155-R03, at 0164-0165, paras 40, 42-45.

[1355] *See for example* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0108-0109, paras 12-19; P-0671: T-099, pp. 12-13.

[1356] *See for example* P-0736's Statement, DAR-OTP-0210-0248-R02, at 0257, paras 36-37; T-035, pp. 56-58; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0020-0021, paras 18-24; T-034, pp. 46-55; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2018, paras 94-96.

[1357] *See for example* P-0617's Statement, DAR-OTP-0202-1496-R02, at 1521-1522, paras 74-76; P-0850's Statement, DAR-OTP-0216-0002-R04, at 0009-0012, paras 27-41; P-0850's Statement Corrections, DAR-OTP-0224-0642, at 0642, paras 1, 4-5, 7 (Kaskeidi spelled Kaskildo).

[1358] *See for example* P-0584's Statement, DAR-OTP-0200-1540-R02, at 1546-1554, paras 19-30, 32, 40-46, 49, P-0584's Sketch, DAR-OTP-0200-1581, Translation, DAR-OTP-0219-855; P-0584's Statement Corrections, DAR-OTP-00000419, at 0001-0002, paras 4, 15; T-092, pp. 18-19; P-0905: T-085, pp. 56-57, 60-65; T-087, p. 49; T-088, pp. 30-43. *See also* para. 468 *below*.

[1359] Korsu: *see for example* P-0973's Statement, DAR-OTP-0220-0736-R01, at 0740-0741, paras 17-18, 22; Ordo:

these attacks, they killed and injured civilians,[1360] burned and destroyed homes,[1361] and looted property and livestock.[1362]

450. Many people were forced to flee the attacks of 15 and 16 August 2003 on Kodoom and Bindisi, and sought refuge notably in Mukjar.[1363] P-0720 saw displaced persons coming from other villages west of Mukjar such as Gausir, Bergei, Kododo, Seder and Kubar.[1364]

451. According to a UN report, by October 2003, there were 31,097 internally displaced persons in the Mukjar locality, while the original population of Mukjar was around 6,997.[1365] Consequently, resources were depleted, there was insecurity and people were living in close proximity to each other without shelter or access to basic needs.[1366] In addition, internally displaced persons were too afraid to return to their homes and harvest any remaining crops.[1367]

452. Some people returned to Kodoom and Bindisi after the attacks of 15 and 16 August 2003.[1368] A meeting was convened in Mukjar by *sheikhs* and *imams* from Kodoom, Bindisi and other villages.[1369] The *sheikhs* and *imams* told the villagers that the *Janjaweed* were not coming back and therefore that they could return to their lives in the villages.[1370]

453. On 30 August 2003, Kodoom and Bindisi were again attacked by the *Janjaweed*,

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see for example P-0736's Statement, DAR-OTP-0210-0248-R02, at 0258-0259, para. 42; Sede: *see for example* P-0712's Statement, DAR-OTP-0209-1884-R04, at 1889, paras 20-21; Gaba: P-0617's Statement, DAR-OTP-0202-1496-R02, at 1506, paras 30-33. *See generally* P-0617's Statement, DAR-OTP-0202-1496-R02, at 1506, 1508, paras 30, 36; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2012, para. 51.

[1360] *See for example* P-0907: T-094, pp. 8, 13, 21-22, *referring to* P-0907's List of Deceased Persons*,* DAR-OTP-00000430; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1509, para. 39; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0740, paras 18-19; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2009-2011, paras 31-33, 35-36, 38, 42; P-0718's Statement Corrections, DAR-OTP-0220-4792, at 4792, paras 4-6; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0353, 0355, 0359, paras 25, 31-32, 48; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0792-0793, para. 8; P-0726: T-053, pp. 13-14.

[1361] *See for example* P-0907: T-094, pp. 11, 14, 21-22; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0740, paras 18, 20; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1506-1508, 1515, paras 33, 36, 38, 57, 59; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2007-2009, paras 20, 26, 28, 32; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0355, paras 32-33.

[1362] *See for example* P-0907: T-094, pp. 8-9, 11; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1506-1507, 1515, paras 33, 35, 57; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2008-2009, paras 26-27, 29; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0355, paras 32-33.

[1363] For the Chamber's factual findings on flight and displacement following the Operation in Kodoom, Bindisi and surrounding areas, *see S*ections 5.III.A.e.ii. Fleeing and displacement and 5.III.A.g.ii. Fleeing and displacement *above*.

[1364] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0303, para. 81.

[1365] UN Report, DAR-OTP-0038-0060, at 0062, 0065, paras 10, 18.

[1366] UN Report, DAR-OTP-0038-0060, at 0065, para. 18.

[1367] UN Report, DAR-OTP-0038-0060, at 0066, para. 18.

[1368] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0613, paras 55, 57.

[1369] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0613, para. 55.

[1370] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0613, para. 56.

prompting a new wave of displacement.[1371]

454. Between the end of August 2003 and February 2004, there were also attacks on the outskirts of Mukjar.[1372] Some displaced persons stayed at the locality building, while others went to the *zakat* office or to the school.[1373] Others, like P-1074 and her family, were not able to take refuge and sheltered under trees.[1374] Food for displaced persons in Mukjar was scarce.[1375]

455. In February 2004, multiple villages surrounding Mukjar were attacked by the *Janjaweed* and GoS Forces,[1376] including Arada,[1377] Tendy,[1378] Abirla,[1379] Dembow Kabdy,[1380] Kirarow,[1381] Sigirgir,[1382] and Nyerli.[1383] This resulted in the mass displacement of people living in those villages towards Mukjar and the nearby mountains.[1384] Some displaced villagers had to live on the streets in Mukjar.[1385] It was estimated that over 40,000 people arrived in Mukjar during this period.[1386] Many brought their livestock with them to prevent it

[1371] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0613, 0615, paras 65, 76.
[1372] P-0012: T-046, p. 72.
[1373] P-1074's Statement, DAR-OTP-0224-0441-R02, at 0449, para. 43.
[1374] P-1074's Statement, DAR-OTP-0224-0441-R02, at 0449, para. 43.
[1375] P-1074's Statement, DAR-OTP-0224-0441-R02, at 0449, para. 44.
[1376] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0439, para. 65; P-0029: T-030, p. 28; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0196, 0210-0211, paras 83, 130; P-0877: T-053, p. 80.
[1377] P-0990: T-040, p. 24; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0391, paras 35-37; P-0877: T-053, p. 80; P-0913's Statement, DAR-OTP-0218-0021-R04, 0034, paras 86-87; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003, paras 25-26.
[1378] P-0877: T-053, pp. 80-81. Similarly, witnesses P-0675, P-0129 and P-0903, who are also from Tendy, fled to Mukjar during the same period: *see* P-0675's Statement, DAR-OTP-0206-0173-R02, at 0191-0192, paras 66, 81; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0137, paras 35, 38; P-0903: T-032, pp. 18-19, 22.
[1379] P-0919: T-060, pp. 11, 13-14; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0034, para. 86; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003, para. 25; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0049, para. 66.
[1380] P-0905: T-085, pp. 72-73, 79; P-0877: T-053, pp. 80-81; P-0984: T-066, pp. 62-63; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0196, para. 83; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0034, para. 86; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003, para. 25.
[1381] P-0905: T-085, pp. 79-80; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0034, para. 90; P-0041's Statement, DAR-OTP-0206-0033-R03, at 0050, paras 68-69.
[1382] P-0877: T-053, pp. 80-81; T-055, p. 25.
[1383] P-0877: T-053, pp. 80-81; P-0581's Statement, DAR-OTP-0216-0560-R02, at 0567, para. 33; P-0581: T-064, p. 31.
[1384] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 95; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0034, para. 88; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85; P-0922: T-039, pp. 60-61; P-0984: T-067, p. 41; T-066, p. 65.
[1385] P-0984: T-067, p. 41.
[1386] UNRC Darfur Humanitarian Profile, DAR-OTP-0160-0885, at 0902. The report emanates from an entity present on the ground in Darfur during the relevant time, and clearly indicates the methodology of information collection and the sources for the facts and statistics. Therefore, the Chamber is satisfied that the report is reliable and has sufficient probative value. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, p. 8. *See also* P-0029: T-030, p. 61; P-0984: T-067, p. 41.

falling in the hands of the *Janjaweed*.[1387]

456. Following an attack on Arada in the evening of 12 February 2004,[1388] *Umdah* Yahya Ahmad Zarruq and the *sheikh* decided that all the inhabitants should flee to the mountain south of the village.[1389] Consequently, around 500 men, women and children fled from Arada to Mukjar.[1390]

b) Events leading up to the Mukjar Operation

457. In this section, the Chamber relies primarily on witnesses P-0012, P-0883 and P-0905,[1391] whose duties placed them in a position to give detailed and credible accounts of the events in question.

i. Delivery of weapons, ammunition and equipment and distribution of money

458. In 2003, Lt Hamdi received a signal communication from Ali Uthman Muhammad Taha, the then Vice President of Sudan,[1392] about a delivery of weapons and uniforms[1393] to **the Accused**.[1394] Lt Hamdi discussed the signal communication with Maj Bakhit[1395] and went to see **the Accused** afterwards.[1396]

459. Subsequently, between August 2003 and March 2004, military equipment and money were distributed to the *Janjaweed* in Mukjar.[1397]

460. Between September 2003 and February 2004, a member of the CRF and Samih,[1398] regularly received money from Hassaballah, the PDF coordinator in Garsila,[1399] to distribute among the *Janjaweed*.[1400]

[1387] P-0029: T-030, p. 34; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0034, para. 88.
[1388] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0391, para. 37; P-0990: T-040, p. 24.
[1389] P-0990: T-040, pp. 24-26.
[1390] P-0990: T-040, p. 26.
[1391] *See* the Chamber's assessment of the evidence of P-0012, P-0883 and P-0905, Annex I, Sections I.A.3, I.A.29, I.A.32.
[1392] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0512, para. 36; P-0905: T-088, p. 97.
[1393] P-0905: T-085, p. 38.
[1394] P-0905: T-085, pp. 35-37. *Contra* Defence's Final Brief, para. 457.
[1395] P-0905: T-085, p. 36.
[1396] P-0905: T-085, p. 38.
[1397] *See* para. 344 *above*.
[1398] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 60.
[1399] P-0643: T-056, pp. 88-89; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0406-0407, Translation, DAR-OTP-0219-6935, at 6939.
[1400] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517, para. 61.

461. P-0012 witnessed several distributions of weapons in Mukjar between October 2003 and February 2004.[1401] In October 2003, he saw uniforms, shoes and caps being provided to Samih and, in January 2004, he noticed an increase in the distribution of weapons.[1402] The weapons were delivered at various locations,[1403] including at the police station, where the *Janjaweed* would come to collect them.[1404]

462. Around February 2004, **the Accused** coordinated the onward distribution of weapons to *umdahs* of the Arab tribes and the *Janjaweed* at the SAF base in Garsila over a period of two days.[1405] Although Maj Bakhit oversaw the distribution from a distance as the commander in charge of the SAF base in Garsila,[1406] **the Accused** decided who should receive the weapons.[1407] Lt Hamdi and Hassaballah were also present during this distribution of weapons,[1408] which included Kalashnikovs and machine guns.[1409] The weapons were distributed to members of Arab tribes,[1410] but denied to Fur tribe members.[1411]

463. On the last day of this weapons distribution, a delegation of high-ranking GoS officials arrived by helicopter at the Garsila SAF base.[1412] The delegation included Minister Harun, a brigadier general from the PDF, a brigadier general from the intelligence services, and the Head of the Third Division of the SAF in Al Fasher.[1413] During this visit, Minister Harun was seen leaving the aircraft and ordering boxes to be offloaded from the helicopter.[1414] Minister Harun then distributed the contents of those boxes, first to **the Accused**,[1415] then to the commander of

[1401] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0516, para. 58. *See also* P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, paras 75-76.
[1402] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0516, para. 59.
[1403] *See* para. 344 *above*.
[1404] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0516, para. 58.
[1405] P-0883: T-071, pp. 27-29; T-074, p. 44. The Chamber notes the Defence's submission highlighting the contradictions between the evidence of P-0883 and P-0905 in relation to the distribution of weapons, *see* Defence's Final Brief, para. 458. Considering P-0883's higher position in the SAF and his basis of knowledge, the Chamber has preferred his account over that of P-0905 on this point. Moreover, the Chamber has not deemed P-0905 credible on this point due to the existence of an ulterior motive, *see* the Chamber's assessment of P-0905's evidence, Annex B, Section I.A.32.
[1406] P-0883: T-071, p. 29.
[1407] P-0883: T-071, p. 28.
[1408] P-0883: T-071, pp. 28-30, 32-33.
[1409] P-0883: T-071, pp. 28-29.
[1410] P-0883: T-071, p. 27.
[1411] P-0883: T-071, p. 35.
[1412] P-0883: T-071, pp. 36-37; T-074, pp. 44-45. The Chamber notes the Defence's submission highlighting the contradictions between the evidence of P-0883 and P-0905 in relation to the delegation's visit to the Garsila SAF base, *see* Defence's Final Brief, paras 459-460. Considering P-0883's higher position in the SAF and his basis of knowledge, the Chamber has preferred his account *above* that of P-0905 on this point, *see* the Chamber's assessment of P-0905's evidence, Annex B, Section I.A.32.
[1413] P-0883: T-071, pp. 36-37.
[1414] P-0883: T-071, p. 37.
[1415] P-0883: T-071, p. 38; T-074, p. 45.

the SAF base, the commander of the police, and the leader of the internal security forces.[1416] The box given to the commander of the SAF base contained a 'large amount of money'.[1417] According to P-0883, the distribution of money was to boost morale and to reward those who had helped in the GoS counter-insurgency effort.[1418] He stated that **the Accused** received 'the lion's share' of the money.[1419]

ii. Minister Harun's speech of 1 February 2004

464. On 1 February 2004, Minister Harun visited Mukjar and attended the graduation ceremony of Fur PPF officers.[1420] Minister Harun and Torshein both gave speeches.[1421] P-0913 recalled Minister Harun saying that he wanted them to completely 'wipe out' the whole area.[1422] According to P-0913, Minister Harun was heard saying that they could 'take all the belongings of the Fur' and consider them as 'a war prize',[1423] and that he wanted them to 'demolish the whole area from Artala to Andi Koti'.[1424] He reportedly said that 'not even a single tree should be standing there'.[1425] **The Accused** was not present during the graduation ceremony.[1426]

iii. Sindu Operation

465. In this section, the Chamber relies primarily on the evidence of P-0905, who closely followed the Sindu Operation from his proximate position.[1427]

466. At the beginning of 2004, a convoy of GoS Forces comprising members of the SAF and the PDF left Garsila for Mukjar.[1428]

467. The convoy first went to Arawala where it was joined by 700 to 800 members of the

[1416] P-0883: T-071, pp. 37-38.
[1417] P-0883: T-071, p. 37; T-074, p. 44.
[1418] P-0883: T-074, pp. 45-46.
[1419] P-0883: T-071, p. 38.
[1420] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0031, paras 69-70; P-0913's Statement Corrections, DAR-OTP-00000012, at 000002, paras 17-18; T-069, pp. 40-41. The Chamber notes P-0913's evidence that he joined the PPF out of fear and that the GoS provided training for Fur men within the PPF to prevent them from joining the rebels, *see* T-069, pp. 49, 51.
[1421] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, paras 72-73.
[1422] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, para. 72; T-069, p. 53.
[1423] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, para. 72; *contra* Defence's Final Brief, para. 452.
[1424] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, para. 72.
[1425] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0032, para. 72.
[1426] P-0913: T-069, pp. 40-41.
[1427] *See* the Chamber's assessment of P-0905's evidence, Annex B, Section I.A. 32.
[1428] P-0905: T-085, p. 48.

Janjaweed.[1429] There, P-0905 heard **the Accused** give a speech to the *Janjaweed* in which he used the term *'amsah aksah*' and instructed them to 'kill everyone' and 'leave no one alive'.[1430] During that speech, **the Accused** told the *Janjaweed* '[a]nything you see, you have to kill or wipe. So, no man has to stay alive. Women can be spared.'[1431] The *Janjaweed* looted the crops and burned down the houses in Arawala.[1432] The convoy stayed in Arawala for approximately three days.[1433]

468. Next, the convoy went to Um Jameina.[1434] There, P-0905 recalled **the Accused** giving another speech to the *Janjaweed* and GoS Forces, instructing them to kill the men but spare the women.[1435] **The Accused** told the *Janjaweed*: 'No, you cannot kill the woman.[…] Do not kill the woman. If you kill the women you will not be victorious.' P-0905, who was listening to this speech, stated that every time the *Janjaweed* went to war, they never killed women. According to him, they would torture and rape women, but not kill them.[1436] The *Janjaweed*[1437] and GoS Forces[1438] killed and assaulted people in Um Jameina, and also burned down the houses in the village.[1439] P-0905 recalled how members of the *Janjaweed* killed a woman as she was giving birth, as well as her husband who was helping her during labour.[1440] Later on the same day, the convoy left for Mukjar.[1441] The villages that were attacked by the convoy between Garsila and Mukjar were all predominantly Fur.[1442]

469. In late February 2004, a contingent of approximately 6,000 members of the *Janjaweed* gathered around Mukjar.[1443] **The Accused** was the leader of those *Janjaweed*, as they took their orders and instructions from him.[1444] They arrived in vehicles filled with military equipment, as well as on camel and horseback.[1445] The *Janjaweed* had weapons such as Kalashnikovs,

[1429] P-0905: T-085, p. 52.
[1430] P-0905: T-085, p. 53. For the Chamber's further findings on the use of the term *'amsah aksah*', *see* Section 5.II.E. Public speeches by GoS officials and Janjaweed leaders, 'Use of the term 'amsah aksah''.
[1431] P-0905: T-085, p. 54.
[1432] P-0905: T-085, p. 55.
[1433] P-0905: T-085, p. 56.
[1434] P-0905: T-085, p. 56.
[1435] P-0905: T-085, pp. 60-61.
[1436] P-0905: T-085, p. 57.
[1437] P-0905: T-085, pp. 56-57.
[1438] P-0905: T-085, pp. 63-64.
[1439] P-0905: T-085, p. 62.
[1440] P-0905: T-085, p. 62. *See* the Chamber's assessment of P-0905's evidence, Annex B, Sections I.A.32.
[1441] P-0905: T-085, p. 65.
[1442] P-0905: T-085, p. 65.
[1443] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 93; P-0012: T-045, pp. 19-20.
[1444] P-0905: T-085, p. 53; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 94; P-0012: T-045, pp. 22-23.
[1445] P-0984: T-066, pp. 60-61; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0304, para. 83.

machine guns and *DShKs*.[1446] **The Accused** was also armed with a Kalashnikov and an axe.[1447]

470. **The Accused** and his forces stayed in Mukjar for five or six days.[1448] During this period, the SAF and the *Janjaweed* were stationed outside of Mukjar.[1449] However, the *Janjaweed* would enter Mukjar, loot the properties of its inhabitants,[1450] and fire their weapons to scare them.[1451] P-0012 stated that people were scared to go outside of their homes and that the security situation was 'precarious and extraordinary'.[1452] On one occasion, while the *Janjaweed* were looting throughout Mukjar, P-0012 saw **the Accused** in a vehicle with Hassaballah.[1453]

471. Owing to the prevailing situation of fear, some inhabitants of Mukjar sought refuge at the locality building.[1454] On the day they entered Mukjar, **the Accused** and the *Janjaweed* went to the locality building, where Torshein addressed them.[1455] During this time, Torshein ordered all forces in Mukjar not to kill any civilians.[1456] On the same day, *Shartay* Omar Ahmad Zarruq addressed the internally displaced persons and urged them to remain at the locality building for their safety.[1457] P-0012 gave evidence that **the Accused** addressed the inhabitants and told them that 'even if they ran, they could not save themselves unless their children came out of the mountains'.[1458] P-0012 understood this to be a threat referring to the rebels who were alleged to be in the Sindu mountains.[1459]

472. **The Accused** then went to the police station.[1460] Lt Col Al-Tayyib, the Head of the CRF in Mukjar, was in charge at the police station.[1461] P-0990, who was being detained at the police station at the time, saw and heard **the Accused** tell Lt Col Al-Tayyib, 'I am Ali Abd-Al-

[1446] P-0984: T-066, p. 61; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0304, para. 83; P-0905: T-085, p. 74.
[1447] P-0984: T-066, p. 61.
[1448] P-0984: T-066, p. 62.
[1449] P-0905: T-085, p. 66.
[1450] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 94; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0330, para. 72.
[1451] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0306, para. 99; P-0905: T-085, p. 71.
[1452] P-0012: T-046, p. 72.
[1453] P-0012: T-045, p. 22.
[1454] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 93.
[1455] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0306, para. 98.
[1456] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0306, para. 98.
[1457] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0306-0307, para. 100.
[1458] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 93; P-0012: T-045, p. 21.
[1459] P-0012: T-045, p. 21.
[1460] P-0990: T-040, pp. 42-43.
[1461] P-0990: T-040, p. 29; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0033, para. 79. *See also* P-0129's Statement, DAR-OTP-0128-0128-R04, at 0148, para. 69.

Rahman Ali Kushayb' and 'I came from the governorate, heading to Sindu to face the rebels.'[1462]

473. While at the police station, **the Accused** held a meeting with high ranking officials, including Lt Col Al-Tayyib and a major from the SAF.[1463] There was a disagreement about the provision of vehicles to **the Accused** for the Sindu Operation.[1464] During that meeting, **the Accused** told the police chief that anyone coming from the direction of Sindu to Mukjar must be registered and detained until their return from the operation.[1465] The police chief answered that the *sheikhs* had to register anyone from outside of Mukjar at the police station, and that failure to do so would result in the arrest of both the non-registered person and their *sheikh*.[1466]

474. Later, a convoy, comprising of *Janjaweed* and GoS Forces,[1467] and led by **the Accused**, attacked various locations between Mukjar and Sindu in a joint operation.[1468] Witnesses heard that the purpose of the Sindu Operation was to fight the rebels.[1469]

475. The convoy first headed to Dembow Kabdy.[1470] There, more *Janjaweed*, including Samih's forces,[1471] joined the convoy, bringing their total number to about 7,000.[1472] In Dembow Kabdy, P-0905 saw **the Accused** address the *Janjaweed* and say: 'We have one major fight, the Sindu fight. You don't […] be cowards, move forward. Don't be afraid.' and *'amsah aksah*, and never bring someone alive'.[1473] The *Janjaweed* looted and burned down the village then left in the morning.[1474]

476. Then, the convoy went to Kirarow,[1475] where it remained for two days.[1476] The

[1462] P-0990: T-041, p. 29.
[1463] P-0905: T-085, p. 69.
[1464] P-0905: T-085, pp. 66-67.
[1465] P-0905: T-085, p. 69. *Contra* Defence's Final Brief, para. 478.
[1466] P-0905: T-085, pp. 70-71.
[1467] P-0012: T-045, p. 22; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 94; P-0905: T-085, pp. 50-51. The Chamber makes no finding on the number of fighters from each (semi) governmental force that participated in the operation as nothing turns on this point. *Contra* Defence's Final Brief, paras 461-463.
[1468] P-0905: T-085, p. 66. For the Chamber's findings on **the Accused's** leadership over the *Janjaweed* and the GoS forces during the Sindu Operation, *see* paras 190-195 and 475-478. *See also* Map of the Sindu Operation, DAR-OTP-00000263-R01; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85; P-0922: T-039, p. 61.
[1469] P-0990: T-040, p. 47; P-0931: T-062, pp. 19-20; P-0905: T-088, p. 9.
[1470] P-0905: T-085, p. 72.
[1471] P-0905: T-085, p. 75.
[1472] P-0905: T-085, p. 74.
[1473] P-0905: T-085, pp. 77-78.
[1474] P-0905: T-085, p. 79. *See also* P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85; P-0922: T-039, p. 61.
[1475] P-0905: T-085, pp. 79-80.
[1476] P-0905: T-085, pp. 80, 83.

inhabitants of Kirarow had fled the village after hearing about the shooting and looting that had occurred in Dembow Kabdy.[1477] They left their belongings behind[1478] and again the village was burned down by the *Janjaweed.*[1479] The number of *Janjaweed* further increased in Kirarow.[1480]

477. On the third day, P-0905 recalled seeing two military aircraft fly over the convoy.[1481] He overheard Maj Bakhit communicating with the aircraft pilots, saying they could see more than 80 military tents.[1482] P-0905 saw the aircraft fly over the convoy again and fire on what P-0905 believed to be a camp of 'armed groups' at the foot of the mountain in Sindu.[1483]

478. The convoy continued towards Sindu and arrived at Lerwa, where they were ambushed by the SLM/A.[1484] After fighting those forces, the convoy was able to reach Sindu.[1485] Once the convoy entered Sindu, they did not meet any resistance and the second-in-command of the SLM/A surrendered.[1486] Although the *Janjaweed* wanted to kill the said second-in-command, **the Accused** instructed them not to harm him as he was a 'very important person' for them, from whom they needed information.[1487] Upon questioning by **the Accused**, the second-in-command revealed that 'some of our people went to Mukjar and they must be in prison now at the police station'[1488] and confirmed that he could identify all of them.[1489] The second-in-command was subsequently taken to Mukjar.[1490]

479. Throughout the Sindu Operation, the *Janjaweed* and GoS Forces suffered significant losses: two of their vehicles were destroyed by landmines,[1491] some of their soldiers were killed and they lost ammunition and vehicles.[1492]

[1477] P-0905: T-085, p. 80.
[1478] P-0905: T-085, p. 80.
[1479] P-0905: T-085, p. 80. *See also* P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85; P-0922: T-039, p. 61.
[1480] P-0905: T-085, p. 82.
[1481] P-0905: T-085, p. 80.
[1482] P-0905: T-085, pp. 80-81.
[1483] P-0905: T-085, pp. 81-82.
[1484] P-0905: T-085, pp. 83, 86. *See* para. 335 *above*.
[1485] P-0905: T-085, p. 84.
[1486] P-0905: T-086, pp. 5-6.
[1487] P-0905: T-086, p. 6.
[1488] P-0905: T-086, pp. 7-8.
[1489] P-0905: T-086, p. 8.
[1490] P-0905: T-086, p. 9.
[1491] P-0931: T-062, p. 22; P-0905: T-086, p. 13.
[1492] P-0990: T-040, p. 47.

c) Arrests

i. Return to Mukjar

480. A few days after the Sindu Operation,[1493] **the Accused** and his forces returned to Mukjar,[1494] attacking various villages along the way.[1495]

481. After arriving in Mukjar, the *Janjaweed* looted and burned down houses, before most of them left the town.[1496] The GoS Forces went towards the police station and to their camp.[1497]

482. The GoS Forces that participated in the Mukjar Operation between late February and early March 2004 included the SAF[1498] (including the Military Intelligence),[1499] the PDF,[1500] the PPF,[1501] the CRF[1502] and the Police.[1503] Some of those forces had participated in the Sindu Operation.[1504]

ii. Checkpoints

483. In February and March 2004,[1505] the *Janjaweed* and GoS Forces set up checkpoints in

[1493] P-0990: T-040, pp. 44-45; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 82; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0306, para. 97. The Chamber notes the discrepancies in the evidence of P-0990 and P-0922, on the one hand, and P-0720, on the other hand, as to the exact duration of the Sindu Operation. The Chamber makes no finding on the exact duration of the Sindu Operation as nothing turns on this point.
[1494] P-0984: T-066, pp. 66-67; P-0990: T-040, p. 44.
[1495] P-0643: T-056, p. 81; P-0990: T-040, p. 47.
[1496] P-0905: T-086, p. 13; T-088, pp. 59-60. The Chamber notes the Defence's submission that there are discrepancies between the evidence of P-0012 and P-0905 on the convoy's return to Mukjar after the Sindu Operation. The Chamber observes, however, that these submissions are incorrect, as both testimonies support the *above* finding that the *Janjaweed* came back to Mukjar and looted the town before leaving, *contra* Defence's Final Brief, paras 464. The Chamber refers to its findings *below* on the continued participation of some *Janjaweed* members in the Mukjar Operation to support the finding that 'most of them' and therefore not 'all of them' left the town.
[1497] P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 82; P-0905: T-086, pp. 13-14; T-088, p. 60.
[1498] P-0905: T-086, pp. 14-15.
[1499] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0139, para. 41; DAR-OTP-0223-0157-R02, at 0164-0165, para. 41.
[1500] P-0129: T-076, pp. 39-40.
[1501] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0036-0037, para. 102; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003, para. 28; T-069, p. 55; T-070, p. 9; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0303, para. 78.
[1502] P-0919: T-060, p. 29; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0303, para. 78; P-0931: T-062, pp. 33-34; P-0877: T-053, pp. 81-82; T-054, pp. 5-6.
[1503] P-0905: T-085, p. 69; P-0919: T-060, p. 14; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0303, para. 78; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143, para. 51.
[1504] *See* fn. 1467 *above*.
[1505] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0396-0397, para. 61.

and around Mukjar[1506] to control the arrival of people who were fleeing the previous attacks on the surrounding villages, including in the context of the Sindu Operation.[1507] P-0129, P-0675, P-0877, P-0903, P-0919, and P-0990 were among the men who were arrested at the checkpoints.[1508] The Chamber relies on their evidence in respect of the following findings.

484. People were stopped and searched at the checkpoints.[1509] Men were separated from women and children,[1510] systematically arrested and taken to the police station and its prison.[1511] Young men in particular[1512] were searched for weapons or physical signs that they had carried weapons.[1513] Elderly or injured men generally were not arrested on account of their age or health.[1514] Around 400, predominantly Fur[1515] people, were arrested during this period.[1516]

485. According to P-0990, one of the officers was instructed to register the name, village, *umdah* and *sheikh* of each of the young men.[1517]

486. The checkpoints were manned by various forces, including the PPF,[1518] the CRF,[1519]

[1506] P-0129: T-076, p. 34; P-0129's Statement, DAR-OTP-0023-0157-R02, at 0164, para. 35; P-0919: T-060, p. 14; P-0919: T-061, pp. 4-5; P-0984: T-066, pp. 65-66; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0439, para. 65; P-0720's Statement, DAR-OTP-0210-0291, at 0304, paras 87-88; P-0029: T-030, p. 34; P-0008's Statement, DAR-OTP-0088-0085, at 0097, para. 46. *See also* P-0757's Statement, DAR-OTP-0211-0003, at 0022, para. 75.
[1507] *See* para. 473 *above*.
[1508] P-0919: T-061, p. 4; P-0990: T-040, pp. 26-27; P-0129's Statements, DAR-OTP-0128-0128-R04, at 0138, para. 39; DAR-OTP-0223-0157-R02, at 0164, para. 35; P-0877: T-053, pp. 81-82; P-0903: T-032, pp. 22-23; P-0675's Statement, DAR-OTP-0203-0173-R02, at 0196-0197, paras 84, 88.
[1509] P-0984: T-066, p. 65; P-1074's Statement, DAR-OTP-0224-0441, at 0450, para. 46.
[1510] P-0990: T-040, p. 26; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 95; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0439, para. 65; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0305, para. 89; P-0675's Statement, DAR-OTP-0203-0173-R02, at 0197, para. 85.
[1511] P-0877: T-054, p. 62; P-0029: T-031, p. 47; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85; P-0675's Statement, DAR-OTP-0203-0173-R02, at 0197, para. 88. P-0675's account on this point is corroborated by P-0877, *see* T-054, p. 4.
[1512] P-0984: T-066, p. 66; P-0922: T-039, p. 29; P-0129's Statement Corrections, DAR-OTP-00000084, at 000002, para. 15; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0439, 0441, paras 65, 73; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, para. 42; P-0892's Statement Corrections, DAR-OTP-0224-0658, at 0659, para. 12.
[1513] P-0990: T-040, pp. 26-28; P-0877: T-055, p. 52; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0197, paras 84-85.
[1514] P-0720's Statement, DAR-OTP-0210-0291, at 0305, para. 90; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0139, para. 41; P-0877: T-053, p. 82.
[1515] P-0892: T-048, pp. 7-8; P-0984: T-066, p. 66.
[1516] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, paras 97-98.
[1517] P-0990: T-040, pp. 27-28.
[1518] P-0012: T-045, p. 25; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, paras 41-42; P-0892: T-048, p. 8; P-0903: T-032, p. 22; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0197, paras 86-87; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0305, para. 93.
[1519] P-0877: T-054, pp. 5-6; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 95.

the police,[1520] the PDF[1521] as well as the *Janjaweed*.[1522] Some of the GoS Forces at these checkpoints had lists of persons that were suspected of being rebels.[1523] The checkpoints were manned at all times.[1524] PDF and PPF members of Fur ethnicity were placed at the checkpoints to identify Fur community members in order to arrest them.[1525]

487. One of the key actors who was identified by multiple witnesses as being present at the checkpoints and arresting people was PPF coordinator Hassan Joma.[1526] Other persons carrying out the arrests were Korein[1527] Haroun Bashir, Ibrahim Sharaf-Al-Din Ibrahim, Ali Osman Ahmed, Ali Al Najar, and Solonga.[1528]

488. The arrests began a few days after **the Accused** and his forces left Mukjar to carry out the Sindu Operation.[1529]

489. Community leaders from Mukjar and the surrounding areas, such as *umdahs* and *sheikhs*, were also arrested.[1530] *Umdahs* and *sheikhs* were detained immediately without being questioned.[1531] *Umdahs* Adam Husayn Abdelmahmoud and Issa Harun Nour were among the *umdahs* who were arrested at the checkpoints.[1532] While there is contradicting evidence as to the precise circumstances surrounding the arrest of *Umdah* Yahya Ahmad Zarruq, the evidence nonetheless supports a finding that he was arrested in Mukjar during the charged period and

[1520] P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85.
[1521] P-0129: T-076, pp. 33-34; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0138, para. 39.
[1522] P-0877: T-053, pp. 81-82; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85.
[1523] P-0916's Statement, DAR-OTP-0224-0023-R01, at 0038, para. 74.
[1524] P-0984: T-066, p. 65.
[1525] P-0129: T-076, pp. 34-35; P-0720's Statement, DAR-OTP-0210-0291, at 0305-0306, para. 94; P-0720: T-043, pp. 68-69. *See also* P-0757's Statement, DAR-OTP-0211-0003-R02, at 0022, para. 75; P-0984: T-066, p. 66; P-0984: T-067, p. 42.
[1526] P-0877: T-053, pp. 81-82; T-054, p. 4; T-055, p. 56; P-0012: T-045, pp. 23-24; P-0990: T-040, p. 27; P-0919: T-060, pp. 14-15; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0164, para. 37; P-0129: T-076, pp. 33-34; P-0903: T-032, pp. 22-23; P-0892's Statement, DAR-OTP-0217-0384, at 0392, para. 42; P-0720's Statement, DAR-OTP-0210-0291, at 0305, para. 93. *See also* para. 322 *above*.
[1527] P-0903: T-032, pp. 22-23; P-0919: T-060, pp. 47-48; P-0012: T-045, pp. 24-25; P-0990: T-040, p. 27; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0164, para. 39; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, para. 42; P-0892's Statement Corrections, DAR-OTP-0224-0658, at 0658, paras 7-8; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0197, para. 87.
[1528] P-0990: T-040, p. 27.
[1529] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 97.
[1530] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 98; P-0012: T-045, pp. 26-28. *See also* P-0008's Statement, DAR-OTP-0088-0085-R02, at 0097, para. 46. *Contra* Defence's Final Brief, para. 471.
[1531] P-0984: T-066, p. 66. *Contra* Defence's Final Brief, para. 471.
[1532] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0439, para. 65; P-0720's Statement, DAR-OTP-0210-0291, at 0305, paras 91-92. *See also* P-0757's Statement, DAR-OTP-0211-0003-R02, at 0022, para. 75; P-0008's Statement, DAR-OTP-0088-0085-R02, at 0097, para. 46. *Contra* Defence's Final Brief, para. 472.

detained at Mukjar police station.[1533]

490. In addition to the above-mentioned witnesses, the following persons were arrested at the checkpoints: two of P-0903's brothers,[1534] Salah Suliman, Adam Suliman, Yahya Sharaf Al-Din Abdallah and Adam Naheed Numan.[1535]

491. Some witnesses reported that, while only men were arrested, women were also searched.[1536] Sometimes children were arrested and detained.[1537]

492. At the checkpoints, the internally displaced persons from surrounding villages were often accused of being rebels.[1538] They were called '*tora bora'*,[1539] *'nujus'* and 'criminals'[1540] by the persons manning the checkpoints. P-0903 reported that he was not given any reason for his arrest.[1541] One witness expressed the sentiment that everyone from the Fur tribe was perceived as being affiliated to or supporting the rebels.[1542]

493. The *Janjaweed* and GoS Forces confiscated livestock, including camels, horses, donkeys, cows, sheep, goats and pigeons, from the persons fleeing from the surrounding villages upon their arrival in Mukjar.[1543]

iii. Other arrests

494. During the same period, the *Janjaweed*[1544] and GoS Forces[1545] conducted house to house searches and arrested people in their homes, the market and other places. On those

[1533] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0305, paras 91-92; P-0720: T-043, p. 46; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0035, para. 91. *Contra* Defence's Final Brief, paras 473-474.
[1534] P-0903: T-032, p. 23.
[1535] P-0903: T-032, pp. 24-25.
[1536] P-0903: T-032, p. 24. The Chamber acknowledges that P-0012 stated that although most arrested persons were men, a few women were also arrested. *See* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 98.
[1537] P-0984: T-066, p. 66. *Contra* Defence's Final Brief, para. 468.
[1538] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, para. 41; P-0892: T-048, p. 8.
[1539] P-0892's Statement Corrections, DAR-OTP-0224-0658, at 0658, paras 5-6.
[1540] P-0129's Statement Corrections, DAR-OTP-00000084, at 000003, para. 41.
[1541] P-0903: T-033, p. 43. *See also* P-0129's Statement, DAR-OTP-0128-0128-R04, at 0139, para. 41.
[1542] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, para. 41.
[1543] P-0877: T-054, pp. 62-63; P-0990: T-040, p. 26; P-0903: T-032, p. 26; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0439, 0441, paras 65, 74.
[1544] P-0913: T-069, p. 45; P-0757's Statement, DAR-OTP-0211-0003-R02, at 0015, para. 51; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 97. *Contra* Defence's Final Brief, para. 476.
[1545] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 97; P-0008's Statement, DAR-OTP-0088-0085-R02, at 0097, para. 46; P-1074's Statement, DAR-OTP-0224-0441-R02, at 0450, para. 47; P-0913: T-069, pp. 45, 50; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0306, para. 95. *Contra* Defence's Final Brief, para. 476.

occasions, witnesses identified PPF members, including Hassan Joma [1546] and Korein conducting searches and arrests.[1547] Children, elderly men and women were not arrested.[1548] The arrests continued for a period of about two weeks,[1549] during which people living in Mukjar were not permitted to leave the town.[1550] A 13 year old boy was arrested and brought to Torshein's office. Torshein released him, after calling him '*tora bora*'.[1551] The boy had to report back to Torshein's office every day for a month.[1552]

495. Shortly after his return to Mukjar following the Sindu Operation, **the Accused** personally arrested a Fur man called Abakar Abdelmoula.[1553] While in his Land Cruiser, **the Accused** pointed towards Abakar Abdelmoula and P-0720.[1554] P-0720 quickly fled on his bicycle, but Abakar Abdelmoula was arrested by **the Accused** and taken to the police station.[1555] Abakar Abdelmoula was later among those who were executed following his detention.[1556]

496. On or around 1 March 2004, four policemen of Fur ethnicity were brought to and detained at the police station.[1557] The policemen were Mohamed Idriss Adam Taha, Adam Idriss Adam Hassan, Abdu Rosik and Abdu Nurlak.[1558] **The Accused** was standing in front of the door of the detention room and was heard saying: '[t]omorrow we will show you who you are, and who we are'.[1559]

iv. Persons at the locality building

497. Some of the arrested persons were taken to the locality building, rather than or after a prior period of detention at the police station.[1560] Generally, women and children were taken to

[1546] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0146, para. 61; DAR-OTP-0223-0157-R02, at 0176, p. 99; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398, para. 67.
[1547] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398, paras 65-66.
[1548] P-0008's Statement, DAR-OTP-0088-0085-R02, at 0097, para. 46.
[1549] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 97.
[1550] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0439, para. 65.
[1551] P-0984: T-066, p. 68.
[1552] P-0984: T-066, p. 69.
[1553] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0307, para. 105.
[1554] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0307, paras 103-104.
[1555] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0307, para. 105; T-043, pp. 11-12. *Contra* Defence's Final Brief, para. 477.
[1556] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0307, para. 105.
[1557] P-0877: T-054, pp. 8, 10, 20, *referring to* P-0877's Sketch of Mukjar police station, DAR-OTP-0217-0251-R01.
[1558] P-0877: T-054, p. 9.
[1559] P-0877: T-054, p. 10.
[1560] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, para. 41; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199, 0200, paras 95-96; P-0877: T-054, p. 64.

the locality building.[1561]

498. Others had sought refuge at the locality building following attacks in the region that occurred before February 2004.[1562] Following the Sindu Operation, many people fled to the locality as a result of **the Accused** and his forces returning to Mukjar.[1563] The persons held at the locality building were predominantly Fur.[1564]

499. The locality building was a walled compound.[1565] It was surrounded by a perimeter fence and guarded by members of the CRF[1566] and the police.[1567] Torshein's office and the PPF office, as well as other administrative offices, were located in this building.[1568]

500. The confiscated livestock was also kept at the locality building.[1569] The persons held at the locality building were not provided with food or water.[1570] They were not registered or questioned.[1571]

501. P-0892, who was a child during the events, witnessed the *Janjaweed* and PDF[1572] beating the people held at the locality building with whips.[1573] P-0892 himself was beaten with a whip by the *Janjaweed.*[1574] The *Janjaweed* and PDF also verbally abused them by calling them rebels and slaves and saying that they were going to wipe out the whole area in Sindu and Arada.[1575]

d) Detention at Mukjar police station

i. Taking of detainees to the police station

502. Following their arrests, at least 100 men and boys, predominantly from the Fur tribe,

[1561] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0200, para. 96; P-0892: T-048, p. 8; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 98.
[1562] *See* paras 454, 471 *above*.
[1563] P-0984: T-066, p. 67; P-0877: T-055, pp. 40-41.
[1564] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395-0396, para. 55.
[1565] P-0877: T-055, p. 41; P-0877's Sketch of Mukjar locality building, DAR-OTP-0217-0479.
[1566] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0200, para. 96.
[1567] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395, para. 52.
[1568] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0301, paras 69, 71. *See also* Map of Mukjar Locality, DAR-OTP-0210-0316-R01.
[1569] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0200, para. 96; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395, para. 52.
[1570] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395, para. 52.
[1571] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395, para. 52.
[1572] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0396, para. 59.
[1573] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395-0396, paras 55, 59; P-0892: T-048, p. 10.
[1574] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395-0396, para. 55.
[1575] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0396, para. 57.

were taken to and detained at Mukjar police station.[1576] The length of their detention varied, with some being detained for up to four weeks.[1577]

503. The arrested persons included P-0129, P-0675, P-0877, P-0903, P-0919, P-0932, and P-0990[1578] upon whom the Chamber relies in respect of the following findings.

504. The Mukjar police station was located at the northern edge of the town, near the roads to Garsila and Bindisi.[1579] There was only one entrance for vehicles to drive into the police station compound.[1580] The entrance to the police station was from the south.[1581] Inside the police station, there were various rooms, such as a reporting room and a storage room.[1582] There were generators at the police station.[1583] The detainees were held in several rooms, including the prison, the police presidency and the headquarters.[1584] The prison was next to the police station in the northern direction and the door opened to the west.[1585] The prison had two separate sections.[1586] One section had iron bars and the other section had one small door.[1587] There was a roundabout between the two buildings of the police station.[1588] The first cell was approximately five metres by four metres.[1589]

505. The detainees came from different villages surrounding Mukjar, including: Kodoom,

[1576] *See* para. 506 *below*.
[1577] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619, para. 100. *See also* P-0903: T-032, p. 64.
[1578] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0138, para. 39; P-0919: T-060, p. 14; P-0990: T-040, p. 29; P-0877: T-054, p. 39; P-0877: T-053, p. 82. Witness P-0903 recalls having seen P-0877 at the police station when he was brought there, *see* P-0903: T-032, pp. 26-27. The Chamber is satisfied that P-0903's account on this point is corroborated by P-0877, *see* T-054, p. 4. *See also* Satellite image annotated by P-0903, DAR-REG-0001-0001, at 0001. P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619, para. 97; P-0932: T-068, p. 36; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0197, para. 88.
[1579] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0139, para. 43; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2867, para. 21.
[1580] P-0931: T-063, p. 11; P-0903's Annotated Satellite Image, DAR-OTP-0224-0880.
[1581] P-0931: T-063, p. 11; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0441, para. 72.
[1582] P-0922's Statement, DAR-OTP-0220-2864-R01, at 2868, para. 25; P-0913: T-069, p. 56. *See also* P-0877's Sketch of Mukjar police station, DAR-OTP-0217-0251.
[1583] P-0919: T-061, p. 6.
[1584] P-0984: T-066, p. 70.
[1585] P-0903: T-032, p. 27.
[1586] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0139, para. 43; P-0919: T-060, p. 16; P-0903's Annotated Satellite Image, DAR-REG-0001-0001; P-0984's Annotated Satellite Image, DAR-OTP-0225-0057-R01; P-0012: T-046, p. 73; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0397, para. 63.
[1587] P-0919: T-061, p. 9; P-0877: T-053, p. 87. *See also* P-0129's Sketch of Mukjar police station, DAR-OTP-0219-7084; P-0990's Sketch of Mukjar police station, DAR-OTP-0223-0232-R01; P-0877's Sketch of Mukjar police station, DAR-OTP-0219-0490.
[1588] P-0990: T-040, p. 30; P-0990's Annotated Satellite Image of Mukjar police station, DAR-OTP-0224-0547; P-0931: T-063, p. 11.
[1589] P-0990: T-040, p. 33; P-0990's Sketch, DAR-OTP-0223-0232-R01; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619, para. 99; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0198, para. 91; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2868, para. 26; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398, para. 67.

Korofota, Nyerli, Aderla, Siguederla, Tendy,[1590] Dembow Kabdy,[1591] Arada,[1592] Sigirgir, Indiri, Artala, Balda, Rumaliya, Karraro, Dina, Zua, Gorolla, Sindu, Alamata, Balabang, Baladepi, Gossoma, Korojure, Morol, Mumu, Amshalay, Bergei, Nainkossé, Gausir and Bornyol.[1593]

506. All the detainees at the police station were male.[1594] While the detainees were predominantly Fur,[1595] some were from other tribes such as Muringa,[1596] Tama, Borgo, Masalit or Zaghawa.[1597] At least 100 persons were detained at the police station between late February and early March 2024.[1598] Most detainees were adults.[1599] However, P-0129 and P-0905 reported seeing children detained at the police station.[1600]

507. Additional detainees were brought in every day.[1601]

508. Multiple witnesses recalled that, after being brought to the police station, their names were registered.[1602] Hassan Joma[1603] and John Koj[1604] were among those who registered the names of the detainees. Lt Col Al-Tayyib had instructed John Koj to register and count the

[1590] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0196, para. 84; P-0877: T-053, pp. 80-81.
[1591] P-0720's Statement, DAR-OTP-0210-0291-R02, at 0305, para. 90.
[1592] P-0990: T-040, pp. 24-26; P-0892: T-048, p. 19.
[1593] P-0903: T-032, p. 32.
[1594] P-0029: T-030, p. 36; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2868, para. 22; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0197, para. 88.
[1595] P-0877: T-053, p. 85; T-054, p. 63; P-0990: T-041, p. 65; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619, para. 100; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0139, para. 45. *See also* P-0903: T-032, p. 63.
[1596] P-0877: T-053, p. 85.
[1597] P-0903: T-032, p. 33.
[1598] P-0990: T-040, p. 32; P-0903: T-032, p. 29; P-0877: T-053, pp. 82-83; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619, para. 98; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0333, para. 86; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0306, para. 96; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0139, para. 44; P-0919: T-060, pp. 16, 63-64; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0198, para. 91; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2868, para. 22; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398, para. 67. *See also* P-0986: T-066, pp. 8-9; P-0931: T-062, p. 17; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 97; P-0012: T-045, p. 23; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0333, para. 86; P-0922: T-039, p. 29; P-0757's Statement, DAR-OTP-0211-0003-R02, at 0022-0023, para. 76; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0305, para. 89.
[1599] P-0877: T-054, p. 63; T-055, pp. 58-59.
[1600] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0142, 0158, paras 48, 118; DAR-OTP-0223-0157-R02, at 0169-0170, para. 58; P-0129: T-076, pp. 58-59; P-0905: T-088, p. 69. The Chamber notes P-0919's evidence in which he indicates that he did not see any children being detained at Mukjar police station, *see* T-061, p. 24. Considering how crowded the detention cells were and that he witnessed the events from a different vantage point, the Chamber acknowledges it is plausible that P-0919 did not see any children. This however does not impact P-0129's credibility on this point, *see* the Chamber's assessment of P-0129's evidence, Annex B, Section I.A.9.
[1601] P-0919: T-061, p. 11; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0198, para. 91. *See also* P-0932: T-068, p. 42.
[1602] P-0919: T-060, p. 15. *See also* P-0675' Statement, DAR-OTP-0206-0173-R02, at 0198, para. 90.
[1603] P-0919: T-060, p. 15; P-0877: T-055, p. 54.
[1604] P-0990: T-040, p. 30; P-0990: T-041, p. 50.

detainees.[1605] P-0990 witnessed Ibrahim Sharaf-Al-Din Ibrahim taking the ledger with the names of the detainees from Hassan Joma and telling him that they should be lined up in groups of ten.[1606] During his detention, P-0990 witnessed John Koj coming to the cell every day and submitting a report on the detainees to his superiors.[1607] One day he said 'tomorrow the government and government forces will come and will be led by Colonel Abdullah Himeidan. And these are Popular Defence Forces, popular police forces led by the leader of militias, the leader of the other colonels of the *Janjaweed*, and that's Ali Kushayb'.[1608]

509. The policemen guarded the detainees.[1609] P-0984[1610] recalled that the forces that were brought from Khartoum were also present at the police station.[1611] Once he was brought to the police station, P-0675 recognised Samih, who was giving orders to the guards.[1612]

510. A number of *sheikhs* and *umdahs* were detained at the police station.[1613] Among them were *Umdah* Yahya Ahmad Zarruq,[1614] *Umdah* Issa Harun Nour,[1615] *Umdah* Adam Husayn Abdelmahmoud,[1616] *Sheikh* Abdala,[1617] *Sheikh* Jobbor,[1618] Omar Ahmad Zarruq, *Umdah* Ahmed Mohamed Gantour, and *Sheikh* Issa Mohamed Ishaq.[1619] Doctor Muhammad Umar Ahmad Zarruq, the brother of *Umdah* Yahya Ahmad Zarruq, was also taken to the police station.[1620] When P-0129 was brought to the police station, he saw the *umdahs*, including *Umdah* Yahya Ahmad Zarruq, *Umdah* Adam Husayn Abdelmahmoud and *Umdah* Issa Harun Nour, being detained on the veranda. They had been made to undress and were sitting in their underwear.[1621]

[1605] P-0990: T-040, p. 29.
[1606] P-0990: T-040, p. 28.
[1607] P-0990: T-040, pp. 39-40.
[1608] P-0990: T-040, p. 40.
[1609] P-0903: T-033, p. 45.
[1610] P-0984: T-066, pp. 70, 74.
[1611] P-0984: T-066, p. 71.
[1612] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0198, para. 89.
[1613] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0167, para. 51.
[1614] P-0919: T-060, p. 16; P-0990: T-040, p. 37; P-0903: T-032, p. 30; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, para. 107.
[1615] P-0919: T-060, p. 16; P-0990: T-040, p. 37; P-0903: T-032, p. 30; P-0757's Statement, DAR-OTP-0211-0003-R02, at 0023, para. 77.
[1616] P-0919: T-060, p. 16; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, para. 107; P-0903: T-032, p. 30.
[1617] P-0903: T-032, p. 30.
[1618] P-0919: T-060, p. 16.
[1619] P-0990: T-040, p. 37.
[1620] P-0903: T-032, p. 31.
[1621] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0167, para. 51; P-0129: T-076, p. 43.

ii. Conditions of detention

511. Several persons who shared a cell at the police station gave evidence before the Chamber, including P-0129, P-0877, P-0903, P-0919, P-0932, and P-0990.[1622] Considering their direct and personal experience of the events, the Chamber relies on their evidence to reach the following findings.

512. The condition of detention were 'very difficult' and 'very bad'.[1623] The detention cells were overcrowded,[1624] dirty[1625] and hot.[1626] Many detainees could not sleep[1627] as there was no place to lie down or move around.[1628] The detainees were sweating profusely.[1629] It was difficult to breathe in the cell.[1630] More and more detainees were added to the cells over the course of two days.[1631] Whenever new detainees were brought in, they would be pushed into the cell,[1632] so that people were positioned on top of each other.[1633]

513. There was a lack of light in the detention cells.[1634] Some detainees reported that there were no windows in their cell.[1635] In one of the cells, there was no light, except for sun light during the day.[1636]

514. The detainees were scared,[1637] hungry, thirsty and tired.[1638] They had limited[1639] or no

[1622] P-0990: T-040, p. 37; P-0877: T-054, p. 39; P-0903: T-032, p. 30; P-0919: T-060, p. 16; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, para. 107; P-0129: T-076, p. 43. The Chamber is satisfied that P-0990, P-0877, P-0903, P-0919, P-0932 and P-0129 were detained in the same cell as *umdahs* Issa Haroun Nour, Yahya Ahmad Zarruq, and Adam Husayn Abdelmahmoud. *Contra* Defence's Final Brief, paras 490-491. *See* the Chamber's assessment of the evidence of P-0990, P-0877, P-0903, P-0919, P-0932 and P-0129, Annex B, Sections I.A. 47, I.A.27, I.A.31, I.A.37, I.A.41 and I.A.9.
[1623] P-0877: T-053, pp. 84-85; P-0905: T-086, p. 63.
[1624] P-0903: T-032, p. 29; P-0877: T-053, p. 85; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619, para. 99; P-0932: T-068, p. 42; P-0675's Statement, DAR-OTP-0203-0173-R02, at 0198, para. 91; P-0905: T-086, p. 63.
[1625] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0621, para. 110.
[1626] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0147, para. 68; P-0903: T-032, p. 30.
[1627] P-0919: T-060, p. 17; P-0877: T-054, p. 65; P-0932: T-068, p. 44.
[1628] P-0129: T-076, p. 39; P-0919: T-060, p. 16; P-0932: T-068, p. 42.
[1629] P-0877: T-053, p. 84; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0147, para. 68; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398, para. 67.
[1630] P-0903: T-032, pp. 29-30; P-0877: T-053, p. 85; T-055, p. 63; P-0990: T-040, p. 34.
[1631] P-0877: T-055, pp. 56-57.
[1632] P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398, para. 67.
[1633] P-0919: T-061, p. 11; P-0932: T-068, p. 42.
[1634] P-0932: T-068, pp. 42-43; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2868, para. 26.
[1635] P-0919: T-060, p. 16; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0147, para. 68; P-0932: T-068, p. 37; P-0877: T-055, pp. 59-60.
[1636] P-0990: T-040, p. 34; P-0932: T-068, p. 37.
[1637] P-0932: T-068, p. 44; P-0877: T-054, p. 65.
[1638] P-0905: T-088, p. 73.
[1639] P-0990: T-040, p. 34; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199, para. 92.

access to a toilet[1640] or other sanitary facilities[1641] and were forced to urinate and defecate in the overcrowded cells.[1642]

515. The detainees were given little to no food[1643] or water.[1644] P-0990 recalled that the detainees were given half a loaf of bread and one glass of water per person.[1645] The detainees were not provided with any medical treatment.[1646]

iii. Minister Harun's visit to Mukjar police station

516. Minister Harun visited Mukjar on or around 1 March 2004.[1647] On that day, two helicopters landed north of the market.[1648] Minister Harun was accompanied by Abd-Al-Hakam,[1649] a cameraman,[1650] and other policemen and officers.[1651] Minister Harun gave a speech in which he saluted the PPF and thanked the *Janjaweed*.[1652] He told them 'you did a good job chasing away the rebels and cleaning the area'.[1653] Minister Harun also visited Mukjar police station, where P-0129 and P-0990 were detained at that time.[1654] **The Accused**, Torshein and Lt Col Al-Tayyib were also present.[1655]

517. During Minister Harun's visit, the detainees were ordered to leave their cell and stand outside between the roundabout and the cell, where the government officials had gathered.[1656]

[1640] P-0877: T-053, p. 84; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0621, para. 110.
[1641] P-0922's Statement, DAR-OTP-0220-2864-R01, at 2868, para. 26; P-0990: T-040, p. 35.
[1642] P-0919: T-060, p. 16; P-0877: T-053, p. 84; P-0903: T-032, p. 29; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199, para. 92; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2868, para. 26.
[1643] P-0903: T-032, p. 30; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0621, para. 110; P-0932: T-068, p. 44; P-0675's Statement, DAR-OTP-0203-0173-R02, at 0199, para. 92; P-0877: T-053, p. 85; P-0905: T-086, p. 63. The Chamber acknowledges the evidence of P-0922 on witnessing big plates of food being brought to the detainees by the soldiers from 200 metres, *see* P-0922's Statement, DAR-OTP-0222-0312-R01, at 0333, para. 86; P-0922: T-039, p. 29. The Chamber dismisses this evidence as it cannot be generalised considering the direct, consistent and probative evidence of other direct witnesses on the lack of food during their detention.
[1644] P-0919: T-060, p. 16; P-0877: T-053, p. 84; P-0903: T-032, p. 30; P-0932: T-068, p. 44; P-0877: T-053, p. 85; P-0905: T-086, p. 63.
[1645] P-0990: T-040, p. 34.
[1646] P-0903: T-032, p. 80; P-0919: T-060, p. 32; P-0932: T-068, pp. 43-44.
[1647] P-0877: T-054, p. 7; P-0903: T-032, p. 69; P-0892's Statement, DAR-OTP-0217-0384, at 0397, para. 62. *See also* P-0986's Statement, DAR-OTP-0222-0437-R01, at 0457, para. 95; P-0675's Statement, DAR-OTP-0203-0173-R02, at 0201-0202, paras 102, 105.
[1648] P-0903: T-032, p. 69; P-0877: T-053, p. 91. *See also* P-0675's Statement, DAR-OTP-0206-0173-R02, at 0201, para. 102.
[1649] P-0984: T-066, p. 60.
[1650] P-0877: T-053, pp. 91-92; P-0990: T-040, p. 50.
[1651] P-0990: T-040, p. 50.
[1652] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0202, para. 105.
[1653] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0202, para. 105.
[1654] P-0990: T-040, p. 50.
[1655] P-0990: T-040, p. 50; P-0877: T-053, p. 92.
[1656] P-0990: T-040, p. 52.

The Accused was heard telling Minister Harun '[t]hese people are rebels. We arrested them with their *umdahs.*'[1657]

518. The detainees were photographed and filmed by a cameraman, while Minister Harun and other government officials called them '*tora bora*' and accused them of being rebels.[1658] Minister Harun was heard telling the detainees '[t]oday and tonight I am going to destroy you all'.[1659] When *Umdah* Yahya Ahmad Zarruq tried to tell the government officials that they were not rebels, but unarmed citizens, Abd-Al-Hakam told him '[s]hut up. Don't speak again.'[1660] Minister Harun was heard instructing Lt Col Al-Tayyib '[b]ring all the rebels inside the cell and tomorrow morning bring them to Ali Kushayb.'[1661]

519. Before Minister Harun left Mukjar on that day, from his prison cell, P-0877 heard someone give a speech but he could not recognise who was speaking.[1662] He remembers the speaker saying '[t]hings are now in your hands, you should plant *panadora*'[1663] and he understood this expression to mean committing rape.[1664] He also heard 'noises' and people shouting back '*Allahu Akbar*, God is the greatest'.[1665] Minister Harun left Mukjar shortly after the end of the speech.[1666]

e) Physical and verbal abuse of detainees

520. Over the course of at least two days, **the Accused** as well as the *Janjaweed*, the police, and CRF personnel entered the cells, and physically and verbally abused the detainees.

521. The Chamber is satisfied, on the basis of the consistent, probative evidence of five credible witnesses, that, on or around 1 March 2004,[1667] **the Accused** entered at least one of the cells of the police station[1668] and physically and verbally abused the detainees.

522. On that occasion, **the Accused** was accompanied by several *Janjaweed* and GoS

[1657] P-0877: T-053, p. 92.
[1658] P-0990: T-040, p. 52.
[1659] P-0990: T-040, p. 52.
[1660] P-0990: T-040, p. 52.
[1661] P-0990: T-040, p. 53.
[1662] P-0877: T-054, p. 8.
[1663] P-0877: T-054, p. 3.
[1664] P-0877: T-054, p. 8.
[1665] P-0877: T-054, p. 3.
[1666] P-0877: T-054, p. 8.
[1667] P-0129: T-076, p. 60.
[1668] P-0919: T-060, p. 17; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0168, 0171, paras 52, 63; P-0129: T-075, p. 57; P-0903: T-032, pp. 41, 78; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0308, para. 106; P-0720: T-043, pp. 49-50; P-0877: T-053, p. 88.

Forces.[1669] Torshein, Lt Hamdi and Samih were also present.[1670] **The Accused** introduced himself as '**Ali Kushayb**'[1671] and as the leader of the *Janjaweed.*[1672] **The Accused** was wearing a *labsa*, while Samih was wearing a khaki uniform and an amulet.[1673]

523. **The Accused** then proceeded to hit the other detained *umdahs* and *sheikhs* with his axe,[1674] including *Umdah* Adam Husayn Abdelmahmoud,[1675] *Sheikh* Abdullahi Ahmad Hassan and *Sheikh* Ahmad Mohammed Barbayi.[1676] **The Accused** was heard threatening to kill *Umdah* Yahya Ahmad Zarruq[1677] and was seen hitting him on the shoulder with his axe and breaking his arm.[1678]

524. **The Accused** also hit other detainees with his axe, including P-0129,[1679] P-0990,[1680] Dr Muhammad Umar Ahmad Zarruq[1681] and Adam Naheed Numan.[1682] P-0129 saw **the Accused** hit and severely injure a boy of about 9 or 10 years old who was sitting next to *Umdah* Yahya Ahmad Zarruq.[1683] Similarly, P-0877 saw **the Accused** hit two detainees named Abaker Mohammed Adam and Omar Adam Harun inside the cell.[1684] Omar Adam Harun lay on the floor of the cell for two days and P-0877 thought he was dead.[1685] **The Accused** used a whip to hit the detainees.[1686]

525. While hitting the detainees, **the Accused** hurled derogatory terms at them such as

[1669] P-0919: T-060, p. 28.
[1670] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0141-0142, para. 46; DAR-OTP-0223-0157-R02, at 0168, para. 52; P-0129: T-075, p. 57; P-0903: T-032, p. 44; P-0903: T-033, p. 48.
[1671] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0142, para. 47; DAR-OTP-0223-0157-R02, at 0169, para. 56; P-0919: T-061, p. 32.
[1672] P-0919: T-060, pp. 17-18.
[1673] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0169, para. 56; P-0919: T-060, p. 19.
[1674] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0142, paras 47, 49; DAR-OTP-0023-0157-R02, at 0168, para. 53; P-0129: T-075, p. 58; P-0919: T-060, p. 19.
[1675] P-0919: T-060, pp. 27-28.
[1676] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0142, paras 47, 49; DAR-OTP-0023-0157-R02, at 0168, para. 53; P-0129: T-075, p. 58; P-0919: T-060, p. 29.
[1677] P-0919: T-060, p. 18; T-061, pp. 12-13.
[1678] P-0919: T-060, pp. 18, 29; P-0903: T-032, p. 46; P-0877: T-054, p. 13.
[1679] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0142, paras 48; DAR-OTP-0223-0157-R02, at 0168, para. 57; P-0129: T-076, p. 41.
[1680] P-0990: T-040, pp. 51-52. The Chamber notes P-0877's evidence corroborating P-0990's account that **the Accused** hit him on the leg, *see* T-054, p. 16.
[1681] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0142, para. 49. *See also* P-0129: T-076, p. 43.
[1682] P-0877: T-054, p. 12.
[1683] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0168-169, paras 53, 57.
[1684] P-0877: T-054, p. 16.
[1685] P-0877: T-054, p. 18.
[1686] P-0919: T-060, pp. 18-19; P-0990: T-040, p. 53.

slaves,[1687] *magus*,[1688] *tora bora*[1689] and rebels.[1690]

526. On or around 1 March 2004, the *Janjaweed*,[1691] the Police,[1692] and CRF personnel[1693] also beat the detained persons at the police station,[1694] including the *umdahs* and *sheikhs*.[1695] All detainees were beaten without exception.[1696] Some were beaten with sticks, others with whips.[1697] The detainees fell over each other in their attempts to escape the beating.[1698]

527. In addition to being hit on the head with a stick,[1699] P-0919 was also burned with an iron by members of the CRF while in the cell.[1700] He explained that detainees would be asked if they were '*tora bora*' and that, if they denied this, they would be burned with an iron for around ten minutes.[1701]

528. P-0903 described how policemen threw what felt like hot plastic on him.[1702]

529. P-0877 recalled being interrogated by members of the CRF during his first detention at Mukjar police station in late February 2004.[1703]

530. The *Janjaweed* shaved the heads[1704] and severed the ears of some detainees with a knife, while **the Accused** was standing near and watching as this happened.[1705] P-0919 described how

[1687] P-0129: T-075, p. 56; T-076, p. 62.
[1688] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0142, para. 47; Footnote in statement: 'Investigator's note: According to the interpreter, the term '*magus*' is used to refer to idol worshippers and is considered a derogatory term.'; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0169, para. 56.
[1689] P-0905: T-086, pp. 21-22; P-0905: T-088, pp. 62, 73; P-0905's Annotated Image, DAR-OTP-00000258-R01.
[1690] P-0990: T-040, p. 51; P-0905: T-088, p. 73.
[1691] P-0919: T-060, p. 18; P-0990: T-040, p. 60; P-0903: T-032, p. 33; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0169, para. 56; P-0129: T-075, p. 58.
[1692] P-0903: T-032, p. 33.
[1693] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619-0620, paras 98, 105; P-0919: T-060, pp. 29-30.
[1694] P-0903: T-032, pp. 33-34.
[1695] P-0919: T-060, pp. 27-28; P-0877: T-054, p. 13. *See also* P-0129: T-076, p. 43.
[1696] P-0903: T-032, pp. 33-35.
[1697] P-0990: T-040, p. 60; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0142, para. 47; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, para. 105.
[1698] P-0903: T-032, p. 34.
[1699] P-0919: T-060, pp. 23-24; T-061, pp. 19-20. *See also* P-0919's Photograph, DAR-OTP-0217-0444; P-0919's Annotated Photograph, DAR-REG-0001-0012.
[1700] P-0919: T-060, p. 30. *See also* P-0919's Photograph, DAR-OTP-0217-0445; DAR-OTP-0217-0446.
[1701] P-0919: T-060, pp. 30-31.
[1702] P-0903: T-032, pp. 34, 36-37. *See* P-0903's Photograph, DAR-OTP-0219-5103; T-033, pp. 50-51.
The Chamber acknowledges that P-0903 is the only witness to provide an account of the use of hot plastic at Mukjar police station to burn detainees but the Chamber is satisfied that P-0903's personal and detailed account of what happened to him and others on that day is credible, *see* the Chamber's assessment of P-0903's evidence, Annex B, Section I.A.31. *Contra* Defence's Final Brief, para. 497.
[1703] P-0877: T-053, p. 83; T-055, p. 52.
[1704] P-0919: T-060, pp. 18, 20-21, 29.
[1705] P-0919: T-060, pp. 20-21.

the person whose ear was severed was left with a bleeding wound.[1706] The detainees whose heads were shaven and whose ears were severed were all from the Fur tribe.[1707]

531. The *Janjaweed* also verbally abused the detainees by threatening them,[1708] calling them '*abid*' and '*tora bora*',[1709] and accusing them of being rebels.[1710] For example, P-0877 recalled that John Koj came to his cell at night and said 'Ask God, because tomorrow you will not be alive, so you have to say your prayers now.'[1711]

532. P-0990 stated that only the *umdahs* and *sheikhs* spoke up, the other detainees 'could not talk at all'.[1712] The only time regular detainees spoke was when they denied being rebels or *tora bora.*[1713] The detainees felt they could not look the officers in charge in the eye and therefore kept their heads down and looked at the ground.[1714]

533. P-0129 recalled that Lt Hamdi questioned the detainees about the whereabouts of presumed rebels while pointing a gun at them.[1715] Other detainees were not asked anything while being assaulted and tortured.[1716]

534. P-0919 described how, after the physical abuse, detainees could be heard shouting and crying.[1717] Others remained silent.[1718] Some detainees were reading quotes and verses from the *Qur'an* and saying '*hamdulillah*'.[1719] The detainees were left with wounds,[1720] were bleeding,[1721] and 'in agony'.[1722] Some detainees' skin started to peel off and their wounds were so grave that they became disfigured.[1723]

535. The detainees were not given any medical treatment for the injuries they sustained as a

[1706] P-0919: T-060, p. 20.
[1707] P-0919: T-060, p. 26.
[1708] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0169, para. 56.
[1709] P-0990: T-040, p. 60; P-0919: T-060, p. 19.
[1710] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199, para. 92.
[1711] P-0877: T-053, pp. 85-86.
[1712] P-0990: T-041, p. 37.
[1713] P-0990: T-041, p. 37.
[1714] P-0990: T-041, pp. 37-38. *See also* P-0919: T-060, p. 49.
[1715] P-0129: T-075, pp. 55-56; T-076, p. 40.
[1716] P-0903: T-033, p. 51.
[1717] P-0919: T-060, p. 32.
[1718] P-0932: T-068, p. 38.
[1719] P-0919: T-060, pp. 32-33.
[1720] *See for example* P-0903: T-032, p. 34; P-0903's Photograph, DAR-OTP-0219-5104.
[1721] P-0931: T-062, p. 18.
[1722] P-0990: T-041, pp. 42-43; P-0903: T-032, p. 36; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, 0623, paras 106, 121; P-0919: T-060, p. 32; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398, para. 67.
[1723] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0621, para. 111.

result of the physical abuse.[1724]

536. Due to the appalling conditions of detention and the abuse inflicted by the *Janjaweed* and GoS Forces, many detainees suffered physical harm and at least three detainees died as a result of their injuries.[1725] P-0932 gave evidence that every morning, bodies were 'extracted' from the cell.[1726]

f) Summary executions outside of Mukjar

537. For the findings in the section below, the Chamber has relied on the evidence of P-0905, P-0931 and P-0984, who closely followed the convoy from their proximate positions, as well as two detainees who survived the summary executions.

i. Meeting at the police station compound shortly before the transport of detainees

538. On or around 2 March 2004, several officials and officers held a meeting at the police station compound, including Lt Col Al-Tayyib, Torshein, Samih, Hassan Joma, Haroun Bashir, Lt Hamdi, Abd-Al-Mun'im and **the Accused**.[1727]

539. During that meeting, **the Accused** spoke first. He was heard saying loudly to Torshein that they needed to take the prisoners to Zalingei and that he was getting direct orders and instructions from Minister Harun and did not take 'instructions from a *wali* or *mu'atamid*.'[1728] P-0913 heard **the Accused** say that he wanted all the displaced persons in Mukjar dead, and when Lt Col Al-Tayyib replied that they should not kill those who came down from the mountains to surrender, **the Accused** was heard answering 'I can communicate directly with the minister. Who are you to tell me this? I would only waste only one bullet to get rid of you.'[1729]

540. **The Accused** entered one of the cells housing the second-in-command of the SLM/A

[1724] P-0919: T-060, p. 32.
[1725] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199, para. 94; P-0029: T-030, p. 35.
[1726] P-0932's Statement, DAR-OTP-0222-0602, at 0619-0620, paras 99, 106.
[1727] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0142-0143, para. 50; Satellite Image, DAR-OTP-00000088, at 000001; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0165, 0170-0171, paras 44, 62-63; P-0129: T-075, p. 57; T-076, p. 57; P-0903: T-032, p. 4; P-0877: T-054, pp. 11-12; P-0984: T-066, p. 74; P-0984's Annotated Satellite Image, DAR-OTP-0225-0057; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0035-0036, paras 93, 101; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003, para. 29, *referring to* P-0913's Statement, DAR-OTP-0218-0021-R04, at 0037, para. 105; P-0931: T-062, pp. 18-19, 23.
[1728] P-0984: T-067, pp. 4, 56, 58. *See also* P-0129: T-076, p. 43, 54, 61.
[1729] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0035, para. 93.

who had been captured in Sindu,[1730] along with Muqaddam Idriss and Abd-Al-Mun'im, who were both intelligence officers.[1731] The second-in-command pointed out a number of detainees, and they were told to get up.[1732] **The Accused** told the commander of the police station that all the detainees were *tora bora* and had to be transferred to Zalingei or Garsila.[1733]

541. **The Accused** then instructed[1734] the *Janjaweed* and GoS Forces who were present to open another cell.[1735] He then entered the cell and ordered the detainees out,[1736] and also instructed the *Janjaweed* and GoS Forces to take them out of their cells.[1737] He told a police officer that he was there to bring the detainees to Garsila.[1738] Detainees' names were called one by one,[1739] with some names being called by **the Accused** himself,[1740] after which detainees would exit or be removed from the cell.[1741]

542. **The Accused** hit several detainees with his axe as they were exiting the cell.[1742] For example, he hit *Umdah* Yahya Ahmad Zarruq on the shoulder with the handle of his axe as he was coming out of the cell.[1743] **The Accused** hit *Umdah* Issa Harun Nour on the shoulder with his axe, and the *Janjaweed* hit him with sticks and whips.[1744]

543. Although a large number of detainees were taken out of the cells and loaded onto the vehicles, some remained in detention at the police station. P-0990, for example, was told by

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[1730] *See* para. 478 *above*.
[1731] P-0905: T-086, pp. 17-18.
[1732] P-0905: T-086, p. 18.
[1733] P-0905: T-086, pp. 18, 20.
[1734] P-0903: T-032, p. 43; T-033, p. 47.
[1735] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0170, para. 62; P-0877: T-054, p. 11.
[1736] P-0129: T-075, pp. 58-59; T-076, p. 56; P-0990: T-040, p. 52.
[1737] P-0877: T-054, p. 11.
[1738] P-0990: T-040, p. 61. *See also* P-0903: T-032, pp. 40-41; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5721, para. 17.
[1739] P-0990: T-040, p. 62; P-0877: T-054, p. 13.
[1740] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0171, paras 65-66; P-0919: T-060, pp. 33-35. *See also* P-0903: T-032, p. 45. *Contra* Defence's Final Brief, para. 517.
[1741] P-0990: T-040, p. 62; P-0903: T-032, p. 44; P-0877: T-054, p. 13. The Chamber notes P-0932's testimony, in which he indicated that he did not witness anyone calling the names of detainees, *see* P-0932: T-068, p. 42. The Chamber is satisfied that P-0932 may have witnessed the unfolding of the events from a different vantage point and that this has no impact on his credibility, *see also* the Chamber's assessment of P-0932's evidence, Annex B, Section I.A.41.
[1742] P-0932: T-068, p. 41; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143, para. 51; P-0877: T-054, p. 11; P-0029: T-030, pp. 34-35. *See also* P-0129: T-075, p. 58.
[1743] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0037, paras 105-106; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003, para. 30; P-0903: T-032, p. 46. The Chamber notes P-0903's evidence that he did not see **the Accused** hit anyone other than *Umdah* Yahya Ahmad Zarruq, *see* P-0903: T-032, p. 48. The Chamber is satisfied nonetheless that other witnesses, including P-0877, saw **the Accused** hitting other detainees as they experienced the events from different vantage points.
[1744] P-0877: T-054, p. 15.

John Koj that he was not to leave the cell, and his name was not called.[1745] Similarly, P-0903, P-0877 and P-0932 were not loaded onto the vehicles and remained in their cell.[1746]

544. Once outside, **the Accused** ordered the *umdahs*[1747] to get into the vehicles and ordered the rest of the detainees to do the same.[1748] **The Accused** also personally took some detainees from the cell and brought them outside to the vehicles.[1749] He further instructed the *Janjaweed* and GoS Forces to load the detainees onto the vehicles,[1750] which they did.[1751]

545. There was general chaos and the detainees were crying.[1752] At some point, the *Janjaweed* and GoS Forces pulled detainees at random out of the cells and put them into vehicles.[1753] *Umdah* Yahya Ahmad Zarruq was denied permission to get properly dressed before leaving the police station.[1754] The *Janjaweed* beat the detainees during this time.[1755]

546. At least 52 detainees[1756] were loaded onto several vehicles,[1757] including open-back Land Cruisers mounted with *DShK*s.[1758] These vehicles belonged to the police, the SAF, and the CRF.[1759]

[1745] P-0990: T-040, p. 62.
[1746] P-0903: T-032, p. 64; P-0877 was released around 3 March 2004, *see* P-0877: T-054, p. 22; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619, para. 100.
[1747] P-0919: T-060, pp. 34-35; P-0129 Statement, DAR-OTP-0128-0128-R04, at 0143, para. 51.
[1748] P-0129: T-076, p. 56; P-0919: T-060, p. 35. *Contra* Defence's Final Brief, para. 525.
[1749] P-0919: T-060, p. 37; P-0129: T-075, pp. 58-59.
[1750] P-0012: T-045, p. 29.
[1751] P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 15; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0171, para. 67. On the loading of the detainees, and the presence of **the Accused** on this occasion, *see also* P-0903: T-032, pp. 45-46. *Contra* Defence's Final Brief, para. 526.
[1752] P-0877: T-054, p. 15.
[1753] P-0877: T-054, p. 15.
[1754] P-0905: T-086, p. 22.
[1755] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0165, para. 45; P-0919: T-060, pp. 35-37; P-0877: T-054, p. 15.
[1756] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0172, para. 72, *referring to* DAR-OTP-0128-0128-R04, at 0143, para. 52; P-0990: T-040, p. 63; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 101; P-0877: T-054, p. 16; P-0905: T-086, p. 23. *See also* P-0984: T-067, p. 6; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0205, para. 112.
[1757] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0142-0143, para. 50; DAR-OTP-0223-0157-R02, at 0170, para. 62; P-0990: T-040, p. 61; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720, para. 15, *referring to* P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619, para. 102; P-0984: T-067, p. 7; P-0919: T-060, p. 37; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0036, para. 100; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003, para. 27; P-0905: T-086, p. 23. *Contra* Defence's Final Brief, para. 521. *See also* P-0903: T-032, pp. 45-46; P-0029: T-030, p. 35; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2870, para. 34; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0308, para. 107; P-0984: T-066, pp. 74-75, *referring to* P-0984's Annotated Satellite Image, DAR-OTP-0225-0057; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0204, para. 111; T-067, p. 7.
[1758] P-0984: T-066, p. 75; T-067, p. 7.
[1759] P-0903: T-032, p. 64; P-0931: T-062, p. 33; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 100.

547. The *Janjaweed* ordered the detainees to lie face down in the vehicles and not to raise their heads.[1760] They were packed so tightly that detainees were forced to sit or lie on top of each other.[1761] Some of the detainees, like P-0919,[1762] were blindfolded. The detainees were still being beaten as they were loaded onto the vehicles.[1763] Once a vehicle was fully loaded with detainees, it was driven away, and another vehicle would be brought to be loaded with more detainees.[1764]

548. The *umdahs*, including *Umdah* Issa Harun Nour,[1765] *Umdah* Adam Husayn Abdelmahmoud[1766] and *Umdah* Yahya Ahmad Zarruq,[1767] were loaded onto the first vehicles.[1768] **The Accused** and Samih boarded this vehicle, which was mounted with a *DShK*.[1769] Lt Hamdi sat in another open-back vehicle mounted with a *DShK*.[1770]

ii. Transport by vehicles

549. These *Janjaweed* and GoS Forces drove the detainees in a convoy, north of Mukjar in the direction of Garsila.[1771] While driving away, P-0913 heard **the Accused** say '*Allahu Akbar*, *Toro Boro* is over, prepare their graves'.[1772]

550. The *Janjaweed* and GoS Forces continued beating and insulting the detainees, including the *umdahs*, throughout the journey.[1773] The *Janjaweed* threatened the *umdahs* by saying 'we

[1760] P-0905: T-086, p. 22.
[1761] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0143, para. 51; DAR-OTP-0223-0157-R02, at 0171, para. 67.
[1762] P-0919: T-060, p. 36.
[1763] P-0905: T-088, p. 63; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5720-5721, paras 15, 17; P-0919: T-060, p. 34.
[1764] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143, para. 51; P-0990: T-040, p. 63.
[1765] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 101; P-0984: T-067, p. 7; P-0877: T-054, p. 13; P-0903: T-033, p. 80.
[1766] P-0903: T-033, p. 79; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 101; P-0012: T-045, p. 29.
[1767] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 101; P-0012: T-045, p. 29; P-0984: T-067, p. 7; P-0903: T-032, p. 48; P-0877: T-054, p. 13; P-0905: T-086, p. 22. *See also* P-0720's Statement, DAR-OTP-0210-0291-R02, at 0308, para. 110; P-0029: T-030, p. 39.
[1768] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0171, para. 68; P-0129's Statement Corrections, DAR-OTP-00000084, at 000003, para. 45; P-0903: T-032, p. 63; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398-0399, para. 68; P-0892's Statement Corrections, DAR-OTP-0224-0658, at 0659-0660, para. 20.
[1769] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0171, para. 68; P-0984: T-067, pp. 8, 12. *See also* P-0903: T-032, p. 49.
[1770] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0143, para. 51; DAR-OTP-0223-0157-R02, at 0171-0172, paras 69, 71.
[1771] P-0905: T-088, p. 73; P-0903: T-032, pp. 48-49; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0205, para. 113; P-0012: T-045, pp. 28, 30; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0037-0038, para. 110; P-0984: T-067, p. 8; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2869-2870, para. 33.
[1772] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0037-0038, para. 110.
[1773] P-0919: T-060, pp. 37-38; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0173, para. 79.

are going to kill you all', which reduced them to tears.[1774]

iii. Summary executions

First execution site: Khor Talaba

551. The convoy travelled approximately one kilometre or about ten minutes before making a first stop.[1775] The convoy stopped at a place called *Khor* Talaba,[1776] not far from what would later become the United Nations – African Union Hybrid Operation in Darfur ('UNAMID') base.[1777] At the time of the events, the *khor* was a dry valley[1778] located near a large tree.[1779] *Khor* Talaba is also known as *Khor* Kushef or *Khor* Kushayb because of the people that were killed there.[1780]

552. After the vehicles stopped, **the Accused** ordered some of the detainees to get out of the vehicles.[1781] He was heard saying '*Umdah* Yahya, get down, *Umdahs*, get down'.[1782] **The Accused** beat the detainees with his axe as they were getting out of the vehicles.[1783]

553. The *Janjaweed* and GoS Forces also ordered some of the other detainees to get out of the vehicles.[1784] The *Janjaweed* and GoS Forces beat the detainees,[1785] and continued insulting

[1774] P-0919: T-060, p. 37.
[1775] P-0905: T-086, pp. 24-25; P-0919: T-060, p. 38; P-0984: T-067, p. 9; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0172, para. 75; P-0877: T-054, pp. 24-25. *See also* P-0903: T-032, p. 54; Video of *Khor* Talaba, DAR-OTP-0220-5444.
[1776] P-0984's Sketch, DAR-OTP-0225-0056; P-0984: T-067, pp. 11-12; P-0905: T-086, pp. 25-26, *referring to* P-0905's Annotated Satellite Image, DAR-OTP-00000259; P-0931: T-063, pp. 17-18. *See also* P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 100; P-0029: T-030, p. 41.
[1777] P-0919: T-060, p. 41; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0622, para. 117. The Chamber is satisfied that the UNAMID base was located at approximately 10 minutes' walk from *Khor* Talaba. It was built after the events and accommodated the African Union before that, *see* P-0903: T-032, p. 54; P-0931: T-062, p. 35; P-0931's Annotated Satellite Image, DAR-OTP-0224-0881; P-0990: T-041, pp. 55-56; P-0984: T-067, p. 10; P-0984's Sketch, DAR-OTP-0225-0056-R01. *See also* P-0932's Statement, DAR-OTP-0222-0602-R02, at 0622, para. 117; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0210, para. 128; P-0990: T-041, p. 56; P-0922's Statements, DAR-OTP-0222-0312-R01, at 0333, para. 89; DAR-OTP-0220-2864-R01, at 2870, para. 40; P-0877: T-054, p. 30; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0172, para. 74.
[1778] P-0931: T-062, p. 37; P-0931: T-062, pp. 36-37; P-0990: T-041, p. 57.
[1779] P-0984: T-067, p. 13; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0172, para. 75; P-0990: T-041, p. 57.
[1780] P-0903: T-032, p. 53; T-033, p. 52. *See also* P-0984: T-067, pp. 13, 73-74; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 5721, para. 20, *referring to* P-0932's Statement, DAR-OTP-0222-0602-R02, at 0622, para. 116; P-0892: T-048, p. 18.
[1781] P-0905: T-086, pp. 25-26. *Contra* Defence's Final Brief, para. 526.
[1782] P-0919: T-060, p. 38. *See also* P-0129's Statements, DAR-OTP-0128-0128-R04, at 0143-0144, para. 53; DAR-OTP-0223-0157-R02, at 0173, para. 78.
[1783] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143, para. 53.
[1784] P-0905: T-086, pp. 25-26; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143-0144, para. 53.
[1785] P-0931: T-062, pp. 32-33.

them and calling them *abid* and *tora bora*.[1786] A soldier told the detainees that 'if any of you know verses from the Koran, you better start praying because these people are going to kill you'.[1787]

554. **The Accused** then ordered the detainees to lie down in a line.[1788] After that, he instructed the *Janjaweed* and GoS Forces to shoot and kill the detainees.[1789] P-0919[1790] and the *umdahs*[1791] were among them. P-0905 heard **the Accused** saying: 'Shoot again. Shoot again. Maybe one of them did not get shot, so shoot again'.[1792]

555. The *Janjaweed* and GoS Forces started shooting at the detainees.[1793] Hassaballah,[1794] Abikir, Ali Al Tarzi and Muqaddam Idriss were among those who shot the detainees.[1795]

556. During this event, **the Accused** was standing with Hassaballah,[1796] Lt Hamdi, Lt Col Al-Jilli, Samih and Torshein.[1797] P-0931 saw how Lt Col Al-Jilli and **the Accused** conferred just before the execution of the detainees.[1798]

557. During the shooting, P-0905 saw and overheard Lt Col Al-Tayyib ask **the Accused** why he was killing the detainees.[1799] He remembers **the Accused** answering him '[w]ell, this is our operation. This is our work.'[1800]

558. The shooting lasted approximately 20 minutes.[1801] During and after the shooting, the *Janjaweed* were heard shouting '*Tora bora*, we are going to fuck you. *Tora bora* we are going to fuck you.'[1802]

559. One of the detainees survived the execution by pretending to be among the dead and

[1786] P-0919: T-061, p. 29; P-0129's Statement Corrections, DAR-OTP-00000084, at 000002, para. 29.
[1787] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0173-0174, para. 83; P-0129's Statement Corrections, DAR-OTP-00000084, at 000003, para. 48.
[1788] P-0905: T-086, pp. 25-26; P-0984: T-067, p. 9.
[1789] P-0905: T-086, pp. 26-28.
[1790] P-0919: T-060, pp. 38-39.
[1791] *See* para. 560 *below*.
[1792] P-0905: T-086, p. 28.
[1793] P-0905: T-086, p. 27; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0173, paras 78, 81; P-0984: T-067, pp. 9, 70. *See also* P-0029: T-030, p. 41.
[1794] P-0905: T-088, p. 74.
[1795] P-0931: T-062, pp. 32-34.
[1796]P-0931: T-062, p. 33.
[1797] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0173, para. 80.
[1798] P-0931: T-062, p. 32.
[1799] P-0905: T-086, p. 28.
[1800] P-0905: T-086, p. 28.
[1801] P-0919: T-060, p. 39.
[1802] P-0919: T-060, p. 39.

lying still until nightfall.[1803] Mohammed Abdelkarim, Abdu Mini and Hassan Abdalla were among the dead.[1804] There were dead bodies everywhere and most detainees were covered in blood.[1805]

560. The evidence establishes that all detainees who were unloaded at this site, except for the survivor, were killed on that day at *Khor* Talaba.[1806] Accordingly, on this basis, recalling its finding that the *umdahs* were unloaded from the vehicles[1807] and having found that they were identified among the corpses found at the site,[1808] the Chamber is satisfied that *umdahs* Yahya Ahmad Zarruq, Adam Husayn Abdelmahmoud and Issa Harun Nour were among the detainees executed on or around 2 March 2004.

561. Many detainees wore *jallabiyas*.[1809]

Second execution site: between Eastern Juguma and Nyerli

562. After the first executions at *Khor* Talaba, the convoy went to another execution site, which was a 15 to 30 minutes' drive, and was located between Eastern Juguma and Nyerli.[1810]

563. At this location, **the Accused** again ordered some detainees to get out of the vehicles.[1811] After being unloaded from the vehicles, these detainees were first beaten by **the Accused** and Samih and were then told to lie face down on the ground.[1812] **The Accused** ordered his forces to execute the detainees.[1813]

[1803] P-0877: T-054, pp. 44-45; P-0990: T-040, pp. 63-64; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0040, para. 124; P-0919: T-060, p. 40.
[1804] P-0919: T-060, p. 40.
[1805] P-0919: T-060, p. 40; P-0984: T-067, p. 13.
[1806] P-0903: T-032, pp. 45, 53; T-033, p. 50; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0308, para. 109; P-0720's Statement Corrections, DAR-OTP-0220-4687, at 4687, para. 4; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0622, para. 116; P-0867's Statement, DAR-OTP-0217-0173-R02, at 0190-0191, paras 84-85, 89; P-0913: T-069, p. 16; P-0029: T-030, pp. 43-44. *See also* para. 569 *below*.
[1807] *See* paras 548, 552 *above*.
[1808] *See* para. 574 *below*.
[1809] P-0931: T-062, p. 37; P-0877 speaking about *Umdah* Yahya Ahmad Zarruq, *see* T-054: p. 34; P-0990 speaking about P-0129: T-040, p. 65. *See also* P-0675's Statement, DAR-OTP-0206-0173-R02, at 0207, para. 123. Witnesses who discovered dead bodies at the execution sites after the events also reported seeing the dead men wearing *jallabiyas, see* P-0029: T-030, p. 46; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0402, para. 89.
[1810] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0144, para. 59; DAR-OTP-0223-0157-R02, at 0174, para. 85; P-0129 Statement Corrections, DAR-OTP-00000084, at 000004, para. 49; P-0129: T-075, p. 60; P-0990: T-040, pp. 69-70. *See also* P-0757's Statement, DAR-OTP-0211-0003-R02, at 0024, para. 84.
[1811] P-0905: T-086, p. 29; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0174, para. 86.
[1812] P-0129's Statements, DAR-OTP-0128-0128-R04, at 0144, paras 54-55; DAR-OTP-0223-0157-R02, at 0173, paras 78-79.
[1813] P-0129: T-075, p. 60.

564. After that, the detainees were shot with GM3s and Kalashnikovs, [1814] while **the Accused** and Samih stood nearby.[1815] The soldiers continued shooting at the detainees using a *DShK* mounted on one of the vehicles, even after most of them were already dead.[1816]

565. After the shooting, some soldiers started walking on top of the detainees.[1817] For about half an hour after the shooting, the soldiers were verifying whether there were any survivors so that they could kill them.[1818] One of the soldiers was heard saying that one of 'the slaves' had money on him and saw the soldier taking the money from the corpse.[1819]

566. One of the detainees who was shot at survived the execution by pretending to be dead.[1820] He did not move while the soldiers were walking on top of him.[1821] There were bloodied bodies everywhere.[1822]

567. On this basis, the Chamber is satisfied that all detainees who were unloaded at this site, except for the survivor, were killed on or around 2 March 2004.[1823] This includes P-0675's brother.[1824]

iv. End of the operation and other execution sites

568. Multiple witnesses who were in Mukjar at the time of the executions heard shots coming from the direction of Garsila.[1825] Many witnesses gave evidence that they never again saw the detainees who had been driven away.[1826]

569. Other detainees were brought to other locations between Mukjar and Garsila to be

[1814] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0144, para. 54.
[1815] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0144, para. 54.
[1816] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0144, para. 54.
[1817] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0144, para. 56.
[1818] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0144, para. 56.
[1819] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0144, para. 56.
[1820] P-0129's Statement, DAR-OTP-0223-0157-R02, at 0175, para. 90.
[1821] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0145, para. 57.
[1822] P-0129's Statement, DAR-OTP-0128-0128-R04, at 0145, para. 58.
[1823] *See* para. 569 *below*.
[1824] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0207, 0209, paras 123, 126.
[1825] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, paras 103-104; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0205, para. 114; P-0012's statement, DAR-OTP-0119-0503-R01, at 0525, para. 100; P-0012: T-045, pp. 29-30; P-0922's Statement, DAR-OTP-0220-2864-R01, at 2869-2870, paras 30, 37, *referring to* P-0922's Video, DAR-OTP-0126-0065, Transcript, DAR-OTP-0220-3562; P-0029: T-030, p. 35; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0308, para. 108; P-0913's Statement, DAR-OTP-0218-0021-R04, at 0038, paras 112-113; P-0877: T-054, pp. 21-22.
[1826] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, para. 103; P-0903: T-032, pp. 53, 57; P-0984: T-067, p. 18; P-0012: T-045, p. 30.

executed. For example, P-0877,[1827] P-0675[1828] and P-0581[1829] reported having seen dead bodies at various other locations. Moreover, as noted above, almost all the detainees who were loaded onto vehicles were never seen again and **the Accused** had given clear instructions to kill them.[1830] The corpses of other detainees, Abdallah Ahmed Hassan, and Bahr-al-Din Idris Mohamed Abdelrahman and Abdullah Jibril,[1831] were discovered at these other sites.

570. Having regard to the totality of the evidence, including the surrounding context and circumstances, the Chamber is satisfied that the only reasonable conclusion is that the detainees who were loaded onto the vehicles and brought to the execution sites were killed by the *Janjaweed* and GoS Forces on or around 2 March 2004.

571. Nonetheless, the Chamber, as set out in the credibility assessment of P-0905, is unable to come to a conclusion beyond reasonable doubt regarding the execution of the *sheikh* and the young boys near *Khor* Talaba.[1832]

572. The convoy then moved towards Garsila and stopped in Mara.[1833]

v. Discovery of bodies

573. Several witnesses gave evidence about bodies discovered not only at *Khor* Talaba,[1834] where P-0877 reported counting 97 bodies,[1835] but also at other execution sites in the area[1836] including near the UNAMID building[1837] and near Nyerli.[1838] All of the bodies found at *Khor*

[1827] P-0877: T-054, pp. 26, 37. *See also* P-0877's Sketch of Execution Sites, DAR-OTP-0217-0483.
[1828] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0209, para. 127.
[1829] P-0581's Statement, DAR-OTP-0216-0560-R02, at 0570, para. 49.
[1830] *See* paras 563, 568 *above*.
[1831] P-0877: T-054, pp. 40-41.
[1832] *See* the Chamber's assessment of P-0905's evidence, Annex B, Section I.A.32.
[1833] P-0931: T-062, p. 38.
[1834] P-0877: T-054, pp. 24-25; Video, DAR-OTP-0220-5444, at 00:00:00:00 to 00:00:25:00; P-0984: T-067, pp. 16-17; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0402, para. 89; P-0892: T-048, p. 13. The Chamber accepts that approximately one month after the summary executions, several witnesses, including P-0877, P-0903, P-0757, P-0028 and P-0029 went to *Khor* Talaba to help clean the area: *see* P-0903: T-032, p. 54; P-0903: T-032, p. 56; P-0877: T-054, p. 41; P-0757's Statement, DAR-OTP-0211-0003-R02, at 0023, para. 80; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0441, para. 75; P-0029: T-030, p. 45. *See also* P-0028's Statement, DAR-OTP-0094-0423-R01, at 0440, para. 69; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0205-0206, paras 115-116; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0333, para. 89.
[1835] P-0877: T-054, p. 32; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0177, para. 109. *See also* P-0986's Statement, DAR-OTP-0222-0437-R01, at 0457, para. 96.
[1836] P-0877: T-054, pp. 25-26, 37, 40-41.
[1837] P-0990: T-040, p. 69; P-0877: T-054, p. 26. *See also* P-0877's Sketch of execution sites, DAR-OTP-0217-0495.
[1838] P-0581's Statement, DAR-OTP-0216-0560-R02, at 0570, para. 49.

Talaba were male[1839] and were surrounded by spent ammunition.[1840]

574. The dates on which the bodies were discovered range from one day after the summary executions[1841] to nine months[1842] after the summary executions. The recognition of the bodies was done sometimes by means of observation, through the recognition of clothing or accessories,[1843] and sometimes on the basis of indirect evidence.[1844] Considering all these circumstances, the Chamber is satisfied that the bodies of *umdahs* Yahya Ahmad Zarruq, Adam Husayn Abdelmahmoud and Issa Harun Nour were found at *Khor* Talaba.[1845] The corpses of the following detainees were also found at the same site: Ibrahim Muhammad Ali Ballut, Adel Bady, Yusuf Muhajer, Adam Mohamed Babay, and Abd-Al-Jabbar Abd-al-Mawla.[1846]

C. Operation in Deleig between 5 and 7 March 2004

a) Relevant background

575. At the time of the events between 5 and 7 March 2004, the town of Deleig was located in the Wadi Salih Locality in West Darfur.[1847] Deleig was approximately 17 kilometres north-east of the town of Garsila and 53 kilometres south-west of the town of Zalingei.[1848] The population of Deleig was predominantly Fur.[1849]

576. In central Deleig there was an open field, used for playing football.[1850] The Deleig

[1839] P-0029: T-030, p. 46.
[1840] P-0757's Statement, DAR-OTP-0211-0003-R02, at 0024, para. 81.
[1841] P-0984: T-067, pp. 16-17.
[1842] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0622, para. 116.
[1843] T-0877: T-054, pp. 34, 38-39; P-0892: T-048, pp. 13-14.
[1844] P-0984: T-067, p. 17; P-0028's Statement, DAR-OTP-0094-0423-R01, at 0440, paras 69-70. *See also* P-0922's Statement, DAR-OTP-0220-2864-R01, at 2871, para. 44.
[1845] P-0877: T-054, p. 25; P-0892's Statement, DAR-OTP-0217-0384-R02, at 0397, para. 64; P-0892: T-048, pp. 13-14.
[1846] P-0877: T-054, pp. 25, 39.
[1847] Third Joint Submission on Agreed Facts, Annex C, Agreed Fact 4. *See also* P-0651's Statement, DAR-OTP-0205-0015-R02, at 0019, para. 14.
[1848] Second Joint Submission on Agreed Facts, Annex B; West Darfur Planning Map, DAR-OTP-0200-1579, at 1580; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0019, para. 14.
[1849] P-0651's Statement, DAR-OTP-0205-0015-R02, at 0019, para. 14; UNHCR Report, DAR-OTP-0145-0237, at 0273. *See also* P-0736: T-035, p. 75.
[1850] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, paras 39, 42, *referring to* P-0671's Sketch, DAR-OTP-0206-0132, at 0133, Translation, DAR-OTP-0219-1696, at 1698; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0269, para. 78, *referring to* P-0736's Sketch, DAR-OTP-0210-0281-R01, at 0282, Translation, DAR-OTP-0219-7097-R01, at 7099; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0630, para. 44; P-0905: T-086, p. 43, *referring to* Satellite Image, DAR-OTP-00000260-R01; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, paras 71, 74, *referring to* P-0725's Sketch, DAR-OTP-0210-0141, Translation, DAR-OTP-0219-1701, at 1702.

police station was located on elevated ground on the eastern side of the field.[1851] To the south of the field was the Deleig primary school.[1852] Situated to the west of the field, some 200 metres from the police station, was the Ansar Al-Sunna mosque.[1853] A sprawling market area wrapped around part of the grounds of the mosque.[1854] Another large mosque, the *Sheikh* Sharif mosque, also known as Masjid Al-Kabir, was situated at the northern periphery of Deleig.[1855]

b) Events leading up to the Deleig Operation

577. In this section, the Chamber relies primarily on the evidence of witnesses P-0883,

[1851] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, paras 39, 42, *referring to* P-0671's Diagram, DAR-OTP-0206-0132, at 0133, Translation, DAR-OTP-0219-1696, at 1698; P-0905: T-086, pp. 43, 45, *referring to* Satellite Image, DAR-OTP-00000260-R01; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1266, paras 96-97, *referring to* P-0584's Sketch, DAR-OTP-0200-1588-R01, at 1589, Translation, DAR-OTP-0219-1666-R01, at 1668; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, paras 71, 74, *referring to* P-0725's Sketch, DAR-OTP-0210-0141, Translation, DAR-OTP-0219-1701, at 1702; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0269, para. 78, *referring to* P-0736's Sketch, DAR-OTP-0210-0281-R01, at 0282, Translation, DAR-OTP-0219-7097-R01, at 7099; P-0736: T-035, p. 16, *referring to* Satellite Image, DAR-OTP-0220-3745; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0630, para. 44*;* P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028, para. 46, *referring to* P-0651's Sketch, DAR-OTP-0205-0040, Translation, DAR-OTP-0219-1684, at 1686; P-0651: T-034, p. 22, *referring to* Satellite Image, DAR-OTP-0224-0498; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743, para. 33 (admitted excerpts only); P-0994's Statement, DAR-OTP-0222-0055-R01, at 0070-0071, paras 72, 75, *referring to* P-0994's Sketch, DAR-OTP-0222-0077, Translation, DAR-OTP-0220-1221, at 1222.

[1852] P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, paras 71, 74, *referring to* P-0725's Diagram, DAR-OTP-0210-0141,Translation, DAR-OTP-0219-1701, at 1702; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 42, *referring to* P-0671's Diagram, DAR-OTP-0206-0132, at 0133, Translation, DAR-OTP-0219-1696, at 1698; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0269, para. 78, *referring to* P-0736's Diagram, DAR-OTP-0210-0281-R01, at 0282, Translation, DAR-OTP-0219-7097-R01, at 7099; P-0736: T-035, p. 17, *referring to* Satellite Image, DAR-OTP-0220-3745; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0630, para. 44; P-0651: T-034, pp. 21-22, *referring to* Satellite Image, DAR-OTP-0224-0498. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071, 0073, paras 76, 88, *referring to* P-0994's Sketch, DAR-OTP-0222-0077; Satellite Image, DAR-OTP-0222-0079.

[1853] P-0718: T-049, pp. 56-57, *referring to* Photograph, DAR-OTP-0219-5483; P-0651: T-034, pp. 15-16, 69-70, *referring to* Photograph, DAR-OTP-0224-0499; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, paras 39, 42, *referring to* P-0671's Diagram, DAR-OTP-0206-0132, at 0133, Translation, DAR-OTP-0219-1696, at 1698; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0269, para. 78, *referring to* P-0736's Diagram, DAR-OTP-0210-0281-R01, at 0282, Translation, DAR-OTP-0219-7097-R01; P-0736: T-035, p. 17, *referring to* Satellite Image, DAR-OTP-0220-3745; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071, 0073, paras 76-77, 88, *referring to* P-0994's Sketch, DAR-OTP-0222-0077, Translation, DAR-OTP-0220-1221; Satellite Image, DAR-OTP-0222-0079; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, paras 71, 74, *referring to* P-0725's Diagram, DAR-OTP-0210-0141, Translation, DAR-OTP-0219-1701, at 1702.

[1854] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, paras 39, 42, *referring to* P-0671's Diagram, DAR-OTP-0206-0132, at 0133, Translation, DAR-OTP-0219-1696, at 1698; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0269, para. 78, *referring to* P-0736's Sketch, DAR-OTP-0210-0281-R01, at 0282, Translation, DAR-OTP-0219-7097-R01, at 7099; P-0736: T-035, pp. 17, 27-28, *referring to* Satellite Image, DAR-OTP-0220-3745; P-0736's Annotated Satellite Image, DAR-REG-0001-0003; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071, 0073, paras 76-77, 88, *referring to* P-0994's Sketch, DAR-OTP-0222-0077, Translation, DAR-OTP-0220-1221, at 1222; Satellite Image, DAR-OTP-0222-0079; P-0651: T-034, pp. 15, 24-25, *referring to* Satellite Image DAR-OTP-0224-0498; P-0651's Annotated Photograph, DAR-OTP-0224-0499; P-0585: T-100, p. 19, *referring to* P-0585's Sketch, DAR-OTP-0201-0072, Translation, DAR-OTP-0219-1674, at 1675; P-0718: T-049, p. 56.

[1855] P-0718: T-049, pp. 55-56, *referring to* P-0718's Statement, DAR-OTP-0209-2004-R02, at 2012, para. 55. *See also* P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027, para. 43; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 39.

P-0905, P-0935, and P-0973, who, from their respective positions, closely followed the events that took place.[1856] The Chamber also relies on the evidence of P-0643, who received accounts of the events.[1857]

i. Displacement of civilians to Deleig and surrounding towns

578. By early March 2004,[1858] more than 16,000 internally displaced persons were staying in Deleig.[1859] The living conditions of the displaced persons were dire. Those who could not stay with relatives or other villagers[1860] sought shelter around the market[1861] and the primary school,[1862] or slept under trees and on the streets.[1863] Others built temporary shelters in and around Deleig and established makeshift camps.[1864] The displaced persons and population of

[1856] *See* the Chamber's assessment of the evidence of P-0883, P-0905, P-0935 and P-0973, Annex B, Sections I.A.29, I.A.32, I.A.42 and II.A.25.
[1857] *See* the Chamber's assessment of P-0643's evidence, Annex B, I.A.15; P-0643 identified these detainees as Taha Abdulrahman Abd-Al-Moula, a forestry civil servant, Abd-Al-Haleem Azraq, a clerk in the locality, and Abdallah Harun, an engineer in Garsila. P-0643: T-056, pp. 89-91, *referring to* P-0643's List of persons killed in Deleig and Mukjar, DAR-OTP-0224-0825, at 0827. P-0905 confirmed that Abdulhalim Adam Azraq was detained at the Garsila SAF base: P-0905: T-086, pp. 38-39. *See also* para. 581 *below*.
[1858] *See* Section 5.III.B.b.ii. Attacks on villages and displacement between early 2003 and early 2004 *above*.
[1859] Darfur Humanitarian Profile, DAR-OTP-0162-0042, at 0074 (the WFP estimated there were 16,345 IDPs as at March 2004); P-0955: T-064, p. 7. *See also* MSF Press Release, DAR-OTP-0209-0014, at 0015 (noting that almost 17,0000 people are seeking refuge in Deleig, a town of 5,000); UNRC Report, DAR-OTP-0115-0747, at 0747 (noting that an inter-agency humanitarian assessment mission encountered an estimated 19,116 IDPs in Deleig on or around 2 March 2004); UNHCR Report, DAR-OTP-0145-0237, at 0273 (listing 5,150 families of IDPs); UNRC Report, DAR-OTP-0211-0326, at 0329, para. 30 (noting that UNICEF provided 10 rolls of plastic sheeting for temporary shelter for more than 12,000 IDPs gathered in Deleig); UNCOI Overview Report, DAR-OTP-0013-0119, at 0156; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0175, para. 40; P-0671: T-098, p. 81. The reports and documents relied upon for this factual finding, emanate from entities present on the ground in Darfur during the relevant time (or immediately thereafter), and they clearly indicate the methodology of information collection and the sources for the facts and statistics. Therefore, the Chamber is satisfied that they are reliable and probative. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 6-10, 20-21; Defence's Final Brief, paras 89-93.
[1860] P-0955: T-064, p. 7; P-0907: T-094, p. 24; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565, para. 92; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0175-0176, paras 40, 42; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0260, paras 47-48; P-0718: T-049, p. 60; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0026, para. 39. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0062-0063, para. 34; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891, para. 26.
[1861] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0175-0176, para. 40; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0062-0063, para. 34.
[1862] P-0718's Statement, DAR-OTP-0209-2004-R02, at 2011, paras 45-46; P-0718: T-049, pp. 15, 60; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 67; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0260-0261, para. 49; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 33; P-0955: T-063, p. 34; T-064, p. 7; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0062-0063, para. 34; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0026, para. 39.
[1863] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0175-0176, para. 40; P-0907: T-094, p. 24; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0130, para. 65; P-0718: T-049, p. 15. *See also* P-0726: T-053, pp. 48-49.
[1864] P-0907: T-094, p. 24; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0110, paras 20-21; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 8; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 31; P-0718's Statement, DAR-OTP-0209-2004-R01, at 2011-2012, paras 46-48, 50; P-0718: T-049, pp. 15, 61; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0130, para. 66; P-0973's Statement, DAR-

Deleig suffered from food shortage, poor sanitation and illness.[1865]

579. Around this time, there was a small *Janjaweed* presence in and around Deleig.[1866] Members of the *Janjaweed* seized horses and other valuables and beat and verbally harassed displaced persons, referring to them as '*tora bora*' and other derogatory names.[1867] The small police presence in Deleig could do little to protect the displaced persons.[1868]

ii. Arrests and detentions in Garsila

580. Following the Sindu and Mukjar Operations in February and March 2004,[1869] the forces which had conducted these operations returned to Garsila.[1870] Around this time, prior to the Deleig Operation, many people who were suspected of being connected with the insurgency were arrested and detained at the Garsila SAF base.[1871] **The Accused** issued the orders for people to be arrested and provided intelligence to the SAF on suspected 'insurgents', which led to many arrests.[1872] He also personally brought some detainees to the Garsila SAF base.[1873] Maj Bakhit approved the detentions, while Lt Hamdi gave the preliminary approval and oversaw the process.[1874]

OTP-0220-0736-R01, at 0741, para. 24. *See also* UNRC Report, DAR-OTP-0211-0326, at 0329, para. 30 (noting that UNICEF provided 10 rolls of plastic sheeting for temporary shelter for more than 12,000 IDPs gathered in Deleig).

[1865] P-0907: T-095, p. 8; P-0718: T-049, pp. 60-61; Darfur Humanitarian Profile, DAR-OTP-0162-0042, at 0074 (detailing the number of people in Deleig in need of food (3,212), shelter (15,625), clean water and sanitation (16,345), primary health facilities (17,845), basic drug supplies and secondary health care (23,345), and immunisation (3,969) as at '03/04'). *See also* P-0718: T-049, p. 61.

[1866] P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 68; P-0955: T-064, p. 7; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0025-0026, para. 37; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891, para. 27. *See also* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0111, para. 23; UNRC Report, DAR-OTP-0115-0747, at 0748, para. 8.

[1867] P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261, para. 50; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891, para. 27; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0025-0026, para. 37. *See also* UNRC Report, DAR-OTP-0115-0747, at 0748, para. 8.

[1868] P-0651's Statement, DAR-OTP-0205-0015-R02, at 0030, para. 54; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261, para. 50; P-0907: T-094, pp. 7, 24-25.

[1869] *See* Section 5.B. Operation in Mukjar between the end of February and the beginning of March 2004 *above*.

[1870] P-0905: T-085, pp. 49-50, *referring to* Map, DAR-OTP-00000263-R01; T-086, pp. 37-38, 41, *referring to* Map, DAR-OTP-00000263-R01; T-088, pp. 48, 53, 79; P-0643: T-056, pp. 81-82; T-059, p. 11; P-0935: T-090, pp. 37-39.

[1871] P-0883: T-071 pp. 46-47; T-072, p. 20.

[1872] P-0883: T-071, pp. 52-53; T-072, pp. 20-21; P-0935: T-090, pp. 41, 43; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0405, Translation, DAR-OTP-0219-6935, at 6937; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0279, Translation, DAR-OTP-0219-7071-R01, at 7072. *See also* P-0883: T-071, p. 57.

[1873] P-0883: T-071, pp. 52-53; T-072, pp. 20-21; P-0935: T-090, pp. 41, 43; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0405, Translation, DAR-OTP-0219-6935, at 6937; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0279, Translation, DAR-OTP-0219-7071-R01, at 7072. *See also* P-0883: T-071, p. 57.

[1874] P-0883: T-071, pp. 8, 48; P-0935: T-090, pp. 6-7.

581. Those detained at the Garsila SAF base included community leaders, coordinators, 'regular citizens', policemen from the Fur community, officials, civil servants, secretaries, administrative officers and tradesmen from the locality.[1875] Specifically:

a) *Adam* Adam Degges Ahmed Abdulshafa (known as Kindiri), the *umdah* of Forgo ('*Umdah* Kindiri'),[1876] and Jiddo Khamis Abd-Al-Karim, the *umdah* of Gaba ('*Umdah* Khamis'),[1877] who were both Fur,[1878] and had been displaced to Garsila,[1879] were brought to Abd-Al-Hakam.[1880] A meeting was convened regarding the captives, following which *Umdah* Kindiri and *Umdah* Khamis were detained at the prison inside the Garsila SAF base.[1881] According to P-0643, 'the government considered them to be rebels'.[1882]

b) Jenif, a Fur man, and the Garsila PDF coordinator, was arrested and detained at the Garsila SAF base based on information received from the *Janjaweed* that he supported the rebellion.[1883]

c) Mohamed Suleiman Abdulshafa (also known as 'Dirbo'), the *umdah* of Tanako ('*Umdah* Suleiman'), a Fur man who fled to Garsila from Tanako, was surrendered to Abd-Al-Hakam.[1884] Abd-Al-Hakam convened a meeting of the local security

[1875] P-0883: T-071, pp. 47, 49, 52; T-072, pp. 20-22; P-0643: T-056, pp. 90-91; P-0935: T-090, p. 41; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0405, Translation, DAR-OTP-0219-6935, at 6937. *See also* Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0279, Translation, DAR-OTP-0219-7071-R01, at 7072.
[1876] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0623, paras 11, 14; P-0883: T-071, p. 62; P-0907: T-094, pp. 7, 25; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1502, para. 21; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0349, para. 12; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0792, para. 3; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 80; P-0883's Note, DAR-OTP-0221-0413-R01, Translation, DAR-OTP-0219-5257-R01.
[1877] P-0883: T-071, p. 60; P-0883's Note, DAR-OTP-0221-0413-R01, Translation, DAR-OTP-0219-5257-R01; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1502, para. 21; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0630, para. 41; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, para. 15 (admitted excerpts only); P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 80; P-0643: T-056, p. 84.
[1878] P-0955: T-63, p. 21; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0349-0350, para. 12.
[1879] P-0883: T-071, pp. 60-64.
[1880] P-0883: T-071, pp. 26, 62, 64; P-0883: T-071, p. 60.
[1881] P-0883: T-071, pp. 62-64.
[1882] P-0643: T-059, p. 69.
[1883] P-0883: T-071, pp. 61, 63; T-072, pp. 4-5; T-073, p. 40; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064-0066, paras 45, 50; P-0994: T-084, pp. 66-67; P-0905: T-085, p. 38; T-086, p. 46; P-0643: T-056, p. 88.
[1884] P-0883: T-071, p. 50; T-072, p. 49, *referring to* P-0883's Note, DAR-OTP-0221-0406, Translation, DAR-OTP-0219-5243-R01, at 5244. The Chamber notes that while P-0883 initially gave evidence that he made these notes (together with P-0883's Note, DAR-OTP-0221-0407-R01, Translation, DAR-OTP-0219-5245 R01; Note, DAR-OTP-0221-0408-R01, Translation, DAR-OTP-0219-5247-R01; Note, DAR-OTP-0221-0409-R01, Translation, DAR-OTP-0219-5249-R01; Note, DAR-OTP-0221-0410-R01, Translation, DAR-OTP-0219-5251-R01; Note, DAR-OTP-0221-0411-R01, Translation, DAR-OTP-0219-5253-R01; Note, DAR-OTP-0221-0412-

committee to discuss *Umdah* Suleiman. Based on information the security committee had received that *Umdah* Suleiman was training and assisting the rebels, it determined that he should be detained at the Garsila SAF base.[1885] **The Accused** visited *Umdah* Suleiman at the Garsila SAF base.[1886]

d) **The Accused** brought Ismail Abdulaziz (known as Ismail Dikobi), the *sheikh* of the western neighbourhood ('*Sheikh* Abdulaziz'*)*, and Hassan Adam Musa, **the Accused's** neighbour, to the prison in the Garsila SAF base.[1887] According to P-0883, it was rumoured that Hassan Adam Musa had complained to *Sheikh* Abdulaziz that '**Ali Kushayb**' was having an affair with his wife, and *Sheikh* Abdulaziz then proposed to the *umdah* of Garsila, *Umdah* Eid, that '**Ali Kushayb**' be forced to swear that he would stop going to Hassan Adam Musa's house.[1888]

582. *Umdah* Kindiri, *Umdah* Khamis and Jenif were subsequently interviewed while in detention and it was determined that they had not committed any crime.[1889] On Maj Bakhit's ensuing orders, *Umdah* Kindiri, *Umdah* Khamis and Jenif were released. The three men fled to Deleig to join their families.[1890]

iii. SAF delegation's visit to Garsila

583. Around early March 2004, prior to the Deleig Operation, a delegation of high-ranking officers arrived at the Garsila SAF base by helicopter.[1891] The delegation was sent by the command in Khartoum to monitor combat operations in the Wadi Salih area.[1892] The delegation

R01, Translation, DAR-OTP-0219-5255-R01; Note, DAR-OTP-0221-0413-R01, Translation, DAR-OTP-0219-5257-R01; Note, DAR-OTP-0221-0414-R01, Translation, DAR-OTP-0219-5259-R01) soon after the events, in or around 2004, it became clear that P-0883 did not, in fact, make these notes until 2006, at the earliest (*see* P-0883: T-072, pp. 48, 77-80). However, the Chamber does not consider that this affected P-0883's credibility. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 80; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631-0632, para. 49.

[1885] P-0883: T-071, pp. 50-51, 56; T-074, pp. 16-17.

[1886] P-0883: T-071, p. 55.

[1887] P-0883: T-071, pp. 52-53; T-072, p. 51, *referring to* P-0883's Notes, DAR-OTP-0221-0408, Translation, DAR-0TP-0219-5247-R01; P-0883's Notes, DAR-OTP-0221-0411-R01, Translation, DAR-OTP-0219-5253-R01; T-074, pp. 13-15, 17; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 80.

[1888] P-0883: T-071, pp. 53-54; T-074, pp. 12-15, 17.

[1889] P-0883: T-071, p. 62; T-072, p. 70. *See also* Darfur Investigation File Report, DAR-OTP-0218-0404, at 0405, Translation, DAR-OTP-0219-6935, at 6937; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0280, Translation, DAR-OTP-0219-7071-R01, at 7074.

[1890] P-0883: T-071, pp. 62-64, 78; T-072, pp. 6, 70. *See also* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 31.

[1891] P-0883: T-071, p. 73; T-073, pp. 2-3, 5; T-074, pp. 44-45; P-0935: T-090, pp. 45-46. *See also* P-0883: T-074, pp. 25, 42.

[1892] P-0883: T-071, p. 73; T-073, p. 4.

remained in Garsila during the Deleig Operation.[1893] During this time, the delegation met in the officers' mess with the SAF commander, Abd-Al-Hakam, the head of the security apparatus and the police.[1894] **The Accused** often accompanied the delegation during its stay.[1895]

584. As to its composition, the delegation included SAF Maj Gen Fa'iz, commander of the 6th division in Al Fasher, Brigadier General Muhammad Khamis, a Military Intelligence commander in Khartoum, and the head of the PDF in Khartoum.[1896]

iv. Arrival of the forces in Deleig

585. Following the Mukjar Operation, the SAF troops returned to the Garsila SAF base.[1897] On the instructions of the SAF commander, Maj Bakhit, Muqaddam Idriss instructed the SAF force which had conducted the operation in Mukjar to take a six day rest period and, thereafter, continue its mission in Deleig.[1898] The same force which conducted the operation in Mukjar deployed to Deleig.[1899] The operation in Deleig consisted of a 'joint deployment' that included the SAF and the *Janjaweed*.[1900]

586. Around 5 March 2004,[1901] **the Accused** arrived at the Garsila SAF base in his vehicle

[1893] P-0883: T-071, p. 73; P-0935: T-090, pp. 45-46.
[1894] P-0883: T-073, pp. 5, 39. *See also* P-0935: T-090, p. 47.
[1895] P-0883: T-071, pp. 73-74; T-073, pp. 7-8. *See also* P-0883: T-072, p. 34.
[1896] P-0883: T-071, pp. 70, 72-73; T-073, pp. 2-3; P-0883's Note, DAR-OTP-0221-0409-R01, Translation, DAR-OTP-0219-5249-R01, at 5250. *See also* Darfur Investigation File Report, DAR-OTP-0218-0404, at 0406, Translation, DAR-OTP-0219-6935, at 6938; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0283, Translation, DAR-OTP-0219-7071-R01, at 7075.
[1897] *See* para. 580 *above*. P-0905: T-085, pp. 49-50, *referring* to Map, DAR-OTP-00000263-R01, at 000001; T-086, pp. 37-38, 41-42, *referring to* Map, DAR-OTP-00000263-R01; T-088, pp. 53, 79; P-0935: T-090, pp. 38-39; P-0643: T-056, pp. 81-82.
[1898] P-0905: T-085, pp. 49-50, *referring* to Map, DAR-OTP-00000263-R01; T-086, pp. 37-39, 41-42, *referring to* Map, DAT-OTP-00000263; T-088, pp. 48, 53, 79-81. *See also* P-0935: T-090, pp. 77-80, 84; P-0883: T-071, p. 8; T-074, pp. 74-75, 77; P-0643: T-056, pp. 81-82.
[1899] P-0905: T-086, pp. 39-40; T-085, pp. 50-51, *referring* to Map, DAR-OTP-00000263-R01; T-087, pp. 60-61. *See also* P-0935: T-090, pp. 35, 82-83; P-0993: T-074, p. 40; P-0643: T-056, pp. 81-82; P-0935: T-090, pp. 38-40.
[1900] P-0935: T-090, p. 84.
[1901] The Chamber notes that the evidence is inconsistent as to the precise date on which the detainees were removed from the Garsila SAF base. P-0883 gave evidence, with reference to his handwritten notes, that *Umdah* Suleiman, *Sheikh* Abdulaziz and *Hassan* Adam Musa were removed from the Garsila SAF base on (Sunday) 7 March 2004. However, in P-0883's 2008 record of interview in the Darfur Investigation File, he suggested that this occurred after 02:00 on a Thursday or Friday (namely, 4 or 5 March 2004) (P-0883: T-072, p. 49, *referring to* P-0883's Note, DAR-OTP-0221-0406-R01, Translation, DAR-0TP-0219-5243-R01, at 5244); Darfur Investigation File Report, DAR-OTP-0218-0404, at 0405, Translation, DAR-OTP-0219-6935, at 6937; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0282, Translation, DAR-OTP-0219-7071-R01, at 7074. *See* the Chamber's assessment of P-0883's evidence, Annex B, Section I.A.29. P-0935 gave evidence that detainees were removed from the Garsila SAF base on the day the SAF troops departed for the Deleig Operation, which other evidence confirms was on or around Friday 5 March 2004 (P-0935: T-090,

and took custody of *Umdah* Suleiman, *Sheikh* Abdulaziz and Hassan Adam Musa.[1902] During this time, **the Accused** was heard saying 'No, I am the commander' […] 'I have no time. I can't wait for an authorisation from the commander. And I have just been with the commander already and I have instructions from him'.[1903]

587. While there is no direct evidence before the Chamber as to where *Umdah* Suleiman, *Sheikh* Abdulaziz and Hassan Adam Musa were transferred that day, the Chamber is satisfied that at least Hassan Adam Musa was detained for an interim period inside Deleig police station until he was removed therefrom on or around 7 March 2004.[1904] The evidence also leads to the conclusion that *Umdah* Suleiman and *Sheikh* Abdulaziz remained in custody from the point at which they were removed from the Garsila SAF base on or around 5 March 2004 to when they were subsequently seen in the custody of the *Janjaweed* near the Deleig market on or around 7 March 2004.[1905]

588. A short time prior to **the Accused's** departure from the Garsila SAF base, a convoy of three vehicles left the base in the direction of Deleig, purportedly bound for Kailek. Lt Hamdi

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pp. 80-82, 99, *referring to* Extract of P-0935's Statement, DAR-OTP-00000350; P-0935's Sketch, DAR-OTP-0218-0725). *See* Section 5.III.C.c. Arrest and mistreatment of Fur men and boys in Deleig *below*. P-0973, who was detained inside Deleig police station from 5 to 9 March 2004, gave evidence that Hassan Adam Musa was detained with him inside the police station until he was removed on or around 7 March 2004, suggesting that Hassan Adam Musa must have been transferred from the Garsila SAF base to Deleig police station prior thereto (P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, 0745, paras 15, 40-42 (admitted excerpts only)). Having regard to the totality of the evidence regarding the events in Deleig, the Chamber is satisfied that *Umdah* Suleiman, *Sheikh* Abdulaziz and Hassan Adam Musa were removed from the Garsila SAF base on or around 5 March 2004, on or around the same day the SAF contingent deployed to Deleig. The Chamber does not consider that the discrepancy in P-0883's recollection of the date on which this occurred otherwise impacts the credibility of his account of these events. *See* Section 5.III.C.c. Arrest and mistreatment of Fur men and boys in Deleig *below*; and the Chamber's assessment of P-0883's evidence, Annex B, Section I.A.29. *Contra* Defence's Final Brief, para. 630.

[1902] P-0883: T-071, pp. 55-56, 64-65, 67; T-072, p. 49, *referring to* P-0883's Note, DAR-OTP-0221-0406, Translation, DAR-0TP-0219-5243, at 5244; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0405, Translation, DAR-OTP-0219-6935, at 6937; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0282, Translation, DAR-OTP-0219-7071-R01, at 7074. *See also* P-0935: T-090, pp. 80-81; P-0905: T-086, pp. 39-40; T-088, p. 81. *See also* P-0905: T-085, pp. 50-51, *referring* to Map, DAR-OTP-00000263-R01, at 000001; P-0584: T-092, p. 53; P-0935: T-090, pp. 80-81, 83; P-0883: T-071, p. 65; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0405-0406, Translation, DAR-OTP-0219-6935, at 6937-6938; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0282-0283, Translation, DAR-OTP-0219-7071-R01, at 7074-7075. *See also* P-0643: T-056, pp. 90-91; P-0935: T-090, pp. 81-82, 99, *referring to* Extract of P-0935's Statement, DAR-OTP-00000350; P-0935's Diagram of the SAF base, DAR-OTP-0218-0725; P-0883: T-071, p. 65.

[1903] P-0883: T-071, pp. 56, 65, 67; T-072, pp. 6-7. Commander Bakhat later indicated that he did not authorize **the Accused** to take the detainees. *See* Darfur Investigation File Report, DAR-OTP-0218-0404, at 0405, Translation, DAR-OTP-0219-6935, at 6937; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0283, Translation, DAR-OTP-0219-7071-R01, at 7074.

[1904] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, 0744-0746, paras 38, 41, 44 (admitted excerpts only). *See* Section 5.III.C.g. Execution of community leaders and other detainees near Fere around 7 March 2004 *below*.

[1905] *See* para. 643 *below*.

led the convoy in a vehicle belonging to the intelligence services of Zalingei, accompanied by 'a force'.[1906] Soon thereafter, a convoy including vehicles used by **the Accused** and Hassaballah,[1907] as well as SAF vehicles, departed from the Garsila SAF base in the direction of Deleig.[1908] Amongst the contingent which deployed to Deleig that day were: **the Accused**, Lt Hamdi, First Lieutenant Seif-Al-Din Ahmad Ali Bakhit from the intelligence services of Zalingei, Hassaballah, Muqaddam Idriss, P-0905, and SAF Military Intelligence officers, Abd-al-Mun'im, Musaddiq Hassan Mansur ('Mansur'), Abubakar Abdullah Muhammad Bakhit, Abdallah Musa Abdullah and Bakhit Abdo Maigari ('Maigari').[1909]

589. Between the late evening of Thursday 4 March 2004 and the early morning of Friday 5 March 2004, armed *Janjaweed* and GoS Forces, surrounded Deleig.[1910] Around 07:00 on 5 March 2004, a large number of *Janjaweed* and GoS Forces entered Deleig.[1911] **The Accused**

[1906] P-0883: T-071, pp. 66-67; P-0905: T-086, pp. 39-40; T-088, p. 81.
[1907] Hassaballah, an Arab, became PDF coordinator for Garsila in or around March 2004, following the death of the previous PDF coordinator, Jenif, a Fur man. P-0883's Extract of Statement, DAR-OTP-00000065, at 000003, para. 234; P-0883: T-071, p. 61; T-072, pp. 64-65; T-073, p. 39; P-0643: T-056, pp. 88-89; T-058, pp. 35-37; P-0931: T-062, p. 51; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0070, para. 69; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0406-0407, Translation, DAR-OTP-0219-6935, at 6939.
[1908] P-0883: T-071, pp. 65-67; P-0905: T-086, pp. 39-40, 43; T-088, p. 81; P-0935: T-090, pp. 80-81, 83, 99-100. *See also* P-0905: T-085, pp. 50-51, *referring* to Map, DAR-OTP-00000263-R01, at 000001; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0406-0407, Translation, DAR-OTP-0219-6935, at 6938-0639; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0283, Translation, DAR-OTP-0219-7071-R01, at 7075; P-0584: T-092, p. 53; P-0935: T-090, pp. 80-81, 83. P-0935's evidence also indicates that a similar contingent was deployed in the Sindu Operation, *see* P-0935: T-090, pp. 31-32.
[1909] P-0883: T-071, pp. 65, 76-77; T-072, pp. 7-9; Darfur Investigation File Report, DAR-OTP-0218-0404, at 0406-0407, Translation, DAR-OTP-0219-6935, at 6938-0639; Darfur Investigation File Handwritten Report, DAR-OTP-0218-0279-R01, at 0283, Translation, DAR-OTP-0219-7071-R01, at 7075; P-0905: T-086, pp. 39-40, 43, 46, 56-57; T-088, pp. 81-82. *See also* P-0643: T-059, p. 11; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, 0069, paras 28, 68; P-0994's Statement Corrections, DAR-OTP-00000268, at 000001, para. 4.
[1910] P-0907: T-094, p. 29; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1564-1565, para. 90; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0111, para. 24; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176, para. 42; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0130-0131, paras 64, 68-69; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 32; P-0955: T-064, p. 6; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0741, para. 25; P-0883: T-074, pp. 53-54; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0062-0063, paras 32-33, 35; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1523, para. 79; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891-1892, paras 28-29. *See also* P-0935: T-090, p. 84; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261-0262, paras 53-54; P-0585: T-100, p. 15; P-0712: T-036, p. 10; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2012, paras 53, 55; P-0718's Statement Corrections, DAR-OTP-0220-4792, at 4792, para. 8; P-0718: T-049, p. 15; P-0651: T-034, p. 60; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793, para. 11. *See also* HRW Report, DAR-OTP-0003-0099, at 0122-0124; UNCOI Overview Report, DAR-OTP-0013-0119, at 0156; UNCOI Final Report, DAR-OTP-0209-0593, at 0667, para. 275. The reports relied upon for this factual finding, are outcomes of research/investigations on the ground in Darfur during the relevant time, and clearly indicate the methodology of information collection and the sources for the facts. Therefore, the Chamber is satisfied that the reports are reliable and probative. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, pp. 11-12, 20-21, 24-25; Defence's Final Brief, paras 80-81.
[1911] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 35. *See also* P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891-1892, paras 28-29; P-0712: T-036, p. 10.

led this contingent.[1912]

590. Some travelled in open-back khaki coloured Land Cruisers with *DShKs* mounted at the rear, while others came by horse or camel, or on foot.[1913] The *asakir*, or military personnel, could be distinguished by their full khaki uniforms.[1914] Most of the *Janjaweed* wore regular civilian clothes with items of khaki coloured camouflage military uniform and scarves or turbans wrapped around their heads.[1915]

c) Arrest and mistreatment of Fur men and boys in Deleig

591. In this and the subsequent section, the Chamber relies primarily on the evidence of P-0584, P-0585, P-0607, P-0671, P-0712, P-0718, P-0725, P-0736, P-0907, P-0955, P-0973, and P-0994, each of whom observed the events from their respective proximate positions.[1916] The Chamber also relies on the evidence of P-0883 who received information in relation to the role played by the SAF in the Deleig Operation.[1917]

592. *Janjaweed* and GoS Forces blocked access routes and established checkpoints around Deleig, including to the east of the Ansar Al-Sunna mosque at a pre-existing government

[1912] The Chamber bases this finding on an assessment of the acts and conducts of **the Accused** in Deleig and the fact that **the Accused** himself stated that he was the commander of the *Janjaweed*. *See* paras 586 *above*, and paras 602, 611-612, 617-618, 620, 624, 643 *below*. *Contra* Defence's Final Brief, paras 583, 645.
[1913] P-0907: T-094, p. 29; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 33; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0111-0112, para. 25; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1892-1893, paras 30, 33, *referring to* Colour Chart, DAR-OTP-0209-1908-R02; P-0712: T-036, pp. 10-11. *See also* P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, paras 58-59; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176, para. 42.
[1914] P-0907: T-094, p. 30; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1566, para. 95; P-0584: T-092, p. 36; P-0671: T-099, pp. 17-18; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 40; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0262, para. 54.
[1915] P-0907: T-094, p. 30; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0108, 0111-0112, 0115, paras 15, 25, 40; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0177, para. 45; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0262, 0264, paras 54, 62-63, *referring to* Colour Chart, DAR-OTP-0210-0277-R01, at 0278; Headdress Board, DAR-OTP-0210-0279, at 0280. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061-0062, paras 27, 33; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, para. 13, *referring to* Headdress Board, DAR-OTP-0220-0755-R01, at 0756; P-0584: T-092, p. 36; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891-1893, para. 29; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, para. 58.
[1916] *See* the Chamber's assessment of the evidence of P-0584, P-0718, P-0907 and P-0973, Annex B, Sections I.A.13, I.A.20, I.A.33 and II.A.25. *See also* the Chamber's assessment of the evidence of P-0585, P-0607, P-0671, P-0712, P-0725, P-0736, P-0955 and P-0994, Annex B, Sections I.A.14, II.A.14, I.A.17, I.A.19, II.A.17, I.A.23, I.A.43 and I.A.48.
[1917] *See* the Chamber's assessment of P-0883's evidence, Annex B, Section I.A.29; P-0883: T-071, pp. 8, 47-48.
[1917] P-0883: T-071, pp. 47-48.

checkpoint.[1918] They closely controlled all movements, checking those who sought to enter Deleig, and preventing anyone from leaving.[1919]

593. From just after 07:00,[1920] armed *Janjaweed*[1921] and GoS Forces[1922] patrolled the streets of Deleig in Land Cruisers,[1923] on foot and on horseback.[1924] The *Janjaweed* and GoS Forces, in groups of five or six,[1925] questioned those who left their homes[1926] and conducted

[1918] P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027, para. 41; P-0651: T-034, pp. 14-15; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0262, 0269, paras 54, 78, *referring to* P-0736's Sketch, DAR-OTP-0210-0281-R01, at 0282; P-0736: T-035, p. 66, *referring to* P-0736's Annotated Satellite Image, DAR-REG-0001-0004; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364, paras 62-63; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793, para. 14; P-0726: T-053, pp. 46-47. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0062, 0073, paras 32-33, 88, *referring to* Satellite Image, DAR-OTP-0222-0079; P-0994: T-084, p. 8, *referring to* Satellite Image, DAR-OTP-00000269; P-0585: T-101, pp. 58-59. The Chamber notes that none of the witnesses specifically identifies the mosque as the 'Ansar Al-Sunna' mosque in this context. The Chamber nonetheless concludes that this is the mosque referred to based on the surrounding facts and circumstances. *See* para. 576 *above*.

[1919] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565, para. 91; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364, para. 62; P-0726: T-053, p. 47, *referring to* P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364, para. 62*;* P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027, para. 41; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261-0262, paras 53, 55; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0062, para. 32. *See also* P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176, para. 42; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 32; P-0585: T-101, p. 59.

[1920] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, paras 35-37; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, para. 26. *See also* P-0907: T-094, pp. 30-31; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893, para. 32; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565, para. 92; P-0584: T-092, pp. 36-37; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0112, para. 26; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 34.

[1921] P-0907: T-094, p. 30; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064, para. 44; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891-1892, para. 29; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0264, paras 62-63, *referring to* Colour Chart, DAR-OTP-0210-0277-R01, at 0278; Headdress Board, DAR-OTP-0210-0279, at 0280; P-0584: T-092, p. 36; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, paras 57-58. *See also* P-0585: T-100, pp. 15-16, 22; T-101, p. 51; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 68.

[1922] P-0907: T-094, p. 30; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1564-1566, paras 90, 94-95; P-0584: T-092, p. 36; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0012-0013, paras 26-29, *referring to* Headdress Board, DAR-OTP-0206-0128, at 0129, P-0671's Sketch, DAR-OTP-0206-0130, at 0131; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 9. *See also* P-0883: T-071, p. 78; T-074, p. 52.

[1923] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, paras 33-34, *referring to* Colour Chart, DAR-OTP-0220-0640, at 0641*;* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0012-0013, paras 26-29, *referring to* Headdress Board, DAR-OTP-0206-0129, at 0129; P-0671's Sketch, DAR-OTP-0206-0130, at 0131; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 9; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565-1566, paras 94, 96; P-0584's Statement Corrections, DAR-OTP-00000419, at 000002, para. 25; P-0584: T-092, p. 37; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893, para. 33; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, paras 58-59.

[1924] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 33; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176, para. 43; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, para. 26; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893, para. 33. *See also* P-0585: T-100, pp. 15-16, 22; T-101, p. 51; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 68.

[1925] P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, para. 58; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628-0629, paras 34-35; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0264, 0266, paras 62, 70; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893-1895, paras 33, 37.

[1926] P-0907: T-094, p. 29; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891-1892, paras 29, 31. *See also* P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, para. 56.

house to house searches for weapons and for Fur men and boys who were not from Deleig, and who they suspected of being, or supporting, rebels.[1927]

594. Lt Hamdi was present and issued instructions relating to the search and arrest operation in Deleig. Thereafter he continued to Kailek.[1928] Military Intelligence officers Abd-Al-Mun'im and Mansur assisted in identifying those who came from Arawala and Gaba, where they had previously been deployed.[1929] At least one Fur police officer, Abdelkarim Issa, assisted the *Janjaweed* to identify which Fur men and boys were from Deleig, albeit apparently somewhat unwillingly.[1930]

595. Members of the Fur community, particularly those who had been displaced to Deleig, were scared[1931] and many hid to avoid interrogation and arrest.[1932] P-0607 hid in the back of a shed[1933] and P-0725 hid in a *dabanga* (a small circular grain barrel).[1934] P-0726 dressed as a woman in a traditional robe with a veil.[1935]

[1927] P-0736's Statement, DAR-OTP-0210-0248-R02, at 0265-0268, paras 64-65, 70, 72, 74; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176-0177, paras 43, 46; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1564-1566, paras 90, 94, 96; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742-0743, paras 26, 30 (admitted excerpts only); P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, 0631, para. 33; P-0883: T-071, pp. 76, 78; T-074, pp. 52-54; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893-1895, paras 32-38; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364, paras 63-64; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793-0794, paras 13, 15; P-0935: T-090, p. 43; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 33. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064, paras 40, 44; P-0585: T-100, pp. 15-16, 22; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 68; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0150-0151, para. 83; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1523-1524, para. 80; P-0935: T-090, p. 38; P-0718: T-049, p. 56; UNCOI Final Report, DAR-OTP-0209-0593, at 0667, para. 275; HRW Report, DAR-OTP-0003-0099, at 0123; UNCOI Overview Report, DAR-OTP-0013-0119, at 0156.

[1928] P-0883: T-071, pp. 66, 78; T-074, pp. 49-50. *See also* P-0907: T-096, p. 35; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0069, para. 66; P-0994's Statement Corrections, DAR-OTP-00000268, at 000003, para. 15; P-0643: T-056, pp. 92-93; T-059, p. 11.

[1929] P-0883: T-071, pp. 76-77; T-074, p. 52. *See also* P-0907: T-096, p. 35; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1533, paras 102-103; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0350, para. 14.

[1930] P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893-1894, paras 33-35.

[1931] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176, para. 42; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893, para. 33.

[1932] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176-0177, para. 44; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 70; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364, paras 63-64; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793, para. 13; P-0726: T-053, p. 16; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1523-1524, para. 80, *referring to* P-0617's Sketch, DAR-OTP-0202-1541, Translation, DAR-OTP-0219-1680, at 1681.

[1933] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176-0177, para. 44.

[1934] P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 70.

[1935] P-0726's Statement, DAR-OTP-0210-0346-R04, at 0363, paras 63-64; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793-0794, paras 13, 16; P-0726: T-053, p. 16.

596. During the operation, *Janjaweed* and GoS Forces arrested predominantly Fur[1936] men and boys on the street,[1937] outside mosques,[1938] and in houses.[1939] Many were arrested without interrogation or explanation.[1940] Others were questioned about where they came from, their affiliation with rebels, and the whereabouts of weapons, prior to being arrested.[1941] The *Janjaweed* accused the Fur people of being *tora bora*, and used denigrating language when addressing them, referring to them as '*abid*', meaning slave, and '*himar*', meaning donkey – a particularly demeaning insult in the region.[1942] One *Janjaweed* said to P-0736, while gesturing to his uniform, words to the effect: 'Look, the uniform is dirty, and you are dirty like this, we want to clean you'.[1943] The *Janjaweed* also threatened, beat, kicked and hit with sticks and rifle stocks both men and women while executing the search and arrest operation.[1944] P-0907, P-0584, P-0736, P-0973 and P-0718 were amongs those who were struck by the *Janjaweed*.[1945] P-0584 lost consciousness as a result of the beating he sustained.[1946]

[1936] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064, para. 40. *See* para. 447 *above*.
[1937] P-0725's Statement, DAR-OTP-0210-122-R02, at 0131, para. 68; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064, para. 44; P-0718: T-049, p. 56. *See also* P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793-0794, para. 16.
[1938] P-0718's Statement, DAR-OTP-0209-2004-R02, at 2012-2013, paras 55-56; P-0718: T-049, p. 56; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 72.
[1939] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565-1566, para. 94; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176-0177, paras 43, 46; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0112, paras 26-27, *referring to* Headdress Board, DAR-OTP-0206-0129, at 0129, P-0671's Sketch, DAR-OTP-0206-0130, at 0131; P-0793's Statement, DAR-OTP-0220-0736-R01, at 0724, para. 26; P-0718: T-049, p. 56. *See also* UNCOI Final Report, DAR-OTP-0209-0593, at 0667, para. 275.
[1940] P-0907: T-094, pp. 32-33; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0112, paras 30-31; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629, para. 36; P-0955: T-064, p. 9; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0177, paras 44, 46; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, para. 26.
[1941] P-0736's Statement, DAR-OTP-0210-0248-R02, at 0265, 0267-0268, paras 65, 67, 74; P-0584: T-092, pp. 42-43.
[1942] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565, para. 92; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, para. 60; P-0718: T-049, p. 40; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0794, para. 16. *See also* P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261, para. 50.
[1943] P-0736's Statement, DAR-OTP-0210-0248-R02, at 0265, para. 67.
[1944] P-0736's Statement, DAR-OTP-0210-0248-R02, at 0265, paras 66-67; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565-1566, paras 92, 94-95; P-0584's Statement Corrections, DAR-OTP-00000419, at 000002, para. 23; P-0584: T-092, pp. 36-37; P-0907: T-094, p. 32; T-095, p. 9; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629, para. 36; P-0955: T-064, p. 9; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1894, para. 36; P-0718: T-049, pp. 40, 64-65. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, paras 35-36. *See also* P-0736's Statement, DAR-OTP-0210-0248-R02, at 0265, para. 67.
[1945] P-0907: T-095, p. 9; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565-1566, paras 92, 94-95; P-0584's Statement Corrections, DAR-OTP-00000419, at 000002, para. 23; P-0584: T-092, pp. 36-37; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0265, para. 66; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, paras 27-28; P-0718: T-049, pp. 15, 64, 66.
[1946] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565, para. 92. *See also* P-0584's Statement Corrections, DAR-OTP-00000419, at 000002, para. 23; P-0584: T-092, pp. 36-37.

597. *Janjaweed* and GoS Forces tied the hands of many of the arrested Fur men and boys, and loaded them onto the open backs of Land Cruisers.[1947] Some detainees were forced to lie face down in the vehicles,[1948] while others were seated close to one another.[1949] The vehicles transported the detainees to Deleig police station.[1950]

598. Armed *Janjaweed* and GoS Forces on foot and horseback herded other groups of Fur men and boys 'like animals'[1951] to Deleig police station.[1952] They kicked and beat some of the detainees *en route* to the police station, using whips and wooden sticks.[1953] One group of detainees, including P-0973, was first marched to an open area on the northern outskirts of Deleig, where they were detained face down on the ground for several hours and were randomly beaten by the *Janjaweed*.[1954] One member of the *Janjaweed* stabbed P-0973 in the right arm with a bayonet at the end of his firearm, leaving a scar.[1955] Some hours later, those detainees were marched to Deleig police station, some 45 minutes' walk away, where they joined the other detainees.[1956]

[1947] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629, para. 37; P-0584's Statement Corrections, DAR-OTP-00000419, at 000002, para. 25; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565-1566, paras 94, 96; P-0584: T-092, pp. 36-37; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0177, para. 46; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1894, para. 36; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, paras 58-60; P-0718: T-049, pp. 64-65; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0112-0114, paras 26-27, 30-31, 34, *referring to* Headdress Board, DAR-OTP-0206-0129, at 0129; P-0671's Sketch, DAR-OTP-0206-0130, at 0131; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 9.
[1948] P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, para. 60; P-0718: T-049, p. 64; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0013-0014, para. 34, *referring to* P-0671's Sketch, DAR-OTP-0206-0130, at 0131; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 9.
[1949] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565-1566, paras 94, 96; P-0584's Statement Corrections, DAR-OTP-00000419, at 000002, para. 25; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0112-0114, paras 26-29, 34, *referring to* Headdress Board, DAR-OTP-0206-0129, at 0129, P-0671's Sketch, DAR-OTP-0206-0130, at 0131; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 9.
[1950] P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, para. 61; P-0718: T-049, p. 64; P-0584: T-092, p. 37; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1566, para. 96.
[1951] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0177, paras 45-46.
[1952] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, paras 36-37; P-0907: T-094, p. 33. *See also* P-0883: T-071, pp. 77-78; P-0793's Statement, DAR-OTP-0220-0736-R01, at 0742, para. 27, *referring to* Photographs, DAR-OTP-0220-0762, DAR-OTP-0220-0763, DAR-OTP-0220-0764.
[1953] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 36. *See also* P-0585: T-100, pp. 15-16, 22-23; T-101, p. 56; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1525-1526, para. 84 (admitted excerpts only).
[1954] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, paras 27-28.
[1955] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, para. 27, *referring to* Photographs, DAR-OTP-0220-0762, DAR-OTP-0220-0763, DAR-OTP-0220-0764.
[1956] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742-0743, paras 28, 30 (admitted excerpts only).

599. Amongst those arrested in Deleig by the *Janjaweed* and GoS Forces on 5 March 2004 were P-0907, P-0584, P-0718 and P-0973.[1957] *Umdah* Kindiri and P-0671's father and brother were also arrested.[1958]

600. Women and some boys and elderly men were spared arrest.[1959] Some Fur men who were identified as being local to Deleig or related to Deleig residents, such as P-0712, were not arrested.[1960] Others, including P-0736, escaped arrest by speaking Arabic,[1961] or by bribing the *Janjaweed* with money.[1962]

601. The *Janjaweed* and GoS Forces continued to patrol the streets of Deleig until at least Sunday 7 March 2004.[1963] There was no armed resistance to the search and arrest operation,[1964] and the relatively small number of police in Deleig, many of whom were also Fur, were powerless to stop it.[1965]

The Accused's involvement in the search and arrest operation

602. Sometime between 09:00 and 10:00 on 5 March 2004, two khaki green open back Land Cruisers mounted with *DShKs*, arrived outside the house where *Umdah* Kindiri was staying.[1966] **The Accused**, accompanied by four armed men wearing camouflage uniforms, entered the house.[1967] **The Accused** looked at *Umdah* Kindiri, instructed him to stand up and then kicked him.[1968] He instructed his men to tie *Umdah* Kindiri's hands and take him to the vehicle.[1969]

[1957] P-0907: T-094, pp. 31-34; T-096, pp. 15, 17; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1565-1566, paras 94-96; P-0584: T-092, p. 37; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013, paras 57-61; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, paras 27-30 (admitted excerpts only).
[1958] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0623, 0628-0629, paras 11-14, 34-37; P-0955: T-064, p. 9; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0113, paras 30-33.
[1959] P-0907: T-094, pp. 32-33; T-096, pp. 15-16; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, para. 26.
[1960] P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893-1894, paras 34-35.
[1961] P-0736 surmised he was spared arrest because he had spoken Arabic and most people from Sindu would probably only speak Fur. *See* P-0736's Statement, DAR-OTP-0210-0248-R02, at 0265, para. 66.
[1962] P-0736's Statement, DAR-OTP-0210-0248-R02, at 0266, para. 68.
[1963] P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793, para. 11; P-0585: T-100, pp. 20-21, 25; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0032-0033, paras 62-64. *See also* P-0712's Statement, DAR-OTP-0209-1884-R04, at 1896, para. 43.
[1964] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063-0064, paras 36, 41; P-0994: T-084, p. 15. *See also* UNCOI Final Report, DAR-OTP-0209-0593, at 0672, para. 297; P-0907: T-094, pp. 24-25.
[1965] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063-0064, paras 37, 41, 44; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261, para. 50; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0030, para. 54.
[1966] *See* the Chamber's assessment of P-0955's evidence, Annex B, Section I.A.43; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, paras 32, 34, *referring to* Colour Chart, DAR-OTP-0220-0640, at 0641.
[1967] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0628, para. 35.
[1968] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0623, 0628-0629, paras 11, 14, 35-36; P-0955: T-064, p. 9.
[1969] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629, para. 36.

Accordingly, *Umdah* Kindiri was loaded onto the back of one of the vehicles with his hands bound behind his back.[1970] **The Accused** did not say why *Umdah* Kindiri was being taken away.[1971] *Umdah* Kindiri's family members were crying as he was dragged out of the house.[1972] **The Accused** instructed *Umdah* Kindiri's family to stay inside and warned them that 'if you step out and follow the vehicles you will be shot'.[1973] Shortly thereafter, *Umdah* Kindiri and *Umdah* Khamis were seen in the back of the same vehicle, along with 'soldiers' and *Janjaweed*,[1974] near the well at the market.[1975] *Umdah* Kindiri's family never saw him alive again.[1976]

d) Detention, mistreatment and killing of Fur men and boys at Deleig police station

603. In this section, in addition to P-0584, P-0607, P-0718, P-0907, and P-0973, the Chamber relies on the evidence of other witnesses who followed the events from close proximity, including P-0905 and P-0994.[1977] The Chamber also relies on the evidence of witnesses who observed the events from some distance away, to the extent that their evidence is supported, including: P-0651, P-0671, P-0725, P-0736, P-0931 and P-0955.[1978]

i. Detention of Fur men and boys outside Deleig police station

604. From around 07:00, *Janjaweed* and GoS Forces detained the arrested men and boys, aged from around 13 to over 60, in a large unfenced area of about one acre on the south-west side of Deleig police station.[1979] Upon their arrival outside the police station, or soon thereafter,

[1970] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629-0630, paras 37, 42.
[1971] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629, para. 36; P-0955: T-064, p. 9.
[1972] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629, para. 36.
[1973] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629, para. 36; P-0955: T-064, p. 9.
[1974] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629-0630, para. 40, *referring to* Headdress Board, DAR-OTP-0220-0642, at 0643.
[1975] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629-0630, paras 40-41.
[1975] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0630, para. 41.
[1976] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0629-0630, paras 41, 43; P-0955: T-063, p. 28.
[1977] *See* the Chamber's assessment of the evidence of P-0584, P-0607, P-0718, P-0907 and P-0973, Annex B, Sections I.A.13, II.A.14, I.A.20, I.A.33, II.A.25. *See also* the Chamber's assessment of the evidence of P-0905 and P-0994, Annex B, Sections I.A.32 and I.A.48.
[1978] *See* the Chamber's assessment of the evidence of P-0651, P-0671, P-0725, P-0736, P-0905, P-0931 and P-0955, Annex B, Sections I.A.16, I.A.17, II.A.17, I.A.23, I.A.32, I.A.40 and I.A.43. While witness accounts as to the precise timing and sequence of events at Deleig police station vary, the Chamber considers that nothing significant turns on these minor discrepancies, particularly considering the passing of time between the relevant events, the traumatic nature of the events, and the witnesses' testimonies.
[1979] P-0907: T-094, pp. 32, 34-35; T-095, p. 9; T-096, pp. 18, 38; P-0905: T-086, pp. 44-45, *referring to* Satellite Image, DAR-OTP-00000260-R01; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1566, para. 97, *referring to* P-0584's Sketch, DAR-OTP-0200-1591, at 1593, Translation, DAR-OTP-0219-1670, at 1673; P-0584: T-092, p. 38; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131-0132, paras 71, 75, *referring to* P-0725's Sketch, DAR-OTP-0210-0141, Translation, DAR-OTP-0219-1701, at 1702; P-0973's Statement, DAR-OTP-0220-0736-

the detainees were ordered to lie face down on the ground in systematic rows.[1980] They were not permitted to raise their heads, or to look to either side.[1981] All the detainees appeared to be wearing civilian clothes, including *jallabiyas*.[1982] Some had their hands bound behind their backs.[1983] Numerous members of the *Janjaweed* and GoS Forces surrounded the detainees, keeping them under close guard.[1984] A small number of police were also present in and around the police station, with some serving as guards.[1985] Several Land Cruisers were parked in the

R01, at 0742-0743, paras 27, 30 (admitted excerpts only); P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063-0064, 0070, 0074, paras 36-37, 39-40, 72-73, 89, *referring to* P-0994's Sketch, DAR-OTP-0222-0077, Translation, DAR-OTP-0220-1221, at 1222; Photograph, DAR-OTP-0219-5483 (noting that this photograph was used with and confirmed by P-0718, the Chamber is satisfied that it is reliable and probative); P-0094's Annotated Image, DAR-OTP-0222-0079; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, paras 40-42, *referring to* P-0671's Sketch, DAR-OTP-0206-0132, at 0133, Translation, DAR-OTP-0219-1696, at 1698; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 11; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2013-2014, paras 61, 63; P-0931: T-062, p. 42. *See also* P-0585: T-100, pp. 15-16, 19, 21-23, *referring to* P-0585's Sketch, DAR-OTP-0201-0072, Translation, DAR-OTP-0219-1674, at 1675; Satellite Image, DAR-OTP-00000465; T-101, pp. 51, 56; P-0651: T-034, p. 21, *referring to* P-0651's Sketch, DAR-OTP-0205-0040, at 0041, Translation, DAR-OTP-0219-1684, at 1686; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, para. 75; UNCOI Overview Report, DAR-OTP-0013-0119, at 0156.

[1980] P-0907: T-094, p. 34; T-096, pp. 17, 19, 22; P-0905: T-086, pp. 44-45; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0178-0179, paras 48, 51; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1566, para. 97, *referring to* P-0584's Sketch, DAR-OTP-0200-1591, at 1593, Translation, DAR-OTP-0219-1670, at 1673; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 39; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 40; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131-0132, paras 71, 75; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742-0743, para. 30 (admitted excerpts only); P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, paras 37, 39; P-0994: T-084, p. 56; P0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46-47, 49. *See also* P-0585: T-100, pp. 16, 18-19, *referring to* P-0585's Sketch, DAR-OTP-0201-0072, Translation, DAR-OTP-0219-1674, at 1675; T-101, pp. 51, 53-54; 56; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0151, para. 84; P-0931: T-062, pp. 42, 50, *referring to* Photograph, DAR-OTP-0224-0883; P-0718's Statement, DAR-OTP-0209-2004-R02, at 2014, paras 63-64; P-0718's Statement Corrections, DAR-OTP-0220-4792, at 4792, paras 9-10; P-0718: T-049, pp. 67, 69; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027-0028, para. 43.

[1981] P-0907: T-096, pp. 20, 24; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0178-0179, para. 51; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 38.

[1982] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115-0117, paras 41, 46; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 11; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 71; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064, para. 41; P-0585: T-100, p. 16.

[1983] P-0718's Statement, DAR-OTP-0209-2004-R02, at 2014, paras 63-64. *See also* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 40; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45; P-0718: T-049, p. 65.

[1984] P-0907: T-096, pp. 20, 24; P-0905: T-086, pp. 44-45; P-0584: T-092, p. 38; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, paras 40-41; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 11; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 39; P-0994: T-084, p. 56; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742-0743, para. 30 (admitted excerpts only); P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45; P-0955: T-064, pp. 12-13; P-0718: T-049, p. 67; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0266-0267, para. 71; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027-0028, paras 43-44; P-0584: T-092, p. 38. *See also* P-0931: T-062, p. 42.

[1985] While P-0994 gave evidence that members of the Police did not play any role in the events, noting that P-0994 was a police officer, and arguably had a vested interest in minimising the involvement of himself and/or others, the Chamber prefers the collective evidence of other witnesses on the record with respect to the involvement of the police. *See* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064, para. 44. *Contra* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45; P-0955: T-064, p. 13; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1566-1567, paras 98, 102; P-0584: T-092, pp. 38-40. *See also* P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261, para. 50.

vicinity of the police station.[1986]

605. Members of the *Janjaweed* and GoS Forces continued to bring detainees to the open area outside the police station throughout the day.[1987] At least 100 detainees were detained outside Deleig police station on 5 March 2004.[1988]

ii. Arrival of the Accused at Deleig police station

606. **The Accused** arrived at Deleig police station on 5 March 2004 some time before 13:00.[1989] **The Accused's** Land Cruiser was parked under a *labob* tree, near the police

[1986] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 40; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0266-0267, para. 71; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45; P-0955: T-064, p. 13; P-0907: T-094, pp. 33-34; T-096, pp. 16-17; P-0905: T-086, pp. 43-45, *referring to* Satellite Image, DAR-OTP-00000260-R01; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 40. *See also* P-0718: T-049, p. 67.

[1987] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179-0180, para. 51; P-0585: T-101, p. 56; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46-47, 49, *referring to* P-0651's Sketch, DAR-OTP-0205-0040, at 0401, Translation, DAR-OTP-0219-1684, at 1686.

[1988] Witness estimates as to the total number of detainees held outside Deleig police station on 5 March 2004 vary from 100 to 700. *See* for close to 100 detainees: P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 40; over 100 detainees: P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 71; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0266-0267, para. 71; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0178, para. 48; P-0585: T-100, p. 16; UNCOI Overview Report, DAR-OTP-0013-0119, at 0156; 150 to 200 detainees: P0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46-47, 49, *referring to* P-0651's Sketch, DAR-OTP-0205-0040, at 0401, Translation, DAR-OTP-0219-1684, at 1686; 200 detainees: P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45; P-0955: T-064, p. 12; 200-300 detainees: P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 37; hundreds of detainees: P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742-0743, para. 30 (admitted excerpts only); 600 to 700 detainees: P-0907: T-094, p. 35; T-096, pp. 18, 38. *See also* P-0931: T-062, p. 42. Having weighed all the evidence, including evidence of the subsequent transfer and killing of detainees, the Chamber is satisfied that at least 100 detainees were detained outside Deleig police station on 5 March 2004. *See* Section 5.III.C.d.i. Detention of Fur men and boys outside Deleig police station *above*.

[1989] P-0994 initially stated that '**Ali Kushayb**' arrived at the police station around 09:00 or 10:00, but subsequently clarified that he first saw '**Ali Kushayb**' at the police station soon after 07:00 (P-0994's Statement, DAR-OTP-0222-0055-R01, at 0065, para. 47; P-0994's Statement Corrections, DAR-OTP-00000268, at 000002, para. 9). P-0907 gave evidence that when he arrived at the police station, sometime between 11:00 and 13:00, he saw '**Ali Kushayb**' and his vehicle. He subsequently clarified he was arrested somewhere between 12:30 and 13:00. (P-0907: T-094, p. 32-34; T-096, pp. 11-12, 46). P-0905 gave evidence that he travelled to Deleig from Garsila with five SAF vehicles, and two of Hassaballah's vehicles; three of **Ali Kushayb's** vehicles and three other vehicles. He noted that when he arrived at the police station after 13:00, he saw **Ali Kushayb's** vehicle under a tree (P-0905: T-086, pp. 39-40, 43-45, *referring to* Satellite Image, DAR-OTP-00000260-R01); T-088, pp. 81-82. P-0736 gave evidence that he saw '**Ali Kushayb**' arrive at a football field next to Deleig police station in the morning (P-0736's Statement, DAR-OTP-0210-0248-R02, at 0261-0263, paras 53, 56-57). P-0718's evidence also supports the evidence of P-0994, P-0907, P-0905 and P-0736 that **the Accused** was present at Deleig police station during the operation (P-0718's Statement, DAR-OTP-0209-2004-R02, at 2014, para. 67). Noting the circumstances and the passage of time since the events, the Chamber is satisfied that discrepancies in witnesses' recollections of the clothing worn by **the Accused** on 5 March 2004 are understandable and have little bearing on the Chamber's conclusions regarding his presence and actions at Deleig police station. *See for example* P-0907: T-096, pp. 20-21; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0022-0023, 0029, paras 26, 48; P-0994's Statement, DAR-OTP-0220-0055-R01, at 0065, para. 47. *Contra* Defence's Final Brief, para. 579. Equally, the Chamber is satisfied that nothing significant turns upon variations in the witnesses' description of the long handled stick and/or axe-like object carried by **the Accused** that day. *See for example* P-0907: T-094, pp. 36-38; T-095,

station.[1990]

607. **The Accused** commanded the *Janjaweed* at Deleig police station that day.[1991] Others present at the police station included Abd-Al-Mun'im, Muqaddam Idriss and Hassaballah.[1992] Following his arrival at the police station, **the Accused** patrolled the area around the prone detainees, talking to them.[1993] P-0905 overheard **the Accused** saying words to the effect, 'You escaped from Arawala and then you came here […] even if you fly to the sky I will get you'.[1994]

iii. Mistreatment of Fur men and boys outside Deleig police station

608. It was a hot day and the detainees were forced to lie on the ground in the sun for several hours.[1995] The detainees received no food or water and were denied all requests, including access to a toilet.[1996] When P-0584 asked a guard for water, he responded that there was no water for them because they were like 'insects',[1997] and when P-0584 requested to go to the toilet, he was told to urinate on himself.[1998] P-0584 subsequently asked a guard if he could perform the prayer, but was told, '[n]o, you are going to pray in a completely different world today'.[1999]

609. While the detainees were lying on the ground, the *Janjaweed* walked on their backs,[2000]

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p. 35; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0065, para. 47; P-0905: T-086, p. 48, *referring to* P-0905's Sketch, DAR-OTP-00000264. *See also* P-0883: T-072, pp. 26-28, *referring to* P-0883's Sketch, DAR-OTP-0219-5828; P-0643: T-057, pp. 39-43, *referring to* P-0643's Sketch, DAR-OTP-0218-0651; P-0643's Video, DAR-OTP-0220-5453; P-0935: T-090, pp. 18-19. *Contra* Defence's Final Brief, paras 597, 601.

[1990] P-0907: T-094, pp. 33-34; T-096, pp. 16-17; P-0905: T-086, pp. 43-45, *referring to* Satellite Image, DAR-OTP-00000260-R01. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0065, para. 47; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742-0743, para. 30 (admitted excerpts only); P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, para. 40; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0254-0255, para. 28.

[1991] P-0907: T-096, pp. 34-37, 47; P-0994's Statement, DAR-OTP-0222-0055, at 0066, para. 51; P-0994's Statement Corrections, DAR-OTP-00000268, at 000002, para. 12. *See* fn. 1912 *above*. The Chamber is satisfied that Lt Hamdi's role does not derogate from the authority of **the Accused**. *Contra* Defence's Final Brief, para. 583.

[1992] P-0905: T-086, pp. 46-47. *See also* P-0643: T-059, p. 11; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, 0069, paras 28, 68; P-0994's Statement Corrections, DAR-OTP-00000268, at 000001, para. 4; P-0907: T-096, p. 35.

[1993] P-0905: T-086, p. 45.

[1994] P-0905: T-086, p. 45.

[1995] P-0905: T-086, pp. 44-45; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1566, para. 97; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, para. 75; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, para. 28; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 38.

[1996] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 38; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 102; P-0907: T-096, p. 20.

[1997] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 102; P-0584's Statement Corrections, DAR-OTP-00000419, at 000003, para. 27; P-0584: T-092, pp. 38-40.

[1998] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 102; P-0584: T-092, pp. 38, 40.

[1999] P-0584: T-092, pp. 38-39.

[2000] P-0907: T-094, p. 35; T-096, pp. 17, 22, 31; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063,

stamped on them,[2001] and hit them with fists, whips and sticks.[2002] The *Janjaweed* 'had no mercy',[2003] and if they saw the detainees lifting their heads or looking around, they would hit them or stamp on their heads.[2004] When P-0907 raised his head, a member of the *Janjaweed* beat him in the back with a stick, which he held with both hands as if he was ploughing the land.[2005] One 'army soldier' referred to a Fur detainee, Abdallah Mussa, known as Mulenqwe ('Mulenqwe'), as '*tora bora*' and then stabbed him in the eye with a bayonet.[2006]

610. **The Accused** stepped on the detainees lying on the ground with his shoes[2007] and struck them with his stick-like object.[2008] P-0907 gave evidence that **the Accused** walked on his back and the backs of other detainees 'as if he was walking on trees'.[2009]

iv. Killings of detainees at Deleig police station

Killing of Jenif

611. Sometime later that day, **the Accused** stood at the entrance of the detention room inside the police station where Jenif was held.[2010] Abd-Al-Mun'im, Muqaddam Idriss and Hassaballah were also present. **The Accused** asked Jenif where he took the PDF's ammunition

paras 36, 39; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131-0132, paras 71, 75. *See also* P-0736's Statement, DAR-OTP-0210-0248-R02, at 0267, para. 72.

[2001] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 38. *See also* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45.

[2002] P-0907: T-096, p. 20; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, paras 27-28, 37 (admitted excerpts only); P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, 0067, paras 38-39, 55. *See also* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 45; P-0955: T-064, p. 12; P0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46-47, 49; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 55.

[2003] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 38.

[2004] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0063, para. 38. *See also* P-0718: T-049, p. 68.

[2005] P-0907: T-096, pp. 20, 24. *See also* P-0907: T-095, p. 9.

[2006] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 101; P-0584's Statement Corrections, DAR-OTP-00000419, at 000002-000003, para. 26. *See also* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, para. 79.

[2007] P-0907: T-094, pp. 34-35; T-095, p. 52; T-096, pp. 17, 22, 31-32.

[2008] P-0907: T-095, p. 35. *See* paras 611-612 *below*.

[2009] P-0907: T-096, pp. 31-32.

[2010] Witness accounts of the precise circumstances of Jenif's arrival at Deleig police station differ. Irrespective of these discrepancies, the Chamber is satisfied that Jenif was present at Deleig police station on 5 March 2004. P-0994 gave evidence that **the Accused** brought Jenif to the police station in the back of his Land Cruiser, accompanied by his driver, Hussein, and several guards (P-0994's Statement, DAR-OTP-0222-0055-R01, at 0065-0066, 0070, paras 47-48, 50, 72-73, *referring to* P-0994's Sketch, DAR-OTP-0222-0077, Translation, DAR-OTP-0220-1221, at 1222; P-0994's Statement Corrections, DAR-OTP-00000268, at 000002, para. 9; P-0994: T-084, pp. 61-62, 64, 66-67, *referring to* P-0994's Sketch, DAR-OTP-0222-0077, Translation, DAR-OTP-0220-1221). P-0907 gave evidence that Jenif walked through the eastern gate of the police station 'totally free' (P-0907: T-096, pp. 25-29. *See also* P-0907: T-094, pp. 34-35).

and weapons.[2011] Jenif responded that he did not take any ammunition or weapons, stating that everything was still in the storeroom of the municipality. Hassaballah told **the Accused** that Jenif took the weapons and ammunition and gave them to the *tora bora* in Arawala.[2012] Then, according to P-0905, **the Accused** said to Jenif words to the effect of: 'You're a liar. You didn't leave a single shot or a single weapon in the storeroom. You took everything in a vehicle to them. And Hassaballah is a witness. And then you escaped from there, you escaped to […] Arawala'.[2013] **The Accused** told the first sergeant of the Deleig police station to get Jenif out of the detention room. The first sergeant opened the cell and when Jenif came out, **the Accused** hit him with his axe three times on the side of his head.[2014] P-0905 recalled that as he did so, **the Accused** stated: 'I'm not going to even spend one single shot on you because shots are expensive, we pay money for it. So all what I'm going to use is this axe'.[2015] Jenif fell to the ground, bleeding very heavily from his nose, mouth and the wounds on his head. Jenif died some 10 minutes later.[2016] **The Accused** then told the first sergeant to lift him up and throw him outside.[2017]

Killing of Adam Adam Abd-Al-Rahman ('*Sheikh* Motor')

612. Sometime after 13:00, Adam Adam Abd-Al-Rahman, the *sheikh* of Massa, also known as '*Sheikh* Motor', was brought to the police station with a group of about six or seven people.[2018] P-0907 recalled how **the Accused** asked *Sheikh* Motor who he was, to which he replied, 'I am a *sheikh*.'[2019] **The Accused** responded with words to the effect of, '[y]ou are a very fat person. You must have eaten people's money or taken people's money'.[2020] **The Accused** then struck *Sheikh* Motor in the head with the same axe he had used to hit Jenif,

[2011] P-0905: T-086, pp. 46-47. *See also* P-0643: T-059, p. 11; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, 0069, paras 28, 68; P-0994's Statement Corrections, DAR-OTP-00000268, at 000001, para. 4.
[2012] P-0905: T-086, p. 46.
[2013] P-0905: T-086, p. 47.
[2014] P-0905: T-086, pp. 45, 47-48, *referring to* P-0905's Sketch, DAR-OTP-00000264.
[2015] P-0905: T-086, p. 47.
[2016] P-0905: T-086, pp. 47, 49.
[2017] P-0905: T-086, p. 49.
[2018] P-0907: T-094, pp. 32, 38; T-096, pp. 11-12, 20, 22, 25, 27; P-0584's Statement Corrections, DAR-OTP-00000419, at 000003, para. 29; P-0584: T-092, p. 64.
[2019] P-0907: T-096, pp. 22, 24, 29. *See also* P-0584's Statement, DAR-OTP-0200-1540-R02, at 1568, para. 106. The Chamber notes that it does not consider P-0584's identification of **the Accused** at Deleig police station to be sufficiently credible and reliable, *see* the Chamber's assessment of P-0584's evidence, Annex B, Section I.A.13. The Chamber is nonetheless satisfied that P-0584 observed a man interacting with, and striking *Sheikh* Motor. The Chamber, therefore, relies upon P-0584's evidence to the extent that it supports the finding that *Sheikh* Motor was struck. As to the identity of the man who struck *Sheikh* Motor, the Chamber relies solely upon the evidence of P-0907.
[2020] P-0907: T-096, p. 27.

causing *Sheikh* Motor to fall to the ground.[2021] *Sheikh* Motor lay on the ground making 'a noise like someone who had been electrocuted', before falling silent.[2022] **The Accused** instructed his men from the *Janjaweed* to throw *Sheikh* Motor in the back of a vehicle.[2023] Four members of the *Janjaweed* lifted *Sheikh* Motor's motionless body by the hands and legs and threw him in the back of a vehicle.[2024] *Sheikh* Motor died as a result of being struck by **the Accused**.[2025] Mohamed Issa Yusef and Abdelmawla Musa Abdullah were on the same vehicle, which transported the men to the execution site near Koska.[2026]

v. Questioning and release from Deleig police station of some Fur men and boys

613. Throughout the course of the afternoon, a number of detainees were released from the area outside Deleig police station.[2027] While detained on the ground, some detainees were questioned, seemingly randomly, in Arabic, about who they were, where they were from and what they did.[2028] Some stated they were students and were permitted to leave.[2029] Another group of detainees, including P-0607, was told – without explanation – to stand up, turn to face the village, and leave the immediate area quickly, without looking back.[2030]

614. Some detainees were released following the intervention of the *Janjaweed*, police and *umdahs* who recognised them. P-0907 gave evidence that the *Janjaweed* called certain people they knew, and that the *Janjaweed* suggested that they select and release people who had money, hoping to obtain money from them.[2031] P-0907 subsequently heard that *Umdah* Adam Ismail

[2021] P-0907: T-094, pp. 38-39; T-096, p. 27. *See also* P-0584's Statement, DAR-OTP-0200-1540-R02, at 1569, para. 107; P-0584: T-092, p. 62.
[2022] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1569, para. 107; P-0484's Statement Corrections, DAR-OTP-00000419, at 000003, para. 30.
[2023] P-0907: T-094, p. 39. *See also* P-0584's Statement, DAR-OTP-0200-1540-R02, at 1569, para. 107; P-0584: T-092, pp. 62-63.
[2024] P-0907: T-094, pp. 38-39. *See also* P-0584's Statement, DAR-OTP-0200-1540-R02, at 1569, para. 107; P-0584: T-092, p. 63.
[2025] The Chamber notes that onlookers were not sure if *Sheikh* Motor was alive or dead at this point (P-0584's Statement, DAR-OTP-0200-1540-R02, at 1569, para. 107). Considering the relevant circumstances, particularly that (i) he was struck on the head; (ii) with an axe; (iii) that he collapsed to the floor; and (iv) exhibited no signs of movement or responsiveness, the Chamber is satisfied that the only reasonable conclusion is that, if not already dead when he was put in the vehicle, *Sheikh* Motor's death occurred thereafter as a direct result of the head injury he suffered.
[2026] P-0907: T-094, p. 54, *referring to* P-0907's List of persons killed in Deleig, DAR-OTP-00000431, at 000001.
[2027] *See for example* P-0907: T-094, pp. 39-40.
[2028] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179, para. 52. *See also* P-0712's Statement, DAR-OTP-0209-1884-R04, at 1895, para. 40; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0267, para. 72; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 57.
[2029] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179, para. 52.
[2030] P-0607's Statement, DAR-OTP-0203-0164-R02, at 0180, para. 56. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 57.
[2031] P-0907: T-094, pp. 39-40. *See also* P-0907: T-096, pp. 11-12.

also negotiated with the *Janjaweed* for the release of some children.[2032] This is consistent with the account given to P-0712 by his classmate, who reported that at the police station, the *Janjaweed* ordered '*Umdah* Adam' to identify P-0712's classmate. *Umdah* Adam, in addition to a Fur police officer, Abdelkarim Issa, confirmed P-0712's classmate was from Deleig, after which he was released.[2033]

615. P-0994 gave evidence that he recognised some detainees being held outside the police station and managed to secure their release.[2034] He explained to various *Janjaweed* members – unofficially – that he knew these detainees very well and that they were innocent people who lived in his neighbourhood in Deleig and had never committed any crimes.[2035] According to P-0994, if the *Janjaweed* agreed to the release of a detainee, P-0994 looked around and then told the detainee to run away.[2036] P-0994 could not recall the names of all the released persons, but referred to two men by their first names, Adam and Badreddine, and two men nicknamed 'Soor' and 'Mo'alem'.[2037]

616. P-0584 gave evidence that, while lying on the ground, he pleaded with a policeman wearing a dark blue uniform to release him because he had been in the wrong area at the wrong time.[2038] The policeman asked P-0584 where he was from and he lied, saying he was from Beige.[2039] P-0584 was taken to an office in the police station, where he was questioned about his identity and village.[2040] A man in civilian clothes checked what appeared to be a handwritten register in a book[2041] but, as the name P-0584 had provided was apparently not listed, he was released.[2042] P-0584 stated that after his release, about 200 metres from the police station, he was confronted by the *Janjaweed*, who accused him of being from the '*tora bora*' and beat him.[2043] Although he explained he had just been released, they arrested him again and took him back to the area outside the police station, where he was again ordered to lie on his

[2032] P-0907: T-096, p. 33.
[2033] P-0712's Statement, DAR-OTP-0209-1884-R04, at 1886-1887, 1891, 1895-1896, paras 11, 14, 28, 40-41. *See also* P-0129's Statement, DAR-OTP-0128-0128-R04, at 0151, para. 85.
[2034] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0066, para. 52.
[2035] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0066, paras 52-53; P-0994: T-084, pp. 57-61.
[2036] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0066, para. 52; P-0994: T-084, pp. 59-60.
[2037] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0066, para. 53.
[2038] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1566, para. 98; P-0584: T-092, p. 39.
[2039] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1566, para. 98
[2040] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 99; P-0584: T-092, pp. 42-43.
[2041] Although P-0584 could not see the book closely and was not sure of its precise contents, he believed it was handwritten and consisted of approximately three pages. He presumed it was a register. P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 99; P-0584: T-092, pp. 40-42.
[2042] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 100; P-0584: T-092, p. 43.
[2043] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 100; P-0584: T-092, p. 43.

stomach, face down.[2044] P-0584 gave evidence that '[t]hey dealt with us as insects. They did not have any respect for us'.[2045]

vi. Loading of detainees onto vehicles at Deleig police station

617. Sometime between 16:00 and 17:00,[2046] **the Accused** was in the open area outside the police station where the detainees remained lying on the ground.[2047] P-0905 recalled that **the Accused** instructed 'his men' to load the detainees onto awaiting Land Cruisers.[2048] *Janjaweed* and GoS Forces shoved the detainees forcefully onto the open backs of at least two Land Cruisers,[2049] without questioning them, while beating the detainees with anything they had, such as their boots, whips and wooden sticks.[2050] Some of the detainees climbed into the vehicles themselves, while others were picked up by two members of the *Janjaweed* by the feet and head and thrown into the back of the vehicles, 'like bags of grain'.[2051] The detainees were packed tightly in the open backs of the vehicles. Some detainees were seated,[2052] while others were forced to lie on their fronts on top of one another.[2053] **The Accused** supervised the process, counting the number of men being loaded onto the vehicles until the capacity of each vehicle

[2044] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1567, para. 100; P-0584: T-092, pp. 43-44.
[2045] P-0584: T-092, pp. 43-45.
[2046] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 55; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, paras 75-76; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1525-1526, para. 84 (admitted excerpts only); P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46, 50. *See also* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0117, para. 48.
[2047] P-0905: T-086, p. 49.
[2048] P-0905: T-086, p. 49; P-0907: T-094, pp. 37, 40-41; T-096, pp. 36, 47; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, 0066-0067, paras 28, 51, 55-56, 58; P-0994's Statement Corrections, DAR-OTP-00000268, at 000002, para. 12; P-0994: T-084, p. 9, *referring to* Photograph, DAR-OTP-0071-0581; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743, para. 33 (admitted excerpts only). *See also* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0129, 0132, paras 53, 76, *referring to* Colour Chart, DAR-OTP-0210-0139; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1525-1526, para. 84 (admitted excerpts only). That P-0584 also made reference in his witness statement to a man in 'civilian clothes' issuing orders for the detainees to be placed on the trucks does not undermine the Chamber's conclusion, based upon other credible and reliable evidence, that **the Accused** issued such orders, particularly noting that P-0584 gave a contradictory account during his testimony (*see* P-0584's Statement, DAR-OTP-0200-1540-R02, at 1569, para. 108; P-0584: T-092, pp. 16-17, 44-45, 68). *Contra* Defence's Final Brief, paras 602, 606.
[2049] P-0907: T-094, pp. 40, 42; P-0905: T-086, pp. 49-50; P-0584: T-092, pp. 52-53; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, paras 55-56; P-0994: T-084, p. 9, *referring to* Photograph, DAR-OTP-0071-0581; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179, para. 53; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743, paras 33-35 (admitted excerpts only). *See also* P-0905: T-086, p. 49; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0129, 0132, paras 53, 76, *referring to* Colour Chart, DAR-OTP-0210-0139; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1525-1526, para. 84 (admitted excerpts only); P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, paras 45-46.
[2050] P-0905: T-086, pp. 49-50; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 55.
[2051] P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131-0132, paras 73, 75-76.
[2052] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1570, para. 111.
[2053] P-0905: T-086, p. 50; P-0994: T-084, p. 9, *referring to* Photograph, DAR-OTP-0071-0581; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743, para. 33 (admitted excerpts only).

was reached.[2054]

618. Children as young as 13 or 14 years old were among those loaded onto the vehicles.[2055] P-0907 recognised the son of Issa Harun, who was around 13 or 14 years old, being loaded onto the first vehicle. When Issa Harun protested and demanded that **the Accused** release his son, he refused. P-0907 recalled that Issa Harun then responded with words to the effect, 'I will go wherever you take my son', so **the Accused** told him to get onto the vehicle.[2056] Both Issa Harun and his son were subsequently taken to an execution site and were killed.[2057]

619. Each vehicle had a driver, one of whom P-0994 identified as **the Accused's** driver, Hussein, and between two to six armed men, who served as guards.[2058] Most of the guards were in uniform, but some wore civilian clothes and some kind of head cover.[2059] When the vehicles were loaded to capacity, with 20 to 30 detainees each,[2060] they departed from the police station.[2061] Within approximately one hour,[2062] the vehicles returned to the police station, empty but for *Janjaweed* and GoS Forces, to collect more detainees.[2063] At least four groups of detainees were transported from the police station over the course of the afternoon of 5 March 2004.[2064] The last batch of detainees was transported from the police station before sunset.[2065]

[2054] P-0907: T-094, p. 40; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0066-0067, paras 51, 56.
[2055] P-0907: T-095, pp. 8-9; T-096, p. 38.
[2056] P-0907: T-094, pp. 42-44; T-095, p. 9.
[2057] P-0907: T-094, pp. 42-44; T-095, pp. 8-9.
[2058] P-0907: T-094, pp. 46, 49; P-0584: T-092, p. 53; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1570-1571, paras 113-114; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0061, 0067-0068, paras 29, 55-56, 62; P-0994's Statement Corrections, DAR-OTP-00000268, at 000001-000002, para. 5; P-0994: T-084, pp. 44-46. *See also* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, para. 76; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46, 50.
[2059] P-0907: T-094, p. 49.
[2060] P-0907: T-094, p. 45; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1570, para. 111; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, paras 56-57; P-0994: T-084, pp. 9, 11; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1525-1526, para. 84 (admitted excerpts only). *See also* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 46; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743, para. 33 (admitted excerpts only); P-0905: T-086, pp. 50-51.
[2061] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 57; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179, para. 53.
[2062] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 56; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179-0180, para. 54. *See also* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, para. 76.
[2063] P-0907: T-094, pp. 40-41; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179-0180, paras 54-55; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743, para. 33 (admitted excerpts only); P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028, 0030, paras 46, 52; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, paras 45-46.
[2064] P-0907: T-094, pp. 42-43; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, paras 56-57; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179-0180, paras 54-55. *See also* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131-0132, paras 73, 75-76. *Contra* Defence's Final Brief, para. 607.
[2065] P-0617's Statement, DAR-OTP-0202-1496-R02, at 1527, para. 86.

Not all detainees being held outside the police station were loaded onto the vehicles,[2066] as there were too many detainees and too few vehicles.[2067]

620. While P-0907 and P-0994 heard **the Accused** issue instructions for the detainees to be taken to Garsila,[2068] the vehicles departed the police station in different directions, transporting the detainees to several locations outside Deleig, where they were killed.[2069] The sequence of events by which the detainees were removed from the police station and executed is not entirely clear. P-0907 observed that sometimes **the Accused** was having 'side conversations secretly'[2070] with his men, while P-0994 surmised that the reference to Garsila was a 'passcode'.[2071]

621. **The Accused** was present at the police station for much of the afternoon. However, on one or two occasions, he left the police station in one of the vehicles which was part of the first or second sets of transport of detainees to the execution sites.[2072]

e) Summary executions of detainees outside Deleig on 5 March 2004

i. North-west of Deleig, near Fere

622. In this section, the Chamber primarily relies on the evidence of P-0905, who observed the events from a proximate position.[2073] The Chamber also relies upon the evidence of

[2066] As noted *above*, some detainees were released during the course of the afternoon. *See* Section 5.III.C.d.v. Questioning and release from Deleig police station of some Fur men and boys *above*.
[2067] P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46, 50; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743, para. 34 (admitted excerpts only). The Chamber notes P-0905's evidence that *all* detainees outside of the police station were loaded onto the vehicles (*see* P-0905: T-086, p. 52), but prefers the evidence of P-0651 and P-0973 over that of P-0905 on this discrete point.
[2068] P-0907: T-094, pp. 37, 41, 46; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 58. *See also* P-0617's Statement, DAR-OTP-0202-1496-R02, at 1525-1526, para. 84 (admitted excerpts only).
[2069] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, paras 57-58; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743, para. 33 (admitted excerpts only); P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46, 50; P-0907: T-094, p. 40; P-0584: T-092, p. 53. *See also* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 46; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1525-1526, para. 84 (admitted excerpts only). *See* Sections 5.C.e. Summary executions of detainees outside Deleig on 5 March 2004 and 5.C.g. Execution of community leaders and other detainees near Fere around 7 March 2004 *below*.
[2070] P-0907: T-094, p. 41.
[2071] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 58.
[2072] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0068, para. 62. *See also* Section 5.III.C.e.i. North-west of Deleig, near Fere *below*.
[2073] *See* the Chamber's assessment of P-0905, Annex B, I.A.32. While the Prosecution also seeks to rely upon the evidence of P-0883, who received a verbal account of mass killings near the *khors* of Soja from someone who said he had witnessed them (*see* Prosecution's Final Brief, paras 568-570), the Chamber recalls its conclusion that P-0883's evidence could not be relied upon in this regard. *See* the Chamber's assessment of P-0883, Annex B, I.A.29.

P-0935,[2074] who received second hand accounts of the Deleig Operation.[2075] Additionally, the Chamber relies on the evidence of P-0651, P-0671, P-0712, and P-0994, who gave evidence on the aftermath of the operation.[2076]

623. In the afternoon of 5 March 2004, a convoy of approximately 13 Land Cruisers departed from the police station, collectively carrying at least 70 to 80 detainees.[2077] The convoy travelled in a north-westerly direction, taking the road towards Zalingei to exit Deleig.[2078] It crossed the *wadi* (valley) of Deleig and then continued in a westerly direction. The convoy stopped not far from the main road of Deleig-Zalingei, close to the *wadi* of Deleig, in a location identified by **the Accused**.[2079] In addition to **the Accused**, Muqaddam Idriss, Abd-Al-Mun'im, P-0905, Hassaballah, and members of the *Janjaweed* and GoS Forces were among those present at this location.[2080]

624. **The Accused** issued instructions for the detainees to be taken off the vehicles.[2081] The detainees were then made to lie on their stomachs on the ground in a line.[2082] Adopting military language, **the Accused** issued instructions for 'the convoy' to 'execute the instructions', which P-0905 understood to mean shoot at the detainees.[2083] Using Kalashnikovs and one Goryunov machine gun, members of the convoy shot dead all of the detainees present.[2084] Following the killings, the bodies were left on the ground.[2085] Members of the *Janjaweed* and the SAF participated in the killings.[2086]

625. Around 6 March 2004, villagers discovered bodies at a site north-west of Deleig 'near

[2074] *See* the Chamber's assessment of P-0935, Annex B, I.A.42.
[2075] The Chamber recalls its conclusion that P-0883's evidence on the killings outside Deleig, as recounted to him by Maigari, is not reliable. *See* the Chamber's assessment of P-0883, Annex B, I.A.29. *Contra* Prosecution's Final Brief, paras 568-570.
[2076] *See* the Chamber's assessment of P-0651, P-0671, P-0712 and P-0994, Annex B, I.A.16, I.A.17, I.A.19 and I.A.48.
[2077] P-0905: T-086, pp. 50-51.
[2078] P-0905: T-086, p. 51, *referring to* P-0905's Satellite Image, DAR-OTP-00000262-R01. *See also* P-0935: T-090, pp. 83-84.
[2079] P-0905: T-086, pp. 51-54, *referring* to P-0905's Satellite Images, DAR-OTP-00000262-R01; DAR-OTP-00000261-R01, marking the location north-west of Deleig, between Fere and Taringa. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067-0068, paras 57, 61; P-0994: T-084, p. 85; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0032, para. 60; P-0651: T-034, p. 32; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0119, para. 57; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1897, para. 50.
[2080] P-0905: T-086, pp. 56-57. *See also* P-0643: T-058, pp. 36-37.
[2081] P-0905: T-086, pp. 54-55, 58.
[2082] P-0905: T-086, pp. 54-55.
[2083] P-0905: T-086, pp. 54-56.
[2084] P-0905: T-086, pp. 54-57. *See also* P-0935: T-090, pp. 83-84.
[2085] P-0905: T-086, p. 58.
[2086] *See* the Chamber's assessment of P-0905's evidence, Annex B, Section I.A.32. *See also* HRW Report, DAR-OTP-0003-0099, at 0122-0123.

Fere' and buried them in a mass grave. Recalling the approximate location of the site P-0905 marked on the satellite image, not far from Fere, the Chamber is satisfied that the location described by the villagers is the same execution site.[2087]

ii. South of Deleig, in the area of Koska

626. In this section, the Chamber principally relies on the evidence of P-0584 and P-0907, both of whom, from their respective proximate positions, closely observed the events.[2088] The Chamber also relies on the evidence of P-0725, who saw a survivor of the killings when the latter returned to Deleig, in addition to P-0651 and P-0671, who observed corpses at the execution site in the days following the killings.[2089]

627. Between 16:00 and 17:00,[2090] at least two vehicles transported at least 40 to 45 detainees from Deleig police station towards Koska.[2091] Koska is an area located between two mountains, approximately two kilometres south-west of Deleig, on the road to Garsila.[2092] *Janjaweed* and GoS Forces guarding the detainees on the vehicles hit the detainees during the journey.[2093] One of the detainees managed to escape during the journey by jumping from the vehicle in which he was being transported, evading gunshots from the guards as he fled and

[2087] P-0651's Statement, DAR-OTP-0205-0015-R02, at 0032, para. 60; P-0651: T-034, pp. 32-35; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0119, para. 57. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067-0068, paras 57, 61; P-0994: T-084, p. 85; P-0697's Statement, DAR-OTP-0209-0155-R03, at 0169, paras 60-61; P-0967's Statement Corrections, DAR-OTP-00000490, at 000002, paras 10-11; P-0967: T-101, pp. 21-22. *See* fn. 2079 *above*.
[2088] *See* the Chamber's assessment of the evidence of P-0584 and P-0907, Annex B, Sections I.A.13 and I.A.33.
[2089] *See* the Chamber's assessment of the evidence of P-0651, P-0671, and P-0725, Annex B, Sections I.A.16, I.A.17 and II.A.16.
[2090] P-0907: T-096, p. 38. The Chamber notes that this timeframe is consistent with P-0907's subsequent evidence that the shooting ceased around 17:35. *See* P-0907: T-094, p. 51.
[2091] Both P-0907 and P-0584 gave evidence that two vehicles travelled towards the execution site. Given the witnesses' descriptions of the execution site and that they both gave evidence that they found Mulenqwe at the site, the Chamber is satisfied that P-0907 and P-0584 were on vehicles that travelled towards the same execution site. P-0907 stated that were about 26 detainees in his vehicle, while P-0584 indicated there were approximately 30 people in his vehicle. P-0584 subsequently identified approximately 40 bodies at the execution site: P-0907: T-094, pp. 42, 45; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1570-1571, 1573, paras 111-112, 114, 123; P-0584: T-092, p. 53. Other witness evidence suggests approximately 40 to 42 bodies were found at the Koska execution site, *see* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, para. 52; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031-0032, paras 56-59; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, paras 51-52.
[2092] P-0907: T-094, pp. 46-47, *referring to* P-0907's Sketch, DAR-OTP-0220-0686, Translation, DAR-OTP-0220-0803, at 0804; T-096, p. 52, *referring to* Satellite Image, DAR-OTP-0220-4767; P-0907's Annotated Satellite Image, DAR-REG-0001-0017; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1570, paras 111-112; P-0584: T-092, pp. 52-53; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067-0068, paras 57-58, 61. *See further* P-0994: T-084, p. 85; P-0671: T-098, pp. 74-75, *referring to* P-0671's Statement, DAR-OTP-0206-0105, at 0118-0119, paras 51-56; Satellite Image, DAR-OTP-00000463. *See also* paras 632-634 *below*.
[2093] P-0907 gave evidence that the guards were hitting and torturing the detainees until they arrived in the valley of Koska, *see* T-094, p. 48. While the Chamber accepts that the guards hit the detainees during the journey, in the absence of further details, it is unable to conclude that the detainees were tortured at this time.

sought cover in a tree.[2094]

628. In the valley of Koska, the vehicles drove through grass[2095] and stopped in an area where there were many short trees[2096] near the mountain of Koska.[2097] *Janjaweed* and GoS Forces[2098] removed the detainees from the vehicles one by one[2099] and told them to lie on their stomachs on the ground.[2100] The *Janjaweed* and GoS Forces threatened to kill the detainees if they did not tell them about people carrying weapons. The detainees responded that they did not see or hear of anyone carrying weapons.[2101] Surrounding the prone detainees, from a distance of approximately five steps away, the *Janjaweed* and GoS Forces started shooting the detainees, then stopped, then resumed shooting.[2102] Most of the detainees were shot in the head and shoulder, while at least two were shot in the abdomen area.[2103] After the shooting had ceased, the *Janjaweed* and GoS Forces started smoking and chatting.[2104] They checked that the detainees were dead, shooting those who were not.[2105] The vehicles, empty, but for the guards, subsequently returned along the same road.[2106]

629. One man, who was covered with the body and blood of another detainee, survived the shooting uninjured, and two other men, Adam Ahmad Abakar Musa ('Abakar Musa') and Mulenqwe, survived the execution, but were gravely injured.[2107] It appeared as though

[2094] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1570-1571, para. 113; P-0584: T-092, pp. 53-54.
[2095] P-0907: T-094, p. 48.
[2096] P-0907: T-096, p. 52, *referring to* Satellite Image, DAR-OTP-0220-4767; P-0907's Annotated Satellite image, DAR-REG-0001-0017. *See also* P-0671: T-098, pp. 75-76, *referring to* Satellite Image, DAR-OTP-00000463.
[2097] P-0907: T-096, para. 38. *See also* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, paras 51-52; P-0671: T-098, pp. 74-75, *referring to* P-0671's Statement, DAR-OTP-0206-0105, at 0118-0119, paras 51-56; Satellite image, DAR-OTP-00000463; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031, paras 56-57. *See also* paras 632-634 *below*.
[2098] P-0907: T-094, p. 49.
[2099] P-0907: T-094, p. 48.
[2100] P-0907: T-094, p. 50. *See also* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, para. 53; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0152, para. 89.
[2101] P-0907: T-094, p. 50.
[2102] P-0907: T-094, pp. 47, 50-51, *referring to* P-0907's Sketch, DAR-OTP-0220-0686, Translation, DAR-OTP-0220-0803, at 0804; T-096, pp. 40-41. *See also* P-0129's Statement, DAR-OTP-0128-0128-R04, at 0152, para. 89; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0366, para. 72; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0133, para. 86.
[2103] P-0907: T-094, pp. 50-52. *See also* P-0584's Statement, DAR-OTP-0200-1540-R02, at 1572-1573, paras 121, 123; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, para. 53; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031, paras 56-58.
[2104] P-0907: T-094, p. 51; T-096, pp. 40-41.
[2105] P-0907: T-094, p. 51; T-096, pp. 40-41.
[2106] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1571, para. 114.
[2107] P-0907: T-094, pp. 52-53. *See also* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, para. 79. *See further*, P-0907: T-094, p. 51; T-096, pp. 40-41. Following the incident, P-0907 shared his story with other members of his community, *see* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0133-0134, paras 87-88, 90-91; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0152, para. 88; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1897, para. 46; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0366, paras 70-72.

everyone else was dead.[2108]

630. After nightfall, *en route* to Deleig, two groups of bodies were found along the side of the road.[2109] There was a first group of 13 bodies and a second group of bodies, not far from the first.[2110] The victims were wearing *jallabiyas*, which were white in colour.[2111]

631. Later that evening, at the execution site near Koska, Mulenqwe was found alive but gravely injured.[2112] Mulenqwe returned to Deleig.[2113] After the sunset prayer, but before midnight that night, Mulenqwe entered a small mosque in Deleig, about twenty minutes' walk from the Ansar Mosque.[2114] Mulenqwe was in a terrible condition. He had what appeared to be a gunshot wound to his temple and a hole through his eye socket, which was bleeding heavily. His right hand was missing three fingers. Mulenqwe told those gathered at the mosque that everyone who had been taken away from Deleig had been killed. Mulenqwe died later that night.[2115]

632. Within the next few days, villagers from Deleig, including P-0651 and P-0671, came across an execution site about thirty minutes' walk south of Deleig, near Tolda mountain.[2116]

633. At the execution site, the villagers found at least 40 to 42 male bodies, in civilian clothes,

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[2108] P-0907: T-094, p. 52.
[2109] P-0907: T-094, pp. 52, 54.
[2110] P-0907: T-094, pp. 54-55.
[2111] P-0907: T-094, p. 54.
[2112] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1572-1573, paras 121-123.
[2113] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1573, para. 124.
[2114] P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, paras 77-78. *See also* P-0643: T-057, p. 58; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1526, para. 85; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0366-0367, paras 73-74; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0795, paras 21-22; P-0907: T-094, pp. 53, 56-57.
[2115] P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132-0134, paras 78-80, 82, 92. *See also* P-0643: T-057, p. 58; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0366-0367, para. 74; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0795, para. 22; P-0907: T-094, p. 53; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1526, para. 85.
[2116] P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031, paras 56-58; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, paras 51-53. *See also* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 48, *referring to* P-0955's Sketch, DAR-OTP-0220-0644, at 0645, Translation, DAR-OTP-0220-0800, at 0802; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0067, para. 58; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0365, para. 69. The Chamber notes that the description of the location provided by these witnesses, and the location marked on the satellite map by P-0671, largely corresponds with P-0907's evidence and the location he marked on the satellite map, *see* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, paras 51-52; P-0671: T-098, pp. 74-75, *referring to* P-0671's Statement, DAR-OTP-0206-0105, at 0118-0119, paras 51-56; Satellite Image, DAR-OTP-00000463; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031, paras 56-57. *See also* P-0907: T-094, pp. 46-47, *referring to* P-0907's Sketch, DAR-OTP-0220-0686, Translation, DAR-OTP-0220-0803, at 0804; T-096, p. 52, *referring to* Satellite Image, DAR-OTP-0220-4767; P-0907's Annotated Satellite Image, DAR-REG-0001-0017.

in a *khor*.[2117] Most of the bodies were lying face down, in a row, but some were twisted on their sides and backs. The bodies bore gunshot wounds to the head and back and were surrounded by a large amount of dried blood. There was a strong smell in the area.[2118] Some of the bodies had their hands tied behind their backs.[2119] The villagers dug graves and buried the bodies in groups of two or three.[2120]

634. In addition to Mulenqwe, Abakar Musa,[2121] Issa Harun and his son,[2122] the following victims were identified amongst those who were executed at Koska: Musa Mohamed Yahia, Mohamed Siddiq Yusef, Abu Bakar Suleiman Abakar and Zakaria Abdelmawla Abakar, both of whom were no more than 12 or 13 years old, and Mohamed Mohamed Adam.[2123] Mohamed Issa Yusef, Abdelmawla Musa Abdullah and *Sheikh* Motor were taken to the execution site in a different vehicle.[2124] P-0584 identified Omar Siddiq Abbakar Ishaq, among the victims.[2125] P-0671 identified the bodies of his father and brother at the Koska execution site, despite their swollen faces.[2126] P-0651 later learnt that Saleh-Al-Din Adam and Mohamed Adam were also among the victims.[2127]

f) Continued detention and mistreatment of detainees inside the police station and release thereof

635. As the vehicles transporting detainees from Deleig police station reached capacity, the *Janjaweed* instructed some of the remaining detainees to line up and go inside the police

[2117] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1573, para. 123; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031-0032, paras 56-59; P-0651: T-034, pp. 30-35, *referring to* P-0651's Sketch, DAR-OTP-0205-0042, at 0043, Translation, DAR-OTP-0219-1687, at 1689; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, paras 51-53. *See also* P-0907: T-094, p. 47, *referring to* P-0907's Sketch, DAR-OTP-0220-0686, Translation, DAR-OTP-0220-0803, at 0804; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0365, para. 69.
[2118] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, para. 53.
[2119] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, para. 53.
[2120] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118-0119, paras 54-56.
[2121] *See* paras 629, 631 *above*. *See also* P-0907: T-094, p. 54, *referring to* P-0907's List of persons killed in Deleig, DAR-OTP-00000431, at 000001.
[2122] P-0907: T-094, pp. 42-44; T-095, pp. 8-9.
[2123] P-0907: T-094, p. 54, *referring to* P-0907's List of persons killed in Deleig, DAR-OTP-00000431, at 000001.
[2124] P-0907: T-094, p. 54, *referring to* P-0907's List of persons killed in Deleig, DAR-OTP-00000431, at 000001.
[2125] P-0584's Statement, DAR-OTP-0200-1540-R02, at 1570-1571, 1573, paras 111, 113, 123.
[2126] P-0671's Statement, DAR-OTP-0206-0105-R02, at 0107, 0113, 0118, paras 11, 31, 53.
[2127] P-0651: T-034, p. 31; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031, para. 58. The Chamber recalls that P-0907 also identified a 'Mohamed Mohamed Adam' amongst the victims. However, noting that P-0907 indicated 'Mohamed Mohamed Adam' was from Forgo, and P-0651 was originally from Waro village and described 'Mohamed Adam' as his neighbour, the Chamber is unable to determine if P-0907 and P-0651 were describing the same victim (*see* P-0907: T-094, p. 54, *referring to* P-0907's List of persons killed in Deleig, DAR-OTP-00000431, at 000002).

station.[2128] The detainees were placed in a windowless jail cell inside the police station.[2129] The brick cell was approximately five metres wide by six metres long and was densely packed with detainees.[2130] The cell was hot and was so crowded that some detainees were lying on top of one another.[2131] Most detainees were unable to sit properly and crouched, their faces so close together that it was hard to breathe.[2132] The *Janjaweed* tried to cram more detainees into the cell, but they could not fit.[2133]

636. Amongst those detained in the police station were P-0973, *Umdah* Khamis, *Umdah* Kindiri, Hassan Adam Musa, Aboud Adam Ali and Badreddine Adam Mohammed Abdul Mula.[2134] P-0973 gave evidence that *Umdah* Jiddo Khamis preached to everyone to remain calm.[2135] P-0994 recalled that on 5 March 2004, while *Umdah* Kindiri was detained in the cell, he heard **the Accused** saying to him, '[t]his is your last day on earth, get ready for the *al-qiyamah*' (the doomsday or judgment day), which P-0994 understood to mean death.[2136]

637. While the period of detention of the detainees inside the police station varied, most were held for between one to four days.[2137] The detainees were forced to defecate where they crouched.[2138] They were denied food and water, but for some peanuts given to them by a police officer.[2139] P-0973 gave evidence that the detainees 'were treated as animals'.[2140]

638. In addition to the intolerable conditions inside the police cell, some detainees were also

[2128] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0743-07444, paras 34, 36 (admitted excerpts only); P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028-0029, paras 46, 50; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064-0065, para. 45; P-0994: T-084, pp. 52-53; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1527, para. 86.
[2129] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, para. 36; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064-0065, para. 45.
[2130] P-0973 estimated there were approximately 200 detainees held in the cell. P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, paras 36-37 (admitted excerpts only), *referring to* P-0973's Sketch, DAR-OTP-0220-0769-R01, at 0770, Translation, DAR-OTP-0219-5226-R01, at 5228. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064-0065, para. 45.
[2131] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, paras 37, 39 (admitted excerpts only).
[2132] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, para. 37 (admitted excerpts only).
[2133] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, para. 37 (admitted excerpts only).
[2134] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739-0740, 0744-0746, paras 15, 38, 41, 44 (admitted excerpts only); P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064-0065, 0072-0073, paras 45-46, 84. *See also* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0134, para. 94.
[2135] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, para. 38.
[2136] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072-0073, para. 84; P-0994: T-084, p. 13.
[2137] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744-0745, 0747, paras 39-42, 53 (admitted excerpts only); P-0617's Statement, DAR-OTP-0202-1496-R02, at 1527, para. 86.
[2138] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, para. 39.
[2139] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, para. 39 (admitted excerpts only); P-0994's Statement, DAR-OTP-0222-0055-R01, at 0064-0065, para. 45.
[2140] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744, para. 39 (admitted excerpts only).

physically mistreated. P-0973 gave evidence that he and Aboud Adam Ali were ordered to leave the cell and enter the rear of a vehicle with some armed *Janjaweed*.[2141] They were driven to an area just outside Deleig, where P-0973 had initially been detained before being brought to the police station.[2142] There, the *Janjaweed* beat P-0973 in the face and right ear, which caused bleeding and some permanent hearing issues. The *Janjaweed* also tied a metallic-type rope around his neck, pulling him with it. As they were doing this, the *Janjaweed* asked P-0973 why he was not killed like the others.[2143] Some time later, the *umdah* of Deleig, *Umdah* Adam Ismail, arrived at the location where P-0973 was being held, as he was supposed to confirm that P-0973 was from Deleig. The *Janjaweed* immediately started whipping and abusing the *umdah*, who then ran away.[2144]

639. Some 'males from the military', dressed in military uniform, subsequently instructed P-0973 and Aboud Adam Ali to stand up.[2145] There appeared to be an argument between the *Janjaweed* and the military personnel, but P-0973 could not determine what was being said.[2146] The military personnel walked P-0973 and Aboud Adam Ali back to the police station and said to the *Janjaweed* and police there that if the detainees were from Deleig, they could leave and if not they should be taken prisoner.[2147] P-0973 was returned to the police cell.[2148]

640. On Tuesday 9 March 2004, the Director of Deleig High School, 'Mr Ismail', attended the police station. P-0973, who was positioned near the cell door, overheard Mr Ismail speaking with Juma, a police officer, and a member the *Janjaweed*, and identifying P-0973 as his student. Mr Ismail provided some money to the *Janjaweed*, who then released P-0973.[2149]

[2141] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0745-0746, paras 43-44 (admitted excerpts only).
[2142] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0746, para. 47 (admitted excerpts only).
[2143] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0746-0747, para. 48.
[2144] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0746-0747, para. 48.
[2145] P-0973's statement, DAR-OTP-0220-0736-R01, at 0746-0747, para. 48.
[2146] P-0973's statement, DAR-OTP-0220-0736-R01, at 0746-0747, para. 48.
[2147] P-0973's statement, DAR-OTP-0220-0736-R01, at 0746-0747, paras 48-49.
[2148] P-0973's statement, DAR-OTP-0220-0736-R01, at 0747, para. 50.
[2149] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0747, para. 53 (admitted excerpts only).

g) Execution of community leaders and other detainees near Fere around 7 March 2004

641. In this section, the Chamber relies primarily on the evidence of P-0907, P-0973 and P-0994, who observed the events from their respective proximate positions.[2150] The Chamber also refers to the accounts of multiple witness of the disappearance of the community leaders.

642. On the morning of 7 March 2004, several detainees, including *Umdah* Khamis, *Umdah* Kindiri and Hassan Adam Musa,[2151] were removed from the cell inside Deleig police station and were placed on the open back of a khaki coloured vehicle with a mounted *DShK*. P-0973 observed, through the open bars of the cell door, that the vehicle appeared to be the same as the vehicle onto which detainees were loaded outside Deleig police station two days prior. About four hours later, the same vehicle returned to the police station without the detainees.[2152]

643. That same morning,[2153] P-0994 saw a Land Cruiser, in the back of which were six men, parked next to a restaurant at the Deleig market. P-0994 identified the men as *Umdah* Khamis, *Umdah* Suleiman, *Umdah* Kindiri, *Sheikh* Abdulaziz, Hassan Adam Musa, and Sherif Mohammedin (collectively, 'community leaders'). Some of the community leaders wore *jallabiyas*, while *Umdah* Kindiri wore an *araguiya*.[2154] P-0994 saw 'the Accused and his driver

[2150] *See* the Chamber's assessment of the evidence of P-0994, P-0973 and P-0907, Annex B, Sections I.A.48, II.A.25 and I.A.33. *See also* P-0973's Statement, DAR-OTP-0220-0736-R01, at 0741, 0744, 0747-0748, paras 25, 36, 53-54 (admitted excerpts only). The Chamber considers that there are a number of reasonable explanations for the purportedly 'contradictory timeline' of the detention of *Umdah* Kindiri and *Umdah* Khamis inside Deleig police station and is satisfied that nothing significant turns on this discrepancy. *Contra* Defence's Final Brief, para. 633. The Chamber recalls its conclusion that P-0883's evidence on the killing of the *umdahs,* as recounted to him by Maigari, is not reliable. *See further,* the Chamber's assessment of P-0883's evidence, Annex B, Section I.A.29. *Contra* Prosecution's Final Brief, paras 569-570.

[2151] While P-0973 also makes reference to *Umdah* Suleiman and 'Dikobi' – who he states he did not know at the time – there is insufficient evidence for the Chamber to draw any conclusions with respect to their detention, or removal from detention, at Deleig police station. The Chamber notes, however, that the evidence suggests that *Umdah* Suleiman and *Sheikh* Abdulaziz remained in custody from their removal from the Garsila SAF base on or around 5 March 2004 to their subsequent sighting near the Deleig market on or around 7 March 2004. *See* P-0973's Statement, DAR-OTP-0220-0736-R01, at 0745, paras 40-42 (admitted excerpts only), *see* para. 587 *above*.

[2152] P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742-0745, paras 28, 33-34, 37, 40 (admitted excerpts only), *referring to* Colour Chart, DAR-OTP-0220-0765-R01, at 0766.

[2153] While P-0973 stated that he observed the vehicle at the police station a few hours after sunrise, possibly around 08:00 (P-0973's Statement, DAR-OTP-0220-0736-R01, at 0745, para. 40 (admitted excerpts only)), and P-0994 gave evidence that he observed the vehicle at the market at or slightly before 07:00 (P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071-0072, para. 79), the Chamber considers that nothing significant turns on this minor discrepancy. *See* para. 194 *above*.

[2154] P-0994 was able to identify these men because they were tribal leaders and prominent people, whom he knew, P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071-0072, paras 79-80.

Hussein'.[2155] Other members of the *Janjaweed* were standing in proximity of the vehicle.[2156] P-0994, who was physically 'very close' to **the Accused** at the time, saw and heard Salah Ismail (alias Mohammed Ismail), another police officer, trying to persuade **the Accused** to release Sherif Mohammedin.[2157] P-0994 heard **the Accused** agree to release Sherif Mohammedin and instruct him to get out of the back of the vehicle.[2158] P-0994 then heard **the Accused** instructing another *Janjaweed*, *Umdah* Abdallah Senousi, to take the detainees to catch up with the buses moving towards Nyala.[2159] P-0994 observed *Umdah* Abdallah Senousi getting into the vehicle with other *Janjaweed* and driving off in a north-western direction.[2160] **The Accused** and some of his subordinates remained where they were.[2161]

644. That morning, P-0907, who was on a bus bound for Nyala, saw the vehicle with people which had transported detainees to the execution sites two days prior, along with around seven or eight people in the back, whom he identified as 'the *umdahs*', including *Umdah* Kindiri.[2162]

645. In the days that followed, word spread amongst the local population that the community leaders had been killed near Fere.[2163] After 7 March 2004, these men were never seen alive again.[2164]

[2155] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071-0072, para. 79. P-0585 also gave evidence that he sighted '**Ali Kushayb**' driving in his vehicle in the vicinity of the market on 7 March 2004 (P-0585: T-100, p. 25). While the Chamber is satisfied that P-0585's identification of '**Ali Kushayb**' is credible (*see* the Chamber's assessment of P-0585's evidence, Annex B, Section I.A.15), the Chamber does not otherwise rely on P-0585's purported sighting of the *umdahs* in the vicinity of the market, having regard to his limited basis of knowledge thereon. *See* Defence's Final Brief, para. 632.
[2156] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071-0072, para. 79.
[2157] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, paras 81-82.
[2158] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 81.
[2159] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 82; P-0994's Statement Corrections, DAR-OTP-00000268, at 000003, paras 16-17.
[2160] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 82; P-0994's Statement Corrections, DAR-OTP-00000268, at 000003, paras 16-17.
[2161] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 82.
[2162] P-0907: T-094, pp. 59-60.
[2163] P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 83; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0745, para. 42 (admitted excerpts only); P-0907: T-094, p. 60; P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631-0632, paras 49-50; P-0643: T-056, pp. 86-87, 89-91; T-059, p. 15; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0134, para. 96; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793, 0795, paras 11, 19; P-0607's Statement, DAR-OTP-0203-0164-R02, at 0182, para. 63; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1573, para. 126; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0117, para. 50; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001-000002, para. 13; P-0651' Statement, DAR-OTP-0205-0015-R02, at 0033, para. 64; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0365, para. 69.
[2164] P-0955's Statement, DAR-OTP-0220-0620-R02, at 0630, 0632, paras 43, 50; P-0955: T-063, p. 28; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 83; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0745, para. 42 (admitted excerpts only); P-0907: T-094, p. 60; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0134, para. 96; P-0643's List of persons killed in Deleig, DAR-OTP-0224-0825, at 0825-0827, nos. 3, 8, 14, 15.

646. There is no direct evidence before the Chamber that the community leaders were killed. However, the Chamber is satisfied that the community leaders were last seen in the back of a Land Cruiser, in the custody of *Janjaweed*, in the vicinity of the Deleig market around 7 March 2004.[2165] Multiple witnesses gave evidence that they learned soon thereafter that the community leaders were killed near Fere.[2166] The community leaders have not since been seen alive.[2167] Having regard to the totality of the evidence, including the surrounding context and circumstances, the Chamber is satisfied that the only reasonable conclusion is that the *Janjaweed* killed the community leaders on or around 7 March 2004.

h) Destruction of mass graves and execution sites

647. In this section, the Chamber relies on the evidence of P-0651 and P-0671, who saw corpses at the execution sites.[2168] The Chamber also relies on the evidence of P-0883, P-0712 and P-0116, who received information in relation to the corpses being moved and the destruction of mass graves at the execution sites.[2169]

648. Following the killings, the bodies at each of the execution sites were left where they were, unburied.[2170] Upon discovery of the corpses near Fere and Koska, members of the community buried the dead.[2171]

649. The commander in Zalingei ordered **the Accused** to return and bury the corpses of the people who were shot at 'Soja mountain'. He further stated that **the Accused** and his forces subsequently returned to the site to bury the corpses.[2172] Approximately one week after the

[2165] *See* para. 587 *above*.
[2166] *See* para. 645 *above*.
[2167] *See* para. 645 *above*.
[2168] P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031, paras 57-58; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118-0119, paras 51-56. *See also* P-0651: T-034, pp. 32-35. *See further* the Chamber's assessment of the evidence of P-0651 and P-0671, Annex B, Sections I.A.16 and I.A.17.
[2169] P-0883: T-071, pp. 69, 79; P-0712's Statement, DAR-OTP-0209-1884-R04, at 1898, para. 53; P-0712: T-036, pp. 28-29; P-0116's Statement, DAR-OTP-0127-0318-R01, at 0352, para. 176. *See also* the Chamber's assessment of the evidence of P-0712, P-0883 and P-0116, Annex B, Sections I.A.19, I.A.29 and II.A.09.
[2170] In relation to the killings in the north-west of Deleig, near Fere, *see* P-0905: T-086, p. 58; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0032, para. 60. *See also* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0119, para. 57. In relation to the killings in the south of Deleig, near Koska, *see for example* P-0907: T-094, pp. 51-53; P-0584's Statement, DAR-OTP-0200-1540-R02, at 1572-1573, paras 121-122; P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031, paras 57-58; P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118, paras 51-53. *See also* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631, para. 48. In relation to the killing of the community leaders and other detainees, *see for example* P-0883: T-071, p. 79.
[2171] In relation to the execution site in the north-west of Deleig, near Fere, *see for example* P-0651: T-034, pp. 32-35. In relation to the to the execution site south of Deleig, near Koska, *see for example* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0118-0119, paras 54-56.
[2172] P-0883: T-071, p. 79; T-074, p. 47.

killings, the PDF commander from Zalingei ordered **the Accused** to move the corpses from the execution site to a different location.[2173] P-0883 understood that this was because an international organisation had learned of the locations of the corpses and the PDF wanted to conceal the evidence of the killings.[2174] Camels were hired and people were promised a good reward to undertake the task of digging up and moving the corpses.[2175] P-0883 stated that one person told him that **the Accused** gave him a bag of sugar and one hundred thousand pounds for completing the difficult task.[2176]

650. According to villagers in Deleig, the Commissioner of Garsila, Abd-Al-Hakam, a representative of the government who was associated with the *Janjaweed*,[2177] threatened the villagers that they would be punished if they assisted any humanitarian or international organisations to locate the execution sites.[2178] However, when Abd-Al-Hakam realised that the whole village knew about the execution sites, he ordered the *Janjaweed* to exhume the corpses and destroy any trace of the killings.[2179] P-0116 also heard from many Fur people who were displaced to the IDP camps that Abd-Al-Hakam was responsible for the destruction of mass graves in the Wadi Salih area. He was told that large tents were erected, graves were exhumed and many bodies were subsequently burned.[2180] According to P-0116, Abd-Al-Hakam had a close relationship with 'Ali Koshib', although he did not know if 'Koshib' was involved in the destruction of the graves.[2181]

651. On the basis of the above, the Chamber is satisfied that steps were taken to destroy, conceal or relocate bodies from at least one of the execution sites. However, noting that the evidence before it on this matter is indirect, vague and inconsistent, the Chamber does not draw any conclusions in relation to the perpetrators of these acts.

[2173] P-0883: T-071, pp. 69, 79; T-073, p. 74; T-074, p. 47. *See also* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0119, para. 58; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0269-0270, para. 80.
[2174] P-0883: T-071, pp. 69, 79; T-073, p. 74; T-074, p. 47. *See also* P-0712's Statement, DAR-OTP-0209-1884-R04, at 1898, para. 52.
[2175] P-0883: T-071, p. 79.
[2176] P-0883: T-071, pp. 79-80.
[2177] P-0712's Statement, DAR-OTP-0209-1884-R04, at 1898-1899, paras 53, 55-56. *See also* P-0617's Statement, DAR-OTP-0202-1496-R02, at 1510, para. 42.
[2178] P-0712's Statement, DAR-OTP-0209-1884-R04, at 1898, para. 53; P-0712: T-036, pp. 28-29. *See also* P-0671's Statement, DAR-OTP-0206-0105-R02, at 0119, para. 58.
[2179] P-0712's Statement, DAR-OTP-0209-1884-R04, at 1898, para. 54.
[2180] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0352, para. 176. *See also* P-0955's Statement, DAR-OTP-0220-0620-R02, at 0631-0632, para. 49.
[2181] P-0116's Statement, DAR-OTP-0127-0318-R01, at 0352, para. 176.

D. Aftermath of the events

652. Following the Kodoom and Bindisi, Mukjar and Deleig Operations, victims suffered long term physical injuries and psychological harm. The injuries worsened as no medical care was available.[2182] Victims of rape in particular still experience physical pain from the rapes they had to endure.[2183] A second attack on Kodoom and Bindisi resulted in a new wave of displacement.[2184] Many rape victims remain isolated and not 'belong[ing] to the society' due to feeling ashamed.[2185] One witness said of the impact of witnessing the torture of the detainees at Deleig police station that it was a painful date that he will remember until the day of judgment.[2186]

653. The pillaging of property in Bindisi market was most severe as many Fur people relied on this market, including those from surrounding villages, since there is no market in Kodoom.[2187] The intentional burning and looting of farms and food sources resulted in victims being left without the means to sustain themselves.[2188] The destruction of homes and livelihoods represented more than a loss of shelter and property for the victims: it severed their ties to the land.[2189]

654. After the summary executions outside of Mukjar, the remaining detainees were released from the police station,[2190] some following payments by their families.[2191]

655. People were forbidden to leave Mukjar,[2192] and for about a month after the summary executions, the GoS Forces continued to conduct roll calls: men had to sit outside while their

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[2182] P-0931: T-063, p. 33; P-0916: T-075, p.17.
[2183] *See* para. 434 *above*.
[2184] *See* para. 453 *above*.
[2185] V-0001: T-120, pp. 24-26.
[2186] P-0994: T-084, p. 50. The Chamber is satisfied that he viewed the events both inside and outside Deleig police station, *see also* the Chamber's assessment of P-0994's evidence, Annex B, I.A. 48. *Contra* Defence's Final Brief, para. 560.
[2187] P-0986: T-065, p. 23; P-0878: T-079, p. 9.
[2188] P-0986's Statement DAR-OTP-0222-0437-R01, at 0446, para. 46; P-0986: T-065, p. 15; P-0651: T-034, p. 40; P-0012: T-045, p. 33.
[2189] P-1042: T-028, p. 21.
[2190] P-0877: T-054, p. 3; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0147, para. 68; P-0990: T-040, pp. 67-68. The Chamber acknowledges that there were a few exceptions, as some detainees were released before the summary executions (*see* P-0922's Statement, DAR-OTP-0220-2864-R01, at 2868, para. 24; P-0877: T-053, p. 83; P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199-0200, paras 93, 95).
[2191] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0621, para. 111; P-0990: T-040, p. 67; P-0129's Statement, DAR-OTP-0128-0128-R04, at 0148, para. 71; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0621, para. 113. *See also* P-0903: T-032, p. 44; P-0877: T-053, p. 83 (in relation to P-0877's first detention); T-054, pp. 22-23 (in relation to P-0877's second detention).
[2192] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0206-0207, para. 119.

houses were searched.[2193] Men continued to be arrested and killed by GoS Forces in Mukjar after the summary executions.[2194]

656. The execution of the *sheikhs* and *umdahs*, in particular had a significant impact on the Fur communities in Mukjar and Deleig, given their symbolic and substantive role and importance.[2195] These leaders offered guidance, resolved disputes, and maintained communal cohesion.[2196] This loss left many in the Fur community without the leaders on whom they were dependent in their daily life.[2197]

657. As a result of the operations in Kodoom, Bindisi, Mukjar and Deleig, many people left the region[2198] and took refuge in camps for displaced persons, such as Kalma, or sought refuge in Chad.[2199] The displaced persons lived in difficult conditions with illnesses spreading, which impacted the elderly and children in particular, leading to a number of deaths.[2200]

IV. THE ACCUSED'S POSITION OF AUTHORITY AND INFLUENCE IN 2003 AND 2004

658. The Chamber recalls its finding that **the Accused** was also known as '**Ali Kushayb'**.[2201] Accordingly, in considering **the Accused's** position within the *Janjaweed*, the Chamber relies upon the evidence of witnesses who refer to him as either **Abd-Al-Rahman** or '**Ali Kushayb**', including the various transliterations of these names.

659. The evidence which establishes **the Accused's** position of authority and influence during the charged events falls into several categories.

[2193] P-0675's Statement, DAR-OTP-0206-0173-R02, at 0206-0207, para. 119.
[2194] P-0028's Statement, DAR-OTP-0094-0423-R01, at 0441, para. 73.
[2195] P-0129: T-075, p. 66; P-0720: T-043, p. 14; P-0994: T-084, p. 14; P-0907: T-095, pp. 10-11.
[2196] P-0720: T-043, p. 14.
[2197] P-0877: T-054, p. 61.
[2198] *See* paras 409, 426, 447-451, 455-456, 578 *above*; P-0907: T-094, pp. 58-59. *See also* UNRC Darfur Humanitarian Profile, DAR-OTP-0160-0885, at 0902. The report emanates from an entity present on the ground in Darfur during the relevant time, and clearly indicates the methodology of information collection and the sources for the facts and statistics. Therefore, the Chamber is satisfied that the report is reliable and has sufficient probative value. *Contra* Defence's Response to Prosecution's Second Bar Table Motion, Annex A, p. 8. *See further* UNHCR Report, DAR-OTP-0145-0237, at 0300, 0305-0306.
[2199] P-0129: T-075, pp. 66-67.
[2200] P-0907: T-095, p. 8; P-0816's Statement, DAR-OTP-0214-0721-R02, at 0720-0721, para. 42; P-0916: T-075, p. 16.
[2201] *See* Section 5.I. The Accused, Abd-Al-Rahman, was known as 'Ali Kushayb' *above*.

A. His relationship with the leadership of the GoS

660. Before the *Janjaweed* attacks, **the Accused** attended meetings between August 2003 and February 2004 at the Garsila SAF base and the Mukjar locality building with senior GoS officials at the state and locality levels, such as Minister Harun, Maj Gen Suleiman Abdullah and Torshein, as well as with senior and mid-level GoS officials from the SAF, the PDF and the CRF.[2202] At one of these meetings, senior GoS officials Minister Harun and Ali Karti publicly expressed their support for the *Janjaweed*,[2203] and **the Accused** was heard saying 'on behalf of the *Janjaweed*' that 'the *Janjaweed* were there to defend the property of the government and that they were alongside the armed forces'.[2204] Soon after these meetings, the *Janjaweed*, under **the Accused's** command, carried out attacks in Mukjar, and in several locations between Mukjar and Sindu.[2205]

661. Senior GoS officials, such as Minister Harun, requested **the Accused's** presence at other meetings and at the distribution of salaries to the *Janjaweed*. P-0883 stated that every time Minister Harun visited Garsila he would seek **the Accused's** presence at meetings.[2206] P-1021 indicated that the GoS, through Minister Harun, would give **the Accused** salaries for the *Janjaweed*. He further stated that after the rebel attack, he saw Minister Harun delivering salaries in the Mukjar locality, and that Minister Harun called on **the Accused** telling him 'I've received the salaries'.[2207]

662. Several witnesses working for the GoS gave evidence that **the Accused** received instructions from the 'government', from 'higher-ups' and from the Ministry of Interior.[2208] P-0643 stated that **the Accused** 'implemented the orders of the government'.[2209] P-0874 said that **the Accused** 'was working for the government' and further stated that when Ministers Hussein and Harun would fly to the area by aircraft, **the Accused** was among the persons attending meetings and taking 'part in decision-making'.[2210] P-0883 indicated that **the Accused** 'got his orders from the command' and that the instructions he received 'came directly from the ministry of interior'.[2211] P-0935 stated that **the Accused** 'got his orders from higher-

[2202] P-0883: T-072, pp. 24-25. *See* paras 381, 473, 583 *above*.
[2203] *See* Section 5.I.E. Public speeches by GoS officials and Janjaweed leaders, and paras 384, 386, 388 *above*.
[2204] *See* Section 5.I.E. Public speeches by GoS officials and Janjaweed leaders, and para. 383 *above*.
[2205] *See* paras 391, 474 *above*.
[2206] P-0883: T-072, p. 19; T-073, pp. 68-69.
[2207] P-1021: T-080, pp. 34-35.
[2208] P-0905: T-088, p. 97.
[2209] P-0643: T-059, p. 44.
[2210] P-0874: T-083, p. 83.
[2211] P-0883: T-072, p. 19; T-073, pp. 43-44.

ups'.[2212] Importantly, on one occasion, when declining an invitation to join a meeting of the Mukjar Security Committee, **the Accused** himself was heard stating that '[his] instructions [came] from the top' and that he 'only took instructions from Harun and Hussein'.[2213] Similarly, at a meeting at Mukjar police station immediately prior to the transport of detainees, **the Accused** was heard saying to Torshein that he was getting direct orders and instructions from Minister Harun.[2214]

663. On the basis of the circumstances surrounding the *Janjaweed* attacks led by **the Accused**, the consistent and clear evidence given by several witnesses, and the statements made by **the Accused** himself, the Chamber is satisfied that **the Accused** received instructions from senior GoS officials, including Ministers Hussein and Harun, to carry out military operations.

B. His relationship with the GoS Forces at the locality level

664. GoS officials at the locality level either directly provided supplies such as weapons, ammunition and food for horses to **the Accused** for the *Janjaweed* or issued instructions to this effect. For example, a letter signed by Abd-Al-Hakam instructed Abd-Al-Jabbar to give **the Accused** and the *Janjaweed* several sacks of corn as food for the horses of the *Janjaweed*.[2215] While in Kodoom, in the context of the Kodoom and Bindisi Operation, Lt Col Himeidan instructed P-0921 to give ammunition to **the Accused**.[2216] P-0643 stated that **the Accused** was receiving weapons for the *Janjaweed* from Lt Hamdi.[2217]

665. **The Accused** cooperated in other ways with GoS officials at the locality level. At the Garsila SAF base, **the Accused** frequently met with Lt Hamdi and other high-ranking officials from Khartoum.[2218] P-0883 described Lt Hamdi's relationship with **the Accused** as 'close'.[2219] **The Accused** also provided intelligence which led to the arrest and detention of suspected rebels.[2220]

[2212] P-0935: T-090, p. 40.
[2213] P-1021: T-080, pp. 37-38, 41.
[2214] *See* para. 539 *above*.
[2215] *See* para. 394 *above*.
[2216] *See* para. 416 *above*.
[2217] P-0643: T-058, p. 35.
[2218] P-0643: T-056, p. 76; P-0935: T-090, pp. 18, 21-23; P-0905: T-085, pp. 42-43.
[2219] P-0883: T-071, p. 30; T-072, pp. 34-35.
[2220] *See* para. 580 *above*.

666. Moreover, **the Accused** was invited to attend meetings of the Mukjar[2221] and Garsila Security Committees. The Garsila Security Committee would summon or invite **the Accused** in order to seek information from him about the insurgency. On the basis of this information, the Committee would take action, such as providing support to the *Janjaweed* or ordering the arrest of suspected rebels.[2222]

667. Furthermore, **the Accused** was a member of, and participated in, important GoS decision-making bodies related to counter-insurgency efforts at the locality level. **The Accused** was the head of the *Mujahidin* Committee,[2223] a sub-committee of the Mobilisation Committee in Wadi Salih,[2224] which was in charge of mobilising, organising and preparing the *Janjaweed* for 'war'.[2225] He was appointed to that position by the Commissioner of Wadi Salih, Abd-Al-Hakam.[2226] Similarly, **the Accused** was a member of the larger Mobilisation Committee,[2227] which was in charge of the mobilisation to fight the insurgency in Darfur.[2228] This Committee was headed by Abd-Al-Hakam.[2229]

668. Accordingly, and consistent with its findings on the events relating to the charged operations, the Chamber is satisfied that **the Accused** and GoS officials worked together in

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[2221] P-1021: T-080, pp. 38-39, 41.
[2222] P-0883: T-072, pp. 15-16, 23-24.
[2223] P-0643: T-056, pp. 21, 25-26. *Contra* Defence's Closing Statement: T-162: p. 50. The Defence argues that **Abd-Al-Rahman** was too old to chair a *Mujahidin* Sub-Committee, relying on the evidence of D-0016 who gave evidence that the Mobilisation Committee was part of the administrative structure of the Reserve Forces and that the maximum age for serving in the Reserve Forces was 50 years old (D-0016: T-131, pp. 46-49; Defence's Final Brief, paras 306, 699). However, although the Defence submits that 'what was called the Mobilisation Committees in the common language actually corresponded to the Reserve Service Committees provided under the 1982 Reserve Service Act' (Defence's Final Brief, para. 306), D-0016 gave evidence that the Mobilisation Committee performed a different function to the Reserve Service Committee (D-0016: T-131, p. 49; *contra* Defence's Final Brief, para. 306) and that, regardless, D-0016 believed he had seen people older than 50 years old serving in the reserve forces (D-0016: T-131, p. 49). P-0643 gave evidence that the Mobilisation Committee and the *Mujahidin* Sub-Committee had distinct functions, with the Mobilisation Committee being more broadly focused on general mobilisation to fight the insurgency, while the *Mujahidin* Sub-Committee focused on mobilising and organising the *Mujahidin* specifically (P-0643: T-056, pp. 18-20, *referring to* P-0643's Sketch, DAR-OTP-0224-0829). Additionally, P-0643 gave evidence that the *Mujahidin* Sub-Committee was required to execute the decisions of the Mobilisation Committee (P-0643: T-058, pp. 63-64). The Chamber is therefore satisfied that the functions of the *Mujahidin* Sub-Committee were not duplicative of the functions of the Mobilisation Committee (*contra* Defence's Final Brief, para. 306). Additionally, given the *Mujahidin* Sub-Committee was established as part of an *ad hoc* committee to focus on the mobilisation of the *Mujahidin* in response to rebel activity in Wadi Salih specifically (P-0643: T-058, pp. 45, 52-53), the Chamber is not satisfied that its functions were redundant compared to those of the PDF Coordinator (*contra* Defence's Final Brief, para. 306), particularly given that P-0643 gave evidence that the PDF had not yet mobilised all people in the Wadi Salih area (P-0654: T-058, pp. 63-64).
[2224] P-0643: T-056, pp. 21, 31; P-0643's Sketch, DAR-OTP-0224-0829.
[2225] P-0643: T-056, p. 20. *Contra* Defence's Final Brief, para. 306.
[2226] P-0643: T-056, p. 24.
[2227] P-0643: T-056, p. 21.
[2228] P-0643: T-056, p. 18.
[2229] P-0643: T-056, p. 19.

order to implement the Government's counter-insurgency efforts at the locality level. **The Accused** worked jointly on the ground with GoS forces, leading the *Janjaweed* in joint operations in Kodoom and Bindisi, Mukjar and Deleig.[2230] In the context of these operations, **the Accused** issued instructions to members of the GoS forces, including Hassaballah.[2231] In some of these joint operations, **the Accused** had authority over both the *Janjaweed* and the GoS forces.[2232] More specifically, during the Mukjar and Deleig Operations, **the Accused** instructed members of GoS Forces to transfer detainees, open cells, load detainees onto vehicles and to shoot and kill detainees.[2233]

C. His role in the recruitment of members of the Janjaweed and in the distribution of matériel to them

669. The Chamber is satisfied that GoS resources destined to support the *Janjaweed* were channelled through **the Accused**. For example, as set out above, Abd-Al-Jabbar gave **the Accused** several sacks of corn as fodder for the horses of the *Janjaweed*.[2234] A delegation of high-ranking GoS officials arrived at the Garsila SAF base, including Minister Harun, and delivered several boxes containing money to **the Accused** and other GoS officials.[2235] According to P-0883, **the Accused** received the 'lion's share' of the money.[2236]

670. In addition, P-0012 stated that the GoS gave **the Accused** weapons, salaries and uniforms to be given out to the *agids*.[2237] P-0643 gave evidence that the weapons in the *Mujahidin* Committee were distributed by **the Accused** and by members of the Arab tribes. He further gave evidence that weapons were issued by the police and handed to **the Accused** for onward distribution.[2238] P-1021 gave evidence that salaries distributed by **the Accused** to the *Janjaweed* came from the GoS.[2239] P-0547 stated that commanders such as **the Accused**, had ranks 'only for administrative purposes' and would receive money from Minister Harun in order to carry out 'the actions in the field'.[2240] P-0874 explained that upon instructions the CRF

[2230] *See* paras 380, 392, 396, 469, 589 *above*. *Contra* Defence's Final Brief, para. 552.
[2231] P-0878: T-078, pp. 30-31, 34. *See* paras 397, 399, 405, 441, 468, 473, 541, 544, 554, 580, 611, 624 *above*. *See also* P-0986's Statement, DAR-OTP-0222-0437-R01, at 0454-0455, paras 80, 87.
[2232] *See* paras 474, 540, 541, 544, 554, 563, 611, 612, 617, 624, 643 *above*. *See also* P-0935: T-090, p. 34.
[2233] *See* paras 540, 541, 544, 554, 624 *above*.
[2234] *See* para. 394 *above*.
[2235] *See* para. 463 *above*.
[2236] P-0883: T-071, pp. 36-38.
[2237] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0513, para. 45.
[2238] P-0643: T-056, pp. 33-34; T-059, pp. 61-62.
[2239] P-1021: T-080, pp. 34-35.
[2240] P-0547: T-052, pp. 6-7.

in Mukjar handed over to **the Accused** weapons brought from Khartoum.[2241] P-0913 mentioned that Lt Col Al-Tayyib provided **the Accused** with several boxes of ammunition, which were subsequently loaded by members of the *Janjaweed* onto vehicles.[2242] The above evidence is consistent with that of P-0905 and P-0011 who, more generally, stated that **the Accused** received or distributed weapons at GoS buildings.[2243]

671. The Chamber is satisfied that **the Accused** oversaw the recruitment of members of the *Janjaweed*, and the distribution of ammunition, weapons, salaries and supplies to them.[2244] **The Accused** equally instructed his deputies to distribute salaries to the *Janjaweed* within their purview.[2245]

672. Although, as submitted by the Defence, there is some evidence which suggests that *Emir* Hessine Sayyid Al Helu, a tribal leader who had authority over all Arab tribes in Wadi Salih,[2246] also played a role in the mobilisation, arming, and the conduct of operations of 'Arab tribes militia',[2247] the Chamber is not persuaded that this detracts from the above finding on the role **the Accused** had in the recruitment of members of the *Janjaweed* and distribution of resources to them. The evidence shows that Arab tribal leaders were also involved in the implementation of the GoS' counter-insurgency efforts.[2248]

D. His role within the Janjaweed

673. **The Accused** demoted or threatened lower-level *Janjaweed* leaders.[2249] **The Accused** issued instructions to lower-ranking members of the *Janjaweed* prior to[2250] or during the operations in Kodoom and Bindisi,[2251] Mukjar[2252] and Deleig.[2253] On several occasions, **the Accused** instructed the forces under his command to '*amsah aksah*',[2254] meaning to 'kill or

[2241] P-0874: T-082, pp. 43-45; T-083, pp. 4-5.
[2242] P-0913's Statement, DAR-OTP-0218-0021-R04, at 0033, para. 80; P-0913: T-069, pp. 17-18.
[2243] P-0905: T-085, pp. 36-37; P-0011: T-091, p. 15.
[2244] P-0643: T-056, p. 34; T-058, pp. 28-29; T-059, pp. 61-62; P-0883: T-071, pp. 28, 34; T-074, pp. 43-44; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0255, para. 30; P-0736: T-035, p. 12; P-0585: T-099, p. 61; T-102, p. 24. *See* paras 667, 669, 670 *above*.
[2245] P-1021: T-080, pp. 34-35.
[2246] P-0643: T-058, p. 14.
[2247] Defence's Final Brief, para. 781, *referring to* P-0643: T-058, pp. 9, 13-14, 17-20.
[2248] *See* paras 341, 342, 345 *above.*
[2249] P-0883: T-071, p. 41; P-0878: T-078, pp. 60-63.
[2250] P-0905: T-085, p. 23; P-0883: T-071, pp. 14-15; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0255, para. 29. *See* paras 361, 382, 383, 467-469, 478, 580 *above.*
[2251] *See* paras 361, 397, 403, 414, 437, 438, 439 *above*.
[2252] *See* paras 541, 544, 554 *above*.
[2253] *See* paras 612, 617, 623, 624, 643 *above*.
[2254] P-0905: T-085, p. 54; P-0878: T-078, p. 34. *See* paras 360, 361, 397, 467 *above*.

wipe'.[2255]

674. **The Accused's** deputies were Bonjouse,[2256] Samih,[2257] Hamuda Hamdan[2258] and *Umdah* Hamdan Umar.[2259] Each of them exercised authority over smaller geographical areas: Samih over Mukjar, Bonjouse over Zame Bayaa, Hamoda Hamdan over Bindisi, and *Umdah* Hamdan Umar over Garsila.[2260]

E. His apparent position as 'agid al-ogada'

675. The Chamber notes that several witnesses described **the Accused** as the '*agid al-ogada*', and stated that he introduced himself as such.[2261] P-0643 gave evidence that **the Accused** was appointed head of the *Mujahidin* Committee given his title of '*agid al-ogada*'.[2262] Given the role the *agid al-ogada* had in Arab tribes,[2263] it is understandable that several witnesses formed the view that **the Accused** was a *Janjaweed* leader because he held the title of *agid al-ogada*. Whilet this is relevant to the perception of **the Accused's** authority, the Chamber emphasises that the evidence shows that **the Accused's** authority did not stem from his title as *agid al-ogada*, but rather, as stated above, from his *de facto* authority over the *Janjaweed* and on some occasions over members of the GoS Forces.

[2255] On the meaning of '*amsah aksah*', *see* paras 364, 365 *above*.
[2256] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0511, para. 33; P-0883: T-071, pp. 41-42; P-0643: T-056, pp. 23-24; P-0931: T-062, pp. 16-17; P-0617's Statement, DAR-OTP-0202-1496-R02, at 1532, para. 100; P-1021: T-080, pp. 31-32, 49; P-1021: T-081, p. 7; Report, DAR-OTP-0198-2291, Translation, DAR-OTP-0204-0518, at 0520, para. 5. *Contra* Defence's Final Brief, paras 339, 791 (indicating that Bonjouse was the *agid al-ogada* for Mukjar).
[2257] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0511-0512, paras 33, 36; P-0012: T-046, pp. 18-19; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0162, para. 24; P-0129: T-076, p. 34; P-1021: T-080, pp. 31-32, 48-49; P-1021: T-081, pp. 7, 12; P-0029: T-030, p. 16; P-0921: T-110, pp. 27, 33; P-0585: T-099, p. 50; P-0905: T-085, pp. 75-76; P-0986: T-066, p. 15; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0458-0459, paras 99, 101-102; P-0720: T-043, p. 40; P-0874: T-082, p. 39; P-0922: T-039, pp. 28-29; P-1074's Statement, DAR-OTP-0224-0441-R01, at 0451-0452, para. 52; P-0883: T-072, pp. 13-14; Transcript of Audio/Video Material, DAR-OTP-0219-2354, Translation, DAR-OTP-0219-2365. The Chamber notes that according to P-0877, Samih was the *agid al-ogada* for Mukjar (P-0877: T-053, p. 70). The Chamber nonetheless notes that the interaction between '**Ali Kushayb**' and Samih, as described by P-0877, are consistent with Samih holding a leadership position in the *Janjaweed* and, in any event, are not inconsistent with Samih being **the Accused's** deputy (P-0877: T-053, p. 75). *Contra* Defence's Final Brief, paras 338, 447. In respect of D-0026, on whom the Defence relied upon, the Chamber notes that D-0026 acknowledged that his evidence on this point was indirect (D-0026's Statement, DAR-OTP-0109-0111-R01, at 0016, para. 23).
[2258] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0511, para. 33; P-0874: T-082, p. 34.
[2259] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0511, para. 33.
[2260] P-0012's Statement, DAR-OTP-0119-0503-R01, at 0511, para. 33; P-0012: T-046, pp. 18-19; P-0932's Statement, DAR-OTP-0222-0602-R02, at 0608, para. 31; P-0905: T-085, pp. 75-76; P-0877: T-053, p. 70; P-0922's Statement, DAR-OTP-0222-0312-R01, at 0321, paras 35-36.
[2261] P-0547: T-050, p. 38; P-0585: T-099, pp. 41, 57-58; P-0643: T-056, pp. 21-22; P-0984: T-066, p. 64; P-0012's Statement, DAR-OTP-0119-0503-R01, at 0509-0510, para. 28.
[2262] P-0643: T-058, p. 65.
[2263] *See* para. 325 *above*.

F. His enlistment in the CRF

676. According to the Defence, **the Accused** would have trained with the CRF between March 2004 and July 2005, and would have been formally admitted and incorporated within the CRF in July 2005.[2264] Noting the partial overlap with the temporal scope of the charges, the Chamber considers that, effectively, the Defence is suggesting that **the Accused** could not have been a *Janjaweed* leader during the whole of the charged period, (particularly the events in Deleig), given his role in the CRF at the time.[2265]

677. Having reviewed the parties' submissions and the totality of the evidence on this point, the Chamber finds that **the Accused** enlisted in the CRF sometime between 2004 and 2005.[2266] However, the only evidence that it could have been before the events of the Deleig Operation comes from D-0035 and D-0032.[2267]

678. This evidence is countered by the overwhelming credible and consistent evidence confirming **the Accused's** presence during the Deleig Operation.[2268] The Chamber is satisfied that the limited and inconsistent evidence raising the possibility that **the Accused** was deployed to the CRF in early March 2004 does not raise any reasonable doubt regarding **the Accused's** presence and authority over the *Janjaweed* in the aforesaid location and within the timeframe of the charges.

679. The Chamber notes that a core Defence challenge is that **the Accused** could not have been a *Janjaweed* leader, given: (i) the neutrality of the Ta'aisha tribe;[2269] (ii) the long-standing tensions between the Salamat, on the one hand, and, on the other, the Fur and Ta'aisha tribes; and (iii) the serious consequences **the Accused** would have faced for disobeying an instruction

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[2264] Defence's Final Brief, paras 784-788.
[2265] Defence's Final Brief, paras 62-64, 786; Defence's Closing Statement: T-162, p. 87.
[2266] Police Forces Act, DAR-OTP-0103-0598, Translation, DAR-D31-0002-0010, at 0012, no. 189 (noting the lack of any specific objection, the Chamber is satisfied that this copy and translation of the Police Forces Act is reliable and probative); P-0643: T-057, p. 52; T-059, pp. 40-41; P-0874: T-082, p. 8; T-083, p. 12; P-0883's Extract of Statement, DAR-OTP-00000065, at 000004, para. 238; P-0883: T-072, pp. 35-36; T-073, pp. 42, 45-48; P-0769: T-097, pp. 54-55; P-0905: T-088, p. 94; P-0955: T-064, p. 20; P-0994's Statement, DAR-OTP-0222-0055-R01, at 0062, para. 31; Report, DAR-OTP-0198-2291, Translation, DAR-OTP-0204-0518, at 0520-0521. *See also* Third Joint Submission on Agreed Facts, Annex A, Agreed Fact 13. *Contra* Prosecution's Closing Statement: T-160, p. 55. *Contra* Defence's Final Brief, paras 784-788. The Chamber further notes that the Defence, relying upon D-0032 and D-0035, argues that **the Accused's** recruitment within the CRF and encampment occurred in early 2004. The Chamber nonetheless recalls its concerns regarding the credibility and reliability of D-0032's and D-0035's evidence. *See* the Chamber's assessment of the evidence of D-0032 and D-0035, Annex B, Sections I.B.13 and I.B.14.
[2267] Defence's Final Brief, paras 785-787, *referring to* D-0032 and D-0035. *See* the Chamber's assessment of the evidence of D-0032 and D-0035, Annex B, Sections I.B.13 and I.B.14.
[2268] *See* Section 5.III.C. Operation in Deleig between 5 and 7 March 2004 *above*.
[2269] *See* para. 324, fn. 712 *above*.

from the *Nazir* of the Ta'aisha.[2270] Regardless of the Ta'aisha's position regarding the armed conflict, the Chamber is satisfied based on the evidence taken as a whole, that this does not undermine its findings regarding **the Accused's** authority over the *Janjaweed*. Considering the overwhelming evidence described in the foregoing paragraphs, the Chamber is satisfied that **the Accused** exercised *de facto* authority as a *Janjaweed* leader during the relevant period of the charges.

680. On the basis of the above considerations, namely, **the Accused's** relationship with the leadership of the GoS and GoS Forces at the locality level, his role within the *Janjaweed*, including in the recruitment of the members of the *Janjaweed* and distribution of matériel to them, the Chamber equally rejects the Defence's submission that **the Accused** was no more than a simple pharmacist at the time.[2271] It is clear that, even before the conflict, **the Accused** was not only well-known in the Wadi Salih area but well respected. Part of that respect appears to have derived from his military background[2272] but additionally the pharmacy which he operated in Garsila was recommended to those seeking medication,[2273] and he travelled to various markets.[2274] More importantly, witnesses described how the pharmacy and its immediate environs were a meeting place for **the Accused** and leaders of Arab tribes[2275] and some came to know him because he was called in to mediate in tribal negotiations.[2276] The Chamber finds that he was an influential figure in the area before the conflict.[2277] The Chamber further notes that **the Accused's** leadership position is consistent with the public awareness of

[2270] Defence's Final Brief, paras 768-773, 777; Defence's Closing Statement: T-162, pp. 47-49. *See* para. 7 *above*.
[2271] *Contra* Defence's Final Brief, paras 83, 313, 413, 762, 782, 783, 794.
[2272] P-0874: T-082, p. 64; P-0878: T-079, pp. 20-21; P-0883: T-071, pp. 17-18, 23; T-073, p. 81; T-074, p. 24; P-0903: T-032, pp. 13-14; P-0905: T-085, pp. 17-22; P-0921: T-110, pp. 24-25; P-0931: T-062, p. 53; P-0935: T-090, pp. 13-15, 67; P-0990: T-040, p. 18.
[2273] P-0931: T-062, pp. 52-54, 64-65; T-063, pp. 19-20 ; P-0883: T-071, pp. 14-15, 20; P-0990: T-040, pp. 15-16; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0442, paras 24-27; P-0986: T-065, pp. 6-8; T-066, pp. 18-19.
[2274] P-0907: T-094, pp. 26-28; T-095, pp. 53-55.
[2275] P-0643: T-059, pp. 28-29; P-0883: T-074, pp. 7, 24; P-0931: T-062, p. 53.
[2276] P-0932's Statement, DAR-OTP-0222-0602-R02, at 0607-0608, paras 26-30; P-0932: T-068, pp. 17-22; P-0585: T-099, p. 62; T-100: pp. 3-6; T-102, pp. 35-36.
[2277] Whilst the Chamber has significant concerns regarding the credibility and reliability of D-0007, D-0011, D-0029 and D-0032 (*see* the Chamber's assessment of the evidence of D-0007, D-0011, D-0029 and D-0032, Annex B, Sections I.B.5, I.B.7, I.B.12 and I.B.13), the Chamber notes that the Defence claim that **the Accused** could not have had a position of authority at the material time, is undermined by these witnesses stating that, not long after the time relevant to the charges, **the Accused** was an experienced soldier with a supervisor role in the CRF (D-0007: T-149, p. 28; D-0011: T-138, pp. 49, 51-53, 69; D-0029: T-157, pp. 24-25, 29; D-0032, pp. 91-92).

his authority[2278] and GoS report referring to **the Accused** as 'Commander of the Al-Fursan'.[2279]

SECTION 6. APPLICABLE LAW

681. In the following section, the Chamber will set forth the relevant applicable law regarding the contextual elements of the war crimes and crimes against humanity, the elements of the individual crimes and the modes of criminal responsibility with which **the Accused** has been charged.

I. CONTEXTUAL ELEMENTS

A. War crimes

a) Armed conflict not of an international character and perpetrator's awareness

682. The war crimes charged in this case relate exclusively to a non-international armed conflict. Pursuant to Article 8(2)(f) of the Statute, an armed conflict not of an international character exists when there is protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.[2280] According to paragraphs (d) and (f) of Article 8(2) of the Statute, an armed conflict of this character excludes situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of similar nature.[2281]

683. Trial Chambers have considered varying factors when determining the 'protracted'

[2278] P-0919: T-060, p. 17; T-061, pp. 12-14; P-0712: T-036, pp. 12, 30-31; P-0990: T-040, p. 66; P-0720: T-043, pp. 70-71; P-0581's Statement, DAR-OTP-0216-0560-R02, at 0565-0566, para. 27; P-0007: T-089, p. 46; P-0585: T-100, p. 24; T-102, p. 25; P-0986's Statement, DAR-OTP-0222-0437-R01, at 0458, para. 100; P-0905: T-088, p. 94. The Chamber notes that several witnesses referred to **the Accused** as the *agid al-ogada*. P-0129's Statements, DAR-OTP-0128-0128-R04, at 0134, para. 24; DAR-OTP-0223-0157-R02, at 0162, para. 23; P-0129: T-076, p. 20; P-0720's Statement, DAR-OTP-0210-0291-R02, at 0300, para. 61; P-0736's Statement, DAR-OTP-0210-0248-R02, at 0255, para. 29; P-0907: T-095, pp. 60-62; T-096, p. 9; P-0984: T-066, p. 64; T-067, p. 33.
[2279] Report, DAR-OTP-0198-2291, Translation, DAR-OTP-0204-0518, at 0520; Report, DAR-OTP-0198-5242, Translation, DAR-OTP-0201-0205, at 0210; P-0547: T-052, pp. 5, 81.
[2280] *Ongwen* Trial Judgment, para. 2683; *Ntaganda* Trial Judgment, paras 701-703.
[2281] *Al Hassan* Trial Judgment, para. 1095; *Ongwen* Trial Judgment, para. 2683.

character of a conflict,[2282] and whether an entity qualifies as an 'organised armed group'.[2283]

b) Nexus requirement and perpetrator's awareness

684. Acts of war crimes are required to have been committed 'in the context of' and be 'associated with' a non-international armed conflict.[2284]

685. What is required is that the perpetrator's conduct must have a sufficiently close link to the hostilities taking place in any part of the territories controlled by the parties to the conflict.[2285] The armed conflict alone need not be the root of the conduct of the perpetrator and the conduct need not have taken place in the midst of the battle.[2286] Nonetheless, the armed conflict must play a major part in the perpetrator's decision, in his/her ability to commit the crime or the manner in which the crime was ultimately committed.[2287]

686. In determining whether the nexus is established, the Chamber may consider, amongst other factors: (i) the status of the perpetrator and the victim; (ii) whether the act may be said to serve the ultimate goal of a military campaign; and (iii) whether the crime is committed as part

[2282] *See* *Al Hassan* Trial Judgment, para. 1097 (and references cited therein): 'Chambers of this Court have considered the following factors to determine [the] 'protracted' character [of a conflict]: (i) the seriousness and frequency of attacks and armed clashes; (ii) the spread of clashes over territory and the group's ability to control territory over a period of time; (iii) whether any ceasefire orders had been issued or agreed to; (iv) the type and number of armed forces deployed, including any involvement of the government; (v) the type of weapons used; (vi) whether the situation had attracted the attention of the UN Security Council, or involvement of other international organisations; (vii) whether those fighting considered themselves bound by international humanitarian law; and (viii) the effects of the violence on the civilian population, including the extent to which civilians left the relevant area, the extent of destruction, and the number of persons killed. […] The Chamber also considers that the intensity and 'protracted armed conflict' criteria do not require fighting to take place continuously and be entirely uninterrupted; it is sufficient for the Chamber to find that violence goes beyond isolated or sporadic acts.' *See also* *Ongwen* Trial Judgment, para. 2684; *Ntaganda* Trial Judgment, paras 716-717.
[2283] *See* *Al Hassan* Trial Judgment, para. 1096 (and references cited therein): 'With respect to the assessment of whether any of the armed groups involved qualifies as an 'organised armed group', the Chamber observes that Article 8(2)(f) of the Statute only requires that the armed group be 'organized', implying that some degree of organisation suffices to satisfy the required threshold. The Chamber notes that the following factors have been considered when assessing this element: (i) the existence of a command structure, the existence of headquarters, the issuing of political statements, the use of official spokespersons, and the group's internal hierarchy; (ii) the military (operational) capacity of the armed group; (iii) the logistical capacity of the armed group; (iv) the existence of an internal disciplinary system and the ability to implement international humanitarian law; and (v) the group's ability to speak with one voice. Importantly, none of these factors are individually determinative and a group may be considered to be sufficiently organised if only some of them are present.' *See also* *Ongwen* Trial Judgment, para. 2685; *Ntaganda* Trial Judgment, para. 704.
[2284] Elements of Crimes, penultimate element of the individual war crimes under Article 8(2). *See also* *Katanga* Trial Judgment, para. 1176.
[2285] *Ongwen* Trial Judgment, para. 2689.
[2286] *Al Hassan* Trial Judgment, para. 1099; *Katanga* Trial Judgment, para. 1176; *Kunarac et al.* Appeal Judgment, para. 58.
[2287] *Al Hassan* Trial Judgment, para. 1099; *Katanga* Trial Judgment, para. 1176.

of, or in the context of, the perpetrator's official duties.[2288]

687. The Elements of Crimes prescribe that the conduct constituting *each* war crime took place 'in the context of' and is 'associated with' an armed conflict not of an international character.[2289]

688. As a mental element, for each war crime, the perpetrator must have been aware of the factual circumstances that established the existence of an armed conflict.[2290]

B. Crimes against humanity

689. The chapeau of Article 7(1) of the Statute stipulates that a '"crime against humanity" means any of the […] acts [listed in the Article 7(1) of the Statute] when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.

690. It is therefore necessary to establish: (i) the existence of an attack 'directed against any civilian population'; (ii) that the 'attack' was 'widespread' or 'systematic'; (iii) the existence of the requisite nexus between the act committed within the ambit of Article 7 and the 'widespread or systematic attack'; and (iv) as a mental element, knowledge of that nexus by the perpetrator.[2291]

a) Attack directed against any civilian population

691. An 'attack' is defined in Article 7(2)(a) of the Statute as: (i) a course of conduct involving the multiple commission of acts referred to in Article 7(1) of the Statute; (ii) directed against any civilian population; and (iii) pursuant to or in furtherance of a State or organisational policy to commit such attack.[2292]

i. Course of conduct involving the multiple commission of acts referred to in Article 7(1) of the Statute

692. An attack in this context need not be military in nature and must involve the commission

[2288] *Ongwen* Trial Judgment, para. 2689 and references cited therein.
[2289] Elements of Crimes, penultimate element of the individual war crimes under Article 8(2). *See also* *Katanga* Trial Judgment, para. 1176.
[2290] Elements of Crimes, Introduction to Article 8, para. 3. *See also* Elements of Crimes, ultimate element of the individual war crimes under Article 8(2).
[2291] *See* *Ntaganda* Trial Judgment, para. 696; *Katanga* Trial Judgment, para. 1099.
[2292] *Ntaganda* Appeal Judgment, para. 416.

of any of the acts listed in Article 7(1) of the Statute.[2293] The Appeals Chamber has held that the requirement that the 'acts form part of a "course of conduct" indicates that Article 7 of the Statute is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts' and that '[a]n aggregate of random or isolated acts could not fulfil these criteria'.[2294] As such, the 'multiple commission of acts' sets a quantitative threshold involving a certain number of acts falling within the course of conduct.[2295] Additionally, the Appeals Chamber found that 'a single incident or operation in which multiple crimes are committed could amount to a crime against humanity provided that the relevant contextual elements are met'.[2296]

693. Therefore, a trial chamber does not need to have regard 'to other military operations or the wider activities of the state or organisation in question, including activities that did not involve the commission of crimes' for the purposes of establishing that there was a course of conduct involving the multiple commission of acts referred to in Article 7(1) of the Statute or that an attack targeted a civilian population.[2297]

ii. Directed against any civilian population

694. Article 7(1) of the Statute requires that the attack must be 'directed against any civilian population', namely a collective, as opposed to individual civilians.[2298] By using the term 'any' civilian population, Article 7(1) of the Statute is not limited to populations defined by a common nationality, ethnicity, or other similar distinguishing features.[2299] There is no legal requirement that the *'main aim* or object of the relevant acts was to attack civilians' as'[a]n attack directed against a civilian population may also serve other objectives or motives'.[2300] The question of whether the attack was directed at a civilian population is a factual issue to be assessed by the Chamber.[2301]

695. In determining whether an attack was directed against any civilian population, the Chamber may, in its assessment, consider, *inter alia*, the following factors:

[2293] Elements of Crimes, Introduction to Article 7, para. 3.
[2294] *Ntaganda* Appeal Judgment, para. 430.
[2295] *Ongwen* Trial Judgment, para. 2674; *Ntaganda* Trial Judgment, para. 663.
[2296] *Al Hassan* Trial Judgment, para. 1105; *Ntaganda* Appeal Judgment, paras 381, 431.
[2297] *Ntaganda* Appeal Judgment, para. 431.
[2298] *Ongwen* Trial Judgment, para. 2675.
[2299] *Al Hassan* Trial Judgment, para. 1106; *Ntaganda* Trial Judgment, para. 667.
[2300] *Ntaganda* Appeal Judgment, paras 7, 424 (emphasis added in original).
[2301] *Ntaganda* Appeal Judgment, para. 424.

> [T]he means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.[2302]

696. When crimes against humanity are alleged to have been committed during an armed conflict, as in this case, it is not necessary to prove that all individual victims were civilians within the meaning of international humanitarian law,[2303] and the presence within a civilian population of individuals who do not fall under the definition of 'civilians' does not deprive the population of its civilian character.[2304] As held by the Appeals Chamber:

> [T]he difficulty in distinguishing combatants from civilians may be a relevant consideration when determining whether the civilian population as such was the object of the attack. At the same time, […] such difficulties cannot justify the targeting of an entire ethnic group without distinction between civilians and combatants. The relevance of this consideration […] [must be] assessed on a case-by-case basis.[2305]

iii. Pursuant to or in furtherance of a State or organisational policy to commit such attack

697. Article 7(2)(a) of the Statute requires that the attack must be committed 'pursuant to or in furtherance of a State or organizational policy to commit such attack'.[2306]

698. The State or organisational policy required by Article 7 of the Statute may consist of a pre-established design or plan, but it may also crystallise and develop extemporaneously as actions are undertaken by the perpetrators.[2307] The existence of a 'policy' may be inferred from a variety of factors, such as: (i) a recurrent pattern of violence; (ii) the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation; (iii) the use of public or private resources to further the policy; (iv) the involvement of organisational forces in the commission of crimes; (v) statements, instructions or documentation attributable to the organisation condoning or encouraging the commission of crimes or; (vi) an underlying

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[2302] *Ntaganda* Appeal Judgment, para. 424, *referring to* *Kunarac et al.* Appeal Judgment, para. 91.
[2303] *Ongwen* Trial Judgment, para. 2675
[2304] *Ongwen* Trial Judgment, para. 2675, *referring to* *Ntaganda* Trial Judgment, para. 668; *Katanga* Trial Judgment, para. 1105. *See also* *Šešelj* Appeal Judgment, para. 69; *Popović et al.* Appeal Judgment, para. 567; *Šainović et al.* Appeal Judgment, para. 549; *Mrkšić and Šljivančanin* Appeal Judgment, para. 31; *Kordić and Čerkez* Appeal Judgment, para. 50.
[2305] *Ntaganda* Appeal Judgment, para. 491.
[2306] *Ntaganda* Appeal Judgment, para. 381.
[2307] *Ongwen* Trial Judgment, para. 2679 and references cited therein.

motivation.[2308]

699. In principle, a State or organisation committing a systematic attack against a civilian population will satisfy the policy requirement.[2309]

700. With respect to the phrase 'pursuant to or in furtherance of', the policy requirement ensures that the acts constituting the course of conduct are linked.[2310] The requisite nexus is one that exists between the course of conduct and the policy.[2311] This ensures that acts which are unrelated or perpetrated by individuals acting randomly on their own are excluded.[2312]

b) Widespread or systematic attack

701. The 'attack' is required to be 'widespread' or 'systematic'. The term 'widespread' connotes the large-scale nature of the attack and the number of targeted persons.[2313] The assessment of whether the attack is widespread is neither exclusively quantitative nor geographical, but must be carried out on the basis of all the relevant facts of the case.[2314] The term 'systematic' reflects the organised nature of the violent acts, referring often to the existence of 'patterns of crimes' and the improbability of their random or accidental occurrence.[2315] In examining whether an attack was systematic, the Chamber shall assess whether a series of repeated actions which took place were intended to have the same effect on a civilian population, and consequently, it may consider whether: (i) identical or similar criminal practices can be identified; (ii) the same *modus operandi* was used; or (iii) victims were treated in a similar manner across a wide geographic area.[2316]

c) Nexus requirement and perpetrator's awareness

702. As stipulated in the *chapeau* of Article 7(1) of the Statute, the individual act must be committed *as part of* a widespread or systematic attack directed against a civilian population.[2317] The Chamber must determine the existence of the requisite nexus between the

[2308] *Ongwen* Trial Judgment, para. 2679 and references cited therein.
[2309] *Ongwen* Trial Judgment, para. 2679 and references cited therein.
[2310] *Ongwen* Trial Judgment, para. 2678.
[2311] *Al Hassan* Trial Judgment, para. 1111; *Katanga* Trial Judgment, para. 1116.
[2312] *Ongwen* Trial Judgment, para. 2678 and references cited therein.
[2313] *Ongwen* Trial Judgment, para. 2681.
[2314] *Ongwen* Trial Judgment, para. 2681.
[2315] *Ongwen* Trial Judgment, para. 2682.
[2316] *Al Hassan* Trial Judgment, para. 1114. *See also* *Ntaganda* Trial Judgment, para. 693, *referring to* *Katanga* Trial Judgment, para. 1113.
[2317] *See also* Elements of Crimes, penultimate element of the individual crimes against humanity; Introduction to Article 7, para. 2.

widespread or systematic attack and the act within the ambit of Article 7(1) of the Statute, taking into account the characteristics, aims, nature and consequences of the acts concerned,[2318] and knowledge of that nexus by the perpetrator of the act.[2319]

703. In that regard, the Chamber must examine whether the act is part of the widespread or systematic attack, considered as a whole with due regard to the nature of the act at issue, its aims and consequences. This analysis must also be conducted in respect of the various components of the attack (including the policy, the patterns of crimes, or the type of victims).[2320]

704. Finally, as to the mental element, the perpetrator must have known that the conduct was part of, or intended it to be part of, a widespread or systematic attack directed against a civilian population.[2321] However, it is not necessary that the perpetrator be aware of the precise details of the plan or policy of the State or organisation.[2322]

II. THE CRIMES

705. Unless otherwise provided in the Statute, the material elements of the crimes must have been committed with 'intent' and 'knowledge' within the meaning of Article 30 of the Statute.[2323] Article 30(2) of the Statute provides that 'a person has intent where':

> (a) In relation to conduct, that person means to engage in the conduct;
>
> (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

706. 'Knowledge' under Article 30(3) of the Statute 'means awareness that a circumstance exists or a consequence will occur in the ordinary course of events'. The standard for this foreseeability of events is *virtual certainty*.[2324]

A. Attack against a civilian population (Article 8(2)(e)(i) of the Statute)

707. Article 8(2)(e)(i) of the Statute provides that '[i]ntentionally directing attacks against

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[2318] *Ongwen* Trial Judgment, para. 2685 and references cited therein.
[2319] *See Katanga* Trial Judgment, para. 1099. *See also Katanga* Trial Judgment, para. 1124.
[2320] *Al Hassan* Trial Judgment, para. 1116. *See also Katanga* Trial Judgment, para. 1124; *Ongwen* Trial Judgment, para. 2688; *Ntaganda* Trial Judgment, para. 696.
[2321] *See chapeau* of Article 7(1) of the Statute.
[2322] Elements of Crimes, Introduction to Article 7, para. 2.
[2323] Article 30 of the Statute; Elements of Crimes, General Introduction, para. 2.
[2324] *Lubanga* Appeal Judgment, para. 447. *See also Al Hassan* Trial Judgment, para. 1121; *Ongwen* Trial Judgment, para. 2695.

the civilian population as such or against individual civilians not taking direct part in hostilities' is a war crime.

708. The Elements of Crimes set out the following elements:[2325]

> 1. The perpetrator directed an attack.
>
> 2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.
>
> 3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.

709. The first material element is that the perpetrator directed an attack. An 'attack' constitutes any 'acts of violence against the adversary, whether in offence or defence';[2326] and to 'direct' an attack means that the perpetrator selected the intended target and decided on the attack.[2327] No particular harm to civilians need be caused; the crime is directing or launching the attack as such.[2328]

710. The war crime of attacking civilians pertains to the category of offences committed during the actual conduct of hostilities. This means that the crime must be committed against civilians 'before [they] have fallen into the hands of the attacking party'.[2329]

711. As regards the second and third elements, the civilian population or individual civilians must have been the *primary* object of the 'attack'; directing the attack against military objects that affects civilians incidentally does not suffice under Article 8(2)(e)(i) of the Statute.[2330]

712. During a non-international armed conflict, civilians are persons who are not members of State armed forces or organised armed groups of a party to the conflict.[2331] During such conflict, civilians are protected and they lose that protection only through active participation in hostilities and for such time as they participate.[2332] Taking an active part in the hostilities is understood as acts of war that by their nature or purpose strike at the personnel and matériel of

[2325] Elements of Crimes, Article 8(2)(e)(i).
[2326] *Ongwen* Trial Judgment, para. 2758.
[2327] *Ongwen* Trial Judgment, para. 2758.
[2328] *Ongwen* Trial Judgment, para. 2758.
[2329] *Ntaganda* Trial Judgment, para. 904.
[2330] *Ongwen* Trial Judgment, para. 2760.
[2331] *Ongwen* Trial Judgment, para. 2759.
[2332] *Ntaganda* Trial Judgment, para. 883.

enemy armed forces.[2333]

713. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.[2334] This general presumption of protection under IHL also applies during non-international armed conflicts. The burden is on the Prosecution to establish the status of the victim as someone taking no active part in the hostilities.[2335] The Prosecution must prove that in the circumstances at the time, a reasonable person could not have believed that the individual or group he or she attacked was a fighter or directly participating in hostilities.[2336] The presence within a civilian population of some members of an armed force or civilians directly participating in hostilities does not deprive the population of its civilian character.[2337]

714. The crime under Article 8(2)(e)(i) of the Statute may encompass attacks that are carried out in an indiscriminate manner, that is by targeting an area, as opposed to specific objects, or not targeting specific military objects or persons taking a direct part in hostilities, so long as the perpetrator was aware of the presence of civilians in the relevant area.[2338] It may also include attacks that are launched without taking necessary precautions to spare the civilian population or individual civilians.[2339]

715. As to the mental elements, pursuant to Article 30 of the Statute,[2340] the perpetrator must have (i) deliberately launched an attack; and (ii) meant for the civilian population as such, or individual civilians not taking direct part in hostilities, to be the object of the attack.[2341]

B. Pillaging (Article 8(2)(e)(v) of the Statute)

716. Article 8(2)(e)(v) of the Statute provides that '[p]illaging a town or place, even when

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[2333] *Ongwen* Trial Judgment, para. 2697.
[2334] *Ntaganda* Trial Judgment, para. 883, *referring to* Article 50(1) of Additional Protocol I; *Blaškić* Appeal Judgment, para. 111. *See also* *Galić* Trial Judgement, para. 55.
[2335] *Ntaganda* Trial Judgment, para. 883.
[2336] *Ntaganda* Trial Judgment, para. 921; *Kordić and Čerkez* Appeal Judgment, para. 48; *Galić* Trial Judgement, para. 55.
[2337] *Ongwen* Trial Judgment, para. 2759; *Ntaganda* Trial Judgment, para. 921.
[2338] *Ntaganda* Trial Judgment, para. 921
[2339] *Ntaganda* Trial Judgment, para. 921 and fn. 2668. *See also* K. Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (Cambridge University Press 2002), p. 445 ('This might be an indication that the following conclusions drawn for international armed conflicts apply also to non-international armed conflicts: This offence is not limited to attacks against individual civilians. It essentially encompasses attacks that are not directed against a specific military objective or combatants or attacks employing indiscriminate weapons or attacks effectuated without taking necessary precautions to spare the civilian population or individual civilians, especially failing to *seek precise information* on the objects or persons to be attacked').
[2340] *See* paras 705-706 *above*.
[2341] Elements of Crimes, Article 8(2)(e)(i), para. 3. *See also* *Katanga* Trial Judgment, para. 808.

taken by assault' is a war crime.

717. The Elements of Crimes set out the following elements:[2342]

> 1. The perpetrator appropriated certain property.
>
> 2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.
>
> 3. The appropriation was without the consent of the owner.

718. The first element of this war crime relates to 'pillaging a town or place'. The pillaging of a town or place comprises all forms of appropriation of property, including appropriation committed by individuals in their own interest and acts of organised or systematic appropriation.[2343] Pillaging extends to the appropriation of all types of property, private or public, movable or immovable.[2344]

719. Trial Chambers have found that the appropriation need not have occurred on a large scale to constitute the crime of pillaging.[2345]

720. With regard to the second element, the perpetrator must have specifically intended to deprive the owner of the property and to appropriate it for private or personal use.[2346] The use of the term 'private or personal use' indicates that 'appropriations justified by military necessity cannot constitute the crime of pillaging'.[2347] Appropriations justified by military necessity require that the appropriation's use be directed to further the war effort and thus be used for military purposes.[2348] If combatants appropriate property essential to their survival, such as food, this alone does not make the appropriation one of military necessity.[2349]

721. The third material element requires that '[t]he appropriation was without the consent of the owner'.[2350] When the property owner has fled, such appropriations must be assumed to

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[2342] Elements of Crimes, Article 8(2)(e)(v).
[2343] *Ongwen* Trial Judgment, para. 2763.
[2344] *Bemba* Trial Judgment, para. 115.
[2345] *Ongwen* Trial Judgment, para. 2764; *Ntaganda* Trial Judgment, para. 1044. The Chamber notes that early jurisprudence of this Court considered that only appropriation of property 'on a large scale' could amount to the war crime of pillaging and, as such, excluded from the scope of application of this crime 'mere sporadic acts of violation of property rights'. *See* *Bemba* Trial Judgment, paras 115, 117.
[2346] *See* para. 722 *below*.
[2347] Elements of Crimes, Article 8(2)(e)(v), fn. 62.
[2348] *Ongwen* Trial Judgment, para. 2767 and references cited therein.
[2349] *Ongwen* Trial Judgment, para. 2767 and references cited therein.
[2350] Elements of Crimes, Article 8(2)(e)(v), para. 3.

have been without the owner's consent, absent any contrary indication.[2351] This could be the case, for example, when items are appropriated from an empty house whose residents have fled.[2352]

722. As to the mental elements of the crime, pursuant to Article 30 of the Statute,[2353] the perpetrator must have: (i) acted deliberately; and (ii) meant to 'deprive the owner' of his or her property and to 'appropriate it for private or personal use', or been aware that this consequence would occur in the ordinary course of event.[2354] Further, under Article 30(3) of the Statute, the perpetrator must also have known that the appropriation was without the consent of the owner.[2355]

C. Destroying or seizing the enemy's property (Article 8(2)(e)(xii) of the Statute)

723. Article 8(2)(e)(xii) of the Statute provides that '[d]estroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict' is a war crime.

724. The Elements of Crimes set out the following elements:[2356]

> 1. The perpetrator destroyed or seized certain property.
>
> 2. Such property was property of an adversary.
>
> 3. Such property was protected from that destruction or seizure under the international law of armed conflict.
>
> 4. The perpetrator was aware of the factual circumstances that established the status of the property.
>
> 5. The destruction or seizure was not required by military necessity.

725. As regards the first material element, to 'destroy' can be, either by act or omission, to set ablaze, demolish, pull down or damage so badly that it is no longer fit for purpose;[2357] and the 'property' destroyed can be movable or immovable, private or public items.[2358] The act of

[2351] *Ongwen* Trial Judgment, para. 2766.
[2352] *Ongwen* Trial Judgment, para. 2766.
[2353] *See* paras 705-706 *above*.
[2354] Elements of Crimes, Article 8(2)(e)(v)(2), para. 2. *See Katanga* Trial Judgment, para. 913; *Ongwen* Trial Judgment, para. 2767; Elements of Crimes, Article 8(2)(e)(v).
[2355] Elements of Crimes, Article 8(2)(e)(v)(3).
[2356] Elements of Crimes, Article 8(2)(e)(xii).
[2357] *Ongwen* Trial Judgment, para. 2775.
[2358] *Ongwen* Trial Judgment, para. 2775.

destruction can be committed during or outside the conduct of hostilities.[2359]

726. The second material element requires that the property must belong to the 'adversary',[2360] namely to individuals or entities considered to be aligned with the opposing party to the conflict, adverse or hostile to the perpetrator.[2361] Regarding the destruction of property belonging to persons who had no stated or apparent allegiance to a party involved in the conflict, it may be established nonetheless that these persons or entities were 'adverse', or were considered as such by the perpetrators; for example, by showing that they were not aligned to or supportive of the perpetrators' party or its objectives.[2362]

727. The third material element requires that '[s]uch property was protected from that destruction or seizure under the international law of armed conflict'.[2363] The property is protected under international law when it does not constitute 'military objectives', namely 'objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage'.[2364] Indeed, objects of the adversary lose their protection under international law of armed conflict if and for such time as they are 'military objects'.[2365] For the purpose of determining as to whether or not property was 'protected', the applicable standard is that, a reasonable person, in the circumstances of the case, could not have believed that the property attacked and destroyed was a military objective.[2366]

728. The fourth element, which is a mental element, will be dealt with below.[2367]

729. Finally, the crime of destruction of property requires that the destruction was not required by military necessity. This relates to situations where destruction is 'imperatively demanded by the necessities of the conflict'.[2368] Such a compelling necessity must be assessed

[2359] *Ntaganda* Trial Judgment, para. 1158, *referring to* Article 23(g) of Fourth Geneva Convention.
[2360] Elements of Crimes, Article 8(2)(e)(xii), para. 2.
[2361] *Ongwen* Trial Judgment, para. 2776.
[2362] *Ongwen* Trial Judgment, para. 2776.
[2363] Elements of Crimes, Article 8(2)(e)(xii), para. 3.
[2364] *Ongwen* Trial Judgment, para. 2777. *See also* Article 52(2) of Additional Protocol I.
[2365] *Ongwen* Trial Judgment, para. 2777.
[2366] *Ntaganda* Trial Judgment, para. 1162.
[2367] *See* para. 730 *below*.
[2368] *Ongwen* Trial Judgment, para. 2779, *referring to* *Katanga* Trial Judgment, para. 894. *See further* *Ntaganda* Trial Judgment, para. 1164.

on a case-by-case basis,[2369] taking account of the particular circumstances prevailing at the time, including whether the destroyed property was defended.[2370]

730. As to the mental elements, pursuant to Article 30 of the Statute,[2371] the perpetrator must have: (i) acted deliberately; and (ii) meant to destroy the property, or was aware that this destruction would occur in the ordinary course of events.[2372] In addition, the perpetrator must have been aware that the property was property of the adversary and aware of the factual circumstances that established the 'status of the property'.[2373] It is therefore not necessary to establish that the perpetrator had concluded, following an assessment of the situation, that the property was effectively protected from destruction under international humanitarian law.[2374] Lastly, the perpetrator must have been aware of the fact that the destruction was not justified by military necessity.[2375]

D. Forcible transfer of population (Article 7(1)(d) of the Statute)

731. Article 7(1)(d) of the Statute provides that '[d]eportation or forcible transfer of population' is a crime against humanity, and Article 7(2)(d) of the Statute provides that it means the 'forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law'.

732. The Elements of Crimes set out the following elements:[2376]

> 1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
>
> 2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
>
> 3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.

733. Footnote 12 of the Elements of Crimes explains that '[t]he term "forcibly" in this element is "not restricted to physical force, but may include threat of force or coercion, such

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[2369] *Ntaganda* Trial Judgment, para. 1165; *Ongwen* Trial Judgment, para. 2779, *referring to* *Katanga* Trial Judgment, para. 894.
[2370] *Ntaganda* Trial Judgment, para. 1165.
[2371] *See* paras 705-706 *above*.
[2372] *Katanga* Trial Judgment, para. 899.
[2373] *Katanga* Trial Judgment, para. 900; Elements of Crimes, Article 8(2)(e)(xii), para. 4.
[2374] *Katanga* Trial Judgment, para. 900. *See also* para. 776 *below*.
[2375] *Katanga* Trial Judgment, para. 900.
[2376] Elements of Crimes, Article 7(1)(d).

as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment"'.[2377] Footnote 13 of the Elements of Crimes specifies that '"forcibly transferred" is interchangeable with "forcibly displaced"'.

734. Different types of conduct displayed by the perpetrator can amount to 'expulsion or other coercive acts' which forced the victim to leave the area where he or she was otherwise lawfully present.[2378] Chambers have considered that the following acts amounted to coercive acts: 'the destruction of homes in residential areas, the brutality of killings and injuries, the rape of [certain individuals], public announcements to the effect that [certain groups needed to] leave',[2379] and the 'deprivation of fundamental rights, killing, sexual violence, torture, enforced disappearance, destruction and looting'.[2380] It therefore must be demonstrated that one or more acts on the part of the perpetrator resulted in forcibly displacing the victim.[2381]

735. Incidental displacement as a result of an entirely lawful attack, or collateral consequences of a lawful attack, do not amount to forcible transfer or displacement.[2382] However, in order to establish the forced character of a displacement, there is no need to establish that 'unlawful targeting' took place and that the displaced population was the object of an unlawful attack designed to coerce its departure.[2383] Rather, it must be demonstrated that there was a genuine lack of choice on the part of the individuals displaced.[2384] While individuals may agree, or even request, to be removed from an area, consent must be real in the sense that it is given voluntarily and as a result of the individual's free will.[2385] When assessing whether the persons transferred had a genuine choice to remain or leave and whether the resulting displacement was unlawful, the Chamber will therefore consider the prevailing situation and atmosphere,[2386] and all other relevant circumstances.[2387]

736. In order to assess the existence of a genuine lack of choice, chambers have had regard

[2377] Elements of Crimes, Article 7(1)(d), fn. 12.
[2378] *Ntaganda* Trial Judgment, para. 1047.
[2379] *Muthaura et al.* Confirmation Decision, para. 244.
[2380] *Bangladesh/Myanmar* Article 19(3) Decision, para. 61.
[2381] *Ntaganda* Trial Judgment, para. 1047.
[2382] *Ntaganda* Trial Judgment, para. 1056.
[2383] *Ntaganda* Trial Judgment, para. 1056.
[2384] *Ntaganda* Trial Judgment, para. 1056. *See also* *Stakić* Appeal Judgment, para. 279; *Krnojelac* Appeal Judgment, para. 229; *Đorđević* Trial Judgment, para. 1605.
[2385] *Ntaganda* Trial Judgment, para. 1056, *quoting* *Stakić* Appeal Judgment, para. 279.
[2386] *Ntaganda* Trial Judgment, para. 1056.
[2387] *Ntaganda* Trial Judgment, para. 1056. *See also* Elements of Crimes, Article 7(1)(d), fn. 12.

to the following circumstances: the atmosphere in a municipality of such a coercive nature that the persons leaving could not be considered as having voluntarily decided to give up their homes;[2388] threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment;[2389] in the case of detained persons, their living conditions and (mis)treatment (which included illegal detention, threats, beatings and mistreatments and an atmosphere of fear or a 'coercive prison regime which was such that they were not in a position to exercise genuine choice'); the vulnerability of the victims.[2390]

737. In the case of *Milutinović et al.*, an ICTY Trial Chamber stated:

> Trial and Appeals Chambers have inferred a lack of genuine choice from threatening and intimidating acts that were calculated to deprive the civilian population of exercising its free will, such as […] the burning of civilian property, and the commission of or threat to commit other crimes calculated to terrify the population and make them flee the area with no hope of return.[2391]

738. The second material element is that the victims 'were lawfully present in the area from which they were so deported or transferred'.[2392] Victims need not have had legal residence in the area from which they were forcibly displaced.[2393]

739. As to the mental elements, pursuant to Article 30 of the Statute,[2394] the perpetrator must have: (i) acted deliberately; and (ii) meant to transfer or displace the victims, or been aware that this transfer or displacement would occur in the ordinary course of events. In addition, the perpetrator must have been aware of the factual circumstances that established the lawfulness of the displaced individuals' presence in the area.[2395]

E. Rape (Articles 7(1)(g) and 8(2)(e)(vi) of the Statute)

740. Articles 7(1)(g) and 8(2)(e)(vi) of the Statute provide that rape is a crime against humanity and a war crime, respectively.

[2388] *Stakić* Trial Judgment, para. 707.
[2389] *Đorđević* Trial Judgment, para. 1605 and references cited therein.
[2390] *Krnojelac* Appeal Judgment, paras 229-233.
[2391] *Milutinović et al.* Trial Judgment, para. 165. *See also Simić et al.* Trial Judgement, paras 125-126; *Naletilić and Martinović* Trial Judgement, para. 519; *Krstić* Trial Judgment, para. 529.
[2392] Elements of Crimes, Article 7(1)(d), para. 2.
[2393] *Ntaganda* Trial Judgment, para. 1069.
[2394] *See* paras 705-706 *above*.
[2395] Elements of Crimes, Article 7(1)(d), para. 3. *See also for example Ntaganda* Trial Judgment, para. 1188.

741. The Elements of Crimes set out the following elements, both as a crime against humanity and as a war crime:[2396]

> 1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
>
> 2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

742. The concept of 'invasion' in the first element is intended to be broad and inclusive, ensuring gender-neutrality.[2397]

743. The establishment of one of the coercive circumstances or conditions set out in the second material element is sufficient alone for penetration to amount to rape within the meaning of Articles 7(1)(g) and 8(2)(e)(vi) of the Statute.[2398] Coercive circumstances need not be evidenced by a show of physical force – threats, intimidation, extortion, and other forms of duress which prey on fear or desperation may constitute coercion.[2399] There is no requirement of resistance on the part of the victim[2400] and the victim's lack of consent need not be proven.[2401] Coercion may be inherent in certain circumstances, such as armed conflict or the military presence of hostile forces amongst the civilian population.[2402] Several factors may contribute to creating a coercive environment, such as: (i) the number of people involved in the commission of the crime; (ii) whether the rape is committed during or immediately following a combat situation, or is committed together with other crimes; (iii) the detention of the victim; (iv) psychological pressure; or (v) abuse of power.[2403]

744. As to the mental elements, pursuant to Article 30 of the Statute,[2404] the perpetrator must have: (i) acted deliberately; and (ii) meant to invade the body of the victim, or been aware that this invasion would occur in the ordinary course of events. In accordance with Article 30(3) of

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[2396] Elements of Crimes, Article 7(1)(g); Article 8(2)(e)(vi).
[2397] *See* Elements of Crimes, Article 7(1)(g)-1, fn. 15; Article 8(2)(e)(vi)-1, fn. 63.
[2398] *Ongwen* Trial Judgment, para. 2709.
[2399] *Ongwen* Trial Judgment, para. 2710.
[2400] *Ongwen* Trial Judgment, para. 2709.
[2401] *Ongwen* Trial Judgment, para. 2709. *See also* Rules 70 and 71 of the Rules.
[2402] *Ongwen* Trial Judgment, para. 2710.
[2403] *Ongwen* Trial Judgment, para. 2710.
[2404] *See* paras 705-706 *above*.

the Statute, the perpetrator must have been aware that the invasion was committed by force, threat of force, coercion or by taking advantage of a coercive environment, or that 'the invasion was committed against a person incapable of giving genuine consent'.[2405]

F. Torture (Articles 7(1)(f) and 8(2)(c)(i) of the Statute)

745. Article 7(1)(f) of the Statute provides that '[t]orture' is a crime against humanity, and Article 8(2)(c)(i) of the Statute that it is a war crime. Article 7(2)(e) of the Statute further defines torture as a crime against humanity as 'the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions'.

746. The Elements of Crimes set out the following elements for the crime of torture as a crime against humanity:[2406]

> 1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
>
> 2. Such person or persons were in the custody or under the control of the perpetrator.
>
> 3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.

747. The Elements of Crimes set out the following elements for the crime of torture as a war crime:[2407]

> 1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
>
> 2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.
>
> 3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
>
> 4. The perpetrator was aware of the factual circumstances that established this status.

[2405] *Katanga* Trial Judgment, para. 970.
[2406] Elements of Crimes, Article 7(1)(f).
[2407] Elements of Crimes, Article 8(2)(c)(i)-4.

748. The crimes of torture as a crime against humanity and as a war crime share the first element that relates to the severity of the pain inflicted.[2408] The word 'severe' implies an important degree of pain and suffering caused to the victim, and may be met by a single act of the perpetrator or by a combination of acts when viewed as a whole.[2409] Severity can only be assessed on a case-by-case basis in the light of all the circumstances of the case.[2410] Indeed, a violation of a person's physical and psychological integrity has several gradations and may encompass actions with physical and psychological effects that vary in intensity depending on endogenous and exogenous factors (such as manner, method used and length of the mistreatment, age, sex, health, context and vulnerability of the victim).[2411] The pain and suffering may be either physical or mental.[2412] It is not necessary to prove that the pain or suffering involved specific physical injury, impairment of a bodily function or death, and the consequences of torture do not have to be visible, nor must the injury be permanent.[2413] Further, it is not necessary to prove that the 'perpetrator personally completed a particular value judgement' as to the severity of the pain inflicted.[2414]

749. The remaining material elements are distinct for each crime. For torture as a crime against humanity, the second material element requires that 'such person or persons were in the custody or under the control of the perpetrator'. The Statute does not require the perpetrator to have acted in an official capacity.[2415] The use of the terms 'custody' and 'under control of the perpetrator' in this element should not be equated with 'imprisonment or other severe deprivation of liberty'; rather it should be interpreted broadly in the sense that a person need not be in actual custody and some form of control is sufficient to establish this element.[2416]

750. The third material element for torture as a crime against humanity is exclusionary in nature. It provides that the pain or suffering of such person or persons 'did not arise only from, and was not inherent in or incidental to, lawful sanctions'.[2417] This element of exclusion is not

[2408] Elements of Crimes, Article 7(1)(f), para. 1; Article 8(2)(c)(i)-4, para. 1.
[2409] *Ongwen* Trial Judgment, para. 2701.
[2410] *Ongwen* Trial Judgment, para. 2701.
[2411] *Al Hassan* Trial Judgment, para. 1128, fn. 3817 and references cited therein. *See also* *Ongwen* Trial Judgment, para. 2701, fn. 7132.
[2412] *Al Hassan* Trial Judgment, para. 1128.
[2413] *Ongwen* Trial Judgment, para. 2701.
[2414] Elements of Crimes, General Introduction, para. 4.
[2415] *Al Hassan* Trial Judgment, para. 1129.
[2416] *Al Hassan* Trial Judgment, para. 1129.
[2417] Elements of Crimes, Article 7(1)(f), paras 2-3. *See also* Article 7(2)(e) of the Statute.

a requirement for the proof of the war crime of torture.[2418]

751. As to the mental elements, for both the crime of torture as a crime against humanity and as a war crime, pursuant to Article 30 of the Statute[2419] the perpetrator must have: (i) acted deliberately and; (ii) meant to inflict severe physical or mental pain or suffering upon one or more persons, or been aware that this pain or suffering would occur in the ordinary course of event. In addition, the second element of the war crime of torture requires that the perpetrator inflicted the pain or suffering 'for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind'.[2420] This specific 'purpose' must be part of the motivation behind the conduct of the perpetrator but it need not be the 'predominant or sole purpose' of the infliction of pain and suffering.[2421] Finally, the fourth element of torture as a war crime requires that the perpetrator must have been aware of the factual circumstances that established the status of the victim.[2422]

G. Other inhumane acts (Article 7(1)(k) of the Statute)

752. Article 7(1)(k) of the Statute provides that '[o]ther inhumane acts of similar character intentionally causing great suffering or serious injury to body or to mental or physical health' are crimes against humanity.

753. The Elements of Crimes set out the following elements:[2423]

> 1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.
>
> 2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.
>
> 3. The perpetrator was aware of the factual circumstances that established the character of the act.

754. The category of 'other inhumane acts' under Article 7(1)(k) of the Statute 'serves as a "residual category" of crimes against humanity, designed to criminalise an act that does not specifically qualify as any of the other crimes under Article 7(1) of the Statute, based on the

[2418] *Al Hassan* Trial Judgment, para. 1130.
[2419] *See* paras 705-706 *above*.
[2420] Elements of Crimes, Article 8(2)(c)(i)-4, para. 2.
[2421] *Ongwen* Trial Judgment, para. 2706 and references cited therein.
[2422] Elements of Crimes, Article 8(2)(c)(i)-4, para. 4. *See also* para. 776 *below*.
[2423] Elements of Crimes, Article 7(1)(k).

understanding that an exhaustive enumeration of inhumane acts is impossible'.[2424] If the underlying conduct is an act already enumerated in Article 7(1) of the Statute, a conviction under Article 7(1)(k) of the Statute can be entered only when the conduct in question, assessed in its entirety, falls completely outside any act under Article 7(1)(a)-(j) of the Statute or when the full scope of the culpable conduct is not reflected by its qualification under the enumerated crime(s) alone.[2425]

755. The Chamber notes that the term 'character' in the second element of Article 7(1)(k) of the Statute refers to the 'nature and gravity of the act'.[2426] A conviction can be entered under Article 7(1)(k) of the Statute if the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of a course of conduct which, despite also comprising acts falling under one or more of the enumerated crimes, is, in its entirety, not identical but is nonetheless 'similar' in character as to its nature and gravity, to those enumerated crimes.[2427]

756. Trial Chambers and international tribunals have considered the following to constitute inhumane acts: forced marriage, forcible circumcision and penile amputation, mental suffering caused by brutal killings and mutilations committed in front of family members, striking people with a machete and injuring protesters by mortar fire, enforced disappearance of persons, deportation or forcible transfer of population, forced prostitution, serious beatings, subjection to deplorable conditions of detention and requiring persons to witness the beatings or killings of others.[2428]

757. The Appeals Chamber has held that as Article 7(1)(k) of the Statute 'is an open provision' – meaning that different types of conduct may amount to other inhumane acts as long as they satisfy the elements of Article 7(1)(k) of the Statute – 'a chamber may have recourse to any relevant international instruments, such as conventions and treaties, in order to determine whether a specific conduct qualifies as a form of other inhumane acts'.[2429]

758. As to the mental elements, pursuant to Article 30 of the Statute,[2430] the perpetrator must

[2424] *Ongwen* Appeal Judgment, para. 1017.
[2425] *Al Hassan* Trial Judgment, paras 1184-1185.
[2426] Elements of Crimes, fn. 30.
[2427] *Al Hassan* Trial Judgment, para. 1185.
[2428] *Al Hassan* Trial Judment, para. 1186 and references cited therein; *Ongwen* Trial Judgment, para. 2744.
[2429] *Ongwen* Appeal Judgment, para. 1021.
[2430] *See* paras 705-706 *above*.

have: (i) acted deliberately; and (ii) meant to inflict great suffering, or serious injury to body or to mental or physical health, or been aware this suffering or injury would occur in the ordinary course of events. In addition, the perpetrator must have been aware of the factual circumstances that established the character of the inhumane act,[2431] but need not have made 'a value judgement as to the "inhumane" character of the act'.[2432]

H. Cruel treatment (Article 8(2)(c)(i) of the Statute)

759. Article 8(2)(c)(i) of the Statute provides that 'cruel treatment' is a war crime.

760. The Elements of Crimes set out the following elements:[2433]

> 1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
>
> 2. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
>
> 3. The perpetrator was aware of the factual circumstances that established this status.

761. The first and second elements of the war crime of cruel treatment are identical to the first[2434] and third[2435] elements of the war crime of torture.

762. The Statute and the Elements of Crimes make no distinction as to the degree of suffering and pain required in the first element for torture as a crime against humanity and war crime or cruel treatment as a war crime.[2436] As stated above, for the crimes of torture, the level of intensity must be determined on a case-by-case basis, bearing in mind all the circumstances of the case[2437] (*i.e.* duration of the treatment, physical and mental effects, age, sex, health, context, vulnerability and other particular circumstances of the victim).[2438] The personal characteristics of the victim must also be taken into account when determining whether their personal integrity was violated, because these characteristics may change the individual's perception of the reality and, consequently, increase the suffering and feeling of humiliation experienced by the

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[2431] Elements of Crimes, Article 7(1)(k), para. 3.
[2432] Elements of Crimes, General Introduction, para. 4.
[2433] Elements of Crimes, Article 8(2)(c)(i)-3.
[2434] Elements of Crimes, Article 8(2)(c)(i)-4, para. 1 which reads: 'The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons'.
[2435] Elements of Crimes, Article 8(2)(c)(i)-4, para. 3 which reads: 'Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities'.
[2436] *Al Hassan* Trial Judgment, para. 1149.
[2437] *Ongwen* Trial Judgment, para. 2701.
[2438] *Al Hassan* Trial Judgment, para. 1149 and references cited therein.

victim.[2439]

763. Finally, the purposive element of the war crime of torture,[2440] (meaning that '[t]he perpetrator inflicted the pain or suffering for such purposes as [….] obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind'),[2441] is the sole element distinguishing this crime from the war crime of cruel treatment. Hence, when an act does not satisfy the purposive requirement of the war crime of torture but satisfies the other elements, it constitutes the war crime of cruel treatment.[2442]

764. As to the mental elements, pursuant to Article 30 of the Statute,[2443] the perpetrator must have: (i) acted deliberately; and (ii) meant to inflict severe physical or mental pain or suffering, or been aware that this pain or suffering would occur in the ordinary course of events. In addition, the fourth element of cruel treatment as a war crime requires that the perpetrator must have been aware of the factual circumstances that established the status of the victim.[2444]

I. Outrages upon personal dignity (Article 8(2)(c)(ii) of the Statute)

765. Article 8(2)(c)(ii) of the Statute provides that '[c]ommitting outrages upon personal dignity, in particular humiliating and degrading treatment' is a war crime.

766. The Elements of Crimes set out the following elements:[2445]

> 1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.
>
> 2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.
>
> 3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
>
> 4. The perpetrator was aware of the factual circumstances that established this

[2439] *Al Hassan* Trial Judgment, para. 1149 and references cited therein.
[2440] Elements of Crimes, Article 8(2)(c)(i)-4, para. 2 which reads: 'The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind'.
[2441] Elements of Crimes, Article 8(2)(c)(i)-4, para. 2.
[2442] *Al Hassan* Trial Judment, para. 1150. *See* A. Zimmermann and R. Geiβ, 'Article 8: War Crimes', in K. Ambos (ed.) *Rome Statute of the International Criminal Court* (2022), para. 908.
[2443] *See* paras 705-706 *above*.
[2444] Elements of Crimes, Article 8(2)(c)(i)-4, para. 4. *See also* para. 776 *below*.
[2445] Elements of Crimes, Article 8(2)(c)(ii). *See also* fn. 57 which reads: 'For this crime, "persons" can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim'.

status.

767. The question of whether the 'severity' of the humiliation, degradation or violation is 'generally recognized' as an outrage upon personal dignity entails an objective assessment of a reasonable person and must be assessed on a case-by-case basis.[2446] This objective component has been defined as requiring that the 'humiliation to the victim must be so intense that the reasonable person would be outraged'.[2447] The suffering or injury caused does not need to have long term effects.[2448]

768. The Court's legal framework does not provide a definition of conduct that humiliates, degrades or otherwise violates someone's dignity or an 'inhumane treatment'.[2449] The jurisprudence of this Court and international tribunals has established that the following acts constitute outrages upon personal dignity: rape, hanging naked prisoners from handcuffs or forcing them to maintain a certain position for a long time, forcing someone to dance naked on a table or to undress and do gymnastics in a public courtyard, using detainees as human shields or making them dig trenches, or forcing detainees to, *inter alia*, relieve themselves in their clothing.[2450]

769. The third element requires that the victims were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

770. As to the mental elements, pursuant to Article 30 of the Statute,[2451] the perpetrator must have: (i) acted deliberately; and (ii) meant to cause the humiliation, degradation or violation of the dignity of the victim, or been aware that such a consequence would occur in the ordinary course of events. The perpetrator need not have completed a value judgment as to the severity of the humiliation, degradation or violation inflicted.[2452] In addition, it must be proven that the 'perpetrator was aware of the factual circumstances that established' the status of the victim.[2453]

[2446] *Ongwen* Trial Judgment, para. 2756.
[2447] *Al Hassan* Trial Judgment, para.1152.
[2448] *Ongwen* Trial Judgment, para. 2756. *See also* *Kvočka et al.* Trial Judgment, para. 168; *Kunarac et al.* Trial Judgment, paras 501, 503.
[2449] *Al Hassan* Trial Judgment, para. 1153.
[2450] *Al Hassan* Trial Judgment, para. 1153 and references cited therein.
[2451] *See* paras 705-706 *above*.
[2452] Elements of Crimes, General Introduction, para. 4.
[2453] Elements of Crimes, Article 8(2)(c)(ii), para. 4. *See also* para. 776 *below*.

J. Murder and attempted murder (Articles 7(1)(a) and 8(2)(c)(i) of the Statute)

771. Article 7(1)(a) of the Statute provides that '[m]urder' is a crime against humanity, and Article 8(2)(c)(i)-1 of the Statute that it is a war crime.

772. The Elements of Crimes set out the following elements, both as a crime against humanity and as a war crime:[2454]

> 1. The perpetrator killed one or more persons.

and that the crime of murder as a war crime has the following additional elements:[2455]

> 2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.
>
> 3. The perpetrator was aware of the factual circumstances that established this status.

773. The first element common to both murder as a crime against humanity and as a war crime is that murder is committed when the perpetrator killed one or more persons,[2456] as a result of an act or omission.[2457] A causal link must be established between the perpetrator's conduct and the victim's death.[2458] Where the perpetrator's actions do not ultimately cause the death of a person, liability for attempted murder may arise pursuant to Article 25(3)(f) of the Statute. For the crime of attempted murder to be established, as per Article 25(3)(f) of the Statute, it must be proven that the perpetrator took action that commenced the execution of the murder by means of a substantial step, but the murder did not occur because of circumstances independent of the perpetrator's intentions.[2459]

774. While the Prosecution must demonstrate, to the extent possible, the location, date and means of killing, it is not required to demonstrate for each killing the identity of the victim or of the perpetrators.[2460] The elements of murder may be satisfied whether or not a victim's body has been recovered; a victim's death may thus be proven by circumstantial evidence so long as

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[2454] Elements of Crimes, Article 7(1)(a).
[2455] Elements of Crimes, Article 8(2)(c)(i)-1.
[2456] Elements of Crimes, Article 7(1)(a), para. 1; Article 8(2)(c)(i), para. 1. *See also* Elements of Crimes, fns 7, 31, stating that '[t]he term "killed" is interchangeable with the term "caused death"'.
[2457] *Ongwen* Trial Judgment, para. 2696.
[2458] *Katanga* Trial Judgment, para. 767.
[2459] *See also* *Ntaganda* Trial Judgment, para. 861.
[2460] *Ongwen* Trial Judgment, para. 2698.

the only reasonable inference that can be drawn therefrom is that the victim died.[2461]

775. Pursuant to Article 8(2)(c) of the Statute and the Elements of Crimes, the killing of civilians only qualifies as murder if they are persons taking no active part in hostilities at the relevant time, 'including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause'.[2462] In determining whether victims were taking an active part in hostilities[2463] at the time of their alleged murder, the Chamber may consider the relevant facts and specific situation of the victims, including the location of the alleged murders, whether the victims were carrying any weapons at the time they were killed, and their clothing, age, and gender.[2464]

776. As to the mental elements, pursuant to Article 30 of the Statute,[2465] the perpetrator must have: (i) acted deliberately; and (ii) meant to kill one or more persons, or been aware that death would occur in the ordinary course of events.[2466] In addition, for the crime of murder as a war crime, and consistent with the knowledge requirement under Article 30(3) of the Statute, the perpetrator must have been aware of the factual circumstances that established the protected status of the victim.[2467] It is not necessary for the perpetrator to have assessed the situation and reached a legal conclusion as to whether the victim was *hors de combat*, a civilian, a member of medical personnel or religious personnel taking no active part in the hostilities.[2468]

777. Since the attempted commission of a crime is characterised by the fact that the perpetrator did not fulfil all objective elements despite their intention to do so, there are no distinctions to be drawn between the mental elements required for murder in its consummated

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[2461] *Ntaganda* Trial Judgment, para. 862; *Bemba* Trial Judgment, para. 88; *Katanga* Trial Judgment, para. 768. *See also* *Ongwen* Trial Judgment, para. 2698. On this point, chambers of the ICTY have considered: proof of incidents of mistreatment directed against the individual; patterns of mistreatment and disappearances of other individuals detained at the same place; the general climate of lawlessness where the acts were committed; the length of time which has elapsed since the person disappeared; and the fact that there has been no contact by that person with others whom he or she would have been expected to contact, such as family members. *See* *Krnojelac* Trial Judgment, para. 327.

[2462] Elements of Crimes, Article 8(2)(c)(i)-1(2). *Ntaganda* Trial Judgment, para. 883. On the definition of 'taking no active part in hostilities', *see* para. 712 *above*.

[2463] *See* para. 712 *above*.

[2464] *Ntaganda* Trial Judgment, para. 884.

[2465] *See* paras 705-706 *above*.

[2466] *See* paras 705-706 *above*. *See also* *Katanga* Trial Judgment, paras 780-781; *Bemba* Trial Judgment, paras 89-90.

[2467] *See* Elements of Crimes, Article 8(2)(c)(i)-1(3). *See also* *Katanga* Trial Judgment, para. 793; *Bemba* Trial Judgment, para. 97.

[2468] *See* Elements of Crimes, fn. 32; *Katanga* Trial Judgment, fn. 1831. The Chamber accordingly finds that 'knowledge that the targeted persons and properties were protected' or knowledge 'that their protection implied that attacking those was a crime under IHL' need not be demonstrated as such. *Contra* Defence's Final Brief, paras 797-826; Defence' s Closing Statement: T-162, pp. 53-54.

form and those required for its attempted form.[2469]

K. Persecution (Article 7(1)(h) of the Statute)

778. Article 7(1)(h) of the Statute provides that '[p]ersecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3,[2470] or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court', is a crime against humanity. Article 7(2)(g) of the Statute further provides that it means 'the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity'.

779. The Elements of Crimes set out the following elements:[2471]

> 1. The perpetrator severely deprived, contrary to international law,[2472] one or more persons of fundamental rights.
>
> 2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
>
> 3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
>
> 4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

780. As regards the first material element, the plain language of the statutory provision indicates that only a 'severe deprivation' of a person's 'fundamental rights', when 'contrary to international law', meets the threshold for persecution.[2473] 'Fundamental rights' may include a variety of rights such as the right to life, the right to personal liberty, the right not to be subjected to torture or cruel, inhumane or degrading treatment, the right to freedom of

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[2469] *Ongwen* Trial Judgment, para. 2699.
[2470] Article 7(3) of the Statute stipulates: 'For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the *above*'.
[2471] Elements of Crimes, Article 7(1)(h).
[2472] Elements of Crimes, fn. 21, which reads: 'This requirement is without prejudice to paragraph 6 of the General Introduction to the Elements of Crimes'. Paragraph 6 of the General Introduction reads: 'The requirement of "unlawfulness" found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes'.
[2473] Elements of Crimes, Article 7(1)(h), para. 1; *Al Hassan* Trial Judgment, para. 1203.

expression, the right to freedom of movement, and the right to private property.[2474]

781. Persecution can be committed either by one act or in a series of acts.[2475] If the conduct relied upon is, in and of itself, one of the other acts listed in Article 7 of the Statute, it will, in principle, result in a deprivation of fundamental rights of one or more individuals and the deprivation will meet the minimum level of severity required.[2476]

782. The Chamber observes that, from the range of rights implicated, the conduct underlying an act of persecution may constitute an act listed in paragraph 1 of Article 7 of the Statute, but it need not be the case.[2477] For example, a broad range of acts such as, exclusion from professions, denial of access to public services and restrictions on family life have been found to constitute acts of persecution.[2478] Thus, discriminatory order, policies, decisions or other regulations, as well as restrictions on movement to certain places and times, provided that they infringe on basic rights and reach the necessary level of gravity, can form underlying acts of persecution.[2479]

783. With respect to other types of underlying acts, the Chamber will need to assess these acts on a case-by-case basis 'in their context and with consideration of their cumulative effect' in order to determine whether, taken alone or in combination with other acts, they have resulted in the 'severe' deprivation of one or more individual's fundamental rights.[2480] In assessing whether a series of violation amount to a severe deprivation of fundamental rights, the number of fundamental rights implicated and the nature of the deprivation are also relevant considerations.[2481]

784. In respect of the second element, the Chamber notes that it is a mental element, and will be dealt with below.[2482]

785. The third element requires that the person or persons within the group or collectivity are targeted on specified discriminatory grounds as listed ('[s]uch targeting was based on

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[2474] *Ongwen* Trial Judgment, para. 2733. *See also Kupreškić et al.* Trial Judgment, para. 621; *Kordić and Čerkez* Trial Judgment, para. 195; CEDAW Gender-based Violence Recommendation, para. 15.
[2475] *Al Hassan* Trial Judgment, para. 1204.
[2476] *Al Hassan* Trial Judgment, para. 1204; *Ntaganda* Trial Judgment, para. 994.
[2477] *Al Hassan* Trial Judgment, para. 1202.
[2478] *Al Hassan* Trial Judgment, para. 1202.
[2479] *Al Hassan* Trial Judgment, para. 1202.
[2480] *Al Hassan* Trial Judgment, para. 1205; *Ntaganda* Trial Judgment, para. 992.
[2481] *Al Hassan* Trial Judgment, para. 1205.
[2482] *See* para. 789 *below*.

political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law')[2483] or any other ground universally recognised as impermissible under international law. One such ground will suffice, although a combination of more than one may equally form the basis for the discrimination.[2484] The targeted group can be defined both in a positive or a negative manner, meaning that it may be the case that the perpetrator targeted only members of a certain group or collectivity, or that the perpetrator targeted individuals for not belonging to a certain group or collectivity.[2485] Thus, it is not required that the members of the targeted group hold common views or consider themselves as an identifiable group.[2486]

786. To determine if a group or collectivity is a protected group, the factors of relevance are: (i) the particular political, social, and cultural context; (ii) the objective factors relevant to the discriminatory ground alleged; and (iii) the subjective perception of belonging of both the perpetrator and the victim.[2487] While it must be demonstrated that the perpetrator targeted certain persons, a group, or a collectivity, based on one of the prohibited grounds, it is not required that all victims of the crime of persecution be members, sympathisers, allies of, or in any other way related to, the protected group.[2488]

787. For the purposes of the present judgment, the discriminatory targeting of persons, groups or collectivity on the basis of 'political', 'gender' and 'ethnic' grounds is relevant. '[P]olitical' grounds include targeting by reason of political affiliations, whether actual or only perceived by the perpetrator.[2489] Article 7(3) of the Statute defines 'gender' as 'the two sexes, male and female, within the context of society'. As previously noted by this Court, the same victim or group of victims can be victimised under multiple grounds and a 'combination of more than one [ground] may […] form the basis for the discrimination'.[2490] A victim can suffer a higher risk of victimisation because of the *intersection* of different factors of discrimination.[2491]

[2483] Elements of Crimes, Article 7(1)(h), para. 3.
[2484] *Al Hassan* Trial Judgment, para. 1208; *Ntaganda* Trial Judgment, para. 1009.
[2485] *Ongwen* Trial Judgment, para. 2735.
[2486] *Ongwen* Trial Judgment, para. 2736.
[2487] *Ongwen* Trial Judgment, para. 2736.
[2488] *Ongwen* Trial Judgment, para. 2736.
[2489] *Ongwen* Trial Judgment, para. 2737.
[2490] *Ntaganda* Trial Judgment, para. 1009.
[2491] On the difference between the concepts of multiple discrimination and intersectionality, *see* *Ntaganda* Reparations Order, para. 60, fn. 153 and references cited therein.

788. In relation to the fourth element, the Chamber observes that connection to either an act referred to in Article 7(1) of the Statute or a *crime* falling within the jurisdiction of the Court is required.[2492] Further, it is the persecution which must be connected with a crime – not the individual acts underlying the same.[2493]

789. As to the mental elements, pursuant to Article 30 of the Statute,[2494] the perpetrator must have: (i) acted deliberately; (ii) meant to deprive one or more person of their fundamental rights, or been aware that this consequence would occur in the ordinary course of event.[2495] In addition, the perpetrator's conduct must be carried out with the requisite intent, *i.e.* an intent to discriminate against the targeted persons on any of the grounds enumerated in Article 7(1)(h) of the Statute.[2496] The perpetrator must target the victim *because* the perpetrator perceives the victim as belonging to a particular group or collectivity.[2497] This specific intent may be inferred from the general behaviour of the perpetrator as well as the circumstances surrounding the commission of the crime.[2498]

III. MODES OF LIABILITY

A. Responsibility within the meaning of Article 25(3)(a) of the Statute

790. Under Article 25(3)(a) of the Statute, 'a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: [c]ommits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible'. Of relevance for this judgment are the modes of liability of 'individual' and 'joint' commission of a crime.

a) Commission as an individual ('direct perpetration')

791. A person commits a crime 'as an individual' – or as a direct perpetrator – by personally carrying out the material elements of the crime with the requisite intent and knowledge pursuant to Article 30 of the Statute, as well as any other applicable provision.[2499]

[2492] *Ntaganda* Trial Judgment, para. 1023. *See also* *Al Hassan* Trial Judgment, paras 1208, 1210.
[2493] *Al Hassan* Trial Judgment, para. 1210.
[2494] *See* paras 705-706 *above*.
[2495] *Ntaganda* Trial Judgment, para. 988.
[2496] Elements of Crimes, Article 7(1)(h), para. 2 reads as follow: '[t]he perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such'. *See also* *Ongwen* Trial Judgment, para. 2739.
[2497] *Ongwen* Trial Judgment, para. 2739.
[2498] *Ongwen* Trial Judgment, para. 2739.
[2499] *Ongwen* Trial Judgment, para. 2782. *See* paras 705-706 *above*.

b) Commission 'jointly with another […] person' ('co-perpetration')

792. Joint commission (co-perpetration) involves the execution of the material elements of the crime by a plurality of persons.

793. According to the jurisprudence of the Court, the 'concept of co-perpetration based on joint control over the crime is rooted in the principle of the division of essential tasks for the purpose of committing a crime between two or more persons acting in a concerted manner. Hence, although none of the persons has overall control over the offence because they all depend on one another for its commission, they all share control because each of them could frustrate the commission of the crime by not carrying out his or her task'.[2500] In these circumstances, any person making a contribution 'can be held vicariously responsible for the contributions of all the others, and, as a result, can be considered as a principal to the whole crime'.[2501]

i. Material elements

794. Consistent with the established jurisprudence of the Court, the Chamber recalls that, to hold an individual criminally responsible as a co-perpetrator under the notion of 'control over the crime',[2502] it must be satisfied that (i) there was a common plan between at least two persons, and (ii) the contribution of the co-perpetrators was essential.

795. As regards the first material element, the Chamber must be satisfied that the accused and at least one other individual worked together ('jointly') in the commission of the offence on the basis of an agreement or common plan.[2503] It is this agreement or common plan that ties the co-perpetrators together and justifies reciprocal imputation of their respective acts.[2504] Accordingly, participation in the commission of the offence without coordination with one's co-perpetrator(s) falls outside the scope of co-perpetration.[2505] The agreement or common plan may be express or implied, previously arranged or materialise extemporaneously.[2506] Its

[2500] *Bemba et al.* Trial Judgment, para. 62; *Lubanga* Trial Judgment, para. 922.
[2501] *Bemba et al.* Trial Judgment, para. 62.
[2502] *Bemba et al.* Trial Judgment, para. 64, fn. 105 ('The Court has accepted the notion of "control over the crime" as the distinguishing criterion between principals and accessories where a criminal offence is committed by a plurality of persons.') and references cited therein. *See in particular* *Lubanga* Appeal Judgment, paras 469-472. *See contra* Minority Opinion of Judge Christine Van den Wyngaert to *Katanga* Trial Judgment; Separate Opinion of Judge Silvia Fernández de Gurmendi to *Mbarushimana* OA4 Judgment.
[2503] *Bemba et al.* Appeal Judgment, para. 818; *Lubanga* Appeal Judgment, para. 445.
[2504] *Bemba et al.* Appeal Judgment, para. 818; *Lubanga* Appeal Judgment, para. 445.
[2505] *Bemba et al.* Appeal Judgment, para. 763; *Bemba et al.* Trial Judgment, para. 65.
[2506] *Lubanga* Appeal Judgment, para. 445.

existence may be inferred from subsequent concerted action of the co-perpetrators,[2507] and proven by direct evidence or inferred from circumstantial evidence.[2508] While the common plan between individuals need not be specifically directed at the commission of a crime',[2509] it must nonetheless involve 'a critical element of criminality', meaning that, in the context of the specificities of the case it was virtually certain that the implementation of the common plan would lead to the commission of the crimes.[2510]

796. With regard to the second material element, the requirement that the co-perpetrator's contribution be 'essential' has been consistently established in the Court's jurisprudence.[2511] The accused must make an essential contribution without which the commission of the offence would not be possible.[2512] To hold an accused liable as a co-perpetrator under Article 25(3)(a) of the Statute, it has to be established, *inter alia*, that he or she had control over the crime, by virtue of his or her essential contribution to it and the resulting power to frustrate its commission, even if that essential contribution was not made at the execution stage of the crime.[2513]

797. It is not necessary that each co-perpetrator, having joint control over the offence, personally and directly carry out the offence, or that he or she be present at the scene of the criminal offence, as long as he or she exercised, jointly with others, control over the criminal offence.[2514]

798. The Appeals Chamber also found that '[p]rovided that the incidents occur within the framework of a criminal common plan, to which the co-perpetrator made an essential contribution with intent and knowledge, it is not necessary for the co-perpetrator to make an

[2507] *Bemba et al.* Trial Judgment, para. 66. *See also* *Bemba et al.* Appeal Judgment, para. 1306 ('The Appeals Chamber recalls that there is no bar to a trial chamber using evidence to infer, either backwards of forward in time, an accused's involvement in a common plan.').
[2508] *Bemba et al.* Trial Judgment, para. 66; *Lubanga* Trial Judgment, para. 988. *See also* *Bemba et al.* Appeal Judgment, paras 763-764.
[2509] *Lubanga* Appeal Judgment, para. 446.
[2510] *Bemba et al.* Trial Judgment, para. 67. *See also* *Lubanga* Appeal Judgment, paras 446, 451.
[2511] *Bemba et al.* Appeal Judgment, para. 810; *Lubanga* Appeal Judgment, paras 468-469. *See also* *Lubanga* Appeal Judgment, paras 462-468; *Lubanga* Trial Judgment, paras 995-999.
[2512] *Bemba et al.* Trial Judgment, para. 68. *See also* *Lubanga* Appeal Judgment, paras 468-469.
[2513] *Bemba et al.* Appeal Judgment, para. 810; *Lubanga* Appeal Judgment, para. 473.
[2514] *Bemba et al.* Trial Judgment, para. 69, *referring to* *Lubanga* Appeal Judgment, paras 458, 460, 465-466, stating that 'in support of this interpretation, the Appeals Chamber draws on article 25(3)(a), third alternative, of the Statute, which embodies the commission of an offence "through another person". In this case, the perpetrator, who did not carry out the incriminated conduct, may bear the same or even more blameworthiness than the person actually commit ting the criminal offence.'

essential contribution to each criminal incident'.[2515] Consistent with the principle of causation, which requires a causal link between the conduct of an accused and the crime, an accused's essential contribution must be to the crime for which he or she is responsible. However, the contribution of a co-perpetrator which, on its face, is not directly to a specific crime, but to the implementation of the common plan more generally may still suffice.[2516] The decisive consideration for determining whether an accused person qualifies as a co-perpetrator is whether the individual contribution of the accused within the framework of the agreement was such that, without it, the crime could not have been committed or would have been committed in a significantly different way.[2517]

799. What is required is a normative assessment of the role and activities of the accused person in the specific circumstances of the case, taking into account the division of tasks.[2518] The 'essential contribution' can be made not only at the execution stage of the crime, but also, depending on the circumstances, at the planning or preparation stage, including when the common plan is conceived.[2519] Acts that do not, as such, form the *actus reus* of the crime may nevertheless be taken into account when determining whether the co-perpetrator made an essential contribution to that crime.[2520]

ii. Mental elements

800. With regards to the mental elements, the Chamber must be satisfied of the co-perpetrators' mutual awareness that implementing the common plan would result in the fulfilment of the material elements of the crimes, and that they nevertheless performed their actions with the requisite intent and knowledge pursuant to Article 30 of the Statute, as well as any other applicable provision.[2521] It is precisely the co-perpetrators' mutual awareness and acceptance of the consequence of their action that justifies that the contributions made by the others may be attributed to each of them, and that they be held criminally responsible as principals to the whole offence.[2522]

[2515] *Bemba et al.* Appeal Judgment, para. 812.
[2516] *Ntaganda* Appeal Judgment, paras 20, 1041.
[2517] *Ongwen* Appeal Judgment, para. 661; *Ntaganda* Appeal Judgment, paras 22, 1041, 1060; *Bemba et al.* Appeal Judgment, paras 820, 825.
[2518] *Bemba et al.* Appeal Judgment, para. 820; *Lubanga* Appeal Judgment, paras 466, 473.
[2519] *Lubanga* Appeal Judgment, paras 469; *Bemba et al.* Appeal Judgment, para. 810.
[2520] *Bemba et al.* Appeal Judgment, para. 810.
[2521] *Bemba et al.* Trial Judgment, para. 70. *See* paras 705-706 *above*.
[2522] *Bemba et al.* Trial Judgment, para. 71.

801. The Appeals Chamber found that in order to find an accused criminally responsible as a co-perpetrator for specific criminal acts of murder or rape that took place on particular dates and in particular locations, it need not be established that he or she was aware of the details of these events, including whether and which specific acts had been committed. Rather, what must be established is that the person possessed the requisite *mens rea* with respect to each of the crime as such in the sense of murder, rape, persecution, pillage, *etc.*, committed in implementation of the common plan.[2523]

B. Responsibility for 'ordering' within the meaning of Article 25(3)(b) of the Statute

802. Pursuant to Article 25(3)(b) of the Statute, 'a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: […] [o]rders, solicits or induces the commission of such crime which in fact occurs or is attempted'.[2524] As regards the mode of liability of 'ordering', the *actus reus* means that a person in a position of authority instructs another person to commit an offence.[2525]

803. First, the accused (the 'accessorial perpetrator') must have been in a *de jure* or *de facto* position of authority *vis-à-vis* the physical perpetrator of the crime.[2526] No formal superior-subordinate relationship between the accused and the physical perpetrator is required; the accused need only possess the authority to order the physical perpetrator to commit the criminal act(s).[2527] The assessment of the accused's authority is based on the circumstances and perceptions of the physical perpetrator.[2528]

804. Second, the accused must have ordered or instructed the physical perpetrator to either: (i) commit the crime which in fact occurred or was attempted; or (ii) perform an act or omission in the execution of which a crime was carried out.[2529] The accused need not have given the

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[2523] *Ntaganda* Appeal Judgment, paras 23, 1065.
[2524] As further analysed in the section on the Legal Findings, only the accessorial mode of liability of 'ordering' is relevant for the present purposes of this judgment.
[2525] *Kordic and Cerkez* Appeal Judgment, para. 28; *Limaj et al* Trial Judgment, para. 515.
[2526] *Mudacumura* Article 58 Decision, para. 63; *Ntaganda* Confirmation Decision, para. 145; *Boškoski and Tarčulovski* Appeal Judgment, para. 160; *Kordić and Čerkez* Appeal Judgment, para. 28; *Đorđević* Trial Judgment, para. 1871. *See Galić* Trial Judgment, para. 168; *Krstić* Trial Judgment, para. 601. *See also Bemba et al.* Trial Judgment, para. 77; *Gbagbo* Confirmation Decision, para. 243.
[2527] *Kordić and Čerkez* Appeal Judgment, para. 28; *Karera* Appeal Judgment, para. 211; *Gacumbitsi* Appeal Judgement, paras 181-183.
[2528] *Gacumbitsi* Appeal Judgement, paras 181-183; *Đorđević* Trial Judgment, para. 1871.
[2529] *Karera* Appeal Judgment, para. 211; *Nahimana et al.* Appeal Judgment, para. 481. *See also Mudacumura* Article 58 Decision, para. 63; *Ntaganda* Confirmation Decision, para. 145.

order directly to the physical perpetrator, it could have been given through an intermediary.[2530] There is no requirement that an order be given in writing or in any particular form, and the existence of an order may be proven through circumstantial evidence.[2531] The Chamber notes that 'ordering' may be inferred from a variety of factors, such as the number of criminal acts; the number, identity and type of physical perpetrators involved; the effective command and control exerted by the accused over the physical perpetrators; the logistics involved; the widespread occurrence of the criminal acts; the tactical tempo of operations; the modus operandi of similar acts; the involvement of other actors; the location of the accused at the time; and his knowledge of criminal acts committed under his authority.[2532]

805. Third, the order must have had a direct effect on the commission of the crime.[2533]

806. Fourth, with regard to the mental element, the accused intended or meant to order the commission of the crime, or must have been aware that the crime would be committed (or attempted) in the ordinary course of events in the realisation or implementation of the order.[2534]

SECTION 7. LEGAL FINDINGS

807. In this section of the judgment, the Chamber establishes its legal findings, which consists of applying the law, as set out above, to the factual findings and analysing the elements of the crimes and modes of liability charged. The Chamber begins by examining the contextual elements of crimes against humanity and war crimes. It then turns to the specific elements of each crime charged, analysing them in turn. The Chamber addresses separately and subsequently **the Accused's** liability as direct perpetrator for crimes alleged to have been personally committed by him. The Chamber finally evaluates **the Accused's** liability for other crimes: first, as co-perpetrator under Article 25(3)(a) of the Rome Statute, for having committed jointly with others certain crimes in both Mukjar and Deleig; and second, as an accessorial perpetrator under Article 25(3)(b) of the Statute, for ordering the commission of other crimes in Kodoom and Bindisi.

[2530] *Đorđević* Trial Judgment, para. 1871; *Kordić and Čerkez* Trial Judgment, para. 388; *Blaškić* Trial Judgment, para. 282. *See also* *Mudacumura* Article 58 Decision, para. 63.
[2531] *Boškoski and Tarčulovski* Appeal Judgment, paras 160-161; *Kamuhanda* Appeal Judgment, para. 76. *See also* *Mudacumura* Article 58 Decision, para. 63; *Ntaganda* Confirmation Decision, para. 145.
[2532] *See* *Galić* Trial Judgment, para. 171.
[2533] *Mudacumura* Article 58 Decision, para. 63; *Ntaganda* Confirmation Decision, para. 145; *Kamuhanda* Appeal Judgment, para. 75; *Kayishema and Ruzindana* Appeal Judgment, para. 186.
[2534] *Mudacumura* Article 58 Decision, para. 63; *Ntaganda* Confirmation Decision, para. 145.

I. CONTEXTUAL ELEMENTS

A. War crimes

808. The Prosecution and the Defence agree on the facts underlying the existence of an armed conflict not of an international character in Sudan, including Darfur, from at least April 2003 until at least April 2004.[2535] The Chamber has made a legal determination bearing in mind that, unless a full review of the evidence shows that an agreed fact is erroneous, it is not necessary for the Chamber to conduct an extensive analysis of the relevant evidence and provide detailed reasoning in support of its legal conclusion.

809. Having reviewed the relevant evidence before it, the Chamber notes, in relation to the organisational requirement: (i) that the SLM/A and the JEM[2536] had a military presence in several areas of the territory;[2537] (ii) an important number of fighters;[2538] (iii) military equipment;[2539] and (iv) the military capacity to attack localities, including police stations and military bases.[2540] In relation to the intensity requirement, the Chamber further notes: (i) the involvement of the Government and the fact that a strategic plan was adopted at the highest state level with the aim of defeating the rebellion,[2541] (ii) the Government's use of public resources to recruit, train, arm, and fund the *Janjaweed*;[2542] (iii) the number of casualties during the attacks;[2543] (iv) the extent of destruction;[2544] (v) the number of civilians who fled the areas where fighting occurred;[2545] (vi) that agreements on cease-fire were signed by both parties;[2546] and (vii) that the situation attracted the attention of the UN Security Council acting under Chapter VII of the UN Charter, which led it to refer the situation in Darfur to the Court.[2547]

[2535] First Joint Submission on Agreed Facts, Annex A, Agreed Facts 1, 2, 5.
[2536] The Chamber recalls that State governmental authorities are presumed and must be considered as sufficiently organised. Since the *Janjaweed* participated on the side of the Government, the Chamber need not consider whether the *Janjaweed* fulfilled the organisation requirement. *See* *Ntaganda* Trial Judgment, para. 711, *referring to* *Haradinaj et al.* Trial Judgment, para. 60; ICRC, Commentary on Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Cambridge University Press 2016), para. 429. *See also* *Njeem* Arrest Warrant, para. 20.
[2537] *See* para. 337 *above*.
[2538] *See* para. 337 *above*.
[2539] *See* para. 337 *above*.
[2540] *See* paras 278, 378-379 *above*.
[2541] *See* paras 279-280, 286 *above*.
[2542] *See* Section 5.II.D. The use of government resources to recruit, train, arm, and fund the Janjaweed *above*.
[2543] The Chamber notes that in the attack of Kodoom and Bindisi alone, at least 46 persons were killed. *See* para. 927 *below*. *See also* paras 278, 399, 407-408, 417, 423-425, 449, 468, 479 *above*.
[2544] *See* paras 278, 380, 392, 398, 399, 411, 418, 428, 449, 476 *above*.
[2545] *See* paras 409, 426, 447-451, 455, 456, 578 *above*.
[2546] *See* para. 283 *above*.
[2547] *See* para. 283 *above*.

810. Therefore, the Chamber is satisfied that the two requirements for the existence of an armed conflict not of an international character, namely the organisational requirement and the intensity requirement, are fulfilled, and concludes that there was an armed conflict not of an international character in Sudan, including Darfur, from at least April 2003 until at least April 2004. This armed conflict involved the GoS and the *Janjaweed* on one side, and the SLM/A and the JEM [2548] (two organised non-state armed groups), on the other side. International humanitarian law therefore applied to the conduct of all members of the *Janjaweed* participating in the hostilities, including **the Accused**, during the temporal scope of the case.

811. As regards the nexus requirement, the Chamber notes that all the physical perpetrators of the crimes discussed below in Section 7.II on the crimes charged were either members of the *Janjaweed* or of regular or semi-regular governmental forces, and were mobilized, armed and deployed in that capacity in order to attack the villages of Kodoom and Bindisi (as well as other villages *en route*), and subsequently those of Mukjar and Deleig. The crimes were therefore committed as part of, or in the context of, the perpetrators' official duties.[2549] The Chamber also notes that all the crimes occurred in the context of these Government-backed military attacks and the physical perpetrators were acting, and armed, for that purpose by the Government. The Chamber further notes the speeches made by GoS officials and *Janjaweed* leaders prior to the attacks and the commission of crimes.[2550] These speeches encouraged the attacks, and the expressions used clearly encouraged the commission of crimes such as the murder of civilians, outrages upon personal dignity, and the pillaging and destruction of properties in violation of international humanitarian law principles.[2551]

812. On the basis of these considerations, and having examined the conduct underlying the crimes and their context, the Chamber is satisfied that such conduct took place in the context of and was associated with an armed conflict not of an international character. The nexus

[2548] The Chamber notes that the Defence refers to the Fur 'self-defence groups' as the 'final category of protagonists of the armed conflict' (*see* Defence's Final Brief, para. 350), but that this fact was not an agreed fact between the parties. Having found that the evidence was insufficient to find that the self-defence groups 'fought on the side of the Rebellion' as argued by the Defence, or that they were sufficiently organized to qualify as an 'organized armed group' within the meaning of Article 8(2)(f) of the Statute, the Chamber does not consider that members of 'self-defence groups' were parties to this conflict.
[2549] *See* *Ongwen* Trial Judgment, para. 2689; *Ntaganda* Trial Judgment, para. 732; *Kunarac et al.* Appeal Judgment, para. 59; *Rutaganda* Appeal Judgment, para. 569.
[2550] *See* Section 5.II.E. Public speeches by GoS officials and Janjaweed leaders *above*.
[2551] *See* Section 5.II.E. Public speeches by GoS officials and Janjaweed leaders *above*.

requirement is therefore met with respect to each war crime.

813. Noting **the Accused's** role and position within the *Janjaweed,* one of the parties to the conflict,[2552] namely that he was often present on the ground during military operations[2553] and cooperated closely with GoS officials in the implementation of the GoS counter-insurgency efforts, immediately before and throughout the period of the charges,[2554] the Chamber is satisfied that **the Accused** was aware of the factual circumstances establishing the existence of the armed conflict.

814. Finally, on the basis of the factual context in which the crimes were committed, as described above,[2555] the Chamber is satisfied that the other physical perpetrators were also aware of the factual circumstances establishing the existence of the armed conflict.

B. Crimes against humanity

a) The existence of an attack directed against a civilian population

i. Course of conduct involving the multiple commission of acts referred to in Article 7(1) of the Statute

815. The Chamber is satisfied that, from at least August 2003 until at least April 2004, members of the GoS forces and *Janjaweed* fighters committed multiple acts referred to in Article 7(1) of the Statute, namely murder, attempted murder, torture, other inhumane acts, rape, forcible transfer and persecution, in the localities of Kodoom, Bindisi, and surrounding areas, Mukjar and Deleig.[2556] The breadth, similarity and number of these acts, which occurred over a period of some six months, clearly demonstrate that they were part of 'a series or overall flow of events'. This constitutes a course of conduct involving the multiple commission of acts referred to in Article 7(1) of the Statute, within the meaning of Article 7(2)(a) of the Statute.

816. Whilst the crimes mentioned above, committed in the context of the charged incidents, are in themselves sufficient to constitute a course of conduct within the meaning of Article 7(2)(a) of the Statute, the Chamber notes that they were committed in the context of a wider State policy, according to which other operations were launched and acts referred to in

[2552] *See* para. 810 *above*.
[2553] *See for example* paras 380, 392, 396-399, 416, 436-441, 467-470, 474, 478, 673 *above*.
[2554] *See* paras 664-668 *above*.
[2555] *See* para. 810 *above*.
[2556] *See* paras 865, 870, 881, 888, 927, 939 *below*.

Article 7(1) of the Statute were committed.

817. Applying these principles of law, the Chamber is satisfied that similar acts were also conducted during the following uncharged attacks: three to four women were raped during the attack on Nyerli on or about 15 August 2003,[2557] and inhabitants were murdered during the attacks in Tiro,[2558] in Merly, in Drangal,[2559] and in Um Jameina.[2560] The congruence between the conduct during the uncharged attacks and the charged attacks satisfy the Chamber that the course of conduct commenced before the three charged operations.

ii. Directed against any civilian population

818. The Chamber recalls that when crimes against humanity are alleged to have been committed during an armed conflict, as in this case, it is not necessary to prove that all individual victims were civilians within the meaning of international humanitarian law. There is no legal requirement that the *'main aim* or object of the relevant acts was to attack civilians'. The question of whether the attack was directed at a civilian population is a factual issue to be assessed by the Chamber.[2561]

819. In Bindisi, the Chamber is satisfied that at least 16 rapes were committed against women.[2562] The Chamber also notes that there is no indication in the evidence, nor was it argued by the parties, that women directly participated in the armed conflict in Darfur, either on the side of the Government, or among the rebel groups. Therefore the Chamber is satisfied that all the victims of rape in Bindisi were civilians.

820. The Chamber is also satisfied that during this operation, at least 46 individuals were killed.[2563] The victims were killed inside their homes; whilst fleeing the attack, whilst hiding in the surrounding fields; after they had been captured (some of whom had their hands tied).[2564] The Chamber further recalls that, at the time of the attacks, Kodoom and Bindisi were inhabited by civilians. There was no indication in the evidence of rebel or armed presence in any of these

[2557] *See* para. 398 *above*.
[2558] *See* para. 399 *above*.
[2559] *See* para. 417 *above*.
[2560] *See* para. 468 *above*.
[2561] *See* para. 694 *above*.
[2562] *See* para. 870 *below*.
[2563] *See* para. 917 *below*.
[2564] *See* para. 918 *below*.

villages at the relevant time.[2565]

821. The Chamber also recalls the circumstances in which those crimes occurred. During the course of this operation in Kodoom and Bindisi, the *Janjaweed* also committed the following acts of violence: they beat, fired at and chased the inhabitants, and set fire to their houses and properties.[2566] The crimes of forced displacements took place in the same circumstances, in Kodoom and Bindisi.[2567]

822. In Mukjar and Deleig, the Chamber recalls that the victims of the crimes of torture and murder were amongst the at least 100 predominantly Fur men and boys victims detained at Mukjar police station, between late February and early March 2004,[2568] and amongst the at least 100 Fur men and boys detained in Deleig between 5 and 7 March 2004.[2569] The Chamber recalls that among them, there were *sheikhs* and *umdahs* who were the civilian leaders of their communities,[2570] and young boys.[2571] These men and boys were arrested during house to house searches,[2572] or on the streets or outside mosques.[2573] The Chamber finally recalls that even if there were some fighters among the detainees, this does not affect the civilian character of the population that was being attacked in terms of article 7(1) of the Statute.[2574] Considering all the circumstances described above as a whole, and bearing in mind the explicit goal of the State policy described below,[2575] the Chamber is satisfied that the attack was directed against a civilian population.

iii. The existence of a State policy to commit such attack

823. First, the Chamber recalls that the attack against the civilian population mounted by GoS forces and the *Janjaweed*, was part of a plan designed at the highest level of the State. After the assault on El Fasher airport on 25 April 2003, the Government of Sudan decided that the rebels should be defeated militarily and put a plan in place.[2576] On 18 December 2003, the

[2565] *See* para. 918 *below*.
[2566] *See* paras 407, 411, 422 *above*.
[2567] *See* paras 961-962 *below*.
[2568] *See* paras 873, 874, 881, 920, 921, 927 *below*.
[2569] *See* para. 605 *above*.
[2570] *See* paras 275, 510 *above*.
[2571] *See* para. 506 *above*.
[2572] *See* paras 494, 593 *above*.
[2573] *See* paras 484, 494, 596 *above*.
[2574] *See* para. 696 *above*.
[2575] *See* para. 830 *below*.
[2576] *See* para. 278 *above*.

plan was formalised by the NSC's adoption of the Emergency Plan.[2577]

824. Second, one of the objectives of this plan was to attack civilians and to target specific communities (non-Arab tribes). The explicit objectives of the Emergency Plan were to '[r]estor[e] security in the states of Darfur and [end] the rebellion through military and security decisiveness', fight the SLA and JEM, and 'impos[e] control over all the villages and the regions to which rebel leaders belong (Fur, Zaghawa, Masalit)' and 'the areas inhabited by the rebellious tribes'.[2578] These aims were to be achieved through the creation of semi-regular forces 'from Arab tribes' and their support by the Government.[2579] The Government Emergency Plan shows that the conflict had an ethnic dimension: the entire communities of the Fur, Zaghawa and Masalit were to be targeted and attacked, because their members were all perceived as associated with the rebels, and thus as the enemy.[2580] The Emergency Plan specifically stated that the Government's project included 'assassinate sympathisers from among community leaders (*umdahs*) and local administration officials.'[2581] Such orders, coming from the highest level of the State, did not take into account the basic international humanitarian law principle of distinction, and, at a minimum, made no distinction between fighters and civilians, who all seemed to be the targets of the planned military operations.[2582]

825. Third, in the execution phase of the plan, this objective to attack civilians and to target specific communities was conveyed by the Government to the direct perpetrators, namely the *Janjaweed* and the GoS forces, through speeches and the use of a specific language. Between at least August 2003 and March 2004, senior GoS officials travelled throughout West Darfur giving speeches to promote and encourage the attacks.[2583] In training camps, at graduation ceremonies, or shortly before the attacks, fighters were encouraged by **the Accused**, GoS officials and *Janjaweed* leaders, including through the use of the term '*amsah aksah*', to commit crimes against civilians and to target specific communities, namely the non-Arab tribes, including the Fur, and to deliver the land with 'not a single Fur on it'.[2584]

[2577] *See* para. 279 *above*.
[2578] *See* para. 286 *above*.
[2579] *See* para. 286 *above*.
[2580] *See* para. 287 *above*.
[2581] *See* para. 288 *above*.
[2582] *See* para. 289 *above*.
[2583] *See* para. 349 *above*.
[2584] *See* Section 5.II.E. Public speeches by GoS officials and Janjaweed leaders *above*.

826. The content of those speeches, including the use of '*amsah aksah*', were explicit orders to:

- take no prisoners and kill anyone, including civilians: 'wipe out and sweep away the Fur do not keep anyone alive',[2585] '[President Al-Bashir said that] no stone, no trees, no plant, no human beings [would] be left safe and that he [did not] want any prisoner or casualties or wounded in the Darfur war',[2586] '[**the Accused** said that the 'motto' was] [c]ut the straw, eat it raw. Don't leave anyone behind, and bring no one alive',[2587] 'never bring someone alive';[2588]

- destroy everything and 'wipe out' entire areas: 'not even a single tree should be standing there';[2589]

- act without any limits: 'Bring him alive, eat him alive, fresh', '[*amsah aksah*' means] there are no restrictions or limits that govern military and combat operations', 'the fighters should be, of course, free to do what they do. There are no limits, so they can do what they like', '[*amsah aksah*] these words mean genocide and killing prisoners';[2590] and

- looting and pillaging: 'the Fur and their money were war booty [sic] or a "prize" for the *Janjaweed*'.[2591]

827. '*Amsah aksah*', also used as a 'motto' by the fighters, GoS Forces and *Janjaweed* alike, when they 'carried out the work' on the battleground,[2592] was described by witnesses as meaning that the fighters could do what they like, without any limit.[2593]

828. The Chamber is satisfied that the language used by GoS officials and *Janjaweed* leaders, including **the Accused**, dehumanised the non-Arab tribes targeted, who would be the future victims of the crimes. In the speeches, they were represented as objects, a 'booty' or a 'war

[2585] *See* para. 352 *above*.
[2586] *See* para. 356 *above*.
[2587] *See* para. 361 *above*.
[2588] *See* para. 361 *above*.
[2589] *See* para. 358 *above*. *See also* paras 357-359 *above*.
[2590] *See* para. 365 *above*.
[2591] *See* paras 354, 386 *above*. *See also* paras 355, 358, 359 *above*.
[2592] *See* para. 364 *above*.
[2593] *See* para. 365 *above*.

prize',[2594] or something that could be eaten;[2595] they were placed on the same level as 'trees' and 'stones';[2596] they were described as something that the fighters could do what they wanted with, with no limits.[2597] The non-Arab tribes targeted and the places they lived in were also repeatedly represented, as something that needed to be 'cleaned'.[2598]

829. In addition, the speeches and instructions were given in a specific context. These preparatory meetings and speeches coincided with the distribution of military equipment, weapons or money by the GoS and/or immediately preceded attacks and lootings.[2599] They were made in the historical context of pre-existing tribal tensions between non-Arab tribes and Arab tribes.[2600] They were addressed to fighters comprised of GoS forces and *Janjaweed* specifically selected on the basis of their belonging to Arab tribes.[2601] Therefore, those speeches, addressed to fighters member of Arab tribes, in this specific context of pre-existing tribal tensions, and which dehumanised members of non-Arab tribes, encouraged, as intended, the commission of crimes against them.

830. Fourth, the existence of the State policy is further demonstrated by the fact the GoS invested significant human and material resources in the execution of the plan, and was involved in the organisation of the attack. Indeed, the GoS provided human and financial resources for its implementation, by creating semi-regular forces, including, the *Janjaweed,* which were recruited, trained, armed and mobilized by the Government.[2602] In this respect, the Chamber recalls that the Government recruited the *Janjaweed* and mobilized other paramilitary forces, like the PDF, in the knowledge of their greater proclivity to commit crimes than the regular forces whose actions were regulated by the law.[2603] On the ground, military leaders (including *Janjaweed* leaders) received orders from the Government.[2604]

831. The Chamber is satisfied that the attack occurred pursuant to a preconceived governmental strategy, formalized in the Emergency Plan, the execution of which involved the

[2594] *See* paras 354, 358, 359 *above*.
[2595] *See* paras 361, 365 *above*.
[2596] *See* para. 356 *above*.
[2597] *See* para. 365 *above*.
[2598] *See* paras 351, 365 *above*.
[2599] *See* para. 362 *above*.
[2600] *See* para. 330 *above*.
[2601] The Chamber recalls that in its counter-insurgency efforts, the GoS, set out to recruit and arm members of Arab tribes, and in fact did. At the same time, members of non-Arab tribes were dismissed, forced to retire or excluded from public service, including from the SAF, police and NISS. *See* para. 286, fn. 576, para. 339 *above*.
[2602] *See* Section 5.II.D. The use of government resources to recruit, train, arm, and fund the Janjaweed *above*.
[2603] *See* para. 348 *above*.
[2604] *See* paras 312, 391, 662, 663 *above*.

commission of crimes. Those crimes specifically targeted civilians[2605] from non-Arab tribes in Wadi Salih, in particular the Fur, who were perceived as associated with the rebels, and thus as the enemy. The crimes committed were undoubtedly the intended outcome of the implementation of this State policy which, as demonstrated above, was designed, actively promoted, and put into action by GoS officials and *Janjaweed*.

832. Accordingly, the Chamber is satisfied that the legal requirement under Article 7(2)(a) of the Statute, namely that the attack was directed against a civilian population pursuant to a State policy, is met.

b) The systematic and widespread nature of the attack

833. The Chamber will first assess whether the attack was systematic. It recalls that the attacks on the non-Arab civilian population in Kodoom, Bindisi, Mukjar and Deleig unfolded following a largely similar pattern and were clearly pre-planned and coordinated. The *Janjaweed*, (at times together with GoS forces), attacked villages, searched for and murdered civilians, either during the course of a military assault (in Kodoom and Bindisi), or after having arrested, detained and mistreated them (in Mukjar and Deleig). The pattern of operations followed in Kodoom was repeated later in Bindisi, namely: the perpetrators first reassured the population to encourage them not to flee;[2606] then attacked the town, killing and raping civilians, pursuing those who were running away, looting goods and burning houses.[2607] Similarly, the pattern followed in Mukjar by the *Janjaweed* and GoS forces was later repeated in Deleig, namely: perpetrators carried out house to house searches,[2608] arrested individuals at checkpoints,[2609] before torturing them and submitting them to other inhumane acts during

[2605] Regarding the Defence's argument that in Deleig 'the main target of the arrests was not the entire main Fur population of these localities', and that individuals were arrested because they were suspected of being rebels (*see* Defence' s Closing Statement: T-161, pp. 88-96), the Chamber recalls that it is not requirement that *all* civilians within the population be targeted or that *all* individual victims were civilians within the meaning of international humanitarian law, to conclude that the attack was directed against a civilian population. The Chamber also recalls that the (alleged) presence within a civilian population of individuals who do not fall under the definition of 'civilians' does not deprive the population of its civilian character and that 'the difficulty in distinguishing combatants from civilians may be a relevant consideration when determining whether the civilian population as such was the object of the attack. At the same time, […] such difficulties cannot justify the targeting of an entire ethnic group without distinction between civilians and combatants.' There is no legal requirement that the *'main aim* or object of the relevant acts was to attack civilians' as '[a]n attack directed against a civilian population may also serve other objectives or motives'. *See* para. 694 *above*. The Chamber accordingly dimisses the Defence's argument.
[2606] *See* paras 404, 420 *above*.
[2607] *See* paras 407-411, 421-425, 427-434 *above*.
[2608] *See* paras 494, 593 *above*.
[2609] *See* paras 483-493, 592-596 *above*.

detention, and murdering some of them.[2610]

834. The systematic nature of the attack is further demonstrated by the fact that the relevant operations were planned and organised by the State, which recruited, trained, and rewarded the *Janjaweed*.[2611] The criminal acts are consistent with the encouragement the perpetrators received from the speeches of senior GoS officials and *Janjaweed* leaders, including **the Accused**.[2612]

835. On the basis of the *modus operandi* of the various operations, which was repeated across several locations and over the course of a six month period, the Chamber is satisfied that the attack against the civilian population was systematic, rather than random or accidental.

836. Second, the Chamber will now turn to assess whether the attack was also widespread. The Chamber recalls its findings to the effect that: (a) in Kodoom, members of the *Janjaweed* 'shot and killed many people', among which at least 46 victims;[2613] (b) in Bindisi, members of the *Janjaweed* raped 'numerous women', at least 16[2614] and several individuals were victims of other inhumane acts;[2615] (c) during the attacks on Kodoom and Bindisi on 15 and 16 August 2003, 'numerous inhabitants', including children, were victims of forced displacements;[2616] (d) the victims of torture at Mukjar police station were among the 'at least 100 predominantly Fur men and boys' detained, and at Deleig police station, they were among the 'at least 100 Fur men and boys' arrested and detained;[2617] (e) members of the *Janjaweed* and GoS Forces shot and killed no fewer than three detainees at Mukjar police station and 50 detainees outside of Mukjar, and no fewer than 114 detainees in the areas surrounding Deleig.[2618] The Chamber is also satisfied that the civilians inhabitants of Kodoom and Bindisi present during the attacks, and all predominantly Fur men arrested and detained in Mukjar and Deleig were victims of the crime of persecution.[2619]

837. In view of its large-scale nature and the number of targeted persons, the Chamber is

[2610] *See* Sections 5.III.C.d) to f) and 5.III.D.d) to g) *above*.
[2611] *See* Section 5.II.D. The use of government resources to recruit, train, arm, and fund the Janjaweed *above*.
[2612] *See* Section 5.II.E. Public speeches by GoS officials and Janjaweed leaders *above*.
[2613] *See* para. 927 *below*.
[2614] *See* para. 870 *below*.
[2615] *See* paras 885-888 *below*.
[2616] *See* paras 409, 426 *above*, para. 865 *below*.
[2617] *See* paras 873, 874, 881 *below*.
[2618] *See* para. 927 *below*.
[2619] *See* paras 931-939 *below*.

satisfied that the attack against the civilian population was also widespread.

838. Whilst the crimes mentioned above, committed in the context of the charged incidents, are by themselves sufficient to show the widespread nature of the attack, the Chamber recalls, furthermore, that it is satisfied that additional and similar acts were also conducted during the uncharged attacks in Nyerli, Tiro, Merly, Drangal, and Um Jameina.[2620]

c) The existence of a nexus between the crimes and the attack directed against any civilian population and perpetrator's awareness of that nexus

839. The Chamber recalls that the physical perpetrators of the crimes of murder and attempted murder, torture, other inhumane acts, rape, forcible transfer and persecution, were all *Janjaweed* (at times together with members of the GoS Forces). These forces, led by **the Accused**,[2621] committed the crimes in the exercise of their activities, acting pursuant to instructions received from GoS officials, and to implement the Government policy described above.[2622] They participated in the three charged operations which resulted in the commission of the crimes.[2623] Bearing in mind this factual context, and also having examined each underlying conduct and their factual circumstances, the Chamber is satisfied that all acts within the ambit of Article 7(1) of the Statute were committed as part of a systematic attack against a civilian population and that the perpetrators, including **the Accused**, must have known that such conduct was part of such an attack.

II. CRIMES CHARGED

A. Cumulative convictions

840. Cumulative conviction is a situation where the same facts satisfy the legal definition of multiple crimes.[2624] The Chamber notes that there is no provision in the Statute explicitly requiring it to exclude some legal qualifications of facts on the ground that they are an impermissible concurrence with other legal qualifications of the same facts.[2625] Additionally, the provisions on sentencing may be considered in themselves adequate to address, in the context of the determination of the sentence to be imposed, those instances in which a person

[2620] *See* paras 816-817 *above*.
[2621] *Contra* Defence's Final Brief, paras 353-355; Defence's Closing Statement: T-161, pp. 88-96.
[2622] *See* para. 831 *above*.
[2623] *See* paras 396, 404-415, 421-424, 427-435, 480-482, 493, 494, 520, 526, 530-533, 555, 564, 565, 585, 592, 593, 597, 598, 599, 601, 604, 617, 623, 624, 635, 643, 646 *above*, and paras 865, 881, 888, 927, 939 *below*.
[2624] *Ongwen* Trial Judgment, para. 2792.
[2625] *Ongwen* Trial Judgment, para. 2792.

is convicted of more than one crime on the basis of the same conduct.[2626]

841. The Chamber agrees with the consistent practice of trial chambers of the Court regarding the existence of certain limitations on the permissibility of concurring crimes and consequential cumulative convictions.[2627] In particular, various trial chambers have consistently held that convictions may be entered cumulatively if the conduct in question violates two distinct provisions of the Statute, each having a 'materially distinct' element not contained in the other, *i.e.* an element which requires proof of a fact not required by the other.[2628]

842. The Chamber observes that, in the present case, situations in which the same conduct fulfils the legal elements of more than one crime include: (i) analogous crimes against humanity under Article 7 and war crimes under Article 8 of the Statute; (ii) torture and other inhumane acts as crimes against humanity under Article 7(1)(f) and (k) of the Statute; (iii) torture and cruel treatment as war crimes under Article 8(2)(c)(i) of the Statute; and (iv) persecution as a crime against humanity under Article 7(1)(g) and other charged crimes. These concrete questions of concurring crimes are discussed in the legal analysis below. In the event of cumulative convictions arising in the present case, these will be addressed in the determination of the sentence imposed.[2629]

B. Attack against a civilian population as a war crime (Count 1)

a) The charges

843. Under Count 1, **the Accused** is charged with intentionally directing attacks against the civilian population of Kodoom and Bindisi and surrounding areas as such, or against individual civilians not taking direct part in hostilities, as a war crime, between 15 and 16 August 2003, pursuant to Article 8(2)(e)(i) of the Statute.[2630]

[2626] *See* Article 78(3) of the Statute, giving the Trial Chamber discretion to impose for multiple crimes a total sentence equal to the highest individual sentence.
[2627] *Al Hassan* Trial Judgment, para. 133; *Ongwen* Trial Judgment, para. 2792; *Bemba* Trial Judgment, para. 744. *Katanga* Trial Judgment, para. 1695.
[2628] *Ongwen* Trial Judgment, para. 2792; *Bemba et al.* Trial Judgment, para. 951; *Bemba* Trial Judgment, paras 747-748; *Katanga* Trial Judgment, para. 1695.
[2629] *See* Article 78(3) of the Statute, on the Chamber's discretion to impose, for multiple crimes, a total joint sentence equal to the highest individual sentence. *See also* *Ongwen* Trial Judgment, para. 2792.
[2630] Confirmation Decision, pp. 54, 67.

b) Findings of the Chamber

844. The Chamber reiterates that on 15 and 16 August 2003, the *Janjaweed* conducted an operation during which both Kodoom and Bindisi were attacked.[2631] Their contingent possessed vehicles, such as Land Cruisers, and was equipped with various types of weapons, such as assault rifles.[2632] Over the course of this operation, the *Janjaweed* moved through the neighbourhoods, firing at and chasing civilians, as well as setting fire to houses and properties.[2633] On the basis of these facts, the Chamber is satisfied that the first legal element of intentionally attacking civilians as a war crime, *i.e*. that the perpetrator directed an attack, is met.

845. The Chamber notes that Kodoom and Bindisi were inhabited by civilians.[2634] Whilst there is some evidence that isolated individuals had weapons and resisted the attack in Kodoom,[2635] the Chamber notes that there is no evidence of rebels or armed groups being present in Kodoom and Bindisi.[2636] In any event, even if rebels or armed persons were present, this does not deprive the civilian population of its civilian character.[2637] The Chamber further notes that Kodoom and Bindisi primarily consisted of civilian structures.[2638] There is no indication in the evidence that these towns contained structures that would constitute military objectives. On the basis of these facts, the Chamber is satisfied that the second legal element of intentionally attacking civilians as a war crime, *i.e*. that the object of the attack was a civilian population as such, is met.

846. With respect to the mental elements, on the basis of the facts discussed above,[2639] the Chamber is satisfied that the various acts underlying the attack were launched deliberately by the *Janjaweed* involved in the Kodoom and Bindisi Operation. In relation to the special intent requirement, the Chamber recalls its finding that Kodoom and Bindisi were targeted as they

[2631] *See* para. 396 *above*. The Chamber notes that the Defence does not dispute that the attacks on Kodoom and Bindisi occurred, and that it submits that '[t]he evidence that the attacks occurred is made out and the evidence that innocent civilians were brutalized, killed, beaten, raped, that homes were burned and pillaged and that civilians were forced to flee' (Defence's Closing Statement: T-162, pp. 4-5). *See also* Defence's Final Brief, para. 413.
[2632] *See* para. 396 *above*.
[2633] *See* paras 407, 422 *above*.
[2634] *See* paras 372, 376 *above*.
[2635] *See* para. 406 *above*.
[2636] *See* paras 372, 376 *above*.
[2637] *See* para. 713 *above*.
[2638] *See* paras 370, 371, 373-375 *above*.
[2639] *See* paras 844-845 *above*.

were primarily inhabited by non-Arab tribes.[2640] As stated above, the GoS considered all members of non-Arab tribes, including the Fur, to be rebels.[2641] In the lead up to the Kodoom and Bindisi Operation, Minister Harun gave a speech in Mukjar in which he told a group of *Janjaweed* to 'wipe out and sweep away the Fur do not keep anyone alive'.[2642] Rather than taking any necessary precautions to spare the civilians, the perpetrators, (immediately prior to the attacks), as already stated, gave reassurances to the local population that they would not be harmed; this was done to ensure that they would not flee the forthcoming attacks.[2643] Given these circumstances, the Chamber finds that the perpetrators meant for the civilian population of Kodoom and Bindisi as such to be the object of their attack. The Chamber is therefore satisfied that the mental elements of intentionally attacking civilians as a war crime, pursuant to Articles 8(2)(e)(i) and 30 of the Statute, are met.

c) Conclusion

847. Accordingly, the Chamber is satisfied that members of the *Janjaweed* committed the war crime of intentionally directing an attack against the civilian population of Kodoom and Bindisi on 15 and 16 August 2003.

C. Pillaging as a war crime (Count 4)

a) The charges

848. Under Count 4, **the Accused** is charged with pillaging as a war crime, in Kodoom and Bindisi, between 15 and 16 August 2003, pursuant to Article 8(2)(e)(v) of the Statute.[2644]

b) Findings of the Chamber

849. The Chamber found that, on 15 August 2003, in Kodoom, the *Janjaweed* took possession of household items, livestock and money.[2645] The *Janjaweed* were seen searching through houses.[2646] On 15 and 16 August 2003, in Bindisi, members of the *Janjaweed* broke into houses, commercial locations, warehouses, the police station and the *zakat* office, and took

[2640] *See* para. 831 *above*.
[2641] *See* para. 286 *above*.
[2642] *See* para. 386 *above*.
[2643] *See* paras 404, 420 *above*.
[2644] Confirmation Decision, p. 68.
[2645] *See* para. 410 *above*. The Chamber observes that, in relation to the Kodoom and Bindisi Operation, the Defence submits that '[i]t is obvious from the evidence that groups of JJW were going around looting and pillaging' (Defence's Final Brief, para. 424).
[2646] *See* para. 410 *above*.

personal belongings from civilians, livestock, supplies and a generator.[2647] On the basis of these facts, the Chamber is satisfied that the first legal element of pillaging as a war crime, *i.e.* that the perpetrator appropriated certain property, is met.

850. The Chamber notes that the persons from whom the property was taken were not in a position to agree voluntarily to the *Janjaweed* taking their property, either because they were absent or owing to the coercive circumstances in which the appropriations occurred.[2648] In this regard, the Chamber notes that at the time these acts of appropriation were being committed, the members of the *Janjaweed* committed other crimes against the inhabitants.[2649] Considering these circumstances, the Chamber finds that appropriation took place without the consent of the owners of the looted goods. This legal element is thus met.

851. As regards the mental elements, the Chamber notes that the appropriation of property, *i.e.* household items, livestock, money, supplies, a generator, and personal items belonging to civilians, did not serve an inherently military purpose nor were they taken from locations serving one.[2650] This is supported by the fact that this looting followed Minister Harun's speech labelling the money of Fur people as booty or 'prize' for the *Janjaweed*,[2651] and that members of the *Janjaweed* indeed kept the appropriated property for their personal use,[2652] and not for any military purpose. On the basis of these considerations, the Chamber finds that these appropriations were deliberate, not justified by military necessary, and, in the absence of evidence indicating the contrary, that the perpetrators meant to deprive the owners of their property and to appropriate them for private or personal use. For the same reasons, the Chamber also considers that the only reasonable conclusion is that the perpetrators must have known that the appropriation was conducted without the consent of the owner. The Chamber is therefore

[2647] *See* para. 427 *above*. The Chamber notes the Defence's submission that the looting of the *zakat* office in Bindisi is not mentioned in the Confirmation Decision and thus falls outside the scope of the charges (Defence's Final Brief, para. 426; Defence's Closing Statement: T-162, pp. 76-77). The Chamber notes that, in confirming the charge of pillaging as a war crime under Count 4, the Pre-Trial Chamber considered the looting of the *zakat* office in Bindisi specifically (Confirmation Decision, pp. 40-41, paras 91, 94), which was pleaded by the Prosecution (Prosecution's Pre-Confirmation Brief, para. 174). Whilst later in its operative part, the Confirmation Decision does not mention this incident explicitly, there is no indication that the Pre-Trial Chamber intended to confirm the charge under Count 4 only in part (Confirmation Decision, p. 55, para. 36). Accordingly, the Chamber rejects the Defence's submission in this regard. *See* *Ntaganda* Appeal Judgment, paras 326-327, 333-336.
[2648] *See* paras 409, 426 *above*.
[2649] *See* paras 407, 422 *above*.
[2650] The Chamber notes that many of the looted items were taken by the *Janjaweed* from houses (*see* para. 849 *above*). The Chamber further notes that while the generator could potentially serve a military purpose, given the circumstances in which the appropriation took place, the Chamber is satisfied that its appropriation took place for personal use of the perpetrators.
[2651] *See* para. 386 *above*.
[2652] *See* paras 410, 427 *above*.

satisfied that the mental elements of pillaging as a war crime, pursuant to Article 30 of the Statute and the specific intent requirement under Article 8(2)(e)(v)(2) of the Elements of Crimes, are met.

c) Conclusion

852. Accordingly, the Chamber is satisfied that members of the *Janjaweed* committed the war crime of pillaging in Kodoom on 15 August 2003 and in Bindisi on 15 and 16 August 2003.

D. Destroying the enemy's property as a war crime (Count 5)

a) The charges

853. Under Count 5, **the Accused** is charged with destruction of the property of an adversary, without military necessity, as a war crime, in Kodoom and Bindisi, between 15 and 16 August 2003, pursuant to Article 8(2)(e)(xii) of the Statute.[2653]

b) Findings of the Chamber

854. The Chamber found that, on 15 August 2003, members of the *Janjaweed* burned down houses across Kodoom, as well as items that were located inside them. On 15 and 16 August 2003, in Bindisi, the members of the *Janjaweed* burned down houses and the 'big mosque' (with its collection of Islamic books). Members of the *Janjaweed* destroyed the police station in South Bindisi, along with documents found in it.[2654] On the basis of these facts, the Chamber is satisfied that the first legal element of destruction of an adversary's property as a war crime, *i.e.* that the perpetrator destroyed certain property, is met.

855. The Chamber notes that Kodoom and Bindisi were predominantly Fur villages,[2655] and therefore the property destroyed (with the exception of the South Bindisi police station, as explained below), belonged primarily to, or at least was perceived to belong to members of the Fur tribe. The Chamber recalls its finding that the GoS considered all members of non-Arab tribes, including the Fur, as being rebels.[2656] The *Janjaweed*, who were fighting on the side of the GoS, considered the Fur tribe and the predominantly Fur villages as the adversary or as being aligned with the opposing party (*i.e.* the rebels) to the conflict. On the basis of these

[2653] Confirmation Decision, p. 68.
[2654] *See* paras 411, 421, 428 *above*. The Chamber notes that the Defence accepts that homes were burned and pillaged during the Kodoom and Bindisi Operation (Defence's Closing Statement: T-162, pp. 4-5).
[2655] *See* paras 372, 376 *above*.
[2656] *See* para. 286 *above*.

considerations, the Chamber is satisfied that the second legal element of destruction of an adversary's property as a war crime is met, *i.e*. that the destroyed property was property of an adversary, is met.

856. As regards the destruction of the South Bindisi police station, along with the documents contained within it, there is no indication that they belonged or were perceived to belong to an individual or entity different from the GoS. Given this, and recalling its finding that the *Janjaweed* were fighting on the side of the GoS,[2657] the Chamber considers that this specific incident does not fulfil the requirements of the second legal element of destruction of an adversary's property as a war crime. Therefore, the Chamber does not consider it in its analysis under Count 5.

857. There is no indication in the evidence that the property destroyed, which was of a civilian nature, served any military purpose or constituted a military objective, and a reasonable person could therefore not have believed that the property destroyed qualified as such. The Chamber further notes that there was no evidence of a rebel presence in these locations at the relevant time.[2658] Importantly, the Chamber observes that Kodoom and Bindisi were under the control of the attacking forces (*i.e.* the *Janjaweed*) when the properties were being destroyed.[2659] The Chamber therefore finds that the property destroyed was protected from that destruction under international humanitarian law. Similarly, there is no evidence that the destruction was required by military necessity. The Chamber is therefore satisfied that the third and fifth legal elements of destruction of an adversary's property as a war crime, respectively, that the destroyed property was protected from that destruction under the international law of armed conflict, and that the destruction was not required by military necessity, are met.

858. Turning to the general mental elements under Article 30 of the Statute, the Chamber is satisfied, based on the nature of the conduct undertaken by the *Janjaweed* throughout the Kodoom and Bindisi Operation,[2660] that their conduct was deliberate, that they meant to destroy property, and that they did so with knowledge that such destruction was not justified by military necessity. In light of the circumstances prevailing at the relevant time,[2661] and in the absence of evidence suggesting otherwise, the Chamber also finds that the perpetrators must have been

[2657] *See* para. 328 *above*.
[2658] *See* paras 372, 376 *above*.
[2659] *See* paras 396, 407, 422 *above*.
[2660] *See* paras 854-855 *above*.
[2661] *See* paras 855, 857 *above*.

aware of the factual circumstances that established the status of the property and that such property was the property of the adversary. On the basis of the above, the Chamber is satisfied that the mental elements of destruction as a war crime, pursuant to Article 30 of the Statute, are met.

c) Conclusion

859. Accordingly, the Chamber is satisfied that members of the *Janjaweed* committed the war crime of destroying the enemy's property in Kodoom on 15 August 2003 and in Bindisi on 15 and 16 August 2003.

E. Forcible transfer of population as a crime against humanity (Count 10)

a) The charges

860. Under Count 10, **the Accused** is charged with forcible transfer as a crime against humanity, concerning the expulsion of Fur persons lawfully present in Kodoom and Bindisi, between 15 and 16 August 2003, pursuant to Article 7(1)(d) of the Statute.[2662]

b) Findings of the Chamber

861. The Chamber recalls its findings that on 15 and 16 August 2003 members of the *Janjaweed* intentionally attacked the civilian populations of Kodoom and Bindisi.[2663] Members of the *Janjaweed* pillaged, destroyed property, mistreated and murdered civilians and raped women.[2664] These acts forced numerous inhabitants, including children, to flee to nearby forests, fields, and towns in Sudan and Chad – many of them were unable to return.[2665] In this regard, the Chamber notes that witnesses gave evidence that people 'ran for their lives', 'ha[d] no other choice than to leave their territory' and that they 'were displaced'.[2666] In these circumstances, and further noting the extent to which Kodoom and Bindisi were destroyed,[2667] the Chamber finds that the persons who fled did not have a genuine choice to remain and were thus forced to leave with no hope of return. Given this, and noting that the evidence on the

[2662] Confirmation Decision, p. 68.
[2663] *See* Section 7.II.B. Attack against a civilian population as a war crime (Count 1) *above*.
[2664] *See* Sections 7.II.C. Pillaging as a war crime (Count 4) and D. Destroying the enemy's property as a war crime (Count 5) *above*, and Sections 7.II.F. Rape as a crime against humanity and as a war crime (Counts 8 and 9), G Other inhumane acts (Article 7(1)(k) of the Statute), I Outrages upon personal dignity (Article 8(2)(c)(ii) of the Statute) and K. Murder and attempted murder as a crime against humanity and as a war crime (Counts 2-3, 17-20, 27-30) *below*.
[2665] *See* paras 409, 426, 653 *above*. The Chamber notes the Defence's submission that the evidence is made out that civilians were forced to flee (Defence's Closing Statement: T-162, pp. 4-5).
[2666] *See* paras 409, 426 *above*.
[2667] *See* para. 854 *above*.

record does not reveal any grounds under international law permitting such displacement, the Chamber finds that the resulting displacement was unlawful. On the basis of these facts, the Chamber is satisfied that the first legal element of forcible transfer as a crime against humanity, *i.e.* that the perpetrator forcibly displaced, without grounds permitted under international law, one or more persons to another location by coercive acts, is met.

862. The Chamber recalls that the individuals who were forcibly displaced were inhabitants of Kodoom and Bindisi.[2668] On this basis, and in the absence of any evidence suggesting that their presence was unlawful, the Chamber is satisfied that the second legal element of forcible transfer as a crime against humanity, *i.e.* that victims were lawfully present in the area from which they were forcibly transferred, is met.

863. In relation to the general mental elements under Article 30 of the Statute, the Chamber recalls that the Kodoom and Bindisi Operation was carried out pursuant to the Emergency Plan, which gave instructions to drive civilians out of areas inhabited by 'rebellious tribes'.[2669] The Chamber further recalls that the Fur were considered one of such tribes, and that Kodoom and Bindisi were predominantly Fur villages.[2670] Given these facts, and noting the facts discussed above,[2671] the Chamber is satisfied that the relevant conduct of the members of the *Janjaweed* was deliberate and that they meant to transfer or displace the victims. For the same reasons, the Chamber is satisfied that the perpetrators were aware of the factual circumstances that established the lawfulness of the displaced individuals' presence in the area.

864. In addition, the Chamber finds that the *Janjaweed* were aware that as an inevitable consequence of their actions (including pillaging, destroying property, mistreating and murdering civilians, and raping women) and the instructions they received to 'wipe out' predominantly Fur villages such as Kodoom and Bindisi,[2672] the inhabitants therein would flee. Given this, and recalling the extent to which Kodoom and Bindisi were destroyed,[2673] the Chamber finds that the *Janjaweed* were aware that it was unlikely that the population would return. In this regard, the Chamber recalls that according to P-1042, the armed conflict's impact on the civilian population was foreseeable in light of prior large-scale military campaigns in

[2668] *See* paras 409, 426 *above*.
[2669] *See* para. 289 *above*.
[2670] *See* paras 286, 372, 376 *above*.
[2671] *See* paras 861, 861 *above*.
[2672] *See* para. 386 *above*.
[2673] *See* para. 854 *above*.

Sudan.[2674] On the basis of all these considerations, the Chamber is satisfied that the members of the *Janjaweed* were aware that the transfer or displacement of victims would occur in the ordinary course of events.

c) Conclusion

865. Accordingly, the Chamber is satisfied that members of the *Janjaweed* committed forcible transfer as a crime against humanity against the inhabitants of Kodoom and Bindisi on 15 and 16 August 2003.

F. Rape as a crime against humanity and as a war crime (Counts 8 and 9)

a) The charges

866. Under Counts 8 and 9, **the Accused** is charged respectively with rape as a crime against humanity, pursuant to Article 7(1)(g), and as a war crime, in Bindisi and surrounding areas, between 15 and 16 August 2003, pursuant to Article 8(2)(e)(vi) of the Statute.[2675]

b) Findings of the Chamber

867. The Chamber found that, between 15 and 16 August 2003, in Bindisi, members of the *Janjaweed* had sexual intercourse with no fewer than 16 women of all ages.[2676] On the basis of these facts, the Chamber is satisfied that the first element of rape as a crime against humanity, pursuant to Article 7(1)(g), and rape as a war crime, pursuant to Article 8(2)(e)(vi), *i.e.* that the perpetrator invaded the body of a person by conduct resulting in sexual penetration, is met.

868. The Chamber notes that these acts were committed concomitantly with an attack directed against the civilian population, including the burning of houses and properties, the shooting and killing of many inhabitants, the looting and the beating of people.[2677] In addition, several of these rapes were committed in circumstances which included: (i) the use of physical force and sharp objects; (ii) the use of explicit threats and other violent and derogatory language; (iii) the commission by several members of the *Janjaweed* successively or simultaneously; (iv) the perpetration out in the open for other women to watch; and (v) the commission against girls between 15 and 18 years of age.[2678] On the basis of these facts, the

[2674] P-1042's Report, DAR-OTP-0220-1623, at 1677, para. 143; P-1042: T-028, pp. 3-4.
[2675] Confirmation Decision, p. 6; Confirmation Decision, Annex, p. 2.
[2676] *See* para. 431 *above*.
[2677] *See* paras 407, 422 *above*.
[2678] *See* paras 432-433 *above*.

Chamber is satisfied that second element of rape as a crime against humanity, pursuant to Article 7(1)(g), and rape as a war crime, pursuant to Article 8(2)(e)(vi), *i.e.* that the invasion was committed by force, or by threat of force or coercion, is met.[2679]

869. As regards the general mental elements under Article 30 of the Statute, the Chamber is satisfied, on the basis of the facts discussed above,[2680] that the conduct of members of the *Janjaweed* resulting in the sexual penetration of the victims was deliberate and that they meant to invade the bodies of the victims. Given the nature of the underlying conduct, as well as the circumstances prevailing at the relevant time,[2681] the Chamber is also satisfied that all perpetrators must have been aware that they had used, created and/or taken advantage of force, threat of force and coercion to commit the crime. On the basis of the above, the Chamber is satisfied that the mental elements of rape as a war crime and as a crime against humanity, pursuant to Article 30 of the Statute, are met.

c) Conclusion

870. Accordingly, the Chamber is satisfied that members of the *Janjaweed* committed rape, as a war crime and as a crime against humanity, in Bindisi between 15 and 16 August 2003, against no fewer than 16 women.

G. Torture as a crime against humanity and as a war crime (Counts 12-13 and 22-23)

a) The charges

871. Under Counts 12 and 13, **the Accused** is charged respectively with torture as a crime against humanity and as a war crime, at Mukjar police station between late February and early March 2004, pursuant to Articles 7(1)(f) and 8(2)(c)(i) of the Statute.[2682]

872. Under Counts 22 and 23, **the Accused** is charged respectively with torture as a crime against humanity and as a war crime in Deleig, between 5 and 7 March 2004, pursuant to Articles 7(1)(f) and 8(2)(c)(i) of the Statute.[2683]

[2679] The Chamber notes that the Defence does not dispute that rapes occurred in the Bindisi attack (Defence's Closing Statement: T-162, p. 12).
[2680] *See* paras 867-868 *above*.
[2681] *See* para. 602 *above*.
[2682] Confirmation Decision, pp. 58-59, 68.
[2683] Confirmation Decision, pp. 63-64, 69.

b) Findings of the Chamber

873. The Chamber recalls that, over the course of at least two days between late February and early March 2004, members of the *Janjaweed* and GoS Forces verbally and physically abused at least 100 predominantly Fur men and boys, at Mukjar police station.[2684] This included beating the detainees using sticks and whips, burning them, shaving their heads and severing their ears.[2685] In addition, the conditions of their detention were inhumane: the cells were overcrowded, dirty and hot; the detainees were given little to no food or water; they were forced to urinate and defecate in the cells; and they were not provided any medical treatment.[2686] The Chamber also found that, as a result of these dire condition of detention and the abuse inflicted by the *Janjaweed* and GoS Forces, at least three man detained at Mukjar police station died.[2687]

874. The Chamber found that, between 5 and 7 March 2004, members of the *Janjaweed* and GoS Forces also physically abused at least 100[2688] Fur men and boys arrested during the search and arrest operation in different areas of Deleig.[2689] The *Janjaweed* and GoS Forces kicked, beat, whipped and stabbed the detainees.[2690] The Chamber also found that the *Janjaweed* and GoS forces brought the detainees to an open area near Deleig police station where they were made to lie face down on the ground in the hot sun for prolonged periods of time.[2691] While the detainees were lying on the ground, members of the *Janjaweed* walked on their backs, stomped on them, and hit them with fist, whip and stick.[2692] The Chamber recalls that the detainees inside Deleig police station were beaten, whipped and pulled by the neck while tied with a metallic-type rope.[2693] In addition, the victims were detained in intolerable conditions: the small cell was so over overcrowded that it was hard to breathe, the detainees were denied food and water, and had to defecate where they crouched.[2694] Finally, the Chamber recalls that the acts of torture and mistreatment committed by the *Janjaweed* left many victims with long term

[2684] *See* paras 502, 520, 526 *above*.
[2685] *See* paras 527, 530, 542 *above*.
[2686] *See* paras 512-515 *above*.
[2687] *See* para. 536 *above*.
[2688] *See* para. 605 *above*.
[2689] *See* para. 598 *above*.
[2690] *See* para. 598 *above*.
[2691] *See* para. 604 *above*.
[2692] *See* para. 609 *above*.
[2693] *See* para. 638 *above*.
[2694] *See* paras 635, 637 *above*.

psychological and physical harms.[2695]

875. On the basis of these facts, the Chamber is satisfied that the first legal element of torture as a crime against humanity, pursuant to Article 7(1)(f) of the Statute, and torture as a war crime, pursuant to Article 8(2)(c)(i) of the Statute, namely that the perpetrator inflicted severe physical or mental pain or suffering on the victim, is met with respect to victims of both the Mukjar and Deleig Operations.

876. At the relevant time, the men and boys arrested and/or detained at Mukjar and Deleig police stations were in the custody and under the control of the *Janjaweed* and GoS Forces. Therefore, the second element of torture as a crime against humanity, pursuant to Article 7(1)(f) of the Statute, namely that the person or persons were in the custody or under the control of the perpetrator, is also met.

877. The Chamber recalls that the victims in this case were subjected to the acts described above while being detained. Furthermore, there is no indication in the evidence that the harsh treatment meted out occurred as a result of lawful sanctions. The third constitutive element of torture as a crime against humanity under Article 7(1)(f) of the Statute, namely that the pain or suffering inflicted did not arise only from, and was not inherent in or incidental to, lawful sanction, is therefore likewise met.

878. With regard to the second legal element of torture as a war crime, pursuant to Article 8(2)(c)(i) of the Statute, the Chamber found that some of the detainees in Mukjar were asked if they were *tora bora*. If they answered negatively, they were interrogated;[2696] threatened, called *abid* and *tora bora*; and accused of being rebels.[2697] In Deleig, the *Janjaweed* and GoS Forces also questioned the detainees about their affiliation with the rebels and weapons.[2698] They were also referred to as '*tora bora*', '*abid*' and '*himar*'.[2699] On the basis of these considerations, the Chamber is satisfied that the second element of Article 8(2)(c)(i) is met as the *Janjaweed* and GoS Forces inflicted pain and suffering to punish and intimidate the detainees and for reasons based on political and ethnic discrimination. This legal element is thus met with respect to all detainees victimised.

[2695] *See* para. 652 *above*.
[2696] *See* paras 529, 533 *above*.
[2697] *See* para. 531 *above*.
[2698] *See* paras 596, 613 *above*.
[2699] *See* para. 596 *above*.

879. In relation to the status of the victims, the Chamber notes that most of the detainees in Mukjar were arrested at checkpoints trying to enter Mukjar, following attacks on their villages;[2700] the *sheikhs* and *umdahs* were arrested as civilian leaders of their communities;[2701] and there is some evidence that boys as young as 9 or 10 years old were detained at Mukjar police station.[2702] The Chamber notes that the detainees at Deleig police station were similarly arrested during house to house searches,[2703] on the streets or outside mosques;[2704] that the *umdahs* were civilian leaders of their communities;[2705] and that some detainees had their hands bound behind their backs.[2706] The Chamber notes that there is no evidence before it, nor has it been suggested by the Defence, that there was any resistance, ongoing hostilities, or other circumstance that would render the victims from the Mukjar or Deleig Operation lawful targets under IHL. Under these circumstances, the Chamber is satisfied that the detainees were protected under IHL, either as civilians taking no active part in the hostilities at the relevant time or *hors de combat*. Accordingly, the Chamber finds that the third element of torture as a war crime, pursuant to Article 8(2)(c)(i) of the Statute is met.

880. Turning to the general elements under Article 30 of the Statute, the Chamber is satisfied, on the basis of the facts discussed above,[2707] that the members of the *Janjaweed* and the GoS Forces who engaged in the relevant conduct did so deliberately and meant to inflict severe pain and suffering upon each and every victim. In light of the circumstances prevailing at the relevant time, most importantly their arrest, detention and mistreatment,[2708] the Chamber also finds that the perpetrators were necessarily aware of the factual circumstances establishing the victims' protected status under IHL. Accordingly, the general mental elements under Article 30 of the Statute are met with respect to torture as a crime against humanity and as a war crime.

c) Conclusion

881. Accordingly, the Chamber is satisfied that members of the *Janjaweed* and GoS Forces committed torture, as a crime against humanity and a war crime, at Mukjar police station between late February and early March 2004, against at least 100 Fur men and boys, and in

[2700] *See* paras 483-484 *above*.
[2701] *See* paras 275, 489, 510 *above*.
[2702] *See* paras 506, 524 *above*.
[2703] *See* para. 593 *above*.
[2704] *See* para. 596 *above*.
[2705] *See* paras 275, 636 *above*.
[2706] *See* para. 604 *above*.
[2707] *See* paras 874-875 *above*.
[2708] *See* para. 879 *above*.

Deleig between 5 and 7 March 2004, against at least 100 Fur men and boys.

H. Other inhumane acts as a crime against humanity (Counts 6, 14 and 24)

a) The charges

882. Under Counts 14 and 24, **the Accused** is charged with other inhumane acts as a crime against humanity, at Mukjar police station between late February and early March 2004, and in Deleig between 5 and 7 March 2004, pursuant to Article 7(1)(k) of the Statute.[2709]

883. Under Count 6, **the Accused** is charged with other inhumane acts as a crime against humanity, in Bindisi and surrounding areas between 15 and 16 August 2003, pursuant to Article 7(1)(k) of the Statute.[2710]

884. The facts underlying the charge of other inhumane acts as a crime against humanity under Counts 14 and 24 are identical to those underlying the charge of torture as a crime against humanity under Counts 12 and 22. The permissibility of this further concurrence of crimes must therefore be considered by the Chamber. In light of the established facts, the Chamber observes that there is no act underlying the charge under Counts 14 and 24 which may be considered as different but of similar character, in terms of harm and protected interests involved, compared to those already qualified as a crime against humanity of torture under Counts 12 and 22. In these circumstances, due to the residual nature of Article 7(1)(k) of the Statute, concurrent legal qualification under this provision is not permissible. For this reason, and given its conclusions above on the crime of torture as a crime against humanity,[2711] the Chamber will not further consider the charge of other inhumane acts under Counts 14 and 24, and will restrict its assessment to the facts under Count 6.

b) Findings of the Chamber

885. The Chamber recalls its findings that on 15 and 16 August 2003, in Bindisi, members of the *Janjaweed* beat several persons (including an elderly woman who had just been raped), including by using objects such as rifle stocks and whips, which resulted in at least two victims sustaining physical injuries on their backs. Victims were subsequently killed or raped within sight or earshot of other individuals, and some women were forced to watch other women being

[2709] Confirmation Decision, pp. 58-59, 63-64, 68-69.
[2710] Confirmation Decision, pp. 55-56, 68.
[2711] *See* para. 881 *above*.

raped. Several victims of rape suffered injuries immediately thereafter, or long-lasting physical and psychological effects. The Chamber further recalls that a member of the *Janjaweed* snatched an infant from a woman, and threw the infant into the air. The infant fell to the ground and stopped breathing for some time. Members of the *Janjaweed* stripped women of their clothes (at least in one instance, using a knife) immediately before raping them out in public view and in front of others.[2712] The Chamber finds that the aforesaid actions amount to inhumane acts and that the perpetrators inflicted great suffering or serious injury to body, physical and mental health upon the victims. The Chamber is therefore satisfied that this legal element is met.[2713]

886. In addition, the Chamber notes that the above inhumane acts were carried out as part of a course of conduct which resulted in the commission of acts that fulfil the requirements of the crimes of murder and rape.[2714] On this basis, the Chamber is satisfied that the second legal element of other inhumane acts as a crime against humanity, *i.e*. that the act was of a character similar to any other act referred to in Article 7 of the Statute, is met.

887. As regards the general mental elements under Article 30 of the Statute, the Chamber is satisfied, on the basis of the facts discussed above,[2715] that the perpetrators acted deliberately and that they meant to inflict great suffering, or serious injury to body, mental or physical health to the victims. For the same reasons, the Chamber is satisfied that the perpetrators were aware of the factual circumstances that established the character of the inhumane acts.

c) Conclusion

888. Accordingly, the Chamber is satisfied that members of the *Janjaweed* committed other inhumane acts as a crime against humanity in Bindisi between 15 and 16 August 2003.

[2712] *See* paras 429-430, 433-434 *above*.
[2713] The Chamber notes that the Defence does not dispute that beatings occurred in the Bindisi attack (Defence's Closing Statement: T-162, pp. 4-5). Moreover, the Chamber notes that the Prosecution charges under Count 6 the beating and perpetration of other violent acts against P-0986 in Kodoom (Prosecution's Final Brief, para. 308). The Chamber however considers that this incident falls outside the geographical scope of the charges (Confirmation Decision, pp. 55-56, 68) and therefore declines to consider it in its determination under Count 6.
[2714] *See* Section 7.II.F. Rape as a crime against humanity and as a war crime (Counts 8 and 9) and Section 5.III.A. Operation in Kodoom, Bindisi and the surrounding areas between 15 and 16 August 2003 *above*.
[2715] *See* para. 885 *above*.

I. Cruel treatment as a war crime (Counts 15 and 25)

a) The Charges

889. Under Counts 15 and 25, **the Accused** is charged with cruel treatment as a war crime, at Mukjar police station between late February and early March 2004, and in Deleig between 5 and 7 March 2004, pursuant to Article 8(2)(c)(i) of the Statute.[2716]

890. The facts underlying the charge of cruel treatment as a war crime under Counts 15 and 25 and the charge of torture as a war crime under Counts 13 and 23 are identical. This is therefore a situation of concurrence which must be specifically considered by the Chamber. In this regard, the Chamber notes that the legal elements of the war crime of cruel treatment are entirely encompassed within the legal elements of the war crime of torture, with the latter containing an additional (mental) constitutive element.[2717] In these circumstances, while the same facts under consideration indeed fulfil the legal elements of both crimes, concurrence of crimes and consequent cumulative conviction, is not permissible. For this reason, and given its conclusions above on the crime of torture as a war crime,[2718] the charge of cruel treatment under Counts 15 and 25 will not be further considered by the Chamber.

J. Outrages upon personal dignity as a war crime (Counts 7, 16 and 26)

a) The charges

891. Under Count 7, **the Accused** is charged with outrages upon personal dignity as a war crime in Bindisi between 15 and 16 August 2003, pursuant to Article 8(2)(c)(ii) of the Statute.[2719]

892. Under Count 16, **the Accused** is charged with outrages upon personal dignity as a war crime at Mukjar police station between late February and early March 2004, pursuant to Article 8(2)(c)(ii) of the Statute.[2720]

893. Under Count 26, **the Accused** is charged with outrages upon personal dignity as a war crime, in Deleig between 5 and 7 March 2004, pursuant to Article 8(2)(c)(ii) of the Statute.[2721]

[2716] Confirmation Decision, pp. 58-59, 63-64, 69-70.
[2717] *See* para. 763 *above*.
[2718] *See* para. 881 *above*.
[2719] Confirmation Decision, pp. 55-56, 68.
[2720] Confirmation Decision, pp. 58-59, 69.
[2721] Confirmation Decision, pp. 63-64, 70.

b) Findings of the Chamber

Bindisi Operation

894. The Chamber recalls that, on or about 15 and 16 August 2003, in Bindisi, the *Janjaweed* arrested and mistreated people. The *Janjaweed*: (i) separated the men and women, forced some men to kneel, tied their hands behind their backs, assaulted them with rifle stocks and then killed them in front of other detained individuals; (ii) whipped and beat women of all ages, which resulted in physical injuries; (iii) struck a women with a sword; (iv) stripped some women of their clothing; and (v) snatched an infant from its mother, threw it into the air and let it fall to the ground.[2722]

895. In establishing that the *Janjaweed* humiliated and degraded the female captives to such a degree of severity as to be generally recognised as an outrage upon personal dignity, the Chamber reiterates that the *Janjaweed* raped no fewer than 16 women, including children and an elderly woman.[2723] Namely the *Janjaweed*, (i) whipped one woman at least 10 times and beat her before she was raped by two men within the view of other women, and then left her bleeding heavily;[2724] (ii) the *Janjaweed*, one after the other, got on top of an elderly woman and raped her in front of a witness;[2725] (iii) did not wear condoms when raping the women; and (iv) on one occasion members of the *Janjaweed* ejaculated inside one of the captive women.[2726]

896. Further, the Chamber recalls that the *Janjaweed*: (i) raped most women jointly, on multiple occasions and often in front of other women and children, who were forced to watch while being held at gunpoint, (ii) undressed, stripped, threatened and held down the women and girls whilst raping them within the view of other women;[2727] (iii) used weapons to exert violence (*inter alia* using a knife to tear off a woman's clothing, held a sword to another's neck to keep her quiet, and threatened some women with guns to force them to watch the *Janjaweed* rape other women in front of them); (iv) silenced some women by stuffing their mouths with cloths torn from their clothing;[2728] and (v) killed some women after raping them.[2729]

897. In addition, the Chamber reiterates that members of the *Janjaweed* used derogatory

[2722] *See* paras 423-424, 429-430, 433 *above.*
[2723] *See* paras 431, 870 *above*.
[2724] *See* paras 433-434 *above*.
[2725] *See* para. 433 *above.*
[2726] *See* para. 432 *above.*
[2727] *See* para. 433 *above.*
[2728] *See* para. 433 *above.*
[2729] *See* para. 433 *above.*

expressions during the sexual violence committed against the detainees, namely: (i) threats of death and accusations of being relatives of *tora bora*;[2730] (ii) restrained a rape victim by the neck whilst questioning if she knew where the *tora bora* were;[2731] (iii) exclaimed 'we don't want these people to stay alive' whilst raping them; (iv) thanked President Al-Bashir for giving them this 'opportunity' and praised God for taking '[t]ora [b]ora's wives';[2732] and (v) some fired their weapons in the air as they exclaimed, 'I have found a virgin woman'.[2733]

898. In establishing the severity of the humiliation perpetrated by the *Janjaweed*, the Chamber recalls that women from Bindisi were raped in public, experienced physical pain and sustained scars, and have suffered long term effects including psychological and social consequences.[2734] Namely, (i) the vulnerability from the young age of the child victims (at least one victim was only 13 years old and another 15 years old); (ii) that one witness suffered permanent physical damage of a split in her vagina which worsened after childbirth;[2735] (iii) if they resisted, victims were further mistreated or attacked by multiple perpetrators;[2736] and (iv) the social stigmatisation that surrounded the rape preventing many women from seeking help and returned the witness to her parents after being raped.[2737]

899. The Chamber finds that the nature of the detention, mistreatment and rape, the manner in which it was imposed and the use of derogatory expressions by the members of the *Janjaweed* humiliated, degraded or otherwise violated the dignity of the detained Fur men, women and children. In relation to the severity, the Chamber is satisfied that the conduct of the members of the *Janjaweed* in Bindisi was of such degree as to be to be generally recognised as an outrage upon personal dignity.

900. On the basis of these facts, the Chamber is persuaded that the first and second legal elements of outrages upon personal dignity as a war crime are met, namely that the *Janjaweed* humiliated, degraded or otherwise violated the dignity of one or more persons and that this conduct was such that the humiliation, degradation and other violations of dignity each victim suffered reached the degree of severity that constitutes an outrage upon personal dignity, with

[2730] *See* paras 433, 435 *above.*
[2731] *See* para. 435 *above*.
[2732] *See* paras 433, 435 *above.*
[2733] *See* para. 435 *above.*
[2734] *See* paras 433-434 *above.*
[2735] *See* paras 431, 434 *above*.
[2736] *See* para. 433 *above.*
[2737] *See* paras 434, 652 *above*.

respect to the inhabitants of Bindisi and the surrounding areas, as discussed above.

901. In relation to the status of the victims, in Bindisi, the Chamber reiterates its findings above.[2738] With respect to the detained, mistreated and raped victims from Bindisi and the surrounding areas, without evidence to the contrary, the Chamber is satisfied that they were protected under IHL either as civilians taking no active part in the hostilities or *hors de combat* at the time of the acts were committed. The Chamber accordingly finds that the third element of outrages upon personal dignity as a war crime is satisfied in relation to the victims.

Mukjar and Deleig Operations

902. With regard to the Mukjar Operation, the Chamber reiterates the verbal and physical abuse perpetrated upon Fur men and boys at Mukjar police station between late February and early March 2004, by members of the *Janjaweed* and GoS Forces as discussed above.[2739] The Chamber is satisfied that the members of the *Janjaweed* and GoS Forces humiliated, degraded and otherwise violated the dignity of at least 100 predominantly Fur men and boys detained at Mukjar police station.

903. In establishing that the severity of the humiliation was of such a degree so as to be generally recognised as an outrage upon personal dignity, the Chamber reiterates that the members of the *Janjaweed*, the Police and the CRF physically and verbally abused the detainees, including young boys.[2740] This humiliation included: (i) physical assault and mistreatment;[2741] (ii) use of derogatory expressions to degrade and threaten such as *nujus*, *tora bora* and *abid*;[2742] (iii) photographing and filming the detainees whilst being called *tora bora* and accused of being rebels, followed by threats of being destroyed by Minister Harun and other government officials;[2743] (iv) forcing detainees to lie face down and not raise their heads, stacking detainees on top of one another; and mistreating them as they were thrown onto the back of vehicles;[2744] and (v) shaving the heads and severing the ears of some detainees, causing bleeding.[2745]

[2738] *See* para. 845 *above.*
[2739] *See* para. 873 *above.*
[2740] *See* paras 502, 520, 526 *above.*
[2741] *See* para. 520 *above.*
[2742] *See* para. 531 *above*.
[2743] *See* para. 518 *above.*
[2744] *See* paras 544-547 *above*.
[2745] *See* para. 530 *above*.

904. Further, regarding the conduct which humiliated and degraded the detainees in Mukjar, the Chamber reiterates that, on or about 1 March 2004, the *Janjaweed* and GoS Forces: (i) physically abused detainees by beating them, striking them with sticks, and whips;[2746] (ii) denied *umdah* Yahya Ahmad Zarruq permission to get dressed properly; and (iii) loaded the detainees, including the *umdahs*, onto the vehicles where they were beaten and told they would be killed.[2747]

905. Considering the above, the Chamber is satisfied that the circumstances of the detention, the mistreatment the detainees endured, and the derogatory expressions used towards them at Mukjar police station humiliated and degraded the personal dignity of the detained Fur men, boys and *umdahs*. The Chamber recalls that the severity of the abuse inflicted by the perpetrators was of such intensity that the detainees were shouting and crying, whilst some read verses from the *Qur'an*, some were left with wounds, in agony and the skin of some detainees started to peel off, leaving them disfigured.[2748] The level of violence employed, the public nature of the violence, the helplessness of the detainees, their vulnerability, and the filming of the detainees during Minister Harun's visit on or around 1 March 2004, render the degree of degrading conduct so severe as to be generally recognised as an outrage upon personal dignity.

906. With regard to the Deleig Operation, the Chamber recalls its findings as mentioned above on the mistreatment of Fur men and boys, during the arrests in Deleig, the transportation of the detainees to and from Deleig police station and the mistreatments outside and inside of Deleig police station.[2749] In order to establish that the *Janjaweed* humiliated and degraded the detainees to such a degree as to be generally recognised as an outrage upon personal dignity, the Chamber recalls the physical assault and mistreatment of captives during the search and arrest operation, namely: (i) some detainees had their hands tied behind their backs and some were forced to lie face down in the open backs of Land Cruisers and;[2750] (ii) men were herded back to Deleig police station after enduring several hours of beating in the northern outskirts of Deleig.[2751] Similarly, outside Deleig police station, detainees were ordered to lie face down on the ground in rows, some with hands tied behind their backs, and some detainees were not

[2746] *See* paras 526-527 *above.*
[2747] *See* paras 545-550 *above.*
[2748] *See* para. 534 *above.*
[2749] *See* paras 598, 604-605, 609, 635, 638 *above.*
[2750] *See* para. 597 *above.*
[2751] *See* para. 598 *above.*

allowed to raise their heads or, if they did so, were beaten with sticks.[2752]

907. Further, the Chamber recalls the mistreatment and detention of Fur men and at least one child[2753] whilst being transported from Deleig police station, particularly by repeatedly beating them with boots, whips and sticks, while subjecting them, at least in one instance, to verbal abuse through the use of derogatory expressions.[2754]

908. The Chamber recalls the circumstances of an *umdah's* arrest, in particular: (i) the physically violent arrest at his home in front of his family, including, being kicked and dragged; (ii) the death threats made by **the Accused** to the family; and (iii) the family seeing their relative alive for the last time while he was detained in the back of a Land Cruiser and taken away by members of the *Janjaweed*.[2755] The Chamber is satisfied that this arrest was particularly degrading upon the dignity of P-0995 and his family in light of, their young age, the fear instilled, and that their father was a leading community figure.

909. The Chamber is convinced that the acts of the *Janjaweed* and the GoS Forces were humiliating and degrading upon the personal dignity of the detainees outside Deleig police station. The Chamber is persuaded that the circumstances of the detention, the mistreatment endured and the derogatory expressions used whilst in detention humiliated, degraded or otherwise violated the personal dignity of the detainees at Deleig police station. Considering the degrading nature of the circumstances of the arrests in Deleig, the conditions of detention inside and outside of Deleig police station, and the violent beatings by the perpetrators which they endured, the Chamber is satisfied that the severity of the humiliation and degradation was of such a high degree so as to be generally recognised as an outrage upon personal dignity.

910. On the basis of these facts, the Chamber is satisfied that the first and second elements of outrages upon personal dignity as a war crime, that the *Janjaweed* and the GoS Forces humiliated, degraded or otherwise violated the dignity of one or more persons and the humiliation, degradation and other violations of dignity each victim suffered was so severe as to constitute an outrage upon personal dignity, are met with respect to at least 100 Fur men and boys taken to Mukjar police station and at least 100 Fur men and boys taken to Deleig police

[2752] *See* para. 604 *above.*
[2753] *See* para. 618 *above.*
[2754] *See* paras 616-617, 619 *above.*
[2755] *See* para. 602 *above*.

station.

911. In relation to the status of the victims, in Mukjar and Deleig, the Chamber reiterates its findings above.[2756] The above highlights that the detainees at Mukjar and Deleig police stations were protected under IHL, either as civilians taking no active part in the hostilities or *hors de combat.* The third element of the war crime of outrage upon personal dignity is thus met in relation to the victims referred to in this charge for the Mukjar and Deleig Operations.

912. With respect to the mental elements, based on the facts and circumstances discussed above, the Chamber is satisfied that the members of the *Janjaweed* and GoS Forces who engaged in the relevant conduct in Bindisi, Mukjar and Deleig did so deliberately, were aware of the factual circumstances establishing the victims' protected status, as civilians taking no active part in the hostilities or *hors de* combat, and meant to cause humiliation, degradation or violation of dignity.[2757] Accordingly, the Chamber is satisfied that the general mental elements under Article 30 of the Statute are met with respect to outrage upon personal dignity as a war crime for all underlying conduct.

c) Conclusion

913. Accordingly, the Chamber is satisfied that members of the *Janjaweed* and GoS Forces committed the war crime of outrage upon personal dignity in Bindisi on 15 and 16 August 2003, in Mukjar between late February and early March 2004, and in Deleig between 5 and 7 March 2004.

K. Murder and attempted murder as a crime against humanity and as a war crime (Counts 2-3, 17-20, 27-30)

a) The charges

914. Under Counts 2 and 3, **the Accused** is charged respectively with murder as a crime against humanity and as a war crime, in Kodoom, Bindisi and surrounding areas, between 15 and 16 August 2003, pursuant to Articles 7(1)(a) and 8(2)(c)(i) of the Statute.[2758]

915. Under Counts 17, 18, 19 and 20, **the Accused** is charged respectively with murder and attempted murder as a crime against humanity and as a war crime, outside of Mukjar between late February and early March 2004, pursuant to Articles 7(1)(a) and 8(2)(c)(i) of the

[2756] *See* para. 879 *above.*
[2757] *See* paras 894-897, 902-910 *above.*
[2758] Confirmation Decision, pp. 67-68.

Statute.[2759]

916. Under Counts 27, 28, 29 and 30, **the Accused** is charged respectively with murder and attempted murder as a crime against humanity and as a war crime, in Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to Articles 7(1)(a) and 8(2)(c)(i) of the Statute.[2760]

b) Findings of the Chamber

Kodoom and Bindisi Operation

917. The Chamber recalls that, on 15 and 16 August 2003, members of the *Janjaweed* killed civilians in Kodoom and Bindisi, including by gunfire or by burning them inside their homes.[2761] Whilst there is evidence that many victims were killed, the Chamber is satisfied that at least 46 victims were killed.[2762] On the basis of these considerations, the Chamber is satisfied that the first legal element of murder as a crime against humanity and as a war crime, *i.e.* that the perpetrator killed one or more persons, is met.

918. With respect to the second legal element of murder as a war crime, the Chamber notes that victims were killed when they were inside their homes, fleeing the attack, hiding in fields, captured or with their hands tied up.[2763] The Chamber further notes that the circumstances establish that, at the time of the attacks, Kodoom and Bindisi were inhabited by civilians, and that there were was no evidence of rebel or armed presence in any of these villages at the relevant time.[2764] On the basis of these facts, the Chamber is satisfied that all victims were civilians not taking direct part in the hostilities or *hors de combat*. This element is thus met.

919. Turning to the mental element under Article 30 of the Statute, the Chamber notes that

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[2759] Confirmation Decision, pp. 59-60, 69, paras 71-79.
[2760] Confirmation Decision, pp. 64-65, 70, paras 109-115.
[2761] *See* paras 408, 423-424 *above*. The Chamber notes that the Defence does not dispute that civilians were killed during the Kodoom and Bindisi attack (Defence's Closing Statement: T-162, pp. 4-5).
[2762] *See* paras 408, 423-425 *above*. *Contra* Prosecution's Final Brief, para. 272. The Chamber notes the Defence's submission that the Chamber should only consider the list of 51 persons indicated for the charge of murder in Annex 1 to the Decision on the Confirmation of Charges, or, alternatively, make individual findings in respect of each additional person considered for this charge (Defence's Final Brief, para. 415). The Chamber recalls that murder as a crime against humanity, pursuant to Article 7(1)(a) of the Statute, and as a war crime, pursuant to Article 8(2)(c)(i) of the Statute, requires the killing of 'one or more persons'. The Chamber notes that whilst the Pre-Trial Chamber referred to a list of 51 persons in the Confirmation Decision (Confirmation Decision, Annex), the Pre-Trial Chamber later clarified that this list was non-exhaustive (Decision on Prosecution's Application to Amend Charges, paras 15, 22-24). Accordingly, the Chamber finds that it may consider victims other than those explicitly mentioned in Annex 1 to the Confirmation Decision, and rejects the Defence's submissions in this regard (*see* *Ntaganda* Appeal Judgment, paras 325-326).
[2763] *See* paras 408, 423-424 *above*.
[2764] *See* paras 372, 376 *above*.

the perpetrators were instructed to '[w]ipe out, sweep away, *amsah aksah*' and were thus given a clear instruction to commit killings during the Kodoom and Bindisi Operation.[2765] Given this, noting the facts discussed above and the manner in which the operation was conducted,[2766] the Chamber is satisfied that the members of the *Janjaweed* that engaged in the relevant conduct did so deliberately, intending to kill one or more persons. In addition, considering the circumstances prevailing at the relevant time,[2767] the Chamber is satisfied that the perpetrators were aware of the factual circumstances that established the protected status of the victims. Accordingly, the Chamber is satisfied that the general mental elements under Article 30 of the Statute are met with respect to murder as a crime against humanity and as war crime.

Mukjar and Deleig Operations

920. The Chamber recalls that, during the Mukjar Operation, members of the *Janjaweed* and GoS Forces shot and killed no fewer than 50 detainees[2768] at at least two execution sites outside of Mukjar.[2769] The Chamber recalls that at least three detainees died as a result of the injuries they sustained during their detention at Mukjar police station.[2770] Considering the dire conditions of detention and the physical pain and suffering inflicted by the *Janjaweed* and GoS Forces on all detainees, the Chamber finds that there was a causal link between the conduct of the *Janjaweed* and GoS Forces and the victims' death.

921. The Chamber also found that, during the Deleig Operation, members of the *Janjaweed* and GoS Forces shot and killed no fewer than 70 detainees at an execution site near Fere[2771] and no fewer than 38 detainees near Koska.[2772] Finally, the Chamber found that, during the Deleig Operation, the *Janjaweed* killed at least six community leaders[2773] near Fere.[2774]

922. Considering the above, the Chamber finds that the first legal element of both murder as a crime against humanity, pursuant to Article 7(1)(a) of the Statute, and murder as a war crime, pursuant to Article 8(2)(c)(i) of the Statute, *i.e.* that the perpetrator killed one or more persons,

[2765] *See* para. 361 *above*.
[2766] *See* paras 917-918 *above*.
[2767] *See* para. 845 *above*.
[2768] *See* the Chamber's findings that at least 52 detainees were loaded onto several vehicles and brought to the execution sites and that they were all killed with the exception of P-0129 and P-0919 who survived the summary executions, paras 546, 560, 567 *above*.
[2769] *See* paras 555, 560, 567 *above*.
[2770] *See* para. 536 *above*.
[2771] *See* paras 623-625 *above*.
[2772] *See* paras 627-628 *above*.
[2773] *See* para. 643 *above*.
[2774] *See* para. 646 *above*.

is met.

923. The Chamber recalls that two detainees were shot at by members of the *Janjaweed* and GoS Forces at execution sites outside of Mukjar, but both survived.[2775] Similarly, during the Deleig Operation, one detainee was fired upon at the execution site near Koska but was not injured.[2776] Another detainee was also transported in a vehicle heading to the execution site near Koska, but managed to escape during the journey by jumping from the vehicle and evading gunshots from the guards.[2777] On the facts, the requirements of Article 25(3)(f) of the Statute are met: the conduct of the *Janjaweed* and GoS Forces with respect to these four victims represented a substantial step commencing the execution of the crime against humanity and the war crime of murder, whereas the completion of the crime, namely the death of the victims, did not occur due to independent circumstances following/during their transport to the execution sites and shooting.

924. The Chamber has previously found that the detainees in Mukjar[2778] and Deleig[2779] were civilians taking no active part in the hostilities or *hors de combat.* All persons brought to the execution sites were previously detained at either Mukjar or Deleig police station. Accordingly, the Chamber finds that the second element of (attempted) murder as a war crime, pursuant to Article 8(2)(c)(i) of the Statute, *i.e.* that the person or persons killed were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, is also met.

925. Turning to the general elements under Article 30 of the Statute, the Chamber is satisfied, on the basis of the facts discussed above,[2780] that the members of the *Janjaweed* and GoS Forces who engaged in the relevant conduct did so deliberately. In both Mukjar[2781] and Deleig[2782] the detainees were told to lie down in a line prior to being shot. In Mukjar, the perpetrators were instructed to shoot at the detainees multiple times[2783] and walked on top of them to ensure that everyone had been killed,[2784] while in Deleig they shot the detainees from

[2775] *See* paras 559, 566 *above*.
[2776] *See* para. 629 *above*.
[2777] *See* para. 627 *above*.
[2778] *See* para. 879 *above*.
[2779] *See* para. 879 *above*.
[2780] *See* para. 920 *above*.
[2781] *See* para. 554 *above*.
[2782] *See* paras 624, 628 *above*.
[2783] *See* para. 554 *above*.
[2784] *See* para. 565 *above*.

a close range,[2785] and checked that they were dead, shooting those who were not.[2786] The Chamber further recalls in relation to the detainees that died as a result of their detention at Mukjar police station, that the *Janjaweed* and GoS Forces did not provide any medical treatment to them,[2787] while inflicting the type of serious injury which were fatal if left untreated, like blows to the head and bleeding wounds.[2788] Accordingly, the Chamber is satisfied that the perpetrators meant to cause the victims' death or, with respect to the deaths which occurred during detention at Mukjar police station, were at least aware that it would occur in the ordinary course of events.

926. As previously established by the Chamber in relation to the crime of torture,[2789] and considering that all persons brought to the execution sites were previously detained at either Mukjar or Deleig police stations, the Chamber is satisfied that the perpetrators were necessarily aware of the factual circumstances establishing the victims' protected status under IHL. Accordingly, the general mental elements under Article 30 of the Statute are met with respect to murder as a crime against humanity and as a war crime.

c) Conclusion

927. Accordingly, the Chamber is satisfied that members of the *Janjaweed* and GoS Forces committed murders, as a war crime and a crime against humanity, during the three charged operations, and attempted murders during the Mukjar and Deleig Operations. On the basis of the above findings, the Chamber is satisfied that no fewer than 46 victims were killed in Kodoom and Bindisi; no fewer than three detainees were killed at Mukjar police station and no fewer than 50 detainees were killed outside of Mukjar; and no fewer than 114 victims were killed in Deleig and its surrounding areas. The Chamber is also satisfied that members of the *Janjaweed* and GoS Forces attempted to kill at least four persons during the Mukjar and Deleig Operations. The Chamber considers, however, that the killings claimed considerably more lives, but imprecision of the evidence tendered prevents it from arriving at a definite breakdown. To this end, it refers to the various testimonies which, although imprecise regarding the actual total number, speak of many more victims killed during the three operations.

[2785] *See* para. 628 *above*.
[2786] *See* para. 628 *above*.
[2787] *See* para. 515 *above*.
[2788] *See* paras 527, 530 *above*.
[2789] *See* para. 880 *above*.

L. Persecution as a crime against humanity (Counts 11, 21, 31)

a) The charges

928. Under Count 11, **the Accused** is charged with persecution as a crime against humanity, on political and ethnic grounds, concerning the predominantly Fur population of Kodoom, Bindisi and surrounding areas perceived as belonging to, or being associated with, or supporting the rebel armed groups, by way of the criminal acts listed in Counts 1-10, between 15 and 16 August 2003, pursuant to Article 7(1)(h) of the Statute.[2790]

929. Under Counts 21 and 31, **the Accused** is charged with persecution as a crime against humanity, on political, ethnic, and gender grounds, concerning Fur men perceived as belonging to, or being associated with, or supporting rebel armed groups, by way of the criminal acts listed in Counts 12-20, in Mukjar and surrounding areas, in late February/early March 2004, and in Deleig and surrounding areas, between 5 and 7 March 2004, by way of the criminal acts listed in Counts 22-30, pursuant to Article 7(1)(h) of the Statute.[2791]

930. The Chamber recalls that the acts underlying the crime against humanity of persecution are, in the present case, also underlying acts for other crimes charged. The Chamber finds that the material elements of the relevant crimes differ and therefore a cumulation of conviction for all these crimes is legally permissible.[2792] In particular, the Chamber notes that while torture as a war crime requires a prohibited purpose, one of which may be discrimination, discrimination is not *per se* required for the war crime of torture to be constituted. By contrast, discriminatory intent is a necessary mental element for the crime against humanity of persecution. Thus, cumulative convictions for torture as a war crime and persecution as a crime against humanity are allowed.[2793]

b) Findings of the Chamber

931. The Chamber finds that, as required by the first material element of the crime against humanity of persecution, the *Janjaweed*, contrary to international law, severely deprived civilians of fundamental rights in the course of the operations in Kodoom, Bindisi and surrounding areas, Mukjar, and Deleig. The *Janjaweed* deprived civilians of, *inter alia*, the

[2790] Confirmation Decision, p. 68.
[2791] Confirmation Decision, pp. 69-70.
[2792] *Ntaganda* Trial Judgment, para. 1206.
[2793] *Naletilić and Martinović* Appeal Judgment, paras 589-590.

right to life,[2794] the right not to be subjected to cruel, inhumane or degrading treatment,[2795] the right to bodily integrity,[2796] the right to personal liberty and security of person,[2797] and the right to private property:[2798] rights which they enjoyed – without any doubt – pursuant to international law.[2799] Therefore, the Chamber is satisfied that the circumstances of victimisation and the severe nature of the deprivation of the abovementioned rights is clearly established in its findings on the facts and the law in relation to Counts 1-10 in respect of Kodoom and Bindisi, Counts 12-13, 16-20 in respect of Mukjar, and Counts 22-23, 26-30 in respect of Deleig, made above.

932. In this context, the Chamber notes that during the time of the charges, a state of emergency was in force in Darfur.[2800] In this regard, the Chamber notes Article 132(1)(a) of the 1998 Sudanese Constitution, which provides that during a state of emergency, the President, 'by law or exceptional order', may '[s]uspend some or all of the provisions in the Chapter on individual rights and liberties', '*except* the following: the prohibition of torture, […], the prohibition of discrimination based on race, sex or religion, freedom of thought […]'.[2801] The Chamber further notes that, pursuant to Article 4(1) of the ICCPR, as well as the UN Human Rights Committee's General Comment on this provision, States derogating from the Covenant in circumstances of public emergency must ensure that such derogations: (i) do not exceed those 'strictly required by the exigencies of the situation'; (ii) 'are not inconsistent with their obligations under international law'; and (iii) 'do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.[2802] Moreover, pursuant to Article 4(2) of the ICCPR, no derogation may be made with respect to the right to life and the right not to be subjected to cruel, inhumane or degrading treatment. Having considered the fundamental nature of the rights identified above, and the relevant findings on the facts and the law in relation to the manner in which these rights were deprived in the instant case, the

[2794] *See* Section 7.II.K. Murder and attempted murder as a crime against humanity and as a war crime (Counts 2-3, 17-20, 27-30).
[2795] *See* Sections 7.II.G. Torture as a crime against humanity and as a war crime (Counts 12-13 and 22-23), 7.II.H. Other inhumane acts as a crime against humanity (Counts 6, 14 and 24) and 7.II.I. Cruel treatment as a war crime (Counts 15 and 25).
[2796] *See* Sections 7.II.F. Rape as a crime against humanity and as a war crime (Counts 8 and 9) and 7.II. J. Outrages upon personal dignity as a war crime (Counts 7, 16 and 26).
[2797] *See* Section 7.II.E. Forcible transfer of population as a crime against humanity (Count 10).
[2798] *See* Sections 7.II.C. Pillaging as a war crime (Count 4) and 7.II.D. Destroying the enemy's property as a war crime (Count 5).
[2799] *See for example* ICCPR, Articles 6, 7, 9, 10, 12, 17, 27; UDHR, Articles 3, 5, 7, 9, 13, 17; African Charter, Articles 4, 5, 6, 12, 14, 16.
[2800] *See* para. 284 *above*.
[2801] 1998 Sudanese Constitution, DAR-OTP-0139-0003, at 0029 (emphasis added).
[2802] ICCPR, Article 4(1); UN Human Rights Committee General Comment on Article 4 of ICCPR, paras 4-5.

Chamber is satisfied that the declaration of a state emergency during the time of the charges does not provide justification under international law for the severe deprivation of civilians' fundamental rights in the present case.

933. In respect of the second and third elements, the Chamber first reiterates its factual finding that the inhabitants of Kodoom and Bindisi predominantly belonged to the Fur tribe.[2803] The Chamber is satisfied that, during the Kodoom and Bindisi Operation, the *Janjaweed* targeted the inhabitants of Kodoom and Bindisi by reason of them being predominantly Fur. This is supported by the factual findings that: (i) immediately prior to the Kodoom and Bindisi Operation, Minister Harun was heard telling the *Janjaweed*, during a speech in Mukjar, that they should 'wipe out and sweep away the Fur', he referred to the Fur as *ghanima*, and said that the Fur and their money were booty or 'prize' for the *Janjaweed*;[2804] (ii) during this same operation, the *Janjaweed*, acting upon orders by **the Accused**, attacked other predominantly Fur villages including Nyerli, Tiro, Merly, Seder and Drangal;[2805] (iii) after the attack on North Bindisi, **the Accused** was heard telling the *Janjaweed* that they 'taught the enemy a lesson that the enemy will never forget' and '[t]he Fur will never forget this lesson';[2806] and (iv) the use of derogatory expressions by the *Janjaweed* during the Kodoom and Bindisi Operation.[2807]

934. The Chamber recalls that, during the operations in Mukjar and Deleig, **the Accused**, the *Janjaweed* and GoS Forces targeted for arrests, detention, torture and mistreatment, and subsequently executed, predominantly Fur men, including community leaders.[2808] This is supported by the factual findings that: during the Mukjar Operation, the *Janjaweed* and GoS Forces: (i) arrested and detained four Fur policemen at Mukjar police station;[2809] (ii) arrested and detained a number of predominantly Fur persons at the Mukjar locality building;[2810] (iii) arrested and detained at least 100 predominantly Fur men at Mukjar police station;[2811] (iv) tortured, mistreated and killed predominantly Fur men at Mukjar police station;[2812] (v) summarily executed predominantly Fur male detainees, including community leaders;[2813]

[2803] *See* paras 372, 376 *above*.
[2804] *See* paras 384-387 *above*.
[2805] *See* paras 397-403, 417-419 *above*.
[2806] *See* para. 437 *above*.
[2807] *See* paras 415, 435 *above*.
[2808] *See* paras 484, 486, 495-496, 502, 506, 530, 551-567, 591-601, 604-610 *below*, 622-634 and 642-646 *above*. *Contra* Defence's Final Brief, paras 471, 473.
[2809] *See* para. 496 *above*.
[2810] *See* paras 497-501 *above*.
[2811] *See* paras 495-496, 502, 506 *above*.
[2812] *See* paras 873, 875, 878-879, 902, 903-904, 909, 920, 927 *above*.
[2813] *See* paras 920, 923-926 *above*.

and (vi) separated men from women and children, and did not arrest women, children and elderly men.[2814] During the Deleig Operation, the *Janjaweed* and GoS Forces: (i) conducted house to house searches for Fur men who were not from Deleig;[2815] (ii) arrested and mistreated (during arrests and transfer) predominantly Fur men from across Deleig;[2816] (iii) detained and mistreated predominantly Fur men in and around Deleig police station;[2817] (iv) summarily executed predominantly Fur male detainees, including community leaders;[2818] and (v) did not arrest women, some boys and elderly men.[2819] The Chamber further recalls that, during an operation preceding the Mukjar Operation, **the Accused** told the *Janjaweed* to 'kill or wipe' all men but not women.[2820]

935. Second, the Chamber reiterates its factual findings that: (i) during the charged period, the GoS perceived non-Arab tribes, including the Fur, to be associated with the rebels, and as per the Emergency Plan targeted them as the enemy;[2821] (ii) several witnesses gave evidence that 'all African tribes' and the 'entire communities of Fur, Zaghawa, Masalit' were targeted indiscriminately, because in the eyes of the GoS, they were 'all rebels';[2822] (iii) during the Kodoom and Bindisi Operation, the *Janjaweed* referred to the Fur inhabitants as *tora bora* (*i.e.* a rebel) and *nuba* (*i.e.* a derogatory term, meaning 'black');[2823] (iv) during the Mukjar Operation, **the Accused** and the *Janjaweed* referred to the detainees as *tora bora*, *abid*, *magus*, slaves and rebels;[2824] and (v) during the Deleig Operation, the *Janjaweed* and GoS Forces accused the Fur of being *tora bora* (*i.e.* rebels).[2825]

936. As is evident from the above findings, the Chamber is satisfied that: (i) in Kodoom and Bindisi, the *Janjaweed* targeted the predominantly Fur inhabitants based on the perception that they were affiliated with the rebels, and the fact that they were Fur, thus discriminated them based on perceived political affiliation and ethnic identity; (ii) in Mukjar and Deleig, the *Janjaweed* and GoS Forces targeted predominantly Fur men of fighting age based on the perception that they were affiliated with the rebels, and the fact that they were Fur, thus

[2814] *See* paras 484, 491, 494 *above*.
[2815] *See* paras 593, 596, 602 *above*.
[2816] *See* paras 592-602 *above*.
[2817] *See* paras 604-605, 608-610 *above*.
[2818] *See* paras 921, 925, 927 *above*.
[2819] *See* para. 600 *above*.
[2820] *See* paras 467-468 *above*.
[2821] *See* paras 286-289 *above*.
[2822] *See* paras 286-289 *above*.
[2823] *See* paras 415, 429, 435 *above*.
[2824] *See* paras 492, 501, 516-518, 525, 527, 531, 553, 558, 565 *above*.
[2825] *See* paras 596, 609, 616 *above*.

discriminated them based on their political affiliation, ethnic identity and perceived gender role.[2826] The Chamber emphasises that the fact that some members of the Fur tribe were recruited by the rebels does not provide any justification for the aforementioned conduct of the perpetrators.[2827]

937. In light of the foregoing, the Chamber is satisfied that, as required by the mental elements of the crime against humanity of persecution, pursuant to Article 30 of the Statute and the second element under Article 7(1)(h), the perpetrators deliberately carried out their conduct with the requisite discriminatory intent, *i.e.* an intent to discriminate against the targeted persons on any of the grounds enumerated in Article 7(1)(h) of the Statute.[2828] The Chamber is also satisfied that the third material element of the crime of persecution for Counts 11, 21, 31 is met.

938. Finally, in light of the above findings, the Chamber is satisfied that the fourth material element, *i.e.* connection with any act referred to in Article 7(1) of the Statute or any crime within the jurisdiction of the Court, is met in respect of Kodoom and Bindisi, Mukjar, and Deleig.

c) Conclusion

939. Accordingly, the Chamber is satisfied that members of the *Janjaweed* and GoS Forces committed the crime against humanity of persecution, pursuant to Article 7(1)(h) of the Statute, during the course of the three charged operations.

M. Conclusion

940. The Chamber recalls that the crimes under Counts 1, 3-5, 7, 9, 13, 16, 18, 20, 23, 26, 28, and 30 took place in the context of and were associated with an armed conflict not of an international character, and that the perpetrators, all members of the *Janjaweed* or of the GoS forces, were aware of the factual circumstances establishing the existence of such armed conflict.[2829] The Chamber recalls that the crimes under Counts 2, 6, 8, 10-12, 17, 19, 21-22, 27, 29, and 31 were committed as part of a widespread and systematic attack against the civilian population, and that the perpetrators, all members of the *Janjaweed* or of the GoS forces, must

[2826] *Contra* Defence's Final Brief, paras 480, 550, 542-548, 647-654, 664, 673-675, 676-684.
[2827] *See* para. 337 *above*.
[2828] *Contra* Defence's Final Brief, para. 440.
[2829] *See* paras 811-812, 814 *above*.

have known that such conduct was part of such an attack.[2830]

941. Accordingly, having found that all specific material and mental elements were met for each crime, the Chamber is convinced beyond reasonable doubt that the following crimes were committed:

- During the Kodoom and Bindisi Operation: attack against a civilian population as a war crime (Count 1), murder as a crime against humanity and war crime and (Counts 2 and 3), pillaging as a war crime (Count 4), destroying the enemy's property as a war crime (Count 5), other inhumane acts as a crime against humanity (Count 6), outrages upon personal dignity as a war crime (Count 7), rape as a crime against humanity and as a war crime (Counts 8 and 9), forcible transfer of population as a crime against humanity (Count 10) and persecution as a crime against humanity (Count 11).

- During the Mukjar Operation: torture as a crime against humanity and war crime (Counts 12 and 13), outrages upon personal dignity as a war crime (Count 16), murder and attempted murder as a crime against humanity and as a war crime (Counts 17-18 and 19-20), and persecution as a crime against humanity (Count 21).

- During the Deleig Operation: torture as a crime against humanity and war crime (Counts 22 and 23), outrages upon personal dignity as a war crime (Count 26), murder and attempted murder as crimes against humanity and war crimes (Counts 27-28 and 29-30), and persecution as a crime against humanity (Count 31).

III. COMMISSION AS AN INDIVIDUAL (DIRECT PERPETRATION)

A. The charges

942. **The Accused** is charged for the direct commission, pursuant to Article 25(3)(a) of the Statute, of:

- the crime against humanity and war crime of torture (Counts 12-13 and 22-23), the war crime of outrages upon personal dignity (Counts 16 and 26), and the crime against humanity of persecution (Counts 21 and 31), against captives and/or detainees in Mukjar between the end of February and the beginning of March 2004 and in Deleig

[2830] *See* para. 839 *above*.

between 5 and 7 March 2005;[2831]

- the crime against humanity and war crime of murder (Counts 27-28) and the crime against humanity of persecution (Count 31) against three Fur male detainees, in and/or near the Deleig police station on 5 March 2004.[2832]

B. Findings of the Chamber

a) Torture and outrages upon personal dignity of detainees at Mukjar and Deleig police stations

943. As regards the Mukjar Operation, the Chamber recalls its findings that, on or around 1 March 2004, **the Accused**, accompanied by several *Janjaweed* and GoS Forces, entered at least one of the cells at the police station and hit detainees, using an axe and a whip.[2833] **The Accused** hit *Umdah* Yaya Ahmad Zarruq on the shoulder with his axe, breaking his arm, and he severely injured a boy of about 9 or 10 years old who was nearby.[2834] He also hit several other detainees, including P-0129, P-0990, *Umdah* Issa Haroun Nour, *Umdah* Adam Husayn Abdelmahmoud, *Sheikh* Abdullahi Ahmad Hassan, *Sheikh* Ahmad Mohammed Barbayi, Adam Naheed Numan, Abaker Mohammed Adam and Omar Adam Harun.[2835] After this assault, Omar Adam Harun had been so severely beaten that he lay on the ground for two days during which P-0877 thought he was dead.[2836] While assaulting detainees at Mukjar Police Station, **the Accused** hurled derogatory terms at them such as slaves, *magus*, *tora bora* and rebels.[2837]

944. As regards the Deleig Operation, the Chamber recalls its findings that **the Accused**, together with other members of the *Janjaweed*, stepped on the back of the detainees lying face down on the ground outside the Deleig police station and struck them with a stick-like object, likely the handle of an axe.[2838] Victims were already in a weak and vulnerable state when **the Accused** assaulted them, some had their hands bound behind their backs.[2839] **The Accused**

[2831] Confirmation Decision, paras 58-63, 80-81, 90-91, 96-101, 102-108, 116-117, 128. On the crimes of other inhumane acts as a crime against humanity (Counts 14 and 24) and cruel treatment as a war crime (Counts 15 and 25), *see* paras 884, 890 *above*.
[2832] Confirmation Decision, paras 96-101, 109, 116-117, 126-128. The Chamber notes that the Prosecution now refers to the killing of two Fur men (Prosecution's Final Brief, paras 548-559, 642). In the absence of supporting evidence, the Chamber will not address further the initial allegation regarding the killing of a third Fur man. The Chamber's findings below are therefore limited to the killing of Jenif and Motor.
[2833] *See* paras 521-522 *above.*
[2834] *See* paras 523-524, 542 *above.*
[2835] *See* paras 523-524, 542 *above.*
[2836] *See* para. 524 *above*.
[2837] *See* para. 525 *above*.
[2838] *See* para. 610 *above.*
[2839] *See* paras 596-598, 604, 608-609 *above*.

patrolled the area around the prone detainees and said to them: 'even if you fly to the sky I will get you'.[2840]

945. In light of the above, the Chamber is satisfied that **the Accused** subjected the victims to severe physical and mental pain and suffering. The Chamber is also satisfied that this same conduct humiliated, degraded or otherwise violated the dignity of the victims. The Chamber is satisfied that by these actions, the first material elements of torture as a crime against humanity and as a war crime, as well as of the war crime of outrages upon personal dignity, are established. On the basis of these same facts and circumstances, the Chamber is also satisfied that the only reasonable conclusion is that **the Accused's** conduct was deliberate and that, in doing so, **the Accused** meant to cause the suffering and humiliation he inflicted on the victims.

946. Regarding the second element of the crime of outrages upon personal dignity, *i.e.* the severity of the humiliation, the Chamber is satisfied that the physical and verbal abuse, in the context of the degrading and humiliating nature of the detention conditions, amounts to a humiliation that was so severe that a reasonable person would be outraged.[2841] Accordingly, the Chamber concludes that the second element of the crime of outrages upon personal dignity has been satisfied.

947. Concerning the victims' status, the Chamber refers to its prior findings that the detainees were in the custody and control of the *Janjaweed* and GoS forces at the relevant time[2842] and protected under IHL, either as civilians taking no active part in the hostilities or *hors de combat.*[2843] The Chamber therefore finds that the relevant material elements for the war crimes of torture and outrages upon personal dignity are met.

948. On the basis of the above circumstances,[2844] the Chamber is also satisfied **the Accused** was aware of the factual circumstances that established the status of the victims. The Chamber is unpersuaded by the Defence submission that a mistake of law applies to **the Accused** which would negate the mental elements of knowledge under Article 30(3) of the Statute. The Chamber notes that the relevant war crimes only require knowledge of certain factual circumstances and, accordingly, it need not be established that **the Accused** assessed the

[2840] *See* para. 607 *above*.
[2841] *See similarly* paras 902-910 *above*.
[2842] *See* para. 876 *above.*
[2843] *See* para. 879 *above*.
[2844] *See* paras 943-944 *above*.

situation and/or was aware of the legal status of the victims or objects.[2845] The Chamber is satisfied that, in the case at hand, the knowledge requirements under Article 30(3) and 8(2)(c)(i) and (ii) of the Statute are met and finds unsubstantiated the Defence allegations that a ground to exclude criminal liability exists.[2846]

949. The Chamber refers to its finding above that the third element of torture as a crime against humanity is met, namely that the pain or suffering inflicted on the detainees did not arise only from, and was not inherent in or incidental to, a lawful sanction.[2847]

950. Finally, regarding the last element of torture as a war crime, the Chamber notes that victims: (i) were arrested and held in detention on suspicion of being or supporting the rebels, and, as such, considered as 'the enemy';[2848] (ii) were predominantly Fur men;[2849] and (iii) included community leaders, such as *sheikhs* and *umdahs*, who had a significant role in the Fur community.[2850] The Chamber further recalls that while physically assaulting the detainees at Mukjar police station, **the Accused** hurled derogatory terms at them such as slaves, *magus*, *tora bora* and rebels.[2851] On the basis of these considerations, the Chamber is satisfied that the second element of the war crime of torture is met, as **the Accused** inflicted the pain and suffering to punish and intimidate the detainees at the Mukjar and Deleig police stations and, as further discussed below,[2852] on discriminatory grounds.[2853]

b) Murder at Deleig police station

951. The Chamber found that, on 5 March 2004, while they were being detained at Deleig police station, both Jenif and *Sheikh* Motor were struck directly on the head by **the Accused** with his axe.[2854] The Chamber recalls that, while he was hitting Jenif, **the Accused** stated: 'I'm not going to even spend one single shot on you because shots are expensive, we pay money for it. So all what I'm going to use is this axe'.[2855] The two men died as a result of their head injury.[2856] The Chamber further recalls that **the Accused** then instructed others at the police

[2845] *See* para. 776 *above*.
[2846] *Contra* Defence's Final Brief, paras 798-826; Defence's Closing Statement: T-162, pp. 53-54, 94.
[2847] *See* para. 877 *above*.
[2848] *See* paras 486, 593-596 *above*.
[2849] *See* paras 502, 506, 596-597 *above*.
[2850] *See* paras 510, 581, 599 *above*.
[2851] *See* para. 525 *above*.
[2852] *See* para. 956 *below*.
[2853] *Contra* Defence's Final Brief, para. 550.
[2854] *See* paras 611-612 *above*.
[2855] *See* para. 611 *above*.
[2856] *See* paras 611-612 *above*.

station to discard the bodies.[2857]

952. On the basis of the above, the Chamber is satisfied that **the Accused** personally caused the death of these men and therefore, the first material element of the war crime and the crime against humanity of murder are met. On the basis of these same facts and circumstances, the Chamber is also satisfied that the only reasonable conclusion is that **the Accused's** conduct was deliberate and that he meant to cause the two victims' death.

953. The Chamber notes that Jenif and *Sheikh* Motor were both detained when they were struck by **the Accused**, and therefore protected under IHL, either as civilians taking no active part in the hostilities or *hors de combat*. On the basis of the above circumstances, the Chamber is satisfied that **the Accused** was aware of the factual circumstances that established the status of the victims. The Chamber is thus satisfied that the second and third elements of the war crime of murder are met.

c) Persecution

954. The Chamber is satisfied that, by physically and verbally abusing detainees and by killing Jenif and *Sheikh* Motor, **the Accused** severely deprived them, contrary to international law, of their right to life, bodily integrity and/or their right not to be subjected to torture or cruel, inhumane or degrading treatment.[2858] Since the underlying conduct itself qualifies as other crimes within the jurisdiction of the Court, the requisite connection is necessarily established.[2859] The first and fourth elements of the crime against humanity of persecution are thus met.

955. With respect to the third element of the crime against humanity of persecution, *i.e.* that the targeting was based on discriminatory grounds universally recognized as impermissible under international law, the Chamber refers to its finding above that the basis for discrimination of the targeted group was a combination of ethnic, political and gender grounds.[2860]

956. Finally, the Chamber refers to its finding that **the Accused** shared the co-perpetrators' discriminatory intent[2861] and notes the particularly cruel nature of his relevant criminal conduct, namely inflicting severe pain and suffering on multiple male detainees, including a boy, while

[2857] *See* paras 611-612 *above*.
[2858] *See similarly* para. 931 *above*.
[2859] *See* para. 938 *above*.
[2860] *See* paras 933-937 *above*.
[2861] *See* para. 996 *below*.

using derogatory and discriminatory language against them.[2862] The Chamber further recalls that, just before striking Jenif on the head, **the Accused** blamed him for having collaborated with the rebels in Arawala.[2863] Given the above considerations, the Chamber is satisfied that the only reasonable conclusion is that **the Accused** deliberately targeted Jenif, *Sheikh* Motor and other detainees at the Mukjar and Deleig police stations by reason of their identity as Fur male perceived as being or supporting the rebels.[2864] The Chamber is accordingly satisfied that the mental elements of the crime against humanity of persecution, pursuant to Article 7(1)(h) and 30 of the Statute, are met with respect to the abovementioned conduct.

C. Conclusion

957. The Chamber is therefore convinced, beyond reasonable doubt, that **the Accused** is criminally responsible, as a direct perpetrator within the meaning of Article 25(3)(a) of the Statute, for the commission of the following crimes:

- in relation to several detainees at the Mukjar and Deleig police stations: torture as a crime against humanity, under Article 7(1)(f) of the Statute, and as a war crime, under Article 8(2)(c)(i) of the Statute (Counts 12-13, 22-23); outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) of the Statute (Counts 16 and 26); and persecution as a crime against humanity, under Article 7(1)(h) of the Statute (Counts 21 and 31); and

- in relation to Jenif and Adam Adam Abd-Al-Rahman also known as '*Sheikh* Motor': murder as a crime against humanity, under Article 7(1)(a) of the Statute, and as a war crime, under Article 8(2)(c)(i) of the Statute (Counts 27-28); and persecution as a crime against humanity, under Article 7(1)(h) of the Statute (Counts 21 and 31).

IV. COMMISSION 'JOINTLY WITH ANOTHER' (CO-PERPETRATION)

A. The charges

958. **The Accused** is charged for the joint commission, pursuant to Article 25(3)(a) of the Statute, of the crime against humanity and war crime of torture (Counts 12-13, 22-23), the war crime of outrages upon personal dignity (Counts 16, 26), the crime against humanity and war

[2862] *See* paras 943-944 *above*.
[2863] *See* para. 611 *above*.
[2864] *Contra* Defence's Final Brief, paras 551, 647, 655.

crime of murder and attempted murder (Counts 17-20, 27-30), and the crime against humanity of persecution (Counts 21, 31), in Mukjar and surrounding areas between the end of February 2004 and the beginning of March 2004,[2865] and in Deleig and surrounding areas between 5 and 7 March 2004.[2866]

B. Findings of the Chamber

959. For the reasons set out below, the Chamber is satisfied that two common plans existed at the time of the relevant events (one in Mukjar, and another one in Deleig), as submitted by the Prosecution.[2867] The Chamber finds that these plans were agreed upon with a view to implement the State policy to attack civilians and target specific communities, namely non-Arab tribes in Wadi Salih, in particular the Fur, who were perceived as associated with the rebels, and thus as the enemy. The Chamber reiterates that the objectives of the Emergency Plan adopted on 18 December 2003 by the Security Council headed by President Al-Bashir were to '[r]estor[e] security in the states of Darfur and [end] the rebellion through military and security decisiveness', fight the SLA and JEM, and 'impos[e] control over all the villages and the regions to which rebel leaders belong (Fur, Zaghawa, Masalit)' and 'the areas inhabited by the rebellious tribes'.[2868] To this end, the Sudanese government recruited, trained, armed and funded the *Janjaweed*, which, alongside the GoS Forces, carried out armed operations in Darfur, including in Mukjar and Deleig.[2869] The Chamber is therefore satisfied that the evidence supports the existence, throughout the period of the charges, of a broader plan to quash the rebellion through the commission of the crimes enumerated.

a) Mukjar Common Plan

960. The Chamber finds that between at least February 2004, when the first check-points were set up in Mukjar,[2870] to at least March 2004, when the detainees were murdered,[2871] **the Accused** shared a common plan with several members of the *Janjaweed* and GoS Forces. The ultimate goal of the common plan was to murder predominantly Fur men, who were perceived as belonging to, or being associated with, or supporting the rebel groups. The agreement also

[2865] Confirmation Decision, pp. 58-63, 68-69.
[2866] Confirmation Decision, pp. 63-67, 69-70. On the crimes of other inhumane acts as a crime against humanity (Counts 14 and 24) and cruel treatment as a war crime (Counts 15 and 25), *see* paras 884, 890 *above*.
[2867] *See* Prosecution's Final Brief, paras 478-479, 624-625.
[2868] *See* paras 285-286 *above*.
[2869] *See* para. 280 *above*. *See also* Section 5.II.D. The use of government resources to recruit, train, arm, and fund the Janjaweed.
[2870] *See* para. 483 *above*.
[2871] *See* paras 538, 555 *above*.

involved arresting, detaining, interrogating and punishing them, through the commission of the crimes of torture, outrages upon personal dignity and persecution (the 'Mukjar Common Plan').[2872]

961. The Chamber is convinced that both this ultimate goal (murdering the detainees), as well as the other criminal acts charged and that occurred in the course of its implementation (the commission of the crimes of torture, outrages upon personal dignity and persecution) were the specific and intended outcome of the Mukjar Common Plan.

962. The Chamber finds that at the time of the Mukjar Operation an agreement existed between the following individuals: **the Accused**; Minister Harun, the State Minister for the Ministry of the Interior;[2873] Samih, one of the leaders of the *Janjaweed* and one of **the Accused's** deputies;[2874] Lt Hamdi, the head of the SAF Military Intelligence branch in Garsila;[2875] Hassaballah, the PDF coordinator in Garsila at the material time;[2876] and Muqaddam Idriss, an intelligence officer and SAF First Sergeant.[2877] Except for Muqaddam Idriss, the individuals who agreed the common plan held high positions in the different GoS Forces, namely the PDF and the SAF, or within the *Janjaweed*, who participated in the Mukjar Operation. These co-perpetrators were deployed on the ground, directly participated in the implementation of the plan and acted with the same common agreement. In addition to those identified by name above, the Chamber is satisfied that other members of the *Janjaweed* and GoS forces, also deployed on the ground and who directly participated in the commission of the crimes, were also members of the Mukjar Common Plan.[2878]

963. The Chamber is satisfied of the existence of the common plan between **the Accused** and the individuals identified above, particularly on the basis that the co-perpetrators clearly acted in a coordinated and planned manner. The *modus operandi* of the arrests, the detentions, the mistreatment in detention, and the executions, was methodical and shows coordinated preparation and planning between the perpetrators: they were carried out with the use of

[2872] *See* Prosecution's Final Brief, paras 478-479. *See* Defence's Final Brief, paras 355, 553-556.
[2873] *See* paras 290, 674 *above*.
[2874] *See* para. 326 *above*.
[2875] *See* para. 294 *above*.
[2876] *See* para. 306 *above*.
[2877] *See* paras 292, 540 *above*.
[2878] However, and contrary to the Prosecution's submission, the Chamber is not satisfied that the evidence shows that Al-Tayyib and Abd-Al-Mun'im were members of the common plan.

check-points,[2879] the registration of the displaced persons and detainees,[2880] the use of lists of suspects,[2881] the use of official detention facilities,[2882] and the use of vehicles to transfer the detainees[2883] to different execution sites.[2884]

964. The Chamber further notes that each of the co-perpetrators was present and actively involved in the preparation and implementation of elements of the plan, and in the logistical preparation necessary to conduct such an operation. The co-perpetrators interacted with one another in different combinations before the operation and during the implementation of the common plan. The fact that **the Accused** and other co-perpetrators issued consistent instructions and orders further demonstrates the existence of a common plan or agreement.

965. More specifically, the co-perpetrators were involved in the distribution of weapons to the fighters, prior to the Mukjar Operation.[2885]

966. The co-perpetrators made public speeches encouraging the commission of crimes comprised in the common plan.[2886] For example, on 1 February 2004, Minister Harun made a speech in Mukjar in which he said that he wanted the fighters to completely 'wipe out' the whole area, that they could 'take all the belongings of the Fur' and consider them as 'a war prize', and that he wanted them to 'demolish the whole area from Artala to Andi Koti'.[2887]

967. The co-perpetrators gathered at meetings in which features of the common plan were discussed.[2888] For example, on or about 2 March 2004, several officials met at the police station compound, including Al-Tayyib, Samih, Lt Hamdi, Abd-Al-Mun'im and **the Accused**.[2889] During this meeting, the features of the implementation of the common plan were discussed: **the Accused** told Torshein that they needed to take the prisoners to Zalingei, and that it was an order of Minister Harun.[2890] **The Accused** was also heard saying that he wanted all the

[2879] *See* paras 483-493 *above*.
[2880] *See* paras 473, 485, 508 *above*.
[2881] *See* paras 486-508, 541 *above*.
[2882] *See* paras 473, 502 *above*.
[2883] *See* paras 502, 544, 546, 549 *above*.
[2884] *See* paras 551-570 *above*.
[2885] *See* paras 462, 463 *above*.
[2886] *See* paras 467, 468, 519 *above*. *See also* Section 5.II.E. Public speeches by GoS officials and Janjaweed leaders.
[2887] *See* para. 464 *above*.
[2888] *See* para. 473 *above*.
[2889] *See* para. 538 *above*.
[2890] *See* para. 539 *above*.

displaced persons in Mukjar dead.[2891]

968. The co-perpetrators were present and/or issued instructions or directly participated in the mistreatment of the detainees at the Mukjar police station.[2892] For example, Lt Hamdi, and Samih were present when **the Accused** physically and verbally abused the detainees, on or around 1 March 2004.[2893] Lt Hamdi questioned the detainees about the whereabouts of presumed rebels while pointing a gun at them.[2894]

969. The co-perpetrators organised and participated in the transfer of detainees to the execution sites. They were present at the execution sites and participated in the murder of the victims. For example, **the Accused** instructed the *Janjaweed* and GoS Forces to take the detainees out of their cells and load them onto vehicles.[2895] **The Accused**, Samih and Lt Hamdi were part of the convoy that transferred the detainees to the executions sites.[2896] At the first execution site at *Khor* Talaba, **the Accused**, Hassaballah, Lt Hamdi, and Samih were present when the detainees were murdered on **the Accused's** instructions.[2897] Muqaddam Idriss and Hassaballah were among those who shot the detainees.[2898] At the second execution site, located between Eastern Juguma and Nyerli, **the Accused** ordered some detainees to get out of the vehicles, and both Samih and **the Accused** beat the detainees.[2899] **The Accused** also ordered his forces to execute the detainees.[2900] **The Accused** and Samih stood next to 10 soldiers who opened fire and shot at the detainees.[2901]

970. Having considered all these elements and the circumstances prevailing at the time of the Mukjar Operation, the Chamber is therefore satisfied of the existence of a common plan specifically directed at the commission of the crimes of murder, torture, outrages upon personal dignity and persecution.

971. The Chamber further notes that the co-perpetrators were present and witnessed the escalating nature of the commission of the crimes, which began with the mistreatment of the

[2891] *See* para. 539 *above*.
[2892] *See* paras 508, 518, 520-533, 542 *above*.
[2893] *See* para. 522 *above*.
[2894] *See* para. 533 *above*.
[2895] *See* paras 540, 541, 543, 544 *above*.
[2896] *See* para. 548 *above*.
[2897] *See* paras 554-555 *above*.
[2898] *See* para. 555 *above*.
[2899] *See* para. 563 *above*.
[2900] *See* para. 563 *above*.
[2901] *See* para. 564 *above*.

detainees. The Chamber also recalls the nature of the tasks undertaken by each of the co-perpetrators, including the fact that **the Accused** and others gave direct instructions and engaged in the direct perpetration of the crimes. In light of this and reiterating the circumstances prevailing at the time, the Chamber is therefore satisfied that the co-perpetrators, including **the Accused**, had mutual awareness that their joint efforts in the implementation of the common plan would result in the commission of each of the crimes it encompassed. The Chamber is also satisfied, as explained below, that **the Accused** shared this intent and awareness.[2902]

b) Deleig Common Plan

972. The Chamber finds that, at least between on or about 5 and 7 March 2004, **the Accused** shared a common plan with several members of the *Janjaweed* and GoS Forces. The ultimate goal of the common plan was to murder predominantly Fur men, who were perceived as belonging to, or being associated with, or supporting the rebels. The agreement also involved arresting, detaining, interrogating and punishing them through the commission of the crimes of torture, outrages upon personal dignity and persecution (the 'Deleig Common Plan').[2903]

973. The Chamber is satisfied that both this ultimate goal (murdering the detainees), as well as the other criminal acts charged and that occurred in the course of its implementation (the commission of the crimes of torture, outrages upon personal dignity and persecution) were the specific and intended outcome of the Deleig Common Plan.

974. The Chamber finds that at the time of the Deleig Operation, an agreement existed between the following individuals: **the Accused**; Lt Hamdi, the head of the SAF Military Intelligence branch in Garsila;[2904] Hassaballah, the PDF coordinator in Garsila after Jenif's death;[2905] and Military Intelligence officers Muqaddam Idriss,[2906] Abd-Al-Mun'im,[2907] and Mansur.[2908] As set out below,[2909] each of them was present during different phases of the preparation and implementation of the common plan. These co-perpetrators were deployed on the ground, directly participated in the implementation of the plan and acted with the same common agreement. In addition to those identified by the Chamber, the Chamber is satisfied

[2902] *See* paras 990-996 *below*.
[2903] *See* Prosecution's Final Brief, para. 624; *see also* paras 623, 625-649. *See* Defence's Final Brief, paras 631, 658-660, 804.
[2904] *See* para. 294 *above*.
[2905] *See* para. 306 *above*.
[2906] *See* para. 540 *above*.
[2907] *See* para. 540 *above*.
[2908] *See* para. 588 *above*.
[2909] *See* paras 976-979 *below*.

that other members of the *Janjaweed* and GoS forces, also deployed on the ground during the Deleig Operation, and who directly participated in the commission of the crimes, were also members of the Deleig Common Plan.

975. The Chamber is satisfied of the existence of the common plan between **the Accused** and the individuals identified above, on the basis that the co-perpetrators clearly acted in a coordinated and planned manner. The Chamber reiterates that during the Deleig Operation between 5 and 7 March 2004, the *Janjaweed* and GoS Forces jointly deployed, surrounded and entered Deleig,[2910] where they established checkpoints and conducted searches and arrests of predominantly Fur men and boys who were not from Deleig and were suspected of being, or supporting, rebels.[2911] They subsequently detained them, including several community leaders, inside or around the Deleig police station, where they were subjected to mistreatment and questioning.[2912] Those who were not released were killed at the Deleig Police station or loaded onto vehicles to be killed in execution sites outside Deleig.[2913] The Chamber is satisfied that the following demonstrates the methodical preparation, planning and coordination in furtherance of the Deleig Common Plan by **the Accused** and his co-perpetrators: (i) the selective arrests and detentions of 'insurgents' in Garsila;[2914] (ii) the joint deployment of the *Janjaweed* and GoS Forces from Garsila to Deleig;[2915] (iii) the surrounding of Deleig by the *Janjaweed* and the GoS Forces and the establishment of check-points and controls of all movement;[2916] (iv) the conduct of searches and arrests;[2917] (v) the detentions at or outside the Deleig police station;[2918] (vi) the questioning and release of some detainees;[2919] (vii) the transfer and execution of detainees at specific locations.[2920]

976. The Chamber further finds that the existence of the Deleig Common Plan may be inferred from **the Accused** and the co-perpetrators' multiple interaction and concerted and coordinated actions in the unfolding of the Deleig Operation, as shown below. Each of the co-perpetrators was present and actively involved in the preparation and implementation of

[2910] *See* paras 585, 589 *above*.
[2911] *See* paras 592-601 *above*.
[2912] *See* paras 603-610 *above*.
[2913] *See* paras 611, 612, 617-646 *above*.
[2914] *See* para. 580 *above*.
[2915] *See* para. 585 *above*.
[2916] *See* para. 592 *above*.
[2917] *See* para. 593 *above*.
[2918] *See* paras 597, 604-616 *above*.
[2919] *See* paras 613-615 *above*.
[2920] *See* paras 623-634, 642, 646 *above*.

elements of the plan, and in the logistical preparation necessary to conduct such an operation. The co-perpetrators interacted with one another in different combinations before the operation and during the implementation of the common plan. The fact that **the Accused** and other co-perpetrators issued consistent instructions and orders further demonstrates the existence of a common plan or agreement.

977. More specifically, the co-perpetrators organised the deployment of the forces in charge of the Deleig Operation. For example, prior to the Deleig Operation, the same *Janjaweed* and GoS Forces, who had conducted the Mukjar Operation, were jointly deployed from Garsila to Deleig on Muqaddam Idriss's instructions.[2921] Amongst the forces deployed to Deleig were **the Accused**, Lt Hamdi, Hassaballah, Muqaddam Idriss, Abd-al-Mun'im, and Mansur.[2922] On 5 March 2004, **the Accused** led the *Janjaweed* and GoS Forces that entered Deleig.[2923]

978. The co-perpetrators also organised and participated in the arrest of the victims.[2924] During the Deleig Operation, the search and arrest of predominantly Fur men and boys was carried out in Lt Hamdi's presence and pursuant to his instructions, with the assistance of Abd-Al-Mun'im and Mansur.[2925] **The Accused** personally conducted the arrest of *Umdah* Kindiri.[2926]

979. The co-perpetrators were present and/or issued instructions or directly participated in the mistreatment of the detainees. They were present at the execution sites and participated in the murder of the victims. For example, at the Deleig police station on 5 March 2004, where the victims were detained and mistreated, the *Janjaweed* were under **the Accused's** command and Abd-Al-Mun'im, Muqaddam Idriss, and Hassaballah were present.[2927] On that same day, they were also present alongside **the Accused** when detainees were killed inside Deleig police station - such as Jenif after being accused by Hassaballah of supporting the rebels - and at the execution site in the North-west of Deleig near Fere, at a location identified by **the Accused**.[2928]

980. Having considered all these elements and the circumstances prevailing at the time of the Deleig Operation, the Chamber is therefore satisfied of the existence of a common plan

[2921] *See* para. 585 *above*.
[2922] *See* para. 587 *above*.
[2923] *See* para. 589 *above*.
[2924] *See* paras 580-581 *above*.
[2925] *See* para. 594 *above*.
[2926] *See* para. 602 *above*.
[2927] *See* para. 607 *above*.
[2928] *See* paras 611, 623, 624 *above*.

specifically directed at the commission of the crimes of murder, torture, outrages upon personal dignity and persecution.

981. The Chamber further notes that the co-perpetrators were present at the different sites where the crimes were committed. The Chamber also recalls the nature of the tasks undertaken by each of the co-perpetrators, including the fact that **the Accused** and others gave direct instructions and engaged in the direct perpetration of the crimes. In light of this and reiterating the circumstances prevailing at the time, the Chamber is therefore satisfied that the co-perpetrators, including **the Accused**, had mutual awareness that their joint efforts in the implementation of the common plan would result in the commission of each of the crimes it encompassed. The Chamber is also satisfied, as explained below, that **the Accused** shared this intent and awareness.[2929]

c) Essential contribution

982. For the reasons set out below, the Chamber is satisfied that **the Accused** made an essential contribution to each of the crimes that were part of the Mukjar and Deleig Common Plans.

983. The Chamber first refers to the role and reputation of **the Accused** within the Wadi Salih area. **The Accused** was well-known in the area and was widely regarded as a *Janjaweed* leader. The evidence does not clearly reveal why a retired *Musa'id* in the medical corps of the SAF, who became a pharmacist, should have achieved such a position in the area. However, the evidence does clearly reveal that he had such a position. **The Accused** had authority over *Janjaweed* leaders and other lower-ranking members. **The Accused** had direct access to key figures at the highest level of the Sudanese government, such as Ministers Hussein and Harun, and at the locality level, such as Lt Hamdi.[2930] The combination of these factors made **the Accused** a leader who commanded respect and therefore obedience from others. The Chamber considers that the implementation of the GoS's counter-insurgency efforts, such as the Mukjar and Deleig Operations, required such a leader.

984. Second, the Chamber refers to the acts and role of **the Accused** immediately prior to the Mukjar and Deleig Operations. The Chamber recalls that GoS resources destined to support the *Janjaweed* were channelled through **the Accused** and that he oversaw the recruitment of

[2929] *See* paras 990-996 *below*.
[2930] *See* Section V.IV. The Accused's position of authority and influence in 2003 and 2004 *above*.

members of the *Janjaweed* and the distribution of *matériel* to them.[2931] Specifically in relation to the Mukjar and Deleig Operations, the Chamber recalls that around February 2004, in the lead up to these operations, **the Accused** coordinated the distribution of weapons to the *Janjaweed* at the Garsila SAF base.[2932]

985. Third, the Chamber notes that **the Accused** was present and intervened throughout the different stages (preparation and execution) of the Mukjar Common Plan and personally carried out the material elements of some of the crimes that were part of the same. More specifically, the Chamber recalls that **the Accused**: (i) prior to the Mukjar Operation, held meetings with high-ranking GoS officials in relation to the implementation of the Common Plan;[2933] (ii) led the *Janjaweed* in this joint operation with the GoS Forces;[2934] (iii) personally committed crimes which were part of the Mukjar Common Plan, namely the crimes of outrages upon personal dignity and torture, in the presence of members of the *Janjaweed* and the GoS Forces;[2935] (iv) prior to the Mukjar Operation, instructed GoS Forces how to carry out, and, during the Operation, personally participated in, arrests;[2936] (v) was present as detainees were being brought to the police station;[2937] (vi) took steps to identify 'rebels', namely by instructing the second-in-command of the SLM/A, who had been captured during the Sindu Operation, to point them out in a cell at the police station;[2938] (vii) physically and verbally abused detainees at the police station, and was present as members of the *Janjaweed* did the same;[2939] (viii) liaised with Minister Harun and other senior GoS officials in relation to the custody of detainees;[2940] (ix) gave orders to GoS officials in relation to the transfer of detainees;[2941] (x) personally took detainees out of their cells and loaded them onto vehicles, and ordered members of the *Janjaweed* and the GoS Forces to do the same;[2942] (xi) supervised the transport of detainees to the execution sites;[2943] (xii) at the execution sites, mistreated detainees in the presence of members of the *Janjaweed* and GoS Forces, and was present while members of the

[2931] *See* Section 5.IV.C. His role in the recruitment of members of the *Janjaweed* and in the distribution of *matériel* to them *above*.
[2932] *See* para. 462 *above*.
[2933] *See* para. 967 *above*.
[2934] *See* paras 469, 480, 482 *above*.
[2935] *See* para. 957 *above*.
[2936] *See* paras 473, 495 *above*.
[2937] *See* para. 496 *above*.
[2938] *See* para. 540 *above*.
[2939] *See* paras 520-525, 530 *above*.
[2940] *See* paras 517-518, 538-539 *above*.
[2941] *See* para. 539 *above*.
[2942] *See* paras 540-549 *above*.
[2943] *See* paras 540-549 *above*.

Janjaweed and GoS Forces were doing the same;[2944] and (xiii) at the execution sites, ordered members of the *Janjaweed* and GoS Forces to execute the detainees.[2945]

986. Fourth, as regards the Deleig Operation, the Chamber notes that **the Accused** was present and intervened throughout the different stages (preparation and execution) of the Deleig Common Plan and personally carried out the material elements of some of the crimes that were part of the same. More specifically, the Chamber recalls that **the Accused**: (i) led the *Janjaweed* in this joint operation with the GoS Forces;[2946] (ii) personally committed crimes, which were part of the Deleig Common Plan, namely the crimes of outrages upon personal dignity, torture and murder in the presence of members of the *Janjaweed* and the GoS Forces; [2947] (iii) personally brought detainees to the Garsila SAF base, and provided intelligence which led to, and issued orders for, the arrest of persons, some of whom were later detained and killed in Deleig;[2948] (iv) was present, issued orders during, and participated in the search and arrest operation;[2949] (v) was present at the Deleig police station, including in the open area outside the police station where detainees were held and mistreated;[2950] (vi) commanded the *Janjaweed* at the Deleig police station;[2951] (vii) questioned detainees;[2952] (viii) decided whether detainees should be released; [2953] (ix) physically and verbally abused detainees in the presence of members of the *Janjaweed* and GoS Forces;[2954] (x) committed killings in the presence of members of the *Janjaweed* and the GoS Forces;[2955] (xi) gave instructions to members of the *Janjaweed* and GoS Forces to load detainees onto vehicles, and supervised this process;[2956] (xii) supervised the transport of detainees to execution sites;[2957] and (xiii) at one execution site, ordered members of the *Janjaweed* and the GoS Forces to take the detainees off the vehicles and execute them.[2958]

987. In light of the above, and consistent with its findings on the common plans, the Chamber

[2944] *See* paras 552-553, 558, 563 *above*.
[2945] *See* paras 554, 563 *above*.
[2946] *See* paras 585, 589 *above*. *Contra* Defence's Final Brief, para. 583.
[2947] *See* para. 957 *above*.
[2948] *See* paras 580-581, 586-587 *above*.
[2949] *See* para. 602 *above*. *Contra* Defence's Final Brief, para. 583.
[2950] *See* paras 605-607, 610 *above*.
[2951] *See* para. 607 *above*.
[2952] *See* paras 611-612 *above*.
[2953] *See* paras 618, 643 *above*.
[2954] *See* paras 607, 610 *above*.
[2955] *See* paras 611-612 *above*.
[2956] *See* para. 617 *above*.
[2957] *See* paras 617, 621, 643 *above*.
[2958] *See* paras 623-624 *above*.

is satisfied that: (i) **the Accused's** participation in the preparation of the Mukjar and Deleig Common Plans was key in defining the contours of both plans and in securing human and material resources to ensure their implementation; (ii) **the Accused's** leadership of the *Janjaweed*, allowed the *Janjaweed* to act as a single and unified force operating jointly with the GoS Forces; (iii) instructions from the highest level of the Sudanese government regarding the Mukjar and Deleig Operations, were communicated to and implemented by **the Accused**; and (iv) **the Accused's** instructions to members of the participating forces (GoS Forces and *Janjaweed* alike) and supervision at several stages of the Mukjar and Deleig Operations, allowed both operations to progress until completion. Additionally, **the Accused's** presence at the relevant sites and personal commission of crimes which were part of the common plans, demonstrate his essential contribution.

988. Accordingly, the Chamber is satisfied that **the Accused's** leadership of the *Janjaweed*, combined with his presence and his actions in preparation of, and throughout, the Mukjar and Deleig Operations, within the framework of the relevant Common Plans, amount to an essential contribution to the crimes of murder and attempted murder (Counts 17-20, 27-30), torture (Counts 12-13, 22-23), outrages upon personal dignity (Counts 16, 26), and persecution (Counts 21, 31), which would have been committed in a significantly different way without such contribution.[2959] This legal element is thus met. On the same basis, the Chamber is satisfied that **the Accused** was aware of his essential role and as such his ability to, jointly with others, control the commission of the crimes.

989. The Chamber notes the Defence's arguments that **the Accused** was not the 'highest authority' or that he was not the one issuing orders at every step of the Mukjar and Deleig Operations.[2960] The Chamber however emphasises that it need not find that **the Accused** had the sole responsibility or was mainly responsible for these crimes, nor that he made an essential contribution to each criminal incident to find him liable as a co-perpetrator. Rather, as stated above, the decisive consideration is whether, without **the Accused's** contribution, the crime(s) could not have been committed or would have been committed in a significantly different way.

[2959] *Contra* Defence's Final Brief, paras 553-556, 656-660; Defence's Closing Statement: T-162, pp. 16-25. In respect of the Deleig Common Plan, whilst the Chamber notes that Lt Hamdi was present and issued instructions relating to the search and arrest operation in Deleig (*see* para. 594 *above*), the Chamber finds that this does not diminish the essential contribution made by **the Accused** to the Deleig Common Plan (*Contra* Defence's Final Brief, para. 583).
[2960] *See for example* Defence's Final Brief, paras 496, 583.

Accordingly, the Chamber rejects the Defence's arguments on this point.

d) Mental elements

990. The Chamber is satisfied, based on the nature of the acts and conduct constituting his essential contribution,[2961] and the absence of allegations or evidence suggesting otherwise, that **the Accused's** conduct was deliberate. The requirement under Article 30(2)(a) of the Statute, *i.e.* that **the Accused** meant to engage in the relevant conduct, is thus met.

991. In assessing **the Accused's** knowledge and intent with respect to the criminal conduct of the *Janjaweed* and GoS Forces during the Mukjar and Deleig Operation, the Chamber first refers to its finding that **the Accused** is liable as a direct perpetrator for the commission of other instances of the same crimes. The Chamber recalls that **the Accused** personally carried out, with intent, the material element of the crimes of torture and outrage upon personal dignity committed against several captives and detainees, as well as the killing of two men.[2962] He did so in a particularly cruel manner, against some community leaders, and in front of members of the *Janjaweed* and GoS Forces.

992. The Chamber further recalls the words of **the Accused** at the relevant time, in particular a few clear and specific instructions which leave no doubt as to how **the Accused** expected those who would execute the Common Plans to behave, in particular with respect to the fate of the captives. Not only did **the Accused** use derogatory terms to refer to them[2963] or threatened to kill some of them,[2964] he specifically said that he wanted them dead.[2965] When on board the vehicle transporting the Mukjar detainees to the first execution site, **the Accused** stated 'prepare their graves'.[2966] When they arrived at the site, and after having ordered the detainees to get out of the vehicle and lie down in a line, **the Accused** instructed some members of the *Janjaweed* and GoS Forces to shoot and kill the detainees, which they did.[2967] The Chamber notes that similar instructions to kill other Mukjar detainees who had been transported to another execution site were also given by **the Accused**.[2968] Moreover, and while the evidence does not allow the Chamber to establish the precise words he used, the Chamber is satisfied

[2961] *See* Section 7.IV.B.c. Essential contribution *above*.
[2962] *See* Section 7.V.III. Commission as an individual (direct perpetration) *above*.
[2963] *See* paras 525, 540 *above*.
[2964] *See* para. 523 *above*.
[2965] *See* para. 539 *above*.
[2966] *See* para. 549 *above*.
[2967] *See* paras 552-561 *above*.
[2968] *See* para. 563 *above*.

that similar instructions to kill the Deleig detainees were also issued by **the Accused**,[2969] who had participated in their mistreatment earlier that day at Deleig police station and supervised the loading and transport of these detainees to the execution site.[2970] The Chamber further recalls that, in the context of a prior operation, **the Accused** gave a speech instructing the *Janjaweed* to 'kill everyone' and 'leave no one alive'.[2971]

993. More generally, the Chamber refers to **the Accused's** acquiescing presence on the ground throughout the various stages of the Deleig and Mukjar Operations. The Chamber recalls that **the Accused**, as a leader exerting authority over all troops present,[2972] was nearby while members of the *Janjaweed* and GoS Forces, conforming with his instructions, proceeded to the arrest, detention, and mistreatment of captives, as well as their transport to and killing at execution sites.[2973]

994. For the reasons set out above, the Chamber is satisfied that **the Accused**, throughout the relevant period, and in the context of the implementation of the Common Plans, intended that members of the *Janjaweed* and GoS Forces should: i) kill civilians not taking an active part in the hostilities and/or persons *hors de combat*; ii) inflict severe physical and mental pain and suffering upon them; iii) humiliate, degrade or otherwise violate their dignity; and, by doing so, also iv) deprive them of some of their fundamental rights. The knowledge and intent requirement for all relevant crimes, pursuant to Article 30(2)(b) and (3) of the Statute, are therefore met.

995. The Chamber recalls that the victims of the crimes charged under Counts 12-13, 16-23, 26-31 were all arrested and/or detained by the *Janjaweed* and GoS Forces during the Mukjar or Deleig Operations. These men and boys were victimized either in or around Mukjar and Deleig Police stations, or while they were being transported to and/or had arrived at the sites where they would be killed. On the basis of the relevant circumstances,[2974] his presence as well as his personal role in these events,[2975] the Chamber is convinced that the only reasonable conclusion is that **the Accused** knew the factual circumstances that established the victims' protected status under IHL. The knowledge requirements under Articles 30(3) and 8(2)(c)(i)

[2969] *See* para. 624 *above*.
[2970] *See* paras 605-621 *above*.
[2971] *See* para. 467 *above*. *See also* para. 475 *above*.
[2972] *See* para. 668 *above*.
[2973] *See generally* paras 985-986 *above*. *See in particular* para. 530 *above*.
[2974] *See* paras 873-874, 920-921 *above*.
[2975] *See* paras 985-986 *above*. *See also* paras 943-944, 951 *above*.

and (ii) of the Statute are thus met.[2976]

996. Finally, as explained above, the victims were singled out and targeted by the *Janjaweed* and GoS Forces, to be tortured and subsequently killed, because of their identity as a protected group.[2977] The Chamber refers to its findings that **the Accused** previously ordered *Janjaweed* to commit certain crimes, targeting the Fur population and their property specifically.[2978] The Chamber further recalls that, in the context of speeches he gave to the *Janjaweed* during operations conducted at the beginning of 2004, *i.e.* immediately before the Mukjar Operation, **the Accused** instructed his troops to kill the men, but spare the women.[2979] As explained above,[2980] **the Accused** then took part and led the Mukjar and Deleig Operations with the objective to murder, arrest, detain, interrogate, punish, through the commission of the crimes of torture, outrages upon personal dignity and persecution, predominantly Fur men, who were perceived as belonging to, or being associated with, or supporting the rebels.[2981] On that basis, the Chamber is convinced that the only reasonable conclusion is that **the Accused's** acts and conduct were deliberate and undertaken with a discriminatory intent on a combination of ethnic, political and gender grounds. As such, the requisite discriminatory intent for the crime against humanity of persecution is met. For the same reasons, and as explained above,[2982] the Chamber is also satisfied that the requisite intent for the war crime of torture is met.

C. Conclusion

997. The Chamber notes that, in its Final Brief, the Defence stated that it had intended to raise an alibi for Counts 22-31 in relation to the crimes committed in Deleig.[2983] The Defence also acknowledged that no evidence was adduced in support of this alibi.[2984] The Chamber, nonetheless, considered whether there was any evidence which could undermine the accounts of the witnesses who identified **the Accused** as not only being present, but taking part in the events which form the factual basis for the charges.[2985] Having found no such credible evidence,

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[2976] *See also* para. 948 *above*.
[2977] *See* paras 933-937 *above*.
[2978] *See* Section 7.V. Accessorial liability for ordering *below*.
[2979] *See* para. 468 *above*.
[2980] *See* para. 994 *above*.
[2981] The Chamber refers to interaction **the Accused** had with the detainees during the Mukjar Operation. *See* paras 517, 525, 540, 611.
[2982] *See also* para. 950 *above*.
[2983] Defence's Final Brief, paras 62-64, 786; Defence's Closing Statement: T-162, p. 87.
[2984] Defence's Final Brief, paras 62-64, 786; Defence's Closing Statement: T-162, p. 87. *See also* paras 93-94 *above*.
[2985] *See* paras 182-185 *above*.

the Chamber is convinced, beyond reasonable doubt, that **the Accused** is criminally responsible, as a co-perpetrator within the meaning of Article 25(3)(a) of the Statute, for the commission of the following crimes in relation to at least 200 captives and/or detainees during the Mukjar and Deleig Operations: torture as a crime against humanity, under Article 7(1)(f) of the Statute, and as a war crime, under Article 8(2)(c)(i) of the Statute (Counts 12-13 and 22-23); outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) of the Statute (Counts 16 and 26); murder (and attempted murder) as a crime against humanity, under Article 7(1)(a) of the Statute, and as a war crime, under Article 8(2)(c)(i) of the Statute (Counts 17-20 and 27-30); and persecution as a crime against humanity, under Article 7(1)(h) of the Statute (Counts 21 and 31).

V. ACCESSORIAL LIABILITY FOR ORDERING

A. The charges

998. Considering the Chamber's findings as regards **the Accused's** criminal responsibility pursuant to Article 25(3)(a) of the Statute in respect of Counts 12-31,[2986] in the present section the Chamber examines only whether **the Accused** is individually responsible pursuant to Article 25(3)(b) of the Statute in respect of Counts 1-11.

999. **The Accused** is charged with accessorial liability for ordering pursuant to Article 25(3)(b) of the Statute, for the war crime of attack against a civilian population (Count 1), the crime against humanity and war crime of murder and attempted murder (Counts 2-3), the war crime of pillaging (Count 4), the war crime of destroying the enemy's property (Count 5), the crime against humanity of other inhumane acts (Count 6), the war crime of cruel treatment (Count 7), the crime against humanity and war crime of rape (Counts 8-9), the war crime of forcible transfer of population (Count 10), and the crime against humanity of persecution (Counts 11) committed in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003.

B. Findings of the Chamber

1000. The Chamber recalls that before the commencement of the trial, notice was given to the parties and participants of the possibility that the legal characterisation of the facts under Counts 1-11 may be subject to change to include the mode of liability of 'ordering' under

[2986] *See* Sections 7.V.III. Commission as an individual (direct perpetration) and V.IV Commission 'jointly with another' (co-perpetration) *above*.

Article 25(3)(b) of the Statute.[2987] The Chamber notes that the Defence had ample time and opportunity to prepare and adjust its defence, and also addressed the mode of liability of 'ordering' in its closing submissions.[2988] Therefore, the Chamber is satisfied that no unfairness arises from this recharacterisation. Accordingly, pursuant to Regulation 55(1) of the Regulations and in light of the totality of the evidence, and as analysed in the paragraphs below, the Chamber hereby modifies the legal characterisation of the facts in accordance with its previous notice.

1001. The Chamber notes that although the crimes charged under Counts 1 to 11 relate only to attacks on Kodoom, Bindisi and surrounding areas,[2989] it is evident from its findings on the facts that the Kodoom and Bindisi Operation comprised of a sequence of attacks, over the course of two days, on multiple towns and villages which - although not charged - included Nyerli, Tiro, Merly, Seder, and Drangal.[2990] Therefore, the Chamber finds that it must take into account **the Accused's** actions (including issuing orders and/or instructions) for the entire duration of the operation, in order to fully capture and assess **the Accused's** role (his authority and instructions to the *Janjaweed*), to establish his individual criminal responsibility for Counts 1 to 11.

1002. First, the Chamber is satisfied that **the Accused** held a *de facto* position of authority vis-à-vis the *Janjaweed* during the Kodoom and Bindisi Operation. This is founded upon the following factual findings:

a) **the Accused** was the leader of the *Janjaweed* in the Mukjar and Wadi Salih localities between July 2003 and August 2004;[2991]

b) he commanded the *Janjaweed* contingent that arrived in Mukjar after the rebel attack on or around 8 August 2003;[2992]

c) during the visit by the GoS delegation in Mukjar on or around 9 August 2003, he met with the delegation and spoke 'on behalf of the *Janjaweed*' at a public

[2987] Regulation 55 Decision, para. 25
[2988] Defence's Final Brief, para. 411.
[2989] *See* Section V.III. The charges *above*.
[2990] *See* Section V.III.A. Operation in Kodoom, Bindisi and the surrounding areas between 15 and 16 August 2003 *above*.
[2991] *See* Section V.IV. The Accused's position of authority and influence in 2003 and 2004 *above*.
[2992] *See* para. 380 *above*.

gathering, which included members of the *Janjaweed*;[2993]

d) after the departure of the GoS delegation on or around 9 August 2003, he led the *Janjaweed* in an operation to attack villages situated east and north of Mukjar;[2994]

e) he commanded the *Janjaweed* contingent that undertook the Kodoom and Bindisi Operation on 15 and 16 August 2003;[2995]

f) in the midst of the attack on Kodoom, a member of the *Janjaweed* addressed **the Accused** as 'Excellency Ali' or 'Commander Ali' and sought his permission to kill P-0986;[2996] and

g) during the operation, **the Accused** subdued and dismissed challenges to his plan or instructions from other *Janjaweed agids*, GoS officials and members of the GoS forces.[2997]

1003. Second, the Chamber is satisfied that **the Accused** issued instructions and directions to the *Janjaweed* throughout the Kodoom and Bindisi Operation to commit the crimes charged under Counts 1 to 11. The Chamber is satisfied that this is the only reasonable conclusion, based on its holistic assessment of the entirety of the evidence, in particular, the following facts:

a) **the Accused** was present on the ground throughout the entirety of the operation;[2998]

b) **the Accused** exercised effective command and control over the *Janjaweed* as he directed them at all stages of the operation;[2999]

c) criminal acts committed by the *Janjaweed* during the operation were widespread and followed a similar pattern, including during the (uncharged) attacks on Nyerli, Tiro, Merly, Seder and Drangal;[3000]

d) throughout the operation, **the Accused** issued instructions to Hassaballah, who was

[2993] *See* paras 381-383 *above*.
[2994] *See* para. 392 *above*.
[2995] *See* para. 396 *above*.
[2996] *See* para. 414 *above*.
[2997] *See* paras 398, 401-403, 416, 436, 440-441 *above*.
[2998] *See* paras 397-399, 401-403, 416, 436-441 *above*.
[2999] *See* paras 397, 399, 401-403, 405, 414, 416, 436-441 *above*.
[3000] *See* paras 397-403, 417-418 *above*.

a senior figure in the *Janjaweed* and PDF;[3001]

e) right before the attack on Kodoom, in its eastern outskirts, **the Accused** held a meeting with Hassaballah and Solonga, who were senior figures in the *Janjaweed* and PDF, after which **the Accused** was heard instructing Hassaballah to 'move on';[3002]

f) in the midst of the attack on Kodoom, a member of the *Janjaweed* addressed **the Accused** as 'Excellency Ali' or 'Commander Ali' and sought his permission to kill P-0986;[3003]

g) around the same time, **the Accused** instructed the *Janjaweed* to question, mistreat and then kill P-0986, and also to chase after livestock and fleeing inhabitants of Kodoom;[3004]

h) on the night of 15 August 2003, **the Accused** blew his whistle and convened the *Janjaweed agids*, he addressed them, and instructed them to go back to their positions, have dinner and sleep early, and that he would speak to them the next morning;[3005]

i) in the morning of 16 August 2003, prior to the attack on South Bindisi, **the Accused** blew his whistle again, convened the *Janjaweed agids*, and instructed the *Janjaweed* to 'destroy the remainder of the villages of Bindisi and Mukjar, south of Bindisi and then eastward of Bindisi all the way to Mukjar';[3006]

j) during the same address to the *Janjaweed*, **the Accused** threatened the *agids* who refused to follow his instructions;[3007] and

k) during the attack on South Bindisi, P-0012 saw **the Accused** making hand gestures, which he interpreted as **the Accused** giving instructions to members of the

[3001] *See* paras 397, 401, 405, 441 *above*. *See also* paras 306, 345 *above*.
[3002] *See* para. 405 *above*. *See also* paras 306, 345 *above*.
[3003] *See* para. 414 *above*.
[3004] *See* paras 413-414 *above*.
[3005] *See* paras 437-438 *above*.
[3006] *See* paras 439-441 *above*.
[3007] *See* paras 439-441 *above*.

Janjaweed.[3008]

1004. Furthermore, the Chamber recalls that during the operation, **the Accused** shouted chants like '*Allahu Akbar*', '*amsah aksah*' and 'wipe out and sweep away' as instructions to the *Janjaweed* to commence its attacks on the villages and townships.[3009] As regards the meaning and significance of the phrases '*amsah aksah*' and 'wipe out and sweep away', the Chamber reiterates its factual finding that in the context of the conflict in Darfur, they were understood to mean to kill without any limit or 'relentlessly', to leave no trace (by burning), and metaphorically to 'wipe out', 'clean' and 'sweep away'.[3010] In fact, a few days prior to the Kodoom and Bindisi Operation, Minister Harun visited Mukjar, and in a public address told the gathered *Janjaweed* to 'wipe out and sweep away the Fur do not keep anyone alive' and that the Fur and their money was booty or 'prize' for the *Janjaweed*.[3011] At the same time he told the predominantly Fur population of Mukjar that they would be 'raped', 'killed' and their properties 'looted'.[3012] **The Accused** was present at this public meeting, standing close to Minister Harun; and also addressed the crowd, speaking 'on behalf of the *Janjaweed*', he said that the *Janjaweed* were there to defend the property of the GoS and that they 'were alongside' the SAF.[3013]

1005. The Chamber finds that, in the context of the armed conflict in Darfur, Minister Harun's use of the phrases '*amsah aksah*' and 'wipe out and sweep away' along with rape, killing and looting, and the fact that it was being uttered by a GoS minister, effectively communicated to those present at the public meeting that '*amsah aksah*' and 'wipe out and sweep away' authorised *inter alia* rape, killing civilians and pillaging. The cohort that attended this public meeting, *i.e.* **the Accused** and the members of the *Janjaweed*, also undertook the Kodoom and Bindisi Operation. Therefore, when **the Accused** issued instructions to the *Janjaweed* using the phrases '*amsah aksah*' and 'wipe out and sweep away' prior to the commencement of the attacks on the villages and townships, including Kodoom and Bindisi, he and the *Janjaweed* were well aware of the meaning and significance of the phrases he used to instruct. This finding that the crimes were sanctioned by the State and thus the *Janjaweed* understood **the Accused's** instruction as a license to commit them, is supported by the fact that, during the attack on

[3008] *See* para. 436 *above*.
[3009] *See* para. 397 *above*.
[3010] *See* paras 363-366 *above*.
[3011] *See* paras 386-387 *above*.
[3012] *See* paras 386-387, 443 *above*.
[3013] *See* paras 382-383, 387 *above*.

Bindisi, after raping, beating and mistreating P-0011, a member of the *Janjaweed* declared 'we don't want these people to stay alive', and thanked President Al-Bashir for giving them this 'opportunity'.[3014]

1006. Third, in light of earlier discussion, the Chamber is also satisfied that **the Accused's** instructions had a direct effect on the commission of the crimes by the *Janjaweed*. This is based on the factual findings that:

a) as discussed above, **the Accused** commanded the *Janjaweed* contingent that undertook the Kodoom and Bindisi Operation,[3015] and directed them at all stages of the operation;[3016]

b) it was after **the Accused** issued his instructions in the manner discussed above, that the *Janjaweed* commenced their attacks on the villages and townships during the Kodoom and Bindisi Operation;[3017] and

c) it was during two such attacks, on Kodoom and on Bindisi, that the crimes charged under Counts 1-11 were committed by the *Janjaweed*.

1007. Further, the fact that, in the midst of the attack on Kodoom, a member of the *Janjaweed* sought **the Accused's** permission to kill P-0986,[3018] demonstrates that the *Janjaweed* were acting directly pursuant to the instructions of **the Accused**.

1008. Fourth, the Chamber is also satisfied that **the Accused** was aware and could foresee that the crimes charged under Counts 1 to 11 would be committed in the ordinary course of the attacks on Kodoom and Bindisi during the implementation of his orders. In particular, the Chamber reiterates the following facts:

a) as discussed earlier, **the Accused** was aware of the meaning and significance of the phrases '*amsah aksah*' and 'wipe out and sweep away' and the *Janjaweed's* understanding of this phrase in his instructions to them;

b) **the Accused** was present on the ground during the *Janjaweed*'s attacks on Kodoom

[3014] *See* para. 435 *above*.
[3015] *See* para. 396 *above*.
[3016] *See* paras 397, 399, 401-403, 405, 414, 416, 436-441 *above*.
[3017] *See* para. 397 *above*.
[3018] *See* para. 414 *above*.

and on Bindisi,[3019] which means that he saw and was aware of the manner in which his orders were being implemented by the *Janjaweed*;

c) **the Accused's** presence on the ground for the entirety of the operation means that, prior to the charged attacks, he saw and became aware of the manner in which the *Janjaweed* were implementing his orders during the course of the attacks on the villages of Nyerli and Tiro (prior to the attack on Kodoom) and also Kodoom, Merly, Seder and Drangal (prior to the attack on Bindisi).[3020]

1009. The Chamber further finds that, at various points during the Kodoom and Bindisi Operation, prior to and during the attacks on Kodoom and on Bindisi, several incidents occurred which demonstrate that **the Accused** was aware that crimes were being committed in the course of implementation of his orders.[3021] This is based on the factual findings that:

a) after the *Janjaweed's* attack on Nyerli, during which they fired at and chased people away, raped women, looted properties and burned down houses,[3022] P-1021 asked **the Accused** why he did it, **the Accused** told him that it was none of his business;[3023]

b) after the *Janjaweed* fired at and chased away the inhabitants of Tiro, who were predominantly Fur, and burned down their houses, **the Accused** dismissed the exhortations of a *Janjaweed agid* that what he was doing was wrong;[3024]

c) in the midst of the attack on Kodoom, **the Accused** saw members of the *Janjaweed* beat P-0986, and he instructed them to question, torture and then kill P-0986, and also to chase after livestock and fleeing inhabitants of Kodoom;[3025]

d) after the *Janjaweed*'s attack on North Bindisi, P-0874 expressed his revulsion about the way in which the attacks were carried out, which **the Accused** dismissively waved off;[3026] and

e) on the night of 15 August 2003, **the Accused** clearly indicated that the attacks were

[3019] *See* paras 416, 436 *above*.
[3020] *See* paras 397-403, 417-419 *above*. *Contra* Defence's Final Brief, para. 436.
[3021] *Contra* Defence's Final Brief, paras 434-435.
[3022] *See* paras 397-398 *above*.
[3023] *See* para. 398 *above*.
[3024] *See* paras 401-403 *above*.
[3025] *See* paras 412-414 *above*.
[3026] *See* para. 436 *above*.

carried out as he intended when he thanked and commended the *Janjaweed*, and told them that they 'taught the enemy a lesson' and 'the Fur will never forget this lesson';[3027]

1010. The Chamber also notes that the attacks on Kodoom and Bindisi were not isolated incidents. The Chamber reiterates its factual finding that during the period of the conflict in Darfur, between August 2003 and March 2004, attacks on villages were marked by a disproportionate number of casualties amongst the civilian population, sexual violence, and large-scale destruction of property and pillaging.[3028] The Chamber also reiterates its finding on the facts that the impact on the civilian population of a large-scale armed operation in Sudan - such as the Kodoom and Bindisi Operation - was foreseeable.[3029]

1011. Furthermore, the Chamber notes that during the Sindu Operation, in Arawala and Um Jameina, P-0905, heard **the Accused** tell the *Janjaweed* that '[w]omen can be spared' and not to kill the women.[3030] Primarily, these incidents took place around six months after the Kodoom and Bindisi Operation. There is no evidence before this Chamber that **the Accused** issued similar instructions during the Kodoom and Bindisi Operation. Moreover, P-0905 explained that the instruction meant that the *Janjaweed* 'never killed women' instead they would 'torture' and 'rape' them.[3031] The Chamber notes that during the same operation, **the Accused** used the phrase '*amsah aksah*', and told the *Janjaweed* to 'never bring someone alive'.[3032] Therefore, the Chamber is satisfied that **the Accused's** order not to kill women was not intended to be understood that women should be 'spared' from the commission of other crimes, during the Kodoom and Bindisi Operation.

C. Conclusion

1012. The Chamber is therefore convinced, beyond reasonable doubt that **the Accused** is criminally responsible within the meaning of Article 25(3)(b) of the Statute for ordering the *Janjaweed* to commit the following crimes during the Kodoom and Bindisi Operation:[3033] attack against a civilian population as a war crime, under Article 8(2)(e)(i) of the Statute (Count 1); murder as a crime against humanity, under Article 7(1)(a) of the Statute and as a

[3027] *See* paras 437-438 *above*.
[3028] *See* paras 281-282 *above*.
[3029] *See* para. 281 *above*.
[3030] P-0905: T-085, pp. 53-57, 60-62. *See* paras 467-468 *above*.
[3031] P-0905: T-085, p. 57. *See* paras 467-468 *above*.
[3032] P-0905: T-085, pp. 77-78. *See* para. 475 *above*.
[3033] *Contra* Defence's Final Brief, paras 412, 417, 427, 431, 439-440.

war crime, under Article 8(2)(c)(i) of the Statute (Counts 2 and 3); pillaging as a war crime, under Article (2)(e)(v) of the Statute (Count 4); destroying the enemy's property as a war crime, under Article 8(2)(e)(xii) of the Statute (Count 5); other inhumane acts as a crime against humanity, under Article 7(1)(k) of the Statute (Count 6); outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) of the Statute (Count 7); rape as a crime against humanity, under Article 7(1)(g) of the Statute and as a war crime, under Article 8(2)(e)(vi) of the Statute (Counts 8 and 9); forcible transfer of population as a crime against humanity, under Article 7(1)(d) of the Statute (Count 10); and persecution as a crime against humanity, under Article 7(1)(h) of the Statute (Count 11).

SECTION 8. DISPOSITION

1013. For the foregoing reasons and on the basis of the evidence submitted and discussed before this Chamber at trial and the entire proceedings, pursuant to Article 74(2) of the Statute,

THE CHAMBER FINDS

ALI MUHAMMAD ALI ABD-AL-RAHMAN

Under **Count 1** of the charges, **GUILTY** of the **war crime of attack against a civilian population** under Articles 8(2)(e)(i) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 2** of the charges, **GUILTY** of the **crime against humanity of murder** under Articles 7(1)(a) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation ;

Under **Count 3** of the charges, **GUILTY** of the **war crime of murder** under Articles 8(2)(c)(i) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 4** of the charges, **GUILTY** of the **war crime of pillaging** under Articles 8(2)(e)(v) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 5** of the charges, **GUILTY** of the **war crime of destroying the enemy's property** under Articles 8(2)(e)(xii) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 6** of the charges, **GUILTY** of the **crime against humanity of other inhumane acts** under Articles 7(1)(k) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 7** of the charges, **GUILTY** of the **war crime of outrages upon personal dignity** under Articles 8(2)(c)(ii) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 8** of the charges, **GUILTY** of the **crime against humanity of rape** under Articles 7(1)(g) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 9** of the charges, **GUILTY** of the **war crime of rape** under Articles 8(2)(e)(vi) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 10** of the charges, **GUILTY** of the **crime against humanity of forcible transfer of population** under Articles 7(1)(d) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 11** of the charges, **GUILTY** of the **crime against humanity of persecution on political and ethnic grounds**, under Articles 7(1)(h) and 25(3)(b) of the Statute, committed during the Kodoom and Bindisi Operation;

Under **Count 12** of the charges, **GUILTY** of the **crime against humanity of torture**, under Articles 7(1)(f) and 25(3)(a) of the Statute, committed during the Mukjar Operation;

Under **Count 13** of the charges, **GUILTY** of the **war crime of torture**, under Articles 8(2)(c)(i) and 25(3)(a) of the Statute, committed during the Mukjar Operation;

Under **Count 16** of the charges, **GUILTY** of the **war crime of outrages upon personal dignity** under Articles 8(2)(c)(ii) and 25(3)(a) of the Statute, committed during the Mukjar Operation;

Under **Count 17** of the charges, **GUILTY** of the **crime against humanity of murder** under Articles 7(1)(a) and 25(3)(a) of the Statute, committed during the Mukjar Operation;

Under **Count 18** of the charges, **GUILTY** of the **war crime of murder** under Articles 8(2)(c)(i) and 25(3)(a) of the Statute, committed during the Mukjar Operation;

Under **Count 19** of the charges, **GUILTY** of the **crime against humanity of attempted murder** under Articles 7(1)(a) and 25(3)(a) of the Statute, committed during the Mukjar Operation;

Under **Count 20** of the charges, **GUILTY** of the **war crime of attempted murder** under Articles 8(2)(c)(i) and 25(3)(a) of the Statute, committed during the Mukjar Operation;

Under **Count 21** of the charges, **GUILTY** of the **crime against humanity of persecution on political, ethnic and gender grounds**, under Articles 7(1)(h) and 25(3)(a) of the Statute, committed during the Mukjar Operation;

Under **Count 22** of the charges, **GUILTY** of the **crime against humanity of torture**, under

Articles 7(1)(f) and 25(3)(a) of the Statute, committed during the Deleig Operation;

Under **Count 23** of the charges, **GUILTY** of the **war crime of torture**, under Articles 8(2)(c)(i) and 25(3)(a) of the Statute, committed during the Deleig Operation;

Under **Count 26** of the charges, **GUILTY** of the **war crime of outrages upon personal dignity** under Articles 8(2)(c)(ii) and 25(3)(a) of the Statute, committed during the Deleig Operation;

Under **Count 27** of the charges, **GUILTY** of the **crime against humanity of murder** under Articles 7(1)(a) and 25(3)(a) of the Statute, committed during the Deleig Operation;

Under **Count 28** of the charges, **GUILTY** of the **war crime of murder** under Articles 8(2)(c)(i) and 25(3)(a) of the Statute, committed during the Deleig Operation;

Under **Count 29** of the charges, **GUILTY** of the **crime against humanity of attempted murder** under Articles 7(1)(a) and 25(3)(a) of the Statute, committed during the Deleig Operation;

Under **Count 30** of the charges, **GUILTY** of the **war crime of attempted murder** under Articles 8(2)(c)(i) and 25(3)(a) of the Statute, committed during the Deleig Operation;

Under **Count 31** of the charges, **GUILTY** of the **crime against humanity of persecution on political, ethnic and gender grounds**, under Articles 7(1)(h) and 25(3)(a) of the Statute, committed during the Deleig Operation;

MODIFIES, pursuant to Regulation 55 of the Regulations of the Court, the legal characterisation of the mode of liability for crimes committed during the Kodoom and Bindisi Operation so as to apply 'ordering' instead of 'inducing' under Article 25(3)(b) of the Statute; and

FINDS that a cumulative conviction is impermissible for the following charges:

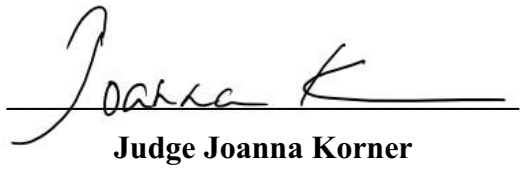
Count 14: **crime against humanity of other inhumane acts** under Articles 7(1)(k) and 25(3)(a) of the Statute, during the Mukjar Operation;

Count 15: **war crime of cruel treatment** under Articles 8(2)(c)(i) and 25(3)(a) of the Statute, during the Mukjar Operation;

Count 24: **crime against humanity of other inhumane acts** under Articles 7(1)(k) and 25(3)(a) of the Statute, during the Deleig Operation; and

Count 25: **war crime of cruel treatment** under Articles 8(2)(c)(i) and 25(3)(a) of the Statute, during the Deleig Operation.

Done in English. A French translation will be prepared, but the English version remains authoritative.



Judge Joanna Korner

Presiding Judge

Judge Reine Alapini-Gansou

Judge Althea Violet Alexis-Windsor

Dated 6 October 2025

At The Hague, The Netherlands