

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : **English**

No.: **ICC-02/05**  
Date: **27 February 2007**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Claude Jorda, Presiding Judge  
Judge Akua Kuenyehia  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

**SITUATION IN DARFUR, THE SUDAN**

**Public Redacted Version**

**Prosecutor's Application under Article 58(7)**

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo, Prosecutor  
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Mr Andrew Cayley, Senior Trial Lawyer

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## I. Summary of the Case

Following investigation of crimes allegedly committed in the territory of Darfur, the Sudan, the Prosecutor (hereafter also referred to as the "Prosecution" or the "Office of the Prosecutor") has concluded that there are reasonable grounds to believe that **Ahmad Muhammad HARUN** (hereafter also referred to as "**Ahmad HARUN**" or "**HARUN**") and **Ali Muhammad Ali ABD-AL-RAHMAN** (also known as **Ali KUSHAYB** and hereafter also referred to as "**Ali KUSHAYB**" or "**KUSHAYB**") bear criminal responsibility for crimes against humanity and war crimes committed in Darfur in 2003 and 2004. The Prosecutor therefore requests under Article 58 of the Rome Statute that Pre-Trial Chamber I issue summonses naming **Ahmad Muhammad HARUN** and **Ali Muhammad Ali ABD-AL-RAHMAN** (also known as **Ali KUSHAYB**) and directing them to appear in this Court for initial proceedings under Article 60. As is described in the remainder of this application, the Prosecutor submits that there are reasonable grounds to believe the following facts:

During all times relevant to this application, **Ahmad HARUN** was the Minister of State for the Interior of the Government of the Sudan. In early 2003, after armed rebels carried out an attack on Al Fashir in North Darfur, **HARUN** was appointed to head the "Darfur Security desk". State and Locality Security Committees in Darfur, which were comprised of representatives of the Sudanese Armed Forces, Police and Intelligence agencies, reported to **HARUN**, especially on matters relating to the staffing, funding and arming of the Militia/Janjaweed in the context of the counterinsurgency campaign being conducted by the Government of the Sudan (hereafter also referred to as the Government) in Darfur.

The most prominent of the coordination tasks entrusted to **HARUN** as the head of the "Darfur Security desk" was his management of, and personal participation in, the recruitment of militia, also commonly called Janjaweed, to supplement the Sudanese Armed Forces (hereafter referred to as the Armed Forces). These militia will be called "Militia/Janjaweed" in the remainder of this application. The mobilised Militia/Janjaweed are described using various terms such as "Janjaweed", "Fursan",<sup>1</sup> "Mujahideen" and "Bashmerga". The term Janjaweed literally means "a man (a devil) on horse". Historically in Darfur Janjaweed has referred to armed robbers or bandits mounted on horses or camels.<sup>2</sup> In the context of the rebellion in Darfur, however, the term has been used to refer to members of tribes who have volunteered to

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<sup>1</sup> [FOOTNOTE REDACTED].

<sup>2</sup> [FOOTNOTE REDACTED].

fight in the counterinsurgency, with the backing of the Sudanese Government.<sup>3</sup> An explanation of certain words and phrases frequently used in this application is contained in the glossary (see Annex 13).

**HARUN** recruited Militia/Janjaweed with full knowledge that they, often in the course of joint attacks with the Armed Forces, would commit crimes against humanity and war crimes against the civilian population of Darfur.

By recruiting, funding, arming and inciting the Militia/Janjaweed, with knowledge of the atrocities these armed groups would commit, and with the aim of furthering those atrocities, **Ahmad HARUN** knowingly contributed to the commission of crimes against humanity and war crimes, including murder, rape, torture, inhumane acts, pillaging and the forcible transfer of civilian populations. The crimes alleged in this application were perpetrated during attacks upon the towns and villages of Kodoom, Bindisi, Mukjar and Arawala.

As is described below the Armed Forces and Militia/Janjaweed did not target any rebel presence within these particular towns and villages. Rather, they attacked these towns and villages based on the rationale that the tens of thousands of civilian residents in and near these towns and villages were supporters of the rebel militia. This strategy became the justification for the mass murder, summary execution, and mass rape of civilians who were known not to be participants in any armed conflict. Application of the strategy also called for, and achieved the forced displacement of entire villages and communities.

**Ali KUSHAYB** was the “Aqid al Oqada”, or “colonel of colonels”, in the Wadi Salih Locality of West Darfur. He commanded thousands of Militia/Janjaweed by mid-2003 and personally led Militia/Janjaweed at the attacks upon Kodoom, Bindisi, Mukjar, and Arawala. By the time he fought in these towns and villages, **Ali KUSHAYB** had been appointed to a position in the Popular Defence Force (“PDF”), the reservist force of the Armed Forces.

This application alleges that **Ahmad HARUN** – with his primary responsibility for recruiting Militia/Janjaweed in Darfur – and **Ali KUSHAYB** – a well known Militia/Janjaweed leader who participated in attacking civilian towns and villages – joined each other, and others, in

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<sup>3</sup> [FOOTNOTE REDACTED].

pursuing the shared and illegal objective of persecuting and attacking civilian populations in Darfur.

## II. Counts<sup>1</sup>

Pursuant to Article 58(7) of the Rome Statute, the Office of the Prosecutor has concluded that there are reasonable grounds to believe that **Ahmad HARUN** and **Ali KUSHAYB** bear criminal responsibility under Article 25 of the Rome Statute for the following crimes:

### The Attacks on the Kodoom villages and surrounding areas

#### Count 1

(Persecution in the Kodoom villages and surrounding areas constituting  
a Crime against Humanity)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

From on or about 15 August 2003 to on or about 31 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the persecution of the primarily Fur population of the Kodoom villages and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, by acts of murder, attacking the civilian population, destruction of property and forcible transfer in violation of Articles 7(1)(h) and 25(3)(d) of the Rome Statute;

#### Count 2

(Murder of civilians in the Kodoom villages and surrounding areas constituting a Crime  
against Humanity)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the murder of civilians from the primarily Fur population of the Kodoom villages and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 7(1)(a) and 25(3)(d) of the Rome Statute;

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<sup>1</sup> See Annex 1 to this application.

**Count 3**

(Murder of civilians in the Kodoom villages and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the murder of civilians from the primarily Fur population of the Kodoom villages and surrounding areas, while those civilians were taking no active part in hostilities, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(d) of the Rome Statute;

**Count 4**

(Murder of civilians in the Kodoom villages and surrounding areas constituting a Crime  
against Humanity)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

On or about 31 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the murder of civilians from the primarily Fur population of the Kodoom villages and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 7(1)(a) and 25(3)(d) of the Rome Statute;

**Count 5**

(Murder of civilians in the Kodoom villages and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

On or about 31 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the murder of civilians from the primarily Fur population of the Kodoom villages and surrounding areas, while those civilians were taking no active part in hostilities, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(d) of the Rome Statute;

### Count 6

(Attacks against the civilian population in the Kodoom villages and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

From on or about 15 August 2003 to on or about 31 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of the Kodoom villages and surrounding areas, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, and against civilians taking no direct part in hostilities, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(d) of the Rome Statute;

### Count 7

(Attacks against the civilian population in the Kodoom villages and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

From on or about 15 August 2003 to on or about 31 August 2003, **Ali KUSHAYB** committed, jointly with others, a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of the Kodoom villages and surrounding areas, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, and against civilians taking no direct part in hostilities, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(a) of the Rome Statute;

### Count 8

(Destruction of property in the Kodoom villages and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

From on or about 15 August 2003 to on or about 31 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the destruction of property belonging to the primarily Fur population of the Kodoom villages and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including the burning of



houses in Kodoom Jureh, Kodoom Tineh, Kodoom Wosta and Kodoom Derliwa, in violation of Articles 8(2)(e)(xii) and 25(3)(d) of the Rome Statute;

### **Count 9**

(Forcible transfer from the Kodoom villages and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37 and 61 to 199, inclusive)

From on or about 15 August 2003 to on or about 31 August 2003 **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the forcible transfer of approximately 20,000 primarily Fur civilians from the Kodoom villages and surrounding areas in the Wadi Salih Locality in West Darfur to Bindisi town and other locations in the Wadi Salih Locality in West Darfur resulting in the desertion of the villages, in violation of Articles 7(1)(d) and 25(3)(d) of the Rome Statute;

### **The Attack on Bindisi town and surrounding areas**

### **Count 10**

(Persecution in Bindisi town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the persecution of the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, by acts of murder, rape, attacking the civilian population, inhumane acts, pillaging, destruction of property and forcible transfer of the population, in violation of Articles 7(1)(h) and 25(3)(d) of the Rome Statute;

### **Count 11**

(Murder of civilians in Bindisi town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the murder of over 100 civilians from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [NAME OF VICTIM REDACTED], in violation of Articles 7(1)(a) and 25(3)(d) of the Rome Statute;

#### **Count 12**

(Murder of civilians in Bindisi town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the murder of over 100 civilians from the primarily Fur population of Bindisi town and surrounding areas, while those civilians were taking no active part in hostilities, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [NAME OF VICTIM REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(d) of the Rome Statute;

#### **Count 13**

(Rape in Bindisi town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the rape of women and girls from the primarily Fur population of Bindisi town and surrounding areas, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 7(1)(g) and 25(3)(d) of the Rome Statute;

#### **Count 14**

(Rape in Bindisi town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which

in fact occurred, namely the rape of women and girls from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(vi) and 25(3)(d) of the Rome Statute;

#### **Count 15**

(Attacks against the Civilian population in Bindisi town and surrounding areas constituting a  
War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, while those civilians were taking no direct part in hostilities, including residents [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(d) of the Rome Statute;

#### **Count 16**

(Attacks against the Civilian population in Bindisi town and surrounding areas constituting a  
War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ali KUSHAYB** committed, jointly with others, a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, while those civilians were taking no direct part in hostilities, including residents [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(a) of the Rome Statute;

#### **Count 17**

(Inhumane acts in Bindisi town constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against hu-

manity which in fact occurred, namely the inflicting of great suffering, serious injury to body or to mental or physical health by means of an inhumane act upon civilians from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including the inhumane act of shooting [NAME OF VICTIM REDACTED], resulting in serious injury, in violation of Articles 7(1)(k) and 25(3)(d) of the Rome Statute;

### **Count 18**

(Pillaging in Bindisi town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the pillaging of property belonging to the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including the pillaging of household property, in violation of Articles 8(2)(c)(v) and 25(3)(d) of the Rome Statute;

### **Count 19**

(Destruction of property in Bindisi town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On or about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the destruction of property belonging to the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including the burning of food storages, the mosque and dwellings in the area, in violation of Articles 8(2)(e)(xii) and 25(3)(d) of the Rome Statute;

### **Count 20**

(Forcible transfer from Bindisi town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 200 to 216, inclusive)

On and about 15 August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against hu-

manity which in fact occurred, namely the forcible transfer of approximately 34.000 primarily Fur civilians from Bindisi town and surrounding areas in the Wadi Salih Locality in West Darfur to Mukjar town and other locations in the Wadi Salih Locality in West Darfur, resulting in the desertion of the town, in violation of Articles 7(1)(d) and 25(3)(d) of the Rome Statute;

**The Attack on Mukjar town and surrounding areas**

**Count 21**

(Persecution in Mukjar town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

Between August 2003 and March 2004, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the persecution of the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur by acts of murder, attacking the civilian population, imprisonment or severe deprivation of liberty, torture, pillaging and destruction of property in violation of Articles 7(1)(h) and 25(3)(d) of the Rome Statute:

**Count 22**

(Murder of men in Mukjar town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

Between September 2003 and October 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the murder of at least 20 men from the primarily Fur population of Mukjar town and surrounding areas, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, in violation of Articles 7(1)(a) and 25(3)(d) of the Rome Statute;

**Count 23**

(Murder of men in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

Between September 2003 and October 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the murder of at least 20 men from the primarily Fur population of Mukjar town and surrounding areas while those men were taking no active part in hostilities, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, in violation of Articles 8(2)(c)(i) and 25(3)(d) of the Rome Statute;

#### **Count 24**

(Murder of men in Mukjar town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the murder of at least 21 men from the primarily Fur population of Mukjar town and surrounding areas, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, in violation of Articles 7(1)(a) and 25(3)(d) of the Rome Statute;

#### **Count 25**

(Murder of men in Mukjar town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

In or around December 2003, **Ali KUSHAYB** committed, jointly with others, a crime against humanity which in fact occurred, namely the murder of at least 21 men from the primarily Fur population of Mukjar town and surrounding areas, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, by transporting them under armed guard to their place of execution, among other things, in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute;

#### **Count 26**

(Murder of men in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the murder of at least 21 men from the primarily Fur population of Mukjar town and surrounding areas while those men were taking no active part in hostilities, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, in violation of Articles 8(2)(c)(i) and 25(3)(d) of the Rome Statute;

**Count 27**

(Murder of men in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

In or around December 2003, **Ali KUSHAYB** committed, jointly with others, a war crime which in fact occurred, namely the murder of at least 21 men from the primarily Fur population of Mukjar town and surrounding areas while those men were taking no active part in hostilities, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, by transporting them under armed guard to their place of execution, among other things, in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

**Count 28**

(Murder of men in Mukjar town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

In or around March 2004, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the murder of at least 32 men from the primarily Fur population of Mukjar town and surrounding areas, near Sinnang outside of Mukjar town in the Mukjar Locality in West Darfur, including [NAME OF VICTIM REDACTED], in violation of Articles 7(1)(a) and 25(3)(d) of the Rome Statute;

**Count 29**

(Murder of men in Mukjar town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

In or around March 2004, **Ali KUSHAYB** committed, jointly with others, a crime against humanity which in fact occurred, namely the murder of at least 32 from the primarily Fur population of Mukjar town and surrounding areas, near Sinnang outside of Mukjar town in the Mukjar Locality in West Darfur, including [NAME OF VICTIM REDACTED], by transporting them under armed guard to their place of execution, among other things, in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute;

### **Count 30**

(Murder of men in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

In or around March 2004, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the murder of at least 32 men from the primarily Fur population of Mukjar town and surrounding areas while those men were taking no active part in hostilities, near Sinnang outside of Mukjar town in the Mukjar Locality in West Darfur, including [NAME OF VICTIM REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(d) of the Rome Statute;

### **Count 31**

(Murder of men in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

In or around March 2004, **Ali KUSHAYB** committed, jointly with others, a war crime which in fact occurred, namely the murder of at least 32 men from the primarily Fur population of Mukjar town and surrounding areas while those men were taking no active part in hostilities, near Sinnang outside of Mukjar town in the Mukjar Locality in West Darfur, including [NAME OF VICTIM REDACTED], by transporting them under armed guard to their place of execution, among other things, in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

### **Count 32**

(Attacks against the civilian population in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)



Between August 2003 and March 2004, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur and against civilians taking no direct part in hostilities, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(d) of the Rome Statute;

### **Count 33**

(Attacks against the civilian population in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

Between August 2003 and March 2004, **Ali KUSHAYB** committed, jointly with others, a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur and against civilians taking no direct part in hostilities, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(a) of the Rome Statute;

### **Count 34**

(Imprisonment or Severe Deprivation of Liberty in Mukjar town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

Beginning in or about August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the imprisonment or severe deprivation of physical liberty of at least 400 civilians from the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including [NAME OF VICTIM REDACTED], in violation of Articles 7(1)(e) and 25(3)(d) of the Rome Statute;

### **Count 35**

(Torture in Mukjar town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

Beginning in or about August 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against

humanity which in fact occurred, namely the torture of at least 60 civilians from the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including the torture of [NAME OF VICTIM REDACTED], by tying, suspension by his arms, beating and starvation, in violation of Article 7(1)(f) and 25(3)(d) of the Rome Statute;

### **Count 36**

(Pillaging in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

Between August 2003 and March 2004, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the pillaging of property belonging to the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including the pillaging of shops, houses and livestock, in violation of Articles 8(2)(e)(v) and 25(3)(d) of the Rome Statute;

### **Count 37**

(Pillaging in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 35, 61 to 190 and 217 to 235, inclusive)

Between on or about 3 August 2003 and 10 August 2003, **Ahmad HARUN** induced the commission of a war crime which in fact occurred, namely the pillaging of property belonging to the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including the pillaging of shops, houses and livestock, in violation of Articles 8(2)(c)(v) and 25(3)(b) of the Rome Statute;

### **Count 38**

(Destruction of property in Mukjar town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 217 to 235, inclusive)

Between August 2003 and March 2004, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the destruction of property belonging to the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including the burning of dwellings and the destruction of crops and farms, in violation of Articles 8(2)(c)(xii) and 25(3)(d) of the Rome Statute;

**The Attack on Arawala town and surrounding areas**

**Count 39**

(Persecution in Arawala town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred namely, the persecution of the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, by acts of murder, rape, attacking the civilian population, outrages upon personal dignity, inhumane acts, pillaging, destruction of property and forcible transfer of the population, in violation of Articles 7(1)(h) and 25(3)(d) of the Rome Statute;

**Count 40**

(Murder of civilians in Arawala town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred namely, the murder of at least 26 civilians from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 7(1)(a) and 25(3)(d) of the Rome Statute;

**Count 41**

(Murder of civilians in Arawala town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred namely, the murder of at least 26 civilians from the primarily Fur population of Arawala town and surrounding areas, while those civilians were taking no active part in

hostilities, in the Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(d) of the Rome Statute;

#### **Count 42**

(Rape in Arawala town and surrounding areas constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred namely, the rape of at least 10 women and girls from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 7(1)(g) and 25(3)(d) of the Rome Statute;

#### **Count 43**

(Rape in Arawala town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the rape of at least 10 women and girls from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(vi) and 25(3)(d) of the Rome Statute;

#### **Count 44**

(Attacks against the civilian population in Arawala town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur and against civilians taking no direct part in hostilities, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(d) of the Rome Statute;

### Count 45

(Attacks against the civilian population in Arawala town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ali KUSHAYB** committed, jointly with others, a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur and against civilians taking no direct part in hostilities, including [NAMES OF VICTIMS REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(a) of the Rome Statute;

### Count 46

(Outrage upon personal dignity in Arawala town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the violation of the dignity of at least 10 women and girls from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including the humiliation and degradation of [NAME OF VICTIM REDACTED], [CONTEXT OF CRIME REDACTED], during which time she was repeatedly raped, in violation of Articles 8(2)(c)(ii) and 25(3)(d) of the Rome Statute;

### Count 47

(Outrage upon personal dignity in Arawala town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ali KUSHAYB** committed, jointly with others, a war crime which in fact occurred, namely the violation of the dignity of at least 10 women and girls from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including the humiliation and degradation of [NAME OF VICTIM REDACTED], [CONTEXT OF CRIME REDACTED] by **Ali KUSHAYB** and then repeatedly raped by others, in violation of Articles 8(2)(c)(ii) and 25(3)(a) of the Rome Statute;

**Count 48**

(Inhumane acts in Arawala constituting a Crime against Humanity)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely inflicting great suffering, or serious injury to body or to mental or physical health by means of an inhumane act upon civilians from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including the inhumane act of shooting and stabbing [NAME OF VICTIM REDACTED], [CONTEXT OF CRIME REDACTED], resulting in serious injury, in violation of Articles 7(1)(k) and 25(3)(d) of the Rome Statute;

**Count 49**

(Pillaging in Arawala town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the pillaging of property belonging to the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including the pillaging of stores, houses and livestock, in violation of Articles 8(2)(e)(v) and 25(3)(d) of the Rome Statute;

**Count 50**

(Destruction of property in Arawala town and surrounding areas constituting a War Crime)  
(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a war crime which in fact occurred, namely the destruction of property belonging to the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including the destruction of most of Arawala town, in violation of Articles 8(2)(e)(xii) and 25(3)(d) of the Rome Statute;

### **Count 51**

(Forcible transfer from Arawala town and surrounding areas constituting a Crime against Humanity)

(Paragraphs 29 to 37, 61 to 190 and 236 to 250, inclusive)

In or around December 2003, **Ahmad HARUN** and **Ali KUSHAYB**, as part of a group of persons acting with a common purpose, contributed to the commission of a crime against humanity which in fact occurred, namely the forcible transfer of approximately 7,000 primarily Fur civilians from Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur to the towns of Deleig, Garsila and other locations in the Wadi Salih Locality in West Darfur, resulting in the desertion of the town, in violation of Articles 7(1)(d) and 25(3)(d) of the Rome Statute.

### **III. Referral of the Darfur Situation and Commencement of the Investigation**

#### **A. The Security Council Referral**

1. On 31 March 2005, the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations ("UN"), adopted Resolution 1593. Resolution 1593 referred the situation in the Darfur region of the Sudan to the Prosecutor of the International Criminal Court ("Court" or "ICC"), thus conferring upon this Court jurisdiction over crimes committed in the Darfur region since 1 July 2002.
2. By letter dated 4 April 2005, and in accordance with regulation 45 of the Regulations of the Court, the Prosecutor notified the President of the Court of Resolution 1593. By a decision of 21 April 2005, the Presidency of the Court assigned the situation in Darfur to Pre-Trial Chamber I.

#### **B. The Commencement of the Investigation**

3. Prior to the initiation of the investigation, the Prosecutor carried out extensive fact-finding in relation to national proceedings or investigations concerning alleged crimes in Darfur. The ICC is a court of last resort, and may initiate cases only where: (i) there has not been any national investigation or prosecution of the case; or (ii) there is, or has been, such an investigation or prosecution, but the State is unwilling or unable genuinely to carry out the investigation or prosecution. In this instance, the Government of the Sudan had stated that it would in-

investigate and prosecute those responsible for alleged crimes in Darfur and had established procedures to undertake this task.

4. On 1 June 2005, pursuant to Article 53(1) of the Rome Statute, the Prosecutor decided to initiate an investigation of crimes allegedly committed in Darfur and potentially within the jurisdiction of this Court. The Prosecutor determined to commence an investigation under Article 53 because there was a reasonable basis to believe that crimes within the jurisdiction of the Court had been committed. Also, and without making any judgment on the Sudanese criminal justice system as a whole, the Prosecution had determined that there were no national proceedings underway which were focused on the most serious crimes or upon those bearing the greatest responsibility. Finally, the Prosecution had considered that there were no substantial reasons to believe that an investigation would not be in the interests of justice, and had concluded that there were substantial reasons to believe that an investigation would serve the interests of victims.

5. An updated assessment of whether the case proposed by this application is currently being investigated or prosecuted by the Sudanese Government – *i.e.*, an admissibility assessment – is included in Section VI below.

6. By letter dated 1 June 2005, the Prosecutor communicated to the President of the Court his decision to commence an investigation. On 6 June 2005, the commencement of the investigation was publicly announced.

## IV. Legal Framework

### A. The Summary of Evidence and Other Information Provided in This Application

7. Consistent with the requirements of Article 58(2)(d) of the Rome Statute, the Office of the Prosecutor furnishes in this application “a summary of the evidence” and “other information” sufficient to establish “reasonable grounds to believe” that **Ahmad HARUN** and **Ali KUSHAYB** have committed crimes within the jurisdiction of the Court.

8. For the purposes of this application the Prosecution relies primarily on the following categories of evidence or other information<sup>5</sup>: (1) statements taken by the Prosecution from victims and other eyewitnesses to rebel attacks and attacks by Armed Forces and Militia/Janjaweed in the Darfur region; (2) statements taken by the Prosecution from individuals who possess knowledge of the activities of the officials and representatives of the Sudanese Government

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<sup>5</sup> Information available publicly will hereafter be cited as “Public Source”.



and of the Militia/Janjaweed, in conducting the counterinsurgency campaign in Darfur; (3) documents and other information provided by the Sudanese Government upon request of the Prosecution; (5) the Report of the UN International Commission of Inquiry (“UNCOI”) and other materials provided by the UNCOI;<sup>6</sup> (6) the Report of the Sudanese National Commission of Inquiry (“NCOI”) and other materials provided by the NCOI;<sup>7</sup> and (7) [TEXT REDACTED].

#### **i. The UN International Commission of Inquiry on Darfur**

9. On 18 September 2004, the UN Security Council, by Resolution 1564, established the UNCOI and directed that body: “to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties”; “to determine also whether or not acts of genocide have occurred”; and “to identify the perpetrators of such violations”. The purpose of the inquiry, as the UN Security Council expressed it, was to “ensur[e] that those responsible are held accountable”. The UNCOI reported to the Secretary General of the UN on 25 January 2005.

10. The UNCOI found, *inter alia*, that from February 2003 to mid-January 2005 grave human rights breaches were committed by all parties to the conflict and that in Darfur:

- Armed Forces and Militia/Janjaweed under their control attacked civilians and destroyed and burned down civilian villages, and that rebel forces did the same but on a much smaller scale;<sup>8</sup>
- Unlawful killing of civilians by both Armed Forces and Militia/Janjaweed took place, and that the killings were widespread and systematic;<sup>9</sup>
- Armed Forces and Militia/Janjaweed committed rape and other forms of sexual violence in a widespread and systematic manner;<sup>10</sup>
- Armed Forces and Militia/Janjaweed committed torture and inflicted inhumane and degrading treatment as an integral and consistent part of attacks against civilians;<sup>11</sup>
- Armed Forces and Militia/Janjaweed forcibly displaced the civilian population in a widespread and systematic manner;<sup>12</sup>

<sup>6</sup> Hereafter cited as “UNCOI Material”.

<sup>7</sup> Hereafter cited as “NCOI Material”.

<sup>8</sup> UNCOI Material, DAR-OTP-0018-0010 at 0161-0163, para. 630-631, 639.

<sup>9</sup> UNCOI Material, DAR-OTP-0018-0010 at 0162, para. 633.

<sup>10</sup> UNCOI Material, DAR-OTP-0018-0010 at 0162, para. 634.

<sup>11</sup> UNCOI Material, DAR-OTP-0018-0010 at 0162, para. 635.

<sup>12</sup> UNCOI Material, DAR-OTP-0018-0010 at 0162, para. 636.

- Militia/Janjaweed abducted women and the Government security apparatus arrested and detained persons in violation of international human rights law, again as part of widespread and systematic attacks against civilians; and<sup>13</sup>
- Victims of the attacks by Armed Forces and Militia/Janjaweed belonged mainly to the Fur, Zaghawa and Masalit tribes, and that the discriminatory nature of the attacks might constitute persecution.<sup>14</sup>

## ii. The National Commission of Inquiry

11. On 8 May 2004, the President of the Sudan established a Commission of Inquiry into allegations of human rights violations committed by armed groups in the states of Darfur. The NCOI reported to the President of the Sudan in January 2005, and its report was made available to the Prosecution by the Sudanese Government on 29 May 2005.

12. The NCOI found, *inter alia*, that from 2003 to 2004 grave human rights breaches had been committed by all parties to the conflict and that:

- In each of the states of Darfur, the crime against humanity of murder had been committed by all parties to the conflict;<sup>15</sup>
- In all three Darfur states, the war crime of wilful killing had been committed by all parties to the conflict;<sup>16</sup>
- Many allegations concerning incidents of murder had been attributed to the Militia/Janjaweed either acting alone or together with the Armed Forces;<sup>17</sup>
- Members of a tribe called the Fur had been forcibly displaced in a part of South Darfur;<sup>18</sup>
- A large number of villages had been completely or partially burnt during armed clashes in the Al Geneina, Kass and Wadi Salih localities of the state of West Darfur.<sup>19</sup>

## iii. The Prosecution's Investigation

13. The Prosecution has thoroughly evaluated the conclusions of the UNCOI and the NCOI, and the materials underlying the findings of those commissions. For example, on 5 April

<sup>13</sup> UNCOI Material, DAR-OTP-0018-0010 at 0162, para. 637.

<sup>14</sup> UNCOI Material, DAR-OTP-0018-0010 at 0162, para. 638.

<sup>15</sup> [FOOTNOTE REDACTED].

<sup>16</sup> [FOOTNOTE REDACTED].

<sup>17</sup> [FOOTNOTE REDACTED].

<sup>18</sup> [FOOTNOTE REDACTED].

<sup>19</sup> [FOOTNOTE REDACTED].

2005, the Prosecution received more than 2,500 items, including documentation, video footage and interview transcripts which had been gathered by the UNCOI, together with a sealed envelope containing the conclusions reached by that commission as to persons potentially bearing criminal responsibility for the crimes in Darfur.

14. As this application makes clear, the Prosecution has benefited greatly from the information furnished by the UNCOI and the NCOI, as well as other organisations and entities with knowledge regarding potential crimes. The Prosecution nonetheless has an obligation to conduct an independent investigation which, *inter alia*, seeks and considers evidence which might either corroborate or impugn information collected by other entities. The Prosecution labours under duties imposed by the Rome Statute to conduct an independent investigation,<sup>20</sup> which includes an examination of incriminating and exculpatory information<sup>21</sup> and which yields evidence capable of satisfying the relevant criminal burden of proof.<sup>22</sup> Accordingly, since the investigation started, in June 2005, the Prosecution has collected statements and evidence, in conformity with the procedural requirements of this Court, during 70 missions conducted in 17 countries.

15. The Prosecution also conducted five missions to the Sudan, after requesting cooperation from the Sudanese Government. During these missions, the Prosecution, with the agreement of the Sudanese Government, obtained information and accounts from senior officials of the Government of the Sudan in respect of: (1) events relating to the ongoing conflict in Darfur since July 2002; and (2) national proceedings being conducted in the Sudan regarding crimes allegedly committed in Darfur.

## **B. Protection of Victims and Witnesses**

16. Article 68(1) obliges the Prosecution to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly during the investigation and prosecution of crimes. To uphold its duties under Article 68(1) the Prosecution determined not to go to Darfur to seek statements from victims. Victims of alleged crimes committed in the Darfur region were interviewed in other countries because of the ongoing insecurity in Darfur.

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<sup>20</sup> See Article 42(1).

<sup>21</sup> See Article 54(1).

<sup>22</sup> The burden of proof to be satisfied, at this early stage, is that of "*reasonable grounds to believe*" that the persons summonsed committed the crimes alleged (Article 58(7)). This standard is lower than that required for the confirmation of charges "*substantial grounds to believe*", see Article 61(5), and for conviction "*beyond reasonable doubt*", see Article 66 (3).

17. Victim and witness protection considerations also apply to this application. The legal regime of the ICC presumes the public nature of court proceedings and documents,<sup>23</sup> but also authorises the Prosecutor and the Court to take measures, including the withholding of information, to protect victims and witnesses from grave endangerment.<sup>24</sup>

18. On that basis, the public version of this document has been filed with redactions deemed necessary to protect the security of a victim or witness. The Prosecution has filed, under seal, a version from which nothing has been redacted, for the Chamber's review.

19. In fulfillment of its statutory responsibilities, the OTP has continuously monitored the security of victims and witnesses and implemented protective measures. Protective measures can rarely serve as a full guarantee if concerted or bad faith efforts are undertaken to threaten victims and witnesses. Taking into account resources, available information and operational constraints, the Victims and Witnesses Unit ("VWU") of the Court, in coordination with the OTP, has taken appropriate measures to provide protection to witnesses. They will continue to monitor and assess the risk to witnesses.

## V. Summary of Evidence and Other Information

### A. Introduction – the Armed Conflict in Darfur

20. From about August 2002, and thus at all times relevant to the Counts above, the Government of the Sudan has been engaged in a military campaign conducted in the Darfur region of the Sudan against rebel armed forces including the Sudanese Liberation Movement/Army ("SLM/A") and the Justice and Equality Movement ("JEM").<sup>25</sup> Both rebel groups mainly recruit from the Fur, Zaghawa and Masalit tribes.<sup>26</sup>

<sup>23</sup> Article 64(7), 67(1). Situation in Democratic Republic of Congo, Decision to Unseal and Reclassify Certain Documents in the Record of the Case Against Mr. Thomas Lubanga Dyilo, 20 March 2006, at p. 3; Situation in Democratic Republic of Congo, Decision to Unseal and Reclassify Certain Additional Documents in the Record of the Case Against Mr. Thomas Lubanga Dyilo, 22 March 2006, p. 4.

<sup>24</sup> Article 68(1) & (5); Rules 85-88 of the Rules of Procedure and Evidence (this can include, inter alia, a witness giving evidence in camera, a witness's name or identifying information being expunged from the record, or a witness receiving a pseudonym for the purpose of giving evidence before the court).

<sup>25</sup> Peace Agreement Between the Government of the Republic of Sudan and the Sudanese Liberation Army, 3-4 September 2003, [DAR-OTP-0116-0433](#); N'djamena Humanitarian Ceasefire Agreement on the Conflict in Darfur, 8 April 2004, [DAR-OTP-0043-0045](#); Protocol on the Establishment of Humanitarian Assistance in Darfur, 8 April 2004, [DAR-OTP-0043-0053](#); Agreement with the Sudanese parties on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in the Darfur, 28 May 2004, [DAR-OTP-0005-0308](#) and [DAR-OTP-0043-0016](#); Comprehensive Peace Agreement, 5 May 2006, [DAR-OTP-0115-0563](#).

<sup>26</sup> UNCOI Material, [DAR-OTP-0018-0010](#) at 0040-0041, paras. 127-137; Public Source, [DAR-OTP-0120-0678](#) at 0753-0783; Public Source, [DAR-OTP-0120-0263](#) at 0320-0321; Public Source, [DAR-OTP-0120-0380](#) at 0384-0385.

21. The SLM/A was established in or about March of 2003. The SLM/A has declared that its aim is to create a united democratic Sudan on the basis of equality, complete restructuring of power, cultural and political pluralism, and prosperity for all Sudanese.<sup>27</sup> The original SLM/A eventually split into two factions under two leaders - Minni Manawi and Abd-al-Wahid respectively.<sup>28</sup> Those forces under Abd-al-Wahid were mostly active in the Jebel Marra area of West Darfur.<sup>29</sup>

22. The JEM was established in or about August 2001 as a political movement under the Chairmanship of Dr. Khalil Ibrahim. It later established a military wing. The aims of the JEM, as disseminated by the JEM, are to fight for political change in Darfur and against marginalisation.<sup>30</sup>

23. On the side of the Sudanese Government, the combatants in the ongoing conflict include the Armed Forces, and the PDF which is a reservist force created by the Popular Defence Force Act of 1989. The Sudanese Police ("Police") has also contributed manpower, as has its reservist force – the Popular Police Force ("PPF"). The Central Reserve Force has also participated in the ongoing conflict.

24. As is well known – and indeed readily acknowledged by officials of the Sudanese Government – the Sudanese Government has also relied on militia drawn predominantly from certain tribes to fight the rebel insurgency.<sup>31</sup> A widely reported characteristic of the armed conflict in Darfur is that the great majority of civilian deaths in the region have been caused during attacks upon towns and villages in Darfur carried out by the Militia/Janjaweed, attacking either singly or together with the Armed Forces.<sup>32</sup> The vast majority of attacks carried out by the Armed Forces and/or Militia/Janjaweed in Darfur were directed at areas inhabited mainly by the Fur, Zaghawa and Masalit.<sup>33</sup> Officials of the Sudanese Government, however, commonly have denied responsibility for any atrocities committed by the Militia/Janjaweed.<sup>34</sup>

25. The region in which the war has been waged is the Darfur region, which is comprised of the three Sudanese states at the western border of the Sudan: North Darfur, West Darfur and

<sup>27</sup> Public Source, [DAR-OTP-0118-1135](#); UNCOI Material, [DAR-OTP-0018-0010](#) at 0040-0041, paras. 127-132.

<sup>28</sup> Public Source, [DAR-OTP-0120-0678](#) at 0772-0775; Public Source, [DAR-OTP-0120-0380](#) at 0385 and 0392.

<sup>29</sup> Public Source, [DAR-OTP-0120-0678](#) at 0773.

<sup>30</sup> Public Source, [DAR-OTP-0120-0258](#); UNCOI Material, [DAR-OTP-0018-0010](#) at 0042, paras. 133-137.

<sup>31</sup> Public Source, [DAR-OTP-0116-0934](#); [FOOTNOTE PARTIALLY REDACTED].

<sup>32</sup> Public Source, [DAR-OTP-0080-0019](#); UNCOI Material, [DAR-OTP-0018-0010](#) at 0064-0069, 0079 and 0161, paras. 225-249, 279 and 626; Public Source, [DAR-OTP-0115-0673](#); Public Source, [DAR-OTP-0080-0402](#) at 0409; Public Source, [DAR-OTP-0003-0099](#); Public Source, [DAR-OTP-0020-0067](#); Public Source, [DAR-OTP-0020-0016](#); [FOOTNOTE PARTIALLY REDACTED].

<sup>33</sup> Public Source, [DAR-OTP-0115-0673](#) at 0678 and 0693; UNCOI Material, [DAR-OTP-0018-0010](#) at 0059, para. 193; Public Source, [DAR-OTP-0107-1151](#) at 1158-1159. See additionally, *infra*, footnote 217.

<sup>34</sup> Public Source, [DAR-OTP-0115-0767](#); Public Source, [DAR-OTP-0107-1106](#) at 1135; [FOOTNOTE PARTIALLY REDACTED].

South Darfur (see Annex 2). Arab and African tribes have lived in Darfur for hundreds of years.<sup>35</sup> The people of Darfur are predominantly Muslim by faith.<sup>36</sup>

26. The attacks which are the subject of this application - upon Kodoom, Bindisi, Mukjar and Arawala - occurred during a period in which the Armed Forces and Militia/Janjaweed were extremely active in Darfur. Statistics maintained by the Prosecution, and based on evidence and information collected in the course of the investigation, show that the vast majority of killings which were carried out by the Armed Forces or Militia/Janjaweed since the beginning of the rebellion and counterinsurgency, in 2002, occurred during the year beginning in April 2003 and ending in April 2004 (see Annex 3). The attacks at Kodoom, Bindisi, Mukjar and Arawala occurred within that year, between August 2003 and December 2003. These attacks targeted towns and villages in which the residents were predominantly Fur. As is detailed below in Section V.E.iv, in these attacks alone approximately 1000 civilians were direct victims of joint attacks by the Armed Forces and Militia/Janjaweed. The attackers committed crimes including murder, rape, torture, persecution and forced displacement.

27. The humanitarian consequences of the war in Darfur are well documented. Many attempts have been made to quantify the number of deaths attributable either directly or indirectly to the war in Darfur. The conclusions are that many tens or even hundreds of thousands of civilians have died – either from direct violence or as a result of disease, starvation and the conditions of life imposed by the attacks.<sup>37</sup> Rape is reported in open sources as a common weapon of the conflict.<sup>38</sup>

28. The mass movement of displaced persons, including across the Sudan-Chad border, has had consequences for the region. Public sources agree that, at a minimum, hundreds of villages have been destroyed during the conflict.<sup>39</sup> The UN estimates that over 2,000,000 people have been displaced within Darfur,<sup>40</sup> and the United Nations High Commissioner for Refugees has reported that the number of refugees in Chad rose from approximately 65,000<sup>41</sup> in September 2003 to 230,000 in January 2007.<sup>42</sup>

<sup>35</sup> Public Source, [DAR-OTP-0090-0224](#) at 0237; [FOOTNOTE PARTIALLY REDACTED].

<sup>36</sup> Public Source, [DAR-OTP-0120-0678](#) at 0697; Public Source, [DAR-OTP-0090-0251](#) at 0254.

<sup>37</sup> Public Source, [DAR-OTP-0118-1140](#); Public Source, [DAR-OTP-0119-0342](#); Public Source, [DAR-OTP-0119-0129](#).

<sup>38</sup> Public Source [DAR-OTP-0002-0128](#); Public Source, [DAR-OTP-0005-0108](#); Public Source, [DAR-OTP-0120-0004](#); Public Source, [DAR-OTP-0107-1455](#); Public Source, [DAR-OTP-0119-0352](#).

<sup>39</sup> Public Source, [DAR-OTP-0025-0088](#) at 0092, para. 25; UNCOI Material, [DAR-OTP-0018-0010](#) at 0084, para. 301; Public Source, [DAR-OTP-0119-0635](#) at 0658.

<sup>40</sup> Public Source, [DAR-OTP-0121-0275](#).

<sup>41</sup> Public Source, [DAR-OTP-0119-0549](#).

<sup>42</sup> Public Source, [DAR-OTP-0119-0556](#).

## **B. The Persons Against Whom Summonses to Appear are Sought**

29. The mobilisation and use of the Militia/Janjaweed to carry out operations in Darfur is a central feature of the conflict and a focus of this application. After his appointment to the “Darfur Security desk”, **Ahmad HARUN** monitored the efforts to recruit Militia/Janjaweed in Darfur, and authorised the provision of funds and arms to those Militia, as a means of ensuring their effectiveness. At all times relevant to this application, **Ali KUSHAYB** was a tribal leader who, funded and encouraged by **HARUN**, subsequently led Militia/Janjaweed in attacking the civilian populations of towns and villages in West Darfur, including those identified in the Counts above.

### **i. Ahmad HARUN<sup>43</sup>**

30. From in or about April 2003 until in or about September 2005, **Ahmad HARUN** served as Minister of State for the Interior of the Government of the Sudan.<sup>44</sup>

31. Since the rebellion in Darfur was an internal security threat, the Ministry of the Interior was responsible for responding to the rebellion, together with the Ministry of Defence and the National Security apparatus. By mid-2003, and in circumstances described further below, **HARUN** had been tasked to manage the “Darfur Security desk” or “Darfur Security file”.<sup>45</sup> At around the same time, the Minister of the Interior was introducing his deputy **HARUN** in Khartoum as the person responsible for “the desk of Darfur”.<sup>46</sup>

32. During his interview with the UNCOI, in January 2005, **HARUN** described that his responsibility was “to work with all the other bodies of the state, to have a good supervision of all apparatus in Darfur (within the competence of the Ministry of the Interior)”.<sup>47</sup>

33. **HARUN**’s own Ministry, the Ministry of the Interior, had direct authority over the Police<sup>48</sup> and its reservist force, the PPF.<sup>49</sup> The Police contributed tens of thousands of its forces in support of the effort to eliminate the rebellion in Darfur.<sup>50</sup> **HARUN** had served, just prior to becoming Minister of State for the Interior of the Government of the Sudan, as the director of the PPF at the national level.<sup>51</sup>

<sup>43</sup> Known alternative spellings for Muhammad Ahmad **HARUN**’s surname include: HAROON and HAROUN.

<sup>44</sup> [FOOTNOTE REDACTED].

<sup>45</sup> [FOOTNOTE REDACTED].

<sup>46</sup> [FOOTNOTE REDACTED].

<sup>47</sup> [FOOTNOTE REDACTED].

<sup>48</sup> [FOOTNOTE REDACTED].

<sup>49</sup> [FOOTNOTE REDACTED].

<sup>50</sup> Public Source, [DAR-OTP-0121-0023](#); Public Source, [DAR-OTP-0121-0015](#); [FOOTNOTE PARTIALLY REDACTED].

<sup>51</sup> [FOOTNOTE REDACTED].

34. As the individual in charge of the Darfur Security desk, **HARUN**'s authority extended to coordinating the efforts of the Police, Armed Forces, National Security Service and the Militia/Janjaweed, particularly in the area of mobilising, funding and arming Militia/Janjaweed<sup>52</sup> using the following means:

- His oversight of the activities of the State and Locality "Security Committees" in Darfur. The composition of these Committees and how they reported to **HARUN** is explained in Section V.C.iii.c;
- His management of, and participation in, the recruitment, funding and arming of Militia/Janjaweed;
- His personal contacts with representatives from all bodies of the Sudanese Government involved in the counterinsurgency, including Army and Police representatives, officers of the Sudanese intelligence agencies, state and local Government leaders, and Militia/Janjaweed leaders.

Each of these means is explored more fully in the remainder of this application.

35. **HARUN** was born in or about 1964 and is a member of a tribe called the Bargou.<sup>53</sup> He is from the State of North Kordofan in Sudan.<sup>54</sup> He is a graduate of Cairo University and was trained as a judge.<sup>55</sup> After 1990 **HARUN** was appointed into the Sudanese National Intelligence and Security Service where he remained an active officer until in or about 2005.<sup>56</sup> In or about 1995 he was appointed the Chief of Staff of the Governor of the state of North Kordofan.<sup>57</sup> As is described below, **HARUN** gained experience in Kordofan in mobilising local tribes, and integrating them into the PDF, as a means of countering an internal insurgency. He is a member of the ruling National Congress Party.<sup>58</sup> Since 2006, **HARUN** has served as Minister of State for Humanitarian Affairs in the present Sudanese Government.<sup>59</sup>

#### ii. **Ali Muhammad Ali ABD-AL-RAHMAN a.k.a. Ali KUSHAYB**<sup>60</sup>

36. At the time he volunteered himself and his tribesmen to fight with the Armed Forces in Darfur, **Ali KUSHAYB** was an "Aqid al Oqada" (meaning "colonel of colonels") in Wadi

<sup>52</sup> [FOOTNOTE REDACTED].

<sup>53</sup> [FOOTNOTE REDACTED].

<sup>54</sup> [FOOTNOTE REDACTED].

<sup>55</sup> [FOOTNOTE REDACTED].

<sup>56</sup> [FOOTNOTE REDACTED].

<sup>57</sup> [FOOTNOTE REDACTED].

<sup>58</sup> [FOOTNOTE REDACTED].

<sup>59</sup> Public Source, DAR-OTP-0115-0670 at 0671.

<sup>60</sup> Known alternative spellings for the name of Ali Muhammad Ali a.k.a. Ali **KUSHAYB** include: KOSHIB, KOSHIEB, KOSHIP, KOSHEIB and KUSHAYB.



Salih Locality, in the state of West Darfur.<sup>61</sup> By virtue of this tribal position, he was one of the most senior leaders in the tribal hierarchy in Wadi Salih Locality.<sup>62</sup> His authority covered the areas north of Garsila and Deleig towns and in the south, the areas surrounding Mukjar town; his authority also extended to the Chadian border in the west and Shattaya in Kass Locality, South Darfur, in the east<sup>63</sup> (see Annex 4). From in or about August 2003, **KUSHAYB** commanded thousands of Militia/Janjaweed.<sup>64</sup>

37. **KUSHAYB** is about 50 years old.<sup>65</sup> His father is from the Taisha tribe, while his mother is from a tribe from southern Sudan.<sup>66</sup> By August 2003, at or about the time he allegedly committed the crimes specified in this application, **KUSHAYB** had formally been appointed to a position in the Armed Forces and was introducing himself to other Government military officers as a member of the PDF.<sup>67</sup> As a tribal leader and member of the PDF, he was known as an “Emir of Mujahideen” or a “leader of religious fighters”.<sup>68</sup>

### **C. The Counterinsurgency Campaign Conducted by the Sudanese Government**

#### **i. The Strategy of the Counterinsurgency Campaign**

38. Since the JEM and the SLM/A sought political change by military force, the Sudanese government was thus confronted by an insurgency in Darfur in 2003.

39. Historically, one strategy adopted in countering insurgency is the integrating of all government agencies under the unified control of a politically appointed security or police official who directs the counterinsurgency campaign through civil-military executive committees. Civilian primacy is the key aspect of these committees, because the military alone cannot integrate the structures necessary to thwart the internal threat. The counterinsurgency thus is a civil-military police action.<sup>69</sup>

40. In Darfur, the Sudanese Government countered the crisis caused by the rebel groups by utilising this unified strategy: at the national, state and local levels, security committees were used to coordinate the actions of the Armed Forces, the Police, the Sudanese Intelligence and Security Service and the Militia/Janjaweed. At the national, state, and local levels, representa-

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<sup>61</sup> [FOOTNOTE REDACTED].

<sup>62</sup> [FOOTNOTE REDACTED].

<sup>63</sup> [FOOTNOTE REDACTED].

<sup>64</sup> [FOOTNOTE REDACTED].

<sup>65</sup> [FOOTNOTE REDACTED].

<sup>66</sup> [FOOTNOTE REDACTED].

<sup>67</sup> [FOOTNOTE REDACTED].

<sup>68</sup> [FOOTNOTE REDACTED].

<sup>69</sup> [FOOTNOTE REDACTED].

tives from each of these bodies sat on common committees to receive information regarding the rebellion and to plan and implement the Government's response.

41. HARUN's authority in the counterinsurgency campaign derived, in part, from the circumstance that the Security Committees of the three Darfur states as well as the Security Committees of the localities within those states, reported to him. To understand his role, however, and HARUN's qualifications to manage the "Darfur Security desk", it is first necessary to understand the larger context of the counterinsurgency campaign.

## ii. The Phases of Government Operations

42. The phases of the counterinsurgency campaign were outlined by witnesses and in a document which was submitted to the Prosecution by Sudanese officials in April 2006 and titled "Armed Forces Memorandum".<sup>70</sup>

43. While characterised slightly differently by witnesses and in documents, the phases of the conflict usually are described to begin and end at major turning points in the campaign against rebel forces, including the signing of peace agreements or decisions by the President of the Sudan. Annex 3 depicts the beginning and end points of the phases of the conflict up to January 2005.

### a. First Phase of Government Operations

44. This phase was characterised by the attempt of the Sudanese Government to control the rebellion by using the Armed Forces, while engaging in negotiations with the rebels. In or about August 2002, officials of the Sudanese Government tried to curb rebel activity, which had begun to emerge for the most part in the Jebel Marra Locality of West Darfur, through negotiations.<sup>71</sup> At about the same time, the Armed Forces mounted an ultimately unsuccessful operation against the rebel forces in the Ein Siro Mountains of North Darfur.<sup>72</sup> In September 2002, following the failure of an attempt by the Government to negotiate with the Fur tribe, the rebel groups organised under the name of the Darfur Liberation Army (DLA).<sup>73</sup> This group, which later became the SLM/A, conducted a series of attacks in the Jebel Marra Locality.<sup>74</sup>

<sup>70</sup> Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, DAR-QTP-0116-0721.

<sup>71</sup> [FOOTNOTE REDACTED].

<sup>72</sup> [FOOTNOTE REDACTED].

<sup>73</sup> [FOOTNOTE REDACTED].

<sup>74</sup> [FOOTNOTE REDACTED].

45. Between September 2002 and March 2003, both sides in the conflict attempted a series of unsuccessful initiatives to solve the rebellion peacefully.<sup>75</sup> In March 2003, the President of the Sudan announced in Al Fashir, the capital of North Darfur, that the Government would use military force.<sup>76</sup> and instructed the Armed Forces to quell the rebellion in two weeks.<sup>77</sup>

46. Reliance on negotiations and efforts of the Armed Forces effectively ended on 25 April 2003.<sup>78</sup> On that date, rebel forces attacked the Government airport at Al Fashir, North Darfur, destroying several aircraft, killing a number of military personnel, and kidnapping the Sudanese Air Force commander.<sup>79</sup> **HARUN** later described the losses to the Government in this attack as unprecedented.<sup>80</sup> The Sudanese Government halted negotiations with the Fur and Zaghawa representatives and launched a full-scale military operation against the rebel groups.<sup>81</sup>

#### **b. Second Phase of Government Operations**

47. In the second phase, the Government greatly increased military operations in North and West Darfur. It also embarked on a new strategy of recruiting Militia/Janjaweed, numbering ultimately in the tens of thousands.<sup>82</sup> **HARUN** described in his NCOI interview that the attack at Al Fashir airport motivated the Government “to gather in all its resources in the form of a general call-up” of the Militia/Janjaweed.<sup>83</sup>

48. On or about 20 May 2003, a military operation was launched to liberate the area north of Kutum town in North Darfur and secure the border with Chad.<sup>84</sup> Two military operations were carried out in the area known as Dar Zaghawa, or the homeland of the Zaghawa tribe, in July and August 2003. These operations were known as Disa 1 and Disa 2.<sup>85</sup>

49. In West Darfur, the rebels attacked a number of Government targets in July and August 2003 in the Wadi Salih Locality (see para. 184).<sup>86</sup> After these attacks, the rebels retreated to their base in the Sindu Hills, which lies in West Darfur near its border with South Darfur (see Annex 5). Following this retreat in or about August 2003, the Armed Forces and the Mili-

<sup>75</sup> [FOOTNOTE REDACTED].

<sup>76</sup> [FOOTNOTE REDACTED].

<sup>77</sup> [FOOTNOTE REDACTED].

<sup>78</sup> [FOOTNOTE REDACTED].

<sup>79</sup> [FOOTNOTE REDACTED].

<sup>80</sup> [FOOTNOTE REDACTED].

<sup>81</sup> [FOOTNOTE REDACTED].

<sup>82</sup> [FOOTNOTE REDACTED].

<sup>83</sup> [FOOTNOTE REDACTED].

<sup>84</sup> [FOOTNOTE REDACTED].

<sup>85</sup> [FOOTNOTE REDACTED].

<sup>86</sup> [FOOTNOTE REDACTED].

tia/Janjaweed, under **KUSHAYB**, commenced the attacks in Kodoom, Bindisi and Mukjar referenced in the Counts above and in paras. 182-235.

50. By August 2003 the Armed Forces believed that they had almost fulfilled their mission in Darfur.<sup>87</sup> The signing of a peace agreement with the main rebel forces – in Abeche, Chad on 3 September 2003 – marked the end of the second phase of the conflict.<sup>88</sup>

### **c. Third Phase of Government Operations**

51. From September 2003 to December 2003, the intensity of rebel attacks and counter-attacks by the Armed Forces increased. After the signing of the Abeche peace agreement, SLM/A rebel forces quickly resumed attacks on military garrisons of the Armed Forces in Darfur.<sup>89</sup> Around October 2003, rebels attacked the garrison in Kulbus, West Darfur<sup>90</sup> and on 2 December 2003, they attacked the military garrison in Abu Qamra near Tina in North Darfur, killing a number of soldiers and stealing military equipment.<sup>91</sup> The Armed Forces decided to launch new operations to regain control of these and other locations.<sup>92</sup>

52. By December 2003, operations of the Armed Forces were again undertaken in the Wadi Salih Locality.<sup>93</sup> In or about December 2003, the Armed Forces and Militia/Janjaweed attacked the town of Arawala in West Darfur, as referenced in the Counts above and in paras. 236-250.

53. Military operations escalated after negotiations with rebel forces failed in mid-December 2003.<sup>94</sup> On or about 14 January 2004, the Armed Forces established five brigade-size units (*i.e.*, over 10,000 troops) in the Western Area Command which encompasses the three Darfur states.<sup>95</sup> These units began operations in West and North Darfur.<sup>96</sup> The brigade that operated in the localities of Wadi Salih, Zallingi, Mukjar<sup>97</sup> and parts of Jebel Marra Locality<sup>98</sup> was the 96<sup>th</sup> Brigade.

<sup>87</sup> [FOOTNOTE REDACTED].

<sup>88</sup> Peace Agreement between the Government of the Republic of Sudan and the Sudanese Liberation Army, 3 September 2003, [DAR-OTP-0116-0433](#); [FOOTNOTE PARTIALLY REDACTED].

<sup>89</sup> [FOOTNOTE REDACTED].

<sup>90</sup> [FOOTNOTE REDACTED].

<sup>91</sup> [FOOTNOTE REDACTED].

<sup>92</sup> [FOOTNOTE REDACTED].

<sup>93</sup> [FOOTNOTE REDACTED].

<sup>94</sup> [FOOTNOTE REDACTED].

<sup>95</sup> [FOOTNOTE REDACTED].

<sup>96</sup> Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, [DAR-OTP-0116-0721](#) at 0726.

<sup>97</sup> [FOOTNOTE REDACTED].

<sup>98</sup> [FOOTNOTE REDACTED].

54. By on or about 31 January 2004, the Armed Forces were in control of the area north of Kutum, North Darfur, and had blocked all major border crossings to Chad.<sup>99</sup> The Government halted military operations on 31 January 2004, and a week later, the President of the Sudan announced that all major military operations were complete,<sup>100</sup> marking the end of the third phase.

#### **d. Fourth Phase of Government Operations**

55. The Armed Forces conducted a series of limited operations in the period between the ceasing of operations on 31 January 2004 and the signing of a ceasefire agreement in N'djamena in Chad with rebel groups on 8 April 2004.<sup>101</sup>

56. In the first months of 2004, rebel forces began to shift their operations to South Darfur.<sup>102</sup> The rebel base around the Sindu Hills became the site of increased attacks by the Armed Forces. It was following the flight of the residents of the Sindu Hills to Mukjar town, that **KUSHAYB** participated in the executions outside of Mukjar town, as described below in paras. 228-231.

57. The fourth phase of the operations of the Sudanese Government ended with the signing of the Ceasefire Agreement on 8 April 2004 in N'Djamena with the rebel movements.

#### **e. Fifth Phase of Government Operations**

58. The fifth phase of the conflict opened with continued rebel attacks, despite the signing of the N'Djamena agreement.<sup>103</sup> Rebel forces attacked the town of Kulbus on 4 October 2004 and seized the area around the town of Abu Qamra on 25 December 2004.<sup>104</sup>

59. The State authorities in Darfur continued to combine forces from the Armed Forces and the Police and security services to counter the rebellion.<sup>105</sup>

#### **f. Sixth Phase of Government Operations**

60. The continued rebel activity led to another major Government initiative in South Darfur at the end of 2004.<sup>106</sup> In December 2004, the Armed Forces General Headquarters in Khartoum

<sup>99</sup> [FOOTNOTE REDACTED].

<sup>100</sup> [FOOTNOTE REDACTED].

<sup>101</sup> [FOOTNOTE REDACTED].

<sup>102</sup> Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, DAR-OTP-0116-0721 at 0726.

<sup>103</sup> Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, DAR-OTP-0116-0721 at 0726.

<sup>104</sup> Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, DAR-OTP-0116-0721 at 0726.

<sup>105</sup> [FOOTNOTE REDACTED].

issued an instruction to carry out partial defensive operations to counter a resumed rebel threat.<sup>107</sup> Subsequent to this order, the Armed Forces deployed a brigade-size unit to South Darfur to clear the road from Nyala to Khartoum. The commander of this brigade was acting under direct instructions from Khartoum.<sup>108</sup> The brigade reached the rebel base of Muhajiriya at the eastern border of South Darfur in January 2005 (see Annex 5).

### iii. The Recruitment, Funding and Arming of Militia/Janjaweed

#### a. HARUN's Responsibility for Recruiting Militia/Janjaweed

61. The phases above demonstrate that **HARUN** was given responsibility for the "Darfur Security desk" at a critical turning point in the Darfur conflict. The rebel attack at Al Fashir airport in April 2003, was followed by re-appointments at high levels of the Armed Forces and Government. For example, in May 2003, General Ismat Abd-al-Rahman Zayn-al-Abidin, then Deputy Director of Military Operations in Khartoum, was appointed the commander of the Western Area Command for Darfur.<sup>109</sup> The Governor of North Darfur, Ibrahim Sulciman, was also replaced after the Al Fashir attack, in approximately June 2003,<sup>110</sup> reportedly due in part to his candid report on the attack<sup>111</sup> and his preference for negotiating with the rebels.<sup>112</sup> It was during these re-appointments that **HARUN** came to be appointed as Minister of State for the Interior.<sup>113</sup>

62. **HARUN** had prior expertise in recruiting Militia/Janjaweed to staff and support the counterinsurgency effort. The Darfur conflict confronted the Sudanese Government with a critical problem which was an insufficient and inadequately-motivated defence force.

63. The Sudanese Government found it necessary to recruit Militia/Janjaweed, especially following the defeat at Al Fashir airport, in part simply because it did not have enough soldiers to fight the counterinsurgency. **HARUN** declared during his interview with the UNCOI the necessity of the reservist forces – the PDF and PPF – and acknowledged the "recruitment" of "tribal leaders" as a means of "reinforce[ing] human resources".<sup>114</sup> He stated: "practically

<sup>106</sup> Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, [DAR-OIP-0116-0721](#) at 0726.

<sup>107</sup> Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, [DAR-OTP-0116-0721](#) at 0726.

<sup>108</sup> [FOOTNOTE REDACTED].

<sup>109</sup> [FOOTNOTE REDACTED].

<sup>110</sup> [FOOTNOTE REDACTED].

<sup>111</sup> [FOOTNOTE REDACTED].

<sup>112</sup> [FOOTNOTE REDACTED].

<sup>113</sup> [FOOTNOTE REDACTED].

<sup>114</sup> [FOOTNOTE REDACTED].

speaking the GoS [*i.e.*, Government of the Sudan] can never have sufficient number of soldiers".<sup>115</sup>

64. Moreover, it was necessary to recruit Militia/Janjaweed since the Government could not rely on the loyalty of the regular army, because the great majority of the soldiers in the Armed Forces had been recruited from African tribes in Darfur. As late as mid-2003, for example, there were incidents in which non-commissioned officers of the regular army shot their own officers during attacks in Darfur.<sup>116</sup> The Sudanese Army also found that soldiers would give up or run away during attacks mounted against villages in Darfur.<sup>117</sup> Reportedly, at a military reception in Darfur a sergeant in the audience warned the Chief of Staff of the Armed Forces: "don't expect the west to fight against the west".<sup>118</sup> [TEXT REDACTED].<sup>119</sup>

65. **HARUN** had gained experience in recruiting Militia/Janjaweed to serve in counterinsurgency efforts in the mid to late 1990s, when he was the Chief of Staff of the Governor of the state of North Kordofan,<sup>120</sup> and also as director or minister of peace in Kordofan.<sup>121</sup> At that time, the Sudanese Government had been fighting armed rebel forces in the south of Sudan, and had adopted a policy of recruiting local tribes, the Murahileen, to fight in that counterinsurgency.<sup>122</sup> As early as 1993 the UN Special Rapporteur for Human Rights had publicly reported widespread human rights abuses of the local civilian population by the Murahileen.<sup>123</sup> While working in Kordofan after 1995, **HARUN** had been responsible for the mobilisation of the Murahileen and for the planning and supply of military operations against rebel targets in Kordofan.<sup>124</sup>

66. As is described below, after becoming the manager of the "Darfur Security desk", **HARUN** possessed all necessary means of coordinating those activities of the Armed Forces, the Police, the security services, and the Militia/Janjaweed most central to the success of the counterinsurgency – the recruitment, funding, and arming of Militia/Janjaweed. He personally participated in each of these activities, often while travelling in Darfur in the company of members of the Armed Forces<sup>125</sup> or security officials,<sup>126</sup> and/or federal and state representa-

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<sup>115</sup> [FOOTNOTE REDACTED].

<sup>116</sup> [FOOTNOTE REDACTED].

<sup>117</sup> [FOOTNOTE REDACTED].

<sup>118</sup> [FOOTNOTE REDACTED].

<sup>119</sup> [FOOTNOTE REDACTED].

<sup>120</sup> [FOOTNOTE REDACTED].

<sup>121</sup> [FOOTNOTE REDACTED].

<sup>122</sup> [FOOTNOTE REDACTED].

<sup>123</sup> [FOOTNOTE REDACTED].

<sup>124</sup> [FOOTNOTE REDACTED].

<sup>125</sup> [FOOTNOTE REDACTED].

<sup>126</sup> [FOOTNOTE REDACTED].

tives of the Government.<sup>127</sup> He became known and recognised in the area as the “minister” responsible for mobilising the Militia/Janjaweed, and arming and funding them.<sup>128</sup>

67. The power that **HARUN**’s ministry, the Ministry of the Interior, held over the Militia/Janjaweed was such that, as one witness put it, the Janjaweed in the field were known to refuse orders given by the military in the field in favour of orders from civilian officials including the Minister of the Interior.<sup>129</sup> In July 2003, at a public meeting in Al Geneina, the capital of West Darfur, **HARUN** had described his role to a crowd of hundreds, including federal officials from Khartoum, officers of the Armed Forces and Police, state and local members of Government, and Militia/Janjaweed leaders.<sup>130</sup> [TEXT REDACTED] **HARUN** stated that in his appointment to the Darfur security desk, he had been given all the power and authority to kill or forgive whoever in Darfur for the sake of peace and security.<sup>131</sup>

#### **b. The Government Forces and the Militia/Janjaweed**

68. **HARUN**’s responsibility to coordinate the efforts of the different “bodies of the State”, especially insofar as those efforts related to the recruitment and support of Militia/Janjaweed, necessarily included coordination and planning among the bodies who furnished, trained and equipped troops for the counterinsurgency: the Armed Forces and its reservist force, the PDF; the Police Force and its reservist force, the PPF; the Central Reserve Force and the Militia/Janjaweed. Critical to understanding the role of the Militia/Janjaweed in Darfur is knowledge of the relationship between the Militia/Janjaweed and the Armed Forces and Police. This is because the Militia/Janjaweed were often integrated into the reservist forces of the Armed Forces and the Police.

69. The active component of the Armed Forces consists of the Land Forces, the Air Forces, the Naval Forces and the Air Defence Forces.<sup>132</sup> In Darfur, Sudanese infantry participated in the counterinsurgency, and the Air Force also carried out aerial attacks by fixed-wing aircraft and by helicopter.<sup>133</sup>

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<sup>127</sup> [FOOTNOTE REDACTED].

<sup>128</sup> [FOOTNOTE REDACTED].

<sup>129</sup> [FOOTNOTE REDACTED].

<sup>130</sup> [FOOTNOTE REDACTED].

<sup>131</sup> [FOOTNOTE REDACTED].

<sup>132</sup> The People’s Armed Forces Act of 1986, Article 10(2), DAR-01P-0118-0075 at 0084.

<sup>133</sup> [FOOTNOTE REDACTED].



70. The Popular Defence Force is the reserve component of the Armed Forces. The PDF is generally described as a citizen force which is provided with military training and mobilised on the demand of the army.<sup>134</sup>

71. The Police are under the operational control of the Ministry of the Interior.<sup>135</sup> During the time period relevant to this application, in Darfur each state had a chief of police who reported to **HARUN** and served as a member of the State Security Committee.<sup>136</sup>

72. The Popular Police Force (“PPF” or “Shurta Shabia”),<sup>137</sup> is a reserve force of local citizens raised to augment the regular Police.<sup>138</sup>

73. As acknowledged by the Sudanese Government<sup>139</sup> and documented in minutes of the State Security Committees<sup>140</sup>, both reserve forces – the PDF and the PPF – committed forces to the counterinsurgency campaign in Darfur.<sup>141</sup>

74. The Central Reserve Force (“Shurta Al Etihati Al Markazi”) was a reserve force originally created to assist the regular Police in countering riots,<sup>142</sup> combating tribal conflicts and pursuing armed robbery gangs. This force, which fell under the responsibility of the Federal Minister of Interior,<sup>143</sup> also participated in the counterinsurgency campaign in Darfur.<sup>144</sup>

75. In the Darfur conflict, the Sudanese Government “levied”, or requested, the participation of Militia/Janjaweed groups to fight in the counterinsurgency campaign.<sup>145</sup> As **HARUN** himself described, in his interview by the UNCOI: “[W]hen the state felt the need to reinforce its human resources, it opened up recruitment and some tribal leaders felt the need to respond”.<sup>146</sup> As described below, Security Committee minutes<sup>147</sup> from the Darfur states establish that during the rebellion, Militia/Janjaweed – in groups of hundreds and thousands – were routinely “called up” in Darfur when needed.

<sup>134</sup> The People’s Defence Forces Act 1989, [DAR-OIP-0116-0889](#); [FOOTNOTE PARTIALLY REDACTED].

<sup>135</sup> [FOOTNOTE REDACTED].

<sup>136</sup> [FOOTNOTE REDACTED].

<sup>137</sup> [FOOTNOTE REDACTED].

<sup>138</sup> [FOOTNOTE REDACTED].

<sup>139</sup> [FOOTNOTE REDACTED].

<sup>140</sup> [FOOTNOTE REDACTED].

<sup>141</sup> [FOOTNOTE REDACTED].

<sup>142</sup> [FOOTNOTE REDACTED].

<sup>143</sup> [FOOTNOTE REDACTED].

<sup>144</sup> [FOOTNOTE REDACTED].

<sup>145</sup> [FOOTNOTE REDACTED].

<sup>146</sup> [FOOTNOTE REDACTED].

<sup>147</sup> The Security Committee minutes of West, North and South Darfur are hereafter cited as “SC Minutes”.

76. Recruitment of Militia/Janjaweed as supplemental forces had in the past 1) increased the tactical capabilities of the government and 2) resulted in widespread atrocities committed by those recruited.<sup>148</sup>

77. As had occurred in prior conflicts, Militia/Janjaweed who volunteered in response to the recruitment calls were often integrated into the PDF or PPF, in the sense that they came to be considered PDF or PPF forces, and acted under PDF or PPF command. **HARUN** himself, in his UNCOI interview, described the tribes who were recruited as “what we call the PDF”.<sup>149</sup> He stated that “those who are mobilised by the PDF follow PDF rules”.<sup>150</sup> Finally, **HARUN** identified “PDF coordinators” as those responsible for recruitment of the tribal leaders. [TEXT REDACTED].<sup>151</sup>

78. Militia/Janjaweed received training at PDF and PPF training centres. Militia/Janjaweed were reportedly trained in the towns of Mukjar, Garsila, Al Geneina, Um Dukhun and For Baranga, under the supervision of the PDF on orders of the government.<sup>152</sup> [TEXT REDACTED].<sup>153</sup> [TEXT REDACTED].<sup>154</sup>

79. Militia/Janjaweed leaders were at times formally appointed within the PDF structure. **KUSHAYB** is an example, because he obtained a PDF appointment, introduced himself as a member of the PDF, and was known to wear a PDF uniform.<sup>155</sup>

80. When mobilised, the Sudanese authorities were responsible for paying and arming the Militia/Janjaweed.<sup>156</sup> Tribal leaders and fighters, upon volunteering, became entitled to claim salaries. Militia/Janjaweed were observed, for example, collecting salaries from Sudanese Army headquarters.<sup>157</sup> Weapons airlifted to the Darfur region were distributed to Militia/Janjaweed. In Mukjar town, for example, which as described below was under the control of the Armed Forces and Militia/Janjaweed throughout late 2003, Militia/Janjaweed were observed going to a police station empty-handed and leaving with weapons which had been delivered by aircraft on a periodic basis.<sup>158</sup> One witness listed the items which the Mili-

<sup>148</sup> Public Source, [DAR-OTP-0115-0699](#) at 0715, para 65-66; Public Source, [DAR-OTP-0120-0263](#), p. 73-74; Public Source, [DAR-OTP-0121-0016](#); Public Source, [DAR-OTP-0121-0141](#), paras. 48, 52 and 164; Public Source, [DAR-OTP-0123-0010](#), para. 26; Public Source, [DAR-OTP-0121-0125](#), para. 52.

<sup>149</sup> [FOOTNOTE REDACTED].

<sup>150</sup> [FOOTNOTE REDACTED].

<sup>151</sup> [FOOTNOTE REDACTED].

<sup>152</sup> [FOOTNOTE REDACTED].

<sup>153</sup> [FOOTNOTE REDACTED].

<sup>154</sup> [FOOTNOTE REDACTED].

<sup>155</sup> [FOOTNOTE REDACTED].

<sup>156</sup> [FOOTNOTE REDACTED].

<sup>157</sup> [FOOTNOTE REDACTED].

<sup>158</sup> [FOOTNOTE REDACTED].

tia/Janjaweed typically did not possess until they received them from the Sudanese Government: cars, weapons and satellite phones.<sup>159</sup>

81. In the field, the merging of the Militia/Janjaweed with Armed Forces at times had a visible consequence. While members of Militia/Janjaweed were often clad in traditional Arab dress or mixed civilian/military clothing, their leaders often wore the uniforms of the Armed Forces, the PDF and PPF.<sup>160</sup>

82. Eyewitnesses to attacks often distinguished Government soldiers from Militia/Janjaweed by referring to men in uniforms or riding in vehicles as “*asakir*” (Arabic for persons in uniform). Others, whom they observed wearing civilian clothing or mixed civilian/military clothing and mounted on horses or camel or on foot, they called the “Janjaweed”, “Fursan”, “Mujahideen”, “Bashmerga” or Arab Militia.

### c. The Security Committees

83. A key means by which **HARUN** managed his responsibility for coordinating the bodies in Government who were participants in the counterinsurgency campaign was his ability to monitor the work of the State and Locality Security Committees.

84. The importance of the functions performed by the State and Locality Security Committees – including the vital job of mobilising Militia/Janjaweed – is apparent from the minutes of the Security Committees of the states of Darfur. [TEXT REDACTED].<sup>161</sup>

85. For example, in the period between August 2003 and April 2004, the State Security Committee of West Darfur ordered reconnaissance<sup>162</sup> missions, created reserve forces,<sup>163</sup> monitored weapons supplies to rebels,<sup>164</sup> ensured sufficient levels of patrol activities,<sup>165</sup> mobilised PDF,<sup>166</sup> increased the Police presence in Mukjar,<sup>167</sup> ordered “tribal levies” to ensure the participation of Militia/Janjaweed,<sup>168</sup> ordered Militia/Janjaweed to support the police or reinforce the PDF,<sup>169</sup> and created joint forces comprised of army, police and security services.<sup>170</sup>

<sup>159</sup> [FOOTNOTE REDACTED].

<sup>160</sup> [FOOTNOTE REDACTED].

<sup>161</sup> [FOOTNOTE REDACTED].

<sup>162</sup> [FOOTNOTE REDACTED].

<sup>163</sup> [FOOTNOTE REDACTED].

<sup>164</sup> [FOOTNOTE REDACTED].

<sup>165</sup> [FOOTNOTE REDACTED].

<sup>166</sup> [FOOTNOTE REDACTED].

<sup>167</sup> [FOOTNOTE REDACTED].

<sup>168</sup> [FOOTNOTE REDACTED].

<sup>169</sup> [FOOTNOTE REDACTED].

<sup>170</sup> [FOOTNOTE REDACTED].

86. The level of responsibility exercised by the State Security Committees was such that the minutes establish that those Committees responded to each of the major developments in the six phases of the counterinsurgency campaign described above. These responses consisted in part of seeking and implementing the mobilisation of Militia/Janjaweed.

87. Thus, even before the attack at Al Fashir airport, during the first phase of the counterinsurgency, the West Darfur Security Committee had created a combined reserve force of regular army, police, intelligence and security units in West Darfur.<sup>171</sup> In May 2003, during “phase two”, the West Darfur Security Committee approved the mobilisation of 1,000 PDF fighters and increased the police presence in Mukjar town to a platoon.<sup>172</sup> On or about 28 August 2003, the State Security Committee determined to draw up security plans and requirements for West Darfur.<sup>173</sup>

88. After rebels attacked Government targets in the Wadi Salih Locality, in mid-2003, the State Security Committee of West Darfur tasked a local official and a PDF representative with calling out “tribal Levies” (*i.e.* Militia/Janjaweed).<sup>174</sup> In or about 4 August 2003, the same Security Committee requested from the Armed Forces General Headquarters in Khartoum authorisation to deliver a total of 1,000 “tribal levies” for the Districts of Garsila and Mukjar.<sup>175</sup>

89. Similarly, at the beginning of 2004, when rebel forces began shifting operations into South Darfur, the State Security Committee of South Darfur sent military and police units to the area of Shataya and Kailek, on the eastern slopes of the Sindu Hills.<sup>176</sup> On the same day the office of the Governor of South Darfur issued a directive to the Commissioner of Nyala to increase mobilisation to control the activities of the rebels.<sup>177</sup>

90. The state-level committees which took these actions – and hundreds of other similar decisions – reported to **HARUN**. **HARUN** himself acknowledged, when interviewed by the UNCOI, that he received the minutes of the State Security Committees of Darfur and that he could call on the State Governors and Chiefs of Police in each state for additional oral briefings about security matters in the state.<sup>178</sup> [TEXT REDACTED].<sup>179</sup>

91. Again, the minutes illustrate the above, by showing that the State Security Committees recognised the need to report to **HARUN**. The Security Committee of West Darfur in May

<sup>171</sup> [FOOTNOTE REDACTED].

<sup>172</sup> [FOOTNOTE REDACTED].

<sup>173</sup> [FOOTNOTE REDACTED].

<sup>174</sup> [FOOTNOTE REDACTED].

<sup>175</sup> [FOOTNOTE REDACTED].

<sup>176</sup> [FOOTNOTE REDACTED].

<sup>177</sup> Public Source, DAR-OTP-0003-0087 at 0093.

<sup>178</sup> [FOOTNOTE REDACTED].

<sup>179</sup> [FOOTNOTE REDACTED].

2003 referred “the matter of troop rations to the State Minister of the Interior”,<sup>180</sup> and in November 2003 noted preparation of “a quick report for the Governor (in Khartoum) on the security situation in the State so that he may inform the Deputy Interior Minister”.<sup>181</sup> As is described below, **HARUN** also attended meetings of the State Security Committees, when he travelled to Darfur.

92. The composition of the State Security Committees, moreover, ensured that **HARUN** had the ability to coordinate the efforts and activities of all of the bodies of the Government engaged in the counterinsurgency, in particular the recruitment, funding and arming of the Militia/Janjaweed. On each State Security Committee sat a roundtable of officials consisting of appointees from the various governmental bodies involved in the Darfur campaign. The members of the State Security Committee included the Governor of the state (who also reported to **HARUN**), the Area Military Leader (a representative of the Armed Forces), the Police Commander of the State, the Director of Internal Security, the Director of the State Legal Directorate, and the Commissioners of the state’s localities.<sup>182</sup> (Each locality within a state has a senior Sudanese Government representative – a Commissioner – who reports directly to the Governor of the state).

93. Annex 6 depicts the composition of the State and Locality Security Committees, their interrelationship, and the interaction of the State and Locality Security Committees with **HARUN** and **KUSHAYB**.

94. The actions taken by the State Security Committee were binding. All members of the State Security Committee, with the exception of the Armed Forces representative, were obliged to implement Committee decisions. The Armed Forces representative could do so after obtaining permission from his chain of command.<sup>183</sup> The State Security Committee also acted in accordance with a national security plan disseminated from Khartoum.<sup>184</sup>

95. Security Committees also existed in each of the localities within the states, and these Locality Committees reported to the State Security Committees, who in turn reported to **HARUN**.<sup>185</sup> The Locality Security Committee was headed by the same Commissioner who

<sup>180</sup> [FOOTNOTE REDACTED].

<sup>181</sup> [FOOTNOTE REDACTED].

<sup>182</sup> Police Forces Act (1999), Article 17, DAR-OTP-0116-0895 at 0906-0907; [FOOTNOTE PARTIALLY REDACTED].

<sup>183</sup> [FOOTNOTE REDACTED].

<sup>184</sup> [FOOTNOTE REDACTED].

<sup>185</sup> Police Forces Act (1999), Article 18(a), DAR-OTP-0116-0895 at 0907; National Security Forces Act (1999), Article 39, DAR-OTP-0021-0412 at 0425; National Security Forces Act (1999), Article 35, DAR-OTP-0021-0412 at 0424; National Security Forces Act (1999), Article 34(1), DAR-OTP-0021-0412 at 0424; [FOOTNOTE PARTIALLY REDACTED].

also sat as a member of the State Security Committee.<sup>186</sup> The remainder of the Committee, like that of the State, included representatives of the Sudanese Government, Armed Forces, Police, and the Intelligence and Security Service.<sup>187</sup> Furthermore at the locality level, a representative of the PDF and PPF sat on the Committee.<sup>188</sup> The PDF representative was responsible for coordinating with tribal leaders, including Aqid al Oqada, the activities of their militia.<sup>189</sup>

96. The chain of reporting from the Locality Security Committees to **HARUN** was made more direct in mid-2003. Until that time, the Locality Security Committees reported to Provincial Security Committees,<sup>190</sup> which in turn reported to the State Security Committees.<sup>191</sup> After the abolition of the province as a unit of government administration in mid-2003, Locality Security Committees reported to the State Security Committees,<sup>192</sup> which in turn reported to **HARUN**.<sup>193</sup>

97. Section V.D.ii describes the ways in which **HARUN**, often while travelling in Darfur, participated in one of the central tasks coordinated by the Security Committees: the recruitment, funding and arming of Militia/Janjaweed, especially in respect of Militia/Janjaweed serving under **KUSHAYB**. **HARUN** thus was simultaneously:

- a high official to whom the State and Locality Security Committees reported their management of the counterinsurgency effort, as is described in this section and depicted in Annexes 6 and 8; and also
- a direct participant in, and contributor to, the work of those Committees, especially the work of mobilising the Militia/Janjaweed and ensuring their effectiveness.

#### **iv. The Coordination and Planning of Attacks Carried out by the Armed Forces and Militia/Janjaweed**

##### **a. Introduction**

98. The repeated recruitment, training and provisioning of the Militia/Janjaweed in Darfur, begins to demonstrate the planning and forethought which accompanied the mobilisation of tribal leaders and their men.

<sup>186</sup> Police Forces Act (1999), Article 18 (f) and (g), [DAR-OIP-0116-0895](#) at 0907.

<sup>187</sup> Police Forces Act (1999), Article 18, [DAR-OTP-0116-0895](#) at 0907.

<sup>188</sup> [FOOTNOTE REDACTED].

<sup>189</sup> [FOOTNOTE REDACTED].

<sup>190</sup> Police Forces Act (1999), Article 18(7), [DAR-OIP-0116-0895](#) at 0907.

<sup>191</sup> Police Forces Act (1999), Article 18(5), [DAR-OIP-0116-0895](#) at 0907.

<sup>192</sup> Local Government Act 2003, Article 19(3), [DAR-OIP-0116-0959](#) at 0965. [FOOTNOTE PARTIALLY REDACTED].

<sup>193</sup> [FOOTNOTE REDACTED].

99. The manner in which the Armed Forces and Militia/Janjaweed attacked towns and villages in Darfur also belies the notion that the Armed Forces lacked knowledge of the intended actions of the Militia/Janjaweed. The Armed Forces routinely planned and organised, with Militia/Janjaweed, joint attacks upon civilian communities in Darfur. These attacks, too, required pre-planning: coordination which would have encompassed the arming and provisioning of the participating Armed Forces and Militia/Janjaweed, taking into account the anticipated activities and needs of both groups.

100. The evidence gathered also furnishes reasonable grounds to believe that the Armed Forces and Militia/Janjaweed jointly and routinely attacked civilians living in towns and villages in Darfur, knowing that those civilians were not participating in the insurgency and thus were not valid military targets. From the attacks themselves, it is apparent that communities chosen for attack, which were usually towns and villages predominantly composed of members of the Fur, Zaghawa and Masalit tribes, were targeted irrespective of the presence of rebel insurgents in those communities. When carried out, attacks were typically launched against the town or village, including civilian targets, and did not cease until the town or village, as an entirety, had been victimised and its population forcibly displaced.

#### **b. Characteristics of the Attacks Carried Out in Darfur**

101. It has been widely reported that between 2003 and 2006, the Armed Forces and/or Militia/Janjaweed have conducted hundreds of military attacks on towns and villages in Darfur, resulting in the destruction of hundreds of villages inhabited mainly by Fur, Zaghawa and Masalit tribes, the murder and rape of thousands of civilians, the forcible transfer of hundreds of thousands, and numerous other inhumane and criminal acts, including torture, outrages on personal dignity, inhumane acts, pillaging, destruction of property and unlawful imprisonment.<sup>194</sup> [TEXT REDACTED].

102. First, the evidence gathered by the Prosecution provides reasonable grounds for believing that the Armed Forces and Militia/Janjaweed routinely carried out attacks in Darfur jointly and in a coordinated manner. In about half of the attacks described by eyewitnesses interviewed by the Prosecution, the Armed Forces arrived to attack the town or village together with Militia/Janjaweed. These attacks executed together by the Armed Forces and Militia/Janjaweed – and taking place throughout the three states of Darfur – include some of the

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<sup>194</sup> See, e.g. UNCOI Material, DAR-OIP-0018-0010 at 0064-0069, 0079 and 0161, paras. 225-249, 279 and 626; Public Source, DAR-OIP-0115-0673; Public Source, DAR-OIP-0003-0099; Public Source, DAR-OIP-0038-0055; [FOOTNOTE PARTIALLY REDACTED].

most notorious and devastating attacks of the counterinsurgency, such as upon the towns of Tawila<sup>195</sup> and Furawiya<sup>196</sup> in North Darfur, the towns of Adwa<sup>197</sup> and Labado<sup>198</sup> in South Darfur, and the towns of Deleig<sup>199</sup> and Surra<sup>200</sup> in West Darfur. Furthermore, in each of the four attacks named in the Counts, the Armed Forces and Militia/Janjaweed acted in concert. Militia/Janjaweed riding on horses and camels began the attack in the company of the Armed Forces, who were riding in army trucks or Land Cruisers. In the case of Bindisi town, military aircraft bombed the town on the first day of the attack while the ground forces were also attacking.<sup>201</sup> Similarly, while Mukjar town was controlled by Militia/Janjaweed and the PDF, the Armed Forces dropped bombs on the town<sup>202</sup> (see paras. 217-235).

103. ICC eyewitness accounts of numerous other attacks feature similar combinations of Militia/Janjaweed and land and air elements of the Armed Forces. Witnesses interviewed during this investigation often described a common scenario: that Militia/Janjaweed and ground elements of the Armed Forces arrived together to commence the attack, with uniformed men or “asakir” riding in vehicles while Militia/Janjaweed were mounted on animals. In some instances, helicopters or aircraft dropped bombs on the town or village either before or during the ground attack.

104. The characteristic elements of attacks as described by many of the above witnesses correlate with the prior reporting of UN agencies, the UNCOI, and national and international NGOs, insofar as these other sources have reported the following pattern common to the attacks carried out by the Armed Forces and Militia/Janjaweed:

- Aerial bombardment as a precursor to or in support of the ground attack;<sup>203</sup>
- Coordinated ground attacks by Militia/Janjaweed, commonly described as “Janjaweed,” riding camels or horses and Armed Forces in motor vehicles as motorised infantry;<sup>204</sup>

<sup>195</sup> Public Source, [DAR-OTP-0121-0084](#); Public Source, [DAR-OTP-0121-0078](#); Public Source, [DAR-OTP-0121-0086](#).

<sup>196</sup> Public Source, [DAR-OTP-0121-0025](#); Public Source, [DAR-OTP-0007-0070](#).

<sup>197</sup> Public Source, [DAR-OTP-0107-1151](#); Public Source, [DAR-OTP-0090-0413](#); UNCOI Material, [DAR-OTP-0018-0010](#) at 0070-0071, para. 253.

<sup>198</sup> Public Source, [DAR-OTP-0121-0014](#); Public Source, [DAR-OTP-0121-0036](#); Public Source, [DAR-OTP-0121-0039](#).

<sup>199</sup> UNCOI Material, [DAR-OTP-0018-0010](#) at 0078 and 0083, paras. 275, 297; UNCOI Material, [DAR-OTP-0116-0380](#) at 0638; Public Source, [DAR-OTP-0003-0099](#).

<sup>200</sup> UNCOI Material, [DAR-OTP-0018-0010](#) at 0077, para. 272.

<sup>201</sup> [FOOTNOTE REDACTED].

<sup>202</sup> [FOOTNOTE REDACTED].

<sup>203</sup> See, e.g. UNCOI Material, [DAR-OTP-0018-0010](#) at 0057, para. 186; Public Source, [DAR-OTP-0003-0099](#) at 0142; Public Source, [DAR-OTP-0090-0197](#) at 0202.

<sup>204</sup> See, e.g. UNCOI Material, [DAR-OTP-0018-0010](#) at 0037, para. 112; Public Source, [DAR-OTP-0115-0698](#); Public Source, [DAR-OTP-0003-0185](#) at 0201; [FOOTNOTE PARTIALLY REDACTED].



- Attacking forces murder, rape, pillage, loot or destroy livestock, and destroy civilian structures including homes;<sup>205</sup>
- Attacking forces murder, rape and harass civilians, even as they attempt to escape,<sup>206</sup> and also after detaining and confining them;<sup>207</sup>
- Attacking forces succeed in destroying all or part of the town or village, forcing the civilian population to flee.<sup>208</sup>

### c. The Joint Planning Required to Carry Out the Attacks

105. The frequent joint perpetration of attacks makes apparent that **HARUN** could not have failed to appreciate the scope of the attacks, including the intended activities of the Militia/Janjaweed. The coordinated attacks logically required preparatory efforts on the part of relevant elements of the Sudanese authorities – such as those made by the State and Locality Security Committees – to provide the necessary organisation, guidance and logistical support. In the case of the joint attacks, merely the logistical requirements associated with conducting the attacks in such an extreme operational environment – arranging the dropping of bombs by aircraft or helicopter, the delivery of vehicles with adequate weaponry and fuel, or the payment, arming and provisioning of the recruited Militia/Janjaweed – would have required significant advanced planning, after taking into account the anticipated activities and needs of the Militia/Janjaweed. Witnesses at times saw the coordination between the Armed Forces and Militia/Janjaweed at work during the attacks themselves, when military aircraft delivered replenishments of ammunition to groups of Militia/Janjaweed during attacks, or aircraft carried wounded attackers away in the aftermath of the fight.<sup>209</sup>

106. Other characteristics of the attacks reveal the close coordination and planning between the Armed Forces and Militia/Janjaweed. For example, Militia/Janjaweed used government buildings and facilities to detain civilians. When Mukjar town was attacked, **KUSHAYB**, who participated in that attack, established his headquarters in a former police station. He

<sup>205</sup> See, e.g. Public Source, [DAR-OTP-0115-0698](#); UNCOI Material, [DAR-OTP-0018-0010](#) at 0057, para. 186; Public Source, [DAR-OTP-0003-0185](#) at 0200.

<sup>206</sup> See, e.g. Public Source, [DAR-OTP-0115-0673](#) at 0683 and 0688, paras. 30, 58; UNCOI Material, [DAR-OTP-0018-0010](#) at 0125, para. 481; Public Source, [DAR-OTP-0003-0185](#) at 0198 and 0200; [FOOTNOTE PARTIALLY REDACTED].

<sup>207</sup> See, e.g. Public Source, [DAR-OTP-0115-0673](#) at 0691, para. 74; UNCOI Material, [DAR-OTP-0018-0010](#) at 0105, para. 396.

<sup>208</sup> See, e.g. Public Source, [DAR-OTP-0115-0673](#) at 0691, para. 74; UNCOI Material, [DAR-OTP-0018-0010](#) at 0067, para. 242; [FOOTNOTE PARTIALLY REDACTED].

<sup>209</sup> [FOOTNOTE REDACTED].

was also seen using two Land Cruisers – commonly used by the Armed Forces - to transport a group of about 20 detained men to a place known as Bedingair, where the men were shot and killed. [TEXT REDACTED].

107. Victims also identified yet another reason that they became convinced of the complicity of elements of the security forces in atrocities perpetrated by the Militia/Janjaweed: the failure of the Armed Forces, the PDF or the Police, even when they were present in bases at the attack site, to protect or defend civilians from actions of the Militia/Janjaweed.<sup>210</sup> It was even the case that victims learned, when they complained of crimes committed by the Militia/Janjaweed, that those crimes had been approved by certain officials. [TEXT REDACTED].<sup>211</sup>

#### **d. The Targeting of Civilians Irrespective of Any Valid Military Objective**

108. Eyewitnesses interviewed by the Prosecution also establish that the Armed Forces and Militia/Janjaweed commonly attacked the civilian populations of towns and villages irrespective of the existence of any valid military objective. In the case of most of the attacks described to the Prosecution, the town or village, when attacked, was devoid of any rebel presence.<sup>212</sup> In some cases, rebels were reported by the eyewitnesses to have been based near to the town or village, or to have been present some days before the attack, but only extremely rarely were Armed Forces and Militia/Janjaweed reported to have engaged rebels who had been staying in the town or village. Witnesses also described instances in which rebels were known to be staying at some location outside of the town or village, but attackers from the Armed Forces and Militia/Janjaweed bypassed that location to attack the town or village instead.<sup>213</sup> Witnesses described instances in which rebels defended the town or village after arriving during the attack commenced by the Armed Forces or Militia/Janjaweed,<sup>214</sup> or the villagers themselves attempted an armed defence, after being attacked.<sup>215</sup>

109. Most fundamentally, the typical plan of an attack carried out by the Armed Forces and Militia/Janjaweed did not involve the targeting of any military objective; rather the entire town or village was assaulted at once. The attacks also were usually not halted until the civilian population had been systematically victimised: through widespread pillaging and looting

<sup>210</sup> [FOOTNOTE REDACTED].

<sup>211</sup> [FOOTNOTE REDACTED].

<sup>212</sup> [FOOTNOTE REDACTED].

<sup>213</sup> [FOOTNOTE REDACTED].

<sup>214</sup> [FOOTNOTE REDACTED].

<sup>215</sup> [FOOTNOTE REDACTED].

of residences or marketplaces, mass torture or killings of groups of civilian residents, and displacement of the resident community.

110. The attacks which are the subject of this application demonstrate that in the Wadi Salih and Mukjar Localities the Armed Forces and Militia/Janjaweed were systematically displacing civilians from area to area, and pursuing and attacking the displaced as they fled. As described below in Section V.E.iv and depicted in Annex 7, numerous predominantly Fur villages scattered in the two localities were attacked in July and early August 2003, and thousands of displaced persons fled to Bindisi and Mukjar. The Armed Forces and Militia/Janjaweed then attacked Bindisi on or about 15 August 2003, and after displacing additional civilians to Mukjar, attacked Mukjar on or about 17 August 2003. By the time Mukjar was attacked, it was swollen with approximately 34,000 persons who had been displaced from areas as diverse as Bindisi and the Sindu Hills. These attacks indicate a strategy not of targeting rebels, but of targeting communities identified with rebels.<sup>216</sup>

111. The circumstance that the Armed Forces and Militia/Janjaweed elected to attack communities whose residents were predominantly from the Fur, Zaghawa and Masalit tribes,<sup>217</sup> and usually attacked those communities *in toto*, suggests strongly that the attackers were targeting not rebel forces, but more broadly civilian communities composed of tribes the attackers associated with the rebels. The next part of this application describes: (1) the direct contributions of **HARUN** to the recruitment, funding, arming and incitement of Militia/Janjaweed, and his knowledge that those contributions would further and promote crimes against civilian populations committed by the Militia/Janjaweed, among other attackers; and (2) the direct participation of **KUSHAYB**, as a Militia/Janjaweed leader, in crimes against civilian populations.

## **D. The Personal Responsibility of Ahmad HARUN and Ali KUSHAYB**

### **i. Introduction**

112. This section of the application describes the contributions of **Ahmad HARUN** and **Ali KUSHAYB** to a common plan to pursue a shared and illegal objective of attacking civilian populations in Darfur.

113. As was described above, in Section V.C.iii.c. **HARUN** as the appointee to the "Darfur Security desk" had the capacity to oversee the Security Committees responsible for coordinating

<sup>216</sup> [FOOTNOTE REDACTED].

<sup>217</sup> [FOOTNOTE REDACTED].

the counterinsurgency in Darfur. Moreover, in frequent trips to Darfur, he exercised his power as the holder of the “Darfur Security desk” by participating in one of the key activities within the scope of Committee work – the recruiting, arming, and funding, of Militia/Janjaweed in Darfur. Crucially, **HARUN** recruited Militia/Janjaweed, and provided support to them, with full knowledge that the *means* used by these Militia/Janjaweed, acting in concert with the Armed Forces, would be to attack the predominantly Fur populations of towns and villages, to persecute these civilian populations, and to engage in other crimes, such as killings, rapes and the forcible transfer of civilians.

114. The Prosecution refers the Chamber to Annex 8, entitled “Structures and relationships in the counterinsurgency in Darfur from April 2003 to April 2004”.

115. The description of **HARUN**’s activities in Darfur also reinforces the assertion that the attacks carried out by the Armed Forces and Militia/Janjaweed demanded a level of pre-planning which could only have been successfully accomplished if the coordinators had full knowledge of the manner in which the attacks would be carried out. **HARUN** well knew that the Militia/Janjaweed he recruited were attacking entire civilian communities and he expressed, on a number of occasions, his understanding that the Militia/Janjaweed would not distinguish within these Fur communities between military and civilian objectives. He spoke publicly, and directly to the Militia/Janjaweed, of his desire that the Militia/Janjaweed attack the tribes associated with the rebels, rather than rebel combatants.

116. The sections below describe, first, **HARUN**’s contributions to the combined assaults of the Armed Forces/Militia/Janjaweed, and second, the evidence and information that he well knew the means and methods used by these forces.

117. **KUSHAYB**, in his capacity as a Militia/Janjaweed leader, himself led and participated in the attacks upon Kodoom, Bindisi, Mukjar and Arawala, which form the basis for this application (see Section V.E.iv and the above Counts).

118. **HARUN**, as Minister of State for the Interior, provided funds, weapons and equipment to the Militia/Janjaweed serving under **KUSHAYB**. He met with **KUSHAYB** and provided the means to **KUSHAYB** and his Militia/Janjaweed, whom he incited at least once, to commit the crimes specified in the counts above.

## ii. **HARUN**’s Recruitment, Funding, Arming and Incitement of Militia/Janjaweed

119. **HARUN** himself was often physically present in Darfur to carry out his duties. Beginning in about April 2003, he visited Darfur on a regular basis<sup>218</sup> (see Annex 4). In July and August 2003 he was in Darfur on at least six occasions.<sup>219</sup>

120. Upon first describing **HARUN**, witnesses typically identified him as the official from Khartoum responsible for mobilising, funding and/or arming the “Janjaweed” or “Fursan”. They reported knowing of **HARUN** from seeing him in Darfur in the company of groups of other officials, including: other Government ministers from Khartoum, State Governors, officers of the Armed Forces (including the Sudanese Air Force), high-ranking members of the Police, member of the Sudanese security services, PDF Coordinators, and Locality Commissioners. Witnesses also often stated that they saw **HARUN** meeting with or addressing leaders of the Militia/Janjaweed, including **KUSHAYB**.<sup>220</sup>

121. **HARUN** stated in hearings before the NCOI that he spent four months in the operational areas in Darfur, gaining knowledge of the military operations taking place there.<sup>221</sup> He admitted, in his interview with the UNCOI, that in addition to receiving the minutes of the State Security Committees, he consulted with others on those Committees about how to respond to the rebellion in Darfur.<sup>222</sup> Minutes of the State Security Committees in Darfur show that **HARUN** attended State Security Committee meetings while in Darfur and was also informed of, and consulted about, such diverse matters as: rations for the troops, the deployment of police vehicles, and recently received security assessments.

#### **a. Recruitment of Militia/Janjaweed**

122. **HARUN** personally and actively recruited Militia/Janjaweed while in the Darfur region.<sup>223</sup> To the UNCOI, he described his “recruitment” role as follows:

“When the State felt the need to reinforce its human resources, it opened up recruitment and some tribal leaders felt the need to respond. This is what we call the PDF. These tribal leaders – some men were directly recruited into the armed forces, others were responsible for protecting the corridors . . . . I addressed the tribes, explained the situation, asked them for help in recruiting people”.<sup>224</sup>

<sup>218</sup> [FOOTNOTE REDACTED].

<sup>219</sup> [FOOTNOTE REDACTED].

<sup>220</sup> [FOOTNOTE REDACTED].

<sup>221</sup> [FOOTNOTE REDACTED].

<sup>222</sup> [FOOTNOTE REDACTED].

<sup>223</sup> [FOOTNOTE REDACTED].

<sup>224</sup> [FOOTNOTE REDACTED].

123.[TEXT REDACTED].<sup>225</sup> For example, he arrived by helicopter, in the town of Mukjar on the same day as a rebel attack which is likely to have occurred between 3 August 2003 and 10 August 2003 resulting in the killing of a number of Central Reservists.<sup>226</sup> At the same time, Militia/Janjaweed under the command of **KUSHAYB** had begun moving to Mukjar from Garsila town. **HARUN** first met privately with **KUSHAYB** and other Militia/Janjaweed leaders, and then gave a speech to army and police commanders, the governor of West Darfur and commanders of the Militia/Janjaweed, including **KUSHAYB**.<sup>227</sup> **HARUN** stated that “since the children of the Fur had become rebels, all the Fur and what they had, had become booty for the Mujahidin”.<sup>228</sup> The Militia/Janjaweed who were present applauded and shouted “God is Great”. **HARUN** then promised the sum of 10,000,000 Sudanese Pounds to the Militia/Janjaweed and also stated that the Government would continue to help them.<sup>229</sup> Immediately upon **HARUN**’s departure the Militia/Janjaweed looted Mukjar town and its market [TEXT REDACTED].<sup>230</sup>

124.During this episode, as related above, a group of Mukjar residents complained to the Central Reservists’ office about the looting by the Militia/Janjaweed, and were told that nothing could be done because the looters were “acting on the orders of the Minister of State”,<sup>231</sup> referring to **HARUN**.<sup>232</sup>

125.Documents created in the office of the Governor of West Darfur show that in November 2003, **HARUN** ordered the recruitment of Militia/Janjaweed during an inspection and recruitment visit to a camp in the village of Qardud, South Darfur. During the visit, on 18 November 2003, he announced that there should be preparations to “recruit 300 ‘knights’ for Khartoum” and directed the Governor to ensure the completion of the recruitment, as well as other tasks relating to the counterinsurgency. Less than a week later, the Governor directed the Commissioners of the localities of Nyala and Kass to execute **HARUN**’s directive.<sup>233</sup>

126.**HARUN** also was seen at training camps, once Militia/Janjaweed had successfully been recruited. On the occasion related above, when he attended a training camp near Nyala during which a group of 150 Militia/Janjaweed were initiated. **HARUN** was in the company of other

<sup>225</sup> [FOOTNOTE REDACTED].

<sup>226</sup> [FOOTNOTE REDACTED].

<sup>227</sup> [FOOTNOTE REDACTED].

<sup>228</sup> [FOOTNOTE REDACTED].

<sup>229</sup> [FOOTNOTE REDACTED].

<sup>230</sup> [FOOTNOTE REDACTED].

<sup>231</sup> [FOOTNOTE REDACTED].

<sup>232</sup> [FOOTNOTE REDACTED].

<sup>233</sup> [FOOTNOTE REDACTED].

Government officials when a Militia/Janjaweed leader assured the group that the Arab tribes “can wipe out the areas of Fur, Zaghawa and Masalit in a matter of one month”.<sup>234</sup>

#### **b. Funding of Militia/Janjaweed**

127. **HARUN** also funded Militia/Janjaweed in Darfur, as is demonstrated by the promise he made to distribute 10 million Sudanese pounds, or more, to the Militia/Janjaweed who attended his speech in Mukjar.<sup>235</sup> [TEXT REDACTED].<sup>236</sup> [TEXT REDACTED] because the airstrip had been cleared to permit humanitarian aid to be delivered.

128. [TEXT REDACTED] the funds distributed by **HARUN**, and the manner in which he distributed them, led them to believe that he funded the Militia/Janjaweed. [TEXT REDACTED] payments that he had made or promised to Militia/Janjaweed leaders from the area of Kass in South Darfur, the town of Al Geneina and the area of Zallingi in West Darfur.<sup>237</sup> **HARUN**'s budget was unlimited and not publicly audited. [TEXT REDACTED] **HARUN**'s disbursements were for the Militia/Janjaweed.<sup>238</sup> [TEXT REDACTED] the Militia/Janjaweed were paid with cash, stated that **HARUN** travelled with well guarded boxes.<sup>239</sup> The weight of the boxes and the attendant security led others to believe they contained money.<sup>240</sup>

129. The salaries paid to the Militia/Janjaweed were also conveyed through people and entities who reported directly or indirectly to **HARUN**: the Governors, State Security Committees and PDF Coordinators. From at least 2003 members of the Militia/Janjaweed in Darfur were paid, through their tribal leaders, monthly salaries of between 150,000 and 750,000 Sudanese Pounds or more.<sup>241</sup> Umdahs (tribal leaders), who played a significant role in mobilising fighters from tribes, also received funding from the Government, as did Emirs and Oqada.<sup>242</sup> During the counterinsurgency campaign, the Governor and the State Security Committees replaced the provinces and localities as the entities responsible for paying the Emirs, Umdahs and Oqada of the tribes in the Darfur states.<sup>243</sup> PDF Coordinators typically paid fighters in the

<sup>234</sup> [FOOTNOTE REDACTED].

<sup>235</sup> [FOOTNOTE REDACTED].

<sup>236</sup> [FOOTNOTE REDACTED].

<sup>237</sup> [FOOTNOTE REDACTED].

<sup>238</sup> [FOOTNOTE REDACTED].

<sup>239</sup> [FOOTNOTE REDACTED].

<sup>240</sup> [FOOTNOTE REDACTED].

<sup>241</sup> [FOOTNOTE REDACTED].

<sup>242</sup> [FOOTNOTE REDACTED].

<sup>243</sup> [FOOTNOTE REDACTED].

Militia/Janjaweed, adding an amount when the fighter “enlisted” together with his own weapon or animal, e.g. horse or camel.<sup>244</sup>

130.**HARUN** also authorised and encouraged Militia/Janjaweed to claim as a form of “salary” the spoils of their efforts, as is demonstrated by the episode in August 2003 when **HARUN** encouraged **KUSHAYB**, among others, to take the booty of “all the Fur”, and the Militia/Janjaweed then looted Mukjar town. Looting is reported by the victims and witnesses in most of the attacks which are the subject of this application.<sup>245</sup>

### **c. Arming of Militia/Janjaweed**

131.**HARUN** personally committed to deliver, and did deliver, arms to Militia/Janjaweed in Darfur.

132.As is recounted above, **HARUN** announced to a crowd at a meeting at Al Geneina, in July 2003, that he held the power to kill or forgive whoever in Darfur, for the sake of peace and security.<sup>246</sup> Later on the same day, the delegation met with a group of Militia/Janjaweed in an area north of the town of Al Geneina. At this gathering the Militia/Janjaweed asked for weapons and **HARUN** promised to provide them.<sup>247</sup>

133.[TEXT REDACTED] landings of aircraft in the localities of Kobong and Rehed al Birdi,<sup>248</sup> in South Darfur, and in Garsila, in West Darfur. **HARUN** [TEXT REDACTED] was present for these deliveries, which reportedly took place between August and September of 2003 in Kobong and Garsila and once in Rehed al Birdi, in January 2004. [TEXT REDACTED] Aqid al Oqada of the Militia/Janjaweed in Darfur received their “quotas of firearms” from these shipments; once the weapons arrived, the Militia/Janjaweed leaders went with their men to collect them.<sup>249</sup>

134.[TEXT REDACTED].<sup>250</sup>

135.[TEXT REDACTED].<sup>251</sup> [TEXT REDACTED].<sup>252</sup>

136.[TEXT REDACTED]<sup>253</sup> [TEXT REDACTED].<sup>254</sup> [TEXT REDACTED].

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<sup>244</sup> [FOOTNOTE REDACTED].

<sup>245</sup> [FOOTNOTE REDACTED].

<sup>246</sup> [FOOTNOTE REDACTED].

<sup>247</sup> [FOOTNOTE REDACTED].

<sup>248</sup> [FOOTNOTE REDACTED].

<sup>249</sup> [FOOTNOTE REDACTED].

<sup>250</sup> [FOOTNOTE REDACTED].

<sup>251</sup> [FOOTNOTE REDACTED].

<sup>252</sup> [FOOTNOTE REDACTED].

<sup>253</sup> [FOOTNOTE REDACTED].

<sup>254</sup> [FOOTNOTE REDACTED].



137.[TEXT REDACTED].<sup>255</sup>

#### **d. Incitement to attack civilians**

138.As is demonstrated by the speech that **HARUN** gave in early August 2003 in Mukjar town (see paras. 123-124), he also personally incited Militia/Janjaweed to attack the civilians indiscriminately.<sup>256</sup>

139.The attacks in the Wadi Salih and Mukjar Localities which are the focus of this investigation can be placed in the context of a series of speeches and pronouncements made by **HARUN** in the weeks in July and August 2003 leading to the attacks. [TEXT REDACTED] heard him addressing Militia/Janjaweed in different fora in those weeks, where **HARUN** consistently incited attacks upon the civilian populations associated with the rebels, rather than the rebels themselves.

140.[TEXT REDACTED]<sup>257</sup> [TEXT REDACTED].<sup>258</sup>

141.It was also in or around July 2003 that **HARUN** had delivered in Al Geneina the speech in which he stated that he had been given the power to kill or forgive whoever in Darfur for the sake of peace and security. Other statements made by him in the Al Geneina speech provided elaboration of the “cleaning” operation he advocated in Kass. He announced that they were ready to kill  $\frac{3}{4}$  of Darfur in order to allow  $\frac{1}{4}$  to live.<sup>259</sup> Addressing the local residents, **HARUN** instructed them to go to their “sons” and ask them to surrender. [TEXT REDACTED].<sup>260</sup>

142.Finally, **HARUN**’s speech in Mukjar in early August 2003 immediately sparked the looting attack on Mukjar.<sup>261</sup> The Militia/Janjaweed who had heard this speech commenced a looting spree as soon as **HARUN** departed. The next day, **KUSHAYB** and the Militia/Janjaweed under his command commenced burning all the towns and villages between Bindisi and Mukjar. By 15 August 2003 **KUSHAYB** and the Militia/Janjaweed under his command had commenced the attacks in the areas in or around Kodoom, Bindisi and Mukjar, as described in the Counts and at paras. 191-235.<sup>262</sup>

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<sup>255</sup> [FOOTNOTE REDACTED].

<sup>256</sup> [FOOTNOTE REDACTED].

<sup>257</sup> [FOOTNOTE REDACTED].

<sup>258</sup> [FOOTNOTE REDACTED].

<sup>259</sup> [FOOTNOTE REDACTED].

<sup>260</sup> [FOOTNOTE REDACTED].

<sup>261</sup> [FOOTNOTE REDACTED].

<sup>262</sup> [FOOTNOTE REDACTED].

### **iii. HARUN's Knowledge of the Means Employed by Militia/Janjaweed in Attacking Villages and Towns Inhabited Primarily by the Fur, Zaghawa and Masalit Tribes**

143. As much of the foregoing demonstrates, **HARUN** well knew, at the time that he was recruiting, funding, arming and encouraging Militia/Janjaweed, that those militias would use illegal means to fight the counter insurgency. He also well knew that this would include the persecution of civilians belonging to mainly Fur, Zaghawa and Masalit tribes by, among other things, the launching of wholesale attacks upon the towns and villages and the commission of criminal acts such as murder, rape, destruction of property and forcible transfer of the civilian population.

144. The reasonable grounds to conclude that **HARUN** shared a common objective with the Militia/Janjaweed – specifically, of intentionally targeting and persecuting civilians belonging to mainly Fur, Zaghawa and Masalit tribes through crimes – derives from a number of facts and circumstances, each of which is described below.

#### **a. HARUN'S Own Statements Establishing Knowledge of the Crimes Committed by the Militia/Janjaweed**

145. **HARUN's** own public statements and speeches while in Darfur demonstrate that he had full knowledge that the Militia/Janjaweed were routinely attacking civilian populations and committing crimes against them. He not only knew about, but also encouraged, the further commission of those crimes. During interviews before the UNCOI and NCOI, **HARUN** did not contest that he knew about the crimes being committed in Darfur. Instead, he maintained that those crimes were justified or excusable.

146. The accounts of **HARUN's** various speeches in Darfur establish that he well knew the methods used by the Militia/Janjaweed. His statements to audiences which included Militia/Janjaweed leaders and troops that they should view "all the Fur" as their property, or regard the killing of ¾ of Darfur to be justified, were plainly prescriptions to attack the civilian population, not perpetrators of the rebellion.

147. Moreover, when interviewed before the NCOI, in July 2004,<sup>263</sup> and UNCOI, in January 2005,<sup>264</sup> **HARUN** denied the culpability of the Sudanese Government for crimes committed in Darfur, but not on the basis that he lacked knowledge of the characteristics of the attacks carried out by the Armed Forces. When asked for an "explanation for the destruction we have seen, the displacement, [the] looting", he did not deny knowing the basis for the question. In-

<sup>263</sup> [FOOTNOTE REDACTED].

<sup>264</sup> [FOOTNOTE REDACTED].

stead, he explained that the Armed Forces had faced a “dilemma”, even if, “as a general policy”, the Sudanese Government did not approve of “attacks against civilians”. The dilemma, he stated, was that the “rebels infiltrate the villages” and thus that the villages “are like water to fish”. When asked whether he kept any records of “villages destroyed, victims, civilian casualties”, **HARUN** responded “there is a war”. He used the word “mistakes” to respond to questions about crimes perpetrated against civilians. **HARUN** acknowledged that the recruited “volunteers”, including the Militia/Janjaweed, were “less disciplined”, although the attacking forces “would go together, with one objective, under one leadership”.

**148.** **HARUN**’s denial of responsibility was therefore ultimately based on the view that wholesale attack upon the “water” in which the “fish”, or rebels, might be hiding, was a defensible military strategy. This proposition – that the potential rebel habitats or communities were as dangerous as the rebels – tellingly differed little from his statements that “all the Fur”, or ¼ of the population of Darfur, should be regarded as the target of the counterinsurgency campaign.

**149.** During his appearance before the UNCOI, in January 2005, **HARUN** minimised the severity of the crimes committed in Darfur, asserting that while “there had been individual instances of criminality”, his “four months within the operational area” had convinced him that there had been “no violations of fundamental human rights”. He again acknowledged and justified the attacking of civilians, repeating the rationale that “rebels sought protection in villages whose inhabitants were of the same tribe”. According to **HARUN**, this factor “complicated military operations and made it impossible to prevent civilian casualties”. At the NCOI, he finally stated that the problem in Darfur was that his Government had “won the military battle but lost the media one”.

#### **b. Knowledge Drawn from HARUN’s Responsibilities**

**150.** **HARUN** had first-hand knowledge of the crimes committed by the Militia/Janjaweed. He travelled in Darfur for the express purpose of monitoring the progress of the conflict. His job was to assess the effectiveness of the strategy he advocated in the speeches he claimed to make on behalf of his Government. The results of the implementation of this strategy – the destruction and displacement of the attacked civilian communities, and the forcible transfer of these populations from location to location – was exactly the matter within **HARUN**’s scrutiny, and hardly could have escaped his awareness as he himself travelled from town to town.

**151.** He obviously received reporting regarding the rebellion and the counterinsurgency, from the host of officials, Security Committee representatives, local leaders, and local residents with whom he came into contact. In Khartoum and in Darfur, residents of Darfur and their

leaders and representatives confronted **HARUN** with the crimes and atrocities that had been committed in their communities. In Darfur, **HARUN** was well and clearly warned, by civilians and by the Militia/Janjaweed leaders themselves, that the Militia/Janjaweed were broadly targeting the tribes associated with the rebels.

152.[TEXT REDACTED].<sup>265</sup>

153.The NCOI heard, [TEXT REDACTED], [TEXT REDACTED] **HARUN** about crimes the Militia/Janjaweed had committed in Kutum town in North Darfur in August 2003. [TEXT REDACTED] that after Kutum, a town of 30.000 inhabitants, had been attacked by rebels, who targeted government establishments, Militia/Janjaweed had responded by attacking the town, the market, and the civilians. The attack resulted in residents being killed and robbed, and 70% of the civilian population displaced to Al Fashir. [TEXT REDACTED] had contacted **HARUN**, among others, and told him about the incursions by the Militia/Janjaweed in Kutum and explained that the people of Kutum had nothing to do with the rebellion. [TEXT REDACTED].<sup>266</sup>

154.**HARUN**'s speech in Mukjar town in early August 2003 was made in the midst of other clear expressions that the Militia/Janjaweed were poised to attack the nearby civilian communities indiscriminately. Just before his speech, and in his presence, a man named 'Abdallah Turshayn, the Chairman of the Mukjar Security Committee, told the crowd that "he and the Government would do everything to clear the area of rebels".<sup>267</sup> **HARUN** then promised to stand by the Militia/Janjaweed and furnish 10 million Sudanese pounds, adding his statement that "all the Fur and what they had" should be considered the booty of the Mujahideen.<sup>268</sup> After his speech, residents in the audience confronted him with the implications of his words. The Shartay (a tribal community leader) spoke out, saying that what **HARUN** had said was not appropriate for a Minister to say. Another resident shouted to **HARUN** that the people there were innocent and that the Government intended to kill them. **HARUN** ignored these remarks.<sup>269</sup>

155.**HARUN**'s speech in Al Geneina (see para. 141) reinforced statements of intention made by the Militia/Janjaweed. On that day, **HARUN**'s speech was preceded by that of the notorious Militia/Janjaweed leader Musa Hilal.<sup>270</sup> Hilal's speech was characterised by the witness who heard it as "very racist". Hilal was enthusiastic about unifying to fight the enemy and

<sup>265</sup> [FOOTNOTE REDACTED].

<sup>266</sup> [FOOTNOTE REDACTED].

<sup>267</sup> [FOOTNOTE REDACTED].

<sup>268</sup> [FOOTNOTE REDACTED].

<sup>269</sup> [FOOTNOTE REDACTED].

<sup>270</sup> [FOOTNOTE REDACTED].

characterised the conflict as a “holy war”. Hilal’s remarks were followed by **HARUN**’s announcement that the President had handed him the Darfur Security desk and that he had the power and authority to kill and forgive whoever in Darfur. It was shortly after the meeting in Al Geneina that **HARUN** travelled together with Hamid Dawa’i in the helicopter as described in paras. 135 and 136.

156. Finally, it should be recalled that the planning and coordination responsibilities of **HARUN** required him to know the intended scope of the attacks in Darfur and, in particular, that the attacks encompassed the purpose of persecuting civilians. The attacks required the recruitment and gathering of forces in numbers adequate to successfully carry out those attacks; the coordination of the activities of the Armed Forces or PDF, on the one hand, and the Militia/Janjaweed, on the other; and the provision of weapons, vehicles and bases of operation. **HARUN** could not have carried out his responsibilities without knowing that the attacking forces intended to mount wholesale attacks upon towns and villages and their civilian populations.

### **c. Public Notice of the Crimes of the Militia/Janjaweed**

157. Between mid-2003 and March 2004, there was, of course, also increasing public and international awareness and outcry that Militia/Janjaweed, and others, were committing atrocities in Darfur. The evidence and information relating to **HARUN** demonstrates that the mobilisation of the Militia/Janjaweed, and the arming, funding and inciting of the Militia/Janjaweed continued despite the increasing knowledge of the crimes of Militia/Janjaweed.

158. International bodies, including the United Nations and the European Union, were discussing bilaterally with representatives of the Sudanese Government and publicly in the media that crimes were being committed in Darfur by the Militia/Janjaweed. By late 2003,<sup>271</sup> for example, UN Secretary-General Kofi Annan as well as UN agencies and news services were reporting systematic raids on civilian populations in Darfur, resulting in the displacement of hundreds of thousands of civilians and a state of humanitarian crisis.<sup>272</sup> These entities charac-

<sup>271</sup> Public Source, [DAR-OTP-0115-0731](#); Public Source, [DAR-OTP-0115-0740](#); Public Source, [DAR-OTP-0115-0742](#); Public Source, [DAR-OTP-0115-0744](#); Public Source, [DAR-OTP-0115-0745](#); Public Source, [DAR-OTP-0115-0746](#); Public Source, [DAR-OTP-0115-0747](#); Public Source, [DAR-OTP-0115-0750](#); Public Source, [DAR-OTP-0115-0752](#).

<sup>272</sup> Public Source, [DAR-OTP-0090-0457](#) at 0472; Public Source, [DAR-OTP-0115-0753](#); Public Source, [DAR-OTP-0020-0067](#) at 0082; Public Source, [DAR-OTP-0090-0197](#); Public Source, [DAR-OTP-0115-0756](#) at 0756; Public Source, [DAR-OTP-0115-0758](#); Public Source, [DAR-OTP-0115-0759](#); Public Source, [DAR-OTP-0115-0771](#).

terised the reported abuses of civilians – including killings, sexual violence, and the burning and looting of villages – as violations of international humanitarian and human rights law.<sup>273</sup>

159. Also in the same time period, members of the Sudanese Government were calling attention to crimes and abuses being committed by the Militia/Janjaweed. On 26 October 2003, President Al Bashir vowed to rein in pro-government Militia/Janjaweed after Members of Parliament from Darfur boycotted parliament. MP Khalid Bilal stated that the Militia/Janjaweed, “originally formed and armed by the government to help fight the rebels, are guilty of robbery, looting and killing” and are out of control.<sup>274</sup> On 15 December 2003, Darfuri members of Sudan’s National Assembly appealed for international intervention into Darfur to stop killings and displacements. They posited that the Sudanese Government was manipulating traditional ethnic tensions and pursuing a policy of “Arabisation” in Darfur, in order to maintain a support base there.<sup>275</sup>

160. The crimes being committed in Darfur by the Militia/Janjaweed were well-known to **HARUN**, or to others, during the period relevant to this application.

#### **iv. The Participation and Knowledge of Ali KUSHAYB**

161. **KUSHAYB**, as the highest ranking tribal military leader in Wadi Salih, directed and was himself present at attacks upon villages and towns in the Wadi Salih area. Thus he knew the illegal means by which the Militia/Janjaweed were carrying out these attacks.<sup>276</sup> [TEXT REDACTED].<sup>277</sup>

162. As is described below, **KUSHAYB** himself, with Armed Forces and Militia/Janjaweed, attacked the town of Kodoom, killing civilians and forcing approximately 20,000 civilians to flee. He was also present during the attack at Bindisi town, when again civilians were killed and driven out.<sup>278</sup> After the attack on Mukjar town, **KUSHAYB** in conjunction with Militia/Janjaweed and Armed Forces, detained, tortured and killed civilians. In Arawala town, approximately 300 Militia/Janjaweed, including **KUSHAYB**, together with the Armed Forces, attacked and raided, as in the prior attacks.<sup>279</sup>

<sup>273</sup> Public Source, [DAR-OIP-0115-0745](#); Public Source, [DAR-OIP-0115-0746](#); Public Source, [DAR-OIP-0115-0750](#).

<sup>274</sup> Public Source, [DAR-OTP-0118-1552](#).

<sup>275</sup> Public Source, [DAR-OTP-0115-0767](#); Public Source, [DAR-OTP-0115-0769](#).

<sup>276</sup> [FOOTNOTE REDACTED].

<sup>277</sup> [FOOTNOTE REDACTED].

<sup>278</sup> [FOOTNOTE REDACTED].

<sup>279</sup> [FOOTNOTE REDACTED].

163. In addition to participating in attacks, **KUSHAYB** also mobilised, recruited, armed and provided supplies to the Militia/Janjaweed under his command.<sup>280</sup> He was described by a witness as “the mediator” between the leaders of the Militia/Janjaweed in Wadi Salih and the Sudanese Government.<sup>281</sup> From mid-2003 to early 2004, **KUSHAYB** gathered fighters, mainly from the Arab, Tama and Gimir tribes, in the Wadi Salih and Mukjar areas.<sup>282</sup> He often ensured the enlistment of those tribesmen mobilised by him as PDF fighters.<sup>283</sup>

164. **KUSHAYB** also supplied funds from the Sudanese Government to members of the Militia/Janjaweed under his command. His four deputies, for example, who were tribal leaders based in the towns of Garsila, Bindisi, Mukjar and Zame Bayaa, obtained money and equipment from **KUSHAYB** and reported to him.<sup>284</sup> Militia/Janjaweed leaders under **KUSHAYB**'s command, with the authorisation of Commissioner of Garsila, Ja'far 'Abd-al-Hakam, collected weekly salaries from Government revenue agencies in the Wadi Salih Locality.<sup>285</sup> **KUSHAYB** also provided the Militia/Janjaweed with food, supplies and other necessities.<sup>286</sup>

## **E. Crimes Perpetrated by the Persons Who are the Subject of These Summonses**

### **i. Contextual Elements of Alleged Crimes against Humanity and War Crimes**

165. The crimes alleged in this application occurred in the factual context which has already been described above in Sections V.A and V.C. This factual context establishes that in each instance in which a crime against humanity has been alleged, the person was participating in, and knew of, widespread or systematic attacks against a civilian population. In addition, in each instance in which a war crime has been alleged, the person participated in, and knew of, an armed conflict not of an international character.

166. To establish the contextual elements of a crime against humanity, it is the Prosecution's burden to prove that: (1) the criminal conduct was part of a widespread or systematic attack directed against a civilian population; and (2) the perpetrator knew that the conduct was part of or intended the conduct to be part of such an attack. See Elements of Crimes. Article 7(2)(a) defines “attack directed against any civilian population” to mean “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian

<sup>280</sup> [FOOTNOTE REDACTED].

<sup>281</sup> [FOOTNOTE REDACTED].

<sup>282</sup> [FOOTNOTE REDACTED].

<sup>283</sup> [FOOTNOTE REDACTED].

<sup>284</sup> [FOOTNOTE REDACTED].

<sup>285</sup> [FOOTNOTE REDACTED].

<sup>286</sup> [FOOTNOTE REDACTED].

population, pursuant to or in furtherance of a State or organisational policy to commit such attack”.

167. There are reasonable grounds for concluding that the Armed Forces and Militia/Janjaweed have engaged in a course of conduct involving the commission of acts specified in paragraph 1 of Article 7 of the Rome Statute, as part of a policy to commit attacks against the civilian population. As is described above, in conducting the war effort and at least since 2003, **HARUN** recruited Militia/Janjaweed, with knowledge that they would attack civilian populations and commit crimes against civilians. The witness statements and other evidence collected by the Prosecution have also confirmed previous authoritative reports – *inter alia* from the UN agencies, the African Union, national and international NGOs, and media – that the Armed Forces indeed participated in, or provided material support to, these attacks with the Militia/Janjaweed, and thus well knew the extent and the character of the attacks upon civilians. Significantly, both the NCOI and UNCOI concluded that grave human rights breaches were committed by all parties to the conflict beginning in 2003, and the UNCOI determined that crimes such as murder and sexual violence had been committed in Darfur by the Armed Forces and the Militia/Janjaweed acting either alone or together.

168. The widespread or systematic nature of these attacks also is not doubtful. Credible secondary sources have alleged that between 2003 and 2006 the Armed Forces and Militia/Janjaweed have conducted hundreds of attacks upon civilian settlements in Darfur, resulting in the destruction of hundreds of villages.<sup>287</sup> The applicable jurisprudence has established that the Prosecution need only exclude the possibility of “isolated or random acts” to satisfy the requirement of demonstrating “widespread or systematic” attacks,<sup>288</sup> and thus that even attacks upon civilians within multiple detention camps in a single municipality, for example, may be sufficient to meet the relevant legal threshold.<sup>289</sup> Under this standard, there are ample grounds to believe that the applicable requirement has been surpassed. The attacks described below, even considered alone, exhibit the relevant characteristics of being widespread geographically and in time, and of being systematic, because they were in furtherance of a plan or policy to commit such attacks.

<sup>287</sup> UNCOI Material, [DAR-OIP-0018-0010](#) at 0064-0069, 0079 and 0161, paras. 225-249, 279 and 626; Public Source, [DAR-OIP-0115-0673](#); Public Source, [DAR-OIP-0080-0402](#) at 0409; Public Source, [DAR-OTP-0003-0099](#); Public Source, [DAR-OTP-0020-0067](#); Public Source, [DAR-OTP-0038-0055](#); Public Source, [DAR-OIP-0020-0016](#); [FOOTNOTE PARTIALLY REDACTED].

<sup>288</sup> Prosecutor v Tadic, Judgment, Trial Chamber, Case No. IT-94-I-T, 7 May 1997 at para. 648.

<sup>289</sup> See Prosecutor v Stakic, Judgment, Trial Chamber, Case No. IT-97-24-T, 31 July 2003 at para. 630; Prosecutor v Mrjda, Judgment, Trial Chamber, Case No. IT-02-59-S, 31 March 2004 at para. 10; Prosecutor v Jelusic, Judgment, Trial Chamber, Case No. IT-95-10-T, 14 December 1999 at para. 55; Prosecutor v Cesic, Judgment, Trial Chamber, Case No. IT-95-10/1-S, 11 March 2004 at para. 18.



169. There are reasonable grounds for concluding, as well, that **HARUN** and **KUSHAYB** knew of the widespread or systematic nature of the attacks upon civilians. **HARUN** served as the head of the Darfur Security desk, a position which required knowledge of the planning and implementation of the counterinsurgency campaign. **KUSHAYB**, as a Militia/Janjaweed leader, who was recruited into the PDF and fought repeatedly in attacks upon villages and towns in West Darfur, also well knew the widespread or systematic nature of the attacks.

170. The contextual elements of the war crimes specified in this application are: (1) the existence of a non-international armed conflict – *i.e.*, protracted armed violence between governmental authorities and organised armed groups; and (2) the perpetrator's awareness of the factual circumstances establishing the existence of the armed conflict. See Elements of Crimes.

171. All sides to the conflict acknowledge the existence of a sustained armed conflict in Darfur. The Sudanese Government has entered into several ceasefire and peace agreements<sup>290</sup> with the two main rebel factions, the SLM/A and the JEM, in which all parties recognised the existence of the conflict,<sup>291</sup> and invoked, *inter alia*, the Geneva Conventions of 1949<sup>292</sup> in agreeing to refrain from any act of violence or any other abuse against the civilian population.<sup>293</sup>

172. In addition, **HARUN** and **KUSHAYB** were well aware that their actions occurred in the context of the sustained armed conflict in Darfur.

## ii. The Prohibition on Attacking a Civilian Population

173. The attacks upon civilian populations alleged in the counts fall within the scope of Article 8 of the Rome Statute. Article 8(2)(e)(i) criminalises attacks directed against civilian populations or individual civilians not taking a direct part in hostilities. Even the presence of non-civilians within the civilian population does not deprive the population of its civilian character<sup>294</sup> so long as the population is predominantly civilian in nature.<sup>295</sup>

<sup>290</sup> Peace Agreement Between the Government of the Republic of Sudan and the Sudanese Liberation Army, 3-4 September 2003, [DAR-OTP-0116-0433](#); N'djamena Humanitarian Ceasefire Agreement on the Conflict in Darfur, 8 April 2004, [DAR-OTP-0043-0045](#); Protocol on the Establishment of Humanitarian Assistance in Darfur, 8 April 2004, [DAR-OTP-0043-0053](#) at 0058 (English); Agreement with the Sudanese parties on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in the Darfur, 28 May 2004, [DAR-OTP-0005-0308](#) and [DAR-OTP-0043-0016](#); Comprehensive Peace Agreement, 5 May 2006, [DAR-OTP-0115-0563](#).

<sup>291</sup> Peace Agreement Between the Government of the Republic of Sudan and the Sudanese Liberation Army, 3-4 September 2003, [DAR-OTP-0116-0433](#); N'djamena Humanitarian Ceasefire Agreement on the Conflict in Darfur signed by the Sudanese Government, SLM/A and JEM, 8 April 2004, [DAR-OTP-0043-0045](#), Article 5.

<sup>292</sup> Protocol on the Establishment of Humanitarian Assistance in Darfur, 8 April 2004, [DAR-OTP-0043-0053](#).

<sup>293</sup> N'djamena Humanitarian Ceasefire Agreement on the Conflict in Darfur signed by the Sudanese Government, SLM/A and JEM, 8 April 2004, Article 2, [DAR-OTP-0043-0045](#).

<sup>294</sup> Prosecutor v Kordic and Cerkez, Judgement, Appeals Chamber, Case No. IT-95-14/2-T, 17 December 17 2004 at para 50; Prosecutor v Strugar, Judgement, Trial Chamber, Case No. IT-01-42-T, 31 January 2005 at

174. It is a fundamental principle of humanitarian law that parties to a conflict are required to take all feasible precautions to discriminate at all times between civilians and combatants.<sup>296</sup> Lawful attacks can only be directed against military objectives.<sup>297</sup>

175. The above principles are also reflected in Article 7 of the Rome Statute, which defines crimes against humanity. In the context of Article 7 also, a population can qualify as civilian even if non-civilians are among it<sup>298</sup> and the term civilian population is interpreted broadly.<sup>299</sup>

### iii. Modes of Liability

176. **HARUN** and **KUSHAYB** are charged together under Article 25(3)(d) with having contributed to the commission of a crime by a group of persons acting with a common purpose. See Article 25(3)(d). Criminal “common purpose” responsibility is demonstrated under the Rome Statute if the contribution is made either: (1) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity and purpose involves the commission of a crime within the jurisdiction of this Court,<sup>300</sup> or (2) in the knowledge of the intention of the group to commit crimes.<sup>301</sup> There are reasonable grounds to believe that the requirements of either of these forms of “common purpose” criminal liability have been met.

177. First, **HARUN** and **KUSHAYB** both contributed to the commission of crimes, as is described above in Section V.D. In **HARUN**’s case, he recruited, funded, furnished material support and incited Militia/Janjaweed who conducted attacks and committed crimes against the civilian population, together with the Armed Forces in West Darfur. **KUSHAYB** also recruited Militia/Janjaweed, supplied those militia and led them in attacking civilian populations in West Darfur.

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para. 282; Prosecutor v Galic, Judgement, Trial Chamber, Case No. IT-98-29-T, 5 December 2003 at para. 50; Prosecutor v Galic, Judgement, Appeals Chamber, Case No. IT-98-29-A, 30 November 2006 at para. 137.

<sup>295</sup> Prosecutor v Strugar, Judgement, Trial Chamber, Case No. IT-01-42-T, 31 January 2005, para 282.

<sup>296</sup> Prosecutor v Galic, Judgement, Trial Chamber, Case No. IT-98-29-T, 5 December 2003 at para. 51, 57. See also Art. 26 of the Hague Regulations 1907; Prosecutor v. Čerkez & Kordić, Decision on the Joint Defence Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, Case No. IT-95-14/2, 2 March 1999 at paras 31-33; Prosecutor v. Strugar, Decision on Defence Preliminary Motion Challenging Jurisdiction, Case No. IT-01-42, 7 June 2002 at para. 21; Prosecutor v. Strugar, Decision on Interlocutory Appeal, Case No. IT-01-42, 22 November 2002 at para. 10.

<sup>297</sup> Triffterer, O. (ed) (1999) Commentary on the Rome Statute of the International Criminal Court, p. 186. Baden-Baden: Nomos Verlagsgesellschaft.

<sup>298</sup> Prosecutor v. Norman et al., Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, Case No. SCSL-04-14-T, 21 October 2005, para. 59; Prosecutor v Limaj et al., Judgment, Trial Chamber, Case No. IT-03-66-T, 30 November 2005 at para 186.

<sup>299</sup> Prosecutor v. Norman et al., Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, Case No. SCSL-04-14-T, 21 October 2005, para. 59; Prosecutor v Limaj et al., Judgment, Trial Chamber, Case No. IT-03-66-T, 30 November 2005 at para 186.

<sup>300</sup> See Article 25(3)(d)(i).

<sup>301</sup> See Article 25(3)(d)(ii).

178. Second, as is described above in Sections V.E.iii and V.E.iv, the contributions to the commission of crimes by **HARUN** and **KUSHAYB** were made to a group which shared a common criminal purpose: to persecute civilians they associated with rebels, primarily from the Fur, Zaghawa and Masalit tribes, through indiscriminate attacks against the civilian population, murder, rape, inhumane acts, cruel treatment, unlawful imprisonment, pillaging, forcible transfer and destruction of property. The shared criminal objective of **HARUN** and **KUSHAYB** was not merely to engage the rebels or legitimate military targets, but to attack entire towns and villages in Mukjar and Wadi Salih Localities, so long as they were inhabited by at least one of the tribes they associated with the rebel groups. The achievement of this objective did not alter any of the contributions of **HARUN** or **KUSHAYB** to the group with the shared objective: the fighters in Darfur from the Armed Forces and Militia/Janjaweed and those who led and supported them, knowing their means and methods. These contributions were made with the knowledge of the criminal means of the attackers and with the aim of furthering their criminal activity.

179. Third, as already stated, the activity and purpose of the group with the shared common objective involved at least one crime within the jurisdiction of this Court. Indeed the activity and objective of the group involved the repeated, systematic and large-scale commission of crimes against civilian populations and those taking no active part in hostilities.

180. When the Prosecution has concluded that there are reasonable grounds to believe that **KUSHAYB** committed the crime at issue in addition to contributing to a group whose common purpose and activities involved the commission of that crime, **KUSHAYB** has been named in an additional count specifying that his individual criminal responsibility lies under Article 25(3)(a). **KUSHAYB** is named in counts specifying "commission" perpetration as the theory of criminal liability in Counts 7, 16, 25, 27, 29, 31, 33, 45 and 47.<sup>302</sup>

181. The Prosecution has also requested that **HARUN** be charged with inducement under Article 25(3)(b) (see Count 37).

#### **iv. The Criminal Episodes Related to Ahmad HARUN and Ali KUSHAYB**

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<sup>302</sup> The Prosecution does not rely on establishing that any particular form of aid given by **HARUN** – the mobilisation of Militia/Janjaweed, funds or weapons – ultimately was used in the perpetration of the specific crimes identified in the Counts. In other words, no form of aiding and abetting liability, which would require a substantial and direct contribution, is proposed. See *Prosecutor v. Dusko Tadic*, Judgment, Appeals Chamber, Case No. IT-94-1A, 15 July 1999, at para 229 (iii): "The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. By contrast, in the case of acting in pursuance of a common purpose or design, it is sufficient for the participant to perform acts that "in some way are directed to the furthering of the common plan or purpose".

### a. Introduction

182. The attacks and criminal episodes that are the subject of this application occurred between on or about 3 August 2003 to March 2004 in the Wadi Salih and Mukjar Localities of West Darfur (see Annexes 5 and 9). Witness accounts establish that from in or about July 2003, the Armed Forces and Militia/Janjaweed had been attacking many predominantly Fur villages in those two localities. Kodoom was the first attacked by the Armed Forces and Militia/Janjaweed, on 15 August 2003. This attack, and the ones upon Bindisi and Mukjar town which rapidly followed in the next two days, had been preceded by rebel activity carried out in Bindisi and Mukjar from rebel bases in the Sindu Hills area. Kodoom is not known to have had any rebel presence at or before the attack by the Armed Forces and Militia/Janjaweed. Moreover, by the time the Armed Forces and Militia/Janjaweed mounted their attacks targeting the entire towns of Bindisi and Mukjar, any rebel forces had departed at least a week prior to the attack. The Armed Forces and Militia/Janjaweed attacked Arawala in December 2003 and prior to that time, the only rebel presence had been an attack on a military garrison which took place in August 2003.

183. The rebel presence in or about July 2003 was based in the Sindu Hills, which is at a distance of approximately 30 kilometers from Arawala and Mukjar, and even farther from Kodoom and Bindisi.<sup>303</sup> A witness DYU-067 [TEXT REDACTED], who was Fur and lived in Bindisi during 2003, confirmed that he had heard there were “Tora Bora”, a word used to describe the rebels, in the Sindu area around this time.<sup>304</sup> Witness DDA-100 [TEXT REDACTED], also corroborated that rebels were present in the Sindu Hills; he joined the rebel forces there (see Annex 5) after the Militia/Janjaweed attacks on villages around Garsila, which took place between December 2002 and January 2003.<sup>305</sup>

184. In July and up to and including the first ten days of August 2003, and at the same time the Armed Forces and Militia/Janjaweed were attacking predominantly Fur villages, the rebels attacked a number of government offices in the Wadi Salih and Mukjar Localities.<sup>306</sup> In Mukjar town they attacked the Central Reservists’ office<sup>307</sup> and in Bindisi they attacked the police station.<sup>308</sup> The rebels looted equipment from Bindisi police station and killed two persons in-

<sup>303</sup> [FOOTNOTE REDACTED].

<sup>304</sup> [FOOTNOTE REDACTED].

<sup>305</sup> [FOOTNOTE REDACTED].

<sup>306</sup> [FOOTNOTE REDACTED].

<sup>307</sup> [FOOTNOTE REDACTED].

<sup>308</sup> [FOOTNOTE REDACTED].

cluding an Arab prisoner. In other areas around Mukjar the rebels also attacked government buildings and fuel depots and looted weapons and ammunition stocks.<sup>309</sup>

185. As is related below in para. 234, on a day believed to be between 3 August 2003 and 10 August 2003, the same day that rebels attacked the Central Reservists' base, **HARUN** arrived in Mukjar town. He made a speech to a large audience in which he encouraged the Militia/Janjaweed to pillage the Fur and their property.<sup>310</sup> It was immediately after this speech that the Armed Forces and Militia/Janjaweed looted Mukjar and attacked a series of villages between Bindisi and Mukjar. The more extensive attack upon Mukjar and its residents, occurred on or about 17 August 2003.

186. **KUSHAYB**, like **HARUN**, was heard to acknowledge openly the objective of targeting civilian Fur communities, based on the rationale that those communities shielded or supported rebels. Witness DRW-101 [TEXT REDACTED], said that he had heard that **KUSHAYB** had stated that he would attack villages east of Mukjar town to Sindu because these were Fur villages shielding rebels.<sup>311</sup> Witness DFG-115 recalled that [TEXT REDACTED], **KUSHAYB** had followed people around in a vehicle and had stated that "even if they ran, they could not save themselves unless their children came out of the mountains". When a listener responded by saying that the Mukjar residents were civilians and had done nothing to deserve the attack, **KUSHAYB** had responded that he was acting under orders.<sup>312</sup>

187. The Armed Forces and Militia/Janjaweed, in attacking Fur communities in the Wadi Salih and Mukjar Localities, succeeded in displacing populations from villages to larger villages, and then to yet larger towns. The attacks pursued, and re-pursued, the displaced.

188. As is depicted in Annex 7, the Militia/Janjaweed and Armed Forces attacked a number of Fur villages including Korofata, Abirla, Tendy, Indiri, Sigijir, Arada, Jogoma, Artala, Merley, Deimbo, Forgo, Kalam Basina and Rosoli. These attacks all took place prior to mid-August 2003.<sup>313</sup> Survivors to these attacks reported seeing overflying aircraft before the attack on their village.<sup>314</sup> During and after these attacks the aforementioned villages were completely burnt out displacing their populations to larger towns like Bindisi and Mukjar.<sup>315</sup>

<sup>309</sup> See also Public Source, DAR-OTP-0090-0173 at 0180; [FOOTNOTE PARTIALLY REDACTED]

<sup>310</sup> [FOOTNOTE REDACTED].

<sup>311</sup> [FOOTNOTE REDACTED].

<sup>312</sup> [FOOTNOTE REDACTED].

<sup>313</sup> [FOOTNOTE REDACTED].

<sup>314</sup> [FOOTNOTE REDACTED].

<sup>315</sup> [FOOTNOTE REDACTED].

189. On or about 15 August 2003 the predominantly Fur area of Kodoom was attacked by the Armed Forces and Militia/Janjaweed.<sup>316</sup> After these attacks, over 20,000 civilians fled from these smaller villages to the town of Bindisi.<sup>317</sup>

190. The predominantly Fur town of Bindisi was also attacked on or around 15 and 16 August 2003, displacing the civilian population and internally displaced from Wadi Salih and Mukjar Localities to larger towns, including Mukjar.<sup>318</sup> Mukjar town itself was then attacked on or around 17 August 2003. By the time of the attack, Mukjar had accumulated a population of internally displaced persons believed to number approximately 34,000 people<sup>319</sup> (see Annex 7).

#### **b. Criminal Episodes Relating to Kodoom**

191. Kodoom is located in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur,<sup>320</sup> close to Bindisi town. Although frequently referred to as one village, Kodoom is in fact a cluster of villages also known as the “four Kodooms” and comprising of Jureh, Tineh, Derliwa and Wosta. These villages were predominantly inhabited by the Fur although Arab nomads sometimes passed through to feed their cattle.<sup>321</sup> The total number of people living in the “Kodooms” prior to the attacks of August 2003 is not clear, but there were about four hundred residents in the Jureh part of Kodoom alone.<sup>322</sup> While the Sudanese Government accused those living in Kodoom of shielding the rebels, a Fur resident of Kodoom, DYW-085 [TEXT REDACTED], stated that when first attacked Kodoom did not even possess a village defence force.<sup>323</sup>

#### **Combined Attack by the Sudanese Armed Forces and Militia/Janjaweed in August 2003**

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<sup>316</sup> Victims and eyewitnesses to attacks often distinguished Government soldiers from Militia/Janjaweed. Those in uniforms or riding in vehicles are referred to as “asakir”, while those observed wearing civilian clothing or mixed civilian/military clothing and mounted on horses or camel or on foot, are called the “Janjaweed”, “Fursan” “Mujahideen” or “Bashmerga”. For the purposes of consistency, where the victims describe the attackers as government soldiers or asakir or as individuals in a uniform these are collectively referred to as members of the Armed Forces. Where the victims describe the attackers as members of the Janjaweed or fighters in civilian dress or mixed civilian/military dress on horses or camels or on foot these are collectively referred to as Militia/Janjaweed.

<sup>317</sup> [FOOTNOTE REDACTED].

<sup>318</sup> [FOOTNOTE REDACTED].

<sup>319</sup> [FOOTNOTE REDACTED].

<sup>320</sup> Public Source, DAR-OPP-0116-0935 at 0951.

<sup>321</sup> [FOOTNOTE REDACTED].

<sup>322</sup> [FOOTNOTE REDACTED].

<sup>323</sup> [FOOTNOTE REDACTED].

192. The first attack on the Kodoom villages and surrounding areas occurred on or about 15 August 2003<sup>324</sup> (see Annexes 5 and 9). At about 8.00 a.m. members of the Armed Forces drove around the Kodoom area informing villagers that the Militia/Janjaweed would be going to a nearby village to collect “zakat” (Islamic tax).<sup>325</sup> Later the same day, Militia/Janjaweed riding horses and camels, accompanied by members of the Armed Forces in vehicles, attacked the Kodoom area. DYW-085 [TEXT REDACTED], saw **KUSHAYB**, [TEXT REDACTED], during the attack in Kodoom Tineh. **KUSHAYB** was armed and in a “bergait” (khaki) uniform. He first arrived in a Land Cruiser and then mounted a horse. He was distributing the Militia/Janjaweed and members of the Armed Forces to different parts of the Kodoom area by using a whistle.<sup>326</sup> **KUSHAYB** was carrying a Gim weapon while those forces around him were armed with Kalashnikovs.<sup>327</sup>

193. Moving through the Kodoom area, this joint force shot and killed a number of civilians. Witness DYW-085 [TEXT REDACTED], described what he saw. As the attack started he fled towards Kodoom Tineh. He heard shooting and saw smoke coming from Kodoom Derliwa.<sup>328</sup> He then saw Militia/Janjaweed on horseback and camelback in the Kodoom area, accompanied by a vehicle with a heavy machine gun<sup>329</sup> mounted on top.

194. The next major attack on the Kodoom area took place on or about 31 August 2003 at about 6.00 a.m.<sup>330</sup> (see Annexes 5 and 9). Witness DYW-085 [TEXT REDACTED] was woken by the attack and observed events as he fled to [TEXT REDACTED]. During the course of this second attack Witness DYW-085 [TEXT REDACTED] saw **KUSHAYB** from a distance of about fifteen metres issuing instructions to the Militia/Janjaweed.<sup>331</sup>

195. **KUSHAYB**, the Militia/Janjaweed and members of the Armed Forces surrounded the four Kodoom villages (Jureh, Tineh, Derliwa and Wosta).<sup>332</sup> Militia/Janjaweed entered the Kodoom villages while others stalked the outskirts. The fleeing civilians were fired upon by the attackers as they ran. Witness DYW-085 [TEXT REDACTED] saw a number of residents fall in the hail of gunfire. The joint attacking force killed civilians, including at least two chil-

<sup>324</sup> [FOOTNOTE REDACTED].

<sup>325</sup> [FOOTNOTE REDACTED].

<sup>326</sup> [FOOTNOTE REDACTED].

<sup>327</sup> [FOOTNOTE REDACTED].

<sup>328</sup> [FOOTNOTE REDACTED].

<sup>329</sup> Described by the witnesses as a “doshka”.

<sup>330</sup> [FOOTNOTE REDACTED].

<sup>331</sup> [FOOTNOTE REDACTED].

<sup>332</sup> [FOOTNOTE REDACTED].

dren and a heavily pregnant woman.<sup>333</sup> On this occasion, the villagers managed to mount a defence and killed fifteen of the attackers while defending themselves.<sup>334</sup>

### **Killings**

196. In the course of the 15 August 2003 attack on the Kodoom villages and surrounding areas, the joint attacking force of the Armed Forces and the Militia/Janjaweed killed a number of civilians. For example, when witness DYW-085 [TEXT REDACTED] returned to the village from his hiding place, he found [TEXT REDACTED] and two other villagers [TEXT REDACTED], had been shot and killed. He helped bury their bodies.<sup>335</sup>

197. During the course of the 31 August 2003 attack on the Kodoom villages and the surrounding areas, the attackers killed more civilians. Witness DYW-085 [TEXT REDACTED] stated that he observed a woman named [TEXT REDACTED] shot while carrying her child, [TEXT REDACTED]. The gunfire hit both mother and the child; as a result [TEXT REDACTED] arm was broken and her child subsequently died from gunshot injuries.<sup>336</sup> Witness DYW-085 [TEXT REDACTED] saw the attackers kill another child, [TEXT REDACTED], as he and his father were fleeing the attack.<sup>337</sup> Witness DYW-085 [TEXT REDACTED] also saw a member of the Militia/Janjaweed shoot a heavily pregnant woman named [TEXT REDACTED], who later died as a result of those gunshot injuries.<sup>338</sup>

198. Other victims of the killings, according to Witness DYW-085 [TEXT REDACTED], included civilians [TEXT REDACTED].<sup>339</sup>

### **Destruction of Property and Forcible Transfer**

199. Witness DYW-085 [TEXT REDACTED] returned to the Kodoom area after the first attack on or about 15 August 2003. He observed and recorded that seventy-two houses had been burnt in Jurch, thirty-five in Tineh, four in Wosta and five in Derliwa.<sup>340</sup> According to witness DLX-088 [TEXT REDACTED], a Fur resident of Bindisi, following the 15 August 2003 attack on Kodoom and prior attacks upon other villages in the area, approximately 20,000 civilians fled to Bindisi<sup>341</sup> (see Annex 7).

<sup>333</sup> [FOOTNOTE REDACTED].

<sup>334</sup> Public Source, DAR-QIP-0090-0173 at 0182.

<sup>335</sup> [FOOTNOTE REDACTED].

<sup>336</sup> [FOOTNOTE REDACTED].

<sup>337</sup> [FOOTNOTE REDACTED].

<sup>338</sup> [FOOTNOTE REDACTED].

<sup>339</sup> [FOOTNOTE REDACTED].

<sup>340</sup> [FOOTNOTE REDACTED].

<sup>341</sup> [FOOTNOTE REDACTED].



### c. Criminal Episodes Relating to Bindisi

200. Bindisi is a town in the Bundis Administrative Unit of Wadi Salih Locality. In early August 2003 Bindisi had an estimated population of upwards of 7,000 residents,<sup>342</sup> the large majority of which was Fur.<sup>343</sup> Members of the Tama and Gimir tribes also lived in the area in small numbers,<sup>344</sup> and Arab nomads would pass through from time to time or settle in a “fariq” (nomad settlement) outside the town to feed their cattle.<sup>345</sup> The town is located between two “wadis”, or valleys - Wadi Salih and Wadi Baro.<sup>346</sup>

### Combined Attack by the Sudanese Armed Forces and Militia/Janjaweed in August 2003

201. On or about 15 August 2003, Bindisi town and its surrounding areas were attacked by members of the Armed Forces and Militia/Janjaweed (see Annexes 5 and 9).<sup>347</sup> On or about 15 August 2003 DCV-074 [TEXT REDACTED], observed **KUSHAYB** leaving Mukjar, in a vehicle, accompanied by Militia/Janjaweed. He later heard that on and after 15 August 2003 **KUSHAYB** had burnt at least ten villages in the area including Bindisi.<sup>348</sup>

202. Witnesses DCV-074, DYU-067 and DFW-099 stated that early in the morning of 15 August 2003 members of the Armed Forces arrived in Land Cruisers at the Umdah’s house in Bindisi where they<sup>349</sup> announced that the Militia/Janjaweed would return later to collect “zakat” (Islamic tax).<sup>350</sup> Between 8.00 a.m and 9.00 a.m. that same morning,<sup>351</sup> Armed Forces riding in a number of camouflage-coloured Land Cruisers mounted with heavy machine guns<sup>352</sup> together with Militia/Janjaweed on horses, camels and on foot attacked the town.

203. During the Bindisi attack **KUSHAYB** was present wearing military uniform and issuing orders to the Militia/Janjaweed.<sup>353</sup> The witness DLX-088 [TEXT REDACTED] saw

<sup>342</sup> [FOOTNOTE REDACTED].

<sup>343</sup> [FOOTNOTE REDACTED].

<sup>344</sup> [FOOTNOTE REDACTED].

<sup>345</sup> [FOOTNOTE REDACTED].

<sup>346</sup> [FOOTNOTE REDACTED].

<sup>347</sup> [FOOTNOTE REDACTED].

<sup>348</sup> [FOOTNOTE REDACTED].

<sup>349</sup> [FOOTNOTE REDACTED].

<sup>350</sup> [FOOTNOTE REDACTED].

<sup>351</sup> [FOOTNOTE REDACTED].

<sup>352</sup> [FOOTNOTE REDACTED].

<sup>353</sup> [FOOTNOTE REDACTED].

**KUSHAYB** in the company of an Armed Forces officer – a Lt. Hamdi – during the attack on Bindisi.<sup>354</sup> She had known **KUSHAYB** prior to the attack as he was a well known local figure who owned a veterinary pharmacy in the market in Garsila. She had also previously seen Lt. Hamdi in the town of Garsila.<sup>355</sup>

204. A witness to the attack DFR-023 [TEXT REDACTED], who was a Fur resident of Bindisi, described seeing four Land Cruisers each with forty or fifty members of the Armed Forces and stated that there were more than five hundred Militia/Janjaweed.<sup>356</sup> After these ground forces entered Bindisi they started shooting at civilians and burning huts.<sup>357</sup> Three aircraft of the Sudanese Air Force dropped bombs in and around the town.<sup>358</sup> The attacking forces pillaged and burned villagers' dwellings, properties and shops. Witness DYU-067 [TEXT REDACTED], another witness to the attack heard the attackers shouting "nuba, nuba". He also commented to the OTP that he heard the attackers stating in Arabic that they did not want any black person to survive.<sup>359</sup> This witness fled south with other residents of Bindisi across Wadi Baro to a hill outside the town of Bindisi. The attackers pursued the civilians as they fled towards the hill. The witness watched as the attackers stood at the foot of the hill shooting residents of Bindisi - men, women and children – all trying to flee from the attack.<sup>360</sup>

205. Witness DYU-067 [TEXT REDACTED] remained on the hill outside the town overnight and observed the attack continuing on the next day starting again between 8.00 a.m. and 9.00 a.m in the morning.<sup>361</sup> Members of the Armed Forces and the Militia/Janjaweed went from house to house searching for remaining residents and killing those that they found.<sup>362</sup> An eyewitness, DFG-115 [TEXT REDACTED], saw the attackers divide into three groups: one burned the village; one collected animals and broke into houses; and the third chased the people who were running away.<sup>363</sup> Witness DFR-023 [TEXT REDACTED] stated that she heard the attackers say that they had been sent "to kill every black thing except the Laloba and Day-labe trees which are also black".<sup>364</sup>

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<sup>354</sup> [FOOTNOTE REDACTED].

<sup>355</sup> [FOOTNOTE REDACTED].

<sup>356</sup> [FOOTNOTE REDACTED].

<sup>357</sup> [FOOTNOTE REDACTED].

<sup>358</sup> [FOOTNOTE REDACTED].

<sup>359</sup> [FOOTNOTE REDACTED].

<sup>360</sup> [FOOTNOTE REDACTED].

<sup>361</sup> [FOOTNOTE REDACTED].

<sup>362</sup> [FOOTNOTE REDACTED].

<sup>363</sup> [FOOTNOTE REDACTED].

<sup>364</sup> [FOOTNOTE REDACTED].

206. The attack on Bindisi persisted for approximately five days, and resulted in the destruction of most of the town.<sup>365</sup>

207. Ja'far 'Abd-Al-Hakam, the Locality Commissioner for Garsila and Abdallah Turshayn, the Locality Commissioner for Mukjar – two senior Sudanese local government officials – were also seen in the vicinity of Bindisi while it was being attacked.<sup>366</sup>

208. The witness DYU-067 [TEXT REDACTED] stated that the soldiers who attacked Bindisi in trucks could only have been Government soldiers. He explained: “the government does not send the Arab Militia alone for attacks using government trucks”.<sup>367</sup> He also believed that the members of the Armed Forces and the Militia/Janjaweed who had attacked Bindisi had arrived there from bases in Mukjar.<sup>368</sup>

### Killings

209. The Armed Forces and Militia/Janjaweed killed over 100 civilians,<sup>369</sup> including thirty children,<sup>370</sup> in the course of the attack on Bindisi.<sup>371</sup>

210. Witness DYU-067 [TEXT REDACTED] saw three women killed in Bindisi. Members of the Militia/Janjaweed and Armed Forces raped two of the women - [TEXT REDACTED] – before killing them. A third woman, [TEXT REDACTED], resisted being raped; the attackers shot and killed her.<sup>372</sup> Witness DFR-023 [TEXT REDACTED], stated that at least [TEXT REDACTED] of the dead were her relatives.<sup>373</sup> Witness DLX-088 [TEXT REDACTED] described that the Militia/Janjaweed gathered a number of male residents together and tied their hands behind their backs. The attackers then forced three men to lie on the ground face down and then shot and killed two of them. The third man was beaten to death. The victims of this killing included [TEXT REDACTED], and two other civilian villagers she knew.<sup>374</sup> Witness DLX-088 [TEXT REDACTED] shot in the chest as he fled. He fell into a nearby wadi. She later discovered that he had died of his injuries.<sup>375</sup> Another witness, DFG-115 [TEXT

<sup>365</sup> [FOOTNOTE REDACTED].

<sup>366</sup> [FOOTNOTE REDACTED].

<sup>367</sup> [FOOTNOTE REDACTED].

<sup>368</sup> [FOOTNOTE REDACTED].

<sup>369</sup> [FOOTNOTE REDACTED].

<sup>370</sup> [FOOTNOTE REDACTED].

<sup>371</sup> Public Source, DAR-OTP-0002-0068 at 0090.

<sup>372</sup> [FOOTNOTE REDACTED].

<sup>373</sup> [FOOTNOTE REDACTED].

<sup>374</sup> [FOOTNOTE REDACTED].

<sup>375</sup> [FOOTNOTE REDACTED].

REDACTED], who was present during the attack and saw people killed in front of him, helped to bury the bodies of 105 people from Bindisi on 16 August 2004.<sup>376</sup>

### **Rapes**

211. Members of the attacking forces raped witness DLX-088 [TEXT REDACTED], a young Fur woman from Bindisi. She described to the OTP that her attackers held her by the arms and a leg [TEXT REDACTED]. Two attackers slapped her repeatedly, and threatened her with a sword, before raping her.<sup>377</sup> Witness DLX-088 [TEXT REDACTED] also saw six or seven of the attackers rape four girls named [TEXT REDACTED]. Two of the attackers held [TEXT REDACTED] by her arms and legs, while the third raped her. Another man then raped her a second time while she was held on the ground. All the females that were raped in front of DLX-088 [TEXT REDACTED] were between 17 and 22 years of age.<sup>378</sup>

212. The witness DFR-023 [TEXT REDACTED] witnessed a separate incident of rape in which Militia/Janjaweed and members of the Armed Forces selected and led away at least ten females between 15 and 18 years of age. She watched as the girls were raped in a field nearby. From the group, the witness recognised [TEXT REDACTED]. While carrying out the rapes, the attackers were saying "we have taken Tora Bora's wives, praise be to God". At least one of the women who was raped bled in the course of the assault. When this happened the rapists shot their weapons in the air and announced, "I have found a virgin woman".<sup>379</sup>

### **Inhumane Acts**

213. Witness DYU-067 [TEXT REDACTED] related that the attacking forces shot [TEXT REDACTED], while his brother was trying to escape from Bindisi.<sup>380</sup> [TEXT REDACTED] was wounded but survived the shooting. Witness DLX-088 [TEXT REDACTED] saw the attackers chop the arm from a woman, using a sword, after the woman resisted handing over the gold bangles which she was wearing on that arm.<sup>381</sup>

### **Destruction of Property and Forcible Transfer**

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<sup>376</sup> [FOOTNOTE REDACTED].

<sup>377</sup> [FOOTNOTE REDACTED].

<sup>378</sup> [FOOTNOTE REDACTED].

<sup>379</sup> [FOOTNOTE REDACTED].

<sup>380</sup> [FOOTNOTE REDACTED].

<sup>381</sup> [FOOTNOTE REDACTED].

214. During the attack on Bindisi, the attackers burnt the mosque, food supplies and all the houses in the town.<sup>382</sup> Witness DFG-115 [TEXT REDACTED] saw the Militia/Janjaweed breaking into houses and torching them.<sup>383</sup>

215. The attack on Bindisi forced the civilians in the town to flee to the hills and to nearby Mukjar town.<sup>384</sup> Moreover, Witness DFG-115 [TEXT REDACTED] states that after the Bindisi attack, people riding in vehicles equipped with loudspeakers, including one person the witness recognised as a member of the West Darfur Parliament, came to Bindisi and delivered the message that if the villagers wanted to save their lives, they should go to Mukjar.<sup>385</sup> The victims who had previously fled from the attacks in Kodoom and other nearby villages found themselves fleeing again with the aim of finding a larger and safer place of refuge. A total of approximately 34,000 civilians fled to Mukjar town<sup>386</sup> (see Annex 7).

### **Pillage**

216. The attackers stole the livestock left behind by the occupants of Bindisi. DFR-023 [TEXT REDACTED] saw the Militia/Janjaweed and members of the Armed Forces going from house to house, pillaging anything they could carry.<sup>387</sup> Witness DLX-088 [TEXT REDACTED] saw the attackers entering abandoned houses and coming out with items like beds, radios and boxes. The looters loaded the stolen property onto Sudanese military vehicles and it was driven away.<sup>388</sup> Witness DFG-115 [TEXT REDACTED] was looted during the attack and he witnessed the Militia/Janjaweed looting the marketplace.<sup>389</sup>

## **d. Criminal Episodes Relating to Mukjar**

### **Context - Geographical Location**

217. Mukjar town is located in the Mukjar Administrative Unit of Mukjar Locality in West Darfur. Mukjar Locality is in the central belt of Darfur in an area that includes the Jebel Marra Mountains. Some of the main towns nearby to Mukjar town are Garsila, Deleig and Kailek, all situated around a group of small hills known as the Sindu Hills. The region is known to be one of the most fertile in Darfur and is inhabited by a mixture of indigenous African and Arab

<sup>382</sup> [FOOTNOTE REDACTED].

<sup>383</sup> [FOOTNOTE REDACTED].

<sup>384</sup> [FOOTNOTE REDACTED].

<sup>385</sup> [FOOTNOTE REDACTED].

<sup>386</sup> [FOOTNOTE REDACTED].

<sup>387</sup> [FOOTNOTE REDACTED].

<sup>388</sup> [FOOTNOTE REDACTED].

<sup>389</sup> [FOOTNOTE REDACTED].

tribes with the Fur tribe being the largest group. By August 2003, both the Militia/Janjaweed and the Armed Forces had camps outside Mukjar town. The two camps were about half a kilometre from each other.<sup>390</sup>

**Combined Attack by the Sudanese Armed Forces and Militia/Janjaweed from August 2003 to March 2004.**

**218.** On or about 17 August 2003, a combined force of Militia/Janjaweed and members of the Armed Forces attacked Mukjar town (see Annexes 5 and 9). The attackers shot and killed at least seventy civilians.<sup>391</sup> No defence was mounted by the residents, and there was no rebel presence in the town when it was attacked. Most of the inhabitants of Mukjar town, at this time, were internally displaced civilians who had fled the earlier attacks on Bindisi, Kodoom and other villages in the Mukjar and Wadi Salih Localities. Ordinarily, about 7,000 people lived in Mukjar<sup>392</sup> but the attacks in the surrounding areas had forced the civilian population to Mukjar and other locations and had swollen the population of Mukjar to over 40,000 people.<sup>393</sup> By early October 2003, the UN estimated that there were 31,000 internally displaced persons in Mukjar.<sup>394</sup>

**219.** Following the attack, the attackers repeatedly pillaged residents' dwellings and from in or about August 2003 to in or about March 2004, the Militia/Janjaweed and members of the Armed Forces controlled the town. They guarded the roads that led north to Garsila, east to Nyala and west to Bindisi thus controlling egress and access to the town. Women who ventured out of town to forage for food or look for firewood were often raped.<sup>395</sup> Between August 2003 to in or about March 2004, civilians were arrested, detained, beaten, tortured and executed in and around Mukjar town.<sup>396</sup> Those arrested were detained at the local school buildings which had been converted into a makeshift prison;<sup>397</sup> some witnesses referred to this building as the new police station. Others were detained in what witnesses described as the "old police station", which was then serving as a base for the Militia/Janjaweed.<sup>398</sup> Some of

<sup>390</sup> [FOOTNOTE REDACTED].

<sup>391</sup> Public Source, DAR-01P-0002-0068 at 0090; [FOOTNOTE PARTIALLY REDACTED].

<sup>392</sup> [FOOTNOTE REDACTED].

<sup>393</sup> [FOOTNOTE REDACTED].

<sup>394</sup> [FOOTNOTE REDACTED].

<sup>395</sup> [FOOTNOTE REDACTED].

<sup>396</sup> [FOOTNOTE REDACTED].

<sup>397</sup> [FOOTNOTE REDACTED].

<sup>398</sup> [FOOTNOTE REDACTED].

those arrested were taken to the Armed Forces camp or the Militia/Janjaweed camp, both of which were outside the town and about half a kilometre from each other.<sup>399</sup>

220. Between August 2003 and March 2004, aircraft of the Armed Forces bombed Mukjar town and the surrounding areas on at least one occasion. Witness DLX-088 [TEXT REDACTED] described that on one occasion a military aircraft dropped bombs on the mosque just after afternoon prayers. This resulted in the deaths of at least forty civilians who were either in the mosque or nearby under temporary shelters.<sup>400</sup>

221. The witness DCV-074 [TEXT REDACTED], who knew **KUSHAYB** from before the attack, confirmed that **KUSHAYB** was based in Mukjar town in August 2003 and in the following months when crimes were committed against the civilian population.<sup>401</sup> [TEXT REDACTED]. Another witness, DFR-023 [TEXT REDACTED]. She had fled to Mukjar town following the attack on Bindisi and also described how she knew **KUSHAYB**, having seen him previously in both of these towns. She confirmed that following the attack, she saw **KUSHAYB** in Mukjar riding around with Militia/Janjaweed in a brown Land Cruiser. She related that although **KUSHAYB**'s base was in Garsila he also had a base in Mukjar town at the old police station during this period.<sup>402</sup>

222. **HARUN** also visited Darfur frequently during this period, and was present in Mukjar at or near the time of all attacks described in this application including the attack on Mukjar in August 2003. These visits are described in Sections V.C and V.D.

### **Deprivation of Liberty and Torture**

223. From in or about late August 2003 to in or about early September 2003, the Militia/Janjaweed and members of the Armed Forces implemented a search and arrest policy in Mukjar town. The attackers randomly and repeatedly searched houses looking for young men over the age of 18. These young men were arrested and transported to the local school buildings which had been converted into a makeshift prison (which is described by some witnesses as the "new" police station).<sup>403</sup> Other prisoners were taken to the "old" police station which **KUSHAYB** had now taken over and converted into a base for the Militia/Janjaweed.<sup>404</sup> The men in detention were verbally abused, beaten and tortured.<sup>405</sup> After September 2003 the Militia/Janjaweed and members of the Sudanese Armed Forces continued to randomly arrest other

<sup>399</sup> [FOOTNOTE REDACTED].

<sup>400</sup> [FOOTNOTE REDACTED].

<sup>401</sup> [FOOTNOTE REDACTED].

<sup>402</sup> [FOOTNOTE REDACTED].

<sup>403</sup> [FOOTNOTE REDACTED].

<sup>404</sup> [FOOTNOTE REDACTED].

<sup>405</sup> [FOOTNOTE REDACTED].

young men in Mukjar. They were also taken to the “old” police station, the “new” police station or to the Armed Forces camp where they would later be transferred to the local Militia/Janjaweed camp for detention. The basis for arrest was suspicion of involvement in rebel activities.<sup>406</sup>

224. In one period in February 2004, witness DFG-115 [TEXT REDACTED] describes how men were lined up and taken in groups of varying sizes to the police station in Mukjar.<sup>407</sup> These abductions were carried out by the Police, the Central Reservists and Militia/Janjaweed.<sup>408</sup> According to the witness, everyone who had any kind of station within the community was rounded up in Mukjar; for example, [TEXT REDACTED] was abducted by **KUSHAYB** himself.<sup>409</sup>

225. The witness DFR-023 [TEXT REDACTED] knew about a mass detention at the new police station which had been set up in the local school buildings. [TEXT REDACTED] was detained there.<sup>410</sup> He had been arrested by members of the Armed Forces and Militia/Janjaweed on [TEXT REDACTED] 2003, shortly after his arrival in Mukjar, and [TEXT REDACTED] he was being held by members of the Armed Forces in a room with about sixty other men. All of the men were restrained in different ways. Some of them, including [TEXT REDACTED], had been tied and were suspended in the air. [TEXT REDACTED] his arms were held wide apart and tied to a plank of wood on the ceiling, while his legs were also held wide apart and tied to objects on either side. [TEXT REDACTED] a stove was left burning between his legs. Another man [TEXT REDACTED] named [TEXT REDACTED] was also restrained in the same manner as [TEXT REDACTED]. The other detainees in the room either had their hands tied behind their backs or were lying face down with their hands and legs tied in front of or behind them. [TEXT REDACTED] all of the men had whip marks on their bodies and that their clothes were torn and blood-stained. [TEXT REDACTED] for about five minutes and [TEXT REDACTED] he had been repeatedly beaten, called “Tora Bora” and deprived of food. [TEXT REDACTED] two other men [TEXT REDACTED], named [TEXT REDACTED], were also detained in the same room with [TEXT REDACTED]. [TEXT REDACTED] had been badly beaten and his fingernails and toenails had been forcibly removed.<sup>411</sup>

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<sup>406</sup> [FOOTNOTE REDACTED].

<sup>407</sup> [FOOTNOTE REDACTED].

<sup>408</sup> [FOOTNOTE REDACTED].

<sup>409</sup> [FOOTNOTE REDACTED].

<sup>410</sup> [FOOTNOTE REDACTED].

<sup>411</sup> [FOOTNOTE REDACTED]



226. Sometime after August 2003, DYW-085 [TEXT REDACTED] visited and stayed at the house of [TEXT REDACTED] in Mukjar, both of whom had been detained in Mukjar by members of the Armed Forces and the Militia/Janjaweed. Witness DYW-085 [TEXT REDACTED] learned that during their detention, both of his friends had sustained injuries as a result of being tied by the wrists and ankles and hung from the ceiling. [TEXT REDACTED] also had been tied with a wire which had cut the blood flow to his arm so severely that three of his fingers had been permanently deformed.<sup>412</sup>

227. Another witness, DLX-088 [TEXT REDACTED], who had fled to Mukjar following the attack on Bindisi described that [TEXT REDACTED], had also been detained in one of the prisons in Mukjar. When he was released, he told her that he and others had been forced to lie on a cement floor. They had been whipped and had cold water thrown on them through the night.<sup>413</sup>

### **Killings/Executions**

228. From in or around August 2003 to in or around March 2004, **KUSHAYB** together with members of the Armed Forces and the Militia/Janjaweed carried out executions of men in and around Mukjar town.<sup>414</sup> Witness DFR-023 [TEXT REDACTED] described one occasion sometime between September and October 2003. She had gone to fetch firewood outside the town in the company of some other women. Members of the Armed Forces and Militia/Janjaweed took at least twenty men from the school building in Mukjar town which was serving as the new police station. The Militia/Janjaweed and members of the Armed Forces drove the twenty men to a brook called Bedingair (or Bidingiar) to the northeast of Mukjar town, and shot them.<sup>415</sup> The witness, out fetching firewood, observed what was taking place from a spot nearby to where the men were shot and killed.

229. Witness DFR-023 [TEXT REDACTED] described another occasion in or around December 2003 when **KUSHAYB**, early one morning, led a group of prisoners to their execution. Twenty-one blindfolded men were taken from the old police station and loaded into the back of two Land Cruisers. The prisoners were accompanied by **KUSHAYB**, members of the Armed Forces and Militia/Janjaweed. The witness had been able to observe what was taking place [TEXT REDACTED]. The witness and other villagers managed to follow the vehicles

<sup>412</sup> [FOOTNOTE REDACTED].

<sup>413</sup> [FOOTNOTE REDACTED].

<sup>414</sup> Public Source, DAR-QIP-0003-0005 at 0031.

<sup>415</sup> [FOOTNOTE REDACTED].

and observe what was going on by hiding nearby. She saw members of the Armed Forces and Militia/Janjaweed line up the men and shoot them. **KUSHAYB** was present throughout.<sup>416</sup> After the shooting, the Militia/Janjaweed and **KUSHAYB** returned to their base, leaving the corpses behind and making celebratory noises.<sup>417</sup> Later in the day some villagers went to bury the bodies but were stopped by members of the Armed Forces who were guarding the site.<sup>418</sup>

230. In or around March 2004,<sup>419</sup> **KUSHAYB** again participated in transporting a group of men to their execution.<sup>420</sup> At least thirty-two<sup>421</sup> men, including some Umdahs and Sheikhs, were loaded onto a convoy of Land Cruisers and taken to a location near Sinnang brook, on the way to Garsila, where they were all shot and killed.<sup>422</sup> The witness DYW-085 [TEXT REDACTED] described how he [TEXT REDACTED] saw members of the Armed Forces loading men from the prison onto three Land Cruisers. **KUSHAYB**, whom he knew, was standing near the entrance of the prison and hitting the men over the head with an axe as they filed past onto the vehicles. Some of the prisoners recognised by witnesses to this event included [TEXT REDACTED],<sup>423</sup> [TEXT REDACTED],<sup>424</sup> and [TEXT REDACTED].<sup>425</sup> The witness DCV-074 [TEXT REDACTED], a resident of Mukjar town, describes how he saw **KUSHAYB** and members of the Armed Forces putting approximately thirty-two detainees onto four Land Cruisers. The witness was able to see this clearly [TEXT REDACTED].<sup>426</sup> The Land Cruisers drove northwards on the road towards Garsila with **KUSHAYB** in one vehicle along with members of the Armed Forces.<sup>427</sup> About fifteen minutes after they had left, witnesses heard gunshots from the direction in which the vehicles had driven. According to the witness DFG-115 [TEXT REDACTED], the shooting lasted for about ten minutes.<sup>428</sup> A short while later the vehicles returned empty.<sup>429</sup>

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<sup>416</sup> [FOOTNOTE REDACTED].

<sup>417</sup> [FOOTNOTE REDACTED].

<sup>418</sup> [FOOTNOTE REDACTED].

<sup>419</sup> [FOOTNOTE REDACTED].

<sup>420</sup> [FOOTNOTE REDACTED].

<sup>421</sup> [FOOTNOTE REDACTED].

<sup>422</sup> [FOOTNOTE REDACTED].

<sup>423</sup> [FOOTNOTE REDACTED].

<sup>424</sup> [FOOTNOTE REDACTED].

<sup>425</sup> [FOOTNOTE REDACTED].

<sup>426</sup> [FOOTNOTE REDACTED].

<sup>427</sup> [FOOTNOTE REDACTED].

<sup>428</sup> [FOOTNOTE REDACTED].

<sup>429</sup> [FOOTNOTE REDACTED].

231. The next day, some women found thirty-two dead bodies in the bushes near Sinnang, a place about one and a half kilometres outside of Mukjar town.<sup>430</sup> Among those killed were [TEXT REDACTED],<sup>431</sup> [TEXT REDACTED]<sup>432</sup> and [TEXT REDACTED].<sup>433</sup>

### **Destruction of Property**

232. As related above in para. 220, the witness DLX-088 [TEXT REDACTED] described that on one occasion between August and September 2003, a Sudanese military aircraft dropped bombs on Mukjar town. Some of the bombs were dropped on the mosque and at least forty worshippers were killed. Other bombs were dropped on the market, houses and temporary shelters, killing many civilians and destroying the houses and shelters.<sup>434</sup> Furthermore, according to witness DCV-074 [TEXT REDACTED], a resident of Mukjar town, the Militia/Janjaweed pillaged livestock and destroyed all the crops in and around Mukjar during the harvest season around November 2003.<sup>435</sup>

### **Pillage**

233. From in or around August 2003 to in or around March 2004, property, houses and the market in Mukjar were pillaged on numerous occasions.

234. For example, on a day between 3 August 2003 and 10 August 2003 **HARUN** made a speech in which he encouraged the Militia/Janjaweed to take the property of the Fur as booty. Directly following the speech, Militia/Janjaweed pillaged Mukjar town and market for several hours, carrying the stolen goods away on camels and horses.<sup>436</sup> According to the witness DFG-115 [TEXT REDACTED], while the looting was going on, Mukjar residents went to the Central Reservists' office in the police station and complained. The response given by the head of the Central Reservists was that the Militia/Janjaweed could do what they wanted because they were acting on the orders of the Minister of State.<sup>437</sup>

235. On another occasion, according to witness DYW-085 [TEXT REDACTED], **KUSHAYB** had just arrived in town and the Militia/Janjaweed started shooting at random. When people

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<sup>430</sup> [FOOTNOTE REDACTED].

<sup>431</sup> [FOOTNOTE REDACTED].

<sup>432</sup> [FOOTNOTE REDACTED].

<sup>433</sup> [FOOTNOTE REDACTED].

<sup>434</sup> [FOOTNOTE REDACTED].

<sup>435</sup> [FOOTNOTE REDACTED].

<sup>436</sup> [FOOTNOTE REDACTED].

<sup>437</sup> [FOOTNOTE REDACTED].

fled to the mosque and the *Mahaliya* to escape the shooting, the Militia/Janjaweed pillaged property, livestock and the shops in the marketplace.<sup>438</sup>

#### **e. Criminal Episodes Relating to Arawala**

236. Arawala is a town which lies to the north east of the Wadi Salih Locality, West Darfur, and is in the Garsila-Deleig Administrative Unit. Arawala is approximately 50 kilometres north of Mukjar. The population is predominantly Fur, with people from the Zaghawa and Dajo tribes also living there.<sup>439</sup>

237. By August 2003, there had been a garrison of the Armed Forces in the outskirts of Arawala for some time. The soldiers at the garrison were a mix of tribes including Arab tribes and the Dinka, Fur, Zaghawa and Masalit.<sup>440</sup> According to witness, DLP-079 [TEXT REDACTED], a Fur resident of Arawala prior to the attack, the unit consisted of about forty soldiers.<sup>441</sup>

238. Statements furnished by witnesses to the NCOI as well as witness DDA-100 [TEXT REDACTED], who was interviewed by the OTP, establish that in or around the beginning of August 2003, in the early hours of the morning, rebel forces attacked the military garrison in Arawala (see Annex 5). The attackers killed six members of the Armed Forces and seized weapons, ammunition and horses.<sup>442</sup> After the attack, the Sudanese government decided to withdraw the remaining troops in Arawala to Garsila.<sup>443</sup> Witness DDA-100 [TEXT REDACTED] stated that after their attack the rebels fled to the south east, in the direction of the Sindu Hills.<sup>444</sup>

#### **Combined Attack by the Sudanese Armed Forces and Militia/Janjaweed in December 2003**

239. In or about December 2003, according to witness DBG-064 [TEXT REDACTED], **KUSHAYB** together with about 60 members of the Armed Forces and 300 Militia/Janjaweed attacked Arawala town and some of its neighbouring towns and villages<sup>445</sup> (see Annexes 5 and 9). [TEXT REDACTED], DLP-079 [TEXT REDACTED] and DZV-016 [TEXT

<sup>438</sup> [FOOTNOTE REDACTED].

<sup>439</sup> [FOOTNOTE REDACTED].

<sup>440</sup> [FOOTNOTE REDACTED].

<sup>441</sup> [FOOTNOTE REDACTED].

<sup>442</sup> [FOOTNOTE REDACTED].

<sup>443</sup> [FOOTNOTE REDACTED].

<sup>444</sup> [FOOTNOTE REDACTED].

<sup>445</sup> [FOOTNOTE REDACTED]

REDACTED], were interviewed by the OTP and stated that early in the afternoon,<sup>446</sup> members of the Armed Forces and Militia/Janjaweed approached from the direction of Garsila and encircled the town.<sup>447</sup> The Armed Forces drove in army trucks and Land Cruisers with heavy machine guns mounted on them.<sup>448</sup> The Militia/Janjaweed, dressed in civilian clothes and green camouflage uniforms, rode on horseback and camels.<sup>449</sup> The witnesses DLP-079 [TEXT REDACTED] and DZV-016 [TEXT REDACTED] explained that the vehicles of the Armed Forces were driving through the town of Arawala, while the Militia/Janjaweed encircled it.<sup>450</sup> At the commencement of the attack, the Armed Forces fired mortar rounds into the town.<sup>451</sup> The shells set fire to a number of huts.<sup>452</sup>

240. According to the residents, the attackers shouted words such as "catch the tora bora",<sup>453</sup> "the women and cows are ours now"<sup>454</sup> and "jina Saudia bala jensiya, aktul al Nuba, Fur Nuba".<sup>455</sup> The witness DZV-016 [TEXT REDACTED] understood this last exclamation to mean that the attackers had come to steal and to kill people.<sup>456</sup>

241. The attacking forces shot and killed civilians and pillaged the town.<sup>457</sup> The residents fled in different directions.<sup>458</sup> Some fled to Mukjar, Garsila and Deleig towns, where they sought refuge.<sup>459</sup>

242. As is related below, **KUSHAYB** himself participated in detaining and inspecting female civilians captured in Arawala. These females had been detained after the attack. They were forced to strip and after **KUSHAYB**'s inspection were raped.<sup>460</sup> Also, two days after the attack on Arawala, the witness DBG-064 [TEXT REDACTED] saw and recognised **KUSHAYB** with some members of the Armed Forces in Amar, a village near to Arawala. **KUSHAYB** told the people in Amar, including the witness, that the Bashmarga had gone to fight the "Tora Bora" from Marra to Arawala and that the animals they brought with them belonged to the Tora Bora and not the poor people.<sup>461</sup>

<sup>446</sup> [FOOTNOTE REDACTED].

<sup>447</sup> [FOOTNOTE REDACTED].

<sup>448</sup> [FOOTNOTE REDACTED].

<sup>449</sup> [FOOTNOTE REDACTED].

<sup>450</sup> [FOOTNOTE REDACTED].

<sup>451</sup> [FOOTNOTE REDACTED].

<sup>452</sup> [FOOTNOTE REDACTED].

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<sup>455</sup> [FOOTNOTE REDACTED].

<sup>456</sup> [FOOTNOTE REDACTED].

<sup>457</sup> [FOOTNOTE REDACTED].

<sup>458</sup> [FOOTNOTE REDACTED].

<sup>459</sup> [FOOTNOTE REDACTED].

<sup>460</sup> [FOOTNOTE REDACTED].

<sup>461</sup> [FOOTNOTE REDACTED].

## Killings

243. According to statements taken by the NCOI, at least twenty-six civilians from Arawala were killed during the attack.<sup>462</sup> Witnesses interviewed by the OTP – DZV-016 [TEXT REDACTED], DYU-067 [TEXT REDACTED], DLP-079 [TEXT REDACTED] and DBG-071 [TEXT REDACTED] – identified a total of nineteen residents of Arawala as among those who were killed. Those killed included [TEXT REDACTED].<sup>463</sup>

## Rapes, Deprivation of Liberty and Outrage Upon Personal Dignity

244. Witness DLP-079 [TEXT REDACTED] stated that soon after the attack on Arawala commenced, [TEXT REDACTED] members of the Militia/Janjaweed apprehended her [TEXT REDACTED]. The attackers [TEXT REDACTED] raped her in turns.<sup>464</sup> Witness DLP-079 [TEXT REDACTED] stated that the attackers also abducted six young women from the village, including a [TEXT REDACTED] year-old girl named [TEXT REDACTED]. She stated that [TEXT REDACTED] and the other young girls were still missing.<sup>465</sup>

245. Witness DZV-016 [TEXT REDACTED] was also a victim of rape during the Arawala attack. According to the witness, during and immediately after the attack, the Militia/Janjaweed and members of the Armed Forces rounded up civilians and divided them into three groups: men and boys, older women and young women. The older women were released, while the men and boys were taken away. The young women were further divided into smaller groups.<sup>466</sup> The Armed Forces and Militia/Janjaweed [TEXT REDACTED] DZV-016 [TEXT REDACTED] group of young women and took them all to the local military garrison. [TEXT REDACTED].

246. Witness DZV-016 [TEXT REDACTED] after arriving at the military garrison, the young women [TEXT REDACTED] were stripped naked and raped. **KUSHAYB**, after being called by the soldiers, came to inspect the naked women and then left.<sup>467</sup> That night, men in military uniform tied the women to trees with their legs apart and continually raped them.<sup>468</sup> The fighters told the women: “little dogs, this land is not for you”.<sup>469</sup> Witness DZV-016 [TEXT

<sup>462</sup> [FOOTNOTE REDACTED].

<sup>463</sup> [FOOTNOTE REDACTED].

<sup>464</sup> [FOOTNOTE REDACTED].

<sup>465</sup> [FOOTNOTE REDACTED].

<sup>466</sup> [FOOTNOTE REDACTED].

<sup>467</sup> [FOOTNOTE REDACTED].

<sup>468</sup> [FOOTNOTE REDACTED].

<sup>469</sup> [FOOTNOTE REDACTED].

REDACTED] on the first night, [TEXT REDACTED] was raped by between [TEXT REDACTED] members of the Armed Forces.<sup>470</sup> [TEXT REDACTED].<sup>471</sup>

247. The young women held with witness DZV-016 [TEXT REDACTED] were also beaten by the attackers and denied food. They were continuously raped by soldiers on the nights that followed and kept naked for at least six days. [TEXT REDACTED]. Witness DZV-016 [TEXT REDACTED] identified seven [TEXT REDACTED] victims of the detention and rape including a young woman named [TEXT REDACTED].<sup>472</sup> [TEXT REDACTED] three of the women detained – [TEXT REDACTED] – died while they were in captivity.<sup>473</sup>

### **Inhumane Acts and Cruel Treatment**

248. When the witness DYU-067 [TEXT REDACTED] met with his cousin, [TEXT REDACTED] described how the attackers [TEXT REDACTED]. He managed to escape death [TEXT REDACTED].<sup>474</sup> The witness DBQ-071 [TEXT REDACTED] recalled that [TEXT REDACTED] was also injured in the attack.<sup>475</sup>

### **Destruction of Property and Pillage**

249. Witness DLP-079 [TEXT REDACTED] described that members of the Armed Forces and Militia/Janjaweed burned and destroyed much of the town of Arawala. The attackers pillaged everything they could, including generators and household items. The pillaged items were carried to the military garrison where they were loaded onto military vehicles and taken to Garsila.<sup>476</sup>

### **Forcible Transfer**

250. The attack on Arawala forced its inhabitants to flee. The witness DLP-079 [TEXT REDACTED], stated that there were at least 7,000 residents living there before the town was attacked in or around December 2003.<sup>477</sup> She related further that the attack on Arawala forced its inhabitants to flee and that after the attack, the town was abandoned and no huts were left

<sup>470</sup> [FOOTNOTE REDACTED].

<sup>471</sup> [FOOTNOTE REDACTED].

<sup>472</sup> [FOOTNOTE REDACTED].

<sup>473</sup> [FOOTNOTE REDACTED].

<sup>474</sup> [FOOTNOTE REDACTED].

<sup>475</sup> [FOOTNOTE REDACTED].

<sup>476</sup> [FOOTNOTE REDACTED].

<sup>477</sup> [FOOTNOTE REDACTED]

standing – all of them had been burnt.<sup>478</sup> Similarly, the NCOI found that as a result of the attack by the Armed Forces and Militia/Janjaweed in December 2003 villages in the Arawala area had been destroyed<sup>479</sup> (see Annex 10).

## VI. Admissibility Assessment

### Gravity

251. The Prosecution has, in accordance with Article 53(2)(b), assessed whether the case which is the subject of this application is inadmissible under Article 17. Under Article 17, there are two aspects to admissibility: gravity (Article 17(1)(d)) and complementarity (Article 17(1)(a)-(b)). Article 17(1)(d) indicates that a case is inadmissible where it is not of sufficient gravity to justify further action by the Court.

252. For all the reasons stated in this application, the Prosecution respectfully submits that the case which is the subject of the current application is of sufficient gravity to justify further action by the Court.

### Complementarity

253. In its decision on the warrant application in the case of Thomas Lubanga Dyilo, Pre-Trial Chamber I stated that “it is a *condition sine qua non* for a case arising from the investigation of a situation to be inadmissible that national proceedings encompass both the person and the conduct which is the subject of the case before the court”.<sup>480</sup> The Chamber identified a case before the Court as including “specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified suspects”.<sup>481</sup>

254. In assessing the admissibility of the case, the Prosecution has followed extremely closely all of the accountability initiatives developed by the Sudanese authorities in connection with the situation in Darfur. It has received written information from the Government of the Sudan on a number of occasions explaining the nature of its legal system generally. It has also received documentation on specific matters from the Government of the Sudan relating to the establishment of various committees, inquiries, investigations and tribal reconciliation endeavours in the context of alleged crimes in Darfur. The Prosecution has also received a large

<sup>478</sup> [FOOTNOTE REDACTED].

<sup>479</sup> [FOOTNOTE REDACTED].

<sup>480</sup> Pre-Trial Chamber I Decision on the Prosecutor’s Application for a warrant of arrest, ICC-01/04-01/06, 10 February 2006, para. 31.

<sup>481</sup> Pre-Trial Chamber I Decision on the Prosecutor’s Application for a warrant of arrest, ICC-01/04-01/06, 10 February 2006, para. 31.



body of documentation on criminal proceedings in relation to Darfur from a wide variety of public and confidential sources. In all of its five missions to the Sudan, the Prosecution has sought to monitor closely any developments in relation to national proceedings. Of most significance have been two extended missions carried out in Khartoum with a view to assessing in the most detailed way possible the degree to which relevant national proceedings were ongoing or had taken place.

255. In its mission of February 2006, the Prosecution met with the Minister of Justice, the Under Secretary for the Ministry of Justice, the judges of the Special Courts and the Chief Justices of each Darfur state, senior officials of the Ministry of the Interior, representatives of the prosecution services and the Judicial Investigations Committee, the Advisory Council for Human Rights, the Committee for Combating Gender-Based Violence, the National Commission of Inquiry and the Governor of South Darfur. In addition to detailed interviews being conducted with these individuals, the Government of the Sudan also provided updated documentation in relation to national proceedings.

256. While in Khartoum in February 2006, the Prosecution noted carefully all that had been carried out to that point. In particular, a Special Court for Darfur had been established in June 2005. The Prosecution was informed that between June and November 2005 the Special Court had completed six criminal trials. However, none of the trials in question related to either of the individuals mentioned in this application or were in respect of the incidents mentioned in the current application. The trials conducted at that point related to purported low level suspects who were not likely to figure in any case before the Court. In November 2006 the Special Court for all of Darfur was replaced by a Special Court in each of the three states of West, North and South Darfur.

257. The Prosecution continued to monitor the development of national proceedings. In November 2006, the Prosecution requested an update on Sudanese national proceedings. On 9 December 2006, the Under Secretary for the Ministry of Justice wrote to the Prosecutor informing him that fourteen people against whom prima facie evidence had been collected had been arrested in relation to incidents concerning the areas of Shattaya in South Darfur and Deleig in West Darfur.<sup>482</sup> **KUSHAYB** was one of those named in connection with these incidents.

258. From 27 January until 7 February 2007, the Prosecution carried out a mission to gather further information on these developments. In this regard, the Prosecution met with The Minister of Justice, the Under Secretary for the Ministry of Justice, the Chief Justice of West Dar-

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<sup>482</sup> [FOOTNOTE REDACTED].

fur and the President of the Special Court for West Darfur. In particular, the Prosecution interviewed the three special advisers of the Judicial Investigations Committee (JIC) over five days.<sup>483</sup>

259. On 15 February 2007 the Prosecution received a letter dated 31 January 2007 from the State Minister for Foreign Affairs, Mr. Ali Ahmed Karti (see Annex 11). Among other things the letter addressed the issue of complementarity. It referred again to the investigations being carried out in respect of Shattaya and Deleig.

260. Annex 12 sets out the details and status of the work of the Judicial Investigations Commission, based on the interviews between the JIC and the Prosecution.

261. The Chief Justice of West Darfur in his interview with the Prosecution indicated that while there were clearly difficulties for the administration of justice in the context of an ongoing conflict, the Courts in the area had nonetheless performed well. He indicated that in all the Courts under his authority a total of 5,302 cases had been completed in 2006, leaving only seven cases outstanding. He accepted that most of the cases related to parties coming from relatively urbanised areas rather than the countryside.

262. The President of the Special Court for West Darfur indicated that it had dealt with only one case in 2006, concerning the alleged murder of a student by a policeman.

263. The current application alleges that war crimes and crimes against humanity were committed by **HARUN** and **KUSHAYB** in Mukjar, Bindisi, Kodoom and Arawala, all in the Wadi Salih and Mukjar Localities of West Darfur. The conduct underlying the alleged crimes includes *inter alia* killing, rape, torture, persecution, forcibly displacing civilians, depriving civilians of their liberty, pillaging and destroying property.

264. The case before the Court therefore involves two identified persons. While there are indications that **KUSHAYB** is under investigation in relation to certain matters, there is no indication that **HARUN** is under investigation for any crime in relation to Darfur.

265. It is noted that both the Prosecution and the JIC are investigating crimes committed in Arawala.<sup>481</sup> The Prosecution investigation relates to events in or around December 2003 and refers to the killing of 26 people, as well as multiple rapes and notorious examples of inhumane treatment. The JIC is investigating an incident of 5 November 2003 in relation to an unspecified number of killings. It makes no mention of rape or other inhumane treatment. The Prosecution does not conclude that the JIC investigation relates to the same incident at this point.

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<sup>483</sup> [FOOTNOTE REDACTED].

<sup>484</sup> See Annex 12, para. 10.

266. With regard to conduct, the indications received at this stage are that **KUSHAYB** is under investigation by the JIC in relation to acts of killing, kidnapping, looting and destruction of property through burning. The underlying conduct set out in this application includes a much broader array of acts for a number of very serious crimes. In particular it is noted that at this point the JIC has made no mention of investigating any allegations of conduct related to rape, torture, forced displacement or persecution.

267. In conclusion, the Prosecution respectfully submits that the investigations currently being carried out by the relevant Sudanese authorities do not encompass the same persons and the same conduct which are the subject of the case before the Court. To the extent that the investigations do involve one of the individuals named in this application, they do not relate to the same conduct which is the subject of the case before the Court: the national proceedings are not in respect of the same incidents and address a significantly narrower range of conduct. Therefore, the Prosecution considers there is no reason to believe the case is inadmissible.

## **VII. Ensuring the Appearance of Ahmad HARUN and Ali KUSHAYB**

268. Under Article 58, if the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that a person has committed crimes within the jurisdiction of the Court, the Chamber may issue upon the application of the Prosecution either a warrant of arrest or a summons to appear.

269. The Prosecution, by this application, submits that the evidence and information summarised above give reasonable grounds to believe that the persons, **Ahmad HARUN** and **Ali KUSHAYB**, committed the crimes alleged.

270. The next issue to address is the best manner in which to ensure the appearance of those two individuals. On the basis of Article 58 the Prosecutor may submit an application requesting an arrest warrant, see Article 58(1), or a summons for a person to appear, see Article 58(7). To decide on the merits of those two options, the Prosecution is obligated to assess all of the information gathered during the investigation. In addition, its assessment and request necessarily involve an element of predicting the likelihood of future events.<sup>485</sup> The Prosecution finally submits that all of the information in this application may be viewed by the Chamber to bear upon an evaluation of the two available options.

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<sup>485</sup> Similarly, see Appeals Chamber Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", ICC-01/04-01/06-824, 13 February 2007, para. 137.

271. Ensuring the persons' appearance is a major challenge. It will be primarily the responsibility of the territorial State, the Sudan, upon the Chamber's decision, either to take steps to arrest the persons under Article 59 or to serve the summons under Article 58. The Sudanese Government, as the territorial State, has both the legal responsibility to cooperate with a view to the appearance of the named individuals,<sup>486</sup> **Ahmad HARUN** and **Ali KUSHAYB**, in accordance with the Chamber's decision, and the ability to do so.

272. According to Article 58(1)(b) the Pre-Trial Chamber shall issue an arrest warrant if it appears necessary: (i) To ensure the person's appearance at trial; (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or; (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances. In this respect as related above<sup>487</sup> the Prosecution wishes to indicate that it has information that **HARUN** has a previous record of concealing evidence in this case.

273. After a careful analysis of the relevant information, the Prosecution nonetheless has assessed at this stage, and respectfully submits, that a summons to appear should be the alternative first pursued by the Court. This route was introduced in Article 58 in the Statute in Rome as a less intrusive one. The Prosecution's present assessment is that a summons could prove sufficient to ensure the persons' appearance.

274. In particular, the Prosecution considers worthy of the Chamber's consideration that the Government of the Sudan, which would serve the summons, and would have to facilitate and follow up on the summons, thus far has in practice provided a degree of cooperation in response to the Prosecution's requests. The Prosecution cannot prejudge, as the matter proceeds to the Pre-Trial Chamber, the subsequent decisions that will be taken by the Government of the Sudan in relation to this new phase of the proceedings. The Prosecution can only call the attention of the Pre-Trial Chamber to past instances. Obviously, there remain a number of outstanding requests, in particular a request to interview **HARUN** that was formulated by the OTP on 16 November 2005 and was never granted and recently, an unwillingness to allow such investigative steps as interviews of witnesses under Article 55(2).<sup>488</sup> A degree of cooperation has nonetheless been forthcoming. It included providing information required by the Prosecution in respect of particular documents from the National Commission of Inquiry, fa-

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<sup>486</sup> See UN Security Council Resolution 1593 (S/RES/1593) (2005), which determined "*that the Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution*".

<sup>487</sup> See, *supra*, footnote 161.

<sup>488</sup> [FOOTNOTE REDACTED].

facilitating four missions to Khartoum during 2005 and 2006, facilitating interviews including that of a senior official under the procedures set forth in Article 55(2), and organising a fifth mission to Khartoum in January 2007. This last instance of cooperation occurred after the Prosecution's announcement to the UNSC that it was completing its investigation and planning to submit its evidence to the judges in February 2007. In light of those elements, and bearing in mind that we are entering a new phase of the judicial proceedings, the Prosecution foresees the possibility that the Government could cooperate in facilitating the appearance of those persons against whom a summons may be issued.

275. Compliance with summonses to appear will also depend on the willingness of the persons concerned. In this regard, it is important to note the position of **HARUN** as a member of Government and that of **KUSHAYB** as a high ranking official. **HARUN** has moreover in the past shown willingness to cooperate with the UNCOI and NCOI .

276. Concerning **KUSHAYB**'s situation, the Pre-Trial Chamber can refer to Annex 12 of the present application: he is reported to be in detention, at the order of a national jurisdiction separate from the ICC, under a separate legal regime and for separate charges. The Pre-Trial Chamber could summons him to appear before the Court, while he would remain in custody under the Sudanese judicial decision; the Sudanese authorities overseeing his detention and the Host state would be called upon to facilitate such a process.

277. The Pre-Trial Chamber, of course, will weigh the record independently on the issue of whether it is more appropriate to issue warrants of arrest or summonses.

278. Finally, the Prosecution submits that a number of circumstances could lead it to modify its assessment of the likelihood that a summons to appear would prove sufficient in ensuring the persons' appearance. In this regard the Prosecution submits that any official response or action of the Sudanese Government, or of **HARUN** or **KUSHAYB**, to the filing of this application, to the effect that they will resist or fail to comply with any decision by the Pre-Trial Chamber on this matter, would modify this assessment of the OTP and would justify, in the Prosecution's view, and subject to the Pre-Trial Chamber's determination, the issuance of warrants of arrest.

### **VIII. [TEXT REDACTED]**

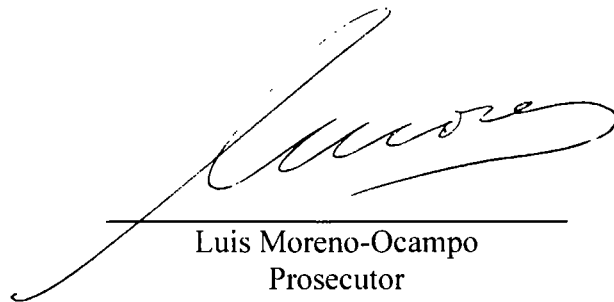
279. [TEXT REDACTED].

280.[TEXT REDACTED].<sup>489</sup>

281.[TEXT REDACTED].<sup>490</sup>

## IX. Conclusion

282. For the reasons stated above the Prosecution respectfully requests that summonses to appear be issued in respect of **Ahmad Muhammad HARUN** and **Ali Muhammad Ali ABD-AL-RAHMAN** (also known as **Ali KUSHAYB**).



Luis Moreno-Ocampo  
Prosecutor

Dated this 27th of February 2007  
At The Hague, The Netherlands

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<sup>489</sup> [FOOTNOTE REDACTED].

<sup>490</sup> [FOOTNOTE REDACTED].