

## **Annex 12: Assessment of National Proceedings by the Judicial Investigations Committee**

1. The Judicial Investigations Committee (“JIC”) was established on 19 January 2005. Its mandate is to investigate certain cases highlighted in the reports of the National Commission of Inquiry and the International Commission of Inquiry. It is concerned with crimes occurring prior to 2005. It has the power to determine whether to bring charges in a particular case and to order the arrest of suspects. If it decides to bring charges the case is presented before the relevant Special Court by members of one of the three Special Prosecutions Commissions.
2. The JIC indicated to the Prosecution that it was investigating several cases.<sup>1</sup> In South Darfur it was investigating incidents in Buram, Kass and Shattaya. In West Darfur it was investigating incidents in relation to Kulbus, Arawala, Deleig, Tanako and Nankuseh. In North Darfur it was investigating incidents in Tawila, Al Fashir, and Mallit.
3. Because **KUSHAYB** appeared to be under investigation for a number of incidents, the Prosecution sought detailed information in this regard.
4. The JIC indicated that **KUSHAYB** was currently employed as a Police Assistant in West Darfur although they could not confirm when he started in this position. According to the JIC, an arrest warrant had been issued against him in April 2005. He had been arrested on 28 November, 2006. The Prosecution was informed that under Sudanese law, if a suspect belongs to an institution such as the army or the police, the normal practice would be for him to be detained by his employers during the course of an investigation rather than him being handed over to the civil authorities. While the JIC confirmed that they had personally not seen him in detention, they had received a written undertaking from **KUSHAYB**’s superiors that he was in fact detained by them. The JIC also noted that on the only occasion the JIC had sought to interview him, he had been brought before them as requested.
5. The JIC indicated that **KUSHAYB** was under investigation in relation to five separate incidents: Shattaya in South Darfur, and Nankuseh, Tanako, Arawala and Deleig in West Darfur.

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

6. He was alleged by several witnesses to have participated in attacks in the area of Shattaya, South Darfur. Shattaya is one of two rural council districts in the locality of Kass, South Darfur. The attacks are alleged to have taken place in late March 2003 over a period of around one week. According to testimonies taken so far, up to 27 villages were attacked with looting and burning taking place on a large scale. From the names of the villages attacked it appears that the attacks took place not only in Shattaya but also in the rural district council of Kass within the locality of the same name. The JIC reported that witnesses stated that as many as 371 people had been killed in these attacks, although some of that number appear to include victims of an attack in the area a month earlier. The JIC indicated that of the 371, twenty-one appear to have been military personnel.
7. According to JIC, witness testimony at this point does not state clearly what the precise conduct of **KUSHAYB** was in relation to the alleged attacks. No charges have yet been brought.
8. The JIC indicated that **KUSHAYB** is under investigation in relation to an alleged attack in the area of Nankuseh, West Darfur, on 5 November 2003. Witness statements indicate three men and two women died in the attacks which also saw looting and burning of houses. **KUSHAYB** is identified by witnesses as being present but his precise conduct is not yet established. No charges have yet been brought.
9. In Tanako, West Darfur, the alleged attack took place on 5 December 2003. Witness statements indicated the presence of **KUSHAYB** while acts of looting, burning and killing took place. It is estimated that 128 people were killed. Statements do not indicate precisely what role **KUSHAYB** played. No charges have yet been brought.
10. The JIC indicated that **KUSHAYB** is under investigation in relation to an alleged attack on the town of Arawala, West Darfur. The JIC indicated that an unspecified number of killings had taken place and that houses had been looted and burned. As a result of the attack most of the residents appear to have left the town and are currently in the Mornei camp for internally displaced persons. Again, witness statements identify **KUSHAYB** as being present but do not specify any more precisely the nature of his conduct. No charges have yet been brought.
11. The JIC also indicated that **KUSHAYB** is under investigation in relation to the alleged disappearance of three community leaders in Deleig in early March 2004.

**KUSHAYB** is one of three suspects under investigation. No charges have yet been brought.

12. The JIC stated that they planned to complete the next phase of their investigations by the end of March 2007. This would include taking statements from witnesses proposed by the suspects. At that point they would be in a better position to determine how likely charges were in any of the cases, although they could not say that a final decision would be made at that time as further inquiries may be necessary.
13. In relation to the investigation into the alleged events in Shattaya, the JIC stated that they had issued a total of 105 arrest warrants. Fourteen of these had been executed, including **KUSHAYB**'s warrant. Upon further inquiries the proceedings against two of those arrested were abandoned for lack of evidence. Upon detailed inquiry by the Prosecution, there arose some degree of confusion in relation to the list of suspects apparently arrested in relation to Shattaya. It appeared that four members of the PDF had been arrested. Three of these were currently detained by their units. The JIC could not be sure if the other PDF member was on bail or currently detained. One member of the Police was in detention, as was one member of the Armed Forces. Four "farmers" or persons with no connection to any particular institution were apparently on bail. There was one other person named on the list received from the Ministry of Justice but the JIC could not indicate who the person was or what his status was. It also appeared that one person appeared twice on the list – once under his real name and once under an alias. In total it appeared that the JIC were confident that ten people had been arrested in relation to Shattaya. Of these, four were members of the PDF while another four were neither members of the regular Armed Forces, the PDF nor the Police. Of the remaining two, one was a policeman and the other a soldier.
14. In relation to the alleged incidents taking place in West Darfur, there are three suspects currently under investigation, including **KUSHAYB**. An additional four were sought for arrest, including one belonging to the PDF and one belonging to the Armed Forces. The JIC had only a first name for the member of the Armed Forces, and acknowledged that the lack of further identifying information made it unlikely that an arrest could be effected.