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**International
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Date: **13 November 2024**

TRIAL CHAMBER I

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

SITUATION IN DARFUR, SUDAN

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

Public

**Public Redacted Version of “Final Brief on behalf of the Participating Victims”, 4
November 2024 (ICC-02/05-01/20-1208-Conf)**

Source: The Common Legal Representative of Victims

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

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I. Introduction

1. The Common Legal Representative of Victims (CLRV), on behalf of the individuals admitted to participate as victims in these proceedings, submits this final brief pursuant to the Chamber's directions.¹
2. Since the filing of the CLRV Trial Brief on 31 March 2023,² and the CLRV's opening statement on 5 June 2023,³ much has changed in the circumstances of the participating victims. At the same time, much remains the same. The number of participating victims admitted in the case has more than doubled to 1,593, but still represents, as the CLRV previously submitted,⁴ a small and therefore symbolic portion of those children, women and men impacted by the charged events in Kodoom, Bindisi, Mukjar and Deleig more than two decades ago, and only a sliver of the likely more than two million Darfuris victimised by the 2003-2004 conflict.
3. The vast majority of the CLRV's clients – almost all from the Fur community – continue living in extremely precarious circumstances as internally displaced persons ("IDPs") in Darfur, or refugees in Chad. **Section II** of this brief is an update of the statistical overview of the participating victims presented in the CLRV Trial Brief,⁵ with the aim of providing the Chamber with an understanding of the circumstances and make-up of the participating victims at the time of the events, as well as their present living situations, which unfortunately has for most of them only worsened since the start of trial. The latter portion of the update includes the impact of the continuing, devastating civil war in Sudan, which erupted more than 18 months ago,⁶ as well as that of floods and fires in their IDP and refugee camps.
4. Notwithstanding the grave impact of the ongoing civil war and environmental factors on the lives of the participating victims, they have uniformly communicated

¹ Decision [1046](#), paras 12-15; Decision [1191](#).

² CLRV Trial Brief (PRV: [914-Corr2-Red](#)) (Arabic translation: [Corr2-Red-tARB](#)).

³ [T-119](#), p. 3, line 10-p. 46, line 6 (video recording of CLRV opening statement available: [here](#)).

⁴ [T-27](#), p. 23, lines 15-22 (CLRV comments at trial opening); [CLRV Trial Brief](#), para. 2 (citing DAR-OTP-0220-1623, paras 145-147, 154-156); [T-119](#), p. 9, line 23-p.10, line 16; p. 17, line 16-p. 18, line 4.

⁵ [CLRV Trial Brief](#), Section IV; *see also* para. 12 (undertaking to provide update of this statistical overview).

⁶ *See* DAR-D31-00000127; DAR-D31-00000164.

their steadfast belief in the fundamental importance of holding to account those responsible for the events underlying the charged crimes, and more specifically the need for the present proceedings against Ali Mohammed Ali Abd-Al-Rahman (allegedly known as “Ali Kushayb”) (the “Accused”), to come to fruition fairly and promptly. As highlighted in the CLRV opening statement, the participating victims have drawn parallels and connections between the ongoing civil war, and the conflict of 2003-2004 – in the devastating nature and consequences of the violence, the continuity among armed actors, and the need for justice and accountability in the pursuit of peace, security, and the possibility of return to their ancestral lands.⁷

5. It is these views and concerns received from her clients, as well as the CLRV’s understanding of the victims’ status and role as participants in ICC proceedings and her concomitant mandate as their representative, as addressed in previous submissions,⁸ that provide the structure for this final brief.
6. Under the Court’s legal framework, it is not the role or responsibility of the participating victims, through the CLRV, to present evidence regarding or otherwise seek to establish an accused’s responsibility for the confirmed charges, or equally investigate any exonerating circumstances; this mandate falls to the Prosecutor.⁹ Contrary to the Defence’s late claim,¹⁰ which the CLRV wholly rejects,¹¹ the CLRV has never acted as a ‘second prosecutor’ in these proceedings. Nor, in the CLRV’s view, would the participating victims’ interests be well served through a final brief on their behalf that seeks to mirror the expected approach of the parties’ respective briefs – addressing, *inter alia*, for each of the 31 counts, an assessment of all of the relevant evidence, and in particular the Accused’s individual actions and alleged criminal responsibility, structures and personnel of relevant organisations, and reflections on witness credibility. The unique role of participating victims in

⁷ [T-119](#), p. 7, line 8-p. 12, line 1.

⁸ See [T-027](#), p. 24, line 24-p. 27, line 20 (video of CLRV remarks available: [here](#)); [CLRV Trial Brief](#), paras 4-6.

⁹ Statute, arts 66(2), 54(1)(a).

¹⁰ Defence Request [1194](#), para. 14.

¹¹ CLRV Observations [1195](#). See also Decision [1201](#), para. 13.

ICC proceedings is also reflected in the Court’s procedural framework and practice, which provide legal representatives with fewer pages for their final briefs,¹² and significantly less resourcing compared to the parties,¹³ and which is directed at in-court representation and client consultation, not investigations.

7. Therefore, and in line with Article 68(3) of the Rome Statute (“Statute”), the CLRV seeks to assist and add value to the Court’s truth-seeking process¹⁴ by focusing on those aspects of the case that are of the most salience or concern to the victims. The brief – in Sections **III**, **IV**, **V** and **VI** – addresses fundamental issues of law, or mixed law and fact, which could be determinative of the outcome of the case as a whole, and therefore are of central importance to the interests of the participating victims.
8. This includes the Accused’s challenge to the Court’s exercise of jurisdiction over him based on the purported inapplicability in Sudan of, or the Accused’s claimed lack of access to, the international legal prohibitions on the flagrant and morally reprehensible conduct captured by the confirmed charges, as well as Defence assertions that the Accused cannot be held responsible for his alleged conduct on account of not having acted with the requisite intent and knowledge (**Section III**).
9. In **Section IV**, the CLRV addresses the Defence’s repeated, and unmeritorious, complaints about the fairness of the proceedings.
10. This brief also engages with the Accused’s core defence of mistaken identity – that he is not the same person allegedly known as “Ali Kushayb”, in respect of which the participating victims have strongly expressed disbelief and incredulity (**Section V**). Similarly, the brief assesses Defence lines of questioning suggesting that the civilian populations of Kodoom and Bindisi, in August of 2003, and the primarily Fur civilians detained, mistreated, tortured, and some then executed, in and around

¹² CLRV granted 125 pages for brief; Parties granted 200 pages (Decision [1046](#), para. 13). Following requests for extension, Trial Chamber extended page limits to 150 pages for CLRV, and 300 for parties (Decision [1201](#)).

¹³ See, e.g., [Legal aid policy of the International Criminal Court](#), 22 November 2023, ICC-ASP/22/9, tables 1-5.

¹⁴ Statute, arts 54(1)(a), 69(3) (“The Court shall have the authority to request the submissions of all evidence that considers necessary for the determination of the truth.”).

Mukjar and Deleig between late February and early March 2004, were (perceived) legitimate targets or subject to lawful treatment (**Section VI**).

11. Next, in **Section VII**, the brief turns to the geographic and temporal scope, and factual details, of what transpired during the four charged incidents, as well as the harm to the victims and wider Fur community arising therefrom. It is of great importance to the victims that the Chamber's Article 74 judgment comprehensively and accurately captures and addresses these matters. The CLRV, pursuant to her representative mandate, has relied on, to the greatest extent possible, the evidence of "dual status" witness-victims – designated by the acronym ("DS") – both those who held such status at the time their evidence entered the record,¹⁵ as well as those who were granted such status post-testimony.¹⁶
12. Lastly, **Section VIII** conveys the participating victims' views on and expectations regarding these proceedings. As much as possible, this section relies on the unvarnished words of the victims, as communicated during consultations, and through numerous audio and video messages recorded from IDP camps in Darfur, refugee camps in Chad, and from the wider diaspora, as well as written accounts, collected by the CLRV's two dedicated field assistants – one based in Chad, and one in Darfur – and other intermediaries, throughout the duration of the trial, and continuing to this day.
13. The CLRV notes that **Section VIII** addresses subjects covered in the CLRV Trial Brief (sections VI-IX). As submitted above, since filing that brief, the number of participating victims has more than doubled. The Chamber determined that it was in the interests of justice to depart from the current ICC practice of accepting applications for participation, at the latest, through the end of the Prosecution

¹⁵ Witnesses: P-0877 (a/10032/22); P-0986 (a/25143/21); P-0913 (a/25145/21); P-0584 (a/25038/21); P-0907 (a/25134/21); P-0585 (a/25217/21); P-0617 (a/25215/21); P-0816 (a/25043/21); and P-0973 (a/25137/21).

¹⁶ Witnesses: P-0012 (a/10048/22); P-0919 (a/10050/22); P-0931 (a/10051/22); P-0932 (a/10052/22); P-0984 (a/10053/22); P-0892 (a/10054/22); P-0129 (a/10237/22); P-0994 (a/10296/22); P-0878 (a/10297/22); P-0918 (a/10298/22); P-0955 (a/10300/22); P-0011 (a/10301/22); P-0015 (a/10413/22); P-0671 (a/10479/22); P-1073 (a/10480/22); P-0718 (a/10484/22); P-0720 (a/10487/22); P-1074 (a/10486/22); P-0007 (a/10482/22); P-0029 (a/10485/22).

("OTP") case,¹⁷ and instead authorised a longer deadline and rolling basis for application submission and determination in light of the difficulties encountered by the Registry in operating in Darfur.¹⁸ The most recent CLRV clients were admitted over the past two and half months, on 14 August (127 clients), 23 October (128 clients) and 30 October (7 clients) 2024.¹⁹ In order to ensure that the rights of all those clients admitted after the CLRV opening statement are respected, and their views and concerns reflected and communicated in these trial proceedings to the extent possible, it is necessary for this brief to dedicate sufficient space to the fruits of the consultations with these clients. It will also be the approach taken by the CLRV in her closing arguments. The promise to her clients is to use as much as possible their own words rather than filtering and interpreting through the CLRV's lens. It lies in the nature of the CLRV's mandate that she is unfortunately not – and will never, even if it is her wish and aspiration – in a position to mirror the views and concerns of all her clients – 1,593 men and women, some who were children during the events, and all with their very individual stories and feelings about what has happened to them since 2003 and 2004, and their expectation from this trial.

14. The CLRV recalls and fully adopts the contents of the CLRV Trial Brief. The present brief should be read in conjunction with this earlier brief, which addressed topics relevant to the proper understanding of the evidence, allegations and broader context of this case, and the participating victims' views, including:

- i. the historic Sultante of 'Dar Fur' and Fur identity; social mores and cohesiveness of the Fur people; and the Fur people's connection to the land;²⁰
- ii. government organisation, infrastructure situation, and makeup of the population in Wadi Salih and Mukjar localities prior to the 2003-2004 conflict;²¹
- iii. life and livelihoods of the Fur community in Wadi Salih & Mukjar localities;²²

¹⁷ ICC, [Chambers Practice Manual](#), 2023 (7th ed.), para. 97(iii).

¹⁸ Decision 868; Decision 943.

¹⁹ Decisions 1165, 1197, 1202.

²⁰ [CLRV Trial Brief](#), paras 15-23.

²¹ [CLRV Trial Brief](#), paras 24-27.

²² [CLRV Trial Brief](#), paras 28-46.

- iv. housing, storage of wealth, and education in the Fur community;²³
 - v. Fur community leadership and the impact of targeting community leaders;²⁴
 - vi. living conditions of participating victims in Darfur, reliance on NGO support, and impact of the Sudanese government's 2009 expulsion of NGOs;²⁵
 - vii. living conditions of participating victims as refugees in Chad and Egypt;²⁶
 - viii. widespread or systematic nature of attacks on the civilian population, including relevance for the Mukjar and Deleig charged incidents;²⁷
 - ix. suspension of police, legal, and medical access processes during the conflict;²⁸
 - x. participating victims' recollections of the four incidents in Koodom, Bindisi, Deleig, and Mukjar, and the immediate and longer-term impacts thereof.²⁹
15. These criminal proceedings concern the alleged acts and conduct of the Accused, in respect of events that took place more than two decades ago in the Wadi Salih and Mukjar localities of West Darfur State³⁰ (now Central Darfur State),³¹ Sudan. These proceedings also concern the impact of the events on the participating victims, who look to this Court, and to the Trial Chamber, for a measure of accountability and impartial justice that has heretofore been entirely absent in Darfur since the outbreak of the 2003-2004 conflict, through the ongoing civil war.
16. The CLRV understands very well the circumscribed role given to participating victims under the Rome Statute and nevertheless prays, on their behalf, the Trial Chamber bestows on the victims the attention they deserve, and to take into account, carefully consider, and reflect as appropriate in its Article 74 judgment, the contents of this brief and the CLRV Trial Brief, as well as the views and concerns of the participating victims communicated to the Chamber and public throughout

²³ [CLRV Trial Brief](#), paras 47-58.

²⁴ [CLRV Trial Brief](#), paras 59-74.

²⁵ [CLRV Trial Brief](#), paras 89-98.

²⁶ [CLRV Trial Brief](#), paras 99-104.

²⁷ [CLRV Trial Brief](#), paras 105-108, 110.

²⁸ [CLRV Trial Brief](#), paras 109, 111-115.

²⁹ [CLRV Trial Brief](#), paras 116-140 (Kodoom and Bindisi); 141-149, 157 (Mukjar), 150-157 (Deleig).

³⁰ Third Agreement on Facts, [Annex C](#), points 1-4.

³¹ P-1042: DAR-OTP-0220-1623, para. 20; T-028, p. 78, lines 5-10; DAR-V47-00000001.

these proceedings, including during the CLRV's examination of witnesses, and the appearances of participating victims V-02, V-03, V-04, V-05 and Witness V-01.

17. This brief is submitted confidentially. A public redacted version will be filed.

II. The Participating Victims

A. Make-up of the participating victims

18. As highlighted many times, the individuality of each and every participating victim is of great importance to the CLRV. However, she considers it important to update the Chamber, and inform the public, of some relevant numbers and statistics.

19. The number of participating victims has increased significantly since the beginning of the proceedings and – as already mentioned – 1,593 individuals have thus far been admitted by the Chamber. During the course of the Prosecution's case, 6 of the 56 individuals who appeared to give testimony before the Chamber did so as 'dual status' witnesses – meaning that, at the time of their appearance, they also held the status of participating victim – with an additional 20 OTP witnesses, to date, having been admitted as participating victims after the conclusion of their testimony. Three further dual status witnesses participated in the proceedings under Rule 68(2)(b) and (c) of the Rules of Procedure and Evidence, meaning that their prior recorded testimonies (signed witness statements and accompanying materials) were admitted into evidence without them having to appear before the Trial Chamber.

20. All the participating victims fall in the categories of direct and/or indirect victims,³² and based on the information available to the CLRV, almost all the participating victims are from the Fur community, and are originally from towns or villages in the Wadi Salih and Mukjar localities of West Darfur State (as it was in 2003-2004).

³² See [CLRV Trial Brief](#), paras 82-83.

21. The vast majority of the participating victims still reside in IDP camps in Darfur, such as the Kalma IDP Camp, and IDP camps in and around Kodoom, Bindisi, Deleig and Mukjar. 80 participating victims are long-term refugees in Chad primarily in the [REDACTED] Camp (close to the village of [REDACTED]) and [REDACTED] Camp, both in Eastern Chad. A smaller number live in the wider diaspora.
22. Among the 1593 participating victims, 777 are women and 816 men.
23. Additionally, 437 of the participating victims were children age 18 or below at the time of the events.

B. *Impact of civil war and environmental factors on the participating victims*

24. While, as addressed above, the largely IDP and refugee status of the participating victims has not changed, the modicum of stability that some were able to pursue and build in their lives, with great fortitude, over the course of the last two decades, has been shattered by the devastating civil war that broke out in Sudan on 15 April 2023,³³ as well as due to environmental factors, like terrible floods in Chad, just recently in August and September this year.
25. In her June 2023 opening statement, the CLRV touched on the impact of the early weeks of the civil war on the participating victims, including those in the global diaspora,³⁴ as participating victim Hassan Hassan (V-0002) viscerally expressed to the Chamber when presenting his views and concerns in-court by video-link:

Please, I'm begging you, we need to stop this war right now. Right now. Right now. It's not about justice now. This is about human lives. [...] This is not about bringing UN and war leaders [...] to sit down and just discuss about [...] what's happening in Darfur. [...] We need to intervene right now to stop the blood of people. Darfur people now, they lost hope [...] of justice. They lost hope in ICC. They lost hope in everything. But for me,

³³ See DAR-D31-00000127; DAR-D31-00000164.

³⁴ T-119, p. 3, line 14-p. 7, line 7.

*I did not lose hope. And many people, they didn't lost hope. Please, please, the genocide is still happening right now in Sudan, right now.*³⁵

26. Four months later, in October 2023, V-0004 and V-0005 presented their views and concerns to the Chamber, having undertaken an eight-week long arduous roundtrip journey from their respective IDP camps,³⁶ through a conflict-wracked Darfur, to appear by video-link from a third state. They described the even more severe deterioration in food security and access to medical care and education, as well as the breakdown of the economic situation, since the outbreak of the war.³⁷
27. While not evidence, the CLRV believes it important to convey, as part of the participating victims' views and concerns, that their humanitarian situation has not improved, and has indeed grown more dire, as the civil war continues unabated. In the CLRV's regular contacts with V-0004, he has described the swelling in size of the population of his IDP camp, already one of the largest in Darfur, as a result of the civil war, and the concomitant deterioration of the humanitarian situation. The CLRV's communications with participating victims residing in IDP camps in Wadi Salih and Mukjar localities, including dual status witness P-0877 (a/10032/22), have similarly revealed dire humanitarian circumstances, exacerbated by flooding during the rainy season, and destructive fires in IDP camps.
28. In early 2024, V-0005 departed the IDP camp in Wadi Salih locality that she had lived in since 2009, with her seven children, for a town on the Darfur-Chad border, and thereafter to a refugee camp across the border – her journey echoing those described to the Chamber by long-term Chadian-based refugees witness V-0001 and participating victim V-0003, when they fled the conflict of 2003-2004.³⁸ The CLRV can sadly report that V-0005's narrative of re-displacement as a result of the ongoing civil war is not an uncommon one among the participating victims.

³⁵ V-0002: T-119, p. 61, lines 1-25. Full recording of V-0002's appearance: [here](#) (1st session), [here](#) (2nd session).

³⁶ V-0004: T-127, p. 58, lines 11-17; V-0005: T-128: p. 27, lines 9-17.

³⁷ V-0004: T-127, p. 43, lines 7-23; p. 48, line 20-p.49, line 8; V-0005: T-128, p. 19, lines 17-22; p. 27, lines 3-8.

³⁸ V-0001: T-120, p. 3, line 3-p.9, line 14; p. 14, line 11-p. 16, line 16; V-0003: T-121, p. 3, line 4-p. 7, line 5.

29. The 80 participating victims, including V-0003, who are long-term refugees in Chad, have also not gone unscathed by the civil war, and apart from their worry for family and friends in Darfur. V-0001 and V-0003 described how the levels of support and services – food, medical, education, social – as well as economic opportunities for Darfuri refugees, had steadily declined over the past two decades,³⁹ with V-0003 summing up that: *“Now we live in a miserable condition, more miserable than the condition we lived in before.”*⁴⁰
30. In the CLRV’s consultations with this group of participating victims since the outbreak of the civil war, they have related the increasingly dire humanitarian situation that has resulted from the influx of tens of thousands of new refugees to Eastern Chad, as well as disruption in the cross-border economic trade between Chad and Darfur. These participating victims have also described increased tensions between the refugee communities in the camps and local Chadian citizens, some arising from the above-mentioned economic pressures, but also, according to the participating victims, due to the Rapid Support Forces (RSF) having boosted its recruitment among Chadian Arab tribes in the border regions to bolster its forces.
31. Most recently, the CLRV’s Chad-based field assistant reported that one of the two camps in Eastern Chad where the overwhelming majority of Chad-based participating victims have resided for the past two decades, was destroyed by devastating floods on 15 August 2024, which also inundated crops on almost forty percent of the arable land in the area where the camp’s residents practice subsistence farming.⁴¹ He conveyed the extremely difficult and dangerous living conditions for the displaced camp residents, including the death of children and adults from starvation, disease and exposure. The nature of the flooding was such that the UN Refugee Agency (UNHCR), NGOs and the Chadian government were

³⁹ V-0001: p. 22, line 14-p. 23, line 5; T-120, p. 18, line 25-p. 20, line 18; p. 32, line 23-p. 33, line 7; V-0003: T-121, p. 7, line 6-p. 8, line 11.

⁴⁰ V-0003: T-121, p. 8, lines 6- 8.

⁴¹ For evidence and views on importance and circumstances of subsistence farming for participating victims who are refugees in Chad, see: V-0001: T-120, p. 32, lines 6-8; p. 33, lines 4-7; p. 34, line 16-p.41, line 3; p. 46, lines 16-19; p. 49, line 25-p. 50, line 16; DAR-V47-00000219 (transcription: DAR-V47-00000221); V-0003: T-21, p. 11, line 20-p. 14, line 15.

unable to begin aid deliveries until the first-half of October 2024, which thus far has been limited to 31,000 Central African Franc (approximately 43 Euros) in monetary assistance for those individuals falling within the most vulnerable of the UNHCR's three category classification system, and meant to assist for two months.

32. The worsening situation of the participating victims – physically, materially and psychologically, and whether they are IDPs, refugees, or in the wider diaspora, presents a stark reminder that the current judicial proceedings, to which the participating victims ascribe great importance, are but one aspect of the complex and difficult lives they have persevered in building, and re-building, against great odds, since the events of 2003-2004 that are the subject of this case.

III. Defence Jurisdictional Challenge, *Mens rea* and Mistake of Law claims

33. In its trial brief and opening statement, the Defence proffers a challenge to the Court's exercise of jurisdiction pursuant to the *nullem crimen sine lege* principle (Statute, Art. 22(1)).⁴² Separately, it posits that even if the ICC may exercise jurisdiction, and the Chamber determines the Accused committed the allegations underlying the charges, the OTP has failed to establish that such acts were undertaken with requisite intent and knowledge per Article 30, and that a mistake of law may be established excluding criminal responsibility under Article 32(2).⁴³
34. The participating victims have consistently expressed to the CLRV an abiding belief in the clearly criminal and sanctionable nature of the conduct captured by the confirmed charges. They harbour no doubts regarding the propriety of the Court's exercise of jurisdiction over the Accused, and hold a common sense view regarding the responsibility of an individual for acts voluntarily undertaken.
35. In the CLRV's assessment, the participating victims have it right, and the Defence jurisdictional challenge should be dismissed. The evidence received in the record

⁴² Defence filing 1022-Conf-tENG, paras 6-11; T-129, p. 39, line 15-p. 40, line 2; Defence filing 891, paras 3-5; Defence filing 898-Conf, paras 11-31.

⁴³ Defence filing 1022-Conf-tENG, paras 27-33; T-129, p. 35, line 5-p. 39, line 14; p. 40, line 4-p. 41, line 16.

establishes that the Court's exercise of jurisdiction over the Accused comports with the corollary human rights principles of legality and *nullem crimen sine lege*.

36. The Defence's claim of a global defect in the Prosecution's case as concerns the mental element of the charged crimes is also in vain. It is based on an incorrect understanding of the law, and otherwise unsupported in the evidentiary record.

A. *The Court's exercise of jurisdiction accords with the principle of legality*

37. The Court has properly exercised personal jurisdiction over the Accused pursuant to the UNSC's referral of the Darfur Situation under Article 13(b) of the Statute. Neither the principle of legality (*nullum crimen sine lege*) under Article 22(1), nor non-retroactivity (Art. 24(1)) are breached. Both elements of the jurisdictional test, as discussed below, are fulfilled: First, the alleged crimes were defined at the time of commission in domestic and international law. Second, the law was accessible to, and prosecution foreseeable, for a person in the Accused's circumstances.

38. The test established by the Appeals Chamber for assessing whether the Court's exercise of jurisdiction over a defendant comports with the corollary principles of legality and *nullum crimin sine lege* in circumstances where the Situation State is not a party to the Statute, may be conceptualised as a two-part assessment: First, did the criminal law applicable to the defendant during the relevant period, whether domestic or international in basis, in principle (subject to step two), criminalise and sanction the conduct captured by the charges.⁴⁴ Second, if the answer to the first step is in the positive: (a) whether the law was accessible to an individual in the accused's circumstances; and (b) whether it would have been foreseeable to such person that they may face domestic or international prosecution and sanction.⁴⁵

39. In respect of accessibility, the Appeals Chamber held that the relevant laws must have been "sufficiently clear and accessible" to a person in the circumstances of the

⁴⁴ [Judgment 503](#), para. 86.

⁴⁵ [Judgment 503](#), para. 85.

accused.⁴⁶ Regarding foreseeability, a “reasonableness” standard applies, taking into account, *inter alia*, the “‘flagrantly unlawful nature’ of the crimes charged and the circumstances of the accused”,⁴⁷ in order to determine whether a person in the accused’s situation “was reasonably capable of taking steps to comprehend and comply with” their “obligations under international law, and [...] capable of appreciating the attendant penal consequences”.⁴⁸

40. The legality assessment is objective and *ex ante*, based on a reasonable person in the accused’s situation.⁴⁹ It is not an investigation of the accused’s mental state, subjective understanding of the law, or belief in the lawfulness of their behaviour.⁵⁰

41. For the Chamber’s legality assessment here, the key factors relevant to identifying the ‘reasonable person’ in the Accused’s circumstances include, an individual who:

- i. was part of a pious and conservative Islamic society;⁵¹
- ii. lived within a multi-ethnic society governed by both ‘tribal’ and formal governmental laws and norms;⁵²
- iii. had attained education and skills sufficient to carry out medical functions within a military context, and run a shop / pharmacy;⁵³
- iv. undertook normal induction training as soldier,⁵⁴ and served in the Sudanese military as part of the medical corps for a number of years (approximately mid-1980’s to mid-1990s), attaining the highest non-commissioned officer rank of Warrant Officer (*musa’id / sol*),⁵⁵ and deployed on missions,⁵⁶ including to South

⁴⁶ [Judgment 503](#), para. 88.

⁴⁷ [Judgment 503](#), para. 85.

⁴⁸ [Judgment 503](#), para. 88.

⁴⁹ [Judgment 503](#), para. 90. *See also* A. Coco, *The Defence of Mistake of Law in International Criminal Law: A Study on Ignorance and Blame* (OUP 2022), pp 54-57 (internal citations omitted).

⁵⁰ *Lubanga*, Decision on the Confirmation of Charges, 29 January 2007, [ICC-01/04-01/06-803-tEN](#), paras 301-316 (differentiating the objective assessment for legality, with the subjective assessment for mistake of law).

⁵¹ [P-1042](#): DAR-OTP-0220-1623, paras 31, 50.

⁵² [P-1042](#): DAR-OTP-0220-1623, paras 69-72; T-027, p. 64, lines 20-25; T-028, p. 69, lines 23-25; p. 70, lines 1-11; p. 80, line 16-p. 84, line 9.

⁵³ Third Agreement on Facts, [Annex A](#), points 9, 10, 11.

⁵⁴ [REDACTED].

⁵⁵ Third Agreement on Facts, [Annex A](#), point 10; [D-0007](#): T-149, p. 6, line 7-p. 8, line 11.

⁵⁶ [REDACTED].

Sudan,⁵⁷ during the period of the second Sudanese civil war,⁵⁸ and serving during a period of an SPLA incursion into Darfur;⁵⁹ and

- v. voluntarily joined the Government of Sudan's (GoS) 2003-2004 counterinsurgency campaign as a commander of GoS-aligned militia forces,⁶⁰ having authority over deputies therein,⁶¹ and regular interactions with and standing *vis-à-vis* high ranking military and civilian officials.⁶²

42. As addressed below, the CLRV has no doubt that the criminal law applicable to the Accused in Sudan during the period relevant to the case criminalised the conduct underlying the 31 confirmed charges, was accessible to a reasonable person in the Accused's circumstances, with the possibility of prosecution and sanction for violation of this law likewise foreseeable to such a person.

- i. Applicable international, domestic, and 'community' laws and norms criminalised or sanctioned the conduct captured by the confirmed charges

43. It is unchallenged that the charged crimes were defined in the Statute at the time of their alleged commission. Further, the UNSC referral mechanism brings crimes committed in non-signatory States, such as Sudan, within the Court's purview. Indeed, and as the Pre-Trial Chamber determined in these proceedings, this is the very "*raison d'être*" of the referral mechanism.⁶³

44. The GoS's *note verbale* to the Registry dated 22 October 2024, unambiguously underlines the long-standing recognition of and incorporation within the Sudanese legal framework of fundamental international humanitarian law (IHL) and human rights principles: "*The [GoS] armed forces interest in IHL dates back as early as the date of establishing of the Sudan Defence Forces in 1925, when the first generations of human*

⁵⁷ [REDACTED].

⁵⁸ P-1042: DAR-OTP-0020-1623, para. 80.

⁵⁹ P-1042: DAR-OTP-0020-1623, para. 104.

⁶⁰ No evidence in the record suggests Accused was cajoled, threatened, or conscripted to take up position he allegedly held as a Janjaweed / militia commander during 2003-2004 conflict in Darfur.

⁶¹ See, e.g., [REDACTED].

⁶² See, e.g., [REDACTED].

⁶³ Decision 391, para. 41.

*rights and the customs and traditions of war appeared in the Queen's orders to the British Army (). These orders continued to govern the armed forces until after the independence, when they were Arabized and new rules and customs were added, consistent with traditions of the Sudanese society. This happened in the time of Lieutenant General Ibrahim Aboud, commander-in-chief of the army, in what was known as the 'List of Individuals' for the year 1960. This list stipulated the protection of rights, and vulnerable groups, women, children and civilians in the context of the armed conflicts. The Republic of Sudan ratified the four Geneva Conventions of 1949 in 1986."*⁶⁴

45. As alluded to in the above cited document, during the period relevant to the case, Sudan was party to pertinent international and regional human rights conventions, which, as the GoS set out in official submissions to international reporting mechanisms, were "considered as part of national legislation" pursuant to the 1998 Constitution⁶⁵ (applicable in 2003-2004), and additionally "several provisions of these conventions [were set out] in the very body of the laws of Sudan".⁶⁶ These international instruments included, *inter alia*,⁶⁷ the African Charter on Human and Peoples' rights (ACHPR) (accession in 1963),⁶⁸ International Convention on the Elimination of All Forms of Racial Discrimination (accession in 1977),⁶⁹ and the International Covenant on Civil and Political Rights (ICCPR) (accession in 1986).⁷⁰ As noted above, Sudan was also party to the four Geneva Conventions of 1949, the direct applicability of which in Sudan, with attendant possibility of prosecution for breach, was underlined by the GoS in its 31 March 2002 agreement with the SPLM.⁷¹ The 31 criminal charges confirmed against the Accused all capture conduct that

⁶⁴ DAR-D31-00000353 (translation DAR-D31-000000354) (underline added).

⁶⁵ DAR-OTP-0139-0003.

⁶⁶ DAR-OTP-00005133, pp 16-17; DAR-OTP-00006618, p. 10; DAR-OTP-00005133, pp 16-17.

⁶⁷ Sudan was also party to the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child (D-0023: DAR-D31-00000134, para. 75; T-142, p. 22, line 23-p. 24, line 7).

⁶⁸ D-0023: DAR-D31-00000134, para. 82; DAR-OTP-00005133.

⁶⁹ DAR-OTP-00006618.

⁷⁰ DAR-OTP-00006661.

⁷¹ DAR-OTP-00005576.

was prohibited, prosecutable, and sanctionable under international instruments directly applicable in Sudan during, and prior to, the period relevant to this case.

46. The 31 counts the Accused is charged with also capture conduct that was prohibited and subject to prosecution as a matter of customary international law. The Appeals Chamber observed that, “[i]n principle”, it “considers that the crimes under the Statute were intended to be generally representative of the state of customary international law when the Statute was drafted”.⁷² International and internationalised courts and tribunals have relied on the prohibition of conduct as a matter of customary international law when assessing whether criminal prosecution of a defendant comports with the principle of legality.⁷³
47. The aforementioned 31 March 2002 agreement between the GoS and SPLM “reconfirm[s] their [the parties] obligations under international law, including common Article 3 of the 1949 Geneva Conventions, to take constant care to protect the civilian population, civilians and civilian objects against the dangers arising from military operations”.⁷⁴ Such reference by the parties is a clear statement recognising the applicability in Sudan of norms and prohibitions under customary international humanitarian law, as Defence expert D-23 likewise accepted.⁷⁵
48. Applicable Sudanese domestic criminal law (including military law), with its foundations in Islamic *Sharia* law, also criminalised the flagrantly unlawful conduct captured by the 31 confirmed charges during the relevant period, providing an additional, independent basis establishing that the Court’s exercise of jurisdiction over the Accused comports with the principle of legality.⁷⁶

⁷² [Judgment 503](#), para. 89 (internal citations omitted).

⁷³ ICTY, *Milutinovic, et al.*, IT-99-37-AR72, Appeals Chamber, [Decision on Dragoljub Ojdanic’s Motion Challenging Jurisdiction - Joint Criminal Enterprise](#), 21 May 2003, para. 15; ECCC, *Kaing Guek Eav alias ‘Duch’*, 001/18-07-2007-ECCC/SC, Supreme Court Chamber, [Appeal Judgement](#), 3 February 2012, paras 96 (general principle), 279–280 (customary status of persecution as a CAH); Extraordinary African Court, *Habré*, [Judgment](#), 30 May 2016, paras 40–43 (internal citations omitted).

⁷⁴ DAR-OTP-00005576 (underline added).

⁷⁵ [D-0023](#): T-142, p. 63, line 8–p. 64, line 21.

⁷⁶ [Judgment 503](#), para. 86; *see also* T. de Souza Dias, “Retroactive Recharacterisation of Crimes and the Principle of Legality and Fair Labelling in International Criminal Law”, DPhil Thesis, University of Oxford Faculty of Law

49. According to D-16, a combatant's murder of a clearly identifiable civilian, rape of women in the context of an armed attack, and theft of civilian property during such attack, are all acts that were criminalised under the Criminal Law Act of 1991 ("1991 Criminal Act") in 2003-2004.⁷⁷ The Sudanese military law applicable during the relevant period, and of particular importance the Sudanese Armed Forces Act of 1986 ("1986 Military Act"),⁷⁸ also criminalised the conduct covered by the charges. While the 1986 Military Act did not include specific reference to IHL, D-16 explained that "the acts described in the Geneva Conventions and the Rome Statute are crimes prohibited" by the domestic criminal statutes in force during the period relevant to the case, which in turn are directly applicable to persons subject to the 1986 Military Act,⁷⁹ as set out in its Article 79.⁸⁰ The 1986 Military Act also contains reference to international conventions under Article 4(e),⁸¹ (prisoners of war), indicating again the relevance of IHL conventions within Sudan's legal framework.
50. Additionally, as addressed by D-16, under the law applicable in Sudan during 2003-2004, core IHL principles, including distinction, the status of protected persons and property, proportionality, and necessity, were well established and understood. The *Sharia* law principle of *ghanima* – the lawful taking of 'enemy' property in the context of armed conflict – as reflected in the 1986 Military Act (Art. 53), is limited to the taking of property from the enemy's military "camps",⁸² with "enemy" defined as "includ[ing] external enemies, outlaw rebels and armed gangs in a state of readiness for combat operations",⁸³ and therefore excluding, as D-23 accepted, at the very least, women and children.⁸⁴ Neither the 1986 Military Act, nor *Sharia* law, condoned or authorised the taking or looting of property from

(2019) (available at: <https://ora.ox.ac.uk/objects/uuid:1a0b5a4b-4033-4db7-9834-aa320c871c02>) (last accessed 14 September 2024), pp 16-18 (with further references).

⁷⁷ D-0016: T-132, p. 86, line 22-p. 88, line 15.

⁷⁸ DAR-OTP-00005984 (translation DAR-OTP-00006136).

⁷⁹ D-0016: T-130, p. 70, lines 1-13. For a specific hypothetical *see* D-0016: T-130, p. 41, lines 4-12.

⁸⁰ DAR-OTP-00005984 (translation DAR-OTP-00006136).

⁸¹ D-0016: T-131, p. 32. 33.

⁸² D-0016: T-131, p. 65, line 1-p. 66, line 14; p. 67, line 19-p. 68, line 2.

⁸³ DAR-OTP-00005984 (translation DAR-OTP-00006136) at p. 6 (underline added).

⁸⁴ D-0023: DAR-D31-00000134, para. 100; T-142, p. 74, line 15-p. 75, line 23.

civilian sites – such as Kodoom and Bindisi. Instead, such acts would constitute *hiraba* (armed robbery) under the 1991 Criminal Act,⁸⁵ equally applicable, as discussed above, in armed conflict. [REDACTED] the introductory statement in a Sudanese military training manual on the law of armed conflict for non-commissioned officers and soldiers, issued in 2000,⁸⁶ which conveyed that much of the content of the “Geneva and Hague Conventions” on the laws of armed conflict is reflected in principles of *Sharia* dating back centuries, including distinction between combatants and non-combatants, and proportionality.⁸⁷

51. Further, and presuming, *arguendo*, that the alleged acts of the Accused took place in the context of formal military command hierarchies, the evidence does not establish, as the Defence asserts, a military legal structure that “cast[] an unconditional obligation to obey, under pain of death, orders issued, with no distinction made according to the lawfulness of the order issued”.⁸⁸ As D-16 explained, the military legal structure under the 1986 Military Act did distinguish between lawful and unlawful orders,⁸⁹ and would entail criminal responsibility for both the issuer of the unlawful order and the individual who executed such order.⁹⁰ Additionally, D-16 rejected the suggestion that the refusal to obey an order would incur an immediate risk of imposition of the death penalty; instead, and unsurprisingly, the practice in such a situation was often informal resolution attempts, with formal procedures, including court processes with assigned counsel for the accused, taking place thereafter if necessary.⁹¹

52. D-16 also explained that the Constitution of Sudan applicable in 2003 and 2004 (the 1998 Constitution) included protections for fundamental human rights, although

⁸⁵ [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ Defence filing 1022-Conf-tENG, para. 30(iv); T-29, p. 38, line 22-p. 39, line 7.

⁸⁹ D-0016: T-130, p. 79, line 2-p. 87, line 25.

⁹⁰ D-0016: T-130, p. 80, lines 15-20; T-131, p. 6, lines 14-17.

⁹¹ D-0016: T-131, p. 4, line 18-p. 8, line 4.

less explicitly than later constitutions.⁹² As noted above, GoS submissions to international reporting mechanisms confirm the same.⁹³

53. In so far as pardons for persons *tried and convicted* of crimes in the context of armed conflict may have been a regular practice in Sudan prior to 2007,⁹⁴ this does not abrogate the clear criminalisation of such acts under Sudanese law during the period relevant to the present case, or the foreseeability of prosecution for such violations. D-16 explained that pardons would be issued by the President,⁹⁵ not by courts. There is no evidence suggesting that the practice of pardoning *convicted* offenders established a legal guarantee or right to be free from prosecution and sanction for violations taking place in the context of armed conflict.

54. Even in the context of intercommunal disputes and conflicts in Darfur prior to and during the period relevant to the case, Sudanese criminal law applied and was understood to apply, certainly for serious offences.⁹⁶ Inter-communal conflict resolution mechanisms in any event did not condone the harm arising from acts that were also criminalised under Sudanese law, but instead addressed them as matters of collective responsibility, requiring compensation (*diyya*).⁹⁷

55. Sudanese investigations into, and the establishment of prosecutorial and judicial bodies concerning, the 2003-2004 Darfur conflict further confirms the criminalisation in Sudan of the conduct encompassed by the 31 charges during the relevant period. The Accused was (allegedly) interviewed in November 2006,⁹⁸ as part of one such GoS investigation.⁹⁹ [REDACTED] a “specialised prosecutions office” and a “Special Criminal Court on Events in Darfur” – the latter enacted by

⁹² D-0016: T-130, p. 47, lines 14-25; p. 50, lines 5-15.

⁹³ See submissions at para. 45 *supra*.

⁹⁴ D-0016: T-130, p. 72 line 4-p. 73, line 5.

⁹⁵ D-0016: T-130, p. 72 line 4-p. 73, line 5.

⁹⁶ P-1042: DAR-OTP-0220-1623, para 71; T-028, p. 80, line 25-p. 81, line 13; p. 82, line 13-p. 84, line 7.

⁹⁷ P-1042: DAR-OTP-0220-1623, para. 70.

⁹⁸ DAR-OTP-0218-0386 (translation DAR-OTP-0219-6910); DAR-OTP-0218-0231 (translation DAR-OTP-0219-7007).

⁹⁹ [REDACTED].

a decree dated 7 June 2005¹⁰⁰ – were also established with a mandate to investigate alleged violations of Sudanese law, including human rights violations, and, per amendment, IHL,¹⁰¹ that took place during the 2003-2004 conflict in Darfur. [REDACTED] the Special Criminal Court had jurisdiction over alleged crimes which fell outside the scope of the military justice system – *i.e.* the alleged perpetrators did not fall within the category of persons to whom the 1986 Military Act applied (Article 4 of the Act), or did fall within this category, but who allegedly committed violations outside of military operations / activities.¹⁰²

56. The existence of these investigations and bodies confirms the position of the GoS that conduct of the nature captured by the confirmed charges was criminalised as a matter of Sudanese and/or international law, regardless of whether, in a particular case, the military or civilian justice system would have jurisdiction. The efficacy of and motive behind these investigations or bodies is, *contra* the opinion of D-23,¹⁰³ irrelevant to the question of what law was applicable in Sudan during the relevant period, with D-23 conceding that courts in Sudan had the ability to apply IHL,¹⁰⁴ although then claiming – unconvincingly and without sufficient basis in the CLRV’s view – that as a practical matter Sudanese law lacked the detail necessary for courts to actually proceed with prosecutions.¹⁰⁵

57. Against this weight of evidence establishing that the interconnecting and overlapping bodies of law applicable in Sudan in 2003-2004, criminalised and subjected to prosecution and sanction the conduct captured by the confirmed charges, only D-23 offers a contrary – one might say contrarian¹⁰⁶ – view. In the CLRV’s submission, a careful assessment of D-23’s report and testimony – including key conclusions on the purported need for specific national

¹⁰⁰ DAR-OTP-0066-0475 (translation DAR-OTP-0066-0470); [REDACTED].

¹⁰¹ DAR-OTP-00006622; D-0023: T-142, p. 67, line 19-p. 69, line 4.

¹⁰² [REDACTED].

¹⁰³ D-0023: DAR-D31-00000134, para. 102; T-142: p. 66, line 12-p. 69, line 24.

¹⁰⁴ D-0023: T-142, p. 69, lines 21-24.

¹⁰⁵ D-0023: T-143, p. 11, line 5-p. 13, line 18.

¹⁰⁶ *See* D-0023: T. 47, p. 33, line 3-p. 61, line 5 (D-23’s discussion with Presiding Judge and OTP counsel on requirement or not of implementing legislation under 1998 Constitution for international human rights treaties).

implementing legislation for international conventions, alleged lack of applicability or transposition within the Sudanese domestic legal system of relevant customary international law, and propositions regarding the content and application of Sudanese domestic and customary / 'tribal' law, including implications of state of emergency declarations – are unreliable, and do not undercut the findings arising from the authoritative, consistent, and clear evidence discussed above, including that of [REDACTED] P-1042 and D-16.

58. Further, D-23 accepted, as the Chamber determined, that he did not have relevant expertise in Sudanese military and security issues.¹⁰⁷ Additionally, not being fluent in reading, writing or speaking Arabic, D-23 had not read the Koran, and his knowledge of Islamic law relevant to armed conflict – including concepts such as *hiraba* and *ghanima*, and other prohibitions on conduct in armed conflict¹⁰⁸ – was limited to meetings with a Sudanese lawyer and referencing a textbook.¹⁰⁹

59. As such, the CLRV deems it unnecessary to dedicate precious pages for an extended assessment of D-23's evidence, and instead, in addition to the relevant submissions above, identifies a few instances from the record highlighting the questionable methodology and thoroughness underlying D-23's evidence:

- i. non-reliance on original texts of Sudanese jurisprudence, legislation, and constitutional decrees, instead utilising secondary sources, or notes or recollections of discussions / interviews, for the content, understanding and significance of core Sudanese law,¹¹⁰ even where copies of at least some of these texts were readily available and accessible;¹¹¹

¹⁰⁷ D-0023: T-142, p. 80, line 9-p. 81, line 1.

¹⁰⁸ D-0023: T. 143, p. 15, line 16-p. 19, line 4.

¹⁰⁹ D-0023: T-142, p. 70, line 3-p. 74, line 14; T-143, p. 28, lines 9-15.

¹¹⁰ D-0023: T-134, p. 31, line 7-p. 32, line 22; p. 104, line 11-p. 105, line 2; T-135, p. 10, line 14-p. 12, line 11; p. 13, line 8-p. 22, line 2; T-142, p. 22, lines 5-8 (agreeing report would be more accurate if texts were accessed).

¹¹¹ D-0023: T-142, p. 10, line 16-p. 12, line 25 (*Goldenburg v. Goldenburg* case); p. 13, line 1-p. 14, line 21 (1983 Judgment (Basic Rule) Act); p. 15, lines 7-17 (9 constitutional decrees, though sourced from BBC radio).

- ii. regarding the 1998 Constitution, making assertions on non-transposition of international customary law without providing sources relied on;¹¹²
- iii. offering a categorical opinion that international human rights law applicable in Sudan under the 1998 Constitution must be in line with Sharia,¹¹³ based on an “implicit” understanding of the constitutional decree relied on,¹¹⁴ and without having read the text of the decree itself;¹¹⁵
- iv. conceding, in the face of documentation that D-23 had relied on for the point, that Sudan had not submitted an interpretative statement derogating from its obligations under the ICCPR covering the period relevant to the case,¹¹⁶ and at most, D-23 could offer not “a totally clear answer” on the matter.¹¹⁷

60. It is accordingly the CLRV’s submission that the evidence clearly and convincingly establishes that the law applicable in Sudan prior to and during the period relevant to the case criminalised, and subjected to prosecution and punishment, the conduct captured by the 31 confirmed charges. The Court’s exercise of jurisdiction over the Accused fulfils the first prong of the legality / *nullum crimen sine lege* assessment.

- ii. The applicable law was accessible, and prosecution for breach foreseeable

61. The CLRV recalls her relevant submissions above on the law governing the second prong of the legality test concerning the *accessibility* of the relevant law to, and the *foreseeability* of prosecution and sanction for breach by, a reasonable person in the Accused’s circumstances.¹¹⁸ The CLRV further recalls the key factual elements noted to identify the ‘reasonable person’ in the Accused’s circumstances.¹¹⁹ As

¹¹² D-0023: T-135, p. 22, line 13-p. 25, line 20.

¹¹³ D-0023: DAR-D31-00000134, para. 78.

¹¹⁴ DAR-OTP-00007036 (Constitutional Decree No. 7) (although sourced from BBC radio).

¹¹⁵ D-0023: T-142, p. 17, line 2-p. 20, line 10; T-143, p. 3, line 1-p. 7, line 1.

¹¹⁶ D-0023: DAR-D31-00000134, para. 76; DAR-OTP-00006661; T-142, p. 24, line 8-p. 30, line 20; p. 31, lines 10-21.

¹¹⁷ D-0023: T-142, p. 85, lines 3-19.

¹¹⁸ See submissions at paras 38-40 *supra*.

¹¹⁹ See submissions at para. 41 *supra*.

addressed hereunder, in view of the relevant law and facts, it is the CLRV's submission that the second prong of the legality test is convincingly met.

62. As addressed above, the conduct captured by the 31 charges was clearly prohibited and subject to prosecution and sanction in Sudan under core and readily accessible national law applicable in Sudan during (and prior to) the relevant period, especially the 1998 Constitution, the 1986 Military Act, the 1991 Criminal Act, and *Sharia* law, including in the context of armed conflict,¹²⁰ as well as applicable international instruments long ratified by Sudan.¹²¹ A person in the Accused's circumstances¹²² would accordingly, at the very least, have been "reasonably capable of taking steps to comprehend and comply with" their "obligations under international law, and [...] capable of appreciating the attendant penal consequences",¹²³ including with respect to the operation of core IHL principles of distinction, proportionality, military necessity,¹²⁴ and the obligation to refuse unlawful orders entailing gross violations of IHL.¹²⁵
63. Further, the wanton and atrocious nature of the conduct against civilian persons, objects, and unarmed or detained individuals, encompassed by the 31 charges, was also "flagrantly unlawful [in] nature",¹²⁶ which would have been readily apparent to a reasonable person in the Accused's circumstances.¹²⁷ International courts and tribunals have held that there is a strong link between acts being clearly morally wrong, and the foreseeability of criminal prosecution, without a need for a person in the defendant's position to have had reference to a specific provision of law.¹²⁸

¹²⁰ See submissions at paras 48-56 *supra*.

¹²¹ See submissions at paras 45-47 *supra*.

¹²² See submissions at para. 41 *supra*.

¹²³ [Judgment 503](#), para. 88.

¹²⁴ See submissions at para. 50 *supra*.

¹²⁵ See submissions at para. 51 *supra*.

¹²⁶ [Judgment 503](#), para. 85.

¹²⁷ See submissions at para. 41 *supra*.

¹²⁸ [Judgment 503](#), para. 85 (see citations to relevant international jurisprudence); *see also*, ECtHR, *Milanković v Croatia*, Application no. 33351/20, [Judgement](#), 20 January 2022, paras 63-64 (internal citations omitted).

64. While, in light of the above legal framework and factual circumstances, a person in the Accused's position would not have had to undergone specific training in IHL to satisfy the legality elements of accessibility and foreseeability, the evidence in the record indicates that awareness of the 1949 Geneva Conventions and their core principles [REDACTED] was a fact,¹²⁹ and actual training in the basics of IHL for deployed soldiers did take place, during the period the Accused served in the SAF, including, as noted, at the highest non-commissioned rank of Warrant Officer (*musa'id / sol*).¹³⁰ [REDACTED] it was already standard practice by the mid-1990s for training in IHL to be delivered to "any mobile force or any force going to any fighting operation".¹³¹ [REDACTED] SAF IHL training materials, albeit 'simpler' than later versions, existing prior to 2000.¹³²

65. In respect of the period relevant to the case, and as submitted above, a reasonable person in the Accused's circumstances includes an individual who voluntarily joined the GoS's 2003-2004 counterinsurgency campaign as a commander of GoS-aligned militia forces,¹³³ having authority over deputies in these forces,¹³⁴ and regular interactions with and standing *vis-à-vis* high ranking military and civilian officials.¹³⁵ A person in these circumstances would, at the very least, have been "reasonably capable of taking steps to comprehend and comply with" their "obligations under international law, and [...] capable of appreciating the attendant penal consequences".¹³⁶ [REDACTED] military legal advisers, including human rights advisors, were routinely made available during the Darfur conflict, and stationed at major military commands, including Zalingei.¹³⁷

¹²⁹ [REDACTED].

¹³⁰ Third Agreement on Facts, [Annex A](#), point 10; [REDACTED].

¹³¹ [REDACTED].

¹³² [REDACTED].

¹³³ There is no evidence in the record suggesting that the Accused was cajoled, threatened, or conscripted to take up the position he allegedly held as a Janjaweed / militia commander during the 2003-2004 conflict in Darfur.

¹³⁴ *See, e.g.*, [REDACTED].

¹³⁵ *See, e.g.*, [REDACTED].

¹³⁶ [Judgment 503](#), para. 88.

¹³⁷ [REDACTED].

66. In view of the above, the CLRV submits that the second prong of the legality test is convincingly met, and therefore, the Court's exercise of jurisdiction over the Accused fully accords with the principles of legality and *nullum crimen sine lege*.

B. *No global mens rea defect, or mistake of law, exists or can be established*

67. If the Chamber rejects the Defence's jurisdictional challenge, and further finds, beyond reasonable doubt, the Accused responsible for carrying out the physical acts underpinning the confirmed charges, the Defence asserts a global *mens rea* defect exists, and mistake of law finding is warranted, in respect of each of the 31 charges, excluding his criminal liability.¹³⁸ The CLRV submits that it follows from the relevant evidence that the Accused acted with the requisite intent and knowledge under Article 30 to engage his criminal responsibility. Further, the elements identified by the Defence as negating the required *mens rea* do not constitute a valid mistake of law under Article 30(2).¹³⁹

i. Applicable legal framework for establishing *mens rea* and mistakes of law

68. The legal framework for assessing whether the requisite *mens rea* has been established for each element of a crime under the Statute, and evaluating whether a mistake of law may be established excluding criminal responsibility, is as follows:

- i. The mental element addressed under Article 30 may be described "as some degree of awareness of the material or definitional elements of the offence",¹⁴⁰ demonstrated, under Article 30(1), through a perpetrator's commission of these elements with "intent and knowledge". Per Article 30(2), intent is established where the individual "means to engage in the conduct" (*i.e.* acts with basic volition or voluntariness), and in relation to the consequence(s) arising from such conduct "means to cause that consequence or is aware that it will occur in the ordinary course of events" (virtual certainty¹⁴¹). Pursuant to Article 30(3),

¹³⁸ Defence filing 1022-Conf-tENG, paras 27-33; T-129, p. 35, line 5-p. 39, line 14; p. 40, line 4-p. 41, line 16.

¹³⁹ Defence filing 1022-Conf-tENG, paras 27-33; T-129, p. 35, line 5-p. 39, line 14; p. 40, line 4-p. 41, line 16.

¹⁴⁰ A. v. Verseveld, Mistake of Law: Excusing Perpetrators of International Crimes (TMC Asser 2012), p. 83.

¹⁴¹ *Lubanga*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, [ICC-01/04-01/06-3121-Red A 5](#), paras 6, 447 (internal citations omitted).

the requisite knowledge is established where the defendant had “awareness that a circumstance exists or a consequence will occur in the ordinary course of events” (again, a virtual certainty standard).

- ii. As set out in the introduction to the Elements of Crimes (“EoC”), “[e]xistence of intent and knowledge can be inferred from relevant facts and circumstances”,¹⁴² and where there are “mental elements associated with elements involving value judgement, such as those using the terms ‘inhumane’ or ‘severe’, it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated”.¹⁴³
- iii. Regarding elements of a crime that involve a perpetrator making a legal assessment – such as the status of enemy property protected from destruction under Article 8(2)(e)(xii) – what is required is that the “perpetrator was aware of the factual circumstances that established” the status or circumstance “without it being necessary [...] to establish that the perpetrator had concluded, following assessment of the situation,” that the relevant status or circumstance exists as a matter of domestic or international law.¹⁴⁴
- iv. Article 30 read with the first sentence of Article 32(2), does not require that an individual possessed the knowledge they were acting unlawfully,¹⁴⁵ or recognise a valid mistake based on an individual’s lack of awareness of the proscribed nature of their conduct (*ignorantia juris non excusat*).¹⁴⁶
- v. Under Article 32(2), a valid mistake of law that *may* exclude an accused’s criminal responsibility is limited to one that “negates the mental element”

¹⁴² EoC, Introduction, para. 3 (underline added).

¹⁴³ EoC, Introduction, para. 4.

¹⁴⁴ *Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, [ICC-01/04-01/07-3436-tENG](#), para. 900 (underline added); *see also* O. Triffter & J. Ohlin, “Article 32: Mistake of fact or mistake of law”, in K. Ambos, *ed.*, Rome Statute of the International Criminal Court: Article-by-Article Commentary (Hart 2022), p. 1395.

¹⁴⁵ The concept of ‘criminal intent’ in the common law; ‘*Unrechtsbewußtsein*’ in German criminal doctrine.

¹⁴⁶ *Al Hassan*, Trial Judgment, 26 June 2024, [ICC-01/12-01/18-2594-Red](#) (by majority), para. 1773; *see also* A. Coco, *The Defence of Mistake of Law in International Criminal Law: A Study on Ignorance and Blame* (OUP 2022), p. 135 (internal citations omitted).

required by such a crime, or as provided for in article 33”, addressing superior orders and prescription of law.

ii. No global *mens rea* defect or mistake of law exists in respect of the Accused

69. While framed as an argument aimed at the failure of the OTP to establish the requisite mental element for each of the charged crimes under Article 30 of the Statute, and concomitantly claiming the existence of a valid mistake of law under Article 32(2), the Defence position is instead a rehashing of its submissions on the principles of *legality* and *nullem crimen sine lege*, which are addressed above.

70. The Defence asserts, *inter alia*, that in “the particular circumstances in Sudan in 2003-2004” the Accused “could not have had knowledge of the criminal and blameworthy character of the acts with which he has been charged and that, on the basis of the information and the knowledge which he could reasonably have possessed, he must have been convinced that not to carry out orders to commit them was a serious crime under Sudanese law, carrying the death penalty”.¹⁴⁷ The Defence points in particular to the IHL principles of “distinction between combatants and non-combatants and the protection of civilians and persons deprived of liberty”,¹⁴⁸ as well as military necessity,¹⁴⁹ as pertinent examples of the body of law that did not apply or was insufficiently clear in Sudan during the relevant period, or that the Accused “could not in the slightest have been made aware of” in the course of his military career.¹⁵⁰

71. The Defence’s submissions amount to a claim that the Accused was ignorant in respect of the applicable law and therefore could not have been aware of the “criminal and blameworthy character” of the proscribed acts he is alleged to have committed. As addressed above, neither ignorance of the applicable and accessible law, nor a lack of awareness of the criminal or ‘blameworthy’ character of one’s

¹⁴⁷ Defence filing 1022-Conf-tENG, para. 29.

¹⁴⁸ Defence filing 1022-Conf-tENG, para. 31.

¹⁴⁹ T-029, p. 38, lines 13-21.

¹⁵⁰ Defence filing 1022-Conf-tENG, para. 31.

conduct, is relevant to the *mens rea* assessment under Article 30, or a valid and cognisable mistake excluding criminal responsibility under Article 32(2).

72. Further, in respect of elements of a crime that may require a legal assessment – such as, potentially, distinction between combatants and non-combatants, the protected status of property or persons, and whether particular conduct comports with the principle of military necessity – what is required, as addressed above, is that an accused had awareness of the factual circumstances that established a status or circumstance, not that the perpetrator conducted an assessment with reference to domestic or international law.

73. In regard to the Defence’s submissions that relevant Sudanese law applicable in 2003-2004 “casts an unconditional obligation to obey, under pain of death, orders issued, with no distinction made according to the lawfulness of the order issued”,¹⁵¹ the CLRv, firstly, refers to its relevant submissions on legality above disputing the characterisation and application of Sudanese law as described by the Defence.¹⁵² Second, even if the law were to have applied in the manner suggested, the evidence does not establish that the Accused, during the relevant period, held a formal military rank, was otherwise formally part of the GoS armed forces, or under a legal obligation to obey formal *military* ‘orders’ that may have been issued to him.¹⁵³ Third, and more to the point, the Defence’s submissions amount to ‘backdoor’ exclusionary claims of superior orders under Article 33 and/or duress pursuant to Article 31(d) of the Statute, which the Defence acknowledges cannot be asserted or claimed as such, as a matter of law and fact in the circumstances of this case.¹⁵⁴

¹⁵¹ Defence filing 1022-Conf-tENG, para. 30(iv); T-29, p. 38, line 22-p. 39, line 7.

¹⁵² See submissions at para. 51 *supra*.

¹⁵³ See P-1042: DAR-OTP-0220-1623, paras 85, 88, 91, 126, T-027, p. 67, line 3-p. 68, line 1; p. 87, lines 14-18; T-029, p. 30, line 9-p. 31, line 7; p. 31, lines 15-24 (only militia / *Janjaweed* formalised were Border Intelligence Brigade of Musa Hilal, who were on payroll of GoS, given ranks, received rations and housing; other militia / *Janjaweed* mobilised were only provided basic support (weapons, transport), primarily rewarded by a license to loot, pillage, take land, commit sexual offences, and with promise of *future* formal incorporation into GoS).

¹⁵⁴ Defence filing 1022-Conf-tENG, para. 32; T-129, p. 37, lines 18-23.

74. Lastly, the Defence's position is impermissibly vague and lacking the detail necessary to assert, on the basis of specific facts, claims under articles 30 and 32, which concern the Accused's *actual* mental state. This is the natural result of the Defence's primary position that the Accused had nothing at all to do with the charged events. While every defendant may advance positions and assert claims under articles 30 and 30(2) of the Statute, the efficacy of such positions is founded on an acknowledgement that an accused was present at relevant events and committed certain acts. An accused who removes himself completely from the scene can hardly muster a credible position based on hypotheticals as to how their mental state and behaviour was *actually* impacted in these circumstances.¹⁵⁵

75. The Defence's assertion of a global *mens rea* defect and mistake of law claim are not supported in law or fact, and do not establish a relevant negation of the Accused's *mens reas*, or a valid exclusion of criminal responsibility, under articles 30 and 32(2).

IV. Defence challenges to the fairness of the proceedings

76. In consultations and interactions with her clients throughout these proceedings, the CLRV and her team have taken care to inform the participating victims and engage them on ICC trial procedures and timelines, the principle of fair proceedings and the fundamental rights of the Accused, and the reasoning behind and circumstances surrounding the Chamber's grant of several extensions of time to the Defence for the preparation and presentation of its case.

77. While laudably expeditious for an ICC trial, these proceedings will likely approach five years in length by the time a judgment is issued, and take place more than two decades after the 2003-2004 conflict. In consultations with the participating victims, they have reflected with grace and understanding on the length of this trial. They have done so because of the trust they have placed in this international judicial

¹⁵⁵ *C.f.*, ICTY, *Erdemović*, IT-96-22, [Sentencing Judgment](#), 5 March 1998, paras 13-14, 17 (consideration of superior orders and duress claims for sentencing based on what Accused accepted he had done and surrounding circumstances, including receiving specific orders and protesting against, difficult relationship with superior, specific threat of death against him, and how circumstances *actually* impacted his thinking and behaviour).

mechanism. As highlighted in the CLRV Trial Brief, participating victim a/20668/20, during a meeting on 13 March 2023, “ask[ed] the judges to move forward so that justice can be done”.¹⁵⁶ In an earlier meeting, a participating victim stated: “*The CLRV, and the Court generally, is responsible for what we have been working on for so long. We have been advocating, complaining, looking for justice for 20 years. Now all our work is out of our hands, it is in yours.*”¹⁵⁷

78. It is the CLRV’s strong submission that in these proceedings, the “work” of justice referred to by the participating victims has been conducted in a manner fully respecting the fair trial rights of the Accused and protective of the integrity of the proceedings. As such, and in line with numerous prior CLRV submissions,¹⁵⁸ and the Chamber’s relevant decisions,¹⁵⁹ the CLRV rejects the Defence’s specious and repeated claims of unfair proceedings and breach of the Accused’s fair trial rights.

A. *The Accused’s fair trial rights have been scrupulously upheld and respected*

79. In notifying the closure of its case, the Defence once more sets out a litany of complaints alleging the obstacles it has faced in conducting investigations and preparing its case – both prior to and after the outbreak of civil war in Sudan, the Chamber’s supposed failures to appropriately address these obstacles, and the insufficiency of the extensions of time granted the Defence to compensate for the impact of these alleged difficulties.¹⁶⁰ The Defence also repeats its mischaracterisation¹⁶¹ of the Chamber’s findings¹⁶² in respect of the uniqueness and

¹⁵⁶ [CLR V Trial Brief](#), para. 233(v).

¹⁵⁷ [CLR V Trial Brief](#), para. 234.

¹⁵⁸ 904-Conf, (PRV: [904-Red](#)); 925-Conf (PRV: [925-Red](#)) 984-Conf, paras 7-8, 13-18; 1011-Conf, paras 4, 7, 8, 10, 14 (PRV: [1011-Red](#)); 1050-Conf, paras 11-12; 1054-Conf, paras 5-7, 9-11; 1113-Conf, paras 5-10 (PRV: [1113-Red](#)); 1130-Conf, paras 4-5; ([1130-Red](#)); 1181-Conf, paras 21-23 (PRV: [1181-Red](#)); 1184-Conf, para. 17 (PRV: [1184-Red](#)).

¹⁵⁹ 853-Conf (PRV: [853-Red](#)); 857-Conf (PRV: [857-Red](#)) 913-Conf ([913-Red](#)); 916-Conf-Exp (PRV: [916-Red](#)); 938-Conf (PRV: [938-Red](#)); 990-Conf (PRV: [990-Red](#)); 995-Conf ([995-Red](#)); 1057-Conf; 1118-Conf; 1161-Conf (PRV: [1161-Red](#)) 1182-Conf ([1182-Red](#)); 1190-Conf, para. 23 (1190-PRV).

¹⁶⁰ Defence filing 1188-Conf, para. 3 (PRV: [1188-Red](#)). See also Defence’s trial brief (1022-Conf, para. 2).

¹⁶¹ Defence filing 1188-Conf, paras 8-9 (PRV: [1188-Red](#)).

¹⁶² Decision 916-Conf, para 33 (PRV: [916-Red](#)) (“[A]s noted by the CLRV, it is not readily apparent to the Chamber how these documents may be considered to be so essential as to prevent the defence from putting forward any kind of a case.”); Decision 938-Conf, para. 28 (PRV: [938-Red](#)).

probative value of civil status, criminal background check, and military records of the Accused, which the Defence has sought – but not yet received – from the GoS.

80. These matters have been fully ventilated, and the Defence's complaints rejected by the Chamber,¹⁶³ and in certain respects, the Appeals Chamber.¹⁶⁴ As the Chamber recalled in a recent decision, "it has granted the Defence a remarkable degree of latitude and flexibility in the preparation and presentation of its evidence", and "[t]he Defence's assertion that the Chamber's decisions according more time to the Defence are of limited use, is not borne out by the evidence".¹⁶⁵
81. The Defence never once turns the mirror on itself, and acknowledges that the root cause of these supposed difficulties are its *own decisions* – to litigate instead of investigate,¹⁶⁶ arbitrarily limit the manner of its investigations, and generally conducting itself in a dilatory manner.¹⁶⁷ These self-inflicted claimed difficulties are all the more glaring given that: (i) the Accused's initial appearance was held more than four years ago (two years and ten months *prior* to the outbreak of the civil war), with his core defence of mistaken identity put forward at the very beginning of these proceedings; and (ii) the more than 19 months separating the appearance of the OTP's last witness,¹⁶⁸ and the closure of the Defence case.
82. It is a Chamber's responsibility to "ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused".¹⁶⁹ It is not within the remit of the Chamber to direct the conduct of the Accused's independent defence. The Defence cannot shift blame for its own choices and missteps, and the consequences arising therefrom, onto the Chamber or outside circumstances.
83. The Accused's Article 67(1) rights to adequate time and facilities to prepare his defence, and to call witnesses and evidence in his favour under the same conditions

¹⁶³ See Trial Chamber decisions cited at fn. 159 *supra*.

¹⁶⁴ Judgment 1097-Conf.

¹⁶⁵ Decision 1190-Conf, para. 23 (internal citations omitted) (PRV: [1190-Red](#))

¹⁶⁶ See, e.g., Decision 916-Conf-Exp, para. 41 and decisions cited at fn. 83 (PRV: [916-Red](#)).

¹⁶⁷ See, e.g., Decision 916-Conf-Exp, paras. 37-42 (PRV: [916-Red](#)).

¹⁶⁸ P-0131 on 14 February 2024 (T-113).

¹⁶⁹ Statute, Art. 64(2).

as evidence against him, have been scrupulously respected. The CLRV is aware of the difficulties the Defence has been facing given the circumstances in Darfur and Sudan in general, and those were acknowledged by the Chamber in numerous decisions. However, at this stage, the Defence's rejected complaints should play no role in how the Chamber assesses the evidence, or in the Chamber's ultimate determinations under Article 74. The "work" of justice the participating victims have awaited for more than two decades compels the Chamber, with full fidelity to the proceeding's fairness, to proceed as such.

V. The Accused's identity as "Ali Kushayb"

84. As addressed in the introduction,¹⁷⁰ and pursuant to the CLRV's understanding of and approach to her mandate in these proceedings, this brief does not, by and large, enter into the core theory of the case advanced by the Prosecutor in respect of the Accused's alleged actions preceding and during the charged incidents, the structure and make-up of relevant organisations, and matters of witness credibility.
85. The primary defence advanced by the Accused and his counsel in these proceedings, however, that the Accused is not the same person known and identified as "Ali Kushayb" prior to, during, and after the charged events, contrary to the Prosecution's position, calls into question the very foundations of this case. In this sense, the Accused's position is similar in nature to the Defence's jurisdictional challenge and *mens rea* arguments, addressed above. It is also a matter that has uniformly elicited a visceral and incredulous reaction from the participating victims when consulted on this subject. As a participating victim named Hawa (a/10288/22) put it during a meeting with the CLRV team on 24 July 2024: "*Hearing the defence claim that this wasn't Ali Kushayb is just satirical to me.*"
86. Given the nature of the defence advanced by the Accused, its implications, and the participating victims' strong and consistent views on the matter, the CLRV

¹⁷⁰ See submissions at paras 6-7 *supra*.

provides these limited submissions to assist the Chamber in considering the Defence's position, and to demonstrate that the participating victims' intuitive and immediate response to this defence is well founded in the evidence.

87. The submitted evidence, including the Accused's own words, relevant documentation, and consistent witness accounts, lead to only one reasonable and inexorable conclusion. The Accused on trial is not the victim of any conspiracy or communal narrative creation. The factual overlap in the biographical details of Mr Abd-Al-Rahman, including facts agreed between the parties, and that of "Ali Kushayb" as established in the evidence, is such that coincidence or mistake is not plausible on any view of the case record. Nor, in the CLRV's submission, does the evidence of Defence witnesses credibly challenge this reality. Instead, the Accused is one and the same as the individual allegedly known as "Ali Kushayb".

A. *Designation as or allusion to "Ali Kushayb" by Accused and others*

88. Videos of the Accused – recorded several years after the period of the charged incidents and the issuance of an ICC arrest warrant for him, and news reports on the same – record the Accused or others directly or indirectly referring to him as "Ali Kushayb". Further, P-0869, who contacted the OTP to facilitate the Accused's surrender, also referred to the Accused, unprompted, as "Ali Kushayb".

89. There is no evidence in the record that can credibly explain why, when the Accused's position in the proceedings is a complete disavowal of any connection to the name "Ali Kushayb" and the ICC allegations linked to this name, that he and others around or connected to him would use the name in reference to the Accused.

90. In a video transmitted by P-0869 in March 2020 to the OTP, the Accused addresses the camera and states without hesitation, *inter alia*: "I'm Ali Muhammad Ali Abd-Al-Rahman, and **my nickname is Kushayb**. In truth, the Government has made accusations

*against me and all of those accusations are false. They've got no bearing on the truth because they said that I was a terrorist. Secondly, I killed, I admit ... people in Darfur [...]."*¹⁷¹

91. Nothing in the evidence offers a credible explanation as to why the Accused, unprompted and of his own volition, would have falsely stated in a communication destined for the Court that his "nickname is Kushayb", when, as discussed above, he thereafter vociferously denied – as the central node of his defence – such a connection once before the ICC. While identifying himself as "Kushayb", the Accused at the same time attacks "accusations" against him as "false". It beggars belief that the Accused would not, in this context, equally attack and deny a supposed false, long-standing and public designation of himself as "Kushayb", instead of claiming it as his nickname. The simple answer is that he spoke the truth.
92. P-0869 contacted the Prosecution and referred to the Accused only as "Ali Kushayb" in his first communication.¹⁷² Again, nothing in the evidence credibly explains why, when the Accused demonstrated an acute allergy to the "Kushayb" name once before the Court, an intermediary acting in concert with him would have casually and without any qualifier, used the "Kushayb" name.
93. In the so-called 'Teachers video', filmed sometime after the April 2019 overthrow of former President Bashir, a bystander shouts "*Long live, Ali Kushayb!*",¹⁷³ as a person identified as the Accused is addressing a crowd in the centre of Rahad al-Berdi, in his capacity as a CRF commander, and as part of the local administration and/or 'security' committee.¹⁷⁴ This video provides further discrete confirmation that the Accused was well-known in Rahad al-Berdi as "Ali Kushayb", and confirms D-0002's evidence that it was widely known in Rahad al-Berdi, based on

¹⁷¹ DAR-OTP-0216-0119 (transcript DAR-OTP-0216-0795; translation DAR-OTP-0216-0797) (emphasis added).

¹⁷² DAR-OTP-0217-0030 (translation DAR-OTP-0217-0030); DAR-OTP-0215-7063 (investigator's report).

¹⁷³ DAR-OTP-0215-2697 / DAR-OTP-00000236 (transcript DAR-OTP-0220-3194) (translation DAR-OTP-0220-3199, p. 3202, line 51).

¹⁷⁴ D-0008: T-139, p. 83, line 5-p. 85, line 3; D-0005: T-158, p. 74, line 7-p. 77, line 7; D-0001: T-155, p. 19, line 7-p. 23, line 4.

radio and television reports and word of mouth, that an arrest warrant for the Accused had been issued by the ICC,¹⁷⁵ which links him to the name “Kushayb”.

94. In the so-called ‘*Um Sory*’ video, filmed sometime between 2013 and 2015,¹⁷⁶ a person identified as the Accused, wearing the CRF uniform with the rank of ‘*Musaid*’,¹⁷⁷ addresses a large group of individuals, and makes the following statement: “*I mean what Radio Dabanga says is true because I’ve killed a great many people and I’m still going to kill people.*”¹⁷⁸ Various news items broadcast or available in Sudan from this period, including from Radio Dabanga, and reporting on the 2013 Ta’aisha-Salamat conflict or on an attempted assassination of the Accused in Nyala later that year, identify him as the head of the CRF in the area of Rahad al-Berdi and mention the ICC arrest warrant and allegations against him, as well as his connection to the name “Kushayb”.¹⁷⁹ The Accused’s knowing reference to these news reports, even if made as a boast, once again tie him to the name “Kushayb”.
95. As a final point, while the Accused voluntarily surrendered himself to the Court in 2020, the claim that he did so, as the Defence submits, out of an abiding and noble interest in justice and to clear his name, holds little credibility in light of the Accused’s allusion, *as much as seven years earlier*, to these news reports. In the CLRV’s view, it is highly doubtful, in any event, that the Accused would not have known about the 2007 ICC arrest warrant issued against him soon thereafter.

B. Documentation of “Kushayb” name; ‘Facebook’ evidence; No conspiracy

96. Documentation dating prior or close to the 27 April 2007 ICC arrest warrant against the Accused refers to the name “Ali Kushayb” and/or the name of the Accused in connection with the 2003-2004 Darfur conflict. There is accordingly no merit to the

¹⁷⁵ D-0002: T-156, p. 51, line 10-p. 53, line 11.

¹⁷⁶ D-0003: T-156, p. 8, line 4-p. 10, line 22. The Accused is a member of the Ta’isha tribe.

¹⁷⁷ D-0032: T-141, p. 38, line 17-p. 41, line 14.

¹⁷⁸ DAR-OTP-00006452; transcript & translation DAR-OTP-0223-0525-R01, p. 0530, lines 115-116.

¹⁷⁹ DAR-OTP-00010624; DAR-OTP-00006171 (translation DAR-OTP-00006771); DAR-OTP-00005652 (translation DAR-OTP-00006587); DAR-OTP-00005676 (translation DAR-OTP-00006589); DAR-OTP-00005660 (translation DAR-OTP-00006581); DAR-OTP-00005650 (translation DAR-OTP-00006582); DAR-OTP-00005668 (translation DAR-OTP-00006583).

claim that the ICC arrest warrant was the genesis of the name “Kushayb” and its connection to the Accused, or the widespread knowledge of this connection.

97. This documentation includes: **(i)** GoS military / intelligence reports on the Darfur conflict dating to 2003, prior to the 15 August 2003 attacks on Kodoom and Bindisi, referring to an individual identified as “Ali Muhammad Ali Abd-Al-Rahman” followed in “parentheses” by “Kushayb”;¹⁸⁰ **(ii)** representations of memorandums [REDACTED] an individual referred to therein as “Commander of the Mujahidin and Fursan, Ali Muhammad Abd-Al-Rahman, ‘Kushayb’”, dated to August 2003, and concerning the planning and execution of the 15 August 2003 attack on Bindisi;¹⁸¹ **(iii)** a Human Rights Watch press release dated 7 April 2004, which refers to an individual named “Ali Kushayb” being in charge of the Deleig executions;¹⁸² **(iv)** meeting minutes from the Sudanese National Commission of Inquiry, dated 1 June 2004, during which a participant refers to “Lieutenant ‘Ali Muhammad ‘Ali, nicknamed ‘Kushayb’ in relation to the alleged detention and execution of 127 men in Deleig”;¹⁸³ **(v)** a Report of the Sudanese National Commission of Inquiry, dated January 2005, and referring to “the leader of the Fursan armed militia, Muhammad ‘Ali Kushayb” and a “militia leader, Muhammad ‘Ali Kushayb”;¹⁸⁴ **(vi)** a Report of the United Nations International Commission of Inquiry on Darfur, also dated January 2005, referring to a person by the name of “Ali Mohamed Ali Kouchib” in respect of alleged killings in Garsila, Deleig, Tanako, Mukjar, Bindisi, and Umkher;¹⁸⁵ **(vii)** an official record of a signed interview with an individual identified as “Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb)”, “Warrant Officer with the Central Reserve Police”, dated November 2006, as part of a GoS investigation / inquiry into crimes committed during the 2003-2004 Darfur conflict

¹⁸⁰ [REDACTED].

¹⁸¹ [REDACTED].

¹⁸² DAR-OTP-0064-0184.

¹⁸³ DAR-OTP-0116-0549 (translation DAR-OTP-0063-0399).

¹⁸⁴ DAR-OTP-0116-0380 (translation DAR-OTP-0036-0348).

¹⁸⁵ DAR-OTP-0013-0119.

and provided along with interviews of other individuals¹⁸⁶ (*contrary to the Defence, no evidence indicating forgery*); **(viii)** media article from ‘Al Hayat’ news service dated 8 March 2007, and reporting on an interview with Ahmad Harun, where it records Harun confirming that he knows “Ali Kushayb” and met him for the first time when the rebels attacking Mukjar in August 2003;¹⁸⁷ **(ix)** sometime in 2007, transmission of an official summons from the Sudanese General Prosecutor for a person named “Ali Kushayb” in the CRF, subsequently corrected to “Ali Muhammad Ali Abd-Al-Rahman”.¹⁸⁸

98. The Defence called one witness (D-26),¹⁸⁹ relied on the prior recorded testimony of another (D-22 / P-0137), and discrete evidence from a third ([REDACTED]),¹⁹⁰ to explore and advance the idea of the existence of an operation to fabricate false evidence aimed at misleading the Court and OTP about the activities of the GoS in Darfur.¹⁹¹ This evidence did not credibly indicate the existence of any such sophisticated operation, and certainly gave no indication whatsoever of a plan or conspiracy by the GoS and/or rebels to concoct into existence a phantom figure named “Ali Kushayb” and connect this nickname and the ICC allegations to the Accused.

99. The weight of the documentation discussed above highlights the paucity of evidence underlying and the incredulity of – as the participating victims have expressed to the CLRV – the notion that conspiracy, simple mistake, or communal narrative creation, is the cause of the OTP’s connecting “Ali Kushayb” to the Accused. Indeed, as a witness called by the Defence, D-0032, finally admitted under cross-examination, he heard people talking about a man named “Ali Kushayb” in

¹⁸⁶ DAR-OTP-0218-0386 (translation DAR-OTP-0219-6910); DAR-OTP-0218-0231 (translation DAR-OTP-0219-7007).

¹⁸⁷ DAR-OTP-0124-0730 (translation DAR-OTP-0153-1614).

¹⁸⁸ [REDACTED].

¹⁸⁹ D-0026: DAR-D31-00000279; DAR-OTP-0109-0111; T-147.

¹⁹⁰ [REDACTED].

¹⁹¹ See, e.g., Defence filing 1028-Conf.

Garsila in 2003 and 2004 (where the parties agree the Accused lived) in the context of the ongoing conflict, and since then, has “heard about this name all the time”.¹⁹²

100. D-32’s observation that he “heard about this name all the time”, is also reflected in a different context – namely, the existence of various Facebook pages that appear to be linked to the sons of the Accused, in which they and/or others proudly link themselves to the Accused and the ICC proceedings against him, and refer to him as “Ali Kushayb”.¹⁹³ While this evidence, by itself, is certainly not determinative, it adds yet another cumulative piece to a jigsaw puzzle that has only one solution that properly, seamlessly and credibly fits together – the Accused is “Ali Kushayb”.

C. Prosecution witnesses definitively link Accused to “Ali Kushayb”

101. The evidence of the witnesses called by the OTP provides further overwhelming and consistent evidence that the Accused is one and the same as the individual allegedly known as “Ali Kushayb”. While the CLRV does not intend to embark on a comprehensive assessment, even a limited exploration confirms the views of the participating victims on this matter.

102. Pursuant to the agreed facts, documentary evidence records that the Accused was born in 1949, in the town of Rahad al-Berdi, Rahad al-Berdi locality, South Darfur State.¹⁹⁴ It is also agreed that the Accused qualified as a medical assistant in 1984, and was part of the Medical Corps of the SAF.¹⁹⁵ It is further agreed that, upon his retirement from the SAF around the early to mid-1990s, he lived in Garsila, where he opened a shop / ‘pharmacy’ from which he sold medication.¹⁹⁶

103. While the evidentiary record does not provide a clear answer as to the exact origin and meaning(s) that may have ascribed to the name “Ali Kushayb” *vis-à-vis* the Accused, it does demonstrate that this *alias* / nickname was well-established in

¹⁹² D-0032: p. 29, line 21-p. 30, line 9.

¹⁹³ See, e.g., evidence of D-0037 (expert): T-152; D-0011: T-138; D-0008: T-139.

¹⁹⁴ Third Agreement on Facts, [Annex A](#), points 1, 7.

¹⁹⁵ Third Agreement on Facts, [Annex A](#), points 9, 10.

¹⁹⁶ Third Agreement on Facts, [Annex A](#), point 11.

the Accused's public life prior to 2003, at the very least in the context of Garsila. [REDACTED] evidence regarding the central role played by the market in Garsila, is a helpful preface when considering the evidence of the OTP witnesses: "[W]e're talking about a small area. You may run into someone twice [...] or more a day. There are only few shops in the market. It's impossible to go to the market and not see most people. I mean, in the market you could find, perhaps, three quarters of the population of the town."¹⁹⁷

104. Dual status witness P-0878 (a/10297/22) first came to know of an individual identified to him by locals as "Ali Kushayb" in 1984, when P-0878 was a student in Garsila. At the time, "Ali Kushayb" was a soldier stationed in Garsila, and it was common for P-0878 and other students to see "Ali Kushayb" in the market along with other soldiers.¹⁹⁸ P-0878 next saw the individual he knew as "Ali Kushayb" in 1989 in Garsila, and identified him as the same person he had seen in the Garsila market years earlier. P-0878 testified that "Ali Kushayb" was now operating a pharmacy and agreed he was well-known ("famous") in the area.¹⁹⁹ During the 1990's, P-0878 [REDACTED] confirmed to him that "Ali Kushayb" had been part of the Medical Corp in the SAF.²⁰⁰ P-0878 was clear when testifying – as the Defence accepted – that the person to whom P-0878 ascribed the "Ali Kushayb" name was the Accused sitting in court.²⁰¹

105. P-0935 provided evidence on his extensive sightings of and knowledge regarding an individual he identified, without prompting, as "Ali Muhammad Ali Abd-Al-Rahman, [...] -- nicknamed Ali Kushayb",²⁰² in Garsila, from 1999 to 2004, including Abd-Al-Rahman / "Kushayb's" running of a pharmacy in the Garsila

¹⁹⁷ [REDACTED].

¹⁹⁸ DS P-0878: T-077, p. 59, line 22-p. 62, line 4; T-079, p. 20, line 10-p. 22, line 6.

¹⁹⁹ DS P-0878: T-079, p. 21, line 22-p. 22, line 6.

²⁰⁰ DS P-0878: T-077, p. 59, line 22-p. 62, line 4; T-079, p. 60, line 1-p. 61, line 3.

²⁰¹ DS P-0878: T-077, p. 49, line 19-p. 50, line 1; T-078, p. 3, line 20-p. 5, line 16 (Defence counsel: "It is on record that the witness is identifying our client as Ali Kushayb. There is no challenge about [...] that identification [...].").

²⁰² P-0935: T-090, p. 11, line 8-11, p. 16, lines 11-14.

market close to the Agricultural bank, Abd-Al-Rahman / “Kushayb’s” former military career in the SAF Medical Corp, [REDACTED].²⁰³

106. [REDACTED] testified about his “brotherly” relationship, commencing in 1996 through 2003, with an individual he knew as “Ali Muhammad Ali Abd-Al-Rahman” with the nickname “Kushayb”, who was based in Garsila. [REDACTED] stated that Abd-Al-Rahman / “Kushayb” was retired from the SAF, had a pharmacy in the Garsila market, and [REDACTED].²⁰⁴

107. Numerous additional witnesses – some like the three cited above, having had longer-term relationships or interactions with an individual they identified as Abd-Al-Rahman and/or “Kushayb” based in Garsila, and others more fleeting interactions or broader ‘general knowledge’ on the matter – are consistent in the core particulars regarding this individual having a pharmacy in Garsila / selling medicine, and most also aware of his SAF career and Ta’aisha tribal background.²⁰⁵

108. This overwhelming witness evidence, tested by the Defence, and considered alongside the documentary evidence discussed above, provides no reasonable opening for a suggestion that the Accused was not widely known by the name “Ali Kushayb”, at the very least in the area of Garsila, for many years prior to 2003.

D. Evidence of Defence witnesses does not sever link to “Ali Kushayb”

109. The evidence of Defence witnesses concerning the Accused, as well as the alleged link to the name “Ali Kushayb”, primarily fall into two categories: (a) evidence that these witnesses never knew the Accused by the name “Ali Kushayb”,

²⁰³ P-0935: T-090, p. 11, line 8-p. 18, line 10.

²⁰⁴ [REDACTED].

²⁰⁵ See, e.g., P-0905: T-085, p.17, line 12-p.18, line 18, p. 27, line 9-p.29, line 21; T-087, p. 29, lines 17-24; DS P-0994: DAR-OTP-0222-0055-R01, para. 23; T-084, p. 36, line 12-p. 37, line 18, p. 41, lines 8-18, p. 42, line 23-p. 43, line 13, p. 79, line 12-p. 80, line 12; DS P-0931: T-062, p.7, lines 8-12, p. 8, lines 22-25, p. 19, line 22-p. 26, line 17, p. 31, line 22-p. 33, line 24, p. 52, line 1-p. 54, line 1; P-0131: DAR-OTP-00001092; T-112, p. 11, line 15-p. 13, line 22; T-113, p. 22, line 14-p. 33, line 21, p. 36, lines 12-25; P-0874: T-082, p. 6, line 12-p.7, line 19; P-0697: T-101, p. 7, lines 16-24, p. 8, lines 2-15; P-0916: T-075, p. 8, line 25-p. 9, line 18; DS P-0986: DAR-OTP-0222-0437-R01, paras 24-28; T-065, p. 5, line 17-p. 8, line 17; P-0883: T-071, p.19, line 25-p. 21, line 18; dual status witness P-0585 (a/25217/21): T-099, p. 38, line 25-p. 39, line 16; T-100, p. 24, lines 6-24; T-102, p. 14, line 10-p. 15, line 7.

and the only other nickname he went by was “Abu Nasser”; and (b) effectively, character evidence centred on the Accused’s position and deeds once he returned to Rahad al-Berdi as the head of the CRF garrison in approximately 2009-2010, as well as ‘tribal’ evidence regarding the Ta’aisha, the tribe of the Accused.

110. This evidence does nothing to puncture the clear, cohesive and overwhelming evidence discussed above connecting the Accused to the name “Ali Kushayb”. Apart from D-0032, none of the witnesses interacted with the Accused in the Garsila area in the years prior to 2003 or during the period of the charged events. It is perfectly plausible – at least until the above noted wide reporting in 2013 and after on the Ta’aisha-Salamat conflict and assassination attempt on the Accused²⁰⁶ – that these witnesses knew the Accused by his legal name and “Abu Nasser”, following a traditional form of address in Darfur related to one’s first born son.²⁰⁷

111. The evidence suggests the Accused may have been known primarily by different names in different communities or contexts. D-0007 acknowledged this possibility, explaining: *“some people call him Abu Nasser, or any other nickname, but that doesn’t mean that everyone knows these nicknames, or the different nicknames. Some people call their friends in different ways, some people call their family members in different ways, but that doesn’t mean that everybody should know these nicknames”*.²⁰⁸ [REDACTED], bridges the gap between these two names, noting that [REDACTED] he [REDACTED] would sometimes call the Accused “[REDACTED],” though he knew him primarily as “Ali Kushayb”,²⁰⁹ and in response to a question posed by the Defence, stated that “Ali Kushayb” was also known as “Abu Nasir” because of his eldest child.²¹⁰

²⁰⁶ See submissions at para. 94 *supra*.

²⁰⁷ D-0039: T-159, p. 29, lines 2-5; D-0005: T-158, p. 20, line 16; D-0029: T-157, p. 31, line 14; D-0002: T-156, p. 50, lines 18-19; D-0003: T-155, p. 47, lines 9-11; D-0007: T-149, p. 11, lines 18-21; D-0032: T-140, p. 23, lines 21-24.

²⁰⁸ D-0007: T-149, p. 40, lines 11-13.

²⁰⁹ [REDACTED].

²¹⁰ [REDACTED].

112. The possibility of the Accused being known by different names in the Rahad al-Berdi community in comparison to those who knew him in Garsila, is also plausible given the decades the Accused lived outside of his hometown, the distance of approximately 200 kilometres by road between the two locations,²¹¹ and the evidence of various Defence witnesses who confirmed never having travelled to Garsila, or even to Wadi Salih or Mukjar localities,²¹² and having little to no knowledge of the 2003-2004 conflict.²¹³ The same logic would apply to evidence suggesting the Accused may have had some presence in Nyala in 2004 or earlier, which is likewise located a significant distance by road from Rahad al-Berdi, and is the second largest city in Sudan. Expert D-36 opined that it would have been possible for some Darfuris, given the vastness of the territory, to live “for years” without feeling the impact of the 2003-2004 conflict.²¹⁴
113. The evidence of Defence witnesses who claim to have no knowledge of the linkage between the Accused and the name “Ali Kushayb” from 2013 and onwards is, however, simply not credible given, as discussed above, the widespread media reporting on and discussion in the Rahad al-Berdi area of the 2013 Ta’aisha-Salamat conflict and the assassination attempt later that year, on the Accused.²¹⁵
114. D-0032 provides the sole evidence in the case of a witness who says he knew the Accused very well in Garsila commencing in 2001-2002, but had never heard the Accused referred to as “Ali Kushayb”. An assessment of D-0032’s evidence on this issue shows him to be highly unreliable. Further, this sole example is drowned and washed away by the Tsunami of contrary evidence, discussed above.

²¹¹ Second Agreement on Facts, [Annex B](#) (West Darfur Administrative Map). *See also*, [P-1042](#); DAR-OTP-0220-1623, para. 18 (lack of infrastructure in Darfur, vast distances, slow and expensive travel).

²¹² [D-0003](#): T-153, p. 83, lines 21-22; [D-0005](#): T-158, p. 65, lines 4-5; [D-0039](#): T-159, p. 71, lines 9-15.

²¹³ [D-0039](#): T-159, p. 54, lines 18-21 (explaining Ta’aisha did not participate in 2003-2004 conflict because it was far away); [D-0008](#): T-139, p.14, line 18-p. 15, line 16; [D-0039](#): T-159, p. 54, lines 5-7; [D-0001](#): T-154, p. 39, lines 20-25; [D-0029](#): T-157, p. 13, line 23-p. 14, line 8.

²¹⁴ [D-0036](#): T-153, p. 20, lines 9-12.

²¹⁵ *See* submissions at para. 94 *supra*.

115. In respect of the ‘character’ and ‘tribal’ evidence elicited from the Defence witnesses, in the CLRV’s assessment, this evidence is utterly irrelevant, and does nothing to address or undercut in any way, as discussed above, the clear, cohesive and overwhelming evidence linking the Accused to the name “Ali Kushayb”. Even presuming, *arguendo*, that the Accused, once he arrived back in Rahad al-Berdi in 2009-2010 as the head of the newly established CRF garrison, had a reputation in the area, including among the Fur population there, as a respected leader and resolver of conflicts, the evidence led by the OTP stands untouched and unrefuted.
116. Similarly, the limited ‘tribal’ evidence from Defence witnesses of a supposed decree under threat of banishment that no member of the Ta’aisha tribe – including the Accused – should participate in the 2003-2004 GoS counter-insurgency campaign, lacks credibility, at the very least in relation to the authority of tribal leaders and the actual utilisation of such a punishment.²¹⁶ As noted by joint expert P-1042, to his knowledge, the practice of banishment from a tribe is a sanction that had not been used since the colonial era, and the “material consequences” of defying tribal authority “would be few”.²¹⁷ Furthermore, and particularly relevant for the circumstances of the Accused, by the time he had departed Rahad al-Berdi to join the SAF, tribal authority was primarily of a geographic nature: “*So that with the growth of towns, people residing in the towns and cities [...] really did not feel the ties [...] of allegiance to the tribal authorities*”, and so “*an individual who has moved to a city would still have an affection, would still pay respects to [...] the tribal elders and chief back home, but would have a great deal more liberty to do as he or she pleased*”.²¹⁸
117. In the CLRV’s submission, the evidence establishes both that the Accused was known as “Ali Kushayb” at all times relevant to the confirmed charges, and furthermore, that he is the type of person who did in fact act as he pleased.

²¹⁶ D-0001: T-154, p. 41, line 13-p. 43, line 16 (questioning by Presiding Judge and Defence counsel).

²¹⁷ P-1042: T-028, p. 73, line 23-p. 74, line 14.

²¹⁸ P-1042: T-028, p. 72, lines 5-9, p. 73, lines 10-18.

VI. Protected status of Kodoom, Bindisi, and the Mukjar and Deleig detainees

118. During the proceedings, the Defence pursued lines of questioning concerning the support of the Fur population for rebel forces,²¹⁹ armaments the Fur population may have held,²²⁰ the presence of rebels near to Fur villages,²²¹ the existence of Fur 'self-defence groups',²²² and attacks by rebels on Arab populations.²²³
119. The Defence also pursued lines of inquiry regarding efforts to identify members of the rebel movements when Fur males were taken into custody in respect of the Mukjar and Deleig charged incidents,²²⁴ and questioning of the detainees by their captors about membership in or allegiance to rebel forces.²²⁵
120. In the CLRV's consultations with participating victims, the clear view expressed is that the villages of Kodoom and Bindisi, and their populations, were peaceful, civilian communities that did nothing to invite the wholesale violence visited upon them, apart from their immutable primarily Fur identities. Similarly, the victims have expressed the view that the Fur boys and men detained in Mukjar and Deleig were vulnerable displaced civilians targeted based on their ethnicity, gender, and perceived political affiliation, not armed members of the rebel movements.
121. The evidentiary record unambiguously supports the views of the participating victims. Kodoom, Bindisi, and their primarily Fur populations, had protected status under the law, and were *not* legitimate military targets. Similarly, the Fur boys and men taken into custody and detained in Mukjar and Deleig were vulnerable, unarmed individuals, who were at the complete mercy of their captors, including, as alleged by the OTP, the Accused. Under the applicable law, these

²¹⁹ P-1042: T-029, p. 10, lines 4-12; P-0916: DAR-OTP-0224-0023, para. 24; T-075, p. 28, line 5-p. 29, line 3.

²²⁰ P-1042: T-029, p. 11, line 7-p. 13, line 8; P-0736: T-035, p. 59, line 23-25.

²²¹ DS P-0984: T-066, p. 39, lines 19-32 (Mukjar); [REDACTED] (Nyreli; Tiro).

²²² P-1042: T-028, p. 94, line 25-p. 95, line 21; T-029, p. 5, line 3-p.19, line 12; P-0736: T-035, p. 59, lines 19-22.

²²³ P-1042: T-029, p. 13, line 23-p. 18, line 23.

²²⁴ Mukjar: P-0916: T-075, p. 29, lines 4-13; Deleig: DS P-0584: T-092, p. 36, line 23-p. 37, line 17.

²²⁵ See, e.g., DS P-0584: T-092, p. 40, line 17-p. 44, line 6.

vulnerable detainees were entitled to protection from the violence and terrible treatment they were subjected to, with some then unlawfully executed.

A. *Protected status is supported by expert background and contextual evidence*

122. The report and testimony of P-1042 – a joint OTP-Defence expert – provides relevant background and contextual evidence supporting a finding that Kodoom, Bindisi, and their populations had civilian status and were not legitimate targets.

123. P-1042’s evidence also underlines the policy and actions of the GoS, its forces, and affiliated militias, to target the Fur population without distinction between rebel forces and locations, civilian persons and sites, and unarmed individuals.

i. Fur population’s supportiveness of rebels did not remove protected status

124. According to P-1042, over the fifteen years preceding the conflict, the Fur population had “become politicised and [...] mobilised because of what they saw [...] as unfair treatment by the government and attacks [on their population]”, and were thus “very receptive to the appeals and the leadership of the” SLM/A.²²⁶

125. However, the traditional tribal authorities – whether from the Fur, Zaghawa, or Masalit – “were not involved” in organising the rebellion, which was led by university students on the side of the SLM/A, and “leaders of [...] dissident Islamists” on the side of the JEM.²²⁷ While the SLM/A and JEM accordingly drew their support from the major non-Arab tribes in Darfur, the rebellion was, for the most part – and certainly in respect of Kodoom and Bindisi – not centred within the traditional leadership structures governing primarily Fur villages and towns.

126. Moreover, under IHL principles, including those of distinction and military necessity,²²⁸ general support for rebel movements – or likewise, civilian support for the government – does not remove protected status of civilian objects and persons.

ii. Civilian ownership of small arms did not remove protected status

²²⁶ P-1042: T-029, p. 10, lines 6-12.

²²⁷ P-1042: T-028, p. 88, line 24-p. 89, line 8.

²²⁸ See submissions at paras 45-50 *supra*, concerning applicable law.

127. Simple possession of small arms by civilians, particularly when obtained and long-held prior to the outbreak of a conflict, as was the case in Darfur, does not remove the protected status of civilian objects and persons.

128. P-1042 explained that, as a result of the events of the fifteen years preceding the conflict, for nomadic Arab tribes in Darfur, *“any adult man would have a firearm [...] because the nomadic groups had livestock, which were very valuable, which they would want to defend. So it would be normal to see in any livestock herders, [...] men with a Kalashnikov on their shoulder.”*²²⁹ In comparison, for Fur “villagers, many of them, but not all” would own firearms.²³⁰ As [REDACTED] dual status witness P-0816 (a/25043/21) put it: *“The villagers in Bindisi did not have any protection. Some of the herders had basic weapons to protect their cattle but we were not able to defend ourselves.”*²³¹

129. This reality, without more, did not remove the protected status of either the nomadic Arab tribes or the Fur civilian population. Instead, it was incumbent on both GoS forces and GoS-aligned militias, as well as the rebels, to distinguish between armed and organised forces engaged in military activities on the one hand, from civilians holding weapons for private purposes, including personal and village self-defence, on the other. As addressed below, the policy of GoS forces and aligned militias during the 2003-2004 conflict did not distinguish between the civilian Fur population, and that of organised and armed SLM/A and JEM forces.

iii. Obvious and apparent location of organised rebel forces

130. In respect of the location and operation of rebel forces during the 2003-2004 conflict, P-1042 related that: *“[T]he SLA had two styles of military organisation. In the Fur areas around Jebel Marra and Zalingei and Wadi Salih, they were essentially an infantry force that was occupying areas. In the north [of Darfur], where the SLA had Fur and Zaghawa forces, and JEM, which was overwhelmingly Zaghawa, was a much more*

²²⁹ P-1042: T-029, p. 11, lines 10-16.

²³⁰ P-1042: T-029, p. 11, lines 7-16.

²³¹ DS P-0816: DAR-OTP-0214-0721-R02, para. 35.

*mobile force, so that they had their bases in some mountainous and remote areas and they had some safe areas [...] on the border with Chad, but they were much more mobile.”*²³²

131. Kodoom and Bindisi were located in Wadi Salih locality,²³³ and therefore in the operational area of SLM/A forces that were primarily operating as infantry, occupying territory. The evidence received concerning the attack by GoS and Janjaweed / militia forces on the village of Sindu and its surroundings in February 2004,²³⁴ which was located in neighbouring Mukjar locality,²³⁵ and where SLM/A forces under the command of SLM/A-co-leader Abdel Wahid Mohamad al Nur²³⁶ held territory,²³⁷ exemplifies the more static, infantry nature of these forces.

132. Within Wadi Salih locality, it would accordingly have been obvious and apparent whether territory was under the control of rebels. As addressed below, there is no evidence that Kodoom, Bindisi, or any of the other primarily Fur villages attacked on 15 August 2003, had rebel forces based within or nearby, or were otherwise controlled by such forces. Further, as noted, traditional tribal authorities were not involved in the leadership or organisation of the rebel movements.²³⁸

iv. Existence and operation of ‘village self-defence’ groups

133. P-1042 also explained that, in addition to the organised forces incorporated into the rebel military hierarchy and holding territory (numbering, by end of 2003, approximately 6,000 to 7,000 SLM/A men, and around 1,000 JEM),²³⁹ there were so-called “village defence militia” in villages whose numbers “would undoubtedly be a considerably higher” than the organised rebel forces.²⁴⁰

134. These “village defence militias would remain in the villages”, per their function, and while unable to definitively discount the possibility, P-1042 was unaware of

²³² P-1042: T-028, p. 94, lines 18-24.

²³³ Second Agreement on Facts, [Annex B](#) (West Darfur Map); DAR-OTP-0194-2340, p. 2347 (Wadi Salih map).

²³⁴ See [REDACTED]; DS P-0029: T-030, p. 27, line 24-p. 29, line 13.

²³⁵ DAR-OTP-0194-2340, p. 2347 (Wadi Salih map); [REDACTED].

²³⁶ First Agreement on Facts, [Annex A](#), point 14.

²³⁷ See P-0736: DAR-OTP-0210-0248-R02, para. 92; P-0990: T-040, p. 13, lines 1-15; p. 47, line 8-p. 48, line 2.

²³⁸ See submissions at para. 125 *supra*.

²³⁹ P-1042: DAR-OTP-0220-1623, para. 122; T-028, p. 94, lines 7-16.

²⁴⁰ P-1042: T-029, p. 9, line 18 to p. 10, line 2.

any encampments of these militias in or near to the villages they were protecting.²⁴¹ Similarly, to P-1042's knowledge, attacks on police stations by rebels during the conflict "all involved [...] the regular forces of the rebels",²⁴² although it "is a reasonable supposition" that village defence forces could have possibly joined with the 'regular' forces to support an attack against a specific target in a village they were protecting, such as a police station.²⁴³ Such 'militias' in Fur villages could primarily be described as "a crowd of adult men who are armed and are mobilising themselves", as opposed to a militia "that is formalised and registered" along the lines of the PDF in the 1990s²⁴⁴ – i.e. more so *levée en masse* for spontaneous defensive purposes, not militia organised for external offensive activity.²⁴⁵

135. P-1042's evidence strongly suggests that any village defence militias that may have existed in Fur villages during the 2003-2004 conflict were overwhelmingly defensive in nature, organised on an *ad hoc* basis by male inhabitants of the village who possessed weapons, did not establish armed encampments, and did not engage in military action outside the areas of their particular village. In view of these factors, the existence of a village defence militia in a Fur village would not have removed the protected civilian status of such a village or their populations.

v. Attacks on Arab populations during the 2003-2004 conflict

136. P-1042 made clear that, as the 2003-2004 conflict escalated, attacks undoubtably took place on Arab communities in Darfur – primarily against *darma* (temporary settlement of a nomadic group) and their livestock – and which were underreported in the work of international aid groups and journalists.²⁴⁶

137. Attacks against Arab tribes during the conflict, including those who carried arms for self-defence,²⁴⁷ are deserving of full condemnation. The participating

²⁴¹ P-1042: T-029, p. 9, lines 4-14.

²⁴² P-1042: T-029, p. 7, lines 8-14.

²⁴³ P-1042: T-029, p. 6, line 25-p. 7, line 21.

²⁴⁴ P-1042: T-029, p. 22, line 21-p. 12, line 3.

²⁴⁵ P-1042: T-029, p. 5, lines 10-20.

²⁴⁶ P-1042: T-029, p. 8, lines 11-22; p. 15, lines 6-10; p. 17, lines 6-11; DAR-OTP-0153-0686.

²⁴⁷ See submissions at paras 127-129 *supra*.

victims have never expressed a wish that any of their fellow Darfuris should have suffered what the participating victims suffered, and continue to suffer.

138. Under the applicable law,²⁴⁸ attacks against any part of the civilian population – whether Fur, Arab or another group – during the 2003-2004 conflict were unequivocally unlawful, including reprisals in response to previous attacks.

139. Nonetheless, to ensure the Chamber’s assessment and findings on this subject reflect the relevant situation in Wadi Salih and Mukjar localities (West Darfur State), the CLRV highlights the following from P-1042’s evidence: the attacks perpetrated against Arab communities during the 2003-2004 conflict mostly occurred in North Darfur State,²⁴⁹ where the mobile primarily Zaghawa SLM/A forces under Minni Minawi were active, as opposed to areas such as Wadi Salih and Mukjar, where the primarily Fur SLM/A forces of Abdel Wahid Mohamad al Nur were present.²⁵⁰ As P-1042 put it: “[T]he evidence that I was able to obtain indicated that [...] the Arab tribes were fearful of attacks by the forces of Minni Minnawi, in a way that they were not fearful of attacks by the [...] overwhelmingly Fur forces of Abdul Wahid al-Nur, and I think this is an important distinction to make.”²⁵¹

140. As alluded to above and further addressed below, the GoS, its forces, and militias aligned with the GoS, as a policy and practice, made no distinction between the civilian population and the organised rebel forces. In comparison, Abdel Wahid Al Nur “was consistent throughout [the conflict] in saying, ‘This is not a war against the Arabs,’ [...] instructing his forces not to attack Arabs”,²⁵² and “insisted that the enemy was the government”, not the Arab tribes of Darfur.²⁵³

vi. GoS policy of targeting civilian population without distinction

²⁴⁸ See submissions at paras 45-50 *supra*, concerning applicable law.

²⁴⁹ P-1042: T-029, p. 8, lines 11-22.

²⁵⁰ P-1042: T-029, p. 8, lines 10-11; p. 18, lines 9-23.

²⁵¹ P-1042: T-029, p. 18, lines 19-23.

²⁵² P-1042: T-029, p. 18, lines 12-14.

²⁵³ P-1042: DAR-OTP-0220-1623, para. 114; T-029, p. 8, lines 2-9.

141. As succinctly stated by P-1042, the attacks conducted pursuant to the GoS's counterinsurgency campaign during the 2003-2004 Darfur conflict "went much broader" than the organised rebel forces – "essentially, the entire communities of Fur, Zaghawa, Masalit, [...] they were all targeted".²⁵⁴ The GoS's counterinsurgency policy did "not make a distinction between a village and a village defence militia"; instead, the GoS view was that "the communities as a whole are supporting the rebellion [...] [and] the way they [the GoS] were describing them in their public statements at the time, [...] even in their directives, did not make a distinction between villages and village defence militia."²⁵⁵

142. The all-encompassing approach of the counterinsurgency plan may have been driven, in part, by the GoS's loss in the years preceding 2003, of on the ground intelligence in Darfur.²⁵⁶ Such a campaign – including the use of locally constituted militias granted a license to act with and reward themselves through impunity – was, however, a practice utilised by the GoS over "decades of civil war" in Sudan.²⁵⁷

143. Within this context, the GoS 2003-2004 counterinsurgency strategy, and the actions of its forces and those of allied militias, to specifically target Fur civilian persons and objects in the conduct of the campaign, while not unexpected, were unquestionably in violation of the law applicable in Sudan.²⁵⁸

B. *Kodoom, Bindisi and their populations had protected status*

144. In addition to the background and contextual evidence addressed above, the submitted evidence specifically establishes that Kodoom, Bindisi, and the other primarily Fur villages, and their populations, attacked on 15-16 August 2003 – allegedly by Janjaweed / militia forces led by the Accused – had protected status.

²⁵⁴ P-1042: T-027, p. 78, lines 19-22; p. 79, lines 1-2, 5-15.

²⁵⁵ P-1042: T-029, p. 10, line 13-p. 11, line 5.

²⁵⁶ P-1042: T-027, p. 67, lines 3-13.

²⁵⁷ P-1042: T-027, p. 67, line 13-p. 68, line 4.

²⁵⁸ See submissions at paras 45-50 *supra*, concerning applicable law.

145. The SLM/A forces of Abdel Wahid Mohamad al Nur did conduct an attack on Bindisi (primarily targeting the police station), and two attacks on Mukjar (primarily targeting police, CRF, and the locality building), in the weeks prior to 15 August 2003.²⁵⁹ However, there is no evidence indicating that rebel forces were based in or close to Kodoom, Bindisi, or the other villages in question,²⁶⁰ that village ‘self-defence forces’ – if any – had encampments in or close to these villages, or that the attacking forces met organised resistance when conducting their attacks.²⁶¹

146. In the CLRV’s submission, there can be no doubt that Kodoom, Bindisi, and the primarily Fur children, women and men living in these communities retained their protected status on 15-16 August 2003. Neither the villages or their populations could reasonably be considered legitimate military objectives such that their targeting, and the indiscriminate violence, pillage, and destruction visited upon them could, under any assessment, comport with applicable IHL principles.

C. Fur males detained in Mukjar and Deleig had protected status

147. Like the populations of Kodoom and Bindisi, and in addition to the contextual and background evidence above, the evidence in the record establishes that the Fur boys and men detained in and around Mukjar and Deleig between late February and early March 2004, were unarmed individuals at the mercy of their captors.²⁶²

148. The submitted evidence also indicates that the search and arrest processes preceding the detentions at the Mukjar police station, and outside and within the Deleig police station, may have had, as one of their goals, the detention of members of the organised rebel forces.²⁶³ However, in line with the policy of the GoS

²⁵⁹ [REDACTED]; P-0916: DAR-OTP-0224-0023-R01, paras 11-13, 19-22; T-075, p. 26, line 6-p. 27, line 23; DS P-0816: DAR-OTP-0214-0721-R02, paras 22-23.

²⁶⁰ DS P-0918: DAR-OTP-0218-0120-R04, para. 37 (no rebels in, around Kodoom; only in Sindu); DAR-OTP-00000104, para. 16; [REDACTED] (no rebels in Nyreli, Tiro); DS P-0984: T-066, p. 39, lines 19-32 (no rebels in Mukjar); P-0883: T-071, p. 10, line 14-p. 11, line 16 (during 2003-2004 conflict rebel forces in West Darfur based in Sindu, Silik, Drissa, Jebel Mara); P-0916: DAR-OTP-0224-0023-R01, para. 11; P-0085: DAR-OTP-0110-0054-R02, para. 52 (rebels in region based in Sindu mountains).

²⁶¹ See paras 158-159 *infra* regarding conduct of charged Kodoom attack, and 180 *infra* for Bindisi attack.

²⁶² For Mukjar detention circumstances see paras 217-228 *infra*, and for Deleig paras 236-263 *infra*.

²⁶³ See, e.g., P-0916: T-075, p. 29, lines 4-13; DS P-0584: T-092, p. 36, line 23-p. 37, line 17.

counterinsurgency strategy,²⁶⁴ no reasonable or credible effort was made to distinguish between members of the rebel forces and the civilian population. Instead, in respect of both the charged Mukjar²⁶⁵ and Deleig²⁶⁶ incidents, the Fur male population as a whole falling within a certain age range, and identified or presumed to be non-residents of these areas, were targeted for detention.

149. Furthermore, the treatment visited on the unarmed, detained Fur men and boys, even presuming, *arguendo*, that some within their number could have possibly been members of the rebel movements, was clearly unlawful under the applicable law, with, at most, the bare semblance of legal process involved.²⁶⁷

VII. The charged incidents – conduct, scope, facts, and impact of alleged crimes

150. In these proceedings, the Defence do not, in large measure, contest the core of the crime base allegations – namely, that armed attacks and associated acts took place in Kodoom, Bindisi and their surroundings on 15-16 August 2003, and that predominantly Fur males were detained, mistreated and tortured in and around the Deleig police station, and in the Mukjar police station, from late February to early March 2004, some of whom were then transported for execution.²⁶⁸

151. Notwithstanding this position, the CLRV emphasises that it is of great importance to the participating victims that the Article 74 judgment, in line with the Chamber’s truth-seeking function,²⁶⁹ comprehensively and accurately captures the geographic and temporal scope, and factual details, of what transpired during

²⁶⁴ See submissions at paras 141-143 *supra*.

²⁶⁵ See, e.g., P-0922: DAR-OTP-0222-0312-R01, para. 85 (“*The displaced whose villages, between Sindu and Mukjar, had been destroyed, fled towards Mukjar. [...] The JJW and police were waiting for any villagers coming toward Mukjar, who had fled. Any arriving fit male who appeared between 18 to 60 years old, were separated from their families and taken to the police station.*”). See further submissions at paras 214-217 *infra*.

²⁶⁶ See, e.g., DS P-0584: DAR-OTP-0200-1540-R02, paras 90-96 (surrounding of Deleig on 5 March 2004 by “the army and Janjaweed”, house searches, arrest of males from outside Deleig); DAR-OTP-00000419, paras 23, 25; T-092, p. 36, line 3 to p. 37, line 10. See further submissions at paras 234, 236, 239-245 *infra*.

²⁶⁷ See, e.g., DS P-0584: T-092, p. 44, line 22-p. 45, line 6.

²⁶⁸ See, e.g., cross-examinations of DS P-0918: T-077, p. 39, lines 19-24 (not challenging evidence of 15 August 2003 attack on Kodoom, during which houses were burned, property looted); DS P-1073: T-103, p. 23, line 21-p. 24, line 4 (not contesting evidence DS P-1073 and sister victims of rape during 15 August 2003 Bindisi attack); [REDACTED] (not contesting evidence that [REDACTED] Deleig detentions, [REDACTED]); [REDACTED] (not contesting evidence that [REDACTED] Mukjar detentions, [REDACTED]).

²⁶⁹ Statute, Art. 69(3).

the four charged incidents, as well as the short and longer-term impact of the charged crimes on victims and the wider Fur community. In the event the Accused is found guilty, the Chamber's findings will also be relevant for reparations proceedings under Article 75 of the Statute. The CLRV's submissions in this section are accordingly aimed at assisting the Chamber's mandate in these respects.

152. The CLRV also refers to, and adopts, its relevant submissions from the CLRV Trial Brief concerning the living circumstances, society, customs, livelihoods, and housing of the Fur people of Wadi Salih and Mukjar localities at the time of the charged events, including in the areas of Kodoom and Bindisi.²⁷⁰ The CLRV recalls in particular the evidence received on the cohesive²⁷¹ and communal²⁷² nature of Fur society, the Fur people's connection to the land,²⁷³ their renown for farming,²⁷⁴ and the minimal government support, services and infrastructure available.²⁷⁵

153. In respect of the contextual elements for war crimes,²⁷⁶ the parties have agreed that from at least April 2003 to at least April 2004, a protracted armed conflict not of an international character was ongoing in Sudan, including Darfur.²⁷⁷ With respect to the contextual elements for crimes against humanity ("CAH")²⁷⁸ the CLRV refers to the relevant submissions from the CLRV Trial Brief on the widespread or systematic attacks directed against predominantly Fur villages in the Wadi Salih and Mukjar localities during relevant period,²⁷⁹ as well as the submissions above on the GoS's policy to conduct and further such attacks.²⁸⁰

A. Charged attacks on Kodoom and Bindisi – 15 and 16 August 2003

²⁷⁰ [CLRV Trial Brief](#), Section III.

²⁷¹ [CLRV Trial Brief](#), para. 21.

²⁷² [CLRV Trial Brief](#), paras 36-46.

²⁷³ [CLRV Trial Brief](#), paras 20, 28.

²⁷⁴ [CLRV Trial Brief](#), paras 28-33.

²⁷⁵ [CLRV Trial Brief](#), paras 25-27.

²⁷⁶ Counts 1, 3-5, 7, 9, 13, 15, 16, 18, 20, 23, 25, 26, 28, 30.

²⁷⁷ First Agreement on Facts, [Annex A](#), points 1-17.

²⁷⁸ Counts 2, 6, 8, 10-12, 14, 17, 19, 21-22, 24, 27, 29, 31.

²⁷⁹ [CLRV Trial Brief](#), paras 105-108, 110.

²⁸⁰ See submissions at paras 141-143 *supra*.

154. As alleged by the OTP, and established by the evidence, the attacks on Kodoom and Bindisi occurred as part of a larger campaign of attacks on predominantly Fur villages located between Mukjar and Bindisi, commencing on the morning of 15 August 2003, and carried out by a single attacking force.²⁸¹ The attacks were perpetrated in a similar manner, including a ruse involving the purported collection of grain by the attacking force from the *zakat* office in Bindisi, in order to maximise its surprise nature and minimise any resistance.²⁸² The harm arising from the charged crimes in both Kodoom and Bindisi was also of a similar nature. The CLRV accordingly addresses these two charged incidents in a more consolidated fashion within this sub-section.

i. Charged attack on Kodoom (15 August 2003) – Counts 1 to 5, 10, 11

155. Counts 1 to 5, 10, and 11 of the confirmed charges concern,²⁸³ in part, alleged crimes arising from an attack by an armed group on the predominantly Fur²⁸⁴ village of Kodoom, on 15 August 2003. The population of Kodoom numbered approximately 1,800²⁸⁵ to more than 2,000²⁸⁶ children, women and men.

156. The evidence in the record establishes that the 15 August 2003 attack extended to all areas or neighbourhoods of Kodoom and its surroundings, and was conducted by a large attacking force variously described as “Arab” militia or “Janjaweed” by witnesses, on horseback with a small number of accompanying vehicles, and armed with automatic firearms and other weapons.²⁸⁷ Dual status witness P-0029 (a/10485/22), for example, testified that: “*So many Janjaweed troops,*

²⁸¹ See, e.g., [REDACTED]; P-0085: DAR-OTP-0110-0054-R02, paras 24, 25, 27-28; DS P-0877: T-053, p. 76, line 14-p. 77, line 14.

²⁸² See, e.g., DS P-0012: DAR-OTP-0119-0503-R01, paras 76-78.

²⁸³ Confirmation Decision, para. 133.

²⁸⁴ DS P-0932: DAR-OTP-0222-0602-R02, para. 15; DS P-0918: DAR-OTP-0218-0120-R04, para 12; [REDACTED].

²⁸⁵ DS P-0932: DAR-OTP-0222-0602-R02, para. 15 (citing recently conducted census).

²⁸⁶ P-0986: DAR-OTP-0222-0437-R01, para. 21.

²⁸⁷ DS P-0029: T-029, p. 48, lines 12-18; DS P-0986: DAR-OTP-0222-0437-R01, paras 34-48, 58-59, 62; DAR-OTP-0222-0437, paras 3-6; T-065, p. 49, line 18-p. 50, line 6; p. 51, lines 18-22; DS P-0932: DAR-OTP-0222-0602-R02, paras 35-38, 41-45; DS P-0918: DAR-OTP-0218-0120-R04, paras 26-27; DAR-OTP-00000104, paras 12, 13; [REDACTED].

*over 2,000 knights and three vehicles, they attacked [...] the entirety of Kodoom. They set the place on fire. They pillaged the place. And from Kodoom, they went to Derliwa, to Central Kodoom, then to [...] Kodoom Tineh, [...]. And then they went all the way to Kodoom Jureh, in the furthest western part of Kodoom.”*²⁸⁸ [REDACTED] described the aftermath of the attack on Kodoom as follows: *“I saw the village burned down. Corpses completely burned inside town. Belongings looted. Things plundered. All that was left was the fire burning. [...] Nothing was left. And even those who survived did not stay there. [...] There even the animals were looted.”*²⁸⁹

157. The evidence establishes the requisite factual elements for **Count 1** of the confirmed charges as concerns Kodoom – intentionally directing attacks against the civilian population. The civilian population in question includes all persons present in Kodoom and its surroundings on 15 August 2003, including persons who had fled to Kodoom to seek safety from earlier attacks on their villages.²⁹⁰

158. The CLRV refers to her above submissions on the civilian protected status of Kodoom and its population.²⁹¹ Dual status witness P-0918 (a/10298/22) explained: *“All the victims in Kodoom were civilians and none were affiliated in any way with the rebels and I do not know of any rebels in and around Kodoom.”*²⁹² The evidence further establishes – with one exception (addressed below) – that the force of Janjaweed / militia faced no organised resistance. Dual status witness P-0932 (a/10052/22) recalled that he couldn’t “say how many” attackers there “were but they were many and overran the village”, and “there was no resistance”.²⁹³ [REDACTED] similarly described that *“the Janjaweed kept going forward [...] -- and went from east Kodoom to west Kodoom. [...] They were burning down the houses and I could hear the*

²⁸⁸ DS P-0029: T-029, p. 48, lines 12-18; T-030, p. 12, lines 3-17.

²⁸⁹ [REDACTED].

²⁹⁰ P-0757: DAR-OTP-0211-0003-R02, para. 33.

²⁹¹ See submissions at paras 118-146 *supra*.

²⁹² DS P-0918: DAR-OTP-0218-0120-R04, para. 37; DAR-OTP-00000104, para. 16.

²⁹³ DS P-0932: DAR-OTP-0222-0602-R02, para. 38.

*Janjaweed firing, but no one was firing back from within the town or the locality”.*²⁹⁴ P-0918 further stated that to his knowledge, no one in Kodoom had any weapons.²⁹⁵

159. [REDACTED] is the only witness who makes reference to ‘resistance’ to the forces attacking Kodoom. However, during [REDACTED] examination by the OTP, when providing his recollections of the attack on Kodoom in narrative fashion, [REDACTED] a village awash in fire and destruction, with Janjaweed freely “plundering” the town, and without any mention of resistance.²⁹⁶ While, during cross-examination, the witness appeared to agree with information in his prior interview about the existence of armed resistance from “some citizens and some armed individuals who were present”, he never mentions ‘rebels’, that the resistance was organised, and says he had no information about [REDACTED].²⁹⁷ Further, it is not clear if [REDACTED].²⁹⁸ [REDACTED].²⁹⁹ Even presuming the attacking force faced some spontaneous armed resistance to the overwhelming attack on the village, under the applicable law, the targeting of Kodoom and its civilian population in the manner established in the evidence was unlawful.

160. Other acts committed by the Janjaweed / militia forces during the attack on Kodoom and its surroundings, while not specifically charged, should be recognised and detailed in the Article 74 judgment as part of the conduct underlying Court 1. In particular, this uncharged conduct may constitute other inhumane acts as a CAH, outrages upon personal dignity as a war crime, torture as a CAH and war crime,³⁰⁰ and rape of girls and women as a CAH and war crime.³⁰¹

²⁹⁴ [REDACTED].

²⁹⁵ DS P-0918: DAR-OTP-0218-0120-R04, para. 37.

²⁹⁶ [REDACTED].

²⁹⁷ [REDACTED].

²⁹⁸ [REDACTED].

²⁹⁹ [REDACTED].

³⁰⁰ DS P-0986: DAR-OTP-0222-0437-R01, paras 47-56, 110-114; DS P-0918: DAR-OTP-0218-0149-R01 (translation (DAR-OTP-0221-1580) at p. 0153 / 1585 (incidents of torture, physical violence, women stripped of clothing).

³⁰¹ DS P-0932: DAR-OTP-0222-0602-R02, paras 49-50; DS P-0918: DAR-OTP-0218-0120-R04, para. 52; DAR-OTP-0218-0161-R01; [REDACTED]; [REDACTED]; P-0867: DAR-OTP-0217-0173-R02, para. 34 (hearsay evidence of Janjaweed raping girls and women during Kodoom attack).

161. Dual status witness P-0986 (a/25143/21) provided a detailed account of being tied and left exposed to the elements: *"I was on the floor. I was tied at the legs [REDACTED] [...]. [F]rom the morning till the evening, I was under the rain."*³⁰² The prolonged exposure, combined with being tightly bound for an extended time, left P-0986 with permanent injuries, in respect of which he was unable to obtain proper treatment, [REDACTED].³⁰³ The subsequent lack of access to proper medical care only deepened P-0986's harm.³⁰⁴
162. The evidence also establishes the factual requisites for **Counts 2** and **3** as concerns Kodoom – murder as a CAH and as a war crime committed against a large number of civilians not taking direct part in hostilities or persons *hors de combat*, perpetrated by the attacking force.³⁰⁵ [REDACTED], for example, described witnessing [REDACTED] in Kodoom by Janjaweed forces, [REDACTED].³⁰⁶
163. The evidentiary record likewise establishes the factual requisites for **Counts 4** (pillage as war crime) and **5** (destruction of the property of an adversary, without military necessity, as a war crime) in respect of the Kodoom attack. Witnesses gave clear and consistent evidence on the burning and destruction of houses and their contents, the pillaging of moveable property, including household goods, money, food, animals and livestock,³⁰⁷ as well as the pillage and destruction of farmland.³⁰⁸

³⁰² DS P-0986: T-065, p. 18, lines 12-14.

³⁰³ DS P-0986: T-065, p. 18, lines 16-21.

³⁰⁴ See CLRV Trial Brief, paras 25-26 (evidence on very limited medical care and infrastructure in West Darfur).

³⁰⁵ DS P-0986: DAR-OTP-0222-0437-R01, paras 40-41 (two deceased), 59 (saw another two bodies, told 61 persons killed); DAR-OTP-0222-0437, paras 3-4; DS P-0932: DAR-OTP-0222-0602-R02, paras 41, 51, 128-132 (killing of nine persons); T-068, p. 8, lines 4-9; DS P-0918: DAR-OTP-0218-0120-R04, para. 31 (knew of three killed); DAR-OTP-0218-0158-R01; DAR-OTP-00000093; [REDACTED] (seeing two dead bodies, later learning of several more); DS P-0029: T-030, p. 12, lines 3-17 (killing of friend and another); Bar Table: DAR-OTP-00000697.

³⁰⁶ [REDACTED].

³⁰⁷ DS P-0029: T-029, p. 48, lines 12-18; p. 42, lines 23-24; p. 44, lines 8-10; p. 71, line 25-p. 72, line 3; T-030, p. 12, lines 3-17 (detailing numbers of houses set alight); P-0986: DAR-OTP-0222-0437-R01, paras 39 (pillaging of houses and livestock), paras 44-46 (pillaging of livestock, looting of huts, burning of huts); DS P-0932: DAR-OTP-0222-0602-R02, paras 41, 44, 47, 53; T-068, p. 7, line 17-p. 8, line 3; DS P-0918: DAR-OTP-0218-0120-R04, paras 27, 31; DAR-OTP-00000104, para. 13; DAR-OTP-0218-0149-R01 (translation DAR-OTP-0221-1580) at pp 0150-0151 / 1583-1584 (recording houses burned); T-077, p. 36, line 17-p. 37, line 7 ([REDACTED] house burned, [REDACTED] looted); [REDACTED] (setting fires, burning houses); [REDACTED] (burning of Kodoom).

³⁰⁸ DS P-0986: T-065, p. 15, line 22-p. 16, line 1.

164. As the CLRV previously submitted,³⁰⁹ and as confirmed by V-0001,³¹⁰ the type of housing structures present in Kodoom, Bindisi, and other Fur villages in Wadi Salih and Mukjar localities consisted of straw, grasses, wood and mud, which were vulnerable to fire.³¹¹ The CLRV also refers to her previous submissions on the Fur community's material wealth being tied to land ownership and farming (with the area surrounding Kodoom and Bindisi being particularly fertile), livestock, animals for daily labour, and storage of gold, jewellery, and money within dwellings.³¹²
165. The intentional burning or looting of farms and food sources resulted in survivors being left without a means to sustain themselves. DS P-0986 emphasised the extent of this devastation: *"They first burnt down the village and they looted the village and all the possessions [...] Then they went to the farm and they also looted the tomatoes, the onions. And they let the cattle walk all over the farm [...]"*³¹³ This purposeful destruction of farmland was an attack on the entire Fur way of life.³¹⁴
166. The evidence also establishes the elements for **Count 10** – forcible transfer³¹⁵ as a CAH – in respect of Kodoom. The violent and destructive attack, as detailed above, caused almost the entire population of the village, as well as civilians from other villages who had sought safety in Kodoom,³¹⁶ to flee for their lives.
167. This forcible displacement had immediate implications, as the children, women and men present in Kodoom fled in terrifying and chaotic circumstances from the attacking Janjaweed / milita forces, with members of families being separated from one another, to hide in fields and forests in the surroundings of the village.³¹⁷ DS P-

³⁰⁹ [CLRV Trial Brief](#), paras 47-51 (with accompanying citations to evidence).

³¹⁰ [V-0001](#): T-120, p. 9, line 22-p. 11, line 15; [DAR-V47-00000147](#), p. 000020; [DAR-V47-00000199](#); [DAR-V47-00000200](#); [DAR-V47-00000201](#).

³¹¹ [REDACTED].

³¹² [CLRV Trial Brief](#), paras 27, 28-32, 52-56 (with accompanying citations to evidence).

³¹³ [DS P-0986](#): T-065, p. 15, lines 23-25.

³¹⁴ See [CLRV Trial Brief](#), paras 28-35 (discussing life and livelihoods in the Fur community).

³¹⁵ Per the EoC, "deported or forcibly transferred" is interchangeable with "forcibly displaced" (EoC, fn. 13).

³¹⁶ [P-0757](#): [DAR-OTP-0211-0003-R02](#), para. 33.

³¹⁷ [DS P-0986](#): [DAR-OTP-0222-0437-R01](#), paras 34, 37, 38 (Kodoom residents fleeing to woods, some eventually to mountains), 45 (fleeing of [REDACTED] who P-0986 never saw again), 46 (residents returning just to look for food on night of attack); [DS P-0932](#): [DAR-OTP-0222-0602-R02](#), para. 43; [REDACTED] (Janjaweed chasing Kodoom villagers).

0029 described how he gathered his family and fled: *"I got my wife and children together and then [...] we entered into the forest and they shot at us. And we heard firing, gunfire."*³¹⁸ Even after escaping the immediate violence, the terror did not end for many. DS P-0986 recounted how, after fleeing Kodoom, they were pursued by the attacking forces: *"[T]he people from the village and ourselves, we all went to Kaba to hide. [...] and the people who were on horseback fired shots."*³¹⁹

168. The attack also had longer-term implications, with many of the displaced undertaking difficult journeys to seek relative safety in Mukjar and its surroundings; here, they lived for days, weeks, and months, in crowded and difficult conditions with limited shelter (initially during the rainy season), precarious physical and food security, having lost most of their possessions and resources, and with disease rampant.³²⁰ P-0916, [REDACTED] gave evidence on the thousands of displaced from surrounding villages arriving in Mukjar, most of whom were "women and children and elderly people". He described the displaced "living in very harsh conditions", with two to three children dying every day from a combination of exposure, fatigue, malnutrition and disease.³²¹

169. After fleeing Kodoom on 15 August 2003, some residents returned, and were victims of a second, uncharged attack on the village two weeks later on 30 August 2003, allegedly perpetrated by Janjaweed, and which resulted in another round of displacement, with many (re)joining their Kodoom brethren already in Mukjar.³²²

170. As already alluded to,³²³ and as previously addressed through questioning of witnesses, presentation of views and concerns, and in the CLRV Trial Brief and opening statement, this initial forced displacement faced by the children, women and men impacted by the 15 August 2003 attack on Kodoom, has now stretched

³¹⁸ DS P-0029: T-029, p. 65, lines 12-15.

³¹⁹ DS P-0986: T-065, p. 15 lines 16-19.

³²⁰ DS P-0986: DAR-OTP-0222-0437-R01, paras 61, 66-69; DS P-0932: DAR-OTP-0222-0602-R02, paras 54, 55-57, 76-77; T-068, p. 8, lines 10-17; DS P-0918: DAR-OTP-0218-0120-R04, paras 32, 39-41; DS P-0877: T-053, p. 76, line 14-p. 77, line 14.

³²¹ P-0916: T-075, p. 16, lines 3-21.

³²² [REDACTED].

³²³ See submissions at para. 3 *supra*.

into two decades, as they remain unable to return to their homes and lands, and live as IDPs in Darfur, refugees in Chad and Egypt, or in the wider diaspora.³²⁴

171. The acts underlying Counts 1 to 5 and 10, were also the means of perpetrating **Count 11** in respect of the population of Kodoom – namely, persecution as a CAH on political and ethnic grounds of the predominantly Fur population of the village perceived as belonging to, or being associated with, or supporting the SLM/A and/or JEM rebels. The CLRV recalls her submissions on the evidence establishing the Fur population’s general support for and affinity towards the rebel movements, and the SLA/M in particular,³²⁵ as well as the GoS’s counterinsurgency campaign and view that did not distinguish between the Fur population and the armed rebels, and which actively targeted the Fur population as a matter of policy based on the perception of the population’s connection to or support for the rebels.³²⁶

172. The attacks conducted by the large, armed force that departed Mukjar on 15 August 2003, targeting, one after the other, the villages and populations of Tiro, Kodoom, Merly, Seder, Bindisi, and Gausir, among other locations, fits perfectly within the GoS’s counterinsurgency strategy. All of these villages were predominantly Fur,³²⁷ as noted by [REDACTED]: “*Fur, all of them. In Bergei, Dorgola, northern Kodoom, eastern Kodoom, Tiro, Nyerli, Merly, everybody there was Fur, all the way to Bindisi.*”³²⁸ [REDACTED] described the ruthless manner in which the Janjaweed conducted the attacks on Nyerli and Tiro: “[REDACTED]”³²⁹ [REDACTED] the attack on Kodoom was conducted in the same manner, with the Janjaweed acting “like a dog chasing his prey, as if these [Fur villagers] were not humans”.³³⁰ [REDACTED], visibly impacted by his testimony,³³¹ similarly described the manner of attack on Kodoom – “[t]he shooting, the killing, the

³²⁴ See, e.g., [REDACTED].

³²⁵ See submissions at paras 124-126 *supra*.

³²⁶ See submissions at paras 141-143 *supra*.

³²⁷ DS P-0986: DAR-OTP-0222-0437-R01, para. 62.

³²⁸ [REDACTED].

³²⁹ [REDACTED].

³³⁰ [REDACTED].

³³¹ [REDACTED].

burning, and the raping” – and, in respect of eastern Kodoom: *“There was a lot of killing, heavy killing if I may call it. Children included. Everything was targeted. Everything moving was targeted.”*³³²

173. Additionally, members of the Janjaweed / militia force used derogatory, racist and anti-ethnic terminology³³³ targeting the Fur residents of Kodoom during the attack.³³⁴ Furthermore, meetings and public speeches by GoS officials with Janjaweed / militia present took place during this time period, where the targeting of the Fur people and the taking of their land was encouraged, and derogatory language used, against the Fur.³³⁵

174. The submitted evidence accordingly establishes the factual requisites for the charge of persecution as a CAH based on political and ethnic grounds in respect of the 15 August 2003 attack on Kodoom and its population.

ii. Charged attack on Bindisi (15-17 August 2003) – Counts 1 to 11

175. Counts 1 to 11 concern,³³⁶ in part, alleged crimes arising from the continuation of the campaign by the same armed group that attacked Kodoom and other villages on 15 August 2003, on the predominantly Fur³³⁷ village (or small ‘town’) of Bindisi on 15 and 16 August 2003, with some charged activity continuing in Bindisi and its surroundings on 17 August 2003.³³⁸ The evidence indicates that Bindisi was the largest population centre in its immediate surroundings, which is reflected in the

³³² [REDACTED].

³³³ See P-1042: T-027, p. 49, line 23-p. 50, line 4 (“Zurga”, meaning darkest skin colour, an inferior person, “Sudanese version of the N-word”); p. 50, lines 4-10 (“Abid”, meaning slave, “an everyday term of abuse and denigration”); p. 50, lines 17-24 (“Nuba”, when used by those from Arab groups referring to non-Arab groups, alluding to darker skin colour, “a term of abuse”); p. 51, lines 9-13, T-028, p. 92, line 11-p. 93, line 21 (“Tora Bora”, “used as a term of abuse, specifically against the rebels”).

³³⁴ DS P-0986: DAR-OTP-0222-0437-R01, paras 39, 47 (attackers chanting “Nuba”, understood as ‘Zurga’/black, derogatory to Fur).

³³⁵ DS P-0932: DAR-OTP-0222-0602-R02, paras 55-64.

³³⁶ Confirmation Decision, para. 133.

³³⁷ DS P-1074: DAR-OTP-0224-0441-R02, para. 14; DS P-0015: DAR-OTP-0088-0187-R03, para. 11; DS P-0012: DAR-OTP-0119-0503-R01, para. 11; P-0927: DAR-OTP-0221-0523-R01, para. 17; DS P-0011: T-091, p. 33, line 24-p. 34, line 2; DS P-0816: DAR-OTP-0214-0721-R02, para. 17; P-0927: DAR-OTP-0221-0523-R01, para. 17.

³³⁸ DS P-1074: DAR-OTP-0224-0441-R02, paras 33-36 (P-1074’s rape by Janjaweed in a forest in Bindisi’s surroundings took place on morning of Sunday 17 August 2003); P-0927: DAR-OTP-0221-0523-R01, paras 29-32 (Janjaweed shooting at villagers and capturing and raping women at gunpoint in meadows at the outskirts of south Bindisi on 17 August 2003).

facilities present and services available in the village,³³⁹ as well its main market day on Thursday, which attracted inhabitants from surrounding villages,³⁴⁰ including Kodoom, which had no market of its own.³⁴¹ While the evidence on the pre-conflict population of Bindisi varies, it can be reliably established that at least 7,000 to 8,000 children, women and men resided there,³⁴² with an upper range of around 17,000, although the higher estimates may conflate the population of the village with that of the larger Bindisi *Mahaliya* (administrative unit) of which Bindisi village was a part, along with other smaller villages.³⁴³

176. The evidence establishes that the attack on Bindisi commenced in the parts of the village north of the Wadi³⁴⁴ Salih ('new Bindisi'),³⁴⁵ and then extended to the parts south of the Wadi Salih ('the old town').³⁴⁶ The entirety of Bindisi and its surroundings were impacted by the 15-16 August 2003 attack. [REDACTED] described what he encountered in north and south Bindisi on 17 August 2003: "*We found corpses everywhere. The town was burned down. There was no one there that we could see. [...] The market was all looted.*"³⁴⁷ Dual status witness P-1074 (a/10486/22) recalled in her testimony: "*When the attack happened [...] the entire village was burned down. They [the attacking force] looted the rest of the donkeys, chickens and goats. They didn't leave anything behind. They looted everything and they left the area in debris,*

³³⁹ DS P-0012: (Bindisi had a court, police station, veterinary service, Islamic Tax Office, pharmacy, two schools, and a big market); DS P-1074: DAR-OTP-0224-0441-R02, para. 12 (describing facilities in north Bindisi, including a hospital); DS P-0015: DAR-OTP-0088-0187-R03, paras 15, 18 (hospital, schools, two police stations);

³⁴⁰ DS P-0007: DAR-OTP-0088-0060-R02, para. 13.

³⁴¹ DS P-0986: T-065, p. 23, lines 4-6.

³⁴² DS P-0012: DAR-OTP-0119-0503-R01, paras 8, 11 ([REDACTED], estimates population of 7,000 to 8,000); DS P-0015: DAR-OTP-0088-0187-R03, paras 8-10 ([REDACTED] estimates population of more than 7,000 people).

³⁴³ DS P-0012: DAR-OTP-0119-0503-R01, para. 12 (discussing Bindisi *Mahaliya*). DS P-0007's estimate of 17,000 residents (DAR-OTP-0088-0060-R02, para. 10), for example, aligns with third-party reporting on population of "administrative unit" of Bindisi as 17,676 (DAR-OTP-0145-0237, p. 0244); DS P-0011: T-091, p. 33, line 24-p. 34, line 2 (estimating population as approximately 15,000).

³⁴⁴ "*Wadi*" meaning creek or riverbed.

³⁴⁵ "*Daguina*" was one of the neighbourhoods in north Bindisi, where the largest market of the village was located ([REDACTED]).

³⁴⁶ DS P-1074: DAR-OTP-0224-0441-R02, paras 12, 23, 31-33; DAR-OTP-00000503, para. 9; DS P-0015: DAR-OTP-0088-0187-R03, paras 10, 23, 33, 37; T-093, p. 47, line 16-p. 53, line 17; DS P-0007: DAR-OTP-0088-0060-R02, para. 23; DS P-0012: DAR-OTP-0119-0503-R01, para. 78; DAR-OTP-0220-4710, para. 18; T-082, p. 32, line 23-p. 34, line 13; [REDACTED].

³⁴⁷ [REDACTED].

*destroyed.”*³⁴⁸ Dual status witness P-0007 (a/10482/22) explained that Bindisi *“was burned down, you could still see the fumes and the smoke [after the attack]. [...] It’s been levelled to the ground.”*³⁴⁹ Dual status witness P-0012 (a/10048/22) described a “terrifying situation” during the attack, and said it was difficult to convey in words; in the days following, he described Bindisi as “a rabble of ashes. Corpses scattered everywhere”.³⁵⁰

177. Witnesses describe a large force descending on north Bindisi on 15 August 2003, on horseback and camels, with a small number of accompanying vehicles, and the attackers armed with automatic firearms and other weapons; these witnesses variously describe the attacking force as composed of “Janjaweed” / “Fursan” and, according to some, GoS soldiers (“*asakir*”).³⁵¹ DS P-0012, for example, describes a force he estimated at 3,000 *Fursan* arriving in north (new) Bindisi shortly after the attack on Kodoom,³⁵² including 2,000 gathered in the market of north Bindisi.³⁵³ P-0917 recalled: *“The Janjaweed attacked Bindisi from the North and I saw people running away in different directions. I saw the Janjaweed entering the village on horses, followed by vehicles. I cannot tell the number of Janjaweed, but their number was huge, probably there were thousands of them. They were shooting randomly.”*³⁵⁴

178. The evidence indicates that while some of the attacking forces crossed from north (new) into south (old) Bindisi in the early evening of 15 August 2003,³⁵⁵ the force camped in north Bindisi overnight,³⁵⁶ with the main attack on south Bindisi

³⁴⁸ DS P-1074: T-103, p. 44, lines 15-17.

³⁴⁹ DS P-0007: T-089, p. 35, lines 17-23.

³⁵⁰ DS P-0012: T-045, p. 18, line 15-p. 19, line 2.

³⁵¹ DS P-1073: T-103, p. 9, line 5-p.10, line 5, p. 11, line 23-p. 12, line12; DS P-1074: DAR-OTP-0224-0441-R02, para. 26; DS P-0011: T-091, p. 17, lines 5-17; DS P-0015: DAR-OTP-0088-0187-R03, paras 23-25 (describing large attacking force of Janjaweed and *asakir*); DS P-0007: DAR-OTP-0088-0060-R02, paras 25-29; [REDACTED] (estimating force of 1,500 to 2,000 Janjaweed); P-0085: DAR-OTP-0110-0054-R02, para. 27 (estimated force of 3,000 Janjaweed and GoS soldiers approaching Daguina on 15 August 2003).

³⁵² DS P-0012: DAR-OTP-0119-0503-R01, para. 78; DAR-OTP-0220-4710, para. 18; T-045, p. 15, lines 7-12.

³⁵³ DS P-0012: T-046, p. 50, line 20-p. 51, line 21.

³⁵⁴ P-0917: DAR-OTP-0217-0071-R01, para. 25.

³⁵⁵ DS P-0011: T-091, p. 15, line 21-p. 17, lines 5-17 (hearing ‘heavy weapons’, seeing “Janjaweed” and “*asakir*” in south Bindisi, early evening of 15 August 2003); [REDACTED] (Janjaweed crossing Wadi into south Bindisi on early evening of 15 August 2003, pillaging and bringing goods back to north Bindisi).

³⁵⁶ DS P-0015: DAR-OTP-0088-0187-R03, para. 33.

commencing on the morning of 16 August 2003,³⁵⁷ with certain charged conduct continuing in Bindisi and its surroundings on 17 August 2003.³⁵⁸ DS P-0029, for example, described members of the Janjaweed shooting at a “big group of women” who were trying to flee Bindisi on 16 August 2003.³⁵⁹

179. The submitted evidence establishes the requisite factual elements for **Count 1** as concerns Bindisi – intentionally directing attacks against the civilian population. The population in question includes all persons present in Bindisi and its surroundings on 15, 16, and 17 August 2003 – men, women, young and old, children of all ages – and tragically, also including persons who had fled to Bindisi to seek safety from the preceding attacks on Kodoom and other villages.³⁶⁰

180. The CLRV refers to her above submissions on the civilian protected status of Bindisi and its population.³⁶¹ The evidence establishes that rebel forces were not present in or near to Bindisi at this time, and that the attackers did not face any organised resistance.³⁶² DS P-1074 stated: “*As far as I know there was no village defence or any rebels in Bindisi during the attack.*”³⁶³ [REDACTED] recalled that the only shooting taking place as the attacking force entered Bindisi on 15 August 2003, emanated from the attackers; there was no gunfire in response.³⁶⁴ DS P-0012 explained that the only resistance to the attack was a limited exchange of gunfire

³⁵⁷ DS P-1074: DAR-OTP-0224-0441-R02, paras 31-32; DS P-0015: DAR-OTP-0088-0187-R03, paras 37-38; DAR-OTP-00000427, para. 12; DAR-OTP-0088-0211-R01 (translation DAR-OTP-0153-1316-R01); DAR-OTP-0088-0217-R01; P-0927: DAR-OTP-0221-0523-R01, para. 26.

³⁵⁸ DS P-1074: DAR-OTP-0224-0441-R02, paras 33-36 (fleeing continued attack with sister into forest on morning of 17 August 2003, where P-1074 was raped by Janjaweed); P-0927: DAR-OTP-0221-0523-R01, paras 29-32 (Janjaweed shooting at villagers, capturing and raping women on outskirts of south Bindisi, 17 August 2003).

³⁵⁹ DS P-0029: T-030, p. 19, line 3-p. 20, line 1.

³⁶⁰ DS P-1074: DAR-OTP-0224-0441-R02, para. 23; DS P-0015: DAR-OTP-0088-0187-R03, para. 34, DAR-OTP-00000427, para. 10 (those seeking refuge in school in south Bindisi on evening of 15 August 2003 included civilians from Kodoom, Seder, Merley); P-0927: DAR-OTP-0221-0523-R01, paras 24-25 (villagers from Kodoom, Merly, Seder, Drangal, Gausir arriving in south Bindisi on 15 August 2003).

³⁶¹ See submissions at paras 118-146 *supra*.

³⁶² P-0927: DAR-OTP-0221-0523-R01, para. 18 (“no presence of rebels, aka ‘Toro Boro’ and I never heard of any rebels living in Bindisi”); DS P-0816: DAR-OTP-0214-0721-R02, para. 35 (“no rebels [...] in Bindisi” and “[t]he villagers [...] did not have any protection.”); DS P-0015: DAR-OTP-0088-0187-R03, para. 16 (“not aware of any civilian defence force” in Bindisi); DS P-0012: DAR-OTP-0119-0503-R01, para. 81 (assisted in burial of 22 persons, none of whom was wearing a uniform or possessing a weapon).

³⁶³ DS P-1074: DAR-OTP-0224-0441-R02, para. 30.

³⁶⁴ [REDACTED].

on 16 August 2003 from a small group of police fleeing the police station in south Bindisi.³⁶⁵

181. The submitted evidence also establishes the factual requisites for **Counts 2** and **3** as concerns Bindisi – murder as a CAH and as a war crime committed against a large number of civilians not taking direct part in hostilities or persons *hors de combat*, perpetrated by the attacking forces.³⁶⁶ As noted above, [REDACTED] described finding “corpses everywhere” in north and south Bindisi on 17 August 2003, including charred bodies in houses of those who were unable to escape the rampage visited on them.³⁶⁷ In addition to Bindisi residents killed in and outside their homes as they attempted to flee the attacking force on 15, 16 and 17 August 2003, the attackers also employed more methodical approaches, with at least 20 civilian men captured, tied up and executed by gunfire.³⁶⁸

182. The evidence likewise establishes the elements for **Counts 4** (pillage as war crime) and **5** (destruction of the property of an adversary, without military necessity, as a war crime) in respect of the 15-16 August 2003 attack on Bindisi. Witnesses gave clear and consistent evidence on the burning and destruction of shops, houses and their contents during the attack, initially centred on the main

³⁶⁵ DS P-0012: DAR-OTP-0119-0503-R01, para. 83.

³⁶⁶ DS P-1074: DAR-OTP-0224-0441-R02, para. 29 (body of Fur woman); DAR-OTP-00000503, para. 10 (dead man with leg missing); DAR-OTP-00000506 (listing seven Fur men killed); DS P-0011: T-091, p. 21, line 10-p. 22, line 5, p. 23, lines 1-8 (shooting of uncle); DS P-0015: DAR-OTP-0088-0187-R03, paras 26-27 (shooting of father, neighbour); para. 32 (death of another uncle, killing of elderly, children and others who could not flee); DAR-OTP-00000427, para. 15, T-093, p. 14, lines 9-14 (many children died during attack and while fleeing on road); DS P-0007: DAR-OTP-0088-0060-R02, paras 21-22 (killing of many inhabitants), 23 (continued killing on 16 August); DAR-OTP-0088-0077 (translation DAR-OTP-0119-0475); DAR-OTP-00000311; DAR-OTP-00000314, paras 12-13; DAR-OTP-00000316, para. 10; DS P-0012: DAR-OTP-0119-0503-R01, paras 81, 85, DAR-OTP-0220-4710, para. 21 (knowledge of approximately 150 civilians killed in Bindisi and in surrounding villages, most appeared to have bullet wounds); [REDACTED] (bodies of three persons); [REDACTED]; DS P-0029: T-029, p. 74, lines 2-7, T-030, p. 13, lines 21-23, p. 22, lines 9-24 (finding corpses of “Ibrahim Gibna” and a woman); DS P-0816: DAR-OTP-0214-0721-R02, para. 38 (told by residents that “a lot of civilian people had been killed during the attack”, and able to remember the name of, or helped bury, several); P-0085: DAR-OTP-0110-0054-R02, para. 31 (saw four [REDACTED] being shot, later told 70 bodies found); Bar Table: Bar Table: DAR-OTP-00000697.

³⁶⁷ [REDACTED].

³⁶⁸ DS P-0011: T-091, p. 23, lines 11-19, p. 27, line 6-p. 30, line 14 (beating and execution by gunfire of 20 men between ages of 18 and 65); DAR-OTP-00000363-R01.

market in north Bindisi, as well as wholesale pillage of moveable property, including household possessions, commercial goods, food, animals, livestock.³⁶⁹

183. The CLRV refers to her above submissions concerning the 15 August 2003 attack on Kodoom,³⁷⁰ which equally apply to the circumstances of Bindisi – namely, housing and structures extremely vulnerable to fire, and the Fur community’s material wealth being tied to land ownership and farming, livestock, animals used for daily labour, and storage of any gold, jewellery, and money within dwellings.³⁷¹

184. Adam, originally from Bindisi, recounted in a video message to the CLRV: *“Indeed, we were expelled from our village and it was burned and looted. The trees were also cut down. At that time, everything was destroyed. They wanted a barren land, without Fur people, saying: ‘The Fur are cursed and must be erased from existence’”*.³⁷²

185. Beyond the immediate material impact to the residents of Bindisi arising from this catastrophic destruction and loss, there was a wider regional implication. [REDACTED] explained: *“When they came, the Janjaweed’s first goal was to plunder the Bindisi market, first and foremost. [...] [T]he majority of them went there and started shooting stores and warehouses which were closed. Bear in mind that this market housed all supplies and food supplies that citizens needed, citizens in Mukjar, Bindisi, Um Dukhun and as far as the border with Chad in Juguma. These people destroyed the storages and were looting the supplies.”*³⁷³

³⁶⁹ DS P-1073: T-103, p. 12, line 15-p. 13, line 17 (looting of homes, property, burning of homes); p. 19, lines 16-25; DS P-1074: DAR-OTP-0224-0441-R02, paras 27-28 (looting cattle), 32 (burning mill); DAR-OTP-00000503, paras 9-10; T-103, p. 44, lines 15-17 (widespread burning, destruction, looting); DS P-0015: DAR-OTP-0088-0187-R03, para. 29, DAR-OTP-00000427, para. 6 (widespread looting by Janjaweed, as described by young men hiding in trees); DS P-0007: DAR-OTP-0088-0060-R02, paras 21, 23 (setting fire to huts); [REDACTED] (finding houses burned in north and south Bindisi on 17 August 2003, and market completely looted); DS P-0012: DAR-OTP-0119-0503-R01, paras 79-80, T-046, p. 54, lines 1-8 (widespread looting of shops in main market); T-045, p. 18, lines 15-21 (“entire town was on fire”); [REDACTED] (large-scale looting of north Bindisi market); [REDACTED] (Janjaweed crossing Wadi into south Bindisi on early evening of 15 August 2003, pillaging houses, bringing goods back to north Bindisi), [REDACTED]; DS P-0029: T-029, p. 62, lines 14-19; T-030, p. 21, lines 2-13.

³⁷⁰ See submissions at para. 164 *supra*.

³⁷¹ See submissions at para. 164 *supra*.

³⁷² Participating Victim a/05454/23, Video message to CLRV, May 2024.

³⁷³ [REDACTED].

186. The evidence also establishes that in the course of the 15-16 August 2003 attack, with certain acts continuing into 17 August 2003, members of the attacking force committed acts against civilians present in Bindisi and its surroundings that constitute other inhumane acts as a CAH (**Count 6**) and/or outrages against personal dignity as a war crime (**Count 7**). These actions included violent beatings and whipping of boys, women and men, stripping clothing from women and men under the control of the attacking force, and, as addressed immediately following, rape of Fur girls and women, as well as terrible violence against helpless children.³⁷⁴

187. Dual status witness P-1073 (a/10480/22) described how she and her sister were brutally beaten by the Janjaweed: *"I was whipped and beaten down. [...] [T]he beating was so severe that I got injured. My sister was beaten as well. She was beaten so hard that she got injured in her back."*³⁷⁵ The physical toll of this violence left lasting injuries, both visible and invisible. In her victim application, DS P-1073 notes the scars that remain [REDACTED] from this abuse.

188. The evidence additionally establishes the commission by members of the attacking force of rape as a CAH and war crime (**Counts 8 and 9**) against Fur girls and women in Bindisi and its surroundings. A commonality of these assaults was the brutality of their commission and coercive use of force by the perpetrators against individuals who were under the attackers' complete mercy, the tearing away of clothing, the assaults by multiple perpetrators endured by victims, and the derogatory and demeaning ethnic-based language and threats used during the assaults. The evidence establishes that these alleged rapes sometimes took place outside of public view in houses or structures,³⁷⁶ but were more often committed in

³⁷⁴ DS P-0011: T-091, p. 23, lines 11-19, p. 27, line 6-p. 30, line 14 (tying up, violent beating of 20 men (18-65 years old) and a number of boys (10 to 15 years old), with men then executed; DAR-OTP-00000363-R01; DS P-0015: DAR-OTP-0088-0187-R03, paras 37-40 (on 16 August, Janjaweed and *asakir* on horseback chasing down and surrounding large group of children, women, and some men, stripping the clothing from women and men, beating and threatening with guns, throwing baby in the air); DAR-OTP-00000427, para. 14 (Janjaweed whipped women).

³⁷⁵ DS P-1073: T-103, p. 14, lines 5-13.

³⁷⁶ DS P-1073: T-103, p. 13, line 19-p. 16, line 2; DAR-OTP-00000492; DAR-OTP-00000500; DS P-1074: DAR-OTP-0224-0441-R02, paras 33-36, 64; DAR-OTP-00000508; DAR-OTP-00000505.

the open,³⁷⁷ including dehumanising gang rape on a larger scale, during which children and other women were forced to watch the assaults of other members of their community or even of their own relatives.³⁷⁸

189. DS P-1073, described the immediate physical and emotional aftermath of her assault during the Bindisi attack: *“After I was raped in the same room, they took me by my hand and took me out of the room and threw me out of the door. Then they told my mother that she needed to come to take her daughter [...].”*³⁷⁹ The pain and humiliation of being handed back to her mother intensified the trauma she experienced. P-1073 also bravely described how what she had survived, continued to affect her mentally and emotionally: *“[T]he rape that I suffered from, I still suffer from this incident and [...] it has impacted me immensely. There is one thing that I still remember. When I remember this, I can’t sleep. As for the future, this rape had impacted my future a lot”*.³⁸⁰

190. V-0001 provided perspective on the difficulties and realities facing victims of rape in refugee camps in Chad, where many CLRV clients reside: *“[T]hose women who were raped, repeatedly raped, were still suffering. They were still sick. They couldn’t [...] find proper treatment. We had those who had been suffering from diseases and*

³⁷⁷ DS P-0007: T-089, p. 6, line 16-p. 12, line 2 (describing violent rape and subsequent murder of three Fur female residents of Bindisi in open by Janjaweed, with ethnic language / threats used); T-089, p. 37, line 15-p. 40, line 2, p. 51, line 20-p. 52, line 3; P-0927: DAR-OTP-0221-0523-R01, paras 29-32 (Janjaweed capturing at gunpoint group of more than five women in meadows at outskirts of south Bindisi on 17 August 2003, dragging two away and raping them, others informing that victims said they were repeatedly called “Abid” along with statements that victims’ husbands would be exterminated).

³⁷⁸ DS P-0011: T-091, p. 23, line 19-p. 25, line 22 (violent gang rape of witness and many other Fur women, in a public setting, with Janjaweed attackers questioning victims for the location of “tora bora”, and ‘thanking’ Omar Al Bashir for opportunity to rape); DAR-OTP-00000357; DAR-OTP-00000358; DAR-OTP-00000366; DAR-OTP-00000367; DAR-OTP-00000356; DS P-0015: DAR-OTP-0088-0187-R03, paras 37-38, 41-45 (mass rape of group of women and girls in public setting over course of 30 minutes, by Janjaweed and *asakir*, who declared that “we have taken Tora Bora’s wives, praise be go God”); DAR-OTP-00000427, paras 16-18 (other women and children in captivity forced at gunpoint to watch mass gang rapes; saw additional women being taken away and shortly thereafter heard screaming); DAR-OTP-0088-0216-R01; T-093, p. 41, lines 12-15, p. 44, lines 3-16, p. 45, line 8-p. 46, line 10, p. 55, line 20-p. 56, line 7; p. 69, line 22 to p. 70, line 3; DS P-0007: DAR-OTP-0088-0081 (translation DAR-OTP-0119-0480) (list of 24 Bindisi rape victims); DAR-OTP-00000311; DAR-OTP-00000314, para. 12; T-089, p. 52, lines 4-9; [REDACTED] (knowledge of rapes of large number of women from Kodoom and Bindisi attacks by Janjaweed, but unsure whether assaults happened inside villages or while fleeing); [REDACTED] (18 underage girls, accompanied by Sheikhs, lodged complaints at Mukjar Police Station about girls’ rapes by Janjaweed in course of, or while fleeing, 15 August 2003 attacks on Fur villages, including Bindisi); P-0085: DAR-OTP-0110-0054-R02, para. 31 (told that some women in Bindisi separated from children and taken to be raped on 15 August 2003, including [REDACTED], who was killed).

³⁷⁹ DS P-1073: T-103, p. 15, line 25-p. 16, line 2.

³⁸⁰ DS P-1073: T-103, p. 21, lines 19-22.

sicknesses. Due to the rape, they ran into mental health issues. So they had both physical and mental health issues, which we couldn't find treatment for. They were not taken to other areas to be taken to other hospitals or other places where they could treat their wounds and get the proper treatment. [...] The implications of war are numerous.”³⁸¹

191. DS P-1073 further explained more broadly how the stigma surrounding rape prevented many women from seeking help: “[W]omen are not able to speak in that fashion. In our community, it is difficult to talk about rape because of the taboo, culture and stigmatisation. That is why women feared speaking about rape.”³⁸²

192. V-0001 echoed DS P-1073's views on the stigmatisation, including self-stigmatisation of rape victims in the context of Darfuri social dynamics: “Victims of rape sees herself as separate from the society. If she walks in the street, she thinks that everybody looks at her as the victim of rape [...]. She feels she doesn't belong to the society. She thinks that. On a daily basis she remembers and she has memories of the repeated rape. Why? Because she has the pain, and the pain occurs to her, that's why she remembers. Because of the intensity of rape, now her body suffers. [...] When she thinks about the pain that she underwent, that prevents her from mingling with her sisters and other female members of the community. So that's why she's always ashamed and trying to hide. She is not obvious. She is not to be seen by the community, because even if the community [...] does not have this perspective, she thinks that the community looks down upon her.”³⁸³

193. In line with the submissions in the introduction of this brief,³⁸⁴ the CLRV has largely eschewed entering into specific discussion of the Accused's specific criminal liability for the charged crimes. However, in relation to **Counts 6 to 9**, here covering the alleged violent rape, abuse and dehumanising treatment of Fur girls and women, should the Chamber find the Accused to have held the role and undertaken the core actions alleged by the OTP on 15 and 16 August 2003 – in

³⁸¹ V-0001: T-120, p. 15, lines 9-20.

³⁸² DS P-1073: T-103, p. 17, lines 6-8.

³⁸³ V-0001: T-0120, p. 26, lines 1-15.

³⁸⁴ See submissions at paras 6-7 *supra*.

particular, leading a primarily Janjaweed / militia force in attacks on Kodoom, Bindisi and other predominantly Fur villages – the CLRV submits that the evidence would establish his criminal culpability for Counts 6 to 9 of the confirmed charges by inducing or ordering the acts underlying these alleged crimes.

194. In this respect, the Chamber need not find that the Accused instructed or otherwise encouraged the attacking force to specifically commit the acts underlying Counts 6 to 9. Instead, as previously submitted,³⁸⁵ the acts underpinning these counts cannot be artificially ringfenced and separated from the acts underlying Counts 1 to 5 and 10 to 11, as well the larger context in which they occurred. Rather, the evidentiary lens through which Counts 6 to 9 must be assessed includes, *inter alia*, the military campaign the Accused allegedly led and participated in, commencing on 15 August 2003, of which Bindisi and its surroundings was just one of several predominately Fur villages that was targeted for attack,³⁸⁶ and which took place as part of the GoS's counterinsurgency strategy.³⁸⁷

195. The manner in which these preceding uncharged attacks took place, as well as the charged attack on Kodoom, and the Accused's alleged actions during these events, and what he would have observed of the Janjaweed / militia allegedly under his control,³⁸⁸ would have made clear to him that the acts underpinning Counts 6 to 9 were virtually certain to occur in the ordinary course of events.³⁸⁹

196. As addressed above,³⁹⁰ these connected attacks on predominantly Fur villages on 15 August 2003 – including allegations of uncharged conduct during the attack on Kodoom³⁹¹ – are characterised by the wanton and dehumanising nature of their commission. The Accused's alleged actions during these attacks, if so determined

³⁸⁵ 911-Conf (PRV: [911-Red](#))

³⁸⁶ See submissions at para. 154 *supra*.

³⁸⁷ See submissions at paras 141-143 *supra*.

³⁸⁸ In respect of these preceding attacks and the Accused's alleged presence and actions, *see*, for example, evidence [REDACTED].

³⁸⁹ *Lubanga*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, [ICC-01/04-01/06-3121-Red](#), para. 447 (holding that the “applicable standard for the foreseeability of events” under Article 30(2)(b) and (3) of the Statute (mental element) is “virtual certainty”, but not “absolute certainty”).

³⁹⁰ See submissions at para. 172 *supra*.

³⁹¹ See submissions at para. 160 *supra*.

by the Chamber, to induce or order those under his command or control to carry out the noted attacks on 15 and 16 August 2003 in the manner that they did, and his observation of the same, would establish his culpability for Counts 6 to 9. There is no basis in law, logic, or the history of human conflict, to separate, in this context, the commission of widespread murder, destruction, pillage, and forcible displacement, from that of the acts underlying Counts 6 to 9, and assert that the former can be viewed as virtually certain to occur, but not the latter.

197. The Defence's previous assertion that "rape is a different type of crime in terms of how envisageable it is, in terms of how it can be anticipated by a person giving the orders[] [...] *aksah amsah*, cut the straw eat it raw",³⁹² is not supported by law and wrong as a matter of fact and logic. Per the Defence, "*aksah amsa*" – variously understood as 'kill relentlessly' or 'wipe out, sweep away'³⁹³ – "*immediately brings to mind an order, an inducement to kill, to wipe away the enemy, [...] but it stretches any reasonable interpretation to argue that that could be [...] understood to mean capture girls and women, strip them, degrade them, humiliate them, rape them.*"³⁹⁴ Instead, the Defence submitted: "*At its highest, perhaps an order or inducement to kill, burn and pillage, but really no more.*"³⁹⁵ In the context of the attacks in question, such an unnatural disconnect of sexual or degrading crimes – in some instances committed in the open³⁹⁶ – from all other crimes committed on the same days, is unnatural and unrealistic, and amounts to another assessment of foreseeability and virtual certainty for rape and related crimes, than for crimes such as pillage and murder.

198. The submitted evidence provides no indication that the Accused cautioned, restrained, or otherwise indicated to the men under his alleged command – particularly after observing their actions during the attacks preceding the attack on Bindisi – that they should not cross certain legal, moral, or cultural lines when

³⁹² T-114, p. 39, lines 15-17.

³⁹³ [REDACTED] (in context of combat operations, effectively means "kill relentlessly", indicates to soldiers "there are no restrictions or limits that govern military and combat operations, and there is no regard for any other consideration", and a phrase that would terrorise civilians in this context); [REDACTED].

³⁹⁴ T-114, p. 40, line 19-p. 41, line 1.

³⁹⁵ T-114, p.42, line 22-23.

³⁹⁶ See submissions at para. 188 *supra*.

carrying out the attacks in question. Instead, his alleged use of exhortations like “*Aksah amsah*”³⁹⁷ in this setting would have further conveyed to the attackers that no rules applied, and that all transgressions were acceptable and encouraged.

199. The CLRV lastly notes the evidence of [REDACTED], that the Accused intervened on behalf of several women and girls in the custody of Sudanese military and Janjaweed forces, which is said to have occurred several months after the 15 and 16 August 2003 attacks on Kodoom, Bindisi, and other predominantly Fur villages.³⁹⁸ At most, this account may provide evidence of the Accused’s state of mind (or calculated decision) in this particular instance and setting, [REDACTED]. It is not evidence of any fundamental moral or decisional bright line held by the Accused that would negate the clear, consistent and overwhelming evidence relevant to Counts 6 to 9 of the charges.

200. As with the charged attack on Kodoom, the evidence also establishes the factual elements for **Count 10** of the confirmed charges – forcible transfer³⁹⁹ as a CAH – in respect of the charged attack on Bindisi. The violent and destructive attack on north and south Bindisi on 15 and 16 August 2003, as detailed above, caused almost the entire population of the village, as well as civilians from other villages who had sought safety in Bindisi from preceding attacks on their villages,⁴⁰⁰ to flee for their lives. [REDACTED] described the scene he encountered in the village on 17 August 2003 as follows: “*There was nobody in Bindisi. It was all vacant, all vacated.*”⁴⁰¹

201. Like the attack on Kodoom, this forcible displacement had immediate implications, as the children, women and men present in Bindisi fled from north Bindisi across the Wadi Salih to seek short-lived safety in south Bindisi on 15

³⁹⁷ See, e.g., [REDACTED].

³⁹⁸ [REDACTED].

³⁹⁹ Per EoC “deported or forcibly transferred” interchangeable with “forcibly displaced” (EoC, fn. 13).

⁴⁰⁰ DS P-1074: DAR-OTP-0224-0441-R02, para. 23; DS P-0015: DAR-OTP-0088-0187-R03, para. 34, DAR-OTP-00000427, para. 10 (those seeking refuge in school in south (old) Bindisi on evening of 15 August 2003 included civilians from Kodoom, Seder, Merley); P-0927: DAR-OTP-0221-0523-R01, paras 24-25 (villagers from Kodoom, Merly, Seder, Drangal, Gausir fleeing to south Bindisi).

⁴⁰¹ [REDACTED].

August 2003,⁴⁰² or otherwise, on both 15 and 16 August, and continuing into 17 August 2003, fled in terrifying and chaotic circumstances from north and south Bindisi, with members of families being separated, into fields, forests, and mountains surrounding the village to escape the attacking force.⁴⁰³ Dual status witness P-0011 (a/10301/22) described the panic and chaos in the village during the attack: *“The citizens were in a difficult situation. They were confused. They did not know what to do. Every person was trying to flee or run for their lives. [...] I saw people in fear [...] entering their houses, taking their belongings, their children [...] We were moving slowly so that the enemy would not see us.”*⁴⁰⁴ DS P-1073 provided this wrenching account: *“We were able to wrap our possessions in a bed sheet and we joined the other villagers with whom we fled. [...] As a family, we were separated. My mother, my sister, myself went in one direction, my other siblings went in another.”*⁴⁰⁵

202. The attack on Bindisi, like that on Kodoom, also had longer-term implications on the participating victims and other Bindisi residents, with most if not all undertaking difficult journeys to seek safety in Mukjar and its surroundings;⁴⁰⁶ here, they lived for days, weeks, and months, in crowded and difficult conditions with limited shelter (initially during the rainy season), precarious physical and food security, having lost most of their possessions and resources, and with disease rampant.⁴⁰⁷ After fleeing the attack on Bindisi and arriving in Mukjar on 20 August 2003, P-0927 described it as “packed with IDPs from the area”.⁴⁰⁸

⁴⁰² P-0917: DAR-OTP-0217-0071-R01, para. 27; P-0927: DAR-OTP-0221-0523-R01, paras 22-24, 26-27, 39.

⁴⁰³ DS P-1073: T-103, p. 9, lines 14-23; DS P-1074: DAR-OTP-0224-0441-R02, para. 25; DS P-0011: T-091, p. 20, line 21-p. 21, line 8; DS P-0015: DAR-OTP-0088-0187-R03, paras 27-28; DAR-OTP-00000427, para. 5; DS P-0007: DAR-OTP-0088-0060-R02, paras 21-22, 32-33; [REDACTED] (describing villagers fleeing from north and south Bindisi from Janjaweed attack on 15 August 2003); DS P-0816: DAR-OTP-0214-0721-R02, paras 36, 37, 39; P-0917: DAR-OTP-0217-0071-R01, para. 27 (fleeing north Bindisi to south Bindisi, then into surrounding mountains, being separated from family); P-0927: DAR-OTP-0221-0523-R01, paras 22-24 (fleeing north Bindisi to south Bindisi on 15 August 2003, with family), 26-27, 39 (fleeing attack on south Bindisi on morning of 17 August 2003 to surrounding wheat fields, then foothills of mountains).

⁴⁰⁴ DS P-0011: T-091, p. 21, lines 2-8.

⁴⁰⁵ DS P-1073: T-103, p. 9, lines 19-25.

⁴⁰⁶ DS P-0877: T-053, p. 76, line 14-p. 77, line 14.

⁴⁰⁷ DS P-1073: T-103, p. 17, lines 3-25, p. 20, lines 3-6; DS P-1074: DAR-OTP-0224-0441-R02, paras 43-44; DS P-0015: DAR-OTP-0088-0187-R03, paras 50-51, 80-89; DS P-0816: DAR-OTP-0214-0721-R02, paras 36, 37, 39; P-0917: DAR-OTP-0217-0071-R01, paras 27-32; P-0927: DAR-OTP-0221-0523-R01, paras 35-36, 38, 43.

⁴⁰⁸ P-0927: DAR-OTP-0221-0523-R01, paras 34-35, 38.

203. DS P-0816 recalled extremely desperate circumstances: *“The situation in Mukjar was miserable with many displaced people in the streets. We stayed there for about two months. Sometimes it rained and there was no place to find shelter. There were elderly people who could not get up anymore as they were tired from walking, hiding, felt fear and were hungry. Many people died of exhaustion. My son also died in Mukjar from starvation and exhaustion. He was less than one year. [...] During the time there I saw Government soldiers and Janjaweed; they sometimes shot in the air and yelled. During the day we stayed in the square as we were afraid of them.”*⁴⁰⁹

204. As with the civilians forcibly displaced by the Kodoom attack,⁴¹⁰ the children, women and men forcibly displaced by the Bindisi attack have never been able to return to their homes and lands; they remain to this day IDPs in Darfur, refugees in Chad and Egypt, or in the wider diaspora,⁴¹¹ more than two decades later.

205. The acts underling **Counts 1 to 10** as concerns the attack on Bindisi, were also the means of perpetrating **Count 11** in respect of the population of Bindisi – namely, persecution as a CAH on political and ethnic grounds of the predominantly Fur population perceived as belonging to, or being associated with, or supporting the SLM/A and/or JEM rebel armed groups. The CLRV recalls her submissions above on the evidence establishing the Fur population’s general support for and affinity towards the rebel movements, and the SLA/M in particular,⁴¹² as well as the GoS’s counter-insurgency campaign and view that did not distinguish between the Fur population and the armed rebels, and which actively targeted the Fur civilian population as a matter of policy based on the perception of the population’s connection to or support for the rebel movements.⁴¹³

206. The CLRV recalls and adopts in full her above submissions on **Count 11** in relation to the charge of persecution as a CAH against the population of Kodoom,⁴¹⁴

⁴⁰⁹ DS P-0816: DAR-OTP-0214-0721-R02, para. 42.

⁴¹⁰ See submissions at paras 165-167 *supra*.

⁴¹¹ See, e.g., P-0917: DAR-OTP-0217-0071-R01, paras 27, 34-40 ([REDACTED]); 872-Conf-AnxXI-Red (corrections).

⁴¹² See submissions at paras 124-126 *supra*.

⁴¹³ See submissions at paras 141-143 *supra*.

⁴¹⁴ See submissions at paras 171-173 *supra*.

which applies in equal measure to the attack on the predominantly Fur population of Bindisi, which likewise fit perfectly within the GoS's counter-insurgency plan.

207. As was the case with the Kodoom attack, members of the same attacking force used derogatory and anti-ethnic terminology targeting Fur residents of Bindisi during the 15-16 August 2003 attack, including when committing the rapes alleged under Counts 8 and 9 in Bindisi and its surroundings.⁴¹⁵ Furthermore, meetings and public speeches by GoS officials with militia / Janjaweed present took place during this period, where the targeting of the Fur and the taking of their land was encouraged, and derogatory language used against them.⁴¹⁶

208. While not specifically charged as such, the evidence also establishes that there was a component of persecution on the basis of gender as a CAH,⁴¹⁷ in addition to persecution on political and ethnic grounds, as made clear by the attacking force's selection of Fur girls and women as victims of rape⁴¹⁸ in Bindisi and its surroundings, as addressed above, and the capture, separation from women, tying up and methodical execution by gunfire of at least twenty Fur men.⁴¹⁹

209. The psychological toll inflicted upon the survivors of the attacks on Kodoom and Bindisi was profound, long-lasting, and left deep emotional scars that continue to affect the survivors to this day. Many participating victims live with symptoms of trauma, including fear, nightmares, a constant sense of insecurity, anxiety, and depression. Survivors like dual status witness P-0015 (a/10413/22) described how they continued to live with the trauma of the attacks: *"I'm trying to co-live [...] with these sorrows. When children scream, I can't tolerate that. I constantly try to heal and co-*

⁴¹⁵ DS P-0011: T-091, p. 23, line 19-p. 25, line 22; DS P-0015: DAR-OTP-0088-0187-R03, paras 37-38, 41-45, 47; DS P-0007: DAR-OTP-0088-0060-R02, para. 21, T-089, p. 15, lines 8-18; T-089, p. 6, line 16-p. 12, line 2; DS P-0012: DAR-OTP-0119-0503-R01, para. 83 (Janjaweed chanting "Holy War against Slaves" during attack on south Bindisi), T-045, p. 19, lines 7-17, p. 31, lines 9-20 ("slaves" referring to Fur population); P-0927: DAR-OTP-0221-0523-R01, paras 29-32).

⁴¹⁶ DS P-0932: DAR-OTP-0222-0602-R02, paras 55-64.

⁴¹⁷ Regarding customary law status of gender persecution as a CAH, see submissions at para. 232.vii *infra*.

⁴¹⁸ See ICTY, *Kvočka*, IT-96-23/1, [Trial Judgment](#), 2 November 2001, para. 560 (sexual violence committed against only women non-Serb detainees, making acts gender discriminatory, in addition to other grounds).

⁴¹⁹ DS P-0011: T-091, p. 23, lines 11-19, p. 27, line 6-p. 30, line 14 (beating, tying up and execution by gunfire of 20 men between ages of 18 and 65).

*live with these memories”.*⁴²⁰ V-0003, simply but powerfully stated, in relation to the attack on his home village of Bindisi: *“In 2003, specifically the 15th of August, 2003, that was a Friday. We call it the day of tragedy.”*⁴²¹

B. *Charged incidents in and around Mukjar and Deleig – February / March 2004*

210. Like the attacks on Kodoom and Bindisi, and as alleged by the OTP, the evidence establishes that the charged incidents centred on the towns of Mukjar (Mukjar locality) and Deleig (Wadi Salih locality) between late February and early March 2004, occurred in the context of a larger military campaign by GoS and allied Janjaweed / militia forces targeting predominantly Fur villages, as well battles against SLM/A forces of Abdul Wahid al-Nur around the mountainous Sindu area (Mukjar locality). The large-scale destruction of villages and the targeting of their residents⁴²² caused their populations, like those of Kodoom and Bindisi, to seek safety, food and shelter in larger towns, including Mukjar, Deleig, and Garsila.⁴²³

211. In both the charged Mukjar and Deleig incidents, in which the Accused is alleged to have played a leading role, including direct perpetration of certain charged crimes, predominantly Fur boys and men were targeted for detention, mistreatment, torture, and, for some, execution in and around these towns. The harm arising from these charged incidents for both individuals, and the wider Fur community, was also of a similar nature.

i. Charged Mukjar incident (February / March 2004) – Counts 12 to 21

212. **Counts 12 to 21** concern alleged crimes arising from the detention of a large number of predominantly Fur males in the police station of the town of Mukjar (“Mukjar Police Station”), from where some were transported for execution.⁴²⁴

⁴²⁰ DS P-0015: T-093, p. 19, lines 10-12.

⁴²¹ V-0003: T-120, p. 62, lines 23-24.

⁴²² See [CLRV Trial Brief](#), paras 105-108, 110 (identifying widespread or systematic attacks on 26 predominantly Fur villages that took place between August 2003 and March 2004).

⁴²³ See, e.g., P-0850: DAR-OTP-0216-0002-R04, para. 51 (explaining that, for residents of villages in his area fleeing attacks on their villages, “Garsila and Deleig were the two main towns where we were seeking refuge”).

⁴²⁴ [Confirmation Decision](#), para. 133.

213. In respect of the core allegations underlying all Mukjar-related counts, the evidence establishes that the detentions at the Mukjar Police Station and related charged conduct, as well as the subsequent transportation of detainees for execution in the surroundings of the town, occurred over the span of approximately three days between late February and early March 2004.⁴²⁵ In this regard, witness evidence is best understood when using the day of the charged executions of detainees as a point of reference, as well as the itinerary of the so-called ‘Sindu operation’ conducted by Janjaweed and GoS forces during this time.

214. The evidence also establishes that most of the predominantly Fur⁴²⁶ men (primarily younger men), as well as a number of boys fifteen and younger,⁴²⁷ detained at the Mukjar Police Station had fled to Mukjar after devastating attacks on their predominantly Fur villages to the east of Mukjar by GoS forces and/or aligned Janjaweed / militia. The displaced were then targeted for detention at checkpoints by a combination of GoS personnel (police, CRF, PDF, military) and Janjaweed, who separated the younger men from women, children and the elderly,

⁴²⁵ P-0919: T-060, p. 14, lines 2-25, p. 15, line 23-p. 16, line 16, p. 17, lines 8-9, p. 32, lines 10-12, p. 33, lines 20-22, p. 35, lines 8-9; DS P-0129: DAR-OTP-0128-0128-R04, paras 34, 38, 39, 49, 50-58; DAR-OTP-0223-0157-R01, paras 40, 42, 43, 49; T-076, p. 39, lines 9-12; p. 43, lines 11-22; DS P-0931: T-062, p. 20, lines 2-22, p. 22, line 11-p. 23, line 13; p. 36, line 19-p. 37, line 10 (was dry season); p. 38, lines 5-25, p. 39, line 18-p. 42, line 13, p. 49, line 11-p. 50, line 25 (Mukjar executions occurred few days prior to Deleig charged event); [REDACTED] (detailing itinerary of ‘Sindu operation’); [REDACTED] (indicating dates are approximations); DS P-0877: T-053, p. 81, line 3-p. 83 line 1 (placing first detention as 28 February 2004); T-055, p. 52, lines 15-22, p. 64, lines 8-15 (followed by release and re-detention on 29 February 2004, and final release 3 March 2004); T-054, p. 11, lines 7-16, p. 16, line 17-p. 17, line 8, p. 21, line 23-p. 22, line 21, p. 65, line 18-p. 66, line 9 (dating loading of detainees and hearing gunfire, to 2 March 2004); P-0903: T-032, p. 10, line 12-p. 11, line 22, p. 20, line 17-p. 24, line 4; p. 27, lines 2-13 (first day of detention Monday, with detained persons sent to be killed Wednesday); p. 60, line 15-p. 65, line 16; p. 64, lines 6-9; P-0990: T-040, p. 30, line 14-p. 31, line 24, p. 36, lines 7-19 (dates Mukjar Police Station detention as 18 February to 16 March 2004); p. 47, lines 8-16, p. 52, line 5-p. 53, line 6 (dates return of forces from Sindu and abuse of detainees in presence of officials, as 23 February 2004); p. 61, lines 1-4, p. 62, lines 8-18, p. 63, line 3-p. 64, line 10; DS P-0932: DAR-OTP-0222-0602-R02, paras 81-100 (detained in Bindisi on 19 February 2004 for approximately one day, transported to Mukjar Police Station, and detained 27 days); 101-105 (describing three incidents of detainees loaded and driven away to Garsila from Mukjar Police Station – (i) day after arrived, (ii) morning after that, and then (iii) seven days later); 107-109; DAR-OTP-0220-5720, para. 18; T-068, p. 35, line 21-p. 36, line 25; dual status witness P-0913 (a/25145/21): DAR-OTP-0218-0021-R04, paras 69, 74-76, 88-92, 94-113; DAR-OTP-00000012, paras 27-32.

⁴²⁶ P-0919: T-061, p. 11, lines 11-13; DS P-0129: DAR-OTP-0128-0128-R04, para. 45; P-0877: T-053, p. 85, lines 13-20; P-903: T-032, p. 32, line 16-p. 33, line 2; DS P-0932: T-068, p. 38, lines 23-25.

⁴²⁷ DS P-0129: DAR-OTP-00000086 (Mukjar executed), rows 17, 20, 31, 35, 36, 37, 39, 57, 58 (nine boys under age 15 detained and executed); DAR-OTP-00000085 (Mukjar detainee list), rows 1, 6, 7 (three detainees fifteen and younger); T-075, p. 65, lines 1-11; DS P-0984: T066, p. 66, lines 7-11 (“They focused on young men. And sometimes very young people got detained, such as 13 or 14 years old people.”); [REDACTED] (execution of seven children aged approximately eight to twelve).

searched the younger men, took away any livestock the displaced had with them, and then marched the detained males to the Mukjar Police Station for registration (at least for some) and detention.⁴²⁸ A smaller number of Fur males had been arrested in places outside of Mukjar and transported to the Mukjar Police Station.⁴²⁹

215. These detainees encompassed a cross-section of male Fur society, including numerous farmers, traders and students, as well as religious scholars and a medical professional.⁴³⁰ Prominent men from the Fur community were specifically targeted for detention,⁴³¹ including *Umdahs* and Sheikhs, such as *Umdah* Yahya Ahmed Zaroq, who lived in Mukjar, and was *Umdah* of Mukjar town and several surrounding villages, as well as *Umdah* Doren, *Umdah* Issa Harun Nour, *Umdah* Adam Husayn Abdelm Mahmoud, *Umdah* Ahmed Mohamed Gantour, 'senior' Sheikh Adam Mousa, Sheikh Jobbor, Sheikh Abdallah Ahmad Hasan, and Sheikh Issa Mohamed Ishaq.⁴³² Collectively, the authority and responsibility of these communal leaders included, *inter alia*, the villages or towns of Mukjar, Artala, Dimbo, Morol, Sindu, Abirla, Nyerli, Korofata, Tiro, Tindi, Indri, Segijie, Bolboso, Keraro, Kankule, Nyamatala, Dine, and Gorola.⁴³³

216. The scale of predominantly Fur displaced arriving in Mukjar at this time was large. They joined many others who had previously fled to Mukjar, as discussed above in relation to the charged Kodoom and Bindisi incidents. Dual status witness P-0984 (a/10053/22) described "thousands" of displaced villagers sleeping in the

⁴²⁸ P-0919: T-060, p. 13, line 2-p. 16, line 3; DS P-0129: DAR-OTP-0128-0128-R04, paras 34-39; DS P-0984: T-066, p. 65, line 4-p. 66, line 23; T-067, p. 29, lines 7-14; DS P-0877: T-053, p. 80, line 17-p. 82, line 19; T-054, p. 62, line 19-p. 63, line 1; P-0903: T-032, p. 10, line 23-p. 11, line 22, p. 21, lines 2-20; p. 22, line 12-p. 27, line 6; P-0990: T-040, p. 24, line 9-p. 29, line 18.

⁴²⁹ DS P-0932: DAR-OTP-0222-0602-R02, paras 81-100 (detained at Bindisi [REDACTED] on 19 February 2004 for approximately one day with sixteen other Fur men by CRF; all then transported to Mukjar Police Station).

⁴³⁰ DS P-0129: T-075, p. 65, lines 16-20; DAR-OTP-00000086 (list of Mukjar executed); P-0903: T-032, p. 31, lines 19-p. 32, line 7 (detainee Muhammad Umar Zarruq was a doctor or pharmacist, and son of a Fur Shartay).

⁴³¹ DS P-0984: T066, p. 66, lines 7-13 ("And [...] some people got arrested straightaway [at the checkpoints], such as the *umdahs*, without any questioning.")

⁴³² P-0919: T-060, p. 16, lines 4-13, p. 26, lines 17-24; P-1029: DAR-OTP-0128-0128-R04, para. 45; DS P-0877: T-054, p. 3, lines 15-23; P-0903: T-032, p. 30, lines 8-23; P-0990: T-40, p. 37, lines 8-14; DS P-0932: DAR-OTP-0222-0602-R02, paras 107-109.

⁴³³ *Ibid.*

streets of the town at this time.⁴³⁴ A report from the UN Resident and Humanitarian Co-ordinator for Sudan, dated 1 April 2004, for instance, estimates the number of IDPs in Mukjar as 41,216.⁴³⁵ This compares with a pre-conflict population of the town of approximately 7,000.⁴³⁶

217. Some of the detainees were brought to the Mukjar Police Station commencing several days prior to the day of the charged executions (perhaps up to approximately ten days prior),⁴³⁷ whereas others were brought to the Police Station commencing approximately two days prior to the day of the charged executions.

218. Over the approximately three days that concern the core of the Mukjar charged incident, around 200 male predominantly Fur detainees were crammed into primarily two detention cells on the Mukjar Police Station grounds – an ‘outer’ cell and an ‘inner’ cell – in high heat (summertime⁴³⁸), and with air that was thick and difficult to breathe.⁴³⁹ Dual status witness P-0919 (a/10050/22) described conditions so crowded that: *“We were sitting upon each other. If you find a place to stretch your leg, that would be too much. That’s more than you can ask for.”*⁴⁴⁰ DS P-0877 recalled: *“[...] 94 people in a room and [...] everybody is going through a difficult time and it was extremely difficult to breathe. So where you stand, you cannot leave either left or right, you have to stay there.”*⁴⁴¹

⁴³⁴ DS P-0984: T-067, p. 41, lines 7-24.

⁴³⁵ DAR-OTP-0160-0885 at 0902.

⁴³⁶ DAR-OTP-0038-0060 at p. 0065.

⁴³⁷ DS P-0932: DAR-OTP-0222-0602-R02, paras 81-100 (detained Bindisi [REDACTED], on 19 February 2004, for one day with sixteen other Fur men by CRF; all transported to Mukjar Police Station and put in cell with 150 others); P-0990: T-040, p. 31, line 12-p. 55, line 2, p. 59, line 5-p. 65, line 14 (beginning of detention three days prior to day “Ali Kushayb” and his forces arrived in Mukjar in *advance* of ‘Sindu operation’, these forces departing for operation same day, “Ali Kushayb” and forces then returning from Sindu two days later (23 February 2024 according to P-0990), and transport of detainees from Mukjar Prison, occurring next day).

⁴³⁸ P-0990: T-040, p. 35, line 24-p. 36, line 4.

⁴³⁹ P-0919: T-060, p. 15, line 25-p. 17, line 12; T-61, p. 8, line 10-p. 9, line 15; DS P-0129: DAR-OTP-0128-0128-R04, para. 44; T-076, p. 39, lines 1-7; DS P-0877: T-053, p. 82, line 21-p. 83, line 1; p. 84, lines 1-5; P-0903: T-032, p. 29, lines 5-14 (estimates 200 persons detained “on top of each other”); p. 29, line 25-p. 30, line 4 (“We could barely breathe”, and “It was very hot”).

⁴⁴⁰ P-0919: T-060, p. 17, lines 1-4.

⁴⁴¹ DS P-0877: T-053, p. 84, lines 1-5.

219. The detained boys and men, already in a precarious situation having fled the destruction of their villages,⁴⁴² and now placed in bursting and stifling cells, were additionally denied food and water, or at most provided grossly insufficient amounts, and forced to relieve their bodily functions in the cells, among their fellow detainees.⁴⁴³ Dual status witness P-0129 (a/10237/22) also confirmed that there was no differentiation in detention conditions or treatment between the children who were detained compared to the men: *"They were all treated the same. No difference between old and young."*⁴⁴⁴

220. On the day prior to the executions, the evidence establishes that incidents took place within the buildings and grounds of the Mukjar Police Station, during which the detainees were subjected to severe violence, threats, and indignities.

221. On the morning of this day, a delegation, including State Minister for the Interior Ahmad Harun⁴⁴⁵ and GoS military officers, visited the Mukjar Police Station, with a cameraman (potentially from Sudan TV).⁴⁴⁶ Witnesses gave evidence that "Ali Kushayb" entered at least one of the detention cells, accompanied by armed Janjaweed, called on the *Umdahs* to come forward, whereupon they and other detainees were beaten or struck with bladed weapons, sticks, and whips.⁴⁴⁷ Many of the detainees (P-0990 recalls a count of 81⁴⁴⁸), including the detained *Umdahs*, were then forced to the yard of the Police Station, where they were denounced as "rebels", "tora bora" and "not citizens", including by Ahmad Harun and "Ali Kushayb", all while being filmed.⁴⁴⁹ The detainees were then brought back

⁴⁴² See DS P-0877: T-053, p. 85, lines 8-12.

⁴⁴³ P-0919: T-060, p. 16, lines 19-22; DS P-0877: T-053, p. 84, lines 14-25, p. 85, lines 8-12; T-054, p. 64, lines 6-9; P-0903: T-032, p. 29, lines 20-21, (no bathroom), p. 30, lines 6-7 (food and drink "not sufficient, the amounts were very small").

⁴⁴⁴ DS P-0129: T-075, p. 65, lines 1-15.

⁴⁴⁵ Second Agreement on Facts, Annex A, point 7.

⁴⁴⁶ DS P-0877: T-053, p. 77, lines 19-25, p. 87, line 23-p. 93, line 10; T-054, p. 3, lines 8-14, p. 7, line 15-p. 8, line 13; P-0990: T-040, p. 47, line 8-p. 53, line 13.

⁴⁴⁷ P-0990: T-040, p. 50, line 24-p. 52, line 7, p. 59, line 5-p. 60, line 25.

⁴⁴⁸ P-0990: T-040, p. 53, lines 4-8.

⁴⁴⁹ DS P-0877: T-053, p. 77, lines 19-25, p. 87, line 23-p. 93, line 10; T-054, p. 3, lines 8-14, p. 7, line 15-p. 8, line 13; P-0990: T-040, p. 47, line 8-p. 53, line 13, p. 59, line 19-p. 60, line 25.

to their cells,⁴⁵⁰ during which, as P-990 testified, “Ali Kushayb” “started whipping some of us and striking some of us until we were all in the cell again”.⁴⁵¹

222. Witnesses also describe brutal treatment on this day that the detainees suffered that took place either as part of the above-described removal of the prisoners to the Police Station yard, or potentially as part of a separate incident. It is understandable, given the circumstances of the Mukjar incident, and the passage of time, that witness accounts do not precisely align in all particulars; this does not, however, undermine in any way the core veracity of the evidence provided. Indeed, given these realities, a perfectly linear account of what happened to the detained, without any discrepancies, might well have raised questions regarding potential coordination and/or external influence regarding their testimony.

223. In particular, DS P-0919 and DS P-0129 provided evidence regarding “Ali Kushayb”, accompanied by armed Janjaweed, entering the cell, calling out and viciously attacking the *Umdahs* and Sheikhs,⁴⁵² with the Janjaweed inflicting other horrific violence on the detained predominantly Fur boys and men, including cutting off of ears and shaving of heads with bladed weapons.⁴⁵³ Ethnic slurs and threats were also issued against the detainees during this violence and abuse.⁴⁵⁴ P-0919 emphasised the helpless situation the detainees were in: “*We had no choice, of course. We had been hit, because the people with Kushayb carried arms, and we had no other choice that we have to surrender and be hit and be assaulted. We had nothing else to do.*”⁴⁵⁵

⁴⁵⁰ DS P-0877: T-053, p. 93, lines 2-10.

⁴⁵¹ P-0990: T-040, p. 53, lines 4-13.

⁴⁵² P-0919: T-060, p. 17, line 3, p. 26, line 25-p. 29, line 6 (on first full day of detention, “Ali Kushayb” threatened *Umdah* Yahya, hitting him with axe on arm and neck (breaking neck bone), with other Janjaweed, beating and whipping *Umdahs* Issa, Jobbor, and Doren, and Sheikh Jobbor); DS P-0129: DAR-OTP-0128-0128-R04, paras 47, 49, T-075, p.g 58, lines 2-11 (on Tuesday, targeting *Umdahs* and Sheikh Abdallah Ahmad Hasan for beatings).

⁴⁵³ P-0919: T-060, p. 18, lines 20-22, p. 19, line 1-p. 25, line 4, p. 26, lines 10-p. 29, line; DS P-0129: DAR-OTP-0128-0128-R04, paras 46-49, T-075, p.g 58, lines 2-11 (on Tuesday, beating and whipping of prisoners in detention cell by “Ali Kushayb” and three others).

⁴⁵⁴ P-0919: T-060, p. 19, lines 20-p. 20, line 1 (on first full day of detention, with “Ali Kushayb” present, Janjaweed calling the detainees “*abid*” and “*tora bora*”); DS P-0129: DAR-OTP-0128-0128-R04, para. 47, T-075, p. 56, lines 8-22 (use of “*magus*” [‘idol worshiper’] and “*abid*” [slave] against Fur detainees and “Ali Kushayb” declaring he had been authorised to eliminate Fur and confiscate their property).

⁴⁵⁵ P-0919: T-060, p. 49, lines 18-25.

224. DS P-0919 also gave evidence that, around three hours after “Ali Kushayb” and the Janjaweed had left the detention cell, men wearing the uniform of the CRF (also known as “*Abu Teira*”) entered the cell P-0919 was in, and began to question the detainees as to whether they were “*tora bora*”; if detainees agreed, they were left alone. If they denied being *tora bora*, as P-0919 did, then the CRF personnel burned their skin with an electric clothes iron for approximately ten minutes at a time, with some detainees also slapped in the face.⁴⁵⁶ DS P-0932 also gave evidence of CRF personnel entering his cell on one evening and beating detainees “very hard” with sticks, and explained that he was in ill health and suffering badly due to the injuries and poor treatment inflicted to him over the preceding several days, and accordingly that things could have happened that he doesn’t recall.⁴⁵⁷

225. After this mistreatment and torture on his first full day of detention (having been brought to the Mukjar Police Station the previous day), DS P-0919 and other detainees remained detained overnight in the same conditions, with no medical aid provided.⁴⁵⁸ P-0919 recalled of his fellow detainees that evening and night – “some were crying and shouting, and some were whining as a result of their suffering”, and some were reciting verses from the Koran.⁴⁵⁹

226. The following day (the day of the charged executions), dual status witness P-0931 (a/10051/22) described seeing the detainees in their cells: “*I saw their bodies. They were covered with blood. They had been tortured, heavily tortured.*”⁴⁶⁰

227. On the day of the charged executions, the evidence establishes that captors in uniform, as well as Janjaweed in civilian clothing – allegedly led by “Ali Kushayb” – entered the detention cells, where *Umdahs* Yahya, Doren and Issa were called to stand up first, other detainees ordered to stand up, and these detainees then beaten

⁴⁵⁶ P-0919: T-60, p. 29, line 4-p. 32, line 8 (P-0919 burned on leg).

⁴⁵⁷ DS P-0932: DAR-OTP-0222-0602-R02, paras 105-106.

⁴⁵⁸ P-0919: T-60, p. 32, lines 10-15.

⁴⁵⁹ P-0919: T-60, p. 32, line 20-p. 33, line 15.

⁴⁶⁰ DS P-0931: T-062, p. 18, lines 7-17.

and taken out of the cells into the yard of the Police Station.⁴⁶¹ *Umdah* Yahya asked for permission to get dressed properly, but was denied even this small dignity.⁴⁶²

228. Thereafter, the detainees removed from the cells ([REDACTED] estimated more than 100⁴⁶³), including the *Umdahs*, continued to be beaten (some blindfolded) in the yard of the Police Station, and then loaded into vehicles.⁴⁶⁴ [REDACTED] described what transpired [REDACTED]: *"I saw five vehicles. [...] [T]here were men beating the people who were going from the door of the prison to the vehicle. [...] And those who were loaded onto the vehicles were so many. Too many. [...] [REDACTED]."*⁴⁶⁵ [REDACTED] stated that detainees were ordered "to lie on their bellies" in the vehicles and were treated as "bags" or "sacks" "of hay" to be stacked-up.⁴⁶⁶

229. The detainees, stacked in the vehicles, and continuing to be beaten,⁴⁶⁷ were taken to at least four different sites in the surroundings of Mukjar, where they were unloaded, lined-up or otherwise organised by their captors, and then shot with automatic weapons; most killed instantly, [REDACTED].⁴⁶⁸ [REDACTED].⁴⁶⁹

⁴⁶¹ P-0919: T-60, p. 33, line 18-p. 35, line 25; DS P-0129: DAR-OTP-0128-0128-R04, 51; DS P-0877: T-054, p. 13, line 12-p. 17, line 17; P-0903: T-032, p. 45, line 2-p. 49, line 19; P-0990: T-040, p. 61, line 4-p. 62, line 18.

⁴⁶² [REDACTED].

⁴⁶³ [REDACTED].

⁴⁶⁴ [REDACTED]; P-0903: T-032, p. 45, line 2-p. 49, line 19.

⁴⁶⁵ [REDACTED].

⁴⁶⁶ [REDACTED].

⁴⁶⁷ [REDACTED].

⁴⁶⁸ [REDACTED] two execution sites), [REDACTED] (first execution site); [REDACTED] (second execution site); DS P-0931: T-062, p. 32, lines 7-25; p. 33, lines 12-15; p. 33, line 25-p. 34, line 11; p. 34, lines 21-24; p. 35, line 8-p. 36 line 18 (execution site close to later UNAMID facility); p. 54, line 17-p. 55 line 18; T-063, p. 17, line 1-p. 18, line 22 ([REDACTED]); DAR-OTP-0222-0052 (translation DAR-OTP-0221-1358); DAR-OTP-0224-0880; DAR-OTP-0224-0881; [REDACTED]; DS P-0877: T-054, p. 24, line 3-p. 25, line 20 (first site near later UNAMID base); p. 25, line 23-p. 26, line 2 (second site located west of first); p. 26, lines 3-7 (describing third and fourth sites of bodies); p. 26, lines 8-25; p. 28, line 22-p. 36, line 20; p. 37, line 1-p. 43, line 20; DAR-OTP-0224-0169 (translation DAR-OTP-0220-2937); DAR-OTP-0217-0256 (sketch – first location) (translation DAR-OTP-0217-0483); DAR-OTP-0217-0258 (sketch – second location) (translation DAR-OTP-0217-0486); DAR-OTP-0217-0260 (sketch – third location) (translation DAR-OTP-0217-0489); DAR-OTP-0217-0264 (sketch – locations) (translation DAR-OTP-0217-0495); DAR-OTP-0220-5444 (video – first location); DAR-OTP-0220-5441 (video – first location); DAR-OTP-0217-0279 (video – third location); P-903: T-032, p. 53, lines 3- p. 56, line 13; T-033, p. 45, line 25-p. 46, line 4, p. 55, line 6-p. 57, line 25; P-0990: T-040, p. 61, lines 1-4, p. 62, lines 8-18, p. 63, line 3-p. 64, line 10; p. 65, lines 3-14; p. 68, line 22-p. 70, line 2 (first, second and third sites); T-041, p. 54, lines 2-17, p. 55, line 21-p. 56, line 14, p. 57, lines 7-11 (first site); DAR-OTP-0224-0544; DS P-0932: DAR-OTP-0222-0602-R02, paras 116-117; DAR-OTP-0220-5720, para. 22; DAR-OTP-0220-5723-R01.

⁴⁶⁹ [REDACTED].

230. [REDACTED] the horrific killing by shooting of seven boys between the ages of eight to eleven, five of whom were in the charge of a teacher in a Koranic school [REDACTED].⁴⁷⁰

231. DS P-0877 – who was one of the detainees not taken out of his cell on this day – described it as “the worst day ever in my life and the life of the entire region”, notwithstanding the preceding destruction of his home village. He explained that the targeted and brutal nature of the execution of the Fur detainees left the Fur community feeling “completely helpless”.⁴⁷¹

232. The above recited evidence from the record establishes the factual requisites for **Counts 12 to 21** in connection with the charged Mukjar incident:

- i. **Count 12 – Torture as a CAH:**⁴⁷² The evidentiary record – and also independent of the physical violence and treatment allegedly inflicted on the detainees by CRF personnel⁴⁷³ – establishes the requisite elements for this charge. This includes the violent beatings, shaving of heads and cutting of ears inflicted on the detainees in the cells, and the beatings in the yard, of the Police Station. Further, while “[i]t is understood that no specific purpose need be provided for this crime”,⁴⁷⁴ as submitted below, such specific purposes are established.
- ii. **Count 13 – Torture as a war crime:**⁴⁷⁵ As with **Count 12**, the evidentiary record likewise fully establishes the satisfaction of these elements. The predominantly Fur make-up of the detainees, the ethnic slurs and threats issued against them during their detention and abuse, the presentation and denunciation of the detainees as “rebels” and “*tora bora*”, and their filming, before a high-level GoS

⁴⁷⁰ [REDACTED].

⁴⁷¹ DS P-0877: T-054, p. 65, line 18-p. 66, line 9.

⁴⁷² In particular, a perpetrator’s infliction of “severe physical or mental pain or suffering upon one or more persons” who “were in the custody or under the control of the perpetrator”, and where “such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions” (EoC, Art. 7(1)(f), p. 5).

⁴⁷³ See submissions at para. 224 *supra*.

⁴⁷⁴ In particular, a perpetrator’s infliction of “severe physical or mental pain or suffering upon one or more persons” “for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind”, and where “such person or persons were protected under one or more of the Geneva Conventions of 1949” (EoC, Art. 7(1)(f), p. 5).

⁴⁷⁵ EoC, Art. 8(2)(a)(ii)-1, p. 10.

delegation, as well as the specific targeting of detained Fur community leaders for violence and abuse, all establish the punishment and intimidatory purposes behind the acts of torture and its discriminatory nature. Further, the detainees held the status of protected persons either under the Third Geneva Convention (1949) concerning prisoners of wars and detainees, or the Fourth Geneva Convention (1949) concerning the protection of civilian persons in time of war.

- iii. **Count 14 – Other inhumane acts as a CAH:**⁴⁷⁶ The same conduct underlying Count 12 establishes the infliction of “great suffering, or serious injury to body or mental or physical health”, as inhumane acts under **Count 14**. This also includes the conduct taking place on the execution day, when detainees were beaten when removed from their cells and stacked up like sacks in vehicles,⁴⁷⁷ as well as the use of ethnic slurs and threats against the predominantly Fur detainees during the other underlying acts, throughout their detentions.

Additionally, the evidence establishes that the harsh conditions of detention in which the detainees were deliberately held over the course of approximately three days⁴⁷⁸ inflicted great physical and mental suffering,⁴⁷⁹ and is of a character similar to the CAH of “other severe deprivation of physical liberty in violation of fundamental rules of international law” (Statute, Article 7(1)(e)).⁴⁸⁰ The detainees were targeted for detention on the basis of their predominantly Fur ethnicity, younger age (including children), and in the case of community leaders, their status as such – all of which took place pursuant to, as previously discussed, a widespread or systematic plan to target the Fur population on the

⁴⁷⁶ In particular, a perpetrator’s infliction of “great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act”, where “such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute” (EoC, Art. 7(1)(k), p. 8).

⁴⁷⁷ See submissions at paras 227-228 *supra*.

⁴⁷⁸ See submissions at paras 218-219, 225 *supra*.

⁴⁷⁹ See ICTY, *Krnjelac*, IT-97-25-T, [Trial Judgment](#), 15 March 2002, paras 129-168 (finding that “brutal and deplorable living conditions imposed” on detainees qualified as inhumane acts as a CAH).

⁴⁸⁰ See submissions at para. 45 *supra* regarding the international human rights instruments to which Sudan was party during the period relevant to the case. ACHPR, arts 2, 3, 5, 6; International Convention on the Elimination of All Forms of Racial Discrimination, arts 2(1)(a) and (b), 4, 5(a) and (b); ICCPR, arts 7, 9, 10, 26.

basis of their perceived support for or connection to armed rebel groups.⁴⁸¹ Nothing in the evidence indicates that the detainees, or at least the vast majority, were formally charged with a crime. Additionally, while the charged crimes in relation to the Mukjar incident pertain to a relatively short period, the conditions of detention, as submitted above, were extremely severe.⁴⁸² The evidence also establishes that the person identified by numerous witnesses as “Ali Kushayb”, was in a position of authority and/or influence in respect of the conditions in which the detainees were deliberately held, including being able to place them in and remove them from the detention cells.

- iv. **Count 15 – Cruel treatment as a war crime.**⁴⁸³ As established in the evidence discussed above, all detainees fell within one of the following categories – persons *hors de combat*, or civilians or religious personnel taking no active part in the hostilities. The same conduct underlying **Counts 12 to 14** likewise establishes the infliction of “severe physical or mental pain or suffering” as the crime of cruel treatment under **Count 15**. This includes, as for **Count 14**, the brutal and deplorable conditions in which the detainees were deliberately held and subjected to,⁴⁸⁴ as well as the use of ethnic slurs and threats against the predominantly Fur detainees over the course of their detentions.
- v. **Count 16 – Outrages upon personal dignity as a war crime.**⁴⁸⁵ The evidence, as addressed above, establishes that detained Fur community leaders were singled out for humiliating and degrading treatment that violated their fundamental dignity as human beings and as respected persons in the Fur

⁴⁸¹ See submissions at paras 147-149 *supra*.

⁴⁸² ICTY, *Krnojelac*, IT-97-25-T, [Trial Judgment](#), 15 March 2002, para. 231 (“The suffering inflicted by the act upon the victim does not need to be lasting so long as it is real and serious.”).

⁴⁸³ In particular, the perpetrator “inflicted severe physical or mental pain or suffering upon one or more persons”, where “[s]uch person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities” (EoC, Art. 8(2)(c)(i)-3, p. 22).

⁴⁸⁴ See ICTY, *Krnojelac*, IT-97-25-T, [Trial Judgment](#), 15 March 2002, paras 129-168 (finding that “brutal and deplorable living conditions imposed” on detainees qualified as cruel treatment as a war crime).

⁴⁸⁵ In particular, the perpetrator “humiliated, degraded or otherwise violated the dignity of one or more persons”, and the “severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity” (EoC, Art. 8(2)(b)(xxi), p. 27).

community, through physical violence and the use of ethnic slurs that took place before other members of the Fur community, and being presented before a large GoS delegation, filmed, and denounced as rebels.⁴⁸⁶ Other detained members of the Fur community were likewise subjected to similar humiliating and degrading treatment constituting outrages against personal dignity as a war crime, including cutting off ears, shaving of heads, and being subjected to ethnic slurs and threats,⁴⁸⁷ as well as being stacked-up like sacks when being loaded into vehicles in the yard of the Mukjar Police Station.⁴⁸⁸

- vi. **Counts 17, 18, 19, 20 – Murder and Attempted Murder as war crimes and CAH:** the submitted evidence, as discussed above, establishes that a large number of predominantly Fur boys and men were killed by the individual identified as “Ali Kushayb” and by men acting at his direction, command, or encouragement at several sites outside of Mukjar on a day in late February or early March 2004.⁴⁸⁹ The evidence likewise establishes that these detainees were persons *hors de combat* or civilians or religious personnel taking no active part in hostilities.
- vii. **Count 21 – persecution on political, ethnic and gender grounds as a CAH:** the acts underlying Counts 12 to 20 were also the means of committing the offense of persecution as a CAH against Fur boys and men, based on the perception of their belonging to, being associated with, or supporting rebel armed groups. The evidence, as discussed above, establishes the persecutory purpose with which the other Mukjar charged crimes were committed, including the GoS’s plan to target the Fur civilian population,⁴⁹⁰ the separation of boys and younger men from women, elderly men and very young children at checkpoints outside of Mukjar, based on the perception that they were or could be part of the armed

⁴⁸⁶ See submissions at paras 215, 221, 223, 227, 228 *supra*.

⁴⁸⁷ See submissions at para. 223 *supra*.

⁴⁸⁸ See submissions at para. 228 *supra*.

⁴⁸⁹ See submissions at paras 229-231 *supra*. See also Bar Table: DAR-OTP-00000697.

⁴⁹⁰ See submissions at paras 141-143 *supra*.

rebel movements,⁴⁹¹ the use of ethnic slurs and denunciation as rebels against the detainees,⁴⁹² and specific targeting of detained community leaders.⁴⁹³

It is important to the participating victims that the Article 74 judgment captures these intersecting bases of persecution on purely political, ethnic and gender grounds. In the CLRV's assessment, there is no doubt that persecution on the basis of gender was an established CAH as a matter of customary international law at the time of the alleged offences,⁴⁹⁴ and accordingly prohibited and prosecutable in Sudan. "Sex" – updated by the time of the Rome Statute to the more encompassing and accurate term of "gender" – "has been a recognized basis of impermissible discrimination since the 1948 Universal Declaration of Human Rights".⁴⁹⁵ The jurisprudence of the *ad hoc* Tribunals, while limited by their statutes to bases of persecution that did not include gender, nonetheless recognised the clear legal basis and reality of gender-based discrimination and persecution.⁴⁹⁶ The Rome Statute marked the codification of this customary norm⁴⁹⁷ and the facts of the present case sadly reflect exactly the protective

⁴⁹¹ See submissions at para. 214 *supra*.

⁴⁹² See submissions at paras 221-223 *supra*.

⁴⁹³ See submissions at paras 215, 221, 223, 227 *supra*.

⁴⁹⁴ ACHPR, arts 2, 3; ICCPR, arts 2(1), 26;

⁴⁹⁵ UN Women, *Identifying Gender Persecution in Conflict and Atrocities*, Dec. 2021, p. 10.

⁴⁹⁶ ICTY, *Tadic*, IT-94-I-A, [Appeals Judgment](#), 15 July 1999, para. 285 ("The experience of Nazi Germany demonstrated that crimes against humanity may be committed on discriminatory grounds other than those enumerated in Article 5 (h) [of the ICTY Statute (political, racial and religious grounds)] [...]"); ICTY, *Kvočka*, IT-96-23/1, [Trial Judgment](#), 2 Nov. 2001, para. 560 (finding rape and sexual violence committed against only non-Serb detainees who were women, not men, making acts discriminatory on basis of gender, in addition to other grounds); ICTR, *Nahimana*, ICTR-99-52-T, [Trial Judgment](#), 3 Dec. 2003, para. 1079 (staying within ICTR Statute in qualifying targeting of Tutsi women as political and ethnic persecution, but also finding: "By defining the Tutsi woman as an enemy in this way, RTLM [broadcaster] and Kangura articulated a framework that made the sexual attack of Tutsi women a foreseeable consequence of the role attributed to them."); ICTR, *Nyiramasuhuko et al.*, ICTR-98-42-A, [Appeals Judgment](#), 14 Dec. 2015, para. 2136 (opining, in context of events from 1994, that "persecution as a crime against humanity under customary international law might not be restricted" to political, ethnic and racial grounds set out in ICTR Statute).

⁴⁹⁷ V. Oosterveld, *Gender, Persecution, and the International Criminal Court: Refugee Law's Relevance to the Crimes Against Humanity of Gender-Based Persecution*, Duke Journal of Comparative & International Law, Vol. 17 (2006), p. 62 ("[T]he case law of the ICTY and ICTR can provide some guidance to the ICC on gender-based persecution. While neither of the Tribunals' cases specifically analyze the distinct ground of gender-based persecution, they clearly illustrate a number of important themes: gender intersects with racial, religious, and political identities; gender identity, as negatively defined by the perpetrator(s), can inexorably lead to persecutory targeting on the basis of gender [...]").

purpose of this norm – namely, the persecution of Fur males on the basis of their gender, as opposed to on ethnic and political grounds only.

ii. Charged Deleig incident (5-7 March 2004) – Counts 22 to 31

233. **Counts 22 to 31**⁴⁹⁸ concern alleged crimes arising from: (i) a search and arrest operation in the town of Deleig (Wadi Salih locality) on 5 March 2004, during which predominantly Fur male civilians were allegedly targeted for violence and abuse;⁴⁹⁹ (ii) the alleged detention, mistreatment, and torture of a large number of predominantly Fur⁵⁰⁰ boys and men⁵⁰¹ on the same day in an open area near the Deleig police station (“Deleig Police Station”), as well as a smaller number of civilians detained inside the Police Station during the period 5 to 7 March 2004;⁵⁰² (iii) the (attempted) murder of large number of the above noted detained civilians on 5 March 2004, at the open area near the Deleig Police Station⁵⁰³ and at areas outside of Deleig where civilians were transported on vehicles, as well as the (attempted) murder of a smaller group of detained predominantly Fur civilians transported to one or more locations outside of Deleig on 7 March 2004.⁵⁰⁴

234. The evidence establishes that the population of Deleig was of a predominantly non-Arab makeup, including Fur, before the conflict,⁵⁰⁵ and which had significantly grown in size by 5 March 2004, due to Fur and other civilians having fled or been displaced to Deleig following attacks on predominantly Fur villages in the

⁴⁹⁸ [Confirmation Decision](#), paras 96-117.

⁴⁹⁹ [Confirmation Decision](#), para. 105.

⁵⁰⁰ *See, e.g.*, [P-0980](#): T-043, p. 79, lines 15-20; T-044, p. 27, line 24-p. 29, line 6.

⁵⁰¹ *See, e.g.*, [DS P-0907](#): T-094, p. 35, lines 4-13 (estimating age of detainees as 13 years to “a bit over 60”); T-095, p. 8, line 22-p. 9, line 15.

⁵⁰² [Confirmation Decision](#), paras 102-104, 106-108.

⁵⁰³ [Confirmation Decision](#), para 109.

⁵⁰⁴ [Confirmation Decision](#), paras 109-115.

⁵⁰⁵ [P-0736](#): T-035, p. 75, lines 15-22 (Deleig population was Fur and Zaghawa). Fur witnesses testified that they stayed with, had relatives, or were otherwise assisted by the Fur community in Deleig: [P-0712](#): DAR-OTP-0209-1884-R04, paras 14, 25; also describing Deleig as a “big town” (para. 23); [DS P-0718](#): T-049, p. 60, line 18-p. 61, line 1; [P-0980](#): DAR-OTP-0221-0553-R03, para. 17; [P-0726](#): DAR-OTP-0210-0346-R04, paras 63-65; T-053-, p. 15, line 25-p. 17, line 1.

surrounding region in the prior weeks and months.⁵⁰⁶ The aforementioned UN report, dated 1 April 2004, estimates the number of IDPs in Deleig as 16,345.⁵⁰⁷

235. Dual status witness P-0907 (a/25134/21) described the circumstances in Deleig at the time: *"The situation was very tragic. The number of displaced people was very high. It was difficult to count them, because [...] the residents of all the surrounding villages also were displaced."*⁵⁰⁸ In respect of living conditions for the displaced, P-0907 further recalled: *"Many children got affected and got diseases [...] -- they got diarrhoea, they were starving. So many of the elderly died and so many children died as well. Many died on the way to Deleig as a result of malnutrition."*⁵⁰⁹ P-0850 described the arrival of his group in Deleig on 3 March 2004, having fled an attack on his home village a few days earlier: *"As we approached Deleig I could see military vehicles and Janjaweed on horses on the outskirts. We were exhausted and extremely hungry and thirsty. Our feet were cut and swollen as we were walking barefoot. My clothes were infested with lice. The children could no longer walk requiring them to be carried. Mothers did not have enough clothes to cover their babies."*⁵¹⁰

236. In respect of the search and arrest operation, as charged under **Counts 22 to 26**,⁵¹¹ the evidence establishes that it amounted to a siege of the town, with its scope extending to the entirety of Deleig and its outskirts on 5 March 2004, including houses, rudimentary IDP camps, and open areas where many displaced had sought shelter. The GoS and Janjaweed forces primarily targeted Fur males who were identified or perceived as having arrived in Deleig from other villages.⁵¹²

⁵⁰⁶ DS P-0973: DAR-OTP-0220-0736-R01, paras 23-24; P-0607: DAR-OTP-0203-0164-R02, paras 39-40; DS P-0671: T-098, p. 81, line 15-p. 82, line 4; P-0712: DAR-OTP-0209-1884-R04, para. 26; T-036, p. 24, line 23-p. 25, line 15; P-0736: DAR-OTP-0210-0248-R02, para. 49; P-0697: DAR-OTP-0209-0155-R03, paras 46-48.

⁵⁰⁷ DAR-OTP-0160-0885 at 0902.

⁵⁰⁸ DS P-0907: T-095, p. 7, lines 8-21; *see also* views and concerns of V-0004: T-127, p. 26, line 18-p. 28, line 24.

⁵⁰⁹ DS P-0907: T-095, p. 8, lines 8-20.

⁵¹⁰ P-0850: DAR-OTP-0216-0002-R04, para. 58.

⁵¹¹ [Confirmation Decision](#), para. 105 (in respects of Counts 22-26: "During the search and arrest operation in different areas of Deleig, the Militia/Janjaweed and GoS Forces whipped, beat and kicked persons.").

⁵¹² DS P-0907: T-094, p. 29, line 12-p. 32, line 9; T-096, p. 10, line 14-p. 12, line 7; P-0980: DAR-OTP-0221-0553-R03, paras 19, 20; T-043, p. 79, lines 15-20 (130 to 140 arrested Fur civilians taken to front of Deleig police station); DS P-0584: DAR-OTP-0200-1540-R02, paras 90-96; DAR-OTP-00000419, paras 23, 25; T-092, p. 36, line 3-p. 37, line 10; DS P-0973: DAR-OTP-0220-0736-R01, paras 25-27; P-0607: DAR-OTP-0203-0164-R02,

237. Abdel Majid encapsulated, in a message to the CLRV, this journey of perilous displacement to a place of false refuge: *“We endured hardship, fatigue, and the ruggedness of the roads between the mountains to reach Deleig. We stayed in schools and abandoned houses. After we arrived, the attackers came to Deleig as well, imposed a siege on the area, and arrested us.”*⁵¹³

238. The CLRV refers to her relevant submissions above, on the requisite elements for the crimes alleged under **Counts 22 to 26** – namely, torture as a CAH and war crime (**Counts 22-23**);⁵¹⁴ other inhumane acts as a CAH (**Count 24**);⁵¹⁵ cruel treatment as a war crime (**Count 25**);⁵¹⁶ and outrages upon personal dignity as a war crime (**Count 26**).⁵¹⁷ The evidence in the record, as discussed below, establishes that these elements are met in respect of the charged search and arrest operation.

239. Firstly, nothing in the evidence indicates that the predominantly Fur children, women and men impacted by the 5 March 2024 search and arrest operation were not entitled to protection under either the Third or Fourth Geneva Conventions, or did not otherwise fall into the categories of persons *hors de combat*, or civilians taking no active part in the hostilities. Instead, as addressed above, these individuals were in an extremely vulnerable and desperate situation, many having arrived in Deleig with nothing more than the clothes on their back, and were at the complete mercy, and under the control, of the large combined force of armed Janjaweed and GoS personnel conducting the operation.

paras 42-46; DAR-OTP-0203-0189 (translation DAR-OTP-0219-1682); 872-Conf-AnxII-Red; DS P-0718: DAR-OTP-0209-2004-R02, paras 53, 55-61; DAR-OTP-0220-4792, para. 8; DAR-OTP-0209-2022 (translation DAR-OTP-0219-1699); T-049, p. 15, lines 7-22; p. 56, lines 7-17; p. 62, line 11-p. 66, line 18; DS P-0671: DAR-OTP-0206-0105-R02, paras 20, 24-34; DAR-OTP-00000462, paras 6-9, 11; DAR-OTP-0206-0130 (translation DAR-OTP-0219-1693); DAR-OTP-0206-0132 (translation DAR-OTP-0219-1696); T-099, p. 14, line 23-p. 15, line 9; p. 15, line 19-p. 16, line 22; P-0712: DAR-OTP-0209-1884-R04, paras 28-38; T-036, p. 10, line 7-p. 10, line 22; p. 25, line 20-p. 26, line 24; P-0736: DAR-OTP-0210-0248-R02, paras 53-56, 62-71; T-035, p. 75, line 25-p. 76, line 7.

⁵¹³ Participating victim a/25129/21, video message to CLRV, September 2024.

⁵¹⁴ See submissions at paras 232.i and 232.ii *supra*.

⁵¹⁵ See submissions at para. 232.iii *supra*.

⁵¹⁶ See submissions at para. 232.iv *supra*.

⁵¹⁷ See submissions at para. 232.v *supra*.

240. Second, the evidence establishes that the actions of the GoS personnel and Janjaweed during the conduct of the operation resulted in multiple instances of infliction of “severe physical or mental pain or suffering” or “great suffering, or serious injury to body or to mental or physical health”, as well as humiliation, degradation or other violations of the dignity of individuals with the “severity of the humiliation, degradation or other violation” being “of such degree as to be generally recognized as an outrage upon personal dignity”. Further the evidence establishes that the violence and ill treatment visited upon the predominantly Fur population during the operation was intended, at least in part, to punish and intimidate, and clearly had a discriminatory nature.

241. P-0850, approximately 22 years of age at the time, describes cowering in fear with four boys in the *dabanga* (small silo like storage container for grain) of his aunt’s house for hours, as Janjaweed and soldiers arrested and beat people in the streets near the house; he heard the arresting forces yelling threats of violence and using derogatory language against the Fur.⁵¹⁸ Dual status P-0584 (a/25038/21), who was a teenager and [REDACTED], gave evidence of two house searches by “soldiers” and Janjaweed, during the first of which he was accused of being a “*tora bora*” and beaten to unconsciousness, and during the second, was arrested with around 30 Fur men from his extended family: “*They entered the house and started beating us and told us to go [...] into an army pick up vehicle outside.*”⁵¹⁹

242. P-0980, around twenty years old at the time, arrived in Deleig with his family as IDPs in the early hours of 5 March 2004, and explained that shortly thereafter “a lot of civilians [were] taken out of the houses and escorted by armed men [...] who pushed and beat us all the way from the house to the police station”.⁵²⁰ Dual status witness P-0973 (a/25137/21), a young man at the time, gave evidence of his arrival

⁵¹⁸ P-0850: DAR-OTP-0216-0002-R04, paras 63-68; T-044, p. 65, line 18-p. 66, line 4.

⁵¹⁹ DS P-0584: DAR-OTP-0200-1540-R02, paras 92-94; DAR-OTP-00000419, paras 23, 25; T-092, p. 36, line 3-p. 37, line 17.

⁵²⁰ P-0980: DAR-OTP-0221-0553-R03, paras 17-21; T-044, p. 27, lines 12-21.

in Deleig with his family on 2 March 2004 as IDPs. He described his arrest by Janjaweed on the morning of 5 March at his shelter made out of a plastic sheet, along with “a large number of adult males in other shelters”, the men being tied together by their clothing and forced to walk to an open area just outside of Deleig, where they were made to lay face down on the ground, “randomly” beaten by Janjaweed over the course of several hours, with one Janjaweed stabbing P-0973 in an arm with a bayonet, and eventually being marched to the open area by Deleig Police Station.⁵²¹ Dual status witness P-0718 (a/10484/22), around fifteen years of age at the time, was arrested by Janjaweed along with his younger brother in the makeshift shelter he shared with his family in Deleig among many other displaced. The Janjaweed beat them, tied their hands behind their backs and to each other, and threw P-0718 and his brother into the back of a vehicle face down where three or four other detained persons were lying. The Janjaweed called them “*abid*” (slave) and “*himar*” (donkey), a clear demonstration of the discriminatory nature and purpose of the attack, and continued to beat and kick the detainees while they were driven to the Deleig Police Station.⁵²² Dual status witness P-0671 (a/10479/22), also a teenager at the time, gave evidence on the arrest of his father and elder brother from their small straw shelter in the eastern part of Deleig, by armed individuals in camouflage uniform, including an individual sitting in a vehicle whom the other uniformed persons referred to as “Ali Kushayb”. P-0671 stated that both his father and brother were forced to the ground, their hands were tied behind their backs, and they were thereafter picked-up by the uniformed persons and thrown facedown into the waiting vehicle, where three or four prisoners were already placed. Around ten other men in surrounding shelters were similarly tied up and placed in the back of vehicles. P-0671 recalled his mother holding him back from confronting the armed men, lest he be taken too, and that his whole family was

⁵²¹ DS P-0973: DAR-OTP-0220-0736-R01, paras 25-28, 30 (excluding references to “Ali Kushayb” per Decision 859-Conf, para. 12).

⁵²² DS P-0718: DAR-OTP-0209-2004-R02, paras 45-61; DAR-OTP-0220-4792, para. 8; T-049, p. 15, lines 7-22, p. 62, line 21-p. 66, line 18.

screaming and crying.⁵²³ P-0736 was beaten by Janjaweed with a stick during a house search in the presence of three females, dragged to the threshold of the house, and threatened with arrest and death if he did not provide information about a Kalashnikov firearm and regarding men who had arrived from Sindu; ultimately, P-0736 was not arrested.⁵²⁴ P-0607 recalled that he and other IDPs detained during the operation were “herded like animals to the yard of the police station” while surrounded by armed Janjaweed.⁵²⁵

243. P-0712, a young man at the time, witnessed Janjaweed tying up a Fur man following a house search and placing the man in a vehicle, with one Janjaweed then striking the man’s wife in the head with the back of his gun when she began to cry, which caused her to fall to the ground.⁵²⁶ DS P-0907 also gave evidence of the Janjaweed hitting the elderly during the search and arrest operation.⁵²⁷

244. Abdel Majid shared with the CLRVR that: “[T]hen his militias came, besieged the village, closed all entrances and exits, and began killing people, burning the village, taking people’s money, and committing all kinds of violence against unarmed civilians.”⁵²⁸

245. The above discussed evidence establishes that during the search and arrest operation in Deleig, Janjaweed and GoS personnel perpetrated acts that satisfy the requisite elements of the crimes charged under **Counts 22 to 26**. As indicated in the cited evidence, given the scope and nature of the search and arrest operation, it spread terror throughout the Fur community present in Deleig on that day.

246. **Counts 22 to 26** also concern what befell those predominantly Fur boys and men detained as part of the 5 March 2004 search and arrest operation and then taken to the open area near the Deleig Police Station over the course of the day.⁵²⁹

⁵²³ DS P-0671: DAR-OTP-0206-0105-R02, paras 20-34; DAR-OTP-00000462, paras 8-10; T-099, p. 13, line 24-p. 17, line 5.

⁵²⁴ P-0736: DAR-OTP-0210-0248-R02, paras 62-67; T-035, p. 75, line 25-p. 76, line 6.

⁵²⁵ P-0607: DAR-OTP-0203-0164-R02, para. 46.

⁵²⁶ P-0712: DAR-OTP-0209-1884-R04, paras 32-36.

⁵²⁷ DS P-0907: T-094, p. 32, line 22-p. 33, line 3.

⁵²⁸ Participating victim a/25129/21, video message to CLRVR, September 2024.

⁵²⁹ P-0980: T-044, p. 27, line 24-p. 29, line 6 (explaining that when he was brought to the open area in the morning there were more than 130 detainees, with more continuing to arrive afterwards).

While estimates vary, the evidence establishes that a large number of predominantly Fur males numbering in the hundreds were detained in this open area for hours, in the blistering summer sun, under the guard of a large combined force of armed Janjaweed and GoS personnel. Most were made to lie face down and unmoving on the burning ground, denied food, water and toilet facilities, and subject to violent, degrading and dehumanising treatment, including beatings, attacks with bladed weapons, and being walked and stomped on by their captors, including, allegedly, an individual identified as “Ali Kushayb”.⁵³⁰ The evidence also establishes that at least three (attempted) murders took place (**Counts 27 to 30**).⁵³¹

247. [REDACTED] encapsulated what transpired to the male and predominantly Fur individuals⁵³² detained at the open field over the course of the day:

“Just after 7am [...] Ali Kushayb and the Janjaweed [began] arresting people, walking them to the police station and beating them on the way there. [...] The Janjaweed kicked them, they beat them everywhere, on different parts of their bodies, using whips and wooden sticks. This continued after 2pm. [...] I remember the Janjaweed continuously arresting people in Deleig throughout the day. [...] I did not see any rebels in Deleig [...]. There was no armed resistance to this operation since these people were innocent civilians. The Janjaweed rounded up a large number of displaced people, around 200-300 [...]. The detained persons were forced to lie face down on the ground [...] [and] were not allowed to lift their heads up. They got no food and no water. They were denied everything, including toilet. It was a

⁵³⁰ DS P-0907: T-094, p. 30, line 16-p. 40, line 13; T-096, p. 18, lines 14-20; p. 19, line 16-p. 20, line 23; DS P-0718: DAR-OTP-0209-2004-R02, paras 60-66; DAR-OTP-0220-4792, paras 9-10; DAR-OTP-0209-2022 (translation DAR-OTP-0219-1699); T-049, p. 15, line 21-p. 16, line 21; p. 20, line 6-p. 21, line 13; p. 66, line 19-p. 67, line 4; P-0980: DAR-OTP-0221-0553-R03, paras 21-23, 29; DAR-OTP-0221-0569 (translation DAR-OTP-0219-9290); DAR-OTP-0224-0632; DAR-OTP-0224-0633; T-043, p. 77, lines 16-24; p. 79, line 15-p. 80, line 25; p. 86, line 20-p. 87, line 8; T-044, p. 27, line 12-p. 29, line 6; p. 32, line 3-p. 41, line 17; DS P-0584: DAR-OTP-0200-1540-R02, paras 96-110; DAR-OTP-00000419, paras 26-27; DAR-OTP-0200-1591 (translation DAR-OTP-0219-1670); DS P-0671: DAR-OTP-0206-0105-R02, paras 24, 38-43, 45-46; DAR-OTP-00000462, para. 11; DAR-OTP-0206-0132 (translation DAR-OTP-0219-1696); T-098, p. 83, line 15-p. 84, line 1; P-0725: DAR-OTP-0210-0122-R02, paras 64, 68-69, 71-76; DAR-OTP-0210-0141 (translation DAR-OTP-0219-1701); [REDACTED].

⁵³¹ See submissions at paras 249-253 *infra*.

⁵³² [REDACTED].

*hot day [...] [and] they were held directly under the sun. The Janjaweed had no mercy, and if any detainee would lift his head or attempted to look around, they would hit him and sometimes, they would stomp on a detainee's head. Everything was permitted: the detainees were beaten with the fist, whip, stick and boot. No family members were allowed to talk to the detainees."*⁵³³ [REDACTED] expressed before the Judges the searing nature of what he had witnessed: *"This date, because it was a painful, intensely painful date. What I saw was atrocious. That is not acceptable. [...] I cannot forget until the day of judgment."*⁵³⁴

248. P-0980 described what he witnessed and suffered as follows: *"We were all gathered in one place, and the armed men were all over the place, on camels, horses, and vehicles. Militias told to everyone to bring any money we were carrying with us. The militia men told us to lie face down on the ground in rows. They beat people with canes, gun buttstocks. [...] We spent the whole day there, we were not allowed to drink, eat or go to the toilet, I reached a point where I thought that dying would be a relief because it was very hot and listening to all the other people beaten it was humiliating and difficult to live like that."*⁵³⁵ P-0980 was beaten on his back with a heavy stick and [REDACTED] the hot ground.⁵³⁶ DS P-0718 similarly explained: *"Ali Kushayb did not leave a man raise his head [sic]. He would beat you. You can't turn neither right nor left. You should face the ground. That applied to everyone."*⁵³⁷

249. DS P-0907 recalled: *"When we arrived, we were immediately ordered to lie down [...] and we were not allowed to raise our heads. [...] We could hear some of the prisoners complaining to the Janjaweed. They were saying that they were thirsty and they wanted to drink water, and the Janjaweed were declining their requests."*⁵³⁸ Subsequently, P-0907 raised his head off the ground when a detained Sheikh – Adam Abd-Al-Rahman (nickname "Motor") from Massa village – was allegedly struck by "Ali Kushayb"

⁵³³ [REDACTED].

⁵³⁴ [REDACTED].

⁵³⁵ P-0980: DAR-OTP-0221-0553-R03, para. 22; T-043, p. 77, lines 16-24

⁵³⁶ P-0980: T-044, p. 35, line 15-p. 41, line 17.

⁵³⁷ DS P-0718: T-049, p. 66, lines 19-25.

⁵³⁸ DS P-0907: T-096, p. 19, line 20-p. 20, line 8.

with an axe, resulting in a Janjaweed member then beating P-0907 for daring to raise his head, with a stick or staff with two hands “as if he was ploughing the land”, and causing an injury that still pains P-0907 to this day.⁵³⁹

250. DS P-0907 said that after striking Sheikh Motor “Ali Kushayb” ordered Janjaweed to throw the fallen man into a vehicle⁵⁴⁰ (**Counts 27 to 30** – (attempted) murder).

251. DS P-0584 likewise described the attack by “Ali Kushayb” on Sheikh Motor, who fell to the ground “making unusual noises before he fell silent”, and was subsequently picked-up, motionless, at “Ali Kushayb’s” order, by four “soldiers” and placed in the back of a vehicle.⁵⁴¹ P-0584 also witnessed a “solider” stabbing a Fur detainee named Abdallah “Mulnenque” in the eye with a bayonet.⁵⁴² When P-0584 asked for water in the sweltering heat, a guard responded saying “no water for them” – referring to the detainees – “because they were like ‘insects’”.⁵⁴³

252. P-0980 also stated that Abdallah Molo (“Moloqwe” / “Mulnenque”) was “injured badly” by the Janjaweed and that “Ali Kushayb” hit a detained Sheikh (who P-0980 understood was from Kiskildo) with the stock of a rifle.⁵⁴⁴

253. P-0980 further gave evidence that two detainees “were killed on the spot by militia men with a big wooden stick”⁵⁴⁵ (**Counts 27 to 30** – (attempted) murder).

254. The violence, degradation and ill-treatment inflicted on the hundreds of predominantly Fur males took place in the middle of Deleig, in the sight and hearing of onlookers, many, if not most, from the Fur community, including participating victim V-0004.⁵⁴⁶ V-0004 described what he saw upon exiting the main mosque located on the opposite side of the open field to the Deleig Police Station,

⁵³⁹ DS P-0907: T-096, p. 20, lines 9-23.

⁵⁴⁰ DS P-0907: T-094, p. 38, line 16-p. 39, line 22.

⁵⁴¹ DS P-0584: DAR-OTP-0200-1540-R02, para. 107; DAR-OTP-00000419, paras 29-30.

⁵⁴² DS P-0584: DAR-OTP-0200-1540-R02, para. 101; DAR-OTP-00000419, para. 26.

⁵⁴³ DS P-0584: DAR-OTP-0200-1540-R02, para. 102; DAR-OTP-00000419, para. 27.

⁵⁴⁴ P-0980: DAR-OTP-0221-0553-R03, paras 23-24.

⁵⁴⁵ P-0980: DAR-OTP-0221-0553-R03, paras 23.

⁵⁴⁶ V-0004: T-127, p. 29, line 2-p. 30, line 11.

around midday on 5 March 2004: *“I saw that the people were lying down on their bellies with their mouth open on the floor and they were being beaten. I also saw some soldiers walking on the backs of people. This was very terrifying for people.”*⁵⁴⁷

255. The terror referred to by V-0004 is palpable in the evidence of witnesses who were bystanders. DS P-0671, who, as discussed above, had witnessed the violent arrest of his father and older brother earlier that morning, described seeing “a large number of prisoners, possibly near to one hundred in total, that were lying face down on ground in rows”, with more prisoners arriving in vehicles over the 30 minutes that P-0671 remained there, before departing out of fear that he “too could be arrested”. P-0671 “watched what was going on and saw some soldiers hit prisoners with the butts of their guns if they tried to lift their heads from the ground”, and noted that “[i]t was very hot” and he “thought the prisoners were trying to lift their heads to get some air”.⁵⁴⁸ P-0671 stated that “[t]here were many others like myself that were watching what was going on from different areas around the field”, but later clarified that in his 30 minutes on the outskirts of the field, bystanders “were not numerous”.⁵⁴⁹

256. P-0725 spent four hours in the compound of the mosque, which he came to as “it was a holy place and I thought it was less likely to be attacked”; he remained there “for safety”, and observed from the roof of the building Janjaweed guarding a large group of men dressed in civilian clothing who had “been lying in the hot sun without shade for many hours and [who] would have been suffering”.⁵⁵⁰

257. The violence, abuse and ill treatment that occurred in the field in the centre of Deleig on 5 March 2004, was matched by alleged conduct taking place inside the

⁵⁴⁷ V-0004: T-127, p. 29, lines 22-24.

⁵⁴⁸ DS P-0671: DAR-OTP-0206-0105-R02, paras 38-46; DAR-OTP-00000462, paras 11-12.

⁵⁴⁹ DS P-0671: DAR-OTP-0206-0105-R02, para. 41; T-098, p. 83, line 15-p. 84, line 1.

⁵⁵⁰ P-0725: DAR-OTP-0210-0122-R02, paras 68-76;

Police Station from 5 to 7 March 2004,⁵⁵¹ that was similar in nature to what had transpired at the Mukjar Police Station, and as captured under **Counts 22 to 26**.

258. [REDACTED],⁵⁵² [REDACTED]:

[REDACTED]. *I saw some Police however it appeared the Janjaweed had taken over the Police Station. [REDACTED]. I believe this was the only prison cell inside [...]. I estimate the size of the cell was [...] 5 metres in width and 6 metres long. The cell [...] walls appeared to be of a red brick [...]. The ground was also made of brick and some had been removed, which was being used for prisoners to go to the toilet. [...] The prison cell was so crowded that some people were laying on top of each other. Prisoners' faces were so close together that they would touch making it hard to breathe. Most were unable to sit properly and crouched. [...] I estimate there were about 200 males in the cell [REDACTED]. The Janjaweed tried to put more males in the cell but due to the number they could not fit. The males that remained outside were then whipped and beaten by the Janjaweed. I saw some Janjaweed shoot in the air. I believe many of these males ran away to escape.*⁵⁵³

259. [REDACTED] stated that among the detainees packed into the cell were *Umdah* Jiddo Khamis, who was “preaching to everyone to remain calm”, and *Umdah* Adam Adam Kindiri, as well as “Dr Hassan” (a veterinarian). Additionally, two other individuals were identified [REDACTED] as *Umdah* Mohamed Suleiman and Sheikh Suleiman ([REDACTED] known as “Dikobi”).⁵⁵⁴

260. [REDACTED] killing of one detainee – “Jenif” (PDF Coordinator for Garsila) – allegedly by “Ali Kushayb”, inside the Deleig Police Station, by a blow to the head with an axe⁵⁵⁵ (**Counts 27 to 30**).

⁵⁵¹ P-0980; DAR-OTP-0221-0553-R03, para. 34; T-044, p. 10, line 25-p. 13, line 5; DS P-0973; DAR-OTP-0220-0736-R01, paras 36-44 (excluding passages per Decision 859-Conf); [REDACTED]; dual status P-0617 (a/25215/21); DAR-OTP-0202-1496-R02, para. 86.

⁵⁵² [REDACTED].

⁵⁵³ [REDACTED].

⁵⁵⁴ [REDACTED].

⁵⁵⁵ [REDACTED].

261. [REDACTED]: *“The conditions were terrible in the cell. It was hot and people had to go to the toilet where they crouched. [REDACTED] were treated as animals.”* The detainees were “not provided any food or water on Saturday” apart from some peanuts.⁵⁵⁶
262. [REDACTED] the detentions in the Deleig Police Station on 5 March 2004 of a large number of Fur males, including *Umdah* Adam Adam Deguis Ahmed (“Kindiri”) of Forgo village. [REDACTED]: *“The cell [...] did not have any windows [...] [and] it was hot outside. The Janjaweed did not give any food or water to the detainees inside the cell.”*⁵⁵⁷
263. P-0980, who was not taken into the Police Station, was aware persons were detained inside, and told they included *Umdah* Adam Adam Ahmed Abdel-Shafi and *Umdah* Jiddo Khamis Abdel-Karim.⁵⁵⁸ DS P-0671 was similarly aware of persons being detained in the Deleig Police Station from 5 to 7 March 2004.⁵⁵⁹
264. For some of the predominantly Fur males detained outside or inside the Deleig Police Station on 5 March 2004, the immediate personal horror of these days came to an end with their release from detention on 5 March 2004 – especially some of those detained at the open field⁵⁶⁰ – or on Sunday 7 March 2004 or shortly thereafter for some who were detained inside the Police Station.⁵⁶¹
265. For many other of the predominantly Fur males – especially those detained on the open field in front of the Deleig Police Station – 5 March 2004 would be their last day. In an operation similar to that alleged in respect of the charged Mukjar incident, the evidence establishes, as set out under **Counts 27 to 30**, that a large number of those detained were packed into vehicles, allegedly at the order or direction of an individual identified as “Ali Kushayb”, and driven to more than

⁵⁵⁶ [REDACTED].

⁵⁵⁷ [REDACTED].

⁵⁵⁸ P-0980: DAR-OTP-0221-0553-R03, para. 34; T-044, p. 10, line 25-p. 14, line 16.

⁵⁵⁹ DS P-0617: DAR-OTP-0202-1496-R02, para. 86.

⁵⁶⁰ See, e.g., P-0980: DAR-OTP-0221-0553-R03, paras 30-31; DS P-0907: T-094, p. 39, lines 23-25.

⁵⁶¹ See, e.g., [REDACTED].

one location outside of Deleig, where, under the command of “Ali Kushayb”, they were executed by automatic weapons, [REDACTED].⁵⁶²

266. DS P-0907 recalled: *“Those who were not released were shoved in the vehicles randomly, and that happened without questioning also.”*⁵⁶³ He explained that the predominantly Fur males loaded into the vehicles, as well as those observing this process, understood the detained would be taken to Garsila, and that those taken away *“were transported in four batches”*.⁵⁶⁴ [REDACTED] like in the Mukjar incident, the detainees were beaten, and stacked on top of one another face down, [REDACTED] approximately 70 to 80 males were loaded into the vehicles.⁵⁶⁵

267. [REDACTED] methodically took place at one of the execution sites, allegedly under the command and direction of “Ali Kushayb”: *“When they go out of the vehicle, they [the detainees] have to lie on their bellies. [REDACTED]. And then, when they’re all in a line, they get shot.”*⁵⁶⁶

268. [REDACTED].⁵⁶⁷ [REDACTED].⁵⁶⁸ P-0725 described his encounter with [REDACTED] Abdallah “Moloqwe” / “Mulnenque”, who managed to make his way back to Deleig: *“After sunset prayer but before midnight, Abdallah MUSSA [...] entered the small mosque. I had remained there after prayers and saw him. Abdallah MUSSA was in a terrible condition and it shocked us. He had what appeared to be a gunshot wound to his temple and a hole through his eye socket. I think it was his right eye ball that was missing and the wound was bleeding heavily. Three fingers of his right hand were missing and his hand was also bleeding heavily. He was in a distressed state and told us that everyone that had been taken away from Deleig had been executed. [...] The next day I*

⁵⁶² [REDACTED]; P-0725: DAR-OTP-0210-0122-R02, paras 75-91; DS P-0671: DAR-OTP-0206-0105-R02, paras 51-56; DAR-OTP-00000463; T-098, p. 74, line 11-p. 76, line 14; *See also Bar Table*: DAR-OTP-0219-9003 (translation DAR-OTP-0220-3043); DAR-OTP-0219-9004 (translation DAR-OTP-0220-3045); DAR-OTP-0219-9005 (translation: DAR-OTP-0220-3047); DAR-OTP-0219-9002 (translation DAR-OTP-0220-3041).

⁵⁶³ DS P-0907: T-094, p. 40, lines 7-10.

⁵⁶⁴ DS P-0907: T-094, p. 41, lines 10-p. 42, line 25.

⁵⁶⁵ [REDACTED].

⁵⁶⁶ [REDACTED].

⁵⁶⁷ *See submissions at paras 251-252 supra.*

⁵⁶⁸ [REDACTED].

*learned that Abdallah MUSSA had died the night before. I gave my condolences and learned from his family that they had buried him secretly.”*⁵⁶⁹

269. V-0004, when providing his views to the Chamber, also spoke about his encounter with Abdallah Mussa, around 17h00 on 5 March 2004: *“He [Abdallah] told me to go back home and not to go anywhere, because all the people who were detained were taken and killed. He told me that he was in the location of this incident, this event, and he was injured in his head. [...] So this was a very difficult situation. [...] I was almost having a mental breakdown. So he went to the mosque and shortly afterwards he passed away.”*⁵⁷⁰

270. As the news of the mass execution of the predominantly Fur detainees spread in Deleig on the evening of 5 March 2004, and into 6 and 7 March 2004, shock and fear spread throughout the Fur community, and many sought to flee the town.⁵⁷¹ As V-0004 explained: *“The Fur community is a peaceful one. After they heard the news, people didn’t have anything to do, they couldn’t do anything, except to grieve and cry.”*⁵⁷²

271. The final grim chapter of the Deleig incident, as also reflected under **Counts 27 to 30**, and established by the evidence, concerned, allegedly under the direction of “Ali Kushayb”, the execution on 7 March 2004, of a smaller group of Fur notables and community leaders who were taken from detention at the Deleig Police Station,⁵⁷³ and executed outside of the town at one or more locations.⁵⁷⁴ The deceased included: *Umdah* Jiddo Khamis Abdul Karim, *Umdah* Adam Adam Deguis Ahmed (‘Kindiri’), *Umdah* Mohamed Suleiman (‘Dirbo’), Sheikh Ismail Abdul Aziz, Hassan Adam Musa (veterinary nurse); [REDACTED].

272. As highlighted in the CLRV Trial Brief,⁵⁷⁵ DS P-0907 described the cascading effects from the killing of so many Fur community leaders: *“The impact was intense,*

⁵⁶⁹ [P-0725](#): DAR-OTP-0210-0122-R02, paras 78-82

⁵⁷⁰ [V-0004](#): T-127, p. 32, lines 2-17.

⁵⁷¹ [REDACTED].

⁵⁷² [V-0004](#): T-127, p. 32, lines 18-22. See also p. 34, line 19-p. 35, line 4 (fleeing Deleig).

⁵⁷³ See submissions at paras 257-263 supra regarding charged detentions at Deleig Police Station.

⁵⁷⁴ [REDACTED]; [DS P-0585](#): T-100, p. 13, line 18- p. 15, line 4, p. 25, line 23-p. 28, line 25; [P-0725](#): DAR-OTP-0210-0122-R02, paras 94-96.

⁵⁷⁵ [CLRV Trial Brief](#), para. 71.

*because [...] they were the community leaders, our community leaders. They would manage our affairs and take care of us in a very well manner. So their loss impacted the community, because it's like a domino effect. Once it starts, everything is affected. [...] [W]hen this domino effect starts, if things get scattered and chaotic, if you have a leader, for example, a communal leader, one of the notables, they would be able to address the authorities, government authorities to fund schools, hospitals. So say when this notable person dies, the whole society suffers because [...] we don't have someone to take care of us."*⁵⁷⁶

273. **Count 31**, persecution as a CAH, on political, ethnic and gender grounds, concerning Fur males perceived as belonging to, or being associated with, or supporting rebel armed groups in Deleig and surrounding areas, between 5 and 7 March 2004, is also established by the evidence underlying **Counts 22 to 30**. The evidence is replete with proof of the discriminatory nature of the violence, ill treatment, and killings, specifically targeting Fur males, and in the context of the GoS's counterinsurgency strategy against the Fur and other ethnic groups.⁵⁷⁷

VIII. Views & concerns of participating victims on long-term impact of charged crimes

A. Life in the Fur community prior to the conflict, and impact of total disruption

274. The rural communities of Wadi Salih and Mukjar localities were once centres of Fur family and economic life, mainly revolving around farming, livestock, and communal traditions.⁵⁷⁸

275. Livestock, including cows, sheep, camels, and donkeys, were a core facet of these communities, not just as assets and work animals, but as symbols of social status and economic security.⁵⁷⁹

276. The trade of livestock was interwoven with seasonal rhythms, as villagers relied on agriculture and animal husbandry for both sustenance and income. Many

⁵⁷⁶ DS P-0907: T-095, p. 10, line 25-p. 11, line 10.

⁵⁷⁷ See submissions at paras 141-143 *supra* regarding GoS counterinsurgency strategy targeting Fur population.

⁵⁷⁸ See [CLRV Trial Brief](#), paras 28-32.

⁵⁷⁹ See [CLRV Trial Brief](#), paras 52-54.

participating victims explained to the CLRV that this deeply rooted connection to the land⁵⁸⁰ made daily life a continuous celebration of heritage, where each family had ties to both the land and its resources, stretching back generations.

277. The fabric of the people's daily lives was intertwined with the different seasons, livestock trade, and communal celebrations.⁵⁸¹ In a video recording to the CLRV, **Harun** (IDP Deleig) expressed that: *"Our previous life was one of the best, with our parents raising us well because we had all the comforts and security. We enjoyed the company of family and loved ones, and we also received education—both formal schooling and informal education in religious schools in our homes, taught by our parents."*⁵⁸²

278. **Ismail**, recounted his life before the attacks and the abrupt end of his community's peaceful existence: *"Previously, we had everything and lived our lives normally, sharing joys and sorrows with everyone. However, after we were attacked by militias, everything changed. The militias took everything we owned and destroyed what was left in the village. Now, only traces of destruction and ruin remain."*⁵⁸³

279. The destruction of homes and livelihoods had devastating personal impacts on families. Not only were they left without shelter, but they were also stripped of the means to provide for themselves.

280. The destruction of this way of life during the attacks represented more than a loss of property; it was the severing of generational bonds to ancestral lands and the end of a cultural lineage that had defined Darfuri identity.⁵⁸⁴ **Khadija** (IDP Mukjar) describes the anguish of losing not just livestock and farmland, but their homes passed down through generations: *"When we were in our village, we owned everything, from livestock to agricultural wealth—fertile lands. The day the village was attacked, everything ended; they took everything we had."*⁵⁸⁵

⁵⁸⁰ See [CLRV Trial Brief](#), para. 20.

⁵⁸¹ See [CLRV Trial Brief](#), paras 30, 44.

⁵⁸² a/25129/21, Video Message to the CLRV, September 2024.

⁵⁸³ a/10608/22, Video Message to CLRV, February 2024.

⁵⁸⁴ See [CLRV Trial Brief](#), paras 16, 20.

⁵⁸⁵ a/05194/23, Video Message to CLRV, February 2024.

281. For many, the attacks meant not only economic hardship but a loss of self-identity, as the structures that supported their sense of belonging were torn down in a matter of hours.⁵⁸⁶ *Mohamed* noted: *“Our life was beautiful. Now, we have been expelled from our land and displaced. Even in displacement camps, we are still being persecuted.”*⁵⁸⁷

282. As the attacks unfolded, victims recall how the villages transformed from close-knit communities to scenes of devastation almost overnight. The sudden destruction was all-encompassing, with homes burned, animals slaughtered, and crops destroyed, leaving nothing for survivors to return to. This loss extended beyond material wealth; the sense of security and unity within their communities was irreparably fractured, leaving emotional and psychological scars that remain unhealed. *Hassan Hassan (V-0002)*, who was a child at the time of the attack, recounted with one sentence the lasting psychological impact on him: *“I am dead, but spiritually I am still alive, But [...] I’m dead psychologically, emotionally, mentally.”*⁵⁸⁸

283. The assault on Darfuri villages left more than physical ruins; it dismantled the social foundation that defined these communities. Village life had been built around trust, shared traditions, and mutual support, where neighbours looked out for one another and families came together for celebrations and labour alike.⁵⁸⁹ After the attacks, this fabric was torn apart. Participating victims describe feeling uprooted not only from their homes but from the life and culture they had cultivated as a community.⁵⁹⁰

284. For those who survived the initial violence, fleeing their homes for the first time was a moment of intense fear and confusion. The sudden eruption of violence left

⁵⁸⁶ See [CLRV Trial Brief](#), paras 39-44.

⁵⁸⁷ a/10642/22, Video Message to CLRV, April 2024.

⁵⁸⁸ [V-0002](#): T-119, p. 81, lines 14-16.

⁵⁸⁹ See [CLRV Trial Brief](#), paras 36, 39, 41.

⁵⁹⁰ Virtual townhall meetings between CLRV and participating victims in Bindisi IDP camp and Sudanese Refugee Camps in Chad, 2024.

families with no time to gather belongings or make plans. In the chaos, many families were separated.

285. **V-0004** recounted how they were forced to flee repeatedly and build makeshift shelters, only to lose them again to violence. He explains that many fled to the mountains when their homes were attacked: *"Everybody would flee to the mountain and would take their family members, starting with children, because they had the most priority. And then you would follow, you would catch up with your family members."*⁵⁹¹

286. Victims recounted harrowing escapes, often with little more than the clothes on their backs, fleeing across mountains and deserts in search of safety. The conditions during these flights were perilous, with families becoming separated, children dying from exhaustion, and survivors facing the constant threat of attack. **Ramadan**, originally from Bindisi, recalled: *"We fled to the neighbouring mountains. We spent two days without food. It was torturous and debilitating. Sometimes young children would die out of exhaustion and lack of shelter."*⁵⁹²

287. For **Adam** (Mukjar IDP), the destruction of his community's way of life was deliberate and total: *"We were expelled from our village and it was burned and looted by Ali Kushayb's militias. The trees were also cut down. At that time everything was destroyed. They wanted a barren land without the Fur people."*⁵⁹³

288. **V-0003**, originally from Bindisi, shared that he spent several months in Mukjar under increasingly dangerous conditions. As the violence escalated, marked by the siege and attacks by Janjaweed forces, the fear for his personal safety became overwhelming, driving him to flee to Chad.⁵⁹⁴

289. For many families, the journey was not just physically exhausting but emotionally devastating. The fear of being pursued by militias made every step a race for survival, and for many, the psychological scars of this journey would last

⁵⁹¹ **V-0004**: T-127, p. 23, lines 1-3.

⁵⁹² a/10027/22, Video Communication with CLRV, August 2024.

⁵⁹³ a/25033/21: Video Communication with CLRV, May 2024.

⁵⁹⁴ **V-0003**: T-121, p. 3, lines 4-24.

a lifetime. *Adam* from Bindisi noted: “We fled into the forest to save ourselves and then moved to Mukjar. Innocent people were slaughtered. Eventually, we fled to Mukjar, but some families who still had livestock were followed to Mukjar, and their animals were taken from them.”⁵⁹⁵

B. Long-term impact of displacement and living in IDP / refugee camps

290. The prolonged displacement of civilians in Darfur has created an environment where survival has replaced security, and deprivation has become a daily reality. The camps that were meant to provide temporary shelter, for many, became permanent residences, now for more than two decades. The hope of returning home faded as conditions in Darfur remained unstable and violent, leaving displaced persons trapped in a cycle of dependency on humanitarian aid that was often insufficient and unreliable.⁵⁹⁶ *Halima* mentions that: “There’s no humanitarian aid anymore, and even when there was, it wasn’t distributed fairly.”⁵⁹⁷

291. *Amina*, displaced in Chad, shared her experience: “I’ve now been living in [REDACTED] for 20 years. All I want is to return home, but the situation in Sudan is terrible, and life in the refugee camp isn’t much better.”⁵⁹⁸

292. Life in IDP and refugee camps has proven to be an extension of the suffering victims hoped to leave behind. For over two decades, confinement in these camps has stripped individuals of their homes, jobs, and a sense of normalcy. Originally intended to be temporary, the camps have become places of chronic hardship, where individuals grapple every day with insecurity, unsanitary conditions, food scarcity, and health crises that challenge their resilience and erode their hope.

293. *Yahya*, now displaced in Kalma Camp, told the CLRV: “I fled to Nyala, and from there to the Kalma camp in search of safety. My life before the war was happy and prosperous, but now it has turned into hell after the displacement and the departure of the

⁵⁹⁵ a/05290/23, Video Communication with CLRV, September 2024

⁵⁹⁶ See P-1042: DAR-OTP-0220-1623, paras 26-27 (‘three-cornered livelihoods’).

⁵⁹⁷ a/10133/22, Townhall meeting with CLRV, July 2024.

⁵⁹⁸ a/10064/22, online townhall meeting with CLRV in January 2024.

*organizations from Kalma camp for the displaced. This has led to many problems like hunger and malnutrition. Sometimes we go days here without food, and as you can see, I am still a young man, but I have aged from the exhaustion, suffering, and harsh conditions caused by the war. My children are also in a miserable state, powerless.”*⁵⁹⁹

294. Othman, also in Kalma Camp, says: *“We fled to Nyala, then to Kalma camp, in search of survival. Upon arriving at the camp, we stood in long lines for days to receive aid because of the sheer number of people, and the aid wasn’t enough. We stayed in the camp, but there is no opportunity for young people to work here, and life became very hard. Often, we eat no more than one meal a day, consisting of the simplest food ingredients, like leaves from trees and meat scraps from butchers, to sustain ourselves and our children.”*⁶⁰⁰

295. Victims’ accounts paint a picture of the severe and ongoing hardships in the camps, where even basic human needs remain unmet. Many participating victims share their “struggle to survive each day”, highlighting to the CLRV how the lack of essential resources leaves people “exhausted and hopeless.”⁶⁰¹

296. For many, the camps feel more like a prison sentence than a sanctuary. **Musa** in Kalma IDP Camp shared a message with the CLRV: *“We have spent all these years feeling like we are in prison, and the camp is a large prison for the people. Camps is deprived of any services, whether public or humanitarian aid.”*⁶⁰²

297. **Abakar**, a refugee in Chad, on the other hand, describes the unbearable nature of camp life, saying, *“living here has become torture. We feel trapped, with no hope of escape or return. Every day is a struggle to survive.”*⁶⁰³ This sentiment is echoed throughout the camps, as victims feel their future as restricted as their current situation.

⁵⁹⁹ a/05781/23, Video Communication with CLRV, July 2024.

⁶⁰⁰ a/10035/22, Video Communication to CLRV, September 2024.

⁶⁰¹ Virtual Townhall meetings between CLRV and participating victims in Bindisi, Kodoom and Chad, 2024.

⁶⁰² a/05246/23, Video Communication to CLRV, September 2024.

⁶⁰³ a/25089/21, Townhall meeting with CLRV in July 2024.

298. The transition to camp life has also created new vulnerabilities, pushing people into a state of forced compliance. Participating victims share how their “lives have changed beyond recognition”, with the sense of stability they once knew now replaced by constant insecurity and the breakdown of social networks that previously provided support.⁶⁰⁴

299. Within the camps, the lack of sanitation and clean water leads to the spread of disease. *Fatne* describes the daily struggle against illness, explaining how “*without medical support, we struggle against illness, and we are left to survive in whatever way we can.*”⁶⁰⁵ In Kalma, *Khadija* shares a similar experience, noting that “*diarrhea and other diseases are constant here, especially for the children and elderly.*”⁶⁰⁶ Without the basic hygiene and healthcare infrastructure needed to manage health crises, illnesses go untreated.

i. Impact of prolonged displacement on malnutrition and food scarcity

300. The scarcity of nutritious food has left a devastating impact on children in the camps. *Othman*, in Kalma camp, describes the desperation that has driven some to subsist on “*leaves and scraps*”,⁶⁰⁷ leading to severe malnutrition.

301. **V-0004** explained during his appearance that the cramped living conditions, lack of sanitation, and inadequate nutrition have created a breeding ground for diseases such as malaria, respiratory infections, and gastrointestinal disorders. He further notes that malnutrition is rampant, particularly among children and pregnant women, and the scarcity of clean drinking water has led to frequent outbreaks of waterborne diseases.⁶⁰⁸

302. The effect of malnutrition on children in the camps are particularly severe, as the ongoing lack of food and proper nutrition hinders both health and

⁶⁰⁴ Virtual townhall meetings between CLRV and participating victims in Bindisi, Kodoom, Chad, 2024.

⁶⁰⁵ a/25172/21, Townhall meeting with CLRV, January 2024.

⁶⁰⁶ a/25061/21, Video Communication to CLRV, September 2024.

⁶⁰⁷ a/10035/22, Video Communication to CLRV, September 2024.

⁶⁰⁸ **V-0004**: T-127, p. 39, lines 7-12.

development. This deprivation exposes children to preventable illnesses and results in physical and cognitive impairments that follow them into adulthood. Mothers, already shouldering the responsibility of caring for their families, face even greater stress within the harsh conditions of the camps. Many mothers prioritise their children's needs over their own, often sacrificing their own health to sustain their families.⁶⁰⁹

303. The responsibility of raising children in these conditions weighs heavily on mothers. *Khadija* expresses the struggle to provide for her children, lamenting that *"we are barely surviving. Mothers struggle to feed their children, with no means of support."*⁶¹⁰

304. *Kaltouma* shared with the CLRV that: *"I'm the only one who provides for my family of 12. I work wherever I can, but it's never enough. If I earn something, my children can eat, but if I don't, they go hungry. My children are malnourished and tired."*⁶¹¹

305. *Musa* (IDP Deleig) voiced a similar despair: *"Our lives are worse than death; we are worse off than the dead and the martyrs because we have lost all human dignity. Life is full of humiliation and degradation. There is no place worse than the displacement camps. We lack the most basic necessities of life. If we have rights like everyone else."*⁶¹²

ii. Impact of the crimes and prolonged displacement on health and well-being

306. The collapse of healthcare services within refugee and IDP camps has become one of the most alarming aspects of prolonged displacement in Darfur. While many camps received some level of medical assistance during the initial years, this support has steadily dwindled, leaving victims without reliable access to basic care.⁶¹³

⁶⁰⁹ V-0001: T-120, p. 31, line 19-p. 32, line 10.

⁶¹⁰ a/05300/23, Video Communication to CLRV, September 2024.

⁶¹¹ a/10316/22, Townhall meeting with CLRV, February 2024.

⁶¹² a/05246/23, Video Communication to CLRV, September 2024.

⁶¹³ Townhall meetings between participating victims in Bindisi, Kodoom and Chad and the CLRV in 2024.

307. The lack of access to proper medical care, compounded by unsanitary living environments, has led to frequent outbreaks of preventable diseases, especially among the most vulnerable – children, the elderly, and pregnant women. These worsening health conditions are directly linked to material deprivation, as displaced individuals suffer from chronic malnutrition, lack of clean water, and inadequate shelter.

308. V-0004 discussed the impact of the lack of proper housing and electricity: *“This affects us mentally, because we have the sense that we are not part, we do not belong to that state, to that country, because currently electricity, drinking water, proper shelter, these are life necessities. Any person must have access to these things. People should not struggle to have some water, drinking water.”*⁶¹⁴

309. Women, especially those who endured violence, continue to suffer from untreated reproductive health issues. Many experience chronic pain, infections, and other complications from the trauma they survived, but the camps lack the necessary facilities and healthcare professionals to provide specialized care. *Khadija* recounts the early years of some aid assistance, saying: *“When we first arrived at the Mukjar camp, relief organizations provided services, but as the conflict continued, they withdrew, leaving us with no medical support.”*⁶¹⁵ This abandonment has left survivors of violence with untreated injuries and enduring pain.

310. The lack of medical care in the camps has particularly dire consequences for individuals with chronic illnesses or those injured during the violence. Without treatment, many are left trapped in a cycle of suffering. *Fatima* explains her situation: *“I work in marginal jobs like brick making, despite my hand being broken during the attack. There is no choice. Even in pain, I must find a way to survive.”*⁶¹⁶

⁶¹⁴ V-0004: T-127, p. 39, lines 7-12.

⁶¹⁵ a/05194/23, Video Message to CLRV, February 2024.

⁶¹⁶ a/05122/23, Video Communication to CLRV, June 2024.

311. Overcrowding, limited sanitation facilities, and lack of clean water contribute to high mortality rates, especially among children and the elderly.⁶¹⁷ Children, particularly vulnerable to infectious diseases, suffer disproportionately in these conditions. As **V-0003** explains, *"We are living in terrible conditions. There is no clean water, and there aren't enough toilets."*⁶¹⁸ This breakdown of basic hygiene poses a continual threat to the displaced population's health and survival.
312. The overcrowding in the camps compounds the spread of illness, as the cramped quarters prevent social distancing and make basic hygiene impossible. Victims report frequent disease outbreaks, especially affecting the elderly and children, who are the most vulnerable.⁶¹⁹
313. Chronic malnutrition has become one of the most pervasive health challenges for the participating victims, disproportionately affecting children, pregnant women, and the elderly. **V-0003** explained *"Life now in the refugee camps is not the same as it was at the beginning [...] we all suffer from malnutrition. All our children suffer from malnutrition, and our women are dying because of malnutrition."*⁶²⁰
314. Moreover, the camps' conditions expose refugees to extreme seasonal weather, bringing cold winters and malaria-ridden autumns, and lack the necessary shelter and protection. **V-0003** vividly described these challenges: *"In autumn, it rains a lot [...] the water floods the streets and the mosquitoes come out. And mosquitoes cause diseases such as malaria."*⁶²¹
315. People's huts, while offering some protection from the summer heat, left camp residents exposed in winter: *"We build our huts from straw [...] and in winter, people*

⁶¹⁷ **V-0001**: T-120, p. 31, line 17-p. 32, line 10.

⁶¹⁸ **V-0003**: T-121, p. 6, lines 19-23.

⁶¹⁹ Townhall meetings between participating victims in Bindisi, Kodoom and Chad and the CLRV in 2024 and shared messages.

⁶²⁰ **V-0003**: T-121, p. 8, lines 6-9.

⁶²¹ **V-0003**: T-120, p. 48, lines 20-24.

*use fire in order to get some warmth. But to use fire, they need wood and people have to go out to get wood,”*⁶²² V-0003 recounted.

316. The lack of maternal and reproductive health services has placed additional strain on women in the camps. Pregnant women often face dangerous conditions during childbirth, with no skilled birth attendants or proper medical facilities available. V-0003 described the dangers women endure: *“Women are dying during childbirth because there is no one to help them. There are no midwives, no doctors. Many women are left to give birth alone, and they do not survive.”*⁶²³ For those who survive, the inability to access postnatal care or necessary nutrition leaves both mothers and infants at heightened risk.

C. *Psychological and emotional impact*

317. The below chart reflects the deep and varied psychological impacts experienced by displaced individuals as a result of the charged crimes and consequent prolonged suffering. With all the participating victims suffering some sort of a psychological harm, the most common form reported is distress, affecting approximately 996 participating victims, followed by fear and depression, each impacting 692 and 624 individuals, respectively, as indicated on their application forms. This prevalence of distress and fear underscores the profound sense of insecurity that permeates daily life for these victims, many of whom have been forced to live in camps for now more than two decades. The death of loved ones, which directly affects around 411 participating victims, adds to the collective grief. These findings are based on personal testimonies of victims received by the CLRV in numerous communications during virtual meetings and in voice and video message.

318. V-0003 described to the Chamber the long-term psychological impact of being trapped in the refugee camps: *“[W]e lived all the tragedies in life. We did not know the*

⁶²² V-0003: T-120, p. 48, lines 8-16.

⁶²³ V-0003: T-121, p. 8, lines 9-11.

*true meaning of life. We only lived in dire situations.”*⁶²⁴ He continued: “*Today, we do not have any identity. On my identification card, they wrote ‘refugee’. I am stateless. I do not have any nationality to belong to. This means that I’m just a displaced person.*”⁶²⁵

319. Many describe how “living in camps has become a constant reminder of everything they lost”,⁶²⁶ underscoring that continual deprivation and lack of resources reinforce the trauma of their initial displacement.

320. This perspective is shared widely among camp residents, as the constant grief of past losses combines with the described daily struggles in the camps.

321. Powerlessness has become a central theme in the experiences of displaced victims. **Halima** explains: “*They took away our lives and left us in this place where we have no control, no say. It feels like we are barely human.*”⁶²⁷ This sense of having no agency or influence over their surroundings deepens the trauma.

322. Life in displacement has stripped many victims of their dignity and roles within their communities. **Alawiya** (Bindisi IDP) describes a profound sense of shame, saying: “*We were once people with pride and respect, but here, we are treated like we are nothing.*”⁶²⁸ This erosion of social identity is worsened by the described camp conditions, where many feel they have been reduced to mere survival.

323. The experience of displacement has also brought about a sense of disconnection. **Youssef**, a refugee in Chad with some of his family, speaks to the isolation and disconnection, sharing that his land and home was taken away from them, and that they are “left with nothing, but memories of what happened in Darfur stay with us every day”.⁶²⁹ For him, and many others, displacement is not only about physical

⁶²⁴ V-0003: T-121, p. 17, lines 12-13.

⁶²⁵ V-0003: T-121, p. 17, line 25-p. 18, line 2.

⁶²⁶ Townhall meetings between participating victims in Bindisi, Kodoom and Chad and the CLRV in 2024.

⁶²⁷ a/10133/22, Townhall meeting with CLRV, July 2024.

⁶²⁸ a/10124/22, Video Communication to CLRV, September 2024.

⁶²⁹ a/25146/21 Townhall meeting with CLRV, January 2024.

relocation but also about the painful loss of social and personal identity. Multiple victims expressed a sense of being “erased from the world”.⁶³⁰

324. The emotional scars left by the initial violence and subsequent displacement have also extended to younger generations who have only known life in the camps. **Salma** from Kalma shares her heartbreak as she watches her children grow up in a setting far removed from the community she remembers: *“They don’t know what life was like before. They only know the camps, the hunger, the fear.”*⁶³¹ For children born after the displacement, the trauma has become the shared instability experienced by their parents.

325. This sense of helplessness and ongoing psychological distress is a common experience among refugees who have suffered similar traumatic events.

326. **Hassan** (Mukjar IDP), for example, reflects on the emotional burden passed on to his children. He explains how *“they know our story because they see it in our faces every day. They see the sadness, the worry. It is a part of them now.”*⁶³² This generational transmission of trauma reveals how deeply the consequences of violence and displacement have permeated family life. As the children of victims grow up in an environment shaped by loss and a fractured sense of belonging, they carry forward both the memories and the struggles that their parents have endured.

327. Others only recently reunited with their children. Only a few months ago, **Halime** (Mukjar IDP), recently shared the painful story of her son’s recent arrival in the camp with the CLRV: *“My son arrived here not long ago, and he came with scars — both physical and emotional — after being tortured by RSF forces. Seeing what he went through and knowing that he carries that trauma with him is unbearable. It reminds me of all the pain that our people have endured. Even though we are here now, supposedly safe in*

⁶³⁰ Townhall meetings between participating victims in Bindisi, Kodoom and Chad and the CLRV in 2024.

⁶³¹ a/05887/23, Video Communication to CLRV, June 2024.

⁶³² Participating victim a/10093/22, Video Communication to CLRV, June 2024.

*the camp, the harm still follows us. Every day is a reminder of the horrors we fled, and now my son bears those same marks. It feels like the suffering never ends.”*⁶³³

328. The psychological toll on children is very different from one to another. **Hawa** (Mukjar IDP) shares how she *“used to ask our mother where our father went, and she always said he would return soon. Whenever our situation worsened, we would ask about our father to come help our mother, but he never returned to this day. I cried many nights in silence. I deeply regret the loss of my dear father, who died in silence without a proper burial or mourning ceremony. We don’t even know where his grave is.”*⁶³⁴

329. The psychological and emotional are reflected in the accounts they give in their applications and numerous messages to the CLRV and the trauma of violence, coupled with the long-term stress of living in camps, has created lasting mental health challenges that the CLRV not in a position to reflect in its entirety and with the respect deserved by her all her clients in a document such as this Final Brief. The quotes provided are just the vain but honest intent to mirror the hopes and expectations of the participating victims to be heard by the Chamber.

330. Many describe how the conditions in the camp have degraded their dignity, as they endure the humiliation and dependency that life in the camps has forced upon them. The emotional impact of this environment marks each day in the camps as a reminder of the life they once had and the dignity they have lost. **Faisal** (Mukjar IDP), said: *“Today, we live in terrible conditions in the camp. Personally, I have wished for death instead of living here.”*⁶³⁵

D. Social and cultural impact – displacement of identity

331. For victims in Darfur, displacement has meant far more than the loss of physical spaces; it has eroded the cultural and social foundations that defined their

⁶³³ a/25017/21. Townhall meeting with CLRV, April 2024.

⁶³⁴ a/05279/23, Video Communication to CLRV, May 2024.

⁶³⁵ a/10447/22, Video Communication to CLRV, April 2024.

identities. The structure and cohesiveness of community life in Darfur were shattered as villages were systematically attacked and communities scattered.

332. **Othman** explained about their lives before the charged incidents: *"We were living a completely happy life, with security and safety. We used to connect with relatives and share life as a community, practicing our customs and traditions in celebrations and mourning. We were content with our lives and attended schools, receiving formal and local education (religious schools). We also had various livelihoods, such as farming, livestock rearing, and trade. Some worked in different official institutions. Then the war came and turned our lives upside down."*⁶³⁶

333. **Haroun** (IDP Deleig) remembers the days before displacement with a profound sense of loss, saying: *"Life was beautiful, full of joy, with family and loved ones close. Now, we live scattered, some as refugees in other countries, others in distant camps."*⁶³⁷ This disruption of close-knit community structures has left victims feeling disconnected, with the bonds that once provided security and identity broken by years of forced separation.⁶³⁸

334. The shift from active, interdependent village life to the stagnant isolation of camp life has fundamentally impacted victims' social identities. **Abdallah** describes how this change has stripped them of the roles that once gave them purpose, stating, *"we are just people waiting, people forgotten."*⁶³⁹ In the camps, many feel that they have lost the social roles that were central to their sense of self, leaving them in a state of purposelessness and disconnect within the unfamiliar camp environment.

335. **Hawa** reflects on this loss of identity, sharing that *"we were once respected. We had dignity. But now, in these camps, we are treated as if we have no worth."*⁶⁴⁰ Her words underscore the shift from a life of agency and respect to one of dependence and

⁶³⁶ a/10035/22, Video Communication to CLRV, September 2024.

⁶³⁷ a/05188/23, Video Communication to CLRV, May 2024.

⁶³⁸ Townhall meetings between participating victims in Bindisi, Kodoom and Chad and the CLRV in 2024

⁶³⁹ a/25023/21, Townhall meeting with CLRV

⁶⁴⁰ a/05279/23, Video Communication to CLRV, May 2024

marginalisation, where their cultural roles and practices hold little relevance in the displaced setting.

336. For many victims, displacement has led to a loss of cultural practices, language, and traditions – integral aspects of their identities. Without the space to practice their culture freely, many feel disconnected from the values and traditions that once sustained them, intensifying their sense of dislocation.

337. *Samira* describes how displacement has disrupted the generational transmission of culture. *“Our children are growing up without knowing who we are, without the traditions that made us who we are,”*⁶⁴¹ she shares. For many parents, watching their children grow up in an environment detached from their heritage is deeply painful. The generational gap in cultural knowledge has left younger generations without a connection to their roots, as the customs and values once passed down in the community are now difficult to maintain in camps.⁶⁴²

338. The destruction of cultural continuity has had a lasting impact on the displaced. As *Fatima* explains, *“It is as if they have erased who we were. Every time we try to hold onto something, it is taken away.”*⁶⁴³ For many participating victims, the loss of cultural expression feels like the loss of self, compounding the trauma with a profound sense of estrangement from their own identity.

339. This detachment from their cultural roots has left many in a state of mourning for a way of life they fear may be permanently out of reach. Without access to their ancestral traditions, their identity, once deeply connected to a rich cultural heritage and language, has been reduced to memories in an environment that offers little support for cultural preservation. As V-0001 explained: *“We expose these children, the refugees [...] to this culture so that they don’t change their identity or their traditions. We try to show them or demonstrate to them the things that we can convey to the children*

⁶⁴¹ a/10141/22, Video Communication to CLRV, June 2024.

⁶⁴² a/25072/21, Video Communication to CLRV, October 2024.

⁶⁴³ a/05194/23, Video Message to CLRV, February 2024.

*about the traditions and norms of Darfurian people so that they don't forget their homeland [...] because they grow up in camps so [...] they may forget their traditions."*⁶⁴⁴

340. The loss of community leaders – such as Sheikhs, *Umdahs*, and other respected figures – has further destabilized cultural continuity within the camps. These leaders were the custodians of social order and cultural values, offering guidance and maintaining communal cohesion.⁶⁴⁵ Without these leaders, the displaced communities have lost vital anchors to their heritage and sense of belonging.

341. Another profound impact of displacement has been on the younger generation, who have grown up in camps with little exposure to the cultural practices and traditions of their parents. For these children, the connection to their past has been severed, leaving them disconnected from the roots that once defined their people.

342. For those displaced, the loss of nationality adds a profound sense of disconnection and disenfranchisement. **V-0003** expresses, *"I have been a refugee for 20 years, so we lived all the tragedies in life [...] we only lived in dire situations."*⁶⁴⁶ As refugees, they are stripped of nationality and rights, a reality painfully encapsulated in the line, *"I am stateless. I do not have any nationality to belong to. This means that I'm just a displaced person."*⁶⁴⁷ This status not only affects their legal rights but also severs them from their cultural roots.

E. Long term material impact and economic deprivation

343. The economic impact of the crimes committed in Darfur has permeated every aspect of victims' lives. Displacement has stripped them of the land, resources, and livelihoods that once sustained their communities. In Bindisi and Kodoom, most victims suffered a huge loss to their life and means, through the following ways:

⁶⁴⁴ **V-0001**: T-120, p. 47, lines 11-16.

⁶⁴⁵ See [CLRV Trial Brief](#), paras 68-74.

⁶⁴⁶ **V-0003**: T-121, p. 17, lines 11-13.

⁶⁴⁷ **V-0003**: T-121, p. 18, lines 1-2.

344. **V-0003** elaborated on the limited rights and resources available to refugees, often resulting in heartbreak and frustration. He explained that most of the land we work on, we rent from Chadian locals or from Arabs and have been working on such land by renting it.⁶⁴⁸ **V-0003** noted that: *"by harvest time, they (landlords) brought their livestock, and the livestock ate the harvest. We complained to gain back our right: How come you work for a whole season and then by harvest time the livestock eats the crops?."*⁶⁴⁹ **V-0003** explained that the refugee farmers resorted to the local authorities to complain with no avail *"because as a refugee you do not have a nation. There's no way to pay you or to grant you something. And that is why we deplore the loss of the homeland."*⁶⁵⁰

345. **Halima** shared with the CLRV the same sentiment that she takes whatever work she can find, but inflation has made everything harder. She also noted that farming is difficult because the landowners allow their mules to eat the crops.⁶⁵¹

346. The forced separation from their homes and lands has left victims without the essential resources they need to support themselves. **Muhammed** (IDP Deleig) describes the devastation of losing everything they had built, saying, *"We had our land, our animals. That was our wealth, our security. Now, it is gone, and we have nothing left."*⁶⁵²

347. **Abbas** (IDP in Mukjar) shares a similar experience, explaining how *"our lives were tied to the land. Without it, we are unable to work, to provide for our families. We are left here in the camps with no way to earn a living."*⁶⁵³ This shift from self-sufficiency to dependency is felt not just as loss of income but also as a loss of dignity and purpose.

⁶⁴⁸ **V-0003**: T-120, p. 37, lines 23-25.

⁶⁴⁹ **V-0003**: T-120, p. 38, lines 1-7.

⁶⁵⁰ **V-0003**: T-120, p. 38, lines 7-13.

⁶⁵¹ a/10133/22, Townhall meeting with CLRV, July 2024.

⁶⁵² a/05555/23, Video communication with CLRV, September 2024.

⁶⁵³ a/05082/23, Video communication with CLRV, July 2024.

348. In the camps, where there is no infrastructure to support economic activities, victims are left with no choice but to depend on aid that is unreliable. **Khadidja** from Kalma recounts the scarcity they face, saying, *“When the aid comes, it is never enough, and when it doesn’t come, we have nothing. We are constantly worrying about whether we will have food.”*⁶⁵⁴ This dependency on unpredictable aid supplies means that the victims have no control over whether their basic needs will be met from one day to the next. Since the new outbreak of the conflict in Sudan and specifically in Darfur, even the limited humanitarian aid received in the IDP camps has completely seized.

349. **Aisha**, in a recent message to the CLRV, where she currently lives, shared: *“Previously, humanitarian organizations provided aid to the camp, but due to the renewed conflict between the army and the Rapid Support Forces, the organizations have left, and no aid is reaching the camp. We suffer severely from the lack of basic necessities — no water, no food, and we often go two days with only one meal. Personally, I am currently pregnant, and there are no services available for pregnant women. I was referred to Nyala Hospital for treatment, but I do not have the money to buy medicine to continue the treatment.”*⁶⁵⁵

350. **Adam**, describes the emotional impact of dependency, saying the following: *“I was once a farmer, providing for my family with my own hands. Now, we wait for handouts that barely keep us alive.”*⁶⁵⁶ This transition to dependency represents a deep blow to the identity and pride of many victims who were once providers and active members of their communities.

351. The conditions in the camps create numerous barriers to economic recovery, with limited opportunities for work or trade. **Harun** explains, *“There is no way to earn a living here. The work we do, if we are lucky enough to find it, is often degrading and*

⁶⁵⁴ a/25061/21, Video Communication to CLRV, August 2024.

⁶⁵⁵ a/05881/23, Video Communication to CLRV, October 2024.

⁶⁵⁶ a/10027/22, Video Communication to CLRV, August 2024.

*does not pay enough to meet our needs.”*⁶⁵⁷ The scarcity of dignified employment prevents victims from escaping the cycle of poverty that defines camp life.

352. For women, the lack of work is particularly difficult, as they often bear the primary responsibility for caring for children and elderly family members. **Fatima** shares her daily struggles, saying, “As women, we are the ones who must find food and care for the family. But with no work, it is impossible to meet even the basic needs.”⁶⁵⁸ This added pressure on women has forced many into precarious forms of labor, compromising their safety and well-being to provide for their families. “We do what we must,” says **Youssef** from Bindisi, “even if it means putting ourselves at risk, just so our children have something to eat.”⁶⁵⁹ This vulnerability to exploitation reflects the desperation many feel and the few safe opportunities available.

353. This is how **Khadidja** describes the difficult living conditions and the struggles to provide for her family: “Life in the camp is unbearable. There’s no work for the men, and although the women find work, it’s degrading. We go from house to house asking if they need help with washing clothes or cleaning, but the pay is so little that what we earn in a day barely buys enough food to feed even one person. I have seven children, and the money from a full day’s work is only enough for one soup. Malnutrition is rampant, and the illnesses that come with it are getting worse. People are weak, children are sick, and there’s no real help. Before the camps were established, NGOs were here helping us, but for the last four years, there has been nothing. Some people get a little help, but most of us receive nothing. It’s like we’ve been abandoned. I don’t know how long we can survive like this.”⁶⁶⁰

354. The loss of agricultural lands and livestock has further hindered economic recovery for those who were once farmers. **Mohamed** (IDP Bindisi), who was once successful in agriculture, describes the devastation of losing his livelihood: “They

⁶⁵⁷ a/25129/21, Video Message to the CLRV, September 2024.

⁶⁵⁸ a/10262/22, Townhall meeting with CLRV, July 2024.

⁶⁵⁹ a/05290/23, Video Communication to CLRV, October 2024.

⁶⁶⁰ a/25061/21, Video Communication to CLRV, September 2024.

*destroyed our fields, killed our animals. All that we had worked for was gone in an instant.”*⁶⁶¹ For **Mohamed** and others, the destruction of farms and livestock is not just a loss of income but a cultural blow, as farming was deeply tied to their way of life and sense of identity.

355. In the camps, displaced individuals who attempt to return to farming face immense logistical and security challenges, making self-sufficiency difficult. Many farmers are forced to travel long distances to find suitable land, often facing harsh terrain and dangerous conditions. **Haroun** describes this reality: *“Life inside the camps is unbearable, and we live only by collecting firewood and grass in the wilderness. Many times, we are threatened, but we have no alternative.”*⁶⁶²

356. **V-003** described an example when appearing in court: *“Some people travel for two days and some travel for one day, which means they have to stay on their farms. And when they go there, they finish their work and the family splits into two parts. Part of the family stays in the farm and the other part goes back to the camp so that they keep an eye on their house and their belongings. And if you have no family that can help you keep an eye on your house and also your farm, then you can be subjected to attacks on your farm, and that’s why you have to pay someone to look after the farm, which means that the money that you get from harvesting your crops, you’ll have to pay to whoever is looking after your farm.”*

357. The destruction of farmlands and the loss of livestock have left many families without their primary sources of income. When appearing before the Trial Chamber, **V-0002** explained that, even when land is available, it is often infertile due to overuse, or too expensive to rent, forcing people to seek work far from the camps under dangerous conditions.⁶⁶³

⁶⁶¹ a/05317/23, Video Communication to CLRV, August 2024.

⁶⁶² a/05188/23, Video Communication to CLRV, May 2024.

⁶⁶³ **V-0002**: p. 53, lines 4-10.

358. Efforts to cultivate food or generate income within the camps are often met with insurmountable challenges. *Hawa* described to the CLRV, *“Even if we try to grow something small here, there is no land, no water. It is impossible to do anything.”*⁶⁶⁴

359. Another participating victim, *Hawaa* in a virtual meeting with the CLRV in July 2024 states: *“We survive by working with whatever we can find. Some years we collect wood, other times we sell herbs and perfumes. But it’s always difficult. We get a little food assistance of 7 to 8 kilos of rice, oil, lentils, salt, and biscuits for children and pregnant women - but it’s never enough. the form of independence they would wish to have to live in dignity.”*⁶⁶⁵

F. Long-term impact on the educational system and opportunities

360. The displacement of communities in Darfur has severely disrupted educational opportunities for children, depriving an entire generation of the stability, knowledge, and growth that schooling provides. Parents shared with the CLRV that many children born and raised in camps, education has become a distant dream and the impact of this educational gap is far-reaching, threatening not only individual futures but also the social and cultural continuity of the entire community. Victims’ testimonies reveal a shared concern over the long-term consequences of this lost educational foundation as for many parents, the lack of educational resources is a profound burden, as they watch their children grow up without the opportunities they once envisioned.

361. Within the camps, barriers to education are often insurmountable. *Salma* from Kalma describes the absence of facilities, stating, *“There are no schools here, no teachers. Even if we wanted to teach our children, there is nowhere to do it.”*⁶⁶⁶ This lack of infrastructure has prevented education, leaving children to rely on informal instruction that falls short of meeting even the most basic educational needs.

⁶⁶⁴ a/05279/23, Video Communication to CLRV, May 2024.

⁶⁶⁵ a/10281/22, Townhall meeting with CLRV in July 2024.

⁶⁶⁶ a/05887/23, Video Communication to CLRV, June 2024.

362. **Hawaa** shared that *“before the war, two of my children were in high school, two in middle school, and two in junior school, but since the fighting began, they haven’t been able to go to school. Their education has been completely disrupted.”*⁶⁶⁷

363. The emotional burden on children has made it difficult for children to engage with any form of education. **Alawiya** (IDP Bindisi) echoes this sentiment, noting how trauma has shaped the lives of younger generations: *“Our children grow up knowing only loss and hardship. They do not know what it means to feel safe, to dream of something beyond this.”*⁶⁶⁸ This sense of loss and insecurity has impacted children’s ability to engage in learning and to envision a future beyond the confines of the camp.

364. **Abbas** (IDP Mukjar) reflects on the broader implications, explaining, *“Our traditions, our knowledge – they will be lost with us if our children have no way to learn.”*⁶⁶⁹ This generational gap in education endangers the continuity of cultural practices, skills, and values that have long defined the community.

365. For these displaced communities, the absence of education is more than a temporary setback; it is a permanent threat to their culture. Without the stability, knowledge, and skills that education offers, an entire generation disconnects from their traditions and roots.

G. Gender-specific impact on women and children

366. The violence in Darfur included systematic gender-based crimes that inflicted deep physical, emotional, and psychological scars on many women. **Samira** describes the lasting trauma, saying, *“What they did to us has left a mark that nothing can erase. We carry this pain every day, in every part of our lives.”*⁶⁷⁰ Her words highlight the enduring impact of these crimes, as survivors grapple with the compounded

⁶⁶⁷ a/10281/22, Townhall meeting with CLRV, July 2024.

⁶⁶⁸ a/10124/22, Video Communication to CLRV, September 2024.

⁶⁶⁹ a/05082/23, Video communication with CLRV, July 2024.

⁶⁷⁰ a/10141/22, Video Communication to CLRV, June 2024

effects of physical harm, emotional trauma, and social exclusion that continue long after the initial violence.

367. Moreover, many of these survivors experienced symptoms of post-traumatic stress disorder (PTSD), anxiety, and depression, often without access to mental health services. The lack of mental health resources in the camps has left women to confront their trauma alone, further compounding their suffering.

368. **V-0005** also highlighted that those who have survived rape were treated “as if nothing had happened,” with the ultimate goal of allowing them to regain their sense of belonging and ease within the community. This approach underscores the community’s desire to help the survivors heal emotionally and psychologically, while also navigating the delicate balance of cultural sensitivities and the need for personal recovery.⁶⁷¹ While medical intervention could address some of the physical wounds, the emotional and psychological scars of sexual violence required continued support from both the community and healthcare providers.

369. The trauma inflicted by rape remained a significant burden for many survivors. The difficulty of addressing rape in the community is compounded by cultural and social stigmas that surround the subject. To preserve the dignity of the survivors and allow them to reintegrate into society without the weight of shame, the community avoids openly discussing the events. This silence, though intended to protect the victims, also speaks to the broader challenge of acknowledging and addressing the trauma of rape in a socially conservative environment.

370. **V-0001** stressed that victims of sexual violence developed a complex about their identity, feeling like they are no longer full members of the community, leading them to avoid public spaces and social gatherings, further reinforcing their isolation.⁶⁷²

⁶⁷¹ V-0005: T-128, pp. 25-26.

⁶⁷² V-001: T-120, pp 24-27

371. She added that the camp's social affairs organization provided aid to rape survivors on an individual basis, interviewing them about their experiences and assessing their needs. However, the support offered—basic necessities like blankets, sheets, and small comforts—was a mere palliative, unable to address the deep-seated pain and suffering these women endure.⁶⁷³ The survivors were encouraged to be patient, but this patience was difficult to maintain when their lives had been irrevocably altered by the violence they experienced.

372. Moreover, for many displaced women, camp life has necessitated a shift in roles, with many stepping up as primary caregivers and protectors of their families. *Fatima* reflects on the resilience among women, explaining, “We have had to rely on each other. We share what little we have, and we support each other because there is no one else.”⁶⁷⁴ Women have therefore formed informal networks of mutual aid, sharing resources and providing emotional support that has become essential for survival.

373. The impact of gender-based violence also extends to children born as a result of these crimes, who face their own unique challenges within the camps.

374. V-0001 explained during her appearance that these children were marked from birth by their physical appearance, often having a different skin color that distinguished them from others in the refugee camps. This difference became a focal point for discrimination, as other children and community members pointed out their distinctiveness, linking it directly to the violence their mothers endured.⁶⁷⁵

375. As these children grow and become aware of the circumstances of their birth, they were deeply affected by the knowledge that they were the product of rape. This was reinforced by the community, where they were often bullied by other children.

⁶⁷³ V-001: T-120, pp 28-30

⁶⁷⁴ a/10262/22, Townhall meeting with CLRV, July 2024

⁶⁷⁵ V-001: T-120, p.29, line 17 – p. 30, line 10

376. In an effort to mitigate the psychological harm, some mothers take their children to social affairs organizations where they receive counselling and support. These organizations provide therapeutic activities such as play and the distribution of toys in an attempt to help the children forget their traumatic past and build a sense of normalcy.

377. As these children grow into young adults, the trauma of their origins continues to haunt them, leading to further displacement and social exclusion. Many of these children, upon learning the truth about their birth, choose to leave the camp altogether, seeking refuge in other places in an attempt to escape the stigma.⁶⁷⁶ This secondary displacement adds another layer of hardship to their already difficult lives.

378. For girls born out of rape, the stigma becomes particularly acute when they reach marriageable age. In their communities, they are often deemed unsuitable for marriage due to the circumstances of their birth, with potential suitors rejecting them because "*she doesn't have a father, she doesn't have a name*".⁶⁷⁷ This rejection not only affects their chances of marriage but also reinforces their status as outcasts within the community.

379. Young men born out of rape face similar challenges, as they too struggle to find partners willing to marry them, leading some to leave the area entirely in search of acceptance elsewhere.⁶⁷⁸

380. The social stigma attached to survivors of gender-based violence adds another dimension of suffering for many women in the camps. For survivors, the violence did not end with the physical attack; the isolation and judgment they face from others compound the trauma they carry.

⁶⁷⁶ V-001: T-120, p.27, line 22 – p. 28, line 10

⁶⁷⁷ V-001: T-120, p.31, line 5

⁶⁷⁸ V-001: T-120, p. 31, lines 10 - 18

381. **V-001** explained that victims of rape often perceive themselves as separate from society, believing that they are seen solely as the raped woman. *Hawa* from Mukjar described this isolation: “We live here without security, without support, carrying memories that haunt us.”⁶⁷⁹ For these women, and as described by **V-0001** and **V-0005**, the camps represent not only a place of physical displacement but also a constant reminder of their trauma.

382. Many women are not only victims of rape, but also lost their husbands. And are left to care alone for their children , while also grappling with their own trauma. **V-005** shares the experience of many widows in refugee camps face immense emotional and physical burdens. They are often left to be both mother and father, striving to create some sense of normalcy for their children while they themselves deal with their loss and trauma.

383. Despite the immense suffering they endure, many women in the camps have formed support networks to help one another through the challenges of camp life. The testimony provided by this **V-0005** offered a compelling insight into the solidarity among women in IDP camps, who have formed associations to provide mutual support in the face of extreme hardship. These women, many widows, have developed community-driven initiatives to help each other navigate the difficulties of displacement, sickness, and loss.

384. **V-0005** described how women in the camp, through their association, gathered resources from the community, such as wheat, corn, okra, and fava beans, which are stored collectively at the home of the association's leader. These resources formed a kind of trust fund that the women draw from in times of crisis. When a member of the community falls ill or faces other emergencies, such as a fire, the association steps in to provide essential aid, offering both food and financial assistance to those in need.⁶⁸⁰

⁶⁷⁹ a/05359/23, Video Communication to CLRV, June 2024

⁶⁸⁰ V-005: T-128, p.24, lines 2-7.

385. *Halima*, a community leader, shared with the CLRV about the work of the local women association, noting that: *“things have become so difficult lately. It’s harder for us to help each other like we used to. We try to gather women to work on farms, and then we distribute what we harvest to those in need, but the situation is becoming unbearable. Everyone is exhausted. There’s no food, no medicine, no water. We share what little we have with the animals so they can help us farm, but it’s not enough.”*⁶⁸¹

386. The association not only provides material support but also offers a sense of protection and security for the women in the camp. **V-0005** explained how they organized groups of women to go into the wilderness to collect firewood, a task that, while necessary for survival, also exposes them to risks of attack or aggression. By working together, the women created a protective network, standing by one another in moments of vulnerability and danger.

387. The economic burden of single-handedly supporting a family is reflected in what *Mariam* reflects by saying, *“My children and I work to provide one meal a day, and many times we fail.”*⁶⁸² For families in the camps, the instability of aid and scarcity of resources mean that basic survival is a daily struggle, particularly for households led by women only.

H. Expectations from the Trial

388. Victims hold high expectations for the Court, primarily centred on justice and accountability, expeditious proceedings and the restoration of rights and lands. P-1074 emphasized the need to hold perpetrators accountable and disarm armed groups who continue to terrorize their communities.⁶⁸³ Others, like Witness P-0007, see the Court as a deterrent, hoping the prosecution of perpetrators will *“serve as a lesson to others”*⁶⁸⁴ and prevent future atrocities.

⁶⁸¹ a/10126/22, townhall meeting with CLRV, July 2024.

⁶⁸² a/05347/23, Video Communication with CLRV in August 2024.

⁶⁸³ DS: P-0074 - a/10486/22: T-103, p. 47, lines 3-6.

⁶⁸⁴ DS: P-0007 – a/10482/22: T-089, p. 18, line 10.

389. Most applications submitted by participating victims' mention fairness of the Court and accountability against the attackers as main expectations. **Nouradine** claimed in a meeting with the CLRV: *"We need to see accountability, and if the trial drags on for too long, there is a fear that we may never get it."*⁶⁸⁵ He further expressed his fears: *"that the longer this trial takes, the more likely it is that he might escape justice simply because of his age. This makes me wonder if all that we've been through will be in vain. The thought that he could go free because of his years is a nightmare for all of us who have suffered so much."*⁶⁸⁶

390. This was sided by **Abdallah**, a refugee in Chad, who said: *"We are surrounded by problems, and it's hard to see a way out. Life feels stagnant, and it's only getting harder. I hope the trial can finish quickly because we have suffered so much. The memories of what happened during the war still haunt us, but now, our suffering is being prolonged."*⁶⁸⁷

391. **Khamis** from Deleig emphasizes that *"a prompt sentencing is essential,"*⁶⁸⁸ noting the long-standing suffering since 2003-2004. The message from **Fathia** to the CLRV enforces this sentiment: *"Knowing that the case might be finished by the end of the year gives me some hope after all this waiting."*⁶⁸⁹ **Hawa**, a refugee in Chad, stressed that: *"After waiting for 20 years, we can wait a little longer to see what the judges decide, but it's hard to live in this uncertainty. Still, we are alive, and we will continue to wait."*⁶⁹⁰

392. Many victims have noted, through consultation with the CLRV, that prosecution of alleged perpetrators is not only essential for justice, but also a deterrent to prevent further atrocities. This expectation is tied to the hope that a strong legal response will mark a turning point in restoring safety for the displaced.

393. Victims also see the trial as a means to reclaim their dignity and rights. **Musa** from Kalma described the camp as *"a large prison,"* where the residents are

⁶⁸⁵ a/25179/21, Townhall meeting with the CLRV.

⁶⁸⁶ a/25179/21, Townhall meeting with the CLRV.

⁶⁸⁷ a/25023/21, Townhall meeting with CLRV.

⁶⁸⁸ a/10550/22, Video Communication to CLRV, October 2024.

⁶⁸⁹ a/10202/22, Townhall meeting with the CLRV.

⁶⁹⁰ a/10361/22, Townhall meeting with the CLRV.

deprived of even basic freedoms. He believes that a judgement would restore a sense of justice, helping victims feel acknowledged and respected by the international community.⁶⁹¹

394. The loss of homeland and livelihoods weighs heavily, with many victims looking to the court for a restoration of some form of normalcy. **Salma** from Mukjar voices the common hope that *“justice will allow us to return to our villages and rebuild our lives.”*⁶⁹² **Faisal** displaced in Mukjar, says in a message to the CLRV: *“We demand that the International Criminal Court stand with us to hold all criminals accountable so that we can return to our villages safely and without obstacles. We also demand reparations for everyone for our stolen money.”*⁶⁹³

395. **Khalil** is convinced: *“It is necessary to hold those responsible accountable. It means stability and a return to our villages, and it is a very important lesson for all criminals. It also means restoring our long-lost human dignity, and not holding him accountable means endless suffering because the Janjaweed will continue their tyranny unchecked, and this is unacceptable to the human conscience.”*⁶⁹⁴ **Zakaria wants the Trial Chamber to know:** *“We were honorable people in our villages, and that is why we demand that the criminal Ali Kushayb be held accountable for the crimes committed against us and for the loss of the meaning of life, and that our rights be restored.”*⁶⁹⁵

396. Those statements, and many more from participating victims, reveal that beyond punitive justice, victims expect an outcome that will address the enduring displacement and deprivation of basic rights caused by the crimes committed. *“Due to the attack, we have become poor. Therefore, we demand that the accused person be tried as soon as possible, and there are also several criminals who collaborated with him who must be held accountable. They are the ones who caused all this hell we are living in. We want a*

⁶⁹¹ a/05246/23, Video Communication to CLRV, September 2024.

⁶⁹² a/05887/23, Video Communication to CLRV, June 2024.

⁶⁹³ a/10447/22, Video Communication to CLRV, April 2024.

⁶⁹⁴ a/05424/23, Video Communication to CLRV.

⁶⁹⁵ a/10080/22, Video Communication to CLRV.

*life where justice prevails, and we thank the International Criminal Court for standing with the Darfur victims.”⁶⁹⁶, is the message from **Dawood**.*

397. Followed by **Hassan** whose message is: *“We ask them to help us hold all the perpetrators of crimes against humanity accountable and to convey our message to the world that we want security and safety to return to our villages and to continue our normal lives because human life is limited, and we have been in the camps for nearly two decades. Even our children have forgotten their original places.”⁶⁹⁷*

IX. Conclusion

398. The CLRV asks the Chamber to take her submissions into consideration and to make explicit findings in its Judgment which reflect the extent of the harm which the crimes allegedly committed have caused to the participating victims as well as the views and concerns presented during the entire proceedings. While a repair of this harm is impossible, the victims would find relief and hope for the future in an official recognition from this Court for what they have individually and collectively suffered.

Respectfully submitted,



Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 13 of November 2024

Berlin, Germany

⁶⁹⁶ a/10592/22, Video Communication to CLRV, September 2024.

⁶⁹⁷ a/10093/22, Video Communication to CLRV, June 2024.