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Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-02/05-01/20

Date: 24 May 2021

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Tomoko Akane  
Judge Antoine Kesia-Mbe Mindua

**SITUATION IN DARFUR, SUDAN**

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

**Public**

**Public Redacted Version of "Written submissions pursuant to rule 121(9) of the Rules of Procedure and Evidence", 21 May 2021, ICC-02/05-01/20-405-Conf**

**Source:** Legal Representative of the Victims

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

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## I. INTRODUCTION

1. The Legal Representative of the Victims makes these submissions pursuant to article 68(3) of the Rome Statute, rule 121(9) of the Rules of Procedure and Evidence and the ruling of the Single Judge that victims 'shall be entitled to file ... written submissions on points of fact and law, as provided for in rule 121(9)'.<sup>1</sup>
2. The submissions are based on views and concerns expressed by victims represented by the Legal Representative during consultations undertaken over a number of months. Victims' views support the charges formulated by the Prosecutor, as will be elaborated during oral submissions at the confirmation hearing. But the victims also have serious concerns about the scope of the current charges which, in the victims' view, do not fully reflect the suspect's criminal conduct. The charges as currently formulated do not respect the victims' right to the truth and to potential reparations. Victims have asked the Legal Representative to convey to the Chamber how important it is to them that any trial of the suspect reflects the scale of crimes committed against them, even if this would mean that the process could take more time.
3. The Legal Representative submits that the Prosecutor should undertake further investigative activities, particularly in relation to two priority categories of lead information: (1) sexual violence, including rape, allegedly perpetrated by the suspect himself as well as by the Janjaweed;<sup>2</sup> and (2) crimes committed in Arawala and Garsila and additional crimes committed in Mukjar. Such investigative acts should be carried out with a view to making a request to this Chamber to amend or add charges under Article 61(9) of the Statute should existing charges be confirmed.

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<sup>1</sup> [ICC-02/05-01/20-314](#), para 33.

<sup>2</sup> According to the OTP, the term 'Janjaweed' is 'a general description for irregular fighters that originated mainly from Arab tribes and were allied with the GoS Forces in the non-international armed conflict in Darfur, Sudan. The Militia/*Janjaweed* were also known as *Bashmerga*, *Fursan* and *Mujahidin*.' The OTP states that '[b]etween at least August 2003 and at least April 2004, ABD-AL-RAHMAN was a senior leader of the Militia/*Janjaweed* in the Wadi Salih and Mukjar Localities, West Darfur State ("West Darfur"), Sudan.' See [ICC-02/05-01/20-325-Anx1-Corr2-Red](#), paras 1 and 3.

## II. CLASSIFICATION

4. These submissions are classified as ‘confidential’ pursuant to regulations 23*bis* (1) and (2) of the Regulations of the Court as they refer to documents marked with the same classification. A public redacted version will be filed in due course.

## III. PROCEDURAL HISTORY

5. On 27 April 2007 and 9 June 2020, Pre-Trial Chamber I issued warrants of arrest against Mr Ali Muhammad Ali Abd-Al-Rahman.<sup>3</sup> On 18 January 2021, 5 February 2021, 19 March 2021, and 19 May 2021, the Single Judge issued decisions relating to legal representation of victims.<sup>4</sup> On 29 March 2021, the Prosecutor filed the Document Containing the Charges (‘DCC’)<sup>5</sup> and on 16 April 2021, the Prosecutor filed a Pre-Confirmation Brief (‘PCB’).<sup>6</sup> On 21 April and 7 May 2021, the Registry filed reports assessing applications for victim participation in the proceedings.<sup>7</sup> On 19 May the Pre-Trial Chamber granted the applications of 151 victims to participate in the case. This includes 126 victims represented by the Legal Representative.

## IV. VICTIMS’ VIEWS AND CONCERNS ON THE SCOPE OF THE CHARGES

6. The Legal Representative acknowledges that the Prosecutor enjoys a wide discretion in deciding which charges to pursue against a suspect. But in exercising these discretionary powers, the Prosecutor must at all times take the interests of victims into account.<sup>8</sup> Investigations must be carried out ‘for the principal goal of determining the truth’<sup>9</sup> and should ensure that ‘the most serious

<sup>3</sup> [ICC-02/05-01/07-3-Corr](#); [ICC-02/05-01/07-74-Red](#).

<sup>4</sup> [ICC-02/05-01/20-259](#); [ICC-02/05-01/20-277](#); [ICC-02/05-01/20-314](#); [ICC-02/05-01/20-398](#).

<sup>5</sup> [ICC-02/05-01/20-325 and its Annexes](#); [ICC-02/05-01/20-325-Anx1-Corr2-Red](#).

<sup>6</sup> [ICC-02/05-01/20-346-Red and its Annexes](#).

<sup>7</sup> [ICC-02/05-01/20-358](#); [ICC-02/05-01/20-383-Red](#).

<sup>8</sup> Article 53(1)(c), 53(2)(c), and 54(1)(b) of the Rome Statute. See also [ICC-01/04-313](#), para 11.

<sup>9</sup> [ICC-01/09-01/11-859](#), para 34.

crimes of concern to the international community as a whole' do 'not go unpunished'.<sup>10</sup>

7. If the charges are unduly narrow, victims lose the right to participate in the case because the crimes committed against them are not included in the charges. This means that their views and concerns would not be presented during the trial and they would be denied their right to know the truth and to have it acknowledged. Victims also lose their right to claim reparations. As the Appeals Chamber has confirmed 'only victims ... who suffered harm as a result of the commission of the crimes of which [the accused] was found guilty, may claim reparations'.<sup>11</sup> So the scope of the charges has a direct and potentially irreversible impact on victims' interests.
8. As this Pre-Trial Chamber confirmed in *Yekatom and Ngaïssona*, 'the victims' right to present their views and concerns ... pursuant to article 68(3) of the Statute ... may well include concerns as to the choices made by the Prosecutor in the formulation of the charges'.<sup>12</sup> And judges considering proposed amendments to charges do so 'taking into consideration diverse factors affecting the case ... including ... the rights of the accused *as well as those of the victims*'.<sup>13</sup>
9. The Appeals Chamber has also confirmed that the Prosecutor has a '*duty* to establish the truth' and that this duty 'is not limited to the time before the confirmation hearing'.<sup>14</sup> This means that 'it must be possible for the Prosecutor to continue his investigation in respect of crimes that are not covered by the document containing the charges ... if this is necessary in order to establish the truth'.<sup>15</sup> And the Appeals Chamber has held that limiting the right of the Prosecutor to investigate after a confirmation hearing would conflict with article

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<sup>10</sup> See Preamble of the Rome Statute.

<sup>11</sup> [ICC-01/04-01/06-3129](#), para 211. See also paras 65, 69, 99, 196-198.

<sup>12</sup> [ICC-01/14-01/18-403-Red-Corr](#), paragraph 55.

<sup>13</sup> [ICC-01/09-02/11-700-Corr](#), para 22 (emphasis added).

<sup>14</sup> [ICC-01/04-01/06-568](#), para 52 (emphasis added).

<sup>15</sup> *Ibid*, paras 51-52.

61 (9) of the Statute which allows ‘a possibility to add further charges until the trial has begun’.<sup>16</sup>

10. The Legal Representative therefore submits that the Prosecutor should carry out additional investigations as soon as possible with a view to filing a request to the Pre-Trial Chamber – in the event that the existing charges are confirmed – to add or amend charges in line with article 61(9) Rome Statute or to file new charges should existing charges not be confirmed.

**A. THE CHARGES SHOULD REFLECT ADDITIONAL SEXUAL AND GENDER BASED CRIMES**

11. The Prosecutor confirmed in her ‘Policy Paper on Sexual and Gender-Based Violence’ that ‘sexual and gender-based crimes are amongst the gravest under the Statute’. The Policy confirmed that she ‘will pay particular attention to these crimes from the earliest stages’ and ‘will *ensure* that charges for sexual and gender-based crimes are brought *wherever there is sufficient evidence to support such charges*’.<sup>17</sup> And in her Strategic Plan for 2019 to 2021, the Prosecutor confirmed that ‘all prosecutions’ should ‘have a priority focus on’ sexual and gender-based violence.<sup>18</sup> The Appeals Chamber has also highlighted that ‘generally speaking and all other things being equal, a person who is found to commit a crime him- or herself bears more blameworthiness than a person who contributes to the crime of another person or persons. Accordingly, it contributes to a proper labelling of the accused person’s criminal responsibility’.<sup>19</sup>
12. Nevertheless, the charges against this suspect are very narrow when it comes to sexual violence. And they do not reflect victims’ accounts of physical perpetration by the suspect himself, including rape.
13. Currently the DCC alleges that in Bindisi and surrounding areas, Janjaweed militia and government forces raped at least 17 women in a two-day period

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<sup>16</sup> *Ibid*, para 51. See also para 55 (noting that this does not conflict with the rights of the defence).

<sup>17</sup> OTP, [Policy Paper on Sexual and Gender-Based Crimes](#), paras 1, 3, 4 and 7 (emphasis added).

<sup>18</sup> OTP, [Strategic Plan 2019-2021](#), p. 37. See also Rule 86 of the Rules of Procedure and Evidence.

<sup>19</sup> [ICC-01/04-01/06-3121-Red](#), para 462 (emphasis added).

between about 15 and about 16 August 2003. The evidence presented includes that of [REDACTED] as well as the accounts of multiple eyewitnesses to these crimes. In addition, the suspect is only charged with physical perpetration of crimes in a limited manner, specifically: (a) his alleged murder of two or three Fur male detainees in or near the Deleig police station, and (b) his alleged verbal and physical abuse of Fur male detainees at Mukjar and Deleig police stations in February-March 2004. The charges do not include the suspect's alleged acts as a physical perpetrator of rape and his alleged responsibility for other crimes against women and girls. An expansion of the investigation should, therefore, include an investigation of the accounts of the victims summarised below.

#### **Victims of rape allegedly perpetrated by the suspect**

14. Three victims represented by the Legal Representative report being victims of rape physically perpetrated by the suspect. These rapes are alleged to have occurred within the temporal and geographic scope of the current charges in the case and information about them has been made available to the Prosecutor. The Legal Representative submits that the Prosecutor should conduct further investigation into this lead information as soon as possible with a view to taking additional action to seek to amend the charges as appropriate.
15. [REDACTED] is a prosecution lead and a victim admitted to participate in the proceedings. Her screening notes have been disclosed to the defence.<sup>20</sup> She recounts that [REDACTED]. [REDACTED]. The Legal Representative facilitated a screening interview between [REDACTED] and the Prosecution team but understands that further interviews with the victim had to be postponed for reasons beyond the Prosecutor's control.
16. [REDACTED] is a prosecution lead and a victim who applied to participate in the proceedings.<sup>21</sup> Her screening notes have been disclosed to the defence.<sup>22</sup> She

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<sup>20</sup> [REDACTED]. The Prosecutor disclosed the screening note of this meeting on 4 May 2021.

<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED]. The Prosecutor disclosed the screening note on 4 May 2021.

recounts being captured in 2003 [REDACTED]. [REDACTED]. [REDACTED].<sup>23</sup>  
The Legal Representative facilitated an interview of this victim by the Prosecution team.<sup>24</sup>

17. Victim a/25196/21, a victim represented by the Legal Representative who applied to participate in the proceedings, recounted that [REDACTED]. [REDACTED]. [REDACTED]. The Legal Representative has informed the Prosecution team that the victim is willing to speak to prosecutors. She was not admitted to participate in the proceedings on the basis that the harm that she suffered is outside the scope of the current charges.

### **Victims of rape allegedly perpetrated by Janjaweed forces**

#### **Alleged rape of Fur women in Mukjar and surrounding areas in 2003**

18. Victims represented by the Legal Representative recount that they were raped by members of the Janjaweed, in at least one instance on the direct orders of Mr Abd-Al-Rahman, in Mukjar and surrounding areas in or around August 2003. Others state that they were eyewitnesses to such crimes.
19. One victim, [REDACTED].<sup>25</sup> Another described how the Janjaweed hit her on the head with a gun butt and stabbed her in the eye with their fingers [REDACTED].<sup>26</sup> Victim a/25100/21 said that [REDACTED].<sup>27</sup> And another victim stated that [REDACTED].<sup>28</sup>
20. In addition, a young Fur victim who is admitted to participate in the proceedings reported that she was raped on the direct orders of Mr Abd-Al-Rahman. She recalled that Ali Kushayb ordered his militia to rape women in Mukjar in 2003 and that she was one of the women who was raped by the Janjaweed at that time.

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<sup>23</sup> [REDACTED].

<sup>24</sup> The Legal Representative understands that the Prosecution team has been in touch with the victim to conduct further interviews.

<sup>25</sup> a/25061/21.

<sup>26</sup> a/25190/21.

<sup>27</sup> a/25100/21

<sup>28</sup> a/25017/21.



[REDACTED].<sup>29</sup> [REDACTED].<sup>30</sup> Prosecution evidence confirms the Janjaweed's widespread rape of women and girls in Mukjar and surrounding villages in or around August 2003.<sup>31</sup> [REDACTED].<sup>32</sup>

**Alleged Rape of Fur Women in Kodoom and Bindisi and surrounding areas on or about 15-16 August 2003**

21. The sexual violence related charges included in the DCC are limited to the accusation that the Janjaweed and Sudanese Government forces 'raped at least 17 women, including the persons listed in Annex 1B' in Bindisi and surrounding areas on or about 15 or 16 August 2003.<sup>33</sup>

22. But other victims have made additional allegations of this nature as well. Two victims who are represented by the Legal Representative allege that they were raped by members of the Janjaweed in Kodoom, Bindisi and surrounding areas on or about 15 August 2003. [REDACTED] is a prosecution lead and a victim admitted to participate in the proceedings.<sup>34</sup> [REDACTED]. [REDACTED]. The Legal Representative facilitated an introductory meeting between [REDACTED] and the Prosecution team and she has indicated her willingness to give evidence if requested to do so.<sup>35</sup>

23. Prosecution witness [REDACTED] was in Bindisi on 15 August 2003 when her village was attacked by Mr Abd-Al-Rahman and his militia. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].<sup>36</sup> The Legal Representative facilitated an introductory meeting between [REDACTED] and the Prosecution

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<sup>29</sup> a/25174/21.

<sup>30</sup> a/25004/21. Also a/25019/21 and a/25088/21.

<sup>31</sup> See e.g. [REDACTED]; P-0011, DAR-OTP-0088-0219, at 0233, paras 82-83; [REDACTED]: P-0007, DAR-OTP-0088-0060-R01, at 0069, para 36; P-0755, DAR-OTP-0211-0072, at 0084, paras 40-41.

<sup>32</sup> [REDACTED]. See also the report of the UN Commission of Inquiry, UN, DAR OTP-0209-0593, at 0681, para 341 (relating to sexual violence in Mukjar in 2004).

<sup>33</sup> [ICC-02/05-01/20-325-Anx1-Corr2-Red](#), para. 5. The first arrest warrant included an additional count of rape in Arawala.

<sup>34</sup> [REDACTED]. The Prosecutor disclosed the screening note of this meeting on 4 May 2021.

<sup>35</sup> *Ibid.*

<sup>36</sup> [REDACTED]. The Prosecutor disclosed the screening note of this meeting on 4 May 2021.

team and she has indicated her willingness to give evidence if requested to do so.<sup>37</sup>

### **Alleged Rape of Fur Women in Arawala and Garsila**

24. The warrant for Mr Abd-Al-Rahman's arrest included two counts of rape in Arawala in or around December 2003. Although these do not appear in the DCC, in addition to the account of victim a/25196/21 mentioned above, at least one witness alleges that she was raped in Mr Abd-Al-Rahman's [REDACTED]. [REDACTED].<sup>38</sup> [REDACTED].<sup>39</sup> [REDACTED].

25. This adds to evidence already gathered by the Prosecution. [REDACTED].<sup>40</sup> Prosecution witness [REDACTED] recounts [REDACTED].<sup>41</sup> Other prosecution witnesses describe how they heard of women and girls being raped in Arawala's surrounding areas in late 2003.<sup>42</sup> Prosecution witnesses confirm that widespread rape and sexual violence by the Janjaweed took place in and around Garsila in 2003 and 2004.<sup>43</sup> This includes [REDACTED].<sup>44</sup>

### **B. THE CHARGES SHOULD REFLECT ADDITIONAL CRIMES COMMITTED IN ARAWALA, GARSILA AND MUKJAR**

#### **Arawala and surrounding areas**

26. The first arrest warrant included charges relating to crimes committed by Mr Abd-Al-Rahman in Arawala and surrounding areas in or around December 2003. But in the Document Containing the Charges, the counts relating to Arawala have been omitted. This is of concern to the victims since a number of victims

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<sup>37</sup> *Ibid.*

<sup>38</sup> [REDACTED].

<sup>39</sup> [REDACTED].

<sup>40</sup> [REDACTED].

<sup>41</sup> [REDACTED].

<sup>42</sup> [REDACTED].

<sup>43</sup> [REDACTED].

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

represented by the Legal Representative have personally been victimised by Mr Abd-Al-Rahman or his militia in Arawala during this time. Several victims represented by the Legal Representative recounted that the villages surrounding Arawala including Um Jemena<sup>45</sup> were attacked by the suspect and his Janjaweed militia in or around November and December 2003, leading to villages being burned to the ground, the loss of homes, land, possessions as well as victims' displacement.<sup>46</sup>

27. Victims represented by the Legal Representative described how the Janjaweed led by the suspect killed civilians during this attack. One victim recalled seeing Mr Abd-Al-Rahman and his militia during an attack on Arawala market in November 2003, and said that 'they slaughtered there'.<sup>47</sup> Another victim described how Mr Abd-Al-Rahman's militia killed several civilians that she can name in Arawala in December 2003.<sup>48</sup> Individuals with the same or similar names were also mentioned by Prosecution witnesses as among those who were killed in or around Arawala in late 2003.<sup>49</sup> Victim a/25162/21 described how the Janjaweed [REDACTED].<sup>50</sup> [REDACTED]. [REDACTED].<sup>51</sup> At least three victims stated that they lost their houses and all of their possessions after the Janjaweed attacked Arawala in December 2003 which left 'the whole village burned'.<sup>52</sup>

28. Prosecution evidence, including the statements of P-0016 and P-0013, confirms these accounts.<sup>53</sup> And investigative reports in the case file confirm that the Arawala area was attacked starting in November 2003. According to Human

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<sup>45</sup> This is also spelled Amjemena and Ndjamena.

<sup>46</sup> E.g., 25097/21, a/25103/21, a/25151/21, a/25014/21, a/25015/21, a/25150/21, a/25097/21, a/25103/21. See also P-0013, DAR-OTP-0088-0129-R01, paras. 33-34.

<sup>47</sup> a/25150/21.

<sup>48</sup> a/25151/21.

<sup>49</sup> See e.g. P-0752, DAR-OTP-0210-0122-R01, paras 25, 33, 37; P-0727, DAR-OTP-0210-0346-R01, paras 43, 69; P-0724, DAR-OTP-0210-0524-R01, paras 46, 52.

<sup>50</sup> a/25162/21.

<sup>51</sup> a/25026/21.

<sup>52</sup> See a/25151/21. See also victim a/25014/21 and a/25015/21.

<sup>53</sup> P-0016, DAR-OTP-0088-0150-R01, para 35-41; P-0013, DAR-OTP-0088-0129-R01, paras. 26-27, 30, 38, 41. See also P-0129 (DAR-OTP-0128-0128-R01 or DAR-OTP-0128-0128-R02 [lesser redacted version]), para 131, 133; P-0724, DAR-OTP-0210-0524-R01, paras 37-50.

Rights Watch: '[s]even of thirteen villages in the Arwalla area [...] were looted and totally or partially destroyed. Most of the villagers were forced into neighboring larger towns, almost entirely destitute.'<sup>54</sup> According to these reports, eyewitness accounts confirm that Janjaweed militiamen killed Fur civilians during the Arawala attacks and identify Mr Abd-Al-Rahman as the leader of these attacks.<sup>55</sup>

### **Garsila and surrounding areas**

29. A number of victims represented by the Legal Representative described Mr Abd-Al-Rahman and his militia killing civilians in and around Garsila in 2003-2004.<sup>56</sup>

30. Some victims were the targets of the abuses. For instance, victim a/25009/21 reported that [REDACTED]. [REDACTED]. Victim a/25070/21 said that he was tortured by Janjaweed in Garsila prison in early March 2004, describing how 'we were tortured by fire; all kinds of torture were applied on us'. Victim a/25075/21 states that he remains injured until this day after he was [REDACTED]. And victim a/25113/21 states that he was severely tortured in an area near Garsila in or after January 2004. [REDACTED].

31. One woman from Garsila who is represented by the Legal Representative was [REDACTED].<sup>57</sup> [REDACTED].<sup>58</sup>

32. Other victims reported being eyewitnesses to these events. Victim a/25178/21 recalled seeing how the suspect [REDACTED]. And she said that in early 2003 she 'used to see Kushayb in Garsila with Janjaweed forces, [REDACTED].<sup>59</sup> Victim a/20673/20 also came upon Mr Abd-Al-Rahman himself giving instructions to his militias in Garsila [REDACTED].

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<sup>54</sup> HRW, DAR-OTP-0003-0099, at 0128; See also HRW, DAR-OTP-0107-1151, at 1180.

<sup>55</sup> HRW, DAR-OTP-0003-0099, at 0132; See also [ICC-02/05-56](#), para 243.

<sup>56</sup> a/25189/21, a/25009/21, a/25178/21, a/25196/21, a/20673/20, a/25011/21.

<sup>57</sup> a/25178/21.

<sup>58</sup> a/25178/21.

<sup>59</sup> a/25178/21.

33. Similarly, several prosecution witnesses speak about torture or other ill-treatment by Mr Abd-Al-Rahman and his men against Fur people in Garsila<sup>60</sup> and killings of Fur civilians by the Janjaweed in 2003 and 2004 in and around Garsila.<sup>61</sup> And NGO reports in the case file also state that Fur civilians were tortured in and around Garsila in 2004.<sup>62</sup>

### **Mukjar and surrounding areas**

34. The first arrest warrant included several counts of crimes committed by Mr Abd-Al-Rahman in Mukjar town and surrounding areas 'between August 2003 and March 2004'. But the Document Containing the Charges only includes a more limited set of alleged crimes in Mukjar and surrounding areas between the end of February 2004 and the beginning of March 2004.

35. A large number of victims represented by the Legal Representative described how the Janjaweed, under the leadership of Mr Abd-Al-Rahman, attacked Mukjar town and its surrounding villages in 2003, attacking civilians and looting and destroying their property. One victim residing in Mukjar recalled how he lost all of his belongings in his house, as well as his cattle and agricultural crops in an attack in August 2003.<sup>63</sup> Another describes how Mr Abd-Al-Rahman gave orders to his militia to loot 'the Market, shops, cattle and all the residents' belongings' during the same attack.<sup>64</sup> One victim recalled that during the attack of [REDACTED] one of Mukjar's surrounding villages, in August 2003 he heard the Janjaweed shouting 'you Nuba, you are the slaves of Ali Kushayb your ruler',

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<sup>60</sup> See e.g. P-0092, DAR-OTP-0012-0175-R01, paras 51, 54; P-0585, DAR-OTP-0201-0037-R01, paras 66-75.

<sup>61</sup> See e.g. P-0585, DAR-OTP-0201-0037, paras 20, 37-39; P-0719, DAR-OTP-0210-0154-R01, paras 25, 40; P-0724, DAR-OTP-0210-0524-R01, at 0536, paras 60-61.

<sup>62</sup> See, for instance, Human Rights Watch, DAR-OTP-0003-0099, at 0314.

<sup>63</sup> a/25179/21.

<sup>64</sup> a/25085/21. Other victims made similar allegations regarding surrounding villages: Takinja (a/25061/21, a/25091/21, a/25008/21, a/25098/21), Karbi (a/25100/21), Kabok (a/25099/21), Dambo (a/25004/21), and AlQadeem, or Old Mukjar (a/25090/21).

after which they burned the town to the ground and looted the civilians' property.<sup>65</sup>

36. Some victims alleged that they were direct victims of physical abuse and torture either by the suspect personally or on his orders. A young Fur victim said that [REDACTED]<sup>66</sup> Another victim said that Mr Abd-Al-Rahman [REDACTED].<sup>67</sup> A third victim recalls how, when she was displaced to Mukjar in August 2003, 'Ali Kushayb, along with many militias, arrived riding camels and horses and casually [REDACTED].<sup>68</sup> Another victim also describes how a 'severely injured' man he met just outside of Mukjar in August 2003 told him that [REDACTED].<sup>69</sup>

37. One victim said that [REDACTED].<sup>70</sup> [REDACTED]. The victim still suffers from injuries as a result of this mistreatment. Victim a/25008/21 recalled seeing the Janjaweed [REDACTED]. [REDACTED].<sup>71</sup>

38. Prosecution evidence already in the case file confirms the attacks against Mukjar and surrounding villages in August 2003 targeting Fur civilians.<sup>72</sup> According to Witness [REDACTED], the Janjaweed [REDACTED].<sup>73</sup> Prosecution witnesses confirm that villages around Mukjar were burned to the ground and that Fur civilians in the town of Mukjar and its surrounding villages had their possessions looted.<sup>74</sup> NGO reports in the case file also confirm that in 'August 2003, Fur villages in Mukjar and Bindisi districts were attacked by the Janjaweed and government forces who [...] killed civilians'.<sup>75</sup> This includes 'reported mass executions during an attack on Mukjar in August 2003'.<sup>76</sup>

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<sup>65</sup> a/25008/21.

<sup>66</sup> a/25094/21.

<sup>67</sup> a/20672/20.

<sup>68</sup> a/25084/21.

<sup>69</sup> a/25146/21.

<sup>70</sup> a/25177/21.

<sup>71</sup> Also a/25146/21, a/25099/21.

<sup>72</sup> See e.g. [REDACTED]; P-0023, DAR-OTP-0088-0169-R01, paras 73-76; P-0129, DAR-OTP-0128-0128-R03, paras 31, 33, 38 ; P-0307, DAR-OTP-0158-0026-R01, lines 560-580 ; [REDACTED].

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

<sup>74</sup> See e.g. P-0029, DAR-OTP-0094-0119-R01, para 50; P-0012, DAR-OTP-0119-0503-R01, paras 72-75.

<sup>75</sup> HRW, DAR-OTP-0003-0099, at 0124.

<sup>76</sup> Amnesty International, DAR-OTP-0006-0207, at 0215.

## V. CONCLUSION

39. The current charges against the suspect are so narrow that victims, including victims alleging that they were personally raped by the suspect, are being denied the right to participate in the case. They cannot express their views and concerns in the proceedings or vindicate their right to the truth. And they will not be able to claim reparations in the event of a conviction. The Legal Representative requests that the victims' views and concerns be taken into consideration, and that the Prosecutor should continue her investigation with a view to taking further procedural steps as appropriate, including by applying to amend or add to the charges under article 61(9) of the Rome Statute if existing charges are confirmed.
40. Counsel representing victims in these proceedings have consulted and agree that the interests of their respective clients are affected by the scope of the charges in this case. Victims have expressed their serious concerns about the limited scope of the charges as currently formulated. While submitting two separate filings to fully represent the interests of their respective clients, counsel agree that there is a need for further investigations by the prosecution following the confirmation hearing with a view to taking steps to amend or add charges as appropriate.



Amal Clooney



Nasser Mohamed Amin Abdalla

**Legal Representatives of the Victims**

Dated this 24<sup>th</sup> day of May 2021