

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 February 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 “Corrigendum to ‘CLR V Request for Trial Chamber guidance on mapping of potential beneficiaries’, 16 February 2024 (ICC-02/05-01/20-1076-Conf)”, 22 February 2024 (ICC-02/05-01/20-1076-Conf-Corr)

Source: The Common Legal Representative of Victims (CLR V)

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

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I. Introduction

1. The CLRV requests Trial Chamber I to issue further guidance on the ordered mapping of potential reparations beneficiaries.¹ Such guidance, at this juncture of the proceedings, will facilitate the effective and efficient conduct of the mapping process, and is therefore in the interests of the participating victims, as well as potential future beneficiaries of reparations, should a conviction be entered.
2. The CLRV further submits that such guidance will, importantly, also assist her in advising her clients, and therefore contribute to greater clarity at an earlier stage of the proceedings, as well as an appropriate management of expectations.
3. In particular, the CLRV requests the issuance of guidance, on the basis of the case record and the Court's relevant jurisprudence, to assist the Victims Participation and Reparations Section's ("VPRS") mandate, pursuant to the Chamber's order, to establish: (i) the approximate number of direct and indirect victims that may qualify as potential beneficiaries of reparations; and (ii) if available, the different types of harm the potential beneficiaries allege to have suffered.²

II. Procedural History

4. In the Second Decision on Admission, the Chamber noted the practice of Trial Chamber VI in the *Said* case,³ and later endorsed by the Appeals Chamber,⁴ to commence at an earlier stage of the proceedings the mapping of potential beneficiaries of the charged crimes "in order for the design and implementation of potential reparations to proceed expeditiously" in the event of a conviction.⁵
5. The Trial Chamber instructed the VPRS to "endeavour to have fully identified, mapped, or at least traced the relevant potential victim population by the time the parties have concluded their closing statements",⁶ and within four weeks of a

¹ 3 Oct. 2022, [ICC-02/05-01/20-761](#) ("Second Decision on Admission"), paras 13-21. Further to a CLRV request by email under Regulation 37(2) of the Regulations of the Court, and non-objection of the parties, the Chamber granted an extension of the page limit to 20 pages for this submission (Email Decision of 25 Jan. 2024).

² *Id.*, para. 18.

³ *Id.*, paras 13, 15 (citing *Said*, 13 April 2022, [ICC-01/14-01/21-278](#), paras 86-90).

⁴ *Ntaganda*, 12 Sep. 2022, [ICC-01/04-02/06-2782 A4-A5](#) ("*Ntaganda* Reparations Judgment"), paras 9, 340.

⁵ [Second Decision on Admission of Victims](#), para. 16.

⁶ *Id.*, para. 17.

judgment of conviction, submit a report on the outcome of the mapping process.⁷ The report should provide “for each of the incidents for which a conviction was entered: (i) the approximate number of direct and indirect victims that may qualify as potential beneficiaries of reparations; and (ii) if available, the different types of harm the potential beneficiaries allege to have suffered”.⁸

6. The Chamber stressed that the ordered “mapping mechanism does not affect the fact that the accused benefits from the presumption of innocence, until proven guilty beyond reasonable doubt”, and that any liability for reparations only arises in the event the accused is convicted of one or more of the confirmed charges.⁹
7. The Prosecution case closed on 28 February 2023.¹⁰ The CLRV presented the case on behalf of the participating victims over the course of five days, concluding on 17 October 2023. The Defence case opened on 19 October 2023, and is ongoing.
8. On 27 November 2023, the VPRS advised that, further to the Second Decision on Admission, it “is in the process of mapping potential beneficiaries of reparations [...] (beyond the participating victims in the proceedings) and the different types of harm they have suffered”, and requested access to the confidential case record, as information therein would be relevant and of assistance for its mandate.¹¹
9. The parties and CLRV advised that they did not object to the VPRS Request.¹²
10. On 11 January 2024, the Trial Chamber granted the VPRS Request.¹³

III. Submissions

11. The Chamber has received the core crime base evidence in these proceedings. It is not anticipated that future Defence witnesses will address in any substance core crime base issues. It is therefore appropriate for the Chamber to provide additional guidance at this juncture, and based on the case record and relevant jurisprudence,

⁷ [Second Decision on Admission of Victims](#), para. 18.

⁸ *Ibid.*

⁹ *Id.*, para. 20.

¹⁰ [ICC-02/05-01/20-887](#).

¹¹ Email from Chief of VPRS to Trial Chamber I, 27 Nov. 2023 at 10h56 (“VPRS Request”).

¹² Email from Defence to Trial Chamber I, 30 Nov. 2023 at 10h13; Email from Prosecution to Trial Chamber I, 4 Dec. 2023 at 16h39; Email from CLRV to Trial Chamber I, 4 Dec. 2023 at 17h12.

¹³ Trial Chamber I Email Decision to the parties, participants and Registry, 11 Jan. 2024 at 16h55.

to facilitate the effective and efficient conduct of the VPRS' mapping mandate. Such guidance will better ensure that the outcome of this process – in the event of a conviction – is of the greatest utility to the Chamber, as well as the CLRV, Defence, VPRS, and eventually the Trust Fund for Victims.

12. The CLRV submits that relevant guidance can be provided in two respects. Firstly, the **geographic and temporal scope** of the four incidents out of which the confirmed charges arise, and the **outer bounds of direct and indirect victims** who may qualify as potential beneficiaries in connection with these incidents. Second, legal guidance on **harm to potential indirect victims**: (a) under the **concept of transgenerational harm**; and (b) as **members of a community whose leaders have been targeted or killed**. The Chamber's guidance on these matters will assist the CLRV in advising and consultation with her clients, as well as benefit the outcome of the VPRS' mandate to "endeavour to have fully identified, mapped, or at least traced the relevant potential victim population"¹⁴ and facilitate the VPRS' understanding of the confidential case record.
13. The CLRV underlines that the requested guidance is for purposes of assisting the CLRV's duties and obligations and the VPRS' mapping mandate. Such guidance could not bind or constitute factual findings for purposes of the Chamber's ultimate determinations on the accused's alleged responsibility for the events underlying the confirmed charges. Nor would the Chamber's guidance constitute final determinations in the event of reparations proceedings, such as in respect of the required causal link between a crime and the stated harm arising therefrom.¹⁵
14. The issuance of the requested guidance arises from the Chamber's order to the VPRS, and is commensurate with the Appeals Chamber's indication, in a Defence appeal in these proceedings,¹⁶ that, "[d]epending on the circumstances, there may [...] be a role for a chamber to make interim orders and decisions in relation to reparations proceedings" prior to the reparations phase.

¹⁴ [Second Decision on Admission of Victims](#), para. 17.

¹⁵ See *Lubanga*, 3 Mar. 2015, [ICC-01/04-01/06-3129 A A2 A3](#) ("*Lubanga* Reparations Judgment") para. 80.

¹⁶ 18 Dec. 2020, [ICC-02/05-01/20-237 OA4](#), para. 14.

15. Given the lengthy period between sentencing and the finalisation of the reparations order in other ICC cases¹⁷ and the insecurity and lack of clarity it brings for participating victims and beneficiaries, the CLRV is anxious that all avenues are utilised to shorten this period for her clients in the event a conviction is entered. It is in this spirit that the CLRV submits this request and is convinced that the guidance sought will serve this goal.
16. Considering the purpose of the requested relief, the fruits of which would appear only after a conviction, the CLRV suggests the appropriate standard to be applied for purposes of the Chamber's factual guidance is that consistently applied at the reparations stage for factual determinations – a balance of probabilities.¹⁸

a. *Guidance on the geographical and temporal scope of the four incidents*

17. The Chamber's guidance, under a balance of probabilities, on the geographical and temporal scope of the four incidents that are the subject of these proceedings, will facilitate both the CLRV's and the VPRS' respective mandates.
18. To assist the Chamber in providing the requested guidance, the CLRV sets out below for each incident proposed factual findings and parameters aimed at capturing the outer bounds of the potential population of direct and indirect victims. The below submissions are not intended to capture all potential heads of harm that could arise from the charged incidents, nor do they discount that a potential victim may have suffered harm arising from multiple charged crimes, or that an individual may qualify as both a direct and indirect victim. Instead, the

¹⁷ *Al Mahdi* (plea agreement and a single charge) is an outlier – 15 months between the Judgment and Sentence (27 Sep. 2016, [ICC-01/12-01/15-171](#)) and finalisation of the Reparations Order before the Appeals Chamber (8 Mar. 2018, [ICC-01/12-01/15-259-Red2 A](#)). *Lubanga*: more than two years and seven months – 10 Jul. 2012 ([ICC-01/04-01/06-2901](#)) and 3 Mar. 2015 ([ICC-01/04-01/06-3129-AnxA](#)). *Katanga*: more than three years and nine months – 23 May 2014 ([ICC-01/04-01/07-3484-tENG](#)) and 8 Mar. 2018 ([ICC-01/04-01/07-3778-Red A3 A4 A5](#)). *Ntaganda*: addendum to the reparations order (presently under appeal) issued more than three years and eight months after sentencing – 7 November 2019 ([ICC-01/04-02/06-2442](#)) and 14 July 2023 ([ICC-01/04-02/06-2858-Red](#)). *Ongwen*: delivery of reparations order been schedule for 28 February 2024 (13 Feb. 2024, [ICC-02/04-01/15-2071](#)), more than two years and nine months post-sentencing judgment (6 May 2021, [ICC-02/04-01/15-1819-Red](#)).

¹⁸ See, e.g., [Lubanga Reparations Judgment](#), para. 84; *Katanga*, 8 Mar. 2018, [ICC-01/04-01/07-3778-Red A3 A4 A5](#), para. 42. A 'balance of probabilities' (or 'preponderance of the evidence') refers to a standard of assessment based on: "The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." (Black's Law Dictionary, B. Garner, ed., 11th ed., 2019)

below proposals and requested guidance are aimed at assisting the CLRV's obligation to advise and consult with her clients in a realistic fashion, and to help in framing the VPRS' mapping mandate at an early stage.

i. Attack on Kodoom (15 August 2003)

19. Counts 1 to 5, 10, and 11 of the confirmed charges concern, in part, alleged crimes arising from an attack by an armed group on the village of Kodoom, on 15 August 2003.¹⁹ Guidance may be given, on a balance of probabilities, that the evidence received in the record demonstrates that an attack on the predominantly Fur village of Kodoom took place on 15 August 2003, extending to all areas of the village, resulting in widespread destruction and pillaging of property and causing civilians to flee, and during which civilians were killed.²⁰

20. Accordingly, the outer bounds of the relevant potential victim population arising from the charged attack on Kodoom may include as possible **direct victims**:

- i. residents of Kodoom, whether present on the day of the attack or not (*e.g.*, Count 1 – intentionally directing attacks against the civilian population as a war crime; Count 4 – pillaging as a war crime; Count 5 – Destruction of the property of an adversary, without military necessity, as a war crime); and
- ii. other persons present in Kodoom on the day of the attack, such as visitors or persons who had fled to Kodoom from other villages (*e.g.*, Count 1).

¹⁹ 23 Nov. 2021 (original: 9 Jul. 2021), [ICC-02/05-01/20-433-Corr](#) (“Confirmation Decision”), para. 133.

²⁰ *See, e.g.*, evidence of: **P-0029**, T-029-CONF-ENG ET, p. 48, lines 12-18 (“*So many Janjaweed troops, 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 Tineh, to Kodoom Tineh, [...]. And then they went all the way to Kodoom Jureh, in the furthest western part of Kodoom.*”); p. 42, lines 23-24; p. 44, lines 8-10; p. 71, line 25 to p. 72, line 3; **P-0986**: DAR-OTP-0222-0437-R01 (statement), paras 34-48, 58-59, 62; DAR-OTP-0222-0437 (clarifications), paras 3-6; T-065-CONF-ENG CT, p. 49, line 18 to p. 50, line 6; p. 51, lines 18-22; **P-0932**: DAR-OTP-0222-0602-R02 (statement), paras 35-44, 47, 48, 51-53; DAR-OTP-0220-5720 (clarifications), para. 7; T-068-CONF-ENG ET, p. 8, lines 1 to 9; p.24, line 4 to p. 25, line 20; p. 26, line 20 to p. 27, line 18; **P-0918**: DAR-OTP-0218-0120-R04 (statement), paras 26-27, 31-32, 49, 51; DAR-OTP-00000104 (clarifications), paras 12, 13, 23, 24; DAR-OTP-0218-0149-R01 (notebook) and translation (DAR-OTP-0221-1580); DAR-OTP-0218-0158-R01 (list of Kodoom killed); DAR-00000093 (list of Kodoom killed); DAR-OTP-00000095 (Kodoom map); T-077-CONF-ENG CT2, p. 34, line 8 to p. 37, line 7; **P-0757**: DAR-OTP-0211-0003-R02 (statement), para. 33; 872-Conf-AnxVIII-Red (Rule 68(2)(b)(3) declaration); [REDACTED] (“*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.*”); p. 23, lines 2-23; p. 24, lines 8-19; p. 48, line 20 to p. 49, line 19; **P-0867**: DAR-OTP-0217-0173-R02 (statement), paras 32-34.

21. In respect of possible **indirect victims** not overlapping with the above categories of direct victims (*i.e.* not a resident of or present in Kodoom on 15 August 2003): family members having a ‘close personal relationship’ with a direct victim,²¹ or others who can demonstrate a direct victim was of ‘significant importance’ to them.²² The CLRV observes that identifying, mapping, or tracing these discrete categories of indirect victims with specificity, particularly in the circumstances of the Darfur Situation, may present greater difficulties than in respect of the above-noted categories of direct victims, or other categories of indirect victims (such as individuals who may qualify as both direct and indirect victims).

ii. Attack on Bindisi (15 and 16 August 2003)

22. Counts 1 to 11 of the confirmed charges concern, in part, alleged crimes arising from an attack by an armed group on the village of Bindisi on 15 and 16 August 2003.²³ Guidance may be given, on a balance of probabilities, that the evidence received in the record demonstrates that this attack on the predominantly Fur village of Bindisi commenced in the parts of Bindisi north of the Wadi Salih (‘new Bindisi’), and then extended to the parts of Bindisi south of the Wadi Salih (‘the old town’).²⁴ The attack impacted all areas of the village, resulting in widespread destruction and pillaging of property and causing civilians to flee, and during which civilians were killed, subjected to derogatory and demeaning language, and individuals mistreated and women raped in Bindisi and its surroundings.²⁵

²¹ [Ntaganda Reparations Judgment](#), para. 622.

²² *Id.*, para. 628 (internal citations omitted) (assessed on the “‘criterion of special bonds of affection or dependence connecting the applicant with the direct victim’, which ‘captures the essence of inter-personal relations, the destruction of which is conducive to an injury on the part of indirect victims’”).

²³ [Confirmation Decision](#), para. 133.

²⁴ *See, e.g.*, evidence of: **P-1074**: DAR-OTP-0224-0441-R02 (statement), paras 12, 23, 31-33; DAR-OTP-00000503 (clarifications), para. 9; **P-0015**: DAR-OTP-0088-0187-R03 (statement), paras 10, 23, 33, 37; T-093-CONF-ENG ET, p. 47, line 16 to p. 53, line 17; **P-0007**: DAR-OTP-0088-0060-R02 (statement), para. 23; **P-0012**: DAR-OTP-0119-0503-R01 (statement), para. 78, first two sentences; DAR-OTP-0220-4710 (clarifications), para. 18; T-082-CONF-ENG CT2, p. 32, line 23 to p. 34, line 13; [REDACTED].

²⁵ *See, e.g.*, evidence of: **P-1073**: T-103-CONF-ENG CT, p. 9, line 14 to p. 10, line 14; p. 12, line 21 to p. 16, line 2; p. 17, lines 9-15; p. 19, lines 16-25; p. 26, lines 5-14; p. 34, line 25 to p. 35, line 4; DAR-OTP-00000492 (anatomical diagram); DAR-OTP-00000500 (physician interview); **P-1074**: DAR-OTP-0224-0441-R02 (statement), paras 23-37, 42, 64; DAR-OTP-00000503 (clarifications), paras 4-10; DAR-OTP-00000508 (physician interview); DAR-OTP-00000505 (anatomical diagram); DAR-OTP-00000506 (list of Bindisi killed); T-103-CONF-ENG CT, p. 44, lines 15-17 (“*When the attack happened [...] the entire village was burned down. They 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, destroyed.*”); **P-0011**: T-091-CONF-ENG CT, p. 16, line 20 to p. 17, line 22; p.

23. Accordingly, the outer bounds of the relevant potential victim population arising from the charged attack on Bindisi may include as possible **direct victims**:

- i. residents of Bindisi, whether present during the attack or not (*e.g.*, Count 1 – intentionally directing attacks against the civilian population as a war crime; Count 4 – pillaging as a war crime; Count 5 – Destruction of the property of an adversary, without military necessity, as a war crime); and
- ii. other persons present in Bindisi on 15 or 16 August 2003, such as visitors or persons who had fled to Bindisi from other villages (*e.g.*, Count 1).

24. Regarding possible **indirect victims not overlapping** with the above categories of direct victims (*i.e.* not a resident of or present in Bindisi on 15 or 16 August 2003): family members having a ‘close personal relationship’ with a direct victim,²⁶ or other persons who can demonstrate a direct victim was of ‘significant importance’

20, line 20 to p. 21, line 3; p. 21, line 6 to p. 22, line 5; p. 23, line 1 to p. 30, line 14; p. 50, lines 13-17; DAR-OTP-00000356 (list of Bindisi killed); DAR-OTP-00000357 (injury diagram); DAR-OTP-00000358 (injury diagram); DAR-OTP-00000363-R01 (diagram, executed men); DAR-OTP-00000366 (physician interview); DAR-OTP-00000367 (physician interview); **P-0015**: DAR-OTP-0088-0187-R03 (statement), paras 23-47; DAR-OTP-00000427 (clarifications), paras 3-18; DAR-OTP-0088-0211-R01 (Bindisi sketch) and translation (DAR-OTP-0153-1316-R01); DAR-OTP-0088-0217-R01 (codes, sketch maps); T-093-CONF-ENG ET, p. 14, lines 5-14; p. 34, line 12 to p. 46, line 10; p. 47, line 16 to p. 53, line 17; p. 54, line 13 to p. 58, line 15; p. 69, line 22 to p. 70, line 3; **P-0007**: DAR-OTP-0088-0060-R02 (statement), para. 21 (“*When the attackers got closer to the town, they started killing people and set fire to the huts. I heard them shouting ‘Nuba nuba’ or ‘black’ as they attacked the town. I heard them say, in Arabic, that they did not want any black person to survive.*”); DAR-OTP-00000314 (clarifications), paras 6-8, 12-13; DAR-OTP-00000316 (prep log), para. 10; DAR-OTP-0088-0076-R01 (Bindisi sketch) and translation (DAR-OTP-0219-8861-R01); DAR-OTP-0088-0077 (list of Bindisi killed) and translation (DAR-OTP-0119-0475); DAR-OTP-0088-0081 (list of Bindisi rape victims) and translation (DAR-OTP-0119-0480); DAR-OTP-00000312 (Bindisi map); DAR-OTP-00000311 (list of Bindisi killed and raped); T-089-CONF-ENG, p. 6, line 15 to p. 12, line 2; p. 15, lines 8-17; p. 22, line 19 to p. 26, line 11; p. 29, lines 6-11; p. 30, line 20 to p. 31, line 20; p. 35, lines 17-23; p. 36, line 16 to p. 40, line 2; p. 51, line 20 to p. 52, line 21; [REDACTED] (describing 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.*”); [REDACTED]; **P-0012**: DAR-OTP-0119-0503-R01 (statement), paras 78, first sentence, 79-81, 82, first two sentences, 83, 85; DAR-OTP-0220-4710 (clarifications), paras 18-23; DAR-OTP-0220-4713-R01 (North Bindisi map); DAR-OTP-0220-4714-R01 (Bindisi satellite image); DAR-OTP-0220-4715-R01 (South Bindisi map); DAR-REG-0001-0009 (North Bindisi map); DAR-REG-0001-0010 (North Bindisi map); T-045-CONF-ENG CT, p. 13, line 18 to p. 14, line 11; p. 15, lines 7-12; p. 16, lines 22-25; p. 17, lines 1-11; p. 18, line 15 to p. 19, line 17; p. 31, line 6, 9-20; T-046-CONF-ENG CT, p. 48, line 16 to p. 52, line 20; p. 54, line 1 to p. 55, line 23; p. 56, line 18 to p. 59, line 3; [REDACTED]; **P-0029**: T-029-CONF-ENG ET, p. 62, lines 14-16; p. 74, lines 2-7; T-030-CONF-ENG CT, p. 13, lines 16-23; p. 18, line 21 to p. 21, line 13; p. 22, lines 9-24; T-031-CONF-ENG ET, p. 31, line 5 to p. 35, line 15; p. 35, line 23 to p. 36, line 12; **P-0816**: DAR-OTP-0214-0721-R02 (statement), paras 34-39; DAR-OTP-0214-0737 (Bindisi sketch); 812-Conf-AnxII (Rule 68(2)(b) declaration); **P-0917**: DAR-OTP-0217-0071-R01 (statement), paras 25-27; 872-Conf-AnxXI-Red (Rule 68(2)(b) declaration); **P-0927**: DAR-OTP-0221-0523-R01 (statement), paras 22-34; 812-Conf-AnxIII (Rule 68(2)(b) declaration); **P-0085**: DAR-OTP-0110-0054-R02 (statement), paras 28-32, 35; DAR-OTP-0110-0071-R02 (sketch – Bindisi and surroundings) and translation (DAR-OTP-0153-1577-R02).

²⁶ [Ntaganda Reparations Judgment](#), para. 622.

to them.²⁷ The CLRV observes that identifying, mapping, or tracing these discrete categories of indirect victims with specificity, particularly in the circumstances of the Darfur Situation, may present greater difficulties than in respect of the noted categories of direct victims, or other categories of indirect victims (such as individuals who may qualify as both direct and indirect victims).

iii. Incident in Mukjar and its surroundings (late February – early March 2004)

25. Counts 12 to 21 of the confirmed charges concern alleged crimes arising from the:

(i) detention, mistreatment and torture of civilians predominantly from the Fur community, including community leaders, at the police station ('Mukjar police station') in the town of Mukjar, over a time frame of at least two days, during the period late February to early March 2004; and (ii) the (attempted) murder of some of the detained individuals during this period at locations outside of Mukjar.²⁸

26. Guidance may be given, on a balance of probabilities, that the evidence received demonstrates that the time frame for the alleged crimes runs over a period of at least two days, from late February to early March 2004,²⁹ and that the geographic

²⁷ *Id.*, para. 628 (internal citations omitted).

²⁸ [Confirmation Decision](#), paras 58-95.

²⁹ See, e.g., evidence of: **P-0919**: T-060-CONF-ENG CT, p. 14, lines 2-25, p. 15, line 23 to p. 16, line 16, p. 17, lines 8-9, p. 32, lines 10-12, p. 33, lines 20-22, p. 35, lines 8-9 (describing fleeing home village to Mukjar, detention at Mukjar police station for three days and two nights, along with Umdah Yahya, Umdah Doren, Umdah Issa, and loading of detainees on vehicles); T-061-CONF-ENG CT, p. 8, lines 10-18, p. 27, lines 5-8 (spent three days and two nights in detention); **P-0129**: DAR-OTP-0128-0128-R04 (1st statement), paras 34, 38, 39, 49 (last four sentences) ("*We spent the night of Tuesday in the prison. [...] [T]he counting [of detainees] was done on Wednesday*"), 50-58 (excluding references to "Ali Kushayb"); DAR-OTP-0223-0157-R01 (3rd statement), paras 40, 42, 43, 49; T-076-CONF-ENG CT, p. 39, lines 9-12; p. 43, lines 11-22; **P-0931**: T-062-CONF-ENG CT, p. 20, lines 2-22, p. 22, line 11 to p. 23, line 13 (Sindu operation took place just prior to detentions at Mukjar police station); p. 36, line 19 to p. 37, line 10 (indicating it was dry season when executions occurred); p. 38, lines 5-25, p. 39, line 18 to p. 42, line 13 (excluding reference to "Ali Kushayb"), p. 49, line 11 to p. 50, line 25 (indicating Mukjar executions took place a few days prior to 5 March 2004 charged events in Deleig); [REDACTED] (placing charged Mukjar incident a few days after 'Sindu operation', in early 2004); [REDACTED]; p. 34, lines 5-21 (dating Mukjar executions to approximately end of January / early February 2004); p. 98, line 24 to p. 99, line 11 (indicating dates are approximations); **P-0877**: T-053-CONF-ENG, p. 81, line 3 to p. 83 line 1 (placing first arrival and detention at Mukjar police station as 28 February 2004); T-055-CONF-ENG CT, p. 52, lines 15-22, p. 64, lines 8-15 (first detention Mukjar police station 28 February 2004, followed by release and re-arrest and detention on 29 February 2004, and final release 3 March 2004); T-054-CONF-ENG, p. 11, lines 7-16 (excluding references to "Ali Kushayb"), p. 16, line 17 to p. 17, line 8, p. 21, line 23 to p. 22, line 21, p. 65, line 18 to p. 66, line 9 (dating loading of detainees and hearing gunfire, to 2 March 2004); **P-0903**: T-032-CONF-ENG CT, p. 10, line 12 to p. 11, line 22 (excluding references to "Ali Kushayb"), p. 20, line 17 to p. 24, line 4 (excluding references to "Ali Kushayb") (dating arrival in Mukjar, and detention at "prison", as immediately following fleeing attack on Sindu by Janjaweed in first quarter 2004); p. 27, lines 2-13 (first day of detention Monday, with detained persons sent to be killed Wednesday); p. 60, line 15 to p. 65, line 16 (loading of detainees, and vehicles returning empty); p. 64, lines 6-9 (detained at Mukjar police station approximately one month); **P-0990**: T-040-CONF-ENG CT, p. 30, line 14 to p. 31, line 24, p. 36, lines 7-19 (dates detention at Mukjar police station as 18 February to 16 March 2004); p. 47, lines 8-16, p. 52, line 5 to p. 53, line 6 (dates return of forces from Sindu and abuse of detainees in Mukjar

parameters are the Mukjar police station compound,³⁰ as well as locations outside of Mukjar where detained persons were allegedly transported for execution.³¹

Police Station courtyard, in presence of government officials, as 23 February 2004); p. 61, lines 1-4, p. 62, lines 8-18, p. 63, line 3 to p. 64, line 10 (dates loading of prisoners to be taken to Garsila as 24 February 2004); **P-0932**: DAR-OTP-0222-0602-R02 (statement), 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 (excluding references to “Ali Kushayb” (describing three incidents of detainees loaded and driven away to Garsila from Mukjar police station – (i) day after P-0932 arrived, (ii) morning after that, and then (iii) seven days later); 107-109 (noting Umdah Yahya and Umdah Doureh as among detained taken away); DAR-OTP-0220-5720 (clarifications), para. 18 (detained in same cell as Umdah Yahya); T-068-CONF-ENG ET, p. 35, line 21 to p. 36, line 25 (arrest in Bindisi and transport to Mukjar police station); **P-0913**: DAR-OTP-0218-0021-R04 (statement), paras 69, 74-76, 88-92, 94-113 (excluding reference to “Ali Kushayb”) (dating arrest, detention of Umdah ‘Yahia Ahmed Zarouq’ at Mukjar police ‘camp’, subsequent loading of detainees to be taken to Garsila, shortly thereafter hearing gunfire, as having taken place sometime during a two month period running from early February 2004); DAR-OTP-00000012 (clarifications), paras 27-32 (excluding reference to “Ali Kushayb”).

³⁰ See, e.g., evidence of: **P-0919**: T-060-CONF-ENG CT, p. 14, lines 14-25; p. 15, line 25 to p. 17, line 12; p. 23, lines 6-9; p. 26, line 6 to p. 27, line 13; p. 28, lines 8-13; p. 29, lines 3-4; p. 30, line 2 to p. 31, line 8; p. 36, lines 12-18; p. 36, line 24 to p. 37, line 3; p. 37, lines 16-23; p. 63, line 10 to p. 64, line 1; T-061-CONF-ENG CT, p. 9, lines 13-22; p. 29, line 15; **P-0129**: DAR-OTP-0128-0128-R04 (1st statement), paras 39-41, 45; DAR-OTP-0128-0163 (Mukjar police station sketch) and translation (DAR-OTP-0219-7084); DAR-OTP-0223-0157-R01 (3rd statement), paras 40, 42, 43, 47, 51, 58 (excluding reference to “Ali Kushayb”); DAR-OTP-00000085 (detainee list); T-075-CONF-ENG ET, p. 57, lines 10-19, 23-25; DAR-OTP-00000088 (Mukjar police station satellite image); T-076-CONF-ENG CT, p. 35, lines 11-13; p. 38, line 24 to p. 39, line 12; **P-0931**: T-062-CONF-ENG CT, p. 17, line 14 to p. 18, line 17; p. 24, line 21 to p. 26, line 1; DAR-OTP-0222-0052 (Mukjar sketch) and translation (DAR-OTP-0221-1358); DAR-OTP-0224-0880 (Mukjar satellite image); [REDACTED]; **P-0905**: T-086-CONF-ENG CT, p. 15, line 18 to p. 17, line 3, p. 21, lines 3-8 (detention locations at Mukjar police station); T-088-CONF-ENG ET, p. 59, line 23 to p. 61, line 25 (arrival at Mukjar police station and observing detainees); p. 69, lines 14-21 (detention location of sheikh, young boys); p. 73, lines 16-25 (detention cells full); DAR-OTP-00000258-R01 (Mukjar police station satellite image); **P-0877**: T-053-CONF-ENG, p. 82, line 18 to p. 85, line 20 (excluding reference to “Ali Kushayb”) (detention, Mukjar police station); T-055-CONF-ENG CT, p. 56, line 13 to p. 57, line 18, p. 60, line 7, to p. 62, line 22 (detention situation, Mukjar police station, 28 and 29 February 2004); DAR-OTP-0217-0248 (Mukjar town sketch) and translation (DAR-OTP-0217-0479); DAR-OTP-0217-0251 (Mukjar police station sketch) and translation (DAR-OTP-0219-0490); **P-0903**: T-032-CONF-ENG CT, p. 27, lines 14-22; p. 29, lines 5-14; p. 30, lines 12-23 (detained same place as Umdahs Yahya, Issa Harun Nour, Adam Husayn, Sheikh Abdallah); p. 74, line 8 to p. 75, line 24, p. 76, lines 7-11 (discussing satellite image – Mukjar police station); T-033-CONF-ENG CT, p. 45, lines 1-10 (detention, Mukjar police station); DAR-REG-0001-0001 (satellite image – Mukjar police station); **P-0990**: T-040-CONF-ENG CT, p. 29, lines 3-18, p. 30, line 6 to p. 31, line 6, p. 32, line 1 to p. 33, line 5, p. 37, line 8 to p. 38, line 12 (detention, Mukjar Police Station); T-040-CONF-ENG CT, p. 30, lines 20-23; T-041-CONF-ENG CT, p. 35, line 7 to p. 37, line 10 (discussing police station sketch); DAR-OTP-0223-0232-R01 and DAR-REG-0001-0006 (Mukjar police station sketches); DAR-OTP-0224-0547 and DAR-REG-0001-0005 (Mukjar police station satellite images); **P-0932**: DAR-OTP-0222-0602-R02 (statement), paras 97-99, 110; DAR-OTP-0220-5720 (clarifications), para. 24 (comments – Mukjar police station satellite image); T-068-CONF-ENG, p. 37, line 2 to p. 38, line 12, p. 41, line 22 to p. 42, line 9 (description of detention cell and conditions); p. 47, lines 3-6 (Mukjar police station location); p. 41, lines 22-25; p. 41, lines 1-3; p. 43, lines 6-8; p. 46, lines 9-15; page 47, lines 4-6; DAR-OTP-0220-5726 (Mukjar police station map); DAR-OTP-0220-4748 (Mukjar police station satellite image).

³¹ See, e.g., evidence of: [REDACTED]; **P-0931**: T-062-CONF-ENG CT, p. 32, lines 7-25 (excluding reference to “Ali”); p. 33, lines 12-15; p. 33, line 25 to p. 34, line 11; p. 34, lines 21-24; p. 35, line 8 to p. 36 line 18 (execution place close to site of later UNAMID facility); p. 54, line 17 to p. 55 line 18 (location of Mukjar police station and execution site); T-063-CONF-ENG CT2, p. 17, line 1 to p. 18, line 22 (Defence indication it does not dispute witnessing execution); DAR-OTP-0222-0052 (Mukjar sketch) and translation (DAR-OTP-0221-1358); DAR-OTP-0224-0880 (Mukjar satellite image); DAR-OTP-0224-0881 (satellite image – Mukjar & surroundings); [REDACTED]; **P-0905**: T-086-CONF-ENG CT, p. 21, lines 12-24, p. 22, lines 8-24, p. 23, lines 16-21 (loading detainees); p. 24, line 11 to p. 25, line 2 (excluding references to “Ali Kushayb”), p. 25, line 7 to p. 26, line 6, p. 28, line 24 to p. 29, line 2 (first execution site near *khorr*); p. 29, lines 3 to 16, p. 29 line 23 to p. 30, line 1 (second execution site (around eight detainees), also near a *khorr*); p. 36, line 11 to p. 37, line 13 (discussing list of executed); T-088-CONF-ENG ET, p. 63, lines 4-10, p. 73, lines 9-15 (loading detainees); DAR-OTP-00000259-R01 (Mukjar execution locations – satellite image); DAR-OTP-00000265 (list of Mukjar executed); **P-0877**: T-054-CONF-ENG, p. 24, line 3 to p. 25, line 20 (first site of bodies near later UNAMID base); p. 25, line 23 to p. 26, line 2

27. Accordingly, the outer bounds of the relevant potential victim population arising from the charged events in Mukjar and its surroundings may include as possible distinct categories of **direct victims**:

- i. individuals detained at the Mukjar police station during the relevant period (e.g., counts 12-13: Torture as a crime against humanity and a war crime; count 14: Other inhumane acts as a crime against humanity; count 15: Cruel treatment as a war crime; count 16: Outrages upon personal dignity as a war crime);
- ii. individuals who may have witnessed crimes allegedly committed against members of their community at Mukjar police station during the relevant period, but who were not themselves detainees;³²
- iii. any detained persons who may have survived the executions alleged to have taken place outside of Mukjar during the relevant period;
- iv. individuals who witnessed the alleged execution of members of their community at places outside of Mukjar during the relevant period, but who were not detained themselves.

28. In respect of possible **indirect victims** not overlapping with the above categories of direct victims: family members having a ‘close personal relationship’ with a direct victim,³³ or other persons who can demonstrate a direct victim was of ‘significant

(second site located west of first); p. 26, lines 3-7 (describing third and fourth sites of bodies); p. 26, lines 8-25 (explaining sketch map of locations bodies found); p. 28, line 22 to p. 36, line 20 (discussing videos of sites bodies found); p. 37, line 1 to p. 43, line 20 (discussing sketch maps and list of Mukjar executed); DAR-OTP-0224-0169 (Mukjar area satellite image) and translation (DAR-OTP-0220-2937); DAR-OTP-0217-0256 (sketch – first location of bodies) and translation (DAR-OTP-0217-0483); DAR-OTP-0217-0258 (sketch – second location of bodies) and translation (DAR-OTP-0217-0486); DAR-OTP-0217-0260 (sketch – third location of bodies) and translation (DAR-OTP-0217-0489); DAR-OTP-0217-0264 (Sketch map – locations bodies found) and translation (DAR-OTP-0217-0495); DAR-OTP-0220-5444 (video – first location of bodies); DAR-OTP-0220-5441 (video – first location of bodies); DAR-OTP-0217-0279 (video – third location of bodies); **P-903**: T-032-CONF-ENG CT, p. 53, lines 3 to p. 56, line 13 (excluding references to “*khor Kushef*”) (one month after release, finding bodies at *Khor Talaba* close to airport / UNAMID base); T-033-CONF-ENG CT, p. 45, line 25 to p. 46, line 4, p. 55, line 6 to p. 57, line 25 (loading of detainees and finding bodies by location of UNAMID base / airport a month later); **P-0990**: T-040-CONF-ENG CT, p. 61, lines 1-4, p. 62, lines 8-18, p. 63, line 3 to p. 64, line 10 (loading detained); p. 65, lines 3-14 (interaction with execution survivor); p. 68, line 22 to p. 70, line 2 (visiting first site bodies found near UNAMID base, as well as a second and third site); T-041-CONF-ENG CT, p. 54, lines 2-17, p. 55, line 21 to p. 56, line 14, p. 57, lines 7-11 (discussing first site bodies found (UNAMID)); DAR-OTP-0224-0544 (list of Mukjar killed); **P-0932**: DAR-OTP-0222-0602-R02 (statement), paras 116-117 (hearsay on killing of fellow detainees; personally visiting site of bodies near UNAMID base); DAR-OTP-0220-5720 (clarifications), para. 22 (identification of bodies); DAR-OTP-0220-5723-R01 (list of Mukjar killed).

³² [REDACTED].

³³ [Ntaganda Reparations Judgment](#), para. 622.

importance' to them.³⁴ In respect of the latter category, the CLRV makes additional submissions under section III(b)(ii).

iv. Incident in Deleig and its surroundings (5 to 7 March 2004)

29. Counts 22 to 31 of the confirmed charges³⁵ concern alleged crimes arising from: (i) a search and arrest operation in the town of Deleig on 5 March 2004, and during which predominantly Fur civilians were allegedly mistreated;³⁶ (ii) the alleged detention, mistreatment, and torture of a large number of predominantly Fur civilians on the same day in an open area near the Deleig police station, as well as a smaller number of civilians detained inside the police station during the period 5 to 7 March 2004;³⁷ (iii) the (attempted) murder of some of the above identified detained civilians on 5 March 2004, at the open area near the Deleig police station³⁸ and at areas outside of Deleig where civilians were transported on vehicles, as well as the (attempted) murder of a group of detained predominantly Fur civilians transported to a location outside of Deleig on 7 March 2004.³⁹

30. Guidance may be given, on a balance of probabilities, that the evidence received in the record demonstrates that the relevant time frame and geographic parameters pertaining to the charged Deleig incident are:

- i. in respect of the alleged arrest and detention operation – the entirety of the town of Deleig on 5 March 2004,⁴⁰ which was of predominantly non-Arab population,

³⁴ *Id.*, para. 628 (internal citations omitted).

³⁵ [Confirmation Decision](#), paras 96-117.

³⁶ *Id.*, para. 105.

³⁷ *Id.*, paras 102-104, 106-108.

³⁸ [Confirmation Decision](#), para 109.

³⁹ *Id.*, paras 109-115.

⁴⁰ *See, e.g.*, evidence of: **P-907**: T-094-CONF-ENG CT, p. 29, line 12 to p. 32, line 9 (surrounding of Deleig by Janjaweed and government forces on evening of 4 March 2004, commencement of search and arrest operation next morning); T-096-CONF-ENG CT, p. 10, line 14 to p. 12, line 7; **P-980**: DAR-OTP-0221-0553-R03 (statement), paras 19, 20 (search of house by military and militia on morning of 5 March 2004, and seeing “a lot of civilians taken out of the houses and escorted by armed men”); T-043-CONF-ENG CT, p. 79, lines 15-20 (130 to 140 arrested Fur civilians taken to front of Deleig police station); **P-0584**: DAR-OTP-0200-1540-R02 (statement), 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 (clarifications), paras 23, 25; T-092-CONF-ENG CT, p. 36, line 3 to p. 37, line 10; **P-0973**: DAR-OTP-0220-0736-R01 (statement), paras 25-27 (Janjaweed surrounding Deleig morning of 5 March 2004, search of makeshift shelters, arrest of P-0973 and other males); **P-0607**: DAR-OTP-0203-0164-R02 (statement), paras 42-46 (Janjaweed surrounding Deleig morning of 5 March 2004, house-to-house searches, arrest of P-0607 and other males); DAR-OTP-0203-0189 (Deleig sketch map) and translation (DAR-OTP-0219-1682); 872-Conf-AnxII-Red (Rule 68(2)(b) Declaration); **P-0718**: DAR-OTP-0209-2004-R02 (statement), paras 53, 55-61 (Janjaweed surrounding Deleig on a Friday in early 2004, search and arrest of males

including Fur, before the conflict,⁴¹ and which had significantly grown in population during this period due to Fur and other civilians having fled or been displaced to Deleig;⁴²

- ii. the field or open area in front of Deleig police station, where predominantly Fur civilians were allegedly detained, mistreated, and/or tortured on 5 March 2004;⁴³

in homes and off the street); DAR-OTP-0220-4792 (clarifications), para. 8; DAR-OTP-0209-2022 (Deleig sketch map) and translation (DAR-OTP-0219-1699); T-049-CONF-ENG CT, p. 15, lines 7-22 (excluding references to “Ali Kushayb”); p. 56, lines 7-17; p. 62, line 11 to p. 66, line 18 (excluding references to “Ali Kushayb”); **P-0671**: DAR-OTP-0206-0105-R02 (statement), paras 20, 24-34 (excluding references to “Ali Kushayb”) (surrounding of Deleig by Janjaweed morning of 5 March 2004, search and arrest operation by Janjaweed and soldiers in IDP camp in east Deleig); DAR-OTP-00000462 (clarifications), paras 6-9, 11; DAR-OTP-0206-0130 (sketch – arrests in east Deleig) and translation (DAR-OTP-0219-1693); DAR-OTP-0206-0132 (sketch – Deleig) and translation (DAR-OTP-0219-1696); T-099-CONF-ENG CT, p. 14, line 23 to p. 15, line 9; p. 15, line 19 to p. 16, line 22; **P-0712**: DAR-OTP-0209-1884-R04 (statement), paras 28-38; T-036-CONF-ENG ET, p. 10, line 7 to p. 10, line 22; p. 25, line 20 to p. 26, line 24; **P-0736**: DAR-OTP-0210-0248-R02 (statement), paras 53-56, 62-71; T-035-CONF-ENG CT, p. 75, line 25 to p. 76, line 7.

⁴¹ **P-0736**: T-035-CONF-ENG CT, 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 (statement), paras 14, 25; also describing Deleig as a “big town” (para. 23)); **P-0718**: T-049-CONF-ENG CT, p. 60, line 18 to p. 61, line 1; **P-0980**: DAR-OTP-0221-0553-R03, para. 17; **P-0726**: DAR-OTP-0210-0346-R04 (statement), paras 63-65; T-053-CONF-ENG CT2, p. 15, line 25 to p. 17, line 1.

⁴² See, e.g., evidence of: **P-0973**: DAR-OTP-0220-0736-R01 (statement), paras 23-24 (“*On arrival in Deleig, I saw many other villagers that had fled and also sought refuge there.*”); **P-0607**: DAR-OTP-0203-0164-R02 (statement), paras 39-40 (“*Just prior to the attack on Deleig about Friday 5th March 2004, many civilians from the surrounding villages had converged on Deleig. There were so many people in Deleig at this time, there were people staying around the market place, sleeping under trees, and the villagers of Deleig were very kind and welcomed many outsider villagers into their homes.*”); **P-0671**: T-098-CONF-ENG CT, p. 81, line 15 to p. 82, line 4 (most IDPs in camp in east Deleig spoke Fur); **P-0712**: DAR-OTP-0209-1884-R04 (statement), para. 26; T-036-CONF-ENG ET, p. 24, line 23 to p. 25, line 15 (IDPs arriving in Deleig were Fur); **P-0736**: DAR-OTP-0210-0248-R02 (statement), para. 49; **P-0697**: DAR-OTP-0209-0155-R03 (statement), paras 46-48.

⁴³ See, e.g., evidence of: **P-0907**: T-094-CONF-ENG CT, p. 30, line 16 to p. 40, line 13 (excluding references to “Ali Kushayb”) (several hundred males detained in open area by Deleig police station on 5 March 2004, subjected to abuse, some released, remainder placed on vehicles); T-096-CONF-ENG CT, p. 18, lines 14-20; p. 19, line 16 to p. 20, line 23; **P-0718**: DAR-OTP-0209-2004-R02 (statement), paras 60-61, 63-66; DAR-OTP-0220-4792 (clarifications), paras 9, first sentence, 10; DAR-OTP-0209-2022 (Deleig sketch) and translation (DAR-OTP-0219-1699); T-049-CONF-ENG CT, p. 15, line 21 to p. 16, line 21 (excluding references to “Ali Kushayb”); p. 20, line 6 to p. 21, line 13 (excluding references to “Ali Kushayb”); p. 66, line 19 to p. 67, line 4 (excluding reference to “Ali Kushayb”); **P-0980**: DAR-OTP-0221-0553-R03 (statement), paras 21-23, 29; DAR-OTP-0221-0569 (Deleig sketch) and translation (DAR-OTP-0219-9290); DAR-OTP-0224-0632 (Deleig satellite image); DAR-OTP-0224-0633 (Deleig photo); T-043-CONF-ENG CT, p. 77, lines 16-24; p. 79, line 15 to p. 80, line 25; p. 86, line 20 to p. 87, line 8; T-044-CONF-ENG CT, p. 27, line 12 to p. 29, line 6; p. 32, line 3 to p. 34, line 5; **P-0584**: DAR-OTP-0200-1540-R02 (statement), paras 96-104; DAR-OTP-00000419 (clarifications), paras 26-27; DAR-OTP-0200-1591 (Deleig sketches) and translations (DAR-OTP-0219-1670); **P-0671**: DAR-OTP-0206-0105-R02 (statement), paras 24, 38-43 (first two sentences), 45-46 (witnessed detention and mistreatment of civilians at open area by Deleig police station on 5 March 2004); DAR-OTP-00000462 (clarifications), para. 11; DAR-OTP-0206-0132 (Deleig sketch) (‘X’ marking P-0671’s vantage point of the field, prisoners and police station) and translation (DAR-OTP-0219-1696); T-098-CONF-ENG CT, p. 83, line 15 to p. 84, line 1 (excluding reference to “Ali Kushayb”); **P-0725**: DAR-OTP-0210-0122-R02 (statement), paras 64, 68-69, 71-76 (from Ansar Mosque, observed more than 100 males lying face down in field in front of Deleig police station in very hot weather); DAR-OTP-0210-0141 (Deleig centre sketch) and translation (DAR-OTP-0219-1701); [REDACTED] (detention and mistreatment of 200 to 300 predominantly Fur males in area in front of Deleig police station on 5 March 2004), para. 89 (photo of Deleig police station); [REDACTED]; [REDACTED] (Deleig police station satellite image).

- iii. inside the Deleig police station from 5 to 7 March 2004, where predominantly Fur civilians are alleged to have been detained and mistreated;⁴⁴
- iv. more than one location outside Deleig, where some of the above-identified civilians detained outside Deleig police station are alleged to have been transported for execution on 5 March 2004;⁴⁵
- v. at least one location outside of Deleig, where predominantly Fur civilians are alleged to have been transported for execution on 7 March 2004.⁴⁶

31. Accordingly, the outer bounds of the relevant potential victim population arising from the charged events in Deleig and its surroundings may include as possible distinct categories of **direct victims**:

⁴⁴ See, e.g., evidence of: **P-0980**: DAR-OTP-0221-0553-R03 (statement), para. 34 (visibility of entry and egress from Deleig police station); T-044-Conf-ENG CT, p. 10, line 25 to p. 13, line 5 (knowledge of persons detained in Deleig police station); [REDACTED] (detained in inhumane conditions in cell in Deleig police station from 5 to 7 March 2004, along with approximately 200 persons); [REDACTED] (Deleig police station sketch) and translation ([REDACTED]); [REDACTED] (investigator's note on estimate of Deleig detention cell size); [REDACTED] (observing detention of persons in Deleig police station on 5 and 7 March 2004), paras 72-75 (excluding references to "Ali Kushayb") (explaining Deleig police station sketch), para. 89 (explaining photo of Deleig police station); [REDACTED]; **P-0617**: DAR-OTP-0202-1496-R02 (statement), paras 83 (excluding references to "Kushayb"), 86 (information on persons detained inside Deleig police station from 5 to 7 March 2004); 872-Conf-AnxX-Red (Rule 68(2)(b) declaration).

⁴⁵ See, e.g., evidence of: [REDACTED]; **P-0907**: T-094-CONF-ENG CT, p. 39, line 23 to p. 40, line 13, p. 41, lines 16-20, p. 41, line 24 to p. 42, line 8, p. 42, lines 22-25 (detained persons loaded in vehicles and transported away from open area in front of Deleig police station in four batches, on afternoon of 5 March 2004); [REDACTED]; [REDACTED]; **P-0725**: DAR-OTP-0210-0122-R02, paras 75-76 (loading detainees on three Land Cruisers at open area in front of Deleig police station (two rounds) on late afternoon of 5 March 2004, paras 77-91 (encounters with Deleig execution survivors); 872-Conf-AnxVI-Red (Rule 68(2)(b) declaration); **P-0671**: DAR-OTP-0206-0105-R02 (statement), paras 51-56 (days after 5 March 2004, finding bodies near Tolda mountain, including his father and brother); DAR-OTP-00000463 (satellite image – location of bodies); T-098-CONF-ENG CT, p. 74, line 11 to p. 76, line 14 (location of bodies).

⁴⁶ See, e.g., evidence of: [REDACTED] (Umdah Jiddo Khamis, Umdah Adam Kindiri, Dr Hassan, Umdah Mohamed Suleiman, Sheikh Suleiman, taken from Deleig police station on morning of 7 March 2004 and driven away in vehicle; around four hours later, what appeared to be same vehicle returned to police station without them, never saw them again, and later heard all were killed); [REDACTED] (morning of 7 March 2004, saw cruiser parked in Deleig market with six detainees – Jiddo Khamis Abdul Karim, Mohamad Suleiman ('Dirbo'), Adam Adam Deguis Ahmed ('Kindiri'), Sheikh Ismail Abdul Aziz, Hassan Adam Musa (veterinary nurse), [REDACTED] – the last of whom was released, and the remainder, witness never saw again, and heard two days later had been executed), [REDACTED]; [REDACTED]; **P-0585**: T-100-CONF-ENG CT, p. 13, line 18 to p. 15, line 4, p. 25, line 23 to p. 28, line 25 (on a Sunday market day in Deleig market in late February / early March 2004, observed five individuals dressed in *jallabiyas* and expensive turbans in the back of a military vehicle, whom P-0585 was told included Umdah Jiddo, Umdah Kindiri, Umdah Muhamed Suleiman, and 'Dikobi', a sheikh from Garsila, later learning they were executed); **P-0725**: DAR-OTP-0210-0122-R02 (statement), paras 94-96 (told that Umdahs, including Umdah Adam Kinderi and Umdah Jido, were being detained at Deleig police station, and on Sunday saw Kinderi, Jido and a third person presumed to be an Umdah in the back of a Land Cruiser in Deleig market, being driven away on the road leading to Zalingei, and thereafter never seeing them again, and being told two or three days later that their bodies were found in a *wadi* in Fere); 872-Conf-AnxVI-Red (Rule 68(2)(b) declaration).

- i. individuals subject to alleged mistreatment during the wide-ranging search and arrest operation in Deleig on 5 March 2004;
- ii. individuals who witnessed the alleged mistreatment of members of their community during the wide-ranging search and arrest operation on 5 March 2004;
- iii. individuals who were allegedly detained, mistreated and/or tortured at the open area near the Deleig police station on 5 March 2004;
- iv. individuals who witnessed the alleged detention, mistreatment, and/or torture of members of their community at the open area near the Deleig police station on 5 March 2004, but who were not themselves detained;
- v. individuals allegedly detained, mistreated and/or tortured inside the Deleig police station during the period 5 to 7 March 2004;
- vi. individuals who witnessed the alleged detention, mistreatment, and/or torture of members of their community detained inside the Deleig police station during the period 5 to 7 March 2004, but who were not themselves detained;
- vii. any individuals who may have survived the executions alleged to have taken place at locations outside of Deleig on 5 March 2004;
- viii. individuals who may have witnessed the alleged execution of members of their community at places outside of Deleig on 5 March 2004, but who were not themselves detained;
- ix. any individuals who may have survived the executions alleged to have taken place outside of Deleig on 7 March 2004;
- x. individuals who may have witnessed the alleged execution of members of their community at places outside of Deleig on 7 March 2004, but who were not themselves detained.

32. In respect of possible **indirect victims** not overlapping with the above categories of direct victims: family members having a 'close personal relationship' with a direct

victim,⁴⁷ or other persons who can demonstrate a direct victim was of ‘significant importance’ to them.⁴⁸ In regard to the latter category, the CLRV makes additional submissions under section III(b)(ii).

b. Legal guidance on transgenerational harm and harm arising from targeting community leaders

33. It is additionally requested that the Trial Chamber issue legal guidance on two potential heads of harm – ‘transgenerational’ harm, and harm that may arise for individuals when leaders from their community have been targeted as a component of the alleged crimes. It is submitted that the Chamber’s legal guidance at this stage, on these two potential heads of harm, will assist the CLRV in advising and consulting with her clients, as well as facilitate the VPRS’ understanding and efficient conduct of its mapping mandate.

34. The CLRV stresses that, in her view, any legal guidance by the Chamber on these subjects would not discount the possible recognition of harm impacting communities as a whole, or on post-conflict generations, for purposes of a judgment under Article 74, or sentencing under Article 76.⁴⁹ The guidance is, instead, and commensurate with the aim of the present application, requested to assist the CLRV and VPRS’ understanding of the Court’s relevant legal framework for cognisable harm impacting, and status as, a participating victim or beneficiary.

i. Transgenerational harm

35. The Appeals Chamber provided the following guidance in *Ntaganda*, on how a Trial Chamber should approach potential claims of transgenerational harm:

[T]he Appeals Chamber considers it appropriate for the Trial Chamber to consider whether it needs to address such issues as: the matter of the basis for the concept of transgenerational harm; the evidence needed to establish it; what the evidentiary requirements are for an applicant to prove this type of harm; the need, if any, for a

⁴⁷ [Ntaganda Reparations Judgment](#), para. 622.

⁴⁸ [Ntaganda Reparations Judgment](#), para. 628 (internal citations omitted).

⁴⁹ In respect of potential communal and generational harm arising from the alleged crimes in these proceedings, see Second Corrigendum to “Common Legal Representative of Victims’ Trial Brief”, 31 March 2023 (ICC-02/05-01/20-914-Conf-Exp), 5 April 2023, ICC-02/05-01/20-914-Conf-Exp-Corr2 (“CLRV Trial Brief”) (public version: [ICC-02/05-01/20-914-Corr2-Red](#)), paras 19, 20, 30, 41, 57, 58, 68-74, 220-224.

psychological examination of applicants and parents; the need, if any, to exercise caution in assessing applications based on transgenerational harm; whether Mr Ntaganda is liable to repair such harm in the specific context of the crimes of which he has been convicted and taking into consideration the impact, if any, that the protracted armed conflict in the DRC may have as to the possibility of establishing that the trauma associated with transgenerational harm was caused by Mr Ntaganda.⁵⁰

36. The CLRV submits that at this stage, it is sufficient to provide guidance on whether the considerations identified by the Appeals Chamber (and any other the Trial Chamber may identify) are, in principle, issues the Chamber deems relevant and that it *may* need to address in the context of these proceedings, should any claims of transgenerational harm arise.

37. It is submitted that the requested guidance will assist both the CLRV and VPRS – particularly given the potential practical realities on the required legal and factual substantiation for possible claims of transgenerational harm – on the conduct of their respective mandates.

ii. Harm arising from targeting of community leaders

38. During the presentation of the Prosecution's case, the Trial Chamber received evidence on the alleged targeting of Fur community leaders from the Wadi Salih and Mukjar localities as a component of the charged Mukjar and Deleig incidents. The Chamber also received evidence, some of which was highlighted in the CLRV Trial Brief,⁵¹ on the impact of the targeting of such leaders on the Fur community.

39. During the reparations phase of the *Ntaganda* case, the Appeals Chamber addressed the applicable test for assessing whether a potential beneficiary has suffered harm as an indirect victim arising from a crime committed against a community leader (in *Ntaganda*, the leader of a religious congregation).⁵² The Appeals Chamber emphasised that a beneficiary would have to demonstrate that the community leader “was a person of significant importance to him or her and

⁵⁰ [Ntaganda Reparations Judgment](#), para. 494; *see also* paras 471, 472, 474, 481, 484, 494.

⁵¹ [CLRV Trial Brief](#), paras 68-74.

⁵² [Ntaganda Reparations Judgment](#), paras 608-634.

that he or she suffered harm as a result of the crime committed against” the community leader. In respect of the ‘significant importance’ requirement, the Appeals Chamber emphasised “the ‘criterion of special bonds of affection or dependence connecting the applicant with the direct victim’, which ‘captures the essence of inter-personal relations, the destruction of which is conducive to an injury on the part of indirect victims’.”⁵³

40. It is submitted that legal guidance, on a preliminary basis, as to the applicability of the Appeals Chamber’s holdings on this subject in the context of the present case (and any other principles the Chamber deems of relevance), will assist both the CLRV and VPRS in the effective conduct of their respective mandates.

IV. Conclusion

41. Based on the preceding submissions, the CLRV respectfully requests Trial Chamber I to issue the factual and legal guidance identified in this application, as well as any other guidance the Trial Chamber deems appropriate.

Respectfully submitted,



Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 27 February 2024
At Berlin, Germany

⁵³ [Ntaganda Reparations Judgment](#), para. 634 (underline added) (citing ECCC, Case No. 001/18-07-2007-ECCC/SC, [Appeal Judgment](#), 3 February 2012, para. 447). Judge Ibáñez Carranza expressed the separate view that “harm affecting ‘collective interests of a community’ defines ‘a separate type of victim: the collective victim’” (para. 635).