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**International
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PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

THE SITUATION IN DARFUR, THE SUDAN

**Public Redacted Version of
Prosecutor's Application under Article 58 filed on 2 December 2011
with Public Annexes 1 & 2**

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I. Introduction

1. The Prosecution submits that there are reasonable grounds to believe that **ABDEL RAHEEM MUHAMMAD HUSSEIN** (“**HUSSEIN**”) bears criminal responsibility for crimes against humanity pursuant to a State policy of the Government of the Sudan (“GoS”) and war crimes committed in Darfur from August 2003 to March 2004. It also submits that arrest is necessary to ensure **HUSSEIN**’s appearance before this Court and to prevent him from obstructing or interfering with the investigation or court proceedings or committing further crimes within the Court’s jurisdiction.

2. The Prosecution therefore requests under Article 58 of the Rome Statute that Pre-Trial Chamber I (“PTC I” or “Chamber”) issue an arrest warrant for **HUSSEIN**.

3. After careful consideration the Office has decided to publicly announce its request for a warrant against **HUSSEIN** to promote a public discussion that may prompt the GoS to review its policy and to arrest **HUSSEIN** and cooperate with the International Criminal Court, in accordance with the UN Security Council Resolution 1593.

4. The charged crimes were perpetrated during attacks upon towns and villages in West Darfur.¹ These same crimes are set out in the Arrest Warrant Application against Ahmad Harun and Ali Kushayb.² Accordingly, the Prosecution relies upon the evidence submitted to the PTC in support of its previous Application, supplemented herein with evidence that demonstrates the particular additional criminal responsibility of **HUSSEIN**. The Prosecution also relies on its Application and the Chamber’s decision in the case of “*Prosecution v. Bashir*” (“*Bashir*”). In

¹ Prosecutor's Application under Article 58(7), 27 February 2007, Public Redacted Version, ICC-02/05-56, paras 182-250.

² Prosecutor's Application under Article 58(7), 27 February 2007, Public Redacted Version, ICC-02/05-56, paras 182-250 (particularly paras 191-250).

that case, PTC I found reasonable grounds to believe that in early 2003, President Bashir decided to use the entire state apparatus to attack and displace the civilian population in Darfur, and in particular, to target the Fur, Masalit and Zaghawa ethnic groups. The Chamber found that, per President Bashir's orders, the attacks followed a consistent pattern: GoS forces surrounded the villages and houses of members of the target groups; killed, tortured, and raped persons therein; and forced the displacement of civilians to hostile terrain. The attacks were carried out in a systematic and widespread manner, in particular against the members of the targeted groups who were perceived hostile to the GoS and supportive of rebel movements. After rebel forces attacked the Al Fashir airport on 25 April 2003, the GoS launched a full-scale military operation, including the use of the Militia/Janjaweed, that targeted the rebels groups and also the ethnic communities that it believed supported them.³

5. **HUSSEIN** played a central role in the formulation and implementation of this GoS military strategy in Darfur. He was the Minister of the Interior and the Special Representative of the President in Darfur; with the power and responsibility of that position "*he could take action on behalf of the president in Darfur*". Due to his role **HUSSEIN** also had ultimate authority over State and Locality Security Committees in Darfur, a mechanism used to coordinate the Common Plan. These committees comprised representatives of the Sudanese Armed Forces, Police, and Intelligence agencies. They coordinated the activities of the state apparatus, defined the targets, and identified resource requirements, including on matters relating to the staffing, funding, and arming of the Militia/Janjaweed. These committees reported directly to

3 The Militia/Janjaweed are described using various terms such as "Janjaweed", "Fursan", "Mujahideen" and "Bashmerga". Janjaweed literally means "a man (a devil) on horse". Historically in Darfur Janjaweed has referred to armed robbers or bandits mounted on horses or camels. In more recent times, however, the term has been used to refer to members of tribes mainly from Ma'aliya, Mahamid, Northern Reizegat, Jalul etc. who have volunteered to fight for and with the backing of the Sudanese Government. See Video Material, DAR-OTP-0136-0100.

Ahmad Harun (“Harun”),⁴ whom **HUSSEIN** appointed to head the “Darfur Security Desk”,⁵ and Harun reported to **HUSSEIN**.

6. HUSSEIN made essential contributions to the Common Plan both directly and through Harun, by recruiting, mobilising, funding, arming, training, inciting and deploying the Militia/Janjaweed, knowing that they would commit crimes against humanity and war crimes, including murder, rape, torture, inhumane acts, pillaging and the forcible transfer of civilian populations.

II. The Prosecution’s investigation and justification for filing under seal

7. In addition to open source material,⁶ the Prosecution’s evidence includes witness statements,⁷ material obtained from the United Nations Commission of Inquiry (“UNCOI”),⁸ and documents provided by the GoS. Victim and witness protection considerations apply to this Application. Accordingly, the Prosecution files its Application under seal to protect their security.⁹

III. Identification of the Person

8. Abdel Rahim Mohammed HUSSEIN¹⁰ is a Sudanese citizen over sixty years old. He was born in or around Dankla in Karma city in North Khartoum, the Sudan.¹¹ He is married, and one of his wives is a blood relative of President Bashir.¹² Sometime after the rebel attack on Al Fashir airport in April 2003, President Bashir appointed **HUSSEIN** as the President’s Special Representative in

4 [REDACTED].

5 Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, paras 80 to 94.

6 Cited hereafter as “Public Sources”.

7 Cited hereafter as “ICC Statements”.

8 Cited hereafter as “UNCOI Material”.

9 [REDACTED].

10 Public Source, DAR-OTP-0181-0035. Alternative spellings: Abdul Rahim Mohamed (Mohammed) HUSSEIN (Husayn), Abdelrahim Mohamed Hussein.

11 Public Source, DAR-OTP-0181-0048 (Arabic); DAR-OTP-0181-0536 at 0538 (Translation).

12 [REDACTED].

Darfur, in addition to his then-position of Minister of the Interior. As Minister of the Interior,¹³ **HUSSEIN** was in charge *inter alia* of internal security issues and was also a member of the National Security Council/Committee (“NSC”)¹⁴ and National Defence Council¹⁵. **HUSSEIN** also controlled the Police, the Popular Police Force (“PPF”), civil defence, drugs control, prisons and traffic police.¹⁶ **HUSSEIN** supervised Harun,¹⁷ the Minister of State for the Interior.¹⁸

9. As the President's Special Representative in Darfur, **HUSSEIN** represented the President in political, security, and administrative activities related to Darfur.¹⁹ In September 2005, **HUSSEIN** was appointed Minister of Defence,²⁰ a position he holds to the date of this filing.

IV. The Incidents Underlying the Crimes Charged

10. The joint attacks by the Armed Forces and Militia/Janjaweed and the incidents that are the subject of this Application occurred between August 2003 and March 2004 in **Kodoom**, **Bindisi**, **Mukjar** and **Arawala**, in the Wadi Salih and Mukjar Localities of West Darfur.²¹ In the case of “*Prosecution v. Harun & Kushayb*” (“*Harun & Kushayb*”), PTC I issued arrest warrants for crimes arising out of these criminal episodes,²² finding reasonable grounds to believe that war crimes and crimes against humanity occurred in the context of the attacks carried on these towns

13 [REDACTED].

14 [REDACTED]; Article 34(1) of National Security Forces Act of 1999, DAR-OTP-0021-0412 at 0424 (Article 34(1)(f) refers to the Minister of Internal Affairs, the same as the Minister of the Interior, as a member of the National Security Council).

15 Article 18(2)(e) of the People's Armed Forces Act of 1986, DAR-OTP-0103-0564 (Arabic); DAR-OTP-0118-0075 at 0086-0087 (Translation).

16 [REDACTED].

17 [REDACTED].

18 [REDACTED]; UNCOI Material, DAR-OTP-0016-0013 at 0013.

19 [REDACTED].

20 [REDACTED].

21 See Annex 1.

22 See Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, pp. 43 to 56 (see “Count 1” to “Count 51”).

and villages between August 2003 to March 2004, committed by the GoS forces and Militia/Janjaweed, acting in concert.²³

V. Counts

11. Pursuant to Article 58 of the Rome Statute, the Prosecution submits that there are reasonable grounds to believe that **Abdel Rahim Mohammed HUSSEIN** bears criminal responsibility under Article 25(3)(a) of the Rome Statute for the following crimes:

The Attacks on the Kodoom villages and surrounding areas

Count 1

(Persecution in the Kodoom villages and surrounding areas constituting a Crime against Humanity)

From on or about 15 August 2003 to on or about 31 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the persecution of the primarily Fur population of the Kodoom villages and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur by acts of murder, attacking the civilian population, destruction of property and forcible transfer in violation of Articles 7(l)(h) and 25(3)(a) of the Rome Statute;

Count 2

(Murder of civilians in the Kodoom villages and surrounding areas constituting a Crime against Humanity)

On or about 15 August 2003. **Abdel Rahim Mohammed HUSSEIN** acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the murder of civilians from the primarily Fur population of the Kodoom villages and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute;

²³ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, para. 64.

Count 3

(Murder of civilians in the Kodoom villages and surrounding areas constituting a War Crime)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the murder of civilians from the primarily Fur population of the Kodoom villages and surrounding areas, while those civilians were taking no active part in hostilities, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur. Including [REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

Count 4

(Murder of civilians in the Kodoom villages and surrounding areas constituting a Crime against Humanity)

On or about 31 August 2003. **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the murder of civilians from the primarily Fur population of the Kodoom villages and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute:

Count 5

(Murder of civilians in the Kodoom villages and surrounding areas constituting a War Crime)

On or about 31 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the murder of civilians from the primarily Fur population of the Kodoom villages and surrounding areas, while those civilians were taking no active part in hostilities, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

Count 6

(Attacks against the civilian population in the Kodoom villages and surrounding areas constituting a War Crime)

From on or about 15 August 2003 to on or about 31 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or

as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of the Kodoom villages and surrounding areas, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur and against civilians taking no direct part in hostilities, including [REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(a) of the Rome Statute;

Count 7
(Destruction of property in the Kodoom villages and surrounding areas
constituting a War Crime)

From on or about 15 August 2003 to on or about 31 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the destruction of property belonging to the primarily Fur population of the Kodoom villages and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including the burning of houses in Kodoom Jureh, Kodoom Tineh, Kodoom Wosta and Kodoom Derliwa, in violation of Articles 8(2)(e)(xii) and 25(3)(a) of the Rome Statute;

Count 8
(Forcible transfer from the Kodoom villages and surrounding areas
constituting a Crime against Humanity)

From on or about 15 August 2003 to on or about 31 August 2003 **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the forcible transfer of approximately 20.000 primarily Fur civilians from the Kodoom villages and surrounding areas in the Wadi Salih Locality in West Darfur to Bindisi town and other locations in the Wadi Salih Locality in West Darfur resulting in the desertion of the villages, in violation of Articles 7(1)(d) and 25(3)(a) of the Rome Statute;

The Attack on Bindisi town and surrounding areas

Count 9
(Persecution in Bindisi town and surrounding areas constituting a Crime
against Humanity)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the persecution of the primarily Fur population of Bindisi town and surrounding areas in the Bundis

Administrative Unit of Wadi Salih Locality in West Darfur, by acts of murder, rape, attacking the civilian population, inhumane acts, pillaging, destruction of property and forcible transfer of the population, in violation of Articles 7(l)(h) and 25(3)(a) of the Rome Statute;

Count 10

(Murder of civilians in Bindisi town and surrounding areas constituting a Crime against Humanity)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the murder of over 100 civilians from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute;

Count 11

(Murder of civilians in Bindisi town and surrounding areas constituting a War Crime)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the murder of over 100 civilians from the primarily Fur population of Bindisi town and surrounding areas, while those civilians were taking no active part in hostilities, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

Count 12

(Rape in Bindisi town and surrounding areas constituting a Crime against Humanity)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the rape of women and girls from the primarily Fur population of Bindisi town and surrounding areas, in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 7(1)(g) and 25(3)(a) of the Rome Statute;

Count 13

(Rape in Bindisi town and surrounding areas constituting a War Crime)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the rape of women and girls from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 8(2)(e)(vi) and 25(3)(a) of the Rome Statute;

Count 14

(Attacks against the Civilian population in Bindisi town and surrounding areas constituting a War Crime)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, while those civilians were taking no direct part in hostilities, including residents [REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(a) of the Rome Statute;

Count 15

(Inhumane acts in Bindisi town constituting a Crime against Humanity)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the inflicting of great suffering, serious injury to body or to mental or physical health by means of an inhumane act upon civilians from the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including the inhumane act of shooting [REDACTED], resulting in serious injury, in violation of Articles 7(1)(k) and 25(3)(a) of the Rome Statute;

Count 16

(Pillaging in Bindisi town and surrounding areas constituting a War Crime)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the pillaging of property belonging to the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur. including the

pillaging of household property, in violation of Articles 8(2)(c)(v) and 25(3)(a) of the Rome Statute;

Count 17
(Destruction of property in Bindisi town and surrounding areas constituting a War Crime)

On or about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the destruction of property belonging to the primarily Fur population of Bindisi town and surrounding areas in the Bundis Administrative Unit of Wadi Salih Locality in West Darfur, including the burning of food storages, the mosque and dwellings in the area, in violation of Articles 8(2)(e)(xii) and 25(3)(a) of the Rome Statute;

Count 18
(Forcible transfer from Bindisi town and surrounding areas constituting a Crime against Humanity)

On and about 15 August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the forcible transfer of approximately 34.000 primarily Fur civilians from Bindisi town and surrounding areas in the Wadi Salih Locality in West Darfur to Mukjar town and other locations in the Wadi Salih Locality in West Darfur, resulting in the desertion of the town, in violation of Articles 7(1)(d) and 25(3)(a) of the Rome Statute;

The Attack on Mukjar town and surrounding areas

Count 19
(Persecution in Mukjar town and surrounding areas constituting a Crime against Humanity)

Between August 2003 and March 2004, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the persecution of the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur by acts of murder, attacking the civilian population, imprisonment or severe deprivation of liberty, torture, pillaging and destruction of property in violation of Articles 7(1)(h) and 25(3)(a) of the Rome Statute:

Count 20

(Murder of men in Mukjar town and surrounding areas constituting a Crime against Humanity)

Between September 2003 and October 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the murder of at least 20 men from the primarily Fur population of Mukjar town and surrounding areas, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute;

Count 21

(Murder of men in Mukjar town and surrounding areas constituting a War Crime)

Between September 2003 and October 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the murder of at least 20 men from the primarily Fur population of Mukjar town and surrounding areas while those men were taking no active part in hostilities, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

Count 22

(Murder of men in Mukjar town and surrounding areas constituting a Crime against Humanity)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the murder of at least 21 men from the primarily Fur population of Mukjar town and surrounding areas, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute;

Count 23

(Murder of men in Mukjar town and surrounding areas constituting a War Crime)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the murder of at least 21 men from the primarily Fur population of Mukjar town and surrounding areas while those men were taking no active part in hostilities, near Bedingair Brook to the north east of Mukjar town in the Mukjar Locality in West Darfur, in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

Count 24

(Murder of men in Mukjar town and surrounding areas constituting a Crime against Humanity)

In or around March 2004, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the murder of at least 32 men from the primarily Fur population of Mukjar town and surrounding areas, near Sinnang outside of Mukjar town in the Mukjar Locality in West Darfur, including [REDACTED], in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute;

Count 25

(Murder of men in Mukjar town and surrounding areas constituting a War Crime)

In or around March 2004, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the murder of at least 32 men from the primarily Fur population of Mukjar town and surrounding areas while those men were taking no active part in hostilities, near Sinnang outside of Mukjar town in the Mukjar Locality in West Darfur. Including [REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

Count 26

(Attacks against the civilian population in Mukjar town and surrounding areas constituting a War Crime)

Between August 2003 and March 2004, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur and against

civilians taking no direct part in hostilities, including [REDACTED], in violation of Articles 8(2)(e)(i) and 25(3)(a) of the Rome Statute;

Count 27

(Imprisonment or Severe Deprivation of Liberty in Mukjar town and surrounding areas constituting a Crime against Humanity)

Beginning in or about August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the imprisonment or severe deprivation of physical liberty of at least 400 civilians from the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including [REDACTED], in violation of Articles 7(1)(e) and 25(3)(a) of the Rome Statute;

Count 28

(Torture in Mukjar town and surrounding areas constituting a Crime against Humanity)

Beginning in or about August 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the torture of at least 60 civilians from the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including the torture of [REDACTED], by tying, suspension by his arms, beating and starvation, in violation of Article 7(1)(f) and 25(3)(a) of the Rome Statute;

Count 29

(Pillaging in Mukjar town and surrounding areas constituting a War Crime)

Between August 2003 and March 2004, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the pillaging of property belonging to the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including the pillaging of shops, houses and livestock, in violation of Articles 8(2)(e)(v) and 25(3)(a) of the Rome Statute;

Count 30

(Destruction of property in Mukjar town and surrounding areas constituting a War Crime)

Between August 2003 and March 2004, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the destruction of property belonging to the primarily Fur population of Mukjar town and surrounding areas in the Mukjar Locality in West Darfur, including the burning of dwellings and the destruction of crops and farms, in violation of Articles 8(2)(e)(xii) and 25(3)(a) of the Rome Statute;

The Attack on Arawala town and surrounding areas

Count 31

(Persecution in Arawala town and surrounding areas constituting a Crime against Humanity)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred namely, the persecution of the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, by acts of murder, rape, attacking the civilian population, outrages upon personal dignity, inhumane acts, pillaging, destruction of property and forcible transfer of the population, in violation of Articles 7(1)(h) and 25(3)(a) of the Rome Statute;

Count 32

(Murder of civilians in Arawala town and surrounding areas constituting a Crime against Humanity)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred namely, the murder of at least 26 civilians from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute;

Count 33

(Murder of civilians in Arawala town and surrounding areas constituting a War Crime)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred namely, the murder of at least 26 civilians from the primarily Fur population of Arawala town and surrounding areas, while those civilians were taking no active part in hostilities, in the Wadi Salih

Locality in West Darfur. including [REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

Count 34
(Rape in Arawala town and surrounding areas constituting a Crime against Humanity)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred namely, the rape of at least 10 women and girls from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur. including [REDACTED], in violation of Articles 7(1)(g) and 25(3)(a) of the Rome Statute;

Count 35
(Rape in Arawala town and surrounding areas constituting a War Crime)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the rape of at least 10 women and girls from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including [REDACTED], in violation of Articles 8(2)(e)(vi) and 25(3)(a) of the Rome Statute;

Count 36
(Attacks against the civilian population in Arawala town and surrounding areas constituting a War Crime)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the intentional directing of attacks against civilians from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur and against civilians taking no direct part in hostilities, including [REDACTED], in violation of Articles 8(2)(c)(i) and 25(3)(a) of the Rome Statute;

Count 37
(Outrage upon personal dignity in Arawala town and surrounding areas constituting a War Crime)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator,

committed a war crime which in fact occurred, namely the violation of the dignity of at least 10 women and girls from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including the humiliation and degradation of [REDACTED] by [REDACTED], during which time she was repeatedly raped, in violation of Articles 8(2)(c)(ii) and 25(3)(a) of the Rome Statute;

Count 38

(Inhumane acts in Arawala constituting a Crime against Humanity)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely inflicting great suffering, or serious injury to body or to mental or physical health by means of an inhumane act upon civilians from the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including the inhumane act of shooting and stabbing [REDACTED] and [REDACTED], resulting in serious injury, in violation of Articles 7(1)(k) and 25(3)(a) of the Rome Statute;

Count 39

(Pillaging in Arawala town and surrounding areas constituting a War Crime)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the pillaging of property belonging to the primarily Fur population of Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur, including the pillaging of stores, houses and livestock, in violation of Articles 8(2)(e)(v) and 25(3)(a) of the Rome Statute;

Count 40

(Destruction of property in Arawala town and surrounding areas constituting a War Crime)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a war crime which in fact occurred, namely the destruction of property belonging to the primarily Fur population of Arawala town and surrounding areas in

the Wadi Salih Locality in West Darfur including the destruction of most of Arawala town, in violation of Articles 8(2)(e)(xii) and 25(3)(a) of the Rome Statute;

Count 41
(Forcible transfer from Arawala town and surrounding areas constituting a Crime against Humanity)

In or around December 2003, **Abdel Rahim Mohammed HUSSEIN**, acting pursuant to a Common Plan, as a co-perpetrator or as an indirect co-perpetrator, committed a crime against humanity which in fact occurred, namely the forcible transfer of approximately 7,000 primarily Fur civilians from Arawala town and surrounding areas in the Wadi Salih Locality in West Darfur to the towns of Deleig, Garsila and other locations in the Wadi Salih Locality in West Darfur, resulting in the desertion of the town, in violation of Articles 7(1)(d) and 25(3)(a) of the Rome Statute.

VI. The GoS Common Plan: The Counterinsurgency Campaign Conducted by the Sudanese Government involving the attack against civilians in Darfur

i. The Strategy of the Counterinsurgency Campaign

12. The Justice and Equality Movement (“JEM”) and the Sudan Liberation Movement/Army (“SLM/A”), pursuing political change, created an armed rebel insurgency against the Sudanese government in Darfur in 2003.²⁴ The GoS countered the insurgency by using, at the national, state and local levels, security committees to coordinate the actions of the Armed Forces, the Police, the National Security and Intelligence Service (NISS) and the Militia/Janjaweed.²⁵

²⁴ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, paras 36-39; Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Public Redacted Version, ICC-02/05-01/09-3, paras 61-63.

²⁵ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, paras 65-66.

ii. Implementation of the GoS Plan: The Phases of Government Operations

13. As Minister of the Interior, **HUSSEIN** had authority and control over the Police. President Bashir delegated further responsibilities in Darfur to **HUSSEIN** when he appointed him as his Special Representative in Darfur. His position as Special Representative enabled **HUSSEIN** to deploy the Armed Forces there to execute the GoS's counterinsurgency plan.²⁶ **HUSSEIN** ultimately exercised authority and control over the security bodies including national security, military intelligence and forces like the PPF, Popular Defence Force ("PDF") and the Border Intelligence Unit ("BIU").²⁷

14. Witnesses and a GoS document²⁸ outlined the six phases of the counterinsurgency campaign. The evidence demonstrates that, typically, these phases began and ended at major turning points in the campaign against rebel forces, including the signing of peace agreements or decisions by President Bashir.²⁹

iii. **HUSSEIN's contribution in each of the phases**

15. The first phase of Government Operations in Darfur, between September 2002 and March 2003, was characterised by the GoS attempt to use the Armed Forces to control the rebellion, while also negotiating unsuccessfully with the rebels.³⁰ From 22 to 25 February 2003, **HUSSEIN** represented the GoS in a Consultative Meeting that was held in Al Fashir for Darfuris, politicians and government representatives.. The outcome of the meeting was a recommendation for a peaceful solution to the conflict through dialogue, wealth distribution and power sharing. However, upon his return to Khartoum, **HUSSEIN** together with the GoS ignored this recommendation

26 Decision of the representative of the President and the Minister of Interior, Decision No.4 of 2004 dated 04 July 2004, UNCOI Material, DAR-OTP-0008-0250 (Arabic); DAR-OTP-0181-0023 at 0024 (Translation); [REDACTED]; UNCOI Material, DAR-OTP-0012-0221 at 0224; [REDACTED]; UNCOI Material, DAR-OTP-0016-0013 at 0013, 0016.

27 [REDACTED].

28 Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, DAR-OTP-0116-0721.

29 See additional details in paragraphs 44 to 60 of the Prosecutor's Application under Article 58(7) of 27 February 2007, Public Redacted Version, ICC-02/05-56.

30 [REDACTED].

and chose to go to war instead.³¹ In March 2003, President Bashir announced in Al Fashir, the capital of North Darfur, that the GoS would use military force,³² and instructed the Armed Forces to quell the rebellion in two weeks and bring back no prisoners or wounded.³³

16. On 25 April 2003 rebel forces attacked the Government airport at Al Fashir, North Darfur, destroying several aircrafts, killing military personnel, and kidnapping the Sudanese Air Force commander.³⁴ The GoS halted negotiations with the Fur and Zaghawa representatives and launched a full-scale military operation against the rebel groups.³⁵ Simultaneously, **HUSSEIN**'s Ministry issued a statement [REDACTED] falsely stating that the situation in Al Fashir had returned to normal.³⁶

17. In the second phase, the GoS increased military operations in North and West Darfur. It also embarked on a new strategy of recruiting Militia/Janjaweed, numbering eventually in the tens of thousands.³⁷ In or around early June 2003, **HUSSEIN** told the Sudanese Parliament that twelve battalions equipped with 364 vehicles were ready to move to Darfur.³⁸ He also revealed that there was a new plan, the implementation of which had already begun, to resolve the situation.

18. Shortly prior to the beginning of the third phase, during a meeting in El Geneina, West Darfur, in or about August 2003, **HUSSEIN** announced that the GoS was supplying sixty vehicles of the Central Reserve Force ("CRF") to keep the peace in the western areas of El Geneina and to enable the displaced population to

31 [REDACTED].

32 UNCOI Material, DAR-OTP-0107-0627 at 0632; [REDACTED].

33 [REDACTED].

34 [REDACTED]; Public Source, DAR-OTP-0020-0067 at 0072; [REDACTED]. See also UNCOI Material, DAR-OTP-0107-0627 at 0633.

35 [REDACTED]; see also UNCOI Material, DAR-OTP-0107-0627 at 0633.

36 Public Source, DAR-OTP-0181-0026.

37 [REDACTED]; UNCOI Material, DAR-OTP-0037-0016 at 0017-0018; UNCOI Material, DAR-OTP-0014-0261 at 0263; UNCOI Material, DAR-OTP-0077-0605 at 0610-0611; [REDACTED].

38 Public Source, DAR-OTP-0182-0011 at 0015.

return to their homes.³⁹ Although **HUSSEIN** had the authority, which he exercised on other occasions, to deploy the CRF,⁴⁰ this announcement was a ruse; the forces remained in their barracks and did not assist the local population. In the third phase, from September to December 2003, the intensity of rebel attacks and counter-attacks by the Armed Forces increased. The GoS halted military operations on 31 January 2004, and a week later, President Bashir announced that all major military operations were complete,⁴¹ marking the end of the third phase. Also, around this time period, **HUSSEIN** told [REDACTED] that [REDACTED].⁴²

19. After a fourth phase - between 31 January and 8 April 2004 – consisting of a series of limited military operations⁴³ and culminating in the signing of a Ceasefire Agreement with the rebels in N'Djamena, Chad on 8 April 2004, the fifth phase opened with continued rebel attacks.⁴⁴ During this phase, in May 2004, **HUSSEIN** told [REDACTED] that the rebels were no longer a military force and had resorted to banditry.⁴⁵ On 4 July 2004, in furtherance of the GoS strategy of denials and cover-ups, **HUSSEIN** deployed (in decision No. 4 of 2004) the police, military and security forces throughout Darfur, allegedly to increase security and protect citizens and property.⁴⁶ However, at a press conference the same day, **HUSSEIN** declared that the GoS would not prosecute the five tribal leaders, including Militia/Janjaweed commander Musa Hilal, who had been named by the US Congress for committing crimes in Darfur.⁴⁷ In the sixth phase, the continued rebel activity led to another major Government initiative in South Darfur at the end of 2004.⁴⁸

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ UNCOI Material, DAR-OTP-0107-0627 at 0633.

⁴² Public Source, DAR-OTP-0182-0009.

⁴³ UNCOI Material, DAR-OTP-0107-0627 at 0633.

⁴⁴ Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, DAR-OTP-0116-0721 at 0726-0727.

⁴⁵ Public Source, DAR-OTP-0099-0210 at 0287-0288.

⁴⁶ Decision of the representative of the President and the Minister of the Interior, UNCOI Material, DAR-OTP-0008-0250 (Arabic); DAR-OTP-0181-0023 at 0024 (Translation).

⁴⁷ Public Source, DAR-OTP-0181-0029 at 0029; Public Source, DAR-OTP-0120-0678 at 0724; Public Source, DAR-OTP-0137-0068 (Translation from Arabic).

⁴⁸ Memorandum titled Unofficial version of the Armed Forces Memorandum concerning the International Criminal Court's Inquiries, 30 April 2006, DAR-OTP-0116-0721 at 0727; [REDACTED].

iv. The Entities Involved in the Implementation of the GoS Plan

20. The GoS implemented the Common Plan in Darfur by using the Security Committees to coordinate the Armed Forces, the Police, Reserve forces, including the Militia/Janjaweed and other GoS institutions.

21. In the Darfur conflict, the GoS “levied”, or requested, the participation of Militia/Janjaweed groups to fight in the counterinsurgency campaign.⁴⁹ These Militia/Janjaweed were often integrated into the reservist forces of the Armed Forces and the Police.

22. PTC I in *Harun & Kushayb*, found reasonable grounds to believe the Militia/Janjaweed acted in concert with the Sudanese Armed Forces and were generally integrated into the PDF (part of the Armed Forces) and the PPF (part of the Police) and acted under their command.⁵⁰ The Militia/Janjaweed received training at PDF and PPF training centres and were paid and armed by the Sudanese authorities. Their leaders also often wore the uniforms of the Sudanese Armed Forces, the PDF and the PPF.⁵¹ **HUSSEIN**’s effective control over these forces, and his role in their recruitment, funding, deployment and arming, are discussed at paragraphs 25--31 of this Application.

23. The Security Committees were responsible for formulating and coordinating the implementation of GoS policy in Darfur. At the national level, the NSC formulated national security policy.⁵² The NSC was replicated at the local levels by

⁴⁹ [REDACTED].

⁵⁰ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, para. 65.

⁵¹ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, paras 65-66; see also [REDACTED].

⁵² The National Security Forces Act defines the composition of the National Security Council: “(a) the President of the Republic, Chairman; (b) the competent Minister, member and rapporteur; (c) the President of the Republic advisor on security affairs, member; (d) the Minister of Defence, member; (e) the Minister of Foreign Relations, member; (f) the Minister of Internal Affairs [the Minister of the Interior], member; (g) the Director, the Internal Security Organ, member; (h) the Director, the

State and Locality Security Committees.⁵³ Each State Security Committee included the Governor of the relevant state, the Area Military Leader (a representative of the Armed Forces), the Police Commander of the State, the Director of Internal Security, the Director of the State Legal Directorate, and the Commissioners of the state's localities.⁵⁴ (Each locality within a state has a senior GoS representative – a Commissioner – who reports directly to the Governor of the State).

24. Each Locality Security Committee was headed by the same Commissioner who also sat as a member of the State Security Committee.⁵⁵ Other members of the Committee, as in the State Security Committees, included representatives of the GoS, the Armed Forces, the Police, and the Intelligence and Security Service.⁵⁶ A representative of the PDF and PPF also sat on each Locality Security Committee.⁵⁷ The PDF representative was responsible for coordinating with tribal leaders (including the Aqid al Oqada) the activities of their militia.⁵⁸ As described in paragraphs 32 and 41, these State and Locality Security Committees played a critical role in the implementation of the Common Plan.

25. Further evidence of this reporting mechanism is contained in the Police Forces Act of 1999, which expressly mandates the State Security Committees to send copies of all the minutes of its meetings and decisions to the “Higher Specialist Committee” (the National Security Council), and a second copy to the Minister of the Interior.⁵⁹ Minutes of some State Security Committee meetings also confirm that

Sudanese Intelligence Organ, member”, see Article 34(1) of the National Security Forces Act of 1999, DAR-OTP-0021-0412 at 0424.

53 Article 150(3) of the Interim Constitution of 2005 reads: “*There shall be established security committees at [...] state levels*”, at DAR-OTP-0136-0605 at 0663-0664.

54 Article 17 of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0906-0907 (Translation); [REDACTED].

55 Articles 17(b) and 18(4)(a) of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0906-0907 (Translation).

56 Article 18 of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0907 (Translation).

57 [REDACTED]

58 [REDACTED]; UNCOI Material, DAR-OTP-0014-0213 at 0214; UNCOI Material, DAR-OTP-0011-0111 at 0112.

59 Article 18 (3) of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0907 (Translation).

the State Security Committees recognised the need to report to Harun.⁶⁰ As is described below, Harun attended meetings of the State Security Committees when he travelled to Darfur. **HUSSEIN** was responsible for delivering on the needs of the various State Security Committees, including needed troops and logistics. **HUSSEIN** issued and signed orders to deploy police, military and other security forces throughout Darfur.⁶¹ Harun, as the link between the local and state authorities and the Federal Authorities, received requests from the local authorities and submitted them to **HUSSEIN**.⁶²

26. The composition of the National and State Security Committees, moreover, ensured that **HUSSEIN** and Harun could coordinate the efforts and activities of all the bodies of the GoS engaged in the counterinsurgency, in particular the recruitment, funding and arming of the Militia/Janjaweed. Each State's Governor was a member of the State's Security Committee. These State Governors reported to **HUSSEIN** through Harun.⁶³ Annex 2⁶⁴ to this Application depicts the composition of the National, State and Locality Security Committees, their interrelationship, and the interaction of the State and Locality Security Committees with **HUSSEIN**, Harun and Kushayb.⁶⁵ Locality Security Committees in each of the State localities reported to the State Security Committees, which reported to Harun who in turn reported to **HUSSEIN**.⁶⁶ At the locality level, the PDF representative

60 [REDACTED].

61 Decisions of the representative of the President and the Minister of the Interior, Decision No.1 of 2004 dated 4 July 2004, DAR-OTP-0181-0016 (Translation), DAR-OTP-0008-0247 (Arabic), Decision No.(2) of 2004 Establishing Police Posts in Displaced Persons' Camps, DAR-OTP-0181-0018 (Translation), DAR-OTP-0008-0248 (Arabic); Decision No.(3) of 2004 Offering Necessary Assistance to the Committees and The African Monitoring Force, DAR-OTP-0181-0021 (Translation), DAR-OTP-0008-0249 (Arabic); Decision No.(4) of 2004 Deploying the Armed Forces, the Police and Security Agencies In the Darfur States To Extend the Security and Protection of the People and Property in Darfur DAR-OTP-0181-0023 (Translation); DAR-OTP-0008-0250 (Arabic). See also UNCOI Material, DAR-OTP-0016-0013 at 0016.

62 [REDACTED].

63 [REDACTED].

64 See Annex 2.

65 See additional details regarding the security committees in paragraph 94 of the Prosecutor's Application under Article 58(7) of 27 February 2007, Public Redacted Version, ICC-02/05-56.

66 [REDACTED]. See also Article 18(a) of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0907 (Translation); Articles 34(1), 35 and 39 of the National Security Forces Act of 1999, DAR-OTP-0021-0412 at 0424-0425; [REDACTED]; UNCOI Material, DAR-OTP-0014-0317 at 0318.

was responsible for coordinating with tribal leaders, including with the “Aqid al Oqada”⁶⁷, the activities of their militia.⁶⁸ A witness told the Prosecution that **HUSSEIN** had the power to appoint Militia/Janjaweed leaders.⁶⁹

27. The Police were also under **HUSSEIN**’s operational control as Minister of the Interior.⁷⁰ It included the PPF or “Shurta Shabia”.⁷¹ One witness related how both the PPF and PDF were “joined to” the military forces and were responsible for the attacks, looting and chasing people out of Darfur.⁷² Another witness observed that the Militia/Janjaweed operating under the PPF attacked, sexually abused and raped girls, and also explained that the PPF were always present when the villages were being burned.⁷³

28. The PDF, the reserve component of the Armed Forces is a citizen force which is provided with military training and mobilised on the demand of the army.⁷⁴ Another witness stated [REDACTED]⁷⁵ told [REDACTED] that during some attacks in Darfur, the PPF and PDF deliberately wore the same uniforms as the regular army to make it difficult to identify the group carrying out the attack.⁷⁶ Witnesses also confirmed that the GoS provided the PPF with supplies⁷⁷ and military training.⁷⁸

67 A position also held by Ali Kushayb (see Prosecutor’s Application under Article 58(7), 27 February 2007, Public Redacted Version, ICC-02/05-56; see also Decision on the Prosecutor’s Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, 27 April 2007, para. 96).

68 [REDACTED]; UNCOI Material, DAR-OTP-0014-0213 at 0214; UNCOI Material, DAR-OTP-0011-0111 at 0112.

69 [REDACTED].

70 [REDACTED].

71 [REDACTED].

72 [REDACTED].

73 [REDACTED].

74 UNCOI Material, DAR-OTP-0107-0627 at 0629. [REDACTED]. See further The People’s Defence Forces Act of 1989, DAR-OTP-0116-0889.

75 The police, PPF, army and PDF, [REDACTED].

76 [REDACTED].

77 [REDACTED].

78 [REDACTED].

29. The CRF was originally created to assist the regular Police in countering riots,⁷⁹ combating tribal conflicts and pursuing armed robbery gangs. The GoS used the CRF, also known as the “*Ihyatie al Markazi*”, in its counter-insurgency campaign in Darfur.⁸⁰ [REDACTED] in November 2003, the head of the CRF from Khartoum gave a speech warning that anyone who did not co-operate with the government would be killed.⁸¹ Witnesses also confirmed that some attacks on villages were carried out by combined forces of CRF, PDF and Militia/Janjaweed.⁸² **HUSSEIN**’s command and control authority is evidenced by his deployment of the force in El Geneina area in or about August 2003. [REDACTED] in or about August 2003, during a meeting in El Geneina, **HUSSEIN** announced that the GoS was deploying 60 CRF vehicles to that area.⁸³ Significantly, the CRF were in fact deployed to a number of villages following **HUSSEIN**’s announcement.⁸⁴

30. According to Prosecution witnesses, during the attack on Bindisi on 15 August 2003, referred to at paragraphs 10 and 11 of this Application,⁸⁵ the CRF was the first force to arrive in land cruisers with weapons mounted on them. They were followed by Militia/Janjaweed who began shooting at people. The CRF themselves then joined in the shooting.⁸⁶ A witness to another such criminal attack in Kodoom, on or about 15 August 2003,⁸⁷ saw Kushayb in uniform, giving orders to the CRF and Militia/Janjaweed to divide up and attack different parts of the village.⁸⁸

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ Prosecutor’s Application under Article 58(7), 27 February 2007, Public Redacted Version, ICC-02/05-56, paras 200-216; Public Redacted Version of Prosecution’s Application under Article 58 filed on 14 July 2008, ICC-02/05-157, paras 215, 218 and 221.

⁸⁶ [REDACTED].

⁸⁷ Public Redacted Version of Prosecution’s Application under Article 58 filed on 14 July 2008, ICC-02/05-157; paras 17, 38, 101, 213, 214, 221; Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Public Redacted Version, ICC-02/05-01/09-3, paras 98-100; Prosecutor’s Application under Article 58(7), 27 February 2007, Public Redacted Version, ICC-02/05-56, paras 191-199, Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1, 27 April 2007, paras 42, 48, 51, 53, 55, 64, 67, 68, 69, 74, 99.

⁸⁸ [REDACTED].

31. As Minister of the Interior, **HUSSEIN** created the Nomad Police (“Asshurtah Azzaanah”) in about 2002.⁸⁹ The Nomad Police, recruited from Arab tribes in Darfur, Chad, Niger, and Central African Republic, were part of the regular police force in North Darfur,⁹⁰ and therefore received orders from **HUSSEIN** (prior to late 2003) and Harun (after late 2003).⁹¹ The Nomad Police are reservist forces of local citizens raised to augment the regular Police force.⁹² They, along with other components of the Police force, also participated in the GoS counter-insurgency campaign. [REDACTED] police commanders in the Nyala area ordered officers to tell non-Arabs living in villages smaller than 50 huts to move to bigger villages; if they refused, their villages were attacked and burnt. The witness stated that the Zaghawa, Masalit and Fur were the main targets of this campaign, which started around the end of 2002 and continued through 2003, and after the rebel attack on Al Fashir airport.⁹³

32. PTC I in *Harun & Kushayb* found reasonable grounds to believe that Security Committees played a significant role in (i) coordinating the counter-insurgency in Darfur;⁹⁴ (ii) organising the actions of the Sudanese Armed Forces, the police, the PDF, the PPF, the NSIS and the Militia/Janjaweed;⁹⁵ (iii) recruiting, arming and funding the Militia/Janjaweed in Darfur.⁹⁶ **HUSSEIN**’s oversight of the activities of these Security Committees, at each level, is discussed at paragraphs 60 to 63 of this Application.

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ [REDACTED].

⁹⁴ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, para. 81.

⁹⁵ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, paras 65-66.

⁹⁶ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, para. 83.

VII. The Criminal Responsibility of HUSSEIN

A. Modes of Liability - HUSSEIN's responsibility under Article 25(3)(a)

33. As found by PTC I in *Bashir*, members of the Common Plan, including **HUSSEIN**, “*directed the branches of the "apparatus" of the State of Sudan that they led, in a coordinated manner, in order to jointly implement the common plan.*”⁹⁷ The Chamber further acknowledged that Harun “*was entrusted with the tasks of (i) supervising the three Darfurian State Security Committees, and (ii) acting as a link between the government of the three Darfurian States and the highest level of the GoS in Khartoum.*”⁹⁸

34. Without excluding any other applicable mode of liability, **HUSSEIN** is individually criminally responsible as indirect co-perpetrator or as co-perpetrator under Article 25(3)(a) for the alleged crimes against humanity and war crimes that he committed jointly with other members of the common plan, through Harun, and through the various entities under **HUSSEIN's** command and control.

35. **HUSSEIN** intentionally contributed to the realisation of the common plan to commit the above-mentioned crimes. Given (i) **HUSSEIN's** contribution to the common plan, (ii) his position of authority over Harun, (iii) his overall coordinating role vis-à-vis various elements of state apparatus; and (iv) his direct responsibilities in mobilising, provisioning and deploying the Militia/Janjaweed, there are reasonable grounds to believe that he is responsible for the crimes alleged in this Application.

97 Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Public Redacted Version, ICC-02/05-01/09-3, para. 216; Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir ICC-02/05-01/09-94, para. 42(iii).

98 Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Public Redacted Version, ICC-02/05-01/09-3, para. 220, see also para. 175.

B. Existence of the Common Plan and HUSSEIN's membership thereof

36. HUSSEIN, as Special Representative of the President in Darfur and the Minister of the Interior, was a key member of the Common Plan and integrally involved in its implementation.⁹⁹ Furthermore, he was a member of the “inner circle”, the core group of individuals at the highest echelons of the GoS that made the key decisions and controlled the Government apparatus.¹⁰⁰ A witness described HUSSEIN as “one of the architects of the Government's policy on how to respond to the rebel insurgency in Darfur”.¹⁰¹

37. In or around June 2003, HUSSEIN himself acknowledged the existence of a GoS plan in Darfur to the press. The government-owned Al-Anbaa newspaper quoted him as saying that there was “a new plan whose implementation has already began to resolve the security situation in Darfur”.¹⁰²

C. HUSSEIN's Essential Contribution to the Implementation of the Common Plan

38. HUSSEIN's role in the Darfur counterinsurgency campaign derived principally from his position as i) the President's Special Representative in Darfur, which gave him authority over all of the forces (including the military) used to carry out the GoS attacks on the civilian population in Darfur; ii) Minister of the Interior which gave him authority over the Police, the PPF, the Nomad Police, and the CRF, forces all used by the GoS in the counterinsurgency campaign; and iii) his position on the NSC, the organ responsible for formulating, coordinating and implementing the national security policy in Darfur,¹⁰³ and from which he ensured that the Security Committees of the three Darfur states, as well as those of the localities within those states, reported to him through Harun (who coordinated the GoS activities on the ground in Darfur).¹⁰⁴

⁹⁹ [REDACTED].

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² Public Source, DAR-OTP-0182-0011 at 0015.

¹⁰³ [REDACTED].

¹⁰⁴ [REDACTED].

39. Sometime around May 2003, **HUSSEIN** was appointed as the President's Special Representative in Darfur with responsibility for "*security policy of all three Darfur States.*"¹⁰⁵ He was delegated to exercise all the powers of the President in Darfur, including to deploy and control the military and other forces to carry out the GoS counterinsurgency plan. **HUSSEIN** brought together the military forces with the forces under the Ministry of the Interior (the Police and PPF).¹⁰⁶

40. Regarding his control over the military, witnesses observed: "[s]ince the President is the supreme commander and chief of the army and commands all the forces these powers in relation to Darfur were also delegated to **HUSSEIN** [...]"¹⁰⁷; he could "*command the military*"¹⁰⁸; **HUSSEIN** "*could take action on behalf of the president in Darfur*" and represent him "*in all areas of activity related to Darfur: political, security, and administrative*"; he could exercise authority and control over the security bodies "*including national security, military intelligence and forces like the PPF, PDF and the Border Intelligence Unit.*"¹⁰⁹

41. Another witness observed that **HUSSEIN**'s appointment as the President's Special Representative in Darfur made him "*responsible for planning, funding and implementation of security policies*",¹¹⁰ and he could even request that members of security bodies be replaced.¹¹¹ In that position, **HUSSEIN** organised and led meetings with representatives of other entities that participated in the implementation of the common plan and supervised the implementation of the security policy in Darfur. He met regularly to coordinate and execute the GoS policies, with Military Intelligence and NISS.¹¹² He also led coordination meetings

105 [REDACTED]; UNCOI Information Report, DAR-OTP 0012-0221 at 0224; [REDACTED]; UNCOI Material, DAR-OTP-0016-0013 at 0013.

106 [REDACTED].

107 [REDACTED].

108 [REDACTED].

109 [REDACTED].

110 [REDACTED].

111 [REDACTED].

112 [REDACTED].

with other entities at the State and Locality level, including with members of the Security Committees in Darfur¹¹³ that played a critical role in implementing the common plan.¹¹⁴

42. HUSSEIN oversaw the work of the Security Committees personally. A Prosecution witness confirmed that “[a]t the national level, there was a “Darfur Security Desk”, also known as the “Darfur Security file”. At the state level, State Security Committees were used to organise the actions” of the various entities operating on the ground in Darfur.¹¹⁵ **HUSSEIN** supervised the Committees personally as well as through Harun. [REDACTED], the Security Committees were answerable to the Minister of the Interior – **HUSSEIN**.¹¹⁶

43. HUSSEIN also coordinated with individual Militia/Janjaweed commanders. [REDACTED] **HUSSEIN**, Jafar Abd-Al-Hakam (a Locality Commissioner), Harun, Captain Hamdi and Kushayb at Garsila prison in West Darfur. [REDACTED] **HUSSEIN** ordered the execution of prisoners accused of being rebels.¹¹⁷ These executions were later carried out. **HUSSEIN** had similar meetings with these same officials in Mukjar, also in West Darfur.¹¹⁸

44. HUSSEIN travelled to Darfur several times a month during the period of the crimes, including to the places where crimes occurred.¹¹⁹ Witnesses observed that after being put in charge of the Darfur Security File, **HUSSEIN** would regularly visit the region accompanied by the head of the security service,¹²⁰ to supervise the implementation of security policies on the ground.¹²¹

113 Public Source, DAR-OTP-0107-1151 at 1202; [REDACTED].

114 [REDACTED].

115 Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, 27 April 2007, para. 65.

116 [REDACTED].

117 [REDACTED].

118 [REDACTED].

119 [REDACTED].

120 [REDACTED].

121 [REDACTED].

45. Witnesses specifically recall **HUSSEIN**'s visits to Mukjar and Beida (both in West Darfur) in early February 2004,¹²² in which he addressed the Militia/Janjaweed to raise their morale.¹²³ After the public address, **HUSSEIN** met privately with the leaders of the Militia/Janjaweed, after which a Militia/Janjaweed commander distributed a statement confirming that the police would no longer entertain complaints from the villagers.¹²⁴ **HUSSEIN** also distributed money to the Militia/Janjaweed, army and police.¹²⁵ This implicit encouragement to attack the civilian population was also reported on [REDACTED].¹²⁶

46. In addition to his supervision of the military and the Militia/Janjaweed (by virtue of his position as Special Representative), **HUSSEIN** had authority as Minister of the Interior over other components of the state apparatus, including the Police, and Reserve police forces, (PPF, Nomad Police, CRF). These forces worked closely together with the Armed Forces and the Militia/Janjaweed in a coordinated manner in carrying out the common plan. **HUSSEIN** directly participated in, and was in charge of, recruiting, mobilising, arming, funding and deploying these forces.¹²⁷

47. **HUSSEIN** also supervised the camps where the Militia/Janjaweed were trained. A Prosecution witness confirmed that **HUSSEIN** opened PDF and CRF training centres where Militia/Janjaweed were trained.¹²⁸ [REDACTED] **HUSSEIN** himself addressed *umdahs* and *furshas* and encouraged them [REDACTED].¹²⁹ His

122 [REDACTED].

123 [REDACTED].

124 [REDACTED].

125 [REDACTED].

126 Public Source, DAR-OTP-0107-1151 at 1202.

127 UNCOI Material, DAR-OTP-0014-0290 at 0290, para. 2; [REDACTED]; UNCOI Material, DAR-OTP-0016-0013 at 0016; Decision of the representative of the President and the Minister of the Interior, Decision No.4 of 2004 dated 04 July 2004, UNCOI Material, DAR-OTP-0008-0250 (Arabic); DAR-OTP-0181-0023 at 0024 (Translation); [REDACTED].

128 [REDACTED].

129 [REDACTED].

support was so manifest that the Militia/Janjaweed preferred to take their orders from **HUSSEIN** instead of from military commanders in the field.¹³⁰

48. HUSSEIN participated in funding the Militia/Janjaweed. In 2003 **HUSSEIN** visited Beida, West Darfur (area of operation covered by Militia/Janjaweed commander Hamid Duwai), and publicly announced that he would provide the Militia/Janjaweed with horses and camels. He also proposed that if the horsemen required ammunition, they should ask the army. Following this announcement, he attended a private meeting, at the end of which [REDACTED] **HUSSEIN** contributed 5,000,000 Sudanese Pounds to the army and police and 10,000,000 Sudanese Pounds to the Fursan.¹³¹

49. HUSSEIN ensured the deployment of enough forces to implement the GoS plan of attacking the civilian population of Darfur, in particular the Fur, Masalit and Zaghawa tribes. As acknowledged by Harun in his interview to the UNCOI, **HUSSEIN** issued decrees concerning the deployment of the extra security forces to Darfur.¹³² For instance, on 4 July 2004, **HUSSEIN** issued the order (decision No.4 of 2004) concerning the deployment of the police, military and security forces throughout Darfur.¹³³ It was his prerogative or responsibility to deploy the police forces wherever he thought they should be deployed, as he did during his visit to El Geneina, as described in paragraphs 18 and 29 above.¹³⁴

50. While these deployment orders stated that their objectives were to enable the Police, the PPF and the CRF to “*enhance the safety and security of citizens*”,¹³⁵ in reality, they were designed to enable the forces to attack the civilian population, in particular those ethnic groups allied with the rebels. The crimes committed by these forces are described in paragraphs 10-11 and 27-31 above.

130 [REDACTED].

131 [REDACTED].

132 UNCOI Material, DAR-OTP-0016-0013 at 0016.

133 [REDACTED], UNCOI Material, DAR-OTP-0008-0250, Translation DAR-OTP-0181-0023.

134 [REDACTED].

135 [REDACTED], UNCOI Material, DAR-OTP-0008-0250, Translation DAR-OTP-0181-0023.

D. HUSSEIN also used Deputy Minister of the Interior Harun to coordinate the implementation of the Common Plan at the State and Locality levels

51. As PTC I acknowledged¹³⁶, **HUSSEIN** gave Harun, his deputy in the Ministry of the Interior¹³⁷, the responsibility for the “Darfur Security Desk” (the “Darfur Security File”).¹³⁸ In that capacity but answerable to **HUSSEIN**, Harun supervised all the bodies dealing with issues relating to national security, including military intelligence and forces like the PPF, PDF and the BIU, including by following up on their operations in their respective areas of deployment.¹³⁹ Harun confirmed his supervisory role and responsibility over these bodies when he was interviewed by the UNCOI.¹⁴⁰

52. **HUSSEIN** also exercised some of his control and authority over the military in Darfur, through Harun. Harun once ordered the Sudanese Chief of Army Staff to stay in Al Fashir for several months and lead field operations in Darfur - a task that would ordinarily have been performed by a lower ranking military officer.¹⁴¹

53. [REDACTED] stated “*Harun brought instructions from the National Security Committee [through HUSSEIN] to the State Security Committees; these would be followed by the State Security Committees and they would issue a decision.*”¹⁴² In *Bashir*, PTC I acknowledged that Harun “*act[ed] as a link between the government of the three Darfurian States and the highest level of the GoS in Khartoum[fn omitted]*”.¹⁴³ Harun himself explained: “*at federal level, I deal with Cabinet; in Darfur I deal with the Governors and their security committees.*”¹⁴⁴ In **HUSSEIN**’s

136 Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, para. 82; *see also* Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Public Redacted Version, ICC-02/05-01/09-3, para. 220.

137 [REDACTED].

138 [REDACTED].

139 [REDACTED].

140 UNCOI Material, DAR-OTP-0016-0013 at 0013.

141 [REDACTED].

142 [REDACTED].

143 Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Public Redacted Version, ICC-02/05-01/09-3, para. 220.

144 UNCOI Material, DAR-OTP-0016-0013 at 0013.

absence, Harun would “represent him in Cabinet meetings”.¹⁴⁵ The Security Committees also reported to **HUSSEIN** through Harun.¹⁴⁶

E. HUSSEIN had effective control over his Subordinates, including the Fighting Forces and the Police

(i) HUSSEIN’s de jure and de facto position of authority

54. As Minister of the Interior **HUSSEIN** had authority and control over the Police, the PPF, the Nomad Police and the CRF. All these forces participated as part of the GoS forces in carrying out attacks against the civilian population in Darfur in the manner described in paragraphs 27-31. As discussed in paragraph 52 above and paragraphs 58 and 62 below, by virtue of his position as the President’s Special Representative in Darfur, **HUSSEIN** also wielded the authority delegated to him over the armed forces in Darfur.¹⁴⁷

55. **HUSSEIN’s** de facto powers were also recognized by [REDACTED]: “[I]t is important to understand that the government in Sudan is not run by well-established institutions; rather, it is run by influential persons [...]. Hussein is an example of this kind of influential person.”¹⁴⁸ Indeed, when **HUSSEIN** transferred to the Ministry of Defence in 2005, “the whole [Darfur security] file was again assigned to Hussein, now as the Minister of Defense; he retained the same duties as before when he was representative of the president in Darfur.”¹⁴⁹

(ii) HUSSEIN’s effective control over Harun

56. **HUSSEIN** was Harun’s hierarchical superior. As described by one witness “[w]hen HAROUN was made State Minister for Interior, [...]HUSSEIN was his

145 UNCOI Material, DAR-OTP-0016-0013 at 0013.

146 [REDACTED].

147 [REDACTED].

148 [REDACTED].

149 [REDACTED].

boss.”¹⁵⁰ In the interview that he gave to the UNCOI, Harun described his relationship with **HUSSEIN**: “*I am like a Deputy Minister, if the Minister is absent, I represent him in Cabinet meetings.*”¹⁵¹ Harun acknowledged that he reported to **HUSSEIN** and occasionally to the cabinet.¹⁵² The fact that **HUSSEIN** delegated authority over the Darfur Security File to Harun further demonstrates the authority that **HUSSEIN** had over him.

57. As Minister of the Interior, **HUSSEIN** ensured that his Ministry and the other forces under his control (the Police, PPF, Nomad Police and CRF) participated together with the GoS forces and its allied Militia/Janjaweed to implement the plan to attack the civilian population in Darfur. As held by the Chamber in *Bashir*,¹⁵³ individual members of the NSC such as **HUSSEIN** ensured implementation of its decisions in their respective ministries at the state and locality levels.¹⁵⁴

58. **HUSSEIN** was also the Special Representative of the President in Darfur. This position came with a delegation of the responsibilities of the President in Darfur, including the power to deploy the military and the other forces to carry out the GoS’s counterinsurgency plan.¹⁵⁵ [REDACTED] **HUSSEIN**’s appointment as the President’s Special Representative for Darfur made him “*responsible for planning, funding and implementation of security policies.*”¹⁵⁶ Effectively, **HUSSEIN** was put in charge of implementing the GoS military policy in Darfur.¹⁵⁷

150 [REDACTED].

151 UNCOI Material, DAR-OTP-0016-0013 at 0013.

152 UNCOI Material, DAR-OTP-0016-0013 at 0013.

153 Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Public Redacted Version, ICC-02/05-01/09-3, para. 216; Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir ICC-02/05-01/09-94, para. 42(iii);

154 [REDACTED]; Unofficial version of the Armed Forces Memorandum concerning the ICC’s inquiries – Military Operations summary since January 2002 – Armed Forces and Rebels (30 April 2006), DAR-OTP-0099-0473 to DAR-OTP-0099-0500 (in Arabic), DAR-OTP-0116-0721 at 0724-0725 (Translation).

155 [REDACTED]; UNCOI Information Report, DAR-OTP-0012-0221 at 0224; [REDACTED]; UNCOI Material, DAR-OTP-0016-0013 at 0013; [REDACTED].

156 [REDACTED].

157 [REDACTED].

(iii) HUSSEIN's control over the regular police and reserve police forces that committed crimes in Darfur

59. By virtue of the Police Forces Act of 1999, the Police Forces were “*under the command of the Minister [of Interior]*”.¹⁵⁸ **HUSSEIN** had the power to issue orders in relation to the Police Forces (a) approving the plans and schedules for better performance of their duties; (b) organizing and upgrading the Police Forces; (c) reviewing draft budget proposals and obtaining the necessary approvals; (d) planning to supply the Police Forces with their essential requirements; (e) authorizing the delegations’ travel abroad; (f) submitting the necessary recommendations to the National Security and Defence Council on all matters relating to public security in the country and the role of the Police therein; (g) supervising the institutions, staffs and organizations associated with the work of the Police and any that may be formed in future; (h) approving their organizational hierarchy.¹⁵⁹ As such, **HUSSEIN** also had operational supervision over the activities of the police.¹⁶⁰ As Minister of the Interior, **HUSSEIN** could also recommend to the President the establishment of a reserve force and issue Regulations needed to expand the administration and organization of such force.¹⁶¹ As noted previously (paragraphs 27 to 31), he created and/or controlled various reserve forces, which were used to implement the Common Plan to attack to attack the civilian populations..

(iv) HUSSEIN's control over Security Committees

60. As Minister of the Interior, **HUSSEIN** was a member of the National Security Council where he sat together with President Bashir and heads of other security organs. Decisions of the National Security Council on Darfur were implemented by

158 Article 13 (2) of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0904 (Translation).

159 Article 13 (2) of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0904 (Translation).

160 Decisions of the representative of the President and the Minister of the Interior, DAR-OTP-0008-0247 (Arabic), Decision No.1 of 2004 dated 04 July 2004 concerns the emergency law's extension: The recruitment of 6000 policeman and mobilization of additional troops in Darfur states to enhance security and safety of the citizens in Darfur; Decision of the representative of the President and the Minister of the Interior, DAR-OTP-0008-0248 (Arabic), Decision No.2 of 2004 dated 04 July 2004 concerns the opening of police offices in the refugee camp and enhancing security in Darfur states; see also UNCOI Material, DAR-OTP-0016-0013 at 0016.

161 Article 6 of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0901 (Translation).

the State and Locality Security Committees under **HUSSEIN**'s coordination and direction. **HUSSEIN** also exercised control over the Security Committees through his deputy, Harun.¹⁶²

61. The State and Locality Security Committees reported to **HUSSEIN** through Harun.¹⁶³ This reporting mechanism is described above in paragraph 25.

62. Minutes of some State Security Committee meetings also confirm that the State Security Committees recognised the need to report to Harun.¹⁶⁴ As is described below, Harun attended meetings of the State Security Committees when he travelled to Darfur. **HUSSEIN** was responsible for delivering on the needs of the various State Security Committees, including needed troops and logistics. **HUSSEIN** issued and signed orders to deploy police, military and other security forces throughout Darfur.¹⁶⁵

63. The chain of reporting from the Locality Security Committees to Harun was made more direct in mid 2003. Until that time, the Locality Security Committees reported to Provincial Security Committees,¹⁶⁶ which in turn reported to the State Security Committees.¹⁶⁷ After the abolition of the province as a unit of government administration in mid 2003, Locality Security Committees reported to the State

¹⁶² See additional details regarding the security committees in paragraphs 84 to 90 of the Prosecutor's Application under Article 58(7) of 27 February 2007, Public Redacted Version, ICC-02/05-56.

¹⁶³ [REDACTED].

¹⁶⁴ [REDACTED].

¹⁶⁵ Decisions of the representative of the President and the Minister of the Interior, DAR-OTP-0008-0247[Arabic], Decision No.1 of 2004 dated 04 July 2004 concerns the emergency law's extension; Decision of the representative of the President and the Minister of the Interior, DAR-OTP-0008-0248 (Arabic), Decision No.2 of 2004 dated 04 July 2004 concerns the opening of police offices in the refugee camp and enhancing security in Darfur states; *see also* UNCOI Material, DAR-OTP-0016-0013 at 0016.

¹⁶⁶ Article 18(7) of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0907 (Translation).

¹⁶⁷ Article 18(5) of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0907 (Translation).

Security Committees,¹⁶⁸ which in turn reported to Harun who in turn reported to **HUSSEIN**.¹⁶⁹

F. Hussein's Knowledge of Crimes Committed in Darfur

64. The evidence shows that, as Special Representative of the President in Darfur, **HUSSEIN**'s essential contribution was to coordinate the implementation of the massive state operation to attack civilians. **HUSSEIN**'s material contributions prove his knowledge and his intention. **HUSSEIN** was aware of how the GoS criminal plan was being implemented in Darfur by the Armed Forces and Militia/Janjaweed. Not only did he receive daily reports of these crimes from numerous reporting lines, as described in paragraphs 23 to 26 and 60 to 63, he was also put on notice of the crimes committed in Darfur by the massive flow of information and condemnation of these crimes by the international media, inter-governmental bodies, individual States, and NGOs. **HUSSEIN**'s knowledge that the Fur, Zaghawa and Masalit towns and villages were being attacked as a result of the GoS policies in Darfur can be inferred from the indicia described below. Notwithstanding this knowledge, **HUSSEIN** continued to support, fund and encourage the Armed Forces and Militia/Janjaweed to commit crimes.

65. **HUSSEIN**'s knowledge of the crimes is demonstrated in the following ways:

a. through HUSSEIN's own public statements

66. For instance, in the face of calls [REDACTED] and the international community for the GoS to disarm the Militia/Janjaweed, **HUSSEIN** publicly stated that the GoS would *not* disarm the Militia/Janjaweed. He attempted to justify his statement by adding that all Arab and non-Arab tribes in Darfur have militias and arms.¹⁷⁰ Another such public statement was **HUSSEIN**'s response when the US

¹⁶⁸ Article 19(3) of the Local Government Act of 2003, DAR-OTP-0116-0959 at 0965. See also [REDACTED]; UNCOI Material, DAR-OTP-0016-0080 at 0105.

¹⁶⁹ [REDACTED]; UNCOI Material, DAR-OTP-0016-0013 at 0013-0014; [REDACTED].

¹⁷⁰ Public Source, DAR-OTP-0181-0033.

government issued a list of individuals alleged to have committed crimes in Darfur including tribal leaders such as Musa Hilal. **HUSSEIN** publicly stated that these leaders would not be arrested.¹⁷¹ These public statements by **HUSSEIN** himself indicate not only his knowledge of the crimes, but also his intention to continue furthering the common plan.

b. through regular reports received from entities involved in the counterinsurgency operation, including the NSC

67. **HUSSEIN** received regular reports and briefings from other members of the common plan on the manner in which the counterinsurgency was being prosecuted and the effects of the GoS plan and policies on Fur, Zaghawa and Masalit towns and villages. **HUSSEIN** was a member of the National Security Committee, and as such he received daily reports from the military intelligence, national security, police and criminal police.¹⁷² **HUSSEIN** also received direct reports from his deputy, Harun,¹⁷³ and from PPF and CRF chiefs in the field.

68. As mentioned earlier, the State and Locality Security Committee minutes were also sent to the National Security Committee and distributed to all members, including **HUSSEIN**.¹⁷⁴

c. through public reports and demarches from members of the international community

69. Between mid 2003 and 2004 the world noted and condemned the atrocities committed in Darfur by the Militia/Janjaweed and others. International organizations [REDACTED] as well as States discussed bilaterally with representatives of the GoS, and in the media, the crimes committed in Darfur.¹⁷⁵ These entities

¹⁷¹ Public Source, DAR-OTP-0181-0029; [REDACTED].

¹⁷² [REDACTED].

¹⁷³ UNCOI Material, DAR-OTP-0016-0013.

¹⁷⁴ [REDACTED]; See also Article 18 (3) of the Police Forces Act of 1999, DAR-OTP-0116-0895 at 0907 (Translation).

¹⁷⁵ Public Source, DAR-OTP-0115-0731; Public Source, DAR-OTP-0115-0740; Public Source, DAR-OTP-0115-0742; Public Source, DAR-OTP-0115-0744; Public Source, DAR-OTP-0115-0745;

characterized the reported abuses of civilians – including killings, sexual violence, and the burning and looting of villages – as violations of international humanitarian and human rights laws.¹⁷⁶ Between 2003 and 2004 the UN Security Council passed numerous Resolutions in an attempt to address the situation.¹⁷⁷

70. Heads of State such as the United States President George Bush¹⁷⁸ and British Prime Minister Tony Blair¹⁷⁹ personally expressed concern about the ongoing atrocities to President Bashir. Other representatives of numerous States, as well as of international bodies [REDACTED] also spoke with President Bashir and/or his ministers, including **HUSSEIN**, to draw their attention to the crimes being committed on the ground in Darfur.¹⁸⁰

d. through his visits to the ground in Darfur

71. **HUSSEIN** also regularly visited Darfur. The visible destruction of entire villages and communities, the massive displacements and the mass mortality could not have escaped his awareness during these regular visits.

72. Indeed, Prosecution witnesses attested to joint trips by **HUSSEIN** and Harun to Darfur.¹⁸¹ [REDACTED] **HUSSEIN** and Harun were regularly in Darfur holding meetings with senior GoS and military commanders; numerous witnesses noted that

Public Source, DAR-OTP-0115-0746; Public Source, DAR-OTP-0115-0747. Public Source, DAR-OTP-0115-0750; Public Source, DAR-OTP-0115-0752; Public Source, DAR-OTP-0090-0457 at 0472; Public Source, DAR-OTP-0115-0753; Public Source, DAR-OTP-0020-0067 at 0082; Public Source, DAR-OTP-0090-0197; Public Source, DAR-OTP-0115-0756 at 0756; Public Source, DAR-OTP-0115-0758; Public Source, DAR-OTP-0115-0759; Public Source, DAR-OTP-0115-0771; Public Source, DAR-OTP-0080-0049; Public Source, DAR-OTP-0141-0159; Public Source, DAR-OTP-0115-0745.

176 Public Source, DAR-OTP-0155-0016; Public Source, DAR-OTP-0080-0307, paras. 92 and 97; Public Source, DAR-OTP-0107-1151; Public Source, DAR-OTP-0020-0067.

177 Public Source, DAR-OTP-0138-0269; Public Source, DAR-OTP-0080-0017; Public Source, DAR-OTP-0080-0019; Public Source, DAR-OTP-0080-0024; Public Source, DAR-OTP-0080-0028; Public Source, DAR-OTP-0080-0035; Public Source, DAR-OTP-0080-0019 at 0019 and 0020.

178 Public Source, DAR-OTP-0090-0070.

179 Public Source, DAR-OTP-0181-0027.

180 UNCOI Material, DAR-OTP-0038-0159.

181 [REDACTED].

their visits and meetings in Darfur and meetings preceded military offensives and militia attacks.¹⁸²

e. through his knowledge of means and methods of Militia/Janjaweed

73. **HUSSEIN**'s appointment of individuals, such as Harun¹⁸³ to implement the GoS plan, further demonstrates his intent. Harun rose to power through the experience he acquired in mobilizing Militias in and Kordofan and in the Nuba Mountains¹⁸⁴ where he earned the nickname the "Butcher/slaughterer of Jebel Nuba".¹⁸⁵ **HUSSEIN** also knew that the Militia/Janjaweed reportedly committed atrocities in earlier conflicts.¹⁸⁶

74. Aware of the potential consequences of using the Militia/Janjaweed in Darfur, [REDACTED] opposed their use against the Darfur counterinsurgency.¹⁸⁷ [REDACTED] also warned President Bashir of the need to remove Militia/Janjaweed commanders from Darfur.¹⁸⁸ **HUSSEIN** was thus on notice that the Militia/Janjaweed would behave in Darfur as they had done in all the other conflicts in which the GoS had used them. This notwithstanding, **HUSSEIN** continued to utilise the Militia/Janjaweed, who continued to commit grave crimes against the civilian population in Darfur.¹⁸⁹

75. The fact that he went ahead to foster the recruitment, mobilisation, training, arming and funding of Militia/Janjaweed demonstrates that **HUSSEIN** intended that they commit the crimes that they committed.

¹⁸² Public Source, DAR-OTP-0107-1151 at 1202.

¹⁸³ UNCOI Material, DAR-OTP-0016-0013 at 0013.

¹⁸⁴ [REDACTED].

¹⁸⁵ [REDACTED].

¹⁸⁶ Public Source, DAR-OTP-0115-0699 at 0715-0717; [REDACTED]; see also Public Source, DAR-OTP-0138-0254 at 0258.

¹⁸⁷ UNCOI Material, DAR-OTP-0014-0293 at 0301, para. 23.

¹⁸⁸ [REDACTED].

¹⁸⁹ [REDACTED]; Public Source, DAR-OTP-0080-0017; Public Source, DAR-OTP-0080-0019; Public Source, DAR-OTP-0080-0028; Public Source, DAR-OTP-0080-0307, paras 10 and 55; Public Source, DAR-OTP-0020-0067; Public Source, DAR-OTP-0090-0424; Public Source DAR-OTP-0080-0255; Public Source, DAR-OTP-0080-0041; Public Source, DAR-OTP-0080-0035; [REDACTED].

f. Harun reported to HUSSEIN

76. [REDACTED] State and Locality Security Committees [REDACTED].¹⁹⁰ In Harun's interview with the UNCOI, he confirmed that he reported directly to the President, Cabinet or the Minister of the Interior.¹⁹¹ [REDACTED] confirmed, "*Harun would not have taken such brutally consequential initiatives without the knowledge of at least HUSSEIN.*"¹⁹²

77. From the above, it is clear that **HUSSEIN** knew of the crimes being committed by the Militia/Janjaweed and the GoS armed forces against the Fur, Masalit and Zaghawa population in Darfur.

F. HUSSEIN contributed to the Common Plan by denying and covering up the crimes committed in Darfur

78. As Minister of the Interior, **HUSSEIN** contributed to the implementation of the Common Plan, by, among other ways, ensuring that the police would cover up and enable the crimes. In particular, witnesses observed that **HUSSEIN** ensured that the police would not intervene to protect the civilians.¹⁹³

79. Even when they were present at the site of attacks by the Armed Forces or Militia/Janjaweed, or had bases nearby, police officers refrained from protecting or defending civilians.¹⁹⁴ Police routinely refused to entertain, let alone address, complaints by rape victims and GoS officials. [REDACTED] recounted the story of [REDACTED] how she and six other women were raped. Some of the women escaped and reported the events to police who had been deployed to their camp for their protection, but the police refused to come to their rescue. Two victims, naked

¹⁹⁰ [REDACTED].

¹⁹¹ UNCOI Material, DAR-OTP-0016-0013 at 0013.

¹⁹² [REDACTED].

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

and unable to walk, were carried back to the camp where, again, the incident was reported to the police. This time, the police accused the victims of making up the story. Subsequently, the police said they filed the case but took no further action, even though the victims stated that they would be able to identify their assailants. The local police chief later denied that any such instance of rape had been reported to him.¹⁹⁵ [REDACTED] how she was raped in or around May 2004, and how, when she reported her own rape and that of seven other women by Militia/Janjaweed, the Police told her to forget the incident had happened.¹⁹⁶

80. As mentioned earlier, during a press conference on 4 July 2004, **HUSSEIN** stated that the GoS would not put on trial the five tribal leaders, including Musa HILAL, named on a list of the United States Congress for committing crimes in Darfur.¹⁹⁷

(a) HUSSEIN Denied and Downplayed the crimes being committed in Darfur

81. **HUSSEIN**, like other members of the Common Plan, made statements that affirmatively denied and covered up the crimes.¹⁹⁸ Public sources report that around July 2004, **HUSSEIN** stated that 86 percent of the IDPs in West Darfur State had returned to their villages and regions. He is reported to have hailed the various initiatives taken in facilitating a conducive environment for the return of the IDPs.¹⁹⁹ These statements were made in spite of the glaring reality [REDACTED] that painted a completely different picture.

82. [REDACTED] stated that [REDACTED] **HUSSEIN** and others say that they would inform the media that the rebels burned down villages.²⁰⁰ This is consistent with other OTP evidence that the GoS blamed the situation in Darfur on inter-tribal conflict, banditry and other acts committed by the rebels. A senior GoS official even

¹⁹⁵ Public Source, DAR-OTP-0006-0076 at 0101-0102.

¹⁹⁶ [REDACTED].

¹⁹⁷ Public Source, DAR-OTP-0181-0029 at 0029.

¹⁹⁸ Public Source, DAR-OTP-0181-0029; Public Source, DAR-OTP-0181-0066 at 0070.

¹⁹⁹ Public Source, DAR-OTP-0181-0066 at 0070.

²⁰⁰ [REDACTED].

suggested that the international community, for its own vested interests, was seeking to prolong the crisis by hindering the return of displaced persons.²⁰¹ In line with this policy, **HUSSEIN** stated that the rebels were no longer a military force and had resorted to banditry.²⁰²

83. In July 2004 **HUSSEIN** said the Militia/Janjaweed had been disarmed in Northern Darfur, and that only rebels were attacking civilians and violating the 8 April 2004 ceasefire.²⁰³ The GoS was unwilling to disarm the Militia/Janjaweed, but at the same time it refused to permit African Union forces to be deployed to protect civilians and bring the situation under control.²⁰⁴ [REDACTED] noted that as of 2005 the Janjaweed had not yet been disarmed.²⁰⁵

VIII. Jurisdiction

84. The Prosecution recalls that by virtue of Security Council Resolution 1593 (31 March 2005), the Court has jurisdiction *ratione loci* and *ratione temporis* in relation to crimes within the material jurisdiction of the Court committed in Darfur, Sudan since 1 July 2002.²⁰⁶

85. This Chamber already found that the crimes committed by Harun and Ali Kushayb in Darfur from August 2003 to March 2004 fall within the jurisdiction of the Court.²⁰⁷ Sharing a common crime base as the earlier case, for the same reasons, the Prosecution submits that the case against **HUSSEIN** falls within the jurisdiction of the Court.

201 Public Source, DAR-OTP-0021-0165 at 0166.

202 Public Source, DAR-OTP-0099-0210 at 0287-0288.

203 Public Source, DAR-OTP-0181-0064.

204 Public Source, DAR-OTP-0136-0462 at 0463.

205 Public Source, DAR-OTP-0080-0041 at 0043; Public Source, DAR-OTP-0136-0462 at 0464.

206 Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, paras 15-17; Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Public Redacted Version, ICC-02/05-01/09-3, paras 36-40.

207 Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, para 17.

IX. Admissibility Assessment

Complementarity

86. Although the review of admissibility is not necessary at the stage of an arrest warrant,²⁰⁸ the Prosecution submits that the case against **HUSSEIN** is admissible. A case is admissible under Article 17(1)(a) unless “national investigations [...] cover the same individual and substantially the same conduct as alleged in the proceedings before the Court. The words ‘is being investigated’ in this context signify the taking of steps directed at ascertaining whether this individual is responsible for that conduct, for instance by interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses”.²⁰⁹

87. In the present case, the known information makes clear that the person and the conduct alleged herein was not and is not now being investigated by the national authorities. There are no ongoing investigations or prosecutions, nor have there been investigations in the past in relation to the case brought forward in this Application.

88. The Prosecution previously assessed the existence of national proceedings in the Sudan in relation to the crimes alleged in *Harun*²¹⁰ and *Kushayb*²¹¹. That conduct was not investigated or prosecuted by the GoS. Nothing has changed since then. To date, none of the accountability mechanisms and initiatives put in place by the GoS has yielded any genuine investigation or prosecution of those responsible of crimes committed in Darfur. [REDACTED].²¹² This report clearly shows that the GoS lacks the intent to investigate or prosecute genuinely the crimes charged in the current Application.

208 Judgment on the Prosecutor’s Appeal against the Decision of the Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for a Warrant of Arrest under Article 58”, 13 July 2006, ICC-01/04-169 OA, paras 42, 44.

209 Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”, 30 August 2011, ICC-01/09-01/11-307 OA, para. 1.

210 See Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr, paras 11-25.

211 [REDACTED].

212 [REDACTED].

Gravity

89. In accordance with Regulation 29(2) of the Regulations of the Office of the Prosecutor, in assessing the gravity of the case, the Prosecution has taken into consideration the scale, nature, manner of commission and impact of the crimes.²¹³ For all the reasons stated in this Application, the Prosecution respectfully submits that the case which is the subject of the current Application is of sufficient gravity to justify further action by the Court.

X. Ensuring the Appearance of Abdel Rahim Mohammed HUSSEIN

90. First, an arrest warrant for **HUSSEIN** is necessary to ensure his appearance at trial, ensure that he does not obstruct or endanger the investigation or the court proceedings. As Minister of Defence, **HUSSEIN** has the means and opportunity to obstruct and endanger the investigations and court proceedings. Many victims reside in areas of Darfur that are under the control of the GoS and have continued to report victimization by the GoS.

91. Second, a warrant of arrest is necessary to prevent **HUSSEIN** from continuing with the commission of crimes within the jurisdiction of the Court.

92. Third, there are reasonable grounds to believe that **HUSSEIN** will not appear for trial unless compelled to do so by arrest. He faces many serious charges and, if convicted, a lengthy term of imprisonment. There is no indication that either **HUSSEIN** or the GoS will cooperate with his appearance before this Court. The Chamber has already issued warrants of arrest against President Bashir, Harun, and Ali Kushayb,²¹⁴ and none of them have surrendered and all remain in government positions. Since the indictment of Harun for the same set of crimes as in the present Application, President Bashir has consistently challenged the jurisdiction of the Court. On 24 July 2007, after this Court issued warrants of arrest against Harun and

²¹³ Regulation 29(2) of the Regulations of the Office of the Prosecutor.

²¹⁴ Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan, ICC-02/05-01/07-57, 25 May 2010.

Kushayb, President Bashir travelled to Darfur with Harun and announced publicly that he would never hand over Harun for trial by the ICC and that Harun would continue working in Darfur to implement his orders. On 14 May 2008, President Bashir again confirmed publicly: *"I will not hand over Ahmed Haroun or any Sudanese to ICC."* Moreover, Harun and Kushayb remain in key official positions. Harun is currently the Governor of the State of South Kordofan²¹⁵, and Kushayb continues to serve in the military in Darfur.²¹⁶

XI. Conclusion

93. For the reasons stated above the Prosecution respectfully requests that a warrant of arrest is issued for **Abdel Rahim Mohammed HUSSEIN**. The Prosecution further requests that if the Chamber issues an arrest warrant against **HUSSEIN**, the Prosecution will request that this case be joined with the case against Harun and Kushayb after the initial appearance should either of those suspects and **HUSSEIN** be arrested or surrender to the Court.



Luis Moreno-Ocampo
Prosecutor

Dated this 24th Day of January 2012
At The Hague, The Netherlands

²¹⁵ Public Source, DAR-OTP-0181-0037.

²¹⁶ Public Source, DAR-OTP-0174-0224 (Arabic).