



Original: English

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

Date: 24 May 2021

PRE-TRIAL CHAMBER II

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

SITUATION IN DARFUR, SUDAN

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

**Public Redacted Version of
ICC-02/05-01/20-403-Conf**

Victims' Submissions under Rule 121(9) of the Rules of Procedure and Evidence

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. Counsel representing victims in these proceedings have consulted and agree that the interests of their respective clients are affected by the scope of the charges in this case. Victims have expressed their serious concerns about the limited scope of the charges as currently formulated. While submitting two separate filings to fully represent the interests of their respective clients, Counsel agree that there is a need for further investigations by the Prosecution following the confirmation hearing with a view to taking steps to amend or add charges as appropriate.

2. Counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) – appointed to represent the general interests of the victims and to assist applicants – as well as to represent certain victims in the proceedings¹ (the “Legal Representative”) submits these observations pursuant to rule 121-9 of the Rules of Procedure and Evidence (the “Rules”). Having read the Document Containing the Charges,² she considers it essential to lodge submissions on certain points of fact and on law that have a direct and significant impact on the interests of the victims in the present case. Victims have been waiting for justice with respect to the crimes they suffered from for almost 18 years. Since Mr Abd-Al-Rahman surrendered to the Court in June 2020, they have hoped that they would be able to contribute to the search for the truth about the events at the origin of their victimisation and that their voice would finally be heard in the proceedings. They have now concerns and queries as to the extent of the crimes charged.

¹ See the “Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests” (Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-398](#), 20 May 2021.

² See the “Prosecution’s submission of the Document Containing the Charges”, [No. ICC-02/05-01/20-325](#), 29 March 2021; and the “the “Public redacted version of ‘Second Corrected Version of ‘Document Containing the Charges’, 29 March 2021, ICC-02/05-01/20-325-Conf-Anx1’, 22 April 2021, ICC-02/05-01/20-325-Conf-Anx1-Corr2”, [No. ICC-02/05-01/20-325-Anx1-Corr2-Red](#), 23 April 2021 (the “Document Containing the Charges”).

II. PROCEDURAL HISTORY

3. On 27 April 2007, Pre-Trial Chamber I granted the Prosecution's application under article 58(7) of the Statute³ and issued a warrant of arrest against Mr Ali Muhammad Ali Abd-Al-Rahman ("Mr Abd-Al-Rahman" or the "Suspect") for crimes against humanity and war crimes allegedly committed in the localities of Kodoom, Bindisi, Mukjar, Arawala and their surrounding areas, in Darfur, Sudan, between August 2003 and March 2004.⁴

4. On 16 January 2018, Pre-Trial Chamber II (the "Chamber"), in its previous composition, granted the Prosecution's application to amend the first warrant of arrest pursuant to article 58(6) of the Statute by issuing a second warrant of arrest against Mr Abd-Al-Rahman for crimes against humanity and war crimes allegedly committed in the locality of Deleig and surrounding areas, in Darfur, Sudan, between on or about 5 to 7 March 2004.⁵

5. On 9 June 2020, Mr Abd-Al-Rahman surrendered himself and was transferred to the Detention Centre of the Court.

6. On 15 June 2020, Mr Abd-Al-Rahman made his first appearance before the Single Judge, acting on behalf of the Chamber (the "Single Judge").⁶ During the hearing, the confirmation of the charges hearing was scheduled to commence on 7 December 2021.⁷

³ See the "Decision on the Prosecution Application under Article 58(7) of the Statute" (Pre-Trial Chamber I), [No. ICC-02/05-01/07-1-Corr](#), 27 April 2007.

⁴ See the "Warrant of Arrest for Ali Kushayb" (Pre-Trial Chamber I), [No. ICC-02/05-01/07-3-Corr](#), 27 April 2007.

⁵ ⁵ See the "Public redacted version of 'Second warrant of arrest for Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')", 16 January 2018, ICC-02/05-01/07-74-Secret-Exp" (Pre-Trial Chamber II), [No. ICC-02/05-01/07-74-Red](#), 11 June 2020.

⁶ See the Transcript of hearing held on 15 June 2020, [No. ICC-02/05-01/20-T-001-ENG](#). See also the Decision on the convening of a hearing for the initial appearance of Mr Ali Kushayb (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/07-82](#), 11 June 2020.

⁷ See [ICC-02/05-01/20-T-001-ENG](#), *supra* note 6, p. 22, line 23 to p. 23, line 3.

7. On 12 June 2020, the Chamber decided to sever the case against Mr Abd-Al-Rahman from the case of *The Prosecutor v. Ahmad Muhammad Harun* (‘Ahmad Harun’) and *Ali Muhammad Ali Abd-Al-Rahman* (‘Ali Kushayb’).⁸

8. On 16 September 2020, the Prosecution submitted a request to postpone the confirmation hearing to 1st June 2021.⁹

9. On 2 November 2020, the Chamber issued the “Decision on the Prosecutor’s Request for Postponement of the Confirmation Hearing and related deadlines”, in which it, *inter alia*, set the confirmation hearing to commence on 22 February 2021.¹⁰

10. On 3 December 2020, the Prosecutor submitted a request to postpone the confirmation hearing to 31 May 2021.¹¹

11. On 18 December 2020, the Chamber issued the “Decision on the Prosecutor’s Second Request to Postpone the Confirmation Hearing and Requests for Variation of Disclosure Related Time Limits”, postponing the start of the confirmation hearing until 24 May 2021 and setting a number of new deadlines.¹²

12. On 18 January 2021, the Single Judge issued the “Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing” (the “First Decision”),¹³ *inter alia*, appointing Counsel from

⁸ See the “Decision severing the case against Mr Ali Kushayb” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/07-87](#), 12 June 2020.

⁹ See the “Public Redacted Version of ‘Corrected Version of ‘Prosecution’s request to postpone the confirmation hearing’, 16 September 2020”, [No. ICC-02/05-01/20-157-Corr-Red](#), 17 September 2020.

¹⁰ See the “Decision on the Prosecutor’s Request for Postponement of the Confirmation Hearing and related deadlines” (Pre-Trial Chamber II), [No. ICC-02/05-01/20-196](#), 2 November 2020.

¹¹ See the “Public Redacted Version of ‘Prosecution’s second request to postpone the confirmation hearing and related deadlines’, 3 December 2020, ICC-02/05-01/20- 218-Conf”, [No. ICC-02/05-01/20-218-Red](#), 4 December 2020.

¹² See the “Decision on the Prosecutor’s Second Request to Postpone the Confirmation Hearing and Requests for Variation of Disclosure Related Time Limits” (Pre-Trial Chamber II), [No. ICC-02/05-01/20-238](#), 18 December 2020.

¹³ See the “Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-259](#), 18 January 2021.

the Office to represent applicant victims in the context of the confirmation proceedings.

13. On 5 February 2021, the Single Judge issued the “Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance” (the “Second Decision”),¹⁴ clarifying certain aspects of the First Decision.

14. On 19 March 2021, the Single Judge issued the “Decision regarding the Registry’s First Assessment Report, legal representation, and the victims’ procedural position”, noting, *inter alia*, that “*the written submissions on points of fact and law, as provided in rule 121(9) of the Rules, must be lodged no later than three days before the start of the confirmation hearing*”.¹⁵

15. On 29 March 2021, the Prosecution submitted the “Document containing the charges”.¹⁶

16. On 16 April 2021, the Prosecution submitted its Pre-Confirmation Brief and its list of evidence.¹⁷

17. On 5 May 2021, the Chamber issued its “Order setting the schedule for the confirmation of charges hearing and convening annual hearing on detention”.¹⁸

¹⁴ See the “Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-277](#), 5 February 2021.

¹⁵ See the “Decision regarding the Registry’s First Assessment Report, legal representation, and the victims’ procedural position” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-314](#), 19 March 2021, para. 33.

¹⁶ See the Document Containing the Charges, *supra* note 2.

¹⁷ See the “Public Redacted Version of ‘Prosecution’s submission of the Pre-Confirmation Brief and the List of Evidence’, 16 April 2021, ICC-02/05-01/20-346-Conf”, [No. ICC-02/05-01/20-346-Red](#), 16 April 2021.

¹⁸ See the “Order setting the schedule for the confirmation of charges hearing and convening annual hearing on detention” (Pre-Trial Chamber II), [No. ICC-02/05-01/20-378](#), 5 May 2021.

18. On 7 May 2021, the Defence submitted its list of evidence in accordance with Rule 121-6 of the Rules.¹⁹ And on 18 May 2021, it submitted a consolidated version thereof.²⁰

19. On 20 May 2021, the Chamber issued the “Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests”, authorising 151 victims to participate in the proceedings and appointing Counsel from the OPCV as one of the legal representatives in the case.²¹

III. CONFIDENTIALITY

20. In accordance with Regulation 23bis(2) of the Regulations of the Court, these submissions are filed confidentially as they refer to documents marked with the same classification. A public redacted version will be filed in due course.

IV. OBSERVATIONS

21. Pursuant to rule 121(9) of the Rules and in accordance with the Single Judge’s Decision dated 19 March 2021, Victims – via their Legal Representatives and for the purpose of presenting their views and concerns – are entitled to present written submissions on points of fact and law no later than three days before the start of the confirmation hearing.²² Accordingly, the Legal Representative provides the Chamber with the views of victims she represents concerning the geographical and temporal scope of the case, as well as the type of crimes covered in the Document Containing the Charges.

¹⁹ See the “*Soumission de l’inventaire des preuves de la Défense en vertu de la Règle 121-6*”, [No. ICC-02/05-01/20-381](#), 7 May 2021.

²⁰ See the “*Soumission de l’inventaire consolidé des preuves de la Défense*”, [No. ICC-02/05-01/20-392](#), 18 May 2021.

²¹ See the “Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests”, *supra* note 1.

²² See the “Decision regarding the Registry’s First Assessment Report, legal representation, and the victims’ procedural position”, *supra* note 15, para. 33.

1. *On the geographical and temporal scope of the case*

22. At the outset, the Legal Representative notes that through their accounts of the events the victims and the applicants she represents, all relate the particularly cruel nature of the crimes they suffered from, but also their widespread and systematic character.

23. The widespread nature of the crimes is reflected in the scope of the attacks. The crimes committed involved a large number of victims. Entire families and communities were affected, independently of their vulnerability and without any regard to their age and gender. Those crimes affected all the victims concerned psychologically, physically and materially.

24. The systematic nature of the attacks, as described by the Prosecution in the Document Containing the Charges,²³ finds corroboration in the victims' accounts. Victims indicate that between at least August 2003 and March 2004, Janjaweed and Government forces attacked several villages – predominantly Fur – in the areas surrounding Deleig, including Arawala, Forgo, Taringa, Andi, Fere, Kaskeidi and Um Jameina.²⁴ These attacks caused thousands of civilians to seek refuge in Deleig, Garsila and other towns.²⁵

25. Some victims heard the Suspect addressed a crowd in Garsila in early 2003, saying “[w]e will destroy villages and clean the area. We will exterminate the Fur”.²⁶ Others explain that they were targeted because of Fur and as such perceived supporters of the rebels who had the same ethnicity.

26. In relation to the systematic character of the attack against the civilian population, the Legal Representative submits that the locations identified by the

²³ See the Document Containing the Charges, *supra* note 2, paras. 2 and 5.

²⁴ See, for instance, the statements of witnesses P-0584, [REDACTED]; P-0651, [REDACTED]; P-0671, [REDACTED]; P-0010, [REDACTED]; P-0013, [REDACTED]; P-0016, [REDACTED]; and P-0850, [REDACTED].

²⁵ See the “Public Redacted Version of ‘Prosecution’s Pre-Confirmation Brief’, 16 April 2021, ICC-02/05-01/20-346-Conf-AnxA”, [No. ICC-02/05-01/20-346-Red](#), 21 May 2021, para. 281.

²⁶ *Idem*, para. 55. See also P-0843, [REDACTED].

Prosecution, as well as the dates chosen for certain events directly referred to in the Document Containing the Charges,²⁷ do not appear to accurately reflect the organised and reiterated violence that was perpetrated during the relevant period.

27. Clearly, the charges brought by the Prosecution against Mr Abd-Al-Rahman represent an infinitesimal part of the crimes committed in West Darfur during that period.²⁸

28. In 2003, the tensions in Darfur grew and triggered multiple episodes of violence. As a result, an armed conflict of a non-international character started between on one side the Government of Sudan and its allied militia – known as *Janjaweed* to the victims – and rebel armed groups on the other.²⁹

29. Several months after the Government launched its counter-offensive against the insurgency in North Darfur, the conflict worsened in the Deleig-Garsila-Mukjar area, as in much of West Darfur. By July 2003, the main rebel group – the Sudan Liberation Army (the “SLA”) – had established a presence not only in North Darfur and the Jebel Marra massif, but also in the Sindu Hills located south of Jebel Marra, within the Deleig-Mukjar-Shattaya semi-circle.³⁰ In August 2003, the SLA launched attacks on police stations and Government offices and looted weapons and ammunitions stocks, fuel depots and other resources in the Mukjar area.³¹

30. In response to the SLA attacks, in August and September 2003, following a policy initiated in other parts of Darfur, the Government of Sudan recruited and

²⁷ *Ibid.*

²⁸ See the [Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General pursuant to Security Council Resolution 1564 of 18 September 2004](#), 25 January 2005 (the “Darfur International Commission of Inquiry Report”, paras. 233-236).

²⁹ See the “Prosecution’s Pre-Confirmation Brief”, *supra* note 25, paras. 6-19. See also the [Darfur International Commission of Inquiry Report](#), *supra* note 28, paras. 74 *et seq.*

³⁰ See HUMAN RIGHTS WATCH, [Targeting the Fur: Mass Killings in Darfur – A Human Rights Watch Briefing Paper](#), 21 January 2005, p. 6. See also HUMAN RIGHTS WATCH, [Darfur in Flames: Atrocities in Western Darfur](#), April 2004.

³¹ See [Targeting the Fur: Mass Killings in Darfur – A Human Rights Watch Briefing Paper](#), *supra* note 30, p. 6.

mobilised militia forces in West Darfur.³² This militia was conceived as a key addition to the small number of army troops deployed in the region, and to the use of aerial bombardment.³³ Said militia included mainly nomadic or semi-nomadic groups of Arab origin.³⁴

31. In West Darfur, the Mukjar and Bindisi areas were among the first ones to be targeted by the Government newly assembled militia forces.

32. In their accounts, victims recall that between 14 and 17 August 2003 at least seven villages in the area were attacked following a similar pattern of killing and looting. In many of the attacks which took place in August and September 2003, however, the villages and crops were initially left intact. Since most of the residents were farmers anticipating harvesting their crops in October-December, many of the displaced people remained in the bush in hiding for several days before hesitantly returning to their homes. In most cases, the Janjaweed and Government forces attacked the residents of Fur ethnicity several times, with increasing violence when facing resistance from the population and until the inhabitants were entirely expelled from the area. For instance, the Janjaweed militia attacked Kodoom again in late-August 2003.

33. By November 2003, towns like Bindisi and Mukjar more than tripled in size due to the arrival of displaced people from the surrounding villages. In accordance with Human Rights Watch Reports more than eighty villages in the areas were attacked, looted and burned, on several occasions.³⁵ Villages in the Garsila-Deleig area – north of Mukjar – came under attack slightly later, in October and November 2003. Coordinated attacks on villages around and east of Garsila occurred over

³² *Ibid.*

³³ *Idem*, p. 7.

³⁴ *Ibid.* See also the [Darfur International Commission of Inquiry Report](#), *supra* note 28, paras. 100-102.

³⁵ *Idem*, p. 8. See also HUMAN RIGHTS WATCH, [Darfur Destroyed, Ethnic Cleansing by Government and Militia Forces in Western Sudan](#), 6 May 2004.

several weeks in October 2003, forcing thousands of civilians to seek security and refuge in Garsila and Deleig.³⁶

34. After the collapse of the ceasefire talks between the Government of Sudan and the rebel groups in December 2003, the Sudanese President Omar Al Bashir promised – as reported by Agence France Presse on 31 December 2003 – to annihilate Darfur rebels he described as *“hirelings, traitors, agents and renegades whom the enemies of the Sudan employed for carrying out their plots against the country”*.³⁷

35. The Sudanese Government, and its allied militia, conducted a massive offensive throughout Darfur in January and February 2004. At the same time, it imposed near-absolute restrictions on access to the region for humanitarian agencies which sought to assist hundreds of thousands of internally displaced people.³⁸

36. By January 2004, many villages around the Sindu Hills were repeatedly attacked and most of the civilian population sought shelter in the larger towns of the region – in Mukjar, Bindisi, Garsila, Deleig, Shattaya, and Artala; others were scattered in the hills and in a few remaining intact villages in the area, trying to save some of their harvest.³⁹

37. By mid-March 2004, the Government’s campaign of ground and air attacks around the Sindu Hills removed almost all existing or perceived support base for the rebellion by forcibly displacing, looting and burning almost every Fur village surrounding the hills, and then extending *“mopping-up operations”* to villages and towns further away.⁴⁰

³⁶ See [Targeting the Fur: Mass Killings in Darfur – A Human Rights Watch Briefing Paper](#), *supra* note 30, p. 9.

³⁷ See AFP, [“Sudanese president vows to annihilate Darfur rebels”](#), 31 December 2021.

³⁸ See [Targeting the Fur: Mass Killings in Darfur – A Human Rights Watch Briefing Paper](#), *supra* note 30, p. 10.

³⁹ *Idem*, p. 9. See also the Public Redacted Version of ‘Prosecution’s application pursuant to article 58(6) of the Rome Statute to amend the warrant of arrest for ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”) by adding new crimes’, 3 November 2017, ICC-02/05-01/07-73-SecretExp”, [No. ICC-02/05-01/20-6-Red2](#), 26 June 2020, paras. 20-22, 70, and 75.

⁴⁰ See the “Public Redacted Version of ‘Prosecution’s application pursuant to article 58(6) of the Rome Statute to amend the warrant of arrest for ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI

38. These operations were accompanied by the commission of other ruthless crimes in the Wadi Saleh, Mukjar and Shattaya localities⁴¹ as a form of collective punishment – and total subjugation – of the civilian population for its perceived support of the rebel movement.⁴² The civilian Fur population was targeted simply because people were sharing the same ethnicity with the rebels.⁴³

39. The Document Containing the Charges indicates that the “*Government of Sudan forces and militia/Janjaweed committed a widespread and systematic attack against the civilian population in the Wadi Salih and Mukjar localities of West Darfur*”.⁴⁴ More importantly in the Document Containing the Charges, the Prosecution acknowledges that attacks to other localities were perpetrated but not charged, namely in, but not limited to, “*Arawala, Forgo, Taringa, Andi, Fere, Seder, Gausir, Kaskeidi and UM Jameina in the Wadi Salih locality and Tendy and Tiro in the Mukjar localities*”.⁴⁵

40. In this regard, the Legal Representative notes that the attack that took place in Arawala and surrounding areas and contained in the first warrant of arrest⁴⁶ is not charged any longer.⁴⁷ She also posits that the evidence in the case record and on which the Prosecution is relying for the purpose of the confirmation of the charges supports the existence of the attack on Arawala and surrounding areas.⁴⁸ The record

KUSHAYB”) by adding new crimes’, 3 November 2017, ICC-02/05-01/07-73-SecretExp”, *supra* note 39, para. 20. See also HAGAN (J.) and RYMOND-RICHMOND (W.), *Darfur and the Crime of Genocide*, Cambridge University Press, 2009, pp. 216-218.

⁴¹ See [Targeting the Fur: Mass Killings in Darfur – A Human Rights Watch Briefing Paper](#), *supra* note 30, p. 11.

⁴² *Ibid.*

⁴³ See the “Prosecution’s Pre-Confirmation Brief”, *supra* note 25, paras. 19, 29, 30, 36, 52, 126, 128, 129, 131, 137, 140, 260, and 278. See also the [Darfur International Commission of Inquiry Report](#), *supra* note 28, para. 245.

⁴⁴ See the Document Containing the Charges, *supra* note 2, para. 2.

⁴⁵ *Idem*, para. 5: “The attack further involved non-charged acts under article 7(1) which took place in other locations, including Arawala, Forgo, Taringa, Andi, Fere, Seder, Gausir, Kaskeidi and Um Jameina in the Wadi Salih Locality, and Tendy and Tiro in the Mukjar Locality” (we underline). See also paras. 19 and 25 referring to armed operations in Arawala.

⁴⁶ See the “Warrant of Arrest for Ali Kushayb”, *supra* note 4, counts 39 to 51.

⁴⁷ See the Document Containing the Charges, *supra* note 2.

⁴⁸ See the “Prosecution’s Pre-Confirmation Brief”, *supra* note 25, paras. 51 d. and 52. On the attack on Arawala, see, *inter alia*, P-0010, [REDACTED]; P-0013, [REDACTED]; and P-0016, [REDACTED]. On the crimes committed, including killings of civilians, rape of women and destruction of properties, see, *inter alia*, P-0010, [REDACTED]; P-0013, [REDACTED]; P-0016, [REDACTED]; P-0010,

of the case contains evidence about the knowledge of the attack by the Suspect. In particular, the Prosecution's Pre-Confirmation Brief indicates that "[i]n or about December 2003, two days after an attack at Arawala, ABD-AL-RAHMAN told a crowd that 'the Bashmerga went to fight the Tora Bora from Marra to Arawala and the animals and livestock they came with belong to the Tora Bora and not the poor people'".⁴⁹ Moreover [REDACTED] describes [REDACTED]. During the attack, Mr Abd-Al-Rahman instructed Militia/Janjaweed to "wipe and sweep", which meant to kill and destroy the area.⁵⁰ [REDACTED] also states that [REDACTED].⁵¹

41. Furthermore, the Legal Representative finds it unclear why the Prosecution is only charging limited crimes in Deleig and Mukjar.⁵² It appears rather evident from the description of the events by the victims that an attack was ongoing in both localities at the time the crimes against the predominantly Fur men were committed,⁵³ and these very crimes were contained in the warrants of arrest issued against the Suspect.⁵⁴ In particular, victims describe how Janjaweed entered their houses looting and pillaging in both localities, and as they killed men and raped women. Some victims indicate that men and women were in fact taken and separated: men to be killed and women to be raped. The events are described in a consistent way by a number of victims and confirm a recurrent pattern in the attacks,

[REDACTED]; P-0016, [REDACTED]; P-0010, [REDACTED]; P-0013, [REDACTED]; and P-0016, [REDACTED].

⁴⁹ See the "Prosecution's Pre-Confirmation Brief", *supra* note 25, para. 55. See also P-0092, [REDACTED].

⁵⁰ See [REDACTED], [REDACTED]; [REDACTED].

⁵¹ *Idem* [REDACTED]; and [REDACTED].

⁵² See the Document Containing the Charges, *supra* note 2, paras. 225 *et seq.*

⁵³ See for instance the reference in para. 282 of the "Prosecution's Pre-Confirmation Brief", *supra* note 25, to the fact that "Members of Militia/Janjaweed and GoS Forces often harassed the displaced people in Deleig". See also P-0879, [REDACTED]; P-0651[REDACTED]; P-0712, [REDACTED]; and P-0736, [REDACTED].

⁵⁴ For the attacks on Mukjar, see the "Warrant of Arrest for Ali Kushayb", *supra* note 4, counts 21, and 32 to 38. For the attacks on Deleig, see the "Second warrant of arrest for Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')", *supra* note 5.

also seen in Kodoom and Bindisi and described in the Document Containing the Charges.⁵⁵

42. Furthermore, victims regrettably note that the crime of persecution is not pleaded in relation to the events which took place at the police stations and open areas near the police stations in Deleig and Mukjar. Survivors and family members of the deceased indicate that men were targeted because they were of Fur ethnicity. Some of them explain that the Janjaweed expressly indicated that they were looking for Fur men when searching the houses and used derogatory terms to address them.

43. These issues have a direct impact on the rights of victims. Because of the very limited selection of charged crimes committed during the relevant period, a large part of the victims will not be able to participate in the proceedings. Many individuals, members of the same community – sometimes relatives or neighbours – who suffered from crimes committed at the same place and at the same time, will not be recognised as victims before the Court.

2. *The issue of gender-based crimes*

44. Rape and other forms of sexual and gender-based violence are specifically prohibited in the Rome Statute to criminalise their use as a weapon of war against the most vulnerable individuals.⁵⁶ The Prosecution repeatedly committed to fight impunity for sexual and gender-based crimes,⁵⁷ which are extremely serious and have devastating consequences for the survivors. They must be investigated and prosecuted, as regular and severe prosecution of perpetrators⁵⁸ is essential to deter and prevent sexual violence.

⁵⁵ See the Document Containing the Charges, *supra* note 2, paras. 34-58. See also the “Prosecution’s Pre-Confirmation Brief”, *supra* note 25, paras. 152-197.

⁵⁶ See AMNESTY INTERNATIONAL, [Sudan: Darfur: Rape as a weapon of war: sexual violence and its consequences](#), 26 March 2011.

⁵⁷ See the [Policy Paper on Sexual and Gender-Based Crimes](#), June 2014, p. 6. See also the [Office of the Prosecutor’s Strategic Plan 2016-2018](#) in which the implementation of the Prosecution’s policies in relation to sexual and gender-based crimes constituted “Strategic Goal 2”.

⁵⁸ See Resolution 2467 (2019) adopted by the Security Council at its 8514th meeting, on 23 April 2019, UN Doc. [S/RES/2467 \(2019\)](#).

45. Nonetheless, the Prosecution decided to charge the Suspect for rape as a crime against humanity and a war crime only for acts committed in Kodoom, Bindisi and surrounding areas.⁵⁹ This significant limitation in the geographical scope is leaving aside many victims who suffered sexual violence during the relevant period, and who still bear the stigma thereof.

46. The victims' accounts allow to conclude that rape and other forms of sexual violence were used as a weapon of war in West Darfur, in order to humiliate, punish, control and inflict fear to women and their communities. Victims recall that rapes occurred during 'raids' before attacks on villages or on roads or in the bush when fleeing. These raids were used in order to terrorise the local population, or as a warning or threat to encourage its displacement. This was a *modus operandi* during all attacks.

47. In the social context of Darfur, rape bears a pervasive cultural stigma. The Janjaweed were well aware of the effects of the widespread rapes and sexual violence, not only on the women themselves – both in the short-term and in the longer-term – but also on the relevant affected communities as a whole. Violence committed in public, such as raping women in front of their relatives or their community, or gang rapes, were perpetrated to humiliate both women and men – as not being able to 'protect' women from such violence.⁶⁰ Moreover, victims recall that racial insults were recurrent during the rape, suggesting that women were targeted not only because of their gender but because of their ethnicity.

48. Used as a tactic of war, abuses against women and girls have been widespread and systematic.⁶¹ The Janjaweed militia, in particular, targeted women and girls in their villages, while in transit, and also in IDP camps.⁶² They abducted, raped and subjected them to inhuman treatments and torture with impunity and with the

⁵⁹ See the Document Containing the Charges, *supra* note 2, paras. 32, 38, 48, 49, and 51 to 53.

⁶⁰ See [Sudan: Darfur: Rape as a weapon of war: sexual violence and its consequences](#), *supra* note 56, pp. 28-29.

⁶¹ See the [Darfur International Commission of Inquiry Report](#), *supra* note 28, paras. 333-338.

⁶² HUMAN RIGHTS WATCH, [Sexual Violence and its Consequences among Displaced Persons in Darfur and Chad: A Human Rights Watch Briefing Paper](#), 12 April 2005.

acquiescence of Government forces.⁶³ This practice has been marked by relentless cruelty. Many amongst the women who were pregnant at the time are reported to have been killed, as symbolising the enemy and its reproductive capacity.⁶⁴ Often married women have been repudiated by their husbands and rejected by their entire family.⁶⁵

49. According to the information in the Legal Representative's possession, rapes and acts of sexual violence have been committed on a large scale and in all the localities under the control of the Suspect – therefore not only in Kodoom, Bindisi and surrounding areas. Since victims of sexual abuse are often hesitant to come forward for fear of being stigmatised, the cases privy to the Legal Representative surely do not fully represent of the real number of incidents of gender-based crimes committed during the period covered by the charges.

50. In light of the above, the Legal Representative echoes the views and concerns of the victims on the need for further investigations into the grave and numerous crimes committed in West Darfur during the relevant period.

Respectfully submitted,



Paolina Massidda
Principal Counsel

Dated this 24th day of May 2021

At The Hague, The Netherlands

⁶³ See [Sudan: Darfur: Rape as a weapon of war: sexual violence and its consequences](#), *supra* note 56, p. 25.

⁶⁴ *Ibid.*

⁶⁵ See [Targeting the Fur: Mass Killings in Darfur – A Human Rights Watch Briefing Paper](#), *supra* note 30, pp. 29-30. See also [Sudan: Darfur: Rape as a weapon of war: sexual violence and its consequences](#), *supra* note 56, pp. 17-18.