

Public redacted version of
Annex B
The Chamber's assessment of witnesses' evidence

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I. The Chamber's assessment of *viva voce* and Rule 68(3) witnesses

A. Prosecution witnesses

1. P-0007

1. P-0007 (DoB 1988), a member of the Fur tribe, gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.¹ At the time of the events in 2003, he was a farmer who also [REDACTED].² His evidence principally dealt with the attack on Bindisi as well as the rape of women during the Kodoom and Bindisi Operation.³

Role of 'Ali Kushayb' in the events

2. In his statement, P-0007 mentioned the name '**Ali Kushayb**' as an attacker in Mukjar but made no mention of the name '**Ali Kushayb**' in Bindisi.⁴ Further as the Defence pointed out, he made no mention at all in his screening note of '**Ali Kushayb**'.⁵ In court, he gave evidence that he had heard from others that '**Ali Kushayb**' was leading the Bindisi and later Mukjar Operation and was the *emir* of the Arabs.⁶ He also gave evidence that he heard mention of the name '**Ali Kushayb**' from the people 'who came to arrest others'.⁷ The Chamber is satisfied that P-0007 heard the name '**Ali Kushayb**' in the circumstances of which he gave evidence.

3. However, the Chamber finds that P-0007 only had indirect, unsubstantiated and general information about who were the leaders and in particular about '**Ali Kushayb**' in relation to Bindisi and Mukjar. Therefore, the Chamber is not satisfied that P-0007's evidence in relation to '**Ali Kushayb**' being the commander of the Bindisi and Mukjar operations is reliable.

¹ P-0007's Statement, DAR-OTP-0088-0060-R02; P-0007: T-089.

² P-0007's Statement, DAR-OTP-0088-0060-R02, at 0063, para. 8.

³ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065-0068, 0071, paras 19-31, 43-44; P-0007: T-089, pp. 6-12, 15-16, 22-45.

⁴ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0069, para. 35.

⁵ P-0007: T-089, pp. 46-47.

⁶ P-0007: T-089, p. 33.

⁷ P-0007: T-089, p. 47.

Kodoom and Bindisi Operation

4. In his statement, P-0007's account was that on 15 August 2003, government fighters and the *Janjaweed* attacked Bindisi town.⁸ P-0007 and his family fled to a nearby hill.⁹ On the next day, while still on the hill, P-0007 observed that the *Janjaweed* and 'government forces' resumed the attack.¹⁰ The Defence challenges P-0007's ability to give an account of what happened in Bindisi since he had fled Bindisi and did not return until September.¹¹

5. P-0007 gave evidence that he witnessed the first day of the attack and then fled to the hill.¹² On that first day, he was sufficiently proximate to see smoke and to hear gunshots but not close enough to clearly observe the attack or identify the leaders.¹³ Further, on the second day of the attack, P-0007 was still on the hill and did not personally observe the attacks.¹⁴ Consequently, much of his evidence on the attack on Bindisi was gleaned from others.¹⁵ Whilst the Chamber finds P-0007 generally credible in relation to what he had been told about the attacks, the Chamber has relied upon the evidence of first-hand witnesses in relation to the Bindisi attacks as opposed to P-0007's indirect evidence in this regard.¹⁶ However, the Chamber is satisfied that P-0007 witnessed the beginning of the attack on Bindisi and returned after the attack and personally observed the destruction and burning of property which had occurred, including his houses and livestock.¹⁷ His evidence in this regard is credible and reliable.¹⁸

6. As posited by the Defence, in P-0007's account, both in his statement and in court, [REDACTED],¹⁹ [REDACTED].²⁰ [REDACTED].²¹ Having considered the evidence as a whole, the Chamber is satisfied that P-0007 gave no evidence on the basis of his knowledge,

⁸ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 21.

⁹ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 22.

¹⁰ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 22.

¹¹ [Defence's Final Brief](#), para. 425.

¹² P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, paras 21-22; P-0007: T-089, p. 24.

¹³ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 22; P-0007: T-089, pp. 24, 30-31.

¹⁴ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0066, para. 23; P-0007: T-089, p. 23.

¹⁵ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0066, para. 23; evidence such as the *Janjaweed* killing people who remained in their houses or that the *Janjaweed* took away goats.

¹⁶ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 420-441.

¹⁷ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0070, para. 41; P-0007: T-089, p. 16.

¹⁸ *Contra* [Defence's Final Brief](#), para. 425.

¹⁹ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0069, para. 35; P-0007: T-089, p. 42.

²⁰ P-0007: T-089, p. 34.

²¹ See [REDACTED].

and he did not personally observe, nor was in a position to know, who was the commander of the Operation.

7. In any event, the Chamber has already found that P-0007 was not present during the Bindisi Operation and was therefore unable to give evidence as to who was the commander. Therefore, whilst the Chamber is satisfied that P-0007 honestly believed that [REDACTED], the Chamber has not relied upon his evidence in this regard.

Incidents of rape in Bindisi

8. P-0007 gave evidence that he personally witnessed the rape and killing of three women which occurred on 15 August 2003.²² P-0007 identified them as [REDACTED].²³ From his vantage point (of about two to three court-lengths),²⁴ he stated he was able to see and hear the rape of these three women by the *Janjaweed*.²⁵ He described in detail the conversation, clothing and the details of the rape including that each *Janjaweed*, who was going to rape one of the women, handed over his weapon—his Kalashnikov—to another *Janjaweed* before committing the rape.²⁶ P-0007 knew the names of the women because they were all from his village and gave detailed evidence describing the circumstances under which each of them was raped.²⁷ He confirmed that these three women were raped by *Janjaweed*.²⁸ P-0007's evidence is that he was able to distinguish the *Janjaweed* fighters because they were wearing green and white which was different from what was being worn by the 'government forces'.²⁹ Given the details of his account, the Chamber is satisfied that P-0007 witnessed the rape and killing of these three women by the *Janjaweed*.

9. The Chamber notes that P-0007 [REDACTED].³⁰ His evidence is [REDACTED].³¹ [REDACTED].³² After the Mukjar Operation, the persons [REDACTED] were either killed or

²² P-0007's Statement, DAR-OTP-0088-0060-R02, at 0071, para. 43; P-0007: T-089, pp. 7, 36-40, 47-48.

²³ P-0007: T-089, p. 8-9, 11, *referring to* P-0007's Annotated Map, DAR-OTP-00000312.

²⁴ P-0007: T-089, p. 10.

²⁵ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0065, para. 36; P-0007's Statement Corrections, DAR-OTP-00000314 at 2, para. 12; P-0007: T-089, pp. 10-12.

²⁶ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0071, para. 43; P-0007: T-089, pp. 8-10.

²⁷ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0071, para. 43; P-0007: T-089, pp. 8-10, 51-52.

²⁸ P-0007: T-089, p. 38.

²⁹ P-0007: T-089, p. 32.

³⁰ P-0007's [REDACTED], DAR-OTP-0088-0081, Translation, DAR-OTP-0119-0480; DAR-OTP-0088-0077, Translation, DAR-OTP-0119-0475.

³¹ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0069-0070, paras 36-39; P-0007: T-089, pp. 37-38.

³² P-0007: T-089, p. 32.

never seen again.³³ The Chamber notes that P-0007's evidence [REDACTED]. [REDACTED]. The Chamber is therefore satisfied that his account is credible and reliable.

10. The Defence argues that the inconsistencies between the witness's screening note, statement and his preparation sessions with the Prosecution negatively affect the witness's credibility.³⁴ Given the explanations provided by P-0007,³⁵ the Chamber is satisfied that these inconsistencies do not affect his credibility.

2. P-0011

11. P-0011 (DoB 1983), a member of the Fur tribe,³⁶ gave *viva voce* evidence over one day.³⁷ At the time of the events in 2003-2004, she was still a student.³⁸ Her evidence principally dealt with weapons distributions;³⁹ her own experience of being raped by the *Janjaweed* as well as witnessing the rape of others in Bindisi during the Kodoom and Bindisi Operation.⁴⁰

Knowledge of the Accused

12. P-0011's evidence [REDACTED].⁴¹ She stated that [REDACTED],⁴² [REDACTED], and was called 'Ali Abd-Al-Rahman Muhammad' and went by the name '**Ali Kushayb**'.⁴³ P-0011 also knew that '**Ali Kushayb**' had a pharmacy in Garsila.⁴⁴

13. The Defence argues that in P-0011's screening note there was no mention of '**Ali Kushayb**'.⁴⁵ It suggests that the link between '**Ali Kushayb**' and **the Accused** was added later and may have been the result of direct or indirect contamination by the Court's public statements.⁴⁶ It also submits that P-0011's physical description of **the Accused** is a vague one

³³ P-0007's Statement, DAR-OTP-0088-0060-R02, at 0070, para. 38, referring to P-0007's [REDACTED], DAR-OTP-0088-0077, Translation, DAR-OTP-0119-0475.

³⁴ P-0007: T-089, pp. 22-23.

³⁵ P-0007: T-089, pp. 22-24. See Judgment, Section 4. Evidentiary principles and considerations, paras 223-226.

³⁶ P-0011: T-091, pp. 7-8.

³⁷ P-0011: T-091.

³⁸ P-0011: T-091, p. 31.

³⁹ P-0011: T-091, pp. 14-15.

⁴⁰ P-0011: T-091, pp. 23-26, 31.

⁴¹ P-0011: T-091, pp. 19-20.

⁴² P-0011: T-091, p. 12.

⁴³ P-0011: T-091, pp. 12-13.

⁴⁴ P-0011: T-091, p. 14.

⁴⁵ [Defence's Final Brief](#), para. 698.

⁴⁶ [Defence's Final Brief](#), paras 697-698.

which cannot be relied upon.⁴⁷ Additionally, the Defence argues that P-0011 gave evidence that she was [REDACTED] according to the Defence, in 2023, [REDACTED] years old.⁴⁸

14. The Chamber has set out its approach to discrepancies between in-court evidence, statements and screening notes in its Section on Evidentiary Principles and Considerations.⁴⁹ P-0011 explained that she mentioned ‘**Ali Kushayb**’ in her statement but not in her screening note because she only answered the questions she was asked,⁵⁰ which the Chamber finds reasonable.⁵¹ Further, the Chamber notes that the assertion by Defence Counsel as to [REDACTED] is unsupported by any evidence to that effect.⁵² The Chamber further notes that P-0011 gave detailed credible evidence in relation to [REDACTED].⁵³ The Chamber finds that these details are largely congruent with the evidence of other credible and reliable witnesses.⁵⁴

Identification of the Accused

15. The Defence further argues that P-0011’s identification of **the Accused** is unreliable because there are contradictions between her statement and in-court evidence about the activities of **the Accused** in Bindisi during the Kodoom and Bindisi Operation.⁵⁵ The Chamber notes that P-0011 explained the apparent contradictions when she stated that when the *Janjaweed* were attacking, they first came on horses, then cars when they were looting property and carrying away the bounty in the ‘big cars’.⁵⁶ The Chamber is satisfied that given the lapse of time between the events, her statement and her in-court evidence, such minor inconsistencies do not negatively affect P-0011’s reliability.⁵⁷ Moreover, the Chamber is satisfied that P-0011’s explanation for the inconsistencies is reasonable and credible.⁵⁸

⁴⁷ [Defence’s Final Brief](#), para. 738.

⁴⁸ [Defence’s Final Brief](#), para. 698; P-0011: T-091, pp. 45-46.

⁴⁹ See Judgment, Section 4. Evidentiary principles and considerations, paras 223-226.

⁵⁰ P-0011: T-091, pp. 41-42.

⁵¹ *Contra* [Defence’s Final Brief](#), paras 697-698.

⁵² *Contra* [Defence’s Final Brief](#), para. 738.

⁵³ P-0011: T-091, pp. 10-13, 18-19, 45-49.

⁵⁴ See for example P-0883: T-091, p. 22 (on ‘**Ali Kushayb**’s house, wives, and children); P-0905: T-085, pp. 28-29; T-087, pp. 24-27; T-088, pp. 90-91 (that the house was built out of red bricks, aligning with P-0011’s evidence). See also the Chamber’s assessment of the evidence of P-0883 and P-0905, Annex B, Sections I.A.29 and I.A.32.

⁵⁵ [Defence’s Final Brief](#), para. 405; P-0011: T-091, pp. 44-45. The witness admitted that she said in her statement of 2005 that ‘**Ali Kushayb**’ was riding a horse but in her in-court evidence she said that he was in a car.

⁵⁶ P-0011: T-091, pp. 44-45.

⁵⁷ *Contra* [Defence’s Final Brief](#), para. 405. See Judgment, Section 4. Evidentiary principles and considerations, paras 223-226.

⁵⁸ P-0011: T-091, pp. 44-45.

16. No suggestion was made to P-0011, nor advanced in argument by the Defence, why she should invent an account of how she came to know **the Accused**. The Chamber is satisfied that as a result of the circumstances she described,⁵⁹ P-0011 [REDACTED] and that her evidence of recognising him during the attack is credible and reliable.⁶⁰

Distribution of Weapons

17. P-0011 gave evidence about Lt Hamdi and ‘**Ali Kushayb**’ distributing weapons in Garsila to members of the Arab tribes, but excluding the Fur, Zaghawa and Masalit tribes, who were told that they were not entitled to any weapons.⁶¹ The Chamber is satisfied that this evidence, which is supported by numerous witnesses, is both credible and reliable.⁶²

The attack on Bindisi

18. P-0011’s evidence was that she was present in Bindisi when it was attacked by the *Janjaweed* during the Kodoom and Bindisi Operation.⁶³ She gave a detailed account of the attack, described the attackers and the circumstances in which members of the *Janjaweed* raped her and other women, and also [REDACTED].⁶⁴ P-0011 specifically identified [REDACTED] as victims of rapes by *Janjaweed* in Bindisi.⁶⁵

19. The Chamber is satisfied—nor was it challenged—that P-0011’s evidence in relation to the attack on Bindisi and the rape she and other women suffered is both credible and reliable.

3. P-0012

20. P-0012 (DoB 1966), a member of the Fur Tribe, gave *viva voce* evidence over two days pursuant to Rule 68(3) of the Rules.⁶⁶ At the time of the events he was [REDACTED].⁶⁷ P-0012’s statement was made in January 2007 before the announcement of the first arrest warrant for **the Accused** on 27 April 2007. His evidence principally dealt with: the workings of the

⁵⁹ P-0011: T-091, pp. 12-13.

⁶⁰ *Contra* [Defence’s Final Brief](#), para. 698.

⁶¹ P-0011: T-091, pp. 14-15.

⁶² *See* Judgment, paras 339, 462.

⁶³ P-0011: T-091, p. 17.

⁶⁴ P-0011: T-091, pp. 18-25.

⁶⁵ P-0011: T-091, pp. 23-24; P-0011’s [REDACTED], DAR-OTP-00000356, at 000001; P-0011’s Report, DAR-OTP-00000367.

⁶⁶ P-0012’s Statement, DAR-OTP-0119-0503-R01; P-0012’s Statement Corrections, DAR-OTP-0220-4710; P-0012: T-045; T-046; T-047.

⁶⁷ P-0012: T-046, pp. 31, 54.

[REDACTED];⁶⁸ the Arab militias;⁶⁹ his knowledge of **the Accused**;⁷⁰ rebel attacks in Bindisi and Mukjar;⁷¹ the distribution of weapons between July 2003 and February 2004;⁷² the visit of Minister Harun to Mukjar in August 2003;⁷³ the attack on Bindisi on 15-16 August 2003;⁷⁴ and the arrests and executions in Mukjar in February and March 2004.⁷⁵

P-0012's Notes

21. P-0012 was able to provide a wealth of detail, including dates and names of persons he knew or recognised, in respect of the events he witnessed.⁷⁶ He stated that he had kept notes of dates contemporaneous with the events from the time refugees from Bindisi came to Mukjar.⁷⁷

22. When questioned by the Defence about why he no longer had the notes, P-0012 explained he had not brought them when making a statement or brought them to court because it was not safe to do so.⁷⁸ The Defence appeared to accept his explanation,⁷⁹ although at the end of his questioning Defence Counsel suggested it was 'convenient' that he did not have access to the notes.⁸⁰

23. Notwithstanding that the notes were not available for inspection, the Chamber is satisfied that P-0012's [REDACTED] explain why he made contemporaneous notes of the events. Indeed, the Chamber observes [REDACTED] did the same thing.⁸¹ The Chamber finds that it is those notes which enabled P-0012 to give the dates and details of the events.⁸² P-

⁶⁸ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0507-0509, paras 16-25; P-0012: T-045, pp. 50-54; T-046, pp. 16-21; T-047, pp. 11-12.

⁶⁹ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0509-0513, paras 27-45; P-0012's Statement Corrections, DAR-OTP-0220-0470, at 000001, paras 3-8; P-0012: T-045, pp. 68-72; T-046, pp. 21-22, 25; T-047, pp. 13-15.

⁷⁰ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0511-0513, paras 33-35, 38-39, 45; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000001, paras 3-6; P-0012: T-045, pp. 8-11, 17-18, 20-23, 28-29, 83-89; T-046, pp. 2-14, 23-24, 61, 63, 83-84; T-047, pp. 8-11, 15-16.

⁷¹ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0519-0520, paras 72-75; P-0012: T-045, pp. 65-68, 73-78.

⁷² P-0012's Statement, DAR-OTP-0119-0503-R01, at 0514-0517, paras 46-61; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000001-000002, paras 9-15; P-0012: T-045, pp. 35, 71-72; T-046, pp. 26-30, 38-39.

⁷³ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517-0519, paras 62-71; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000002, paras 14-17; P-0012: T-045, pp. 32-33; T-046, pp. 30-31, 39-43, 71-81.

⁷⁴ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0520-0523, paras 75-87; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000002, paras 18-25; P-0012: T-045, pp. 11-19; T-046, p. 43.

⁷⁵ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0523-0526, paras 88-108; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000003, paras 26-29; P-0012: T-45, pp. 19-30; T-046, pp. 35, 66-71.

⁷⁶ P-0012: T-045, pp. 38-46.

⁷⁷ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0505, para. 7; P-0012: T-045, pp. 38-39.

⁷⁸ P-0012: T-045, pp. 39-43.

⁷⁹ P-0012: T-045, pp. 39-43.

⁸⁰ P-0012: T-046, p. 84.

⁸¹ [REDACTED].

⁸² P-0012: T-045, p. 39.

0012's carefully indicated the matters on which he was unable to answer questions.⁸³ The Chamber is satisfied that P-0012's account of the above-mentioned facts add to his credibility and reliability.

Knowledge of the Accused

24. P-0012 gave evidence that he was based at [REDACTED].⁸⁴ but his employment obliged him to travel [REDACTED].⁸⁵ Whilst Garsila was a different district, P-0012 would travel there [REDACTED] as well as visit friends.⁸⁶ As a result he visited **the Accused's** pharmacy on many occasions [REDACTED] to buy veterinary medication.⁸⁷ Thus, P-0012 got to know **the Accused**, whom he knew as '**Ali Kushayb**' but heard ('everyone knows') his real name was 'Ali Muhammed Ali' and would call him that or 'Uncle Ali'.⁸⁸

25. When questioned by the Defence, P-0012 said he first met **the Accused** in [REDACTED], described the layout of the pharmacy and accepted that he did not call him '**Ali Kushayb**', (others did), nor did **the Accused** identify himself by that name.⁸⁹ He also explained why he bought medication from a pharmacy in Garsila [REDACTED], namely that it was safer to buy medication from a pharmacy.⁹⁰

26. P-0012 described **the Accused** in his statement,⁹¹ and was questioned about this description by the Defence.⁹² He was asked how he came to change his evidence about '**Ali Kushayb's**' origin from Al-Da'in to Rahad Al-Berdi.⁹³ P-0012 explained that, since making his statement, he had found a video (the 'Teachers Video') on the internet in which he recognised '**Ali Kushayb**' and heard him say he was from that area.⁹⁴ The Teachers Video,⁹⁵

⁸³ See for example P-0012: T-045, p. 63.

⁸⁴ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0508, paras 21-22.

⁸⁵ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0508-0509, para. 23.

⁸⁶ P-0012: T-045, pp. 8-9, 50-51.

⁸⁷ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0512, para. 38; P-0012: T-045, pp. 8-9; T-046, p. 7.

⁸⁸ P-0012: T-045, pp. 9-10, 87-88.

⁸⁹ P-0012: T-045, pp. 84-88.

⁹⁰ P-0012: T-046, p. 8.

⁹¹ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0512, para. 38; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000001, para. 5.

⁹² P-0012: T-046, pp. 3-5.

⁹³ P-0012: T-046, pp. 9-16.

⁹⁴ P-0012: T-046, p. 10, referring to Teachers Video, DAR-OTP-0215-2697. See Judgment, Section 4. Evidentiary principles and considerations, para. 216.

⁹⁵ P-0012: T-046, pp. 95-98, referring to Teachers Video, DAR-OTP-0215-2697.

he described was later shown to a number of witnesses,⁹⁶ and is accepted by the Defence as portraying **the Accused** making a speech in Rahad Al-Berdi.⁹⁷

27. P-0012 also acquired knowledge of **the Accused** through his dealings with [REDACTED],⁹⁸ whom he described as [REDACTED] [REDACTED].⁹⁹ In his statement P-0012 explained how, according to [REDACTED], **the Accused** had been elected *agid al-ogada* and how he came to know about ‘**Ali Kushayb**’s’ relationship with the GoS.¹⁰⁰ Whilst the Defence did not challenge P-0012’s account in court, it suggests in its Final Brief that the assertion in his statement that **the Accused** became *agid al-ogada* as a result of his military experience and education was ‘not substantiated’.¹⁰¹ The Chamber is satisfied that, read in context, P-0012’s evidence in relation to **the Accused**’s position as *agid al-ogada* was part of the information he received from [REDACTED] and indeed is supported by evidence from other witnesses.¹⁰²

28. The Defence suggested to P-0012 that he was untruthful about seeing ‘**Ali Kushayb**’ in Garsila, which he denied.¹⁰³ In its Final Brief, the Defence asserts that P-0012’s evidence is based on limited interaction at the pharmacy and should be given little reliance.¹⁰⁴ The Chamber rejects this characterisation of P-0012’s evidence and is satisfied that, as set out above, P-0012 provided cogent reasons for how he came to interact with **the Accused** in his pharmacy, without attempting to embellish his evidence, and also how he obtained further information about **the Accused**. Furthermore, as already noted, P-0012 made his statement at a time before any announcement had been made of any potential prosecution of **the Accused** and mentioned the video without being aware that the Prosecution was in possession of a copy.¹⁰⁵ Therefore, the Chamber is satisfied that the witness is both credible and reliable in his identification of **the Accused** as ‘**Ali Kushayb**’.

⁹⁶ See Judgment, paras 254-261.

⁹⁷ P-0012: T-046, pp. 86-92.

⁹⁸ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0511, para. 35.

⁹⁹ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0511, para. 34; P-0012: T-046, pp.18-21.

¹⁰⁰ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0511-0513, paras 34, 36, 38, 41, 45; P-0012’s Statement Corrections, DAR-OTP-0220-4710, at 000001, para. 6.

¹⁰¹ [Defence’s Final Brief](#), para. 774, referring to P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0511-0512, para. 35.

¹⁰² See Judgment, para. 675.

¹⁰³ P-0012: T-046, pp. 83-84.

¹⁰⁴ [Defence’s Final Brief](#), paras 722, 778.

¹⁰⁵ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0503; T-046, pp. 12-14, 98.

29. The Chamber accepts that P-0012's account is truthful, and is satisfied that P-0012's [REDACTED], as well as the nature of P-0012's interaction with members of the *Janjaweed*, provide a solid foundation for his basis of knowledge on this point. Whilst the Defence contends that P-0012 failed to substantiate the military experience and education upon which **the Accused's** appointment was based,¹⁰⁶ given the context in which P-0012 came to know about **the Accused's** appointment as the *agid al-ogada*, the Chamber is satisfied that the lack of details thereof does not undermine the credibility and reliability of his evidence.

Arrival of a GoS delegation in Mukjar on 7 August 2003

30. In his statement, P-0012 described the arrival of the delegation led by Minister Harun and the subsequent public meeting held outside the locality building and attended by the *Janjaweed* and 'people'.¹⁰⁷ According to him, '**Ali Kushayb**' had met with Minister Harun before the public meeting at the police station.¹⁰⁸ However, at the public meeting the speakers were Torshein and Minister Harun.¹⁰⁹ While '**Ali Kushayb**' was standing near Minister Harun, he did not speak.¹¹⁰ The Defence did not challenge P-0012's account in court but asserted in its Final Brief that he was the only witness who gave evidence of '**Ali Kushayb's**' presence at the meeting.¹¹¹ However, the Chamber notes that [REDACTED] also stated that '**Ali Kushayb**' was present at the meeting and indeed spoke.¹¹² Whilst there is a difference in the accounts of P-0012 [REDACTED] as to who spoke and was present at the meeting, such differences are understandable considering that each of them observed the event from their own perspective. Accordingly, the Chamber is satisfied that discrepancies such as these are to be anticipated and therefore have no adverse effect on its assessment of P-0012's credibility and reliability.¹¹³

The Kodoom and Bindisi Operation

31. P-0012 gave an account in his statement of the events leading to and including the attack on Bindisi.¹¹⁴ He described the arrival of Marko [REDACTED] who told them that the *Fursan*

¹⁰⁶ [Defence's Final Brief](#), para. 778.

¹⁰⁷ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517-0518, paras 62-68.

¹⁰⁸ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0518, para. 67.

¹⁰⁹ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0517-0518, para. 64.

¹¹⁰ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0518, para. 67.

¹¹¹ [Defence's Final Brief](#), para. 681.

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0519-0523, paras 72-87; P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000002-000003, paras 18-25.

were simply coming to Bindisi to collect fodder for the horses.¹¹⁵ This evidence is supported by many witnesses and is not challenged by the Defence.¹¹⁶

32. According to P-0012, when the *Janjaweed* entered Bindisi, he was in a position to see **the Accused**, [REDACTED] and Hassaballah (the Garsila PDF co-ordinator), arrive at the marketplace in a vehicle [REDACTED].¹¹⁷ P-0012 explained in court that [REDACTED] was close to the market.¹¹⁸ He also saw the attacks which took place on 15 August and again the following day.¹¹⁹ On 16 August P-0012 stated that **the Accused** was on a horse during the attack giving orders to the *Fursan* and was able to describe what **the Accused** was wearing.¹²⁰

33. According to P-0012, [REDACTED] later told him that,¹²¹ the attack on 16 August took place after a discussion between **the Accused** and Samih in which **the Accused** had wished to retreat but, in effect, he was accused of cowardice by Samih and so had agreed that the attack should go forward.¹²² However, [REDACTED] gave evidence that it was one of the *Janjaweed* leaders, Issa Mardom, who wanted to retreat and ‘**Ali Kushayb**’ chastised him.¹²³ The Chamber is satisfied that, [REDACTED] was actually present when this conversation took place, his account is more reliable. Given the fact that P-0012 was recollecting the contents of a conversation—the importance of which may not have been obvious at the time—the Chamber is satisfied that this discrepancy does not reflect adversely on his credibility.

34. The Defence questioned P-0012 about his ability to identify **the Accused** from the position and distance at which he was on both occasions,¹²⁴ and indeed his assertion that he had sent [REDACTED] whilst himself remaining in Bindisi.¹²⁵ Finally, the Defence suggested that he was not telling the truth about seeing **the Accused** in Bindisi.¹²⁶

¹¹⁵ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0519, para. 76.

¹¹⁶ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, para. 420.

¹¹⁷ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0520-0521, para. 78; P-0012’s Statement Corrections, DAR-OTP-0220-4710, at 000002, para. 18.

¹¹⁸ P-0012: T-045, p. 15.

¹¹⁹ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0520-0523, paras 76-86; P-0012’s Statement Corrections, DAR-OTP-0220-4710, at 000002-000003, paras 18-24; P-0012: T-045, pp. 15-19.

¹²⁰ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0522, para. 84; P-0012: T-045, pp. 17-18; T-046, pp. 60-61.

¹²¹ P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0521-0522, para. 82.

¹²² P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0521-0522, para. 82.

¹²³ [REDACTED].

¹²⁴ P-0012: T-046, pp. 52-61.

¹²⁵ P-0012: T-046, pp. 53-54.

¹²⁶ P-0012: T-046, pp. 83-84.

35. P-0012 was adamant that he saw **the Accused** in Bindisi.¹²⁷ In its Final Brief, the Defence suggests that P-0012 was inconsistent about the distance from which he viewed **the Accused** on horseback and asserts that he agreed that it was at least 350 metres away.¹²⁸ In fact that figure was put to the witness, but he did not agree.¹²⁹

36. The Chamber is satisfied from the detail P-0012 was able to provide and his responses to the Defence questions that he is both credible and reliable.¹³⁰ Moreover, the fact that **the Accused** was in Bindisi is supported by the evidence of other witnesses.¹³¹

Events in Mukjar February/March 2004

37. In his statement, P-0012 described the arrival of the *Janjaweed* in Mukjar in February 2004.¹³² According to him the inhabitants started to flee but were addressed by **the Accused** who was in a vehicle and told them that, unless the rebels in Sindu surrendered, they could not save themselves.¹³³ Thereafter, the *Janjaweed*, together with the SAF, departed for Sindu.¹³⁴ The Defence suggests that the discrepancy in the numbers of troops between P-0012's evidence and that of P-0905 means that this part of P-0012's evidence is unreliable.¹³⁵ The Chamber has not made any adverse finding against P-0012's evidence in this regard.¹³⁶

38. P-0012 also witnessed men, detained at Mukjar police station, being loaded into vehicles.¹³⁷ He recognised some of the people, and also saw **the Accused** watching and thereafter leaving in convoy with the vehicle containing the prisoners.¹³⁸ In court, he explained he had seen this from [REDACTED].¹³⁹

¹²⁷ P-0012: T-046, pp. 83-84.

¹²⁸ [Defence's Final Brief](#), para. 406.

¹²⁹ P-0012: T-046, p. 59.

¹³⁰ *Contra* [Defence's Final Brief](#), para. 406.

¹³¹ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 436-441.

¹³² P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, paras 93-96.

¹³³ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 93.

¹³⁴ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0524, para. 94.

¹³⁵ [Defence's Final Brief](#), para. 464.

¹³⁶ See Judgment, Section 4. Evidentiary principles and considerations, para 195.

¹³⁷ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 100.

¹³⁸ P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, paras 100-102.

¹³⁹ P-0012: T-045, p. 23.

39. The Defence questioned P-0012 extensively about [REDACTED] the view which he had,¹⁴⁰ and finally suggested to him that he had not told the truth about seeing **the Accused** in Mukjar, which the witness denied.¹⁴¹

40. The Chamber is satisfied that, in keeping with the whole tenor of his evidence, P-0012 was able to provide detailed, unexaggerated, descriptive evidence, including names. Moreover, P-0012's determination to be as accurate as possible was reflected by the fact that, although in his statement he said that he had seen **the Accused** conducting arrests in Mukjar,¹⁴² he withdrew that assertion in his preparation session.¹⁴³ Accordingly the Chamber is satisfied that his account of the events in Mukjar is credible and reliable.

4. P-0015

41. P-0015 (DoB 1983), a member of the Fur tribe, gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.¹⁴⁴ At the time of the events in 2003, she had just finished secondary school and [REDACTED].¹⁴⁵ Her evidence principally dealt with the attack on Bindisi in August 2003, the rape of women in Bindisi and the treatment of detainees in Mukjar in 2003-2004.¹⁴⁶

Knowledge of 'Ali Kushayb'

42. P-0015 provided inconsistent evidence in relation to how many times she saw '**Ali Kushayb**' and the basis of her knowledge of '**Ali Kushayb**'.¹⁴⁷ In her [REDACTED] statement to the ICC investigators, P-0015's account was that in December 2003, she saw 'Ali Koshib' leading a group of *Janjaweed* and *asakir* to a brook in Mukjar.¹⁴⁸ However, in her clarifications statement of [REDACTED], she said that: (a) she did not see '**Ali Kushayb**' in Mukjar, but only saw vehicles when the *Janjaweed* came into Mukjar; (b) she heard from others

¹⁴⁰ P-0012: T-046, pp. 73-82.

¹⁴¹ P-0012: T-046, p. 84.

¹⁴² P-0012's Statement, DAR-OTP-0119-0503-R01, at 0525, para. 99.

¹⁴³ P-0012's Statement Corrections, DAR-OTP-0220-4710, at 000003, para. 27.

¹⁴⁴ P-0015's Statement, DAR-OTP-0088-0187-R04; P-0015's Statement Corrections, DAR-OTP-00000427; P-0015: T-093.

¹⁴⁵ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0189-0190, para. 8.

¹⁴⁶ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0192-0199, 0203-0204, paras 23-47, 52-60, 82-87; P-0015's Statement Corrections, at 000001-000005, paras 2-28, 38-39; P-0015: T-093, pp. 13-18, 23-46, 53, 55-64, 68-70.

¹⁴⁷ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0200-0202, paras 62-64, 71-77; P-0015's Statement Corrections, DAR-OTP-00000427, at 000005, paras 35-37; P-0015: T-093, pp. 61-69.

¹⁴⁸ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0200, paras 62-64.

that ‘**Ali Kushayb**’ was in one of the vehicles; and (c) that the *Janjaweed* were saying they were ‘Ali Kushayb’s people’, and that it was ‘Ali Kushayb’s day’.¹⁴⁹

43. Additionally, in her [REDACTED] statement, P-0015’s account was that when she was a student in Mukjar and Garsila, she had seen ‘**Ali Kushayb**’ on several occasions.¹⁵⁰ She saw ‘**Ali Kushayb**’ riding around in his Land Cruiser with the *Janjaweed* in Mukjar.¹⁵¹ However, in the clarifications to her statement, she stated that she never saw ‘**Ali Kushayb**’ in Mukjar herself, but that she was told that he was the person in the vehicle.¹⁵² She added that she had seen him twice in Garsila while studying there, but could not describe his face.¹⁵³ In court, P-0015 gave evidence that she had never seen ‘**Ali Kushayb**’ in Mukjar with her own eyes but had been told that he was present.¹⁵⁴

44. The Chamber finds that these inconsistencies demonstrate a tendency to conflate what she heard with what she saw herself.¹⁵⁵ Therefore, the Chamber is satisfied that whilst P-0015 is a credible witness who tried to demarcate between first-hand and indirect evidence, the internal inconsistencies in her evidence are such that the Chamber finds her identification of ‘**Ali Kushayb**’ in Mukjar unreliable.

Kodoom and Bindisi Operation

45. The Defence asserts that P-0015’s evidence cannot be relied upon in relation to the attack on Bindisi in August 2003 because her evidence was that after the attack she and her family fled and did not return to Bindisi until January/February 2004.¹⁵⁶ P-0015’s account is that Bindisi was attacked on 15 August 2003.¹⁵⁷ She saw a large number of about 500 *asakir* on camels and horses.¹⁵⁸ P-0015 and her family fled to nearby [REDACTED] fields, spending the night in the [REDACTED].¹⁵⁹ While in hiding, P-0015 heard the sound of shooting coming from the direction of Bindisi and saw the *Janjaweed* looting, including her family’s

¹⁴⁹ P-0015’s Statement Corrections, DAR-OTP-00000427, at 000004, para. 30.

¹⁵⁰ P-0015’s Statement, DAR-OTP-0088-0187-R04, at 0201, para. 71.

¹⁵¹ P-0015’s Statement, DAR-OTP-0088-0187-R04, at 0201-0202, para. 72.

¹⁵² P-0015’s Statement Corrections, DAR-OTP-00000427, at 000005, para. 35.

¹⁵³ P-0015’s Statement Corrections, DAR-OTP-00000427, at 000005, para. 35.

¹⁵⁴ P-0015: T-093, pp. 65-66.

¹⁵⁵ P-0015: T-093, p. 34; intervention of Presiding Judge to witness.

¹⁵⁶ [Defence’s Final Brief](#), para. 425, referring to P-0015’s Statement, DAR-OTP-0088-0187-R04, at 0190, 0205, paras 13, 90, 92.

¹⁵⁷ P-0015’s Statement, DAR-OTP-0088-0187-R04, at 0192, para. 23; P-0015: T-093, pp. 47-49.

¹⁵⁸ P-0015’s Statement, DAR-OTP-0088-0187-R04, at 0193, para. 25.

¹⁵⁹ P-0015’s Statement, DAR-OTP-0088-0187-R04, at 0193-0194, paras 28-34.

possessions.¹⁶⁰ The Chamber is satisfied that, given her detailed account, while P-0015 did not return to Bindisi until January/February 2004,¹⁶¹ she witnessed first-hand the attack on Bindisi on the first day of the attack,¹⁶² and her evidence in that regard is credible and reliable.¹⁶³

46. P-0015 described the incidence of rape of women during the Kodoom and Bindisi Operation.¹⁶⁴ Her evidence was that, during the attack on Old Bindisi on 16 August 2003, she had to flee when the [REDACTED] where she had sought refuge was attacked by *Janjaweed* and *asakir*.¹⁶⁵ She stated that she saw the *Janjaweed* take [REDACTED], [REDACTED].¹⁶⁶ The Chamber notes that they are [REDACTED] respectively.¹⁶⁷ The *Janjaweed* raped [REDACTED] and other young women about 20 metres from where P-0015 stood.¹⁶⁸

47. In this regard, P-0015's evidence that she saw the rape of [REDACTED] is inconsistent with the account of P-1073, who gave evidence that she was raped in a hut and [REDACTED] told her that she was raped in another hut.¹⁶⁹ The Defence asserts that this inconsistency between the evidence of P-1073 and P-0015 renders P-0015's evidence unreliable.¹⁷⁰ The Chamber notes P-0015's evidence that in her culture it is difficult to talk about rape as it is considered taboo,¹⁷¹ and that a girl, who has been raped, had no value and prospective suiters would be discouraged from marrying her.¹⁷² The Chamber has taken this societal norm surrounding rape into account in assessing P-0015 and P-1073's account of rape. The Chamber is satisfied that:

- [REDACTED] of P-1073;¹⁷³

¹⁶⁰ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0193, para. 29; P-0015's Statement Corrections, DAR-OTP-00000427, at 000001, para. 6; P-0015: T-093, pp. 39, 49.

¹⁶¹ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0190, 0205, paras 13, 90, 92.

¹⁶² P-0015's Statement, DAR-OTP-0088-0187-R04, at 0192-0197, paras 23-47; P-0015's Statement Corrections, DAR-OTP-00000427, at 000001-000003, paras 2-18; P-0015: T-093, pp. 23-46.

¹⁶³ *Contra* [Defence's Final Brief](#), para. 425.

¹⁶⁴ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195-0197, paras 38-46; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 12-18; P-0015: T-093, pp. 24-25, 42-46, 54-58.

¹⁶⁵ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195, para. 37.

¹⁶⁶ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195-0196, paras 38-43; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 12-17; P-0015: T-093, p. 44.

¹⁶⁷ P-1073: T-103, pp. 7-8. *See also* the Chamber's assessment of P-1073's evidence, Annex B, Section I.A.52.

¹⁶⁸ P-0015's Statement, DAR-OTP-0088-0187, at 0196, para. 41; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 16-17; P-0015: T-093, p. 44.

¹⁶⁹ P-1073: T-103, pp. 14-15.

¹⁷⁰ [Defence's Final Brief](#), paras 432-433.

¹⁷¹ P-0015: T-103, p. 53.

¹⁷² P-0015's Statement, DAR-OTP-0088-0187-R04, at 0206, paras 99-102; P-0015: T-093, pp. 16-18; 52-56.

¹⁷³ P-1073: T-103, pp. 7-8.

- P-0015 witnessed them being raped by the *Janjaweed*;¹⁷⁴
- P-1073 did not observe [REDACTED] rape;¹⁷⁵ and that
- P-0015's account of the rape of [REDACTED] is credible and reliable.¹⁷⁶ The Chamber is satisfied that P-0015's account of the rape of [REDACTED] is first-hand and is preferred over the indirect evidence of P-1073 in relation to the rape of [REDACTED].

48. The Chamber thus finds P-0015 to be a credible and reliable witness in relation to her direct evidence.

5. P-0020

49. P-0020 (DoB 1955), a member of the Fur tribe, gave *viva voce* evidence over two days pursuant to Rule 68(3) of the Rules.¹⁷⁷ P-0020 was a [REDACTED] during the relevant period and previously worked as [REDACTED].¹⁷⁸ P-0020's evidence principally dealt with the background to the armed conflict,¹⁷⁹ and the identity of **the Accused** as '**Ali Kushayb**'.¹⁸⁰ Generally, the Chamber notes that, by virtue of his position, P-0020 had in-depth knowledge of the background to the armed conflict in Darfur and the situation in Sudan and Darfur before and during the relevant period of the charges. The witness helpfully answered the questions from both parties and clearly differentiated between direct and indirect knowledge (and provided the sources of his information in several instances).¹⁸¹

50. As regards the identity of '**Ali Kushayb**', P-0020 had limited knowledge thereof. In fact, the witness was frank and did not try to over-state what he knew about '**Ali Kushayb**'.¹⁸² Accordingly, the Chamber will not rely on this aspect of his evidence.

¹⁷⁴ P-0015's Statement, DAR-OTP-0088-0187, at 0196, para. 41; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 16-17; P-0015: T-093, p. 44.

¹⁷⁵ P-1073: T-103, p. 15.

¹⁷⁶ *Contra* [Defence's Final Brief](#), paras 432-433.

¹⁷⁷ P-0020's Statement, DAR-OTP-0095-0002-R02; P-0020's Statement Corrections, DAR-OTP-0224-0551; P-0020: T-041; T-042.

¹⁷⁸ P-0020's Statement, DAR-OTP-0095-0002-R02, at 0004-0005, paras 6-10; P-0020: T-042, pp. 47-48.

¹⁷⁹ P-0020's Statement, DAR-OTP-0095-0002-R02, at 0005-0007, paras 11-21; P-0020: T-041, pp. 73-79, 81-87; T-042, pp. 7-30, 47-51.

¹⁸⁰ P-0020's Statement, DAR-OTP-0095-0002-R02, at 0018, para. 63; P-0020: T-041, pp. 72-73, 76-77; T-042, pp. 31-42.

¹⁸¹ *See for example* P-0020: T041, p. 84; T-042, pp. 7-9, 49.

¹⁸² *See for example* P-0020: T-042, p. 31.

51. The Defence does not challenge P-0020's reliability or credibility. In fact, the Defence relies on this witness on, *inter alia*, human rights law and international humanitarian law in Sudan, the title of Sultan in the Fur tribe, the mobilisation of Arab militias, and the Ta'aisha tribe.¹⁸³

52. The Chamber is therefore satisfied that P-0020 is a reliable and credible witness.

6. P-0029

53. P-0029 (DoB 1969), a member of the Fur tribe, gave *viva voce* evidence over two and a half days.¹⁸⁴ In 2003-2004, he was a farmer in Kodoom [REDACTED].¹⁸⁵ His evidence principally dealt with: his knowledge of 'Ali Kushayb';¹⁸⁶ the Kodoom and Bindisi Operation in August 2003;¹⁸⁷ and the Mukjar Operation in March 2004.¹⁸⁸ He also provided accounts of events at which he was not present, namely the Sindu Operation and the execution of prisoners on the outskirts of Mukjar during the Mukjar Operation.¹⁸⁹

54. The distinction between events he witnessed himself and those about which he was told was clearly delineated. However, the Chamber has not found it necessary to rely on the latter in the light of other direct evidence.

55. There were severe interpretation issues during P-0029's evidence, which he gave in Arabic but would have preferred to give in Fur.¹⁹⁰ Regrettably no Fur interpreters were available at the time of his in-court evidence. As a result of his difficulties in recollecting the detail of events, P-0029's statement was read to him during the weekend break.¹⁹¹ The Chamber has taken this into account, taking a cautious approach in making this assessment, including some visible mistakes in his transcript which were not corrected.¹⁹² However, the

¹⁸³ [Defence's Final Brief](#), paras 27, 92, 238-240, 260, 273, 281, 284, 309, 319, 341, 445.

¹⁸⁴ P-0029: T-029; T-030; T-031.

¹⁸⁵ P-0029: T-029, p. 41; T-030, pp. 23, 40, 55, 67; T-031, pp. 40, 69-70.

¹⁸⁶ P-0029: T-029, pp. 42-44, 48, 52-56, 58-60, 66-71; T-030, pp. 14, 16-18, 22-23, 35-39, 42, 46-47, 71-73; T-031, pp. 25-27, 48-62, 64, 71-72, 77-80, 82-86.

¹⁸⁷ P-0029: T-029, pp. 42-44, 50-51, 60-77; T-030, pp. 11-16, 18-23, 46-48, 57-58, 82; T-031, pp. 19-36.

¹⁸⁸ P-0029: T-029, pp. 48-51; T-030, pp. 34-40, 41-46; T-031, pp. 64-72.

¹⁸⁹ P-0029: T-029, p. 50; T-030, pp. 27-29, 34-36; T-031, pp. 8-9, 11, 46-48.

¹⁹⁰ P-0029: T-030, pp. 2-10.

¹⁹¹ P-0029: T-030, p. 9.

¹⁹² See for example P-0029: T-030, pp. 16-17. See Judgment, Section 4. Evidentiary principles and considerations, paras 227-229.

transcript was re-reviewed to check whether there were errors such as to affect the gravamen of his evidence. No such errors were found.

Knowledge of the Accused

56. P-0029 gave evidence that he knew ‘**Ali Kushayb**’, having purchased veterinary medication from the latter’s pharmacy—which he described¹⁹³—in Garsila on several occasions.¹⁹⁴ He learnt ‘**Ali Kushayb’s**’ name from a friend—whom he stated knew ‘**Ali Kushayb**’—and that ‘**Ali Kushayb’s** shop’ was well-known in the area.¹⁹⁵ In answer to the Defence, P-0029 said that selling veterinary medication did not require someone to be a pharmacist and he did not know whether ‘**Ali Kushayb**’ was a pharmacist.¹⁹⁶ P-0029 agreed with the Defence that there were places in Bindisi and Mukjar that sold veterinary medication but said Garsila had a better market.¹⁹⁷

57. P-0029 said he was aged about 20 or 21 at that time, and did not know the age of ‘**Ali Kushayb**’.¹⁹⁸ He also said that the fingers of one of ‘**Ali Kushayb’s**’ hands were bent.¹⁹⁹ When questioned by the Defence about ‘**Ali Kushayb’s**’ appearance, P-0029 first said he did not recall whether ‘**Ali Kushayb’s**’ ears were pierced,²⁰⁰ but later in answer to a question from the Chamber, he said that ‘**Ali Kushayb**’ had a hole in his right ear.²⁰¹

58. The Defence suggested to P-0029 that he had never been to the pharmacy or seen ‘**Ali Kushayb**’,²⁰² and that, overall, his entire evidence about ‘**Ali Kushayb**’ was untrue, invented, because he wished to assist the Prosecution.²⁰³ The Defence further argues that P-0029’s evidence is unreliable on the basis of:

- his description of an ear as being pierced,²⁰⁴ whereas **the Accused** has no obvious piercing;

¹⁹³ P-0029: T-031, pp. 58-61.

¹⁹⁴ P-0029: T-029, pp. 58-59; T-030, pp. 16-17; T-031, pp. 53-54, 61, 64.

¹⁹⁵ P-0029: T-031, pp. 78-81.

¹⁹⁶ P-0029: T-031, pp. 53-54.

¹⁹⁷ P-0029: T-031, pp. 55-56.

¹⁹⁸ P-0029: T-029, pp. 58-59; T-030, p. 17.

¹⁹⁹ P-0029: T-030, p. 18; T-031, pp. 61-62.

²⁰⁰ P-0029: T-031, p. 57.

²⁰¹ P-0029: T-031, p. 85.

²⁰² P-0029: T-031, p. 64.

²⁰³ P-0029: T-031, pp. 71-72.

²⁰⁴ P-0029: T-031, p. 85.

- the fact that he learnt the name from an unidentified person;²⁰⁵ and
- the fact that he said the pharmacy sold veterinary items.²⁰⁶

59. The Chamber is satisfied that P-0029 gave measured evidence about his dealings with **the Accused** at his pharmacy,²⁰⁷ which comports with that of other witnesses who came to know **the Accused**, and his nickname ‘**Ali Kushayb**’, through purchasing medication.²⁰⁸ Several witnesses also stated that they bought veterinary products from the pharmacy,²⁰⁹ and P-0029’s explanation of how it was possible to sell both was supported by at least one other witness.²¹⁰ P-0029 described **the Accused** as he was before 2003 and there is no evidence before the Chamber on the length of time scars from ear piercings are obvious before becoming less apparent, if remaining at all visible. The Chamber is satisfied that even if the fact is that **the Accused’s** ears (more than 20 years later) do not show any sign of ear piercing does not undermine P-0029’s evidence.²¹¹ Numerous witnesses gave evidence that ‘**Ali Kushayb**’ and his pharmacy were well known in Garsila.²¹² Accordingly, in the light of this renown,²¹³ the fact that the person, from whom P-0029 learnt the name, was unidentified does not undermine the cogency of this evidence. Therefore, the Chamber is satisfied given the detailed responses by the witness and the fact that it is supported by evidence from other witnesses that his evidence on this aspect is credible and reliable.

The Kodoom and Bindisi Operation

60. P-0029 gave evidence that he was present at the open meeting in Mukjar at which Minister Harun and ‘**Ali Kushayb**’ spoke (mentioning *ghanima*) just prior to the Operation.²¹⁴ P-0029 went on to describe the arrival of Marko [REDACTED] in Kodoom, when the latter told everyone the *Janjaweed* were going to Bindisi to the *zakat* to obtain fodder for their

²⁰⁵ P-0029: T-031, pp. 78-81.

²⁰⁶ P-0029: T-031, pp. 53-54, 61. *See also* [Defence’s Final Brief](#), paras 721-722.

²⁰⁷ *Contra* [Defence’s Final Brief](#), para. 510.

²⁰⁸ *See* Judgment, paras 262, 266.

²⁰⁹ *See for example* P-0012’s Statement, DAR-OTP-0119-0503-R01, at 0512, para. 38; P-0012: T-045, pp. 8-9; T-046, p. 7; P-0883: T-071, pp. 14-15, 20; P-0932’s Statement, DAR-OTP-0222-0602-R02, at 0607, paras 24-25; P-0932: T-068, pp. 13-14.

²¹⁰ P-0874: T-082, pp. 73-75. *See* the Chamber’s assessment of P-0874’s evidence, Annex B, Section I.A.26.

²¹¹ *Contra* [Defence’s Final Brief](#), para. 706.

²¹² *See* P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0442, paras 24-27; P-0986: T-066, p. 19. *See also* the Chamber’s assessment of P-0986’s evidence, Annex B, Section I.A.46.

²¹³ *See* Judgment, Section 4. Evidentiary principles and considerations, para. 172.

²¹⁴ P-0029: T-029, pp. 48-49.

horses.²¹⁵ P-0029 was present in Kodoom when it was attacked during the Kodoom and Bindisi Operation.²¹⁶ When Kodoom was attacked, he and others went into the woods,²¹⁷ but he said he saw ‘**Ali Kushayb**’ in a Land Cruiser with other fighters who shot at them with Kalashnikovs.²¹⁸ However, at a later stage, he said ‘**Ali Kushayb**’ got out of the vehicle got onto a horse, at which stage he whistled to gather the *Janjaweed*.²¹⁹ When P-0029 returned to Kodoom, he found his houses had been burnt, as had other houses.²²⁰ Thereafter, he and [REDACTED] went to Bindisi where they saw the *Janjaweed* burning houses,²²¹ and buried bodies they found there and in nearby villages.²²²

61. The Defence suggested to P-0029 that Kodoom had a self-defence force—based on evidence he gave of an earlier incident involving conflict with Arab tribes²²³—and that there was a rebel presence in Kodoom.²²⁴ P-0029 responded in the negative to both suggestions.²²⁵ This response is supported by the evidence of other witnesses.²²⁶ The Chamber is satisfied that P-0029 is both credible and reliable in this respect.

62. As regards P-0029’s evidence that he recognised ‘**Ali Kushayb**’ in Kodoom, the Defence suggested he did not witness the arrival of the *Janjaweed* in Kodoom as he was running away and that in any event the distance—described by him as akin to the distance between the witness box and the entrance to the actual court building—from which he stated he observed the arrival of ‘**Ali Kushayb**’, was too great to make this evidence reliable.²²⁷ Whilst the Chamber is satisfied that P-0029 genuinely believed that he saw ‘**Ali Kushayb**’, it accepts the Defence’s submission and does not rely on P-0029’s account in respect of this aspect of his evidence. On other aspects of the Kodoom and Bindisi Operation and the preceding events—including the presence of ‘**Ali Kushayb**’ at the open meeting with Minister

²¹⁵ P-0029: T-029, pp. 61-62, 63-64; T-030, pp. 11-12; T-031, pp. 20-21.

²¹⁶ P-0029: T-029, pp. 60-77.

²¹⁷ P-0029: T-029, p. 65.

²¹⁸ P-0029: T-029, pp. 65-67.

²¹⁹ P-0029: T-029, pp. 69-70; T-030, p. 12.

²²⁰ P-0029: T-030, p. 15.

²²¹ P-0029: T-030, pp. 21-22.

²²² P-0029: T-030, pp. 18-19.

²²³ P-0029: T-030, pp. 85-91.

²²⁴ P-0029: T-031, p. 19.

²²⁵ P-0029: T-030, pp. 85-91.

²²⁶ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, para. 372.

²²⁷ P-0029: T-031, pp. 25-27.

Harun in Mukjar in August 2003—the Chamber finds P-0029’s evidence to be credible and reliable.

Arming of the *Janjaweed*

63. P-0029 gave evidence that before and after the attack on Kodoom, he witnessed the distribution of weapons to the *Janjaweed*.²²⁸ The weapons were delivered by helicopter and distributed by Samih and ‘the leader of the fighters in Mukjar’ whom he knew as Lt Col Himeidan.²²⁹

64. Whilst the Defence asked a number of questions about this evidence,²³⁰ it was never suggested that P-0029 had invented this part of his account. P-0029 was able to explain in detail how he came to witness these deliveries, [REDACTED].²³¹ Moreover, similar, if not identical evidence of the arming of the *Janjaweed* was given by other witnesses.²³² The Chamber is therefore satisfied that this account is credible and reliable.

The Mukjar Operation

65. P-0029 gave evidence that, after the Sindu Operation, he was at Mukjar police station—[REDACTED]—when ‘**Ali Kushayb**’ arrived in a convoy of three Land Cruisers.²³³ He described ‘**Ali Kushayb**’ as holding an axe and assaulting detainees who were then loaded into the cruisers. P-0029 was able to recognise some of the detainees.²³⁴ He did not witness the executions but heard shots and then heard an account of what happened from [REDACTED].²³⁵ Thereafter P-0029 went to the site and found the bodies, some of whom he recognised.²³⁶

66. Whilst the Defence asked a number of questions in relation to this evidence,²³⁷ other than the general challenge that he was not telling the truth about the presence and actions of ‘**Ali Kushayb**’, no specific challenges were made to P-0029’s account in this regard.

²²⁸ P-0029: T-030, pp. 23-25; T-031, p. 36.

²²⁹ P-0029: T-030, pp. 23-25.

²³⁰ P-0029: T-031, pp. 36-45.

²³¹ P-0012: T-029, p. 53; T-030, p. 24.

²³² See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 461-463.

²³³ P-0029: T-029, pp. 43-44; T-030, pp. 34-35.

²³⁴ P-0029: T-030, pp. 35-40.

²³⁵ P-0029: T-030, pp. 42-44.

²³⁶ P-0029: T-030, pp. 39, 45-46.

²³⁷ P-0029: T-031, pp. 65-71.

67. P-0029's account of the Mukjar Operation is supported by several other witnesses.²³⁸ Whilst there are some variations in what the witnesses recalled or perceived, such as the number of detainees loaded onto the Land Cruisers, other aspects are constant, such as the use by 'Ali Kushayb' of an axe to beat prisoners.²³⁹

68. The Chamber is satisfied that traumatic events of this nature will nearly always result in a variance of details from witnesses.²⁴⁰ P-0029's reason for being at the police station and his description of what he saw was detailed, and at its core, generally consistent with evidence of other witnesses.²⁴¹ Accordingly, the Chamber is satisfied that his evidence is credible and reliable.²⁴²

Collusion with other witnesses

69. The Defence questioned P-0029 about discussions with other people he had met in the [REDACTED] before and during the making of his statement to the Prosecution investigators.²⁴³ P-0029's response was, '[u]ntil this day I never talked about this to anyone. I stand for myself'.²⁴⁴

70. The Defence argues that because [REDACTED], this demonstrates collusion between the P-0029 and P-0878.²⁴⁵ However, no such suggestion was ever put to P-0029 [REDACTED]. Additionally, the Defence argues that P-0029's evidence has been contaminated because of information, the Defence submits, the witness shared with other witnesses (*i.e.* [REDACTED]).²⁴⁶

71. The Chamber is satisfied that not only is there no evidence that P-0029 was influenced by discussions of events with [REDACTED] (*i.e.* [REDACTED]), but also there is no evidence of any collusion between him and any of the aforesaid witnesses.²⁴⁷ Indeed there is little cross-

²³⁸ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 502-550.

²³⁹ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 520-525.

²⁴⁰ See Judgment, Section 4. Evidentiary principles and considerations, paras 194-195.

²⁴¹ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 502-550.

²⁴² *Contra* [Defence's Final Brief](#), para. 519.

²⁴³ P-0029: T-030, pp. 69-75.

²⁴⁴ P-0029: T-030, p. 75.

²⁴⁵ [Defence's Final Brief](#), para. 399.

²⁴⁶ [Defence's Final Brief](#), paras 399, 504, 532.

²⁴⁷ *Contra* [Defence's Final Brief](#), paras 399, 504, 532.

over between their accounts. The Chamber is satisfied that the fact that the witnesses may have known each other and/or discussed events does not in itself render their evidence less credible or reliable.

7. P-0119

72. P-0119 (DoB 1962),²⁴⁸ a member of the Fur tribe, gave evidence over one day pursuant to Rule 68(3) of the Rules.²⁴⁹ P-0119 [REDACTED],²⁵⁰ before commencing employment with [REDACTED].²⁵¹ P-0119's evidence principally dealt with the background to the armed conflict in Darfur, including Darfur's history;²⁵² the establishment of the PDF and its recruitment procedures;²⁵³ the connection between the GoS and the 'Arab militia', including the distribution of salaries, vehicles, weapons and ammunition to the 'Arab militia' by the GoS;²⁵⁴ the PPF;²⁵⁵ the CRF;²⁵⁶ and the BIU.²⁵⁷ P-0119 also gave evidence on the Deleig Operation,²⁵⁸ and his knowledge of, and relationship with, '**Ali Kushayb**'.²⁵⁹

Knowledge of '**Ali Kushayb**'

73. P-0119 gave evidence that '**Ali Kushayb**' was involved in the Deleig Operation and that he was present during the killings of detainees.²⁶⁰ The Defence submits that P-0119 originally gave evidence that he had met '**Ali Kushayb**' many times,²⁶¹ but later clarified that he had met him on only one occasion.²⁶² The Chamber is satisfied that P-0119 had only a slight acquaintanceship with '**Ali Kushayb**'. Given this, and also that his evidence on '**Ali Kushayb**'s' role in the Deleig Operation is general and based on indirect evidence (which

²⁴⁸ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0196; P-0119: T-038, p. 70.

²⁴⁹ P-0119's Statement, DAR-OTP-0124-0196-R03; P-0119: T-038.

²⁵⁰ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0198-0199, paras 8-9, 12; P-0119: T-038, p. 42.

²⁵¹ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0201, paras 22-24.

²⁵² P-0119's Statement, DAR-OTP-0124-0196-R03, at 0205-0208, paras 44-64; P-0119: T-038, pp. 26-29, 44-49, 91-92.

²⁵³ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0199-0200, 0208-0212, paras 13-18, 69-73, 82-87, 93-95; P-0119: T-038, pp. 49-56, 60.

²⁵⁴ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0208, paras 65-68.

²⁵⁵ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209-0210, 0212, paras 74-79, 96; P-0119: T-038, pp. 61-63.

²⁵⁶ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209-0210, 0212, paras 74-79, 96; P-0119: T-038, pp. 61-63.

²⁵⁷ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0213, paras 101-102.

²⁵⁸ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0213-0215, paras 104-110, 116-119.

²⁵⁹ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0215-0216, paras 121, 124-125; P-0119: T-038, pp. 11-25, 36-39, 65-88.

²⁶⁰ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0213-0215, paras 108-118. *See also* [Defence's Final Brief](#), para. 616.

²⁶¹ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0215, para. 121.

²⁶² [Defence's Final Brief](#), para. 708. *See also* P-0119: T-038, p. 68.

contains inconsistencies with other credible and reliable evidence), the Chamber is satisfied that it has little probative value and does not rely on his identification evidence in relation to the Deleig Operation. The Chamber also accepts the Defence's submission that P-0119's evidence that 'Ali Kushayb's' real name was **Abd-Al-Rahman** is based on indirect evidence.²⁶³ In the circumstances that P-0119 originally stated that he did not know 'Ali Kushayb's' real name,²⁶⁴ and that he only learned of his real name in 2013,²⁶⁵ the Chamber also does not rely on his evidence on the link between **the Accused** and the nickname 'Ali Kushayb'.

Background and context of the conflict

74. P-0119 gave detailed evidence on the background of the conflict in Darfur and contextual information regarding forces involved in the conflict, including the PDF,²⁶⁶ the PPF and the CRF.²⁶⁷ The Chamber is satisfied [REDACTED],²⁶⁸ P-0119 has a solid basis of knowledge for his understanding on the background of the conflict.

75. P-0119 also gave evidence of being shown documents relating to the distribution of salaries by the GoS to the 'Arab militias'.²⁶⁹ However, the Chamber acknowledges that much of P-0119's information was indirect. In some instances, P-0119 was unable to clearly explain the basis of knowledge of the individual from whom he received the information.²⁷⁰ Accordingly, the Chamber only relies on P-0119's evidence on this issue where it aligns with other credible and reliable evidence.²⁷¹

Deleig Operation

76. The Chamber acknowledges that the entirety of P-0119's evidence on the Deleig Operation is based on indirect evidence from P-0643 and others [REDACTED].²⁷² His evidence on the Deleig Operation is generally unsupported by P-0643's evidence and contains

²⁶³ P-0119: T-038, pp. 16, 37, 80. *See also* [Defence's Final Brief](#), paras 708, 739.

²⁶⁴ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0215, para. 121; P-0119: T-038, p. 37.

²⁶⁵ P-0119: T-038, pp. 16, 80. *See also* [Defence's Final Brief](#), para. 708.

²⁶⁶ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0208-0209, paras 69-73.

²⁶⁷ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0209-0210, paras 74-79.

²⁶⁸ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0201-0203, paras 22, 25, 32, 34.

²⁶⁹ P-0119's Statement, DAR-OTP-0124-0196-R03, at 0212, para. 97.

²⁷⁰ *See for example* P-0119's Statement, DAR-OTP-0124-0196-R03, at 0212, para. 96; P-0119: T-038, pp. 61-63.

²⁷¹ *See* Judgment, paras 340, 345, 661, 670.

²⁷² P-0119's Statement, DAR-OTP-0124-0196-R03, at 0213-0215, paras 104-112, 116-119.

inconsistencies with other reliable and credible evidence.²⁷³ The Chamber therefore does not rely on P-0119's evidence on the Deleig Operation.

77. The Chamber notes the Defence's reliance on P-0119 in respect of Minister Harun and Abd-Al-Hakam's role in the Deleig Operation.²⁷⁴ However, it finds that P-0119's evidence on this issue is based solely on what he was told by P-0643. However, as P-0643 was not asked about this aspect of P-0119's evidence, there is no correlation between the two accounts and the Chamber is therefore unable to reach any conclusion on the reliability of P-0119's evidence on this issue.

8. P-0120

78. P-0120 (DoB 1961) gave *viva voce* evidence over two days pursuant to Rule 68(3) of the Rules.²⁷⁵ P-0120 is a [REDACTED],²⁷⁶ as [REDACTED].²⁷⁷ P-0120's evidence principally dealt with the background to the armed conflict in Darfur and the GoS's role in arming the militias,²⁷⁸ and supporting Arab tribes.²⁷⁹ He also referred to Ministers Hussein and Harun regularly visiting Al Geneina during the relevant period and holding meetings there,²⁸⁰ as well as to the role of the Border Intelligence in Al Geneina in the counter-insurgency campaign.²⁸¹

79. In court, P-0120 was questioned extensively by the Defence about the applicable legal system in Sudan at the time of the charges, particularly human rights law and criminal law, including fair trial rights.²⁸² Whilst P-0120 was called as a witness of fact, the Defence treated him as akin to an expert witness, which led to a situation whereby he was asked to give opinion evidence. P-0120 was unprepared to answer some of the legal questions asked by the Defence, and had to be provided with the legal texts.²⁸³

²⁷³ See generally Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004.

²⁷⁴ [Defence's Final Brief](#), para. 577.

²⁷⁵ P-0120's Statement, DAR-OTP-0124-0816-R02; P-0120: T-036; T-037.

²⁷⁶ P-0120's Statement, DAR-OTP-0124-0816-R02, at 0818-0819, paras 6-13.

²⁷⁷ P-0120's Statement, DAR-OTP-0124-0816-R02, at 0826-0828, paras 50-61.

²⁷⁸ P-0120's Statement, DAR-OTP-0124-0816-R02, at 0821-0822, paras 23-28.

²⁷⁹ P-0120's Statement, DAR-OTP-0124-0816-R02, at 0822-0823, paras 29-32.

²⁸⁰ P-0120's Statement, DAR-OTP-0124-0816-R02, at 0823-0825, paras 33-41.

²⁸¹ P-0120's Statement, DAR-OTP-0124-0816-R02, at 0825-0826, paras 42-49.

²⁸² See for example P-0120: T-036, pp. 62-69, 71-73, 75-76; T-037: p. 8, 10-11, 13-19, 63-65, 74-79, 84.

²⁸³ P-0120: T-036, pp. 76-78. See also P-0120: T-037, pp. 2-3.

80. Generally, P-0120's evidence in court was consistent with his written statement and the Chamber notes that the Defence does not challenge P-0120's credibility or reliability, and in fact, has referred at length to his evidence in its Final Brief, both on issues of law²⁸⁴ and facts.²⁸⁵

81. The Chamber is therefore satisfied that P-0120 is a reliable and credible witness as to facts and although not formally qualified as an expert, finds no reason not to rely on his opinion evidence.

9. P-0129

82. P-0129 (DoB 1972), a member of the Fur tribe,²⁸⁶ gave *viva voce* evidence over two trial days pursuant to Rule 68(3) of the Rules.²⁸⁷ At the relevant time, he was [REDACTED].²⁸⁸ His evidence principally dealt with his arrest and detention on two occasions at Mukjar police station in March 2004;²⁸⁹ the killing of detainees at execution sites between Mukjar and Garsila; and the role of '**Ali Kushayb**' in these events.²⁹⁰

Knowledge of '**Ali Kushayb**'

83. Before the events at Mukjar police station, P-0129 had seen '**Ali Kushayb**' on one occasion in Deleig in July 2003 when the latter arrived with Abd-Al-Hakam and another man[REDACTED].²⁹¹ P-0129 gave evidence that he was told the identity of '**Ali Kushayb**' (of whom he had heard was an ex-military man who had opened a pharmacy in Garsila and recently been appointed an *agid* of the Arabs).²⁹² P-0129 also gave a physical description of '**Ali Kushayb**'.²⁹³

²⁸⁴ [Defence's Final Brief](#), paras 23, 27, 28, 238, 240, 241, 245, 246, 248, 250, 258, 274, 736, 812, 818, 821, 823.

²⁸⁵ [Defence's Final Brief](#), paras 334, 341, 342, 351, 357, 791.

²⁸⁶ P-0129: T-075, pp. 48-68.

²⁸⁷ P-0129's Statements, DAR-OTP-0128-0128-R04 (2007), DAR-OTP-0220-0703-R02 (2021), DAR-OTP-0223-0157-R02 (2021); P-0129's Statement Corrections, DAR-OTP-00000084-000001; P-0129: T-075; T-076. *See also* P-0129's Statement, DAR-OTP-0128-0128-R04, at 0130, para. 7 (on P-0129 being a member of the Fur tribe); DAR-OTP-0220-0703-R02, at 0705, para. 14 (on P-0129's date of birth).

²⁸⁸ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0130-0131, paras 7, 8.

²⁸⁹ *See for example* P-0129's Statement, DAR-OTP-0128-0128-R04, at 0138-0150, paras 39-82; P-0129: T-075, pp. 55-58; T-076, pp. 20-26, 42-46. *See also* P-0129's Statement, DAR-OTP-0223-0157-R02, at 0163-0176, paras 34-102.

²⁹⁰ *See for example* P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143-0145, paras 53-58; P-0129: T-075, pp. 59-60; T-076, pp. 56-57. *See also* P-0129's Statement, DAR-OTP-0223-0157-R02, at 0173-0175, paras 77-96.

²⁹¹ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0134-0135, paras 24-29. *See also* P-0129's Statement, DAR-OTP-0223-0157-R02, at 0161-0162, paras 21-27.

²⁹² P-0129's Statement, DAR-OTP-0128-0128-R04, at 0135-0136, paras 24-27. *See also* P-0129's Statement, DAR-OTP-0223-0157-R02, at 0161-0162, paras 21-27.

²⁹³ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0153, paras 94-95. *See also* P-0129: T-076, pp. 14-16.

84. In court, P-0129 specified that [REDACTED] when the three men had arrived at the shop and it was [REDACTED] who had identified ‘**Ali Kushayb**’.²⁹⁴ He explained that the distance between them had been equivalent to that between the witness box and where the court officers sat.²⁹⁵ When questioned by the Defence, P-0129 said [REDACTED] went frequently to Garsila and they had told him that ‘**Ali Kushayb**’ had been elected by the Arab tribes as their *agid*.²⁹⁶ Whilst the Defence asked a number of questions about this meeting, no specific challenge was made.²⁹⁷

85. However P-0129, both in his first statement and in court, stated that when he was arrested and taken to Mukjar police station for the first time, [REDACTED], ‘**Ali Kushayb**’ was both present and in charge.²⁹⁸ P-0129 stated that the reason he knew it was ‘**Ali Kushayb**’ was that the latter introduced himself and at that stage, but not before, he recognised him as the man identified to him [REDACTED] in Deleig.²⁹⁹

86. Whilst his account on the number of occasions on which he saw ‘**Ali Kushayb**’ during his detention is varied (see below), P-0129 was insistent that he recognised ‘**Ali Kushayb**’.³⁰⁰ In answer to a question from the Chamber, he confirmed it was a combination of ‘**Ali Kushayb**’s’ announcement of his name when he came into the prison cell and recognition as the man he had seen in Deleig.³⁰¹

87. The Chamber is satisfied that the circumstances of the encounter, namely, that he knew the people with ‘**Ali Kushayb**’ and was curious as to the identity of the third person,³⁰² that the information was provided [REDACTED] who had reason to know who ‘**Ali Kushayb**’

²⁹⁴ P-0129: T-075, pp. 53-55; T-076, pp. 17-20, 60.

²⁹⁵ P-0129: T-075, pp. 53-55.

²⁹⁶ P-0129: T-076, pp. 20-26.

²⁹⁷ P-0129: T-076, pp. 17-20.

²⁹⁸ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0141-0144, paras 46-54; P-0129: T-075, pp. 55-60. *See also* P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0166-0174, paras 50, 52-53, 55-59, 61-65, 67-68, 75, 80, 82, 84, 86-87.

²⁹⁹ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0142, para. 47; P-0129: T-076, pp. 43, 60-61. *See also* P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0168-0169, paras 55-56.

³⁰⁰ *See for example* P-0129: T-075, pp. 55-60; T-076, p. 61.

³⁰¹ P-0129: T-076, pp. 60-61.

³⁰² P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0135-0136, paras 24-27; P-0129: T-075, pp. 53-55; T-076, pp. 17-20, 60. *See also* P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0161-0162, paras 21-27.

was;³⁰³ and the fact that shortly after the meeting he learned about ‘**Ali Kushayb**’s’ appointment as *agid*,³⁰⁴ render P-0129’s evidence in this respect both credible and reliable.

88. Further, the Chamber is satisfied that in Mukjar police station, ‘**Ali Kushayb**’ introduced himself, which prompted P-0129 to recollect the earlier encounter thus recognising ‘**Ali Kushayb**’.³⁰⁵

Mukjar Operation

89. P-0129 gave evidence, as already stated, that he was arrested twice and detained at Mukjar police station.³⁰⁶ In his first statement [REDACTED], P-0129 stated that on the first occasion he was held [REDACTED], when ‘**Ali Kushayb**’ (together with Lt Hamdi and Samih) arrived, and began beating detainees, ‘**Ali Kushayb**’ using his axe to do so.³⁰⁷ In that same statement, when recounting his second period of incarceration, he made no mention of ‘**Ali Kushayb**’.³⁰⁸

90. P-0129 also described in his first statement hearing the arrival of a helicopter, which he was told was carrying Minister Harun, shortly before the entrance of ‘**Ali Kushayb**’.³⁰⁹ He said that ‘**Ali Kushayb**’ had told them that Minister Harun had authorised them to confiscate the property of and eliminate the Fur.³¹⁰ However, in his third statement [REDACTED], he said that hearing the helicopter had occurred during his second detention.³¹¹

91. When questioned by the Defence, P-0129 first said that it was during his second detention that ‘**Ali Kushayb**’ had repeated what Minister Harun had said and later that it was said on both occasions.³¹² When the Defence put this inconsistency to him, he said that ‘**Ali Kushayb**’ had beaten the detainees during both detentions.³¹³ On the basis that notes taken by an interpreter of an interview [REDACTED] made no mention of ‘**Ali Kushayb**’, the Defence

³⁰³ P-0129: T-075, pp. 53-54.

³⁰⁴ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0135, para. 24; P-0129: T-076, pp. 20-26. *See also* P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0161-0162, paras 21-26.

³⁰⁵ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0142, para. 47; P-0129: T-075, pp. 55-60; T-076, pp. 43, 60-61. *See also* P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0168-0169, paras 55-56.

³⁰⁶ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0138-0149, paras 39-76. *See also* P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0163-0176, paras 34-103.

³⁰⁷ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0139-0143, paras 43-51.

³⁰⁸ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0146-0143, paras 62-76.

³⁰⁹ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0141-0142, para. 46.

³¹⁰ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0142, para. 47.

³¹¹ P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0168, para. 54.

³¹² P-0129: T-076, pp. 40-45, 53-54.

³¹³ P-0129: T-076, pp. 53-54, 62.

suggested to P-0129 that ‘**Ali Kushayb**’ never visited the cell whilst he was being detained, which suggestion the witness denied.³¹⁴

92. The Defence submits in its Final Brief that these internal inconsistencies in P-0129’s evidence and the inconsistencies with other witnesses (*i.e.* [REDACTED]) in the detail of what happened inside Mukjar police station render his whole account, particularly his identification of ‘**Ali Kushayb**’, unreliable.³¹⁵ Further, the Defence invites the Chamber to infer that in the [REDACTED], witnesses discussed their experiences and that when P-0129 gave his first statement [REDACTED], he knew a warrant of arrest for ‘**Ali Kushayb**’ had been issued, and these factors in themselves contaminate P-0129’s evidence.³¹⁶

93. There can be no doubt that there are internal and external inconsistencies in the detailed account given by P-0129 both relating to Mukjar police station and the execution sites (see below). The Chamber is unsurprised by this, given the traumatic nature of the experience which he underwent and the passage of time.³¹⁷ As P-0129 stated: “This was a very emotional period for me so it is difficult to remember everything which happened”.³¹⁸

94. Notwithstanding those inconsistencies of detail, the one aspect about which P-0129 was clear and adamant was that ‘**Ali Kushayb**’ had come to his cell, introduced himself, beaten the detainees and made threats.³¹⁹ This evidence is supported by other witnesses,³²⁰ and the Chamber is satisfied that it is credible and reliable. The Chamber is unpersuaded that P-0129’s knowledge that ‘**Ali Kushayb**’ was wanted by the Court, or any discussion about events which may have taken place in [REDACTED] with other witnesses, could lead this witness to invent (and consistently recount with such detail) this aspect of his evidence.³²¹ The Chamber is equally satisfied that notes taken by a third party who is not a witness, in unknown

³¹⁴ P-0129: T-076, pp. 5-10, 46-49, *referring to* P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0150, paras 79-80; P-0129’s Interview Notes, DAR-OTP-0119-0241, Translation, DAR-OTP-0153-0205.

³¹⁵ [Defence’s Final Brief](#), paras 490-491, 501, 514-516.

³¹⁶ P-0129: T-076, pp. 5, 10-12. *See also* [Defence’s Final Brief](#), para. 501.

³¹⁷ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

³¹⁸ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0144, para. 56.

³¹⁹ P-0129’s Statement, DAR-OTP-0128-0128-R04, at 0139-0143, paras 43-51; P-0129: T-075, pp. 55-58; T-076, pp. 41-57, 61-62. *See also* P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0165-0172, paras 47-71.

³²⁰ *See* Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 520-525.

³²¹ *Contra* [Defence’s Final Brief](#), paras 490-491, 501, 514-516; [Defence’s Closing Statement](#): T-161, pp. 81-82.

circumstances, and not seen at the time by P-0129 in order to verify their accuracy, have no impact on P-0129's credibility.³²²

The execution sites

95. In his first statement, P-0129 described being taken from Mukjar police station, after witnessing a meeting in the yard between '**Ali Kushayb**', Lt Hamdi, Torshein [REDACTED] and Samih.³²³ P-0129 was placed in the [REDACTED] vehicle of four, [REDACTED] and driven on the road to Garsila.³²⁴ The vehicle stopped at *Khor* Burongbanyi.³²⁵ P-0129, recounted how detainees in the first vehicle were unloaded, beaten by '**Ali Kushayb**' and Samih and then shot by fighters.³²⁶ In court, P-0129 said that '**Ali Kushayb**' had given the orders to shoot.³²⁷

96. After the detainees were shot at *Khor* Burongbanyi, the vehicle continued on to an area between Nyerli and Eastern Juguma, where it stopped.³²⁸ P-0129 and the other detainees were ordered out, told to lie on the ground and on the orders of '**Ali Kushayb**', fighters then opened fire.³²⁹ [REDACTED].³³⁰ He originally stated that 52 people had been in the vehicles but in his third statement said it was about 97.³³¹ [REDACTED].³³²

97. The Defence did not challenge his description of these events in court, but suggested that as P-0129 stated that Lt Hamdi, Torshein and Samih were present, they had greater authority than '**Ali Kushayb**', and the executions took place under their command.³³³ P-0129,

³²² P-0129: T-076, pp. 46-49, *referring to* P-0129's Interview Notes, DAR-OTP-0119-0241, Translation, DAR-OTP-0153-0205. *See* Judgment, Section 4. Evidentiary principles and considerations, paras 223-226.

³²³ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0142-0143, paras 50-51. *See also* P-0129: T-075, p. 57.

³²⁴ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143, para. 51.

³²⁵ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143, para. 52.

³²⁶ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143-0145, paras 53-57.

³²⁷ P-0129: T-075, p. 59; T-076, pp. 56-57.

³²⁸ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143-0144, paras 52-56; P-0129: T-075, p. 60. *See also* P-0129's Statement, DAR-OTP-0223-0157-R02, at 0172-0175, paras 72-90.

³²⁹ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0144, paras 55-56; P-0129: T-075, p. 60; T-076, pp. 56-57. *See also* P-0129's Statement, DAR-OTP-0223-0157-R02, at 0174-0175, paras 84-90.

³³⁰ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0145, paras 57-58. *See also* P-0129's Statement, DAR-OTP-0223-0157-R02, at 0174-0175, paras 88-96.

³³¹ P-0129's Statement, DAR-OTP-0128-0128-R04, at 0143, para. 52; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0172, para. 72.

³³² P-0129's Statement, DAR-OTP-0220-0703-R02, at 0706, paras 16-18; P-0129: T-075, pp. 61-65, *referring to* P-0129's **Lists**, DAR-OTP-00000085; DAR-OTP-00000086.

³³³ P-0129: T-076, pp. 55-56.

responded by saying that ‘**Ali Kushayb**’ was the highest authority.³³⁴ The Defence further suggested that ‘**Ali Kushayb**’ was not there, which P-0129 also denied.³³⁵

98. However, the Defence submits in its Final Brief:

- That P-0129’s ‘recognition’ of ‘**Ali Kushayb**’ is unreliable;³³⁶
- That as men of superior authority were present ‘it was impossible’ to understand how ‘**Ali Kushayb**’ could have ordered anything;³³⁷
- That P-0129’s account of the convoy of vehicles being split after the first executions is directly contradicted by the evidence of [REDACTED] and stated that it was the whole convoy which continued to the second execution site;³³⁸ and
- That there is contamination of evidence between P-0129 [REDACTED] as regards the events [REDACTED].³³⁹

99. In respect of the first submission, the Chamber is satisfied for the reasons set out above that P-0129 did recognise ‘**Ali Kushayb**’.³⁴⁰ In respect of the second submission, this is no more than a comment by the Defence. In respect of the third submission, the Chamber is satisfied that the account given by P-0129, [REDACTED], and the wealth of detail provided renders his account credible and reliable. In respect of the fourth submission, the Chamber is unpersuaded that the evidence referred to by the Defence in support of its allegation provides a basis for the suggestion of ‘contamination’. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.³⁴¹

100. The Defence suggests that there is evidence of collusion between [REDACTED].³⁴² The Chamber is unpersuaded that the evidence referred to by the Defence in support of its allegation provides a basis for the suggestion of collusion. Not only is there no evidence of

³³⁴ P-0129: T-076, p. 56.

³³⁵ P-0129: T-076, pp. 56-57.

³³⁶ [Defence’s Final Brief](#), paras 515, 539.

³³⁷ [Defence’s Final Brief](#), para. 527.

³³⁸ [Defence’s Final Brief](#), para. 533, *referring to* [REDACTED].

³³⁹ [Defence’s Final Brief](#), para. 532.

³⁴⁰ *Contra* [Defence’s Final Brief](#), paras 515, 539.

³⁴¹ *Contra* [Defence’s Final Brief](#), para. 532.

³⁴² [Defence’s Final Brief](#), para. 501.

collusion but the inconsistencies in their evidence militate against a finding of collusion. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.³⁴³

10. P-0131

101. P-0131 (DoB 1968), a member of the Fur tribe,³⁴⁴ gave *viva voce* evidence over two days.³⁴⁵ At the time of the events in 2003, he was working [REDACTED].³⁴⁶ He worked in [REDACTED].³⁴⁷ His evidence principally dealt with the authority the GoS gave to **the Accused** in 2003/2004 and the links between **the Accused** and Minister Harun.

Knowledge of the Accused

102. P-0131 gave evidence that he knew **Ali Muhammed Ali Abd-Al-Rahman**—nicknamed ‘**Ali Kushayb**’—who was the commander of the *Janjaweed* in Wadi Salih.³⁴⁸ He stated that he met **the Accused** while in Wadi Salih [REDACTED].³⁴⁹ According to P-0131, the next time he saw **the Accused** was when P-0131 was [REDACTED].³⁵⁰

103. However, later in his evidence, P-0131 stated that he had only met **the Accused** once and maintained that they did not speak although they spent one hour in each other’s company.³⁵¹ The Chamber notes that P-0131 provided no explanation for this internal contradiction in his evidence. The Defence argues that P-0131 did not personally know **the Accused**.³⁵² On the basis of this limited and contradictory evidence, the Chamber is not satisfied that P-0131 met **the Accused** in the circumstances he described.

³⁴³ *Contra* [Defence’s Final Brief](#), para. 501.

³⁴⁴ P-0131: T-112, p. 7.

³⁴⁵ P-0131: T-112; T-113.

³⁴⁶ P-0131: T-112, p. 8.

³⁴⁷ P-0131: T-112, p. 10.

³⁴⁸ P-0131: T-112, p. 11.

³⁴⁹ P-0131: T-112, pp. 11-12.

³⁵⁰ P-0131: T-112, pp. 13-14.

³⁵¹ P-0131: T-113, pp. 34, 51-52.

³⁵² [Defence’s Final Brief](#), paras 109, 709, referring to P-0131: T-112, pp. 11-14; T-113, p. 51.

The two handwritten documents

104. P-0131 provided handwritten copies of two documents, [REDACTED].³⁵³ [REDACTED].³⁵⁴ The Chamber finds that, the circumstances as described by P-0131 in which he was able to make these copies, and the nature of the copies themselves to be incapable of belief.³⁵⁵ Accordingly, the Chamber does not rely on either of these two documents produced by P-0131.

105. P-0131 gave evidence that sometime between April and June 2003 when he was [REDACTED] reports in relation to the *Janjaweed* attack on Bindisi during the Kodoom and Bindisi Operation.³⁵⁶ The Defence posits that this is impossible because the attacks in Bindisi took place in August 2003 [REDACTED].³⁵⁷ The Chamber is not satisfied that, [REDACTED] reports about the events in Bindisi in relation to the Kodoom and Bindisi Operation, [REDACTED], and will not rely on this evidence.³⁵⁸

106. Based on the Chamber's assessment of the evidence, including the foregoing, the Chamber has significant doubts about the credibility of P-0131 and the reliability of the core elements of his evidence as detailed above. Accordingly, the Chamber will not rely on any of his evidence.

11. P-0547

107. P-0547 (DoB 1964) gave *viva voce* evidence for three days.³⁵⁹ P-0547 was [REDACTED].³⁶⁰ He [REDACTED].³⁶¹ P-0547's evidence principally dealt with the GoS structure before, during and after the relevant period.³⁶² He also provided evidence on concepts such as *hiraba*, and the phrase '*amsah aksah*', as well as on the *Janjaweed*.³⁶³ P-0547 provided

³⁵³ P-0131: T-112, p. 22; P-0131's Notes, DAR-OTP-0134-0116, DAR-OTP-0134-0118, Translations, DAR-OTP-00000116, DAR-OTP-00000117.

³⁵⁴ P-0131: T-112, pp. 22-25.

³⁵⁵ P-0131: T-113, p. 50.

³⁵⁶ P-0131: T-112, pp. 23-24; T-113, pp. 2-3.

³⁵⁷ [Defence's Final Brief](#), para. 381, referring to P-0131: T-112, pp. 10, 24.

³⁵⁸ See [Defence's Final Brief](#), paras 379-383.

³⁵⁹ P-0547: T-050; T-051; T-052.

³⁶⁰ P-0547: T-050, pp. 9-10.

³⁶¹ P-0547: T-050, p. 10; T-051, pp. 19-20.

³⁶² P-0547: T-050, pp. 40-47, 48, 62, 73-74, 82-83; T-051, pp. 23-29; T-052, pp. 10, 73.

³⁶³ P-0547: T-051, pp. 2-7, 22-29; T-052, pp. 61-67, 70-80.

several documents to the Prosecution which he authenticated.³⁶⁴ He also gave evidence about the functions and leadership position of ‘**Ali Kushayb**’.³⁶⁵

108. The Defence generally challenges P-0547’s reliability and credibility as an ‘insider’.³⁶⁶ [REDACTED].³⁶⁷ The Defence further recalls that P-0547, [REDACTED].³⁶⁸ Nonetheless, the Defence does not challenge the authenticity of the documents [REDACTED], neither, does it make any specific submissions against P-0547’s credibility or reliability. In fact, the Defence also relies on P-0547 in relation to the application of human rights law and IHL in Sudan, the concept of *hiraba*, the phrase ‘*amsah aksah*’, military intelligence during the relevant period including on the counter-insurgency, the rebels, the *Janjaweed*, and the PDF.³⁶⁹

Role of ‘Ali Kushayb’

109. P-0547 acknowledged that, he had never met **the Accused** in person, but that he came to know about ‘**Ali Kushayb**’ after 2004, [REDACTED].³⁷⁰ P-0547 gave evidence that ‘**Ali Kushayb**’ held the rank of warrant officer and thus was the most senior non-commissioned officer,³⁷¹ and that he was chosen on the basis of tribal affiliation.³⁷²

110. When confronted by the Defence about his previous statement (where he had stated initially that ‘**Ali Kushayb**’ was a brigadier general), P-0547 explained that he had made this inference based on the reports that ‘Ali Kushayb carried major out tasks in the field that a warrant officer would not be tasked with’ and that ‘[f]ield military commanders usually begin at the rank of brigadier general’.³⁷³ P-0547 further stated that ‘**Ali Kushayb**’ was only given a rank for administrative purposes.³⁷⁴ The Defence also put to the witness that he had ‘presumed’ that ‘**Ali Kushayb**’ was an *emir* in the PDF.³⁷⁵ P-0547 explained that the word ‘emir’ just means leader, and that ‘**Ali Kushayb**’ was ‘a wartime emir, a useful one’,³⁷⁶ who was chosen

³⁶⁴ P-0547: T-050, pp. 13-21, 27-28, 33-40, 49-58, 63-83, *referring to* [REDACTED][REDACTED].

³⁶⁵ P-0547: T-050, pp. 48-49, 87-89; T-051, pp. 86-99; T-052, pp. 3-24, 81-84.

³⁶⁶ [Defence’s Final Brief](#), para. 106.

³⁶⁷ [Defence’s Final Brief](#), para. 154.

³⁶⁸ [Defence’s Final Brief](#), para. 155.

³⁶⁹ [Defence’s Final Brief](#), paras 27, 238, 243, 253, 264-266, 270-272, 302, 304, 308, 322, 324, 342, 346, 468.

³⁷⁰ P-0547: T-050, pp. 87-89; T-051, pp. 86-91.

³⁷¹ P-0547: T-050, pp. 48-49.

³⁷² P-0547: T-052, p. 3.

³⁷³ P-0547: T-052, p. 5.

³⁷⁴ P-0547: T-052, p. 6. *See also* P-0547: T-052, p. 24.

³⁷⁵ P-0547: T-052, pp. 8-9.

³⁷⁶ P-0547: T-052, pp. 9-10.

as a leader to work with the PDF to end the rebellion in Darfur,³⁷⁷ and had a role in the recruitment of 6,000 men in 2003.³⁷⁸ P-0547 explained that the rank was irrelevant to ‘Ali Kushayb’s actions’.³⁷⁹

111. The Chamber notes that P-0547 did not personally know ‘**Ali Kushayb**’. Moreover, P-0547’s explanation as to why he first said ‘**Ali Kushayb**’ was a brigadier general and then that he was a warrant officer is not reliable because the former rank was an inference based on his reading of the reports. His evidence that ‘**Ali Kushayb**’ was a warrant officer was correct. Whilst the rank of brigadier general he ascribed to ‘**Ali Kushayb**’, was an inference which was wrongly drawn by P-0547, in the view of the Chamber his reason for so doing was explicable and finds that his error lends support to the fact that there were contemporaneous reports indicating ‘**Ali Kushayb**’s leadership role.

GoS in 2003-2004

112. P-0547 provided evidence about the GoS’s structure during the relevant period.³⁸⁰ The Chamber considers that P-0547 had a good basis of knowledge in this regard [REDACTED].³⁸¹ [REDACTED].³⁸²

113. The Chamber considers that P-0547’s evidence must be considered with caution, as he clearly had an interest to serve [REDACTED]. It became clear during his questioning by the Defence that P-0547 wanted to distance himself from the events in Darfur during the relevant period.³⁸³ However, the Chamber considers P-0547 was able to provide detailed evidence as regards the GoS policy. The Chamber therefore relies on P-0547’s evidence on the GoS’s structure and policy to the extent that it is supported by other credible and reliable evidence on the record.³⁸⁴

114. The Chamber notes that P-0547 also gave evidence in relation to a document [REDACTED].³⁸⁵ In relation to this document, P-0547 explained that [REDACTED], he knew

³⁷⁷ P-0547: T-052, pp. 14-16.

³⁷⁸ P-0547: T-052, pp. 18-22.

³⁷⁹ P-0547: T-052, p. 24.

³⁸⁰ P-0547: T-050, pp. 47, 48, 62, 73-74, 82-83; T-052, pp. 10, 73.

³⁸¹ P-0547: T-050, pp. 9-10.

³⁸² P-0547: T-050, pp. 40-46. *See also* P-0547: T-051, pp. 23-29.

³⁸³ P-0547: T-051, pp. 19-21.

³⁸⁴ *See Judgment*, paras 279, 285-289.

³⁸⁵ [REDACTED].

very well what was written in this report.³⁸⁶ The Chamber is satisfied that although P-0547 did not author nor provide this document to the Prosecution (and given that the Defence does not challenge its authenticity),³⁸⁷ he had a basis of knowledge to discuss its contents.

[REDACTED] **documents** [REDACTED]

115. P-0547 [REDACTED].³⁸⁸ The Chamber notes that P-0547's evidence on how [REDACTED].³⁸⁹ The Chamber also notes that the Defence does not challenge the authenticity of these documents.

116. Two of these documents refer to '**Ali Kushayb**'. First, a report [REDACTED], which mentions that '**Ali Kushayb**' was succeeded as '*agid al-ogada*', as he had joined the CRF as a warrant officer.³⁹⁰ Second, a report [REDACTED], mentions '**Ali Kushayb**' as commander of 'Al-Fursan'.³⁹¹

117. P-0547 [REDACTED] of the National Security Plan, about which he also commented in court.³⁹² P-0547 [REDACTED].³⁹³

118. During questioning the Defence suggested to P-0547 that [REDACTED].³⁹⁴ However, P-0547 described in detail that [REDACTED].³⁹⁵ Accordingly, the Chamber has no evidence before it that such [REDACTED] is satisfied with P-0547's explanation in this regard.

119. The Chamber notes that P-0547 accepted [REDACTED].³⁹⁶ When questioned by the Presiding Judge, he accepted that this lack of documentation was because violations or illegal actions had taken place and these were simply not recorded.³⁹⁷ The Chamber notes that P-0547 was vague when answering the questions from Defence counsel and the Presiding Judge on

³⁸⁶ P-0547: T-050, p. 70.

³⁸⁷ P-0547: T-050, p. 63.

³⁸⁸ P-0547: T-050, pp. 13-21; T-051, pp. 48-50.

³⁸⁹ P-0547: T-050, pp. 14-19; T-051, pp. 59-64, 75-76.

³⁹⁰ [REDACTED].

³⁹¹ [REDACTED].

³⁹² National Security Plan, DAR-OTP-0223-0487, Translation, DAR-OTP-0220-4795; P-0547: T-050, pp. 75-80. The Chamber notes that a duplicate of this document is also submitted on the record (National Security Plan, DAR-OTP-0212-0100, Translation, DAR-OTP-0215-4648), which P-0547 confirmed is the same document. *See also* P-0547: T-050, pp. 80-82.

³⁹³ P-0547: T-050, pp. 75-80.

³⁹⁴ P-0547: T-051, pp. 70-74.

³⁹⁵ P-0547: T-051, pp. 70-74.

³⁹⁶ P-0547: T-050, pp. 19-20, 50.

³⁹⁷ P-0547: T-050, pp. 19-20.

whether [REDACTED].³⁹⁸ When the Defence questioned P-0547 about instances of provision of false evidence, for the purpose of misguiding the ICC, he accepted that this indeed happened [REDACTED].³⁹⁹ Moreover, when the Defence counsel and the Presiding Judge asked P-0547 whether it was common practice [REDACTED], P-0547 failed to provide an answer.⁴⁰⁰

120. As noted above, P-0547 clearly had an interest to serve. The Chamber finds unconvincing P-0547's explanation of why [REDACTED].⁴⁰¹ The Chamber therefore accepts the Defence's submission that P-0547's evidence was 'selective',⁴⁰² [REDACTED]. Hence, whilst P-0547's comments on these documents were detailed, for the reasons stated above, his evidence on this point is to be treated with caution. The Chamber therefore only relies on his evidence when it is supported by other credible and reliable evidence on the record.

12. P-0581

121. P-0581 (DoB 1955), a member of the Fur tribe, gave *viva voce* evidence over half a day pursuant to Rule 68(3) of the Rules.⁴⁰³ P-0581's evidence principally dealt with the tribal administrative structure of Mukjar;⁴⁰⁴ the rebel attack in Mukjar;⁴⁰⁵ Minister Harun's visit to Mukjar in the 'summer' of 2003 and its aftermath;⁴⁰⁶ and events that took place in Mukjar in September/October 2003.⁴⁰⁷

Knowledge of 'Ali Kushayb'

122. P-0581 initially gave evidence that 'Ali Kushayb' was 'sent' by the GoS to Mukjar.⁴⁰⁸ He later clarified that this evidence was based on his inference from the circumstances.⁴⁰⁹ P-0581 stated that 'Ali Kushayb' was leading the *Janjaweed* and many people knew him,⁴¹⁰

³⁹⁸ P-0547: T-051, pp. 51-59.

³⁹⁹ P-0547: T-052, pp. 33-40.

⁴⁰⁰ P-0547: T-052, pp. 42-43.

⁴⁰¹ P-0547: T-052, pp. 44-48.

⁴⁰² [Defence's Final Brief](#), paras 154-155.

⁴⁰³ P-0581's Statement, DAR-OTP-0216-0560-R02; P-0581's Statement Corrections, DAR-OTP-0220-5656; P-0581: T-064.

⁴⁰⁴ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0562-0564, paras 12-21; P-0581's Statement Corrections, DAR-OTP-0220-5656, at 000001, para. 1.

⁴⁰⁵ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0564, paras 22-23; P-0581's Statement Corrections, DAR-OTP-0220-5656, at 000001, para. 2; P-0581: T-064, pp. 34-38.

⁴⁰⁶ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0565-0569, paras 24-40; P-0581's Statement Corrections, DAR-OTP-0220-5656, at 000001, paras 3-6; P-0581: T-064, pp. 40-52.

⁴⁰⁷ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0569-0570, paras 41-49; P-0581's Statement Corrections, DAR-OTP-0220-5656, at 000001-000002, paras 7-8; P-0581: T-064, pp. 51, 53.

⁴⁰⁸ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0565-0566, para. 27.

⁴⁰⁹ P-0581's Statement Corrections, DAR-OTP-0220-5656, at 000001, paras 3-4.

⁴¹⁰ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0565-0566, para. 27; P-0581: T-064, p. 46.

and that he saw ‘**Ali Kushayb**’ arrive in Mukjar.⁴¹¹ P-0581 had not seen ‘**Ali Kushayb**’ before, but people told him that the man was ‘**Ali Kushayb**’ because the latter was well-known in the area.⁴¹² P-0581 later stated that he saw ‘**Ali Kushyab**’ in a vehicle.⁴¹³ P-0581 described ‘**Ali Kushayb**’ as ‘tall’, having ‘dark skin’ and a ‘tribal piercing on the ear lobe of one of his ears’, and wearing a uniform.⁴¹⁴ However, in his corrections to his statement he stated that he only heard that ‘**Ali Kushayb**’ had a hole in his earlobe and had never seen him up close.⁴¹⁵ P-0581 initially stated that, during his detention at the ‘primary school’ in Mukjar, he saw ‘**Ali Kushayb**’ take prisoners away in vehicles, whom P-0581 was later told had been killed.⁴¹⁶ P-0581 later stated that ‘**Ali Kushayb**’ never came to the ‘primary school’ and hence he did not see ‘**Ali Kushayb**’ there.⁴¹⁷ P-0581 also gave evidence about the background of ‘**Ali Kushayb**’ which he heard from people, as it was ‘common information’.⁴¹⁸

123. The Chamber notes that P-0581 acknowledged that at the time of giving his statement to the Prosecution in [REDACTED], he was aware that ‘**Ali Kushayb**’ was in the custody of the Court.⁴¹⁹ The Chamber finds P-0581, overall, a credible witness. However, considering that, P-0581’s knowledge of the man he identified as ‘**Ali Kushayb**’ in Mukjar was based entirely on indirect evidence,⁴²⁰ the Chamber does not rely on P-0581’s knowledge and identification of the man leading the *Janjaweed* in Mukjar nor P-0581’s evidence on ‘**Ali Kushayb**’s’ actions thereafter.

Events in Mukjar in 2003

124. P-0581 gave evidence that the rebels attacked Mukjar, but stated that the rebels ‘did not kill anyone’ and only took ‘weapons and ammunition’.⁴²¹ P-0581 did not see the rebels arrive as it was still dark outside but he saw them as they were leaving after the attack.⁴²² P-0581 stated that the rebels attacked Mukjar twice, but could not recall the dates of the attacks.⁴²³

⁴¹¹ P-0581’s Statement, DAR-OTP-0216-0560-R02, at 0565-0566, para. 27; P-0581: T-064, pp. 46-48.

⁴¹² P-0581’s Statement, DAR-OTP-0216-0560-R02, at 0565-0566, para. 27; P-0581: T-064, pp. 46-50.

⁴¹³ P-0581: T-064, p. 48.

⁴¹⁴ P-0581’s Statement, DAR-OTP-0216-0560-R02, at 0565-0566, para. 27. *See also* [Defence’s Final Brief](#), paras 738, 743.

⁴¹⁵ P-0581’s Statement Corrections, DAR-OTP-0220-5656, at 000001, paras 3-4.

⁴¹⁶ P-0581’s Statement, DAR-OTP-0216-0560-R02, at 0568, 0570, paras 40, 49; P-0581: T-064, pp. 32-33.

⁴¹⁷ P-0581: T-064, p. 52. *See also* [Defence’s Final Brief](#), para. 447.

⁴¹⁸ P-0581: T-064, pp. 46-51. *See also* [Defence’s Final Brief](#), para. 725.

⁴¹⁹ P-0581’s Statement, DAR-OTP-0216-0560-R02, at 0565-0566, para. 27.

⁴²⁰ P-0581: T-064, pp. 46-51.

⁴²¹ P-0581’s Statement, DAR-OTP-0216-0560-R02, at 0564, para. 22; P-0581: T-064, p. 35.

⁴²² P-0581’s Statement Corrections, DAR-OTP-0220-5656, at 000001, para. 2.

⁴²³ P-0581’s Statement Corrections, DAR-OTP-0220-5656, at 000001, para. 2.

P-0581 also gave evidence that Minister Harun visited Mukjar in September/October 2003 and gave a speech near the locality building.⁴²⁴ He had never seen Minister Harun before.⁴²⁵ He further stated that he only heard about the speech from other people and did not see or hear it himself.⁴²⁶ P-0581 also stated that a day after Minister Harun's visit, the *Janjaweed* and the GoS Forces, looted properties, arrested and 'killed' people, and 'burned down houses'.⁴²⁷

125. The Chamber notes that P-0581's evidence on the rebel attack and Minister Harun's visit to Mukjar is indirect. However, it is supported by credible and reliable evidence.⁴²⁸ With regard to P-0581's evidence on the aftermath of Minister Harun's visit, specifically that people were killed, the Chamber finds that this evidence is vague, lacks any basis, and is unsupported by other credible and reliable evidence.⁴²⁹ Therefore, the Chamber does not rely on this aspect of P-0581's evidence.

126. Sometime after Minister Harun's visit to Mukjar, P-0581 was arrested, detained for about two months, during which he was physically assaulted and mistreated.⁴³⁰ P-0581 initially stated that he was arrested from his house.⁴³¹ Later, in his corrections to his statement, he stated that he was arrested on his way to the locality building and that no one had come to his house.⁴³² The Chamber notes this correction and finds that it does not impact its finding that it is credible and reliable that, P-0581 was detained in the primary school in Mukjar in 2003, and was physically assaulted and mistreated during his detention.

127. P-0581 also gave evidence about people fleeing attacks on their villages and seeking refuge in Mukjar in September/October 2003.⁴³³ The Chamber notes that P-0581's evidence on this point is credible but lacks specificity. Therefore, the Chamber relies on it as it is supported by other credible and reliable evidence.

⁴²⁴ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0565, paras 24-25; P-0581: T-064, pp. 40-41.

⁴²⁵ P-0581: T-064, p. 41.

⁴²⁶ P-0581: T-064, p. 41.

⁴²⁷ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0566-0567, paras 29, 31, 34.

⁴²⁸ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 379, 381-391.

⁴²⁹ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 391-392.

⁴³⁰ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0567-0569, paras 34-42; P-0581: T-064, pp. 32, 42-45, 51.

⁴³¹ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0567, para. 34.

⁴³² P-0581's Statement Corrections, DAR-OTP-0220-5656, at 000001, para. 5.

⁴³³ P-0581's Statement, DAR-OTP-0216-0560-R02, at 0567, para. 33; P-0581: T-064, pp. 31-32. See also [Prosecution's Final Brief](#), paras 345, 399.

13. P-0584

128. P-0584 (DoB 1986),⁴³⁴ a member of the Fur tribe,⁴³⁵ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.⁴³⁶ At the time of the events, he was attending school in [REDACTED].⁴³⁷ His evidence principally dealt with the attacks by the GoS Forces and *Janjaweed* on Um Jameina in September and November 2003;⁴³⁸ the Deleig Operation;⁴³⁹ his arrest and detention at Deleig police station where he saw ‘**Ali Kushayb**’ give orders to the *Janjaweed*;⁴⁴⁰ and [REDACTED].⁴⁴¹

129. There were interpretation problems during P-0584’s evidence which made it difficult to assess some of the detail he provided.⁴⁴² Therefore, the Chamber has taken this into account in making its assessment.⁴⁴³

Role of ‘**Ali Kushayb**’

130. P-0584 gave evidence identifying ‘**Ali Kushayb**’ at Deleig police station on 5 March 2004.⁴⁴⁴ The Chamber accepts that there are inconsistencies in relation to P-0584’s purported identification.⁴⁴⁵ P-0584 gave evidence that he had never seen ‘**Ali Kushayb**’ before that day at Deleig police station.⁴⁴⁶ In his statement, his identification of ‘**Ali Kushayb**’ rested on being told who he was by another detainee, who informed P-0584 that the man who had struck *Sheikh Motor*—and who had been greeted by the fighters as ‘*Jenabu Ali*’ (meaning ‘Commander Ali’)—was ‘**Ali Kushayb**’.⁴⁴⁷

⁴³⁴ [REDACTED].

⁴³⁵ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1542, para. 6; P-0584: T-092, p. 32.

⁴³⁶ P-0584’s Statement, DAR-OTP-0200-1540-R02; P-0584’s Statement Corrections, DAR-OTP-00000419; P-0584: T-092.

⁴³⁷ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1543, para. 7.

⁴³⁸ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1546-1554, paras 19-50; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000001, paras 1-9; P-0584: T-092, pp. 18-10, 27-32.

⁴³⁹ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1564-1566, paras 90-96; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000002, paras 23-25; P-0584: T-092, pp. 20-21.

⁴⁴⁰ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1564-1570, paras 89-110; P-0584’s Statement Corrections, DAR-OTP-00000419, at 0000012-000003, paras 23-31; P-0584: T-092, pp. 13-18, 36-45, 52-53, 60-70.

⁴⁴¹ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1570-1574, paras 111-127; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000003, paras 31-32; P-0584: T-092, pp. 53.

⁴⁴² See for example P-0584: T-092, p. 74.

⁴⁴³ See Judgment, Section 4. Evidentiary principles and considerations, paras 227-229.

⁴⁴⁴ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1568-1570, paras 103-110; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000003, paras 28-31.

⁴⁴⁵ [Defence’s Final Brief](#), para. 596.

⁴⁴⁶ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1569, para. 109.

⁴⁴⁷ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1568-1569, paras 105, 108-109.

131. In court, P-0584 gave evidence that the fighters greeted the man as ‘Mr Ali’,⁴⁴⁸ and P-0584 later said that when ‘**Ali Kushayb**’ arrived, they shouted ‘**Ali Kushayb**’.⁴⁴⁹ He subsequently denied having used the words ‘Mr Ali’, and insisted that everyone called him ‘**Ali Kushayb**’.⁴⁵⁰ In these circumstances, the Chamber is not satisfied that P-0584’s evidence relating to the identification of **the Accused** at Deleig police station is sufficiently credible and reliable. Given that the Chamber is not relying on P-0584’s identification of ‘**Ali Kushayb**’ at Deleig police station, the Chamber is also not relying on P-0584’s evidence that *Sheikh* Motor was struck by ‘**Ali Kushayb**’. However, as noted below, it does, nonetheless rely on his evidence that *Sheikh* Motor was struck, given there is other credible evidence to this effect.⁴⁵¹

Deleig Operation

132. P-0584 gave evidence about his arrest [REDACTED] in Deleig on 5 March 2004, including the verbal abuse and injuries he suffered from ‘soldiers’ conducting the search and arrest operation.⁴⁵² Whilst the Chamber accepts the Defence’s submission that the evidence in respect of the derogatory terms used during the search and arrest operation differs as between witnesses, it is satisfied that the proper conclusion to draw is that not all *Janjaweed* members used the same terms, and that this feature of the overall evidence has no impact on P-0584’s credibility on this point.⁴⁵³

133. P-0584 gave evidence that during his detention at Deleig police station, he interacted with the *Janjaweed* and the Police and was able to observe some things from his position on the ground by turning his head to the side.⁴⁵⁴ The Chamber is satisfied that P-0584’s evidence on the search and arrest operation, and the detention and mistreatment at Deleig police station is credible and reliable. P-0584’s evidence on this point is detailed, first-hand, and generally consistent with other reliable evidence.⁴⁵⁵

⁴⁴⁸ P-0584: T-092, p. 14.

⁴⁴⁹ P-0584: T-092, pp. 60-61.

⁴⁵⁰ P-0584: T-092, p. 61.

⁴⁵¹ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, para. 612.

⁴⁵² P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1565, paras 92-93; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000002, para. 23.

⁴⁵³ *Contra* [Defence’s Final Brief](#), para. 590.

⁴⁵⁴ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1566-1567, paras 98-102; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000002-000003, paras 26-27.

⁴⁵⁵ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 591-612.

Transfer of detainees and killings near Koska

134. In its Final Brief, the Defence argues that P-0584's evidence lacked credibility and reliability because:

- He tried, though without success, to join the rebel movement which demonstrates that he was not objective;⁴⁵⁶
- His evidence about what '**Ali Kushayb**' was wearing is contradicted by other witnesses;⁴⁵⁷
- His evidence that other persons were in charge of the detentions in Deleig suggest that these persons were in authority and not '**Ali Kushayb**';⁴⁵⁸
- His evidence of '**Ali Kushayb**'s' weapons while at Deleig police station does not align with that of other Prosecution witnesses;⁴⁵⁹
- His evidence as to '**Ali Kushayb**' personally loading detainees into the vehicle was unreliable;⁴⁶⁰ and
- P-0584's evidence about Mulenqwe contradicts that of other Prosecution witnesses.⁴⁶¹

135. The Chamber is satisfied that P-0584's attempt to join the rebels has no impact on the witness's overall credibility and reliability.⁴⁶² The Chamber accepts that P-0584 gave contradictory evidence in relation to who issued the orders for the detainees to be loaded onto the vehicles to transport them to the execution sites.⁴⁶³ In his statement, his account is that a person in civilian clothes at Deleig police station directed the fighters to place the detainees in the awaiting trucks, saying 'soldiers, let's start the work, pick them up', while '**Ali Kushayb**' was still at Deleig police station.⁴⁶⁴ However, in court P-0584 stated that '**Ali Kushayb**' and the man in civilian clothes gave the order to the fighters to take the people and put them in the

⁴⁵⁶ [Defence's Final Brief](#), paras 173, 175. See P-0584's Statement, DAR-OTP-0200-1540-R02, at 1558-1559, paras 64-70; P-0584's Statement Corrections, DAR-OTP-00000419, at 000002, paras 15-16; P-0584: T-092, pp. 32-34 (P-0584 told the Prosecution's investigators that, [REDACTED]).

⁴⁵⁷ [Defence's Final Brief](#), para. 579.

⁴⁵⁸ [Defence's Final Brief](#), para. 583.

⁴⁵⁹ [Defence's Final Brief](#), para. 601.

⁴⁶⁰ [Defence's Final Brief](#), para. 601.

⁴⁶¹ [Defence's Final Brief](#), para. 638.

⁴⁶² *Contra* [Defence's Final Brief](#), paras 173, 175.

⁴⁶³ [Defence's Final Brief](#), para. 602.

⁴⁶⁴ P-0584's Statement, DAR-OTP-0200-1540-R02, at 1569, para. 108.

vehicle.⁴⁶⁵ Later, P-0584 confirmed that the order to load the prisoners onto the vehicle was given by this person in civilian clothes,⁴⁶⁶ before clarifying that it was ‘**Ali Kushayb**’ who issued the order.⁴⁶⁷ The Chamber is unable to resolve these inconsistencies and therefore cannot rely upon P-0584’s evidence in relation to who ordered the fighters to load the detainees into the vehicles.⁴⁶⁸

136. P-0584 gave evidence that [REDACTED] site near Koska and later discovered the execution site.⁴⁶⁹ P-0584 said [REDACTED] Mulenqwe, who was mortally injured during the killings to return to Deleig.⁴⁷⁰ In respect of P-0584’s [REDACTED],⁴⁷¹ the Chamber notes that P-0907, [REDACTED], stated that [REDACTED].⁴⁷² Given that both witnesses were recounting their experiences of the most traumatic of events,⁴⁷³ the Chamber is satisfied that, P-0907’s [REDACTED] does not undermine P-0584’s evidence, particularly as there is no evidence that P-0907 and P-0584 were [REDACTED].

137. The Chamber notes that P-0584 stated that Mulenqwe had been shot in his stomach.⁴⁷⁴ However, P-0907 stated that Mulenqwe was shot in the head.⁴⁷⁵ The Defence challenges P-0584’s credibility on the basis that other witnesses did not mention P-0584 [REDACTED].⁴⁷⁶ For the same reasons as expressed above, the Chamber finds these differences in recollection understandable, and thus does not affect P-0584’s credibility.⁴⁷⁷

138. Thus, the Chamber is unpersuaded that minor contradictions between the evidence of P-0584 and that of other Prosecution witnesses render his evidence implausible.

[REDACTED]

⁴⁶⁵ P-0584: T-092, pp. 16-17.

⁴⁶⁶ P-0584: T-092, pp. 44-45.

⁴⁶⁷ P-0584: T-092, pp. 67-68.

⁴⁶⁸ [Defence’s Final Brief](#), para. 602.

⁴⁶⁹ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1570-1573, paras 111-126; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000003, paras 31-32; P-0584: T-092, pp. 53-54, 69-70.

⁴⁷⁰ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1570-1573, paras 111, 113, 121, 124; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000003, paras 31-32; P-0584: T-092, pp. 53-54.

⁴⁷¹ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1570-1571, paras 111-113; P-0584’s Statement Corrections, DAR-OTP-00000419, at 000003, para. 31; P-0584: T-092, pp. 52-54.

⁴⁷² P-0907: T-096, p. 39. *See also* the Chamber’s assessment of P-0907’s evidence, Annex B, Section I.A.33.

⁴⁷³ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

⁴⁷⁴ P-0584’s Statement, DAR-OTP-0200-1540-R02, at 1572-1573, para. 122.

⁴⁷⁵ P-0907: T-094, p. 53.

⁴⁷⁶ [Defence’s Final Brief](#), para. 638.

⁴⁷⁷ *Contra* [Defence’s Final Brief](#), para. 638.

139. [REDACTED].⁴⁷⁸ [REDACTED].⁴⁷⁹ [REDACTED],⁴⁸⁰ [REDACTED].

14. P-0585

140. P-0585 (DoB 1975), a member of the Fur tribe, gave *viva voce* evidence over four days.⁴⁸¹ At the time of the events, he was [REDACTED] Garsila and Deleig.⁴⁸² His evidence principally dealt with his knowledge of **the Accused**,⁴⁸³ and the events in Deleig during and after the Deleig Operation.⁴⁸⁴

Knowledge of the Accused

141. P-0585 gave credible evidence about his knowledge and early interactions with ‘**Ali Kushayb**’. He knew ‘**Ali Kushayb**’ before the war because ‘**Ali Kushayb**’ [REDACTED].⁴⁸⁵ P-0585 gave evidence that he had known of ‘**Ali Kushayb**’ for many years but first interacted with him in 2002 when he went into his pharmacy.⁴⁸⁶ P-0585 gave a detailed description of ‘**Ali Kushayb**’s’ pharmacy and of ‘**Ali Kushayb**’s’ physical appearance that is consistent with other credible evidence.⁴⁸⁷ Further, from 2002 until 2004, the witness saw ‘**Ali Kushayb**’ about five times in his pharmacy in Garsila.⁴⁸⁸ The witness described ‘**Ali Kushayb**’ as a tall dark skinned man with a moustache who always spoke Arabic and who was generally dressed in traditional Sudanese clothes.⁴⁸⁹

142. P-0585 also gave evidence that [REDACTED], including ‘**Ali Kushayb**’, came to his village after it was attacked.⁴⁹⁰ [REDACTED].⁴⁹¹ Thereafter, ‘**Ali Kushayb**’ would come to [REDACTED] village, to give information to the *sheikhs* and *imams* and to supervise the *Janjaweed* there.⁴⁹² P-0585 also observed when ‘**Ali Kushayb**’ came to the village to resolve

⁴⁷⁸ P-0584: T-092, pp. 69-70.

⁴⁷⁹ See for example P-0584: T-092, pp. 58-59, 69.

⁴⁸⁰ See [REDACTED].

⁴⁸¹ P-0585: T-099; T-100; T-101; T-102.

⁴⁸² P-0585: T-099, pp. 38-39.

⁴⁸³ P-0585: T-099, pp. 39-61; T-100, pp. 3-20, 24-26, 29-31; T-101, pp. 32-38, 55-59; T-102, pp. 11-21, 23-31, 33-39.

⁴⁸⁴ P-0585: T-100, pp. 14-32, 45-48; T-101, pp. 41, 47-65; T-102, pp. 9-10.

⁴⁸⁵ P-0585: T-099, p. 43.

⁴⁸⁶ P-0585: T-099, p. 42.

⁴⁸⁷ P-0585: T-099, pp. 39-40, 44. See also the Chamber’s assessment of the evidence of P-0012, P-0643, P-0874, P-0878, P-0883, P-0905, P-0935 and P-1021, Annex B, Sections I.A.3, I.A.15, I.A.26, I.A.28, I.A.29, I.A.32, I.A.42 and I.A.49.

⁴⁸⁸ P-0585: T-099, pp. 40-42.

⁴⁸⁹ P-0585: T-099, pp. 44-45.

⁴⁹⁰ P-0585: T-099, pp. 47-49; T-101, pp. 35-36.

⁴⁹¹ P-0585: T-099, p. 49; T-101, pp. 35-36.

⁴⁹² P-0585: T-099, pp. 57-59.

a dispute in which a *Janjaweed* fighter accused members [REDACTED] village of stealing a weapon.⁴⁹³ P-0585 stated that he used to call him ‘Mr. Ali’ but that most people knew him by the nickname ‘**Ali Kushayb**’.⁴⁹⁴ However, he knew that his full name was Ali **Abd-Al-Rahman**.⁴⁹⁵ P-0585 knew this as he attended meetings in [REDACTED] village where ‘**Ali Kushayb**’ introduced himself as Ali **Abd-Al-Rahman**.⁴⁹⁶ P-0585 spontaneously recognised **the Accused** in court.⁴⁹⁷ However, the Chamber recalls its finding that such in-court recognitions are of limited probative value.⁴⁹⁸

143. The Chamber is unconvinced by the Defence’s challenge that P-0585’s failure to mention the name ‘**Ali Kushayb**’ in his [REDACTED] statement to the Prosecution necessarily impacts the credibility of his evidence in light of his evidence at court.⁴⁹⁹

144. The Chamber is satisfied that P-0585 had the benefit of interacting, observing and speaking to **the Accused** for many years in times of peace and at times in close proximity. He gave clear and convincing evidence on his knowledge of **the Accused** both by his full name and nickname. The Chamber is thus satisfied that P-0585’s evidence in this regard is both credible and reliable.

The Accused’s role as *agid al-ogada*

145. P-0585 gave credible and reliable evidence about the appointment of ‘**Ali Kushayb**’ as *agid al-ogada*, including the rationale for the appointment and the responsibilities of the position.⁵⁰⁰ Given [REDACTED] with **the Accused** and that his evidence is detailed and direct, the Chamber is satisfied that P-0585 provided a credible and reliable account of how he came to know that **the Accused** was the *agid al-ogada* during the events.

Rape by the *Janjaweed*

146. P-0585 gave indirect evidence in relation to the occurrence of the *Janjaweed* raping women and girls in his area.⁵⁰¹ His evidence is that rapes were widespread, especially after the

⁴⁹³ P-0585: T-099, p. 62; T-100, pp. 3-6.

⁴⁹⁴ P-0585: T-099, p. 39.

⁴⁹⁵ P-0585: T-099, p. 39.

⁴⁹⁶ P-0585: T-102, pp. 14-15.

⁴⁹⁷ P-0585: T-102, pp. 31-32.

⁴⁹⁸ See Judgment, Section 4. Evidentiary principles and considerations, paras 214-215.

⁴⁹⁹ *Contra* [Defence’s Final Brief](#), para. 710. See also P-0585: T-102, p. 33.

⁵⁰⁰ P-0585: T-099, pp. 41, 57-61.

⁵⁰¹ P-0585: T-099, pp. 55-56; T-100, pp. 7-12, 44-45; T-102, pp. 33-39.

beginning of the conflict after his village was burnt.⁵⁰² P-0585 heard about these rapes and in one instance a woman, whom he knew, told him that she had been raped.⁵⁰³ P-0585 said that, although the rapes continued to occur throughout the course of the events, the incidence was particularly high between December 2003 and March 2004.⁵⁰⁴

147. P-0585 said that during this period of time, ‘**Ali Kushayb**’ and other officials met with the villagers [REDACTED].⁵⁰⁵ P-0585 heard the village representative speak about the unacceptability of Arabs raping women and girls.⁵⁰⁶ P-0585 said that ‘**Ali Kushayb**’ was present at that meeting.⁵⁰⁷ On another occasion, P-0585 was present when the village representatives held meetings with the villagers to ascertain their concerns.⁵⁰⁸ P-0585 said that on being told about allegations of rape by the *Janjaweed*, the village representatives went to Garsila to meet with ‘**Ali Kushayb**’.⁵⁰⁹ [REDACTED].⁵¹⁰ Afterwards, the village representative informed the villagers that ‘**Ali Kushayb**’ had promised to assist but did not fulfil his promises.⁵¹¹

148. The Chamber is satisfied that P-0585 heard about rapes, particularly of the rape of which he was told directly. The Chamber is also satisfied that his evidence that **the Accused** was present when the village representatives spoke about rapes is credible and reliable. Whilst the evidence is indirect, it contains sufficient detail to satisfy the Chamber that the village representatives went to Garsila to report the *Janjaweed* raping women to **the Accused**.

The Deleig Operation

149. P-0585 gave evidence about the events in Deleig which took place on a Friday sometime between late February and May 2004.⁵¹² He was on a bus which habitually passed through Deleig on its way to Nyala.⁵¹³ In Deleig, whilst in the window seat of that bus, P-0585 saw more than 100 persons lying on the ground in front of the police station. He asked a passing member of the *Janjaweed* what was happening and P-0585 was told that these people were all

⁵⁰² P-0585: T-099, pp. 55-56; T-100, p. 9.

⁵⁰³ P-0585: T-100, pp. 8-9.

⁵⁰⁴ P-0585: T-099, pp. 55-56; T-100, p. 9.

⁵⁰⁵ P-0585: T-099, pp. 48-58.

⁵⁰⁶ P-0585: T-099, p. 55.

⁵⁰⁷ P-0585: T-099, p. 58.

⁵⁰⁸ P-0585: T-102, p. 35.

⁵⁰⁹ P-0585: T-102, pp. 34-35.

⁵¹⁰ P-0585: T-102, p. 35.

⁵¹¹ P-0585: T-102, p. 36.

⁵¹² P-0585: T-100, pp. 14-32, 45-48.

⁵¹³ P-0585: T-100, pp. 14-15.

tora bora and they were going to be killed.⁵¹⁴ The witness also saw ‘**Ali Kushayb**’ seemingly preventing the buses from allowing passengers to alight in Deleig and ordering them to go to Garsila instead.⁵¹⁵ The Defence challenges P-0585’s evidence, about the bus journey, suggesting that it is not plausible that a commercial bus would have undertaken such a journey given the danger.⁵¹⁶

150. The Chamber notes that even in this time of insecurity, there is no evidence to suggest that all forms of public transport were halted.⁵¹⁷ To the contrary, other witnesses gave evidence that they travelled on buses during this period of time.⁵¹⁸ Despite strong Defence challenges in court, P-0585 gave credible and reliable responses on this point.⁵¹⁹ The Chamber is satisfied that P-0585 travelled by public transport on the dates and in the circumstances on which he gave evidence.

151. P-0585 further gave evidence that when he returned to Deleig on the Sunday,⁵²⁰ he saw a vehicle with people on the back, dressed in white *jallabiyas* and turbans which partially covered their faces.⁵²¹ P-0585 said ‘**Ali Kushayb’s**’ vehicle was following that vehicle.⁵²² On making enquiries, P-0585 was told by someone—who had heard this from another person who had been detained at Deleig police station—that those men were *umdahs* who were taken away and executed.⁵²³

152. The Chamber is satisfied that P-0585’s evidence identifying **the Accused** in a vehicle on that occasion is reliable and credible, particularly since the witness gave a clear and detailed account of how he came to know that.⁵²⁴ However, the Chamber is not satisfied that it can rely on the evidence of the men at the back of the vehicle being the *umdahs*.⁵²⁵

⁵¹⁴ P-0585: T-100, p. 16.

⁵¹⁵ P-0585: T-100, pp. 16-18.

⁵¹⁶ [Defence’s Final Brief](#), para. 562.

⁵¹⁷ *Contra* [Defence’s Final Brief](#), para. 562.

⁵¹⁸ *See for example* P-0120’s Statement, DAR-OTP-0124-0816-R02, at 0820, para. 17. *See also* the Chamber’s assessment of P-0120’s evidence, Annex B, Section I.A.8.

⁵¹⁹ P-0585: T-101, pp. 41-64.

⁵²⁰ P-0585: T-100, pp. 20-21.

⁵²¹ P-0585: T-100, pp. 25-28.

⁵²² P-0585: T-100, p. 25.

⁵²³ P-0585: T-100, pp. 25-27.

⁵²⁴ P-0585: T-100, p. 25.

⁵²⁵ P-0585: T-100, pp. 26-27. *See also* [Defence’s Final Brief](#), para. 632.

[REDACTED]

153. [REDACTED],⁵²⁶ [REDACTED].⁵²⁷

15. P-0643

154. P-0643 (DoB 1962), a member of the Fur tribe,⁵²⁸ gave *viva voce* evidence over four days.⁵²⁹ During the charged period, P-0643 [REDACTED].⁵³⁰ In this position, P-0643 was the [REDACTED].⁵³¹ In addition, P-0643 [REDACTED].⁵³² P-0643's evidence principally dealt with, his knowledge and identification of **the Accused**, and his role and authority;⁵³³ the background and context to the Darfur conflict;⁵³⁴ the context of the Kodoom and Bindisi Operation;⁵³⁵ and the crimes committed in Deleig.⁵³⁶

Knowledge of the Accused

155. P-0643 stated that he had known **the Accused** as '**Ali Kushayb**' for more than five years prior to August 2003.⁵³⁷ P-0643 gave evidence that '**Ali Kushayb**' was a 'citizen' in Garsila when they first met,⁵³⁸ and that he visited '**Ali Kushayb**'s' pharmacy several times.⁵³⁹ P-0643 knew that, before running the pharmacy, '**Ali Kushayb**' was a retired fighter in the SAF, where he had been a nurse.⁵⁴⁰ He also gave evidence that '**Ali Kushayb**' is from the Ta'aisha tribe.⁵⁴¹ P-0643 described '**Ali Kushayb**' as 'always carr[ying] an axe' when they

⁵²⁶ P-0585: T-102, pp. 8-11. See also [Defence's Final Brief](#), para. 562.

⁵²⁷ [REDACTED].

⁵²⁸ P-0643: T-056, p. 8.

⁵²⁹ P-0643: T-056; T-057; T-058; T-059.

⁵³⁰ P-0643: T-056, pp. 9-10.

⁵³¹ P-0643: T-056, pp. 9-11.

⁵³² P-0643: T-056, p. 19.

⁵³³ P-0643: T-056, pp. 26-29, 33, 35-36 40-42, 48-49, 51-52, 76-81; T-057, pp. 37-46, 51-52, *referring to* P-0643's Sketch, DAR-OTP-0218-0651; Um-Sory Video, DAR-OTP-0220-4835; T-058, pp. 35, 66, 69-71, 82-85, *referring to* Decisions of the State's Security Committee, DAR-OTP-0034-0260, Translation, DAR-OTP-0219-8825; T-059, pp. 25-45, 47-59, 70-71.

⁵³⁴ P-0643: T-056, pp. 29-42, 46-58, 78-86; T-057, pp. 56-69, 75-86; T-058, pp. 3-22, 28-41, 45-69, 76-82, 88-92; T-059, pp. 65-72.

⁵³⁵ P-0643: T-056, pp. 38-49; T-059, pp. 4-11.

⁵³⁶ P-0643: T-056, pp. 87-94; T-058, pp. 23-25, 27; T-059, pp. 11-25.

⁵³⁷ P-0643: T-056, p. 26.

⁵³⁸ P-0643: T-056, p. 26.

⁵³⁹ P-0643: T-056, p. 26. See also P-0643: T-056, p. 23.

⁵⁴⁰ P-0643: T-056, pp. 26-27.

⁵⁴¹ P-0643: T-056, p. 28.

saw each other in Garsila,⁵⁴² and that his rank in the CRF was that of *musa'id* (warrant officer).⁵⁴³

156. P-0643 stated that he met **the Accused** [REDACTED].⁵⁴⁴ [REDACTED].⁵⁴⁵ P-0643 confirmed that [REDACTED] '**Ali Kushayb**' was appointed as the head of a *Mujahidin* Sub-Committee, established to mobilise the *Mujahidin* and prepare them for war,⁵⁴⁶ and that [REDACTED].⁵⁴⁷ P-0643 claimed that '**Ali Kushayb**' [REDACTED].⁵⁴⁸ P-0643 stated that the last time he saw '**Ali Kushayb**' in Sudan,⁵⁴⁹ [REDACTED].⁵⁵⁰ P-0643 was unsure of the date of that incident.⁵⁵¹

157. In respect of identification, P-0643 cogently explained the basis on which he understood that '**Ali Kushayb's**' full name was **Ali Muhammad Ali Abd-Al-Rahman**.⁵⁵² The Defence suggests that P-0643 understood **Abd-Al-Rahman** to be the same person as '**Ali Kushayb**' solely on the basis of the [REDACTED] document the witness allegedly viewed and which was not produced.⁵⁵³ However, P-0643 also gave evidence that [REDACTED],⁵⁵⁴ and as part of his duties, he would regularly use '**Ali Kushayb's**' full name [REDACTED].⁵⁵⁵ P-0643 also recognised **Abd-Al-Rahman** in multiple images and a video as '**Ali Kushayb**', and referred to '**Ali Kushayb**' as 'Ali Mohamed Ali Kouchib' in [REDACTED].⁵⁵⁶ The Chamber notes that [REDACTED] predates the Court's arrest warrant issued in both names.

158. Given the extremely detailed nature of P-0643's evidence and the witness's credible explanation for knowing '**Ali Kushayb's**' full name, the Chamber is satisfied that P-0643's evidence on the identification issue is credible and reliable, and that for many years he knew **the Accused, Ali Muhammad Ali Abd-Al-Rahman**, as '**Ali Kushayb**'.⁵⁵⁷

⁵⁴² P-0643: T-057, pp. 39-43, referring to P-0643's Sketch, DAR-OTP-0218-0651.

⁵⁴³ P-0643: T-057, pp. 40-41. See also P-0643: T-057, pp. 37-38, referring to Um-Sory Video, DAR-OTP-0220-4835.

⁵⁴⁴ P-0643: T-056, p. 23.

⁵⁴⁵ P-0643: T-056, p. 21.

⁵⁴⁶ P-0643: T-056, p. 20.

⁵⁴⁷ P-0643: T-056, p. 24. See also Judgment, paras 339, 667, 670, 675.

⁵⁴⁸ P-0643: T-056, pp. 46-50.

⁵⁴⁹ P-0643: T-059, pp. 30-31.

⁵⁵⁰ P-0643: T-059, pp. 31-32. Contra [Defence's Final Brief](#), para. 144.

⁵⁵¹ P-0643: T-059, pp. 29-30.

⁵⁵² P-0643: T-059, p. 59.

⁵⁵³ [Defence's Final Brief](#), para. 699.

⁵⁵⁴ P-0643: T-056, pp. 9-10.

⁵⁵⁵ P-0643: T-059, p. 59.

⁵⁵⁶ [REDACTED].

⁵⁵⁷ Contra [Defence's Final Brief](#), para. 144.

Role and position of authority of the Accused in the *Mujahidin* Sub-Committee

159. P-0643 gave evidence that **the Accused** was appointed *agid al-ogada*, stating that to his understanding, **the Accused** was appointed because he was ‘a retired army officer who had a good command of warfare’, not because of his nursing background.⁵⁵⁸

160. The Defence argues that P-0643 is the only witness to give evidence on the existence of a *Mujahidin* Sub-Committee and on **the Accused’s** leadership role within it.⁵⁵⁹ The Defence also contends that the existence of the sub-committee and **the Accused’s** involvement are contradicted by other witnesses, such as P-1021 and D-0016,⁵⁶⁰ and that P-0643 feigned ignorance of the Mobilisation Committee’s role in arming the *Mujahidin* [REDACTED].⁵⁶¹ The Defence also argued in court that a document on the Decisions of the State’s Security Committee never mentioned the establishment of the Mobilisation Committee or the *Mujahidin* Sub-Committee.⁵⁶²

161. The Chamber finds that, whilst P-0643 was the only witness to give evidence about the establishment of a *Mujahidin* Sub-Committee with ‘**Ali Kushayb**’ as its leader, P-0643’s evidence on this point is not ‘contradicted’ by that of P-1021 and D-0016.⁵⁶³ P-1021 confirmed that the security committee in the Mukjar locality did not have a *Mujahidin* Sub-Committee,⁵⁶⁴ but was not in a position to confirm the situation in Garsila (which was in the Wadi Salih locality).⁵⁶⁵ Similarly, when asked how the Mobilisation Committee was composed, D-0016 stated that he did not know about its ‘actual or the practical implementation’,⁵⁶⁶ giving him limited understanding of the relevant details of the Mobilisation Committee’s structure. The Chamber is also unpersuaded by the Defence’s submission that **the Accused** was too old to chair a *Mujahidin* Sub-Committee, given the age limit of the Reserve Forces applied.⁵⁶⁷ The Chamber is satisfied that in times of conflict, administrative rules are not necessarily adhered

⁵⁵⁸ P-0643: T-058, pp. 82-83.

⁵⁵⁹ [Defence’s Final Brief](#), paras 306, 699.

⁵⁶⁰ [Defence’s Final Brief](#), paras 306, 699.

⁵⁶¹ [Defence’s Final Brief](#), para. 374.

⁵⁶² P-0643: T-058, pp. 55-61, *referring to* Decisions of the State’s Security Committee, DAR-OTP-0034-0260, Translation, DAR-OTP-0219-8825.

⁵⁶³ *Contra* [Defence’s Final Brief](#), paras 306, 699.

⁵⁶⁴ P-1021: T-081, p. 93. *See also* the Chamber’s assessment of P-1021’s evidence, Annex B, Section I.A.49.

⁵⁶⁵ P-1021: T-081, pp. 92-93.

⁵⁶⁶ D-0016: T-131, p. 48. *See also* the Chamber’s assessment of D-0016’s evidence, Annex B, Section I.B.8.

⁵⁶⁷ [Defence’s Final Brief](#), paras 306, 699.

to, and that there is evidence to suggest that people over the age limit served in the Reserve Forces.⁵⁶⁸

162. In respect of the Defence's argument that P-0643 sought to [REDACTED],⁵⁶⁹ the Chamber is satisfied that P-0643 was frank in admitting that [REDACTED]. He gave detailed and convincing evidence [REDACTED].⁵⁷⁰ The Chamber is unpersuaded by the Defence's argument that P-0643 was attempting to minimise [REDACTED].⁵⁷¹ The Chamber finds his evidence on the establishment of a *Mujahidin* Sub-Committee and **the Accused's** role therein, credible and reliable.

Background and context to conflict

163. P-0643 gave detailed evidence on a multitude of topics relating to the background and context of the 2003-2005 conflict in Darfur and its relevant actors.⁵⁷²

164. As set out above, P-0643's [REDACTED],⁵⁷³ meant he regularly interacted with civilians, colleagues and people in leadership positions involved in the conflict.⁵⁷⁴ By virtue of [REDACTED], P-0643 had first-hand exposure to important incidents in the conflict, such as the distribution of weapons to Arab tribes.⁵⁷⁵ His [REDACTED] also gave him an understanding of the leadership structure of Arab tribes and the individuals who held leadership positions in such tribes.⁵⁷⁶ Much of his evidence on the context to the Darfur conflict aligns with other credible and reliable evidence on the record.⁵⁷⁷ The Chamber is thus satisfied that P-0643 is generally credible and reliable on these topics.

Context of the Kodoom and Bindisi Operation

165. P-0643 gave evidence about the events preceding the Kodoom and Bindisi Operation, including the arrival of the *Janjaweed* in Mukjar,⁵⁷⁸ and the visit of a delegation of GoS

⁵⁶⁸ See for example D-0016: T-131, p. 49.

⁵⁶⁹ [Defence's Final Brief](#), paras 373-375.

⁵⁷⁰ See for example P-0643: T-056, pp. 33-37.

⁵⁷¹ Contra [Defence's Final Brief](#), para. 373-375.

⁵⁷² P-0643: T-056, pp. 29-42, 46-58, 78-86; T-057, pp. 56-69, 75-86; T-058, pp. 3-22, 28-41, 45-69, 76-82, 88-92; T-059, pp. 65-72.

⁵⁷³ P-0643: T-056, pp. 17-20, referring to P-0643's Sketch, DAR-OTP-0224-0829.

⁵⁷⁴ P-0643: T-056, pp. 31-32, 34-35, 55; T-057, pp. 49, 80-81.

⁵⁷⁵ P-0643: T-056, pp. 31-32, 34-35, 55; T-057, pp. 80-81.

⁵⁷⁶ P-0643: T-056, pp. 22-23, 40-41.

⁵⁷⁷ See Judgment, paras 290, 303-309, 325-326, 331-332, 339, 462.

⁵⁷⁸ P-0643: T-056, pp. 38-49.

officials in Mukjar.⁵⁷⁹ Whilst P-0643's evidence about the events preceding the Kodoom and Bindisi Operation was based largely on indirect evidence, it is generally consistent with other first-hand credible and reliable evidence,⁵⁸⁰ and the Chamber is satisfied that it may rely on P-0643's evidence.

166. The Defence challenges P-0643's account on the GoS delegation's visit to Mukjar in August 2003 on the basis that it is based entirely on what [REDACTED] told him.⁵⁸¹ P-0643 explicitly acknowledged that his evidence on this point was based on what he contemporaneously heard from [REDACTED], lending credence to a lack of invention by [REDACTED].⁵⁸² The Chamber is satisfied that [REDACTED] is a credible and reliable witness on this point,⁵⁸³ and considering that the source of this information for P-0643 [REDACTED], the Chamber relies on P-0643's evidence on this topic to the extent it aligns with [REDACTED] evidence.⁵⁸⁴

Deleig Operation

167. The Chamber acknowledges that P-0643's evidence about the events in Deleig on 5 March 2004, including the killing of Jenif,⁵⁸⁵ was based solely on indirect evidence and that P-0643 was not present in Deleig during the Deleig Operation.⁵⁸⁶ There is a wealth of evidence from witnesses who were present at, or involved in these events.⁵⁸⁷ However, whilst the Chamber does not generally rely on P-0643 for the events that occurred on the ground in Deleig on 5 March 2004, the Chamber finds that his evidence supports the fact that the accounts of those with direct knowledge emerged very shortly thereafter.⁵⁸⁸

168. P-0643 also gave evidence in respect of the lead-up to the events that occurred in Deleig on 5 March 2004, such as the detention of individuals at the Garsila SAF base prior to the Deleig Operation and the subsequent removal of these detainees.⁵⁸⁹ P-0643 explained that he

⁵⁷⁹ P-0643: T-056, pp. 40-44.

⁵⁸⁰ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 378-392.

⁵⁸¹ [Defence's Final Brief](#), para. 366.

⁵⁸² P-0643: T-056, pp. 40-41. *Contra* [Defence's Final Brief](#), para. 372.

⁵⁸³ See [REDACTED].

⁵⁸⁴ P-0643: T-056, pp. 41-44; T-057, pp. 82-83. *Contra* [Defence's Final Brief](#), para. 366.

⁵⁸⁵ P-0643: T-056, p. 88; T-058, pp. 23-25, 27.

⁵⁸⁶ P-0643: T-056, p. 82. *See also* [Defence's Final Brief](#), para. 595.

⁵⁸⁷ *See generally* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004.

⁵⁸⁸ *Contra* [Defence's Final Brief](#), paras 584, 595.

⁵⁸⁹ P-0643: T-056, pp. 89-91; T-059, p. 69.

was given this information by others imprisoned in Garsila.⁵⁹⁰ Although this information is indirect, the Chamber is satisfied that it can rely on this evidence, particularly given P-0643, named the individuals who provided him with the information,⁵⁹¹ and that it is generally consistent with other credible and reliable evidence.⁵⁹²

169. P-0643 [REDACTED].⁵⁹³ As regards P-0643, the Chamber accepts that the majority of individuals named on the list [REDACTED].⁵⁹⁴ Where the individuals listed are not [REDACTED], such as *Sheikh Abdulaziz* and *Umdah Suleiman*,⁵⁹⁵ the Chamber relies on this evidence as it is supported by other credible evidence.⁵⁹⁶

Collusion with other witnesses

170. The Defence suggests that there is evidence of collusion between P-0643 and [REDACTED] because of their friendship.⁵⁹⁷ No such suggestion was ever put to P-0643 or [REDACTED]. The Chamber is unpersuaded that the evidence referred to by the Defence in support of its allegation provides a basis for the suggestion of collusion. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.⁵⁹⁸

16. P-0651

171. P-0651 (DoB 1989),⁵⁹⁹ a member of the Fur tribe,⁶⁰⁰ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.⁶⁰¹ P-0651 lived, and was a student, [REDACTED] during the charged period.⁶⁰² He was present in Deleig during the Deleig Operation.⁶⁰³ Despite his young age at the time, P-0651's evidence was rich in detail, indicating that he spoke from personal experience. His evidence was generally internally consistent and consistent with other

⁵⁹⁰ P-0643: T-056, pp. 90-91.

⁵⁹¹ P-0643: T-056, pp. 90-91.

⁵⁹² See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 580-582. *Contra Defence's Final Brief*, para. 632.

⁵⁹³ [REDACTED].

⁵⁹⁴ P-0643: T-056, p. 82.

⁵⁹⁵ [REDACTED].

⁵⁹⁶ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 641-646. See also Judgment, Section 4. Evidentiary principles and considerations, paras 170-171.

⁵⁹⁷ *Defence's Final Brief*, para. 142.

⁵⁹⁸ *Contra Defence's Final Brief*, para. 142.

⁵⁹⁹ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0017-0018, para. 11.

⁶⁰⁰ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0017-0018, para. 11; P-0651: T-034, p. 18.

⁶⁰¹ P-0651's Statement, DAR-OTP-0205-0015-R02; P-0651: T-034.

⁶⁰² P-0651's Statement, DAR-OTP-0205-0015-R02, at 0017-0018, 0027-0028, paras 11, 43; P-0651: T-034, p. 15.

⁶⁰³ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0024-0027, paras 33-34, 37-41; P-0651: T-034, pp. 59-60.

credible and reliable evidence on the record. P-0651's evidence principally dealt with the identification of '**Ali Kushayb**';⁶⁰⁴ the attacks by the *Janjaweed* on Fere in September 2003;⁶⁰⁵ Taringa in November 2003;⁶⁰⁶ Burbur in February 2004;⁶⁰⁷ the arrests, detention, and removal of detainees in Deleig on 5 March 2004;⁶⁰⁸ his discovery of bodies in an area near Tolda mountain on 6 March 2004;⁶⁰⁹ and his discovery of a mass grave near Fere.⁶¹⁰

Identification of '**Ali Kushayb**'

172. P-0651 gave evidence identifying '**Ali Kushayb**' in Deleig before, during and after the Deleig Operation on 5 March 2004,⁶¹¹ in Garsila in 2005 and 2006,⁶¹² and in Khartoum in 2015.⁶¹³ P-0651 first saw '**Ali Kushayb**' at Deleig market in late 2003 when his friend pointed to a man and stated 'that is **Ali Kushayb**'.⁶¹⁴ P-0651's friend gave little information as to how he knew that it was '**Ali Kushayb**', stating only that '**Ali Kushayb**' had also been pointed out to him by another friend whom P-0651 did not know.⁶¹⁵

173. The Chamber accepts that P-0651's identification evidence is indirect and that it relies on the limited basis of knowledge of P-0651's friend who identified '**Ali Kushayb**'.⁶¹⁶ Whilst the Chamber is satisfied that P-0651 was told that an individual was '**Ali Kushayb**', given the circumstances, the Chamber cannot rely on this as a positive identification that the man was indeed '**Ali Kushayb**'.

⁶⁰⁴ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0022-0023, 0029, 0032-0036, paras 25-27, 48, 60, 63-64, 66, 70-71, 73; P-0651: T-034, pp. 8, 32-35, 72-78, 83-85, 93.

⁶⁰⁵ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0020-0022, paras 18-24; P-0651: T-034, pp. 40, 46-49.

⁶⁰⁶ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0023-0024, paras 28-30; P-0651: T-034, pp. 12-13, 40-41, 55-59.

⁶⁰⁷ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0024, paras 31-33.

⁶⁰⁸ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027-0031, paras 41-55; P-0651: T-034, pp. 14-15, 21, referring to P-0651's Sketch, DAR-OTP-0205-0040, at 0041, Translation, DAR-OTP-0219-1684, at 1686.

⁶⁰⁹ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031-0032, paras 56-59; P-0651: T-034, pp. 30-32, referring to P-0651's Sketch, DAR-OTP-0205-0042, at 0043, Translation, DAR-OTP-0219-1687, at 1689.

⁶¹⁰ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0032, para. 60; P-0651: T-034, pp. 32-35.

⁶¹¹ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0022-0023, 0029, 0033, paras 25-27, 48, 63-64; P-0651: T-034, pp. 8, 72-75.

⁶¹² P-0651's Statement, DAR-OTP-0205-0015-R02, at 0034, para. 66;

⁶¹³ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0035, paras 70-71; P-0651: T-034, pp. 19-20, 35, 78-85, referring to P-0651's Sketch, DAR-OTP-0205-0044, Translation, DAR-OTP-0219-1690; Satellite Image, DAR-D31-0007-0001.

⁶¹⁴ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0022-0023, paras 25-26; P-0651: T-034, pp. 73-75.

⁶¹⁵ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0022, para. 25.

⁶¹⁶ [Defence's Final Brief](#), para. 722.

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174. Whilst the Defence suggests that P-0651's evidence on attending the Ansar mosque is unreliable given the risks involved in leaving his home on that date, the Chamber is satisfied that P-0651 did attend the Ansar mosque on or around 5 March 2004.⁶¹⁷ The Chamber accepts P-0651's evidence as to the importance of attending Friday prayer at the mosque and accepts his account that to mitigate the risk of violence and detention in leaving his house he carried his student card.⁶¹⁸ P-0651 gave evidence that his route to the mosque took him past Deleig police station slightly before 13:30 and that he observed detainees lying on the ground outside the police station.⁶¹⁹ From the mosque, P-0651 continued to observe the police station, which was slightly elevated from other buildings in the vicinity, until no detainees remained.⁶²⁰ Whilst there was some distance between P-0651 and the police station, the Chamber is satisfied P-0651's position enabled him to see the detainees lying on the ground and observe the events at Deleig police station and that this evidence is credible and reliable.⁶²¹

Discovery of bodies

175. P-0651 gave detailed evidence about his discovery of approximately 40 to 42 bodies near the Tolda mountain that is consistent with other credible and reliable evidence.⁶²² The Chamber notes that P-0651 did not claim to identify any of the bodies,⁶²³ and stated that he could not recognise any of the bodies at the time of seeing them, but later learnt the names of two of the bodies that were identified by others.⁶²⁴ The Chamber therefore relies on P-0651's evidence of discovering the bodies near the Tolda mountains and the mass grave near Fere as his account is both credible and reliable.

⁶¹⁷ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027-0028, paras 43, 46; P-0651: T-034, pp. 61-63. *Contra* [Defence's Final Brief](#), para. 586.

⁶¹⁸ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027-0028, para. 43; P-0651: T-034, pp. 61-63.

⁶¹⁹ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0027-0028, paras 43, 46.

⁶²⁰ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028, 0030, paras 46-47, 53-54, *referring to* P-0651's Sketch, DAR-OTP-0205-0040, at 0041, Translation, DAR-OTP-0219-1684, at 1686.

⁶²¹ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0028, para. 47. *Contra* [Defence's Final Brief](#), para. 560.

⁶²² P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031-0032, paras 56-59; P-0651: T-034, pp. 30-31, *referring to* P-0651's Sketch, DAR-OTP-0205-0042, at 0043, Translation, DAR-OTP-0219-1687, at 1689.

⁶²³ *Contra* [Defence's Final Brief](#), para. 639.

⁶²⁴ P-0651's Statement, DAR-OTP-0205-0015-R02, at 0031, para. 58.

176. [REDACTED].⁶²⁵ [REDACTED].⁶²⁶ [REDACTED],⁶²⁷ [REDACTED],⁶²⁸ [REDACTED]).⁶²⁹ [REDACTED].⁶³⁰

17. P-0671

177. P-0671 (DoB 1986), a member of the Fur tribe,⁶³¹ gave *viva voce* evidence over two days pursuant to Rule 68(3) of the Rules.⁶³² P-0671 attended primary and secondary school in Deleig.⁶³³ He fled with his family to Deleig after his village was attacked by the *Janjaweed* in November or December 2003.⁶³⁴ P-0671's evidence, principally dealt with the attack on Andi and his resulting displacement to Deleig;⁶³⁵ the Deleig Operation on 5 March 2004;⁶³⁶ and the identification of 'Ali Kushayb' during the Deleig Operation.⁶³⁷

Identification of 'Ali Kushayb'

178. In his statement, P-0671 gave evidence that, during the arrest of [REDACTED] in Deleig, he heard fighters refer to 'Ali Kushayb' by name.⁶³⁸ However, in court, P-0671 gave evidence that the only reason he established a link between 'Ali Kushayb' and the [REDACTED].⁶³⁹ In light of this evidence, the Chamber cannot be sure that P-0671 heard a fighter refer to 'Ali Kushayb' by name during the arrests and accordingly does not rely on that evidence. It follows, therefore, that the Chamber does not rely on P-0671's evidence identifying 'Ali Kushayb' during the Deleig Operation.⁶⁴⁰

⁶²⁵ [REDACTED].

⁶²⁶ See [REDACTED].

⁶²⁷ [REDACTED].

⁶²⁸ [REDACTED].

⁶²⁹ [REDACTED].

⁶³⁰ [REDACTED].

⁶³¹ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0107, para. 11; P-0671: T-098, p. 78.

⁶³² P-0671's Statement, DAR-OTP-0206-0105-R02; P-0671's Statement Corrections, DAR-OTP-00000462; P-0671: T-098; T-099.

⁶³³ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0107, paras 11-12.

⁶³⁴ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0108, 0110, paras 14, 20; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, paras 7-8; P-0671: T-098, p. 81.

⁶³⁵ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0108-0111, paras 14-23; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, paras 3-8; P-0671: T-099, p. 10.

⁶³⁶ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0111-0117, paras 24-49; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, paras 9-12.

⁶³⁷ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0113-0114, 0116-0117, paras 32, 35-37, 43-44, 46; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 12; P-0671: T-099, pp. 14-26.

⁶³⁸ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0113, para. 32; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 10; P-0671: T-099, p. 14.

⁶³⁹ P-0671: T-099, pp. 22, 25.

⁶⁴⁰ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0113, 0115, paras 32, 41; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 10. See also [Defence's Final Brief](#), paras 587, 598, 738.

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179. P-0671 gave evidence that, after the arrests of [REDACTED], on 5 March 2004, he arrived near the centre of Deleig to look for them.⁶⁴¹ P-0671 observed detainees lying face down on the ground in front of Deleig police station from a distance of approximately 40 to 50 metres.⁶⁴² Whilst the Defence submits that this distance impacts the reliability of P-0671's evidence,⁶⁴³ the Chamber is satisfied that this evidence is credible and reliable, particularly as it is generally consistent with other credible and reliable evidence.⁶⁴⁴

180. P-0671 also gave evidence that he observed bodies at the execution site near Koska in the days following the executions and [REDACTED].⁶⁴⁵ The Chamber is satisfied that it can rely on this evidence given that it is rich in detail, and that the location given of the execution site, is generally consistent with that of other credible witnesses.⁶⁴⁶ The Chamber notes the Defence's submission on the difference between the evidence of P-0671 and P-0994 as to the location in which the body of *Sheikh* Ismael was found.⁶⁴⁷ In this instance, given that P-0671's evidence in respect of *Sheikh* Ismael is somewhat vague and that, owing to his position, P-0994 was better placed to recognise *Sheikh* Ismael, the Chamber prefers the evidence of P-0994 and does not rely on P-0671 on this point.

[REDACTED]

181. [REDACTED].⁶⁴⁸ [REDACTED].⁶⁴⁹ [REDACTED].⁶⁵⁰

⁶⁴¹ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0114, para. 38.

⁶⁴² P-0671's Statement, DAR-OTP-0206-0105-R02, at 0115, paras 40-42, *referring to* P-0671's Sketch, DAR-OTP-0206-0132, at 0133, Translation, DAR-OTP-0219-1696, at 1698; P-0671's Statement Corrections, DAR-OTP-00000462, at 000001, para. 11.

⁶⁴³ *Contra* [Defence's Final Brief](#), para. 560.

⁶⁴⁴ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 604-605.

⁶⁴⁵ P-0671's Statement, DAR-OTP-0206-0105-R02, at 0018-0019, paras 51-57; P-0671's Statement Corrections, DAR-OTP-00000462, at 000002, paras 14-15; P-0671: T-098, pp. 75-76.

⁶⁴⁶ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 626-634.

⁶⁴⁷ [Defence's Final Brief](#), para. 639. See also P-0671's Statement, DAR-OTP-0206-0105-R02, at 0119, para. 57.

⁶⁴⁸ See [REDACTED].

⁶⁴⁹ P-0671: T-098, pp. 76-78; T-099, pp. 5-10, 22-23, 25.

⁶⁵⁰ [REDACTED].

18. P-0697

182. P-0697 (DoB 1989),⁶⁵¹ a member of the Fur tribe,⁶⁵² gave *viva voce* evidence over half a day pursuant to Rule 68(3) of the Rules.⁶⁵³ At the time of the charged events, he was still in school.⁶⁵⁴ P-0697's evidence principally dealt with, his knowledge of '**Ali Kushayb**';⁶⁵⁵ *Janjaweed* attacks on Korní and Taringa;⁶⁵⁶ the arming of Arab tribes by the government;⁶⁵⁷ the Deleig Operation on 5 March 2004;⁶⁵⁸ and the discovery of bodies near Fere.⁶⁵⁹ His evidence was, on the whole, unspecific and therefore the Chamber has only relied thereon as providing some support to other evidence where indicated as appropriate.

Knowledge of '**Ali Kushayb**'

183. P-0697 gave evidence that he knew '**Ali Kushayb**' from the Garsila market where he would regularly go to buy some goods and where '**Ali Kushayb**' owned a veterinarian pharmacy.⁶⁶⁰ Although, P-0697 had never spoken to '**Ali Kushayb**' or bought anything from his pharmacy, he said he knew him because '**Ali Kushayb**' was well known in the area.⁶⁶¹ Whilst the Chamber is satisfied that P-0697 knew of '**Ali Kushayb**', it does not rely on his identification evidence given his lack of direct interaction with '**Ali Kushayb**' and limited basis of knowledge for his identification.⁶⁶²

Discovery of bodies near Fere

184. P-0697 gave evidence that, whilst walking to a nearby village to attend the market, he saw approximately 12-15 dead bodies near Fere a few days after 5 March 2004.⁶⁶³ He was

⁶⁵¹ P-0697's Statement, DAR-OTP-0209-0155-R03, at 0158, para. 14.

⁶⁵² P-0697's Statement, DAR-OTP-0209-0155-R03, at 0157, para. 11.

⁶⁵³ P-0697's Statement, DAR-OTP-0209-0155-R03; P-0697's Statement Corrections, DAR-OTP-00000490; P-0697: T-101.

⁶⁵⁴ P-0697: T-101, pp. 13-14.

⁶⁵⁵ P-0697's Statement, DAR-OTP-0209-0155-R03, at 0158-0159, 0166, 0168, 0170, paras 15-18, 50, 55, 65; P-0697's Statement Corrections, DAR-OTP-00000490, at 000001-000002, paras 3, 5, 12; P-0697: T-101, pp. 6-10, 12-16, 20-22, 32-34, 36-39, 55-59.

⁶⁵⁶ P-0697's Statement, DAR-OTP-0209-0155-R03, at 0159-0162, 0164-0165, paras 19-23, 26-33, 40-45; P-0697's Statement Corrections, DAR-OTP-00000490, at 000001, paras 6-7.

⁶⁵⁷ P-0697's Statement, DAR-OTP-0209-0155-R03, at 0160-0161, paras 24-25; P-0697: T-101, p. 35.

⁶⁵⁸ P-0697's Statement, DAR-OTP-0209-0155-R03 at 0166-0167, paras 50-58; P-0697's Statement Corrections, DAR-OTP-00000490, at 00001, paras 8-9; P-0697: T-101, pp. 16-18, 40-41, 47-55, 61, 63.

⁶⁵⁹ P-0697's Statement, DAR-OTP-0209-0155-R03, at 0169-0170, paras 59-63; P-0697's Statement Corrections, DAR-OTP-00000490, at 000001, paras 10-11.

⁶⁶⁰ P-0697's Statement, DAR-OTP-0209-0155-R03, at 0158, para. 15; P-0697's Statement Corrections, DAR-OTP-00000490, at 000001, para. 3; P-0697: T-101, pp. 6-7.

⁶⁶¹ P-0697: T-101, pp. 6-7, 14.

⁶⁶² [Defence's Final Brief](#), para. 722.

⁶⁶³ P-0697's Statement, DAR-OTP-0209-0155-R03, at 0169-0170, paras 59-61; P-0697: T-101, pp. 21-22.

some 100 to 150 metres away from the bodies and was unable to see their specific injuries but could see their blood stained civilian clothing.⁶⁶⁴ The Defence argues that P-0697's evidence in this regard is unreliable because he was unable to verify that these were the bodies of persons who had been arrested.⁶⁶⁵ The Chamber is satisfied that P-0697's evidence in relation to personally seeing dead bodies near Fere is credible and reliable, and lends support to other witnesses who were able to identify the bodies discovered near Fere, as being of persons who had been arrested.⁶⁶⁶

19. P-0712

185. P-0712 (DoB 1981),⁶⁶⁷ a member of the Fur tribe,⁶⁶⁸ gave *viva voce* evidence over half a day pursuant to Rule 68(3) of the Rules.⁶⁶⁹ P-0712 was living and attending secondary school in [REDACTED] and was present during the Deleig Operation.⁶⁷⁰ P-0712's evidence principally dealt with, the attack by the *Janjaweed* on Sede at the end of 2003;⁶⁷¹ and to a far more limited extent with the Deleig Operation;⁶⁷² the execution sites near Fere and to the south of Deleig;⁶⁷³ the destruction of mass graves at the execution sites.⁶⁷⁴

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186. P-0712 gave clear and detailed evidence on the searches conducted by the *Janjaweed* on or around 5 March 2004.⁶⁷⁵ P-0712 was present [REDACTED] when the *Janjaweed* searched the house on two occasions.⁶⁷⁶ P-0712 also gave evidence that [REDACTED] accompanied the *Janjaweed* during one of the house searches.⁶⁷⁷ The Chamber is satisfied that P-0712's account [REDACTED] presence and actions is credible and reliable.

⁶⁶⁴ P-0697: T-101, pp. 21-22.

⁶⁶⁵ [Defence's Final Brief](#), para. 642.

⁶⁶⁶ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, para. 625.

⁶⁶⁷ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1886, para. 11.

⁶⁶⁸ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1886, para. 11.

⁶⁶⁹ P-0712's Statement, DAR-OTP-0209-1884-R04; P-0712: T-036.

⁶⁷⁰ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1890-1891, paras 25, 28.

⁶⁷¹ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1889-1890, paras 19-22; P-0712: T-036, pp. 23, 38-39.

⁶⁷² P-0712's Statement, DAR-OTP-0209-1884-R04, at 1891-1892, paras 28-31; P-0712: T-036, p. 42.

⁶⁷³ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1897-1898, paras 49-51.

⁶⁷⁴ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1898, para. 54.

⁶⁷⁵ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893-1895, paras 32-38.

⁶⁷⁶ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893, para. 32.

⁶⁷⁷ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893-1894, paras 33-36.

[REDACTED].⁶⁷⁸ The Chamber is also satisfied that P-0712's evidence on the house searches is credible and reliable.

187. The Chamber notes that P-0712's evidence on the detainees at Deleig police station is based on what [REDACTED], had told him he experienced, rather than what P-0712 observed directly.⁶⁷⁹ The Chamber is satisfied that P-0712's evidence is supported by other credible and reliable evidence on the record and that it can rely on it.⁶⁸⁰

188. P-0712 gave indirect evidence about the execution sites and the destruction of mass graves.⁶⁸¹ The Chamber is satisfied that the location of an execution site near Fere and the destruction of mass graves is supported by other credible evidence, and that it can rely on it.⁶⁸²

189. [REDACTED].⁶⁸³ [REDACTED],⁶⁸⁴ [REDACTED].⁶⁸⁵

20. P-0718

190. P-0718 (DoB 1987),⁶⁸⁶ a member of the Fur tribe,⁶⁸⁷ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.⁶⁸⁸ He was a student during the period of the charges.⁶⁸⁹ P-0718's evidence principally dealt with, the Deleig Operation, particularly on his detention near Deleig police station;⁶⁹⁰ the identification of 'Ali Kushayb';⁶⁹¹ and the killing of [REDACTED].⁶⁹²

⁶⁷⁸ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1893, para. 33.

⁶⁷⁹ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1895-1896, paras 39-41.

⁶⁸⁰ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 613-616.

⁶⁸¹ P-0712's Statement, DAR-OTP-0209-1884-R04, at 1897-1898, paras 49-54.

⁶⁸² See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 622-625, 647-651.

⁶⁸³ [REDACTED].

⁶⁸⁴ P-0712: T-036, pp. 36-42.

⁶⁸⁵ See [REDACTED]. [REDACTED].

⁶⁸⁶ P-0718's Statement, DAR-OTP-0209-2004-R02, at 2004. The Chamber notes this date of birth is an estimate and that P-0718 stated that he did not know his date of birth (P-0718's Statement Corrections, DAR-OTP-0220-4792, at 4792, para. 3; P-0718: T-049, p. 50).

⁶⁸⁷ P-0718's Statement, DAR-OTP-0209-2004-R02, at 2004; P-0718: T-049, pp. 30-32.

⁶⁸⁸ P-0718's Statement, DAR-OTP-0209-2004-R02; P-0718's Statement Corrections, DAR-OTP-0220-4792; P-0718: T-049.

⁶⁸⁹ P-0718's Statement, DAR-OTP-0209-2004-R02, at 2007, para. 14.

⁶⁹⁰ P-0718's Statement, DAR-OTP-0209-2004-R02, at 2012-2015, paras 53-75; P-0718's Statement Corrections, DAR-OTP-0220-4792, at 4792, paras 8-10; P-0718: T-049, pp. 15-17, 20-25, 40, 55-75.

⁶⁹¹ P-0718's Statement, DAR-OTP-0209-2004-R02, at 0215-0217, paras 76-85; P-0718's Statement Corrections, DAR-OTP-0220-4792, at 4792-4793, paras 11-13; P-0718: T-049, pp. 25-26, 29, 68-69, 75-78.

⁶⁹² P-0718's Statement, DAR-OTP-0209-2004-R02, at 0217-0218, paras 86-91; P-0718's Statement Corrections, DAR-OTP-0220-4792, at 4793, para. 14.

Identification of ‘Ali Kushayb’

191. P-0718 gave evidence that the day he was detained in Deleig was the first time he saw the man he later learnt to be ‘**Ali Kushayb**’.⁶⁹³ ‘**Ali Kushayb**’ came to the area where he and [REDACTED] were detained near Deleig police station and questioned P-0718’s [REDACTED].⁶⁹⁴ P-0718 also gave evidence that ‘**Ali Kushayb**’ beat the detainees and that he was also beaten (although he did not specify by whom).⁶⁹⁵ P-0718 was later released [REDACTED].⁶⁹⁶ A few days later, the witness went to the market and [REDACTED] pointed to a man and told him it was ‘**Ali Kushayb**’.⁶⁹⁷ This was when P-0718 first learnt the name ‘**Ali Kushayb**’.⁶⁹⁸ He was about 10-15 metres away and recognised the voice as the person who had spoken [REDACTED].⁶⁹⁹ In the corrections to his statement, the witness said that he was looking at ‘**Ali Kushayb**’ in the Deleig market for approximately 20-25 minutes.⁷⁰⁰ However, in court the witness said that he did not look for 20-25 minutes as he could not keep looking that long, otherwise, he would have himself been noticed.⁷⁰¹

192. The Defence asserted in its Final Brief that P-0718 was not in a position to identify the person he referred to as ‘**Ali Kushayb**’ at Deleig police station or at Deleig market and that his recognition was *ex post facto*.⁷⁰² The Defence also challenged P-0718’s evidence that ‘**Ali Kushayb**’ beat the detainees noting that, whilst P-0718 originally stated that ‘**Ali Kushayb**’ beat the detainees, he later gave evidence that due to his fear, he did not pay enough attention to know whether the person beating people was ‘**Ali Kushayb**’.⁷⁰³

193. The Chamber accepts that P-0718’s identification of ‘**Ali Kushayb**’ is not based on prior interaction with ‘**Ali Kushayb**’ but indirect evidence. Whilst the Chamber finds that the factors set out above limit the reliance which may be placed on his evidence of identification, the Chamber nonetheless finds that it lends limited support, (particularly given that he did have opportunity to observe what was taking place and it was the voice of the person who ordered

⁶⁹³ P-0718’s Statement, DAR-OTP-0209-2004-R02, at 2013, para. 62.

⁶⁹⁴ P-0718’s Statement, DAR-OTP-0209-2004-R02, at 2014, para. 67.

⁶⁹⁵ P-0718: T-049, p. 16.

⁶⁹⁶ P-0718’s Statement, DAR-OTP-0209-2004-R02, at 2014-2015, paras 69-70.

⁶⁹⁷ P-0718’s Statement, DAR-OTP-0209-2004-R02, at 2016, para 78; P-0718’s Statement Corrections, DAR-OTP-0220-4792, at 4792-4793, para. 11.

⁶⁹⁸ P-0718’s Statement, DAR-OTP-0209-2004-R02, at 2016, para 78; P-0718’s Statement Corrections, DAR-OTP-0220-4792, at 4792-4793, para. 11.

⁶⁹⁹ P-0718’s Statement, DAR-OTP-0209-2004-R02, at 2015-2016, paras 76-83.

⁷⁰⁰ P-0718’s Statement Corrections, DAR-OTP-0220-4792, at 4793, para. 13.

⁷⁰¹ P-0718: T-049, pp. 77-78.

⁷⁰² [Defence’s Final Brief](#), para. 598.

⁷⁰³ [Defence’s Final Brief](#), para. 598.

his release which triggered the identification), to the more credible and reliable evidence which places ‘**Ali Kushayb**’ at Deleig police station.

Deleig Operation

194. P-0718 gave evidence that he was arrested, detained and beaten during the Deleig Operation and, in the days following the operation, saw the body [REDACTED] at an execution site.⁷⁰⁴

195. In court, the Defence challenged P-0718’s evidence that he was beaten during his arrest and while being transported to Deleig police station, given he did not mention this in his statement.⁷⁰⁵ The Defence also notes the inconsistencies in P-0718’s evidence in respect of where he was arrested.⁷⁰⁶ The Chamber is satisfied that minor inconsistencies such as these do not impact P-0718’s overall credibility, particularly given P-0718’s young age and traumatic experience.⁷⁰⁷ The Chamber is therefore satisfied that it can rely on his evidence, particularly given the level of detail provided.

196. The Chamber accepts that there are inconsistencies within P-0718’s evidence on the killing of [REDACTED]. In his statement, P-0718’s account is that he heard that [REDACTED] bodies had been found at an execution site near Fere.⁷⁰⁸ In court, P-0718 gave evidence that he went to the execution site himself which was near Koska and saw the body of [REDACTED].⁷⁰⁹ Given the level of detail provided by P-0718, the Chamber is satisfied that the witness attended an execution site but it is unable to determine its exact location. P-0718 gave evidence that the identification of [REDACTED] body was based only on [REDACTED] clothing and that there were lots of bodies, there was ‘blood everywhere’, and he was ‘very scared’ and was crying.⁷¹⁰ Given this, and the internal inconsistencies in P-0718’s evidence, the Chamber is not satisfied that P-0718 saw the body of [REDACTED] himself.⁷¹¹ The Chamber is, however, satisfied that P-0718 was told that [REDACTED] were killed.

⁷⁰⁴ P-0718’s Statement, DAR-OTP-0209-2004-R02, at 2013, paras 60-61; P-0718: T-049, pp. 15-17, 40, 64-66.

⁷⁰⁵ P-0718: T-049, pp. 65-66.

⁷⁰⁶ [Defence’s Final Brief](#), para. 588.

⁷⁰⁷ See Judgment, Section 4. Evidentiary principles and considerations, paras 223-226.

⁷⁰⁸ P-0718’s Statement, DAR-OTP-0209-2004-R02, at 2017, para. 89.

⁷⁰⁹ P-0718: T-049, pp. 21-22.

⁷¹⁰ P-0718: T-049, pp. 17, 22.

⁷¹¹ P-0718: T-049, p. 22.

197. [REDACTED].⁷¹² [REDACTED].⁷¹³ [REDACTED].⁷¹⁴ [REDACTED].⁷¹⁵ [REDACTED].⁷¹⁶

21. P-0720

198. P-0720 (DoB 1985), a member of the Fur tribe,⁷¹⁷ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.⁷¹⁸ At the relevant time, he was attending school in [REDACTED].⁷¹⁹ His evidence, which for the most part was indirect, principally dealt with events in Mukjar between 2003 and 2004.⁷²⁰ This included, the rebel attacks;⁷²¹ his knowledge of the village self-defence groups;⁷²² the arrest of *Umdah* Yahya Ahmad Zarruq;⁷²³ and [REDACTED] three people, including *Umdah* Yahya Ahmad Zarruq, whom he heard were killed at an execution site towards Garsila.⁷²⁴

199. In his statement, P-0720 explained that he had heard in early 2003 that ‘**Ali Kushayb**’ was in charge of the *Janjaweed* in Wadi Salih, which had burned villages.⁷²⁵ P-0720 stated that he saw the arrival of ‘**Ali Kushayb**’s’ forces in Mukjar and returning from the Sindu Operation in early 2004.⁷²⁶ The day after the arrival of the *Janjaweed*, he was with [REDACTED], near a checkpoint when the latter pointed out a man in a Land Cruiser whom he said was ‘**Ali Kushayb**’.⁷²⁷ It appeared to P-0720 that ‘**Ali Kushayb**’ was pointing at them so he left the area but was able to see [REDACTED] being stopped by ‘**Ali Kushayb**’ and taken in the direction

⁷¹² [REDACTED].

⁷¹³ [REDACTED].

⁷¹⁴ [REDACTED].

⁷¹⁵ [REDACTED].

⁷¹⁶ See [REDACTED]. [REDACTED].

⁷¹⁷ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0293, para. 12.

⁷¹⁸ P-0720’s Statement, DAR-OTP-0210-0291-R02; P-0720’s Statement Corrections, DAR-OTP-0220-4687; P-0720: T-043.

⁷¹⁹ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0293-0294, paras 17-18.

⁷²⁰ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0296-0308, paras 34-110.

⁷²¹ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0298-0299, paras 51-59; P-0720: T-043, pp. 22, 34-38.

⁷²² P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0298, para. 50; P-0720: T-043, pp. 9, 19-29.

⁷²³ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0300, 0305-0306, 0308, paras 60-64, 91-94, 110; P-0720: T-043, pp. 13-14, 41-42, 46-47.

⁷²⁴ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0308, 0307, paras 95, 107-110; P-0720: T-043, pp. 10-12, 41.

⁷²⁵ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0300, 0303, paras 61, 82.

⁷²⁶ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0300-0301, 0304, paras 69, 83-86, 97-99, 102; P-0720’s Statement Corrections, DAR-OTP-0220-4687, at 000001, para. 3.

⁷²⁷ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0307, para. 103.

of Mukjar police station.⁷²⁸ The following day, P-0720 saw ‘**Ali Kushayb**’ walking towards Mukjar police station accompanied by bodyguards.⁷²⁹

200. When questioned by the Defence, P-0720 agreed he did not know how [REDACTED] was able to identify ‘**Ali Kushayb**’ but said after that on seeing ‘**Ali Kushayb**’, he was sure it was him because he always had security guards with him and it was ‘common knowledge’.⁷³⁰ However, in answer to the questions from the Judges, P-0720 said he had only seen ‘**Ali Kushayb**’ on those two occasions.⁷³¹ Considering P-0720’s acknowledgment of the limits of his knowledge, the Chamber is satisfied that he was truthful on his evidence on [REDACTED] arrest.⁷³²

201. The Defence challenges P-0720’s credibility on the basis that [REDACTED].⁷³³ The Chamber rejects the Defence’s challenges in this regard.⁷³⁴

202. The Defence suggests that there is evidence of collusion between [REDACTED].⁷³⁵ The Chamber is unpersuaded that the evidence referred to by the Defence in support of its allegation provides a basis for the suggestion of collusion. Not only is there no evidence of collusion but the inconsistencies in their evidence militate against a finding of collusion. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.⁷³⁶ Therefore, the Chamber is satisfied that P-0720 was credible and reliable in relation to his direct evidence of events and that his evidence lends support to other witnesses who were able to give a more detailed account of the activities of ‘**Ali Kushayb**’ in Mukjar.⁷³⁷

⁷²⁸ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0307, paras 104-105.

⁷²⁹ P-0720’s Statement, DAR-OTP-0210-0291-R02, at 0308, para. 106.

⁷³⁰ P-0720: T-043, pp. 9-10, 47-49.

⁷³¹ P-0720: T-043, pp. 70-72.

⁷³² *Contra* [Defence’s Final Brief](#), para. 478. *See also* [Defence’s Final Brief](#), para. 511.

⁷³³ [Defence’s Final Brief](#), para. 166.

⁷³⁴ *See* [REDACTED].

⁷³⁵ [Defence’s Final Brief](#), para. 501.

⁷³⁶ *Contra* [Defence’s Final Brief](#), para. 501.

⁷³⁷ *See* Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 520-525, 530, 538-548.

22. P-0726

203. P-0726 (DoB 1984),⁷³⁸ a member of the Fur tribe,⁷³⁹ gave *viva voce* evidence over half a day pursuant to Rule 68(3) of the Rules.⁷⁴⁰ At the time of the events [REDACTED]. P-0726's evidence principally dealt with, the attacks by the *Janjaweed* on Forgo and the mountains surrounding the village;⁷⁴¹ the Deleig Operation;⁷⁴² and the identification of '**Ali Kushayb**' in Deleig.⁷⁴³

Identification of '**Ali Kushayb**'

204. P-0726 originally stated that the first time he saw '**Ali Kushayb**' was at Deleig market following the arrests and executions during the Deleig Operation, where '**Ali Kushayb**' was pointed out to him by a local villager.⁷⁴⁴ He later corrected this, and stated that he had actually seen '**Ali Kushayb**' multiple times in the Gaba market between 2000-2001,⁷⁴⁵ that it was [REDACTED] who pointed '**Ali Kushayb**' out to him at Deleig market,⁷⁴⁶ and that he recognised '**Ali Kushayb**' when he saw him at Deleig market.⁷⁴⁷ P-0726 explained that this discrepancy was due to problems in interpretation and that he had meant that when he saw '**Ali Kushayb**' at Deleig market, it was the first time he had seen him as a criminal and in a military uniform.⁷⁴⁸ The explanation is unclear. Accordingly, the Chamber does not rely on P-0726's identification evidence.

Attacks on Forgo

205. P-0726 was displaced from [REDACTED] Forgo after it was attacked by the *Janjaweed* and fled to Deleig.⁷⁴⁹ P-0726 gave evidence that [REDACTED] and other women in Forgo

⁷³⁸ P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0792, para. 1.

⁷³⁹ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0349, para. 11; P-0726: T-053, p. 5.

⁷⁴⁰ P-0726's Statement, DAR-OTP-0210-0346-R04; P-0726: T-053.

⁷⁴¹ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0351-0352, 0358, 0362-0363, paras 20, 43, 56-59.

⁷⁴² P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364-0365, paras 62-69; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793-0795, paras 14-19; P-0726: T-053, pp. 16-17, 47-50.

⁷⁴³ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0367-0368, paras 76-80; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0795, para. 23; P-0726: T-053, pp. 11, 50-56, 59-62.

⁷⁴⁴ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0367, para. 76.

⁷⁴⁵ P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0795, para. 23.

⁷⁴⁶ P-0726: T-053, p. 61.

⁷⁴⁷ P-0726: T-053, p. 61. *See also* [Defence's Final Brief](#), para. 604.

⁷⁴⁸ P-0726: T-053, pp. 51-52.

⁷⁴⁹ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0349, 0362-0363, paras 11, 56-60; P-0726: T-053, pp. 5, 16.

were raped during the first attack by the *Janjaweed* in August or September 2003.⁷⁵⁰ Whilst P-0726 originally stated that he had overheard a number of women and young girls state that they were the victim of rape or attempted rape by the *Janjaweed*,⁷⁵¹ he later gave evidence that he only heard [REDACTED] discuss this, rather than the rape victims themselves.⁷⁵² The Chamber is satisfied that it is credible that P-0726 heard that women had been raped by the *Janjaweed*. To that extent the Chamber finds it lends limited support to more direct accounts of rape.

Deleig Operation

206. P-0726 gave evidence that, on arriving in Deleig after fleeing the mountains near Forgo, he stayed with other villagers under a tree,⁷⁵³ where he could see the *Janjaweed* establishing blockades and Deleig police station in the distance.⁷⁵⁴ P-0726 also gave evidence that he hid in [REDACTED].⁷⁵⁵ The Chamber is satisfied that it can rely on this evidence since it included details [REDACTED] [REDACTED],⁷⁵⁶ which emphasised that he spoke from personal experience.

207. The Defence submits that much of P-0726's account of the events at Deleig police station and the executions come from what he was told by [REDACTED].⁷⁵⁷ The Chamber accepts this submission. However, the Chamber is satisfied that P-0726's evidence lends support to the fact that [REDACTED]—who the Chamber has found generally credible and reliable⁷⁵⁸—was already describing these events at an early stage. Although P-0726 gave evidence that he was no longer in contact with [REDACTED] and then later rectified this to state that he had had contact with him in the last two months,⁷⁵⁹ this does not negatively impact

⁷⁵⁰ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0355-0357, paras 34-35, 38-39; P-0726: T-053, pp. 15, 27-31.

⁷⁵¹ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0356, para. 35.

⁷⁵² P-0726: T-053, pp. 30-31.

⁷⁵³ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0363, para. 61; P-0726: T-053, p. 46.

⁷⁵⁴ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364, para. 62; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793, para. 14; P-0726: T-053, pp. 46-48.

⁷⁵⁵ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364, paras 63-64; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0793-0794, paras 15-16; P-0726: T-053, p. 16.

⁷⁵⁶ P-0726's Statement, DAR-OTP-0210-0346-R04, at 0364, para. 64; P-0726's Statement Corrections, DAR-OTP-0224-0792, at 0794, para. 16.

⁷⁵⁷ [Defence's Final Brief](#), paras 563, 604, 624.

⁷⁵⁸ See [REDACTED].

⁷⁵⁹ P-0726: T-053, pp. 57-58.

his overall credibility and reliability.⁷⁶⁰ This is a minor inconsistency which P-0726 quickly corrected.

23. P-0736

208. P-0736 (DoB 1988), a member of the Fur tribe,⁷⁶¹ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.⁷⁶² At the time of these events he was a farmer. P-0736's evidence principally dealt with, the attacks by the *Janjaweed* on Fere and Ordo in October or November 2003;⁷⁶³ the events that occurred in Deleig leading up to, during, and following the Deleig Operation;⁷⁶⁴ the execution sites around Deleig;⁷⁶⁵ the identification of 'Ali Kushayb' in Garsila⁷⁶⁶ and Deleig;⁷⁶⁷ and indirect evidence of the killing of Jenif.⁷⁶⁸

Identification of the Accused

209. P-0736 gave evidence that he saw 'Ali Kushayb' arrive at a football field next to Deleig police station on the morning of the Deleig Operation.⁷⁶⁹ P-0736's account in his statement is that 'Ali Kushayb' remained in his vehicle.⁷⁷⁰ However, in court he gave evidence that this was a misinterpretation and that 'Ali Kushayb' stood by his vehicle.⁷⁷¹ P-0736 stated that he knew who 'Ali Kushayb' was prior to the period of the charges and first saw him when [REDACTED] pointed him out in Garsila, as he was a well-known individual.⁷⁷² P-0736 said he saw 'Ali Kushayb' many times after this event, such as when he walked by his pharmacy in Garsila,⁷⁷³ and found out from a *Janjaweed* acquaintance—whom he named—that 'Ali Kushayb' paid their salaries.⁷⁷⁴ The Chamber is therefore satisfied that P-0736's had a solid

⁷⁶⁰ *Contra* [Defence's Final Brief](#), para. 563.

⁷⁶¹ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0250, para. 12; P-0736: T-035, pp. 55, 56.

⁷⁶² P-0736's Statement, DAR-OTP-0210-0248-R02; P-0736: T-035.

⁷⁶³ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0257-0259, paras 36-44; P-0736: T-035, pp. 57-59.

⁷⁶⁴ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0260-0269, paras 49-50, 53-78, *referring to* Colour Chart, DAR-OTP-0210-0277-R01, at 0278; Headdress Board, DAR-OTP-0210-0279-R01, at 0280; P-0736: T-035, pp. 66-78.

⁷⁶⁵ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0269-0270, paras 79-80.

⁷⁶⁶ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0254-0255, 0259-0260, paras 27-29, 45; P-0736: T-035, pp. 8-12, 23, *referring to* P-0736's Sketch, DAR-REG-0001-0002, Translation, DAR-OTP-0219-7100, at 7102.

⁷⁶⁷ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0263, para. 57; P-0736: T-035, pp. 13, 16-17, 24-26, 38, 46-47, 70-74, 79-80, *referring to* P-0736's Annotated Satellite Image, DAR-OTP-0220-3745.

⁷⁶⁸ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0271, para. 83.

⁷⁶⁹ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0263, para. 57.

⁷⁷⁰ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0263, para. 57.

⁷⁷¹ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0263, para. 57; P-0736: T-035, pp. 25-26, 73-74.

⁷⁷² P-0736's Statement, DAR-OTP-0210-0248-R02, at 0271, para. 83; P-0736: T-035, pp. 40, 44-45.

⁷⁷³ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0254-0255, para. 28; P-0736: T-035, pp. 10, 24, *referring to* P-0736's Sketch, DAR-REG-0001-0002, Translation, DAR-OTP-0219-7100, at 7102.

⁷⁷⁴ P-0736's Statement, DAR-OTP-0210-0248-R02, at 0255, para. 30.

basis of knowledge to identify **the Accused** as ‘**Ali Kushayb**’ and is satisfied that his identification evidence is credible and reliable.⁷⁷⁵

Deleig Operation

210. P-0736 gave evidence that on his way to work on the morning of the Deleig Operation, he witnessed the establishment of a checkpoint that prevented people from leaving the town.⁷⁷⁶ He was also present in [REDACTED] when it was searched by the *Janjaweed* and was beaten during the search.⁷⁷⁷ Later in the afternoon, while walking through Deleig from a distance (of some three football fields), he had an unimpeded view of the detainees lying on the ground outside Deleig Police Station.⁷⁷⁸

211. P-0736 gave clear and detailed evidence of his experiences during the Deleig Operation.⁷⁷⁹ Although P-0736 viewed the detainees at Deleig police station from some distance, the Chamber is not persuaded by the Defence’s submission that this distance impeded P-0736’s view to the extent that he could not see the large number of detainees on the ground.⁷⁸⁰ The Chamber is satisfied that P-0736’s evidence regarding what he witnessed during the Deleig Operation is credible and reliable.

212. The Defence contends that P-0736 provided indirect and confused evidence that he had heard a rumour that ‘**Ali Kushayb**’ had beaten Jenif with his gun and killed him.⁷⁸¹ Given the remoteness of this evidence, and that it is based merely on a rumour, the Chamber will not rely thereon.

213. The Defence also challenges P-0736’s evidence on the location of the execution sites, submitting that it lacks a proper evidentiary basis.⁷⁸² Given P-0736’s evidence about the locations of the execution sites is based only on general talk amongst villagers,⁷⁸³ the Chamber will also not rely thereon.

⁷⁷⁵ *Contra* [Defence’s Final Brief](#), para. 722.

⁷⁷⁶ P-0736’s Statement, DAR-OTP-0210-0248-R02, at 0262, paras 54-55; P-0736: T-035, pp. 66-68, *referring to* P-0736’s Annotated Satellite Image, DAR-REG-0001-0004.

⁷⁷⁷ P-0736’s Statement, DAR-OTP-0210-0248-R02, at 0264-0265, paras 62-67; P-0736: T-035, pp. 75-76.

⁷⁷⁸ P-0736’s Statement, DAR-OTP-0210-0248-R02, at 0266-0267, para. 71.

⁷⁷⁹ *See for example* P-0736’s explanation of his belief that the *Janjaweed* only stopped beating him during the house search because he spoke Arabic (P-0736’s Statement, DAR-OTP-0210-0248-R02, at 0265, para. 66).

⁷⁸⁰ P-0736’s Statement, DAR-OTP-0210-0248-R02, at 0261, para. 71. *Contra* [Defence’s Final Brief](#), para. 560.

⁷⁸¹ [Defence’s Final Brief](#), para. 594; P-0736’s Statement, DAR-OTP-0210-0248-R02, at 0261, para. 50.

⁷⁸² [Defence’s Final Brief](#), paras 638, 641; P-0736’s Statement, DAR-OTP-0210-0248-R02, at 0269, para. 79.

⁷⁸³ P-0736’s Statement, DAR-OTP-0210-0248-R02, at 0269, para. 79.

24. P-0769

214. P-0769, (DoB 1973), [REDACTED],⁷⁸⁴ gave *viva voce* evidence over three days.⁷⁸⁵ At the time of the events, he was working [REDACTED].⁷⁸⁶ His evidence principally dealt with, his duties in the [REDACTED],⁷⁸⁷ the work of the [REDACTED],⁷⁸⁸ [REDACTED],⁷⁸⁹ and the plan of the GoS in relation to the rebels.⁷⁹⁰

Knowledge of the Accused

215. P-0769 never met **the Accused**.⁷⁹¹ Therefore, he is unable to give any direct identification evidence. However, he gave evidence that the [REDACTED] ‘**Ali Kushayb**’, whose full name was ‘Ali Muhammed Ali Abd Al-Rahman’, which contained information such as that he was of the Ta’aisha tribe, had houses in Nyala, was born in the 1940s and joined the medical section of the SAF—from which he retired in 1993—and thereafter opened a pharmacy in Nyala.⁷⁹² Sometime after June 2003 (following the Emergency Plan), P-0769 gave evidence that he saw [REDACTED] in relation to Bindisi and Mukjar which referred to ‘**Ali Kushayb**’ as the leader of the militia in the area.⁷⁹³ [REDACTED]. The Chamber is satisfied that P-0769’s evidence in this regard is credible and reliable as it is detailed, [REDACTED] and therefore, provides official and contemporaneous support for the link between the two names.⁷⁹⁴

[REDACTED]

216. P-0769’s [REDACTED].⁷⁹⁵ Thus, P-0769 gave evidence [REDACTED].⁷⁹⁶ [REDACTED].⁷⁹⁷

⁷⁸⁴ P-0769: T-096, pp. 56-57.

⁷⁸⁵ P-0769: T-096; T-097; T-098.

⁷⁸⁶ P-0769: T-096, p. 57.

⁷⁸⁷ P-0769: T-096, pp. 58-64.

⁷⁸⁸ P-0769: T-097, pp. 7-24.

⁷⁸⁹ P-0769: T-096, p. 65; T-097, pp. 41, 57; T-098, pp. 10-13, 42.

⁷⁹⁰ P-0769: T-097, pp. 56-70.

⁷⁹¹ [Defence’s Final Brief](#), para. 711; [Defence’s Closing Statement](#): T-162, p. 32. *See also* P-0769: T-097, pp. 29-30; T-098, p. 43.

⁷⁹² P-0769: T-097, pp. 30-31, 36-37.

⁷⁹³ P-0769: T-097, pp. 28-29.

⁷⁹⁴ *Contra* [Defence’s Final Brief](#), para. 711.

⁷⁹⁵ P-0769: T-096, pp. 60-61, 64; T-097, p. 80.

⁷⁹⁶ P-0769: T-096, p. 60.

⁷⁹⁷ P-0769: T-096, pp. 60-61, 64.

217. P-0769 gave evidence that during his time [REDACTED].⁷⁹⁸ As part of his duties, [REDACTED].⁷⁹⁹ [REDACTED].⁸⁰⁰ [REDACTED].⁸⁰¹

218. The Defence alleged, generally, that P-0769 had an interest to serve as someone who had a motive to shift blame to other persons in order to escape liability for his own crimes.⁸⁰² The Chamber notes that P-0769 [REDACTED],⁸⁰³ and finds that there is no evidence before the Chamber that P-0769 had any reason to shift blame to any person, [REDACTED].⁸⁰⁴

219. The Chamber is satisfied that P-0769's knowledge [REDACTED];⁸⁰⁵ and his [REDACTED],⁸⁰⁶ gave him a credible and reliable basis for his knowledge of [REDACTED].

[REDACTED] **GoS supply document and NSC 2004 Plan**

220. P-0769 [REDACTED].⁸⁰⁷ The Chamber is satisfied [REDACTED] and is equally satisfied that these documents are genuine and reliable.⁸⁰⁸

25. P-0850

221. P-0850 (DoB 1982), a member of the Fur tribe,⁸⁰⁹ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.⁸¹⁰ At the time of the events he was a farmer. P-0850's evidence principally dealt with, his knowledge of 'Ali Kushayb';⁸¹¹ the attacks on various villages around Deleig;⁸¹² the background of the tensions between the Fur and Arab tribes;⁸¹³ and the Deleig Operation.⁸¹⁴

⁷⁹⁸ P-0769: T-096, p. 63.

⁷⁹⁹ P-0769: T-096, pp. 63-64.

⁸⁰⁰ P-0769: T-096, p. 65.

⁸⁰¹ P-0769: T-096, pp. 63-65.

⁸⁰² [Defence's Final Brief](#), para. 106.

⁸⁰³ P-0769: T-096, pp. 63-64.

⁸⁰⁴ *Contra* [Defence's Final Brief](#), paras 106, 156-157.

⁸⁰⁵ P-0769: T-096, pp. 63-65.

⁸⁰⁶ P-0769: T-096, pp. 60-61.

⁸⁰⁷ [REDACTED].

⁸⁰⁸ *See* [REDACTED].

⁸⁰⁹ P-0850's Statement, DAR-OTP-0216-0002-R04, at 0002, 0005, paras 11, 15.

⁸¹⁰ P-0850's Statement, DAR-OTP-0216-0002-R04; P-0850's Statement Corrections, DAR-OTP-0224-0642; P-0850: T-044.

⁸¹¹ P-0850's Statement, DAR-OTP-0216-0002-R04, at 0006-0007, 0021-0022, paras 18-20, 75-81; P-0850's Statement Corrections, DAR-OTP-0224-0642, at 000001, paras 2-3, 9; P-0850: T-044, pp. 72-80, 86-88, 91-95.

⁸¹² P-0850's Statement, DAR-OTP-0216-0002-R04, at 0008-0016, 0020, paras 23, 25-57, 74; P-0850's Statement Corrections, DAR-OTP-0224-0642, at 000001, paras 4-7.

⁸¹³ P-0850's Statement, DAR-OTP-0216-0002-R04, at 0008, para. 24.

⁸¹⁴ P-0850's Statement, DAR-OTP-0216-0002-R04, at 0018-0019, paras 64-69.

P-0850's lies to the Prosecution investigator

222. P-0850 admitted lying to a Prosecution investigator who called him on the phone in [REDACTED].⁸¹⁵ The witness told the person who called him that he had seen 'Ali Kushayb' in a car when his village was being attacked, as he knew 'Ali Kushayb' from before the attack and recognised an image of a tiger on the door of 'Ali Kushayb's' house.⁸¹⁶ P-0850 later gave evidence that this was not the truth.⁸¹⁷ He explained that he lied because he did not know who this person was, [REDACTED] and did not trust the identity of the person who had called, could not even be sure that the person really was from the ICC, but when he was later contacted by the Prosecution in 2020, he then told the truth.⁸¹⁸

223. The Chamber notes that P-0850 did not lie about peripheral matters but specifically about 'Ali Kushayb'. The Chamber is satisfied that this negatively affects the credibility of P-0850's evidence on this point and that it cannot rely on his evidence on **the Accused's** role in the events.

Events in Deleig in early March 2004

224. In relation to events that do not relate to 'Ali Kushayb', the Chamber finds P-0850's evidence on the attack on his village by *Janjaweed* and his displacement to Deleig, to be credible and reliable. The Chamber accepts that P-0850 heard the *Janjaweed* using derogatory terms at the start of the arrest operation in Deleig and that he hid to avoid arrest.⁸¹⁹ The Chamber is also satisfied that P-0850 gave credible and reliable evidence on his interaction [REDACTED].⁸²⁰ His reasoning for [REDACTED]—is reasonable and convincing.⁸²¹

26. P-0874

225. P-0874 (DoB 1969), a member of the [REDACTED] tribe, gave *viva voce* evidence over two days.⁸²² At the time of the events, he was [REDACTED].⁸²³ He was [REDACTED]

⁸¹⁵ P-0850: T-044, pp. 60-64, 69-71.

⁸¹⁶ P-0850: T-044, pp. 61-64.

⁸¹⁷ P-0850: T-044, p. 61.

⁸¹⁸ P-0850: T-044, pp. 61-62; 90-91.

⁸¹⁹ P-0850's Statement, DAR-OTP-0216-0002-R04, at 0018-0019, paras 65-69. *Contra* [Defence's Final Brief](#), para. 590.

⁸²⁰ P-0850's Statement, DAR-OTP-0216-0002-R04, at 0019-0020, paras 70-72.

⁸²¹ P-0850's Statement, DAR-OTP-0216-0002-R04, at 0019-0020, para. 71.

⁸²² P-0874's Background, DAR-OTP-00000219; P-0874: T-082; T-083.

⁸²³ P-0874's Background, DAR-OTP-00000219, at 000001, para. 5.

when he gave evidence before the Chamber.⁸²⁴ In 2003-2004, he was [REDACTED]. Thus, he [REDACTED].⁸²⁵ His evidence dealt principally with the Kodoom and Bindisi Operation in August 2003 led by ‘**Ali Kushayb**’.⁸²⁶

Identification of the Accused

226. P-0874’s evidence was that he had been familiar with ‘**Ali Kushayb**’ before the events of 2003, having come to know him [REDACTED].⁸²⁷ ‘**Ali Kushayb**’ left the SAF and opened a pharmacy in Garsila.⁸²⁸ During this period, P-0874 would see ‘**Ali Kushayb**’ in the market since the latter was a recognisable person.⁸²⁹ He would go into the pharmacy around once per month or as required.⁸³⁰ P-0874 gave evidence that in August 2003, ‘**Ali Kushayb**’ came to Mukjar as the *agid al-ogada* in order to negotiate the release of an Arab man who had been captured by the *tora bora*.⁸³¹ Further, around 2005-2006, P-0874 heard that ‘**Ali Kushayb**’ was also called ‘Abu Kasha’.⁸³² Additionally, ‘**Ali Kushayb**’ would sometimes be called ‘Abu Nasir’ because his elder child was called ‘Nasir’.⁸³³

227. The Chamber notes P-0874’s evidence that, in 2005 or 2006, he was told that ‘**Ali Kushayb**’ owned a pharmacy in Nyala which catered to dentistry needs.⁸³⁴ The Defence challenges P-0874’s evidence that **the Accused**—who he knew as ‘**Ali Kushayb**’—ran a veterinary pharmacy, asserting that the pharmacy in Garsila catered to human beings as **the Accused** was not qualified to sell veterinary medication and therefore that P-0874 did not know **the Accused**.⁸³⁵ However, P-0874’s evidence was that this was possible because in Darfur, at that time, there was no strong oversight over such matters and even regular traders sold medication as if it were a regular commodity such as ‘sugar’ or ‘cereal’.⁸³⁶ The Chamber finds this explanation to be credible. Therefore, the Chamber is satisfied that the lack of a license does not demonstrate that it was impossible for **the Accused** have sold veterinary or even dental

⁸²⁴ P-0874’s Background, DAR-OTP-00000219, at 000001, para. 3; P-0874: T-083, pp. 13-14, 83-84.

⁸²⁵ P-0874’s Background, DAR-OTP-00000219, at 000001, para. 7.

⁸²⁶ P-0874: T-082, pp. 20, 22-25, 32-43, 48-49, 56-57, 62-63; T-083, pp. 18-21, 39-49, 54-60, 64-69, 74-77.

⁸²⁷ P-0874: T-082, pp. 6-7, 65-66, 73-74.

⁸²⁸ P-0874: T-082, p. 64.

⁸²⁹ P-0874: T-082, pp. 6-7.

⁸³⁰ P-0874: T-082, pp. 6-7. See [Defence’s Final Brief](#), para. 712.

⁸³¹ P-0874: T-082, pp. 10-12.

⁸³² P-0874: T-082, pp. 7-9.

⁸³³ P-0874: T-082, p. 71.

⁸³⁴ P-0874: T-082, pp. 73-74. See [Defence’s Closing Statements](#): T-162, p. 30.

⁸³⁵ [Defence’s Final Brief](#), paras 721-722.

⁸³⁶ P-0874: T-082, p. 75.

medication.⁸³⁷ Additionally, lack of a license does not demonstrate that P-0874 was telling lies about what was sold in ‘**Ali Kushayb**’s’ pharmacy.

228. P-0874 [REDACTED] ‘**Ali Kushayb**’ in Bindisi on the first day of the Kodoom and Bindisi Operation.⁸³⁸ P-0874 gave evidence that, after the 2004 events, ‘**Ali Kushayb**’ was recruited into the CRF after being trained for six or seven months.⁸³⁹ Therefore, the name ‘**Ali Kushayb**’ [REDACTED].⁸⁴⁰ In court, he was shown **the Accused’s** Passport Photo and identified it as the man he knew as ‘**Ali Kushayb**’.⁸⁴¹

229. The Defence challenges P-0874’s identification of **the Accused** on multiple grounds: (i) the Defence asserts that the identification procedure through a single photograph is flawed and of no value;⁸⁴² (ii) that P-0874 had seen ‘**Ali Kushayb**’ in the media when he surrendered ‘to the United Nations’;⁸⁴³ and (iii) that P-0874 did not see ‘**Ali Kushayb**’ until Bindisi during the Kodoom and Bindisi Operation, and that they did not have a close relationship.⁸⁴⁴

230. In respect of the Defence’s objections, the Chamber first refers to the section on Evidentiary Principles and Considerations.⁸⁴⁵ The Chamber notes that, the period of time over which P-0874 knew ‘**Ali Kushayb**’; the special circumstances of his observations in 2003; his profession; the distance of the observations and the regularity of the observations contribute to P-0874’s credibility and of the reliability of his identification of **the Accused** as ‘**Ali Kushayb**’.⁸⁴⁶ Hence, by the time P-0874 identified ‘**Ali Kushayb**’ as the man in the Passport Photo,⁸⁴⁷ there were so many layers to the correctness of his identification evidence, that it could be properly characterised as identification by recognition.⁸⁴⁸

⁸³⁷ *Contra* [Defence’s Final Brief](#), paras 720-722.

⁸³⁸ P-0874: T-082, pp. 36-40.

⁸³⁹ P-0874: T-083, p. 11.

⁸⁴⁰ P-0874: T-083, p. 12.

⁸⁴¹ P-0874: T-082, p. 47, *referring to* Passport Photo, DAR-OTP-0221-0778. *See* [Defence’s Final Brief](#), para. 116 (The Defence asserts that this identification procedure is flawed and accordingly its value is nugatory as he was shown a single photograph and not an array of photographs). *See* Judgment, Section 4. Evidentiary principles and considerations, paras 217-218.

⁸⁴² [Defence’s Final Brief](#), paras 115-116, 736.

⁸⁴³ P-0874: T-082, pp. 15-16, 87-88. *See* [Defence’s Final Brief](#), para. 736.

⁸⁴⁴ [Defence’s Final Brief](#), paras 407, 712.

⁸⁴⁵ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 217-218.

⁸⁴⁶ *Contra* [Defence’s Final Brief](#), paras 407, 712.

⁸⁴⁷ P-0874: T-083, pp. 46-47, *referring to* Passport Photo, DAR-OTP-0221-0778.

⁸⁴⁸ *Contra* [Defence’s Final Brief](#), para. 116.

231. The Chamber further notes that P-0874 stated in answer to the Defence that he saw on the media that ‘**Ali Kushayb**’ had surrendered ‘to the United Nations’.⁸⁴⁹ However, the Chamber is satisfied that there is no evidence to suggest P-0874’s identification of the man he knew as ‘**Ali Kushayb**’ was affected by the media.⁸⁵⁰ Further, and most importantly, on the basis of the detail provided and the post held by the witness—as elicited above—which gave him access to relevant information, the Chamber is satisfied that P-0874 knew ‘**Ali Kushayb**’, had interacted with him, and was sufficiently acquainted with him so as to render his identification of ‘**Ali Kushayb**’ both credible and reliable.⁸⁵¹ The Chamber finds that P-0874 bore no animus towards **the Accused** and spoke of his character in glowing terms.⁸⁵² Therefore, the Chamber finds that the identification evidence of P-0874 of **the Accused** as ‘**Ali Kushayb**’ is credible and reliable.

The Kodoom and Bindisi Operation

232. P-0874 gave evidence that he saw ‘**Ali Kushayb**’ in early August 2003 when the rebels attacked the CRF camp in Mukjar and ‘**Ali Kushayb**’s’ forces successfully helped to defend the CRF ‘camp’ from the rebel attack.⁸⁵³ As P-0874 [REDACTED], he saw the aftermath of their attack on the villages, (villages burned down and corpses burned inside homes) and saw the looting, plundering and burning of homes in Kodoom and Bindisi.⁸⁵⁴ P-0874 saw ‘**Ali Kushayb**’ in Bindisi [REDACTED].⁸⁵⁵ [REDACTED].⁸⁵⁶ He did so.⁸⁵⁷ Given his [REDACTED], the Chamber is satisfied that P-0874 [REDACTED] during the Kodoom and Bindisi Operation and finds his evidence in this regard both credible and reliable.

233. P-0874 gave evidence that he was [REDACTED].⁸⁵⁸ This happened in August 2003, after the Kodoom and Bindisi Operation.⁸⁵⁹ This procedure [REDACTED].⁸⁶⁰ ‘**Ali Kushayb**’ [REDACTED].⁸⁶¹ The Chamber finds that the evidence [REDACTED] is not in the interest of

⁸⁴⁹ P-0874: T-083, pp. 15-16.

⁸⁵⁰ *Contra* [Defence’s Final Brief](#), para. 736.

⁸⁵¹ *Contra* [Defence’s Final Brief](#), paras 407, 712.

⁸⁵² P-0874: T-082, pp. 80-81.

⁸⁵³ P-0874: T-082, pp. 10-13.

⁸⁵⁴ P-0874: T-082, pp. 13-14, 17-18, 20-26, 32.

⁸⁵⁵ P-0874: T-082, pp. 38-40.

⁸⁵⁶ P-0874: T-082, pp. 38-40.

⁸⁵⁷ P-0874: T-082, pp. 38-40.

⁸⁵⁸ P-0874: T-082, pp. 43-46.

⁸⁵⁹ P-0874: T-082, pp. 19-20; 43-46.

⁸⁶⁰ P-0874: T-082, pp. 44-45.

⁸⁶¹ P-0874: T-083, p. 5.

P-0874,⁸⁶² in that it is an admission of lending assistance to a person who in his view had committed the crimes.⁸⁶³ Accordingly, the Chamber is satisfied that this evidence is credible. However, the Chamber notes that there is no evidence that P-0874 was involved in the events other than [REDACTED] after the Kodoom and Bindisi Operation.⁸⁶⁴

234. The Defence challenges the credibility of P-0874 on the basis that he was an active participant in the attacks [REDACTED] and, therefore, had a personal motive to shift blame to escape liability for his own crimes.⁸⁶⁵ In this regard, the Defence highlights the addition of the name ‘**Ali Kushayb**’ in P-0874’s notebook, citing that it was not added contemporaneously and was added with a view to deflecting blame to ‘**Ali Kushayb**’.⁸⁶⁶ For the reasons stated in the preceding paragraph, the Chamber rejects the Defence argument.

235. P-0874 clearly had an interest in down-playing his [REDACTED] in the events.⁸⁶⁷ Therefore, the Chamber assessed P-0874’s evidence with caution, particularly that directly related to actions of **the Accused** and that relating to the killings (*see* below). However, the Chamber is satisfied that, taken as a whole, his account of these events is detailed, consistent (not only internally but with the evidence of other credible and reliable witnesses to these events), and therefore is evidence on which it can rely.

236. In relation to the persons who were killed in Bindisi, the Chamber notes that P-0874 gave evidence that he had made a [REDACTED].⁸⁶⁸ P-0874 then confirmed as accurate his prior interview with the OTP where he stated that nobody was killed in Bindisi and the *Janjaweed* were only shooting in the air.⁸⁶⁹ Later, when the OTP showed the signed [REDACTED] during re-questioning, he confirmed that he saw the dead bodies in Bindisi on 15 August 2003.⁸⁷⁰ In light of these internal contradictions, the Chamber does not rely on [REDACTED].

⁸⁶² *Contra* [Defence’s Final Brief](#), para. 106.

⁸⁶³ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 177-178.

⁸⁶⁴ P-0874: T-082, pp. 19-20; T-083, pp. 82-83.

⁸⁶⁵ [Defence’s Final Brief](#), paras 106, 407.

⁸⁶⁶ [Defence’s Final Brief](#), paras 115, 407, 722, *referring to* P-0874: T-083, pp. 26, 37, 89.

⁸⁶⁷ *Contra* [Defence’s Final Brief](#), paras 106, 407.

⁸⁶⁸ P-0874: T-082, pp. 35-36, *referring to* [REDACTED].

⁸⁶⁹ P-0874: T-083, p. 66.

⁸⁷⁰ P-0874: T-083, pp. 76-77, *referring to* [REDACTED].

27. P-0877

237. P-0877 (DoB 1968), a member of the Fur tribe,⁸⁷¹ gave *viva voce* evidence over three days.⁸⁷² In 2003 and 2004, he was a [REDACTED].⁸⁷³ In that same year, [REDACTED].⁸⁷⁴ His evidence dealt principally with, the attack on Tendy;⁸⁷⁵ his arrest and detention at Mukjar police station;⁸⁷⁶ the conditions of detention in Mukjar;⁸⁷⁷ and his knowledge of **the Accused**.⁸⁷⁸

Identification of the Accused

238. P-0877's evidence was that after 9 August 2003, when he was returning [REDACTED] [REDACTED] Tendy after it had been attacked, one [REDACTED] told him that the village had been attacked by the forces of '**Ali Kushayb**' and Samih.⁸⁷⁹ This was the first time P-0877 had heard the name '**Ali Kushayb**'.⁸⁸⁰

239. P-0877's account was that he personally met '**Ali Kushayb**' later in August 2003.⁸⁸¹ He was at the Mukjar locality building and saw a man he did not know talking to Samih [REDACTED].⁸⁸² P-0877 heard the man asking questions about Muhammad Abdul Al-Jabbar, [REDACTED].⁸⁸³ [REDACTED], told him that the man asking questions was '**Ali Kushayb**'.⁸⁸⁴ [REDACTED].⁸⁸⁵ P-0877 observed him for about five to six minutes.⁸⁸⁶ P-0877 gave evidence that on that same day, around 12:00 to 13:00, he heard '**Ali Kushayb**' addressing the *Janjaweed*.⁸⁸⁷

240. Further, P-0877 gave evidence that on or about 1 March 2004—the first day of his detention at Mukjar police station—'**Ali Kushayb**' came to the police station.⁸⁸⁸ P-0877 saw

⁸⁷¹ P-0877: T-053, pp. 64, 85.

⁸⁷² P-0877: T-053, pp. 63-94; T-054; T-055.

⁸⁷³ P-0877: T-053, p. 65.

⁸⁷⁴ P-0877: T-053, pp. 64-65.

⁸⁷⁵ P-0877: T-053, pp. 66-67, 80-81.

⁸⁷⁶ P-0877: T-053, pp. 68-69, 81-82; T-054, pp. 5-7; T-055, p. 52.

⁸⁷⁷ P-0877: T-053, pp. 82-93; T-054, pp. 10-23; T-055, pp. 56-64.

⁸⁷⁸ P-0877: T-053, pp. 69-76, 88-91; T-054, pp. 8-16, 45-49.

⁸⁷⁹ P-0877: T-053, pp. 66-67; T-054, pp. 73-74.

⁸⁸⁰ P-0877: T-053, p. 67.

⁸⁸¹ P-0877: T-053, pp. 69-72. [REDACTED].

⁸⁸² P-0877: T-053, pp. 68-70.

⁸⁸³ P-0877: T-053, pp. 71-73.

⁸⁸⁴ P-0877: T-053, p. 72.

⁸⁸⁵ P-0877: T-053, p. 72.

⁸⁸⁶ P-0877: T-053, p. 73.

⁸⁸⁷ P-0877: T-053, pp. 74-76.

⁸⁸⁸ P-0877: T-053, pp. 74, 88.

him carrying an axe and overheard him speaking on his Thuraya phone.⁸⁸⁹ The next day, ‘**Ali Kushayb**’ returned to Mukjar police station and told the detainees; ‘tomorrow, I will show you who you are and who I am’.⁸⁹⁰ At that time, P-0877 was about three to four metres away from ‘**Ali Kushayb**’.⁸⁹¹ On the next day, ‘**Ali Kushayb**’ returned to the police station with Torshein and Lt Col Al-Tayyib.⁸⁹² P-0877 observed ‘**Ali Kushayb**’ beating the detainees, including the *umdaqs*.⁸⁹³ P-0877 [REDACTED].⁸⁹⁴

241. P-0877’s evidence is that he next saw ‘**Ali Kushayb**’ in April 2004,⁸⁹⁵ when he went to Garsila to verify whether the man ‘**Ali Kushayb**’ was the same person who had been in Mukjar.⁸⁹⁶ P-0877 entered the pharmacy, located west of the agricultural bank,⁸⁹⁷ and recognised ‘**Ali Kushayb**’ in a transaction that lasted for about two to three minutes.⁸⁹⁸ P-0877 gave evidence that he last saw ‘**Ali Kushayb**’ in 2007.⁸⁹⁹ P-0877 was at Mukjar market when he saw ‘**Ali Kushayb**’ come out of a CRF vehicle wearing a CRF uniform.⁹⁰⁰

242. The Defence submits that the Chamber should not rely on the correctness of P-0877’s identification of ‘**Ali Kushayb**’ because:

- He did not know the source of information of the person who told him that Tenny had been attacked by ‘**Ali Kushayb**’;⁹⁰¹
- [REDACTED] during his detention, therefore P-0877 was not speaking the truth about being positioned by the door and thereby observing ‘**Ali Kushayb**’;⁹⁰² and
- It is implausible that P-0877 would have entered ‘**Ali Kushayb**’s’ pharmacy and spent five minutes given the insecurity of the times.⁹⁰³

⁸⁸⁹ P-0877: T-053, pp. 88-91.

⁸⁹⁰ P-0877: T-054, pp. 8-10.

⁸⁹¹ P-0877: T-054, pp. 8-10.

⁸⁹² P-0877: T-054, pp. 11-12.

⁸⁹³ P-0877: T-054, pp. 11-16.

⁸⁹⁴ P-0877: T-054, p. 22.

⁸⁹⁵ P-0877: T-054, pp. 45-47; T-055, pp. 75-76.

⁸⁹⁶ P-0877: T-054, pp. 45-47.

⁸⁹⁷ P-0877: T-054, pp. 45-47.

⁸⁹⁸ P-0877: T-054, pp. 45-47.

⁸⁹⁹ P-0877: T-054, pp. 48-49; T-055, p. 76.

⁹⁰⁰ P-0877: T-054, pp. 48-49.

⁹⁰¹ P-0877: T-055, p. 5.

⁹⁰² [Defence’s Final Brief](#), para. 490, referring to P-0877: T-054, pp. 53-54 and P-0932: T-068, p. 52.

⁹⁰³ [Defence’s Closing Statement](#): T-161, pp. 82-83.

243. The Chamber accepts that P-0877 did not see ‘**Ali Kushayb**’ attacking Tendy and did not ascertain how [REDACTED] came to this conclusion. However, the Chamber notes that thereafter, P-0877 personally observed ‘**Ali Kushayb**’ on several occasions in varying conditions, lighting, times and distances in Mukjar.⁹⁰⁴ The Chamber notes that the Defence did not challenge the fact of P-0877’s detention at Mukjar police station. His account of the conditions was confirmed by many other reliable and credible witnesses.⁹⁰⁵ Given the conditions pertaining to the detention in Mukjar police station, the Chamber finds it unsurprising that one witness did not see another and rejects the Defence’s contention that the only conclusion is that P-0877 was untruthful.⁹⁰⁶

244. The Chamber is satisfied that P-0877’s account of his interaction with the man he was told was ‘**Ali Kushayb**’ was detailed and consistent and that the violence directed towards him and others at Mukjar police station was such that he wished to confirm the identity of the man who as in charge thereof. Accordingly, the Chamber is satisfied that P-0877’s rationale for visiting the Garsila pharmacy was credible and finds convincing P-0877’s evidence that this visit confirmed the link between the man who owned the pharmacy and ‘**Ali Kushayb**’ who was involved in the Mukjar events.⁹⁰⁷

Mukjar Operation

245. P-0877 gave evidence that [REDACTED], [REDACTED], told him that the detainees who had been taken from Mukjar police station had been taken to *Khor* Talaba and killed.⁹⁰⁸ P-0877 personally visited three execution sites and saw corpses there.⁹⁰⁹ [REDACTED], identified one of the corpses as *Umdah* Yahya Ahmad Zarruq.⁹¹⁰

246. The Defence argues that the discrepancies in the evidence of the conditions of detention between [REDACTED] render all of their evidence unreliable.⁹¹¹

⁹⁰⁴ P-0877: T-053, pp. 69-76, 88-91; T-054, pp. 8-16, 45-49.

⁹⁰⁵ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 511-515.

⁹⁰⁶ *Contra* [Defence’s Final Brief](#), paras 490, 491.

⁹⁰⁷ *Contra* [Defence’s Final Brief](#), para. 490; [Defence’s Closing Statement](#): T-161, pp. 82-83.

⁹⁰⁸ P-0877: T-054, p. 23.

⁹⁰⁹ P-0877: T-054, pp. 24-42.

⁹¹⁰ P-0877: T-054, pp. 25, 29, 34, 38.

⁹¹¹ [Defence’s Final Brief](#), paras 490-491.

247. As already stated, the Chamber is satisfied that P-0877 was detained at Mukjar police station and that his account of the conditions of detention was credible and reliable.⁹¹² Additionally, given these conditions of detention, it is not surprising that witnesses have differing recollections of what must have been traumatic circumstances.⁹¹³ Therefore, whilst the Chamber accepts that there are minor inconsistencies between these witnesses, it is satisfied that these inconsistencies do not impinge upon P-0877's credibility and reliability.⁹¹⁴

P-0877's Diaries

248. P-0877 gave evidence that while detained at Mukjar police station, [REDACTED].⁹¹⁵ The Defence argues that P-0877's account [REDACTED] is implausible in the circumstances of detention.⁹¹⁶ Further, the Defence [REDACTED].⁹¹⁷ The Chamber is not persuaded that [REDACTED] casts any doubt on the credibility and reliability of P-0877's account.⁹¹⁸ Given that [REDACTED] would not have been foremost in his mind given the conditions of detention.⁹¹⁹

249. P-0877 gave evidence that after his release he made notes in various diaries over the course of time so that he could remember details of the events.⁹²⁰ Upon his interview by the Prosecution, P-0877 relied on his memory but on occasion had recourse to the notes he had made in the diaries.⁹²¹ [REDACTED].⁹²² The Defence argues that the diaries could not be relied upon because P-0877 did not produce them.⁹²³ However, for the same reasons expressed in its assessments of [REDACTED],⁹²⁴ the Chamber is satisfied that P-0877 did make relatively contemporaneous notes of the events. Having considered P-0877's very detailed account, the cogency and precision of his evidence, including the dates of events, the Chamber

⁹¹² *Contra* [Defence's Final Brief](#), paras 490-491, 520.

⁹¹³ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

⁹¹⁴ *Contra* [Defence's Final Brief](#), paras 490-491.

⁹¹⁵ P-0877: T-053, pp. 86-87.

⁹¹⁶ [Defence's Final Brief](#), para. 493.

⁹¹⁷ [Defence's Final Brief](#), para. 493, *referring to* P-0919: T-060, pp. 63-65.

⁹¹⁸ *Contra* [Defence's Final Brief](#), para. 493.

⁹¹⁹ *See* Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 503, 511, 527, 530. [REDACTED].

⁹²⁰ P-0877: T-055, pp. 6-8.

⁹²¹ P-0877: T-055, pp. 6-8.

⁹²² P-0877: T-055, pp. 9-11.

⁹²³ [Defence's Final Brief](#), para. 493.

⁹²⁴ [REDACTED].

is satisfied that P-0877 wrote [REDACTED] and subsequently transferred this information into paper form and that his evidence in this regard can be relied upon.⁹²⁵

Minister Harun's visits

250. P-0877 gave evidence that Minister Harun visited Mukjar on three occasions.⁹²⁶ On the first occasion, P-0877 witnessed a meeting between Samih, Torshein and Minister Harun, while he was detained at the locality building in August 2003.⁹²⁷ P-0877 also heard that Minister Harun came to Mukjar in January 2004 and held a meeting at the locality building.⁹²⁸ P-0877 also stated that when he was detained in March 2004, Minister Harun came to Mukjar police station where P-0877 was able to overhear '**Ali Kushayb**' speaking to Minister Harun.⁹²⁹ The Chamber notes that P-0877's evidence in this regard is first-hand and P-0877 was careful to only testify about what he had seen and heard himself. Therefore, the Chamber is satisfied that P-0877's evidence in relation to Minister Harun's visits is credible and reliable.

251. The Defence questioned P-0877 [REDACTED] Mukjar police station, whereas in his evidence, P-0877 made it clear that Minister Harun was not present at that time.⁹³⁰ The Chamber finds persuasive P-0877's explanation [REDACTED].⁹³¹ Further, the Chamber is satisfied that, [REDACTED], any inconsistencies between the [REDACTED] account and P-0877's account do not render P-0877's evidence unreliable.⁹³²

Collusion with other witnesses

252. Having argued that the inconsistencies between witnesses detained at Mukjar police station mean all are unreliable (which has been discussed above), the Defence at the same time argues that [REDACTED] all testified about mistreatment by '**Ali Kushayb**' in such similar terms as to suggest these witnesses must have colluded,⁹³³ and that this is 'the phenomenon of collective memory' between the witnesses (*i.e.* [REDACTED]) living in the same place and making the statements after the announcement of the arrest warrant against **the Accused**.⁹³⁴

⁹²⁵ *Contra* [Defence's Final Brief](#), para. 493.

⁹²⁶ P-0877: T-053, pp. 68-71, 77, 79-80, 91-92.

⁹²⁷ P-0877: T-053, pp. 68-71.

⁹²⁸ P-0877: T-053, pp. 79-80.

⁹²⁹ P-0877: T-053, pp. 91-92.

⁹³⁰ [Defence's Final Brief](#), para. 503, [REDACTED].

⁹³¹ P-0877: T-054, p. 87.

⁹³² *Contra* [Defence's Final Brief](#), para. 503.

⁹³³ [Defence's Final Brief](#), paras 501, 506.

⁹³⁴ [Defence's Final Brief](#), para. 501.

Moreover, the Defences argues that [REDACTED], thus demonstrating collusion between the two.⁹³⁵ The Chamber is satisfied that not only is there no evidence of collusion but that the inconsistencies in their evidence, which have been enumerated by the Defence, militate against a finding of collusion.⁹³⁶ The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.

28. P-0878

253. P-0878 (DoB 1968), a member of the Fur tribe, gave *viva voce* evidence over three days.⁹³⁷ At the time of the events, [REDACTED].⁹³⁸ His evidence principally dealt with: the rebel attack on Bindisi on 1 August 2003 and the arrival of the *Janjaweed* under the command of **the Accused**;⁹³⁹ the rebel attack on Mukjar on 8 August, followed by the arrival there of **the Accused** and his forces, which included Samih and Bonjouse;⁹⁴⁰ his knowledge of **the Accused**;⁹⁴¹ the arrival in Mukjar on 9 August 2003 of a high-level delegation;⁹⁴² and [REDACTED] **the Accused** and the *Janjaweed*, [REDACTED], to the Kodoom and Bindisi Operation.⁹⁴³

P-0878's Notes

254. Similarly to [REDACTED] P-0878 was able to provide a wealth of detail, in respect of the events he witnessed. He stated that during that period he kept a small diary in which he would record dates and events.⁹⁴⁴ [REDACTED].⁹⁴⁵ In fact, his original account which he provided to the Prosecution was written entirely by him in the form of notes—based on his original handwritten notes.⁹⁴⁶ He did not bring the notebooks to court, although he agreed that the Prosecution had told him they would like to see them.⁹⁴⁷

⁹³⁵ [Defence's Final Brief](#), para. 503.

⁹³⁶ *Contra* [Defence's Final Brief](#), paras 501, 503, 504, 506.

⁹³⁷ P-0878: T-077; T-078; T-079.

⁹³⁸ P-0878: T-077, pp. 46-47.

⁹³⁹ P-0878: T-077, pp. 47-50; T-079, pp. 11-19.

⁹⁴⁰ P-0878: T-077, pp. 53-59.

⁹⁴¹ P-0878: T-077, pp. 59-62; T-078, pp. 25-26; T-079, pp. 20-22, 68, 89.

⁹⁴² P-0878: T-077, pp. 63-65; T-078, pp. 8-14; T-079, pp. 34-43.

⁹⁴³ P-0878: T-077, pp. 62-63; T-078, pp. 17-21, 24, 30-36, 41-48, 53-65; T-079, pp. 7-11, 43-59, 61-68, 84-86, 89.

⁹⁴⁴ P-0878: T-077, p. 17; T-078, p. 73; T-079, pp. 22, 25.

⁹⁴⁵ P-0878: T-079, pp. 23-24.

⁹⁴⁶ P-0878: T-078, pp. 72-74; T-079, pp. 24-27.

⁹⁴⁷ P-0878: T-078, p. 74; T-079, pp. 23-27.

255. Save for the general challenge to his credibility, the Defence when questioning the witness made no specific challenge as to the existence of these notes.⁹⁴⁸ However, it suggests that his account of having notebooks was ‘fictitious’.⁹⁴⁹

256. For the same reasons as expressed in its assessment of [REDACTED], the Chamber is satisfied that P-0878 did indeed make relatively contemporaneous notes of the events.⁹⁵⁰ It is those notes which enabled him to give the details of the events—and write his first account to the Prosecution unassisted by investigators—and those details assisted the Chamber in concluding that his account of what took place during the operation, for the most part, is credible and reliable.

257. Further, [REDACTED], the Chamber is satisfied that his explanation of transferring them into separate notebooks, because of the danger to him if the original was discovered, is credible.⁹⁵¹

Knowledge of the Accused

258. P-0878 gave evidence that he had known **the Accused** since [REDACTED].⁹⁵² At that stage **the Accused** was still in the medical unit of the SAF.⁹⁵³ He described him as ‘well-known’.⁹⁵⁴ P-0878 stated that he got to know him when he retired and opened a medical stall in the market,⁹⁵⁵ and later [REDACTED] **the Accused** during the Kodoom and Bindisi Operation.⁹⁵⁶ During his evidence on the first day, he repeatedly identified **the Accused** in court as ‘**Ali Kushayb**’.⁹⁵⁷

259. No specific challenges were put to him by the Defence on the issue of identification, other than that **the Accused** was not the man he described as ‘**Ali Kushayb**’ and that he was an untruthful witness on whose evidence no reliance could be placed.⁹⁵⁸

⁹⁴⁸ P-0878: T-077, p. 17; T-078, pp. 72-74; T-079, pp. 24-27.

⁹⁴⁹ [Defence’s Final Brief](#), para. 119.

⁹⁵⁰ *Contra* [Defence’s Final Brief](#), para. 119. [REDACTED].

⁹⁵¹ *Contra* [Defence’s Final Brief](#), para. 119.

⁹⁵² P-0878: T-077, pp. 15-17.

⁹⁵³ P-0878: T-079, pp. 20-21, 60.

⁹⁵⁴ P-0878: T-079, p. 21.

⁹⁵⁵ P-0878: T-078, pp. 59-62; T-079, pp. 20-22.

⁹⁵⁶ P-0878: T-077, pp. 62-63.

⁹⁵⁷ P-0878: T-077, p. 49; T-078, pp. 59, 64; T-079, p. 84.

⁹⁵⁸ P-0878: T-079, pp. 83-84.

260. The Chamber is satisfied that P-0878's account of the man whom he knew as '**Ali Kushayb**' in Garsila is credible and consistent with other witnesses who also encountered **the Accused** during the period before the latter left the SAF and later as the proprietor of a pharmacy in Garsila market.⁹⁵⁹

261. It is also satisfied—nor was it challenged—that [REDACTED] with the forces which undertook the Kodoom and Bindisi Operation and that during that period he was [REDACTED] **the Accused**.⁹⁶⁰ The fact that he demonstrated some animosity towards **the Accused**, while giving evidence, is explicable, in light of how the Defence began their questioning, namely 'I want you to understand very clearly what I say about your testimony. I want you to be in no doubt. Since Wednesday afternoon and throughout your testimony yesterday, you have told the Court lie after lie after lie'.⁹⁶¹ Accordingly, the Chamber finds that it was this accusation which may have prompted P-0878's hostile reaction and therefore does not undermine his credibility.

Events related to Arrival of Delegation in Mukjar

262. P-0878 described in detail the arrival in a helicopter at the Mukjar CRF base on 9 August 2003 of high-level dignitaries from Khartoum, including Minister Harun.⁹⁶² He stated that there was an original meeting with Torshein, Lt Col Himeidan and '**Ali Kushayb**' and then a series of speeches in public by '**Ali Kushayb**', Minister Harun, and Ali Karti.⁹⁶³ Those present for the speeches included members of the *Janjaweed*.⁹⁶⁴

263. It was pointed out by the Defence that his notes had no reference to a speech made by '**Ali Kushayb**'.⁹⁶⁵ His response was that his concern was to focus on those made by the GoS representatives.⁹⁶⁶ His account of who spoke at the meeting differs from that of [REDACTED], but the Chamber is satisfied that such discrepancies are to be expected in recollections of what was clearly an unexpected and dramatic event.

⁹⁵⁹ See Judgment, paras 262, 266. *Contra* [Defence's Final Brief](#), paras 700, 726. See also the Chamber's assessment of the evidence of P-0581, P-0012 and P-0907, Annex B, Sections I.A.12, I.A.3 and I.A.33.

⁹⁶⁰ P-0878: T-078, pp. 58-65.

⁹⁶¹ P-0878: T-079, p. 15.

⁹⁶² P-0878: T-077, pp. 63-65; T-078, pp. 8-14.

⁹⁶³ P-0878: T-078, pp. 8-14; T-079, pp. 34-43.

⁹⁶⁴ P-0878: T-077, pp. 63-65; T-078, pp. 8-13; T-079, pp. 34-43.

⁹⁶⁵ P-0878: T-079, pp. 38-43.

⁹⁶⁶ P-0878: T-079, pp. 41-42.

264. The visit by this delegation was not specifically challenged by the Defence and P-0878's assertion that he was concentrating on speeches made by GoS representatives is borne out by the record of [REDACTED].⁹⁶⁷ P-0878 gave a detailed account of how he came to be present in the vicinity which is logically consistent with the events which followed, resulting [REDACTED] during the Kodoom and Bindisi Operation.⁹⁶⁸ The Chamber is therefore satisfied that his evidence on this aspect of the events is credible and reliable.

The Kodoom and Bindisi Operation

265. There is no dispute that P-0878 [REDACTED] during the Kodoom and Bindisi Operation.⁹⁶⁹ [REDACTED].⁹⁷⁰ [REDACTED].⁹⁷¹ [REDACTED].⁹⁷² [REDACTED].⁹⁷³

266. The Defence made it clear questioning that P-0878's explanation of the reason [REDACTED] seemed illogical and indeed, at one stage, he accepted that was not the reason [REDACTED].⁹⁷⁴ [REDACTED].⁹⁷⁵

267. The Chamber notes that P-0878's account of the detail of the operation was inconsistent in a number of respects with those given by [REDACTED].⁹⁷⁶ The major ones related to:

- Who was present when [REDACTED];⁹⁷⁷
- How it was that [REDACTED];⁹⁷⁸
- Who [REDACTED],⁹⁷⁹ [REDACTED] [REDACTED];⁹⁸⁰ and

⁹⁶⁷ P-0878: T-078, pp. 71-72, *referring to* P-0878's Record, DAR-OTP-0220-2280.

⁹⁶⁸ P-0878: T-077, pp. 62-63; T-078, pp. 17-21, 24, 30-36, 41-48, 53-65; T-079, pp. 7-11, 43-59, 61-68, 84-86, 89.

⁹⁶⁹ P-0878: T-078, pp. 18-26, 30-37, 41-48, 51-64; T-079, pp. 45-67, 82-83, 86-87.

⁹⁷⁰ P-0878: T-078, pp. 21-24; T-079, pp. 45-46, 54-56, 82, 85-86, 89-90. The Chamber notes that P-0878, in his evidence, referred to the *Janjaweed* as 'PDF'. This is understandable because the *Janjaweed* were in some way integrated into the PDF by the GoS. *See* Judgment, paras 330, 333.

⁹⁷¹ P-0878: T-078, p. 24; T-079, pp. 45-46, 54-56, 85-86, 89-90.

⁹⁷² P-0878: T-078, pp. 23-24; T-079, pp. 86, 89-90.

⁹⁷³ P-0878: T-078, pp. 21-24; T-079, pp. 48-54, 64.

⁹⁷⁴ P-0878: T-079, pp. 48-54.

⁹⁷⁵ *See* [REDACTED].

⁹⁷⁶ *See* [Defence's Final Brief](#), paras 384, 391-395, 397, 402-404, 419.

⁹⁷⁷ [REDACTED]

⁹⁷⁸ P-0878: T-078, p. 19; [REDACTED].

⁹⁷⁹ P-0878's Record, DAR-OTP-0220-2280.

⁹⁸⁰ P-0878: T-078, pp. 19-21, 29-30, 34; [REDACTED].

- The disposition of the *Janjaweed* after the attack on Nyerli.⁹⁸¹

268. As already stated, the Defence does not challenge that P-0878 [REDACTED].⁹⁸² Indeed, its case is that he was an ‘active’ participant in the operation and that his naming of ‘**Ali Kushayb**’ as the leader, both in evidence and [REDACTED] was an attempt to deflect attention from himself.⁹⁸³ The Defence also suggested that P-0878 wanted to shift blame on to **the Accused**.⁹⁸⁴ However, since there was no evidence or indeed no suggestion that P-0878 was in command during the operation, there is no logic to the assertion that this was P-0878’s motive and the Chamber is satisfied that this submission has no merit.

269. The Defence further suggested [REDACTED].⁹⁸⁵ The Chamber is satisfied that this last suggestion was a wholly unrealistic one in light of the circumstances of the indisputable events of a series of attacks being carried out by an armed force.

270. Moreover, at no stage was any suggestion made to him in respect of the form which his ‘active’ participation was supposed to have taken. [REDACTED].⁹⁸⁶ [REDACTED].⁹⁸⁷ Accordingly, as already stated, the Chamber is satisfied that [REDACTED] during the said operation and therefore for the most part his evidence is to be preferred, where there are inconsistencies between his account and those of [REDACTED].⁹⁸⁸ Both [REDACTED], taken with the fact that both were reliant on memory of events taking place 20 years earlier, required the Chamber to exercise caution when assessing the reliability of their evidence—as further explained in its assessments of the credibility [REDACTED].⁹⁸⁹

271. The exception to this general finding comes in respect of P-0878’s evidence relating to the sequence of events [REDACTED].⁹⁹⁰ [REDACTED].⁹⁹¹ On the other hand, in his evidence

⁹⁸¹ P-0878: T-078, pp. 33, 36; [REDACTED].

⁹⁸² [Defence’s Final Brief](#), para. 402.

⁹⁸³ P-0878: T-079, pp. 66, 81-82. *See also* [Defence’s Final Brief](#), paras 117, 121, 386, 683.

⁹⁸⁴ [Defence’s Final Brief](#), paras 106, 118, 403, 419.

⁹⁸⁵ P-0878: T-079, pp. 57-58, 66-67. *See also* [Defence’s Final Brief](#), para. 403.

⁹⁸⁶ P-0878: T-079, pp. 54-55.

⁹⁸⁷ P-0878: T-077, pp. 46-47.

⁹⁸⁸ *Contra* [Defence’s Final Brief](#), paras 125-126, 370, 384-397, 402-404, 419.

⁹⁸⁹ *See* [REDACTED]

⁹⁹⁰ P-0878: T-078, pp. 17-18, 24, 30-36, 41-48; T-079, pp. 53-59, 84-86.

⁹⁹¹ P-0878: T-078, pp. 30-31, 34.

in court, [REDACTED].⁹⁹² For the most part the evidence from other witnesses is consistent with ‘**Ali Kushayb**’ being in a vehicle during the operation.⁹⁹³

272. The Chamber notes that the evidence, taken as a whole shows that some witnesses saw **the Accused** in a vehicle,⁹⁹⁴ and some on a horse.⁹⁹⁵ Given the lengthy nature of the operation, the Chamber does not find that this reflects necessarily an irreconcilable inconsistency between witness accounts, save that P-0878 was clear that [REDACTED].

273. Whilst the Chamber is not persuaded by his account that [REDACTED], the Chamber is of the opinion that witnesses may be truthful on some aspects and not truthful on others.⁹⁹⁶ The Chamber has drawn the conclusion from all the circumstances that P-0878 believed from the moment [REDACTED] as indeed was the suggestion made to him, in terms, by the Defence.⁹⁹⁷

274. The Defence further argues, generally, that:

- These discrepancies demonstrate that all the witnesses attempted to distance themselves from the alleged events out of fear of self-incrimination and had an interest in blaming anyone else to protect themselves;⁹⁹⁸
- The Chamber has no means of preferring the evidence of one witness over another;⁹⁹⁹ and
- The witnesses [REDACTED].¹⁰⁰⁰

275. The Chamber accepts that, in the case of witnesses who played a role, whether willingly or unwillingly, in the perpetration of crimes, it is incumbent upon it to take such factors into account when examining the evidence and assessing the credibility of the witnesses. However, the Chamber rejects the Defence argument that, where there are inconsistencies, even major ones, it is precluded from finding a witness may be credible and reliable in some aspects of

⁹⁹² [REDACTED].

⁹⁹³ [REDACTED].

⁹⁹⁴ [REDACTED].

⁹⁹⁵ [REDACTED].

⁹⁹⁶ See Judgment, Section 4. Evidentiary principles and considerations, paras 219-220.

⁹⁹⁷ See P-0878: T-079, p. 15. *Contra* [Defence’s Final Brief](#), paras 117, 120-121, 385; [Defence’s Closing Statements](#): T-161, pp. 74-75.

⁹⁹⁸ [Defence’s Final Brief](#), paras 106, 403, 419.

⁹⁹⁹ [Defence’s Final Brief](#), para. 419.

¹⁰⁰⁰ [Defence’s Final Brief](#), para. 390.

their evidence and not in others.¹⁰⁰¹ Such assessments are part of the fact-finding function of a Chamber and reflect the reality of human experience.

Collusion with other witnesses

276. The Defence suggests that there is evidence of collusion between P-0878, [REDACTED] either because of friendship or family connections or simply because they worked together.¹⁰⁰²

277. No such suggestion was ever put to any of these witnesses when they gave evidence. The Chamber is unpersuaded that the evidence referred to by the Defence in support of its allegation provides a basis for the suggestion of collusion. Not only is there no evidence of collusion but the inconsistencies in their evidence militate against a finding of collusion. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.¹⁰⁰³

29. P-0883

278. P-0883, a member of the [REDACTED] tribe,¹⁰⁰⁴ gave *viva voce* evidence over four days.¹⁰⁰⁵ He was [REDACTED].¹⁰⁰⁶ He [REDACTED].¹⁰⁰⁷ His evidence principally dealt with: his knowledge of **the Accused**;¹⁰⁰⁸ the structure of the military;¹⁰⁰⁹ [REDACTED];¹⁰¹⁰ the weapons distribution to the *Janjaweed* in February 2004;¹⁰¹¹ the events in Garsila in 2004;¹⁰¹² and the Deleig Operation.¹⁰¹³

¹⁰⁰¹ *Contra* [Defence's Final Brief](#), paras 126, 419.

¹⁰⁰² [Defence's Final Brief](#), paras 132, 142, 396, 399.

¹⁰⁰³ *Contra* [Defence's Final Brief](#), paras 132, 396, 399.

¹⁰⁰⁴ P-0883: T-071, p. 6.

¹⁰⁰⁵ P-0883: T-071; T-072; T-073; T-074.

¹⁰⁰⁶ P-0883: T-071, pp. 6-8.

¹⁰⁰⁷ P-0883: T-071, p. 8.

¹⁰⁰⁸ P-0883: T-071, pp. 14-25, 55-57, 60-61; T-072, pp. 15, 17-19, 25-27, 34-45, 47; T-073, pp. 49-51, 57, 61, 78-82; T-074, pp. 2-15, 17, 19-30, 34, 69-70.

¹⁰⁰⁹ P-0883: T-071, pp. 8-10, 25-27, 72-74; T-072, pp. 15-17, 53-62.

¹⁰¹⁰ P-0883: T-071, pp. 74-77; T-072, pp. 10-11, 62-69, 76-77.

¹⁰¹¹ P-0883: T-071, pp. 27-38; T-072, pp. 19-15; T-074, pp. 42-44.

¹⁰¹² P-0883: T-071, pp. 38-67; T-072, pp. 4-9, 69-74; T-073, pp. 2-14; T-074, pp. 41, 74-77.

¹⁰¹³ P-0883: T-071, pp. 67-72, 77-81; T-074, pp. 40, 47-56, 65.

P-0883's Notes

279. P-0883, when originally interviewed by the OTP, provided handwritten notes relating to some of the events he described.¹⁰¹⁴ He stated that the notes had been compiled in about 2003 or 2004.¹⁰¹⁵ However, when the Defence pointed out to the witness that an event which took place in 2006 was recorded in his notes, P-0883's response was that he could not now remember when he wrote the notes.¹⁰¹⁶ In its Final Brief, the Defence suggests that he did not tell the truth.¹⁰¹⁷

280. For the same reasons expressed in its assessments of [REDACTED], the Chamber is satisfied that P-0883 did indeed make relatively contemporaneous notes of the events.¹⁰¹⁸ As he explained in evidence, the notes were written at different times and under difficult circumstances.¹⁰¹⁹ Therefore, the Chamber finds it unsurprising that he was unable to recall exactly when each note was made. Moreover, the notes were made available to the Chamber and parties which, in the opinion of the Chamber, supported his account of the circumstances described by the witness. It is those notes which enabled him to give the details of the events and those details assisted the Chamber in concluding that his account of what took place during the events he witnessed, for the most part, is credible and reliable.

[REDACTED] Report on the Deleig Operation

281. [REDACTED].¹⁰²⁰ [REDACTED].¹⁰²¹ [REDACTED].¹⁰²² [REDACTED] [REDACTED].¹⁰²³ [REDACTED].¹⁰²⁴ [REDACTED].¹⁰²⁵ [REDACTED].¹⁰²⁶

282. [REDACTED].¹⁰²⁷ [REDACTED].¹⁰²⁸

¹⁰¹⁴ P-0883: T-072, p. 48.

¹⁰¹⁵ P-0883: T-072, p. 48.

¹⁰¹⁶ P-0883: T-072, pp. 78-80.

¹⁰¹⁷ [Defence's Final Brief](#), para. 145.

¹⁰¹⁸ [REDACTED].

¹⁰¹⁹ P-0883: T-072, pp. 48-51, 77-80.

¹⁰²⁰ P-0883: T-071, pp. 70, 74-76; T-072, p. 8; T-073, p. 26; T-074, p. 53. [REDACTED]

¹⁰²¹ P-0883: T-071, p. 75.

¹⁰²² P-0883: T-071, pp. 70-71, 75-76; T-074, p. 53. [REDACTED].

¹⁰²³ P-0883: T-071, p. 70.

¹⁰²⁴ P-0883: T-071, pp. 76-77.

¹⁰²⁵ P-0883: T-071, pp. 70, 75-78. *See also* [REDACTED] [REDACTED].

¹⁰²⁶ [REDACTED].

¹⁰²⁷ P-0883: T-071, pp. 70-71; T-073, pp. 22-25; T-074, pp. 65-66.

¹⁰²⁸ [REDACTED].

283. Although the report on the incidents in Deleig is not in evidence, the Chamber is satisfied that such a report existed. However, without access to a copy of the report, the witnesses' evidence thereon is of limited probative value and therefore, the Chamber does not rely on the alleged content of the report.¹⁰²⁹

Knowledge of the Accused

284. P-0883 provided a detailed account of his relationship with the man he knew as '**Ali Kushayb**', and explained how he came to understand that '**Ali Kushayb's**' full name was **Ali Muhammad Ali Abd-Al-Rahman**.¹⁰³⁰ The witness provided detailed information in relation to **the Accused's** personal background, such as that he belonged to the Ta'aisha tribe and that he worked as a doctor or medical assistant in Garsila holding the rank of *musa'id* in the armed forces.¹⁰³¹ Additionally, he knew that **the Accused** had a small shop near the Agricultural Bank in Wadi Salih, where he sold medicines to people and stocked veterinary medicine.¹⁰³² P-0883 not only met '**Ali Kushayb**' often in Garsila marketplace [REDACTED],¹⁰³³ but also visited his pharmacy when he needed medicine.¹⁰³⁴ This information is consistent with the evidence of other witnesses.¹⁰³⁵ Moreover, [REDACTED] '**Ali Kushayb's**' younger brother, who also looked like him and whose name was Hassan Muhammed Ali Abd-Al-Rahman,¹⁰³⁶ and recalled that '**Ali Kushayb**' had a son who was a fighter in the SAF who was killed while on a mission to Jebel Marra.¹⁰³⁷

285. P-0883 added that '**Ali Kushayb**' was 'well-known' in the area and they had [REDACTED].¹⁰³⁸ P-0883 [REDACTED],¹⁰³⁹ and even had occasion to speak directly to '**Ali Kushayb**'.¹⁰⁴⁰ P-0883 saw and spoke with 'Ali Muhammed Abd-Al-Rahman'

¹⁰²⁹ [Defence's Final Brief](#), para. 570.

¹⁰³⁰ P-0883: T-071, p. 19.

¹⁰³¹ P-0883: T-071, pp. 17-18, 25.

¹⁰³² P-0883: T-071, pp. 14-15, 20.

¹⁰³³ P-0883: T-071, pp. 20-21.

¹⁰³⁴ P-0883: T-071, pp. 20, 22-23; T-074, p. 7.

¹⁰³⁵ See for example P-0012's Statement, DAR-OTP-0119-0503-R01, at 0512, para. 38; P-0012: T-045, pp. 8-9; T-046, p. 7; P-0585: T-099, pp. 39-40, 44; P-0643: T-056, pp. 23, 26-27; P-0874: T-082, p. 64; P-0905: T-085, pp. 17-21; T-087, p. 21. See also the Chamber's assessment of the evidence of P-0012, P-0585, P-0643, P-0874 and P-0905, Annex B, Sections I.A.3, I.A.14, I.A.15, I.A.26 and I.A.32.

¹⁰³⁶ P-0883: T-071 p. 24. See also P-0883: T-073 p. 79.

¹⁰³⁷ P-0883: T-074, p. 8.

¹⁰³⁸ P-0883: T-071, pp. 21, 24; T-074, p. 7.

¹⁰³⁹ P-0883: T-071, p. 7.

¹⁰⁴⁰ P-0883: T-071, pp. 46, 65-67.

[REDACTED].¹⁰⁴¹ P-0883 gave evidence that ‘**Ali Kushayb**’ always carried around an axe with a long handle.¹⁰⁴²

286. P-0883 further interacted with **the Accused** after the events of 2004. His evidence was [REDACTED].¹⁰⁴³ On another occasion, P-0883 [REDACTED].¹⁰⁴⁴ In addition, after P-0883 [REDACTED], he would see ‘**Ali Kushayb**’ there on a monthly basis at the marketplace.¹⁰⁴⁵ The Defence suggested to the witness that it was possible that ‘**Ali Kushayb**’ did not exist and was invented to take the blame for the crimes committed by others. The witness denied this.¹⁰⁴⁶

287. During his evidence P-0883 on several occasions pointed to **the Accused**.¹⁰⁴⁷ Additionally, P-0883 was able to identify **the Accused** in the Teachers’ video.¹⁰⁴⁸ In fact the Defence does not dispute that P-0883 knew **the Accused** as the pharmacist in Garsila but dispute that he became known as ‘**Ali Kushayb**’.¹⁰⁴⁹

288. The Defence suggests that P-0883’s evidence on **the Accused** is not credible on the basis that:

- His explanation for knowing ‘**Ali Kushayb**’s’ full name was based on assumptions about **Abd-Al-Rahman** having a brother named Hassan, of which there is no evidence;¹⁰⁵⁰
- He did not explain how he remembered ‘**Ali Kushayb**’s’ name ten years after having heard it once;¹⁰⁵¹
- His claim that ‘**Ali Kushayb**’ was the leader of the CRF is incompatible with **Abd-Al-Rahman** joining the CRF in July 2005 as a simple ‘recruit’;¹⁰⁵² and

¹⁰⁴¹ P-0883: T-071, pp. 64-67.

¹⁰⁴² P-0883: T-072, pp. 26-27.

¹⁰⁴³ P-0883: T-072, p. 38.

¹⁰⁴⁴ P-0883: T-072, pp. 47-48.

¹⁰⁴⁵ P-0883: T-072, pp. 37-38.

¹⁰⁴⁶ P-0883: T-073, p. 79. The witness pointed to **the Accused** at that time. *See also* P-0883: T-073, p. 83.

¹⁰⁴⁷ *See for example* P-0883: T-073, pp. 79, 83. *See also* Judgment, Section 4. Evidentiary principles and considerations, paras 214-215.

¹⁰⁴⁸ P-0883: T-072, pp. 40-44, *referring to* Teachers Video, DAR-OTP-0215-2697.

¹⁰⁴⁹ P-0883: T-074, p. 18.

¹⁰⁵⁰ [Defence’s Final Brief](#), paras 146, 713.

¹⁰⁵¹ [Defence’s Final Brief](#), para. 147.

¹⁰⁵² [Defence’s Final Brief](#), para. 147.

- It is not [REDACTED].¹⁰⁵³

289. The Chamber is satisfied that, whilst P-0883's evidence of **the Accused's** full name was based on inferences in relation to the brother of **the Accused**, this does not diminish P-0883's credibility in relation to the name of **the Accused**.¹⁰⁵⁴ Although the Defence argues that there is no evidence of **the Accused** having a brother named Hassan,¹⁰⁵⁵ what P-0883 said in court is evidence and no evidence has been adduced which calls into question the veracity of P-0883's assertion. Indeed, the Chamber finds that the lack of embellishment in P-0883's evidence is an indicator of its reliability. The fact that P-0883 could not recall precisely which years he heard of and met '**Ali Kushayb**'¹⁰⁵⁶ is consistent with him having seen '**Ali Kushayb**' regularly over several years in the Garsila marketplace and in the neighbourhood [REDACTED], as well as the witness's evidence that '**Ali Kushayb**' was a 'well-known' person in Wadi Salih.¹⁰⁵⁷

290. Similarly, P-0883's description of '**Ali Kushayb**' becoming the leader of the CRF is not incompatible with other evidence on the record.¹⁰⁵⁸ Indeed, D-0032 explained that everyone joined the CRF as a 'recruit'.¹⁰⁵⁹ P-0883 clearly explained the basis on which he understood '**Ali Kushayb**' to be the (*de facto*, if not *de jure*) leader of the CRF, which is that the witness observed police officers standing up to salute '**Ali Kushayb**' when he arrived at an event.¹⁰⁶⁰

291. Finally, having known and interacted personally with '**Ali Kushayb**' over many years, the Chamber finds that is conceivable that P-0883 [REDACTED].¹⁰⁶¹ The Defence's claim that P-0883 'lack[ed] personal knowledge of '**Ali Kushayb**' is, in this respect, without foundation.¹⁰⁶²

¹⁰⁵³ [Defence's Final Brief](#), para. 730, referring to P-0883: T-072, p. 38.

¹⁰⁵⁴ *Contra* [Defence's Final Brief](#), para. 146.

¹⁰⁵⁵ [Defence's Final Brief](#), para. 146.

¹⁰⁵⁶ P-0883: T-071, pp. 19-21.

¹⁰⁵⁷ P-0883: T-071, pp. 20-22. *Contra* [Defence's Final Brief](#), paras 146, 147, 148, 713.

¹⁰⁵⁸ *Contra* [Defence's Final Brief](#), para. 147.

¹⁰⁵⁹ D-0032: T-140, pp. 39-40. *See also* the Chamber's assessment of D-0032's evidence, Annex B, Section I.B.13.

¹⁰⁶⁰ P-0883: T-073, pp. 47-48.

¹⁰⁶¹ P-0883: T-072, p. 38.

¹⁰⁶² *Contra* [Defence's Final Brief](#), para. 730.

292. The Chamber is therefore satisfied that P-0883 knew **the Accused** well and had a [REDACTED] over a long period of time; and that he knew **the Accused** as ‘**Ali Kushayb**’.¹⁰⁶³

Weapons distribution to the *Janjaweed* and visit of a delegation to Garsila in February 2004

293. P-0883 gave evidence that a lorry containing arms and ammunition [REDACTED].¹⁰⁶⁴ Whilst Lt Hamdi was directly in charge of the distribution, according to P-0883 this was done in conjunction with ‘**Ali Kushayb**’.¹⁰⁶⁵ P-0883 also described the visit of the delegation (including Minister Harun) as taking place on the last day of the distribution of weapons.¹⁰⁶⁶

294. The Defence points to the inconsistencies in this aspect of P-0883’s evidence with that of P-0905 who stated that Abd-al-Mun’im was in charge of the distribution which lasted a month.¹⁰⁶⁷ In respect of the delegation, P-0905 stated it happened ‘less than a month’ later.¹⁰⁶⁸ Moreover there are also inconsistencies between the account given by P-0883 and P-0935 as to the composition of the delegation.¹⁰⁶⁹

295. The Chamber is satisfied that [REDACTED] evidence supports the finding of the presence of the delegation.¹⁰⁷⁰ The Chamber is further satisfied that by virtue of [REDACTED], P-0883 was in a better position than either [REDACTED] to assess and recall these events, particularly as he [REDACTED].¹⁰⁷¹ The Chamber is therefore satisfied that to the extent of any significant inconsistencies between witnesses on this aspect, the evidence of P-0883 is more reliable.

Transfer of detainees from the Garsila SAF base

296. P-0883 gave evidence about the arrests of ‘citizens’ which took place in Garsila after an operation against Rebels in Tanako,¹⁰⁷² including that **the Accused** himself brought *Sheikh*

¹⁰⁶³ *Contra* [Defence’s Final Brief](#), paras 146, 147, 148, 713, 730.

¹⁰⁶⁴ P-0883: T-071, pp. 26-27.

¹⁰⁶⁵ P-0883: T-071, pp. 26-33; T-074, pp. 42-44.

¹⁰⁶⁶ P-0883: T-071, pp. 35-38.

¹⁰⁶⁷ P-0905: T-085, p. 45.

¹⁰⁶⁸ P-0905: T-085, pp. 40-41.

¹⁰⁶⁹ P-0883: T-071, p. 37; P-0935: T-090, p. 21. *See also* the Chamber’s assessment of P-0935’s evidence, Annex B, Section I.A.42.

¹⁰⁷⁰ P-0905: T-085, pp. 41-42. [REDACTED].

¹⁰⁷¹ P-0883: T-071, pp. 37-38.

¹⁰⁷² P-0883: T-071, pp. 46-49.

Abdulaziz and Musa, **the Accused's** neighbour, to the prison in the Garsila SAF base.¹⁰⁷³ P-0883 further gave a first-hand account of the detainees' removal and transferral from the SAF base into the custody of **the Accused** as a result of orders from **the Accused**.¹⁰⁷⁴ P-0883 gave the date of that removal—with reference to his handwritten notes—as (Sunday) 7 March 2004.¹⁰⁷⁵ In [REDACTED] he suggested that the detainees were removed on a Thursday or Friday (which would be 4 or 5 March 2004).¹⁰⁷⁶ The Defence points to this inconsistency between [REDACTED] and P-0883's evidence as a factor which undermines his credibility.¹⁰⁷⁷

297. As set out above, the Chamber is satisfied, given the nature of the events, that errors in dates are not fatal to credibility.¹⁰⁷⁸ Having regard to the totality of the evidence regarding the events in Deleig, including other witness evidence,¹⁰⁷⁹ the Chamber does not consider that this discrepancy in the date impacts P-0883's account of the removal of the detainees from the Garsila SAF base, which it is otherwise satisfied is credible and reliable.¹⁰⁸⁰

Deleig Operation

298. P-0883's did not witness the killings in Deleig and his evidence thereof was based on the account provided to him [REDACTED].¹⁰⁸¹ Whilst parts of [REDACTED] account, as recalled by P-0883, are consistent with P-0905's direct evidence thereof,¹⁰⁸² other key elements, such as the sequence of events and killings of Jenif and the *umdahs*,¹⁰⁸³ are contradicted by other reliable evidence on the record.¹⁰⁸⁴ Having regard to these irreconcilable inconsistencies, and noting that P-0883's evidence on this subject was second hand, that [REDACTED] was

¹⁰⁷³ P-0883: T-071, pp. 52-53; T-072, p. 51, *referring to* P-0883's Notes, DAR-OTP-0221-0408-R01, DAR-OTP-0221-0411-R01, Translations, DAR-OTP-0219-5247-R01, DAR-OTP-0219-5253-R01. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 80. *See further* the Chamber's assessment of P-0994's evidence, Annex B, Section I.A.48.

¹⁰⁷⁴ P-0883: T-071, pp. 55-56, 64-65.

¹⁰⁷⁵ P-0883: T-072, p. 49, *referring to* P-0883's Note, DAR-OTP-0221-0406-R01, Translation, DAR-OTP-0219-5243-R01, at 5244.

¹⁰⁷⁶ [REDACTED].

¹⁰⁷⁷ [Defence's Final Brief](#), para. 630.

¹⁰⁷⁸ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 223-226.

¹⁰⁷⁹ P-0935: T-090, pp. 80-82, 99, *referring to* Extract of P-0935's Statement, DAR-OTP-00000350, [REDACTED]; P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739-0740, 0745, paras 15, 40-42. *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, para. 586.

¹⁰⁸⁰ *Contra* [Defence's Final Brief](#), para. 630.

¹⁰⁸¹ P-0883: T-071, pp. 67-70, 75; T-072, p. 10; T-073, p. 75; T-074, pp. 53-55.

¹⁰⁸² For example, that a convoy of vehicles travelled to the execution site, that '**Ali Kushayb**' directed the convoy where to stop and the general location at which it stopped, the large number of detainees transported to the execution site, and that '**Ali Kushayb**' directed that the detainees be taken off the vehicles and executed. *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 611, 617, 622-624.

¹⁰⁸³ *See for example* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 586-587, 611, 636, 642-646.

¹⁰⁸⁴ As it is acknowledged in the [Prosecution's Final Brief](#), para. 570.

‘stressed and confused’¹⁰⁸⁵ and in a ‘bad state’ when he recounted these events to P-0883,¹⁰⁸⁶ and that [REDACTED] himself did not give evidence, the Chamber does not rely on P-0883’s evidence on the killings outside Deleig.¹⁰⁸⁷ P-0883 also gave evidence that he [REDACTED] on the killings by [REDACTED].¹⁰⁸⁸ The Chamber is satisfied that P-0883 gave credible evidence that [REDACTED].

[REDACTED]

299. [REDACTED].¹⁰⁸⁹ [REDACTED].¹⁰⁹⁰ [REDACTED].¹⁰⁹¹ [REDACTED].¹⁰⁹²

Collusion with other witnesses

300. The Defence’s overall suggestion that the three witnesses [REDACTED], in some way colluded, is not borne out by their evidence which as the Defence points out is inconsistent in many major respects.¹⁰⁹³ Not only is there no evidence of collusion but the inconsistencies in their evidence militate against a finding of collusion. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.¹⁰⁹⁴

301. As [REDACTED], P-0883 was able to provide a detailed account of key events, based on his personal observations and interaction, supported [REDACTED].¹⁰⁹⁵ It is noteworthy that P-0883 is neither Fur nor Arab.¹⁰⁹⁶ He was objective and did not seem to have any anti-Arab and/or anti-Fur sentiments and referred to GoS fighters who died at the hand of the rebel armed groups as martyrs.¹⁰⁹⁷ No suggestion was made that he had any motive to lie, interest to serve, or animosity towards ‘**Ali Kushayb**’.¹⁰⁹⁸ Indeed, he testified that even now, he would categorise his relationship with ‘**Ali Kushayb**’ as good.¹⁰⁹⁹ P-0883’s evidence is generally

¹⁰⁸⁵ P-0883: T-071, p. 67.

¹⁰⁸⁶ P-0883: T-071, pp. 67-68, 75.

¹⁰⁸⁷ [Defence Final Brief](#), paras 614-615, 585, 634.

¹⁰⁸⁸ P-0883: T-071, pp. 70, 74-76.

¹⁰⁸⁹ P-0883: T-074, pp. 58-59.

¹⁰⁹⁰ [Defence’s Final Brief](#), para. 149.

¹⁰⁹¹ *Contra* [Defence’s Final Brief](#), para. 149.

¹⁰⁹² [REDACTED].

¹⁰⁹³ [Defence’s Final Brief](#), para. 569.

¹⁰⁹⁴ *Contra* [Defence’s Final Brief](#), para. 569.

¹⁰⁹⁵ P-0883: T-071, pp. 6-8.

¹⁰⁹⁶ P-0883: T-071, p. 6; T-074, pp. 9-10.

¹⁰⁹⁷ P-0883: T-071, pp. 11-12; T-074, p. 8.

¹⁰⁹⁸ *Contra* [Defence’s Final Brief](#), para. 501.

¹⁰⁹⁹ P-0883: T-074, pp. 7-9.

consistent with other credible and reliable evidence on the record. For all of these reasons, the Chamber is satisfied that P-0883 is a generally credible and reliable witness.

30. P-0892

302. P-0892 (DoB 1987),¹¹⁰⁰ a member of the Fur tribe,¹¹⁰¹ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.¹¹⁰² He was a student during the period of the charges.¹¹⁰³ P-0892's evidence, which for the most part was indirect, principally dealt with the two attacks on the village of Arada,¹¹⁰⁴ the events in Mukjar in 2004;¹¹⁰⁵ his encounter with the man he was told was '**Ali Kushayb**';¹¹⁰⁶ and his knowledge of persons arrested and then killed at the execution sites outside Mukjar.¹¹⁰⁷

Identification of '**Ali Kushayb**'

303. In his statement, P-0892 stated that he first heard of '**Ali Kushayb**' in August 2003, when he was told that he had arrived in Mukjar with government forces. P-0892 did not know who '**Ali Kushayb**' was at the time.¹¹⁰⁸ P-0892 also described how after the second attack on Arada in February 2004, he fled to Mukjar.¹¹⁰⁹ There at a checkpoint, he was told to go to the locality building and, while seated in the courtyard, he saw a man, holding a stick, who seemed to be ordering the *Janjaweed* to beat detainees.¹¹¹⁰ He had not seen him before but was told that this man was '**Ali Kushayb**'.¹¹¹¹ P-0892 described how he was close enough to the man pointed out as '**Ali Kushayb**' to hear at least some of what '**Ali Kushayb**' was saying, which included a reference to the Sindu Operation.¹¹¹²

¹¹⁰⁰ [REDACTED].

¹¹⁰¹ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0384.

¹¹⁰² P-0892's Statement, DAR-OTP-0217-0384-R02; P-0892's Statement Corrections, DAR-OTP-0224-0658; P-0892: T-048.

¹¹⁰³ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0387, paras 12-13.

¹¹⁰⁴ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0389-0392, paras 22-40.

¹¹⁰⁵ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392-0400, paras 41-80.

¹¹⁰⁶ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395-0396, paras 53-56, 59-60; P-0892: T-048, pp. 9-12, 56-57, 70-71.

¹¹⁰⁷ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0398-0400, paras 66-80.

¹¹⁰⁸ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0389, para. 22.

¹¹⁰⁹ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0391-0392, paras 37-40.

¹¹¹⁰ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0392, 0395-0396, paras 41-42, 52-59; P-0892's Statement Corrections, DAR-OTP-0224-0658, at 0658-0659, paras 5-13, 16-17; P-0892: T-048, pp. 9-12, 70-71.

¹¹¹¹ P-0892's Statement, DAR-OTP-0217-0384-R02, at 0395, paras 53-54; P-0892's Statement Corrections, DAR-OTP-0224-0658, at 0659, para. 16; P-0892: T-048, p. 12.

¹¹¹² P-0892's Statement, DAR-OTP-0217-0384-R02, at 0396, para. 60; P-0892: T-048, pp. 9-12.

304. In his evidence, P-0892 said that he had seen the man twice, first when the beatings were taking place and then when he and others were released from the locality building.¹¹¹³ When questioned by the Defence, P-0892 agreed that at the time of making his statement in [REDACTED] he had known of the surrender of ‘**Ali Kushayb**’ and that there had been a lot of talk about him and his background.¹¹¹⁴ As P-0892 said ‘I do not remember twenty years ago, but back then, this was talked about subject in the community. If information spreads across society, everybody starts talking and hearing about it’.¹¹¹⁵ When it was put to him that the distance from ‘**Ali Kushayb**’ he had described appeared to equate to 175 metres, he said that all he could do was estimate.¹¹¹⁶

305. The Defence suggested to P-0892 in court that he had neither seen ‘**Ali Kushayb**’ in Mukjar nor heard anything he said.¹¹¹⁷ The witness rejected these suggestions.¹¹¹⁸ The Defence further argues that because of discussions he had before making his statement with persons who were also witnesses (*i.e.* [REDACTED]), his evidence is ‘contaminated’, and that never having seen ‘**Ali Kushayb**’ before his identification renders his evidence unreliable.¹¹¹⁹

306. The Chamber found P-0892 to be a careful witness who did not attempt to exaggerate his knowledge of ‘**Ali Kushayb**’ nor his proximity to the latter while at the locality building. The Chamber accepts the Defence’s submission that this witness could not ‘identify’ the man whom he was told was ‘**Ali Kushayb**’.¹¹²⁰ However the Chamber is satisfied that P-0892 is credible and reliable when he stated that he was told who this man was and that he saw ‘**Ali Kushayb**’ giving orders and heard the references to the Sindu Operation.¹¹²¹ As such, his evidence lends support to those witnesses who knew ‘**Ali Kushayb**’ to be **the Accused** and placed him at the locality building.¹¹²²

307. The Chamber rejects the Defence’s contention that the fact that P-0892 discussed the events with other witnesses (*i.e.* [REDACTED]) and knew of the surrender of ‘**Ali Kushayb**’

¹¹¹³ P-0892: T-048, pp. 10, 56-57.

¹¹¹⁴ P-0892: T-048, pp. 33-34, 57-58.

¹¹¹⁵ P-0892: T-048, p. 33.

¹¹¹⁶ P-0892: T-048, p. 56.

¹¹¹⁷ P-0892: T-048, p. 70.

¹¹¹⁸ P-0892: T-048, p. 70.

¹¹¹⁹ [Defence’s Final Brief](#), paras 501-505, 509.

¹¹²⁰ [Defence’s Final Brief](#), para. 509.

¹¹²¹ P-0892’s Statement, DAR-OTP-0217-0384-R02, at 0395-0396, paras 52-60; P-0892’s Statement Corrections, DAR-OTP-0224-0658, at 0659, paras 16-17; P-0892: T-048, pp. 9-12, 70-71.

¹¹²² See for example the Chamber’s assessment of the evidence of P-0877 and P-0984, Annex B, Sections I.A.27 and I.A.84.

before making his statement, ‘contaminated’ his evidence.¹¹²³ Discussion about events with other witnesses or knowledge of the surrender are, in the absence of any other evidence, insufficient for the Chamber to make a finding that the evidence is thereby so tainted as to make it unreliable.

Physical abuse suffered at the locality building

308. As already stated above, in his statement, P-0892 described how over the course of the day those detained there were beaten by the *Janjaweed*/PDF while being described as rebels and slaves.¹¹²⁴ When questioned by the Defence in court, P-0892 amplified his account saying it did not appear to be organised but that the “militia” were going around beating people and telling them to put their heads down.¹¹²⁵ This evidence was not challenged by the Defence and the Chamber notes that, without exaggeration, P-0892 stated that, whilst he himself was struck, he was not badly hurt.¹¹²⁶ Accordingly, the Chamber is satisfied that P-0892’s evidence is both credible and reliable.

Knowledge of victims of the killings at the execution sites outside of Mukjar

309. In his statement, P-0892 dealt with his indirect knowledge of those killed,¹¹²⁷ and produced [REDACTED] at Mukjar police station who he averred had been killed.¹¹²⁸ He also found bodies near what later became the UNAMID base.¹¹²⁹

310. The Chamber is satisfied that, whilst P-0892’s evidence is largely indirect evidence, it lends support to witnesses who were able to provide more direct evidence of persons who were killed.¹¹³⁰

¹¹²³ *Contra* [Defence’s Final Brief](#), paras 501-505, 714.

¹¹²⁴ P-0892’s Statement, DAR-OTP-0217-0384-R02, at 0395-0396, paras 52-59; P-0892’s Statement Corrections, DAR-OTP-0224-0658, at 0659, paras 16-17.

¹¹²⁵ P-0892: T-048, pp. 51-53.

¹¹²⁶ P-0892’s Statement, DAR-OTP-0217-0384-R02, at 0395, para. 55.

¹¹²⁷ P-0892’s Statement, DAR-OTP-0217-0384-R02, at 0398-0400, paras 66-80; P-0892’s Statement Corrections, DAR-OTP-0224-0658, at 0659-0670, paras 19-23.

¹¹²⁸ P-0892: T-048, p. 6, *referring to* [REDACTED].

¹¹²⁹ P-0892’s Statement, DAR-OTP-0217-0384-R02, at 0402, paras 89-90; P-0892: T-048, pp. 14-16.

¹¹³⁰ *See* Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 549-567.

31. P-0903

311. P-0903 (DoB 1985), a member of the Fur tribe,¹¹³¹ gave *viva voce* evidence over two days.¹¹³² In 2003 and 2004, he was a [REDACTED].¹¹³³ His evidence dealt principally with the attacks on Tendy;¹¹³⁴ his arrest and the conditions of his detention at Mukjar police station;¹¹³⁵ and his knowledge of ‘**Ali Kushayb**’.¹¹³⁶

Identification of the Accused

312. P-0903 gave evidence that he knew ‘**Ali Kushayb**’ before the events of 2003-2004,¹¹³⁷ and saw ‘**Ali Kushayb**’ on one occasion in Garsila before the events for about three to four hours as ‘**Ali Kushayb**’ was in a group that was sitting close by while [REDACTED].¹¹³⁸ P-0903 said that ‘**Ali Kushayb**’ was a person of such renown that everyone knew him, so much so that P-0903 was unable to recall who told him that that person was ‘**Ali Kushayb**’ and because of his renown knew his name was ‘Ali Muhammed Abd-Al-Rahman’.¹¹³⁹ He also heard that ‘**Ali Kushayb**’ had a pharmacy although he did not personally see it.¹¹⁴⁰ P-0903’s evidence was that he had heard that ‘**Ali Kushayb**’ was a civilian defence coordinator and had a position in government.¹¹⁴¹ The Chamber is satisfied that P-0903’s evidence in relation to this Garsila encounter with ‘**Ali Kushayb**’ is credible given the renown of ‘**Ali Kushayb**’ and proximity and length of time of the observation.

313. P-0903’s evidence was that the next time he saw ‘**Ali Kushayb**’ was during the attack on Tendy in February 2004.¹¹⁴² Having fled to a nearby mountain, he recognised ‘**Ali Kushayb**’ as taking part in the attack, although he was about one kilometre away.¹¹⁴³ He approximated that it would take about 15 to 20 minutes to walk from the bottom to the top of the mountain.¹¹⁴⁴ In court, the Defence questioned P-0903 about the reliability of his observation given the

¹¹³¹ P-0903: T-032, p. 7.

¹¹³² P-0903: T-032; T-033.

¹¹³³ P-0903: T-032, p. 85.

¹¹³⁴ P-0903: T-032, pp. 10-13.

¹¹³⁵ P-0903: T-032, pp. 22-50.

¹¹³⁶ P-0903: T-032, pp. 11-17, 40-49, 64-66, 76-78; T-033, pp. 38, 61-65, 69-75, 86.

¹¹³⁷ P-0903: T-032, pp. 13-14; T-033, pp. 38, 61-65, 86.

¹¹³⁸ P-0903: T-033, pp. 38, 61-65, 86.

¹¹³⁹ P-0903: T-032, pp. 13-14; T-033, p. 63-66.

¹¹⁴⁰ P-0903: T-032, p. 13.

¹¹⁴¹ P-0903: T-032, pp. 13-14.

¹¹⁴² P-0903: T-032, pp. 11-15, 17; T-033, p. 86.

¹¹⁴³ P-0903: T-032, pp. 12, 14.

¹¹⁴⁴ P-0903: T-032, p. 17.

distance.¹¹⁴⁵ In the circumstances, the Chamber is not satisfied that P-0903 was close enough to the events in Tendy to credibly identify ‘**Ali Kushayb**’ as being present.

314. The next occasion P-0903 saw ‘**Ali Kushayb**’ was when he was detained in Mukjar police station in late February and early March 2004.¹¹⁴⁶ ‘**Ali Kushayb**’ came there on several occasions.¹¹⁴⁷ The first time P-0903 saw him was when ‘**Ali Kushayb**’ came to the police station and was standing in front of the prison gate.¹¹⁴⁸ P-0903 was able to observe him because he was about five metres away.¹¹⁴⁹ P-0903 described ‘**Ali Kushayb**’ as slim, wearing a *labsa* and holding an axe.¹¹⁵⁰ The Chamber is satisfied that P-0903’s evidence in relation to seeing ‘**Ali Kushayb**’ at Mukjar police station is detailed, consistent with other evidence, credible and reliable.¹¹⁵¹

315. The last time P-0903 saw ‘**Ali Kushayb**’ was in 2010,¹¹⁵² [REDACTED].¹¹⁵³ At the time, P-0903 was about five to six metres away.¹¹⁵⁴ The Chamber is satisfied that P-0903 recognised ‘**Ali Kushayb**’ in 2010 as by this time, P-0903 had known him for many years and it was reasonable that he would have paid close attention to ‘**Ali Kushayb**’ especially after the Mukjar detention.

Mukjar Operation

316. P-0903’s evidence was that after Tendy was attacked, he fled to Mukjar and he was arrested upon his arrival in Mukjar in late February 2004.¹¹⁵⁵ He gave an account of the difficult conditions of detention at Mukjar police station.¹¹⁵⁶ There were several *umdahs* and *sheikhs* [REDACTED].¹¹⁵⁷

¹¹⁴⁵ P-0903: T-033, p. 38. See also [Defence’s Final Brief](#), para. 512.

¹¹⁴⁶ P-0903: T-032, pp. 40-49, 64, 76-78; T-033, pp. 71-73.

¹¹⁴⁷ P-0903: T-032, pp. 40-49, 76-78.

¹¹⁴⁸ P-0903: T-032, pp. 40-41; T-033, pp. 72-73.

¹¹⁴⁹ P-0903: T-032, pp. 40-41.

¹¹⁵⁰ P-0903: T-032, pp. 42-43.

¹¹⁵¹ *Contra* [Defence’s Final Brief](#), para. 512. See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 520-525, 530, 538-544.

¹¹⁵² P-0903: T-032, pp. 14, 65-66; T-033, pp. 61, 74-75.

¹¹⁵³ P-0903: T-032, p. 66; T-033, pp. 74-75.

¹¹⁵⁴ P-0903: T-032, p. 66. [REDACTED].

¹¹⁵⁵ P-0903: T-032, pp. 22-27.

¹¹⁵⁶ P-0903: T-032, pp. 29-50; T-033, pp. 50-51.

¹¹⁵⁷ P-0903: T-032, pp. 29-35.

317. P-0903 stated that he saw ‘**Ali Kushayb**’ hit *Umdah* Yahya Ahmad Zarruq on the head with an axe.¹¹⁵⁸ *Umdah* Yahya Ahmad Zarruq was taken to the vehicle with many other detainees.¹¹⁵⁹ [REDACTED].¹¹⁶⁰ The Defence challenges P-0903’s account on the basis that it was not corroborated.¹¹⁶¹ The Chamber is satisfied that the witness was best placed to give an account of his experience and finds no reason to doubt his account.¹¹⁶²

318. P-0903 gave evidence that around 2 March 2004, ‘**Ali Kushayb**’ came to Mukjar police station.¹¹⁶³ The ‘people’ of ‘**Ali Kushayb**’ and Torshein said that the detainees ‘were being taken to Garsila’.¹¹⁶⁴ They were calling out the names of people and taking them out of the cell.¹¹⁶⁵ Several detainees were taken out of the cell and placed in a vehicle where, according to P-0903, they were not taken to Garsila but taken to a *khora* and killed.¹¹⁶⁶

Execution sites

319. According to P-0903, the persons who were taken from Mukjar police station were taken to *Khora* Talaba where they were killed.¹¹⁶⁷ [REDACTED] *Khora* Talaba and saw corpses [REDACTED] UNAMID airport.¹¹⁶⁸ This part of his evidence was somewhat confusing, but the witness agreed that the first time he had mentioned seeing the corpses was whilst giving evidence.¹¹⁶⁹ The Defence submits that this was a lie evidenced by the fact that, although P-0903 stated that he went there [REDACTED], there was evidence that UNAMID did not arrive until 2007.¹¹⁷⁰

¹¹⁵⁸ P-0903: T-032, pp. 46, 48; T-033, p. 47.

¹¹⁵⁹ P-0903: T-032, pp. 45-49; T-033, p. 48.

¹¹⁶⁰ P-0903: T-032, pp. 36-37.

¹¹⁶¹ [Defence’s Final Brief](#), para. 498. See Judgment, Section 4. Evidentiary principles and considerations, paras 179-181.

¹¹⁶² *Contra* [Defence’s Final Brief](#), para. 498.

¹¹⁶³ P-0903: T-032, pp. 40-44.

¹¹⁶⁴ P-0903: T-032, pp. 39-40.

¹¹⁶⁵ P-0903: T-032, pp. 45-49.

¹¹⁶⁶ P-0903: T-032, pp. 44-45, 53-54; T-033, p. 50.

¹¹⁶⁷ P-0903: T-032, pp. 44-45, 53-54.

¹¹⁶⁸ P-0903: T-032, pp. 53-56.

¹¹⁶⁹ P-0903: T-033, pp. 51-60.

¹¹⁷⁰ [Defence’s Final Brief](#), para. 177; P-0903: T-033, pp. 56-57. The Chamber notes that the UNAMID base was located at approximately 10 minutes’ walk from *Khora* Talaba. It was built after the events and accommodated the African Union before that (see P-0903: T-032, p. 54; P-0931: T-062, p. 35; P-0931’s Annotated Satellite Image of Mukjar, DAR-OTP-0224-0881; P-0984’s Sketch, DAR-OTP-0225-0056-R01; P-0990: T-041, pp. 55-56; P-0984: T-067, p. 10. See also P-0675’s Statement, DAR-OTP-0206-0173, at 0210, para. 128; P-0877: T-054, p. 30; P-0129’s Statement, DAR-OTP-0223-0157-R02, at 0172, para. 74; P-0922’s Statements, DAR-OTP-0220-2864-R01, at 2870, para. 40, and DAR-OTP-0222-0312-R01, at 0333, para. 89; P-0932’s Statement, DAR-OTP-0222-0602-R02, at 0622, para. 117; P-0990: T-041, p. 56). See further the Chamber’s assessment of the evidence

320. Whilst P-0903's evidence was confusing, he was adamant that he had seen the bodies not long after the killing. Other evidence from credible and reliable witnesses, as to the discovery of the bodies refer to P-0903 as being present, and further describe the fact that there was an abandoned landing strip at the execution site.¹¹⁷¹ Accordingly the Chamber is satisfied that P-0903 was credible on this part of his evidence.

[REDACTED]

321. P-0903 gave evidence [REDACTED].¹¹⁷² The Defence challenges the credibility and reliability of [REDACTED].¹¹⁷³ [REDACTED].

Collusion with other witnesses

322. As already stated, the Defence submits that there are inconsistencies between the evidence of P-0903 and that of [REDACTED].¹¹⁷⁴ Further, it submits that it is highly improbable that [REDACTED] therefore, they colluded.¹¹⁷⁵ Given the conditions of detention and the traumatic nature of the events that occurred at Mukjar police station, the Chamber finds it understandable that there are inconsistencies in the account of these witnesses.¹¹⁷⁶ Further, the Chamber finds that, the Defence's submissions on the improbability amounts to no more than comment and is satisfied that not only is there no evidence of collusion but that the inconsistencies in their evidence, which have been enumerated by the Defence, militate against a finding of collusion.¹¹⁷⁷ The Defence further suggests that there is evidence of collusion between P-0903, [REDACTED].¹¹⁷⁸ The Chamber is unpersuaded that the evidence referred to by the Defence in support of its allegation provides a basis for the suggestion of collusion, and the Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.¹¹⁷⁹

of P-0129, P-0675, P-0922, P-0931, P-0932, P-0984 and P-0990, Annex B, Sections I.A.9, II.A.16, I.A.39, I.A.40, I.A.41, I.A.45 and I.A.47.

¹¹⁷¹ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 573-574.

¹¹⁷² P-0903: T-033, pp. 13-17.

¹¹⁷³ [Defence's Final Brief](#), para. 177.

¹¹⁷⁴ [Defence's Final Brief](#), para. 490.

¹¹⁷⁵ [Defence's Final Brief](#), para. 491.

¹¹⁷⁶ See Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

¹¹⁷⁷ *Contra* [Defence's Final Brief](#), paras 490-491, 501.

¹¹⁷⁸ [Defence's Final Brief](#), para. 501.

¹¹⁷⁹ *Contra* [Defence's Final Brief](#), paras 490-491, 501, 503, 532.

323. The Defence submits that P-0903 gave his statement to the Prosecution after it had issued a public arrest warrant for **the Accused** in relation to Mukjar and that his identification of ‘**Ali Kushayb**’ is based on his knowledge of the arrest warrant.¹¹⁸⁰ As already stated in respect of other witnesses, where a similar Defence suggestion is made, the Chamber is satisfied, that absent any other evidence, this has no bearing on the credibility of P-0903.¹¹⁸¹

324. The Defence further avers that P-0903 [REDACTED].¹¹⁸² Despite P-0903’s categorical refusal [REDACTED], the Defence maintains that this undermines the overall credibility of his evidence.¹¹⁸³ The Chamber finds the Defence’s allegations against P-0903 unmeritorious and speculative.

32. P-0905

325. P-0905 (DoB 1983), a member of the Fur tribe,¹¹⁸⁴ gave *viva voce* evidence over four days.¹¹⁸⁵ At the time of the events, [REDACTED].¹¹⁸⁶ [REDACTED].¹¹⁸⁷ P-0905’s evidence principally dealt with **the Accused’s** identity;¹¹⁸⁸ position of authority and leadership role in the *Janjaweed*; command over members of GoS forces;¹¹⁸⁹ and the composition of the *Janjaweed*.¹¹⁹⁰ He also gave evidence about the distribution of weapons, uniforms and ammunition to **the Accused** by GoS officials, including Minister Harun and Ali Uthman Muhammad Taha;¹¹⁹¹ and the joint operations of GoS forces and the *Janjaweed* in the Mukjar and Wadi Salih localities (including **the Accused’s** leading role during the Sindu Operation);¹¹⁹² and the Mukjar and Deleig operations.¹¹⁹³

¹¹⁸⁰ [Defence’s Final Brief](#), para. 501.

¹¹⁸¹ See Judgment, Section 4. Evidentiary principles and considerations, paras 201-203.

¹¹⁸² [Defence’s Final Brief](#), para. 176.

¹¹⁸³ [Defence’s Final Brief](#), para. 176.

¹¹⁸⁴ P-0905: T-085, pp. 8-9; T-086, p. 36.

¹¹⁸⁵ P-0905: T-085; T-086; T-087; T-088.

¹¹⁸⁶ P-0905: T-085, pp. 9-12.

¹¹⁸⁷ P-0905: T-085, pp. 9-11; T-087, p. 10.

¹¹⁸⁸ See for example P-0905: T-085, pp. 17-30; T-087, pp. 21-24, 27-33, 40-41, 53-55.

¹¹⁸⁹ See for example P-0905: T-085, pp. 22-24; T-087, pp. 54-55.

¹¹⁹⁰ See for example P-0905: T-085, pp. 32-34, 45, 76; T-087, pp. 6-8.

¹¹⁹¹ See for example P-0905: T-085, pp. 35-38; T-088, p. 97.

¹¹⁹² See for example P-0905: T-085, pp. 47-59; T-088, pp. 12-15.

¹¹⁹³ See for example P-0905: T-086, pp. 14-27, 39-40; T-088, pp. 60-76, 81-82.

Knowledge of the Accused

326. P-0905 knew ‘**Ali Kushayb**’ before the events of 2003,¹¹⁹⁴ who had a veterinarian pharmacy in Garsila near the Agricultural Bank.¹¹⁹⁵ P-0905 used to walk by ‘**Ali Kushayb’s**’ pharmacy in Garsila [REDACTED],¹¹⁹⁶ and would encounter **the Accused** [REDACTED].¹¹⁹⁷ P-0905 would greet ‘**Ali Kushayb**’ as ‘Mr *Musa ‘id*’ or ‘Mr Warrant Officer’, because ‘**Ali Kushayb**’ had been in the SAF, although most people would refer to him as ‘**Ali Kushayb**’.¹¹⁹⁸ P-0905 often went to the market [REDACTED].¹¹⁹⁹

327. P-0905 knew ‘**Ali Kushayb’s**’ actual name [REDACTED].¹²⁰⁰ [REDACTED].¹²⁰¹ [REDACTED].¹²⁰² P-0905 stated that [REDACTED],¹²⁰³ [REDACTED].¹²⁰⁴ [REDACTED].¹²⁰⁵ Another basis upon which P-0905 came to know ‘Ali Abd-Al-Rahman Kushayb’ was [REDACTED].¹²⁰⁶ [REDACTED].¹²⁰⁷

328. The Defence challenged the existence of [REDACTED] in the market,¹²⁰⁸ and suggested that **the Accused** did not have a son called ‘Muhammad’.¹²⁰⁹

329. The Chamber is satisfied that P-0905 knew **the Accused** prior to the period of the charges. The Chamber finds that the witness’s account of the reasons for the existence [REDACTED] in the market, and his reaction when challenged thereon, dispel any suggestion of invention.¹²¹⁰ His account of [REDACTED] were clear, rational and credible,¹²¹¹ and the existence of a son named Muhammad is supported by other evidence.¹²¹² Consequently, the Chamber is satisfied that P-0905 knew **the Accused** by his full name, **Abd-Al-Rahman**, as

¹¹⁹⁴ P-0905: T-085, pp. 17-21; T-087, pp. 21-23.

¹¹⁹⁵ P-0905: T-085, pp. 17-21; T-087, p. 21.

¹¹⁹⁶ P-0905: T-085, pp. 18-20.

¹¹⁹⁷ P-0905: T-085, pp. 17-30.

¹¹⁹⁸ P-0905: T-085, pp. 17-18.

¹¹⁹⁹ P-0905: T-085, pp. 13-16.

¹²⁰⁰ P-0905: T-085, pp. 24, 26-28; P-0905: T-087, p. 23.

¹²⁰¹ P-0905: T-085, p. 28.

¹²⁰² P-0905: T-085, p. 29.

¹²⁰³ P-0905: T-085, pp. 24, 26-27.

¹²⁰⁴ P-0905: T-085, p. 27; T-087, pp. 29-30.

¹²⁰⁵ P-0905: T-085, pp. 27-28.

¹²⁰⁶ P-0905: T-085, pp. 35-38.

¹²⁰⁷ P-0905: T-088, p. 94.

¹²⁰⁸ P-0905: T-087, pp. 18-19.

¹²⁰⁹ P-0905: T-087, pp. 30-31.

¹²¹⁰ P-0905: T-087, pp. 18-19.

¹²¹¹ See for example P-0905: T-085, pp. 24, 26-28; T-087, pp. 23, 29-31.

¹²¹² See for example P-0883: T-074, p. 8; P-0935: T-090, pp. 15-16, 91-93. See also the Chamber’s assessment of the evidence of P-0883 and P-0935, Annex B, Sections I.A.29 and I.A.42.

well as by his nickname ‘**Ali Kushayb**’. The Chamber finds that the combination of P-0905’s [REDACTED] placed him in an ideal position to have contact with and be aware of the person and activities of ‘**Ali Kushayb**’.¹²¹³

Structure of the SAF and the SAF in Garsila

330. P-0905 provided evidence on the structure of the SAF generally and the SAF in Garsila.¹²¹⁴ Much of his evidence is supported by other witnesses,¹²¹⁵ but on some discrete topics, [REDACTED], his evidence stands alone.¹²¹⁶ The Chamber is satisfied that his duties would have placed him in a position to give such an account and his evidence was sufficiently detailed to be credible and was not challenged by the Defence.

The Accused’s position of authority

331. P-0905 gave an account of the 2003 arrangements for, and distribution of, weapons to, the *Janjaweed*.¹²¹⁷ He further gave evidence that, [REDACTED].¹²¹⁸ In effect, he said that from the outset, *i.e.* the distribution of weapons [REDACTED], it was ‘**Ali Kushayb**’ who was in charge and gave the relevant orders.¹²¹⁹

332. His evidence in respect of the weapons distribution was challenged by the Defence on the basis that it was not mentioned in his screening interview ([REDACTED]),¹²²⁰ and that his account in evidence of the distribution differed from that of P-0883.¹²²¹ In respect of the screening note, P-0905 explained that there were translation problems and denied that a forcible seizure had taken place.¹²²²

333. The Chamber’s general position on the content of screening notes is set out in the section on Evidentiary Principles and Considerations.¹²²³ In the case of P-0905 however, it is clear that he was, and is, [REDACTED].¹²²⁴ The Chamber has concluded that it cannot discount

¹²¹³ *Contra* [Defence’s Final Brief](#), para. 715.

¹²¹⁴ P-0905: T-085, pp. 10-11, 31-34, 72; T-087, p. 6.

¹²¹⁵ *See* Judgment, paras 291-299.

¹²¹⁶ *See for example* P-0905: T-085, pp. 32-34; T-087, p. 6.

¹²¹⁷ P-0905: T-085, pp. 35-46, 52-53, 74-75; T-087, pp. 35-39, 49-52; T-088, p. 97.

¹²¹⁸ P-0905: T-085, pp. 48-72; T-086, pp. 13-28; T-087, pp. 44-49, 58-61, 64.

¹²¹⁹ P-0905: T-085, pp. 35-53.

¹²²⁰ P-0905: T-087, pp. 42-44, *referring to* P-0905’s Screening Note, DAR-OTP-0215-5256-R02, at 5258.

¹²²¹ [Defence’s Final Brief](#), paras 457-458, *referring to* P-0883: T-071, p. 29; T-074, p. 42.

¹²²² P-0905: T-087, p. 44.

¹²²³ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 223-226.

¹²²⁴ *See for example* P-0905: T-088, p. 80. *See also* [Defence’s Final Brief](#), para. 136.

the possibility that the account recorded in the screening note is part of that concern and that his explanation of interpretation problems amount to an excuse. Accordingly, it does not rely on P-0905's evidence of the weapons distribution.

334. He further gave evidence about the activities of the *Janjaweed* during their progress through the villages,¹²²⁵ the involvement of Samih,¹²²⁶ the distribution of weapons among the *Janjaweed* themselves,¹²²⁷ the difficulties with obtaining vehicles as the number of *Janjaweed* increased,¹²²⁸ and the involvement of 'Ali Kushayb' in giving orders which were followed.¹²²⁹

335. The Chamber is satisfied that P-0905 is credible on **the Accused's** position of authority and leadership role in the *Janjaweed* and command over members of GoS forces as this is supported by other credible and reliable evidence.¹²³⁰ P-0905's [REDACTED], P-0905 was in a position to have knowledge of the different actors during the conflict and their role therein. The inconsistencies raised by the Defence between P-0905's evidence and [REDACTED],¹²³¹ as to the composition of the forces are explicable, as arising from [REDACTED].¹²³² The Chamber notes that P-0905 did not try to ascribe acts unfairly to **the Accused**.¹²³³ For example, according to P-0905 [REDACTED]. Indeed, according to him, **the Accused** made an effort to prevent rapes.¹²³⁴

336. Whilst the Chamber concluded that P-0905 may have minimised his own part in these activities, this does not undermine his credibility when describing the events, given the detail of his account and the lack of any apparent animus, as set out above and given also that there is support from other witnesses.¹²³⁵

¹²²⁵ See for example P-0905: T-085, pp. 51-52, 71-74.

¹²²⁶ See for example P-0905: T-085, pp. 75-76.

¹²²⁷ See for example P-0905: T-085, pp. 74-75.

¹²²⁸ See for example P-0905: T-085, pp. 66-68.

¹²²⁹ See for example P-0905: T-085, pp. 36-44, 49-55, 60-61, 69-79, 82-85; T-086, pp. 5-9, 13, 17-18, 21, 54-55; T-088, pp. 39-40, 72-74, 81-84, 97.

¹²³⁰ See Judgment, paras 658-675.

¹²³¹ [Defence's Final Brief](#), para. 464.

¹²³² See Judgment, Section 4. Evidentiary principles and considerations, paras 225-226. [REDACTED].

¹²³³ *Contra* [Defence's Final Brief](#), para. 136.

¹²³⁴ P-0905: T-085, pp. 54-57.

¹²³⁵ *Contra* [Defence's Final Brief](#), paras 134-135.

GoS delegation visiting [REDACTED]

337. The Defence highlights contradictory evidence from P-0905 and P-0883 in relation to the GoS delegation.¹²³⁶ P-0905 testified that a delegation which came from Khartoum, visited [REDACTED].¹²³⁷ He did not mention Minister Harun as being part of the delegation.¹²³⁸ P-0883 gave evidence that the delegation included Minister Harun and visited [REDACTED] in February 2004.¹²³⁹ [REDACTED],¹²⁴⁰ [REDACTED].¹²⁴¹

338. The Chamber is satisfied that, to the extent of any significant inconsistencies, the evidence of P-0883 is to be preferred in this instance, [REDACTED] and his evidence is supported by that of other witnesses.¹²⁴² However, the evidence of P-0905 supports the fact that a delegation [REDACTED].¹²⁴³ The Chamber has already made clear its approach to witnesses' recollection of dates and times,¹²⁴⁴ and P-0905 himself stated: 'Yes, when I give you dates, I give you approximation. The specific date, no one would be quite precise, because we were not keeping track of time. I'm giving you approximation which applies to all the dates I provide.'¹²⁴⁵

Mukjar Operation

339. P-0905 gave evidence that [REDACTED] at Mukjar police station in 2004 when the detainees were loaded onto trucks and present at the site where the summary executions of the detainees, ordered by **the Accused**, took place.¹²⁴⁶ Additionally, he stated that a *sheikh* and some young boys aged 8-11 were driven to a different location and executed.¹²⁴⁷

340. The Defence points to contradictory evidence from other witnesses in respect of the number of execution sites and the number of people who were killed and, in respect of the

¹²³⁶ [Defence's Final Brief](#), paras 459-460.

¹²³⁷ P-0905: T-085, pp. 40-42.

¹²³⁸ P-0905: T-085, pp. 41-42.

¹²³⁹ P-0883: T-071, p. 36; T-074, p. 25.

¹²⁴⁰ P-0883: T-071, pp. 37-38.

¹²⁴¹ [Defence's Final Brief](#), para. 460.

¹²⁴² P-0883: T-071, pp. 36-38; T-074, p. 25.

¹²⁴³ P-0905: T-085, pp. 40-42.

¹²⁴⁴ See Judgment, Section 4. Evidentiary principles and considerations, para. 195.

¹²⁴⁵ P-0905: T-088, p. 99.

¹²⁴⁶ P-0905: T-086, pp. 16-28.

¹²⁴⁷ P-0905: T-086, pp. 28-31.

sheikh, points to the fact that P-0905 [REDACTED] mentions this incident and that the evidence taken as a whole shows that only military-aged men were killed.¹²⁴⁸

341. The Chamber acknowledges the contradictions between the evidence of P-0129 and P-0905 in particular.¹²⁴⁹ Whilst both witnesses gave evidence regarding the summary executions near *Khor Talaba*,¹²⁵⁰ their accounts diverge [REDACTED]¹²⁵¹ and the identity of the victims at each site.¹²⁵² The Chamber acknowledges that P-0905 [REDACTED].

342. The Chamber stresses that, considering [REDACTED] and the elapsed time between the events and P-0905's in-court evidence, these discrepancies in evidence between P-0129 and P-0905 did not create any indication that P-0905 intentionally tried to mislead or lie to the Chamber. However, in these particular circumstances, the Chamber is unable to come to a conclusion regarding [REDACTED].

Deleig Operation

343. P-0905 gave evidence that he clearly observed events occurring both inside and outside Deleig police station, including the actions of, and statements made by, **the Accused**.¹²⁵³ P-0905's account of events in Deleig is largely consistent with, and corroborated by, the evidence of other witnesses.¹²⁵⁴ The Chamber is satisfied that P-0905 was present at Deleig police station and that he was in close proximity to Jenif, whom he recognised as a senior coordinator in the PDF, when he was struck by **the Accused**.¹²⁵⁵ The Defence suggests that P-0905 was not sure about seeing '**Ali Kushayb**' in Deleig given he stated in his screening interview that he 'believed' he saw '**Ali Kushayb**' in Deleig.¹²⁵⁶ However, the Chamber is satisfied that when challenged by the Defence on this point in court, the witness was resolute that he was with **the Accused** in Deleig.¹²⁵⁷

¹²⁴⁸ [Defence's Final Brief](#), paras 528, 534.

¹²⁴⁹ See the Chamber's assessment of P-0129's evidence, Annex B, Section I.A.9.

¹²⁵⁰ P-0905: T-086, pp. 24-25; P-0129's Statement, DAR-OTP-0223-0157-R02, at 0172, para. 75.

¹²⁵¹ [REDACTED].

¹²⁵² [REDACTED].

¹²⁵³ See for example P-0905: T-086, pp. 43-47, referring to P-0905's Annotated Image, DAR-OTP-00000260-R01; P-0905's Sketch, DAR-OTP-00000264.

¹²⁵⁴ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 606-607, 610-612, 617-621.

¹²⁵⁵ P-0905: T-086, pp. 46-48, referring to P-0905's Sketch, DAR-OTP-00000264.

¹²⁵⁶ P-0905: T-088, pp. 81-82, referring to P-0905's Screening Note, DAR-OTP-0215-5256-R02, at 5260.

¹²⁵⁷ P-0905: T-088, pp. 82-83.

344. The Chamber is also satisfied that [REDACTED] **the Accused**, *Janjaweed* and GoS forces from Deleig police station to a location north-west of Deleig where he witnessed the killings near Fere.¹²⁵⁸ P-0905 personally heard and observed **the Accused** ordering detainees to be taken from the vehicles and killed and was approximately one or two metres from **the Accused** at the time.¹²⁵⁹ P-0905 further observed the *Janjaweed* carrying out those orders.¹²⁶⁰

345. In respect of the perpetrators of the killings near Fere, P-0905 gave evidence that ‘the army does not kill prisoners, but the *Janjaweed* were the ones who shot at the prisoners’.¹²⁶¹ P-0935, however, heard [REDACTED] the Deleig Operation that ‘they killed people and killed and killed’.¹²⁶² According to P-0935, [REDACTED].¹²⁶³ In his view, [REDACTED].¹²⁶⁴ Recalling the Chamber’s conclusion that P-0905 attempted [REDACTED], the Chamber finds that P-0935’s evidence, whilst indirect, does suggest that [REDACTED] and therefore does not rely on this aspect of P-0905’s evidence.¹²⁶⁵

346. The Defence suggests that P-0905’s evidence on the Deleig Operation is uncorroborated and not reliable.¹²⁶⁶ Notwithstanding that P-0905 [REDACTED] in the Deleig Operation executions, the Chamber is satisfied that his evidence in relation to the events in and around Deleig was generally credible and reliable. His account was compelling in its detail.¹²⁶⁷

347. Although [REDACTED] presence of **the Accused** at the executions at Fere, ([REDACTED]),¹²⁶⁸ there is support for his account from surrounding circumstances. Those circumstances include the bodies that were later found ‘near Fere’, and that the executions, which ensued earlier in Mukjar and those near Koska followed a virtually identical pattern of events, with **the Accused** being identified as the person who gave the orders.¹²⁶⁹ P-0905’s

¹²⁵⁸ P-0905: T-086, pp. 51-54, *referring to* P-0905’s Annotated Images, DAR-OTP-00000262-R01, DAR-OTP-00000261-R01.

¹²⁵⁹ P-0905: T-086, pp. 54-57.

¹²⁶⁰ P-0905: T-086, pp. 54-57.

¹²⁶¹ P-0905: T-086, p. 55.

¹²⁶² P-0935: T-090, p. 45.

¹²⁶³ P-0935: T-090, pp. 83-84.

¹²⁶⁴ P-0935: T-090, p. 84.

¹²⁶⁵ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, para. 624. See also HRW Report, DAR-OTP-0003-0099, at 0122-0123.

¹²⁶⁶ [Defence’s Final Brief](#), paras 560, 591, 593, 597, 599, 601, 603, 608, 612-615, 621.

¹²⁶⁷ See for example P-0905: T-086, pp. 43-45.

¹²⁶⁸ P-0905: T-086, pp. 51-57.

¹²⁶⁹ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 623-624.

[REDACTED].¹²⁷⁰ Accordingly the Chamber is satisfied that, with the exception, as already stated, of [REDACTED] in the killings, his evidence is credible and reliable.

348. The Defence's overall suggestion that [REDACTED], in some way colluded is not borne out by their evidence which, as the Defence pointed out, is inconsistent in many major respects.¹²⁷¹ The Chamber is satisfied that the fact that they worked together and may have known each other does not in itself render their evidence less credible or reliable.¹²⁷²

33. P-0907

349. P-0907 (DoB 1967), a member of the Fur tribe,¹²⁷³ gave *viva voce* evidence over two and a half days.¹²⁷⁴ During the period of the charges, he [REDACTED].¹²⁷⁵ His evidence principally dealt with the attack on the village of Forgo by the *Janjaweed* on 8 October 2003;¹²⁷⁶ the attack on Deleig by GoS Forces and *Janjaweed* on 5 March 2004;¹²⁷⁷ [REDACTED] at the police station in Deleig [REDACTED] 'Ali Kushayb' giving orders to the *Janjaweed*;¹²⁷⁸ and [REDACTED] the executions in an area called Koska.¹²⁷⁹

Identification of 'Ali Kushayb'

350. P-0907 gave evidence identifying 'Ali Kushayb' at Deleig police station on 5 March 2004.¹²⁸⁰ The Chamber is satisfied that P-0907 gave a comprehensive explanation of how he had come to know 'Ali Kushayb' before the conflict, being that he first met 'Ali Kushayb', nicknamed 'Doctor Ali' in 2002 at his pharmacy in Garsila when P-0907 went to buy medication, which is credible.¹²⁸¹ The witness also stated that he personally interacted with 'Ali Kushayb' at the pharmacy and, additionally, that he used regularly to meet 'Ali Kushayb' at various 'mobile' markets [REDACTED].¹²⁸²

¹²⁷⁰ P-0905: T-086, pp. 35-37; T-088, pp. 44-47, 64-66, 99-100.

¹²⁷¹ [Defence's Final Brief](#), paras 569, 580.

¹²⁷² *Contra* [Defence's Final Brief](#), para. 569. See also the Chamber's assessment of the evidence of P-0883 and P-0935, Annex B, Sections I.A.29 and I.A.42.

¹²⁷³ P-0907: T-094, pp. 5-6.

¹²⁷⁴ P-0907: T-094; T-095; T-096.

¹²⁷⁵ P-0907: T-094, p. 6.

¹²⁷⁶ P-0907: T-094, pp. 7-22; T-095, p. 5.

¹²⁷⁷ P-0907: T-094, pp. 29-31.

¹²⁷⁸ P-0907: T-094, pp. 32-44; T-096, pp. 16-37.

¹²⁷⁹ P-0907: T-094, pp. 45-61; T-096, pp. 37-42.

¹²⁸⁰ P-0907: T-094, pp. 30-42.

¹²⁸¹ P-0907: T-094, pp. 26-27.

¹²⁸² P-0907: T-094, pp. 26-28; T-095, pp. 53-55.

351. In court, the Defence suggested to P-0907 that he only mentioned ‘**Ali Kushayb**’ because the investigator who took the witness’s statement told him that ‘**Ali Kushayb**’ was before the Court and he wanted reparations.¹²⁸³ As already stated in respect of other witnesses, where a similar Defence suggestion was made, the Chamber is satisfied that, absent any other evidence, this has no bearing on the credibility of P-0907. P-0907 emphasised that he knew ‘**Ali Kushayb**’ and the crimes he perpetrated before being interviewed by the Prosecution and insisted that he did not receive any information from the Prosecution about ‘**Ali Kushayb**’s’ crimes.¹²⁸⁴ The Defence further argues that P-0907 did not know ‘**Ali Kushayb**’ as well as he stated because [REDACTED].¹²⁸⁵ However, the Chamber is satisfied that it is reasonable that P-0907 [REDACTED],¹²⁸⁶ including systematic acts of violence targeting Fur men, as well as [REDACTED] and ‘**Ali Kushayb**’.¹²⁸⁷ Indeed, P-0907, a member of the Fur tribe, gave evidence that it was a ‘very difficult situation’,¹²⁸⁸ that he was scared,¹²⁸⁹ and believed that ‘if you look ‘**Ali Kushayb**’ in the eyes, you will have a big problem’.¹²⁹⁰

352. The Chamber is therefore satisfied that P-0907’s identification of ‘**Ali Kushayb**’ is credible and reliable. However, the Chamber accepts the Defence’s submission that it cannot rely on P-0907’s evidence on the link between **the Accused’s** civil name and nickname given P-0907 gave evidence that he did not know ‘**Ali Kushayb**’s’ real name to be **Ali Muhammad Ali Abd-Al-Rahman** until after the latter’s surrender to the Court.¹²⁹¹

Deleig Operation

353. P-0907 gave consistent and detailed evidence on his arrest and subsequent detention at Deleig police station,¹²⁹² during which he could hear the *Janjaweed* walking around the detainees and he raised his head to see what was happening.¹²⁹³ The Chamber is satisfied that this, along with P-0907’s prior knowledge of ‘**Ali Kushayb**’ and proximity to him during this event, forms a solid basis of knowledge to witness ‘**Ali Kushayb**’s’ actions, including the

¹²⁸³ P-0907: T-095, pp. 24-26, 51-52.

¹²⁸⁴ P-0907: T-095, pp. 20, 24-26.

¹²⁸⁵ *Contra* [Defence’s Final Brief](#), paras 564, 596.

¹²⁸⁶ P-0907: T-096, p. 32.

¹²⁸⁷ P-0907: T-094, pp. 34-36.

¹²⁸⁸ P-0907: T-096, p. 32.

¹²⁸⁹ P-0907: T-096, p. 21.

¹²⁹⁰ P-0907: T-096, p. 21.

¹²⁹¹ [Defence’s Final Brief](#), para. 716, referring to P-0907: T-094, p. 28; T-095, pp. 25, 34-35.

¹²⁹² P-0907: T-094, pp. 30-34; T-096, pp. 18-20.

¹²⁹³ P-0907: T-096, pp. 20-24.

assault of detainees and his supervision of the *Janjaweed*.¹²⁹⁴ The Chamber is therefore satisfied that this evidence is credible and reliable.

Loading of detainees at Deleig police station

354. The Chamber is satisfied that P-0907 witnessed Issa Harun and his son being detained together in a vehicle and driven in the direction of an execution site as it is evident (and was not challenged) [REDACTED].¹²⁹⁵

Mistreatment and killings of detainees at and/or near Deleig police station

355. P-0907 gave evidence about the mistreatment of *Sheikh* Motor and Jenif at and/or near Deleig police station, including the circumstances under which he knew them.¹²⁹⁶ P-0907 stated that [REDACTED],¹²⁹⁷ [REDACTED].¹²⁹⁸ The Chamber is satisfied that, due to P-0907's prior familiarity with *Sheikh* Motor, his proximity to him during the events, and that his evidence on *Sheikh* Motor being struck and thrown onto a vehicle, is supported by other credible evidence, it can rely on his account.¹²⁹⁹

356. In respect of the evidence relating to Jenif, the Chamber accepts that there are some inconsistencies between the evidence on the circumstances of Jenif's arrival at Deleig police station.¹³⁰⁰ P-0907 stated that Jenif was not arrested because he saw him coming to the police station,¹³⁰¹ whereas P-0994 gave evidence that he saw Jenif arriving in the same vehicle with Minister Hussein and '**Ali Kushayb**'.¹³⁰² The Chamber is satisfied that these discrepancies do not impact P-0907's credibility and reliability on Jenif's mistreatment, and is satisfied that it can rely on P-0907's evidence that Jenif was present at Deleig police station on 5 March 2004.¹³⁰³ Given that people remember traumatic events differently, it is unexceptional that witness accounts on the precise circumstances of Jenif's arrival differ somewhat.¹³⁰⁴

¹²⁹⁴ P-0907: T-094, pp. 34-41.

¹²⁹⁵ P-0907: T-094, pp. 42-44; T-095, pp. 8-9.

¹²⁹⁶ P-0907: T-094, pp. 34-41; T-096, pp. 20, 25-29.

¹²⁹⁷ P-0907: T-094, p. 39.

¹²⁹⁸ P-0907: T-094, p. 38.

¹²⁹⁹ P-0907: T-094, pp. 38-41; T-096, pp. 20, 25, 27-29; P-0907's List of persons killed in Deleig, DAR-OTP-00000431, at 000001. *See also* P-0584's Statement, DAR-OTP-0200-1540-R02, at 1569, para. 107.

¹³⁰⁰ *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 581-582, 611.

¹³⁰¹ P-0907: T-096, pp. 25-29. *See also* [Defence's Final Brief](#), para. 584.

¹³⁰² P-0994: T-084, p. 61. *See also* the Chamber's assessment of P-0994's evidence, Annex B, Section I.A.48.

¹³⁰³ P-0907: T-094, pp. 34-38; T-096, pp. 25-28. *Contra* [Defence's Final Brief](#), para. 584.

¹³⁰⁴ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

357. P-0907 also gave evidence of [REDACTED] the execution site near Koska and [REDACTED] the killings that occurred there.¹³⁰⁵ The Defence submits that P-0907's evidence contains internal inconsistencies, such as his evidence on whether or not [REDACTED].¹³⁰⁶ The Chamber is satisfied that this minor inconsistency does not have a significant impact on P-0907's credibility and reliability on the executions near Koska, particularly given he corrected himself on this issue and gave further details.¹³⁰⁷ Whilst the Defence points to further minor inconsistencies with other witnesses (*i.e.* [REDACTED]) on this point, such as the location of the execution sites,¹³⁰⁸ and the precise manner in which the executions were carried out,¹³⁰⁹ the Chamber is satisfied that, in the circumstances of the event, details such as these have no impact on the credibility and reliability of P-0907's overall account.¹³¹⁰ The Chamber is therefore satisfied that it can rely on P-0907's evidence on the killings near Koska.

34. P-0913

358. P-0913 (DoB 1964), a member of the Fur tribe, gave *viva voce* evidence over two days pursuant to Rule 68(3) of the Rules.¹³¹¹ In 2003-2004, [REDACTED].¹³¹² He also [REDACTED].¹³¹³ His evidence principally dealt with his knowledge of 'Ali Kushayb',¹³¹⁴ the Kodoom and Bindisi Operation,¹³¹⁵ and the Mukjar Operation.¹³¹⁶

¹³⁰⁵ P-0907: T-094, pp. 45-52; T-096, pp. 40-41.

¹³⁰⁶ [Defence's Final Brief](#), para. 623, referring to P-0907: T-094, p. 51; T-096, p. 41.

¹³⁰⁷ P-0907: T-094, p. 51.

¹³⁰⁸ [Defence's Final Brief](#), paras 638, 642.

¹³⁰⁹ [Defence's Final Brief](#), para. 624, referring to P-0907: T-094, pp. 50-51; T-095, p. 37; T-096, p. 40; P-0726's Statement, DAR-OTP-0210-0346-R04, at 0366, para. 72; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0133, para. 86; P-0850's Statement, DAR-OTP-0216-0002-R04, at 0020, paras 71-72. *See also* the Chamber's assessment of the evidence of P-0726, P-0725 and P-0850, Annex B, Sections I.A.22, II.A.17 and I.A.25.

¹³¹⁰ *Contra* [Defence's Final Brief](#), paras 624, 638, 642.

¹³¹¹ P-0913's Statement, DAR-OTP-0218-0021-R04; P-0913's Statement Corrections, DAR-OTP-00000012; P-0913: T-069; T-070.

¹³¹² P-0913's Statement, DAR-OTP-0218-0021-R04, at 0023, paras 14, 18; P-0193: T-069, p. 55. [REDACTED].

¹³¹³ P-0913: T-069, p. 14.

¹³¹⁴ P-0913's Statement, DAR-OTP-0218-0021-R04, at 0035, para. 93; P-0913: T-069, pp. 16-19, 57-68; T-070, p. 9.

¹³¹⁵ P-0913's Statement, DAR-OTP-0218-0021-R04, at 0024-0030, 0031, paras 21-59, 65-68; P-0913's Statement Corrections, DAR-OTP-00000012, at 000001-000002, paras 1-15, 20-21; P-0913: T-069, pp. 12-14, 19-23, 27, 43-45.

¹³¹⁶ P-0913's Statement, DAR-OTP-0218-0021-R04, at 0031-0039, paras 69-118; P-0913's Statement Corrections, DAR-OTP-00000012, at 000003-000004, paras 22-32; P-0913: T-069, pp. 14-15, 17-19, 23-27, 40-43, 45-48, 52-54; T-070, pp. 5-19, 21-22.

Identification of ‘Ali Kushayb’

359. P-0913 gave evidence that some time before the war began, he was in Garsila when his relative pointed to a man and told him that the man was ‘**Ali Kushayb**’.¹³¹⁷ He himself did not go into the pharmacy to ascertain whether this was so.¹³¹⁸ He did not see ‘**Ali Kushayb**’ in Bindisi during the attack because he did not personally witness the attack, having fled.¹³¹⁹

360. P-0913’s account is that, after seeing ‘**Ali Kushayb**’ in Garsila, he next saw ‘**Ali Kushayb**’ around 17 March 2004 at Mukjar police station when the latter came to collect ammunition and weapons.¹³²⁰ At that time, P-0913 [REDACTED] saw the *Janjaweed* arrive.¹³²¹ [REDACTED], informed P-0913 that it was ‘**Ali Kushyab**’ and the *Janjaweed*.¹³²² P-0913[REDACTED].¹³²³ [REDACTED].¹³²⁴ In the course of the weapons collection, [REDACTED] Lt Col Al-Tayyib having a conversation with the man who came to collect the weapons and the man answered to the name ‘**Ali Kushayb**’.¹³²⁵ The Chamber notes that there is inconsistency between this evidence and P-0913’s statement in which he said that the man answered to the name ‘Ali’.¹³²⁶ P-0913’s evidence is that when he saw this man he believed he recognised him but, when Lt Col Al-Tayyib spoke to the man, he became absolutely sure of ‘**Ali Kushayb**’s’ identity.¹³²⁷

361. The Defence challenges the credibility of P-0913’s evidence on the basis that his evidence in relation to the identification of ‘**Ali Kushayb**’ was ‘vague’ and ‘inconsistent’.¹³²⁸ As noted, there was an inconsistency, but given that P-0913 had seen ‘**Ali Kushayb**’ in Garsila before the events, added to his proximity to ‘**Ali Kushayb**’ during the weapons collection, the detailed account of the conversations, and the interaction between ‘**Ali Kushayb**’ and *Umdah*

¹³¹⁷ P-0913: T-069, pp. 16, 60.

¹³¹⁸ P-0913: T-069, pp. 16-17.

¹³¹⁹ P-0913: T-069, p. 36.

¹³²⁰ P-0913: T-069, pp. 16-18, 57-58; T-070, p. 5. This instance of weapons collection is not a charged event and the Chamber has not made any finding in relation to any culpability of ‘**Ali Kushayb**’ in respect of this event.

¹³²¹ P-0913: T-069, pp. 17-18; T-070, pp. 6-7.

¹³²² P-0913: T-069, pp. 17-18.

¹³²³ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0036, para. 99.

¹³²⁴ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0036, para. 102; P-0913’s Statement Corrections, DAR-OTP-00000012, at 000003, para. 28.

¹³²⁵ P-0913: T-069, pp. 17-18; T-070, pp. 7-9.

¹³²⁶ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0033, paras 81, 82; P-0913: T-069, pp. 17-18, 64-65. In paragraphs 78-79 of his statement, P-0913 said that Lt Col Al-Tayyib called the man Ali but in his in-court evidence he said that Lt Col Al-Tayyib had said the name ‘**Ali Kushayb**’ (see P-0913: T-069, pp. 64-65).

¹³²⁶ P-0913: T-069, pp. 58-61, 64-65.

¹³²⁷ P-0913: T-069, pp. 58-61, 64-65.

¹³²⁸ [Defence’s Final Brief](#), paras 137-138, referring to P-0913: T-069, pp. 63-65.

Yahya Ahmed Zarruq—all of which is consistent with other evidence in this trial—satisfies the Chamber that P-0913’s evidence with regard to his identification of ‘**Ali Kushayb**’ is credible and reliable.¹³²⁹

Events in Bindisi

362. P-0913 gave evidence in court that Bindisi was attacked on a Friday and he fled to the woods.¹³³⁰ When the *Janjaweed* attacked South Bindisi on the next day (Saturday), P-0913 fled to another area,¹³³¹ and did not directly witness the attack on Bindisi.¹³³² When he returned he saw that Bindisi had been burnt, including everything in the market and the mosque.¹³³³ He also saw dead bodies.¹³³⁴ The evidence in relation to the aftermath of the attacks in Bindisi was not challenged and is detailed and consistent with other credible and reliable evidence.¹³³⁵

Events in Mukjar

363. P-0913’s account in his statement is that in August 2003 he fled to Mukjar and stayed indoors because he had heard that ‘**Ali Kushayb**’s’ forces were targeting young men of the Fur tribe considered to be *tora bora*.¹³³⁶ [REDACTED].¹³³⁷ [REDACTED], in February 2004, Minister Harun gave a speech in which he said that they could take all the belongings of the Fur and that the entire area should be demolished.¹³³⁸ After [REDACTED], the *Janjaweed* returned to Mukjar and arrested and detained many persons, including the *umdahs* such as *Umdah* Yahya Ahmad Zarruq.¹³³⁹

364. The Defence contends that P-0913’s evidence in relation to Minister Harun’s speech is not corroborated.¹³⁴⁰ However, whilst this evidence is in fact uncorroborated,¹³⁴¹ the Chamber

¹³²⁹ *Contra* [Defence’s Final Brief](#), paras 137-138, 408, 513.

¹³³⁰ P-0913: T-069, p. 12.

¹³³¹ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0027, para. 41; P-0913’s Statement Corrections, DAR-OTP-00000012, at 000001, para. 11.

¹³³² P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0028, para. 50.

¹³³³ P-0913: T-069, pp. 13-14.

¹³³⁴ P-0913: T-069, pp. 13-14.

¹³³⁵ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 423-430.

¹³³⁶ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0030, para. 61; P-0913’s Statement Corrections, DAR-OTP-00000012, at 000002, para. 16.

¹³³⁷ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0030, para. 62; P-0913’s Statement Corrections, DAR-OTP-00000012, at 000002, para. 17.

¹³³⁸ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0032, para. 72; P-0913: T-069, p. 54.

¹³³⁹ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0036-0038, paras 95-112; P-0913’s Statement Corrections, DAR-OTP-00000012, at 000003-000004, paras 27-32; P-0913: T-070, p. 10.

¹³⁴⁰ [Defence’s Final Brief](#), para. 452.

¹³⁴¹ See Judgment, Section 4. Evidentiary principles and considerations, paras 179-181.

is satisfied that it can be relied upon because it is generally consistent with other credible and reliable evidence in respect of speeches made by Minister Harun around this period.¹³⁴²

Detainees taken from Mukjar police station

365. [REDACTED] Mukjar police station when he saw vehicles entering the compound through another gate.¹³⁴³ P-0913 saw when ‘**Ali Kushayb**’ hit a detainee as the detainees were being loaded into the CRF trucks.¹³⁴⁴ P-0913 saw detainees, including *Umdah* Yahya Ahmad Zarruq, being beaten and taken away.¹³⁴⁵ He gave evidence that about 15 minutes later he heard gunfire coming from the direction where the vehicles carrying the detainees had gone.¹³⁴⁶ The Chamber is satisfied that [REDACTED], P-0913 was well placed to give reliable evidence in relation to these events including the presence and involvement of ‘**Ali Kushayb**’.

Meeting between ‘Ali Kushayb’, Al-Tayyib and Torshein

366. Sometime in 2004, after the arrest of *Umdah* Yahya, [REDACTED] a meeting between ‘**Ali Kushayb**’, Lt Col Al-Tayyib and Torshein in which they spoke about *tora bora* and ‘**Ali Kushayb**’ said that Lt Col Al-Tayyib could not tell him that people who came down from the mountains were civilians and not *tora bora*.¹³⁴⁷ [REDACTED] the Chamber is satisfied that P-0913’s evidence in relation to this meeting¹³⁴⁸ is both credible and reliable.

367. The Defence asserts that P-0913’s evidence in relation to ‘**Ali Kushayb**’ hitting *Umdah* Yahya Ahmad Zarruq should be disregarded because he failed to mention it during his screening interview, despite being informed by the investigators that they were interested in evidence related to ‘**Ali Kushayb**’.¹³⁴⁹ The Chamber notes that this evidence is consistent with other credible and reliable evidence on the record.¹³⁵⁰

¹³⁴² See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 384-388.

¹³⁴³ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0036, paras 95-96, 98-99.

¹³⁴⁴ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0036-0037, paras 100-107; P-0913’s Statement Corrections, DAR-OTP-00000012, at 000003, paras 27-30; P-0913: T-070, pp. 12-15.

¹³⁴⁵ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0036-0038, paras 95-111; P-0913’s Statement Corrections, DAR-OTP-00000012, at 000003-000004, paras 27-32; P-0913: T-070, p. 10.

¹³⁴⁶ P-0913’s Statement, DAR-OTP-0218-0021-R04, at 0038, paras 112-113.

¹³⁴⁷ P-0913’s Statement, DR-OTP-0218-0021-R04, at 0036, para. 93.

¹³⁴⁸ P-0913: T-069, pp. 16-18, 57-58, 60; T-070, p. 5.

¹³⁴⁹ [Defence’s Final Brief](#), para. 513, referring to P-0913: T-070, pp. 17-19.

¹³⁵⁰ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, para. 542. See further Judgment, Section 4. Evidentiary principles and considerations, paras 223-226.

Collusion with other witnesses

368. The Defence suggests that there is evidence of collusion between [REDACTED].¹³⁵¹ With regard to [REDACTED] specifically, the Defence argues that their evidence is tainted because they discussed the mistreatments meted out by ‘**Ali Kushayb**’ at Mukjar police station.¹³⁵² Furthermore, a contention is made that P-0913’s evidence [REDACTED] is contaminated by the evidence of [REDACTED].¹³⁵³

369. The Chamber is unpersuaded that the evidence referred to by the Defence in support of these allegations. Not only is there no evidence of collusion but the inconsistencies in their evidence militate against a finding of collusion.¹³⁵⁴ The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable. Therefore, the Chamber is satisfied that P-0913 was credible and reliable in relation to his direct evidence and that his evidence lends support to other witnesses who were able to give a more detailed account of the activities of ‘**Ali Kushayb**’ in Mukjar.

35. P-0916

370. P-0916 (DoB 1958), a member of the Fur tribe, gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.¹³⁵⁵ At the time of the events, [REDACTED].¹³⁵⁶ His evidence principally dealt with the rebel attacks on Mukjar in July and August 2003,¹³⁵⁷ the subsequent *Janjaweed* attack on Mukjar,¹³⁵⁸ the arrest and detention of men in Mukjar,¹³⁵⁹ and his knowledge of ‘**Ali Kushayb**’.¹³⁶⁰

¹³⁵¹ [Defence’s Final Brief](#), para. 501.

¹³⁵² [Defence’s Final Brief](#), para. 503.

¹³⁵³ [Defence’s Final Brief](#), para. 532.

¹³⁵⁴ *Contra* [Defence’s Final Brief](#), paras 501, 503, 532.

¹³⁵⁵ P-0916’s Statement, DAR-OTP-0224-0023-R01; P-0916’s Statement Corrections, DAR OTP-00000060; P-0196: T-075.

¹³⁵⁶ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0025, paras 2, 5.

¹³⁵⁷ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0025-0028, paras 6-20; P-0916’s Statement Corrections, DAR OTP-00000060, at 000001, paras 1-5; P-0916: T-075, pp. 15-30, 32-35; P-0916: T-075, p. 44.

¹³⁵⁸ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0032-0038, paras 36-73; P-0916’s Statement Corrections, DAR OTP-00000060, at 000002, paras 14-15; P-0916: T-075, pp. 42-44.

¹³⁵⁹ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0028-0032, 0038-0040, paras 23-34, 74-83; P-0916’s Statement Corrections, DAR OTP-00000060, at 000001-000002, paras 8-11, 15.

¹³⁶⁰ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0032-0033, 0035, paras 36-38, 55-57; P-0916’s Statement Corrections, DAR OTP-00000060, at 000001-000002, paras 10-12, 14-15, 17, 19; P-0916: T-075, pp. 8-15, 39-42, 44-47.

Identification of ‘Ali Kushayb’

371. P-0916’s evidence is that he came to know ‘**Ali Kushayb**’ even before the events in Mukjar in 2003/2004.¹³⁶¹ In court, P-0916 gave evidence that he had heard of ‘**Ali Kushayb**’ in the 90s as a person who used to work with the Sudanese government and then retired.¹³⁶² P-0916 physically met ‘**Ali Kushayb**’ for the first time in August 2003 when the latter arrived in Mukjar with the *Janjaweed*.¹³⁶³ P-0916 stated that ‘**Ali Kushayb**’ was present at a meeting held by Minister Harun.¹³⁶⁴ P-0916 did not recognise him at the meeting because he did not know him.¹³⁶⁵ However, after the meeting, when P-0916 was in the market [REDACTED].¹³⁶⁶ [REDACTED] informed him that the man was ‘**Ali Kushayb**’.¹³⁶⁷ This was the first time P-0916 physically met ‘**Ali Kushayb**’.¹³⁶⁸ He described ‘**Ali Kushayb**’ as tall, dark skinned, having a hole in his ear lobe.¹³⁶⁹ According to P-0916, he saw ‘**Ali Kushayb**’ when Minister Harun came.¹³⁷⁰ However, P-0916 also gave evidence that he saw ‘**Ali Kushayb**’ when he came to Mukjar in August 2003 before Minister Harun arrived and that he did not meet ‘**Ali Kushayb**’ in March 2003 but in August 2003.¹³⁷¹

372. The Defence challenges the credibility and reliability of P-0916’s identification of ‘**Ali Kushayb**’. In its Closing Statement, the Defence submitted that P-0916 did not personally know ‘**Ali Kushayb**’ and his evidence was hearsay.¹³⁷² Additionally, as with other witnesses, he was interviewed after [REDACTED] 2007 by which time the Prosecution had already made public its information that ‘**Ali Kushayb**’ was **Abd-Al-Rahman**.¹³⁷³

373. The Chamber is unable to ascertain whether P-0916 met ‘**Ali Kushayb**’ on one or two occasions. However, the Chamber is satisfied that P-0916 met ‘**Ali Kushayb**’ in August 2003 in Mukjar market.¹³⁷⁴ On this occasion, [REDACTED] introduced him to ‘**Ali Kushayb**’ and

¹³⁶¹ P-0916: T-075, pp. 8-15, 39-40.

¹³⁶² P-0916: T-075, pp. 8-9. *See also* P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0035, paras 55-56.

¹³⁶³ P-0916: T-075, p. 41.

¹³⁶⁴ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0033, para. 40; P-0916: T-075, p. 46.

¹³⁶⁵ P-0916: T-075, p. 14.

¹³⁶⁶ P-0916: T-075, pp. 11-12, 42-43.

¹³⁶⁷ P-0916: T-075, p. 11.

¹³⁶⁸ P-0916: T-075, pp. 8-10.

¹³⁶⁹ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0035, paras 56-57; P-0916’s Statement Corrections, DAR-OTP-00000060, at 000002, para. 19.

¹³⁷⁰ P-0916: T-075, p. 14.

¹³⁷¹ P-0916: T-075, pp. 41-45.

¹³⁷² [Defence’s Closing Statement](#): T-162, p. 27.

¹³⁷³ [Defence’s Closing Statement](#): T-162, p. 28.

¹³⁷⁴ P-0916: T-075, pp. 11, 40-41,

P-0916 shook ‘**Ali Kushayb**’s hand. [REDACTED] had a conversation with ‘**Ali Kushayb**’. The Chamber is satisfied that [REDACTED] provides a credible explanation for [REDACTED] entitlement to speak to ‘**Ali Kushayb**’.¹³⁷⁵ The Chamber is also satisfied that P-0916 shook ‘**Ali Kushayb**’s hand.¹³⁷⁶ Further, the detail provided by P-0916 in relation to a physical description of ‘**Ali Kushayb**’ is generally consistent with other credible and reliable witnesses who gave evidence that ‘**Ali Kushayb**’ was present in Mukjar in August 2003, attended Minister Harun’s speech and then started looting in Mukjar.¹³⁷⁷ The Chamber is satisfied that P-0916’s evidence in relation to meeting ‘**Ali Kushayb**’ in Mukjar in August 2003 is credible and reliable, notwithstanding P-0916’s account in his statement that the meeting took place in February 2003.¹³⁷⁸

374. However, the Chamber finds that much of the evidence provided by P-0916 in relation to ‘**Ali Kushayb**’ is indirect. Further, P-0916 was not present during the attack on villages such as Nyerli and Tiro.¹³⁷⁹ The Chamber is satisfied that all of the evidence provided by P-0916 before August 2003 is indirect evidence which, whilst admissible, has not been used as the sole evidence, especially in relation to the identification of ‘**Ali Kushayb**’. The Chamber is satisfied that there is credible and reliable evidence that ‘**Ali Kushayb**’ went to Mukjar after the rebel attack in August 2003;¹³⁸⁰ that Minister Harun made speeches instructing those gathered to wipe away the Fur;¹³⁸¹ that looting started after Minister Harun’s speech;¹³⁸² that ‘**Ali Kushayb**’ ordered the *zakat* officer to accompany him from Mukjar to Bindisi and torched villages on the way to Bindisi.¹³⁸³ The Chamber is therefore satisfied that P-0916’s indirect evidence supports otherwise credible and reliable evidence.¹³⁸⁴

¹³⁷⁵ P-0916: T-075, p. 11.

¹³⁷⁶ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0035, para. 57.

¹³⁷⁷ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0035, paras 56-57; P-0916’s Statement Corrections, DAR-OTP-00000060, at 000002, para. 19. *See also* the Chamber’s assessment of the evidence of P-0012 and P-0878, Annex B, Sections I.A.3 and I.A.28.

¹³⁷⁸ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0035, para. 55.

¹³⁷⁹ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0034, paras 46-47.

¹³⁸⁰ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0033, para. 40; P-0916: T-075, pp. 41, 46.

¹³⁸¹ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0036-0037, paras 60, 67; P-0916’s Statement Corrections, DAR-OTP-00000060, at 000002, para. 21.

¹³⁸² P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0033, para. 41; P-0916: T-075, p. 42.

¹³⁸³ P-0916’s Statement, DAR-OTP-0224-0023-R01, at 0033-0034, paras 41-47.

¹³⁸⁴ *See* Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 384-387, 391, 394-395, 397-441.

36. P-0918

375. P-0918 (DoB 1975), a member of the Fur tribe, gave *viva voce* evidence for half a day pursuant to Rule 68(3) of the Rules.¹³⁸⁵ P-0918's evidence principally dealt with his knowledge of **the Accused** as the man he knew as '**Ali Kushayb**',¹³⁸⁶ and the attacks on Kodoom on 15 and 30 August 2003.¹³⁸⁷

Attack on Kodoom

376. In respect of the first attack, P-0918 identified Samih as being present.¹³⁸⁸ In respect of the second attack, he identified a number of those killed—[REDACTED].¹³⁸⁹ After the second attack, P-0918 fled to Mukjar, where he saw an aircraft and a helicopter land on different days, carrying dignitaries who were met by Torshein and Lt Col Himeidan.¹³⁹⁰

Knowledge of the Accused

377. In respect of his knowledge of **the Accused**, P-0918 stated he had first seen him [REDACTED] sitting outside his pharmacy, then in 2002 in a market in Amar village selling medicines and, finally, in the Mukjar market in August 2003 (shortly before the first attack on Kodoom).¹³⁹¹ On this occasion, he was in a vehicle carrying persons P-0918 identified as *Janjaweed*.¹³⁹²

378. When questioned by the Defence he confirmed he had been [REDACTED].¹³⁹³ His year of birth was an estimate provided to him,¹³⁹⁴ but he rejected the suggestion that it was improbable that he had been [REDACTED] during those years and therefore had seen **the Accused**.¹³⁹⁵ Moreover, when challenged about his identification of **the Accused** at Amar market, he first said he had recognised him, then said that people had called him '**Ali Kushayb**' and, finally, said 'what matters is that I was able to know who this person was'.¹³⁹⁶

¹³⁸⁵ P-0918's Statement, DAR-OTP-0218-0120-R03; P-0918: T-077.

¹³⁸⁶ P-0918's Statement, DAR-OTP-0218-0120-R03, at 0124-0126, paras 14-16, 19-21.

¹³⁸⁷ P-0918's Statement, DAR-OTP-0218-0120-R03, at 0126-0131, paras 22-38.

¹³⁸⁸ P-0918's Statement, DAR-OTP-0218-0120-R03, at 0128, paras 28-30.

¹³⁸⁹ P-0918's Statement, DAR-OTP-0218-0120-R03, at 0130, paras 35-36.

¹³⁹⁰ P-0918's Statement, DAR-OTP-0218-0120-R03, at 0131-0132, paras 39-43.

¹³⁹¹ P-0918's Statement, DAR-OTP-0218-0120-R03, at 0124-0126, paras 14-16, 19-21.

¹³⁹² P-0918's Statement, DAR-OTP-0218-0120-R03, at 0125-0126, para. 19.

¹³⁹³ P-0918: T-077, p. 9.

¹³⁹⁴ P-0918: T-077, p.12.

¹³⁹⁵ P-0918: T-077, pp. 13-17.

¹³⁹⁶ P-0918: T-077, pp. 20-21.

379. In court, his account of the events leading to and during the attack on Kodoom was both contradictory and confusing.¹³⁹⁷ He was not challenged in respect of his account of the second attack.

380. P-0918's evidence was plagued by interpretation problems.¹³⁹⁸ Additionally, the Chamber concluded that he was a witness on whom it could not rely in respect of his identification of **the Accused** as the man known as 'Ali Kushayb', nor on the events before and during the first attack on Kodoom given his evidence on these matters is confused and often contradictory. However, his account of the persons who were killed in the second attack was detailed and unchallenged and the Chamber is satisfied that his evidence in his statement on this one aspect was credible and reliable.¹³⁹⁹

37. P-0919

381. P-0919 (DoB 1975), a member of the Fur tribe,¹⁴⁰⁰ gave *viva voce* evidence over two days.¹⁴⁰¹ In 2008, he was a [REDACTED].¹⁴⁰² [REDACTED]. His evidence principally dealt with his knowledge of 'Ali Kushayb';¹⁴⁰³ [REDACTED] detention at Mukjar police station in 2004;¹⁴⁰⁴ and [REDACTED] the executions at *Khor Talaba*.¹⁴⁰⁵

Mukjar Operation and Identification of the Accused

382. P-0919's account is that after the destruction [REDACTED], he and his family fled to Mukjar. Upon their arrival, they encountered a checkpoint at which P-0919 was taken to Mukjar police station.¹⁴⁰⁶ Their names were registered once they arrived at the police station.¹⁴⁰⁷

¹³⁹⁷ P-0918: T-077, pp. 25-28.

¹³⁹⁸ See for example P-0918: T-077, pp. 11, 32, 33, 34.

¹³⁹⁹ P-0918's Statement, DAR-OTP-0218-0120-R03, at 0130, paras 35-36.

¹⁴⁰⁰ P-0919 did not expressly give evidence of his tribe but gave evidence that his relatives were Fur and the village he lived in was inhabited by the Fur (see P-0919: T-060, p. 40).

¹⁴⁰¹ P-0919: T-060; T-061.

¹⁴⁰² P-0919: T-060, p. 11.

¹⁴⁰³ P-0919: T-060, pp. 17-21, 27-38; T-061, pp. 11-22, 26, 29-33.

¹⁴⁰⁴ P-0919: T-060, pp. 16-36, 49-50; T-061, pp. 8-27. P-0919 gave evidence that he was detained in 2004 (see P-0919: T-060, pp. 52, 65; T-061, pp. 5-6, 21, 30).

¹⁴⁰⁵ P-0919: T-060, pp. 38-41; T-061, pp. 29-30. The Chamber is satisfied that P-0919 gave evidence that the shootings took place at the execution site *Khor Talaba* by stating that they were close to where the UNAMID base would later be located (see P-0919: T-060, p. 41; Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, para. 551).

¹⁴⁰⁶ P-0919: T-060, p. 14.

¹⁴⁰⁷ P-0919: T-060, p. 15.

383. P-0919 did not know ‘**Ali Kushayb**’ prior to his detention at Mukjar police station.¹⁴⁰⁸ However, P-0919 gave evidence that on the second day of his detention, ‘**Ali Kushayb**’ entered the cell and said, ‘I am the head of the *Janjaweed* and my name is **Ali Kushayb**’.¹⁴⁰⁹ P-0919 said that ‘**Ali Kushayb**’ then told *Umdah* Yahya Ahmad Zarruq, ‘I detained you in the past and released you, but this time, I am going to kill you’.¹⁴¹⁰ At that time, P-0919 was about a half metre away from ‘**Ali Kushayb**’.¹⁴¹¹ He described ‘**Ali Kushayb**’ as a tall, dark and thin man.¹⁴¹² P-0919 said that on the next day, ‘**Ali Kushayb**’ returned and oversaw the loading of the detainees into the waiting vehicles.¹⁴¹³

384. P-0919 gave evidence about being detained.¹⁴¹⁴ ‘**Ali Kushayb**’s men shaved off the hair of detainees while beating them and calling them *abid*.¹⁴¹⁵ P-0919 did not know the meaning of the word.¹⁴¹⁶ They also severed the ear of three detainees, two of whom were known to P-0919.¹⁴¹⁷ ‘**Ali Kushayb**’ hit *Umdah* Yahya Ahmad Zarruq with an axe.¹⁴¹⁸ Further, according to P-0919, members of the military inflicted burns on other detainees.¹⁴¹⁹

385. P-0919 stated that on the next day, ‘**Ali Kushayb**’ returned to the cell holding a whip and an axe.¹⁴²⁰ ‘**Ali Kushayb**’ called out the names of detainees who were then loaded onto the vehicles while being beaten by the *Janjaweed*.¹⁴²¹ P-0919 [REDACTED].¹⁴²² He heard ‘**Ali Kushayb**’ telling people ‘you get up’, having recognised his voice from having heard him speak to the detainees the day before.¹⁴²³

386. The Defence submits that P-0919’s evidence in relation to ‘**Ali Kushayb**’s identity is not reliable because he had never seen ‘**Ali Kushayb**’ prior to his detention at Mukjar police

¹⁴⁰⁸ P-0919: T-061, p. 32.

¹⁴⁰⁹ P-0919: T-060, pp. 17-18; T-061, pp. 11-13, 32-33.

¹⁴¹⁰ P-0919: T-060, p. 18; T-061, p. 13.

¹⁴¹¹ P-0919: T-060, p. 18.

¹⁴¹² P-0919: T-060, p. 19.

¹⁴¹³ P-0919: T-060, pp. 33-36.

¹⁴¹⁴ P-0919: T-060, pp. 16-36, 49-50; T-061, pp. 8-27.

¹⁴¹⁵ P-0919: T-060, pp. 18-20, 22-23, 26-29.

¹⁴¹⁶ P-0919: T-060, p. 19; T-061, p. 21.

¹⁴¹⁷ P-0919: T-060, pp. 20-22; T-061, p. 22.

¹⁴¹⁸ P-0919: T-060, p. 18.

¹⁴¹⁹ P-0919: T-060, pp. 30-31.

¹⁴²⁰ P-0919: T-060, pp. 33-34.

¹⁴²¹ P-0919: T-060, pp. 34-35.

¹⁴²² P-0919: T-060, pp. 36-37.

¹⁴²³ P-0919: T-060, pp. 34-36.

station and he admitted he was not focused on ‘**Ali Kushayb**’.¹⁴²⁴ Further, the Defence submits that P-0919’s description of ‘**Ali Kushayb**’ is vague.¹⁴²⁵

387. The Chamber is satisfied that, even though P-0919 did not know ‘**Ali Kushayb**’ before his detention, ‘**Ali Kushayb**’ introduced himself as such and twice came to Mukjar police station where the witness was detained.¹⁴²⁶ Although P-0919 said he did not focus on ‘**Ali Kushayb**’, he was able to see ‘**Ali Kushayb**’s’ face and identify him.¹⁴²⁷ Therefore, the Chamber is satisfied that P-0919’s evidence in relation to the identification of ‘**Ali Kushayb**’ at Mukjar police station is credible and reliable.¹⁴²⁸

388. The Defence submits that P-0919’s account of his detention in Mukjar contains many elements incapable of belief:

- His [REDACTED].¹⁴²⁹ These witnesses colluded to reinforce their credibility and reliability, which explains the similarity in the evidence;¹⁴³⁰
- P-0919 gave [REDACTED].¹⁴³¹ However, P-0919 could not say [REDACTED].¹⁴³² Further, P-0919 gave evidence that he saw other detainees being ‘scalped’ yet no other witness confirmed this evidence which would have been a remarkable event;¹⁴³³
- P-0919 gave contradictory answers [REDACTED].¹⁴³⁴ [REDACTED];¹⁴³⁵
- There were discrepancies between the evidence of P-0919 and other prosecution witnesses in relation to the number of vehicles and the number of detainees;¹⁴³⁶
- P-0919 could not explain why he was [REDACTED];¹⁴³⁷

¹⁴²⁴ [Defence’s Final Brief](#), paras 507-508, referring to P-0919: T-060, p. 17; T-061, pp. 15, 17, 26, 32.

¹⁴²⁵ [Defence’s Final Brief](#), para. 508, referring to P-0919: T-061, p. 15. See also [Defence’s Final Brief](#), para. 738.

¹⁴²⁶ P-0919: T-060, pp. 17-18, 33-34; T-061, pp. 15-17, 32.

¹⁴²⁷ P-0919: T-061, pp. 14-16.

¹⁴²⁸ *Contra* [Defence’s Final Brief](#), paras 507-508.

¹⁴²⁹ [Defence’s Final Brief](#), paras 490-491, referring to [REDACTED].

¹⁴³⁰ [Defence’s Final Brief](#), paras 490-491.

¹⁴³¹ [Defence’s Final Brief](#), para. 499, referring to P-0919: T-060, p. 29.

¹⁴³² [Defence’s Final Brief](#), para. 499, referring to P-0919: T-061, p. 24; P-0932: T-068, p. 37.

¹⁴³³ [Defence’s Final Brief](#), para. 508, referring to P-0919: T-060, p. 20.

¹⁴³⁴ [Defence’s Final Brief](#), para. 503, referring to P-0919: T-060, p. 61.

¹⁴³⁵ [Defence’s Final Brief](#), para. 503, referring to P-0919: T-060, pp. 60-62.

¹⁴³⁶ [Defence’s Final Brief](#), paras 514, 519, 521, referring to P-0903: T-033, p. 73; P-0990: T-040, p. 40.

¹⁴³⁷ [Defence’s Final Brief](#), para. 521, referring to P-0919: T-060, pp. 36-37; T-061, pp. 27-29.

- P-0919 could not have remembered the words *abid* and *tora bora* because he did not then know the meaning of those words;¹⁴³⁸ and
- After the events in Mukjar and before giving their evidence, P-0919 and other witnesses (*i.e.* [REDACTED]) [REDACTED].¹⁴³⁹ Consequently, their evidence has been tainted.

389. The Chamber is satisfied that P-0919 was detained at Mukjar police station.¹⁴⁴⁰ Further, the conditions of detention were very poor and overcrowded so that witnesses would have varying vantage points viewing events and therefore have differing recollections.¹⁴⁴¹ The Chamber is satisfied that the fact that no other witness gave evidence of detainees [REDACTED], the Chamber finds P-0919's evidence that he subsequently observed a generator between the police station and the locality building to be reasonable and credible.¹⁴⁴² Further, the Chamber notes that P-0919 did not give evidence of any detainee being scalped but rather that their hair was shaved off.¹⁴⁴³

390. In addition, there is no evidence of any collusion [REDACTED].¹⁴⁴⁴ [REDACTED],¹⁴⁴⁵ [REDACTED]¹⁴⁴⁶ —[REDACTED]. [REDACTED].¹⁴⁴⁷ [REDACTED].¹⁴⁴⁸ [REDACTED]. The Chamber is also unpersuaded that the evidence referred to by the Defence in support of its allegation of collusion between P-0919 and the other abovementioned witnesses.¹⁴⁴⁹ Not only is there no evidence of collusion but the inconsistencies in their evidence militate against a finding of collusion. The fact that witnesses may have known each other does not in itself render their evidence less credible or reliable. The Chamber accepts P-0919's evidence that he remembered the words *abid* and *tora bora* although he did not know what they meant because the *Janjaweed* kept repeating those words while they were beating the detainees. Finally, the Chamber has no evidence as to the rationale for P-0919's [REDACTED] but equally has no reason to disbelieve P-0919's account in this

¹⁴³⁸ [Defence's Final Brief](#), para. 545, referring to P-0919: T-060, p. 19; T-061, pp. 21-22.

¹⁴³⁹ [Defence's Final Brief](#), para. 501.

¹⁴⁴⁰ P-0919: T-060, pp. 16-36, 49-50; T-061, pp. 8-27.

¹⁴⁴¹ See Judgment, Section 4. Evidentiary principles and considerations, para. 195.

¹⁴⁴² P-0919: T-061, pp. 5-7. *Contra* [Defence's Final Brief](#), para. 499.

¹⁴⁴³ P-0919: T-060, pp. 18, 20, 23, 26. *Contra* [Defence's Final Brief](#), para. 508.

¹⁴⁴⁴ *Contra* [Defence's Final Brief](#), para. 503. [REDACTED].

¹⁴⁴⁵ P-0919's Screening Note, DAR-OTP-0215-8491-R02, at 8492, para. 1.

¹⁴⁴⁶ [Defence's Final Brief](#), para. 504.

¹⁴⁴⁷ P-0919: T-060, pp. 53-57.

¹⁴⁴⁸ P-0919: T-060, p. 57.

¹⁴⁴⁹ *Contra* [Defence's Final Brief](#), para. 501.

regard. Therefore, the Chamber is satisfied that P-0919's detailed evidence in relation to the events during his detention are credible and reliable.

Execution site

391. P-0919 gave evidence that when [REDACTED].¹⁴⁵⁰ [REDACTED], he recognised the voices of *Umdahs* Yahya Ahmad Zarruq, Adam Husayn Abdelmahmoud and Issa Harun Nour as the *Umdahs* were lamenting when the *Janjaweed* told them they were going to kill them.¹⁴⁵¹

392. [REDACTED] 'Ali Kushayb's' voice saying 'Umdah Yahya, get down, *Umdahs*, get down'.¹⁴⁵² [REDACTED].¹⁴⁵³

393. The Defence submits that P-0919's evidence in relation to the execution site is not reliable because [REDACTED] that it was 'Ali Kushayb' giving directions as to who should alight from the vehicle based on voice identification.¹⁴⁵⁴ Whilst, the Chamber finds that his evidence amounts to voice identification, which on its own would not be sufficient, it is supported by other reliable and credible evidence that 'Ali Kushayb' gave the instructions recalled by P-0919. Moreover, P-0919's account aligns with other credible and reliable evidence that 'Ali Kushayb' was indeed present and giving orders.¹⁴⁵⁵

38. P-0921

394. P-0921 (DoB 1966), a member of the [REDACTED] tribe, gave *viva voce* evidence over two days.¹⁴⁵⁶ At the time of these events he [REDACTED].¹⁴⁵⁷ In early 2003, he [REDACTED].¹⁴⁵⁸ P-0921's evidence principally dealt with: the rebel attack on the Mukjar CRF base and the arrival of the *Janjaweed* under the command of **the Accused**;¹⁴⁵⁹ his

¹⁴⁵⁰ P-0919: T-060, pp. 36-37; T-061, p. 28.

¹⁴⁵¹ P-0919: T-060, pp. 36-37.

¹⁴⁵² P-0919: T-060, p. 38; T-061, pp. 29, 32.

¹⁴⁵³ P-0919: T-060, pp. 38-41; T-061, pp. 29-30.

¹⁴⁵⁴ [Defence's Final Brief](#), paras 530, 539, referring to P-0919: T-060, pp. 19, 36-38, 40, 60; T-061, pp. 21, 27-29, 32.

¹⁴⁵⁵ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 551-561. *Contra* [Defence's Final Brief](#), para. 539.

¹⁴⁵⁶ P-0921: T-110; T-111.

¹⁴⁵⁷ P-0921: T-110, p. 17; T-111, pp. 83-84.

¹⁴⁵⁸ P-0921: T-110, pp. 17-19, 68.

¹⁴⁵⁹ P-0921: T-110, pp. 19-22; T-111, pp. 20-25, 36-37.

knowledge of **the Accused**;¹⁴⁶⁰ and how [REDACTED] in the Kodoom and Bindisi Operation with **the Accused** and the *Janjaweed*, and the events of that Operation.¹⁴⁶¹

395. [REDACTED].¹⁴⁶² [REDACTED].¹⁴⁶³ [REDACTED].¹⁴⁶⁴

396. Further, when questioned by the Defence [REDACTED],—the Chamber is satisfied—he told a number of lies.¹⁴⁶⁵ He also asserted that he had no idea that **the Accused** was in custody until contacted by investigators in 2020.¹⁴⁶⁶ The Chamber was unpersuaded by this assertion.¹⁴⁶⁷

397. In the light of these features of his evidence the Chamber assessed P-0921’s credibility and reliability with extreme caution. It concluded that only if there was convincing detail in his account of matters in dispute and/or support for his evidence on an issue was he to be considered credible and reliable.¹⁴⁶⁸

Knowledge of the Accused

398. P-0921 stated that he first met **the Accused** in Garsila in the 1990s when the latter was a medical assistant in the ‘army’.¹⁴⁶⁹ He stated that, while **the Accused** was still in the ‘army’, he also ran a ‘shop’ in Garsila market and they would sit around and chat [REDACTED].¹⁴⁷⁰ P-0921 said he knew **the Accused** as ‘Ali Kushayb’—which **the Accused** explained to him was an alcohol which he used to drink—but that **the Accused** also told him his real name.¹⁴⁷¹ P-0921 said the last time he had met **the Accused** before seeing him in 2003 was in [REDACTED].¹⁴⁷² He identified the passport photograph of **the Accused**.¹⁴⁷³

¹⁴⁶⁰ P-0921: T-110, pp. 22-29, 57-63, 65-66, *referring to* Passport Photo, DAR-OTP-0222-0037; T-111, pp. 5, 25-28, 31-32.

¹⁴⁶¹ P-0921: T-110, pp. 27-42, 45-56; T-111, pp. 20-22, 42-70, 74, 82-83, 85-86.

¹⁴⁶² P-0921: T-110, pp. 2-3.

¹⁴⁶³ P-0921: T-110, pp. 43-44.

¹⁴⁶⁴ P-0921: T-110, pp. 15-17, 29-30, 45, 65-66; T-111, pp. 48, 52-54, 81. See [Defence’s Final Brief](#), para. 122.

¹⁴⁶⁵ P-0921: T-111, pp. 8-20, 80, 82, *referring to* [REDACTED]. See [Defence’s Final Brief](#), para. 123.

¹⁴⁶⁶ P-0921: T-111, pp. 3-7.

¹⁴⁶⁷ *Contra* [Defence’s Final Brief](#), paras 125-126, 701.

¹⁴⁶⁸ *Contra* [Defence’s Final Brief](#), paras 106, 122, 124, 136, 701.

¹⁴⁶⁹ P-0921: T-110, pp. 23-24.

¹⁴⁷⁰ P-0921: T-110, pp. 24-25.

¹⁴⁷¹ P-0921: T-110, p. 25.

¹⁴⁷² P-0921: T-110, p. 26; T-111, pp. 32-35.

¹⁴⁷³ P-0921: T-110, pp. 57-58, *referring to* Passport Photo, DAR-OTP-0222-0037.

399. The Defence queried P-0921's evidence that **the Accused** had run a pharmacy while still in the 'army'. [REDACTED].¹⁴⁷⁴

400. The Defence put to him in the clearest possible terms that he had never met **the Accused** and that [REDACTED] was a complete fabrication.¹⁴⁷⁵

401. P-0921 was able to provide a number of details in respect of the pharmacy and provide a reason why he would be in Garsila, namely that [REDACTED].¹⁴⁷⁶ His account of why he would go and chat with **the Accused** was supported by other witnesses, [REDACTED].¹⁴⁷⁷

402. The Chamber is satisfied that his account of how he came to know **the Accused** is both credible and reliable.¹⁴⁷⁸ The challenged [REDACTED] has no bearing on the issue of identification, and the Chamber does not deem it necessary to make a finding thereon.¹⁴⁷⁹

Events leading to the Kodoom and Bindisi Operation

403. P-0921's account of the rebel attacks in Bindisi and Mukjar generally aligns with that of other witnesses and is not disputed.¹⁴⁸⁰ However, his account of the significant events thereafter differs from both [REDACTED].¹⁴⁸¹ P-0921 stated that **the Accused** arrived at the CRF base with Samih, Adam Abdallah Shukurtalla and Abd-Al-Halim, the Executive Director of Mukjar locality.¹⁴⁸² **The Accused** [REDACTED].¹⁴⁸³ [REDACTED].¹⁴⁸⁴ The Defence suggested that this was a lie.¹⁴⁸⁵ P-0921 stated that [REDACTED] [REDACTED].¹⁴⁸⁶ He stated that the *Janjaweed* commanders [REDACTED].¹⁴⁸⁷

¹⁴⁷⁴ P-0921: T-111, pp. 28-29.

¹⁴⁷⁵ P-0921: T-111, pp. 35-36.

¹⁴⁷⁶ P-0921: T-110, pp. 23-24.

¹⁴⁷⁷ See for example P-0905: T-085, pp. 18-22; P-0935: T-090, p. 13; P-0883: T-071, p. 23; T-073, p. 81; T-074, p. 24; P-0643: T-059, pp. 28-29; P-0931: T-062, p. 53; P-0585: T-099, pp. 40-41; P-0903: T-032, pp. 13-14. See also the Chamber's assessment of the evidence of P-0905, P-0935, P-0883, P-0643, P-0585 and P-0903, Annex B, Sections I.A.32, I.A.42, I.A.29, I.A.15, I.A.14 and I.A.31.

¹⁴⁷⁸ *Contra* [Defence's Final Brief](#), paras 701, 724, 726.

¹⁴⁷⁹ P-0921: T-110, pp. 43-47, 52; T-111, pp. 32-35, 47-53, 68-70.

¹⁴⁸⁰ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 378-379.

¹⁴⁸¹ See [Defence's Final Brief](#), paras 375-378.

¹⁴⁸² P-0921: T-110, pp. 22, 27; T-111, pp. 36, 40.

¹⁴⁸³ P-0921: T-110, pp. 22, 27-32; T-111, pp. 37-40.

¹⁴⁸⁴ P-0921: T-110, pp. 22, 27-28; T-111, pp. 40-42.

¹⁴⁸⁵ P-0921: T-111, p. 42. See also [Defence's Final Brief](#), para. 384.

¹⁴⁸⁶ P-0921: T-110, p. 31.

¹⁴⁸⁷ P-0921: T-110, p. 33.

404. The Chamber is satisfied that, with the exception of the facts that [REDACTED] (as that matter is attested to by [REDACTED]),¹⁴⁸⁸ it cannot rely on P-0921's account [REDACTED].

The Kodoom and Bindisi Operation

405. There is no dispute that P-0921 [REDACTED].¹⁴⁸⁹ There is equally no dispute that he [REDACTED].¹⁴⁹⁰ He stated that he did so [REDACTED].¹⁴⁹¹ [REDACTED],¹⁴⁹² [REDACTED].¹⁴⁹³

406. There are a number of contradictions between his evidence and that of [REDACTED] as to:

- [REDACTED];¹⁴⁹⁴
- The timing of, and the nature of events which occurred in each village which was attacked during the journey;¹⁴⁹⁵ and
- The actions taken by 'Ali Kushayb' during the course of the operation.¹⁴⁹⁶

407. He also stated [REDACTED].¹⁴⁹⁷ [REDACTED].¹⁴⁹⁸

408. The Chamber is satisfied that P-0921 [REDACTED].¹⁴⁹⁹ It is therefore not satisfied that his evidence as to the detail of the operation and the actions of **the Accused** is either credible or reliable.

¹⁴⁸⁸ [REDACTED].

¹⁴⁸⁹ P-0921: T-111, pp. 42, 50.

¹⁴⁹⁰ P-0921: T-110, pp. 43-47, 52; T-111, pp. 32-35, 47-53, 68-70. *See also* [Defence's Final Brief](#), para. 376.

¹⁴⁹¹ P-0921: T-110, p. 37; T-111, pp. 59-60, 65-73.

¹⁴⁹² *See* Judgment, Section 4. Evidentiary principles and considerations, paras 177-178.

¹⁴⁹³ *Contra* [Defence's Final Brief](#), para. 106.

¹⁴⁹⁴ *See* P-0921: T-110, pp. 32-33; T-111, pp. 58, 64, 66-67, 78; [REDACTED]. *See also* [Defence's Final Brief](#), paras 391-392, 394.

¹⁴⁹⁵ *See* P-0921: T-111, pp. 58, 64, 67; P-1021: T-080, pp. 28-31, 46-47; P-0878: T-077, pp. 53-57; T-078, pp. 18, 22-23, 76-78; T-079, pp. 48-49, 61. *See also* [Defence's Final Brief](#), para. 392.

¹⁴⁹⁶ *See* P-0921: T-110, pp. 45-47; T-111, pp. 60, 64-65, 67, 77-78; [REDACTED]. *See also* [Defence's Final Brief](#), paras 397-399, 409, 418-419.

¹⁴⁹⁷ P-0921: T-110, pp. 47-48; T-111, pp. 76-77.

¹⁴⁹⁸ *See* Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, para. 420.

¹⁴⁹⁹ P-0921: T-111, p. 83. *See also* [Defence's Final Brief](#), para. 106.

409. However, it is satisfied that, [REDACTED], nor do the Defence suggest this to be the case. P-0921 places ‘**Ali Kushayb**’ as the person in charge.¹⁵⁰⁰ This evidence is supported not only by [REDACTED] but by the evidence of other credible and reliable witnesses, including those who were victims of the attacks.¹⁵⁰¹ Therefore, on this single aspect the Chamber is satisfied that P-0921 is credible and reliable.

Reports of Rape

410. P-0921 described the arrival [REDACTED] of women from Bindisi who alleged they had been raped.¹⁵⁰² [REDACTED]¹⁵⁰³ [REDACTED].¹⁵⁰⁴

411. Whilst undoubtedly indirect evidence, the Chamber is satisfied that this part of his evidence is not tarnished by a desire to blame others or [REDACTED]. It therefore concludes that it lends support to the more direct accounts of the rapes.¹⁵⁰⁵

Collusion with other witnesses

412. The Defence suggests that there is evidence of collusion between [REDACTED].¹⁵⁰⁶

413. No such suggestion was ever put to any of these witnesses when they gave evidence.

414. The Chamber is unpersuaded that the evidence referred to by the Defence in support of its allegation provides a basis for the suggestion of collusion. Not only is there no evidence of collusion but the inconsistencies in their evidence militate against a finding of collusion. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.¹⁵⁰⁷

¹⁵⁰⁰ P-0921: T-110, pp. 21-22; T-111, pp. 83-84, 85-86.

¹⁵⁰¹ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 396-397, 416, 436-441.

¹⁵⁰² P-0921: T-110, pp. 50-51; T-111, pp. 78-80.

¹⁵⁰³ P-0921: T-110, pp. 51, 70.

¹⁵⁰⁴ P-0921: T-110, pp. 50-51; T-111 pp. 78-80.

¹⁵⁰⁵ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 431-434.

¹⁵⁰⁶ [Defence's Final Brief](#), paras 132, 142, 396, 399.

¹⁵⁰⁷ *Contra* [Defence's Final Brief](#), paras 132, 396, 399.

39. P-0922

415. P-0922 (DoB 1959), a member of the Fur tribe, gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.¹⁵⁰⁸ At the time of the events, he was [REDACTED].¹⁵⁰⁹ His evidence principally dealt with the attack on Bindisi,¹⁵¹⁰ and his arrest and torture at Mukjar police station.¹⁵¹¹

Knowledge of ‘Ali Kushayb’

416. The first time P-0922 heard about ‘**Ali Kushayb**’ was in Bindisi [REDACTED].¹⁵¹² P-0922’s account is that in the course of the events in Mukjar and Bindisi he only saw a man whom he was told was ‘**Ali Kushayb**’ on one occasion in early 2004 when he was in Mukjar.¹⁵¹³ On this occasion, P-0922 saw a Land Cruiser with two passengers in it and *Janjaweed* in the open tray.¹⁵¹⁴ P-0922 was across a street and saw when the man came out of the Land Cruiser and approached the police station and spoke to [REDACTED].¹⁵¹⁵ He did not want to bring attention to himself and did not look for very long, no longer than three to four minutes.¹⁵¹⁶ About two days later, [REDACTED] told P-0922 that the man who came out of the vehicle was ‘**Ali Kushayb**’.¹⁵¹⁷ On every other occasion that P-0922 gave evidence of ‘**Ali Kushayb**’ having done or said something, it was indirect evidence.¹⁵¹⁸

417. The Chamber is satisfied that P-0922 did not know ‘**Ali Kushayb**’ before the events in Bindisi and Mukjar and was told subsequently that the person who had been involved in the events was ‘**Ali Kushayb**’.¹⁵¹⁹ Accordingly, the Chamber does not rely on P-0922’s identification of ‘**Ali Kushayb**’.

¹⁵⁰⁸ P-0922’s Statements, DAR-OTP-0222-0312-R01, DAR-OTP-0220-2864-R01; P-0922: T-039.

¹⁵⁰⁹ P-0922’s Statement, DAR-OTP-0222-0312-R01, at 0315, para. 12; P-0922: T-039, p. 39.

¹⁵¹⁰ P-0922’s Statement, DAR-OTP-0222-0312-R01, at 0316-0320, paras 16-31; P-0922: T-039, pp. 15, 36.

¹⁵¹¹ P-0922’s Statements, DAR-OTP-0222-0312-R01, at 0320-0329, paras 32-71; DAR-OTP-0220-2864-R01, at 2867-2869, paras 18-28; P-0922: T-039, pp. 35, 54-55.

¹⁵¹² P-0922’s Statement, DAR-OTP-0220-2864-R01, at 2867, para. 17.

¹⁵¹³ P-0922’s Statement, DAR-OTP-0222-0312-R01, at 0330, para. 76; P-0922: T-039, pp. 46-53.

¹⁵¹⁴ P-0922’s Statement, DAR-OTP-0222-0312-R01, at 0330, para. 76; P-0922: T-039, pp. 22-27, 43-46.

¹⁵¹⁵ P-0922’s Statement, DAR-OTP-0222-0312-R01, at 0330, paras 75-76; P-0922: T-039, pp. 50-51.

¹⁵¹⁶ P-0922: T-039, pp. 27-28, 51-52.

¹⁵¹⁷ P-0922’s Statement, DAR-OTP-0222-0312-R01, at 0330, para. 76; P-0922: T-039, pp. 43, 53.

¹⁵¹⁸ See for example P-0922’s Statement, DAR-OTP-0222-0312-R01, at 0319, para. 27; P-0922: T-039, pp. 46, 60-61.

¹⁵¹⁹ P-0922: T-039, pp. 45-46.

Events in Bindisi

418. P-0922 gave a comprehensive account of the attack on Bindisi.¹⁵²⁰ [REDACTED],¹⁵²¹ later that day, Bindisi was attacked by *Janjaweed*.¹⁵²² P-0922 fled the attacks, eventually seeking refuge in Mukjar.¹⁵²³ As between [REDACTED] the Bindisi inhabitants that the *Janjaweed* were coming to the *zakat* office.¹⁵²⁴ However, the Chamber finds that P-0922 had no interest to serve, and was a careful witness who distinguished between direct and indirect knowledge.

Events in Mukjar

419. After the attack on Bindisi, P-0922 fled to Mukjar.¹⁵²⁵ There, he was arrested by the *Janjaweed* and detained.¹⁵²⁶ After his release, P-0922 stayed in Mukjar.¹⁵²⁷ He witnessed how the *Janjaweed* entered Mukjar and looted the properties of the villagers before leaving towards Sindu.¹⁵²⁸ Some days after the arrival of the *Janjaweed*, P-0922 saw a helicopter pass above him and he was later told by others that Minister Harun was there and had brought weapons and ammunitions for the *Janjaweed*.¹⁵²⁹

420. P-0922 recounted seeing the *Janjaweed* and the police separate men, who appeared to be between 18 and 60 years old, from their families and take them to the police station.¹⁵³⁰ P-0922 recounted seeing vehicles at the police station with *DShKs*, but did not see detainees being loaded onto the vehicles.¹⁵³¹ On his way home, he heard gunshots and he was told the next day that the detainees at the police station had been killed at the creek with the big sycamore fig tree.¹⁵³²

¹⁵²⁰ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0316-0320, paras 16-31; P-0922: T-039, pp. 15, 36.

¹⁵²¹ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0316-0317, paras 16-18.

¹⁵²² P-0922's Statement, DAR-OTP-0222-0312-R01, at 0317, para. 19.

¹⁵²³ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0320, para. 31.

¹⁵²⁴ See P-0922's Statement, DAR-OTP-0222-0312-R01, at 0316-0317, paras 16-18; P-0878: T-078, pp. 23-24; T-079, pp. 86, 89-90; P-0921: T-110, pp. 31-32; T-111, pp. 39-40. See also the Chamber's assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38.

¹⁵²⁵ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0320, para. 31.

¹⁵²⁶ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0320, 0322, 0325, paras 31-32, 42, 51.

¹⁵²⁷ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0327, para. 58.

¹⁵²⁸ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0330-0331, paras 75-77.

¹⁵²⁹ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0331, para. 78.

¹⁵³⁰ P-0922's Statement, DAR-OTP-0222-0312-R01, at 0332, para. 85; P-0922: T-039, pp. 28-30.

¹⁵³¹ P-0922's Statement DAR-OTP-0222-0312-R01, at 0333, para. 88.

¹⁵³² P-0922's Statement, DAR-OTP-0222-0312-R01, at 0333, paras 86, 88-89.

421. The Chamber is satisfied that P-0922 gave detailed and precise evidence of what he saw in Bindisi in August 2003 and in Mukjar in February and March 2004 and is both credible and reliable.

40. P-0931

422. P-0931 (DoB 1974), a member of the Fur tribe,¹⁵³³ gave *viva voce* evidence for two days.¹⁵³⁴ At the time of the events, [REDACTED].¹⁵³⁵ His evidence principally dealt with his knowledge of ‘**Ali Kushayb**’,¹⁵³⁶ and the executions of detainees during the Mukjar Operation.¹⁵³⁷

Knowledge of the Accused

423. P-0931 gave evidence that he had heard of ‘**Ali Kushayb**’ prior to the period of the charges.¹⁵³⁸ P-0931’s account is that ‘**Ali Kushayb**’ had a veterinary pharmacy near the Agricultural Bank in Garsila which he opened after his retirement from the military.¹⁵³⁹ P-0931 also heard people in the market mentioning the name ‘**Ali Kushayb**’.¹⁵⁴⁰ P-0931 said that although he saw ‘**Ali Kushayb**’, he was not well acquainted with him.¹⁵⁴¹ P-0931 said he never entered the pharmacy as it was usually surrounded by *Janjaweed*.¹⁵⁴² In court, the Defence challenged the reliability of this account because P-0931 never purchased anything from the pharmacy and never even went past it but only saw it from afar.¹⁵⁴³ The Chamber notes that P-0931 made no efforts to augment his evidence in relation to his knowledge of ‘**Ali Kushayb**’ before the events. Further, the Chamber is satisfied that ‘**Ali Kushayb**’ was a very well-known person in Garsila and that it is credible that P-0931 had heard of ‘**Ali Kushayb**’, passed by his pharmacy, saw ‘**Ali Kushayb**’ from a distance but never went into the pharmacy.¹⁵⁴⁴ Accordingly, the Chamber is satisfied that P-0931’s evidence in this regard is both credible and reliable.

¹⁵³³ P-0931: T-062, pp. 58, 61.

¹⁵³⁴ P-0931: T-062; T-063.

¹⁵³⁵ P-0931: T-062, p. 8.

¹⁵³⁶ P-0931: T-062, pp. 29-39, 41-49, 52-54, 63-65; T-063, pp. 14-21.

¹⁵³⁷ P-0931: T-062, pp. 32-38; T-063, pp. 17-18.

¹⁵³⁸ P-0931: T-062, pp. 52-53; T-063, pp. 19-20.

¹⁵³⁹ P-0931: T-062, pp. 52-53, 65; T-063, pp. 19-20.

¹⁵⁴⁰ P-0931: T-062, p. 52.

¹⁵⁴¹ P-0931: T-062, p. 52.

¹⁵⁴² P-0931: T-062, p. 53.

¹⁵⁴³ P-0931: T-062, pp. 63-65.

¹⁵⁴⁴ P-0931: T-062, pp. 52-53, 63-65.

Mukjar Operation

424. P-0931's evidence was that when he arrived in Mukjar, he saw people detained in the Mukjar prison, these detainees looked tired and were covered in blood.¹⁵⁴⁵ P-0931 said he later saw '**Ali Kushayb**' in Mukjar and recognised him as the military retiree from the pharmacy.¹⁵⁴⁶ P-0931 gave evidence that [REDACTED] drive '**Ali Kushayb**' to the eastern part of Mukjar and back to Mukjar police station.¹⁵⁴⁷ [REDACTED].¹⁵⁴⁸

425. Later that day, [REDACTED].¹⁵⁴⁹ [REDACTED] the detainees were off-loaded from the vehicles and were shot.¹⁵⁵⁰ According to P-0931, '**Ali Kushayb**' was with Hassaballah and Lt Hamdi near where the detainees were being shot.¹⁵⁵¹ P-0931 [REDACTED].¹⁵⁵² The other vehicles left and returned with more detainees.¹⁵⁵³ '**Ali Kushayb**' was still at the execution site with a small axe in his hand.¹⁵⁵⁴ P-0931 gave evidence that [REDACTED].¹⁵⁵⁵ The Chamber [REDACTED] the execution of the detainees, the presence of '**Ali Kushayb**' at the execution site and the location of the execution site.¹⁵⁵⁶ Therefore, the Chamber is satisfied that P-0931 [REDACTED].

426. [REDACTED].¹⁵⁵⁷ On the next day, [REDACTED].¹⁵⁵⁸ [REDACTED] Deleig and inferred that '**Ali Kushayb**' was present there because he saw the *Janjaweed* whom he identified as '**Ali Kushayb's**' men.¹⁵⁵⁹ Accordingly, the Chamber has not relied upon this evidence on '**Ali Kushayb**' presence in Deleig.

427. The Defence challenges the overall credibility of P-0931 on the basis that he was an [REDACTED].¹⁵⁶⁰ The Defence also argues that P-0931 admitted that [REDACTED].¹⁵⁶¹ The

¹⁵⁴⁵ P-0931: T-062, pp. 17-18.

¹⁵⁴⁶ P-0931: T-062, pp. 53-54.

¹⁵⁴⁷ P-0931: T-062, pp. 29-31; T-063, pp. 14-16.

¹⁵⁴⁸ P-0931: T-062, pp. 30-31; T-063, pp. 14-16.

¹⁵⁴⁹ P-0931: T-062, p. 32; T-063, p. 17.

¹⁵⁵⁰ P-0931: T-062, pp. 32-38; T-063, pp. 17-18.

¹⁵⁵¹ P-0931: T-062, pp. 32-33.

¹⁵⁵² P-0931: T-062, pp. 13-15.

¹⁵⁵³ P-0931: T-062, p. 34.

¹⁵⁵⁴ P-0931: T-062, pp. 34-35.

¹⁵⁵⁵ P-0931: T-062, pp. 32, 37.

¹⁵⁵⁶ P-0931: T-062, pp. 32-38; T-063, pp. 17-18.

¹⁵⁵⁷ P-0931: T-062, pp. 37-39.

¹⁵⁵⁸ P-0931: T-062, pp. 37-41.

¹⁵⁵⁹ P-0931: T-062, pp. 41-49.

¹⁵⁶⁰ [Defence's Final Brief](#), paras 106, 139-140.

¹⁵⁶¹ [Defence's Final Brief](#), paras 139, 178, referring to P-0931: T-062, p. 58; [Defence's Closing Statement](#): T-161, pp. 83-84, 93-94.

Chamber notes that [REDACTED].¹⁵⁶² [REDACTED].¹⁵⁶³ [REDACTED].¹⁵⁶⁴ The Chamber is unconvinced that merely [REDACTED] renders his evidence unreliable.¹⁵⁶⁵ Additionally, [REDACTED]. Notwithstanding his evidence as to the date of the Mukjar Operation which runs contrary to all other evidence,¹⁵⁶⁶ the Chamber is satisfied that P-0931's account of his dealings with '**Ali Kushayb**' and the events in Mukjar are both credible, and with the exception of the date, reliable.

41. P-0932

428. P-0932 (DoB 1974), a member of the Fur tribe, was a [REDACTED], who gave evidence over one day pursuant to Rule 68(3) of the Rules.¹⁵⁶⁷ P-0932's evidence principally dealt with: his knowledge of **the Accused**;¹⁵⁶⁸ the attack on Kodoom on 15 August 2003 and the presence there of **the Accused**;¹⁵⁶⁹ his subsequent arrest by the *Janjaweed* in Bindisi in [REDACTED] by the [REDACTED];¹⁵⁷⁰ and, lastly, his transfer to Mukjar police station where he witnessed some of the events.¹⁵⁷¹

Knowledge of the Accused

429. P-0932 stated that once in 2000, he had been to **the Accused's** pharmacy in Garsila—having been told that it belonged to '**Ali Kushayb**'—to obtain stomach medicine, only to be told by **the Accused** that he only sold veterinary products.¹⁵⁷² In 2001, P-0932 met **the Accused** at a [REDACTED].¹⁵⁷³ P-0932 said that **the Accused** had many names, including 'Ali Mohammed Ali' and 'Abd-Al-Rahman', but everyone called him '**Ali Kushayb**'.¹⁵⁷⁴ P-

¹⁵⁶² P-0931: T-062, pp. 58, 61.

¹⁵⁶³ P-0931: T-062, pp. 58-62.

¹⁵⁶⁴ P-0931: T-062, pp. 58-62.

¹⁵⁶⁵ *Contra* [Defence's Final Brief](#), paras 139-140, 178.

¹⁵⁶⁶ *See generally* Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004. *See also* Judgment, Section 4. Evidentiary principles and considerations, para. 195.

¹⁵⁶⁷ P-0932's Statement, DAR-OTP-0222-0602-R02; P-0932's Statement Corrections, DAR-OTP-0220-5720; P-0932: T-068.

¹⁵⁶⁸ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0606-0608, paras 22-30.

¹⁵⁶⁹ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609-0612, paras 35-54; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001, paras 5-7.

¹⁵⁷⁰ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0616-0618, paras 81-93; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001, paras 11-13.

¹⁵⁷¹ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0618-0621, paras 94-109; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001-000002, paras 14-19.

¹⁵⁷² P-0932's Statement, DAR-OTP-0222-0602-R02, at 0607, paras 24-25; P-0932: T-068, pp. 13-14.

¹⁵⁷³ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0607-0608, paras 26-30; P-0932: T-068, pp. 17-22.

¹⁵⁷⁴ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0606-0607, paras 22-23; P-0932: T-068, pp. 20-22.

0932 described **the Accused** as of ‘senior age’,¹⁵⁷⁵ tall with a ‘pointed head’, ‘a hump’, and pierced ears.¹⁵⁷⁶

430. The Defence suggested to P-0932 that he was not telling the truth about seeing **the Accused** at the pharmacy nor at [REDACTED],¹⁵⁷⁷ and that he had mentioned the name **Abd-Al-Rahman** because he knew at the time of making his statement—[REDACTED]—that **the Accused** was in custody and thought that was what the investigator wanted to hear.¹⁵⁷⁸ The Defence further argues that P-0932 invented a story about seeing ‘**Ali Kushayb**’ on earlier occasions to enhance his identification at Mukjar police station.¹⁵⁷⁹

431. As already stated in respect of other witnesses, the Chamber is unpersuaded by the Defence’s contention that P-0932 only named **the Accused** as the man he knew as ‘**Ali Kushayb**’ because the latter was in custody at the ICC.¹⁵⁸⁰ Nor is the Chamber persuaded that variations in the physical description of the man, that the witness named as ‘**Ali Kushayb**’, is conclusive evidence that this was not **the Accused**, as physical descriptions may often vary and/or be inaccurate. Equally, whether a witness stated that he purchased veterinary or human medication from the pharmacy—given the apparent overlap between the two¹⁵⁸¹—in the opinion of the Chamber has no bearing the witness’s credibility or reliability.¹⁵⁸²

432. Contrary to the Defence’s allegations, the Chamber is satisfied that no reason has been shown for P-0932 to have been untruthful.¹⁵⁸³ The Chamber is satisfied that P-0932 met **the Accused** prior to the events, particularly since his account [REDACTED] is extremely detailed (including the names of some of those present), which belies any form of invention. Accordingly, the Chamber is satisfied that before the Kodoom and Bindisi Operation, he knew **the Accused** as ‘**Ali Kushayb**’.

¹⁵⁷⁵ P-0932: T-068, p. 19.

¹⁵⁷⁶ P-0932’s Statement, DAR-OTP-0222-0602-R02, at 0606, para. 22; P-0932: T-068, pp. 34-35.

¹⁵⁷⁷ P-0932: T-068, pp. 53-54.

¹⁵⁷⁸ P-0932: T-068, p. 22.

¹⁵⁷⁹ P-0932: T-068, pp. 53-54.

¹⁵⁸⁰ *Contra* [Defence’s Final Brief](#), para. 717.

¹⁵⁸¹ P-0932: T-068, p. 14.

¹⁵⁸² *Contra* [Defence’s Final Brief](#), paras 721-722.

¹⁵⁸³ *Contra* [Defence’s Final Brief](#), paras 510, 717.

The Kodoom and Bindisi Operation

433. In his statement, P-0932 described the arrival in Kodoom of [REDACTED], followed by the arrival of the *Janjaweed* on 15 August 2003.¹⁵⁸⁴ P-0932 stated that he saw **the Accused** arrive in a white car in the centre of Kodoom Ronga Tass, near the mill, and noticed that [REDACTED].¹⁵⁸⁵ From Kodoom he fled to Merly and, upon witnessing the attack there, returned to Kodoom.¹⁵⁸⁶ P-0932 eventually fled to Mukjar.¹⁵⁸⁷

434. The Defence argues that P-0932's evidence about the attack is unreliable because of the time at which he alleges it took place (*i.e.* 8am), whereas other witnesses place it much later on that day.¹⁵⁸⁸ The Defence further argues that, as P-0932 was fleeing at the time he stated that he saw '**Ali Kushayb**' in Kodoom, this could not have been more than a fleeting glance.¹⁵⁸⁹ In re-examination by the Prosecution, P-0932 stated that he had seen '**Ali Kushayb**' for about a minute from a distance of about 15 metres.¹⁵⁹⁰ The Chamber is satisfied that this recognition of **the Accused**—given his prior dealings with the latter—is both credible and reliable, not least because P-0932's description of who was in the vehicle is consistent with evidence given by other witnesses, (with whom it is not suggested that P-0932 had discussed the events).¹⁵⁹¹

Events in Mukjar

435. P-0932 gave evidence that before his arrest, while in Mukjar, on one occasion he saw **the Accused** in the marketplace surrounded by the *Janjaweed*.¹⁵⁹²

436. P-0932 was arrested in Bindisi [REDACTED], where he was detained.¹⁵⁹³ While in detention, [REDACTED].¹⁵⁹⁴ The Defence made it clear this evidence was not in dispute.¹⁵⁹⁵

¹⁵⁸⁴ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0609, para. 36; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001, para. 5.

¹⁵⁸⁵ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610, paras 39-42; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001, paras 6-7.

¹⁵⁸⁶ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0610-0611, paras 42-47.

¹⁵⁸⁷ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0612, para. 52.

¹⁵⁸⁸ [Defence's Final Brief](#), para. 400. *See* Judgment, Section 4. Evidentiary principles and considerations, para. 195.

¹⁵⁸⁹ P-0932: T-068, pp. 26-27.

¹⁵⁹⁰ P-0932: T-068, pp. 61-62.

¹⁵⁹¹ *See* [REDACTED].

¹⁵⁹² P-0932's Statement, DAR-OTP-0222-0602-R02, at 0616, para. 79; P-0932: T-068, pp. 31-32.

¹⁵⁹³ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0616-0618, paras 81-93; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001, paras 11-13; P-0932: T-068, pp. 35-38.

¹⁵⁹⁴ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0617, paras 86-90; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001, paras 12-13; P-0932: T-068, p. 43.

¹⁵⁹⁵ P-0932: T-068, p. 36.

437. P-0932 was then taken to Mukjar police station and was placed in a cell.¹⁵⁹⁶ Both in his statement and in his in-court evidence he stated that from his position he was able to see **the Accused** beating detainees with the blunt end of an axe while they were being loaded onto the Land Cruiser vehicles.¹⁵⁹⁷ According to P-0932 this happened on three separate occasions.¹⁵⁹⁸ There are inconsistencies between other witnesses and P-0932's description of the sequence of these events.¹⁵⁹⁹ Given [REDACTED],¹⁶⁰⁰ the Chamber prefers the evidence of other witnesses in respect of the sequence.

438. The Chamber further notes that the Defence did not challenge the witness on the number of occasions detainees were taken away and relies on his account relating to the third time detainees were taken away, in particular that P-0932 was able to recognise one of the detainees (who was taken away in this fashion) as *Umdah Yahya Ahmad Zarruq*.¹⁶⁰¹

439. The Defence argues that P-0932 would have been unable to see the beatings from his position and points to the discrepancies between the witnesses who were also detained there.¹⁶⁰² Whilst the Chamber, as already stated, will not rely on the sequence detailed by P-0932 in respect of the axe beatings, it is satisfied that the traumatic nature of these incidents themselves—as opposed to the order in which they took place—meant that they were firmly imprinted on P-0932's memory and their nature is also confirmed by other witnesses.¹⁶⁰³

440. Discrepancies are to be expected when witnesses are describing such traumatic events witnessed from varied perspectives and positions. [REDACTED].¹⁶⁰⁴ However, the Chamber is satisfied that the details P-0932 gave of what he saw, in particular on the conditions of detention and the physical and verbal abuse he and other detainees were subjected to—which is similar, if not identical, to evidence given by other credible and reliable witnesses—and the

¹⁵⁹⁶ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0618-0619, paras 94-99; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001, paras 12-14.

¹⁵⁹⁷ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619-0620, paras 102-105; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001-000002, paras 14-17; P-0932: T-068, pp. 39-44.

¹⁵⁹⁸ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0619-0620, paras 101-105; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000001-000002, paras 14-17; P-0932: T-068, p. 42.

¹⁵⁹⁹ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 549-550.

¹⁶⁰⁰ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, para. 106; P-0932: T-068, pp. 43-44.

¹⁶⁰¹ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620-0621, paras 105, 107-108; P-0932's Statement Corrections, DAR-OTP-0220-5720, at 000002, paras 18-19.

¹⁶⁰² [Defence's Final Brief](#), paras 488-491, 494, 499, 518, 522.

¹⁶⁰³ See Judgment, Section 4. Evidentiary principles and considerations, paras 225-226; Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 549-550.

¹⁶⁰⁴ P-0932's Statement, DAR-OTP-0222-0602-R02, at 0620, para. 106; P-0932: T-068, pp. 43-44.

fact that by this stage he was well able to recognise **the Accused**, make his evidence, as regards the actions of **the Accused**, both credible and reliable.¹⁶⁰⁵

Collusion with other witnesses

441. P-0932 was asked by the Defence whether he knew [REDACTED].¹⁶⁰⁶ He replied that he knew them both and that he and [REDACTED] had discussed the presence of ‘**Ali Kushayb**’ at Mukjar police station.¹⁶⁰⁷ Neither [REDACTED] although in the Defence Final Brief it was suggested that they had colluded together.¹⁶⁰⁸

442. Further, the Defence submits that there are inconsistencies as to the nature of the mistreatment meted out by ‘**Ali Kushayb**’ between the witnesses [REDACTED];¹⁶⁰⁹ [REDACTED];¹⁶¹⁰ and their evidence is the result of ‘the phenomenon of collective memory’ of witnesses living in the same place (*i.e.* [REDACTED]) and making statements after the announcement of the arrest warrant against **the Accused**.¹⁶¹¹

443. First, it was not suggested to P-0932 that he [REDACTED] had deliberately concocted a false account of the events and in particular of the presence of ‘**Ali Kushayb**’ during the charged operations. The Chamber finds that, absent any other evidence, ‘discussion’ does not in itself equate to ‘collusion’. Secondly, given the conditions of detention and the traumatic nature of the events that occurred at Mukjar police station, the Chamber finds it understandable that there are inconsistencies in the account of these witnesses. Further, the Chamber finds that, the Defence’s submissions on the improbability amounts to no more than comment and is satisfied that not only is there no evidence of collusion, but that the inconsistencies between their evidence of the events (as set out above) militate to a finding of an absence of collusion.¹⁶¹² The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.

¹⁶⁰⁵ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 520-525, 530.

¹⁶⁰⁶ P-0932: T-068, pp. 48-52.

¹⁶⁰⁷ P-0932: T-068, pp. 48-52.

¹⁶⁰⁸ [Defence’s Final Brief](#), paras 501, 503.

¹⁶⁰⁹ [Defence’s Final Brief](#), para. 490.

¹⁶¹⁰ [Defence’s Final Brief](#), para. 491.

¹⁶¹¹ [Defence’s Final Brief](#), para. 501.

¹⁶¹² *Contra* [Defence’s Final Brief](#), paras 490-491, 501, 503.

42. P-0935

444. P-0935 (DoB 1980), a member of the [REDACTED] tribe,¹⁶¹³ gave *viva voce* evidence for one day.¹⁶¹⁴ At the time of the events in 2003, [REDACTED].¹⁶¹⁵ [REDACTED].¹⁶¹⁶ [REDACTED].¹⁶¹⁷ His evidence principally dealt with his knowledge of **the Accused**,¹⁶¹⁸ the context of the armed conflict;¹⁶¹⁹ and the events in Deleig in March 2004.¹⁶²⁰

Knowledge of the Accused

445. P-0935 gave clear evidence of his interaction with **the Accused**. He first met ‘**Ali Kushayb**’ in [REDACTED].¹⁶²¹ During that period of time, he saw ‘**Ali Kushayb**’ on several occasions, such as at the market and at his pharmacy as, like other witnesses,¹⁶²² he frequented a nearby tea-shop.¹⁶²³ P-0935 provided a wealth of detail about the location of the pharmacy—that it was next to the Agricultural Bank, what it sold, and how ‘**Ali Kushayb**’ came to be running the pharmacy.¹⁶²⁴

446. After 2003, P-0935 came to know ‘**Ali Kushayb**’ better when the latter came [REDACTED].¹⁶²⁵ P-0935 interacted with ‘**Ali Kushayb**’ [REDACTED], although P-0935 would not communicate with ‘**Ali Kushayb**’ directly.¹⁶²⁶ P-0935 would refer to ‘**Ali Kushayb**’ either by his military rank of *musa'id* or *sol*,¹⁶²⁷ or by the name ‘Uncle Ali’ to show respect.¹⁶²⁸ Before being given responsibilities by the GoS, ‘**Ali Kushayb**’ would come [REDACTED] about once per month.¹⁶²⁹ However, after he was given those responsibilities, he would come

¹⁶¹³ P-0935: T-090, p. 4.

¹⁶¹⁴ P-0935: T-090.

¹⁶¹⁵ P-0935: T-090, p. 5.

¹⁶¹⁶ P-0935: T-090, p. 5.

¹⁶¹⁷ P-0935: T-090, p. 6.

¹⁶¹⁸ P-0935: T-090, pp. 11-20, 23, 32, 53-54, 60-68, 81, 89.

¹⁶¹⁹ P-0935: T-090, pp. 6-11, 20-36, 51-54, 59-80.

¹⁶²⁰ P-0935: T-090, pp. 36-47, 80-84, 99-100.

¹⁶²¹ P-0935: T-090, pp. 5, 13, 67.

¹⁶²² See for example P-0905: T-085, pp. 18-20; P-1021: T-081, pp. 3, 91. See also the Chamber’s assessment of the evidence of P-0905 and P-1021, Annex B, Sections I.A.32 and I.A.49.

¹⁶²³ P-0935: T-090, p. 13.

¹⁶²⁴ P-0935: T-090, pp. 16-17.

¹⁶²⁵ P-0935: T-090, pp. 13-14.

¹⁶²⁶ P-0935: T-090, p. 14.

¹⁶²⁷ P-0935: T-090, pp. 32, 67.

¹⁶²⁸ P-0935: T-090, pp. 13-15.

¹⁶²⁹ P-0935: T-090, p. 17.

to the [REDACTED], often carrying an axe about half a metre long.¹⁶³⁰ P-0935 heard that ‘**Ali Kushayb**’ had served as a ‘nurse’ in the Medical Corps of the SAF.¹⁶³¹

447. Additionally, P-0935 gave evidence of ‘**Ali Kushayb**’s’ real name and the basis of this knowledge. [REDACTED].¹⁶³² P-0935 stated [REDACTED].¹⁶³³ [REDACTED].¹⁶³⁴ [REDACTED].¹⁶³⁵ P-0935 knew the full name of Muhammad and therefore knew the full name of ‘**Ali Kushayb**’.¹⁶³⁶ The Defence argues that the Prosecution has provided no proof of **Abd-Al-Rahman** having a son named Muhammad.¹⁶³⁷ The Chamber is unpersuaded by this submission,¹⁶³⁸ given that P-0935’s evidence on this point is supported by other witnesses whom the Chamber considers to be credible, including P-0883 and P-0905.¹⁶³⁹ It is also supported by Defence witness D-0032, (against whom no allegation is made of collusion).¹⁶⁴⁰

448. The Chamber is satisfied that P-0935 [REDACTED] that this provided him with a credible basis for his knowledge of the full name of **the Accused**. Overall, the Chamber is satisfied that P-0935 gave clear evidence that ‘**Ali Kushayb**’ was the same person as **Ali Muhammed Ali Abd-Al-Rahman**.¹⁶⁴¹ He had no reason to lie and indeed, it was not suggested that he had done so.

Structure of the SAF

449. P-0935 gave detailed evidence about the command structure of the SAF [REDACTED] and his knowledge of the events.¹⁶⁴² [REDACTED].¹⁶⁴³ The Chamber is satisfied that [REDACTED], P-0935 [REDACTED].

¹⁶³⁰ P-0935: T-090, pp. 17-19.

¹⁶³¹ P-0935: T-090, pp. 13, 17.

¹⁶³² P-0935: T-090, pp. 15, 91-93.

¹⁶³³ P-0935: T-090, p. 15.

¹⁶³⁴ P-0935: T-090, p. 92.

¹⁶³⁵ P-0935: T-090, p. 92.

¹⁶³⁶ P-0935: T-090, pp. 15-16.

¹⁶³⁷ [Defence’s Final Brief](#), para. 702.

¹⁶³⁸ *Contra* [Defence’s Final Brief](#), para. 702.

¹⁶³⁹ P-0883 testified that ‘**Ali Kushayb**’ had a son named Muhammad Ali Muhammad Ali Kushayb or Muhammad Ali Muhammad Ali Abd-Al-Rahman who was a fighter with the SAF and was killed while on a mission to Jebel Marra (P-0883: T-074, p. 8). P-0905 testified that ‘**Ali Kushayb**’ had a son called Muhammad Ali (also known by the nickname ‘Kushayb’) who was in the 273 battalion and died during an operation in Jebel Marra around 2004 (P-0905: T-085, pp. 24, 27-28).

¹⁶⁴⁰ D-0032: T-140, pp. 21-22. *See also* the Chamber’s assessment of D-0032’s evidence, Annex B, Section I.B.13.

¹⁶⁴¹ P-0935: T-090, p. 11.

¹⁶⁴² P-0935: T-090, pp. 6-9.

¹⁶⁴³ P-0935: T-090, pp. 4-6.

Delegation in [REDACTED], deployment of forces to Deleig and [REDACTED]

450. The Defence highlights contradictory evidence from P-0935 and [REDACTED] in relation to the high powered delegation that came to the [REDACTED],¹⁶⁴⁴ and also in relation to the existence of a [REDACTED].¹⁶⁴⁵ The Chamber is satisfied that both [REDACTED] and P-0935 provided credible evidence of the arrival of the delegation, and that discrepancies between these witnesses, with respect to dates and personnel, are to be expected given the lapse of time and the [REDACTED].¹⁶⁴⁶ Nevertheless, as set out in [REDACTED] credibility assessment, [REDACTED], to the extent of any inconsistencies in the evidence of [REDACTED] and P-0935 on the delegation, the Chamber relies upon the evidence of [REDACTED].¹⁶⁴⁷

451. P-0935 also gave evidence on the deployment of forces to Deleig.¹⁶⁴⁸ Whilst the Chamber generally finds this evidence to be credible, it accepts that P-0935 did not specify his location when he witnessed these events and provided less detail than other witnesses to the same events.¹⁶⁴⁹ Given this lack of detail, the Chamber, therefore, prefers the evidence of other witnesses on this topic to the extent of any inconsistency.¹⁶⁵⁰

452. In respect of the [REDACTED].¹⁶⁵¹ [REDACTED].¹⁶⁵²

Killings near Fere

453. P-0935 [REDACTED] of the killings near Fere from [REDACTED].¹⁶⁵³ Although his evidence is indirect, the Chamber is satisfied that it is credible and reliable, as it is generally consistent with other credible direct evidence. In respect of the inconsistencies between [REDACTED].¹⁶⁵⁴

454. Collusion with other witnesses

¹⁶⁴⁴ [Defence's Final Brief](#), para. 571.

¹⁶⁴⁵ [Defence's Final Brief](#), para. 572.

¹⁶⁴⁶ *Contra* [Defence's Final Brief](#), paras 571-572.

¹⁶⁴⁷ See the [REDACTED].

¹⁶⁴⁸ P-0935: T-090, pp. 39-40.

¹⁶⁴⁹ See for example P-0935: T-090, pp. 79-80, 82-83.

¹⁶⁵⁰ See Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 585-590.

¹⁶⁵¹ P-0935: T-090, pp. 47-51, 84-88.

¹⁶⁵² P-0935: T-090, pp. 50-51; [Defence's Final Brief](#), para. 570.

¹⁶⁵³ P-0935: T-090, p. 83.

¹⁶⁵⁴ See the Chamber's assessment of [REDACTED].

455. The Defence contends that there is evidence that P-0935, [REDACTED] knew each other and therefore colluded in relation to their evidence.¹⁶⁵⁵ The Chamber notes that [REDACTED],¹⁶⁵⁶ and [REDACTED].¹⁶⁵⁷ Therefore, the Chamber finds it credible that, [REDACTED]. Not only is there no evidence of collusion but the inconsistencies between their evidence militate a finding of an absence of collusion.¹⁶⁵⁸ The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.

[REDACTED]

456. [REDACTED].¹⁶⁵⁹ [REDACTED].

457. In support of its challenge against the credibility of P-0935, the Defence adverted to the comments of the Chamber in relation to this witness.¹⁶⁶⁰ The Chamber notes that, on occasion, in the course of his in-court evidence, P-0935 came to conclusions based on unattributed indirect evidence rather than direct evidence.¹⁶⁶¹ However, as it was clear when P-0935 was giving such evidence, the Chamber is satisfied that it did not undermine the general credibility of P-0935's evidence taken as a whole.

43. P-0955

458. P-0955 (DoB 1989),¹⁶⁶² a member of the Fur tribe, gave *viva voce* evidence over two days pursuant to Rule 68(3) of the Rules.¹⁶⁶³ P-0955 [REDACTED] at the time of the events.¹⁶⁶⁴ His evidence principally dealt with the attacks on Forgo and Arawala and the Deleig Operation, including [REDACTED] in Deleig;¹⁶⁶⁵ and the identification of '**Ali Kushayb**' [REDACTED].¹⁶⁶⁶

¹⁶⁵⁵ [Defence's Final Brief](#), para. 569.

¹⁶⁵⁶ [REDACTED].

¹⁶⁵⁷ [REDACTED].

¹⁶⁵⁸ *Contra* [Defence's Final Brief](#), para. 569.

¹⁶⁵⁹ [Defence's Final Brief](#), para. 171. *See* [REDACTED].

¹⁶⁶⁰ [Defence's Final Brief](#), para. 150, *referring to* comments of the Chamber at T-090, p. 73.

¹⁶⁶¹ *See for example* P-0935: T-090, pp. 49-50.

¹⁶⁶² P-0955's Statement, DAR-OTP-O220-0620-R02, at 0620.

¹⁶⁶³ P-0955's Statement, DAR-OTP-O220-0620-R02; P-0955's Statement Corrections, DAR-OTP-0220-0053; P-0955: T-063; T-064.

¹⁶⁶⁴ P-0955's Statement, DAR-OTP-O220-0620-R02, at 0623, para. 12; P-0955's Statement Corrections, DAR-OTP-0220-0053, at 0053, para. 1.

¹⁶⁶⁵ P-0955's Statement, DAR-OTP-O220-0620-R02, at 0624-0629, paras 15-38; P-0955: T-064, pp. 5-14.

¹⁶⁶⁶ P-0955's Statement, DAR-OTP-O220-0620-R02, at 0628-0633, paras 35-38, 42, 51-53; P-0955: T-064, pp. 8-10, 17-21.

Identification of the Accused

459. P-0955 gave evidence that on 5 March 2004 a man [REDACTED] identified as ‘**Ali Kushayb**’, accompanied by four other armed men, arrested [REDACTED] *Umdah* Kindiri, [REDACTED].¹⁶⁶⁷ During the arrest, [REDACTED] *Umdah* Kindiri being placed on the back of one of the vehicles with his hands bound behind his back.¹⁶⁶⁸ A short time thereafter, [REDACTED] *Umdah* Kindiri, together with *Umdah* Jiddo Khamis—both of whom were wearing white *jallabiyas*—in the back of the same vehicle near the well at the market.¹⁶⁶⁹ [REDACTED].¹⁶⁷⁰

460. The Defence challenges the reliability of P-0955’s evidence of the identification of ‘**Ali Kushayb**’, asserting that it was solely based on the unsubstantiated evidence of [REDACTED].¹⁶⁷¹ The Chamber accepts that P-0955 did not know ‘**Ali Kushayb**’ personally at the time of these events.¹⁶⁷² However, P-0955 gave evidence that [REDACTED] immediately identified the man who had arrested him as ‘**Ali Kushayb**’.¹⁶⁷³ Although this identification evidence is indirect,¹⁶⁷⁴ [REDACTED].¹⁶⁷⁵ [REDACTED] added that ‘**Ali Kushayb**’ would sometimes travel with a briefcase containing animal medicine for sale.¹⁶⁷⁶

461. In his statement, P-0955 recounted another occasion when someone pointed out ‘**Ali Kushayb**’ to him. His account is that, [REDACTED].¹⁶⁷⁷ P-0955 stated that ‘**Ali Kushayb**’ entered the house wearing the same type of clothing that he wore [REDACTED] in Deleig.¹⁶⁷⁸ After the search, [REDACTED] told P-0955 that the man was ‘**Ali Kushayb**’.¹⁶⁷⁹ She provided a basis for her knowledge in that she knew him before the events as having a house in Garsila and a pharmacy near the Garsila market.¹⁶⁸⁰ P-0955 also said in his statement that subsequently,

¹⁶⁶⁷ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0628-0629, paras 35-38.

¹⁶⁶⁸ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0629-0630, paras 37, 42.

¹⁶⁶⁹ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0629-0630, paras 40-41.

¹⁶⁶⁹ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0630, para. 41.

¹⁶⁷⁰ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0629, paras 41, 43; P-0955: T-063, p. 28.

¹⁶⁷¹ [Defence’s Final Brief](#), para. 585.

¹⁶⁷² P-0955: T-064, p. 10.

¹⁶⁷³ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0629, para. 38.

¹⁶⁷⁴ [Defence’s Final Brief](#), paras 579, 585.

¹⁶⁷⁵ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0629, para. 38.

¹⁶⁷⁶ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0628-0629, paras 31, 34, 38; P-0955: T-064, pp. 9-11.

¹⁶⁷⁶ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0629, para. 38.

¹⁶⁷⁷ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0632-0633, paras 51-52.

¹⁶⁷⁸ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0632, para. 51.

¹⁶⁷⁹ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0633, para. 53.

¹⁶⁸⁰ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0633, para. 53.

he saw ‘**Ali Kushayb**’ standing in front of the pharmacy holding a Thuraya phone similar to the phone he had on the occasion [REDACTED].¹⁶⁸¹

462. In the context of all the surrounding circumstances, the Chamber is satisfied that P-0955’s identification evidence, whilst grounded on indirect evidence, is credible and reliable.¹⁶⁸²

Deleig Operation

463. P-0955 gave evidence that on 5 March 2004, he stood at the north-eastern side of the Deleig market from around 14:00 and observed detainees lying face down outside the police station, being randomly beaten, and being loaded onto vehicles which returned empty.¹⁶⁸³ The Chamber is satisfied that the witness’s evidence in this regard is credible. P-0955 observed and experienced the events himself and the evidence is consistent with other credible and reliable evidence on the record.¹⁶⁸⁴

The killing of community leaders during the Deleig Operation

464. The Chamber finds that aspects of P-0955’s evidence were based on unsubstantiated indirect evidence. In this regard, the Chamber is not satisfied and will not rely on the evidence of P-0955 that the *umdahs*, [REDACTED], had been killed and their bodies were seen in an area near Koska.¹⁶⁸⁵ P-0955 obtained this information from [REDACTED] who told P-0955 that they had been informed of the identities of the bodies by an unidentified woman who saw the bodies but, later, when returning to the site to confirm that it was indeed the *umdahs*, found the bodies burnt and was unable to identify them.¹⁶⁸⁶

465. The Defence suggests that P-0955’s evidence was ‘primarily motivated by his own interests’ and ‘may have been tailored for the sole purpose of suiting the OTP case, instead of seeking to establish the truth’ based on the fact that [REDACTED].¹⁶⁸⁷ The Chamber has not

¹⁶⁸¹ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0628-0629, 0633, paras 35, 53.

¹⁶⁸² *Contra* [Defence’s Final Brief](#), para. 585.

¹⁶⁸³ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0631, paras 45-46; P-0955: T-064, p. 12.

¹⁶⁸⁴ *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 608-610.

¹⁶⁸⁵ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0631-0632, paras 48-50; P-0955’s Statement Corrections, DAR-OTP-0220-0053, at 0053, para. 3.

¹⁶⁸⁶ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0631-0632, paras 48-50.

¹⁶⁸⁷ [Defence’s Final Brief](#), para. 172.

found, neither has the Defence identified, any instance where P-0955 may have ‘tailored’ his evidence to suit the Prosecution’s case or to serve ‘his own interests’.¹⁶⁸⁸

44. P-0980

466. P-0980 (DoB 1984),¹⁶⁸⁹ a member of the Fur tribe,¹⁶⁹⁰ gave *viva voce* evidence over two days pursuant to Rule 68(3) of the Rules.¹⁶⁹¹ His evidence principally dealt with the *Janjaweed* attacks on Gaba;¹⁶⁹² the Deleig Operation;¹⁶⁹³ and the identification of ‘**Ali Kushayb**’ at Deleig police station.¹⁶⁹⁴

467. P-0980’s account in his statement was that he saw ‘**Ali Kushayb**’ at Deleig police station questioning detainees, hitting *sheikhs*, and issuing orders.¹⁶⁹⁵ P-0980 also stated that, as he was lying on the floor of Deleig police station, he was not allowed to lift his head to look around and was not even allowed to turn his head to rest his cheek on the ground.¹⁶⁹⁶ However, when giving evidence in court, P-0980 said that he was only about one metre from ‘**Ali Kushayb**’ who was the leader of the ‘militia’ and who had a Thuraya phone and was carrying a gun and holding a stick.¹⁶⁹⁷ P-0980 also gave other evidence related to the Deleig Operation, such as that he saw ‘*Umdah Yahya*’ being brought to and later removed from Deleig police station on 6 March 2004.¹⁶⁹⁸

468. The Chamber finds that P-0980 is not a credible witness. His evidence involves significant internal and external inconsistencies. For instance, in respect of his identification of ‘**Ali Kushayb**’, the Chamber accepts the Defence’s submission that P-0980’s evidence that he was forced to lie with his forehead on the ground would have made it very difficult for him to observe the events occurring and to see ‘**Ali Kushayb**’.¹⁶⁹⁹ Additionally, P-0980 gave evidence

¹⁶⁸⁸ *Contra* [Defence’s Final Brief](#), para. 172.

¹⁶⁸⁹ P-0980’s Statement, DAR-OTP-0221-0553-R03, at 0555, para. 11. [REDACTED].

¹⁶⁹⁰ P-0980’s Statement, DAR-OTP-0221-0553-R03, at 0053, 0555, para. 11; P-0980: T-043, p. 79.

¹⁶⁹¹ P-0980’s Statement, DAR-OTP-0221-0553-R03; P-0980: T-043; T-044.

¹⁶⁹² P-0980’s Statement, DAR-OTP-0221-0553-R03, at 0555-0556, paras 13-16; P-0980: T-044, p. 19.

¹⁶⁹³ P-0980’s Statement, DAR-OTP-0221-0553-R03, at 0556-0559, paras 17-19, 21-25, 28; P-0980: T-044, pp. 11-14, 22-34, 39-42.

¹⁶⁹⁴ P-0980’s Statement, DAR-OTP-0221-0553-R03, at 0558-0559, paras 24, 27-28; P-0980: T-043, pp. 81-89; T-044, pp. 50-55.

¹⁶⁹⁵ P-0980’s Statement, DAR-OTP-0221-0553-R03, at 0558-0059, paras 24, 27. *See also* [Defence’s Final Brief](#), para. 600.

¹⁶⁹⁶ P-0980’s Statement, DAR-OTP-0221-0553-R03, at 0558-0059, para. 27; P-0980: T-043, pp. 77-78; T-044, pp. 29-30.

¹⁶⁹⁷ P-0980: T-043, pp. 81-82, 88-89.

¹⁶⁹⁸ P-0980’s Statement, DAR-OTP-0221-0553-R03, at 0560, para. 32; P-0980: T-044, pp. 42-44.

¹⁶⁹⁹ [Defence’s Final Brief](#), para. 603. *See also* P-0980: T-043, pp. 83-86; T-044, pp. 50-54.

that he did not know ‘**Ali Kushayb**’ before the events so that the first time he encountered ‘**Ali Kushayb**’ was at Deleig police station on 5 March 2004.¹⁷⁰⁰ Indeed, the only way in which he identified the person he referred to as ‘**Ali Kushayb**’ was that he heard the ‘militia’ calling him by that name.¹⁷⁰¹ When the Defence confronted P-0980 with his screening interview and his statement in court, (as P-0980 had clearly stated then that he was not beaten), P-0980 denied any contradiction and insisted that he was beaten.¹⁷⁰²

469. In respect of his evidence about seeing ‘*Umdah Yahya*’, the overwhelming evidence of other witnesses is that *Umdah Yahya* Ahmad Zarruq had been detained in Mukjar.¹⁷⁰³ P-0980 also gave evidence that he was detained outside Deleig police station and never told anyone that he was detained inside.¹⁷⁰⁴ However, [REDACTED].¹⁷⁰⁵

470. Based on the Chamber’s assessment of the evidence, including the foregoing, the Chamber has significant concerns in relation to the credibility of P-0980. The witness’s evidence contained significant, internal and external inconsistencies. The Chamber is therefore satisfied that P-0980 was not a credible or reliable witness.

45. P-0984

471. P-0984 (DoB 1972), a member of the Fur tribe, gave *viva voce* evidence over two days.¹⁷⁰⁶ During the [REDACTED].¹⁷⁰⁷ His evidence principally dealt with: his knowledge of ‘**Ali Kushayb**’;¹⁷⁰⁸ the events leading to the Bindisi and Kodoom Operation;¹⁷⁰⁹ the visits to Mukjar by Minister Harun in 2003 and 2004;¹⁷¹⁰ the arrests after the Kodoom and Bindisi and the Mukjar operations;¹⁷¹¹ and the killings during the Mukjar Operation.¹⁷¹²

¹⁷⁰⁰ P-0980: T-044, p. 55.

¹⁷⁰¹ P-0980: T-044, p. 55.

¹⁷⁰² P-0980: T-044, pp. 36-41.

¹⁷⁰³ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 510, 518, 524, 542, 545, 548. See also [Defence’s Final Brief](#), para. 565.

¹⁷⁰⁴ P-0980: T-044, p. 14. See also [Defence’s Final Brief](#), paras 585, 591.

¹⁷⁰⁵ P-0955’s Statement, DAR-OTP-0220-0620-R02, at 0631, para. 47.

¹⁷⁰⁶ P-0984: T-066; T-067.

¹⁷⁰⁷ P-0984: T-066, pp. 36-38; T-067, p. 57.

¹⁷⁰⁸ P-0984: T-066, pp. 50-56, 60-65; T-067, pp. 5, 8, 12, 29, 33-36, 39, 58-59, 76-82, 85-86.

¹⁷⁰⁹ P-0984: T-066, pp. 38-40, 46-53, 65-66.

¹⁷¹⁰ P-0984: T-066, pp. 40-43, 46, 56-57, 59-60; T-067, pp. 26-28.

¹⁷¹¹ P-0984: T-066, pp. 57-59, 65-74, referring to P-0984’s Annotated Satellite Image, DAR-OTP-0225-0057-R01; T-067, pp. 29-31, 36-43.

¹⁷¹² P-0984: T-066, pp. 74-75, referring to P-0984’s Annotated Satellite Image, DAR-OTP-0225-0057-R01; T-067, pp. 3, 8-18, 48-56, 60-76, 84-85, referring to P-0984’s Annotated Satellite Image, DAR-OTP-0225-0057-R01; P-0984’s Sketch, DAR-OTP-0225-0056-R01.

Knowledge of the Accused

472. P-0984 said he first met the man he knew as ‘**Ali Kushayb**’ in December 2001 at the market in Garsila [REDACTED].¹⁷¹³ [REDACTED].¹⁷¹⁴ [REDACTED] saw ‘**Ali Kushayb**’, called him ‘Kushayb’, and the two of them chatted for a short time in the presence of P-0984.¹⁷¹⁵ After this meeting, [REDACTED] told P-0984 that ‘**Ali Kushayb**’ had a shop in the market trading medicines.¹⁷¹⁶

473. P-0984 stated he next saw ‘**Ali Kushayb**’ [REDACTED], shortly before the Bindisi and Kodoom operation.¹⁷¹⁷ He gave a description of ‘**Ali Kushayb**’.¹⁷¹⁸ P-0984 described also seeing him in Mukjar in 2004 at the locality building when he noticed that ‘**Ali Kushayb**’ was carrying a Kalashnikov and an axe.¹⁷¹⁹ P-0984 [REDACTED],¹⁷²⁰ [REDACTED].¹⁷²¹ [REDACTED].¹⁷²²

474. The Defence suggested to P-0984 that effectively it was improbable he would remember a brief meeting in 2001.¹⁷²³ His reply was ‘I only remembered him by 2003, when the events in Mukjar happened and people were talking about ‘**Ali Kushayb**’. I later on saw him, and I recognised that it was indeed Ali Kushayb’, and stated that [REDACTED] had explained exactly who he was.¹⁷²⁴

475. The Chamber is satisfied that [REDACTED] ‘**Ali Kushayb**’ during the events he described. His evidence was measured and unexaggerated—for example, he made it clear that he did not see ‘**Ali Kushayb**’ during the killings.¹⁷²⁵ His account of the first meeting in Garsila was frank, in that P-0984 was prepared to name [REDACTED] and did not try to over-state its length or his interaction with the man [REDACTED] addressed as ‘Kushayb’.¹⁷²⁶ He also made

¹⁷¹³ P-0984: T-066, pp. 53-55.

¹⁷¹⁴ P-0984: T-066, p. 56.

¹⁷¹⁵ P-0984: T-066, pp. 54-56.

¹⁷¹⁶ P-0984: T-066, pp. 54-56.

¹⁷¹⁷ P-0984: T-066, pp. 50-51.

¹⁷¹⁸ P-0984: T-066, pp. 50-53.

¹⁷¹⁹ P-0984: T-066, pp. 60-61.

¹⁷²⁰ P-0984: T-067, pp. 51-52, *referring to* P-0984’s Annotated Satellite Image, DAR-OTP-0225-0057-R01.

¹⁷²¹ P-0984: T-067, p. 5, *referring to* Annotated Satellite Image, DAR-OTP-0225-0057-R01.

¹⁷²² P-0984’s Annotated Satellite Image, DAR-OTP-0225-0057-R01.

¹⁷²³ P-0984: T-067, pp. 79-82.

¹⁷²⁴ P-0984: T-067, p. 81.

¹⁷²⁵ P-0984: T-067, p. 71.

¹⁷²⁶ P-0984: T-066, pp. 53-55.

it clear that his description of ‘**Ali Kushayb**’ as *agid al-ogada* was based on what he saw and heard.¹⁷²⁷

476. Accordingly, the Chamber is satisfied that P-0984 is both credible and reliable both in respect of his recognition of ‘**Ali Kushayb**’s’ as the man he met in Garsila in 2001, and ‘**Ali Kushayb**’s’ part in the events he observed.¹⁷²⁸

Events prior to the Kodoom and Bindisi Operation

477. P-0984 described the arrival of Minister Harun in a helicopter in August 2003 and the speech made to the *Janjaweed*.¹⁷²⁹ According to P-0984, Torshein was present but otherwise only local *Janjaweed* leaders were present, namely Samih, Jalombo and Garang.¹⁷³⁰ P-0984 also stated that [REDACTED] was present.¹⁷³¹ This evidence is inconsistent (in the detail of who was present at the meeting and who spoke) with that of other witnesses accounts of this meeting.¹⁷³² Given that P-0984 was dependent entirely on recollection some years after the event, the Chamber does not rely on this evidence save for the fact that the meeting took place.

478. P-0984 also described the meeting [REDACTED].¹⁷³³ According to [REDACTED].¹⁷³⁴ Whilst others describe the meeting as taking place in the CRF base,¹⁷³⁵ the Chamber is satisfied that the importance of the meeting lies in its content, *i.e.* the [REDACTED], on which, in general terms, all witnesses are in agreement.

479. It was followed immediately by the Kodoom and Bindisi Operation [REDACTED], but he was able to observe its after-effects, *i.e.* the arrival of refugees from the villages and the arrest of young men who were forced to join the police.¹⁷³⁶ His account of that meeting, whilst more limited in detail, generally aligns with that of [REDACTED].¹⁷³⁷ The Chamber notes that it was not suggested by the Defence that P-0984 was being untruthful or mistaken in his description of the meeting. Accordingly, the Chamber is satisfied that his account is credible

¹⁷²⁷ P-0984: T-067, pp. 33-35.

¹⁷²⁸ *Contra* [Defence’s Final Brief](#), para. 141.

¹⁷²⁹ P-0984: T-066, pp. 40-43; T-067, p. 28.

¹⁷³⁰ P-0984: T-066 pp. 40-43, 46; T-067, pp. 27-28.

¹⁷³¹ P-0984: T-066, pp. 43-44.

¹⁷³² *See* Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 382-390.

¹⁷³³ P-0984: T-066, pp. 50-52.

¹⁷³⁴ P-0984: T-066, pp. 50-52.

¹⁷³⁵ *See for example* [REDACTED].

¹⁷³⁶ P-0984: T-066, pp. 57-58.

¹⁷³⁷ *See for example* [REDACTED].

and reliable and lends support to those witnesses who described the request as being made by ‘**Ali Kushayb**’.

Mukjar Operation

480. P-0984 described the second visit by Minister Harun to Mukjar in 2004 which was followed shortly after by the arrival of ‘**Ali Kushayb**’ and his forces, and he stated it was ‘[D]ifferent from the first time. He was in military vehicles, filled with military equipment’.¹⁷³⁸ Although [REDACTED], he saw the after-effects of displaced persons being arrested at checkpoints or at homes, and young men being detained at the police station.¹⁷³⁹ [REDACTED].¹⁷⁴⁰

481. As a result of this aspect of his evidence, the Defence suggested to P-0984 that [REDACTED],¹⁷⁴¹ [REDACTED].¹⁷⁴² No reason was advanced for this suggestion. Moreover, the Defence, in its Final Brief, relies on the words as being said by ‘**Ali Kushayb**’, to demonstrate that there was no plan by ‘**Ali Kushayb**’ to execute prisoners.¹⁷⁴³ Accordingly, the Chamber is satisfied that his account [REDACTED] is both credible and reliable.

482. P-0984 gave evidence that, [REDACTED],¹⁷⁴⁴ [REDACTED].¹⁷⁴⁵ [REDACTED].¹⁷⁴⁶ The Defence submits that because of these inconsistencies the evidence of P-0984 is unreliable.¹⁷⁴⁷

483. However, as the Chamber has already stated, events as traumatic as this will clearly result in inconsistencies of detail and such inconsistencies do not undermine the credibility of a witness, particularly considering the passage of time between the events and the in-court evidence.¹⁷⁴⁸ P-0984 made it clear that [REDACTED].¹⁷⁴⁹ As already stated, P-0984 made no attempt to exaggerate [REDACTED], and the Chamber is satisfied that, in the most general of

¹⁷³⁸ P-0984: T-066, pp. 60-61.

¹⁷³⁹ P-0984: T-066, pp. 66-67.

¹⁷⁴⁰ P-0984: T-066, pp. 68-69.

¹⁷⁴¹ P-0984: T-067, pp. 4-5, 56-58.

¹⁷⁴² P-0984: T-067, p. 58.

¹⁷⁴³ [Defence’s Final Brief](#), para. 525.

¹⁷⁴⁴ P-0984: T-066, pp. 72-73.

¹⁷⁴⁵ P-0984: T-067, pp. 68-74.

¹⁷⁴⁶ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 551-560.

¹⁷⁴⁷ [Defence’s Final Brief](#), paras 530, 534, 540.

¹⁷⁴⁸ See Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

¹⁷⁴⁹ P-0984: T-067, pp. 9, 71-73, 86.

terms, [REDACTED] the executions and, [REDACTED] the bodies of the detainees that had been executed.¹⁷⁵⁰

46. P-0986

484. P-0986 (DoB 1982), a member of the Fur tribe, gave *viva voce* evidence before the Chamber over a day pursuant to Rule 68(3) of the Rules.¹⁷⁵¹ At the time of the events, he was a [REDACTED]. His evidence, both in his statement and in court, principally dealt with his interaction with the man he stated was ‘**Ali Kushayb**’, and the torture he underwent at the hands of the *Janjaweed*.¹⁷⁵² Additionally, he provided some evidence on the identification of **the Accused** during the attack on Kodoom on 15 August 2003,¹⁷⁵³ and the arrests and detentions in Mukjar in September 2003.¹⁷⁵⁴

Identification of the Accused

485. P-0986 gave evidence that in June 2001 [REDACTED] Garsila market, [REDACTED] the ‘veterinary doctor’ called ‘**Ali Kushayb**’ who had a ‘place’ next to the ‘Agricultural Bank’. They did so, [REDACTED] asked the man at the shop if he was ‘**Ali Kushayb**’. The man confirmed he was [REDACTED]. The encounter lasted about 20-25 minutes.¹⁷⁵⁵ P-0986 described the man and gave an estimate of his age as ‘in his 30’s or 40’s’.¹⁷⁵⁶

486. P-0986 explained [REDACTED] when the attack on Kodoom on 15 August 2003 began, [REDACTED].¹⁷⁵⁷ P-0986 was discovered by the *Janjaweed*, which is when he encountered the man he knew as ‘**Ali Kushayb**’. During this encounter, in the presence and under the supervision of ‘**Ali Kushayb**’, P-0986 was physically assaulted and questioned.¹⁷⁵⁸ P-0986

¹⁷⁵⁰ P-0984: T-067, p. 17. *Contra* [Defence’s Final Brief](#), paras 530, 534, 540.

¹⁷⁵¹ P-0986’s Statement, DAR-OTP-0222-0437-R01; P-0986: T-065; T-066.

¹⁷⁵² P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0442-0443, 0447-0449, 0458, paras 24-27, 47-56, 97; P-0986: T-065, pp. 6-8, 10-13, 46-50, 59, 64; T-066, pp. 18-19, 25-26.

¹⁷⁵³ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0447-0449, 0458, paras 47-56, 97; P-0986: T-065, pp. 10-13, 46-50, 59, 64; T-066, pp. 25-26.

¹⁷⁵⁴ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0452-0454, paras 70-80; P-0986: T-065, pp. 11-13.

¹⁷⁵⁵ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0442-0443, paras 24-27; P-0986: T-065, pp. 6-8; T-066, pp. 18-19.

¹⁷⁵⁶ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0442, para. 28.

¹⁷⁵⁷ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0444-0445, paras 34-41; P-0986: T-065, pp. 45-46.

¹⁷⁵⁸ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0447-0449, paras 47-56; P-0986: T-065, pp. 10-11, 46-50, 59; T-066, pp. 25-26.

described him as wearing civilian clothes and carrying a walkie-talkie in one hand and an axe in the other.¹⁷⁵⁹

487. When questioned by the Defence, P-0986 said he had been able to see ‘**Ali Kushayb**’ because he had turned his head sideways,¹⁷⁶⁰ and that ‘**Ali Kushayb**’ had been with him for between 10-20 minutes.¹⁷⁶¹ The Defence suggested to P-0986 that he was never in Kodoom but had fled with his family and the only time he was tortured was when he was arrested in [REDACTED]. P-0986 rejected those suggestions.¹⁷⁶²

488. P-0986 recounted one further sighting of ‘**Ali Kushayb**’ in Mukjar in September 2003 during the arrests of displaced persons near the mosque.¹⁷⁶³ He said that ‘**Ali Kushayb**’ was with Solonga and Samih about 10 metres away from where he was.¹⁷⁶⁴ He described ‘**Ali Kushayb**’ as wearing civilian clothes and carrying a phone and axe.¹⁷⁶⁵ He was able to hear ‘**Ali Kushayb**’ giving orders.¹⁷⁶⁶

489. The Chamber notes that, while giving his evidence in court, on two occasions P-0986 identified **the Accused** as the ‘**Ali Kushayb**’ he was talking about.¹⁷⁶⁷ [REDACTED].¹⁷⁶⁸

490. The Defence submits that P-0986 is an unreliable witness in respect of his identification of the man who ordered his torture in Kodoom and then whom he saw in Mukjar as being ‘**Ali Kushayb**’, let alone being the same man whom he saw in the pharmacy in Garsila in 2001, namely **the Accused**.¹⁷⁶⁹

491. In respect of Garsila, the Defence points to:

- The insignificance of the Garsila encounter;¹⁷⁷⁰

¹⁷⁵⁹ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0448, 0458, paras 52, 97; P-0986: T-065, p. 13.

¹⁷⁶⁰ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0447-0448, paras 50-51; P-0986: T-065, pp. 10, 48.

¹⁷⁶¹ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0448, para. 55; P-0986: T-065, p. 54.

¹⁷⁶² P-0986: T-065, pp. 61-62.

¹⁷⁶³ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0452-0454, paras 70-80; P-0986: T-065, pp. 12-13. *See also* P-0986’s Statement Corrections, DAR-OTP-0220-5673, at 5673, para. 9.

¹⁷⁶⁴ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0452, para. 71; P-0986: T-065, pp. 11-12.

¹⁷⁶⁵ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0453, para. 74; P-0986: T-065, p. 13.

¹⁷⁶⁶ P-0986’s Statement, DAR-OTP-0222-0437-R01, at 0453-0454, 0458, paras 74, 76, 79-80, 97; P-0986: T-066, p. 13.

¹⁷⁶⁷ P-0986: T-065, pp. 33, 38-39; T-066, pp. 20-21.

¹⁷⁶⁸ P-0986: T-065, pp. 40-43.

¹⁷⁶⁹ [Defence’s Final Brief](#), paras 401, 418, 430.

¹⁷⁷⁰ [Defence’s Final Brief](#), paras 401, 418.

- The discrepancies between P-0986's description of the pharmacy and that of other witnesses;¹⁷⁷¹ and
- His estimate of the age of '**Ali Kushayb**'.¹⁷⁷²

492. In respect of Kodoom, the Defence points to:

- The fact that P-0986 [REDACTED];¹⁷⁷³
- His position, physically, on the ground;¹⁷⁷⁴ and
- Inconsistent evidence from other witnesses who gave an account of where '**Ali Kushayb**' was in Kodoom.¹⁷⁷⁵

493. The Chamber rejects the suggestion made by the Defence that P-0986 invented the account of his torture in Kodoom.¹⁷⁷⁶ Given his detailed and internally consistent account of what happened to him and [REDACTED],¹⁷⁷⁷ the Chamber is satisfied that P-0986 is credible and reliable. It is further satisfied that his reasons for remembering the visit to the pharmacy and the man [REDACTED] are cogent and well-founded.¹⁷⁷⁸

494. In respect of the inconsistencies between P-0986 and other witnesses as to the whereabouts of '**Ali Kushayb**' in Kodoom, the Chamber is satisfied that these arise from the traumatic and unexpected nature of the events and do not undermine the credibility of the witness.¹⁷⁷⁹

495. The Chamber takes into account the difficult circumstances, as described by the Defence, in which P-0986 came to recognise the man as the '**Ali Kushayb**' he saw in Garsila. However, the Chamber finds that the fact that P-0986 stated that the *Janjaweed* addressed the

¹⁷⁷¹ [Defence's Final Brief](#), paras 430, 722, 726.

¹⁷⁷² [Defence's Final Brief](#), paras 401, 740.

¹⁷⁷³ [Defence's Final Brief](#), paras 401, 418, 430.

¹⁷⁷⁴ [Defence's Final Brief](#), para. 418.

¹⁷⁷⁵ [Defence's Final Brief](#), paras 401, 418, 430.

¹⁷⁷⁶ *Contra* [Defence's Final Brief](#), paras 401, 418, 430.

¹⁷⁷⁷ P-0986: T-065, pp. 45-46.

¹⁷⁷⁸ P-0986's Statement, DAR-OTP-0222-0437-R01, at 0442-0443, paras 24-27; P-0986: T-065, pp. 6-8; T-066, pp. 18-19.

¹⁷⁷⁹ See Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

man as ‘Commander Ali’ not only confirms his recognition but also is an indicator of his credibility.¹⁷⁸⁰

496. The Chamber finds that the evidence reveals no motive, nor has any been suggested for P-0986 to invent the identity of the person [REDACTED]. Further, the Chamber finds that, a person [REDACTED]. Whilst identifications of **the Accused** in court usually carry very little weight,¹⁷⁸¹ given the circumstances, the Chamber is satisfied that P-0986, when in court, did recognise **the Accused** again as the man he knew as ‘Ali Kushayb’. It is therefore satisfied that he is credible and reliable in his evidence which identifies ‘Ali Kushayb’ as **the Accused** and also in respect of the events he described taking place in Kodoom and Mukjar.

47. P-0990

497. P-0990 (DoB 1980), a member of the Fur tribe, gave *viva voce* evidence over two days.¹⁷⁸² During the period of the charges, he was [REDACTED].¹⁷⁸³ P-0990’s evidence principally dealt with: the attack on Arada in 2004;¹⁷⁸⁴ his detention at Mukjar police station;¹⁷⁸⁵ the visit by Minister Harun and **the Accused** [REDACTED];¹⁷⁸⁶ and the removal of detainees from the cells by **the Accused**.¹⁷⁸⁷

498. It should be noted that his evidence was subject to severe problems in interpretation therefore the Chamber approached the detail of his evidence with caution.¹⁷⁸⁸

Knowledge of the Accused

499. In 1999, P-0990 [REDACTED].¹⁷⁸⁹ He met ‘Ali Kushayb’ in 1999 in the market.¹⁷⁹⁰ On that occasion, he went into ‘Ali Kushayb’s’ pharmacy which was near the Agricultural Bank to purchase medicine.¹⁷⁹¹ He stated that **the Accused** introduced himself as ‘Ali Abd Al-

¹⁷⁸⁰ P-0986: T-066, p. 26.

¹⁷⁸¹ See Judgment, Section 4. Evidentiary principles and considerations, paras 214-215.

¹⁷⁸² P-0990: T-040; T-041. Regarding P-0990’s belonging to the Fur tribe, see P-0990: T-040, p. 6.

¹⁷⁸³ P-0990: T-040, pp. 6-9. [REDACTED].

¹⁷⁸⁴ P-0990: T-040, pp. 24-26.

¹⁷⁸⁵ P-0990: T-040, pp. 26-68.

¹⁷⁸⁶ P-0990: T-040, pp. 39-54.

¹⁷⁸⁷ P-0990: T-040, pp. 61-65.

¹⁷⁸⁸ See for example P-0990: T-040, pp. 21-22; T-041, pp. 30-31. See also Judgment, Section 4. Evidentiary principles and considerations, paras 227-229.

¹⁷⁸⁹ P-0990: T-040, p. 7.

¹⁷⁹⁰ P-0990: T-040, p. 15; T-041, p. 64.

¹⁷⁹¹ P-0990: T-040, pp. 15-16.

Rahman’ and said that his nickname was ‘**Ali Kushayb**’.¹⁷⁹² ‘**Ali Kushayb**’ told him that he had been a military man in the town of Garsila but that he had left his job and bought the pharmacy in the market.¹⁷⁹³ ‘**Ali Kushayb**’ welcomed the witness and they had a conversation.¹⁷⁹⁴ ‘**Ali Kushayb**’ was tall and dark and had a high receding hairline.¹⁷⁹⁵ The witness returned to ‘**Ali Kushayb**’s’ pharmacy about 15 days later in order to purchase more medicine and, on this occasion, spoke to him again.¹⁷⁹⁶

500. On or around 18 February 2004, P-0990 fled to Mukjar after [REDACTED] Arada had been attacked.¹⁷⁹⁷ He was stopped at a checkpoint and taken to Mukjar police station.¹⁷⁹⁸ On or around 20 February 2004, during his detention, [REDACTED] that a high-level delegation including ‘**Ali Kushayb**’ was coming to Mukjar.¹⁷⁹⁹ The following day, he saw them arrive and recognised a uniformed person as being ‘Ali Abd-Al-Rahman, Ali Kushayb’, who was the same person he had met in Garsila, and Samih [REDACTED].¹⁸⁰⁰ He heard men shouting about going to Sindu.¹⁸⁰¹ When ‘**Ali Kushayb**’ returned to Mukjar on or around 23 February 2004, the witness again saw him.¹⁸⁰² ‘**Ali Kushayb**’ was in the courtyard in front of the cells giving a speech.¹⁸⁰³ He heard ‘**Ali Kushayb**’ give a speech about what had taken place in Sindu followed by the arrival of helicopters carrying Minister Harun and other high-level dignitaries.¹⁸⁰⁴

501. Subsequently, P-0990 stated that ‘**Ali Kushayb**’ came toward the cell with his axe.¹⁸⁰⁵ ‘**Ali Kushayb**’ was standing in front of the detainees speaking to the *umdahs* and *sheikhs*, and assaulted *Umdah* Issa Harun Nour.¹⁸⁰⁶ ‘**Ali Kushayb**’ [REDACTED].¹⁸⁰⁷

¹⁷⁹² P-0990: T-040, pp. 16-17.

¹⁷⁹³ P-0990: T-040, p. 18.

¹⁷⁹⁴ P-0990: T-040, pp. 18-19.

¹⁷⁹⁵ P-0990: T-040, pp. 19-20.

¹⁷⁹⁶ P-0990: T-040, pp. 17, 20-21.

¹⁷⁹⁷ P-0990: T-040, pp. 24-26.

¹⁷⁹⁸ P-0990: T-040, pp. 26-29.

¹⁷⁹⁹ P-0990: T-040, pp. 39-40.

¹⁸⁰⁰ P-0990: T-040, pp. 40-43.

¹⁸⁰¹ P-0990: T-040, pp. 40-41.

¹⁸⁰² P-0990: T-040, pp. 43-45, 47.

¹⁸⁰³ P-0990: T-040, pp. 47-49.

¹⁸⁰⁴ P-0990: T-040, pp. 44-50.

¹⁸⁰⁵ P-0990: T-040, pp. 50-51.

¹⁸⁰⁶ P-0990: T-040, p. 51.

¹⁸⁰⁷ P-0990: T-040, pp. 51-52, 59; T-041, pp. 41-42.

502. On the morning of the next day, ‘**Ali Kushayb**’ returned to the prison and stood in front of it.¹⁸⁰⁸ He instructed the officers to bring the detainees out of the cells, as they were to be taken to Garsila.¹⁸⁰⁹ [REDACTED].¹⁸¹⁰ [REDACTED].¹⁸¹¹

503. When questioned by the Defence, P-0990 added that apart from his recognition of **the Accused**, the latter had given his name, whilst discussing the Sindu Operation outside his cell.¹⁸¹² The witness said that:

He was sitting outside, and I was seeing him clearly. I figured it’s the same person who was-who had been working at the pharmacy in Garsila, with whom I got acquainted and I had a talk and who told me about his past job and his then current job at the market. And then he introduced himself with his full name in front of Lieutenant Colonel Mustafa Al-Tayyib. He said, I am ‘Ali Abd Al-Rahman Ali Kushayb’.¹⁸¹³

504. P-0990 [REDACTED] that ‘**Ali Kushayb**’ was coming, he ‘was not sure if indeed it would turn out to be the exact same person’ but when the person showed up, he realised that it was certainly the same person.¹⁸¹⁴ He was sure with ‘absolute certainty’ that he had interacted with ‘**Ali Kushayb**’ in 1999 and then saw him in Mukjar in 2004.¹⁸¹⁵

505. The Defence further questioned P-0990 on his knowledge of the nickname ‘**Ali Kushayb**’ and the use of nicknames, in general, in Sudan.¹⁸¹⁶ When asked about the age of ‘**Ali Kushayb**’, he replied that it would be a guess.¹⁸¹⁷

506. The Defence argues that the link made by P-0990 between the man at the pharmacy and the man P-0990 saw while in Mukjar is not credible.¹⁸¹⁸ The Defence suggested to P-0990 that his account of his meetings with ‘**Ali Kushayb**’ in the pharmacy was invented in order to bolster his identification of ‘**Ali Kushayb**’ at Mukjar police station.¹⁸¹⁹ P-0990 denied this suggestion.¹⁸²⁰

¹⁸⁰⁸ P-0990: T-040, p. 61.

¹⁸⁰⁹ P-0990: T-040, pp. 61-63.

¹⁸¹⁰ P-0990: T-040, p. 61.

¹⁸¹¹ P-0990: T-040, p. 62.

¹⁸¹² P-0990: T-041, pp. 28-29.

¹⁸¹³ P-0990: T-041, p. 29.

¹⁸¹⁴ P-0990: T-041, pp. 30-34.

¹⁸¹⁵ P-0990: T-041, pp. 58-59.

¹⁸¹⁶ P-0990: T-041, pp. 20-25.

¹⁸¹⁷ P-0990: T-041, p. 27.

¹⁸¹⁸ P-0990: T-041, p. 58. *See also* [Defence’s Final Brief](#), paras 514, 718.

¹⁸¹⁹ P-0990: T-041, pp. 58-59.

¹⁸²⁰ P-0990: T-041, pp. 58-59.

507. The Defence further argues that there are inconsistencies between the witnesses who were in the cell (*i.e.* [REDACTED]) as to the nature of the mistreatment meted out by ‘**Ali Kushayb**’,¹⁸²¹ but at the same time argues that this is ‘the phenomenon of collective memory’ between witnesses living in the same place (*i.e.* [REDACTED]) and making statements after the announcement of the arrest warrant against **the Accused**.¹⁸²² Specifically in respect of P-0990, the Defence argues that he was ‘coached’ [REDACTED].¹⁸²³

508. The Chamber is satisfied that this witness first met ‘**Ali Kushayb**’ in 1999.¹⁸²⁴ The meetings were not in traumatic circumstances, and involved close quarter conversations with ‘**Ali Kushayb**’.¹⁸²⁵ The meetings in 1999 were not fleeting glances.¹⁸²⁶ They were made in circumstances in which the witness would have a reason to recall the person. In 2004, when the witness heard that ‘**Ali Kushayb**’ was coming, he had time to process the information and to consider whether the person would be the same person he had met before as he knew no one else with that name.¹⁸²⁷ When the person arrived, he had already been poised to consider whether it was the same person that he had met.¹⁸²⁸ P-0990 looked at him and concluded that it was indeed the same person.¹⁸²⁹ The circumstances [REDACTED].¹⁸³⁰ However, the observations were varied; the time period of each observation was not fleeting; the witness was close enough so that he was able to repeat what the person was saying and heard when that person said his name was ‘Ali Muhammad Abd-Al-Rahman Ali Kushayb’.¹⁸³¹ The evidence of P-0990 can be relied upon to prove that ‘**Ali Kushayb**’ and ‘Ali Muhammad Abd-Al-Rahman’ was the same person.

509. The Chamber is further satisfied from: (a) the careful way in which he gave his answers; (b) his explanation of the importance of nicknames; (c) his lack of exaggeration; and (d) the fact that it was not challenged that he was [REDACTED], that the Defence’s suggestion regarding the veracity of this aspect of P-0990’s evidence, is unconvincing.¹⁸³² P-0990

¹⁸²¹ [Defence’s Final Brief](#), paras 490-491.

¹⁸²² [Defence’s Final Brief](#), paras 501, 506.

¹⁸²³ [Defence’s Final Brief](#), para. 505.

¹⁸²⁴ P-0990: T-040, pp. 15-21.

¹⁸²⁵ P-0990: T-040, pp. 15-21.

¹⁸²⁶ P-0990: T-040, pp. 15-21.

¹⁸²⁷ P-0990: T-041, pp. 31-34.

¹⁸²⁸ P-0990: T-041, pp. 32-33.

¹⁸²⁹ P-0990: T-041, p. 34.

¹⁸³⁰ P-0990: T-040, pp. 32-36.

¹⁸³¹ P-0990: T-041, pp. 27-34.

¹⁸³² See for example P-0990: T-041, pp. 20-25, 31-34. *Contra* Defence’s Challenge: T-041, pp. 58-59; [Defence’s Final Brief](#), para. 514.

provided a wealth of detail in respect of those events, which negate any form of invention, and was careful to point out that the authority of ‘**Ali Kushayb**’ was limited to his own men.¹⁸³³ The restrained nature of his evidence was a notable feature of that evidence as a whole. The Chamber is therefore satisfied that his evidence that he knew **the Accused** before the events at Mukjar police station is both credible and reliable.¹⁸³⁴

510. The inconsistencies noted between P-0990 and other witnesses are to be expected given the traumatic nature of the events and undermine the Defence’s contention of ‘collective memory’ or collusion.¹⁸³⁵ In respect of the assertion that P-0990 was ‘coached’ by [REDACTED], the Chamber is satisfied that no such suggestion was put to either of the witnesses, nor does their evidence reveal any form of collusion.¹⁸³⁶

Mukjar Operation

511. As mentioned above, P-0990 stated that he fled to Mukjar, with other villagers, after the attack on his village.¹⁸³⁷ Having been stopped at a checkpoint, he was taken to Mukjar police station and detained [REDACTED].¹⁸³⁸ P-0990 further stated that [REDACTED].¹⁸³⁹ Further, it was clarified that [REDACTED].¹⁸⁴⁰

512. When questioned by the Defence, (in some detail), on this aspect of his evidence, P-0990 agreed [REDACTED].¹⁸⁴¹ Further he accepted that conditions in the cell were hot and overcrowded and that [REDACTED].¹⁸⁴² However, he was adamant that [REDACTED].¹⁸⁴³

513. The Defence suggested to him that he had [REDACTED], which was rejected by P-0990.¹⁸⁴⁴ Further the Defence argues that P-0990’s account in this respect is implausible and that the only reasonable conclusion is that it is fabricated and therefore the whole of his evidence should be disregarded.¹⁸⁴⁵ The Chamber accepts that the conditions described seem

¹⁸³³ P-0990: T-041, p. 65, answering the Chamber’s question.

¹⁸³⁴ See for example P-0990: T-040, pp. 15-21; T-041, pp. 64-65.

¹⁸³⁵ See Judgment, Section 4. Evidentiary principles and considerations, paras 225-226. *Contra* [Defence’s Final Brief](#), paras 490-491, 501, 506.

¹⁸³⁶ *Contra* [Defence’s Final Brief](#), para. 505.

¹⁸³⁷ P-0990: T-040, pp. 24-26.

¹⁸³⁸ P-0990: T-040, pp. 26-38.

¹⁸³⁹ P-0990: T-040, pp. 36-39.

¹⁸⁴⁰ P-0990: T-041, pp. 6-8.

¹⁸⁴¹ P-0990: T-040, p. 38; T-041, pp. 13-14, 43.

¹⁸⁴² P-0990: T-041, pp. 43-48.

¹⁸⁴³ P-0990: T-041, pp. 4-7.

¹⁸⁴⁴ P-0990: T-041, pp. 59-60.

¹⁸⁴⁵ [Defence’s Final Brief](#), paras 491-492.

[REDACTED], but not withstanding the discussion in court, no evidence was called to that effect.¹⁸⁴⁶

514. The Chamber is satisfied that P-0990 was a truthful witness, who as he said ‘things I did not see, I could not testify about. [...] As a witness you can’t claim something then deny it afterwards. Otherwise, you would be a liar’.¹⁸⁴⁷ Further, the Chamber notes that the names of the persons he recorded as being detained at Mukjar police station is corroborated by the evidence of other credible and reliable witnesses.¹⁸⁴⁸ However given the state of the evidence, the Chamber is unable to reach a conclusion [REDACTED].

48. P-0994

515. P-0994 (DoB 1979), a member of the Fur tribe,¹⁸⁴⁹ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.¹⁸⁵⁰ P-0994 was a [REDACTED].¹⁸⁵¹ During the [REDACTED].¹⁸⁵² P-0994’s evidence principally dealt with the detainees at Deleig police station, including their treatment, removal and reported execution;¹⁸⁵³ and the role of ‘**Ali Kushayb**’ in these events.¹⁸⁵⁴

Knowledge of ‘Ali Kushayb’

516. P-0994 gave evidence identifying ‘**Ali Kushayb**’ at Deleig police station on 5 March 2004 and [REDACTED] the community leaders on 7 March 2004.¹⁸⁵⁵ In his statement, P-0994 stated that he had known ‘**Ali Kushayb**’ for some 20 years before the conflict.¹⁸⁵⁶ He did not remember the exact year he met him, but he knew ‘**Ali Kushayb**’ as a seller of veterinary

¹⁸⁴⁶ P-0990: T-041 p. 47.

¹⁸⁴⁷ P-0990: T-041, p. 10.

¹⁸⁴⁸ See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 502-510.

¹⁸⁴⁹ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0064, para. 41.

¹⁸⁵⁰ P-0994’s Statement, DAR-OTP-0222-0055-R01; P-0994’s Statement Corrections, DAR-OTP-00000268; P-0994: T-084.

¹⁸⁵¹ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0058, para. 14; P-0994: T-084, pp. 18-19.

¹⁸⁵² P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0058, para. 14.

¹⁸⁵³ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0062-0073, paras 32-87; P-0994’s Statement Corrections, DAR-OTP-00000268, at 000002-000003, paras 8-17; P-0994: T-084, pp. 9-14, 27, 50-65, 67-78, 82-86.

¹⁸⁵⁴ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0063, 0065-0073, paras 36, 47-48, 51, 56, 58-59, 62, 65, 68, 71, 79, 81-82, 84; P-0994’s Statement Corrections, DAR-OTP-00000268, at 000002-000003, paras 9, 12-14, 16-17; P-0994: T-084, pp. 12-13, 61-63, 67-68, 77-78.

¹⁸⁵⁵ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0065, 0071-0072, paras 47, 79.

¹⁸⁵⁶ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0060, 0065, paras 23, 47; P-0994’s Statement Corrections, DAR-OTP-00000268, at 000001, para. 3; P-0994: T-084, pp. 38-42, 80.

medicine in Deleig—even though he had never bought anything from him.¹⁸⁵⁷ P-0994 gave evidence that ‘**Ali Kushayb**’ was also called ‘Abdul Rahman’ ‘or something like that’ and that he knew this as it was common knowledge from people in the area.¹⁸⁵⁸

517. The Defence challenges P-0994’s identification of ‘**Ali Kushayb**’, asserting that P-0994 [REDACTED] that he did not have a convincing basis for his knowledge of ‘**Ali Kushayb**’ and that he never actually visited ‘**Ali Kushayb**’s’ pharmacy.¹⁸⁵⁹

518. The Chamber acknowledges that P-0994’s knowledge of ‘**Ali Kushayb**’ was predominantly based on the information from others and that he had no personal interaction with ‘**Ali Kushayb**’ other than through general greetings.¹⁸⁶⁰ Notwithstanding this, given his descriptions of ‘**Ali Kushayb**’ and his pharmacy, along with the length of time P-0994 knew ‘**Ali Kushayb**’ and P-0994’s [REDACTED],¹⁸⁶¹ the Chamber is satisfied that P-0994’s identification evidence of ‘**Ali Kushayb**’ at Deleig police station is credible and reliable.¹⁸⁶² However, the Chamber does not rely on P-0994’s evidence on the link between the name **Abd-Al-Rahman** and ‘**Ali Kushayb**’ given his limited basis of knowledge with respect to the name **Abd-Al-Rahman**.

Deleig Operation

519. P-0994 gave evidence that he started [REDACTED].¹⁸⁶³ P-0994 [REDACTED].¹⁸⁶⁴ [REDACTED].¹⁸⁶⁵ [REDACTED].¹⁸⁶⁶ However, the Chamber is satisfied that it is reasonable and credible that the witness [REDACTED].¹⁸⁶⁷

¹⁸⁵⁷ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0060, para. 23; P-0994’s Statement Corrections, DAR-OTP-00000268, at 000001, para. 3; P-0994: T-084, p. 40.

¹⁸⁵⁸ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0060, para. 24; P-0994: T-084, p. 41. *See also* [Defence’s Final Brief](#), para. 719.

¹⁸⁵⁹ [Defence’s Final Brief](#), paras 106, 151-153, 719.

¹⁸⁶⁰ P-0994: T-084, pp. 42-43; [Defence’s Final Brief](#), para. 152.

¹⁸⁶¹ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0060, para. 23; P-0994’s Statement Corrections, DAR-OTP-00000268, at 000001, para. 3.

¹⁸⁶² *Contra* [Defence’s Final Brief](#), paras 152-153, 719.

¹⁸⁶³ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0063, para. 36; P-0994’s Statement Corrections, DAR-OTP-00000268, at 000002, para. 9.

¹⁸⁶⁴ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0065, 0070, paras 48, 72-73, *referring to* P-0994’s Sketch, DAR-OTP-0222-0077, Translation, DAR-OTP-0220-1221, at 1222; P-0994: T-084, pp. 63-64, *referring to* P-0994’s Sketch, DAR-OTP-0222-0077, Translation, DAR-OTP-0220-1221, at 1222.

¹⁸⁶⁵ P-0994’s Statement, DAR-OTP-0222-0055-R01, at 0065-0066, para. 49; P-0994: T-084, pp. 53-55.

¹⁸⁶⁶ [Defence’s Final Brief](#), para. 568.

¹⁸⁶⁷ *Contra* [Defence’s Final Brief](#), para. 568.

520. The Defence also questioned P-0994 about why he was able to remember 5 March 2004 so precisely when he could not remember many other things.¹⁸⁶⁸ The Chamber is satisfied that a momentous day such as 5 March 2004 may be recalled while other less remarkable days may not be. The Chamber is satisfied that P-0994's [REDACTED] his evidence about the events he witnessed at Deleig police station is credible and reliable,¹⁸⁶⁹ particularly as it is generally consistent with other credible and reliable evidence.¹⁸⁷⁰

521. The Defence suggested to P-0994 that [REDACTED],¹⁸⁷¹ [REDACTED].¹⁸⁷² As there is no evidence that P-0994 [REDACTED] the Chamber rejects the suggestion that he was trying to blame **the Accused** for his own criminality. The Defence also questioned P-0994 as to why, [REDACTED].¹⁸⁷³

522. [REDACTED].¹⁸⁷⁴ The Chamber is satisfied that this evidence is credible and reliable as P-0994 was able to recall the names of some of the detainees [REDACTED],¹⁸⁷⁵ and that there is other [REDACTED].¹⁸⁷⁶ It is also unreasonable to contend that the witness [REDACTED],¹⁸⁷⁷ [REDACTED],¹⁸⁷⁸ [REDACTED]. Moreover, he did not exhibit any animus towards 'Ali Kushayb', and he did not attempt to attribute every offence in Deleig to 'Ali Kushayb'.¹⁸⁷⁹ The Chamber is also unconvinced that P-0994's [REDACTED] impacts his overall credibility or reliability given the passage of time.¹⁸⁸⁰

523. P-0994 gave evidence identifying Jenif—[REDACTED]—at Deleig police station on 5 March 2004.¹⁸⁸¹ The Chamber acknowledges—as asserted by the Defence¹⁸⁸²—that there are some inconsistencies between P-0994 and other witnesses as to the precise circumstances of Jenif's arrival and death at Deleig police station.¹⁸⁸³ However, it is satisfied that these

¹⁸⁶⁸ P-0994: T-084, p. 50.

¹⁸⁶⁹ *Contra* [Defence's Final Brief](#), para. 560.

¹⁸⁷⁰ *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 603-621.

¹⁸⁷¹ P-0994: T-084, pp. 55, 61, 75-76. *See also* [Defence's Final Brief](#), para. 567.

¹⁸⁷² P-0994: T-084, p. 76. *See also* [Defence's Final Brief](#), paras 106, 568.

¹⁸⁷³ P-0994: T-084, pp. 46-49, 66-68.

¹⁸⁷⁴ *Contra* [Defence's Final Brief](#), para. 567.

¹⁸⁷⁵ P-0994's Statement, DAR-OTP-0222-0055-R01, at 0066, para. 53.

¹⁸⁷⁶ *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 613-616.

¹⁸⁷⁷ P-0994: T-084, pp. 46-49.

¹⁸⁷⁸ P-0994: T-084, pp. 66-68.

¹⁸⁷⁹ *Contra* [Defence's Final Brief](#), paras 106, 568. *See also* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0068, para. 62; P-0994's Statement Corrections, DAR-OTP-00000268, at 000002, para. 14.

¹⁸⁸⁰ *Contra* [Defence's Final Brief](#), para. 568.

¹⁸⁸¹ P-0994: T-084, pp. 66-67, *referring to* P-0994's Statement, DAR-OTP-0222-0055-R01, at 0066, para. 50.

¹⁸⁸² [Defence's Final Brief](#), para. 594.

¹⁸⁸³ *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, para. 611.

inconsistencies, which as already noted are to be expected in such traumatic events, have no impact on P-0994's credibility and reliability.¹⁸⁸⁴ The Chamber is satisfied that it can rely on P-0994's evidence that Jenif was present at Deleig police station on 5 March 2004 and that he saw '**Ali Kushayb**' assault Jenif outside the police station.

524. P-0994 gave evidence that he had heard that there were several execution sites, such as between Koska and Ordo, near Fere and another in the direction of Andi.¹⁸⁸⁵ The Defence argues that P-0994's evidence in relation to the execution sites is unreliable.¹⁸⁸⁶ The Chamber accepts that P-0994's evidence on the location of the execution sites is based on indirect evidence, and relies on it as it is consistent with direct evidence from other credible and reliable witnesses.¹⁸⁸⁷

Sighting of the community leaders on 7 March 2004

525. P-0994 gave evidence that on 7 March 2004, [REDACTED], he saw a Land Cruiser at Deleig market, in the back of which were *Umdah* Khamis, *Sheikh* Suleiman, *Umdah* Kindiri, *Sheikh* Abdulaziz, Hassan Adam Musa, and Sherif Mohammedin.¹⁸⁸⁸ '**Ali Kushayb**' accompanied the vehicle.¹⁸⁸⁹ On that day, P-0994 was sufficiently proximate to the vehicle carrying the *umdahs* at the back while it was parked at the market to hear [REDACTED], persuading '**Ali Kushayb**' to release one of the detainees, Sherif Mohammedin.¹⁸⁹⁰

526. The Defence argues that P-0994's evidence in this regard is unreliable because it is vague and inconsistent with other witnesses.¹⁸⁹¹ However, the Chamber finds that P-0994's evidence is detailed and aligns with other credible and reliable evidence.¹⁸⁹² As noted above, the Chamber is satisfied that P-0994 knew '**Ali Kushayb**' and therefore that his evidence identifying '**Ali Kushayb**' as present with the *umdahs* on 7 March 2004 is credible and reliable.¹⁸⁹³

¹⁸⁸⁴ *Contra* [Defence's Final Brief](#), paras 593-594.

¹⁸⁸⁵ P-0994's Statement, DAR-OTP-0222-0055-R01, at 0068, para. 61.

¹⁸⁸⁶ [Defence's Final Brief](#), paras 616, 640.

¹⁸⁸⁷ *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 623, 627.

¹⁸⁸⁸ P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071-0072, paras 79-80.

¹⁸⁸⁹ P-0994's Statement, DAR-OTP-0222-0055-R01, at 0071-0072, para. 79.

¹⁸⁹⁰ P-0994's Statement, DAR-OTP-0222-0055-R01, at 0072, para. 81.

¹⁸⁹¹ [Defence's Final Brief](#), paras 632-633.

¹⁸⁹² *See* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004, paras 641-646.

¹⁸⁹³ *Contra* [Defence's Final Brief](#), paras 560, 632-633.

527. The Defence further argues that P-0994's evidence in relation to Badreddine Adam Mohammed Abdul Mula impacts his overall credibility.¹⁸⁹⁴ The Chamber acknowledges that P-0994's evidence about whether Badreddine Adam Mohammed Abdul Mula had been killed is contradictory¹⁸⁹⁵ but accepts that the witness could have reasonably come to the conclusion that Badreddine Adam Mohammed Abdul Mula had been killed [REDACTED].¹⁸⁹⁶

49. P-1021

528. P-1021 (DoB 1968), a member of the [REDACTED] tribe,¹⁸⁹⁷ gave *viva voce* evidence over two days.¹⁸⁹⁸ At the time of these events, [REDACTED].¹⁸⁹⁹ [REDACTED].¹⁹⁰⁰ [REDACTED].¹⁹⁰¹ [REDACTED].¹⁹⁰² [REDACTED].¹⁹⁰³ P-1021's evidence principally dealt with: the rebel attack on Mukjar CRF base and the arrival of the *Janjaweed* under the command of **the Accused**;¹⁹⁰⁴ his knowledge of **the Accused**;¹⁹⁰⁵ a security committee meeting that took place in Mukjar the day after the rebel attack;¹⁹⁰⁶ and how [REDACTED] the Kodoom and Bindisi Operation.¹⁹⁰⁷

Knowledge of the Accused

529. P-1021 stated that he met **the Accused** in [REDACTED] in Garsila, after he had opened his pharmacy.¹⁹⁰⁸ [REDACTED].¹⁹⁰⁹ After the first meeting he said that when he came to Garsila [REDACTED].¹⁹¹⁰ During the course of the Kodoom and Bindisi Operation, [REDACTED],¹⁹¹¹ P-1021 described **the Accused** as wearing a khaki uniform and carrying an

¹⁸⁹⁴ [Defence's Final Brief](#), para. 566.

¹⁸⁹⁵ P-0994's Statement, DAR-OTP-0222-0055-R01, at 0068, para. 60; P-0994: T-084, pp. 68-70.

¹⁸⁹⁶ *Contra* [Defence's Final Brief](#), para. 566.

¹⁸⁹⁷ P-1021: T-080, p. 21.

¹⁸⁹⁸ P-1021: T-080; T-081.

¹⁸⁹⁹ P-1021: T-080, pp. 20-22.

¹⁹⁰⁰ P-1021: T-080, pp. 22-23.

¹⁹⁰¹ P-1021: T-080, pp. 24-25.

¹⁹⁰² P-1021: T-080, pp. 2-8, 14-16.

¹⁹⁰³ P-1021: T-081, pp. 39-42, *referring to* P-1021's Interview Transcript, DAR-OTP-0221-1105-R02, at 1105.

¹⁹⁰⁴ P-1021: T-080, pp. 30-34.

¹⁹⁰⁵ P-1021: T-080, pp. 32-36.

¹⁹⁰⁶ P-1021: T-080, pp. 37-42.

¹⁹⁰⁷ P-1021: T-080, pp. 43-47.

¹⁹⁰⁸ P-1021: T-081, p. 3.

¹⁹⁰⁹ P-1021: T-081, p. 3.

¹⁹¹⁰ P-1021: T-081, pp. 3-4.

¹⁹¹¹ P-1021: T-081, p. 20.

axe.¹⁹¹² He was shown the passport photo by the Prosecution and identified it as being of the man he called ‘**Ali Kushayb**’.¹⁹¹³

530. The Defence did not question P-1021 about his meetings with **the Accused**. However in answer to questions from the Chamber, he stated that they had met on a number of occasions in Garsila, that he knew the latter’s full name and nickname ‘**Kushayb**’ before the events in 2003, and this was because [REDACTED].¹⁹¹⁴

531. The Defence did question him about the arrest of **the Accused** and P-1021 agreed that there had been a news bulletin which had contained an image of **the Accused**, but then said he had not seen an image until shown one by investigators.¹⁹¹⁵ His response to this line of questioning was unclear,¹⁹¹⁶ but in any event the Chamber is not persuaded that the mere fact of seeing **the Accused’s** photograph in the media, undermines what is evidence amounting to recognition, rather than identification.¹⁹¹⁷

532. The Defence suggests that his identification of **the Accused** as ‘**Ali Kushayb**’ should be disregarded, because of his account of [REDACTED] which the Defence described as ‘fanciful’ and improbable given his *état civil*.¹⁹¹⁸ Although no evidence was adduced to lay the foundation for the assertion of ‘improbability’, nonetheless, the Chamber does not find the witness’s account, [REDACTED], persuasive.

533. However, his description of the activities of the man he called ‘**Ali Kushayb**’ during the Kodoom and Bindisi Operation,¹⁹¹⁹ particularly as carrying an axe,¹⁹²⁰ aligns with evidence given by other witnesses who knew **the Accused** by both names.¹⁹²¹

534. The Chamber is satisfied that P-1021 knew ‘**Ali Kushayb**’ [REDACTED]. It was not a passing acquaintanceship and P-1021 had the time, the opportunity and numerous occasions in which to associate with ‘**Ali Kushayb**’ and be able to recognise him. [REDACTED] P-1021

¹⁹¹² P-1021: T-081, p. 4.

¹⁹¹³ P-1021: T-081, pp. 24-25, *referring to* Passport Photo, DAR-OTP-0221-0891.

¹⁹¹⁴ P-1021: T-081, pp. 90-92.

¹⁹¹⁵ P-1021: T-081, pp. 31-32.

¹⁹¹⁶ P-1021: T-081, pp. 32-35.

¹⁹¹⁷ *Contra* [Defence’s Final Brief](#), para. 129. *See also* Judgment, Section 4. Evidentiary principles and considerations, paras 217-218.

¹⁹¹⁸ [Defence’s Final Brief](#), para. 128, *referring to* P-1021: T-081, pp. 91-92.

¹⁹¹⁹ P-1021: T-081, pp. 5-7, 10-12.

¹⁹²⁰ P-1021: T-081, p. 4.

¹⁹²¹ *See* Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 394-396, 398, 403, 441.

would travel to Garsila on a regular basis, and his evidence of meeting **the Accused** is both credible and reliable. The Chamber is thus satisfied that when shown the photograph by the OTP, P-1021 was recognising rather than identifying the man he had met in Garsila.¹⁹²²

535. During the events, P-1021 continued to interact with ‘**Ali Kushayb**’. These encounters were not fleeting. Furthermore, in 2003, the witness [REDACTED].

536. P-1021 knew that **Ali Muhammed Ali Abd-Al-Rahman** and ‘**Ali Kushayb**’ were one and the same person. He knew and interacted on friendly terms with this person before 2003 and in 2003 [REDACTED] P-1021 knew ‘**Ali Kushayb**’ well before the incident all demonstrate that the witness’s evidence can be relied upon when he gave evidence that ‘**Ali Kushayb**’ is the same as **Ali Muhammed Ali Abd-Al-Rahman**. Accordingly, the Chamber is satisfied that P-1021’s linkage of the two names of **the Accused** is both credible and reliable.

Events leading to Kodoom and Bindisi Operation

537. The Chamber notes that P-1021 places the rebel attack on the Mukjar CRF base and the subsequent events as taking place in July,¹⁹²³ whereas P-0878 and P-0921 gave evidence that they took place in August.¹⁹²⁴ For the reasons given in P-0878’s credibility assessment,¹⁹²⁵ the Chamber is satisfied that P-1021 made an error in the dates.

538. His account [REDACTED] was not specifically challenged,¹⁹²⁶ other than to point to some variations in his account of how ‘**Ali Kushayb**’ had been contacted about the meeting,¹⁹²⁷ and the general Defence challenge to his credibility (*see* below). The fact that [REDACTED] was attested to by other witnesses.¹⁹²⁸ Accordingly, the Chamber is satisfied that his account of the meeting is credible and reliable.

539. P-1021 did not mention in evidence the visit of the high-ranking delegation in Mukjar before the Kodoom and Bindisi Operation, other than a general assertion that Minister Harun would deliver salaries by helicopter.¹⁹²⁹ Other witnesses, in particular [REDACTED],¹⁹³⁰ gave

¹⁹²² P-1021: T-081, pp. 24-25.

¹⁹²³ P-1021: T-080, pp. 28-29; T-081, p. 61.

¹⁹²⁴ *See for example* P-0878: T-077, pp. 53-57; T-078, pp. 76-78; P-0921: T-110, p. 21. *See also* the Chamber’s assessment of the evidence of P-0878 and P-0921, Annex B, Sections I.A.28 and I.A.38.

¹⁹²⁵ *See* the Chamber’s assessment of P-0878’s evidence, Annex B, Section I.A.28.

¹⁹²⁶ [Defence’s Final Brief](#), paras 361-363.

¹⁹²⁷ P-1021: T-080, pp. 37-46.

¹⁹²⁸ *See* Judgment, paras 581, 662, 666.

¹⁹²⁹ P-1021: T-080, pp. 35-36.

¹⁹³⁰ *See* [REDACTED].

detailed descriptions of that event and, as already stated, the Chamber finds that there was such a visit and is satisfied that this omission by P-1021 is due to the lapse of time since these events.¹⁹³¹

540. As already indicated,¹⁹³² there are considerable inconsistencies between the evidence of [REDACTED] about the sequence of events which [REDACTED] on the Kodoom and Bindisi Operation. [REDACTED].¹⁹³³ The Chamber rejects the Defence suggestion that there was collusion between the witnesses about their evidence (*see below*).¹⁹³⁴ In respect of [REDACTED],¹⁹³⁵ this discrepancy arises as the result of P-1021 drawing a mistaken conclusion.

541. As to the discrepancy of how [REDACTED] on the day the forces set out on the Kodoom and Bindisi Operation,¹⁹³⁶ the Chamber is satisfied that the account given by [REDACTED],¹⁹³⁷ [REDACTED].¹⁹³⁸

542. Both P-1021 [REDACTED],¹⁹³⁹ in direct contradiction of the evidence given [REDACTED].¹⁹⁴⁰ The Defence does not suggest there was direct collusion between [REDACTED]. For the reasons given in the assessment of [REDACTED] evidence,¹⁹⁴¹ the Chamber is satisfied that P-1021's account [REDACTED] is credible and reliable.

The Kodoom and Bindisi Operation

543. Whilst the general outline of the evidence regarding this Operation, namely the fact that villages were attacked,¹⁹⁴² is consistent, again, the Chamber notes that there are substantial variations between the evidence of this operation given by [REDACTED] in relation to this operation.¹⁹⁴³

¹⁹³¹ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 381-391. See also Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

¹⁹³² [REDACTED]

¹⁹³³ [REDACTED].

¹⁹³⁴ *Contra* [Defence's Final Brief](#), paras 132, 396, 399.

¹⁹³⁵ [REDACTED].

¹⁹³⁶ [REDACTED].

¹⁹³⁷ [REDACTED].

¹⁹³⁸ [REDACTED].

¹⁹³⁹ [REDACTED].

¹⁹⁴⁰ [REDACTED].

¹⁹⁴¹ [REDACTED].

¹⁹⁴² P-1021: T-080, pp. 42, 47-49; T-081, pp. 4-5, 10-12, 15-20, 45, 62, 68-69, 81, 85-86.

¹⁹⁴³ See also the Chamber's assessment of the evidence of [REDACTED]

544. The Defence's general arguments in respect of these three witnesses have been set out in the assessment of the evidence of [REDACTED].¹⁹⁴⁴ Specifically in respect of P-1021, the Defence suggested to him that [REDACTED].¹⁹⁴⁵ He denied this,¹⁹⁴⁶ and indeed other evidence of how the *Janjaweed* were armed indicates the contrary.¹⁹⁴⁷

545. The Defence further suggested that his overall credibility is undermined by the [REDACTED].¹⁹⁴⁸

546. Finally, the Defence argues that as a witness who [REDACTED],¹⁹⁴⁹ who had a motive to 'deflect attention away from [his] criminality on to [**the Accused**]',¹⁹⁵⁰ he has no credibility.

547. The Chamber concludes that, as already stated, P-1021, was recalling events of many years ago and therefore is likely to have an imperfect memory. As he himself stated '[t]here are certain things you would not recall [...] it has been longer than 20 years'.¹⁹⁵¹ The Chamber also concludes that as a result of [REDACTED] the nature of the events during the Kodoom and Bindisi Operation.

548. Therefore, for the reasons expressed in the assessment of [REDACTED] and above, the Chamber concludes that the account of the attacks during the operation given by [REDACTED] is the more credible and reliable.¹⁹⁵² However, as with [REDACTED] there is no suggestion that P-1021 [REDACTED], the Chamber is satisfied that in the absence of collusion (see below) his account of '**Ali Kushayb**' being in charge of the operation is both credible and reliable.¹⁹⁵³

¹⁹⁴⁴ See the Chamber's assessment of [REDACTED].

¹⁹⁴⁵ P-1021: T-081, p. 49.

¹⁹⁴⁶ P-1021: T-081, p. 49.

¹⁹⁴⁷ See Judgment, paras 306-307, 331, 333, 339, 344, 346, 416.

¹⁹⁴⁸ P-1021: T-081, pp. 82-83.

¹⁹⁴⁹ P-1021: T-081, p. 41.

¹⁹⁵⁰ P-1021: T-081, p. 84.

¹⁹⁵¹ P-1021: T-081, pp. 78-79.

¹⁹⁵² See the Chamber's assessment of [REDACTED].

¹⁹⁵³ P-1021: T-080, pp. 31-32, 36.

Collusion with other witnesses

549. As already noted in the assessments of [REDACTED], the Defence suggests that there is evidence of collusion between [REDACTED].¹⁹⁵⁴ [REDACTED].¹⁹⁵⁵ [REDACTED].¹⁹⁵⁶ The Defence did not ask [REDACTED] about any contact with P-1021.

550. The Defence argues that P-1021 was evasive in his answers and that therefore the Chamber should find that both had colluded as to the nature of their evidence.¹⁹⁵⁷

551. As already stated, in respect of [REDACTED], not only is there no evidence of collusion but the inconsistencies in their evidence militate against a finding of collusion. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.¹⁹⁵⁸

50. P-1042

552. Dr Alex de Waal ('Dr de Waal') gave *viva voce* evidence as an expert before the Chamber and his report was introduced into evidence pursuant to Rule 68(3) of the Rules.¹⁹⁵⁹ Both the Prosecution and Defence accepted that Dr de Waal is an expert and there was no dispute as to his expertise.¹⁹⁶⁰ Indeed, both the Prosecution and the Defence relied on this expert's in-court evidence and his report in support of their case. The Defence relied upon Dr de Waal principally in support of its case in relation to the neutrality of the Ta'aisha,¹⁹⁶¹ and the role of the *agid al-ogada*.¹⁹⁶² The Prosecution relied upon Dr de Waal principally in respect of the history of the conflict and its consequences,¹⁹⁶³ including sexual violence,¹⁹⁶⁴ the

¹⁹⁵⁴ [Defence's Final Brief](#), paras 132, 396, 399.

¹⁹⁵⁵ P-1021: T-081, pp. 43-48, 92.

¹⁹⁵⁶ P-1021: T-081, pp. 46-47.

¹⁹⁵⁷ [Defence's Final Brief](#), para. 132.

¹⁹⁵⁸ *Contra* [Defence's Final Brief](#), paras 132, 396, 399.

¹⁹⁵⁹ P-1042's Report, DAR-OTP-0220-1623; P-1042: T-027; T-028; T-029, pp. 1-37.

¹⁹⁶⁰ P-1042: T-027, pp. 30-31.

¹⁹⁶¹ See for example [Defence's Final Brief](#), paras 772-773; fns 2892, 2894, 2898-2902, referring to P-1042's Report, DAR-OTP-0220-1623, at 1649, 1676, paras 67, 141; P-1042: T-028, pp. 34-43, 50-52, 59, 62-64, 73-74.

¹⁹⁶² See for example [Defence's Final Brief](#), fns 2934, 2940-2941, 2958, referring to P-1042's Report, DAR-OTP-0220-1623, at 1646, para. 61; P-1042: T-028, pp. 50, 52, 59, 62-63.

¹⁹⁶³ See for example [Prosecution's Final Brief](#), fns 220, 226-230, 233, 240, referring to P-1042's Report, DAR-OTP-0220-1623, at 1627, 1644-1646, paras 5, 56-58, 61; P-1042: T-027, pp. 39, 55, 58-59, 61-62.

¹⁹⁶⁴ See for example [Prosecution's Final Brief](#), para. 333; fns 387, 1117, 1122, referring to P-1042's Report, DAR-OTP-0220-1623, at 1641-1642, 1653-1654, 1677, 1680-1681, paras 50, 52, 76, 80, 143, 151-152; P-1042: T-027, pp. 53, 67-73, 83-88; T-028, pp. 4-5, 11, 17.

structure of the relevant armed groups,¹⁹⁶⁵ and the term *Janjaweed*.¹⁹⁶⁶ The CLRV relied upon Dr de Waal principally in relation to the background and core features of the Darfur region, conflicts, communities, and the Fur society.¹⁹⁶⁷

553. Dr de Waal has a PhD in social anthropology from Oxford University, worked in support of the peace negotiations to resolve the conflict between Sudan and South Sudan, joined the African Union as an advisor in 2005 to attempt to resolve the conflict in Darfur, and was a member of the experts advising the African Union on Darfur in 2009.¹⁹⁶⁸ Dr de Waal conducted fieldwork in Darfur for some periods of time from September 2005 to March 2007 and between 2006 to 2009 having consultations with community leaders, displaced people, nomads and civil society.¹⁹⁶⁹ He has written multiple books and articles in relation to Darfur and Sudan.¹⁹⁷⁰ He is presently the executive director of the World Peace Foundation and a professor at the Fletcher School of Law and Diplomacy at Tufts University and continues to do work with the African Union High Implementation Panel for Sudan.¹⁹⁷¹ Accordingly, the Chamber notes that Dr de Waal's knowledge of the issues is based on his education, research and extensive field visits and work in the area of Darfur.

554. Dr de Waal provided detailed, well balanced and neutral answers on many relevant aspects of the case.¹⁹⁷² Further, he very clearly acknowledged the boundaries of his knowledge, often simply answering 'I don't know' or 'I don't have specific information'.¹⁹⁷³ For example, he said that he did not know if local Fur community leaders like *umdahs* or *shartays* played a role in the mobilisation of people to fight in response to the possibility of attacks on a village,¹⁹⁷⁴ nor of the price of a Kalashnikov on the open market in Darfur,¹⁹⁷⁵ nor the

¹⁹⁶⁵ See for example [Prosecution's Final Brief](#), fns 240, 252, 259, referring to P-1042's Report, DAR-OTP-0220-1623, at 1661-1662, 1671, paras 96, 120; P-1042: T-027, p. 77.

¹⁹⁶⁶ See for example [Prosecution's Final Brief](#), paras 80, 82; fns 281-283, 285, 290, 293, referring to P-1042's Report, DAR-OTP-0220-1623, at 1625, 1672-1674, 1658-1659, 1670, paras 88(c), 89, 118, 126, 130; P-1042: T-028, pp. 28-29.

¹⁹⁶⁷ See for example [CLRV's Final Brief](#), paras 122-124, 128, 130, 133-136, 139, 141; fns 219-220, 222-223, 226-227, 229-230, 249-253, referring to P-1042's Report, DAR-OTP-0220-1623, at 1668-1669, 1671, paras 114, 122; P-1042: T-027, pp. 67-68, 78-79; T-028, pp. 88-89, 94-95; T-029, pp. 5-19, 22-23.

¹⁹⁶⁸ P-1042: T-027, p. 35. See also P-1042's CV, DAR-OTP-0220-1696, at 1696-1699.

¹⁹⁶⁹ P-1042: T-027, p. 36. See also P-1042's CV, DAR-OTP-0220-1696, at 1697-1699.

¹⁹⁷⁰ P-1042: T-027, p. 36. See also P-1042's CV, DAR-OTP-0220-1696, at 1696, 1703-1711.

¹⁹⁷¹ P-1042: T-027, pp. 36-37. See also P-1042's CV, DAR-OTP-0220-1696, at 1696-1697.

¹⁹⁷² See for example P-1042: T-027, pp. 39-49.

¹⁹⁷³ See for example P-1042: T-028, pp. 37, 40-41, 52, 62-63, 81, 87; T-029, pp. 5-6, 13, 27.

¹⁹⁷⁴ P-1042: T-029, p. 5.

¹⁹⁷⁵ P-1042: T-029, p. 13.

relationship between Minister Harun and other leaders in 2003-2004.¹⁹⁷⁶ He did not jump to conclusions, neither did he show any bias to either party.¹⁹⁷⁷

555. For the foregoing reasons, based on the Chamber's holistic assessment of the evidence, the Chamber finds Dr de Waal, P-1042, to be a credible and reliable witness. The Chamber relies upon his expert report with its annexes as well as his *viva voce* evidence.

51. P-1061 and P-1062

556. P-1061, [REDACTED], and P-1062, [REDACTED], gave expert biometric evidence as a result of their examination of **the Accused** in 2021.¹⁹⁷⁸

557. There was no dispute about their evidence. The Defence relies upon them to demonstrate that at the time of the examination the Accused had no visible signs of holes to his earlobes, scars to his forehead, or a back which was hunched and therefore any description of **the Accused** by an identification witness, referring to one or more of these features, is unreliable.¹⁹⁷⁹

558. The Chamber does not find this evidence to be relevant to the physical condition of **the Accused** prior to, or during, the period 2003-2004.

52. P-1073

559. P-1073 (DoB 1988), a member of the Fur tribe, gave *viva voce* evidence over one day.¹⁹⁸⁰ At the time of the events in 2003 she [REDACTED].¹⁹⁸¹ Her evidence principally dealt with her own rape, [REDACTED], and the attack on Bindisi by the *Janjaweed* during the Kodoom and Bindisi Operation.¹⁹⁸²

Identification of 'Ali Kushayb'

560. P-1073 saw 'Ali Kushayb' on one occasion during the attack on Bindisi on 15 August 2003 during the Kodoom and Bindisi Operation.¹⁹⁸³ Having fled her village, and while hiding

¹⁹⁷⁶ P-1042: T-029, p. 23.

¹⁹⁷⁷ See for example P-1042: T-027, pp. 77-78; T-028, pp. 29, 51, 94.

¹⁹⁷⁸ Biometric Report, DAR-OTP-0223-0241, Translation, DAR-OTP-0220-1529; T-107; T-109.

¹⁹⁷⁹ [Defence's Final Brief](#), paras 737, 741, 742, 743.

¹⁹⁸⁰ P-1073: T-103.

¹⁹⁸¹ P-1073: T-103, p. 8.

¹⁹⁸² P-1073: T-103, pp. 9-19, 25-31.

¹⁹⁸³ P-1073: T-103, pp. 10, 28-31.

in a millet field [REDACTED], she saw a man in a vehicle surrounded by *Janjaweed*.¹⁹⁸⁴ Her [REDACTED] told her that the man was ‘**Ali Kushayb**’.¹⁹⁸⁵ He was holding an axe.¹⁹⁸⁶ She did not know how or why [REDACTED] knew or could recognise ‘**Ali Kushayb**’.¹⁹⁸⁷ The man, ‘**Ali Kushayb**’, according to her, had a scar on his forehead from prostrating in prayer.¹⁹⁸⁸ She did not see this man again. In these circumstances, the Chamber does not rely on her identification of ‘**Ali Kushayb**’.

561. The Defence asserts that P-1073 gave evidence that the man identified to her as ‘**Ali Kushayb**’ had a scar in the centre of his forehead from prostrating in prayer and that since **the Accused** has no such scar, the man identified to P-1073 could not have been **the Accused**.¹⁹⁸⁹ The Chamber is satisfied that there is no evidence before it about whether **the Accused** has a scar at the centre of his forehead, or how long such scars are apparent before fading, if at all. Accordingly, the Chamber rejects the Defence contention in this regard.¹⁹⁹⁰ Therefore, the Chamber is satisfied that P-1073’s evidence in relation to this scar does not negate her general credibility and reliability.

The Kodoom and Bindisi Operation

562. P-1073 gave evidence about the attack on Bindisi by the *Janjaweed* during the Kodoom and Bindisi Operation.¹⁹⁹¹ She saw the attack on ‘Friday’ but did not see the attack on ‘Saturday’ because she and her family, by then, were already fleeing to Mukjar.¹⁹⁹² On the ‘Friday’ P-1073, [REDACTED] were captured by members of the *Janjaweed* while trying to escape the attack.¹⁹⁹³ She gave evidence that some *Janjaweed* members took [REDACTED] and raped her there.¹⁹⁹⁴ At that time, she did not know what happened [REDACTED].¹⁹⁹⁵ Subsequently, [REDACTED] told her that she had been raped by the *Janjaweed* [REDACTED].¹⁹⁹⁶ P-1073’s

¹⁹⁸⁴ P-1073: T-103, pp. 10-11.

¹⁹⁸⁵ P-1073: T-103, pp. 11, 18, 28-31.

¹⁹⁸⁶ P-1073: T-103, p. 11.

¹⁹⁸⁷ P-1073: T-103, p. 28.

¹⁹⁸⁸ P-1073: T-103, p. 31.

¹⁹⁸⁹ [Defence’s Final Brief](#), paras 409, 742, referring to P-1073: T-103, p. 31.

¹⁹⁹⁰ *Contra* [Defence’s Final Brief](#), paras 409, 742.

¹⁹⁹¹ P-1073: T-103, pp. 9-17, 25-27.

¹⁹⁹² P-1073: T-103, p. 26.

¹⁹⁹³ P-1073: T-103, pp. 13-14.

¹⁹⁹⁴ P-1073: T-103, pp. 13-15.

¹⁹⁹⁵ P-1073: T-103, p. 15.

¹⁹⁹⁶ P-1073: T-103, pp. 14-15. See also P-1073’s Report, DAR-OTP-00000500; P-1073’s Anatomical Drawing, DAR-OTP-00000492.

evidence on this attack and the account of her rape is unchallenged.¹⁹⁹⁷ The Chamber is satisfied that P-1073's evidence that she was raped by the *Janjaweed* is credible and reliable and congruent with that of other credible and reliable witnesses.¹⁹⁹⁸

563. The Defence asserts that there are inconsistencies between the evidence of P-1073 and that of P-0015 as regards the rapes.¹⁹⁹⁹ The Chamber has found P-0015's evidence in this regard to be credible and reliable. As already noted, P-0015 gave evidence that she saw when [REDACTED] was raped.²⁰⁰⁰ The Chamber finds that, whilst there are inconsistencies between the evidence of P-1073 and P-0015 in relation to the rape of [REDACTED], the Chamber, having found them both credible, is satisfied that:

- [REDACTED], was raped by the *Janjaweed*;²⁰⁰¹
- P-1073 did not personally witness this rape;²⁰⁰²
- P-0015 personally witnessed the rape;²⁰⁰³ and
- Any discrepancy between the accounts of P-0015 and P-1073 is understandable given the taboo attached to rape and an equally understandable reluctance to talk about a public rape.²⁰⁰⁴

564. The Chamber is satisfied—and it is not challenged²⁰⁰⁵—that P-1073 is a credible and reliable witness in respect of her own rape. The Chamber is also satisfied that P-1073 is a credible and reliable witness [REDACTED] told her that she was raped by the *Janjaweed*.²⁰⁰⁶

¹⁹⁹⁷ P-1073: T-103, p. 15.

¹⁹⁹⁸ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 431-434.

¹⁹⁹⁹ [Defence's Final Brief](#), para. 433. See also the Chamber's assessment of P-0015's evidence, Annex B, Section I.A.4.

²⁰⁰⁰ P-0015's Statement, DAR-OTP-0088-0187-R04, at 0195-0196, paras 38-43; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 12-17; P-0015: T-093, p. 44.

²⁰⁰¹ P-0015's Statement, DAR-OTP-0088-0187, at 0196, para. 41; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 16-17; P-0015: T-093, p. 44.

²⁰⁰² P-1073: T-103, p. 15.

²⁰⁰³ P-0015's Statement, DAR-OTP-0088-0187, at 0196, para. 41; P-0015's Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 16-17; P-0015: T-093, p. 44.

²⁰⁰⁴ P-1073: T-103, pp. 15-18, 21-23.

²⁰⁰⁵ P-1073: T-103, p. 23.

²⁰⁰⁶ P-1073: T-103, p. 15.

The Chamber considers that the evidence of P-0015 is to be preferred as regards the particulars of the rape of [REDACTED].²⁰⁰⁷

53. P-1074

565. P-1074 (DoB-1989), a member of the Fur tribe,²⁰⁰⁸ gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.²⁰⁰⁹ At the time of the events in 2003, [REDACTED].²⁰¹⁰ Her evidence principally dealt with her rape and the attack by the *Janjaweed* on Bindisi during the Kodoom and Bindisi Operation.²⁰¹¹

Identification of the Accused

566. P-1074 gave evidence that sometime after the Kodoom and Bindisi Operation, when she was residing in Mukjar after she and her family had fled there, she purportedly saw a man in the market, who was identified to her as ‘**Ali Kushayb**’ by a woman named ‘[REDACTED]’.²⁰¹² [REDACTED] also told her that ‘**Ali Kushayb**’ was the leader of the *Janjaweed* and the one who gave the order to burn villages.²⁰¹³ He was in his 40s, dressed in military uniform, carried a gun and had about five guards also dressed in military khaki uniforms.²⁰¹⁴ P-1074 could not see this man clearly as she was far away from him.²⁰¹⁵ P-1074 did not see this man ever again.²⁰¹⁶ She did not know how this woman knew ‘**Ali Kushayb**’, just that the latter had known him very well.²⁰¹⁷ Given the nature of the circumstances under which P-1074 saw ‘**Ali Kushayb**’, the Chamber does not rely on her identification.

The Kodoom and Bindisi Operation

567. P-1074 gave evidence about the attack on Bindisi by the *Janjaweed*.²⁰¹⁸ On one Thursday in August 2003, she heard that some people had come to Bindisi to announce that

²⁰⁰⁷ P-0015’s Statement, DAR-OTP-0088-0187, at 0196, para. 41; P-0015’s Statement Corrections, DAR-OTP-00000427, at 000002-000003, paras 16-17; P-0015: T-093, p. 44; P-1073: T-103, pp. 26-27.

²⁰⁰⁸ P-1074’s Statement, DAR-OTP-0224-0441-R02, at 0441.

²⁰⁰⁹ P-1074’s Statement, DAR-OTP-0224-0441-R02; P-1074: T-103. Details of her sexual violation are contained in DAR-OTP-0000-0508. Document containing anatomical drawing outlining areas of body injured during the attack at DAR-OTP-0000-0505. Clarifications to her statement are contained at DAR-OTP-0000-0503.

²⁰¹⁰ P-1074’s Statement, DAR-OTP-0224-0441-R02, at 0444, para. 13.

²⁰¹¹ See P-1074’s Statement, DAR-OTP-0224-0441-R02, at 0446-0448, paras 23-25, 31-36.

²⁰¹² P-1074’s Statement, DAR-OTP-0224-0441-R02, at 0451, para. 50.

²⁰¹³ P-1074’s Statement, DAR-OTP-0224-0441-R02, at 0451, para. 50.

²⁰¹⁴ P-1074’s Statement, DAR-OTP-0224-0441-R02, at 0451, para. 50.

²⁰¹⁵ P-1074’s Statement, DAR-OTP-0224-0441-R02, at 0451, para. 50.

²⁰¹⁶ P-1074: T-103, p. 49.

²⁰¹⁷ P-1074: T-103, p. 49.

²⁰¹⁸ P-1074’s Statement, DAR-OTP-0224-0441-R02, at 0446-0447, paras 23-33.

there would be a non-contentious collection of *zakat*.²⁰¹⁹ On the next day, Friday, the *Janjaweed* attacked Bindisi and P-1074 and her family fled.²⁰²⁰ On the Saturday, P-1074 was with her family [REDACTED] when they saw the *Janjaweed* coming and they again fled.²⁰²¹ On Sunday, P-1074 was separated from her family.²⁰²² Four *Janjaweed* found her, whipped her and raped her.²⁰²³ She ultimately fled to Mukjar.²⁰²⁴

568. P-1074's description of the attackers, *i.e.* the *Janjaweed* forces, is congruent with that of other credible and reliable witnesses.²⁰²⁵ P-1074 gave evidence that members of the *Janjaweed* raped her on Sunday, 17 August 2003 when they found her in the forest south of Bindisi after she fled the attack.²⁰²⁶ Moreover, whilst P-1074 stated that she was raped on 17 August 2003, the Chamber considers that the circumstances of this incident, particularly its context, perpetrators and way of commission, indicate that it could only have occurred over the course of the attack on Bindisi, *i.e.* during 15-16 August 2003. Given the significant passage of time and the nature of the events experienced by P-1074, the Chamber finds understandable P-1074's confusion regarding the date of this incident. For these reasons, the Chamber finds that P-1074 was raped sometime between 15 and 16 August 2003.

569. P-1074 and her family subsequently fled to Mukjar. In Mukjar, she witnessed the *Janjaweed* arresting and taking away boys and men who were then detained in Mukjar police station.²⁰²⁷

570. With the exception of the purported identification of 'Ali Kushayb' in Mukjar as discussed above, the Chamber finds P-1074 generally credible and reliable in all aspects of her evidence.

²⁰¹⁹ P-1074's Statement, DAR-OTP-0224-0441-R02, at 0445, para. 22.

²⁰²⁰ P-1074's Statement, DAR-OTP-0224-0441-R02, at 0445-0446, paras 23-26.

²⁰²¹ P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447, paras 31-32.

²⁰²² P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447, para. 33.

²⁰²³ P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447-0448, paras 34-36.

²⁰²⁴ P-1074's Statement, DAR-OTP-0224-0441-R02, at 0448-0449, paras 37, 41.

²⁰²⁵ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, para. 396.

²⁰²⁶ P-1074's Statement, DAR-OTP-0224-0441-R02, at 0447-0448, paras 33-37; P-1074's Interview Transcript, DAR-OTP-00000508; P-1074's Sketch, DAR-OTP-00000505; P-1074's Photographs, DAR-OTP-0224-0461; DAR-OTP-0224-0462; DAR-OTP-0224-0463.

²⁰²⁷ P-1074's Statement, DAR-OTP-0224-0441-R02, at 0450-0451, paras 46-49.

B. Defence witnesses

1. D-0001

571. D-0001 (DoB 1983), a member of the Ta'aisha tribe,²⁰²⁸ gave *viva voce* evidence over two days.²⁰²⁹ D-0001 [REDACTED].²⁰³⁰ [REDACTED].²⁰³¹ His evidence principally dealt with the history of the Ta'aisha tribe,²⁰³² the function of the *nazir*,²⁰³³ the role of the Ta'aisha tribe in the 2003-2004 insurgency,²⁰³⁴ and his knowledge of **the Accused**.²⁰³⁵

Knowledge of the Accused

572. D-0001 gave evidence that he has known **the Accused** [REDACTED].²⁰³⁶ Before 2010, D-0001 had never heard anything about **the Accused**.²⁰³⁷ He did not know [REDACTED].²⁰³⁸ He gave evidence that **the Accused** had a reputation for helping the weak and standing by the poor although not a wealthy man himself.²⁰³⁹ D-0001 was not aware of any political affiliation of **the Accused**.²⁰⁴⁰ D-0001 identified **the Accused** in the Teachers and Um-Sory videos, and maintained that **the Accused** was a kind person, whom he had never heard making threats.²⁰⁴¹

573. In relation to the nickname '**Ali Kushayb**', D-0001 said that he was not aware of any other name given to **the Accused** other than his legal name and had never heard the name '**Ali Kushayb**' in connection with **the Accused** until he heard on the radio that the ICC had arrested Ali Muhammed **Abd-Al-Rahman** and also referred to the name '**Ali Kushayb**'.²⁰⁴²

574. The Prosecution challenged this witness on the basis that he must have heard the name '**Ali Kushayb**' before the arrest of **the Accused** by the ICC, given his knowledge of news

²⁰²⁸ D-0001: T-155, pp. 1-27. *See also* D-0001: T-154, p. 9.

²⁰²⁹ D-0001: T-154; T-155.

²⁰³⁰ D-0001: T-154, pp. 9-11.

²⁰³¹ D-0001: T-154, p. 11.

²⁰³² *See for example* D-0001: T-154, pp. 14-17, 21-22, 28-29.

²⁰³³ *See for example* D-0001: T-154, pp. 24-30.

²⁰³⁴ *See for example* D-0001: T-154, pp. 38-40.

²⁰³⁵ *See for example* D-0001: T-154, pp. 51-55; T-155, pp. 19-27.

²⁰³⁶ D-0001: T-154, p. 52.

²⁰³⁷ D-0001: T-154, pp. 54-55.

²⁰³⁸ D-0001: T-154, p. 52.

²⁰³⁹ D-0001: T-154, pp. 51, 53.

²⁰⁴⁰ D-0001: T-154, pp. 53-55.

²⁰⁴¹ D-0001: T-155, pp. 19-27, *referring to* Teachers Video, DAR-OTP-00000236 (subtitled); Video, DAR-OTP-000006452.

²⁰⁴² D-0001: T-154, pp. 14, 55.

reports of problems between the Salamat and Ta'aisha tribes and reports that in 2013, **the Accused** had been shot and injured, all of which identified **the Accused** as 'Ali Kushayb'.²⁰⁴³

575. Despite his awareness of the assassination attempt against **the Accused** in Nyala in 2013, and having been shown articles referring to **the Accused** as 'Ali Kushayb' at the time, D-0001 said he was wholly unaware of the reports linking **the Accused** with the name 'Ali Kushayb'.²⁰⁴⁴ As already stated, D-0001 first said he made the link when he heard of the ICC arrest warrant.²⁰⁴⁵ Later he clarified that he had only learnt about the arrest warrant in 2020, when **the Accused** surrendered.²⁰⁴⁶ He said he had otherwise never heard of the name 'Ali Kushayb' and did not know what it meant.²⁰⁴⁷ When the Prosecution showed him media reports referring to **the Accused** as 'Ali Kushayb' and commanding the forces carrying out attacks, D-0001 maintained that he did not know at the time that **the Accused** was called 'Ali Kushayb'.²⁰⁴⁸ The Prosecution put to D-0001 that he had come to court to protect **the Accused** but he denied this assertion.²⁰⁴⁹ The Chamber finds it implausible [REDACTED] that D-0001 would never have heard the name 'Ali Kushayb' before **the Accused** surrendered to the ICC.

Role of the *nazir* and other functionaries in the Ta'aisha tribe

576. D-0001 described the role of a *nazir* and also the roles of *agids* and *agid al-ogada*, stating that they were all administrative in nature.²⁰⁵⁰ He said he did not know who had been the *agid al-ogada* during 2003-2004,²⁰⁵¹ and was 'not aware' of **the Accused** ever holding either position at that time,²⁰⁵² or any other position within the Ta'aisha tribe (although he accepted that his knowledge was as of 2010, when he met **the Accused**).²⁰⁵³ D-0001 gave evidence that it was not possible for someone to be *agid* or *agid al-ogada* in an area outside the *dar* of the tribe.²⁰⁵⁴ However, D-0001 acknowledged that the *nazir* could have a

²⁰⁴³ D-0001: T-154, pp. 87-95; T-155, pp. 4-5, *referring to* Media Reports, DAR-OTP-00005660, DAR-OTP-00006171, DAR-OTP-00005650, DAR-OTP-00005648, DAR-OTP-00005652, Translations, DAR-OTP-00006581, DAR-OTP-00006771, DAR-OTP-00006582, DAR-OTP-00006585, DAR-OTP-00006587.

²⁰⁴⁴ D-0001: T-155, pp. 3-6, 8-9, *referring to* Media Reports, DAR-OTP-00005660, DAR-OTP-00006171, DAR-OTP-00010624, Translations, DAR-OTP-00006581, DAR-OTP-00006771, DAR-OTP-00010624.

²⁰⁴⁵ D-0001: T-154, pp. 12-14.

²⁰⁴⁶ D-0001: T-154, pp. 82-83.

²⁰⁴⁷ D-0001: T-143, p. 14.

²⁰⁴⁸ D-0001: T-154, pp. 87-98, *referring to* Media Reports, DAR-OTP-00005648, DAR-OTP-00005650, DAR-OTP-00005652, Translations, DAR-OTP-00006585, DAR-OTP-00006582, DAR-OTP-00006587.

²⁰⁴⁹ D-0001: T-155, p. 9.

²⁰⁵⁰ D-0001: T-154, pp. 24-29, 31-35.

²⁰⁵¹ D-0001: T-154, p. 36.

²⁰⁵² D-0001: T-154, p. 37.

²⁰⁵³ D-0001: T-154, pp. 53-54.

²⁰⁵⁴ D-0001: T-154, p. 35.

representative of his authority outside of the area of Rahad Al-Berdi (although he did not know specifically if a Ta'aisha representative was appointed by the *nazir* in Garsila in 2003-2004).²⁰⁵⁵ The Chamber notes that D-0001 had no information or even knowledge of **the Accused** before 2010 and therefore was unable to assist the Chamber in its determination of the 2003-2004 events.

Relationship between the Ta'aisha tribe and the Fur tribe

577. D-0001 stated that the Fur were considered to be 'part and parcel of the family' of the Ta'aisha and were represented on the tribal council by an *umdah* and *sheikhs*.²⁰⁵⁶ He said that the Fur people who came to Rahad Al-Berdi during the 2003-2004 conflict were not considered refugees,²⁰⁵⁷ were well treated and given houses including by **the Accused**,²⁰⁵⁸ who the witness described as 'a man of high ethics',²⁰⁵⁹ and not 'a man of wealth'.²⁰⁶⁰ D-0001 rejected the LRV's suggestion that he was lying and that conditions had been imposed on the Fur before they could reside in Rahad Al-Berdi.²⁰⁶¹ D-0001 also stated that when **the Accused** returned to Rahad Al-Berdi in 2010, the Fur welcomed him,²⁰⁶² and even asked that he stay to protect them when he was going to be deployed to Nyala at one point.²⁰⁶³ The Chamber finds that there is no contrary evidence relating to the manner in which the Fur were treated by the Ta'aisha tribe, (in 2003-2004 in Rahad Al-Berdi), but is satisfied that this was not relevant to the actions of **the Accused** in Wadi Salih and Mukjar.

Relationship between the Ta'aisha tribe and Salamat tribe

578. D-0001 was aware of the problems between the Ta'aisha and Salamat tribes which arose from a conflict over land.²⁰⁶⁴ He gave evidence that the problems were resolved [REDACTED] and that the Salamat left voluntarily.²⁰⁶⁵ He acknowledged that **the Accused**

²⁰⁵⁵ D-0001: T-154, pp. 28-30.

²⁰⁵⁶ D-0001: T-154, pp. 15-17.

²⁰⁵⁷ D-0001: T-154, pp. 45-47; T-155, pp. 15-16.

²⁰⁵⁸ D-0001: T-154, pp. 47-51.

²⁰⁵⁹ D-0001: T-154, p. 51.

²⁰⁶⁰ D-0001: T-154, p. 53.

²⁰⁶¹ D-0001: T-154, pp. 69-79.

²⁰⁶² D-0001: T-154, pp. 58-59.

²⁰⁶³ D-0001: T-154, pp. 61-63.

²⁰⁶⁴ D-0001: T-154, pp. 20-23, 84-85.

²⁰⁶⁵ D-0001: T-154, pp. 20-23.

was the Commander of the CRF at the time but maintained that **the Accused** ‘never participated in the war’.²⁰⁶⁶

Position of neutrality of the Ta’aisha tribe in the 2003-2004 counter-insurgency

579. In respect of the counter-insurgency in 2003-2004, D-0001 gave evidence that he had heard that in 2003-2004 in Wadi Salih and Mukjar, there had been problems between the Arabs on the one hand and the *zurga* or non-Arabs on the other hand.²⁰⁶⁷ [REDACTED] the *nazir* of the tribe at the time, decided that the Ta’aisha tribe would take no part in the counter-insurgency.²⁰⁶⁸ D-0001 stated that ‘nobody disobeys a decision taken by the *nazir*’, even if that person lives outside the *dar*, but should it happen such a person would be ‘rejected out of the tribe’.²⁰⁶⁹ D-0001 said that as a consequence of the neutral stance of the Ta’aisha tribe in respect of the 2003-2004 problems in Wadi Salih, the GoS marginalised the Ta’aisha tribe in relation to development such as the provision of roads, water, health services and education.²⁰⁷⁰

580. The Chamber finds that D-0001 is not a credible witness in many respects. His assertions about not connecting **the Accused** to ‘**Ali Kushayb**’ for at least a period of ten years (between the time he met **the Accused** and his surrender), are implausible given [REDACTED], his knowledge of the Salamat events and the assassination attempt,²⁰⁷¹ and the fact that—as he acknowledged in court—he followed the news on the television and radio.²⁰⁷² Moreover, the Chamber is satisfied that D-0001’s evidence of the neutrality of the Ta’aisha tribe and **the Accused’s** good relationship with the Fur in Rahad Al-Berdi does not have any impact on the Chamber’s findings in relation to the alleged role of **the Accused** in 2003-2004 in Wadi Salih. Accordingly, the Chamber finds that little weight can be accorded to his evidence.

²⁰⁶⁶ D-0001: T-154, p. 85.

²⁰⁶⁷ D-0001: T-154, pp. 38-40.

²⁰⁶⁸ D-0001: T-154, pp. 39-41.

²⁰⁶⁹ D-0001: T-154, pp. 41-42.

²⁰⁷⁰ D-0001: T-154, pp. 44-45.

²⁰⁷¹ D-0001: T-154, pp. 20-23, 84-85; T-155, pp. 3-6.

²⁰⁷² D-0001: T-154, pp. 11-12.

2. D-0002

581. D-0002 (DoB 1969), a member of the Ta'aisha tribe,²⁰⁷³ gave *viva voce* evidence over one day.²⁰⁷⁴ Between 2003-2004, D-0002 [REDACTED].²⁰⁷⁵ D-0002 [REDACTED].²⁰⁷⁶ D-0002's evidence principally dealt with his knowledge of **the Accused** and the nickname '**Ali Kushayb**',²⁰⁷⁷ as well as certain aspects of the Ta'aisha tribe.²⁰⁷⁸

Knowledge of the Accused

582. When he was about [REDACTED], D-0002 first got to know **the Accused**.²⁰⁷⁹ He knew that **the Accused** had a pharmacy and was in the CRF.²⁰⁸⁰

583. D-0002 described **the Accused** as a 'humanitarian person', 'social', someone who 'helped the vulnerable' and 'protected the oppressed' and 'participated in reconciliation'.²⁰⁸¹ D-0002 gave evidence that **the Accused** was the 'right-hand man of the [former] *nazir*', by providing the security, protecting the farms on behalf of the *nazir*.²⁰⁸²

584. In respect of nicknames of **the Accused**, D-0002 gave evidence that the only nickname of **the Accused** he had heard is 'Abu Nasser' and he had never heard the nickname '**Ali Kushayb**' and did not know what it meant.²⁰⁸³ Nonetheless, D-0002 acknowledged that he had heard the nickname '**Ali Kushayb**' in the context of the ICC investigations.²⁰⁸⁴ D-0002 said that 'the entirety of Rahad Al-Berdi did not accept the Prosecution's allegations.'²⁰⁸⁵ [REDACTED].²⁰⁸⁶ D-0002 confirmed that the ICC arrest warrants were 'big piece of news and people did hear about it'.²⁰⁸⁷ However, he stated that until the date of his appearance in court, he did not know with which crimes **the Accused** had been charged.²⁰⁸⁸

²⁰⁷³ D-0002: T-156, pp. 35-81. *See also* D-0002: T-156, p. 38.

²⁰⁷⁴ D-0002: T-156.

²⁰⁷⁵ D-0002: T-156, pp. 39-41, 58.

²⁰⁷⁶ D-0002: T-156, p. 58.

²⁰⁷⁷ D-0002: T-156, pp. 42, 48-53, 59-61, 68-75.

²⁰⁷⁸ D-0002: T-156, pp. 44-47, 54-55, 58-59, 61-67.

²⁰⁷⁹ D-0002: T-156, p. 42.

²⁰⁸⁰ D-0002: T-156, p. 48.

²⁰⁸¹ D-0002: T-156, p. 49.

²⁰⁸² D-0002: T-156, pp. 59-60.

²⁰⁸³ D-0002: T-156, pp. 50-51.

²⁰⁸⁴ D-0002: T-156, pp. 51-52.

²⁰⁸⁵ D-0002: T-156, p. 52.

²⁰⁸⁶ D-0002: T-156, pp. 52-53, 68-69.

²⁰⁸⁷ D-0002: T-156, p. 69.

²⁰⁸⁸ D-0002: T-156, pp. 70-72.

585. When questioned by the Presiding Judge, D-0002 said that before the ICC arrest warrants, he had never heard of a man called ‘**Ali Kushayb**’ being involved in the 2003-2004 conflict [REDACTED].²⁰⁸⁹

Neutrality of the Ta’aisha tribe

586. D-0002 gave evidence that the *nazir* of the Ta’aisha tribe did not provide young men to fight the counter-insurgency because the Ta’aisha tribe was composed of other tribes and the *nazir* did not want in-fighting within the tribe.²⁰⁹⁰ D-0002 heard this [REDACTED].²⁰⁹¹ D-0002 also stated that when Fur people came to Rahad Al-Berdi from Wadi Salih after the conflict in 2003, they were treated nicely and provided with security, food and land by the Ta’aisha tribe.²⁰⁹² D-0002 denied the LRV’s suggestion that Fur displaced persons were subject to certain conditions imposed by the Ta’aisha tribe.²⁰⁹³

587. D-0002 first stated that during the conflict between shepherds in 2012-2013, **the Accused** called for ‘unity of all inhabitants of Rahad Al-Berdi’.²⁰⁹⁴ D-0002 had never heard about the clashes between the Ta’aisha and Salamat tribes in 2012-2013.²⁰⁹⁵ However, when he was confronted with an article from Radio Dabanga commenting on this conflict,²⁰⁹⁶ D-0022 changed his evidence and said he had indeed heard about this.²⁰⁹⁷ Also, although he originally denied it, when he was shown the article from Radio Dabanga, [REDACTED].²⁰⁹⁸

588. The Prosecution challenged the credibility of D-0002 in relation to his knowledge of the nickname ‘**Ali Kushayb**’. D-0002 gave evidence that he did not know the name ‘**Ali Kushayb**’ in connection with **the Accused** until sometime after 2010 but before 2014.²⁰⁹⁹ The Prosecution challenged this by presenting the witness with an article from Radio Dabanga which clearly made a connection between **the Accused** and the name ‘**Ali Kushayb**’.²¹⁰⁰ The Chamber notes that the article was published prior to 2014 and that this line of enquiry did not

²⁰⁸⁹ D-0002: T-156, pp. 74-75.

²⁰⁹⁰ D-0002: T-156, p. 44.

²⁰⁹¹ D-0002: T-156, p. 45.

²⁰⁹² D-0002: T-156, pp. 45-47.

²⁰⁹³ D-0002: T-156, pp. 54-55.

²⁰⁹⁴ D-0002: T-156, pp. 49-50.

²⁰⁹⁵ D-0002: T-156, pp. 61-62.

²⁰⁹⁶ D-0002: T-156, p. 62, *referring to* Media Report, DAR-OTP-00005650, Translation, DAR-OTP-00006582.

²⁰⁹⁷ D-0002: T-156, p. 63.

²⁰⁹⁸ D-0002: T-156, pp. 65-66.

²⁰⁹⁹ D-0002: T-156, p. 61.

²¹⁰⁰ D-0002: T-156, pp. 62-68, *referring to* Media Report, DAR-OTP-00005650, Translation, DAR-OTP-00006582.

affect the credibility of D-0002 in relation to the 2003-2004 events.²¹⁰¹ The Prosecution also questioned D-0002 on whether he had asked [REDACTED], about the ICC charges.²¹⁰² The witness maintained that he had not.²¹⁰³

589. The gravamen of D-0002's evidence was to support the Defence case that **the Accused** was never known by the nickname of '**Ali Kushayb**' and the neutrality of the Ta'aisha tribe during the conflict. The Chamber finds his evidence on the first issue was contradictory and unpersuasive. In respect of the second issue, (as already indicated in the assessment of D-0001's evidence), this does not have any impact on the Chamber's findings in relation to the alleged role of **the Accused** between 2003-2004 in Wadi Salih as D-0002 was not present in the area.²¹⁰⁴

3. D-0003

590. D-0003 (DoB 1947), a member of the Ta'aisha tribe,²¹⁰⁵ gave *viva voce* evidence over two days.²¹⁰⁶ [REDACTED].²¹⁰⁷ [REDACTED] *ogada*,²¹⁰⁸ [REDACTED].²¹⁰⁹ D-0003's evidence principally dealt with **the Accused** and the nickname '**Ali Kushayb**',²¹¹⁰ the Ta'aisha tribe,²¹¹¹ and its leadership.²¹¹²

Knowledge of the Accused

591. D-0003 gave evidence that he first met **the Accused** [REDACTED].²¹¹³ D-0003 next saw **the Accused** [REDACTED].²¹¹⁴ He acknowledged that he neither saw **the Accused** nor knew anything about **the Accused's** activities between 2003-2004.²¹¹⁵ However, D-0003 stated

²¹⁰¹ See Media Report, DAR-OTP-00005650, Translation, DAR-OTP-00006582.

²¹⁰² D-0002: T-156, pp. 70-72.

²¹⁰³ D-0002: T-156, p. 72.

²¹⁰⁴ D-0002: T-156, p. 56.

²¹⁰⁵ D-0003: T-155, pp. 29-97; T-156, pp. 1-35. See also D-0003: T-155, pp. 32-33.

²¹⁰⁶ D-0003: T-155; T-156.

²¹⁰⁷ D-0003: T-155, p. 36.

²¹⁰⁸ D-0003: T-155, p. 34.

²¹⁰⁹ D-0003: T-155, p. 34.

²¹¹⁰ D-0003: T-155, pp. 47-48.

²¹¹¹ D-0003: T-155, pp. 39-46, 68-77.

²¹¹² D-0003: T-155, pp. 45-48, 68-77.

²¹¹³ D-0003: T-155, pp. 36-39.

²¹¹⁴ D-0003: T-155, p. 80.

²¹¹⁵ D-0003: T-155, p. 80.

that he had never known **the Accused** to discriminate between people of different tribes, or colours and that **the Accused** served all people.²¹¹⁶

592. D-0003 gave evidence that **the Accused** held no positions of responsibility in the Ta'aisha, he was neither an *agid* nor an *agid al-ogada*.²¹¹⁷ The Prosecution pointed out to him that this evidence was inconsistent with an earlier statement he had made to the Defence.²¹¹⁸ In that statement, D-0003 said that **the Accused** was an *agid*, but corrected that in the preparation session to say that he was the *agid al-ogada*, and later in court that he was neither.²¹¹⁹ D-0003 then said both were wrong and in fact '**Ali Kushayb**' had been a *musha'arif*, "overseer"—a position he described as being equivalent to *agid al-ogada*—from 2012-2015.²¹²⁰ The Chamber finds D-0003's evidence in relation to the positions held by **the Accused** to be internally inconsistent and therefore neither credible nor reliable.

593. In relation to the nickname '**Ali Kushayb**', D-0003 gave evidence that he only heard **the Accused** being called 'Abu Nasser'.²¹²¹ D-0003 said he knew nothing about the name '**Ali Kushayb**'.²¹²² He never heard **the Accused** refer to himself as '**Ali Kushayb**' and never heard anyone refer to **the Accused** as '**Ali Kushayb**',²¹²³ until contacted by the Defence in [REDACTED],²¹²⁴ [REDACTED] in the attempt to assassinate **the Accused** in Nyala in 2013 and that this had been widely reported in the media.²¹²⁵ D-0003 said he was unaware of any reports linking **the Accused** to '**Ali Kushayb**'.²¹²⁶ He similarly denied having been aware of any report of the Salamat and Ta'aisha conflict, although he was aware of **the Accused's** involvement when he helped the Salamat move to Nyala 'for their own protection'.²¹²⁷ The Chamber finds D-0003's assertion of ignorance on these matters unpersuasive.

²¹¹⁶ D-0003: T-155, p. 46

²¹¹⁷ D-0003: T-155, p. 46.

²¹¹⁸ D-0003: T-155, pp. 68-73.

²¹¹⁹ D-0003: T-155, pp. 68-73.

²¹²⁰ D-0003: T-155, pp. 73-77.

²¹²¹ D-0003: T-155, pp. 46-47.

²¹²² D-0003: T-155, pp. 47-48.

²¹²³ D-0003: T-155, p. 47.

²¹²⁴ D-0003: T-155, p. 48.

²¹²⁵ D-0003: T-155, pp. 51-53.

²¹²⁶ D-0003: T-156, pp. 5-8, *referring to* Media Report, DAR-OTP-00006171, Translation, DAR-OTP-00006771.

²¹²⁷ D-0003: T-155, pp. 89-94, *referring to* Media Reports, DAR-OTP-00005648, DAR-OTP-00005646, Translations, DAR-OTP-00006585, DAR-OTP-00006766.

594. Finally, when shown the Um-Sory Video, D-0003 [REDACTED].²¹²⁸ [REDACTED].²¹²⁹ He insisted that **the Accused's** speech was normal and said he was 'silent boasting', 'words that are not correct or not true' and 'empty words'.²¹³⁰

595. D-0003 stated that **the Accused** never discriminated between people of different tribes.²¹³¹ D-0003 said he had never heard of the attacks in Bindisi, Mukjar or Deleig between 2003-2004.²¹³² He also stated that he had never heard of **the Accused** being wanted by the ICC until his surrender in 2020.²¹³³ When the Prosecution put to D-0003 [REDACTED] (and that by then the ICC had issued an arrest warrant and the Prosecutor of Sudan had also summoned **the Accused** identifying him as 'Ali Kushayb'), D-0003 said that [REDACTED].²¹³⁴ There is no evidence before the Chamber that contradicts his answer.

Agid al-ogada of the Ta'aisha tribe

596. D-0003 gave evidence about the positions of *agid* and *agid al-ogada* in the Ta'aisha tribe, stating that they were administrative tribal positions.²¹³⁵ However, D-0003 subsequently gave evidence that when two tribes go to war, the '*agid al-ogada* is the one in charge'.²¹³⁶

597. D-0003 gave further evidence that **the Accused** was an 'overseer', which corresponded to but was not an *agid al-ogada*.²¹³⁷ No other Prosecution or Defence witness mentioned such a position and the Chamber finds that it was not credible evidence.²¹³⁸

598. The Chamber also finds that D-0003's evidence in relation to the Um-Sory Video meeting was untruthful [REDACTED],²¹³⁹ and his assertions that the kind of language used by **the Accused** was 'our normal way of talking'.²¹⁴⁰ In these circumstances, the Chamber finds little weight can be accorded to his evidence.

²¹²⁸ D-0003: T-156, pp. 8-15, *referring to* Um-Sory Video, DAR-OTP-00006452.

²¹²⁹ D-0003: T-156, pp. 14-15.

²¹³⁰ D-0003: T-156, pp. 19-30.

²¹³¹ D-0003: T-155, p. 46.

²¹³² D-0003: T-155, pp. 83-84.

²¹³³ D-0003: T-155, p. 85.

²¹³⁴ D-0003: T-155, pp. 85-86.

²¹³⁵ D-0003: T-155, pp. 40-45.

²¹³⁶ D-0003: T-155, p. 45.

²¹³⁷ D-0003: T-155, pp. 73-77.

²¹³⁸ *See for example* D-0005: T-158, p. 63. *See also* the Chamber's assessment of D-0005's evidence, Annex B, Section I.B.3.

²¹³⁹ D-0003: T-156, pp. 8-15, *referring to* Um-Sory Video, DAR-OTP-00006452.

²¹⁴⁰ D-0003: T-156, pp. 28-31.

4. D-0005

599. D-0005 (DoB 1961), a member of the Ta'aisha tribe,²¹⁴¹ gave *viva voce* evidence over two days.²¹⁴² D-0005 is a [REDACTED].²¹⁴³ His evidence principally dealt with the nickname 'Ali Kushayb' and the Ta'aisha tribe.

Knowledge of the Accused

600. D-0005 has known **the Accused** since 2011, [REDACTED].²¹⁴⁴ D-0005 said that **the Accused** had a pharmacy in Rahad Al-Berdi and had heard that he previously had owned a pharmacy in Wadi Salih.²¹⁴⁵

601. D-0005 gave evidence that **the Accused's** nickname was 'Abu Nasser', and that he has never been referred to as 'Ali Kushayb'.²¹⁴⁶ D-0005 also said he had never heard of the name 'Ali Kushayb' in any context.²¹⁴⁷

602. D-0005 described **the Accused** as a 'brave person, helping the vulnerable and providing aid for those who suffered', 'he helps people', a 'humanitarian person'.²¹⁴⁸ D-0005 stated that he never heard **the Accused** say or do anything discriminatory.²¹⁴⁹ When confronted with videos in which **the Accused** gave speeches that contradict his description of **the Accused**, D-0005 maintained his evidence and stated that **the Accused** was talking about 'discipline' and that he could be 'merciful' in other settings.²¹⁵⁰ D-0005 said **the Accused** did not have a formal position of responsibility in the tribe as he was a government official, a *musa'id* in the CRF.²¹⁵¹ He however acknowledged that **the Accused** was a notable among the Ta'aisha.²¹⁵² When

²¹⁴¹ D-0005: T-158, T-159, pp. 1-12. *See also* D-0005: T-158, pp. 4-5.

²¹⁴² D-0005: T-158; T-159.

²¹⁴³ D-0005: T-158, pp. 5, 30-31.

²¹⁴⁴ D-0005: T-158, pp. 5-6, 13-14.

²¹⁴⁵ D-0005: T-158, pp. 14-15. The Chamber notes that the agreed fact is that **the Accused** had a pharmacy in Garsila and that, as noted by the Defence counsel, this is the only pharmacy that **the Accused** has had (*see* D-0005: T-158, pp. 66-68; [Third Joint Submission on Agreed Facts, Annex A](#), Agreed Fact 11).

²¹⁴⁶ D-0005: T-158, p. 20.

²¹⁴⁷ D-0005: T-158, pp. 20-21.

²¹⁴⁸ D-0005: T-158, pp. 19, 66, 71.

²¹⁴⁹ D-0005: T-158, pp. 19-20, 71-72.

²¹⁵⁰ D-0005: T-158, pp. 74-81, *referring to* Um-Sory Video, DAR-OTP-00006452; Teachers Video, DAR-OTP-00000236. [REDACTED].

²¹⁵¹ D-0005: T-158, pp. 16-17, 64.

²¹⁵² D-0005: T-158, pp. 31-32.

questioned by the Chamber, D-0005 stated that **the Accused** never held the position of ‘overseer’ of the Ta’aisha tribe.²¹⁵³

603. D-0005 gave evidence that he only heard that **the Accused** was wanted by the ICC after he surrendered.²¹⁵⁴ When confronted with his answers to the Defence in his preparation session (stating that he had learned about this well before the surrender), D-0005 said it was a mistake by the Defence.²¹⁵⁵ D-0005 stated that he had not heard the ‘big news’ about the arrest warrant in Rahad Al-Berdi.²¹⁵⁶ In the circumstances, the Chamber finds D-0005’s evidence in this regard implausible.

604. When confronted with news articles from Radio Dabanga reporting the attempt against **the Accused’s** life in Nyala and his role in the Ta’aisha-Salamat conflict, which refer to him as ‘Ali Kushayb’, D-0005 maintained that he had never heard anyone call **the Accused** by that nickname.²¹⁵⁷

Conflict between the Ta’aisha and Salamat tribes

605. D-0005 gave evidence about the conflict between the Ta’aisha and Salamat tribes and stated that **the Accused** played a role in the solution as a member of the security committee of the government.²¹⁵⁸ D-0005 denied that **the Accused** was in charge of organising the troops and weapons, as this was the task of the *agid al-ogada*.²¹⁵⁹

606. D-0005 denied having told the Defence during his preparation session that he knew about the attacks in 2003-2004, particularly in Tiro and Arawala.²¹⁶⁰ He said he had never heard of crimes committed in Mukjar or Deleig and that these events were not discussed on the radio.²¹⁶¹ D-0005 stated that no Fur displaced persons came to Rahad Al-Berdi from the Wadi Salih area.²¹⁶²

²¹⁵³ D-0005: T-158, p. 63. *See* evidence to the contrary from D-0003.

²¹⁵⁴ D-0005: T-158, pp. 21-22.

²¹⁵⁵ D-0005: T-158, pp. 36-38; T-159, pp. 6-9. [REDACTED] (*see* D-0005: T-159, pp. 6-9).

²¹⁵⁶ D-0005: T-158, pp. 39-40.

²¹⁵⁷ D-0005: T-158, pp. 40-45, *referring to* Media Reports, DAR-OTP-00005650, DAR-OTP-00005660, Translations, DAR-OTP-00006582, DAR-OTP-00006581.

²¹⁵⁸ D-0005: T-158, pp. 23-25.

²¹⁵⁹ D-0005: T-158, pp. 69-71.

²¹⁶⁰ D-0005: T-158, pp. 33-34.

²¹⁶¹ D-0005: T-158, pp. 34-35.

²¹⁶² D-0005: T-158, pp. 68-69.

607. Given, not only the major contradictions in his evidence, both internally and *vis-à-vis* other evidence on the record and agreed facts,²¹⁶³ but also his denial of any knowledge of the events between 2003-2004,²¹⁶⁴ or the allegations against **the Accused** in respect thereof,²¹⁶⁵ or the arrival of displaced persons in Rahd Al-Berdi,²¹⁶⁶ the Chamber concludes that, generally, D-0005 was not a credible witness.

5. D-0007

608. D-0007 (DoB 1950), a member of the Ta'aisha tribe,²¹⁶⁷ gave *viva voce* evidence over one day.²¹⁶⁸ Currently, D-0007 [REDACTED].²¹⁶⁹ D-0007's evidence principally dealt with his interaction with **the Accused** [REDACTED] [REDACTED];²¹⁷⁰ and the nicknames by which he knew **the Accused**.²¹⁷¹ He also gave evidence that [REDACTED],²¹⁷² [REDACTED],²¹⁷³ and, in any event, 'was not interested in political affairs'.²¹⁷⁴

Knowledge of the Accused

609. D-0007 gave evidence that he met **the Accused** [REDACTED].²¹⁷⁵ D-0007 [REDACTED].²¹⁷⁶ [REDACTED],²¹⁷⁷ [REDACTED].²¹⁷⁸ D-0007 described **the Accused** as 'humane' and 'noble'.²¹⁷⁹

610. In relation to the nickname '**Ali Kushayb**', D-0007 gave evidence that the only name he knew for **the Accused** was 'Abu Nasser',²¹⁸⁰ never '**Ali Kushayb**'.²¹⁸¹ He had never heard

²¹⁶³ See for example D-0005: T-158, pp. 14-15, in contradiction with [Third Joint Submission on Agreed Facts, Annex A](#), Agreed Fact 11.

²¹⁶⁴ D-0005: T-158, pp. 33-35.

²¹⁶⁵ D-0005: T-158, pp. 21-22, 36-38; T-159, pp. 6-9.

²¹⁶⁶ D-0005: T-158, pp. 68-69.

²¹⁶⁷ D-0007: T-149, pp. 4-5.

²¹⁶⁸ D-0007: T-149.

²¹⁶⁹ D-0007: T-149, p. 4, referring to D-0007's Civil Status Certificate, DAR-D31-00000228, Translation, DAR-D31-00000317, p. 5.

²¹⁷⁰ D-0007: T-149, pp. 6-9, 13-16, 47.

²¹⁷¹ D-0007: T-149, pp. 11-12, 39-41, 49.

²¹⁷² D-0007: T-149, p. 49.

²¹⁷³ D-0007: T-149, pp. 13, 41.

²¹⁷⁴ D-0007: T-149, p. 50.

²¹⁷⁵ D-0007: T-149, pp. 6-7.

²¹⁷⁶ D-0007: T-149, pp. 7-9.

²¹⁷⁷ D-0007: T-149, pp. 8, 47.

²¹⁷⁸ D-0007: T-149, pp. 13-16.

²¹⁷⁹ D-0007: T-149, p. 9. See also D-0007: T-149, p. 53.

²¹⁸⁰ D-0007: T-149, p. 11.

²¹⁸¹ D-0007: T-149, p. 12.

the name ‘**Ali Kushayb**’ in connection with **the Accused**,²¹⁸² or otherwise,²¹⁸³ prior to his in-court evidence. The Chamber finds this aspect of D-0007’s evidence implausible, given the plethora of media reports linking **the Accused** with the name ‘**Ali Kushayb**’,²¹⁸⁴ including in relation to the shooting of **the Accused** in [REDACTED] Nyala in 2013.²¹⁸⁵ The Chamber finds that D-0007’s evidence does not assist the Chamber in the determination of the issue of whether **the Accused** was called ‘**Ali Kushayb**’ in 2003-2004.

The Ta’aisha tribe

611. D-0007 gave evidence that in 2004-2005 displaced Fur families were welcomed by the Ta’aisha, who shared food and houses with them.²¹⁸⁶ He gave evidence that the *nazir* of the Ta’aisha tribe at the time (2003-2004) decided that the tribe would not take part in the counter-insurgency.²¹⁸⁷ However, as admitted by the witness during his questioning by the LRV, he was in [REDACTED] at the time and thus only heard about these events.²¹⁸⁸ D-0007 stated that the Ta’aisha have never been involved in violent conflicts.²¹⁸⁹

612. The Chamber notes that D-0007 was fiercely loyal to the Ta’aisha tribe, describing it as the ‘leading tribe’ that laid the foundations for ruling Sudan.²¹⁹⁰ D-0007 repeatedly emphasised that the Ta’aisha tribe was ‘pacifist and peaceful’,²¹⁹¹ and dismissed its involvement in any wars, violent conflicts, counter insurgencies, or ‘volatile steps or actions’.²¹⁹² The Chamber finds D-0007’s evidence in this regard to be incongruent with his subsequent admission that the Ta’aisha are ‘very interested in being soldiers’, with ‘large numbers’ in the armed forces and police.²¹⁹³

613. The Chamber notes that D-0007 was cooperative during direct examination, providing clear and concise responses to the Defence’s questions, but repeatedly appeared to

²¹⁸² D-0007: T-149, pp. 11-12, 39-41.

²¹⁸³ D-0007: T-149, pp. 41, 49.

²¹⁸⁴ See for example Media Reports, DAR-OTP-00005650, DAR-OTP-00005648, DAR-OTP-00005652, Translations, DAR-OTP-00006582, DAR-OTP-00006585, DAR-OTP-00006587.

²¹⁸⁵ See for example Media Reports, DAR-OTP-00005660, DAR-OTP-00006171, Translations, DAR-OTP-00006581, DAR-OTP-00006771, DAR-OTP-00010624.

²¹⁸⁶ D-0007: T-149, pp. 18-19.

²¹⁸⁷ D-0007: T-149, p. 20.

²¹⁸⁸ D-0007: T-149, pp. 22-23.

²¹⁸⁹ D-0007: T-149, p. 24.

²¹⁹⁰ D-0007: T-149, p. 20.

²¹⁹¹ D-0007: T-149, p. 24.

²¹⁹² D-0007: T-149, pp. 18, 20, 24-25, 55.

²¹⁹³ D-0007: T-149, p. 52.

misunderstand the Prosecution's questions.²¹⁹⁴ The Chamber further notes that D-0007's evidence was vague.²¹⁹⁵ Accordingly, the Chamber finds his evidence is of limited reliability and credibility.

6. D-0008

614. D-0008 (DoB 1957), a member of the Ta'aisha tribe,²¹⁹⁶ gave *viva voce* evidence over one day.²¹⁹⁷ D-0008 [REDACTED].²¹⁹⁸ D-0008 [REDACTED].²¹⁹⁹ [REDACTED].²²⁰⁰ [REDACTED].²²⁰¹ D-0008's evidence principally dealt with **the Accused**, including any nickname and his character;²²⁰² as well as some aspects about the Ta'aisha tribe.²²⁰³

Knowledge of the Accused

615. D-0008 gave evidence that he had known **the Accused** since he was approximately [REDACTED].²²⁰⁴ [REDACTED].²²⁰⁵ [REDACTED].²²⁰⁶ [REDACTED].²²⁰⁷

616. D-0008 described **the Accused** as someone with a 'nice reputation', who would give medication for free if someone was unable to pay, and mediate to resolve issues.²²⁰⁸ D-0008 gave evidence that **the Accused** never had a position within the Ta'aisha tribe.²²⁰⁹ D-0008 also stated that **the Accused** owned a clinic and pharmacy in Rahad Al-Berdi where he would sell medication and offer treatment to people.²²¹⁰ D-0008 said that he heard that **the Accused** previously owned a clinic in Garsila.²²¹¹ D-0008 gave evidence about [REDACTED].²²¹²

²¹⁹⁴ See for example D-0007: T-149, pp. 31, 33-34.

²¹⁹⁵ See for example D-0007's explanation as to why 250 Salamat families were displaced from Rahad Al-Berdi to Nyala (D-0007: T-149, pp. 47-48, 53-55).

²¹⁹⁶ D-0008: T-139, p. 4.

²¹⁹⁷ D-0008: T-139.

²¹⁹⁸ D-0008: T-139, p. 4.

²¹⁹⁹ D-0008: T-139, pp. 7-9, 34-35.

²²⁰⁰ D-0008: T-139, pp. 7-8.

²²⁰¹ D-0008: T-139, pp. 8-9.

²²⁰² See for example D-0008: T-139, pp. 20-31, 54-55, 63-64, 75-77.

²²⁰³ See for example D-0008: T-139, pp. 16-17, 41-42.

²²⁰⁴ D-0008: T-139, pp. 20-21.

²²⁰⁵ D-0008: T-139, pp. 25-26.

²²⁰⁶ D-0008: T-139, pp. 26-27.

²²⁰⁷ D-0008: T-139, pp. 25, 27-28, 63-64.

²²⁰⁸ D-0008: T-139, pp. 28-30.

²²⁰⁹ D-0008: T-139, p. 29.

²²¹⁰ D-0008: T-139, pp. 29-30, 90.

²²¹¹ D-0008: T-139, pp. 30-31.

²²¹² D-0008: T-139, pp. 68-73.

617. In relation to the nickname ‘**Ali Kushayb**’, D-0008 gave evidence that he heard this name on the radio but that in the broadcast there had been no mention of the person he knew as **Ali Muhammad Ali Abd-Al-Rahman**.²²¹³ The only nickname he knew **the Accused** had was that of ‘Abu Nasser’.²²¹⁴ D-0008 said he never heard anyone refer to **the Accused** as ‘**Ali Kushayb**’ and neither did he hear **the Accused** refer to himself as ‘**Ali Kushayb**’.²²¹⁵ D-0008 said that in 2020 **the Accused** told him he was going to the Court.²²¹⁶ However, D-0008 never made a connection between **the Accused** and the nickname ‘**Ali Kushayb**’.²²¹⁷

618. Indeed, according to D-0008, he never heard the name ‘**Ali Kushayb**’ or about the ICC warrants of arrest until 2019.²²¹⁸ The Chamber finds this aspect of the witness’ evidence to be implausible, [REDACTED].²²¹⁹

The Accused and the Ta’aisha tribe

619. D-0008 stated that between 2003-2004, Fur persons took refuge in Rahad Al-Berdi, including in **the Accused’s** house.²²²⁰ He stated that the Fur persons were protected and given homes.²²²¹

620. D-0008 was not in Rahad Al-Berdi at the time of the 2013 Salamat-Ta’aisha conflict and had never heard of **the Accused** leading the CRF troops in that period.²²²²

621. D-0008 identified **the Accused** in the ‘Teachers video’ [REDACTED].²²²³

622. In respect of the charged events in Wadi Salih in 2003-2004, the Chamber notes that D-0008 was [REDACTED] and although he heard that there were tribal issues in Wadi Salih, he did not know, nor was interested in knowing what was happening in such far away areas as Mukjar, Deleig, Kodoom and Bindisi.²²²⁴ Indeed, D-0008’s evidence was that he only knew that there were problems between the Fur tribe and some Arab tribes,²²²⁵ and even up to the

²²¹³ D-0008: T-139, pp. 54-55.

²²¹⁴ D-0008: T-139, p. 21.

²²¹⁵ D-0008: T-139, p. 21.

²²¹⁶ D-0008: T-139, pp. 22, 75-77.

²²¹⁷ D-0008: T-139, pp. 23-24.

²²¹⁸ D-0008: T-139, pp. 36-38, 54-56.

²²¹⁹ D-0008: T-139, pp. 20-29, 63-64.

²²²⁰ D-0008: T-139, pp. 15-16, 18-20, 64-65.

²²²¹ D-0008: T-139, p. 17.

²²²² D-0008: T-139, p. 74.

²²²³ D-0008: T-139, pp. 82-85, *referring to Teachers Video*, DAR-OTP-00000236.

²²²⁴ D-0008: T-139, pp. 14-15, 55-60, 86.

²²²⁵ D-0008: T-139, p. 55.

time of his appearance in court, he had never heard of these crimes.²²²⁶ D-0008's evidence was that he had no access to information as he had no knowledge of the internet, no smartphone, nor access to social media,²²²⁷ did not listen to the radio very often, and did not read any newspapers.²²²⁸

623. The only real relevance of D-0008's evidence to the issues in the case was in respect of the link between **the Accused** and the name '**Ali Kushayb**'. The Chamber was unpersuaded that he could have been as unaware, as he professed to be, of all current events, media reports, or reports from refugees of what had happened to them. His lack of credibility on this issue is reinforced by the evidence D-0008 gave [REDACTED]. Accordingly, based on the Chamber's holistic assessment of his evidence, in the context of the evidence as a whole, it finds that little weight can be accorded to D-0008's evidence.

7. D-0011

624. D-0011 (DoB 1989), a member of the Ta'aisha tribe,²²²⁹ gave *viva voce* evidence over one day.²²³⁰ [REDACTED],²²³¹ [REDACTED]. The Chamber notes that D-0011 recognised [REDACTED].²²³² [REDACTED].²²³³ [REDACTED].²²³⁴ [REDACTED].²²³⁵

625. D-0011 gave evidence that he knew [REDACTED].²²³⁶ D-0011 also stated that [REDACTED].²²³⁷ [REDACTED].²²³⁸

626. D-0011's evidence principally dealt with his knowledge of **the Accused**, including his name, his character, and his position in the CRF.²²³⁹

²²²⁶ D-0008: T-139, pp. 57-58.

²²²⁷ D-0008: T-139, pp. 12, 49.

²²²⁸ D-0008: T-139, p. 13.

²²²⁹ D-0011: T-138, p. 47.

²²³⁰ D-0011: T-138.

²²³¹ D-0011: T-138, p. 48.

²²³² D-0011: T-138, pp. 63-65, 97, [REDACTED].

²²³³ D-0011: T-138, p. 64.

²²³⁴ D-0011: T-138, pp. 90-92, [REDACTED].

²²³⁵ D-0011: T-138, p. 97, [REDACTED].

²²³⁶ D-0011: T-138, pp. 71-72.

²²³⁷ D-0011: T-138, pp. 94-95.

²²³⁸ D-0011: T-138, pp. 95-96.

²²³⁹ See for example D-0011: T-138, pp. 47-59, 70-71, 100-103.

Knowledge of the Accused

627. D-0011's account is that he had known **the Accused** [REDACTED].²²⁴⁰ He recalled the circumstances under which he met **the Accused**.²²⁴¹ [REDACTED].²²⁴² [REDACTED].²²⁴³ [REDACTED].²²⁴⁴ Further, when asked whether he had said in his screening note that **the Accused** [REDACTED].²²⁴⁵

628. The Chamber finds it credible that the witness [REDACTED].²²⁴⁶ However, the Chamber does not find credible his account [REDACTED].²²⁴⁷

629. D-0011 continued to see **the Accused** [REDACTED].²²⁴⁸ Thus, D-0011 gave evidence that he saw **the Accused** in [REDACTED] [REDACTED].²²⁴⁹ The witness then saw **the Accused** again in [REDACTED] and **the Accused** was *musa'id* of the CRF there.²²⁵⁰ D-0011 said he [REDACTED].²²⁵¹

630. In relation to the nickname '**Ali Kushayb**', D-0011 gave evidence that he had never heard anyone call **the Accused**, neither did he hear **the Accused** refer to himself, by that name.²²⁵² He did not hear the name '**Ali Kushayb**' until 2019 on the radio and on television.²²⁵³ The witness said he called **the Accused** 'Uncle Ali', and said everyone under his command called him that.²²⁵⁴ He also heard people calling **the Accused**, 'Abu Nasser'.²²⁵⁵

631. D-0011 described **the Accused** as a 'respectable person' who did not discriminate at all.²²⁵⁶ D-0011 said **the Accused** did not participate in any combat operations or fighting while he was leading the CRF in Rahad Al-Berdi.²²⁵⁷

²²⁴⁰ D-0011: T-138, pp. 47-49.

²²⁴¹ D-0011: T-138, pp. 49-51.

²²⁴² D-0011: T-138, pp. 49-50, 102.

²²⁴³ D-0011: T-138, p. 50.

²²⁴⁴ D-0011, T-138, pp. 50-51.

²²⁴⁵ D-0011, T-138, pp. 100-101.

²²⁴⁶ D-0011, T-138, pp. 49-50.

²²⁴⁷ D-0011: T-138, pp. 50-51, 100-101.

²²⁴⁸ D-0011: T-138, pp. 51-53, 74-77.

²²⁴⁹ D-0011: T-138, pp. 49, 51-53.

²²⁵⁰ D-0011: T-138, pp. 52, 69.

²²⁵¹ D-0011: T-138, p. 53.

²²⁵² D-0011: T-138, pp. 54-58.

²²⁵³ D-0011: T-138, p. 59.

²²⁵⁴ D-0011: T-138, p. 54.

²²⁵⁵ D-0011: T-138, pp. 54-55, 58.

²²⁵⁶ D-0011: T-138, p. 53.

²²⁵⁷ D-0011: T-138, pp. 70-71.

632. The Chamber finds that D-0011's evidence does not assist the Chamber in the determination of the issue of whether **the Accused** was called 'Ali Kushayb' in 2003-2004.

8. D-0016

633. D-0016 (DoB 1958) gave *viva voce* evidence over four days.²²⁵⁸ [REDACTED].²²⁵⁹ D-0016 is a [REDACTED].²²⁶⁰ [REDACTED],²²⁶¹ [REDACTED].²²⁶²

634. D-0016 principally provided evidence about the law, including the adoption of UN Security Council Resolution 1593,²²⁶³ the applicability of IHL in Sudan and its incorporation into Sudanese law,²²⁶⁴ as well as the cooperation between Sudan and the ICC,²²⁶⁵ military and civilian legislation and jurisdiction as well as its distinction,²²⁶⁶ whether Sudanese law prohibits cooperation with the ICC,²²⁶⁷ the applicability of international customary law to Sudan.²²⁶⁸ He also commented on documents such as the National Security Plan,²²⁶⁹ the report of the National Commission of Inquiry on Darfur,²²⁷⁰ a letter from the Deputy Minister of Sudan to the Prosecution dated 9 December 2006,²²⁷¹ and a document seemingly containing a 2006 interview note allegedly with **the Accused**.²²⁷²

²²⁵⁸ D-0016: T-130; T-131; T-132; T-133.

²²⁵⁹ D-0016: T-130, p. 6.

²²⁶⁰ D-0016: T-130, pp. 9-10.

²²⁶¹ D-0016: T-130, pp. 9-19. *See also* D-0016's CV, DAR-D31-00000234.

²²⁶² D-0016: T-130, p. 29; T-132, pp. 11-28; T-133, p. 4.

²²⁶³ D-0016: T-130, pp. 19-22.

²²⁶⁴ D-0016: T-130, pp. 22-27, 69-88; T-131, pp. 5-18; T-132, pp. 74-88; T-133, pp. 19-20, 27-29.

²²⁶⁵ D-0016: T-130, pp. 31-38.

²²⁶⁶ D-0016: T-130, pp. 38-41; T-131, pp. 22-28, 46-51, 70; T-132, pp. 14-15; T-133, pp. 20-22, 25-27.

²²⁶⁷ D-0016: T-130, pp. 42-44, 63-69.

²²⁶⁸ D-0016: T-130, pp. 48-58.

²²⁶⁹ D-0016: T-131, pp. 51-64, *referring to* National Security Plan, DAR-D31-00000230, Translation, DAR-D31-00000231.

²²⁷⁰ D-0016: T-132, pp. 91-97; T-133, pp. 6-8, 10-11, *referring to* Report, DAR-OTP-0036-0348, Translation, DAR-OTP-0116-0380.

²²⁷¹ D-0016: T-132, pp. 27-28, 98; T-133, pp. 3-4, 6, 29-35, *referring to* Letter, DAR-OTP-0123-0002.

²²⁷² D-0016: T-131, pp. 75-84, T-132, pp. 2-11, *referring to* Interview Note, DAR-OTP-0218-0231, Translation, DAR-OTP-0219-7007.

635. D-0016 also gave evidence on the GoS structure,²²⁷³ as well as on the *Fursan*,²²⁷⁴ the *Janjaweed*,²²⁷⁵ and other terms such as *ajawid* and *diya*,²²⁷⁶ *hiraba* and *ghanima*,²²⁷⁷ as well as the expressions ‘*Allahu Akbar*’ and ‘*amsah aksah*’.²²⁷⁸

636. D-0016’s basis of knowledge on the matters in respect of which he was called to testify is his educational background,²²⁷⁹ his work [REDACTED],²²⁸⁰ as well as his fluency in Arabic and English.²²⁸¹ The Chamber finds that this provides a strong basis for this witness’ knowledge on the issues on which he testified. Moreover, D-0016’s evidence on these issues was detailed and contextualised. The Chamber is therefore satisfied that D-0016’s evidence in this regard was credible and reliable.

Knowledge of the Accused

637. D-0016 also gave evidence about a meeting he had with someone he had been told was ‘**Ali Kushayb**’ [REDACTED].²²⁸² D-0016’s evidence was that [REDACTED] met this person in a hurry.²²⁸³ It was the first time the witness was meeting ‘**Ali Kushayb**’, who was presented to D-0016 as a member of the PDF.²²⁸⁴ D-0016 described ‘**Ali Kushayb**’ as someone in his late thirties.²²⁸⁵ When D-0016 was shown a picture of **the Accused** and asked to confirm whether it was the same person he saw on that occasion, he could not confirm whether it was the person called ‘**Ali Kushayb**’ or not because he met him only briefly.²²⁸⁶ The Defence relies on this evidence that given the apparent age of the man that D-0016 met, it undermines the Prosecution’s case that **the Accused** was the man known as ‘**Ali Kushayb**’.²²⁸⁷ The Chamber finds that given the circumstances of the meeting and the vagueness of the description, this

²²⁷³ D-0016: T-131, pp. 24-26.

²²⁷⁴ D-0016: T-131, pp. 45-46.

²²⁷⁵ D-0016: T-131, pp. 68-69.

²²⁷⁶ D-0016: T-131, p. 41.

²²⁷⁷ D-0016: T-131, pp. 65-69.

²²⁷⁸ D-0016: T-132, pp. 88-89; T-133, pp. 16-18.

²²⁷⁹ D-0016: T-130, pp. 9-10.

²²⁸⁰ D-0016: T-130, pp. 9-19, 29; T-132, pp. 11-28; T-133, p. 4. *See also* D-0016’s CV, DAR-D31-00000234.

²²⁸¹ D-0016: T-130, p. 25.

²²⁸² D-0016: T-132, pp. 33-34.

²²⁸³ D-0016: T-132, p. 33.

²²⁸⁴ D-0016: T-132, pp. 35-36.

²²⁸⁵ D-0016: T-132, p. 36.

²²⁸⁶ D-0016: T-132, pp. 37-39.

²²⁸⁷ [Defence’s Final Brief](#), para. 740.

evidence does not materially impact the overwhelming evidence showing that **the Accused** was ‘**Ali Kushayb**’.²²⁸⁸

9. D-0023

638. D-0023 gave *viva voce* evidence over three days pursuant to Rule 68(3) of the Rules.²²⁸⁹ His report was submitted to the Chamber on the basis that he was an expert witness, but the Prosecution challenged his qualifications and the admission of the report.²²⁹⁰ Accordingly, the Chamber conducted a *voir dire* hearing which lasted two days.²²⁹¹

639. In the event, the Chamber preliminarily accepted D-0023’s qualifications as an expert witness (with the exception of the matters referred to in Section 5 of his report,²²⁹² which pertain to the impact of the Emergency Plan during the charged period 2003-2004 and fell outside the scope of his expertise).²²⁹³ The Chamber made the preliminary finding that D-0023 appeared neutral and objective,²²⁹⁴ and that he was sufficiently qualified in public international law and its implementation in the Sudanese legal system,²²⁹⁵ as well as in inter-tribal structures and concepts such as *hiraba* and *ghanima*.²²⁹⁶ The Chamber however noted its concern as regards D-0023’s sources, referencing and methodology, and considered that these could be addressed during his in-court evidence and taken into consideration in its evaluation of the weight to be given to his report.²²⁹⁷

640. D-0023’s evidence principally dealt with sources of Sudanese law; the implementation of public international law in Sudan; tribal customary law and international customary law in Sudan; intertribal coordination structure; traditional justice; and the concepts of *hiraba* and *ghanima*.²²⁹⁸

²²⁸⁸ See generally Judgment, Section 5.I, The Accused, Abd-Al-Rahman, was known as ‘Ali Kushayb’.

²²⁸⁹ D-0023: T-136; T-142; T-143; D-0023’s Report, DAR-OTP-00005970; *Corrigendum* to D-0023’s Report, DAR-D31-00000259. The original French version of D-0023’s Report is DAR-D31-00000134. See also [Decision on Philippe Gout as Expert Witness](#).

²²⁹⁰ [Decision on Philippe Gout as Expert Witness](#), paras 2, 5, 14-18.

²²⁹¹ D-0023: T-134; T-135.

²²⁹² D-0023’s Report, DAR-OTP-00005970, at 0052-0059, paras 106-134.

²²⁹³ [Decision on Philippe Gout as Expert Witness](#), paras 8, 25.

²²⁹⁴ [Decision on Philippe Gout as Expert Witness](#), para. 23.

²²⁹⁵ [Decision on Philippe Gout as Expert Witness](#), para. 24.

²²⁹⁶ [Decision on Philippe Gout as Expert Witness](#), para. 26.

²²⁹⁷ [Decision on Philippe Gout as Expert Witness](#), para. 29. See also D-0023: T-142, p. 83: ‘The actual weight to attach to it [D-0023’s Report] is a matter for us at the end, having heard all the cross-examination’.

²²⁹⁸ D-0023’s Report, DAR-OTP-00005970, at 0005, para. 1.

641. The Chamber notes that the Defence relies on D-0023 principally in the context of its submissions on the court's jurisdiction and the principle of legality.²²⁹⁹ The Defence also refers to D-0023 in relation to its submissions on the impact of the Emergency Plan,²³⁰⁰ and the role of the *agid al-ogada*.²³⁰¹

642. The Prosecution submits that no weight can be given to D-0023's evidence, given his lack of expertise in Sudanese military or security issues,²³⁰² Islamic or Sudanese law,²³⁰³ and the application of international law in Sudanese law.²³⁰⁴ The Prosecution also submits that D-0023's report is inaccurate,²³⁰⁵ and has an egregious lack of proper sourcing,²³⁰⁶ and that his opinion is unsupported.²³⁰⁷

The application of international law in Sudanese law

643. D-0023 gave evidence on the interaction between Sudanese law (positive and customary),²³⁰⁸ and international law (particularly international humanitarian law and human rights).²³⁰⁹ During his evidence, he reaffirmed that international humanitarian law in Sudan was subject to its compatibility with Sharia law.²³¹⁰ He also confirmed his opinion that international instruments have to be implemented via laws or decrees to be applicable in Sudan,²³¹¹ particularly in light of the 1998 Sudanese Constitution that does not expressly refer to international law.²³¹² Further, he provided evidence that in his view, between 2003-2004,

²²⁹⁹ See [Defence's Final Brief](#), paras 22-25, referring to D-0023: T-142, pp. 63-64; T-136, pp. 39-40, 45-46; paras 238, 241-242, 245-246, 249, referring to D-0023's Report, DAR-OTP-00005970, at 0008, 0038-0042, 0047-0048, paras 11, 73-74, 77-85, 95-96; T-136, pp. 40-41, 45-46; T-142, pp. 45-47; T-143, pp. 11-12. See also [Defence's Final Brief](#), para. 823, referring to D-0023's Report, DAR-OTP-00005970, at 0042, paras 83-84; D-0023: T-136, pp. 45-46.

²³⁰⁰ [Defence's Final Brief](#), para. 275, referring to D-0023's Report, DAR-OTP-00005970, at 0039, para. 76.

²³⁰¹ [Defence's Final Brief](#), para. 288, referring to D-0023's Report, DAR-OTP-00005970, at 0033-0038, paras 67-68, 70-72; D-0023: T-134, p. 38.

²³⁰² [Prosecution's Final Brief](#), fn. 366, referring to D-0023: T-142, pp. 78-84; T-136, pp. 17-27.

²³⁰³ [Prosecution's Final Brief](#), fn. 1052, referring to D-0023: T-142, pp. 70-75; T-143, p. 16-19; T-134, pp. 57-64, 66, 93-95; T-135, pp. 28-33, 59-60.

²³⁰⁴ [Prosecution's Final Brief](#), fn. 2009.

²³⁰⁵ [Prosecution's Final Brief](#), fn. 2009, referring to D-0023: T-142, pp. 15-20, 22-30, 44-48, 54-55, 57-58, 65-72.

²³⁰⁶ [Prosecution's Final Brief](#), fn. 2009, referring to D-0023: T-134, pp. 28-29, 31-33, 74, 103-105; T-135, pp. 4-6, 10-19, 22-25, 29-32, 35-43, 47-48; T-142, pp. 9-15, 20-24, 70-71, 73-74, 82-83; T-143, pp. 6-8.

²³⁰⁷ [Prosecution's Final Brief](#), fn. 2009, referring to D-0023: T-135, pp. 7-10, 22-25; T-136, pp. 40-43; T-142, pp. 9, 16, 43, 49-50, 54.

²³⁰⁸ D-0023's Report, DAR-OTP-00005970, at 0007-0032, paras 10-65.

²³⁰⁹ D-0023's Report, DAR-OTP-00005970, at 0038-0048, paras 74-96.

²³¹⁰ D-0023: T-136, p. 39.

²³¹¹ D-0023: T-136, pp. 41-42, 44; T-142, pp. 31-61.

²³¹² D-0023: T-136, pp. 14, 29-32, 40, 50-51; T-142, pp. 15-18, 33-38, 45-60, 88-90; T-143, pp. 23-28, referring to 1998 Sudanese Constitution, DAR-OTP-0139-0003; D-0023's Report, DAR-OTP-00005970, at 0039-0040, paras 77-78.

the rules of international customary law had to be transposed into domestic Sudanese law in order to be applicable.²³¹³ For the reasons that follow, the Chamber considers D-0023's evidence in this respect has very little probative value.

644. First, D-0023's experience was very limited, derived from academic research he had conducted on a very discrete topic namely the expropriation of property of non-Muslims, specifically Christians, in the area of Khartoum in 2012.²³¹⁴

645. Second, D-0023's research methodology and sourcing were deficient, both as an academic and even more as an expert appearing before a court of law. During the *voir dire* hearing, D-0023 admitted he had not read the Qur'an or any other legal text of Sharia law (and said he could read some Arabic, but still had to consult with colleagues to understand texts he consulted),²³¹⁵ but that instead he had consulted with practitioners and specialists (which as the Chamber pointed out had inherent shortcomings given that interpretations could vary).²³¹⁶ The Chamber noted its concern when it preliminarily authorised him to appear as an expert.²³¹⁷

646. During the course of questioning by the Prosecution in the hearing which followed the *voir dire* procedure, far from being allayed, the Chamber's concerns were confirmed. For example, when D-0023 was asked to comment on the Emergency Plan, D-0023 stated that he had not been able to consult the document, or other relevant documents referred to in his report (such as the 1992 decree), but that he had 'spoken about it with academics' in Khartoum and had gathered information by reading articles on these issues.²³¹⁸ The Prosecution confronted D-0023 in court with the fact that many of these legal texts were readily available in libraries (such as the Peace Palace and ICC libraries) and on the internet.²³¹⁹ As was admitted by D-0023 in court, had he consulted these legal texts, his report might have been more accurate.²³²⁰

²³¹³ D-0023: T-136, pp. 47-53.

²³¹⁴ D-0023: T-136, pp. 32-33.

²³¹⁵ D-0023: T-134, p. 27.

²³¹⁶ D-0023: T-134, pp. 52-54.

²³¹⁷ [Decision on Philippe Gout as Expert Witness](#), para. 29.

²³¹⁸ D-0023: T-136, pp. 20-26, *referring to* National Security Plan, DAR-D31-00000230, Translation, DAR-D31-00000231.

²³¹⁹ D-0023: T-142, pp. 9-15, *referring to* D-0023's Report, DAR-OTP-00005970, at 0008-0010, paras 13-14, 16. The Prosecution confronted D-0023 with the fact that some of the legal texts he had stated he was not able to locate and read in full (such as the *Goldenberg v. Goldenberg case*, or the 1983 Act), were readily available in the Peace Palace Library, the ICC's library and the internet.

²³²⁰ D-0023: T-142, pp. 16-22, *referring to* Constitutional Decree No. 7, DAR-OTP-0007036; D-0023's Report, DAR-OTP-00005970, at 0009, para. 14, fns 7-8.

647. Moreover, when the Chamber asked D-0023 to cite the ‘actual law’ of Sharia that mandated that non-Muslim people could be discriminated against,²³²¹ D-0023 referred generally to ‘the Islamic law, in the Koran’,²³²² although, as already stated he had never read this text.²³²³ Moreover, while D-0023 stated during his *voir dire* that he had found no disagreements among persons he had consulted with,²³²⁴ he later said during his evidence that he had disagreed with a Sudanese academic (with whom he had consulted) who considered that provisions of international human rights law were directly applicable under Sudanese Law once ratified.²³²⁵ D-0023 also admitted that he had failed to include several human rights conventions when listing in his report the treaties Sudan had signed and ratified.²³²⁶

648. Third, D-0023’s responses to many questions were vague and often inconclusive. For example, when he was asked to comment on a reference in his expert report to a Sudanese constitutional decree dealing with expropriation, D-0023 gave vague answers such as ‘[I] imagine so’ and ‘it would seem so’.²³²⁷ When the Chamber asked him to confirm whether in Sudan international customary law had to be implemented in domestic legislation in order to form part of domestic law, D-0023 said he could not confirm that, as he had not consulted Sudanese jurisprudence in this regard.²³²⁸ When questioned about his opinion in respect of the dualist system in Sudan, D-0023 stated ‘I apologise, I have the bad habit of a university professor who likes to debate matters and not necessarily come to a definitive conclusion’.²³²⁹ When confronted with reports from Sudan which appeared to rebut his point on view on this dualist system, D-0023 was equally inconclusive: ‘Perhaps Sudan is responding to criticisms, so – well, I can’t answer the question. I stand by my position’.²³³⁰

649. Fourth, a substantial part of D-0023’s evidence was based on information either pre- or post-dating the temporal scope of this case and where the link with the Sudanese legal framework during the 2003-2004 conflict in Darfur is not evident. For example, as noted by

²³²¹ D-0023: T-136, p. 35.

²³²² D-0023: T-136, p. 35.

²³²³ D-0023: T-134, pp. 52-54.

²³²⁴ D-0023: T-134, p. 54.

²³²⁵ D-0023: T-136, p. 41.

²³²⁶ D-0023: T-142, pp. 22-24, *referring to* D-0023’s Report, DAR-OTP-00005970, at 0038-0039, para. 75. *See also* D-0023: T-142, pp. 43-47, when D-0023 was confronted with a legal text he had not consulted, which appeared to contradict his opinion on the dualist system in Sudan. He accepted that if he had known about this text (readily available online) he would have made a more ‘moderate’ conclusion in this regard.

²³²⁷ D-0023: T-136, pp. 27-29, *referring to* D-0023’s Report, DAR-OTP-00005970, at 0009, para. 14, fn. 5.

²³²⁸ D-0023: T-136, pp. 49-50.

²³²⁹ D-0023: T-142, pp. 34-35.

²³³⁰ D-0023: T-142, pp. 36-43.

the Prosecution during its questioning of D-0023, his report refers to a 1958 Sudanese judgment to substantiate his opinion about the dualist nature of the Sudanese legal system.²³³¹ Moreover, as noted above, D-0023's field work in Sudan took place several years after the relevant 2003 to 2004 conflict.²³³²

Inter-tribal coordination structures and positions

650. D-0023 gave evidence on inter-tribal coordination structures and positions.²³³³ As regards the concepts of *diya* and *judiya*, the Chamber notes that the tables in D-0023's report are dated 1892.²³³⁴ The Chamber further notes that although D-0023 gave evidence on the link between the counter-insurgency and a tribe's possession of *dar*, his evidence relates to the Rizeigat tribe.²³³⁵ In fact, D-0023 stated he had never studied the Ta'aisha tribe.²³³⁶ Further, D-0023 acknowledged that he did not have information about the *judiya* process during the 2003-2004 conflict.²³³⁷

651. When asked about the role of the *agid al-ogada*, D-0023 stated that, whilst he was not familiar with the term, it was referred to in some texts he used for the purpose of his PhD thesis to characterise commanders of armed groups, militia people, fighters or military groups.²³³⁸ The Chamber notes the Defence's argument that D-0023's evidence confirms that the authority of the *agid al-ogada* over the *agids* of the Ta'aisha tribe was limited.²³³⁹ However, bearing in mind D-0023's superficial knowledge on this issue, the Chamber finds that he is not in a position to provide such confirmation, particularly in light of the preponderance of evidence to the contrary.²³⁴⁰

The concepts of *hiraba* and *ghanima*

652. D-0023 provided evidence on the concepts of *hiraba* and *ghanima*.²³⁴¹ However, the Chamber notes that D-0023's knowledge seemed to be based on events either prior to the

²³³¹ D-0023: T-142, p. 9, *referring to* D-0023's Report, DAR-OTP-00005970, at 0010, para. 16.

²³³² D-0023: T-134, pp. 25, 72.

²³³³ D-0023: T-136, pp. 54-61; D-0023's Report, DAR-OTP-00005970, at 0032-0037, paras 66-72.

²³³⁴ D-0023's Report, DAR-OTP-00005970, at 0035-0037, paras 70-71.

²³³⁵ D-0023: T-136, pp. 64-67.

²³³⁶ D-0023: T-136, p. 67.

²³³⁷ D-0023: T-142, p. 7.

²³³⁸ D-0023: T-136, pp. 68-70.

²³³⁹ [Defence's Final Brief](#), para. 288, *referring to* D-0023's Report (French version), DAR-D31-00000134, at 0031-0035, paras 67-68, 70-72; D-0023: T-134, p. 38.

²³⁴⁰ See P-0547, P-0585, P-0643, P-0878, P-1021, and P-1042.

²³⁴¹ D-0023's Report, DAR-OTP-00005970, at 0050-0052, paras 97-101; D-0023: T-142, pp. 70-71.

charged period (1992-1994) or after (2014-2017).²³⁴² The Chamber did not find any apparent basis upon which D-0023 could conclude that these mechanisms were applicable in the 2003-2004 conflict. In fact, when D-0023 was asked to mention a concrete example, he referred to events in 2014-2017.²³⁴³

653. Moreover, as noted above, D-0023 admitted he had never read the Qur'an.²³⁴⁴ He had also never studied Islamic law.²³⁴⁵ Also, as noted above, his sources were principally interviews he had with others and D-0023 said he no longer had notes of these interviews.²³⁴⁶

654. In light of the above, the Chamber considers D-0023's evidence in this respect to possess little relevance and probative value.

State of emergency

655. As already stated, in the *voir dire* procedure, the Chamber found that D-0023 did not have the required expertise to opine on the impact of the state of emergency on domestic law in Sudan during the period 2003-2004.²³⁴⁷ Nonetheless he provided some evidence on the topic including its application to human rights in Sudan and particularly Darfur.²³⁴⁸ The Chamber finds this evidence to have very little relevance or probative value.

656. Whilst it is not a requirement that an expert's opinion be based only on first-hand knowledge or experience,²³⁴⁹ D-0023's evidence revealed not only a lack of first-hand knowledge of the matters on which he was asked to provide his opinion, but also, as set out in the foregoing paragraphs, an inadequate level of research. Accordingly, the Chamber is not persuaded that D-0023's evidence reaches the high standard which is required for a witness to be considered an expert and therefore is unable to place reliance on his evidence.

²³⁴² D-0023: T-136, pp. 75-76; D-0023's Report, DAR-OTP-00005970, at 0030 (Box 3).

²³⁴³ D-0023: T-136, pp. 80-81, *referring to* D-0023's Report, DAR-OTP-00005970, at 0030 (Box 3).

²³⁴⁴ D-0023: T-142, p. 70.

²³⁴⁵ D-0023: T-142, p. 70.

²³⁴⁶ D-0023: T-142, pp. 71-73.

²³⁴⁷ D-0023's Report, DAR-OTP-00005970, at 0050-0052, paras 102-105; D-0023: T-136, pp. 70-71.

²³⁴⁸ D-0023: T-142, pp. 24-30, *referring to* D-0023's Report, DAR-OTP-00005970, at 0039, 0050, paras 76, 102.

²³⁴⁹ See [Ntaganda Trial Judgment](#), para. 54, fn. 192.

10. D-0026

657. D-0026 (DoB 1963) gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.²³⁵⁰ He is [REDACTED].²³⁵¹ [REDACTED].²³⁵² [REDACTED].²³⁵³ [REDACTED].²³⁵⁴ [REDACTED].²³⁵⁵ The Chamber finds that this witness gave impartial evidence as to what he had seen and been told.

658. D-0026's evidence principally dealt with [REDACTED].²³⁵⁶

659. When asked whether he came across the name '**Ali Kushayb**' when in Darfur, D-0026 said he came across a similar name, but could not recollect the exact name mentioned by Defence counsel.²³⁵⁷

660. D-0026's evidence also dealt with his understanding of the *Janjaweed*,²³⁵⁸ the *Fursan*,²³⁵⁹ the *Mujahidin*,²³⁶⁰ and their relationship with the GoS (particularly the PDF), the military and local tribal authorities such as the *agid*.²³⁶¹

661. The Chamber observes that D-0026's evidence largely related to a time period— July 2004 to July 2005 – subsequent to the charges in the present case. As noted by D-0026 in court, [REDACTED].²³⁶² The Chamber therefore cannot draw conclusions from the evidence relating to this later period and apply it to the period of the charges. Moreover, although D-0026 was called as a witness of fact, his evidence was presented as that of an expert, *i.e.* he gave his opinion on a number of matters. The Chamber further notes that the witness's basis of knowledge for many of his assertions is not clear and his evidence is based mainly on indirect unsupported accounts or on his opinion.²³⁶³ For example, the Chamber notes that D-0026's

²³⁵⁰ D-0026's Statements, DAR-OTP-0109-0111; DAR-D31-00000279; D-0026's Statement Corrections, DAR-D31-00000297; D-0026: T-147.

²³⁵¹ D-0026: T-147, p. 27.

²³⁵² D-0026: T-147, p. 31.

²³⁵³ D-0026: T-147, p. 59.

²³⁵⁴ D-0026: T-147, pp. 33-59.

²³⁵⁵ D-0026: T-147, pp. 25, 27, *referring to* D-0026's Statement, DAR-OTP-0109-0111.

²³⁵⁶ D-0026: T-147, pp. 31-34, 90.

²³⁵⁷ D-0026: T-147, p. 55.

²³⁵⁸ D-0026: T-147, p. 48.

²³⁵⁹ D-0026: T-147, p. 49.

²³⁶⁰ D-0026: T-147, p. 52.

²³⁶¹ D-0026: T-147, pp. 48-51.

²³⁶² D-0026: T-147, p. 90.

²³⁶³ *See for example* D-0026: T-147, pp. 35, 79-86.

assertion about attacks by the *Janjaweed* as being fabricated or exaggerated is based on one village.²³⁶⁴

662. Whilst the Chamber finds this witness credible, it finds that his evidence was of limited relevance to any of the issues in this case.

11. D-0027

663. D-0027 gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.²³⁶⁵ D-0027 appeared as an expert before the Chamber. According to her CV,²³⁶⁶ D-0027 received training and worked in the scientific examination of documents and handwriting since 1982, and is on the list of approved expert witnesses for the Court.²³⁶⁷ The Chamber observes that it is not in issue, having been accepted by both sides, that witness D-0027 is an expert witness.²³⁶⁸ Having regard to her professional experience,²³⁶⁹ the Chamber fully accepts that this witness is an expert.

664. The Defence requested the witness to provide the Chamber with her expert examination of two questioned signatures and compare them individually with the known signatures of **the Accused**.²³⁷⁰ The two signatures in question are, respectively, from the copy of an interview conducted by the Sudanese judicial commission of inquiry dated 2006 ('Annex A'), and from a *laissez-passer* document, dated 2003 ('Annex B').²³⁷¹ D-0027 compared these two 'questioned signatures' with three 'known signatures', namely an ICC document dated 2020 signed by **the Accused** ('Annex C'), a document from the CAR authorities dated 2020 signed by **the Accused** ('Annex D') and a blank sheet of paper **the Accused** signed several times ('Annex E').²³⁷²

665. D-0027 reached conclusions on three points. Firstly, she found no evidence to indicate that the two challenged signatures were written by the same person.²³⁷³ Secondly, she found no evidence to indicate that **the Accused** wrote the questioned signature on the *laissez-passer*

²³⁶⁴ D-0026: T-147, pp. 39-43, 79-80, 90-92, referring to D-0026's Statement, DAR-OTP-0109-0111, at 0118, para. 39; D-0026's Photograph, DAR-OTP-0109-1332.

²³⁶⁵ D-0027: T-137; D-0027's Report, DAR-D31-00000158.

²³⁶⁶ D-0027's CV, DAR-D31-00000159.

²³⁶⁷ D-0027: T-137, p. 10.

²³⁶⁸ D-0027: T-137, p. 11.

²³⁶⁹ See for example D-0027's CV, DAR-D31-00000159.

²³⁷⁰ D-0027's Report, DAR-D31-00000158, at 0003.

²³⁷¹ D-0027's Report, DAR-D31-00000158, at 0002.

²³⁷² D-0027's Report, DAR-D31-00000158, at 0002.

²³⁷³ D-0027's Report, DAR-D31-00000158, at 0004-0005.

document.²³⁷⁴ Finally, she was unable to determine with any degree of certainty whether or not **the Accused** wrote the questioned signature on the November 2006 document.²³⁷⁵ The result of her examination was therefore inconclusive.²³⁷⁶

666. The Chamber observes that D-0027 was very knowledgeable, provided candid and objective answers, explained her methodologies clearly,²³⁷⁷ and was straightforward about the limitation of her findings.²³⁷⁸ In comparing the signature from Annex A with that of Annex B, D-0027 said that while there was nothing to suggest they were written by the same person, this possibility could not be excluded as one's handwriting can change or be affected by factors such as age, illness, and injury.²³⁷⁹

667. The Chamber considers that, while D-0027's finding on whether **the Accused** wrote the questioned signature on the November 2006 interview note is inconclusive,²³⁸⁰ this has no bearing on her expertise. The Chamber notes that the witness's findings were impacted by the fact that the 'known signatures' given to her were very limited and not contemporaneous with the 'questioned signatures' by several years.²³⁸¹ The Chamber observes that, while the reliability of the expert's evidence may be impacted by the aforementioned evidence, D-0027 was indeed very candid about these issues.²³⁸²

668. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0027 to be a generally credible and reliable expert witness. However, D-0027's conclusions both in her report and in court, do not assist the Chamber in determining whether or not **the Accused** signed the November 2006 interview note. Therefore, the Chamber does not rely on D-0027's evidence.

²³⁷⁴ D-0027's Report, DAR-D31-00000158, at 0005-0006.

²³⁷⁵ D-0027's Report, DAR-D31-00000158, at 0006-0007.

²³⁷⁶ D-0027's Report, DAR-D31-00000158, at 0006-0008.

²³⁷⁷ *See for example* D-0027: T-137, pp. 26-27 (on the qualitative scale of evidence employed in the D-0027's conclusions).

²³⁷⁸ *See for example* D-0027: T-137, p. 22; D-0027's Report, DAR-D31-00000158, at 0003.

²³⁷⁹ D-0027: T-137, pp. 20, 37-40.

²³⁸⁰ D-0027's Report, DAR-D31-00000158, at 0006-0008.

²³⁸¹ D-0027: T-137, p. 22.

²³⁸² D-0027: T-137, p. 22.

12. D-0029

669. D-0029 (DoB 1991), a member of the Fur tribe,²³⁸³ gave *viva voce* evidence over one day.²³⁸⁴ D-0029 [REDACTED].²³⁸⁵ D-0029 [REDACTED].²³⁸⁶ D-0029 said he [REDACTED]²³⁸⁷ [REDACTED]²³⁸⁸ but does not know [REDACTED],²³⁸⁹ [REDACTED].²³⁹⁰ D-0029's evidence principally dealt with **the Accused** (his nickname and his character)²³⁹¹ and members of the Fur tribe living in Rahad Al-Berdi.²³⁹²

Knowledge of the Accused

670. D-0029 gave evidence that he encountered **the Accused** in 2010 when **the Accused** came back to Rahad Al-Berdi as *musa'id* of the CRF.²³⁹³ When **the Accused** returned, all tribes in Rahad Al-Berdi welcomed him.²³⁹⁴ D-0029 used to see **the Accused** from afar in his pharmacy in Rahad Al-Berdi but never had a conversation with him.²³⁹⁵ D-0029 said that **the Accused** ran the pharmacy at the same time he was the *musa'id* of the CRF.²³⁹⁶ He stated he would also pass by **the Accused's** house and would also see him in the CRF camp.²³⁹⁷

671. D-0029 gave evidence about the character of **the Accused**, stating that he had never heard **the Accused** said anything discriminatory,²³⁹⁸ nor was he involved in politics.²³⁹⁹ D-0029 said he would call **the Accused** 'Uncle Ali' or 'Abu Nasser'.²⁴⁰⁰

672. In relation to the nickname '**Ali Kushayb**', D-0029 gave evidence that he first heard the name on the radio but could not recall when or what it was in relation to.²⁴⁰¹ D-0029 only heard that **the Accused** was wanted by the Court when he surrendered in 2020.²⁴⁰² However,

²³⁸³ D-0029: T-157, pp. 6-7.

²³⁸⁴ D-0029: T-157.

²³⁸⁵ D-0029: T-157, p. 8.

²³⁸⁶ D-0029: T-157, pp. 51-52.

²³⁸⁷ D-0029: T-157, pp. 8-10, 48-50, 55.

²³⁸⁸ D-0029: T-157, pp. 40.

²³⁸⁹ D-0029: T-157, pp. 40-41, 54-55.

²³⁹⁰ D-0029: T-157, p. 41.

²³⁹¹ See for example D-0029: T-157, pp. 24-34.

²³⁹² See for example D-0029: T-157, pp. 16-22.

²³⁹³ D-0029: T-157, pp. 24-25.

²³⁹⁴ D-0029: T-157, pp. 26-27.

²³⁹⁵ D-0029: T-157, pp. 27-28, 32-33.

²³⁹⁶ D-0029: T-157, p. 29.

²³⁹⁷ D-0029: T-157, p. 43.

²³⁹⁸ D-0029: T-157, p. 28.

²³⁹⁹ D-0029: T-157, p. 28.

²⁴⁰⁰ D-0029: T-157, p. 31.

²⁴⁰¹ D-0029: T-157, pp. 11-13, 31.

²⁴⁰² D-0029: T-157, p. 34.

during the questioning by the Prosecution, when confronted with his written statement, D-0029 accepted that he had heard on Radio Dabanga about ‘**Ali Kushayb**’ in relation to the ‘problems’ between the government and the ‘opposition’.²⁴⁰³ When the Prosecution suggested that D-0029 had heard about ‘**Ali Kushayb**’ on Radio Dabanga in the context of the Salamat and Ta’aisha tribe conflict in 2013, D-0029 denied this.²⁴⁰⁴

Fur people in Rahad Al-Berdi

673. D-0029 had heard that there were ‘problems’ in Darfur between the Fur and the Arabs and that the Fur were displaced.²⁴⁰⁵ However, contrary to what other Defence witnesses asserted,²⁴⁰⁶ D-0029 said he had no recollection that any displaced people ever came to Rahad Al-Berdi to seek protection between 2003-2004.²⁴⁰⁷

674. D-0029 also gave evidence that people from different tribes, including Fur people, had arrived and settled in Rahad Al-Berdi and they were welcomed and had no conditions imposed upon them.²⁴⁰⁸ D-0029 said that there was a Fur tribe administration in Rahad Al-Berdi, including *umdahs*, *agids* and *agid al-ogada*.²⁴⁰⁹

675. The Chamber notes that D-0029 was about 10 years old at the time of the relevant events.²⁴¹⁰ D-0029 stated that he is not familiar with the internet and only had access to news about Sudan and the wider world through radio.²⁴¹¹ The Chamber finds that his evidence in relation to the name ‘**Ali Kushayb**’ was temporally and factually limited in scope, and somewhat inconsistent.

²⁴⁰³ D-0029: T-157, pp. 41-42.

²⁴⁰⁴ D-0029: T-157, pp. 43-44.

²⁴⁰⁵ D-0029: T-157, pp. 13-14.

²⁴⁰⁶ See for example D-0001: T-154, pp. 45-47; T-155, p. 16; D-0002: T-156, pp. 45-47; D-0008: T-139, pp. 15-20. See also the Chamber’s assessment of the evidence of D-0001, D-0002 and D-0008, Annex B, Sections I.B.1, I.B.2 and I.B.8.

²⁴⁰⁷ D-0029: T-157, pp. 14-15.

²⁴⁰⁸ D-0029: T-157, pp. 16-17.

²⁴⁰⁹ D-0029: T-157, p. 18.

²⁴¹⁰ D-0029: T-157, p. 14.

²⁴¹¹ D-0029: T-157, pp. 11-12, 41.

13. D-0032

676. D-0032 (DoB 1989),²⁴¹² a member of the Ta'aisha tribe,²⁴¹³ gave *viva voce* evidence over two days.²⁴¹⁴ [REDACTED].²⁴¹⁵ [REDACTED].²⁴¹⁶ [REDACTED].²⁴¹⁷ D-0032's evidence principally dealt with **the Accused** having no association with the name '**Ali Kushayb**'.²⁴¹⁸ D-0032 gave evidence that he saw **the Accused** [REDACTED].²⁴¹⁹

Knowledge of the Accused

677. D-0032 [REDACTED].²⁴²⁰ D-0032 [REDACTED].²⁴²¹ D-0032 gave evidence that [REDACTED].²⁴²² D-0032 [REDACTED],²⁴²³ [REDACTED].²⁴²⁴

678. D-0032 [REDACTED].²⁴²⁵ D-0032 gave evidence that in the period [REDACTED] he saw **the Accused** [REDACTED].²⁴²⁶ When questioned by the Chamber why **the Accused**, [REDACTED], had been recruited at the CRF [REDACTED], D-0032 said **the Accused** was a 'poor man' so he did this to have a job.²⁴²⁷ Later during the questioning of the Prosecution, D-0032 said **the Accused** was actually not training [REDACTED] but as an experienced fighter, **the Accused** was supervising people.²⁴²⁸

679. D-0032 first said that [REDACTED].²⁴²⁹ D-0032 gave evidence that he would [REDACTED].²⁴³⁰ Later, when questioned by the Prosecution, D-0032 said that in fact [REDACTED].²⁴³¹ D-0032 also said [REDACTED].²⁴³² However, during his evidence the

²⁴¹² [REDACTED] (*see* the questioning by the Prosecution in this regard at D-0032: T-140, pp. 52-53, *referring to Laissez-Passer*, DAR-D31-00000162).

²⁴¹³ D-0032: T-140, pp. 10-11.

²⁴¹⁴ D-0032: T-140; T-141.

²⁴¹⁵ D-0032: T-140, pp. 12-14.

²⁴¹⁶ D-0032: T-140, pp. 32, 37, 45-47.

²⁴¹⁷ D-0032: T-140, pp. 47-48.

²⁴¹⁸ D-0032: T-140, pp. 23-24; T-141, pp. 17-24, 42.

²⁴¹⁹ D-0032: T-140, pp. 3-4, 26.

²⁴²⁰ D-0032: T-140, p. 82.

²⁴²¹ D-0032: T-140, pp. 17-18, 26.

²⁴²² D-0032: T-140, pp. 17-18, 83-85.

²⁴²³ D-0032: T-140, pp. 17-18, 20.

²⁴²⁴ D-0032: T-140, pp. 83-85.

²⁴²⁵ D-0032: T-140, pp. 38-40, *referring to* Assignment Order, DAR-D31-00020003, Translation, DAR-D31-0002-0010.

²⁴²⁶ D-0032: T-140, p. 41.

²⁴²⁷ D-0032: T-140, pp. 42-43.

²⁴²⁸ D-0032: T-140, pp. 91-92.

²⁴²⁹ D-0032: T-140, pp. 19-20, 45, 94-95.

²⁴³⁰ D-0032: T-140, p. 46.

²⁴³¹ D-0032: T-140, pp. 85-86.

²⁴³² D-0032: T-140, p. 89.

following day, D-0032 [REDACTED].²⁴³³ The Chamber finds this evidence internally inconsistent.

680. In relation to the nickname ‘**Ali Kushayb**’, D-0032 stated that [REDACTED].²⁴³⁴ D-0032 said he never heard **the Accused’s** [REDACTED] or anyone else call **the Accused** by the name of ‘**Ali Kushayb**’.²⁴³⁵ First, D-0032 said he heard the nickname for the first time in court.²⁴³⁶ However, later he said he heard ‘**Ali Kushayb**’ being mentioned on Radio Dabanga sometime around 2022.²⁴³⁷ Later, during the questioning by the Prosecution, D-0032 stated he had heard of a warrant of arrest against **the Accused** (aka ‘**Ali Kushayb**’) when he surrendered in 2020.²⁴³⁸ A few minutes later, when questioned by the Chamber, D-0032 said he could have heard about ‘**Ali Kushayb**’ ‘in 2004, I think, 2001, 2002, I don’t know’.²⁴³⁹ It became evident during the hearing that D-0032 was simply unwilling to give a date in this regard.²⁴⁴⁰ Later, after the Prosecution read to him excerpts from Radio Dabanga articles (that reported on the conflict between the Salamat and Ta’aisha tribe in 2013, and referring to **the Accused** as ‘**Ali Kushayb**’), D-0032 first denied once again knowing anything about **the Accused’s** nickname, but a few minutes later changed his evidence again and accepted that he knew by 2013 that **the Accused** was being called ‘**Ali Kushayb**’.²⁴⁴¹ In re-examination by the Defence, D-0032 stated that the first time he heard the name ‘**Ali Kushayb**’ was in 2003.²⁴⁴² The Chamber finds this evidence internally inconsistent.

681. D-0032 gave evidence that **the Accused** never held any political position,²⁴⁴³ that he never said anything discriminatory against the Fur,²⁴⁴⁴ and that he never led any militia or military group.²⁴⁴⁵ When he was shown by the Chamber the Um-Sory Video, D-0032 recognised **the Accused** and his uniform as a *musa’id* of the CRF.²⁴⁴⁶

²⁴³³ D-0032: T-141, pp. 30-31.

²⁴³⁴ D-0032: T-140, pp. 23-24.

²⁴³⁵ D-0032: T-140, pp. 23-24.

²⁴³⁶ D-0032: T-140, p. 23.

²⁴³⁷ D-0032: T-140, pp. 24-25.

²⁴³⁸ D-0032: T-141, pp. 17-18.

²⁴³⁹ D-0032: T-141, p. 18.

²⁴⁴⁰ D-0032: T-141, pp. 18-19.

²⁴⁴¹ D-0032: T-141, pp. 21-24, *referring to* Media Reports, DAR-OTP-00005650, DAR-OTP-00005652, Translations, DAR-OTP-00006582, DAR-OTP-00006587.

²⁴⁴² D-0043: T-141, p. 42.

²⁴⁴³ D-0032: T-140, p. 26.

²⁴⁴⁴ D-0032: T-140, p. 28.

²⁴⁴⁵ D-0032: T-140, p. 28.

²⁴⁴⁶ D-0032, T-141, pp. 39-41, *referring to* Video, DAR-OTP-0202-1377.

682. There were also significant, relevant and important differences between D-0032's in-court evidence and his witness statement. These discrepancies included, for example, D-0032 saying in court he did not know what the word *Janjaweed* meant while he had given a definition in his statement.²⁴⁴⁷ Likewise, whilst D-0032 said first in court that he had never heard of the attacks in Wadi Salih between 2003-2004, when confronted by the Prosecution with his previous statement, D-0032 accepted that he had indeed heard about these events.²⁴⁴⁸

683. The fact that D-0032 [REDACTED],²⁴⁴⁹ and his contradictory evidence about his knowledge of the name '**Ali Kushayb**' in Garsila, in itself raised doubts as to his credibility. Those doubts were confirmed when D-0032 stated that he had never heard of the internet, and had never possessed a smartphone with which to use the internet or access social media.²⁴⁵⁰ He said his only access to information was the radio and television, particularly Radio Dabanga.²⁴⁵¹ [REDACTED].²⁴⁵² [REDACTED].²⁴⁵³ [REDACTED].²⁴⁵⁴

684. In all the circumstances, the Chamber concludes that generally D-0032 was not a credible witness.

14. D-0035

685. D-0035 (DoB 1957) gave *viva voce* evidence over two days pursuant to Rule 68(3) of the Rules.²⁴⁵⁵ D-0035 is a [REDACTED].²⁴⁵⁶ [REDACTED].²⁴⁵⁷

686. D-0035's evidence principally dealt with the CRF, including its structure and position within the GoS;²⁴⁵⁸ the CRF; the PPF; and the *Janjaweed* particularly in the 2003-2004 counter-insurgency; the CRF's command structure [REDACTED].²⁴⁵⁹ He further gave

²⁴⁴⁷ D-0032: T-140, p. 30; T-141, pp. 6-7.

²⁴⁴⁸ D-0032: T-140, pp. 30-31; T-141, pp. 7-11.

²⁴⁴⁹ D-0032: T-140, pp. 15-16, 63.

²⁴⁵⁰ D-0032: T-140, pp. 15-16, 63.

²⁴⁵¹ D-0032: T-140, pp. 16-17.

²⁴⁵² D-0032: T-140, p. 63.

²⁴⁵³ D-0032: T-140, p. 69.

²⁴⁵⁴ D-0032: T-140, pp. 68-74, [REDACTED].

²⁴⁵⁵ D-0035's Statement, DAR-D31-00000274; D-0035's Statement Corrections, DAR-D31-00000318; D-0035: T-148; T-151. *See also* D-0035's Statement, DAR-D31-00000274, at 0001.

²⁴⁵⁶ D-0035's Statement, DAR-D31-00000274, at 0001, 0004, paras 13-16.

²⁴⁵⁷ D-0035: T-148, pp. 4-5.

²⁴⁵⁸ *See for example* D-0035: T-148, pp. 23-44; D-0035: T-151, pp. 36-41.

²⁴⁵⁹ D-0035: T-148, pp. 23-48; D-0035: T-151, pp. 36-37, 39-41.

evidence about the link between the nickname ‘**Ali Kushayb**’ and **the Accused**,²⁴⁶⁰ and **the Accused**’s recruitment in the CRF.²⁴⁶¹

Knowledge of the Accused

687. D-0035 met **the Accused** [REDACTED].²⁴⁶²

688. D-0035 gave evidence that [REDACTED].²⁴⁶³ [REDACTED].²⁴⁶⁴ D-0035 said that when **the Accused** was recruited in the CRF, he would have received a three-month training,²⁴⁶⁵ which would have started after March 2004 and been completed by 28 July 2005.²⁴⁶⁶

689. In relation to the nickname ‘**Ali Kushayb**’, D-0035 gave evidence that he did not hear the nickname ‘**Ali Kushayb**’ in association with **the Accused**,²⁴⁶⁷ nor did he hear that **the Accused** had been a *Janjaweed* leader.²⁴⁶⁸ D-0035 stated that in 2004, he had not heard the nickname ‘**Ali Kushayb**’ at all,²⁴⁶⁹ and did not hear the nickname ‘**Ali Kushayb**’ until 2007,²⁴⁷⁰ [REDACTED].²⁴⁷¹ D-0035 said he knew nothing about the link between ‘**Ali Kushayb**’ and Minister Harun or that **the Accused** or ‘**Ali Kushayb**’ had taken part in the counter-insurgency in Wadi Salih in 2003-2004.²⁴⁷² D-0035 said he had not heard about ‘any kind of warrant of arrest against Ali Kushayb’.²⁴⁷³ He also stated he had never heard of the charged events, never received any reports thereof and that in fact, he had never even heard of a place called Deleig or had any knowledge of the CRF’s involvement therein.²⁴⁷⁴

690. The Chamber notes that D-0035 spent very little time with **the Accused** [REDACTED].²⁴⁷⁵ However, given [REDACTED],²⁴⁷⁶ the Chamber is satisfied that he was

²⁴⁶⁰ See for example D-0035’s Statement, DAR-D31-00000274, at 0005, 0006, paras 18, 25; D-0035: T-151, pp. 6, 15, 19-20, 26-30.

²⁴⁶¹ See for example D-0035’s Statement, DAR-D31-00000274, at 0004, para. 17; D-0035: T-151, pp. 37-39.

²⁴⁶² D-0035’s Statement, DAR-D31-00000274, at 0006, paras 23-24; D-0035: T-151, pp. 23-25.

²⁴⁶³ D-0035’s Statement, DAR-D31-00000274, at 0004, para. 17.

²⁴⁶⁴ D-0035’s Statement, DAR-D31-00000274, at 0004, para. 17; D-0035: T-151, pp. 37-39.

²⁴⁶⁵ D-0035’s Statement, DAR-D31-00000274, at 0005, para. 20.

²⁴⁶⁶ D-0035’s Statement, DAR-D31-00000274, at 0006, para. 22.

²⁴⁶⁷ D-0035’s Statement, DAR-D31-00000274, at 0005, 0006, paras 18, 25; D-0035: T-151, p. 6.

²⁴⁶⁸ D-0035’s Statement, DAR-D31-00000274, at 0005, para. 18; D-0035: T-151, p. 6.

²⁴⁶⁹ D-0035: T-151, p. 6.

²⁴⁷⁰ D-0035’s Statement, DAR-D31-00000274, at 0006, paras 25-26; D-0035: T-151, pp. 19-20.

²⁴⁷¹ D-0035: T-151, pp. 26-30.

²⁴⁷² D-0035’s Statement, DAR-D31-00000274, at 0005, para. 19. See also D-0035: T-151, pp. 15, 26.

²⁴⁷³ D-0035’s Statement, DAR-D31-00000274, at 0006, para. 26; D-0035: T-151, pp. 31-32.

²⁴⁷⁴ D-0035: T-151, pp. 3-18.

²⁴⁷⁵ D-0035’s Statement, DAR-D31-00000274, at 0006, paras 23-24; D-0035: T-151, pp. 23-25.

²⁴⁷⁶ D-0035’s Statement, DAR-D31-00000274, at 0001, 0004, paras 13-16; D-0035: T-148, pp. 15-17.

well placed to have met with **the Accused** and been introduced to him. Nonetheless, D-0028's evidence cannot assist the Chamber in its determination of whether **the Accused** was '**Ali Kushayb**' as the witness said he did not hear the name '**Ali Kushayb**' until 2007 and he knows very little about the person so nicknamed.²⁴⁷⁷

691. Based on the Chamber's assessment of the evidence, the Chamber finds that D-0035 was not a credible witness. Given [REDACTED],²⁴⁷⁸ particularly [REDACTED],²⁴⁷⁹ and later became the [REDACTED],²⁴⁸⁰ and [REDACTED],²⁴⁸¹ it is implausible that he had never heard of a connection between the name '**Ali Kushayb**' and Minister Harun or knew nothing about the charged events.

15. D-0036

692. D-0036 gave *viva voce* evidence as an expert witness over one day and his report was introduced pursuant to Rule 68(3) of the Rules.²⁴⁸² According to his CV, he worked as [REDACTED].²⁴⁸³

693. The Chamber observes that it is not in issue, having been accepted by both sides, that witness D-0036 is an expert witness.²⁴⁸⁴ Having regard to his educational and research background and his professional experience,²⁴⁸⁵ the Chamber fully accepts that this witness is an expert.

694. In its letter of instruction,²⁴⁸⁶ the Defence requested D-0036 to provide his expert opinion on the PDF, particularly its structure and chain of command, its recruitment practices in 2003-2004 in the counter-insurgency in Darfur, the distinctions between the PDF and the *Janjaweed* in Wadi Salih/Mukjar in 2003-2004, the relationship between the PDF and the BIU. He was also asked to evaluate the religious indoctrination within the PDF and its implications for the dissemination of international humanitarian law principles. He was also requested to give his opinion on the definitions of the concepts of *Mujahidin*, *Fursan*, and *Janjaweed* troops.

²⁴⁷⁷ D-0035's Statement, DAR-D31-00000274, at 0005, 0006, paras 18, 25-26; D-0035: T-151, pp. 19-20, 26-30.

²⁴⁷⁸ D-0035: T-148, pp. 15-17, 27-30.

²⁴⁷⁹ D-0035: T-148, p. 16.

²⁴⁸⁰ D-0035: T-148, p. 18.

²⁴⁸¹ D-0035: T-148, pp. 20, 23.

²⁴⁸² D-0036's Report, DAR-D31-00000312; D-0036: T-153. See also [Decision on Expert Witness D-0036](#).

²⁴⁸³ D-0036's CV, DAR-D31-00000306.

²⁴⁸⁴ See [Decision on Expert Witness D-0036](#), para. 7.

²⁴⁸⁵ See for example D-0036's CV, DAR-D31-00000306.

²⁴⁸⁶ D-0036's Letter of Instruction for Expertise, DAR-D31-00000307.

695. In court, D-0036 gave evidence as to the history of the PDF,²⁴⁸⁷ the concepts of *Mujahidin* and *jihad*, particularly in the in Darfur in the 1990s,²⁴⁸⁸ the arming of the PDF and the formation of the *Fursan*, particularly in the late 1980s and early 1990s.²⁴⁸⁹ D-0036 also commented on the term *Janjaweed* and its connection with tribal leadership.²⁴⁹⁰ He also stated that not all Arab tribes joined the 2003-2004 counter-insurgency, including the Ta'aisha tribe.²⁴⁹¹

696. The Chamber acknowledges that in its decision authorising the introduction of D-0036's expert report, it stated that 'the witness is sufficiently qualified to provide expert evidence on the [PDF]'.²⁴⁹² However, much of D-0036's evidence on the BIU and the PDF, including its command and structure, fell outside the scope of Darfur in 2003-2004.²⁴⁹³ Moreover, D-0036's evidence in relation to Musa Hilal is based on an NGO report, a Human Rights Watch interview with Musa Hilal and the UNCOI Report.²⁴⁹⁴ Additionally, D-0036 acknowledged: (a) that his report [REDACTED] did not contain any references to interviews with PDF members operating in the Wadi Salih area in 2003-2004;²⁴⁹⁵ (b) that he had never written about international humanitarian law in Sudan nor interviewed any persons in 2003-2004 on this issue;²⁴⁹⁶ and (c) the limits of his knowledge concerning the Ta'aisha and the Arab tribes joining the counter-insurgency.²⁴⁹⁷ As accepted by D-0036, his knowledge relates more specifically to [REDACTED].²⁴⁹⁸ Therefore, the Chamber finds that D-0036 lacks expertise in these areas.

697. The Chamber notes D-0036's limited knowledge on some of the topics covered in his report and in-court evidence, particularly in relation to the PDF's role, means and methods of warfare, and operations in the Wadi Salih area during the conflict in 2003-2004, and the application of international humanitarian law in Sudan during the same period. The Chamber therefore does not rely on these aspects of his evidence. However, as regards, his evidence on

²⁴⁸⁷ D-0036: T-153, pp. 10-12.

²⁴⁸⁸ D-0036: T-153, pp. 12-17.

²⁴⁸⁹ D-0036: T-153, pp. 17-25.

²⁴⁹⁰ D-0036: T-153, pp. 41-45.

²⁴⁹¹ D-0036: T-153, pp. 47-48.

²⁴⁹² [Decision on Expert Witness D-0036](#), para. 4.

²⁴⁹³ D-0036: T-153, pp. 27-38, 50-51, 58-59, 85-87.

²⁴⁹⁴ D-0036's Report, DAR-D31-00000312, paras 9, 43, 57; D-0036: T-153, pp. 28-30, 36, 51, 54-55, 74-79, 82-85.

²⁴⁹⁵ D-0036: T-153, pp. 68-71.

²⁴⁹⁶ D-0036: T-153, pp. 73-74.

²⁴⁹⁷ D-0036: T-153, pp. 45, 47-48.

²⁴⁹⁸ D-0036: T-153, p. 89.

the PDF generally, the Chamber relies on it only when it is supported by other credible and reliable evidence.

16. D-0037

698. D-0037 gave *viva voce* evidence over one day pursuant to Rule 68(3) of the Rules.²⁴⁹⁹ D-0037 is a digital investigator [REDACTED].²⁵⁰⁰ He provided evidence on the social media platform Facebook (Meta). D-0037 also commented in court on some Facebook posts [REDACTED].²⁵⁰¹

699. The Chamber notes that D-0037 provided clear and well explained answers.²⁵⁰² D-0037 was also honest and indicated the topics with which he was less comfortable, and provided reasons for this.²⁵⁰³

700. D-0037's expert evidence, which was not contested, is generally credible and reliable. However, the Chamber considers his expert evidence to be of limited relevance to the case, particularly the identification issue as the Chamber did not rely on the material from Facebook which the Prosecution relied upon in relation to identification.²⁵⁰⁴

17. D-0039

701. D-0039 (DoB 1941), a member of the Ta'aisha tribe,²⁵⁰⁵ gave *viva voce* evidence over one day.²⁵⁰⁶ D-0039 [REDACTED].²⁵⁰⁷ He also acknowledged in court that he is [REDACTED].²⁵⁰⁸ D-0039's evidence principally dealt with his knowledge of **the Accused**;²⁵⁰⁹ the nickname '**Ali Kushayb**';²⁵¹⁰ and different aspects of the Ta'aisha tribe, including its role during the armed conflict.²⁵¹¹

Knowledge of the Accused

²⁴⁹⁹ D-0037's Report, DAR-D31-00000313, Translation, DAR-D31-00000320; D-0037: T-152.

²⁵⁰⁰ D-0037: T-152, pp. 9-11.

²⁵⁰¹ D-0037: T-152, pp. 66-78, 91-105.

²⁵⁰² See for example D-0037: T-152, pp. 58-59, 68-69.

²⁵⁰³ D-0037: T-152, pp. 24, 56-57, 67, 71-73, 95.

²⁵⁰⁴ See Judgment, Section 4. Evidentiary principles and considerations, paras 232-235.

²⁵⁰⁵ D-0039: T-159, p. 23.

²⁵⁰⁶ D-0039: T-159, pp. 21-99.

²⁵⁰⁷ D-0039: T-159, pp. 23-24.

²⁵⁰⁸ D-0039: T-159, pp. 66-67.

²⁵⁰⁹ See for example D-0039: T-159, pp. 27-49.

²⁵¹⁰ See for example D-0039: T-159, pp. 29-31, 49-52, 72-75, 81-93.

²⁵¹¹ See for example D-0039: T-159, pp. 47-49, 54, 84-87.

702. D-0039 has known **the Accused** since [REDACTED].²⁵¹² However, D-0039 acknowledged that there were periods of time when he was not in direct contact with **the Accused**.²⁵¹³ For example, the Chamber notes that D-0039 stated that **the Accused** had a pharmacy in Rahad Al-Berdi and not in any other location,²⁵¹⁴ which is clearly contrary to evidence on the record and the agreed fact that **the Accused** had a pharmacy which was located in Garsila.²⁵¹⁵ D-0039 seems to have had more contact with **the Accused** [REDACTED].²⁵¹⁶

703. In relation to **the Accused** having any name beside **Ali Muhammad Ali Abd-Al-Rahman**, D-0039 gave evidence that his only nickname was ‘Abu Nasser’.²⁵¹⁷ D-0039 stated that he had never heard **the Accused** refer to himself or anyone else calling him ‘**Ali Kushayb**’.²⁵¹⁸ D-0039 first stated he only realised that **the Accused** was referred to as ‘**Ali Kushayb**’ after he surrendered himself to the Court,²⁵¹⁹ and in fact had never heard the name ‘**Ali Kushayb**’ until that time.²⁵²⁰ However, D-0039 later stated during his questioning by the Prosecution that he had heard the name ‘**Ali Kushayb**’ on the radio, together with the names of those others wanted by the Court, namely President Al-Bashir and Minister Harun.²⁵²¹

704. Later in his evidence, D-0039 gave inconsistent accounts when he was questioned about his account [REDACTED] when **the Accused** was shot in 2013.²⁵²² D-0039 first said [REDACTED]. When asked by the Prosecution about an earlier statement, and D-0039 stated that although everyone was talking about the assassination attempt and notwithstanding that all reports referred to **the Accused** as ‘**Ali Kushayb**’ he had never heard **the Accused** being referred to as such.²⁵²³ The Chamber finds D-0039’s evidence in this regard implausible.

²⁵¹² D-0039: T-159, p. 27.

²⁵¹³ D-0039: T-159, pp. 28, 31-32.

²⁵¹⁴ D-0039: T-159, p. 33.

²⁵¹⁵ See [Third Joint Submission on Agreed Facts, Annex A](#), Agreed Fact 11. See also Judgment, para. 266.

²⁵¹⁶ D-0039: T-159, pp. 34-39.

²⁵¹⁷ D-0039: T-159, p. 29.

²⁵¹⁸ D-0039: T-159, p. 30.

²⁵¹⁹ D-0039: T-159, p. 49.

²⁵²⁰ D-0039: T-159, p. 51.

²⁵²¹ D-0039: T-159, pp. 74-75.

²⁵²² D-0039: T-159, pp. 45-46, 79-83.

²⁵²³ D-0039: T-159, pp. 45-46, 79-80.

Accused's leadership position

705. D-0039's evidence is that after 2009, **the Accused** was a '*musa'id* in Rahad Al-Berdi' CRF.²⁵²⁴ However, he was not able to provide any detailed information about the composition of the CRF in Rahad Al-Berdi.

706. D-0039 stated that **the Accused** never held any position in the Ta'aisha tribe and never held the position of *agid* or *agid al-ogada*,²⁵²⁵ or any other political or tribal position.²⁵²⁶ However, during the course of his in-court evidence, D-0039 gave contradictory evidence in this regard.²⁵²⁷

707. D-0039 stated that **the Accused** had no role in the Ta'aisha-Salamat conflict in 2012-2013.²⁵²⁸ D-0039 contradicted himself when he said that he didn't know if many people were killed in that conflict, although he had told the Defence during his preparation session that lots of people were killed.²⁵²⁹

708. D-0039 also gave evidence that there was no position of '*musha'arif*' in the Ta'aisha tribe.²⁵³⁰ When confronted by the Prosecution with the fact that a few days before his in-court evidence (during his preparation session), D-0039 had said to the Defence that **the Accused** held this position, D-0039 simply denied it and gave no explanation for his inconsistency.²⁵³¹ He became somewhat incoherent when he was asked whether he had talked with other Defence witnesses between his preparation session with the Defence and appearance in court.²⁵³²

709. D-0039 further contradicted himself when shown the Um-Sory Video.²⁵³³ D-0039 recognised **the Accused** in this video and acknowledged that **the Accused** [REDACTED] during his speech.²⁵³⁴ When confronted with the speech of **the Accused** boasting that he killed

²⁵²⁴ D-0039: T-159, p. 34.

²⁵²⁵ D-0039: T-159, pp. 39-40.

²⁵²⁶ D-0039: T-159, p. 42.

²⁵²⁷ See for example D-0039: T-159, pp. 39-41, 75-78 (D-0039's contradictions on **the Accused's** position of *musha'arif*).

²⁵²⁸ D-0039: T-159, pp. 47-48.

²⁵²⁹ D-0039: T-159, pp. 84-85.

²⁵³⁰ D-0039: T-159, pp. 40-41.

²⁵³¹ D-0039: T-159, pp. 75-78.

²⁵³² D-0039: T-159, p. 79.

²⁵³³ D-0039: T-159, pp. 89-91, referring to Um-Sory Video, DAR-OTP-00006452.

²⁵³⁴ D-0039: T-159, pp. 90-91.

many people as reported by Radio Dabanga, D-0039 said he didn't know if this was true as he never listened to Radio Dabanga.²⁵³⁵ [REDACTED].²⁵³⁶ [REDACTED].²⁵³⁷

710. The Chamber finds D-0039's account to be contradictory and unconvincing and therefore little weight can be accorded to his evidence.

C. CLRV witness

1. V-0001

711. V-0001 (DoB 1964)²⁵³⁸ gave *viva voce* evidence for one day.²⁵³⁹ Her appearance as a witness was authorised by the Chamber,²⁵⁴⁰ upon the CLRV's request.²⁵⁴¹ V-0001 [REDACTED].²⁵⁴² V-0001's evidence principally dealt with the situation of women²⁵⁴³ and children²⁵⁴⁴ [REDACTED]; the stigmatisation of rape victims in the context of Darfuri social dynamics;²⁵⁴⁵ and the impact of prolonged displacement.²⁵⁴⁶

712. As to V-0001's basis of knowledge on the matters in respect of which she was called to testify, the Chamber notes that after fleeing the conflict in Darfur, V-0001 [REDACTED].²⁵⁴⁷ [REDACTED].²⁵⁴⁸ [REDACTED], the Chamber considers V-0001 to be well placed to give evidence on issues related to the situations of women and children in the camp.

713. The Chamber further observes that V-0001's account was detailed and internally consistent, related to personal experience,²⁵⁴⁹ and that she was well-placed to answer the questions asked and provide evidence on those matters. For example, throughout her in-court evidence, the witness gave consistent and detailed evidence on the situation of victims of rape

²⁵³⁵ D-0039: T-159, pp. 92-93.

²⁵³⁶ D-0039: T-159, p. 94.

²⁵³⁷ D-0039: T-159, p. 95.

²⁵³⁸ V-0001: T-120, p. 5.

²⁵³⁹ V-0001: T-120.

²⁵⁴⁰ [Decision on CLRV's Leave Request](#), paras 6-7.

²⁵⁴¹ [CLRV's Leave Request](#), paras 7, 17-22.

²⁵⁴² V-0001: T-120, pp. 4-5.

²⁵⁴³ See for example V-0001: T-120, pp. 24-25.

²⁵⁴⁴ See for example V-0001: T-120, pp. 41-47.

²⁵⁴⁵ See for example V-0001: T-120, pp. 26-27.

²⁵⁴⁶ See for example V-0001: T-120, pp. 31-32 (on displacement's impact on health and malnutrition), 47 (on displacement's impact on the continuity of Fur traditions).

²⁵⁴⁷ V-0001: T-120, p. 14.

²⁵⁴⁸ V-0001: T-120, p. 5.

²⁵⁴⁹ See for example V-0001: T-120, [REDACTED].

in the camp, which includes, *inter alia*, the health issues they endured,²⁵⁵⁰ the resources accessible to them,²⁵⁵¹ how they were perceived in the community,²⁵⁵² and the life of the children born out of rape.²⁵⁵³

714. The Chamber considers V-0001's evidence to be mostly relevant for eventual sentencing and reparations, and notes that some of her evidence may be relevant for contextual elements and the crime of persecution. The Chamber further notes that the Defence has not challenged the credibility of V-0001 in its Final Brief.

715. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds V-0001 to be a credible and reliable witness.

II. The Chamber's assessment of Rule 68(2)(b) and (c) witnesses

A. Prosecution witnesses

1. P-0008

716. P-0008's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁵⁵⁴ The Defence did not oppose the introduction of P-0008's evidence, subject to the Prosecution's undertaking not to rely on the parts of the evidence that either go to the alleged acts and conduct of **the Accused**, or otherwise relate to his alleged background and identity.²⁵⁵⁵ The Chamber recalls that it had decided to exclude paragraphs 17, 26, 35, 37, 41-43, 45, and paragraph 47 of P-0008's statement.²⁵⁵⁶ A declaration under Rule 68(2)(b) of the Rules, including amendments to the statement, was filed on the record.²⁵⁵⁷ These amendments were not contested by the Defence.²⁵⁵⁸

²⁵⁵⁰ V-0001: T-120, p. 15.

²⁵⁵¹ V-0001: T-120, pp. 28-29.

²⁵⁵² V-0001: T-120, pp. 26-27.

²⁵⁵³ V-0001: T-120, pp. 29-31.

²⁵⁵⁴ P-0008's Statement, DAR-OTP-0088-0085-R02; P-0008's Photograph, DAR-OTP-0088-0103; P-0008's Handwritten Note, DAR-OTP-0088-0102-R02, Translation, DAR-OTP-0153-1340-R01. *See also* [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#).

²⁵⁵⁵ Defence's Response to Prosecution's Sixth, Seventh and Eighth Rule 68(2)(b) Applications, para. 3.

²⁵⁵⁶ [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), paras 11, 20, fns 19, 49. The words in paragraph 47 excluded were '[...] KUSHAYB went to the prisons after the arrests and selected 32 detainees, including all the Umdahs, some Sheikhs and young men, for execution. He also told me that'.

²⁵⁵⁷ Registry's Transmission of Prosecution Witness Declarations, Annex I.

²⁵⁵⁸ The Chamber issued an oral ruling on the matter (*see* T-123, p. 6).

717. P-0008 (DoB 1948), a member of the Fur tribe, [REDACTED] at the time of the events.²⁵⁵⁹

718. P-0008's evidence principally dealt with the background to the armed conflict in Darfur,²⁵⁶⁰ and the structure of the SAF in Mukjar,²⁵⁶¹ as well as of the *Janjaweed*.²⁵⁶² He also provided detailed information on a meeting between Abd-Al-Hakam, Minister Harun, Torshein and other officials in Mukjar in August 2003.²⁵⁶³ Finally, P-0008 provided evidence on the Sindu operation,²⁵⁶⁴ and the killings of detainees in Mukjar in February 2004.²⁵⁶⁵

719. The Chamber does however observe that the majority of P-0008's knowledge of the events is based on indirect evidence, for which he sometimes provides a source,²⁵⁶⁶ but not always.²⁵⁶⁷

720. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0008 to be a generally credible and reliable witness.

2. P-0013

721. P-0013's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁵⁶⁸ The Chamber accepted the Defence's objection to paragraph 38 of P-0013's statement, which mentions 'Ali Koship', and does not rely on it.²⁵⁶⁹

722. P-0013 (DoB 1968), a member of the Fur tribe, [REDACTED] at the time of the charges.²⁵⁷⁰

723. P-0013's evidence principally dealt with the rebels' attack on the military garrison in Arawala in August 2003, followed by the arrival of GoS forces, including Lt Hamdi

²⁵⁵⁹ P-0008's Statement, DAR-OTP-0088-0085-R02, at 0085, 0087-0088, para. 8.

²⁵⁶⁰ P-0008's Statement, DAR-OTP-0088-0085-R02, at 0089, paras 13-15.

²⁵⁶¹ P-0008's Statement, DAR-OTP-0088-0085-R02, at 0089, para. 16.

²⁵⁶² P-0008's Statement, DAR-OTP-0088-0085-R02, at 0090, para. 18.

²⁵⁶³ P-0008's Statement, DAR-OTP-0088-0085-R02, at 0095, para. 36.

²⁵⁶⁴ P-0008's Statement, DAR-OTP-0088-0085-R02, at 0096-0097, paras 40, 44.

²⁵⁶⁵ P-0008's Statement, DAR-OTP-0088-0085-R02, at 0097, paras 46-47.

²⁵⁶⁶ See for example P-0008's Statement, DAR-OTP-0088-0085-R02, at 0098, para. 49.

²⁵⁶⁷ See for example P-0008's Statement, DAR-OTP-0088-0085-R02, at 0096-0097, para. 44. See [Defence's Final Brief](#), para. 328.

²⁵⁶⁸ P-0013's Statement, DAR-OTP-0088-0129-R03; P-0013's Sketches, DAR-OTP-0088-0146-R01, DAR-OTP-0088-0145, DAR-OTP-0088-0147, Translations, DAR-OTP-0153-1344-R01, DAR-OTP-0153-1342; P-0013's Photograph, DAR-OTP-0088-0127. See also [First Decision on Prosecution's Rule 68\(2\)\(b\) Request](#), paras 28-34, 74(b).

²⁵⁶⁹ [First Decision on Prosecution's Rule 68\(2\)\(b\) Request](#), paras 28-34.

²⁵⁷⁰ P-0013's Statement, DAR-OTP-0088-0129-R03, at 0132-0133, 0135-0138, paras 13-16, 17.

[REDACTED], and the ensuing arrest and physical abuse of the inhabitants.²⁵⁷¹ P-0013 provided evidence on the various crimes committed by GoS forces and the *Janjaweed* during the first and second attacks of Arawala and its surroundings in December 2003 and January 2004.²⁵⁷² P-0013 also testified about the arrest and killing of three *umdahs* in Deleig.²⁵⁷³

724. Generally, the Defence argues that P-0013 ‘was also [REDACTED] that this element should be taken into consideration in the assessment of the credibility of his evidence’.²⁵⁷⁴ Further, the Defence refers to P-0013’s statement in its argument that the evidence presented by the Prosecution on the transportation and killing of detainees outside Deleig on 7 March 2004 is ‘vague, mostly based on anonymous hearsay’, and ‘inconsistent as between witnesses’.²⁵⁷⁵ In particular, the Defence challenges P-0013 for hearing, ‘without specifying the source or timeframe’, about the arrest in Deleig and the killing of the three *umdahs* mentioned.²⁵⁷⁶

725. The Chamber is satisfied that P-0013 is a credible and reliable witness regarding the attacks on Arawala and its surroundings in December 2003 and January 2004. The Defence’s assertion that he was [REDACTED] is not supported by sufficient evidence to affect the credibility of his direct evidence,²⁵⁷⁷ which is consistent with that of other witnesses.²⁵⁷⁸ However, the Chamber acknowledges the Defence’s submission that P-0013’s evidence about the arrest and killing of the three *umdahs* is based on indirect evidence, and in particular lacks detail.²⁵⁷⁹ For these reasons, the Chamber does not rely on the witness’s evidence on this issue.

3. P-0016

726. P-0016’s evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁵⁸⁰ In her subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0016 made some amendments to her written statement.²⁵⁸¹ Neither the Prosecution Rule 68(2)(b) request nor the amendments were

²⁵⁷¹ P-0013’s Statement, DAR-OTP-0088-0129-R03, at 0133-0134, paras 22-24.

²⁵⁷² P-0013’s Statement, DAR-OTP-0088-0129-R03, at 0137-0138, 0140, paras 35-38, 41-42, 55.

²⁵⁷³ P-0013’s Statement, DAR-OTP-0088-0129-R03, at 0141, para. 63.

²⁵⁷⁴ [Defence’s Final Brief](#), para. 174.

²⁵⁷⁵ [Defence’s Final Brief](#), para. 632.

²⁵⁷⁶ [Defence’s Final Brief](#), para. 632.

²⁵⁷⁷ *Contra* [Defence’s Final Brief](#), para. 174.

²⁵⁷⁸ See the Chamber’s assessment of the evidence of P-0016 and P-0955, Annex B, Section II.A.3 and I.A.43.

²⁵⁷⁹ [Defence’s Final Brief](#), para. 632.

²⁵⁸⁰ P-0016’s Statement, DAR-OTP-0088-0150-R02; [Second Decision on Prosecution’s Rule 68\(2\)\(b\) Application](#), paras 18-24.

²⁵⁸¹ Registry’s Transmission of Prosecution Witness Declarations, Annex V.

opposed by the Defence.²⁵⁸² However, the Chamber will not rely on paragraph 40 of her statement which provides a physical description of ‘Ali Koship’.²⁵⁸³

727. P-0016, a member of the Fur tribe, was approximately 22 years old at the time of the charges. She was living in [REDACTED] at the relevant time.²⁵⁸⁴

728. P-0016’s evidence principally dealt with the attack on Arawala in December 2003.²⁵⁸⁵ She gave evidence that people [REDACTED] were killed, their farms and houses destroyed and looted.²⁵⁸⁶ P-0016 narrated how [REDACTED] women were held captive, beaten and raped multiple times over a series of days.²⁵⁸⁷

729. Generally, P-0016 is a credible and reliable witness. Her account is internally consistent. Most of her evidence is direct evidence of what she experienced during the attack on Arawala. When she did not give direct evidence, she stated this clearly.²⁵⁸⁸ The Chamber notes that the Defence does not challenge her credibility.

4. P-0026

730. P-0026’s evidence was introduced pursuant to Rule 68(2)(c) of the Rules.²⁵⁸⁹

731. P-0026 (DoB 1950), a member of the Fur tribe, [REDACTED].²⁵⁹⁰ [REDACTED].²⁵⁹¹

732. P-0026’s evidence principally dealt with the background of the conflict in Darfur and the GoS policy to persecute members of the Fur tribe, and high-ranking government official’s awareness of this.²⁵⁹²

733. Generally, P-0026’s account is internally consistent and, [REDACTED], he had [REDACTED] knowledge of meetings and reports, including with [REDACTED].²⁵⁹³

²⁵⁸² T-123, pp. 5-6.

²⁵⁸³ [Second Decision on Prosecution’s Rule 68\(2\)\(b\) Application](#), para. 22.

²⁵⁸⁴ P-0016’s Statement, DAR-OTP-0088-0150-R02, at 0150, 0152, para. 7.

²⁵⁸⁵ P-0016’s Statement, DAR-OTP-0088-0150-R02, at 0155, para. 23.

²⁵⁸⁶ P-0016’s Statement, DAR-OTP-0088-0150-R02, at 0156-0157, paras 28-38.

²⁵⁸⁷ P-0016’s Statement, DAR-OTP-0088-0150-R02, at 0157-0161, paras 39, 41-57.

²⁵⁸⁸ *See for example* P-0016’s Statement, DAR-OTP-0088-0150-R02, at 0153, para. 9; Registry’s Transmission of Prosecution Witness Declarations, Annex V, p. 4, [REDACTED].

²⁵⁸⁹ P-0026’s Statement, DAR-OTP-0095-0151-R02; [Decision on Rule 68\(2\)\(c\) Request](#), paras 8-13.

²⁵⁹⁰ P-0026’s Statement, DAR-OTP-0095-0151-R02, at 0153-0154, paras 7-13.

²⁵⁹¹ *See* the Chamber’s assessment of P-0020’s evidence, Annex B, Section I.A.5.

²⁵⁹² P-0026’s Statement, DAR-OTP-0095-0151-R02, at 0154-0171, 0175, paras 14-97, 121-126.

²⁵⁹³ *See for example* P-0026’s Statement, DAR-OTP-0095-0151-R02, at 0160-0161, paras 42-46, 48.

Although some of his evidence is indirect, P-0026 noted this in his evidence, particularly when incidents [REDACTED].²⁵⁹⁴

734. The Chamber notes that the Defence does not challenge the credibility of this witness and in fact relies on his statement on the issue of the self-defence groups.²⁵⁹⁵

735. The Chamber therefore concludes that P-0026 is generally a reliable and credible witness.

5. P-0028

736. P-0028's evidence was introduced pursuant to Rule 68(2)(b) of the Rules, and was not opposed by the Defence.²⁵⁹⁶ The Chamber recalls that it has not relied on paragraphs 33, 35-37, 40, 42, 51, 59, 62, 66-68 of P-0028's statement.²⁵⁹⁷

737. P-0028 (DoB 1969) is a member of the Fur tribe.²⁵⁹⁸ He is from [REDACTED] and during the period of the charges, he was [REDACTED].²⁵⁹⁹

738. P-0028's evidence principally dealt with the local administration in Mukjar;²⁶⁰⁰ the attacks on Mukjar and surrounding villages in 2003;²⁶⁰¹ the attack on Sindu in 2004;²⁶⁰² the arrests and summary executions in and around Mukjar in 2004;²⁶⁰³ and the discovery of bodies after the summary executions.²⁶⁰⁴ He was clear about his basis of knowledge, distinguishing between what he himself observed,²⁶⁰⁵ and what he was told by other people.²⁶⁰⁶

739. The Chamber notes that the Defence argues that because [REDACTED], this demonstrates collusion between the two,²⁶⁰⁷ and submits that it did not have the opportunity to question the witness, test his account and basis of knowledge, as required under Article 67(1)(e)

²⁵⁹⁴ See for example P-0026's Statement, DAR-OTP-0095-0151-R02, at 0161, 0170-0171, paras 47, 95, 100.

²⁵⁹⁵ [Defence's Final Brief](#), para. 351, fn. 1251.

²⁵⁹⁶ P-0028's Statement, DAR-OTP-0094-0423-R01; P-0028's Map, DAR-OTP-0094-0445; P-0028's List, DAR-OTP-0094-0446, Translation, DAR-OTP-0153-1434. See also [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#).

²⁵⁹⁷ [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), paras 11-12, 20.

²⁵⁹⁸ P-0028's Statement, DAR-OTP-0094-0423-R01, at 0423.

²⁵⁹⁹ P-0028's Statement, DAR-OTP-0094-0423-R01, at 0423, 0425, para. 7.

²⁶⁰⁰ P-0028's Statement, DAR-OTP-0094-0423-R01, at 0426, 0428, paras 10-12, 16.

²⁶⁰¹ P-0028's Statement, DAR-OTP-0094-0423-R01, at 0428-0436, paras 17-32, 34, 38-39, 41, 43-50, 52-54.

²⁶⁰² P-0028's Statement, DAR-OTP-0094-0423-R01, at 0437-0439, paras 60-61, 63-64.

²⁶⁰³ P-0028's Statement, DAR-OTP-0094-0423-R01, at 0439-0441, paras 65, 69-74.

²⁶⁰⁴ P-0028's Statement, DAR-OTP-0094-0423-R01, at 0441, paras 75-76.

²⁶⁰⁵ See for example P-0028's Statement, DAR-OTP-0094-0423-R01, at 0432, para. 34.

²⁶⁰⁶ See for example P-0028's Statement, DAR-OTP-0094-0423-R01, at 0434, para. 43.

²⁶⁰⁷ [Defence's Final Brief](#), para. 396.

of the Statute.²⁶⁰⁸ However, the Chamber is satisfied that there is no evidence of collusion between [REDACTED],²⁶⁰⁹ and that P-0028 is generally credible and reliable. The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.

6. P-0039

740. P-0039's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁶¹⁰ The Defence opposed the introduction of his statement under this provision, submitting that it relates to issues materially in dispute and also that parts of P-0039's evidence is indirect.²⁶¹¹ In his subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0039 made some amendments to his written statement,²⁶¹² which were not challenged by the Defence.²⁶¹³

741. P-0039 (DoB 1968), a member of the [REDACTED] tribe, is a [REDACTED].²⁶¹⁴ At the time of the charges, [REDACTED].²⁶¹⁵

742. P-0039's evidence principally dealt with the background to the armed conflict, particularly in Beida, and the attacks of surrounding villages by the *Janjaweed*.²⁶¹⁶ He referred to the arming of *Janjaweed* and the creation of *Janjaweed* camps in July-August 2003,²⁶¹⁷ as well as the relationship between the GoS forces and the *Janjaweed*.²⁶¹⁸

743. Generally, P-0039 is a credible and reliable witness whose statement is internally consistent. Nonetheless, his evidence is of limited relevance to the charges.

7. P-0040

744. P-0040's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁶¹⁹ The Defence objected to the admission of his statement pursuant to this provision, submitting that

²⁶⁰⁸ [Defence's Final Brief](#), para. 538.

²⁶⁰⁹ *Contra* [Defence's Final Brief](#), para. 396.

²⁶¹⁰ P-0039's Statement, DAR-OTP-0094-0270-R02; [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), paras 25-32.

²⁶¹¹ [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), paras 27, 30-31.

²⁶¹² Registry's Transmission of Prosecution Witness Declarations, Annex XIV.

²⁶¹³ The Chamber issued an oral ruling on the matter (*see* T-123, p. 6).

²⁶¹⁴ P-0039's Statement, DAR-OTP-0094-0270-R02, at 0270, 0273, para. 12.

²⁶¹⁵ P-0039's Statement, DAR-OTP-0094-0270-R02, at 0273, paras 8-12.

²⁶¹⁶ P-0039's Statement, DAR-OTP-0094-0270-R02, at 0273-0276, 0279, 0281-0282, paras 16-30, 43-47, 55-57.

²⁶¹⁷ P-0039's Statement, DAR-OTP-0094-0270-R02, at 0275-0276, paras 27-30.

²⁶¹⁸ P-0039's Statement, DAR-OTP-0094-0270-R02, at 0276-0279, 0283-0295, paras 31-42, 66-127.

²⁶¹⁹ P-0040's Statement, DAR-OTP-0094-0165-R02; [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), paras 33-39.

his evidence did not pertain solely to the contextual elements, but also to core issues materially in dispute.²⁶²⁰ In his subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0040 made some amendments to his written statement,²⁶²¹ which were contested by the Defence.²⁶²² Accordingly, the Chamber has not relied on the evidence contained in the amended paragraphs.²⁶²³

745. P-0040 (DoB 1957), a member of the [REDACTED].²⁶²⁴

746. P-0040's evidence principally dealt with the general civilian structure in Beida at the relevant time,²⁶²⁵ as well as the creation, structure and arming of the Arab militias at the time.²⁶²⁶ His evidence also dealt with several attacks around Beida, between May and November 2003,²⁶²⁷ and incidents of rape and other crimes in Beida between October-December 2003.²⁶²⁸ P-0040 also gave evidence related to [REDACTED],²⁶²⁹ including a meeting with a high-level delegation in Beida in November 2003.²⁶³⁰

747. The Chamber notes that the Defence does not challenge P-0040's reliability or credibility and in fact refers several times to his evidence in its Final Brief.²⁶³¹

748. Generally, the Chamber considers P-0040 to be a reliable and credible witness. His evidence is internally consistent. However, barring the issue of the PDF, his evidence has little relevance in relation to the charges.

8. P-0041

749. P-0041's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁶³² In his subsequent declaration pursuant to Rule 68(2)(b)(iii) of the Rules, P-0041 made some

²⁶²⁰ [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 35.

²⁶²¹ Registry's Transmission of Prosecution Witness Declarations, Annex XII.

²⁶²² [Defence's Submissions on Rule 68\(2\)\(b\) Declarations](#), paras 24-25.

²⁶²³ The Chamber issued an oral ruling on the matter (*see* T-123, p. 6).

²⁶²⁴ P-0040's Statement, DAR-OTP-0094-0165-R02, at 0165, 0168, para. 8.

²⁶²⁵ P-0040's Statement, DAR-OTP-0094-0165-R02, at 0168-0171, paras 15-30.

²⁶²⁶ P-0040's Statement, DAR-OTP-0094-0165-R02, at 0161-0174, paras 31-44.

²⁶²⁷ P-0040's Statement, DAR-OTP-0094-0165-R02, at 0174-0176, 0179-0181, 0183-0188, paras 45-53, 70, 73-76, 80-83, 92-114.

²⁶²⁸ P-0040's Statement, DAR-OTP-0094-0165-R02, at 0188-0190, paras 115-125.

²⁶²⁹ P-0040's Statement, DAR-OTP-0094-0165-R02, at 0176-0181, paras 54-73, 77-79.

²⁶³⁰ P-0040's Statement, DAR-OTP-0094-0165-R02, at 0182-0183, paras 84-91.

²⁶³¹ [Defence's Final Brief](#), paras 324, 341, 791.

²⁶³² P-0041's Statements, DAR-OTP-0096-0002-R01; DAR-OTP-0206-0033-R02; P-0041's Photographs, DAR-OTP-0096-0009; DAR-OTP-0096-0010; DAR-OTP-0096-0011; DAR-OTP-0096-0012; P-0041's Sketch, DAR-OTP-0206-0057, Translation, DAR-OTP-0219-1374; P-0041's Map, DAR-OTP-0206-0058; P-0041's

amendments to his written statements.²⁶³³ The Defence did not oppose the Prosecution's Rule 68(2)(b) application,²⁶³⁴ but did oppose some of the amendments to P-0041's statements.²⁶³⁵ The Chamber does not rely on paragraph 13 of P-0041's First Statement and paragraphs 23-24, 26, 52 and 79 of P-0041's Second Statement.²⁶³⁶

750. P-0041 (DoB 1974), a member of the Fur tribe, was approximately 30 years old and living in Mukjar at the time of the charges.²⁶³⁷

751. P-0041's evidence principally dealt with the Fur tribal and civil administrations;²⁶³⁸ the various forces in Mukjar in 2003;²⁶³⁹ the meeting of high officials in Mukjar in 2004;²⁶⁴⁰ and the attacks on villages surrounding Mukjar in 2004.²⁶⁴¹

752. He was clear about his basis of knowledge, distinguishing between what he himself observed,²⁶⁴² and what he was told by other people.²⁶⁴³

753. The Chamber rejects the Defence's challenge to P-0041's evidence contrasting the difference in detail between his first and second statements.²⁶⁴⁴

754. Generally, P-0041 is a credible and reliable witness. His account is internally consistent and he makes clear distinctions between direct and indirect evidence, without seeking to embellish or aggrandise his own experience.

Identification, DAR-OTP-0206-0059-R01; P-0041's List, DAR-OTP-0206-0060, Translation, DAR-OTP-0221-0935; P-0041's Investigation Report, DAR-OTP-0209-01110-R02. *See also* [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), paras 9-20.

²⁶³³ Registry's Transmission of Prosecution Witness Declarations, Annex III, pp. 2-4.

²⁶³⁴ [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), paras 3, 5.

²⁶³⁵ Defence's Response to Registry's Transmission of Rule 68(2)(b) Declarations, paras 26-27. The Chamber also issued an oral ruling in relation to this Defence's challenge (*see* T-123, p. 6).

²⁶³⁶ [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), para. 11. *See also* [Prosecution's Sixth Rule 68\(2\)\(b\) Application](#), para. 14.

²⁶³⁷ P-0041's Statement, DAR-OTP-0206-0033-R02, at 0033, 0044-0045, para. 43.

²⁶³⁸ P-0041's Statement, DAR-OTP-0206-0033-R02, at 0037-0038, paras 14-16.

²⁶³⁹ P-0041's Statement, DAR-OTP-0206-0033-R02, at 0038-0041, paras 17-29.

²⁶⁴⁰ P-0041's Statement, DAR-OTP-0206-0033-R02, at 0044-0047, paras 43-55.

²⁶⁴¹ P-0041's Statement, DAR-OTP-0206-0033-R02, at 0047-0052, paras 57-75.

²⁶⁴² *See for example* P-0041's Statement, DAR-OTP-0206-0033-R02, at 0045, para. 44.

²⁶⁴³ *See for example* P-0041's Statement, DAR-OTP-0206-0033-R02, at 0040, para. 27.

²⁶⁴⁴ *See* Judgment, Section 4. Evidentiary principles and considerations, paras 223-226. *Contra* [Defence's Final Brief](#), para. 451.

9. P-0083

755. P-0083's was introduced pursuant to Rule 68(2)(c) of the Rules.²⁶⁴⁵

756. P-0083 (DoB 1945), a member of the [REDACTED].²⁶⁴⁶ At the time relevant to the charges, P-0083 was a [REDACTED].²⁶⁴⁷

757. P-0083's evidence principally dealt with the background to the armed conflict in Darfur,²⁶⁴⁸ the structure of the security committees,²⁶⁴⁹ the composition and leadership of the *Janjaweed*,²⁶⁵⁰ and the role of the GoS.²⁶⁵¹

758. Given P-0083's position and background, he gave comprehensive evidence about historical events leading to the armed conflict in 2003-2004.²⁶⁵² As [REDACTED] therefore had a good basis of knowledge in that regard.²⁶⁵³ However, the Chamber notes that some parts of his evidence are based on his personal assessment, indirect evidence, or the basis of knowledge is not clear.²⁶⁵⁴ In such instances, his evidence is relied upon to the extent that it does not go to key issues in dispute or is confirmed by other witnesses. The Chamber further notes that the Defence does not challenge the credibility of this witness.

759. The Chamber therefore concludes that P-0083 is generally a reliable and credible witness.

10. P-0085

760. P-0085's evidence was introduced pursuant to Rule 68(2)(c) of the Rules.²⁶⁵⁵ P-0085 (DoB 1968) is a member of the Fur tribe.²⁶⁵⁶ P-0085 [REDACTED] in Bindisi until 16 August

²⁶⁴⁵ P-0083's Statement, DAR-OTP-0110-0002-R02; [Decision on Rule 68\(2\)\(c\) Request](#), paras 14-19.

²⁶⁴⁶ P-0083's Statement, DAR-OTP-0110-0002-R02, at 0005-0006, paras 9, 11.

²⁶⁴⁷ P-0083's Statement, DAR-OTP-0110-0002-R02, at 0006, para. 9.

²⁶⁴⁸ P-0083's Statement, DAR-OTP-0110-0002-R02, at 0007-0022, paras 19-72.

²⁶⁴⁹ P-0083's Statement, DAR-OTP-0110-0002-R02, at 0022-0026, paras 73-93.

²⁶⁵⁰ P-0083's Statement, DAR-OTP-0110-0002-R02, at 0026-0032, 0039, paras 94-118, 157-159.

²⁶⁵¹ P-0083's Statement, DAR-OTP-0110-0002-R02, at 0032-0039, 0040-0044, paras 119-156, 161-187.

²⁶⁵² P-0083's Statement, DAR-OTP-0110-0002-R02, at 0007-0022, paras 19-72.

²⁶⁵³ P-0083's Statement, DAR-OTP-0110-0002-R02, at 0023, para. 77.

²⁶⁵⁴ See for example P-0083's Statement, DAR-OTP-0110-0002-R02, at 0022, 0027, 0029, 0032-0036, paras 72, 98, 108, 119-150.

²⁶⁵⁵ See [Decision on Rule 68\(2\)\(c\) Request for P-0085](#). The Parties agreed to redact parts of paragraphs 23, 25, 26, 29, 33, 34 and 45 of P-0085's statement mentioning 'Ali Kushayb' and the Prosecution specified that it would not rely on paragraphs 30, 42-44 in their entirety (Email from the Prosecution at 11:43 on 9 December 2022). The Chamber therefore does not rely on these parts of his statement.

²⁶⁵⁶ P-0085's Statement, DAR-OTP-0110-0054-R01, at 0054.

2003, when it was attacked during the Kodoom and Bindisi Operation.²⁶⁵⁷ P-0085 was [REDACTED].²⁶⁵⁸

761. P-0085's evidence principally dealt with the background of the conflict and the forces involved,²⁶⁵⁹ and the attack on Bindisi on 15-16 August 2003 during the Kodoom and Bindisi Operation.²⁶⁶⁰ In his statement, P-0085 differentiated between what he saw, what he was told and what he inferred from circumstances, and what he knew and what he did not know.²⁶⁶¹ P-0085 also provided details about on the circumstances in which he came to acquire the information which forms the basis of his evidence.²⁶⁶² [REDACTED], P-0085 was able to provide reliable evidence on the forces stationed around Bindisi, and the attack on Bindisi on 15-16 August 2003 during the Kodoom and Bindisi Operation.²⁶⁶³ Additionally, P-0085's evidence on the attack on Bindisi aligns with and is supported by the evidence of other credible and reliable witnesses.²⁶⁶⁴

762. P-0085 also gave evidence that a 'Kaltuma Daiya' was killed during the attack on Bindisi.²⁶⁶⁵ The Defence challenges this evidence on the basis that it could not question P-0085.²⁶⁶⁶ The Chamber notes several credible and reliable witnesses gave evidence that a 'Khaltouma Yahia Ahmed' was killed in the attack.²⁶⁶⁷ The Chamber is satisfied that 'Kaltuma Daiya' is a phonetic variation of 'Khaltouma Yahia Ahmed'. Thus, it finds P-0085's evidence on this point credible and reliable, as despite the variations in the spelling, it is supportive of other evidence on the record.²⁶⁶⁸

763. As regards other aspects of P-0085's evidence the Defence does not take issue. Therefore, the Chamber is satisfied that P-0085 is generally credible and reliable.

²⁶⁵⁷ P-0085's Statement, DAR-OTP-0110-0054-R01, at 0056-0057, paras 7-8.

²⁶⁵⁸ P-0085's Statement, DAR-OTP-0110-0054-R01, at 0058, para. 15.

²⁶⁵⁹ P-0085's Statement, DAR-OTP-0110-0054-R01, at 0057-0060, 0063-0065, paras 10-23, 36-41.

²⁶⁶⁰ P-0085's Statement, DAR-OTP-0110-0054-R01, at 0060-0063, paras 24-35. *See also* P-0085's Sketch, DAR-OTP-0110-0071-R01, Translation, DAR-OTP-0153-1577-R01.

²⁶⁶¹ P-0085's Statement, DAR-OTP-0110-0054-R02, at 0057-0067, paras 12-29, 31-41, 46-51.

²⁶⁶² P-0085's Statement, DAR-OTP-0110-0054-R02, at 0057-0067, paras 12-29, 31-41, 46-51.

²⁶⁶³ P-0085's Statement, DAR-OTP-0110-0054-R02, at 0060-0064, paras 24-29, 31-39.

²⁶⁶⁴ *See* the Chamber's assessment of the evidence of P-0011, P-0012, P-0015, P-1073 and P-1074, Annex B, Sections I.A.2, I.A.3, I.A.4, I.A.52 and I.A.53.

²⁶⁶⁵ P-0085's Statement, DAR-OTP-0110-0054-R02, at 0062, para. 31.

²⁶⁶⁶ [Defence's Final Brief](#), para. 416.

²⁶⁶⁷ *See* Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, para. 424.

²⁶⁶⁸ *See* Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, para. 424. *Contra* [Defence's Final Brief](#), para. 416.

11. P-0087

764. P-0087's evidence was introduced pursuant to Rule 68(2)(c) of the Rules.²⁶⁶⁹ This was unopposed by the Defence.²⁶⁷⁰ P-0087's evidence related to the acts and conduct of **the Accused** is not relied upon by the Chamber.²⁶⁷¹

765. P-0087 (DoB 1940) was a member of the [REDACTED].²⁶⁷² He [REDACTED].²⁶⁷³ [REDACTED].²⁶⁷⁴ [REDACTED].²⁶⁷⁵ [REDACTED].

766. P-0087's evidence principally dealt with the background to the armed conflict in Darfur,²⁶⁷⁶ the attack to Habila in August 2003,²⁶⁷⁷ and the 2005 peace process.²⁶⁷⁸ P-0087 also referred to the GoS (including its leaders President Al-Bashir, Minister Harun, Minister Hussein and Abd-Al-Hakam),²⁶⁷⁹ the security committees,²⁶⁸⁰ and the *Janjaweed*.²⁶⁸¹ [REDACTED].²⁶⁸²

767. The Defence does not challenge P-0087's reliability or credibility and in fact relies on his evidence, particularly as regards rebel forces.²⁶⁸³ Generally, the Chamber considers that P-0087's evidence is credible and reliable. [REDACTED], he had a sufficient basis of knowledge, particularly as regards the background of the conflict and its aftermath, as well as generally, the GoS structure and leadership.

²⁶⁶⁹ P-0087's Statements, DAR-OTP-0133-0573-R02; DAR-OTP-0222-0631-R01. *See also* [Decision on Rule 68\(2\)\(c\) Request](#), paras 20-25.

²⁶⁷⁰ [Decision on Rule 68\(2\)\(c\) Request](#), para. 23.

²⁶⁷¹ [Decision on Rule 68\(2\)\(c\) Request](#), para. 24; P-0087's Statement, DAR-OTP-0222-0631-R01, at 0654, para. 188.

²⁶⁷² P-0087's Statement, DAR-OTP-0133-0573-R02, at 0573.

²⁶⁷³ [Decision on Rule 68\(2\)\(c\) Request](#), para. 21.

²⁶⁷⁴ P-0087's Statement, DAR-OTP-0133-0573-R02, at 0576-0577, 0579, paras 10-12, 22.

²⁶⁷⁵ P-0087's Statement, DAR-OTP-0133-0573-R02, at 0588-0589, 0605-0607, paras 61-62, 121-131.

²⁶⁷⁶ P-0087's Statement, DAR-OTP-0133-0573-R02, at 0577-0591, paras 13-71.

²⁶⁷⁷ P-0087's Statement, DAR-OTP-0133-0573-R02, at 0591-0595, paras 72-87.

²⁶⁷⁸ P-0087's Statement, DAR-OTP-0133-0573-R02, at 0600-0605, paras 104-120.

²⁶⁷⁹ P-0087's Statements, DAR-OTP-0133-0573-R02, at 0605-0607, paras 121-131; DAR-OTP-0222-0631-R01, at 0634-0644, 0646-0649, 0651, paras 15-65, 74-96, 114-140, 163-166.

²⁶⁸⁰ P-0087's Statements, DAR-OTP-0133-0573-R02, at 0607-0611, paras 132-149; DAR-OTP-0222-0631-R01, at 0640-0641, paras 66-73.

²⁶⁸¹ P-0087's Statements, DAR-OTP-0133-0573-R02, at 0611-0612, paras 150-151; DAR-OTP-0222-0631-R01, at 0649-0652, paras 141-159, 167-172.

²⁶⁸² P-0087's Statements, DAR-OTP-0133-0573-R02, at 0616-0622; DAR-OTP-0222-0631-R01, at 0652-0658, paras 173-179, 192-224.

²⁶⁸³ [Defence's Final Brief](#), para. 358, fns 1280, 2123.

12. P-0096

768. P-0096's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁶⁸⁴ In his subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0096 made some amendments to his written statement,²⁶⁸⁵ which were unopposed by the Defence.²⁶⁸⁶

769. P-0096, [REDACTED].²⁶⁸⁷ He was also a [REDACTED].²⁶⁸⁸

770. P-0096's evidence principally dealt with the attacks on Arara and other villages by the GoS and the *Janjaweed* between August and December 2003,²⁶⁸⁹ and the relationship between these two exposed during meetings [REDACTED].²⁶⁹⁰

771. The Defence does not challenge P-0096's reliability or credibility. In fact, the Defence relies on P-0096's evidence in relation to the link between the *Janjaweed* and the PDF.²⁶⁹¹ Generally, P-0096's evidence is internally consistent and relevant mostly for background and contextual elements of the charges and the Chamber therefore concludes that P-0096 is a reliable and credible witness.

13. P-0116

772. P-0116's evidence was introduced pursuant to Rule 68(2)(c) of the Rules.²⁶⁹² The Chamber rejected the Defence's challenges to the introduction of his evidence.²⁶⁹³

²⁶⁸⁴ P-0096's Statement, DAR-OTP-0113-0138-R02; [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), paras 75-80.

²⁶⁸⁵ Registry's Transmission of Prosecution Witness Declarations, Annex VII.

²⁶⁸⁶ The Chamber issued an oral ruling on the matter (*see* T-123, p. 6).

²⁶⁸⁷ P-0096's Statement, DAR-OTP-0113-0138-R02, at 0138, 0140, 0143, paras 6-8, 33.

²⁶⁸⁸ P-0096's Statement, DAR-OTP-0113-0138-R02, at 0142, para. 21.

²⁶⁸⁹ P-0096's Statement, DAR-OTP-0113-0138-R02, at 0143-0150, paras 34-76.

²⁶⁹⁰ P-0096's Statement, DAR-OTP-0113-0138-R02, at 0150-0153, paras 77-97.

²⁶⁹¹ [Defence's Final Brief](#), para. 324.

²⁶⁹² P-0116's Statements, DAR-OTP-0123-0039-R01; DAR-OTP-0127-0318-R01; P-0116's Death Investigation First Report, DAR-OTP-0219-6151-R01; P-0116's Death Investigation Second Report, DAR-OTP-0220-1720-R01; P-0116's Court Order, DAR-OTP-0220-1722; P-0116's Identification Card, DAR-OTP-0127-0593, Translation, DAR-OTP-0219-8864. *See also* [Decision on Rule 68\(2\)\(c\) Request](#), paras 33-40.

²⁶⁹³ [Decision on Rule 68\(2\)\(c\) Request](#), paras 33-40. *See also* T-022, p. 27.

773. P-0116 (DoB 1957) [REDACTED].²⁶⁹⁴ [REDACTED].²⁶⁹⁵ [REDACTED].²⁶⁹⁶ [REDACTED].²⁶⁹⁷

774. P-0116 provided evidence regarding the background to the armed conflict in Darfur.²⁶⁹⁸ He gave evidence about the rebel activity, including that at Al Fasher airport, their impact on the GoS's State Policy towards African tribes,²⁶⁹⁹ and the subsequent attacks carried out by GoS forces and the *Janjaweed* in the Al Geneina area between 2002 and 2003.²⁷⁰⁰ He provided evidence about the coordination between the GoS forces and the *Janjaweed*, particularly with regard to the selective recruitment, arming, and training of Arab tribes.²⁷⁰¹ He provided evidence about Minister Harun;²⁷⁰² the Security Committees' role;²⁷⁰³ and the lack of support for the affected populations and failure to control and prosecute the *Janjaweed*.²⁷⁰⁴ Finally, he gave evidence about the destruction of mass graves in the Wadi Salih area.²⁷⁰⁵

775. P-0116 had heard about **the Accused's** leadership position within the *Janjaweed* in the Wadi Salih area and his activities.²⁷⁰⁶ The Defence argues that P-0116 cannot be considered a witness to the link between **the Accused** and '**Ali Kushayb**'.²⁷⁰⁷ The Chamber notes that the Prosecution does not rely on P-0116 for this purpose.

776. Generally, the Chamber is satisfied that P-0116 is a credible and reliable witness. His account is internally consistent and coherent. Given [REDACTED], the Chamber notes that P-0116 has a solid knowledge base regarding the key events about which he gave evidence. P-0116 also clearly specified the source of his information when relying on indirect evidence.

²⁶⁹⁴ P-0116's Statement, DAR-OTP-0127-0318-R01, at 0318.

²⁶⁹⁵ P-0116's Statement, DAR-OTP-0127-0318-R01, at 0323, para. 21.

²⁶⁹⁶ P-0116's Statement, DAR-OTP-0127-0318-R01, at 0346-0348, paras 140-149.

²⁶⁹⁷ P-0116's Death Investigation First Report, DAR-OTP-0219-6151-R01; P-0116's Death Investigation Second Report, DAR-OTP-0220-1720-R01; P-0116's Court Order, DAR-OTP-0220-1722.

²⁶⁹⁸ P-0116's Statement, DAR-OTP-0127-0318-R01, at 0322-0324, 0327, paras 17-20, 22-24, 42.

²⁶⁹⁹ P-0116's Statement, DAR-OTP-0127-0318, at 0324, 0326, 0333-0334, 0355, 0358, paras 25, 27, 35, 72-81, 188-190, 211.

²⁷⁰⁰ P-0116's Statement, DAR-OTP-0127-0318, at 0324-0325, 0327, 0329-0333, 0335-0338, 0343, 0356-0357, paras 27, 34, 42, 53-71, 86, 88-100, 124-125, 193-200.

²⁷⁰¹ P-0116's Statement, DAR-OTP-0127-0318, at 0324-0329, 0334, 0338-0341, 0343-0345, 0350-0353, 0356-0358, paras 26, 28-33, 36, 39, 42, 45-52, 87, 103-114, 122-123, 129-131, 162-165, 168, 176, 178-179, 193, 196, 198, 200, 202, 212.

²⁷⁰² P-0116's Statement, DAR-OTP-0127-0318, at 0321, 0338-0341, 0350-0351, paras 10, 101-114, 166-172.

²⁷⁰³ P-0116's Statement, DAR-OTP-0127-0318, at 0353-0354, paras 180-182.

²⁷⁰⁴ P-0116's Statement, DAR-OTP-0127-0318, at 0333-0336, 0346, 0355-0358, paras 71, 75, 81, 86-87, 139, 190-192, 199-200, 206-209, 212.

²⁷⁰⁵ P-0116's Statement, DAR-OTP-0127-0318, at 0352, para. 176.

²⁷⁰⁶ P-0116's Statement, DAR-OTP-0127-0318, at 0328, 0352, paras 47, 176.

²⁷⁰⁷ [Defence's Final Brief](#), para. 707, referring to P-0116's Statements, DAR-OTP-0123-0039-R01, at 0048, para. 45 ('Ali Koshib'); DAR-OTP-0127-0318-R01, at 0329, para. 48 ('Abdelrahman Koshib').

Concerning his evidence on **the Accused**, P-0116 explicitly stated the limits of his knowledge of **the Accused**.²⁷⁰⁸

14. P-0607

777. P-0607's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁷⁰⁹ In his subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0607 made some amendments to his written statement.²⁷¹⁰ Neither the Prosecution Rule 68(2)(b) request nor the amendments were opposed by the Defence.²⁷¹¹ However, the Chamber will not rely on paragraphs 47, 48, 49-50, 52, 55, 57, 60.²⁷¹²

778. P-0607, a member of the Fur tribe, [REDACTED].²⁷¹³ He [REDACTED].²⁷¹⁴

779. P-0607's evidence principally dealt with the attacks on Arawala and Burunga in 2003,²⁷¹⁵ and the events in Deleig in March 2004.²⁷¹⁶ P-0607 narrated how he hid in the back of a shed to avoid interrogation and arrest during the Deleig Operation.²⁷¹⁷ He also recounted his detention and release from Deleig police station.²⁷¹⁸

780. The Chamber notes that there were some minor discrepancies between P-0607's statement and the documents he provided to the Prosecution. [REDACTED] [REDACTED],²⁷¹⁹ [REDACTED].²⁷²⁰ Noting [REDACTED],²⁷²¹ [REDACTED], the Chamber considers these discrepancies are understandable in the circumstances and do not impact the overall credibility or reliability of the core of P-0607's evidence.

²⁷⁰⁸ P-0116's Statement, DAR-OTP-0127-0318, at 0321, 0329, 0352, paras 10, 48, 176.

²⁷⁰⁹ P-0607's Statement, DAR-OTP-0203-0164-R02; [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#).

²⁷¹⁰ Registry's Transmission of Prosecution Witness Declarations, Annex II.

²⁷¹¹ Defence's Response to Prosecution's Sixth, Seventh and Eighth Rule 68(2)(b) Application, para. 3. *See also* T-123, p. 6.

²⁷¹² [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), para. 11; fns 19, 49. [REDACTED].

²⁷¹³ P-0607's Statement, DAR-OTP-0203-0164-R02, at 0164.

²⁷¹⁴ P-0607's Statement, DAR-OTP-0203-0164-R02, at 0169-0170, para. 21.

²⁷¹⁵ P-0607's Statement, DAR-OTP-0203-0164-R02, at 0168-0175, paras 16-38.

²⁷¹⁶ P-0607's Statement, DAR-OTP-0203-0164-R02, at 0175-0183, paras 39-46, 51, 53-54, 56, 58-59, 61-70.

²⁷¹⁷ P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176-0177, para. 44.

²⁷¹⁸ P-0607's Statement, DAR-OTP-0203-0164-R02, at 0180, para. 56.

²⁷¹⁹ P-0607's Statement, DAR-OTP-0203-0164-R02, at 0164.

²⁷²⁰ Registry's Transmission of Prosecution Witness Declarations, Annex II, pp. 4, 8.

²⁷²¹ The Chamber recalls that several witnesses testified that they had no birth certificate or formal record of their birth and considers that this was relatively common in Sudan. *See for example* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0124, para. 11. *See also* the Chamber's assessment of P-0725's evidence, Annex B, Section II.A.17.

781. Generally, P-0607 is a credible and reliable witness. His account is internally consistent. The Chamber notes that P-0607 personally experienced the attacks on Arawala and was arrested and detained at Deleig police station,²⁷²² and the Chamber finds that P-0607 has a solid basis of knowledge for the key events about which he testified. P-0607 also clearly indicated matters which were beyond the scope of his knowledge and did not speculate.²⁷²³

15. P-0617

782. P-0617's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁷²⁴ In his subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0607 made some amendments to his written statement.²⁷²⁵ Neither the Prosecution Rule 68(2)(b) request nor the amendments were opposed by the Defence.²⁷²⁶ The Chamber recalls that it will not rely on (parts of) paragraphs 60, 81, 82-83, 84, 87, 90 and 96-98.²⁷²⁷

783. P-0617 (DoB 1982), a member of the Fur tribe, [REDACTED].²⁷²⁸ [REDACTED].²⁷²⁹

784. P-0617's evidence principally dealt with Gaba and its tribal administration;²⁷³⁰ the military garrisons of Gaba and Arawala;²⁷³¹ the attacks on Gaba and other villages in July, September and December 2003;²⁷³² the attacks on Gaba and various other villages in January and February 2004;²⁷³³ the arrests and summary executions in Deleig;²⁷³⁴ and the arrest and transportation of *Umdahs* Kindiri, Jiddo and three others.²⁷³⁵

²⁷²² P-0607's Statement, DAR-OTP-0203-0164-R02, at 0168-0174, 0176-0180, paras 16, 21-35, 44-55.

²⁷²³ P-0607's Statement, DAR-OTP-0203-0164-R02, at 0179, 0181-0182, paras 53, 58, 65.

²⁷²⁴ P-0617's Statement, DAR-OTP-0202-1496-R02; [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#).

²⁷²⁵ Registry's Transmission of Prosecution Witness Declarations, Annex X.

²⁷²⁶ Defence's Response to Prosecution's Sixth, Seventh and Eighth Rule 68(2)(b) Applications, para. 3; T-123, p. 6.

²⁷²⁷ [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), para. 11; fns 19, 49. [REDACTED].

²⁷²⁸ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1496.

²⁷²⁹ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1499-1500, paras 12, 15.

²⁷³⁰ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1501-1503, paras 18-23.

²⁷³¹ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1503-1504, paras 24-27.

²⁷³² P-0617's Statement, DAR-OTP-0202-1496-R02, at 1505-1517, paras 28-61.

²⁷³³ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1517-1523, paras 62-78.

²⁷³⁴ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1523-1527, 1529, paras 79-86, 91.

²⁷³⁵ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1527-1529, paras 87-90.

785. In its Final Brief, the Defence noted that P-0617's evidence was indirect, but did not challenge his credibility.²⁷³⁶ Furthermore, the Defence relies on his evidence on the presence and interaction with the rebels.²⁷³⁷

786. Generally, P-0617 is a credible and reliable witness. His account is internally consistent. Observing that P-0617 personally experienced the various attacks on Gaba, the Chamber finds that P-0617 has a solid basis of knowledge for these attacks.²⁷³⁸ P-0617 also clearly indicated that he learned about the arrests and summary executions in Deleig from those who survived them,²⁷³⁹ as he himself was in hiding during that time.²⁷⁴⁰ Although indirect, P-0617's evidence on the Deleig Operation is credible and consistent with that of other reliable and credible witnesses.²⁷⁴¹

16. P-0675

787. P-0675's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁷⁴² In his subsequent declaration pursuant to Rule 68(2)(b)(iii) of the Rules, P-0675 made some amendments to his written statements.²⁷⁴³ The Defence did not oppose the Prosecution's Rule 68(2)(b) application,²⁷⁴⁴ nor the amendments to P-0675's statements. The Chamber recalls that it does not rely on paragraphs 46-48, 100, 104, 106, 108, 121, 124 and 136 of P-0675's statement.²⁷⁴⁵

788. P-0675 (DoB 1981), a member of the Fur tribe, [REDACTED].²⁷⁴⁶ At that time, [REDACTED].²⁷⁴⁷

²⁷³⁶ [Defence's Final Brief](#), paras 560, 625, fn. 2159.

²⁷³⁷ [Defence's Final Brief](#), paras 651-652.

²⁷³⁸ *Contra* [Defence's Final Brief](#), para. 625.

²⁷³⁹ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1525-1526, paras 84-85.

²⁷⁴⁰ P-0617's Statement, DAR-OTP-0202-1496-R02, at 1524, para. 80.

²⁷⁴¹ *See generally* Judgment, Section 5.III.C. Operation in Deleig between 5 and 7 March 2004.

²⁷⁴² P-0675's Statement, DAR-OTP-0206-0173-R02; P-0675's Consent, DAR-OTP-0206-0216-R01; P-0675's Satellite Images, DAR-OTP-0206-0217; DAR-OTP-0206-0218; DAR-OTP-0206-0219; DAR-OTP-0206-0220; DAR-OTP-0206-0221; DAR-OTP-0206-0222; DAR-OTP-0206-0223; DAR-OTP-0206-0224; DAR-OTP-0206-0225; DAR-OTP-0206-0226; DAR-OTP-0206-0227; DAR-OTP-0206-0228; DAR-OTP-0206-0229; DAR-OTP-0206-0230; DAR-OTP-0206-0231; DAR-OTP-0206-0232. *See also* [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), paras 9-20.

²⁷⁴³ Registry's Transmission of Prosecution Witness Declarations, Annex XIII, p. 4.

²⁷⁴⁴ Defence's Response to Prosecution's Sixth, Seventh and Eighth Rule 68(2)(b) Applications, paras 3, 5.

²⁷⁴⁵ Defence's Response to Prosecution's Sixth, Seventh and Eighth Rule 68(2)(b) Applications, para. 5(iii); [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), para. 11.

²⁷⁴⁶ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0173, 0176, 0196, paras 11, 84.

²⁷⁴⁷ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0177, paras 13-14.

789. P-0675's evidence principally dealt with the attacks on villages surrounding Mukjar in 2003 and 2004;²⁷⁴⁸ his flight to Mukjar and ensuing arrest;²⁷⁴⁹ his detention at Mukjar police station;²⁷⁵⁰ his detention at the locality building in Mukjar;²⁷⁵¹ Minister Harun's visit to Mukjar;²⁷⁵² summary executions of the detainees;²⁷⁵³ the execution [REDACTED];²⁷⁵⁴ the execution sites;²⁷⁵⁵ and attacks on other villages.²⁷⁵⁶

790. P-0675 was clear about his basis of knowledge, distinguishing between what he experienced himself,²⁷⁵⁷ and what he was told by others.²⁷⁵⁸ With regards to P-0675's account of being beaten with [REDACTED] by GoS forces during his detention at Mukjar police station,²⁷⁵⁹ the Chamber notes the Defence's submission that P-0675 is the only witness claiming to have been hit with [REDACTED].²⁷⁶⁰ Considering the Defence's inability to question the witness on this point, the Chamber is unable to come to a conclusion as to the credibility of this claim and has thus not relied on this part of P-0675's evidence.

791. The Chamber notes P-0675's account that when he visited *Khor Talaba* [REDACTED] after the summary executions, he did not see any corpses.²⁷⁶¹ Other witnesses who went to *Khor Talaba* after the summary executions, gave evidence of seeing corpses around the same period.²⁷⁶² However, as the exact timing of these different visits is unclear, the Chamber finds that this discrepancy may well arise from the visits having taken place on different days.

792. The Defence—although noting that P-0675 did not state that [REDACTED]—[REDACTED].²⁷⁶³ Given the conditions of detention and the traumatic nature of the events that occurred at Mukjar police station, the Chamber finds these discrepancies between these

²⁷⁴⁸ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0178-0186, 0187-0196, paras 18-45, 49-83.

²⁷⁴⁹ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0196-0198, paras 82-88.

²⁷⁵⁰ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0197-0200, paras 89-95.

²⁷⁵¹ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199-0200, paras 95-96.

²⁷⁵² P-0675's Statement, DAR-OTP-0206-0173-R02, at 0201-0203, paras 102-103, 105, 107.

²⁷⁵³ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0204-0206, paras 109-115.

²⁷⁵⁴ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0207-0208, paras 122-123.

²⁷⁵⁵ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0208-0210, paras 125-129.

²⁷⁵⁶ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0210-0212, paras 130-135.

²⁷⁵⁷ See for example P-0675's Statement, DAR-OTP-0206-0173-R02, at 0198, para. 91.

²⁷⁵⁸ See for example P-0675's Statement, DAR-OTP-0206-0173-R02, at 0200, para. 97.

²⁷⁵⁹ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199, para. 92.

²⁷⁶⁰ [Defence's Final Brief](#), para. 497.

²⁷⁶¹ P-0675's Statement, DAR-OTP-0206-0173-R02, at 0208, para. 125.

²⁷⁶² See Judgment, Section 5.III.B. Operation in Mukjar between the end of February and the beginning of March 2004, paras 559-560, 573-574.

²⁷⁶³ [Defence's Final Brief](#), paras 490-491, referring to P-0675's Statement, DAR-OTP-0206-0173-R02, at 0199-0200, para. 95.

witnesses to be unexceptional.²⁷⁶⁴ Nevertheless, the Defence argues that if the witnesses [REDACTED], their evidence would be contaminated, thereby undermining their overall credibility and reliability.²⁷⁶⁵ The Defences further suggests that there is evidence of collusion between [REDACTED] as for the events that took place at the second execution site between Nyerli and Eastern Juguma.²⁷⁶⁶

793. The Chamber is unpersuaded that the evidence referred to by the Defence in support of its allegation provides a basis for the suggestion of collusion. Not only is there no evidence of collusion but the inconsistencies in their evidence, which have been enumerated by the Defence, militate against a finding of collusion.²⁷⁶⁷ The Chamber is satisfied that the fact that the witnesses may have known each other does not in itself render their evidence less credible or reliable.

17. P-0725

794. P-0725's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁷⁶⁸ In his subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0725 made some amendments to his written statement.²⁷⁶⁹ Neither the Prosecution's Rule 68(2)(b) request nor the amendments were opposed by the Defence.²⁷⁷⁰ However, the Chamber does not rely on paragraph 97 of P-0725's statement.²⁷⁷¹

795. P-0725 (DoB 1990), a member of the Fur tribe, was approximately 14 years old during the charged period and lived in [REDACTED] with his family.²⁷⁷²

796. P-0725's evidence principally dealt with the attacks on Forgo in late 2003 and early 2004 by the *Janjaweed*,²⁷⁷³ his displacement to Deleig in February 2004,²⁷⁷⁴ the *Janjaweed*'s

²⁷⁶⁴ See Judgment, Section 4. Evidentiary principles and considerations, paras 225-226. See also [REDACTED]

²⁷⁶⁵ [Defence's Final Brief](#), paras 490-491.

²⁷⁶⁶ [Defence's Final Brief](#), para. 532.

²⁷⁶⁷ *Contra* [Defence's Final Brief](#), paras 490-491, 532

²⁷⁶⁸ P-0725's Statement, DAR-OTP-0210-0122-R02; [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#).

²⁷⁶⁹ Registry's Transmission of Prosecution Witness Declarations, Annex VI.

²⁷⁷⁰ Defence's Response to Prosecution's Sixth, Seventh and Eighth Rule 68(2)(b) Applications, para. 3; T-0123, p. 6.

²⁷⁷¹ [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), paras 11, 20, fn. 49.

²⁷⁷² P-0725's Statement, DAR-OTP-0210-0122-R02, at 0124, paras 11, 13-14.

²⁷⁷³ P-0725's Statement, DAR-OTP-0210-0122-R02, at 0128, para. 43.

²⁷⁷⁴ P-0725's Statement, DAR-OTP-0210-0122-R02, at 0130, para. 64.

arrival in Deleig two or three weeks later, on a Friday;²⁷⁷⁵ their encirclement of Deleig in around March 2004;²⁷⁷⁶ and his observation, from the Ansar mosque and [REDACTED], of the arrest and detention of men and boys at Deleig police station.²⁷⁷⁷ P-0725's evidence also dealt with what he learnt, contemporaneously, of the execution of Fur men and boys in and around Deleig.²⁷⁷⁸

797. The Chamber notes that P-0725 was relatively young during the period of the charges and much of his evidence is based on observations he made from a distance of 'one and a half soccer pitches'²⁷⁷⁹ from the events at the police station,²⁷⁸⁰ or accounts heard from others (*i.e.* [REDACTED]).²⁷⁸¹ Whilst the Chamber notes that P-0725's basis of knowledge is, thus, more limited than witnesses who personally experienced the events, it finds that P-0725's statement is both internally consistent and consistent with other reliable evidence on the record.²⁷⁸² The Chamber therefore relies on such evidence to the extent that it is supported by other reliable evidence.²⁷⁸³ Based on the Chamber's holistic assessment of the evidence, the Chamber finds P-0725 to be a generally credible and reliable witness, albeit of limited probative value.

18. P-0756

798. P-0756's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁷⁸⁴ In his subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0756 made some amendments to his statement.²⁷⁸⁵ The Defence did not oppose these amendments,²⁷⁸⁶ but did oppose the introduction of his statement, arguing that it related to issues materially in dispute,²⁷⁸⁷ and that

²⁷⁷⁵ P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, paras 68-69. *See also* P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176, para. 42. *See further* the Chamber's assessment of P-0607's evidence, Annex B, Section II.A.14.

²⁷⁷⁶ P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131, para. 68.

²⁷⁷⁷ P-0725's Statement, DAR-OTP-0210-0122-R02, at 0131-0132, paras 71-73, 75-76.

²⁷⁷⁸ For example on what happened to Mulenqwe, *see* P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, paras 77-82; P-0907: T-094, pp. 56-57.

²⁷⁷⁹ P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, para. 75.

²⁷⁸⁰ P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, paras 75-76.

²⁷⁸¹ P-0725's Statement, DAR-OTP-0210-0122-R02, at 0132, paras 83-86. *See also* [Defence's Final Brief](#), para. 624.

²⁷⁸² *See* [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), para. 15.

²⁷⁸³ [REDACTED].

²⁷⁸⁴ P-0756's Statement, DAR-OTP-0211-0039-R02; Colour Chart, DAR-OTP-0211-0061; Headdress Board, DAR-OTP-0211-0062; P-0756's Investigation Report, DAR-OTP-0215-4618-R01. *See also* [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 102.

²⁷⁸⁵ Registry's Transmission of Declarations of P-0756, P-0816 and P-0927, Annex I, pp. 2-3.

²⁷⁸⁶ T-123, pp. 5-6.

²⁷⁸⁷ [Defence's Response to Prosecution's Fourth Rule 68\(2\)\(b\) Application](#), para. 14, *referring to*, in particular, P-0756's Statement, DAR-OTP-0211-0039-R02, at 0052-0053, 0055-0057, paras 55-61, 71-80. *See also* [Prosecution's Fourth Rule 68\(2\)\(b\) Application](#), paras 4, 8, 11 and 13.

parts of it is indirect evidence and related to the acts and conduct of **the Accused**.²⁷⁸⁸ The Chamber recalls that it has not relied on paragraphs 62 to 68 of P-0756's statement.²⁷⁸⁹

799. P-0756 (DoB 1987), a member of the Fur tribe, [REDACTED] time of the charges.²⁷⁹⁰ He was living in [REDACTED] and later in Mukjar at the relevant time.²⁷⁹¹ His evidence principally dealt with the SLA,²⁷⁹² and persons detained at Mukjar police station in March 2004.²⁷⁹³

800. P-0756's knowledge about the events was said to be mainly based on his personal experience and observations.²⁷⁹⁴

Mukjar Operation

801. P-0756 gave evidence relating to the arrest of *Umdah* Yahya Ahmad Zarruq and the loading of detainees from Mukjar police station onto vehicles for summary executions in March 2004.²⁷⁹⁵

[REDACTED]

802. [REDACTED].²⁷⁹⁶ [REDACTED].²⁷⁹⁷ [REDACTED]. [REDACTED].²⁷⁹⁸

803. In the circumstances that the Defence was not able to question the witness on either his account of what he said he witnessed, nor his account [REDACTED], the Chamber has concluded that it will not rely on this witness.

²⁷⁸⁸ [Defence's Response to Prosecution's Fourth Rule 68\(2\)\(b\) Application](#), para. 15, referring to P-0756's Statement, DAR-OTP-0211-0039-R02, at 0055, para. 70. The Chamber rejected the Defence's submission on this point, see [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 48.

²⁷⁸⁹ [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), paras 40, 47; fns 56-57. See also [Prosecution's Fourth Rule 68\(2\)\(b\) Application](#), para. 16.

²⁷⁹⁰ P-0756's Statement, DAR-OTP-0211-0039-R02, at 0039, 0041, para. 12.

²⁷⁹¹ P-0756's Statement, DAR-OTP-0211-0039-R02, at 0041, 0050, paras 12, 48.

²⁷⁹² P-0756's Statement, DAR-OTP-0211-0039-R02, at 0044, paras 21-22.

²⁷⁹³ P-0756's Statement, DAR-OTP-0211-0039-R02, at 0055-0057, paras 71-80.

²⁷⁹⁴ P-0756 was in [REDACTED] when it was attacked in August 2003, and he fled to Mukjar in August 2003, where he lived until 2016 (see P-0756's Statement, DAR-OTP-0211-0039-R02, at 0041, 0045-0050, paras 12, 27-48).

²⁷⁹⁵ P-0756's Statement, DAR-OTP-0211-0039-R02, at 0055-0057, paras 71-80.

²⁷⁹⁶ [Defence's Final Brief](#), paras 167-168.

²⁷⁹⁷ See [REDACTED].

²⁷⁹⁸ [Defence's Final Brief](#), para. 168.

19. P-0757

804. P-0757's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁷⁹⁹ The Chamber recalls that it will not rely on paragraphs 66-69, 73-74, and the words of paragraphs 70 71, and 79 of P-0757's statement that relate to **the Accused**.²⁸⁰⁰

805. P-0757 (DoB 1984), a member of the Fur Tribe,²⁸⁰¹ [REDACTED] it was attacked during the Kodoom and Bindisi Operation on 15 August 2003.²⁸⁰²

806. P-0757's evidence principally dealt with the attack on Tiro and events surrounding the Kodoom and Bindisi Operation;²⁸⁰³ circumstances in Mukjar between mid-August 2003 and March 2004;²⁸⁰⁴ Minister Harun's speech in Mukjar around mid-August 2003;²⁸⁰⁵ and the sites of executions during the Mukjar Operation.²⁸⁰⁶

807. P-0757 was present at the locations and saw for himself: (i) the attacks and events surrounding the Kodoom and Bindisi Operation;²⁸⁰⁷ (ii) circumstances in Mukjar after the Kodoom and Bindisi Operation;²⁸⁰⁸ (iii) Minister Harun's visit to Mukjar sometime in the middle of August 2003;²⁸⁰⁹ and (iv) the discovery of corpses at a site northwest of Mukjar near the UNAMID base in March 2004.²⁸¹⁰ On key aspects of his evidence, P-0757 distinguished between what he saw (or did not see), heard (or overheard) or inferred (or believed) from circumstances.²⁸¹¹

808. The Chamber notes that the Defence does not take any issue with P-0757's evidence. The Chamber is satisfied that P-0757's evidence is credible and reliable.

²⁷⁹⁹ P-0757's Statement, DAR-OTP-0211-0003-R02; P-0757's Sketches, DAR-OTP-0211-0029; DAR-OTP-0211-0032, Translation, DAR-OTP-0219-1390; DAR-OTP-0211-0033, Translation, DAR-OTP-0219-1392; P-0757's Lists, DAR-OTP-0211-0030; DAR-OTP-0211-0031. *See also* [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#); Registry's Transmission of Prosecution Witness Declarations, Annex VIII.

²⁸⁰⁰ [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), paras 11, 20, fns 20, 49. [REDACTED].

²⁸⁰¹ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0005-0006, para. 12.

²⁸⁰² P-0757's Statement, DAR-OTP-0211-0003-R02, at 0005-0006, 0009, paras 12-16, 25.

²⁸⁰³ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0009-0015, paras 25-49.

²⁸⁰⁴ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0015, paras 49-51.

²⁸⁰⁵ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0017-0019, paras 57-61.

²⁸⁰⁶ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0023-0024, paras 80-84.

²⁸⁰⁷ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0009-0015, paras 25-49.

²⁸⁰⁸ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0015, paras 49-51.

²⁸⁰⁹ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0016-0019, paras 52-62.

²⁸¹⁰ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0023-0024, paras 80-84.

²⁸¹¹ P-0757's Statement, DAR-OTP-0211-0003-R02, at 0009, 0010, 0012, 0015-18, 0023-24, paras 26-27, 32, 39, 50, 52-60, 80-84.

20. P-0816

809. P-0816's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁸¹² P-0816 (DoB 1967) is a member of the Fur tribe.²⁸¹³ P-0816 [REDACTED].²⁸¹⁴

810. P-0816's evidence principally dealt with the conflict;²⁸¹⁵ the *Janjaweed*;²⁸¹⁶ the rebel attack on Bindisi;²⁸¹⁷ Bindisi, generally;²⁸¹⁸ the attack on Bindisi during the Kodoom and Bindisi Operation;²⁸¹⁹ and its aftermath.²⁸²⁰ As stated in its decision authorising the introduction of P-0816's evidence, the Chamber does not rely upon P-0816's evidence on '**Ali Kushayb**'.²⁸²¹

811. P-0816 was present in Bindisi during the rebel attack.²⁸²² He saw the rebels run past his house.²⁸²³ P-0816 heard gun shots and later learned about the attack from others.²⁸²⁴ P-0816 was also told by others about the rebel attack in Mukjar.²⁸²⁵

812. P-0816 also heard that the *Janjaweed* had attacked villages.²⁸²⁶ P-0816 returned to Bindisi around four days after the attack and saw corpses and the aftermath of the attack.²⁸²⁷ P-0816 mentioned the names of seven persons whose corpses he saw when he returned to Bindisi.²⁸²⁸ The Defence challenges P-0816's evidence on these seven corpses on the basis that it could not question him on the subject.²⁸²⁹

813. The Chamber is satisfied that P-0816 saw and heard about the events recorded in his statement. Furthermore, as a resident of Bindisi, P-0816 was able to reliably identify the

²⁸¹² P-0816's Statement, DAR-OTP-0214-0721-R02; [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#); Registry's Transmission of Prosecution Witness Declarations, Annex II.

²⁸¹³ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0721.

²⁸¹⁴ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0724, para. 15.

²⁸¹⁵ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0725, para. 21.

²⁸¹⁶ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0726-0728, paras 24-33.

²⁸¹⁷ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0725-0726, paras 22-23.

²⁸¹⁸ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0724-0725, paras 15-20.

²⁸¹⁹ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0728-0730, paras 34-36, 40.

²⁸²⁰ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0730-0733, paras 40-51.

²⁸²¹ [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 56. See also P-0816's Statement, DAR-OTP-0214-0721-R02, at 0727, para. 27.

²⁸²² P-0816's Statement, DAR-OTP-0214-0721-R02, at 0725-0726, para. 22.

²⁸²³ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0725-0726, para. 22.

²⁸²⁴ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0725-0726, para. 22.

²⁸²⁵ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0726, para. 23.

²⁸²⁶ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0728-0729, paras 34-36.

²⁸²⁷ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, paras 37-39.

²⁸²⁸ P-0816's Statement, DAR-OTP-0214-0721-R02, at 0729-0730, para. 38.

²⁸²⁹ [Defence's Final Brief](#), para. 416.

corpses mentioned in his evidence and take stock of the aftermath of the *Janjaweed* attack.²⁸³⁰ Additionally, P-0816's evidence on the attack on Bindisi aligns with and is supported by the evidence of other credible and reliable witnesses.²⁸³¹ Therefore, the Chamber is also satisfied that P-0816 is generally credible and reliable on all other aspects of his evidence.

21. P-0867

814. P-0867's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁸³² In his subsequent declaration pursuant to Rule 68(2)(b)(iii), P-0867 made some amendments to his written statement.²⁸³³ The Defence did not oppose the amendments,²⁸³⁴ but opposed the introduction of P-0867's statement under Rule 68(2)(b), submitting that it related to issues materially in dispute and the acts and conduct of **the Accused**, parts of his evidence is indirect, and that P-0867's [REDACTED] at the time of the events warrants the Chamber's attention when assessing his reliability.²⁸³⁵ The Chamber recalls that it will not rely on paragraphs 75, 76, 78, 79 of his statement.²⁸³⁶

815. P-0867 (DoB 1993) [REDACTED].²⁸³⁷ He is a member of the Fur tribe, and [REDACTED].²⁸³⁸

816. P-0867's evidence principally dealt with the emergence of the *Janjaweed* and their attacks on Gausir in 2003;²⁸³⁹ [REDACTED];²⁸⁴⁰ events in Mukjar;²⁸⁴¹ [REDACTED].²⁸⁴²

817. As a civilian who was present during the events, and despite his young age at the time of the charges, P-0876 was able to provide a detailed account of key events based on his personal experience and observations. The Chamber considers P-0867's evidence to be

²⁸³⁰ *Contra* [Defence's Final Brief](#), para. 416.

²⁸³¹ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 421-425.

²⁸³² P-0867's Statement, DAR-OTP-0217-0173-R02. See also [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 102.

²⁸³³ Registry's Transmission of P-0867's Declarations, Annex I.

²⁸³⁴ T-123, p. 6.

²⁸³⁵ [Defence's Response to Prosecution's Fourth Rule 68\(2\)\(b\) Application](#), paras 11, 20-22. The Defence pointed out particularly in P-0867's Statement, DAR-OTP-0217-0173-R02, at 0177, paragraph 20, as issues materially in dispute; at 0189, paragraph 81, as hearsay evidence; and at 0191, paragraph 90, as matters related to the acts and conduct of **the Accused**.

²⁸³⁶ [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 63.

²⁸³⁷ See Judgment, Section 4. Evidentiary principles and considerations, paras 225-226.

²⁸³⁸ P-0867's Statement, DAR-OTP-0217-0173-R02, at 0175-0176, para. 12.

²⁸³⁹ P-0867's Statement, DAR-OTP-0217-0173-R02, at 0176-0184, paras 16-58.

²⁸⁴⁰ P-0867's Statement, DAR-OTP-0217-0173-R02, at 0185-0187, paras 59-71.

²⁸⁴¹ P-0867's Statement, DAR-OTP-0217-0173-R02, at 0187-0191, paras 72-89.

²⁸⁴² P-0867's Statement, DAR-OTP-0217-0173-R02, at 0191, paras 90-91.

internally consistent and generally consistent with other credible and reliable evidence on the record.²⁸⁴³ Based on the Chamber's holistic assessment of the evidence, the Chamber finds P-0867 to be a generally credible and reliable witness.

22. P-0917

818. P-0917's evidence was introduced pursuant to Rules 68(2)(b) of the Rules.²⁸⁴⁴ P-0917 (DoB 1987) is a member of the Fur tribe.²⁸⁴⁵ P-0917 was a resident of [REDACTED].²⁸⁴⁶ Her evidence principally dealt with the attack on Bindisi during the Kodoom and Bindisi Operation as regards the context and the charges.²⁸⁴⁷ The Chamber does not rely on certain parts of P-0917's statement relating to **the Accused**.²⁸⁴⁸

819. P-0917 was present in Bindisi when it was attacked by the *Janjaweed* during the Kodoom and Bindisi Operation.²⁸⁴⁹ She and her family fled to Mukjar and then returned to Bindisi around October 2003 and saw what she describes as the aftermath of the attack on Bindisi.²⁸⁵⁰ P-0917's account of the attack on Bindisi and its aftermath is very limited and lacks sufficient detail. Therefore, whilst the Chamber is satisfied that P-0917 is generally credible, it finds that her evidence has very limited probative value.

23. P-0927

820. P-0927's evidence was introduced pursuant to Rule 68(2)(b) of the Rules.²⁸⁵¹ P-0927 (DoB 1988) is a member of the Fur tribe.²⁸⁵² P-0927 had been residing [REDACTED].²⁸⁵³ P-0927's evidence principally dealt with: Bindisi, generally;²⁸⁵⁴ the rebel attack on Bindisi police

²⁸⁴³ See generally Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003.

²⁸⁴⁴ P-0917's Statement, DAR-OTP-0217-0071-R03; [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#); Registry's Transmission of Prosecution Witness Declarations.

²⁸⁴⁵ P-0917's Statement, DAR-OTP-0217-0071-R03, at 0073, para. 12.

²⁸⁴⁶ P-0917's Statement, DAR-OTP-0217-0071-R03, at 0073, para. 12.

²⁸⁴⁷ P-0917's Statement, DAR-OTP-0217-0071-R03, at 0077-0080, paras 25-41.

²⁸⁴⁸ [Decision on Prosecution's Sixth, Seventh and Eighth Rule 68\(2\)\(b\) Requests](#), paras 11, 49, fns 20, 49. The Chamber has not relied on P-0917's Statement, DAR-OTP-0217-0071-R03, at 0082-0084, paragraphs 51, 55-57, 59-61, 63, and at 0074, paragraph 15 on the words '[...] as she had learned from her husband that Government [*sic*] was providing weapons and military training to the *Janjaweed* through Ali KUSHAYB, in Garsila', and the heading 'Ali KUSHAYB' above paragraph 51.

²⁸⁴⁹ P-0917's Statement, DAR-OTP-0217-0071-R03, at 0077, paras 25-27.

²⁸⁵⁰ P-0917's Statement, DAR-OTP-0217-0071-R03, at 0078, para. 31.

²⁸⁵¹ P-0927's Statement, DAR-OTP-0221-0523-R01; P-0927's Photographs, DAR-OTP-0221-0549; DAR-OTP-0221-0550. See also [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#); Registry's Transmission of Declarations of P-0756, P-0816 and P-0927.

²⁸⁵² P-0927's Statement, DAR-OTP-0221-0523-R01, at 0523, 0526, para. 11.

²⁸⁵³ P-0927's Statement, DAR-OTP-0221-0523-R01, at 0526, para. 13.

²⁸⁵⁴ P-0927's Statement, DAR-OTP-0221-0523-R01, at 0525-0526, paras 15-18.

stations;²⁸⁵⁵ and the attacks on Bindisi during the Kodoom and Bindisi Operation.²⁸⁵⁶ As stated in its decision authorising the introduction of P-0927's evidence, the Chamber does not rely on certain parts of P-0927's statement in relation to **the Accused**.²⁸⁵⁷

821. P-0927 was present in Bindisi when it was attacked during the Kodoom and Bindisi Operation, and thus provided a detailed first-hand account of the attack, particularly of the second day of the attack.²⁸⁵⁸ In his evidence, P-0927 distinguished between what he saw, heard (or overheard) or inferred from circumstances.²⁸⁵⁹ Additionally, P-0927's evidence on the attack on Bindisi aligns with and is supported by the evidence of other credible and reliable witnesses.²⁸⁶⁰

822. At the time of the introduction of P-0927's evidence, the Defence noted that P-0927's formal education comprises of only one month of primary school and that he cannot read or write Arabic properly and has problems with numbers and measurements.²⁸⁶¹ The Defence argued that this could have affected the taking of the witness's statement.²⁸⁶² The Chamber notes that there is no indication from P-0927's evidence or anywhere else that the taking of his statement was affected by his level of literacy. The Chamber therefore finds P-0927 generally credible and reliable.

[REDACTED]

823. [REDACTED].²⁸⁶³ [REDACTED].²⁸⁶⁴

²⁸⁵⁵ P-0927's Statement, DAR-OTP-0221-0523-R01, at 0527, para. 20.

²⁸⁵⁶ P-0927's Statement, DAR-OTP-0221-0523-R01, at 0527-0531, paras 19-35.

²⁸⁵⁷ [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 72. The Chamber has not relied upon paragraphs 45 to 48 of P-0927's statement.

²⁸⁵⁸ P-0927's Statement, DAR-OTP-0221-0523-R01, at 0527, 0529-0530, paras 19, 26-29.

²⁸⁵⁹ P-0927's Statement, DAR-OTP-0221-0523-R01, at 0527-0528, paras 19-21, 23.

²⁸⁶⁰ See Judgment, Section 5.III.A. Operation in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, paras 420-441.

²⁸⁶¹ [Defence's Response to Prosecution's Fourth Rule 68\(2\)\(b\) Application](#), para. 26, referring to P-0927's Statement, DAR-OTP-0215-8151, at 0526, para. 14. See [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 70.

²⁸⁶² [Defence's Response to Prosecution's Fourth Rule 68\(2\)\(b\) Application](#), para. 26, referring to P-0927's Statement, DAR-OTP-0215-8151, at 0526, para. 14. See [Second Decision on Prosecution's Rule 68\(2\)\(b\) Application](#), para. 70.

²⁸⁶³ [Defence's Final Brief](#), paras 169-170.

²⁸⁶⁴ See [REDACTED].

24. P-0954

824. P-0954's evidence was introduced pursuant to Rule 68(2)(c) of the Rules.²⁸⁶⁵ The Chamber does not rely on parts of his evidence referring to the acts and conduct of **the Accused**.²⁸⁶⁶

825. P-0954, (DoB 1963) was a member of the [REDACTED] tribe, who was living in [REDACTED] at the time of the events.²⁸⁶⁷ [REDACTED].²⁸⁶⁸ [REDACTED].²⁸⁶⁹

826. Excluding the excerpts of his evidence related to the acts and conduct of **the Accused**,²⁸⁷⁰ P-0954's evidence principally dealt with the PDF's structure and operations at the relevant time, particularly in [REDACTED].²⁸⁷¹

827. Generally, the Chamber considers that P-0954 provided a credible account. On the basis [REDACTED], he had a sufficient basis of knowledge as regards the GoS, particularly the PDF, and its link with the *Janjaweed*, also known as *Mujahidin*, during the relevant time.²⁸⁷² P-0954's evidence on these points is generally consistent with other credible and reliable evidence on the record.

828. The Chamber notes that the Defence does not challenge P-0954's reliability or credibility, and in fact relies on his evidence, mainly as regards the PDF.²⁸⁷³

829. The Chamber therefore concludes that P-0954 is a credible and reliable witness.

25. P-0973

830. P-0973's evidence was introduced pursuant to Rule 68(2)(c) of the Rules.²⁸⁷⁴ The Chamber recalls that it will not rely on (certain parts of) paragraphs 14-16, 29-34, 37, 39-40,

²⁸⁶⁵ P-0954's Statement, DAR-OTP-0221-0571-R01; [Third Rule 68\(2\)\(c\) Decision](#), paras 8-10.

²⁸⁶⁶ [Third Rule 68\(2\)\(c\) Decision](#), para. 9, referring to P-0954's Statement, DAR-OTP-0221-0571-R01, at 0575, 0578-0579, 0581-0583, paras 24, 34-35, 41, 49-60, where 'Ali Kushayb' is mentioned.

²⁸⁶⁷ P-0954's Statement, DAR-OTP-0221-0571-R01, at 0573, paras 12, 14.

²⁸⁶⁸ P-0954's Statement, DAR-OTP-0221-0571-R01, at 0573-0574, paras 14-16.

²⁸⁶⁹ [Second Rule 68\(2\)\(c\) Decision](#), para. 7.

²⁸⁷⁰ P-0954's Statement, DAR-OTP-0221-0571-R01, at 0575, 0578-0579, 0581-0583, paras 24, 34-35, 41, 49-60.

²⁸⁷¹ P-0954's Statement, DAR-OTP-0221-0571-R01, at 0573-0581, paras 14-48.

²⁸⁷² See for example P-0954's Statement, DAR-OTP-0221-0571-R01, at 0574, 0576, 0578-0580, paras 19-20, 26-27, 37, 40, 42-44.

²⁸⁷³ [Defence's Final Brief](#), paras 260, 293-295, 326, 346, fns 3010-3012.

²⁸⁷⁴ P-0973's Statement, DAR-OTP-0220-0736-R01; [Decision on Prosecution's Rule 68\(3\) Application for P-0907 and P-0973](#).

42-47, 53-54 and Annex E.²⁸⁷⁵ The Defence does not oppose the introduction of P-0973's evidence pursuant to Rule 68(2)(c) of the Rules, insofar as the relevant parts of the aforementioned paragraphs are excluded.²⁸⁷⁶

831. P-0973 (DoB 1979), a member of the Fur tribe, was a [REDACTED] during the period of the charges.²⁸⁷⁷

832. P-0973's evidence principally dealt with the attack on Korsu by the *Janjaweed* in late 2003 and hiding [REDACTED] in the nearby mountains;²⁸⁷⁸ his displacement from the mountains to Deleig on 2 March 2004 to seek refuge there;²⁸⁷⁹ the *Janjaweed*'s²⁸⁸⁰ encirclement of Deleig on 5 March 2004,²⁸⁸¹ his arrest, detention, mistreatment and the ensuing arrest, detention, mistreatment and execution of Fur men and boys in and around Deleig, including the involvement of the *Janjaweed* in these incidents.²⁸⁸²

833. Noting that P-0973 was himself arrested,²⁸⁸³ detained and physically abused both outside²⁸⁸⁴ and inside²⁸⁸⁵ Deleig police station, the Chamber considers P-0973 has a strong basis of knowledge for the key events about which he gave evidence, which he personally observed and experienced. Further, the Chamber finds P-0973's statement to be both internally consistent and consistent with, and corroborative of, other reliable evidence on the record.²⁸⁸⁶ Based on the Chamber's holistic assessment of the evidence, the Chamber finds P-0973 to be a generally credible and reliable witness.

²⁸⁷⁵ [Third Rule 68\(2\)\(c\) Decision](#), paras 12-13, indicating the specific parts of the statement that are excluded.

²⁸⁷⁶ [Third Rule 68\(2\)\(c\) Decision](#), paras 3, 22, referring to [Prosecution's Rule 68\(2\)\(c\) Application for P-0973](#), para. 22.

²⁸⁷⁷ P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, paras 11-12.

²⁸⁷⁸ P-0973's Statement, DAR-OTP-0220-0736-R01, at 0740-0741, paras 17-22.

²⁸⁷⁹ P-0973's Statement, DAR-OTP-0220-0736-R01, at 0741, paras 23-24.

²⁸⁸⁰ P-0973's Statement, DAR-OTP-0220-0736-R01, at 0739, para. 13, referring to Headdress Board, DAR-OTP-0220-0755-R01. P-0973 was shown a document labelled headdress board and he identify headdress similar to those at nos 7, 8 and 9 in the document that would be worn by person he considered as *Janjaweed*.

²⁸⁸¹ P-0973's Statement, DAR-OTP-0220-0736-R01, at 0741, para. 25. See also P-0607's Statement, DAR-OTP-0203-0164-R02, at 0176, para. 42; P-0725's Statement, DAR-OTP-0210-0122-R02, at 0128, para. 43. See further the Chamber's assessment of the evidence of P-0607 and P-0725, Annex B, Sections II.A.14 and II.A.17.

²⁸⁸² P-0973's Statement, DAR-OTP-0220-0736-R01, at 0741-0748, paras 25-56.

²⁸⁸³ P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742, para. 26.

²⁸⁸⁴ P-0973's Statement, DAR-OTP-0220-0736-R01, at 0742-0743, 0746-0747, paras 27-28, 30-31, 47-48.

²⁸⁸⁵ P-0973's Statement, DAR-OTP-0220-0736-R01, at 0744-0747, paras 36-44, 49-53.

²⁸⁸⁶ See [Decision on Prosecution's Rule 68\(3\) Application for P-0907 and P-0973](#).

B. Defence witnesses

1. D-0017

834. D-0017 (DoB 1963) is a member of the [REDACTED].²⁸⁸⁷ [REDACTED],²⁸⁸⁸ [REDACTED].²⁸⁸⁹ His two statements were introduced pursuant to Rule 68(2)(b) of the Rules.²⁸⁹⁰ The Defence requested the introduction of D-0017's evidence to demonstrate that 'the PPF and the Border Guards were indistinguishable and that a member of the *Janjaweed* would necessarily be either a member of the PDF or the PPF / Border Guards'.²⁸⁹¹ The Prosecution did not object to the admission of his statement.²⁸⁹²

835. D-0017 joined the [REDACTED].²⁸⁹³ [REDACTED].²⁸⁹⁴ [REDACTED].²⁸⁹⁵

836. In his first statement, D-0017's evidence principally dealt with: the structure of local government [REDACTED];²⁸⁹⁶ the GoS, PDF and local militia and rebel groups in that area;²⁸⁹⁷ as well as attacks to villages in the aforesaid area in 2003²⁸⁹⁸ and in 2004.²⁸⁹⁹

837. In his second statement, D-0017's evidence principally dealt with [REDACTED].²⁹⁰⁰ He gave evidence about the PDF, particularly *vis-à-vis* the *Janjaweed*,²⁹⁰¹ and the PPF, including its link with the BIU.²⁹⁰²

838. As to D-0017's basis of knowledge on the matters in his statements, the Chamber finds that [REDACTED] would have provided him with the information.²⁹⁰³

²⁸⁸⁷ D-0017's Statements, DAR-OTP-0088-0262-R01, at 0262; DAR-D31-00000146, at 0001.

²⁸⁸⁸ D-0017's Statement, DAR-OTP-0088-0262-R01.

²⁸⁸⁹ D-0017's Statement, DAR-D31-00000146.

²⁸⁹⁰ [Decision on Defence's D-0017 Request](#); Registry's Transmission of D-0017's Declaration.

²⁸⁹¹ [Defence's Rule 68\(2\)\(b\) Application for D-0017](#), para. 13.

²⁸⁹² [Decision on Defence's D-0017 Request](#), paras 4, 9.

²⁸⁹³ D-0017's Statements, DAR-OTP-0088-0262-R01, at 0264, para. 9; DAR-D31-00000146, at 0004, 0006, paras 13, 19.

²⁸⁹⁴ D-0017's Statements, DAR-OTP-0088-0262-R01, at 0265, para. 10; DAR-D31-00000146 at 0005, para. 17.

²⁸⁹⁵ D-0017's Statements, DAR-OTP-0088-0262-R01, at 0265, para. 11; DAR-D31-00000146, at 0005, para. 16.

²⁸⁹⁶ D-0017's Statement, DAR-OTP-0088-0262-R01, at 0267-0270, paras 22-38.

²⁸⁹⁷ D-0017's Statement, DAR-OTP-0088-0262-R01, at 0270-0275, paras 41-80.

²⁸⁹⁸ D-0017's Statement, DAR-OTP-0088-0262-R01, at 0275-0282, paras 81-134.

²⁸⁹⁹ D-0017's Statement, DAR-OTP-0088-0262-R01, at 0283-0291, paras 147-211.

²⁹⁰⁰ D-0017's Statement, DAR-D31-00000146, at 0004-0006, paras 13-20.

²⁹⁰¹ D-0017's Statement, DAR-D31-00000146, at 0006-0008, paras 20-28.

²⁹⁰² D-0017's Statement, DAR-D31-00000146, at 0008, paras 29-32.

²⁹⁰³ *See for example* D-0017's Statements, DAR-OTP-0088-0262-R01, at 0264-0265, paras 9-11; DAR-D31-00000146, at 0004-0006, paras 13-20.

839. Based on the Chamber's assessment of the statements and associated documents, the Chamber finds that D-0017's evidence is relevant to the general background of the case, but not to any of the specific issues which have arisen during the course of the case. Therefore, although D-0017 is a credible witness, the Chamber finds that his evidence is generally irrelevant.[REDACTED]

2. D-0022

840. D-0022's evidence was introduced pursuant to Rule 68(2)(c) of the Rules.²⁹⁰⁴ [REDACTED] and the Prosecution did not object to the admission of his statement.²⁹⁰⁵ The Chamber notes that the Defence does not rely on D-0022's account for its contents but solely to establish that evidence has been fabricated.²⁹⁰⁶

841. In particular, the Chamber notes that excerpts of D-0022's evidence were relied upon by the Defence in its Final Brief.²⁹⁰⁷ In his interview, D-0022 acknowledged that he had lied to the Prosecution investigators and that what he had previously told investigators had been [REDACTED].²⁹⁰⁸ D-0022 confirmed he had lied and he was never in the *Janjaweed*.²⁹⁰⁹

842. The Chamber is satisfied that D-0022 lied to the Prosecution investigators, and he was prompted by others to lie to the Court. Some support for this is provided by the evidence [REDACTED].²⁹¹⁰

843. The Defence introduced this evidence 'to demonstrate the existence of a sophisticated system of fabrication of false evidence'.²⁹¹¹ Whilst D-0022 apparently was persuaded to lie to the investigator, there is no evidence that this was true of any of other witnesses called by the Prosecution, nor indeed was a suggestion made to witnesses whom the Chamber found to be untruthful in one, or more respects, of their accounts.

²⁹⁰⁴ D-0022's Interview Transcripts, DAR-OTP-0220-2539-R01; DAR-OTP-0220-2572-R01; DAR-OTP-0220-2605-R01; DAR-OTP-0220-2636-R01; DAR-OTP-0220-2668-R01; DAR-OTP-0220-2673-R01; DAR-OTP-0220-2709-R01; DAR-OTP-0220-2743-R01; DAR-OTP-0220-2767-R01; DAR-OTP-0220-2778-R01; DAR-OTP-0220-2798-R01; DAR-OTP-0220-2807-R01; DAR-OTP-0220-2836-R01.

²⁹⁰⁵ Decision on Defence's D-0022 Request, para. 4.

²⁹⁰⁶ [Defence's Final Brief](#), paras 201-202.

²⁹⁰⁷ [Defence's Final Brief](#), fn. 621.

²⁹⁰⁸ D-0022's Interview Transcript, DAR-OTP-0220-2836-R01, at 2841-2842.

²⁹⁰⁹ D-0022's Interview Transcript, DAR-OTP-0220-2836-R01, at 2841. *See also* D-0022's Evidence Translation, DAR-OTP-0203-0362, at 0363-0364, signed by D-0022, admitting that he lied to the Prosecution.

²⁹¹⁰ [REDACTED].

²⁹¹¹ Decision on Defence's D-0022 Request, para. 4.

844. Accordingly, the Chamber, rejects the inference which the Defence wishes it to draw namely, that if one witness was so persuaded, then so were others on whom the Chamber has placed reliance.

3. D-0028

845. D-0028's evidence was introduced pursuant to Rule 68(2)(c) of the Rules.²⁹¹² D-0028 (DoB 1980), a member of the Fur tribe, [REDACTED].²⁹¹³ His evidence dealt principally with the relationship between the Fur and the Ta'aisha tribes in Rahad Al-Berdi.²⁹¹⁴ The Chamber observes that at the relevant time, the witness was neither in Rahad Al-Berdi or Wadi Salih, but said he obtained information about the events from news on the television, radio, and in the newspaper, and heard that in Wadi Salih the *Janjaweed* was targeting the Fur tribe.²⁹¹⁵

846. The Chamber observes that both the Defence and the Prosecution rely on this witness' evidence.²⁹¹⁶

Identification of the Accused

847. D-0028 stated that he had known **the Accused** since 2001 in Rahad Al-Berdi and the only nickname he knew him by was 'Abu Nasser'.²⁹¹⁷ D-0028 said he never heard anyone call 'Mr Ali' by the name '**Ali Kushayb**' although he heard the name on the television, radio, and newspaper.²⁹¹⁸ In 2010, the witness saw 'Mr Ali' who was a *musa'id* with the CRF in Rahad Al-Berdi.²⁹¹⁹ D-0028's evidence is that as a child he knew that 'Mr Ali' was an *agid* of the tribe, but that he has never been the *agid al-ogada* of the Ta'aisha tribe.²⁹²⁰ D-0028 also stated that **the Accused** owned a pharmacy in Rahad Al-Berdi.²⁹²¹ The Chamber finds that D-0028's evidence that he did not hear anyone calling **the Accused** by the name '**Ali Kushayb**' in 2010 does not assist the Chamber in the determination of the issue of whether **the Accused** was called by that name in 2003-2004.

²⁹¹² D-0028's Statement, DAR-D31-00000150; [Decision on Defence's D-0028 Request](#).

²⁹¹³ D-0028's Statement, DAR-D31-00000150, at 0001, 0004, para. 12.

²⁹¹⁴ D-0028's Statement, DAR-D31-00000150, at 0004-0005, paras 12-13, 17-19.

²⁹¹⁵ D-0028's Statement, DAR-D31-00000150, at 0004, paras 15-16.

²⁹¹⁶ [Defence's Final Brief](#), paras 758, 765, fns 419, 966, 974, 989, 2855, 2857-2859, 2869-2870, 2897, 2920, 2969; [Prosecution's Final Brief](#), para. 137, fns 492, 683.

²⁹¹⁷ D-0028's Statement, DAR-D31-00000150, at 0005-0006, paras 20, 27.

²⁹¹⁸ D-0028's Statement, DAR-D31-00000150, at 0005, paras 20-22.

²⁹¹⁹ D-0028's Statement, DAR-D31-00000150, at 0005, para. 23.

²⁹²⁰ D-0028's Statement, DAR-D31-00000150, at 0006, para. 26.

²⁹²¹ D-0028's Statement, DAR-D31-00000150, at 0006, para. 27.

The Fur in Rahad Al-Berdi

848. D-0028's evidence is that displaced Fur people made their way from Wadi Salih to Rahad Al-Berdi and were well treated by the *nazir* and the Ta'aisha tribe.²⁹²² This is in keeping with the case for the Defence.²⁹²³ D-0028 also stated that he 'never witnessed anything suggesting that 'Mr Ali' does not like the Fur' and that **the Accused** and his family are friends.²⁹²⁴

849. Based on the Chamber's assessment of the statement and associated documents, the Chamber is satisfied that D-0028's evidence is credible. He stated what he knew and what he had heard. However, the Chamber finds that the witness was neither in Wadi Salih nor Rahad Al-Berdi in 2003-2004 and has no direct knowledge of the events there.²⁹²⁵ D-0028's basis of knowledge on the matters in his statement is largely based on indirect evidence.

850. Accordingly, the Chamber finds that although the witness is credible, his evidence is generally not relevant.

²⁹²² D-0028's Statement, DAR-D31-00000150, at 0004-0005, paras 17-19.

²⁹²³ See for example [Defence's Final Brief](#), paras 768-773.

²⁹²⁴ D-0028's Statement, DAR-D31-00000150, at 0006, para. 30.

²⁹²⁵ D-0028's Statement, DAR-D31-00000150, at 0004, para. 15.