

Status Conference

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Status Conference and Trial Hearing - Courtroom 3
9 Thursday, 21 March 2024
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:22] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:32:46] Yes, good morning to everyone. Could we
15 call the case, please.
16 THE COURT OFFICER: [9:32:51] Good morning, Madam President, your Honours.
17 This is the Prosecutor versus Ali Muhammad Ali Abd-Al-Rahman, case reference
18 ICC-02/05-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE KORNER: [9:33:08] Yes. Thank you very much. I will start
21 with the appearances from the Defence, please.
22 MR LAUCCI: [9:33:16](Interpretation) Good morning, Madam President, dear
23 colleagues.
24 Alongside Ali Muhammad Ali Abd-Al-Rahman, who is present in the court, we have
25 the legal assistant, we have counsel Iain Edwards and myself Cyril Laucci who is

1 counsel. And I'm also standing to welcome the new legal expert in the team for the
2 Chamber. And I'd like to also congratulate Judge Alapini-Gansou for her election to
3 the position of Vice President.

4 PRESIDING JUDGE KORNER: [9:34:01] Yes, I'm sure she's very grateful for that
5 recognition. Yes, thank you very much, Mr Laucci.

6 Defence, please -- Prosecution, please.

7 MR NICHOLLS: [9:34:18] Good morning, Madam President. Good morning, your
8 Honours. Good morning to everyone.

9 Julian Nicholls with Diana Saba, Edward Jeremy, Claire Sabatini, Rachel Mazzarella
10 and Alison Whitford.

11 Thank you very much.

12 PRESIDING JUDGE KORNER: [9:34:33] Yes, thank you very much. And the
13 representatives of the victims.

14 MR SHAH: [9:34:36] Good morning, Madam President. Good morning, your
15 Honours. Good morning, colleagues.

16 Anand Shah with Saif Kassis, and the legal representative

17 Ms Natalie von Wistinghausen will be joining us very shortly.

18 PRESIDING JUDGE KORNER: [9:34:49] Yes, thank you very much. Before we go
19 into private session, which I think we'll have to do to discuss the witnesses, do we
20 know whether this morning's witness has yet landed? Any...

21 MR EDWARDS: [9:35:03] He has and he's en route.

22 PRESIDING JUDGE KORNER: [9:35:07] Right. That's great. Thank you very
23 much.

24 In that case, we'll go into private session, please.

25 (Private session at 9.35 a.m.)

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Trial Hearing
WITNESS: DAR-D31-P-0026

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1 (Redacted)

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3 (Recess taken at 10.21 a.m.)

4 (Upon resuming in open session at 11.32 a.m.)

5 THE COURT USHER: [11:32:55] All rise.

6 Please be seated.

7 PRESIDING JUDGE KORNER: [11:33:12] Yes, Mr Edwards, I gather you wanted to
8 raise something before the witness comes in?

9 MR EDWARDS: [11:33:22] It's simply that as a 68(3) witness, or provisionally as a
10 68(3) witness, I propose, as is the Chamber's practice, to read out a very short
11 summary of the witness's evidence.

12 PRESIDING JUDGE KORNER: [11:33:37] Sorry, just a moment, I forgot to put my
13 earphones in. Can you say that again, sorry? MR EDWARDS: [11:33:43] Yes, it's
14 the practice of the Court to hear a very short summary of Rule 68(3) witnesses, and, I
15 think the practice is that that's done in the witness's absence.

16 PRESIDING JUDGE KORNER: [11:33:56] Yes, you are quite right. It's so long since
17 we have had one of these. Yes, okay, Mr Edwards, let us know what the witness is
18 going to say in summary.

19 MR EDWARDS: [11:34:04] Thank you, your Honour.

20 Well, the next witness will testify under no protective measures. He is Patrick
21 Bernard Markey, a career soldier, recently retired as a full colonel in the Irish Defence
22 Force. Colonel Markey was deployed as a European Union military observer to the
23 African Union peacekeeping mission in Sudan between July 2004 and July 2005.
24 He was based in the sector, including the town of Al Geneina, in Darfur during that
25 time, but his duties involved him on occasion travelling to areas outside of his sector.

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1 His duties included responding to and investigating alleged violations of the peace
2 agreement that had been reached between the Government of Sudan and rebel forces,
3 also visiting IDP camps, assessing the humanitarian conditions that existed in Darfur,
4 amongst other things.

5 Now, Colonel Markey kept a contemporaneous record, a diary, during his time in
6 Darfur and he took hundreds of photos during his deployment, and during his
7 evidence, your Honours, he will be commenting on some of those diary entries and
8 some of the photos that he took.

9 I ought to say he was originally a Prosecution witness not called by the Prosecution,
10 and he will testify this morning -- or today as a witness for the Defence of
11 Mr Abd-Al-Rahman.

12 PRESIDING JUDGE KORNER: [11:35:56] Yes, thank you very much, Mr Edwards.

13 In that case, let's have Colonel Markey in, please.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE KORNER: [11:36:15] It's just the statement that you took that's
16 going to go in, is it? Not the Prosecution one as well?

17 MR EDWARDS: [11:36:22] No, both statements.

18 PRESIDING JUDGE KORNER: [11:36:24] They're both going in.

19 MR EDWARDS: [11:36:25] Yes.

20 PRESIDING JUDGE KORNER: [11:36:26] All right.

21 MR EDWARDS: [11:36:27] They would be at tabs 1 and 3 of your Honours' bundles.

22 PRESIDING JUDGE KORNER: [11:36:27] Yes, we have got them. Thank you.

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24 (The witness speaks English)

25 PRESIDING JUDGE KORNER: [11:37:18] Colonel Markey, thank you very much for

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1 coming to give evidence at court today. I know you've had a journey that was
2 slightly fraught this morning.

3 In a moment, you are going to be asked to make the solemn declaration, which I think
4 is on a card in front of you.

5 Can I just mention two things: I don't know if you've testified in court before, if you
6 haven't - and particularly in an international court - then everything you say is being
7 interpreted into three different languages -- two languages, French and Arabic.

8 So it would be helpful if you could keep your answers as short as possible, and also
9 there will have to be a gap left. What tends to happen is that Mr Edwards and you
10 both speaking English, it goes without a gap, but the interpretation has got to be
11 given time to finish.

12 I don't think you'll be that long today, but it's likely certainly that we are going to go
13 over the adjournment for lunch, which is at 1 o'clock. But you will certainly
14 conclude your evidence this afternoon.

15 So, unless you have any questions, if you would be good enough to read the solemn
16 declaration.

17 THE WITNESS: [11:38:45] Thank you, ma'am.

18 I solemnly declare that I will speak the truth, the whole truth and nothing but the
19 truth.

20 PRESIDING JUDGE KORNER: [11:39:00] Yes, Mr Edwards.

21 MR EDWARDS: [11:39:01] Thank you, your Honour.

22 QUESTIONED BY MR EDWARDS:

23 Q. [11:39:08] Good morning, colonel.

24 Would you please tell the Court your full name and date of birth?

25 A. [11:39:10] My name is Patrick Bernard Markey and my date of birth, 3 May 1963.

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1 Q. [11:39:22] You go by the name Bernard, right?

2 A. [11:39:24] I go by the name Bernard, sir, yes.

3 Q. [11:39:27] Is your nationality Irish?

4 A. [11:39:29] My nationality is Irish, I was born in Ireland.

5 Q. [11:39:32] And you were a soldier in the Irish permanent defence

6 forces -- defence force, rather, before retiring in May of last year; is that right?

7 A. [11:39:40] Yes, I spent 40 years in the Irish defence forces and retired as a colonel

8 on my 60th birthday on 3 May.

9 Q. [11:39:48] Colonel Markey, you will see a folder on the table in front of you.

10 Could you please take that up and turn to tab 3.

11 MR EDWARDS: [11:40:01] Your Honours, this will be the document

12 DAR-OTP-0109-0111.

13 Q. [11:40:17] Colonel Markey, do you see that document and do you see your

14 signature at the bottom right of that document?

15 A. [11:40:27] Affirmative. Affirmative, sir. I see the document and my signature

16 at the bottom right.

17 Q. [11:40:31] Would you be good enough to turn to the last page of that document,

18 which is page 12. Is that your signature above a date of 31 August 2006?

19 A. [11:40:44] That is correct, sir, yes.

20 Q. [11:40:46] And this is a statement you gave the Prosecution between 19 July and

21 31 August 2006, here in The Hague?

22 A. [11:40:58] To my best knowledge, this is the statement that I gave to the

23 Prosecution at that time.

24 Q. [11:41:04] Thank you very much. If you would just put that to one side and

25 turn now to the document at tab 1, please.

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1 MR EDWARDS: [11:41:19] Your Honours, the ERN is DAR-D31-00000279.

2 Q. [11:41:28] Same questions, please, colonel: Is that your signature at the bottom
3 right of this page?

4 A. [11:41:31] This is my signature at the bottom right of this page, yes.

5 Q. [11:41:35] And if I could ask you to turn to the last page, page 9 of 9 of that
6 document. Again, is that your signature above the date of 1 March 2024?

7 A. [11:41:49] I confirm this is my signature.

8 Q. [11:41:52] And this is a statement that you gave the Defence --

9 THE INTERPRETER: [11:41:55] Message from the interpreter: please observe pauses
10 for the interpretation.

11 PRESIDING JUDGE KORNER: [11:42:00] You've already been ticked off by the
12 interpreters. Please leave a pause. I think you'll have to wear your earphones.

13 MR EDWARDS: [11:42:10] Didn't take long, did it.

14 Q. [11:42:13] I was saying, Colonel Markey, is that a statement you gave the
15 Defence between 20 and 21 February of this year in Dublin?

16 A. [11:42:25] I confirm that this is the statement I gave at that time, yes.

17 Q. [11:42:30] In respect of both of those statements -- sorry, let me start again.

18 The first statement, 2006, that was read back to you in your language before signing it,
19 was it?

20 A. [11:42:48] Yes, sir, it was.

21 Q. [11:42:49] And the statement that you gave last month, did you read that back to
22 yourself before signing it?

23 A. [11:42:55] Yes, I did, sir, yes.

24 Q. [11:42:56] Thank you.

25 Now could I ask you to turn to tab 8 in the folder, DAR-D31-00000297.

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1 Do you see a document there entitled: "Clarifications regarding entries in my diary"?

2 A. [11:43:22] I see that, sir, yes.

3 Q. [11:43:24] And if we turn to the third page of three, of this document, is that
4 your signature above your name and the date, 19 March 2024?

5 A. [11:43:39] That is my signature, yes.

6 Q. [11:43:40] And is this -- as we see in the paragraph at the top of the first page of
7 this statement, during a meeting with the Defence you were asked to read out and
8 clarify the contents of a number of entries in a diary that we'll talk about a bit later?

9 A. [11:44:03] I'm sorry, the question, sir?

10 Q. [11:44:04] Yes. Essentially, the document that you have in front of you, is it a
11 transcript of handwritten entries in a diary that you kept in 2005?

12 A. [11:44:16] That is correct, yes, sir.

13 Q. [11:44:20] Did you sign each of these three documents after satisfying yourself
14 that they accurately reflected the truth to the best of your knowledge and belief?

15 A. [11:44:33] Yes, to the best of my knowledge and belief, these reflected the truth.

16 Q. [11:44:36] And do you object to the submission of the two statements and this
17 clarification document in evidence in these proceedings?

18 A. [11:44:42] No, I have no such objection.

19 MR EDWARDS: [11:44:45] Your Honours rendered a provisional ruling on 18 March.
20 Would the Chamber now make that finding?

21 PRESIDING JUDGE KORNER: [11:44:55] Yes. We agree to both statements being
22 admitted into evidence under the provisions of Rule 68(3). I suppose they need ERN
23 numbers.

24 MR EDWARDS: [11:45:07] They have ERNs, your Honour.

25 PRESIDING JUDGE KORNER: [11:45:08] Yes.

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1 MR EDWARDS: [11:45:09] They'll need an exhibit reference.

2 PRESIDING JUDGE KORNER: [11:45:10] Yes.

3 MR EDWARDS: [11:45:11] And can I -- forgive me, does that include the
4 clarifications document?

5 PRESIDING JUDGE KORNER: [11:45:16] Oh, sorry, and the clarification document,
6 yes.

7 MR EDWARDS: [11:45:22] I'm grateful.

8 Q. [11:45:23] Colonel Markey, I'm just going to briefly look at your professional
9 background, if that's okay with you?

10 Did you join the Irish national police force, the Garda, in 1983?

11 A. [11:45:32] Yes, I did.

12 Q. [11:45:33] And how long did you work in the Garda?

13 A. [11:45:36] Approximately five months.

14 Q. [11:45:39] And did you then join the army, the Irish defence forces?

15 A. [11:45:43] Yes, I went straight from the police into the army.

16 Q. [11:45:47] And with your background, short as it was as a civilian policeman,
17 did you start to work as a military police officer?

18 A. [11:45:56] I started to work as a military police officer after about five years in
19 the army, yes, sir.

20 Q. [11:46:05] Just picking up on a point that her Honour made a moment ago, have
21 you given evidence in criminal proceedings, whether civilian or courts martial in the
22 past?

23 A. [11:46:16] I confirm that I have given evidence from time to time in military
24 court martials, yes.

25 Q. [11:46:24] Colonel Markey, if we think about a police officer's assessment of a

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1 crime scene, can you say something about assessments based on observation and
2 evidence on the one hand and assessments based on speculation and guess work on
3 the other?

4 A. [11:46:46] Yes, sir. With respect to the crime scene and observations based on
5 evidence, I am always quite aware that I must comment on what I see and not what I
6 think I see. I try to ensure that my observations are accurate and to the point.
7 With respect to speculation, obviously you are subconsciously speculating as to what
8 you think might have happened, but this must be influenced by what you have as
9 evidence in front of you, and that's how I work.

10 Q. [11:47:33] Thank you, colonel. Could you please explain how you came to be
11 deployed in Darfur between July 2004 and July 2005?

12 A. [11:47:45] I was deployed to Darfur as I was a volunteer for overseas service at
13 that time. Furthermore, I had experience in Africa, having served in Rwanda just
14 after the genocide in 1994. Subsequently, I was approached and asked was I
15 prepared to deploy at short notice to Darfur, to which I agreed.

16 Q. [11:48:20] And I'm sure there won't be any dispute, but you were deployed on
17 the request of the Irish government to the European Union, or as an EU military
18 observer to the African Union peacekeeping mission; is that right?

19 A. [11:48:36] That is correct. I was one of several EU observers so deployed.

20 Q. [11:48:39] And in just a couple of sentences, if you would, please,
21 Colonel Markey, can you just summarise the role of the AU mission, the
22 African Union mission, in Darfur that you were attached to?

23 A. [11:48:53] The role and mission of the AU mission in Darfur was to observe the
24 ceasefire agreement which had been signed between the different engaged parties,
25 and our job was to clarify as to whether the different bodies respected the agreement

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1 and had ceased all military activities.

2 Q. [11:49:25] Thank you. I'm just going to refer to a couple of things that you say
3 in paragraphs 16 and 17 of your 2006 statement. Maybe that can be brought up on
4 the screen, and, your Honours, there is no reason why this cannot be publicly
5 broadcast.

6 MR NICHOLLS: [11:49:55] Well, I'm not objecting yet, but that's -- what's the point
7 to show him his statement now and ask him questions about it? That's pretty
8 leading. Why can't he just ask him the question.

9 MR EDWARDS: [11:50:07] Your Honour, I'm not asking him to read it, I was
10 referring to the paragraphs for your Honours' benefit.

11 PRESIDING JUDGE KORNER: [11:50:13] Right. Well, quite honestly, Mr Nicholls,
12 I think we may as well just get on with it. I appreciate it is probably leading.

13 MR EDWARDS: [11:50:24]

14 Q. [11:50:24] Don't look at the screen, then, Colonel Markey.

15 A. [11:50:28] I will not.

16 Q. [11:50:29] In terms of visiting sites of alleged violations of the ceasefire, how
17 often did those visits take place?

18 A. [11:50:48] On a very regular basis. We would visit a scene either as a
19 consequence of a request that would have come from headquarters or some other
20 source to inspect a particular location to determine whether there had been illegal
21 activity of a military nature, or we would visit as a consequence of a regular patrol
22 plan that we had and that we exercised every second day normally.

23 Q. [11:51:26] And were there occasions when you did assess incidents as
24 amounting to ceasefire violations?

25 A. [11:51:39] Yes. There were several occasions which were the subject of reports

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1 made to the African Union headquarters where we believed there had been a
2 deliberate breach of the ceasefire agreement.

3 Q. [11:51:55] And could you assist their Honours in terms of giving us a flavour of
4 the nature of some of these ceasefire violations that you observed?

5 PRESIDING JUDGE KORNER: [11:52:08] Can we just establish again what year it is?
6 You may have asked, but I can't see it on the live note.

7 MR EDWARDS: [11:52:17]

8 Q. [11:52:17] Colonel Markey, was it between July 2004 and July 2005 you were in
9 Darfur?

10 A. [11:52:21] That is correct, sir.

11 Q. [11:52:28] Would you like me to ask the question again?

12 A. [11:52:30] If you don't mind, sir, yes.

13 Q. [11:52:32] Just give us a flavour, if you would, of the nature of some of these
14 ceasefire violations that you encountered?

15 A. [11:52:40] Usually the ceasefire violations took the form of burning and
16 destruction of a village or town infrastructure. In many cases, there were several
17 killings, and in all cases it seemed to be quite, in my opinion, systematic. Usually the
18 well would be the -- the village well in the case of villages would be drove in, that is
19 to say made unusable; any public food capabilities of storage would be broken; and
20 any public buildings, such as a mosque, or any other village communal facility would
21 normally be destroyed by having its walls broken down and its roof perhaps burned.
22 And then there was wanton destruction around the village, usually centred on
23 dwellings.
24 There was -- any cattle paddocks or enclosures, or camel enclosures were usually
25 destroyed as well. So it was quite, what I would call, organised and systematic.

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1 Q. [11:54:05] When you and your military observer colleagues intended to visit a
2 given site, were these visits announced or unannounced?

3 A. [11:54:16] For security reasons, they were always announced. I was very
4 insistent on this because in my mind it was too dangerous to intrude on an attack for
5 fear that we would become the targets, either deliberately or as a consequence of
6 crossfire.

7 Q. [11:54:39] And then on your arrival -- following a report, you would arrive at a
8 scene and then what would you then do? What kind of investigations would you
9 carry out or attempt to carry out?

10 A. [11:54:51] The first protocol we would adopt would be to attempt to identify
11 whoever was in charge in the village or in the location, whether that be a local tribal
12 leader or some other official. We would then try and talk to them and ask them for
13 an account of what had happened here. This was often difficult, because the times
14 were often ambiguous and centred around activities rather than a calendar; for
15 example, the day before the market in Um Taguk. So we would try and put a timing
16 on it. Then we would take an account of what had happened, and always then we
17 would go on a walk-around, an inspection, of the location.

18 Q. [11:55:52] In practice, how easy was it always to establish the truth of what you
19 were investigating?

20 A. [11:56:04] I would say extremely difficult, because sometimes the story you
21 heard did not match the evidence you saw. This is particularly the case with respect
22 to numbers. The numbers were always inaccurate, particularly when it came to
23 describing the amount of the attackers, and were usually given in rounded figures
24 such as 14, 40 or 400. Strangely, those numbers were frequently used.

25 Q. [11:56:41] So I just want to try and understand. When you were seeking to

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1 establish how many attackers had been involved in a given attack on a village, it was
2 not -- these numbers that you give of 14, 40 or 400, are the numbers that were often
3 given to you?

4 A. [11:57:06] Usually, sir, yes.

5 Q. [11:57:07] And were you able to account for why this phenomenon occurred?

6 A. [11:57:16] I think perhaps it was a cultural interpretation. You would describe
7 a small attack as having 14 horsemen, a medium-sized attack as having 40, and a
8 large organised attack as having 400, rather than the -- sorry, it was a means of
9 description of an attack rather than an accurate reflection of the numbers.

10 Q. [11:57:40] Did you ever attend at the scene of an attack where the number of
11 attackers were described as, say, 400, and come to your own conclusion about likely
12 how many attackers there had been?

13 A. [11:58:01] I cannot say for definite about 400, but certainly I came into many
14 scenes where it was described as having been attacked by 40, and this would be a
15 number given which, in my mind, described an attack by a medium group of
16 perpetrators.

17 Q. [11:58:29] Yes. Were you ever able to account for why it was or why it may
18 have been that these numbers of 14 or 40 or 400 were being given to you in different
19 locations? In terms of your investigations in different villages throughout your time
20 that you were in Darfur, why were these numbers specifically, do you know, being
21 given to you as estimates for the number of attacks?

22 A. [11:59:17] My own personal opinion, in many cases the attacks were described
23 according to the victim's perception, and in many cases this was influenced by one of
24 the representative groups. Some African villages -- and I qualify, I use the term
25 "African" to its generic -- rather, African or Arab without any particular scientific

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1 assessment. In some cases, if an African village alleged that they had been attacked
2 by a large government-led or a government-organised force, they would use the
3 number 400 to suggest that there were large numbers involved.

4 Q. [12:00:16] Now, just to pick up on the word you used a moment ago, that
5 accounts were given and may have been influenced by one of the representative
6 groups, can you just expand on that, on the role of any of the groups in influencing
7 the accounts of villagers?

8 A. [12:00:44] I must say that every patrol that we went on had representatives from
9 the different factions, shall we say. For example, there was always a rep from the
10 Government of Sudan, a uniformed professional officer. There was also a
11 representative from JEM, which was one of the rebel groups known as justice and
12 equality mission -- movement, I beg your pardon. There was also a representative
13 from the Sudanese People's Liberation Army, SPLA, and there was also a
14 representative from the Chadian government who had observer status. These were
15 all military personnel or rebels in military uniform. There was also members of the
16 AU and then usually me, as being the EU observer.

17 The different representatives in many cases had an agenda. The GoS, for example,
18 would - or Government of Sudan - always were protective and argued that this was
19 not the work of Sudanese armed forces, or government forces, at which stage one of
20 the other rebel groups, for example JEM, would say -- would disagree and say it was.
21 Similarly speaking, there was often disagreement between different -- the different
22 rebel groups as to who was responsible, because everybody wanted to gain as much
23 sympathy and support as possible, and sometimes these attacks were used to
24 promote that agenda.

25 It was very obvious at times that a particular village had a particular loyalty. It

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1 might be loyal to JEM, for example, and JEM would use any destruction in that village
2 to further argue their case that they were being attacked by GoS or Janjaweed or some
3 other militia force. But certainly every village had a particular indigenous loyalty, if
4 this is a way of describing it.

5 Q. [12:03:44] Now, I want to come back to your use of the word "influence".

6 PRESIDING JUDGE KORNER: [12:03:49] Sorry, Mr Edwards, if you're going to
7 move on from that. Colonel Markey, how were you able to establish whether a
8 village was loyal to JEM or loyal to the Government of Sudan or to the rebels?

9 THE WITNESS: [12:04:02] Usually through the interpreters or through local
10 knowledge. They would say, for example, "This is a Masalit village. This village
11 has connections with the SPLA", or "This is a village that is mainly Arab and it is a
12 Government of Sudan", or "This is a hybrid village", which many were. So usually,
13 your Honour, it was a question of local knowledge and questioning of the inhabitants
14 through the interpreters or through the different representatives that we had on
15 patrol.

16 PRESIDING JUDGE KORNER: [12:04:50] Thank you.

17 MR EDWARDS: [12:04:54]

18 Q. [12:04:54] Yes, so, I just want to come back to your use of the word "influence"
19 from a moment ago, and you've explained how one group or another may have a
20 particular agenda. Can you link that thought with the concept of influence that was
21 brought to bear on those who described to you what had happened at a given village?
22 Let's talk in generalities before moving into one or two specific examples, all right.

23 A. [12:05:38] For example, at camp, we would be told that the next day we would
24 go to examine an alleged atrocity, burning of a village, rape, murder, and that this
25 was an allegation that came through the SPLA or the NMRD or one of the other actors.

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1 We would then go out to examine that, to see whether the damage and destruction
2 caused was consistent with the allegations made.

3 I was always mindful of the fact that in some cases there may have been an attempt to
4 mislead the investigation team into writing a report which would allocate blame to a
5 particular body against another. This was an extremely territorial dispute and it
6 was -- it was quite obvious that not alone was it on a national but also on a local scale.
7 So, for example, on one occasion, I noticed behind a hut which had been burned that
8 there were implements that would have suggested that this had been deliberately
9 burned. I refer to that in my statement. I'm not sure which paragraph.

10 PRESIDING JUDGE KORNER: [12:07:27] Sorry, I thought that was the whole point,
11 colonel. Of course it had been deliberately burned, that's what they were doing?

12 THE WITNESS: [12:07:34] Yes, sorry, to clarify that, deliberately burned by one of
13 the parties making the allegation that there had been an attack. They were
14 attempting to mislead us, and I -- while I had no forensic proof, on one occasion I
15 believed that it was one of the factions that had burned their own village in order to
16 better argue their case, while blaming the GoS or the Janjaweed.

17 MR EDWARDS: [12:08:04]

18 Q. [12:08:05] Now, Colonel Markey, I'm not going to ask you to look at it, lest I be
19 accused of leading you, but just for your Honours' purposes, paragraph 39 of his 2006
20 statement.

21 So I'm just going to ask you to give a little bit more detail on that one incident. I'm
22 just trying to find exactly what it was you said -- noticing behind a hut, implements
23 that suggested this had been deliberately burned. Can you expand on that? What
24 was the implement that suggested that they had been deliberately burning and what
25 was it about this implement that made you think that all was not as it appeared at

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1 first blush?

2 A. [12:09:02] I thought, firstly, the implements were the standard hoes that they use
3 there -- H-O-E-S -- and agricultural-type implements. For me, in some cases there
4 was an attempt to demonstrate an attack which would have been a little bit too
5 organised. It was like a crime scene that was too perfect. There was not the chaos
6 consistent with what you might expect; the buildings were burned in a particular
7 manner which would suit a certain formula. A couple of huts burned, as I
8 mentioned, the well drove in, the communal food storage broken, and some random
9 burnings around. And I -- in this case, as far as I was concerned, this had been
10 carried out for the benefit of our patrol.

11 Q. [12:10:20] But, again, I just want to be very, very clear. What conclusion did
12 you arrive at on seeing this hoe and what use it had been put to in -- in terms of what
13 you were able to see with your own eyes? What do you think this hoe had been
14 used for?

15 A. [12:10:46] It was used to ensure the fire was controlled, used normally to draw
16 lines or to create firebreaks, I think, in certain areas in order to ensure that the fire did
17 not spread.

18 Q. [12:11:00] Okay.

19 A. [12:11:01] If I may say, we must remember that it was very dry and the huts
20 were made of grass roofs, so it could very easily get out of control.

21 Q. [12:11:11] And apart from the hoe on this occasion, did you see evidence of a
22 firebreak having been dug?

23 A. [12:11:17] Yes, I clearly remember. That is how I found the hoe because I saw a
24 firebreak and I followed it to where the implements were.

25 Q. [12:11:28] And do you remember on this occasion whether this was a village

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1 that could be described as a village populated by sympathisers of the Government of
2 Sudan, on the one hand, or a village that was considered to be sympathetic of one or
3 other of the rebels?

4 A. [12:11:48] In the second case -- this was definitely a village that was considered
5 sympathetic to one of the rebel groups. To the best of my knowledge, it was the
6 SPLA, the Sudanese People's Liberation Army, yes.

7 MR NICHOLLS: [12:12:12] Sorry, your Honour. Sorry. If we could just have
8 some idea just -- if we could know when and where this was?

9 MR EDWARDS: [12:12:19] Yes.

10 Q. [12:12:22] Do you have any independent recollection today of where the village
11 that we are talking about, the firebreak village, where that was and when you carried
12 out this investigation?

13 A. [12:12:42] I believe that I elaborated on this in my 2006 statement, which I have
14 in front of me but which I'm not looking at, because when I made that statement it
15 was almost contemporaneous in that I had returned from the mission area within the
16 last -- within 12 months of making it. I cannot remember the name of it now, I'm
17 sorry to say, without looking at that statement.

18 Q. [12:13:14] All right.

19 PRESIDING JUDGE KORNER: [12:13:15] Well, I mean -- I thought you said the
20 Defence statement, but do you mean the Prosecution one, which is much closer to the
21 time?

22 THE WITNESS: [12:13:23] Yes, ma'am, the one that was made in 2006.

23 PRESIDING JUDGE KORNER: [12:13:25] and you say that -- I mean, Mr Edwards
24 referred us to paragraph 39, but you don't mention either the name or when this was
25 in that paragraph. But you think somewhere else?

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1 THE WITNESS: [12:13:40] I --

2 MR EDWARDS: [12:13:42] Perhaps the witness could look at paragraph 39 rather
3 than dance around the issue.

4 PRESIDING JUDGE KORNER: [12:13:48] Yes.

5 MR EDWARDS: [12:13:48]

6 Q. [12:13:49] Just have a look at paragraph 39 of that first statement, sir. And,
7 again, I don't want to take up too much time. I appreciate my learned friend's
8 question, but I don't suggest that there's any detail in paragraph 39 that indicates
9 contemporaneously the name of the village or the date of the incident.

10 THE WITNESS: [12:14:20] I see it here, sir, paragraph 39. I'm reading it to myself
11 now.

12 Yes, I've refreshed.

13 PRESIDING JUDGE KORNER: [12:14:38] There's no diary entry, Mr Edwards, that
14 deals with this?

15 MR EDWARDS: [12:14:41] No.

16 PRESIDING JUDGE KORNER: [12:14:42] All right. So it's got to be sometime
17 between 2004 and 2005, that's the best you can do?

18 THE WITNESS: [12:14:47] I'm sorry, that's the best I can do.

19 PRESIDING JUDGE KORNER: [12:14:49] All right.

20 MR EDWARDS: [12:14:50] And, your Honour, seeing as you've raised it now, the
21 diary, only starts at the beginning of 2005, so from July until December of 2004. We
22 don't have the same sort of contemporaneous account as we do from January 2005
23 until July 2005.

24 Q. [12:15:16] Let's have a look at a photo that you took, please, Colonel Markey.
25 Could we please have up the image at tab 6, DAR-OTP-0109-1332.

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1 Do you see that on the screen?

2 A. [12:15:35] I see it on the screen, yes.

3 Q. [12:15:36] Is this photograph representative of the scenes of burning of villages
4 that you encountered from time to time in Darfur?

5 A. [12:15:46] Yes. This is consistent with what I found, and I remember this
6 village, actually, because it was very near the Chadian border. If you see to your
7 front, you can see the pots have been deliberately broken.

8 Q. [12:16:02] Colonel Markey, can I just pause you for one moment.

9 MR EDWARDS: [12:16:05] I'm sorry, your Honour, I didn't --

10 PRESIDING JUDGE KORNER: [12:16:09] (Microphone not activated) No, I just
11 asked -- sorry, now I'm doing it.

12 I was just asking whether this photograph could be shown publicly?

13 MR EDWARDS: [12:16:15] Yes, it can. Yes.

14 PRESIDING JUDGE KORNER: [12:16:17] So we'll take it that all photographs, unless
15 there's some reason where it can't be --

16 MR EDWARDS: [12:16:23] Yes.

17 Q. [12:16:36] Forgive me, colonel, I interrupted you as you said that you can see
18 pots that have been deliberately broken.

19 A. [12:16:43] Mm-hmm.

20 Q. [12:16:44] Can I just invite you to continue with your thoughts on this
21 photograph.

22 A. [12:16:49] To my knowledge, these were the food-reserve pots where the
23 villagers kept either their food reserve or seeds to plant for the next season, and their
24 destruction meant that the village was less tenable and less inviting for returnees than
25 otherwise would be.

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1 And you can see that it was burned in a very deliberate manner, and this would have
2 been one example of what I would have called an organised and systematic
3 destruction of a village in order to ensure that the inhabitants were not inclined to
4 return.

5 Q. [12:17:37] Yes, thank you.

6 PRESIDING JUDGE KORNER: [12:17:41] Just so we all understand this, you said it
7 was an organised and systematic destruction of a village. It's not one, therefore,
8 you're suggesting where the villagers did it themselves in order to get sympathy, or
9 whatever; you're saying this was a proper raid?

10 THE WITNESS: [12:18:01] No, ma'am, this was not, in my opinion, done by the
11 villagers, and one of the things which I always noticed is that I did not see bodies or
12 remains consistent with a large, unexpected attack. I did see a lot of destruction, but
13 I did not see a lot of graves.

14 PRESIDING JUDGE KORNER: [12:18:24] Well, now you've -- I'm afraid, colonel,
15 you've confused me again.

16 Is it your suggestion -- was this village an Arab village or an African village?

17 THE WITNESS: [12:18:35] To my best recollection, this was an African village.

18 PRESIDING JUDGE KORNER: [12:18:38] Right. Is it -- are you saying that, in your
19 view, when you went to investigate, this had been committed by opponents, if you
20 like, or those who were anti-the villagers, as opposed to the villagers themselves, or
21 whatever group they were aligned with doing this?

22 THE WITNESS: [12:18:59] In this case - and I asked about it - this was done by
23 people who did not want the villagers who were African to return to that scene.

24 PRESIDING JUDGE KORNER: [12:19:11] Right.

25 MR EDWARDS: [12:19:12] Thank you.

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1 Q. [12:19:15] Now, you -- thank you. You gave us the example of one visit which
2 you concluded in your own mind was fabricated, at least in part. Can I ask you to
3 give an assessment of whether that -- whether your visit of that village -- whether
4 conclusions that an attack had been fabricated, or at least exaggerated, was that rare
5 and isolated, would you say? Did that happen just once or twice in the course of
6 your deployment or was it a more regular occurrence?

7 A. [12:20:08] I believe this to have been rare, because we made such commentary
8 about it that anybody attempting this again would have been less inclined to do so.

9 Q. [12:20:22] Yes. Thank you.
10 The Court has already heard evidence about rebel groups, such as the JEM and the
11 SLM/A. I know you wanted to refer to another group. This is at paragraph 34 of
12 your OTP statement with the initials NMRD. Is there anything you'd like to tell the
13 Court about this group?

14 A. [12:21:12] Yes. The NMRD were the national movement for reconstruction and
15 development. They operated in the Jebel Marra mountains to the north of
16 Al Geneina. They were allegedly a breakaway from JEM, that is the Justice and
17 Equality Movement.

18 They were -- we went to visit them because there were complaints from local villagers
19 that these NMRD individuals were harassing them and stealing their cattle and
20 raping their women.

21 I noticed when we went up to visit them, firstly, the visit was announced. They did
22 threaten to shoot down our helicopter, but we ignored it. They were heavily armed.
23 Their weaponry was well maintained, light infantry-type machine guns -- that is,
24 guns that are normally mounted on the back of trucks or cars or, in this case,
25 pick-ups.

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1 They had a definite chain of command and were very insistent that they were to be
2 players in any peace settlement or peace agreement, and they were on good terms
3 with both the Chadian representative on the patrol and with the JEM representative.
4 I went to visit their commander, who had been shot in the leg, and I advised him that
5 he needed medical help or he would die, and I was quite impressed with their
6 weaponry and with their sense of organisation and resolve.
7 I took several photos of that group. They are among the photos that I submitted.
8 But they were a very definite participant in the conflict.

9 Q. [12:23:42] Yes, thank you. Colonel, I now want to have a look at one or two of
10 your entries in the diary that we have heard about. Could you turn to tab 4 of the
11 bundle.

12 MR EDWARDS: [12:24:01] And this is the exhibit, your Honours, with the reference
13 DAR-OTP-0109-0183.

14 Q. [12:24:06] Now, colonel, it happens that the Prosecution have been able to find
15 the original of your diary, and if you want, rather than try to decipher some of your
16 entries from a black and white PDF, with my learned friend's assistance and
17 agreement, you may find it easier to actually look at the original, but let's see how we
18 go.

19 Let's start, please -- actually, yes, rather than break things off halfway through, I
20 wonder if my learned friend could just arrange for the original to be passed to the
21 witness.

22 PRESIDING JUDGE KORNER: [12:25:03] Have you got this, Mr Nicholls?

23 MR NICHOLLS: [12:25:05] (Microphone not activated).

24 MR EDWARDS: [12:25:10] If the court officer would be good enough to --

25 MR NICHOLLS: [12:25:25] (Microphone not activated).

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- 1 MR EDWARDS: [12:25:26] Thank you. I'm grateful.
- 2 THE WITNESS: [12:25:52] Thank you.
- 3 MR EDWARDS: [12:25:53]
- 4 Q. [12:25:53] It must be a bit of a blast from the past, seeing that.
- 5 Can you turn to the entry for Thursday, 24 February 2005.
- 6 MR EDWARDS: [12:26:02] Your Honours, it's ERN ending 0192, it's at PDF --
- 7 THE WITNESS: [12:26:12] Yes, I see that entry.
- 8 PRESIDING JUDGE KORNER: [12:26:27] Did you ever think of being a doctor?
- 9 THE WITNESS: [12:26:33] May I explain these diaries? These were the only thing I
- 10 had to record what was happening in a very fluid and difficult environment to work
- 11 in, and, in many cases, I just wrote as best I could remember, as contemporaneously
- 12 as possible. I had not intended them to be used for a situation such as this. They
- 13 were more prompt notes for me.
- 14 MR EDWARDS: [12:27:13]
- 15 Q. [12:27:13] And would you -- were these entries made at the scene of your
- 16 investigations, or a little later on?
- 17 A. [12:27:18] May I refer to these?
- 18 Q. [12:27:20] Yes.
- 19 A. [12:27:20] These were made always at the scene, because I had it in my pocket.
- 20 Q. [12:27:25] You're holding your military logbook notes there.
- 21 A. [12:27:29] My military police notebooks.
- 22 Q. [12:27:30] Yes.
- 23 A. [12:27:31] Traditionally, all military police officers the world over keep them in
- 24 their top-left pocket for some reason or other. It's a force of habit.
- 25 Q. [12:27:39] Yes.

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1 A. [12:27:40] This one could be made when I returned back to camp that night, after
2 an 11 or 12-hour patrol, at which I was the driver, so I was usually quite tired and I
3 just scrawled down what I could remember --

4 Q. [12:27:55] Right.

5 A. [12:27:56] -- in difficult handwriting, I admit.

6 MR EDWARDS: [12:28:01] Your Honours, out of an abundance of caution, because
7 there are certain names of interlocutors that are noted on this page, it probably ought
8 not to be publicly broadcast.

9 PRESIDING JUDGE KORNER: [12:28:14] Well, we've got a page up as you asked,
10 for 24 February. Are there names there that --

11 MR EDWARDS: [12:28:22] Yes, there are.

12 PRESIDING JUDGE KORNER: [12:28:24] I see, all right.

13 MR EDWARDS: [12:28:25] And it might be of assistance to cross-reference the
14 clarifications document.

15 PRESIDING JUDGE KORNER: [12:28:30] Yes, I have got that open. I can see --

16 MR EDWARDS: [12:28:32] You have that open --

17 PRESIDING JUDGE KORNER: [12:28:33] Yes.

18 MR EDWARDS: [12:28:34] Yes, thank you. All right. There are a couple of names
19 of individuals.

20 PRESIDING JUDGE KORNER: [12:28:40] All right. Well, we'll have that not be
21 shown publicly.

22 MR EDWARDS: [12:28:44] Not that any member of the public would be able to read
23 it, I suspect.

24 Q. [12:28:52] Yes, I wanted to focus -- well, by 24 February 2005, you were over
25 halfway through your tour, weren't you?

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1 A. [12:29:06] Yes, sir.

2 Q. [12:29:09] And how would you describe, do you think, the sense of what was
3 going -- your sense of what was going on in Darfur at that halfway point of your tour,
4 as compared to, for example, journalists that may be floating around?

5 A. [12:29:28] At that point, I had been six months in the field and had spent a lot of
6 time patrolling in different areas where there was little access to other outsiders other
7 than ourselves, the African Union.

8 It was my understanding that this was a conflict at several different levels. There
9 was no doubt that the Government of Sudan forces were behind a lot of the raids and
10 attacks either themselves or through other personnel that they had armed and
11 mobilised.

12 At a second level, there were a lot of other players in the field, either representing the
13 rebel groups or - and this is important - different tribal militias, loosely organised
14 with the goal of clearing land or taking land from one group for themselves, which
15 would mean to drive out the resident population.

16 And then, most dangerously, arguably, there was a lot of brigandry, or robbery,
17 carried out by what became known as Janjaweed. These were young men on horses
18 and camels, and extremely dangerous. They operated in small mobile groups and
19 they had considerable local knowledge.

20 And, finally, there was activity from another -- from across the border in Chad, either
21 where Chadian forces came across the border to retaliate for raids that had been
22 carried out by militias or armed elements emanating from Darfur. Sorry, I forget to
23 mention there was another more ominous factor: We did come across a camp of
24 rebels -- of armed men, sorry, whom I was told were there at the behest of the
25 Sudanese government and they were antagonistic to the Chadian government just

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1 across the border. So there were many different players in the operational area.

2 Q. [12:32:20] Thank you. On one of the lines, about seven lines down, on
3 24 February, I see this entry, "PDF called Fursan". First of all, by looking at this entry
4 in your diary globally, and without giving any names, can you give us an indication
5 of where that information came from, or where you think that information came from,
6 that the PDF were called the Fursan?

7 A. [12:32:56] Looking at the top left of the diary, the second line down, I see this
8 referred to, a visit to For Baranga. And at For Baranga, I would have listed this
9 information, that the PDF were called Fursan which, to my best recollection, was a
10 description of men on horses in an organised, military fashion.

11 Q. [12:33:26] And this may sound like a strange question, but what was your
12 understanding of which side of the conflict the Fursan aligned with?

13 A. [12:33:39] Very definitely Government of Sudan, sir.

14 Q. [12:33:48] You mentioned Janjaweed a few moments ago. If we see the very
15 last line of that entry, 24 February, "Gov" - government - "opening new recruitments
16 of 'Janjaweed'". Then I suspect it's a continuation of that entry, but it's on
17 25 February, "New PDF recruitment 'symbol of yellow horse'".

18 Do you have a recollection today of what you meant by referring to "New PDF
19 recruitment 'symbol of yellow horse'"?

20 A. [12:34:22] Yes. At all times, I was trying to understand the structure of the
21 different groups and who their reporting responsibility was towards. If I may refer
22 to the symbol of the yellow horse, this was often a symbol that was reported by
23 witnesses to have been on the uniforms of the PDF raiders who came to the village. I
24 saw it myself on uniforms from time to time. It was a small yellow horse on the top
25 left or top right, I cannot remember, of their uniform. And this, to me, symbolised

1 that there was some structure or organisation to this group or body.

2 If I may refer to the new recruitment of Janjaweed. As far as I could see, the
3 Janjaweed was used to describe these loosely associated often nomadic and usually
4 very violent young men who were brought together, armed and equipped, and put
5 under some sort of military or government authority either as an add-on to the
6 Fursan part of them, or with some association.

7 Q. [12:36:01] Thank you. Can we jump forward, please, to the entry at PDF
8 page 24, its ERN ending in 0206, for Sunday, 17 April 2005. Again, you may be able
9 to read the version in the original diary better, colonel.

10 Can we just scroll down to the 17th. Yes, there we are -- a bit further, please. Let's
11 have the whole of the entry for Sunday, the 17th, on the screen, please. Thank you.

12 MR EDWARDS: [12:36:55] I think, your Honours, that this is -- I'm just going to
13 double check. This can be publicly broadcast, please.

14 Q. [12:37:23] Where was Um Taguk, colonel?

15 A. [12:37:33] To my best recollection, Um Taguk was in the south-east of our sector,
16 near the Chadian border and within what I have written as the Masalit Dar or Masalit
17 homeland. It was a Masalit area.

18 Q. [12:38:00] Now, we have got a point numbered 1, "Police Compound 38". If
19 you look at the original diary, are you able to give us any indication of whether that is
20 in fact what you have written. Is that "police compound", or what have you written?

21 A. [12:38:29] I think -- no, I can say, it is "police corporal" and 38 would be the age
22 he described himself as.

23 Q. [12:38:36] Okay.

24 A. [12:38:38] If I may explain that entry --

25 Q. [12:38:40] Yes.

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1 A. [12:38:41] -- these were the local police force usually, but not always, African
2 drawn from the same Dar, Masalit in this case, who were there as the representatives
3 of local authority. They were the village policemen, as such, and they consistently
4 said that they had no facilities, that they had no transport - I see written here - and in
5 many cases that they were in control and the sector was calm. So I have there,
6 "Police corporal 38", "Sector calm, "No transport".

7 Q. [12:39:24] Sector calm, I see, okay. That's the advantage of having the original
8 up. And then there are a number of points down to point 9, I think. Are you able
9 to give us an indication of where the information contained in these entries came
10 from?

11 A. [12:39:43] This information would be as a direct consequence of our visit to
12 Um Taguk. I suspect I wrote this deliberately -- sorry, I wrote this
13 contemporaneously with the patrol, and what I am referring to here is the police are
14 saying that the village -- the sector is calm, but that there is PDF activity, they are
15 known as the Mujahidin, or nomads, the nomads are all in the people's defence force
16 who are responsible- and I'm not sure if I can mention the name there. I see a name,
17 point 4.

18 Q. [12:40:40] One second. Yes, it says "Tina Arab Leader". What was Tina?

19 A. [12:40:45] Well, it says "PDF responsible to Agid", and "Tina Arab Leader", I
20 suspect -- sorry, that is traditional Arab leader. Excuse me again.

21 Q. [12:41:00] Tina is the name of a town or a village; is that right?

22 A. [12:41:04] Well, it could be that I was making the point that the PDF -- they are
23 reporting to Agid who is a traditional tribal leader, possibly of a local -- Agid suggests
24 it was of the local Arab population.

25 Q. [12:41:20] Thank you.

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1 A. [12:41:24] Shall I continue?

2 Q. [12:41:27] I just want to come back to your use of the word "Mujahidin". What
3 did you understand, or did you ever receive any information that informed you about
4 the difference between, if any, Mujahidin and the Janjaweed?

5 A. [12:41:50] These terms would have been used very loosely, depending on who
6 gave evidence -- or who spoke them. Mujahidin would be used by African tribes or
7 people, villagers, to describe nomads, armed nomads, and you can see in brackets
8 after I have queried this and I have written "nomads", because they were influenced,
9 in my opinion, by an allegation that, if I can mention the name - he is deceased - that
10 Osama bin Laden had been operating in Al Geneina in a previous period, and so in
11 many cases they would have used the word "Mujahidin". Either they had picked up
12 this as a consequence of reading or listening to descriptions of bin Laden and his
13 associates or because of the influence of the conflict in Afghanistan. But I took it to
14 mean armed nomadic Arabs.

15 Q. [12:43:13] Okay. I'm just going to pick up on the Afghanistan conflict. Did
16 you ever come across the term Tora Bora?

17 A. [12:43:23] Yes, sir. I must explain that I served in Afghanistan in 2014 in Kabul,
18 so I have a reasonable knowledge of the ground there and I understand Tora Bora to
19 mean a mountainous range in Afghanistan, yes.

20 Q. [12:43:40] And did you ever come across the term Tora Bora in any context
21 during your time in Darfur?

22 A. [12:43:49] Not to my knowledge or recollection, but not infrequently the term
23 "Mujahidin" would be used by local villagers, African villagers, or in some cases used
24 around Al Geneina, because this is allegedly where Osama bin Laden based himself
25 in, I think, the late 90s.

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1 Q. [12:44:24] Thank you. I just wanted to continue -- by looking at this entry for
2 17 April, I was just continuing the exploration of the term "PDF". But let's now go
3 back to 26 March, please, DAR-OTP --

4 MR NICHOLLS: [12:44:42] I am sorry to object, and no criticism whatsoever to the
5 witness, but what is the relevance of the peaceful situation, which is good, in
6 Um Taguk in April 2005 to this case?

7 PRESIDING JUDGE KORNER: [12:44:58] I have so say, Mr Edwards, I was
8 beginning to wonder, particularly as it is now a quarter to 1, what the relevance to the
9 issues is, in this case.

10 MR EDWARDS: [12:45:09] I accept that. Can I -- it's not something I would feel
11 entirely comfortable discussing in the presence of the witness. I have ended with it,
12 but to enlighten my learned friend and your Honours, I am very happy to explain
13 precisely why I've been asking these questions either just before we break for lunch or
14 at the -- when we resume.

15 PRESIDING JUDGE KORNER: [12:45:38] All right.

16 MR EDWARDS: [12:45:39] It's not without its relevance, and I will explain why.

17 PRESIDING JUDGE KORNER: [12:45:41] All right. Well, why don't you
18 complete -- can you complete your examination before the break?

19 MR EDWARDS: [12:45:47] Yes.

20 PRESIDING JUDGE KORNER: [12:45:48] Why don't you do that and then you can
21 explain to Mr Nicholls and myself and my colleagues.

22 MR EDWARDS: [12:45:54] Yes.

23 Q. [12:46:02] 26 March 2005, please, it is ERN ending 0200 and it's the 18th page of
24 the PDF. Colonel Markey, have you been able to bring up Saturday, 26 March?

25 A. [12:46:15] I have, sir, yes.

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1 Q. [12:46:16] All right. And you reference places -- two places, Mukjar and Bindisi.

2 Do you see that?

3 A. [12:46:26] Yes, I see that.

4 Q. [12:46:28] This can be -- actually, no, this should probably not be -- this should
5 probably not be broadcast.

6 Did you ever visit either Mukjar or Bindisi?

7 A. [12:46:42] Yes, I remember Mukjar, to the best of my recollection, as being a
8 sprawling town of some strategic significance and I have here the south-east, in the
9 south-east of the sector, which, to my knowledge, was mainly -- or to my recollection
10 was mainly Masalit.

11 Q. [12:47:06] Yes. Thank you. Now, at point 6, you refer to a name and the way
12 it's written in your notes is "Alaef Al Sima Gebril". Do you see that?

13 A. [12:47:24] Yes, sir.

14 Q. [12:47:25] At paragraph 23 of your OTP statement, the investigator, him or
15 perhaps herself, opines that this may be a reference, because it's in square brackets, to
16 someone called al-Dayf al-Samih Jibril. Any comment you have to make, sir, on
17 whether this is a transliteration of the name that in fact is al-Dayf al-Samih Jibril?

18 A. [12:48:14] I'm sorry, as far as I'm concerned, this was the best way I could
19 write - I don't know how you would describe it - a phonetic recording of a name that
20 was mentioned by the interlocutor at the time, and I have written after it "Janjaweed
21 chief".

22 If I may explain one thing, please. These notes were written in extremely difficult
23 circumstances, because usually they were part of an interview in a small, very hot hut,
24 and I would always be one of many and I took down what I could, but there was no
25 question of me asking for clarification of a name. It would be too dangerous.

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1 Q. [12:49:06] No, that's fine. That's fine. Well, talking about names, during your
2 time in Darfur, did you ever come across the name Ali Kushayb?

3 A. [12:49:17] I came across a name that sounded similar to it, but I'm not certain
4 that I recollect that name that you're mentioning.

5 Q. [12:49:29] Okay.

6 A. [12:49:36] It could be in my notes, but I would have to read them again.

7 Q. [12:49:40] Okay. And then the next page down, 28 March, there's a reference to
8 a place called Rahad al-Berdi. Do you see that? It's mentioned twice -- at the third
9 line and the fifth line.

10 A. [12:49:57] Yes, I see it on the third line and, yes, I see it on the fifth line, yes.

11 Q. [12:50:01] And is this a place that you ever visited or do you just refer to it
12 because you're told about what's going on there?

13 A. [12:50:10] I think the latter, that this was -- I have in the second line, "People
14 went to Bindisi (1 hr)/Chad".

15 This would refer to the fact that I would have been asking where were the people
16 from this particular location, where had they gone to, and the answer, I believe, was
17 in the second line, that people went to Bindisi, one hour away in Chad.

18 Q. [12:50:47] Did you ever hear or come across the name of a tribe called the
19 Ta'aisha?

20 A. [12:50:54] Yes, I believe I did, and I think that I have them noted in different
21 interviews. To my recollection, they possibly were an Arab tribe, but I cannot
22 confirm that.

23 Q. [12:51:09] Now, I'm just finishing off now, colonel.

24 Today represents the latest step on a journey that started for you some 20 years ago.

25 A. [12:51:36] Correct.

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1 Q. [12:51:37] You were initially a Prosecution witness?

2 A. [12:51:40] Correct, sir.

3 Q. [12:51:42] And you are now testifying at the request of the Defence. I ask this
4 question because I know that you are keen to tell their Honours what you have to say
5 about it, but just as I conclude my questions, would you like to say a few words about
6 your views of the work of this Court?

7 A. [12:52:00] Please, I would be honoured to do so.

8 PRESIDING JUDGE KORNER: [12:52:04] I think, Mr Edwards -- sorry, colonel, to
9 interrupt, but I think anything that he wants to say about it, he can say at the end of
10 the testimony. I don't think it's appropriate at this stage.

11 MR EDWARDS: [12:52:16] Very well. Well, you've heard that colonel, you'll have
12 an opportunity to say what you'd like to say.

13 PRESIDING JUDGE KORNER: [12:52:22] Yes.

14 MR EDWARDS: [12:52:23] Thank you, colonel. Please wait there, there may be
15 some more questions for you from the lawyer for the victims.

16 PRESIDING JUDGE KORNER: [12:52:30] Yes. Well, I think what we are going to
17 do -- first of all, Ms von Wistinghausen, do you have any questions for the witness?

18 MS VON WISTINGHAUSEN: [12:52:40] Yes, I do. I will need something like
19 20 minutes, half an hour.

20 PRESIDING JUDGE KORNER: [12:52:45] All right. Well, then, I think what we'll
21 do is we'll adjourn now but we are going to cut the luncheon adjournment a bit
22 shorter, because I want to make sure that the colonel finishes.

23 MR NICHOLLS: [12:52:55] I can just say that I had no questions. I have two
24 corrections, I think, to errors on -- possible errors on the transcript, but that is all, so I
25 will be very quick.

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1 PRESIDING JUDGE KORNER: [12:53:08] All right. In that case - well, I still think,
2 on balance, we'll cut it short slightly. You never know what's going to happen. So I
3 think we'll sit again at 2.15 to finish your evidence, because, as you heard, colonel,
4 you will be finished this afternoon.

5 Thank you very much.

6 So, if you'd like to leave Court with the court officer, but can I just give you a slight
7 warning which, if you have testified before you will know about, which is that over
8 the adjournment you mustn't discuss the evidence you're giving. Nor, I'm afraid,
9 can you talk to either of Defence counsel. I don't suppose that's going to be too great
10 a strain.

11 If you'd like to leave with the court officer, thank you.

12 THE WITNESS: [12:53:56] Thank you, your Honour.

13 (The witness exits the courtroom)

14 PRESIDING JUDGE KORNER: [12:54:24] Yes, Mr Edwards, you were going to
15 explain the relevance of this village in 2005, and so on, and so forth.

16 MR EDWARDS: [12:54:33] Yes. I'm not in the slightest bit interested in what
17 happened in that village, with respect, in 2005. The questions that your Honours
18 would have -- that your Honours would have noted I was asking about related to
19 what the witness understood to be the PDF, Janjaweed, Mujahidin, Fursan, and the
20 interchangeability of these terms or the relationship between these terms. I wasn't
21 asking about the peacefulness or otherwise of a village that has nothing to do with
22 this case, and that is of relevance to -- that's of relevance to what we, the Defence,
23 have described as the second element of our defence relating to the PDF essentially
24 being the same thing as the Janjaweed, essentially being the same thing as the Fursan,
25 essentially being the same thing as the Mujahidin, but specifically the PDF.

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1 This witness gave evidence of what he was being told at a time of great relevance to
2 these allegations against Mr Abd-Al-Rahman, give or take a few months, perhaps, but
3 nevertheless how -- he gives evidence of the relationship between the PDF and the
4 Janjaweed.

5 PRESIDING JUDGE KORNER: [12:56:19] Yes, all right. Well, you heard that,
6 Mr Nicholls. Thank you, Mr Edwards.

7 We'll sit again, please, as I say, at 2.15.

8 (Recess taken at 12.56 p.m.)

9 (Upon resuming in open session at 2.18 p.m.)

10 THE COURT USHER: [14:18:14] All rise.

11 Please be seated.

12 PRESIDING JUDGE KORNER: [14:18:33] Yes, you'd completed, hadn't you,

13 Mr Edwards. So Ms von Wistinghausen.

14 MR NICHOLLS: [14:18:54] Thank you, your Honour.

15 QUESTIONED BY MR NICHOLLS:

16 Q. [14:18:58] Colonel Markey, just a couple of questions, it'll be -- it'll be quite
17 quick.

18 PRESIDING JUDGE KORNER: [14:19:06] No. I was going to have

19 Ms von Wistinghausen asking. Have you changed your mind, have you, or you're
20 doing it in different order?

21 MS VON WISTINGHAUSEN: [14:19:14] I've always let Mr Nicholls go first and we
22 are not changing it for the Defence case.

23 PRESIDING JUDGE KORNER: [14:19:19] All right, never mind. All right. I don't
24 think it makes any difference.

25 Off you go, Mr Nicholls.

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1 MR NICHOLLS: [14:19:26] I don't think in this case it will make a difference.

2 Thank you.

3 Q. [14:19:30] At page 39, lines 18 to 19, my friend, Mr Edwards said to you:

4 "Was it between July 2004 and July 2005 you were in Darfur?" And, I just want to
5 break that down a little bit.

6 I'm looking at your first statement from 2006, paragraphs 8 to 10. But just if I get it
7 right, in July 2004, you first went to Khartoum; is that right?

8 A. [14:20:06] Sir, I only spent two days in Khartoum and then we deployed
9 immediately to Al Fasher, which was the AU headquarters. I was there for about
10 three weeks and then I went to Al Geneina.

11 Q. [14:20:20] Okay, and so what it says in your statement is that in August you
12 went to Al Fasher?

13 A. [14:20:26] Mm-hmm.

14 Q. [14:20:27] This is at paragraph 10, for about two weeks, and then you were
15 deployed to Al Geneina in September 2004.

16 A. [14:20:37] Either at the beginning of September or the last of August, yes.

17 Q. [14:20:40] Okay. And is that when you began the patrols?

18 A. [14:20:43] We started active duty from approximately the first week in
19 September 2004 until my departure in July 2005, yes.

20 Q. [14:20:55] Okay. That's very clear. Thank you.

21 And I had just one other, I think, slight correction to the transcript.

22 MR NICHOLLS: [14:20:57] Your Honours, this is at page 53, lines 19 to 21.

23 Q. [14:20:59] And here, sir, if you could look at your first statement, the statement
24 to the Office of the Prosecutor from 2006, at paragraph 34. Just tell me when you
25 have that.

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1 A. [14:21:40] I have paragraph 34, titled "Rebels", sir, yes.

2 Q. [14:21:48] Exactly. Thank you.

3 Now your answer at page 53, line 19 today, again about this rebel group the NRMD,
4 you stated they "were the national movement for reconstruction and development.
5 They operated in the Jebel Marra mountains [...]"

6 And I think you meant "Jebel Moon" because that is what you referred to in
7 paragraphs 34, 36 and 37 when you're talking about the NMRD area of operations.

8 A. [14:22:20] Yes, Jebel Moon. I was mistaken referring to it as Jebel Marra. Jebel
9 Moon was -- if I said it then, that was the correct name. It would be more
10 contemporary in my memory.

11 Q. [14:22:32] And as you said, that is north of Al Geneina?

12 A. [14:22:34] That is north of Al Geneina, yes.

13 Q. [14:22:37] Yes. That's all I have. Thank you very much for giving your
14 statement to my office in 2006 and for coming here today. I appreciate it and we
15 may be in touch again. Thank you.

16 Q. [14:22:50] My pleasure, sir. Thank you.

17 PRESIDING JUDGE KORNER: [14:22:53] Thank you, Mr Nicholls.

18 Yes, now Ms von Wistinghausen.

19 QUESTIONED BY MS VON WISTINGHAUSEN:

20 Q. [14:23:00] Yes, Colonel Markey, we briefly met this morning. My name is
21 Natalie von Wistinghausen. I, together with my team, we represent the participating
22 victims in this case.

23 And what we are most interested in is to have a look with you at some of the pictures
24 that you have taken.

25 A. [14:23:22] Mm-hmm.

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1 Q. [14:23:23] We don't have many contemporaneous pictures, so it's actually a little
2 treasure that you brought and really interesting for us.

3 But I will start to ask you a few questions about the sectors where you were based
4 and your deployments, just to give us a better idea of your location at the time.

5 So if I can ask the court officer, please, to display item 3 on our list of materials.

6 That's DAR-OTP-0109-0943, at page 3 of the document, which is 0945.

7 MS VON WISTINGHAUSEN: [14:24:03] We have, Madam President, consulted with
8 the Prosecution and the Defence, and there was no objection to any of these items to
9 be broadcast publicly.

10 Q. [14:24:28] So, Colonel Markey, you can see this map on the screen. This was
11 one of the items that you annexed to your statement that you gave to the Prosecution
12 in 2016 -- 2006, pardon.

13 Does this map, to the best of your recollection, reflect the locations and borders of the
14 various African Union mission operational sectors during the period of your
15 deployment specifically?

16 A. [14:24:59] It does to the best of my knowledge, but I have no way of verifying it.
17 I know I was in -- I now know or remember that I was in sector 3, Al Geneina. I can
18 see Al Fasher, sector 1, which was the headquarters. I visited Tina, which I think
19 you have down -- I can't see it. I think it's sector 2. And I visited Zalingei and
20 Nyala.

21 As far as I'm aware this reflects a reasonably accurate portrayal of the deployment of
22 the troops, or the sectors, in the African Union mission, yes.

23 Q. [14:25:35] Thank you.

24 And can we please display item 4 on our list. This is DAR-V47-00000241, please.

25 This is a map that we found.

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1 A. [14:25:57] Mm-hmm.

2 Q. [14:25:57] If you look at this map, the same question: Does it to the best of your
3 recollection today generally reflect the locations and borders of the AU operational
4 sectors --

5 A. [14:26:10] Yes.

6 Q. [14:26:10] -- during your deployment?

7 A. [14:26:12] To my -- from what I can see here, there is no inconsistency. It
8 generally reflects the borders of the operational deployments.

9 Q. [14:26:24] And, you mentioned already in your Prosecution statement at
10 paragraph 11 and also when you met the Defence in preparation of this hearing - this
11 is preparation log, paragraph 8 - that you were based in the African Union sector that
12 was headquartered in Al Geneina, and this was sector 3; correct?

13 A. [14:26:45] That is correct. There was some confusion on my part of the number
14 of the sector, but it was clarified and I've agreed it was sector 3, it is Al Geneina, and I
15 was based out of there for the best part of 10 to 11 months for my deployments, yes.

16 Q. [14:27:13] And, of course, you didn't always stay in your sectors; you moved
17 around, as you told us. And in your Prosecution statement at paragraph 11, you
18 mentioned that you at least occasionally deployed with your team outside of your
19 sector. And you mentioned at paragraph 23, a mission to the town of Mukjar on 26
20 March 2005. We spoke about it this morning already; is that correct?

21 A. [14:27:46] Yes, I -- I'm sorry I can't see where Mukjar is on this map.

22 Q. [14:27:52] Yes. I was going to guide you on this. It's in sector 7. Maybe we
23 can zoom it in a little bit.

24 A. [14:27:59] Yes. Yes, I see it.

25 May I say that the -- we had at our disposal both helicopters and cross-country

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1 vehicles, and while the borders were outlined, it was not absolutely strict that we
2 could not go into another sector. So I have little doubt that sector -- Mukjar, as you
3 have it here, was sector 7, and it must reflect where I was. But it would be hard for
4 me to be absolutely certain as to why we went there. We were probably deployed
5 there and there was no patrol available from sector -- whatever the sector is for that
6 area.

7 One thing I would emphasise -- actually, two things I would emphasise to understand
8 the situation there. There was virtually no road infrastructure. It was very difficult
9 to make any sort of cross-country -- any sort of travel, and in the wet season, most of
10 the roads were engulfed with water.

11 And, secondly, the communications network was virtually non-existent; so there was
12 a great deal of sometimes confusion as to what were the proper operational
13 boundaries, shall we say.

14 Q. [14:29:35] And if you look at sector 7, are there any other locations that sound
15 familiar to you where you may have been -- like Deleig, Garsila? I'm not suggesting
16 you have or -- and it's nothing you've mentioned to the Prosecution or to the Defence,
17 just if you see the names here, is it a possibility?

18 A. [14:30:01] I -- it is a possibility that we patrolled in those areas, yes.

19 The other occasions when I would have gone out of the sector was at my various
20 travel back to Al Fasher and then on to Khartoum on my leave, or for a conference.

21 And there was no certainty where you would land. You would take off from
22 Al Geneina and you may end up in Nyala and have to get yourself then to Al Fasher
23 or to Khartoum.

24 It's difficult for me to describe the uncertainty and the difficulties with which we were
25 faced when trying to make any personal or logistic movement in the whole

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1 operational area in Darfur.

2 Q. [14:30:56] You already said that you took the helicopter also because the roads
3 were very bad. Having seen the sector from the air, can you tell us if it's hilly, if
4 there are forests, if it's easy to move around, certainly not by car, but by foot, what
5 would it mean?

6 A. [14:31:22] Darfur -- I forget the comparison, but I think it's the size of France or
7 something of a similar. It's an enormous area. The topography is largely semi-arid.
8 I think they call it savanna-type desert.

9 There are some mountain masses such as Jebel Moon to the north and mountains in
10 the centre, which names I can't remember at the moment. There are a lot of what
11 they would call isolated patches of trees and rivers, and the road infrastructure is
12 difficult and certainly dangerous because of, if nothing else, banditry.

13 And there were a lot of very isolated communities who had very little communication
14 at times with anything outside the immediate 10 or 12-kilometre radius from their
15 village.

16 I was surprised always at how isolated it was and how far removed from Khartoum it
17 was as well, both socially and in many ways culturally as well.

18 People tended to identify with their village, with their tribe or with their local Dar
19 rather than anything else -- "Dar" meaning homeland.

20 Q. [14:33:05] I would like to take you now through some of the pictures I have
21 already mentioned.

22 A. [14:33:10] Sure.

23 Q. [14:33:11] And maybe for the court officer, first, if you could bring up item 5 on
24 our list, which is DAR-OTP-0109-0142.

25 And please go to the second page, so 0143.

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1 So before I show you the pictures, I want to know the dates and descriptions
2 provided to these items. They indicate that the photographs were taken at an IDP
3 camp just east of Al Geneina, sometime between September and December 2004.
4 And you also provide a comment in respect of the first photograph, which says, "IDP
5 camp in poor condition; without established UNHCR presence."

6 Do you agree that what is reflected in your explanation in respect of the two items is
7 what it also shows?

8 A. [14:34:26] Yes, I think I remember that picture. One of the things about these
9 photographs is when I came out of the operational area, I surrendered all -- gladly
10 surrendered all material to the ICC as quickly as I could and answered any questions
11 they had, knowing that in time my memory would fade and also being conscious that
12 there were not so many pictures from the area.

13 So I believe that anything that I wrote here, without being familiar with this actual
14 picture, would be fairly accurate.

15 Q. [14:35:04] Yes, so the pictures actually are item 6 and item 7 on the list, so first
16 item 6, DAR-OTP-0109-1421.

17 A. [14:35:23] Yes.

18 Q. [14:35:24] Yes. That's the first one. And the second one ends in 1422. It's
19 item 7.

20 A. [14:35:40] Yes.

21 Q. [14:35:41] Yes. So the -- I mean you've seen it with your own eyes so maybe
22 your best placed describe what the housing looked like?

23 A. [14:35:55] Okay. Well, I think housing is a rather ambitious description,
24 without being flippant about it.

25 I remember this photo well, because you'll see there's a lady there with an orange

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1 dress or an orange cape around her -- orange, sorry, shawl around her. You can see
2 on the bottom right-hand corner of the picture, and she's a child similarly. I
3 remember her well because I had given her some -- against our instructions I had
4 given her some money, some small money I had because I was so sympathetic to her
5 plight.

6 These camps -- camps were largely divided into two types. The first camps were
7 those that were managed by the NGOs, somewhat protected by the local government,
8 and very well-ordered and supported. You would see tents in straight lines, for
9 example, sanitation facilities to some degree and plenty of overhead covering or
10 materials.

11 On the other side of the coin, there were these camps which had grew up suddenly
12 outside main townlands as people from the villages, afraid for their lives, came
13 towards popular centres, believing that this is how they would be best protected.
14 But this is obviously during the rainy season, you can see from the ground. And
15 while I don't have any figures, I'm quite sure that the mortality -- child mortality was
16 shocking. You can see one or two pictures of children there. Generally speaking,
17 they're malnourished, very vulnerable to the great killer, which is diarrhoea. And
18 as you can see, they're anxiously looking towards me, presumably in the hope of
19 some sustenance or help.

20 These camps were difficult to -- to -- to comprehend or difficult to accept, I should say,
21 because the conditions were so appalling.

22 Additionally at night, militias of one description or other, or of one side or the other,
23 often came into the camps, seized some food, if you'll excuse me, raped a lot of
24 woman, and generally marauded through the camps at night. They were not safe
25 places by any means after dark, and, then, as you can see during the days, they were

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1 pretty -- pretty grim to say the least.

2 If I can -- the other thing I'd -- finally I would say is there was huge differences of
3 opinion as to whether the camps should be encouraged and supported, because some
4 felt, at strategic level, that this encouraged more migration of people from their
5 villages to these camps, or whether people should be convinced to go home and the
6 camps should remain unsupported.

7 So these people were really the victims of the politics of the time and of the region.

8 The only certainty is that a lot of people died, unfortunately.

9 Q. [14:39:22] There are a couple of more pictures I would like to show you. Item 8
10 on our list, which is DAR-OTP-0109-1291. And in your explanatory annex it is
11 entitled "El Geneina 10 May 015.jpg". And it is said to be taken an IDP camp in Sisi.
12 Do you remember that?

13 A. [14:40:02] Yes, I think I remember Sisi. I certainly -- this is an example of
14 a camp which is -- probably has sprung up or had developed around a village such as
15 Sisi. If I said it was Sisi at the time, that's where it is.

16 But you will notice that the conditions are slightly better. The children appear to be
17 better fed. There is -- it is not the wet season, which means it's easier to have a better
18 standard of living or of sanitation.

19 You can also see that it's more ordered. They have some huts. So I suspect this
20 comes from a particular movement where they were -- from the village, where they
21 were able to bring some of their matting materials and housing materials with them
22 and establish some sort of infrastructure.

23 You can see also at the bottom right corner -- sorry mid-right corner, there's a shop of
24 sorts there.

25 They were normally -- I think they're pink bags, in which they make bread and put

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1 them in those bags and just sold in the camps by local entrepreneurs.

2 So this is a camp, I suspect, which is established, has been there for a while, and the
3 conditions are better.

4 The other thing you will notice, and this is always of interest, is there are men in this
5 camp. In the previous picture I showed you, there were only women and children.

6 The men were not there either because they did not feel it safe to be there or because,
7 as we would often be told by one side or the other, that the men had gone off to fight
8 with the rebels.

9 So each camp told its own story and each camp was very -- it's conditions there were
10 very circumspect on the environment, the time of the year and as to whether and
11 what relationships they had with local rebel groups, and, finally, as to what extent
12 they were supported by the big agencies.

13 I don't see any visible signs of World Food Programme here or UNHRC, except for
14 the tarpaulins or the white plastic sheeting which was normally given out.

15 Everything else seems indigenous.

16 Q. [14:42:27] Maybe we can also have a brief look, please, to item 9 on our list, so
17 DAR-OTP-0109-1300.

18 That should be the same camp as before, Sisi, which is about one hour by car from
19 Al Geneina.

20 A. [14:42:53] Mm-hmm. If I could comment. One of the things an expert or an
21 anthropologist would probably be able to tell you very easily what tribe or
22 what -- what grouping they came from by the different types of straw matting and
23 perhaps by the pattern on the blanket, although not necessarily so, because different
24 tribes had different methodologies or different footprints that they had on their
25 craftwork.

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1 But you can see some differences. Here again, it's the dry season, so conditions are
2 a bit better. You can see more plastic. The blue plastic, in particular, I suspect
3 comes from either UNHRC or World Food Programme who'd give out these covering
4 plastic.

5 You can also see that it's reasonably well organised. There's no open sewerage on
6 the ground that we saw on the first picture. And I suspect again this is a camp that
7 has been there for a long time.

8 There's also some green in it, which means that there's some order, because
9 traditionally the first thing that is sacrificed are all the trees, as the locals -- as the
10 camp inhabitants are forced to cut them down for firewood.

11 So I would say this camp probably is quite well supervised and, as camps go, quite
12 a healthy place as much as I can say that.

13 Q. [14:44:26] And can we see item 10, please, which is DAR-OTP-0109-1304, which
14 should still be the same camp?

15 A. [14:44:45] I can't tell whether this is the same camp except for my notes. Again,
16 I think they were pretty accurate.

17 The other thing I'd say about my photos, I only -- as I mentioned to somebody, I only
18 bought the camera on my way into the zone. It was the first time that I ever had
19 a digital camera, so I can't say that I was in any way proficient or claimed to be
20 a professional photographer.

21 The other thing is that you had to be very careful in the camps taking photos, because
22 people objected on the basis that you were stealing their image, obviously, and,
23 secondly, on a security front because they were suspicious that their photos would
24 appear somewhere.

25 This camp is in much -- is in much worse order. You can see that there's an open

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1 sewer there at the front and centre. The brushwood is cast around, not terribly well
2 organised. There are some dwellings which have been built, suggesting they've been
3 there for a while, and some overhead cover, so -- and there are men there. So I
4 would say this is probably not so -- not so bad in terms of camps, certainly, again,
5 a lot better than the first two or three photos you showed me. But, again -- and to
6 estimate the size, the camps went from up to maybe 30 or 40,000 people in them, at
7 least on the Darfur side.

8 Q. [14:46:22] Yes, you had mentioned in your Prosecution statement and also in the
9 preparation meeting with my colleague, Mr Edwards, that the situation in the camps
10 were actually very different from one camp to another.

11 And you also speak about still another camp called Zamzam and you called it
12 a model camp.

13 If you can please bring up item 11 on our list, which is DAR-OTP-0109-1310.

14 Can you explain to us what you meant by a "tightly controlled 'model camp'", these
15 are your words?

16 A. [14:47:05] Yes. The camps were very political in the sense that there were some
17 camps that the Sudanese government were very anxious to show visitors, be they
18 high-level visitors or people wishing to -- for whatever reason, to see the camps.

19 And these camps -- this camp centres around Al Fasher. These camps were very
20 orderly. You can see that the tents all have plastic. They have some sort of roping,
21 I think, to tie them down. You would even find in some of these camps that there
22 were schools operating, run by one of the NGOs -- UNICEF, for example.

23 I see there in the background there are two toilets, you can see these small grey
24 rectangles, if you look at the centre of the -- yeah, yeah, perfect. Sorry.

25 You can see that there's these grey blocks, they look like. They're actually WATSAN,

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1 or water sanitation, which mean a very rudimentary toilet.

2 And you can see that the children are well dressed. There's no -- no open sewers
3 that I can see from here.

4 And these are the type of camps that would have been heavily supported by the
5 NGOs and guarded by the local police and GoS forces, because they did not want any
6 more trouble in the camps than -- than was necessary because they were potential
7 hazardous areas.

8 So I would call this -- that was my own description as "model camp", which all the
9 guests were shown, you can be -- or sorry, visitors were shown. You can be sure that
10 they weren't shown the pictures of the camps in the first two slides or the camps in
11 the first two slides, or at least I never saw anybody there.

12 And, finally, I would say these camps attracted a lot of aid, because -- UN, whatever.

13 I don't want to mention one agency in particular, but there were a lot of NGOs
14 around the main -- and international organisations which operated around the main
15 population centres such as Al Fasher, for example, to a lesser extent, Al Geneina, and,
16 for security reasons, oftentimes they were not able to leave these populations
17 centres -- the NGOs or the international organisations. So they tendered to plough
18 much of their resources into the camps where they could do so.

19 And the access to these camps was often tightly controlled by the respective agencies
20 and by the GoS, who were keen to know who were -- who were in the camps, which
21 sometimes discouraged people from going in there.

22 Q. [14:50:06] This picture, according to your notes, has been taken between
23 September and December 2004? Is that possible?

24 A. [14:50:16] Yes, because I think this is outside Al Fasher. When I arrived to
25 Al Fasher for the first three or four weeks, as I earlier described to a colleague from

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1 the Prosecution, I was based in or around Al Fasher, and my earlier patrols
2 were -- excuse me, in that area. And to my best recollection, this was just outside
3 Al Fasher, which by its nature or by calendar would mean that it was in late
4 September, early October -- early October at the latest because, as I said, at that stage I
5 was deployed to Al Geneina.

6 Q. [14:50:58] And would you be able to recall if you saw other IDP camps of this
7 type in sector 3 and 7 in West Darfur State during your deployments?

8 A. [14:51:14] Perhaps around -- sorry, in sector -- in sector 3.

9 In sector 7, I would've had only the exposure in the first two or three weeks, because
10 that was the time at which I was in Al Fasher, but thereafter I would've had very little
11 to do with anything outside my zone.

12 And in sector 3, which was Al Geneina, I didn't see, or my memory now is I didn't see
13 anything as well organised and as well supported as I'm looking at here. More often
14 than not, they were like the earlier pictures I showed you. Some terrible like
15 the lady -- the one with the lady with the orange dress, and others not so terrible,
16 because they had been there for a while and they had established -- but not like this.
17 You can see there is a lot of foreign aid and organisation that have gone in here,
18 symbolised by the toilet blocks. Because anyone would -- sorry, experts on camps
19 are always afraid of diarrhoea and sewage-borne or fluid-borne infections. I was in
20 a cholera situation once and it's quite horrifying, and they will try to prevent that.

21 So, no, I -- to answer the question succinctly, no, I did not see or I have no memory of
22 seeing anything like this in sector 3, only in Al Fasher.

23 Q. [14:52:56] Thank you. If we can briefly go back to Mukjar, which already has
24 been mentioned a couple of times.

25 Do you remember if during your visit or deployment to Mukjar, you visited IDP

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1 camps around that place?

2 A. [14:53:26] I remember -- IDP camps sometimes were on their own at the edge of
3 the village or town, and sometimes they were dispersed throughout the town. From
4 my recollection in Mukjar, the IDPs that I would have met would have been IDPs that
5 were resident in the town.

6 My memory of Mukjar was this vast sprawling place with a lot of small -- small huts
7 and, to my recollection, most of the IDPs were dispersed amongst the local
8 population or in parts of the town. But I do not remember, unless there is
9 a photograph there that says Mukjar, a sprawling organised camp such as we saw in
10 Al Fasher, no.

11 One of the things that I -- I'm sorry, if I'm allowed to say this, one of the things I
12 constantly was antagonistic towards was reports about the situation in Darfur, which
13 obviously had been written from places other than Darfur, because in the 12 months
14 that I was there, I did not -- beyond Al Fasher and Nyala, perhaps, I did not meet
15 many journalists in the field because it wasn't safe for them, and I thought in many
16 cases that much of the information was inaccurate.

17 Q. [14:55:08] Thank you. And I'm reaching the last topic.

18 I would like to show you two further pictures.

19 Please, Madam Court Officer, item 5 again on our list, the fifth page, and you mention
20 there what you call a typical African village with the location indicated as south to
21 Al Geneina, and the date is approximately March 2005.

22 So item 5 is actually just the list. Maybe we can immediately go to the picture which
23 is number 13 in our list, DAR-OTP-0109-1338.

24 Can you describe to us from where you took this picture -- or if you took it, from
25 where? And can you describe it, please?

1 A. [14:56:25] This is a picture taken from a helicopter as we came back off a patrol.

2 It was very dangerous to take these photos because the Government of Sudan

3 representatives were very hostile to me taking any photographs of what they

4 considered to be the nomadic population or the Arab population.

5 This is an Arab camp for several reasons: firstly, its location to the south of

6 Al Geneina; secondly, if you focus in on the individuals, they are in the traditional

7 nomadic apparel, the white -- long white gowns; thirdly, you can see that the huts are

8 built in a certain way which -- which I was told was consistent with the nomadic

9 population.

10 And these were isolated settlements that you would -- you would see from the air,

11 and allegedly - and I say allegedly - it was from these populations that much of the

12 nomadic Janjaweed were drawn. I cannot confirm that, obviously, but they -- you

13 can see it's quite prosperous in the sense that there's plenty of animals, goats, I can

14 think in this case, around, a donkey. There is some grazing there. I see some maize,

15 that it's cut and spread for the goats, and it seems to be quite organised. Each family

16 has their own compound, and I would say it was typical of a lot of the smaller

17 nomadic settlements that we would see from the air.

18 We were one of the only groups who had access to this type of imagery because our

19 helicopter was the only non-military helicopter, to my knowledge, working or

20 allowed access in this area.

21 Q. [14:58:37] And can we have number 14, please, on our list, which is

22 DAR-OTP-0109-1438, which again, according to your explanatory table, says it's

23 a typical village from the region.

24 A. [14:58:59] Mmm. Yeah, I think, and, again, I cannot contradict what I wrote, I

25 used this slide in many cases to explain what Darfur was like, because there you see

1 an example of the topography which I was trying to explain earlier, this savanna-type
2 desert, with a lot of dried-up riverbeds, a limited amount of greenery and some
3 undulating countryside like the hills behind it, with some vegetation.

4 This is typical of the topography and the land use.

5 Here, interestingly enough, and I don't pretend to be an expert, you can see some
6 horses. Again, the horses were usually associated with either government forces or
7 with the - unfortunately described - Janjaweed.

8 You will also see that the huts are divided into compounds, which would reflect
9 different families.

10 I think this might be a Zaghawa camp but I cannot be certain. People can tell from
11 the way the huts are built because different tribes had different manners of thatch, as I
12 said earlier. They had different what I call footprints on their craft, but this is a very
13 good picture to describe -- sorry, to describe the environment, and I would say this is
14 a well-ordered, well-organised and quite prosperous area. There's considerable
15 amount of livestock and people seem to be moving around without too much
16 restriction or difficulty.

17 Q. [15:00:53] Would you be able to tell if you ever visited a village with a majority
18 of the Fur population?

19 A. [15:01:01] Yes. Certainly I see in my notes, just looking at them today, that
20 there was one of the entries where I said this is a Fur town. Yes, there is no doubt we
21 visited. They tended to congregate together -- sorry, together -- tended to
22 congregate according to their tribal ethnicity.

23 So sometimes we'd come into Masalit, sometimes into Fur, and less so into Zaghawa
24 areas - I suspect they were up around the Jebel Moon - and on one or two occasions
25 you will see in my photographs, I got access to nomadic populations, but that was

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1 because I -- I was as curious as I dared to be. But certainly I visited camps and
2 settlements across the divide.

3 One thing I should mention is that I was not armed by choice, and I always made it
4 quite clear when I was moving around that I was not armed and I was there simply to
5 report on the situation and monitor the peace. So I never -- or did my best to
6 ever -- always to avoid coming across as a threat, and that is very important.

7 Q. [15:02:20] And just one last question. There are many more pictures. I don't
8 want to show all of them to you, it would take too much time.

9 But you also have taken pictures of burnt houses, of abandoned villages, of empty
10 villages. Would you be able to tell what happened to the people of these villages
11 and why did they leave the villages? Would you be able to tell if they -- well, they
12 just left the villages because they were nomads, or is it villages that had been
13 destroyed? Is it something that you could see?

14 A. [15:03:08] To me, that is the central question of my time in Darfur, and I don't
15 mean to say this with any disrespect to the victims, but where were all the bodies?
16 Because in the many burnt-out villages I visited, I did not see any mass graves, and I
17 looked for them. And I did see some graves, and we dug up bodies, unfortunately,
18 not a pleasant experience, but I did not see any large groups of - put it bluntly - dead
19 villagers, which means to me that these people fled in advance of the raid on their
20 village.

21 And the perpetrators, or the people responsible for burning the villages, were sending
22 a message that you have fled now, do not come back because this is what we've done
23 to your village and arguably this is within our capability to do to you.
24 So, in many cases, in my opinion - and it is only an opinion, I accept - there was
25 forewarning that the villages were going to be attacked and people fled.

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1 And in one case I came across an extraordinary situation where the villagers told me
2 that a *khawaja*, which normally meant a foreigner and usually a white person, had
3 come to them and ordered them to leave the village because it would be attacked.
4 There were many different actors here, some of whom were international, and some
5 of whom had a vested interest that the situation in Darfur continue to be broadcast as
6 one of continued fighting, forcing the people to leave their villages and arguably
7 destabilise the region, and there were other actors who wanted the people to leave the
8 camps and go back to their villages.

9 But I never came across more than eight or 10 bodies and where I did come across
10 them, they usually had been killed by primitive instruments suggesting a raid at night.
11 They would normally be, to put it bluntly, stabbed through the eye, usually by
12 a sword or whatever, but I never came across a large amount of civilians who had
13 been gunned down, shall we say, consistent with what I had seen in other parts of the
14 world.

15 But that is -- that has always bothered me. I would read reports of atrocities but I
16 never saw one in sector 3, of anything more than, as I said, a dozen people. And I
17 can only say what I saw personally and suggest that sometimes what I saw was
18 inconsistent with the message about what was happening in Darfur because it didn't
19 happen in sector 3 when I was there.

20 Q. [15:06:20] Thank you, Colonel Markey. Thank you for your testimony.

21 PRESIDING JUDGE KORNER: [15:06:27] Yes. Mr Edwards, re-examination?

22 MR EDWARDS: [15:06:30] No, there is no re-examination. I have nothing further.
23 Do your Honours have any questions?

24 PRESIDING JUDGE KORNER: [15:06:42] I'm just checking.

25 (Trial Chamber confers)

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1 JUDGE ALEXIS-WINDSOR: [15:06:50] Good afternoon, Colonel Markey.

2 I have a few questions for you.

3 I saw that you said that there is a difference between an intelligence officer and
4 a military police officer. Can you explain to me what the difference is, please?

5 THE WITNESS: [15:07:17] In my mind, a military police officer deals with facts and
6 evidence, and attempts to explain the crime scene based on those -- on what he or she
7 sees.

8 And an intelligence officer tries to -- is more based, I think, on information and
9 conjecture. Arguably, the two should be the same, but my concentration always as
10 a military police officer -- I've never been an intelligence officer, or never wished to be
11 an intelligence officer -- was to deal with what I saw and try and explain what
12 happened as a consequence of that and pay less attention to what I had heard, to put
13 it bluntly, or any other conjecture.

14 So I dealt with, I would've always said the facts on the ground before my eyes, really,
15 to put it simply.

16 JUDGE ALEXIS-WINDSOR: [15:08:07] All right. Thank you.

17 THE WITNESS: [15:08:15] And I -- sorry. I beg your pardon. I have also received
18 a considerable amount of what they call forensic training in modern crime
19 investigation techniques, so I would use that to assist me, yes.

20 JUDGE ALEXIS-WINDSOR: [15:08:39] Thank you.

21 Did you ever go to Darfur before July 2004?

22 THE WITNESS: [15:08:44] No, your Honour. It was the first time I had been there.
23 I knew, to be quite honest, very, very little about it. And the people who sent me
24 knew equally little about it. I would say that my preparations were fairly basic and
25 my equipment was equally fairly basic.

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1 JUDGE ALEXIS-WINDSOR: [15:09:05] All right.

2 You spoke about different tribal affiliations. You spoke about the Fur, you spoke
3 about the Zaghawa, I think.

4 THE WITNESS: [15:09:17] Zaghawa.

5 JUDGE ALEXIS-WINDSOR: [15:09:19] Zaghawa, Massalit and Arab tribes. Were
6 you able -- so I'm not asking for anthropology. So merely from what you could see
7 in terms of their faces, were you personally able to tell the difference?

8 THE WITNESS: [15:09:36] No, ma'am, I was not, and I learnt that lesson from
9 Rwanda where I was there during the genocide between the Hutu and the Tutsi.
10 Certainly there were classic stereotypical members of the Tutsi and, similarly, of the
11 Hutu. But, by and large, this was the exception rather than the rule. And I was
12 always careful to try to identify somebody by their -- shall we say by their racial
13 features or by their physical features, I should say. The answer is no. I could not
14 and I don't think many could. Perhaps an indigenous person, but certainly not me.

15 JUDGE ALEXIS-WINDSOR: [15:10:13] All right.

16 I have a few questions. Perhaps to be fair, I should let Colonel Markey see the
17 paragraphs that I'm referring to.

18 This is the statement -- let me find the date.

19 PRESIDING JUDGE KORNER: [15:10:48] March --

20 JUDGE ALEXIS-WINDSOR: [15:10:50] Is it this one? Yes, right. It's this one.
21 Right.

22 It is the February 2024 statement which was read back -- in March 2024.

23 THE WITNESS: [15:11:09] Yes, ma'am.

24 JUDGE ALEXIS-WINDSOR: [15:11:12] I'm looking at paragraph 25, the last
25 sentence.

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1 THE WITNESS: [15:11:26] Is this "Sometimes I saw evidence"?

2 JUDGE ALEXIS-WINDSOR: [15:11:30] Yes, indeed.

3 What is the basis of that conclusion, please?

4 THE WITNESS: [15:11:35] There would be nothing. I would arrive out and be told

5 that there were, typically, the number is 40 Janjaweed had attacked the camp and

6 many were killed. And I'd say, first of all, there's the ground, and the damage

7 suggests they were not 40 horsemen -- 40 horsemen is quite a number -- and, secondly,

8 where are the bodies?

9 And if they showed me where the graves were, we would dig them up. It was an

10 unpleasant process. But, again, all I found were maybe bodies of one or two people,

11 not the massacre that had been claimed.

12 JUDGE ALEXIS-WINDSOR: [15:12:23] All right. Look in that same statement, look,

13 please, at paragraph 29. The first sentence.

14 THE WITNESS: [15:12:38] Yes.

15 JUDGE ALEXIS-WINDSOR: [15:12:39] Again, the same question: What is your

16 basis for saying that in some cases witnesses were coached by rebel groups?

17 THE WITNESS: [15:12:47] When I -- when we arrived to carry out an investigation,

18 it would be as a consequence of a report and a request that we go there to investigate

19 an atrocity that had allegedly happened there.

20 I did not directly cross-examine the witnesses; the team did, but I'd be always in the

21 background as an observer. And sometimes it was my opinion that the stories did

22 not match the events and that in some cases, the stories were rehearsed.

23 JUDGE ALEXIS-WINDSOR: [15:13:24] So it was just your view?

24 THE WITNESS: [15:13:28] Just my view, ma'am, yes.

25 JUDGE ALEXIS-WINDSOR: [15:13:30] All right.

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1 Again, look at paragraph 31, please. It has to do with, "There were also external
2 actors, including Western countries".

3 THE WITNESS: [15:13:40] Mm-hmm.

4 JUDGE ALEXIS-WINDSOR: [15:13:41] That portion there.

5 THE WITNESS: [15:13:43] Yes, ma'am.

6 JUDGE ALEXIS-WINDSOR: [15:13:44] Again, can you tell me what is the -- what
7 was the basis of that conclusion?

8 THE WITNESS: [15:13:54] There were some Western powers - I'm not quite
9 prepared to mention them in open session - who had a strategic interest in Darfur and
10 had personnel in the field whom I met, military personnel, some in uniform, some
11 not.

12 Equally --

13 MR EDWARDS: [15:14:23] Forgive me, your Honour, perhaps we can go into
14 private session. This was not an area that I was proposing to lead the witness on,
15 because it wasn't -- I know that the witness had something to say about this, but
16 perhaps we could do so in private session.

17 PRESIDING JUDGE KORNER: [15:14:43] Well, I think the reason that Judge
18 Alexis-Windsor is asking this question because the statement has gone in --

19 MR EDWARDS: [15:14:50] Yes.

20 PRESIDING JUDGE KORNER: [15:14:52] -- without any explanation for how the
21 witness is making these assumptions.

22 MR EDWARDS: [15:14:56] Absolutely. I'm not in any way seeking to dissuade her
23 Honour from asking the question. I'm just saying that for a full answer to be given,
24 perhaps we could do so in private session.

25 JUDGE ALEXIS-WINDSOR: [15:15:08] All right. Perhaps I'll get back to it,

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- 1 (indiscernible) is needed. All right.
- 2 Well, actually I should go now because I'm moving on from the statement.
- 3 THE WITNESS: [15:15:16] May I explain the mining interests --
- 4 JUDGE ALEXIS-WINDSOR: [15:15:20] One moment. One moment, please.
- 5 THE WITNESS: [15:15:22] Sorry.
- 6 JUDGE ALEXIS-WINDSOR: [15:15:23] One moment, sir.
- 7 THE WITNESS: [15:15:24] I beg your pardon.
- 8 JUDGE ALEXIS-WINDSOR: [15:15:25] Can we go into closed session, please.
- 9 THE WITNESS: [15:15:26] Oh, sorry.
- 10 JUDGE ALEXIS-WINDSOR: [15:15:27] Just for one --
- 11 (Trial Chamber confers)
- 12 (Private session at 3.15 p.m.)
- 13 THE COURT OFFICER: [15:15:40] We are in private session, your Honours.
- 14 (Redacted)
- 15 (Redacted)
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1 (Redacted)

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4 (Open session at 3.21 p.m.)

5 THE COURT OFFICER: [15:21:54] We are back in open session, your Honours.

6 JUDGE ALEXIS-WINDSOR: [15:22:05] All right. Thank you.

7 Right, my last question is from your next statement, this is the statement that was
8 given on 19 July 2006. If you can get to that statement --

9 THE WITNESS: [15:22:23] Sorry --

10 JUDGE ALEXIS-WINDSOR: [15:22:25] -- it's paragraph 41. It begins: "I have no
11 doubt..."

12 THE WITNESS: [15:22:42] Yes.

13 JUDGE ALEXIS-WINDSOR: [15:22:43] A very strong statement.

14 THE WITNESS: [15:22:44] Mm-hmm.

15 JUDGE ALEXIS-WINDSOR: [15:22:45] Tell me please, sir, Colonel Markey, what is
16 the basis of this conclusion of yours?

17 THE WITNESS: [15:22:52] That village that I earlier meant where I found the tools,
18 was, to my -- as far as I remember, a Masalit village and in SLA control, it had been
19 abandoned. And at the time I was of the belief that the SLA had stage-managed our
20 visit in order to impress upon us that the government of Sudan were burning their
21 villages and forcing the people out.

22 JUDGE ALEXIS-WINDSOR: [15:23:24] Why were you of that belief?

23 THE WITNESS: [15:23:27] Because I found the tools, because we had been directed
24 to that village by the SLA rep, and because when I said to him -- he had no defence.

25 He -- in the -- during the petrol, I said, "This is your village. These were your people.

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1 You're wasting our time and putting us in danger by bringing us out to
2 a stage-managed situation."

3 JUDGE ALEXIS-WINDSOR: [15:23:56] But that happened on how many occasions?

4 THE WITNESS: [15:24:01] One that I can point to --

5 JUDGE ALEXIS-WINDSOR: [15:24:02] Okay.

6 THE WITNESS: [15:24:03] -- and one that I was aware of, but on several other
7 occasions I was of the impression that we were being used - the African Union
8 patrols - to send a message of some type or other that had been manipulated; that we
9 were being brought to places for political reasons by one or other of the actors.

10 JUDGE ALEXIS-WINDSOR: [15:24:28] And I keep say it's my last question, but
11 hopefully this is, then what was your basis? I'm trying to get to the essence, to the
12 heart of it. What was your basis?

13 THE WITNESS: [15:24:39] That there were different interests at play in Darfur, those
14 that wanted the people to get out of the camps and back into the villages and to
15 normalise the situation; and others who wanted the situation to continue and the
16 camps to remain and people -- sorry, to abandon their villages and go across the
17 border and they did not want a return to normal life at that time.

18 JUDGE ALEXIS-WINDSOR: [15:25:18] All right.

19 THE WITNESS: [15:25:19] On one occasion, for example, as I mentioned earlier, I
20 was told that a *khawaja* had come to the village and told them to leave. And that's as
21 definite as I can be.

22 JUDGE ALEXIS-WINDSOR: [15:25:36] All right. Thank you very much,
23 Colonel Markey. Those are all my questions.

24 JUDGE ALAPINI-GANSOU: [15:25:54] (Microphone not activated)

25 THE INTERPRETER: [15:25:56] Mic, please. Mic, please.

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1 JUDGE ALAPINI-GANSOU: [15:25:57] Okay. (Interpretation) Witness, I have a
2 concern. Can you not listen. Hello? Can you listen?
3 THE WITNESS: [15:25:59] I'm sorry, I cannot hear this.
4 THE INTERPRETER: [15:26:00] One, two, three.
5 PRESIDING JUDGE KORNER: [15:26:01] He needs the translation. He needs to
6 change the channel.
7 THE WITNESS: [15:26:02] Yes, I can hear now.
8 THE INTERPRETER: [15:26:05] One, two, three. Am I audible? One, two, three.
9 Am I audible?
10 THE WITNESS: [15:26:09] Yes, I can hear now.
11 JUDGE ALAPINI-GANSOU: [15:26:10] Okay.
12 (Interpretation) I'm going to speak in French, witness.
13 I have a slight concern -- but before that, you just said when you replied to a question
14 by Judge Alexis, you feel that you have been taken to places for political reasons.
15 When you say, "We have been led to these places for political reasons", who are these
16 people who led you? Are these people? Are these institutions who have led you to
17 these situations to various places?
18 So whom do you include in this "we"?
19 THE WITNESS: [15:27:23] Thank you.
20 The patrol -- the African Union patrols emanated or were directed from Al Fasher
21 headquarters.
22 JUDGE ALAPINI-GANSOU: [15:27:50](Interpretation) Can you please repeat.
23 THE WITNESS: [15:27:53] African Union patrols were tasked or ordered from
24 Al Fasher headquarters normally as a consequence of reports of atrocities in
25 a particular area or a particular village. Many of these areas or villages had an

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1 association with a particular ethnic group. We would deploy to these villages to
2 investigate these reports.

3 Many of the different ethnic groups wanted to show us that they were being attacked
4 by other forces. So they had an interest that the patrols would go to their area to
5 witness and to report on this, and, in some cases, it was my opinion that we were
6 directed there because they wanted to ensure that we reported that their tribe or that
7 their group was being attacked, for example. Because it was never clear in many
8 cases who or what we were dealing with. There appeared to be many different
9 actors, the victims were always the same, the women and the children, largely.

10 JUDGE ALAPINI-GANSOU: [15:29:46](Interpretation) So we can understand that
11 these are local actors, you spoke -- are you speaking about local actors? The ones we
12 see on the field?

13 THE WITNESS: [15:30:01] Sometimes they were local militias, sometimes they were
14 more coordinated groups by either side. Sometimes it was a village dispute and
15 sometimes it was a more organised attack or cleansing.

16 But there was one thing that I had the opinion of and that was there was not a simple
17 generic answer for all the different events that I saw. The conflict was
18 oversimplified, largely by as a consequence of reports from people who had - I would
19 argue - not much of an opportunity to verify what they were -- what they were
20 saying.

21 JUDGE ALAPINI-GANSOU: [15:30:52](Interpretation) Thank you.

22 I am now coming to my concern. When I heard you through your testimony, I
23 believe I understood that when you presented the background or the context of the
24 situation, you're saying that when we are talking of massacres of people, you never
25 saw too many people who died.

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1 Now I'm going to ask you a question in terms of human rights. What difference
2 does it make when there's a situation where, as you said, 12 people died, and you said
3 that never -- or a case where a hundred people died.

4 Could you make a distinction between this in terms of violation of human rights,
5 a situation where 12 people died or a hundred people died?

6 THE WITNESS: [15:32:01] No, I do not. I think it is unfortunate that anybody died,
7 particularly a noncombatant. But what I'm simply emphasizing is, I only report on
8 what I saw in my year there, and I did not see any large massacres of the population
9 that we were given to believe was happening as a consequence of media reports or, at
10 least, not in sector 3. If one person dies, it's a tragedy. If a hundred dies, it's
11 a tragedy. The difference is the numbers.

12 But I only saw small numbers and, unfortunately, I did see some as some of the
13 photos would testify to and it was not terribly pleasant. But I did not witness or
14 come across any mass murder scenes that perhaps I had seen in other operational
15 areas in different parts of the world.

16 Finally, if I may, your Honour, say, I'm not saying they did not happen, I'm simply
17 saying I did not see them.

18 JUDGE ALAPINI-GANSOU: [15:33:23](Interpretation) In the sector 3?

19 THE WITNESS: [15:33:28] In sector 3, absolutely, that was the only area that I
20 covered for any extensive period of time.

21 JUDGE ALAPINI-GANSOU: [15:33:39] Okay. (Interpretation) Thank you.

22 Thank you, witness.

23 PRESIDING JUDGE KORNER: [15:33:44] I just want to pick up on that,
24 Colonel Markey.

25 You were there after a ceasefire had been arranged, however ineffective it may have

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1 been, as part of the observers; is that right?

2 THE WITNESS: [15:34:03] Yes, your Honour.

3 PRESIDING JUDGE KORNER: [15:34:04] And were you given any accounts of what
4 had happened in the previous period, that is to say, roughly March 2003 to
5 March -- well, March, April 2004?

6 THE WITNESS: [15:34:16] Yes, but largely through my own reading and research,
7 but there was no coordinated briefing on any massacres that had occurred before I
8 arrived. When I arrived, our understanding was that our job was to report any
9 violations or alleged violations of the ceasefire agreement.

10 PRESIDING JUDGE KORNER: [15:34:39] And I just want to go back for one
11 moment to the paragraph of your statement that Judge Alexis-Windsor was asking
12 you about, that's the statement you made to the Defence recently in March '24,
13 paragraph 25.

14 You end the paragraph -- you describe again effectively the village with the fire break
15 and the agricultural implements behind the house that was burnt, which you
16 described in your original statement to the OTP.

17 And you say that you concluded that the rebels had done this themselves and you
18 said:

19 "Sometimes I saw [...] that the consequence of a real Janjaweed attack had been
20 exaggerated [...]"

21 This is what you're referring to when you say that it was 40 and not 400 or -- and that
22 the hoof marks --

23 THE WITNESS: [15:35:49] Mm-hmm.

24 PRESIDING JUDGE KORNER: [15:35:50] And finally, this is what I want to ask you
25 about though: "sometimes [...] it had been fabricated outright."

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1 Are you saying that an attack had been outright fabricated?

2 Is that what you're actually saying? Or are you simply saying effectively it was
3 exaggerated again?

4 THE WITNESS: [15:36:14] I would say with respect a bit of both because any time
5 we -- there was an attack -- of a report -- sorry, a report of an attack, something had
6 gone on or something had happened without a doubt.

7 But the consequences of that attack were not consistent with the reports of it. So, for
8 example, I remember looking at a patch of ground where 400 horsemen were meant
9 to have been, and, I said, no, this is not possible.

10 And there were meant to be 40 bodies, I remember -- again these numbers keep
11 coming up and I said, "Well, show me them." And there wasn't 40 bodies. There
12 were three or four different bodies. I'm sorry I forget the actual name of the site.

13 But one of the difficulties working was trying to determine the relationship between
14 the allegation and the fact and sometimes it was inconsistent.

15 PRESIDING JUDGE KORNER: [15:37:15] And as you said rightly, you were wholly
16 dependent - other than what you could see with your own eyes - on what you heard
17 about the attack on what interpreters were saying to you?

18 THE WITNESS: [15:37:31] Yes, but this was slightly mitigated by the fact that there
19 were never less than about eight of us in the group listening to this. I was always at
20 the back and there were many different people -- sorry, many people with language
21 capability.

22 For example, the rebels mostly spoke English, the JEM spoke excellent English, and
23 we had an interpreter there. So it would be difficult for an interpreter to give you
24 a completely false translation without being contradicted by the others, ma'am.

25 PRESIDING JUDGE KORNER: [15:38:09] No, I'm not suggesting a false translation,

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1 but as we know all too well in this court, particularly where you've got the Fur
2 language and the Arab language as well as other tribal languages, it can be quite
3 difficult sometimes to get at what is actually being said.

4 THE WITNESS: [15:38:25] Mm-hmm.

5 PRESIDING JUDGE KORNER: [15:38:26] And apart from this village with the fire
6 break - and you told us about the hoof marks - can you think of any other village
7 where the evidence you saw suggested that the so-called attack had been deliberately
8 orchestrated by the group that was in control of the village?

9 THE WITNESS: [15:38:55] No, I don't because I don't believe the group would have
10 gone to the extent of allowing killings. It was burnings and destruction of the village,
11 but I never saw any evidence that one of the rebel groups went to the extreme of
12 allowing their villagers to be killed in order to fabricate or exaggerate an attack, no.

13 PRESIDING JUDGE KORNER: [15:39:25] No, sorry, I'm not asking you that.
14 You've mentioned this village in both statements where you found the agricultural
15 implements and the fire break. Can you recall any other village during your period
16 where you saw similar -- similar physical evidence which suggested that the attack
17 itself had been done by the side that occupied the village?

18 THE WITNESS: [15:39:54] No, I cannot. As I sit here, no.

19 PRESIDING JUDGE KORNER: [15:39:57] No. All right.

20 Yes, thank you very much indeed Colonel Markey.

21 Now, exceptionally --

22 Yes, do you want to ask some questions arising?

23 MR EDWARDS: [15:40:09] Yes, please.

24 PRESIDING JUDGE KORNER: [15:40:10] All right.

25 MR EDWARDS: [15:40:11] I'm sorry, it's just to pick up from a matter that Her

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- 1 Honour Judge Alexis-Windsor asked the witness about.
- 2 Can we go back into private session, please.
- 3 PRESIDING JUDGE KORNER: [15:40:29] Yes, let's go into private session.
- 4 (Private session at 3.40 p.m.)
- 5 THE COURT OFFICER: [15:40:37] We are in private session, Madam President.
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
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- 19 (Open session at 3.47 p.m.)
- 20 THE COURT OFFICER: [15:47:10] We are back into open session, Madam President.
- 21 PRESIDING JUDGE KORNER: [15:47:14] Colonel Markey, just before Mr Edwards
- 22 finished asking you questions, he said that you would like to say something about the
- 23 work of this Court, and, exceptionally, we are prepared to let you do so.
- 24 So if you want to say something about the work of this Court, please go ahead.
- 25 THE WITNESS: [15:47:43] Thank you very much, and I very much appreciate that.

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1 I've always said that my interest is in the judicial process, whether I'm giving
2 evidence for the Prosecution, for the Defence or for the witness. It does not matter to
3 me.

4 What matters is that the Court should be recognised and appreciated for what it is,
5 and, perhaps that arms carriers in the field will be less likely to carry out atrocities
6 than they would otherwise were the Court not here.

7 Secondly, Madam President, just to say I have tried to avoid speculation. I've just
8 concentrated on what I saw. Obviously, there are many different interpretations to
9 that and that is all I can say.

10 And finally, thank you very much for allowing me this experience. And thank you
11 to the people who have dealt with me over the last four or five hectic weeks. It was
12 all done in a very civilised, thorough and friendly basis. Thank you

13 PRESIDING JUDGE KORNER: [15:48:47] Well, colonel, thank you very much
14 indeed and we do genuinely thank you for coming to court, taking the trouble to go
15 back over your diaries and notebooks and photographs to come and assist the Court
16 and we are truly grateful; so thank you again.

17 And that concludes your evidence, and if you would like to leave with the court
18 officer, there's just one matter I'm going to raise that arises from this morning.

19 THE WITNESS: [15:49:18] I'm sorry about the handwriting!

20 PRESIDING JUDGE KORNER: [15:49:21] I'm amazed you could actually translate it
21 yourself when you came to re-read it.

22 THE WITNESS: [15:49:27] Sometimes with difficulty. Thank you very much.
23 Thank you.

24 (The witness is excused)

25 (The witness exits the courtroom)

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1 PRESIDING JUDGE KORNER: [15:49:39] Mr Laucci and Mr Nicholls, this really
2 arises out of the discussion we had this morning during the status conference, and
3 because we are in public session I'm not going to mention the problems or the witness,
4 but I did refer to a procedure that we had in my domestic jurisdiction whereby the
5 witness could be examined prior to a trial and cross-examined or on video, and
6 somebody reminded me very helpfully - one of the legal officers - that we all look at
7 Rule 68(2) and (3), but 68(2)(a) says that:
8 "Both the Prosecutor and the defence -- "
9 Sorry, I'll start again 68(2), says:
10 "If the witness who gave previously recorded testimony is not present before the
11 Trial Chamber, [...] it may allow the introduction of that previously recorded
12 testimony in any one of the following instances:
13 (a) Both the Prosecutor and the defence had the opportunity to examine the witness
14 during the recording."
15 So, in fact, it is a procedure that's been echoed here.
16 I merely mention it because I think this morning there was some doubt. But as I say,
17 as you very helpfully agreed to get together, that's -- that's (indiscernible).
18 All right, so we'll adjourn then until the week of the 22nd of April. We expect that
19 there will be witnesses available, Mr Laucci and Mr Edwards, that week and,
20 obviously, as we said this morning, we want the next report from you on -- two
21 weeks today.
22 Yes, is there anything else? No. In that case, we'll adjourn.
23 Thank you all very much.
24 THE COURT USHER: [15:51:48] All rise.
25 (The hearing ends in open session at 3.51 p.m.)