

Trial Hearing
WITNESS: DAR-OTP-P-0120

(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
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Friday, 29 April 2022
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:59] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:20] Yes, good morning, all.
15 Could we call the case, please.
16 THE COURT OFFICER: [9:33:25] Good morning, Madam President, good morning,
17 your Honours.
18 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
19 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
20 And for the record, we are in open session.
21 PRESIDING JUDGE KORNER: [9:33:43] Yes, thank you.
22 Yes, let's start with the Defence appearances this morning.
23 MR LAUCCI: [9:33:50] Good morning, your Honours. This morning for
24 the Defence, in addition to Mr Ali Muhammad Ali Abd-Al-Rahman, present in the
25 courtroom, Madam Eva Kalb, assistant evidence reviewer; Vanessa Grée, legal

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 advisor; and Mr Ahmad Issa, case manager; in addition to myself, Cyril Laucci, lead
2 counsel.

3 PRESIDING JUDGE KORNER: [9:34:10] Yes, thank you, Mr Laucci.

4 Prosecution, please.

5 MR NICHOLLS: [9:34:14] Good morning, your Honours. I'm Julian Nicholls with
6 Laura Morris, Rachel Mazzarella, Claire Sabatini, Edward Jeremy and
7 Mohanad Elkholy. Thank you.

8 PRESIDING JUDGE KORNER: [9:34:26] Thank you, Mr Nicholls.

9 And for the victims.

10 MR SHAH: [9:34:30] Good morning, your Honours. The victims are represented
11 today by Nasser Amin Abdalla, appearing by video link, and myself, Anand Shah.

12 PRESIDING JUDGE KORNER: [9:34:39] Yes, thank you very much, Mr Shah.

13 Yes, good morning, sir.

14 I gather you were provided with some documents yesterday by the witness unit, but
15 not, I understand, Mr Laucci, the criminal code regrettably.

16 MR LAUCCI: [9:34:58] Well, unfortunately, immediately after the session yesterday
17 we provided in the first time in English and then in Arabic the Criminal Code 1991
18 and the People's Armed Forces Act 1986, which are the two documents of relevance
19 for today. And we learned this morning that the criminal code was actually
20 provided in Arabic to Mr Witness only this morning, which is a bit sad, because, I
21 mean, I don't know how much time he had to make the verification he wanted to get
22 through. We will have to take that into account.

23 PRESIDING JUDGE KORNER: [9:35:34] Yes.

24 Well, I think we had better check with the witness before you carry on, Mr Laucci,
25 then.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 Sir, I'm sorry, that there was obviously some misunderstanding. Have you had
2 a chance this morning to look through the criminal code that you were given?

3 WITNESS: DAR-OTP-P-0120 (On former oath)

4 (The witness speaks Arabic)

5 THE WITNESS: [9:36:01](Interpretation) I haven't received the Arabic version until
6 now.

7 PRESIDING JUDGE KORNER: [9:36:07] Well, Mr Laucci, if you're going to go on
8 asking questions about it, which you were yesterday, then he ought to be given
9 the chance to go through it, unless, as he was given the military code, if you -- we can
10 take a break when you've finished asking questions about that and then he'll have
11 the opportunity to look through it.

12 MR LAUCCI: [9:36:39] Madam President, Mr Witness, what I propose, I already
13 asked some questions on the criminal code yesterday. I got some answers.
14 I could leave it there, for the moment, and after the break, once you have time to
15 make the verification you wanted to make yesterday, feel free to come back on this
16 issue. But I will, for the -- as far as the criminal code is concerned, I may stop here
17 and carry on and we can come back later, if that is convenient.

18 PRESIDING JUDGE KORNER: [9:37:10] Well, that seems more sensible if he's
19 had -- if the witness has had the chance to look at the military code but not
20 the criminal. And we'll have a break, as much -- as much time as the witness
21 requires.

22 Yes, all right. Thank you, Mr Laucci.

23 QUESTIONED BY MR LAUCCI: (Continuing)

24 Q. [9:37:32] Good morning, Mr Witness. And actually to assist you when you will
25 have time to look at the criminal code, what I am interested in and what you may

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 wish to look at is all the offences that may be related to participation or support to
2 a rebel movement. So that's where -- that's the topic of interest in the criminal code.
3 So I move to the People's Armed Forces Act of 1986. This one you had a chance
4 to -- to read it since yesterday?

5 A. [9:38:22] Yes. However, I would like to remind of the following, that my work
6 is restricted in the realm of military courts and military law.

7 Q. [9:38:46] Perfectly fine.

8 Do you know if this code of 1986 is still in force today?

9 A. [9:39:01] Yes. The 1986 law was in force. However, there are a lot of
10 amendments that were introduced.

11 Q. [9:39:21] Just for verification and understanding, I have no specific question to
12 ask about this other act, but we have found a defence forces act dated 2007 which is in
13 the Defence binder under tab 3. I will just read the ERN. DAR-D31-0003-0074. It
14 is provided in English and Arabic.

15 What -- what -- what is the relation between the act of '86 and the act of 2007? It's
16 just for our understanding.

17 A. [9:40:11] I have not read the law of 2007, unfortunately.

18 Q. [9:40:17] Okay. Forget it, it's -- it's not important.

19 I thought you wanted to add something.

20 Can I ask you to take the law of '86 that you have in your binder and we will start
21 specifically with its Article 4.

22 I read the ERN. So it's in tab 2, the ERN is DAR-OTP-0118-0075. And I propose to
23 start with page 0082.

24 So this article is entitled, "Those subject to the provisions of this Act" and it reads that:

25 "The following people are subject to the provisions of this Act."

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 I will not read the full list, it's a long list, but I want to mention three entries in that
2 list:

3 Entry (d) "Any person appointed or enlisted under the provisions of this Act".

4 Entry (f) "Any forces constituted under any given Act or Regulation where such an
5 Act or Regulation ... subjects them to the provisions of this Act."

6 And finally, entry (j), like John, the French have problems with -- between the J and
7 the G, so I precise, it's the J for John: "Any other persons other than those mentioned
8 who commit any crime listed in Sections five, six or seven of 'The Criminal Law Act ...
9 1991', where this has been ordered by the Commander-in-Chief and approved by
10 the Minister of Justice".

11 So we have focus on these three entries. And my first question is: Would rebels
12 and those who support the rebellion fall under the section (j), which I just read, which
13 would make then the People's Armed Forces Act applicable to them?

14 A. [9:43:04] The version that I see in front of me is in English.

15 Q. [9:43:11] I think you have been provided with the Arabic version.

16 THE COURT OFFICER: [9:43:18] Could counsel kindly confirm what tab
17 number and we will (Overlapping speakers)

18 THE WITNESS: [9:43:20](Overlapping speakers)

19 MR LAUCCI: [9:43:24] Tab number 2.

20 Sorry, actually, the tab number 2 is the English version, but we have provided
21 yesterday the Arabic version. That's -- so that's the version that was provided
22 yesterday that should be used.

23 PRESIDING JUDGE KORNER: [9:44:18] Mr Laucci, are you saying this is the one
24 you personally gave him? But has it got any ERN numbers?

25 MR LAUCCI: [9:44:28] I'm told yes.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

- 1 THE COURT OFFICER: [9:44:30] Your Honours, if I may, the documents were
2 provided to the witness upon adjournment and he took them with him to the VWS
3 office. So unless we have them brought down, he does not have them with him in
4 front.
- 5 MR LAUCCI: [9:44:42] So the ERN is DAR-OTP-0103-0564.
- 6 THE WITNESS: [9:45:00](Speaks English) I left there.
- 7 PRESIDING JUDGE KORNER: [9:45:01] So he has -- yeah, I think we all heard that.
8 The witness doesn't appear to have brought it with him to court, but is it possible to
9 put it up on the screen? It should be, is it? No? I think can we -- we can do that.
10 Yeah.
- 11 MR LAUCCI: [9:45:15] Yeah. Otherwise I understood that it was in the next room,
12 but ...
- 13 PRESIDING JUDGE KORNER: [9:45:22] Is that what he's saying? Is it in
14 the witness room?
15 You can check. Yes.
- 16 THE WITNESS: [9:45:34](Interpretation) Yes, they are in the waiting room.
17 (Pause in proceedings)
- 18 MR LAUCCI: [9:46:33] In the meantime, I see that the act in Arabic is on the screen.
19 Can we go to the page with Article 4 of that act, please.
- 20 PRESIDING JUDGE KORNER: [9:46:45](Microphone not activated) is that
21 somebody here speaks Arabic or reads Arabic. I think you'll have to give
22 the number where Article 4 is.
- 23 MR LAUCCI: [9:47:00] Yes, that's what I'm ...
24 (Counsel confer)
- 25 MR NICHOLLS: [9:47:10] Excuse me, just while we're waiting, maybe the question

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 could be broken down, because it was rebels and those who support them, and "those
2 who support them" is a pretty broad concept and so there's a lot in that question.

3 PRESIDING JUDGE KORNER: [9:47:25] Mr Laucci, I think that's right. You better
4 break it down to rebels and whoever else. "Those who support them" is not very
5 clear. I think for a lawyer you had better use the terms aiding, abetting, counselling,
6 procuring.

7 MR LAUCCI: [9:47:52] So that should be the page 0570.

8 Q. [9:48:13] Do you see it on the screen, Mr Witness?

9 A. [9:48:20] Yes. However, I do not see the 4th article.

10 It's okay now.

11 MR LAUCCI: [9:48:34] Okay.

12 Can you scroll down at the end of the article, the last entry.

13 Okay, I think it should be the right one.

14 (Counsel confer)

15 THE WITNESS: [9:49:28](Interpretation) So what is the question?

16 MR ISSA: [9:49:40] Your Honours, with your leave, I would like to just give
17 the number of the paragraph with the correct pronunciation for the witness, if that's
18 okay with you?

19 PRESIDING JUDGE KORNER: [9:49:52] Fine by me, go ahead.

20 MR ISSA: (Interpretation) We are talking about article (j), so that is the last line.

21 THE WITNESS: [9:50:06](Interpretation) This is clear. However, I was asking what
22 is the question regarding the article number (j).

23 MR LAUCCI:

24 Q. [9:50:15] Thank you. I wanted to make sure that you had the right article in
25 front of you.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 So my question is would rebel fall under this subarticle (j)?

2 A. [9:50:37] 4(j) has -- specifies "anybody else apart from the people who are
3 specified -- specified in the chapters five, six and seven of the criminal code." So if
4 people commit crimes that are outside the realm of the chapters five, six and seven,
5 then they can be -- they can fall under this law. However, this is conditional and you
6 can see the condition at the end.

7 Q. [9:51:20] So the condition you are referring -- referring to is there must be an
8 order by the Commander-in-Chief and an approval by the Minister of Justice. If that
9 double conditions is met, it means that this Article 4(j) applies to rebels; am I right?

10 A. [9:51:44] Yes.

11 Q. [9:51:50] Thank you. Then I would like you to focus -- get my notes.

12 Okay. The subparagraph (c) of the same -- no, not yet.

13 Yes, sorry, I would like you to look at the entry (d) and (f) of this Article 4 that you
14 have in front of you.

15 And my question is whether the persons who have been mobilised in
16 the counterinsurgency, for instance, the border intelligence that you mentioned
17 yesterday, would fall under this Article 4(d) and/or (f)?

18 A. [9:53:32] I think that 4(f) applies, so any forces are -- that are formed based on
19 a special law or regulation, they are bound by that law or regulation. So if the laws
20 of the border intelligence or the other groups that you mentioned yesterday, if their
21 laws refer to this, then this law could apply to them.

22 Q. [9:54:07] Thank you very much.

23 I would like now to go to the Article 48 of the same act. And in the Arabic version,
24 this is page 0583, please.

25 Scroll down. I would like Article 48.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

- 1 Yes, this one. Thank you. For this article --
- 2 THE INTERPRETER: [9:54:55] And Mr Laucci, please, a note from the interpreter:
- 3 Since the witness has the English -- the Arabic version in front of him, would you
- 4 please put the English version on the screen. So the witness already has the Arabic
- 5 version in front of him on paper.
- 6 PRESIDING JUDGE KORNER: [9:55:11] Let me just confirm that.
- 7 Sir, have you got the paper version now, in Arabic?
- 8 THE WITNESS: [9:55:17](Interpretation) Yes.
- 9 PRESIDING JUDGE KORNER: [9:55:19] Right. So the interpreters need
- 10 the English.
- 11 THE WITNESS: [9:55:23](Interpretation) But I would like to know what is required
- 12 of me.
- 13 MR LAUCCI:
- 14 Q. [9:55:27] We are coming to that, Witness. That's coming. It's just that the
- 15 interpreters need the English version on the screen. So what I propose, if you agree,
- 16 you look on your paper version in Arabic and we will put the English version on
- 17 the screen to assist the interpreters.
- 18 A. [9:55:44] That's okay.
- 19 Q. [9:55:49] So for the English version now, this is DAR-OTP-0118-0075. And we
- 20 are at page 0095.
- 21 Since you have the -- no, I will wait for the interpreter.
- 22 Yes. Like this.
- 23 So this Article 48 of the same act of '96 is titled "Misconduct in the face of the enemy".
- 24 I will just read the introduction.
- 25 "Any persons subject to the provisions of this Act who commit any of the following

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 actions intentionally in the face of the enemy shall be sentenced to death or some
2 other penalty as shown in Article 80:"

3 Then there is a list and I want you to focus on entry (c) of that list, which I will
4 read -- read aloud:

5 "Any refusal to obey orders or any behaviour deliberately intended to imperil any
6 headquarters, unit, position or military property".

7 My question is, in your understanding, is there any limitation as to which orders this
8 entry (c) applies?

9 A. [9:58:07] Would you please repeat the question.

10 Q. [9:58:11] In the entry (c), "Any refusal to obey orders" my question is on
11 the word "orders", and I would like if you see any limitation in the kind of "orders"
12 that are referred to here.

13 A. [9:58:40] I have no idea if there are any restrictions on -- or limitations on these
14 orders or not.

15 PRESIDING JUDGE KORNER: [9:58:46] I think, Mr Laucci, there comes a limit to
16 asking this witness about ex -- matters of expertise which are not in his direct -- direct
17 experience.

18 THE WITNESS: [9:59:05](Interpretation) This has also to do with military experience.
19 You need a military expert here.

20 PRESIDING JUDGE KORNER: [9:59:15] As we've just heard, sir, I agree with you
21 and I'm stopping Mr Laucci from proceeding down this line.

22 MR LAUCCI:

23 Q. [9:59:22] Point taken. I just wanted the opinion of the expert. But I
24 understand that you say "It's out of my field of competence," so that's fair enough and
25 I will stop going on with that line of questioning.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 I thank you.

2 A. [9:59:44] Thank you.

3 Q. [9:59:53] I will just try to summarise, to summarise what we, together,
4 could -- could agree on, that both the Sudan Criminal Act 1991 and the Armed Forces
5 Act 1986 were in force at the time of the events; is that correct?

6 A. [10:00:21] Yes.

7 Q. [10:00:25] That participation in a rebel movement was an offence, a serious
8 offence under Sudanese law?

9 A. [10:00:40] Yes.

10 Q. [10:00:41] And you will have the opportunity to come back to this specific issue
11 once you have read the Arabic version of the criminal code, if there is anything else
12 you want to add. And I will ask you also about acts of aiding and abetting,
13 supporting the rebellion. But we will talk about that later.

14 We have established that the act of 1986 was applicable to the rebellion under
15 Article 4(j).

16 It is just a confirmation of what we have discussed earlier, Witness, nothing more, to
17 sum up.

18 A. [10:02:24] Regarding Article 4, subsection (b), my answer was that
19 the Popular Defence Forces, the border forces and the forces that you have mentioned
20 yesterday, based on the nature of the law, and based on their -- the law that founded
21 them, they could be falling under the Armed Forces Act according to subsection (f).

22 Q. [10:02:59] Thank you. That was the last point I wanted you to confirm, but
23 that's already done. So we are -- we have completed our common examination of
24 the Act of 1986. Thank you.

25 Let me come back to your written statement, and specifically it's paragraph 58 to 61,

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

- 1 where you describe the functioning of the public prosecution in Sudan and you
2 describe the discretionary power to prosecute crimes and its limits. And at
3 paragraph 59 - maybe we can take it - it's tab 1 in OTP list, ERN DAR-OTP-0124-0816.
4 And I think that should be 0827 or 28. I'm looking for paragraph 59.
5 Is there a problem?
6 The specific page I'm looking for is 0827.
7 I think I will move on and it will be on the screen in a few seconds.
8 So, at paragraph 59, you -- you opine, you give your opinion that the prosecution of
9 serious crimes such as those committed during the counterinsurgency should have
10 been mandatory and that the non-prosecution of these crimes by the Sudanese
11 authorities was against the law.
12 Do you remember that and is there any further comment you want to make on this
13 opinion that you are giving?
14 A. [10:06:36] Can I see the paragraph that you have just mentioned or the page,
15 please?
16 MR LAUCCI: [10:06:43] This is what I'm asking for for some time.
17 PRESIDING JUDGE KORNER: [10:06:46] But again, he wants to see it in Arabic, not
18 in English. Is there a copy of his statement in Arabic here in the court, Mr Nicholls,
19 or Ms ...
20 MR NICHOLLS: [10:07:17] Yes, your Honour.
21 PRESIDING JUDGE KORNER: [10:07:19] Somebody can drag it out and the witness
22 can have it in Arabic. I think that's probably the quickest. For whatever reason it's
23 not coming up on the screen.
24 MR LAUCCI: [10:07:43]
25 Q. [10:07:44] Mr Witness, actually, the time we are taking it on the screen, I think

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

- 1 it -- I mean unless you really want to -- to read back what you have already declared,
2 but I'm just asking you afresh your opinion, irrespective of what you have said:
3 Was -- according to you, was the prosecution of the crimes committed as part of
4 the counterinsurgency mandatory at the time under Sudanese law?
5 Here comes your statement in Arabic and thanks a million to my colleagues in OTP.
6 PRESIDING JUDGE KORNER: [10:08:37] Put it in the statement, Mr Laucci, why do
7 you want him to confirm it.
8 MR LAUCCI: [10:08:43] That's just the introduction of my line of questioning.
9 PRESIDING JUDGE KORNER: [10:08:47] It's always a risk you take if you do that,
10 that the witness, "Well, actually, I made a terrible mistake and now I'm going to say
11 the opposite." So you want to be a bit careful about that.
12 THE WITNESS: [10:09:03](Interpretation) Can you please repeat the number of
13 the paragraph. Is it 29?
14 MR LAUCCI:
15 Q. [10:09:09] Fifty-nine.
16 A. [10:09:24] Page 59?
17 Q. [10:09:26] No. Paragraph 59.
18 A. [10:09:49] Paragraph 59.
19 Okay, go ahead.
20 Q. [10:10:10] So I -- my first question, and it's just an introduction, I wanted to
21 know if you have further comments on this assertion that the crimes committed as
22 part of the -- of the counterinsurgency should have been prosecuted under Sudanese
23 law?
24 A. [10:10:39] I talked about serious crimes in general. I did not talk about crimes
25 that were committed within the scope of counterinsurgency.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 Q. [10:10:54] Okay. So if I -- if I ask you now about serious crimes committed as
2 part of the counterinsurgency, what would be your opinion?

3 A. [10:11:07] Of course there is a need to put on trial those who commit such crimes
4 and to ensure that impunity is not the order of the day.

5 Q. [10:11:22] Thank you. And my next question is, in order to fully understand
6 your -- your view on this topic, you also say that "... the law governing states of
7 emergency excludes military operations from being subject to prosecution ..."
8 How do you reconcile this -- what you just said before, that they should have been
9 prosecuted but that whatever forms part of military operation is excluded from
10 prosecution?

11 A. [10:12:11] In my opinion, the military operations that are covered under the state
12 of emergency would restrict or give immunity to those who commit such acts or
13 crimes. And this is similar to the acts that are committed during war operations
14 between the armed forces and the insurgent.

15 But what happened in Darfur was totally the opposite. There were armed forces that
16 were attacking civilians and civil villages -- civilian villages and people who had
17 nothing to do with the insurgency. That is why, in my opinion, those should be
18 prosecuted.

19 Q. [10:13:15] Thank you. Once again, to make sure that I fully understand what
20 you say, the reason why those crimes should have been prosecuted irrespective of
21 the state of emergency is that the attacks were targeting civilians; did I understand
22 correctly?

23 A. [10:13:45] I didn't understand quite the first section of your question. Your
24 first -- the first part of your question, can you please repeat it.

25 Q. [10:13:54] I will cut it in two pieces. You say there was a state of emergency

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 and this makes that military operations are falling under the state of emergency.

2 First step.

3 Second step --

4 A. [10:14:13] Correct.

5 Q. [10:14:14] Second step, you say, but even if there was a state of emergency,
6 attacks on civilians should have been prosecuted?

7 A. [10:14:29] Yes.

8 Q. [10:14:30] And the reason for that is precisely that the state of emergency does
9 not allow to attack civilians?

10 A. [10:14:43] Yes.

11 Q. [10:14:47] Now, we have seen together --

12 PRESIDING JUDGE KORNER: [10:14:51] Mr Laucci, just before you go on, I
13 think -- I really need -- in the light of what's going on now, I need to give you
14 a caution about this. Of course, this -- you can ask the questions of the witness and
15 the witness can give the answers he's able to, but in the end, what is a legal, what is a
16 matter of law is not a matter for the witness but for the judges.

17 MR LAUCCI: [10:15:14] Certainly, your Honours. Please -- please construe my
18 questions as being entirely limited to Sudanese law, which is not the law applicable
19 before your Court.

20 PRESIDING JUDGE KORNER: [10:15:28] Right. All right. Well, just so long as
21 you bear that in mind.

22 MR LAUCCI: [10:15:33] Thank you for giving me the opportunity to make that
23 clarification.

24 Q. [10:15:41] So yesterday when we talked about the impact of a state of emergency
25 we -- we saw that the declaration of a state of emergency made that the protection

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 against arbitrary arrest and detention was derogated, isn't it?

2 A. [10:16:16] Under the state of emergency there were arrests taking place.

3 Q. [10:16:23] Thank you. And also the protection of the right to fair trial was
4 derogated as a consequence of the declaration of state of emergency?

5 A. [10:16:57] Regarding fair trial, in some circumstances also there were
6 derogations, it wasn't applied.

7 Q. [10:17:15] Thank you. At paragraph 61 of your statement, so you have it here,
8 you mention a verbal directive from Khartoum "... not to prosecute incidents which
9 occurred in the context of the counterinsurgency ..."
10 So if the protection against arrest and detention and the protection of the right to fair
11 trial were suspended, how do you consider this directive to be not in accordance with
12 the law? And it's not a question of moral or values that I'm asking. It's a purely
13 legal question.

14 A. [10:18:28] Can you please repeat the question.

15 Q. [10:18:31] I'm talking about the verbal directive not to prosecute the incidents
16 which occurred as part of the counterinsurgency that you mentioned, and I want to
17 know whether, in light of everything we have seen together, about the impact of
18 the state of emergency, I want to understand why you say that this directive was
19 illegal.

20 A. [10:19:07] (Overlapping speakers)

21 Q. [10:19:07] Illegal. Illegal.

22 A. [10:19:15] Regarding the crimes that you have mentioned that were taking part
23 within the scope of counterinsurgency, I do not agree with what you just said because
24 these crimes again were targeting civilians, even in villages where they had no idea
25 that there was an insurgency taking place in Darfur. These villages were targeted,

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 were attacked, people were killed, their assets and homes were burned. So this is
2 why I do not agree when you said that all these crimes were committed within
3 the scope of fighting the insurgency.
4 As for this paragraph, or the paragraph related to the orders and directives related to
5 the events and violations against civilians in their villages and these should -- these
6 are not applied, this, as you said, was a verbal directive from the prosecution and
7 the prosecution should -- would not accept such directives until the Commission of
8 Inquiry interfered, headed by Judge Cassese, if I remember the name correctly. And
9 this Commission of Inquiry visited villages throughout Darfur. And even when he
10 visited the area where I was, he met the head of the prosecution there, the prosecution
11 office.
12 And once the Commission of Inquiry left, the head of the prosecution was held
13 accountable because the judiciary committee, when they met with Cassese, they said
14 that they had not received any similar orders and that all the directives, order, issues
15 or cases that were referred to the court, they were looked into.
16 So during the visit of Judge Cassese, he was informed that the prosecution was
17 refusing to receive any cases and so the head of the prosecution, the prosecutor
18 general, was reminded that there was a directive by which such summons or cases
19 would be put on hold.
20 So the question was, was there a written directive, and the answer was it was just an
21 oral directive. So this is what happened.
22 After that, the whole prosecution, all the members of the prosecution were transferred
23 outside the governorate.
24 Q. [10:22:17] Thank you. And I take the opportunity to thank you also for this
25 homage to late Judge Cassese.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 When you speak about crimes committed in the context of the counterinsurgency,
2 you are mentioning attacks on villages, burning of houses, killing of civilians, all that
3 sort of things.

4 My question now is a bit more specific. What about the selection, arrest, and
5 execution of males suspected of being rebels or of being supporting rebels, what is
6 your opinion on the impact of the state of emergency on this behaviour?

7 A. [10:23:33] Again my question is to the Bench: Would my opinion as a witness
8 be admissible?

9 PRESIDING JUDGE KORNER: [10:23:42] Well, what you're being asked, sir, is
10 whether under Sudanese law, if properly enacted and surrounded by all the caveats
11 that -- that haven't really been mentioned so far, whether -- I think the question was
12 quite a long question, whether the state of emergency allowed for the arrest and
13 execution of persons suspected of being part of the rebel insurgence.

14 I'm not sure what "supporting" is meant to mean. Do you mean legally supporting
15 would have to mean aiding or abetting in some way?

16 MR LAUCCI: [10:24:46] Yes, that's the meaning.

17 PRESIDING JUDGE KORNER: [10:24:51] Sir, as I say, I've already given Mr Laucci
18 a warning. I'm not sure how much relevance this has, but if you are able to answer
19 that question, then you should. If you feel unable, then say so.

20 THE WITNESS: [10:25:11](Interpretation) I can answer, but from my own personal
21 opinion. And I already answered that question before.

22 The state of emergency really impacted the respect of human rights and it led to many
23 violations, including the execution, the burning, the killing, the raping. And I
24 already explained that the state of emergency can limit certain rights or restrict certain
25 rights, rights of freedoms or something of the sort. But under no circumstances can

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 the state of emergency can lead to the killing of innocent people. This is not justified,
2 even under the state of emergency.

3 MR LAUCCI: [10:26:13]

4 Q. [10:26:13] Thank you, Witness. And I want to clarify once again that I'm not
5 asking for anything else than your opinion on this -- these issues.

6 Just the last question on that and I move to another topic. Well, I should not ask
7 because we have seen that, but can you confirm that death penalty applies in Sudan,
8 that's a sentence that exists in Sudanese law?

9 A. [10:26:48] Yes, the death penalty is enacted in the Sudanese law, but it has to go
10 through a trial within the scope of the judicial system.

11 Q. [10:27:04] Which is suspended in times of state of emergency?

12 PRESIDING JUDGE KORNER: [10:27:10](Microphone not activated) the question.

13 Sir, that's meant as a question rather than a comment, I think. Do you agree that all
14 the rights to fair trial and arbitrary arrest and other aspects that Mr Laucci has
15 mentioned are all suspended when a state of emergency is declared?

16 THE WITNESS: [10:27:48](Interpretation) Maybe you can simplify that question,
17 your Honour.

18 MR LAUCCI: [10:27:53] Actually, I think ...

19 PRESIDING JUDGE KORNER: [10:27:59] What Mr Laucci is putting to you is that if
20 a state of emergency is declared, that the right to -- I don't know whether it's any trial
21 or whether just fair trial rights are suspended and therefore the death penalty could
22 be imposed without such a trial taking place. Is that what you're suggesting?

23 MR LAUCCI: [10:28:33] That's the essence of my question.

24 THE WITNESS: [10:28:37](Interpretation) No, the death penalty cannot be imposed
25 or executed without a trial.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 MR LAUCCI:

2 Q. [10:28:46] Thank you for your opinion, Witness.

3 I'm done with my questions on Sudanese law. You will be happy.

4 I move to the second topic of my cross-examination, which is about the insurgency
5 and counterinsurgency in 2003/2004.

6 PRESIDING JUDGE KORNER: [10:29:12] Yes, can I just give you, Mr Laucci,
7 a warning that if you think that any of your questions are going to lead to answers
8 which may identify the witness, then you ought to go into private session.

9 MR LAUCCI: [10:29:28] Be sure I kept that issue in mind all the time. I clarified
10 this morning with my colleagues in the OTP what had been wrong yesterday and I
11 will try to make sure not to repeat it.

12 PRESIDING JUDGE KORNER: [10:29:40] Yes, Mr Nicholls, you're about to ...

13 MR NICHOLLS: [10:29:43] It's just a question, really, is will Mr Laucci, who has all
14 these different topics, put his case all at the end? Because I think it's fair to the
15 witness to put his case about what all these various legal arguments under Sudanese
16 law mean in relation to his client, which -- or is -- this will all be grouped at the end?
17 But it may be easier for the witness to understand and be able to respond by putting
18 the case at the end of these chapters rather than all at the end. Because I think I
19 understand what -- how this is relevant or what the case is, but I believe it should be
20 put to the witness.

21 MR LAUCCI: [10:30:27] My opinion, colleague, was that I had sort of already put
22 the case on this topic when I did the summary, remember, step by step, the codes are
23 applicable, they apply to the rebellion, they apply to those in the counterinsurgency,
24 et cetera, et cetera. And the last point on the impact of the state of emergency, I can
25 repeat it, but I thought it was clear enough. I leave it to --

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [10:30:55] I think I -- yes, I think what you need to
2 put, and at this stage it's really a hypothetical case, of -- and I obviously want to make
3 sure that it's your words, and Mr Nicholls -- and not mine or Mr Nicholls',
4 what -- whether in certain circumstances if someone behaved in a certain way - as I
5 say, it's quite hypothetical - this would mean that under Sudanese law he faced
6 the death penalty. Because that's what you've been leading up to, isn't it?

7 MR LAUCCI: [10:31:45] That's part of it. I will try to do it again once and for all.

8 PRESIDING JUDGE KORNER: [10:31:50] All right, I think what we'll do is,
9 Mr Nicholls rightly said you've got till the end of cross-examination. There's going
10 to be a break anyhow. And so if you put at the end what these questions have to do.

11 MR LAUCCI: [10:32:01] I'm happy to do that as well. Thank you.

12 Q. [10:32:15] So, Mr Witness, moving to this new topic of insurgency and
13 counterinsurgency, I would like you to look at paragraph 21 of your written
14 statement.

15 And in English version that's on page 0820.

16 Paragraph 21.

17 PRESIDING JUDGE KORNER: [10:32:42] It's probably different in Arabic.

18 MR LAUCCI: [10:32:47] Well, I assume in Arabic the paragraphs are the same
19 numbering.

20 Q. [10:33:00] In that paragraph, I will read the English version, but you have
21 the Arabic one in front of you, you say that -- and it's a comment, comment that
22 you are making:

23 "... the unfortunate thing was that the Government thought ... anyone from these
24 villages is against the government. When the African groups started the rebellion
25 the Government formed the same view of all the African groups."

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 My question is, what about the intelligence network of the government, didn't they
2 have information of what was happening in the villages?

3 A. [10:33:53] I have no idea with regard to the intelligence network. However,
4 the result that the government reached through its different apparatuses, while I
5 disagree with them, they reached the conclusion that the people were divided into
6 two groups, a group of African origin and they were considered as rebels irrespective
7 of their tribe, and another group, which is the Arab group, and these were considered
8 loyal to the government and supportive of the government in its war on the rebellion.
9 And the thing that I want to confirm is that some African villages did not even have
10 an idea or a clue that there was a rebellion going on. And this was the case until
11 the militias started attacking their areas. They were perfectly innocent and they had
12 no idea that there was a rebellion ongoing.

13 Q. [10:35:05] So it means that beyond that distinction between African and -- and
14 Arabs, the government was totally incapable of distinguishing between rebels and
15 normal citizens not rebels?

16 A. [10:35:34] What I think is that the government was doing this on purpose. It
17 did not distinguish between those who were connected with the rebellion and those
18 who were not connected with the rebellion. The government did that on purpose for
19 reasons that are known to the government.

20 Q. [10:35:59] Thank you. I move to the next paragraph, paragraph 22 of your
21 statement, which is on two pages, 0820, 0821 and -- actually I want to go to 0821.
22 Here you mention the presence of defence militias in the villages. And you take as
23 an example the village of Nuri, which, you state, could resist up to six days against
24 the attack of the Government of Sudan, supported by heavy artillery and aircraft.

25 PRESIDING JUDGE KORNER: [10:36:46] Sorry, that's a rather unclear sentence. It

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 was the government that was supported by --

2 MR LAUCCI: Yes.

3 PRESIDING JUDGE KORNER: [10:36:49] -- heavy artillery. It sounded as though
4 you were saying the villages.

5 MR LAUCCI: [10:36:58] No, no. I'm saying that's the government with the support
6 of heavy artillery and aircraft.

7 Q. [10:37:00] Which, if you allow me this comment, is quite impressive that
8 a village could resist for six days to such an attack.

9 And did -- my question is, did -- in your knowledge, did numerous villages have such
10 a capacity to defend themselves and resist for that amount of time against such heavy
11 attacks?

12 A. [10:37:35] The answer to this question makes me go back to a question that I
13 answered yesterday. From the end of the '90s there were events of looting that were
14 targeting trade caravans and the owners of cattle. The villages where people owned
15 cattle, they had to carry arms in order to protect their properties.

16 So the village in question was attacked not for six days in a row, so it was not for six
17 consecutive days facing an attack. It was attacked six times in -- on different days,
18 and it managed to resist. And when this resistance was successful, the government
19 thought that there were rebels there and the government supported the militias with
20 heavy artillery.

21 MS MORRIS: [10:39:08] Excuse me. Sorry. I would just like to draw attention.

22 Mr Laucci referenced paragraph 22 of the witness's statement. The witness referred
23 to self-defence groups, and I believe at page 27, line 21, Mr Laucci implied that
24 the witness was speaking about defence militia. I think there's a distinction between
25 the two, if you can clarify, please.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 MR LAUCCI: [10:39:32] Thank you. I'm happy to ask for that clarification.

2 Q. [10:39:35] What -- do you make a difference between the self-defence groups
3 that you mentioned and village defence militias?

4 A. [10:39:56] It is maybe the same thing, but there is a difference in naming. But
5 they are not connected to the rebellion. That is the thing that I want to confirm.
6 And it does not have any political objectives, either, as I said in the chief examination.

7 Q. [10:40:17] Thank you for that clarification.

8 Did -- did the villages that were under attack, like, for instance, Nuri, but my question
9 is not limited to Nuri, did they receive support from outside?

10 A. [10:40:38] Outside, what do you mean with "outside"? Outside the village?
11 Outside Sudan?

12 Q. [10:40:44] From outside villages.

13 A. [10:40:51] No, I have no idea.

14 Q. [10:41:02] At paragraph 23 and 29 of your written statement - maybe you want
15 to look at it, but I don't think it's necessary to go on the screen - you describe
16 the process of arming the militias by the tribal leaders to their tribesmen. You
17 explained that each community leader, *umdah*, would have a list of the persons who
18 were to receive arms. And during your preparation, the preparation of your
19 appearance with the OTP at the beginning of the week, you clarified that this only
20 applied to the Arab tribes.

21 My question is: Which Arab tribes are you talking about?

22 A. [10:42:05] This is, again, I repeated the answer, so every area, depending on
23 the tribes that were in that area, so, for instance, in my area most of the people
24 belonged to Rizeigat, that was the biggest tribe. And every tribe had sub-branches,
25 it had Mahariya, Mahamid, Awlad Zeid, Najran.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 Q. [10:42:38] Thank you. Were there *umdahs* in the Fur tribe as well? I'm not
2 asking if they were involved in raising the militia, not at all. I'm just asking, in
3 the Fur tribes, were there *umdahs*?

4 A. [10:42:59] Yes, they are the basis of the civilian administration, so all
5 the different tribes in Darfur had internal administration on different levels.

6 Q. [10:43:16] And I understand from your answer that the functions of *umdahs* were
7 similar whatever the tribes they belonged to; is that correct?

8 A. [10:43:29] Yes.

9 Q. [10:43:32] So my next question is, were the *umdahs*, the Fur *umdahs*, active in
10 raising militias on the side of the Fur?

11 A. [10:43:51] There was no confidence left between the different groups. And I
12 will give you an example from my own city. The head of the civilian
13 administration --

14 PRESIDING JUDGE KORNER: [10:44:11] Yes, I'm sorry, but I think we need to go
15 into private session.

16 MR LAUCCI: [10:44:15] Okay.

17 Q. [10:44:13] Yes. We are in public session, Witness. If you think there is
18 anything that may identify your own city, then we go to closed session for your
19 answer. But if you think you can answer without specifying the city you are talking
20 about, we can also carry on in public. Up to you.

21 A. [10:44:37] It is better to go into closed session.

22 PRESIDING JUDGE KORNER: [10:44:42] Yes.

23 Can we go into closed session, please.

24 (Private session at 10.45 a.m.)

25 THE COURT OFFICER: [10:45:02] We're in private session, Madam President.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 (Redacted)

2 (Open session at 10.48 a.m.)

3 THE COURT OFFICER: [10:48:24] We're back in open session, Madam President.

4 MR LAUCCI: [10:48:27]

5 Q. [10:48:27] Yes, Mr Witness, and because we are back in public session I really
6 repeat, try to -- my questions are very general. Try to have -- make the same kind of
7 response that will avoid any risk that you may be identified.

8 And if you need to say something that may identify you again, just say so and we go
9 to private session.

10 A. [10:48:58] Thank you.

11 Q. [10:49:00] Was it -- in your knowledge, was it the first time that the *umdahs* were
12 interested with the role of calling and arming militias, or was it something usual?

13 A. [10:49:20] During that period that I witnessed, this was the second time. And
14 the first time was at the beginning of the '90s.

15 Q. [10:49:51] Thank you for this very specific response.

16 Do you have any explanation why the Government of Sudan for the second time
17 decided to proceed through the *umdahs* to arm the militia?

18 A. [10:50:15] This answer is connected with the previous answer, which is
19 the campaign that took place in 1991. It succeeded in repressing the rebellion. So
20 when the rebellion occurred again for the second time, the government decided to use
21 the same methods.

22 Q. [10:50:41] Thank you. Were there any other network that the government may
23 have used to -- to raise the militia? Was it the only solution or could there be -- could
24 there have been other alternative solutions?

25 A. [10:51:09] Of course I cannot answer such a question. I do not know what are

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 the options that are available to the government and how the government thinks
2 about this. So I cannot really answer this question.

3 Q. [10:51:21] Fair enough. I do not insist.

4 So we have a recruitment of militias that is done through the tribal network --

5 PRESIDING JUDGE KORNER: [10:51:35] I think -- sorry, Mr Laucci, I'm sorry to
6 interrupt you again, but you've been calling them "militias", you've also at the same
7 time referred to "defence militias", which you say is somehow the rebels against
8 the government. Are we now talking about government forces or rebel forces?

9 MR LAUCCI: [10:51:55] I thought it was clear. But we are on the government side.

10 PRESIDING JUDGE KORNER: All right.

11 MR LAUCCI:

12 Q. [10:52:01] So we are talking about recruitment of militias on the government
13 side. Do you follow me? Okay.

14 So does that mean -- because it's done through the tribal network, does that mean that
15 those that did not belong to the dominant tribe in a place would -- would not be
16 called to join the militias?

17 A. [10:52:43] The arming was selective and it was in the three states and it targeted
18 the Arab tribes only. So it was not meant for all tribes.

19 Q. [10:53:02] Thank you. I will try to be more specific.

20 If we talk about -- and it's not your region, but it's just for you to understand the logic
21 of my question. If we talk about Wadi Salih, we have evidence that the dominant
22 Arab tribe in that region, Wadi Salih, were the Salamat. Does that mean that when
23 the government called for the -- called for the recruitment of militias, this would have
24 been done through the Salamat tribal network because that was the dominant tribe?

25 First question.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 A. [10:54:00] Not necessarily. It's not necessarily the case that an Arab tribe is
2 the big tribe or the dominant tribe. So the mobilisation would include all tribes in
3 Wadi Salih. However, there are the Salamat or other tribes as well. All Arab tribes.

4 Q. [10:54:24] Yes, but those recruiting would be the *umdahs*, right?

5 A. [10:54:32] The *umdahs* have a role to play, which is to collect or to gather
6 the recruitees and they would receive incentives from the government for this.

7 Q. [10:54:48] And you explained that they do so talking to their tribes -- through
8 their tribes?

9 A. [10:54:58] Yes.

10 Q. [10:55:04] Thank you. By the way, to illustrate what you just said, if we go at
11 paragraph 30 of your written statement, and that is on page 0823. I will not speak
12 about the city, or whatever, but you are talking about a meeting that took
13 place -- the meeting that took place that is mentioned in this paragraph, no need to
14 specify which one, you say that there was a meeting to organise the militias and some,
15 two persons, who had participated in that meeting, had not received weapons. And
16 the reason why -- the reason was that they represented minority groups and could not
17 bring together enough people to gain support from the government.

18 So I take this specific episode that you mention as a confirmation that the arming of
19 the militias was completed through the tribal networks. Do you agree that this is an
20 illustration of what we have been discussing?

21 A. [10:56:40] No, I did not mention not arming these two people. I said that they
22 did not get any vehicles.

23 Q. [10:56:50] Thank you, yes, but this is because they were from minor -- minority
24 groups and because of that, because they were recruiting only in their group, they
25 could not recruit enough people. That's what -- is my understanding correct?

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 A. [10:57:11] This depends on the specific number that the *umdah* can gather. If
2 the *umdah* can gather a certain number, then they can get a vehicle with heavy
3 artillery, for instance. And there are some *umdahs* that could not get that number, so
4 they could only offer their people light weapons. However, they did not get vehicles.
5 They were not given any vehicles.

6 Q. [10:57:47] And when you say "their people", that's the people of their tribe that
7 they recruited. I understand correctly?

8 A. [10:57:59] Yes.

9 Q. [10:58:01] Thank you.

10 Madam President, it's almost 11. I have a series of questions on the border
11 intelligence, but we may start this after the break, if you want to take it now.

12 PRESIDING JUDGE KORNER: [10:58:12] Yes, what I want to know is do you want
13 to go back to the criminal code, because, if so, I'm going to give the witness a slightly
14 longer break to enable him to go through the criminal code. But if you're -- if you've
15 now finished what you're going to ask ...

16 MR LAUCCI: [10:58:32] Actually, I have no problem with coming back to
17 the criminal code after the lunch break, which is longer, so which means that we
18 would not need a longer break now.

19 PRESIDING JUDGE KORNER: [10:58:44] Right. Somehow I thought you were
20 winding down, Mr Laucci, but clearly not. So we will be going on after the lunch
21 break, will we?

22 MR LAUCCI: [10:58:54] Yes, please.

23 PRESIDING JUDGE KORNER: [10:58:56] Yes, very well. In that case we'll stick
24 with the normal break.

25 Sir, there will be a break of half an hour for you to have coffee or tea and then if you

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 can come back at 11.30, please. Yes. Thank you.

2 THE COURT USHER: [10:59:13] All rise.

3 (Recess taken at 10.59 a.m.)

4 (Upon resuming in open session at 11.31 a.m.)

5 THE COURT USHER: [11:31:39] All rise.

6 Please be seated.

7 PRESIDING JUDGE KORNER: [11:32:03] Yes, Mr Laucci.

8 MR LAUCCI: [11:32:05] Yes, Madam President.

9 Maybe small housekeeping matters. I have enough, I think, to go at this session until
10 half past noon. And after I will need to -- to go again in the criminal code. So
11 maybe if we can move a little bit, take the lunch break a bit earlier and resume earlier,
12 that would be, I think, perfect.

13 PRESIDING JUDGE KORNER: [11:32:37] Yes. All right.

14 Yes. Well, we'll adjourn then at half past 12 and sit again at 2 o'clock.

15 MR LAUCCI: [11:32:46] Thank you for that.

16 Q. [11:32:49] Are you okay, Mr Witness? Can we carry on?

17 A. [11:32:56] Yes.

18 Sorry, regarding the last answer, before we proceed with the questioning, regarding
19 my answer about the attack on the village that I have mentioned, and it was related to
20 the six-day period attack, I would like to add something, if the bench allows it.

21 PRESIDING JUDGE KORNER: [11:33:25] By all means.

22 THE WITNESS: [11:33:29](Interpretation) Following this attack and the government
23 intervention, it became obvious to the citizens, without any doubt, that
24 the government was behind the attack and that the government was supporting
25 the militias that was committing the looting and the ones they were defending

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 themselves against. And since the government was supporting these militias, all
2 the self-defence groups stopped, stopped defending themselves because they could
3 not fight and stand in the face of the government. This was part of the opposition.

4 MR LAUCCI: [11:34:29]

5 Q. [11:34:29] Thank you, Mr Witness.

6 As I announced before the break, I'm moving to the topic of the border intelligence
7 that is mentioned in your statement.

8 Can you tell us first who were the -- the leaders of the border intelligence.

9 A. [11:35:02] I'm not sure -- I don't know if we need to go into a private session or
10 not, to give you the answer.

11 Q. [11:35:10] If you believe there is a need for that, we will do so.

12 A. [11:35:18] I think that would be better.

13 PRESIDING JUDGE KORNER: [11:35:21] Very well.

14 Private session, please.

15 (Private session at 11.35 a.m.)

16 THE COURT OFFICER: [11:35:35] We're in private session, Madam President.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 MR LAUCCI:

23 Q. [11:36:24] Thank you. Since you come back to this issue of the division between
24 two governorates within West Darfur, can you specify when these two governorates
25 were divided, when they were created?

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 A. [11:36:47] These divisions were successive and they happened on several periods
2 of time. The last division was in 2012. The eastern governorate that were before that
3 following West Darfur became the middle or the centre Darfur governorate, and the
4 western governorate remained under that name, the western
5 governorate of Darfur.

6 Q. [11:37:22] But is this distinction -- yes, sorry, I repeat. This distinction, did it exist in
7 2003/2004?

8 A. [11:37:35] In 2002 and 2003, yes, they existed. Before the division of the state into
9 two states, yes, they did exist.

10 Q. [11:37:48] And so that we fully understand, what was it, was it like an
11 administrative division?

12 A. [11:38:04] This division was well known in the government institutions. They
13 would require that a number of governorates from the west and a number of the
14 eastern governorates should be as such.

15 Q. [11:38:31] So which means that, in the state of West Darfur, there were actually two
16 governors; is it what you say?

17 A. [11:38:49] I am not sure when it comes to the administrative division. Do you want
18 me to talk about the different level of government?

19 In Sudan we had three different levels of government. We had the federal
20 government in Khartoum, and then at the state level. At the state level you have at the
21 head of the state the wali. The wali had his own cabinet with a number of governors
22 for the different governorates.

23 Q. [11:39:32] That's very clear. So you confirm that this was more like an
24 administrative division. In each state you had the wali at the head of the state, and
25 then governors for various regions. That is the way the administration was

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 organised?

2 A. [11:39:51] Yes.

3 Q. [11:39:57] But then how this administrative division was relevant for the
4 organisation of informal groups like the militias or the border intelligence we are
5 talking about, how is it related?

6 A. [11:40:24] Each region would deal with the groups that exist within its perimeters
7 or borders, whether it's locally or at the state level.

8 Q. [11:40:43] Mr Witness, we went in closed session because you felt more
9 comfortable. Having heard your answers, I'm not sure this was necessary.
10 I have other questions of the same generality about the border intelligence. Do you
11 want to remain in closed session to answer them?

12 A. [11:41:05] Yes.

13 Q. [11:41:07] Okay. Did you ever hear about a person named Musa Hilal?

14 A. [11:41:15] Yes.

15 Q. [11:41:19] Wasn't he the -- the leader of the border intelligence?

16 A. [11:41:25] Yes. He was in the state of West Darfur.

17 Q. [11:41:35] Are you saying that he was the leader only for West Darfur?

18 A. [11:41:46] West --

19 THE INTERPRETER: Correction: The north of Darfur, from the interpreter correction.
20 So north of Darfur, not the west of Darfur.

21 THE WITNESS: [11:41:56](Interpretation) In addition, he was the highest ranking
22 recruit back then, or officer.

23 MR LAUCCI:

24 Q. [11:42:13] So there was a correction by the interpreter. You say Musa Hilal was in
25 northern Darfur and he was the highest grade, but does that mean that his

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 authority was limited to northern Darfur or was it larger than that?

2 A. [11:42:42] I think that his powers were limited to North Darfur. But he's a tribal
3 leader and some of his tribe members exist in other governorates within Darfur. And
4 these were kind of his direct subordinates.

5 Q. [11:43:16] Okay. So you are explaining that, once again, the tribal network may
6 actually result in giving authority to Musa Hilal over the persons of the same tribe as
7 his own tribe in other regions?

8 A. [11:43:37] Yes, in other regions even outside Sudan.

9 Q. [11:43:43] Can you remember us what was the tribe of Musa Hilal, please?

10 A. [11:43:50] Yes, the Mahamid tribe.

11 Q. [11:44:00] Thank you.

12 Was the border intelligence the only armed group involved in the counterinsurgency,
13 or were there other groups?

14 A. [11:44:43] At one point everything was very chaotic. You couldn't make the
15 difference between one from the other. Between, I mean, the -- the border intelligence,
16 the self-defence, the popular police, between the central reserves.

17 Q. [11:45:07] And I believe it's yesterday - correct me if I'm wrong - but I believe it's
18 yesterday answering to my colleagues in the OTP that you said that this became a
19 little bit more structured, let's say, in the course of 2004, second half of 2004, so to
20 say?

21 A. [11:45:32] This does not contradict my answer. I said that at the beginning of the
22 events this was the case.

23 Q. [11:45:38] No, no, I'm not trying to contradict you, I'm just trying to follow.

24 A. [11:45:48] I said that at the beginning it was very difficult to differentiate between
25 the different armed groups. However, after the date mentioned, yes, things

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 became more organised. And lately, even more organised than that. Right now, we do
2 not have any longer any forces known as border intelligence. We have only the Rapid
3 Support Forces.

4 Q. [11:46:20] Yes. Thank you. You -- you referred to the Rapid Support Forces, not
5 with the full name yesterday, but now you confirm that this is what you are talking
6 about. So thank you for this clarification.

7 The way you describe the border intelligence, it seemed to have, at least, a fair level of
8 organisation. You mentioned uniforms and ID cards. To the best of your knowledge,
9 was there a register of members of the border intelligence somewhere?

10 A. [11:47:04] Yes. That was headed by the army command number 22 in the region.
11 Under the supervision of the military intelligence.

12 Q. [11:47:28] When you say "army command number 22", what is it, is it an order that
13 was issued? That's what you are referring to?

14 A. [11:47:44] I am talking about the name. It's the corps, it's the corps or the contingent
15 22. I think it's the corps 22 for the infantry.

16 Q. [11:47:58] Thank you. Thank you for this clarification.

17 And -- and the way this border intelligence was structured and organised, as you -- as
18 you describe, was it unique example of such level of organisations, or were the other
19 groups much more chaotic that you described that formed part of the
20 counterinsurgency, was there -- were they, as well, organised that way?

21 A. [11:48:40] The other groups, can you mention them? Which groups? What do you
22 mean exactly?

23 Q. [11:48:47] Well, earlier I asked you if the border intelligence was the only
24 component of the counterinsurgency. You said no, there were other component.
25 I'm talking about these other components, if they were -- if they had reached that level

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 of organisation that you mentioned for the border intelligence?

2 A. [11:49:15] The other groups, for example, like the popular defence, they would
3 have the same uniform. Or the border intelligence, they used to have the same
4 uniform. However, from the organisational point of view, the popular defence was
5 more organised than the border intelligence, because they have coordinators and
6 others, and they also have training in camps. However, for the border intelligence, I
7 think that they were less organised. And I think they were not even trained enough,
8 in my opinion. But you can -- they barely knew how to hold a weapon and fire, but
9 they did not follow any real training, for example, on war ethics, fighting ethics, et
10 cetera. They were not trained in these issues.

11 Q. [11:50:29] Do I understand that the PDF, for instance, did receive training in
12 military ethics?

13 A. [11:50:44] In their camps, yes, they have trainings.

14 Q. [11:50:53] Thank you. And what about in the PDF this register of members and ID
15 cards, did that exist?

16 A. [11:51:05] Yes. They have -- they hold a card and it holds the title "Border
17 Intelligence".

18 Q. [11:51:16] Thank you. My question actually was related to the PDF, whether this
19 did exist as well for the PDF?

20 A. [11:51:28] Yes, yes.

21 Q. [11:51:34] Thank you. I'm done with the border intelligence.

22 My next topic is about the visits of the representative of the Government of Sudan,
23 especially Mr Harun and Mr Hussein.

24 Do you want to remain in closed session or can we move to public session?

25 A. [11:51:58] I prefer to stay in private session. It would be better.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 MR LAUCCI: [11:52:03] With your authorisation, Madam President.

2 PRESIDING JUDGE KORNER: [11:52:05] Yes, I think it's obviously in your interest
3 that the witness doesn't feel constrained in answering.

4 MR LAUCCI: [11:52:11] Absolutely. That's the reason why I keep asking for every
5 new topic. I mean, I regret that we cannot go public, but I fully understand the
6 problem.

7 Q. [11:52:24] So in your statement you mentioned visits of representative of the
8 Government of Sudan to Darfur, and specifically you mentioned visits by Mr Harun
9 and Mr Hussein.
10 You mention at paragraph 34 of your statement, you mention the figure of an average
11 of one visit per week. Any reason -- is there any reason you know why they did come
12 so often?

13 A. [11:53:20] I can maybe clarify before I answer your question. Of course, the
14 president of the republic derogated some prerogatives to the Minister of Interior
15 Muhammad Hussein, who was the representative of the president of the republic in
16 Darfur. At the same time, he was the minister of interior. Mr Ahmad Harun was the
17 state minister within the Ministry of Interior and he was representing Abdel Raheem
18 Muhammad Hussein in representing the president of the republic in Darfur during
19 his visits to Darfur. And the visits were in the scope of fighting the insurgency, so the
20 counterinsurgency efforts. And that was by arming the groups that I had mentioned
21 before.

22 Q. [11:54:30] Thank you. But my question was did that require them to come as often
23 as once a week?

24 A. [11:54:44] Of course, that was the way they saw it. Not me. And when I said once a
25 week, of course it's an approximation, and this is linked to the events that were

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 unfolding.

2 Q. [11:55:01] And, to your knowledge, would they visit all around Darfur or only Al
3 Geneina?

4 A. [11:55:09] They used to visit the head of the wali or the governorate, particularly
5 Ahmad Harun, so he would visit the wali and he would visit Wadi Salih constantly.

6 Q. [11:55:29] Thank you.

7 At paragraph 35 of your statement you mention having discovered on CNN on 27
8 February 2007 - by the way, as a coincidence, that's the same day as the first day of
9 your interview by the OTP - that Mr Harun had been summoned by the ICC.

10 Did you hear about --

11 A. [11:56:02] Yes.

12 Q. [11:56:03] Did you hear about someone else summoned by the ICC together with
13 Mr Harun?

14 A. [11:56:18] Yes.

15 Q. [11:56:18] Who was that?

16 A. [11:56:22] The accused standing trial before the Court.

17 Q. [11:56:29] And under which name was it?

18 A. [11:56:39] Ali Kushayb.

19 Q. [11:56:41] Was it the first time you heard the name Ali Kushayb? I'm talking about
20 February 2007.

21 A. [11:56:51] Of course not.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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6 Q. [11:58:03] Thank you for that. And can you remember, approximately, when you
7 heard about a person named Ali Kushayb for the first time?

8 A. [11:58:19] I cannot specify exactly when it was the first time, but it was during the
9 main events that were taking place, particularly in Wadi Salih. I had heard a lot about
10 him.

11 Q. [11:58:35] Thank you.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. [11:59:30] First question, can you explain why you decided to -- to volunteer this
19 document to the Office of the Prosecutor earlier this week, please.

20 A. [11:59:50] I actually submitted three documents. I would like to introduce the
21 Court to my previous activities through these documents.

22 Q. [12:00:07] Yes, indeed. And you remember that I referred already to the first two
23 documents, two other documents yesterday, in introduction to your
24 cross-examination. Now I'm moving this one. So you explained that the reason why
25 you provided it is, once again, to introduce your background.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 A. [12:00:34] Exactly.

2 Q. [12:00:38] Beyond that, do you second the information that is provided in that
3 document?

4 A. [12:00:56] I support it. But, of course, this is limited to the paragraph that has my
5 name in it. However, I did not check the rest of the information in this
6 document.

7 Q. [12:01:14] Do you mind if I ask you, if we go through this document, and I ask you
8 your input or opinion on some of the information that is contained in that
9 document?

10 A. [12:01:29] I have already answered you. I do not know about the rest of the
11 information. You can only pose a question regarding the paragraph that contains my
12 name. But for the rest I cannot really say yes or no.

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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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13 MR LAUCCI: [12:04:17] So I'm told that in the transcript -- transcript of yesterday,

14 that would be on page 66, line 11 to 14.

15 Is it the English or French version? English version.

16 PRESIDING JUDGE KORNER: [12:04:33] Yes, you may have all seen -- well, I'm not

17 sure you've all seen, but we've sent an email saying please can both sides refer to the

18 English transcript, because it gets so confusing with the page numbers.

19 MR LAUCCI: [12:04:44] The problem also is that we get the French transcripts much

20 earlier than the English one.

21 PRESIDING JUDGE KORNER: [12:04:50] No, I've noticed that, yes.

22 MR LAUCCI: [12:05:03] Can I move on?

23 PRESIDING JUDGE KORNER: [12:05:04] Yes, carry, on, Mr Laucci.

24 Didn't hear that, or maybe I hadn't my microphone on.

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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12 A. [12:06:59] The Sudanese criminal code does not include war crimes and wars

13 against humanity and mass killings, or genocide.

14 Q. [12:07:33] Okay. And so does that mean that there was nothing in the Sudanese law

15 to -- to hold someone, Mr Ali Kushayb or anyone else, responsible for the kind of

16 crimes that you are referring to?

17 A. [12:08:06] Yes. So that is if we put aside the other impediments.

18 Q. [12:08:11] What impediments are you referring to?

19 A. [12:08:22] The other impediments is the -- the amnesty and the unwillingness of the

20 judiciary.

21 Q. [12:08:44] Are you telling us that there was a specific law on amnesty?

22 PRESIDING JUDGE KORNER: [12:08:50] Sorry, the -- whether it's a question of

23 translation, but the answer wasn't finished. "The other impediments is the amnesty

24 and the unwillingness of the judiciary" to do what?

25 THE WITNESS: [12:09:14](Interpretation) The unwillingness to try the perpetrators

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 of the crimes that were committed in Darfur during the events.

2 MR LAUCCI: [12:09:30]

3 Q. [12:09:30] You mention an amnesty. Was there a specific law on the amnesty of the
4 events we are talking about, 2003/2004?

5 A. [12:09:50] The armed forces, they have amnesty or they have protection against
6 being tried.

7 Q. [12:10:02] Okay. Maybe you are referring to a question of immunity rather than
8 amnesty. Do I understand correctly?

9 A. [12:10:23] I am talking about procedures. So if the -- there was willingness or
10 seriousness about trying the perpetrators, then there would have been the conditions
11 in place to report crimes and to act upon them.

12 PRESIDING JUDGE KORNER: [12:10:48] Yes. Do you mind, sorry, Mr Laucci.

13 Sir, I think what you're being asked is, was an amnesty actually given by the
14 government to its forces? In other words, for any crimes that they may have
15 committed during the period that we're concerned with, for example, 2003 and 2004.
16 Was there an actual grant of an amnesty?

17 THE WITNESS: [12:11:17](Interpretation) No, I do not recall that.

18 MR LAUCCI: [12:11:23] If we can move to page 5, and actually what I want to – to
19 quote is between page 5 and 6. It starts on page 5 and it carries on in page 6.

20 Yes, so keep that for the moment.

21 (Redacted)

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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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5 A. [12:13:01] About whom are you talking now?

6 Q. [12:13:04] For the moment I'm not talking about a person, I'm talking about a place.

7 And, actually, the answer is on the previous page. If you want, we can move back.

8 But the introduction is talking about Geneina. So when -- when we talk about the city

9 proper, I want to clarify that it is indeed Al Geneina that we are

10 talking about.

11 A. [12:13:30] I did not understand the question clearly. What do you mean with this

12 question?

13 Q. [12:13:39] If you want, we can move back to the page, but before that, do you

14 remember that the beginning of what I read was related to Al Geneina?

15 A. [12:13:52] Yes.

16 Q. [12:13:53] Thank you. So is it, do I understand well, when if I say that it is in Al

17 Geneina that the Janjaweed exert Mafia-like control, according to that document?

18 PRESIDING JUDGE KORNER: [12:14:13] Yes, Mr Nicholls. I'm just wondering how

19 he can say.

20 MR NICHOLLS: [12:14:17] Well, I think the problem is, and my apologies, the witness

21 asked is this about a particular person. And it is, this paragraph. If you go to the

22 previous page, 5, of the same paragraph. Unless I'm missing something.

23 I'm looking at 0009-0005. It's about a particular person, Ali Kushayb, and whether he

24 can get a fair trial. And then there's this "Mafia-like control" comments.

25 So the witness asked, in trying to understand this paragraph, is it about a particular

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 person. So I think that needs to be put to him. When talking about what is the home
2 base and is a fair trial possible there, he needs to know which person is being
3 discussed, which the witness expressly asked.

4 MR LAUCCI: [12:15:11] Colleague, I'm happy to jump to the conclusion of the
5 questioning. I was about to go to that.

6 Q. [12:15:16] So, basically, this paragraph that I read, is it suggesting that Al Geneina
7 was the home base of Ali Kushayb from 2003/2004?

8 A. [12:15:34] No, it was not a home base. It was the capital of a state and he was more
9 towards Wadi Salih. And Al Geneina is the capital for Wadi Salih.

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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

- 1 A. [12:17:37] I cannot really give an opinion regarding this statement.
- 2 Q. [12:17:44] Fair enough.
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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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23 A. [12:23:28] Not just the coup d'état. So the militias, which were the basis of the
24 border intelligence, has become the quick support forces and they have become
25 parallel forces to the armed forces. And their leader is the deputy of the military

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 council. And the militias there are still killing and looting, even on a wider scale.

2 Forty-eight hours ago, in an area that is 80 kilometres east of Geneina, they killed 201
3 citizens.

4 THE INTERPRETER: [12:24:31] A note from the interpreter: If the witness can please
5 repeat the name of the area.

6 MR LAUCCI: [12:24:39]

7 Q. [12:24:41] Yes, the interpreter is asking you if you can repeat the place of the area of
8 these sad events that actually we obviously saw in the news?

9 A. [12:24:51] The area is called Kreinik and it is to the north-east of Al Geneina. It is 80
10 kilometres from Al Geneina.

11 Q. [12:25:06] Yes. This event is about militia attacking -- still attacking people in
12 Darfur.

13 A. [12:25:18] Yes, this concerns the militias that are attacking people, because their
14 leaders have enjoyed impunity, whether from the ICC or from local Sudanese courts.

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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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2 A. [12:26:44] There is something that I would like to clarify.

3 Those who are indicted by the ICC, Omar al-Bashir, Harun, Hussein, had they been
4 handed over to the Court, had they been tried and convicted, then those who were --
5 who are still in power, they would have taken this into consideration that anybody
6 who commits a crime will not enjoy impunity. Unfortunately, this is not
7 the case.

8 Q. [12:27:25] Thank you, Mr Witness.

9 (Redacted)

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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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14 MR LAUCCI: [12:33:38] I can carry on a little bit, because I still have questions on this
15 statement.

16 PRESIDING JUDGE KORNER: [12:33:43] You may as well finish the topic of the
17 statement before lunch.

18 MR LAUCCI: [12:33:50] Okay. Thank you.
19 Unlikely, but I will try.

20 PRESIDING JUDGE KORNER: [12:33:58] Well, sorry, Mr Laucci, it's up to you. If
21 you'd like to take the break now, then we're happy to take the break until 2 o'clock.

22 MR LAUCCI: [12:34:07] No. Actually, what I did took longer than I expected, so I can
23 carry on for 30 minutes. It's your preference, really.

24 PRESIDING JUDGE KORNER: [12:34:19] On you go, Mr Laucci.

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

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8 (Recess taken at 12.58 p.m.)
9 (Upon resuming in open session at 2.16 p.m.)
10 THE COURT USHER: [14:16:07] All rise.
11 Please be seated.
12 PRESIDING JUDGE KORNER: [14:16:27] We're in open session at the moment,
13 Mr Laucci, and although the public gallery isn't packed, I think, if possible, we ought
14 to stay -- are your questions simply going to be related to general principles of
15 the criminal code?
16 MR LAUCCI: [14:16:47] Yes.
17 PRESIDING JUDGE KORNER: [14:16:48] Then, sir, can I ask you, there is, as I'm
18 sure you understand, a principle, particularly for trials at this Court, that they should,
19 if possible, be held so that the public can hear them.
20 If Mr Laucci's questions are purely restricted to general legal principles arising from
21 the code of criminal conduct, would you be prepared to answer those in open
22 session?
23 Can I add, the decision is entirely yours, and if you feel uneasy about that, in
24 the sense that your answers may lead to your identification, then of course we'll go
25 straight into private session.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 THE WITNESS: [14:17:49](Interpretation) This depends on the nature of the
2 question.

3 PRESIDING JUDGE KORNER: [14:17:53] Right. Well, let's try in open session and
4 see. And, sir, at any stage, if you prefer private session, just say so.

5 MR LAUCCI: [14:18:06] Very well.

6 Q. [14:18:07] Are you still feeling okay for this final session of your appearance,
7 Mr Witness?

8 A. [14:18:21] Yes.

9 Q. [14:18:22] I will try to be -- to be quick. And in order to shorten time, actually, I
10 will start with an open question to you.

11 Yesterday we - no, yesterday? No, today, or yesterday, I don't remember, too
12 long - we -- we started going through the Criminal Act of 1991 in order to try to
13 identify the specific offences that would apply to acts of rebellion. You remember
14 that?

15 A. [14:19:03] Yes.

16 Q. [14:19:05] I proposed you -- I started with Article 50, but you seem to have in
17 mind some other references that you wanted to draw the attention of the Court on.
18 So let's start with that.

19 What are, according to your knowledge of the Criminal Code 1991, the specific
20 offences applying to acts of rebellion under the Sudanese law?

21 A. [14:19:44] These are articles from 50 through to 63.

22 Q. [14:20:06] Thank you. That's -- I'm happy to say that this is the selection I had
23 made. So my understanding of the Sudanese criminal code is not that bad.
24 Next question: Do -- so this applies to acts of rebellion, that is, for someone to
25 participate actively in a rebel movement.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 Now I'm turning to all forms of aiding and abetting rebellion, supporting a rebel
2 movement. This time my question is: In your understanding, what are the forms
3 of aiding, abetting, supporting rebellion that would constitute a criminal offence
4 under the criminal code?

5 A. [14:21:17] These cases are prescribed in the beginning from Article 21 till 26.
6 It's about abetting, cooperating, participating, and so on.

7 Q. [14:21:44] Thank you.

8 PRESIDING JUDGE KORNER: [14:21:48] That, Mr Laucci, takes us back to where
9 we stopped yesterday on this whole topic. Do we have copies of those articles?

10 MR LAUCCI: [14:21:57] Yes. So the tab is still tab 1 in the Defence list. The ERN
11 is DAR-OTP-0021-0296, and we need to go to page 0304 and onwards.

12 PRESIDING JUDGE KORNER: [14:22:36] I don't suppose you brought printed
13 copies, because you gave us printed copies of the later articles, but not these?

14 MR LAUCCI: [14:22:47] Well, actually the articles were just identified right now by
15 the witness, so ...

16 PRESIDING JUDGE KORNER: [14:22:50] Yesterday they were.

17 MR LAUCCI: [14:22:51] It was not clear. He was speaking about Article 20, I
18 looked at 20, I was not convinced that it was what he meant, so.

19 PRESIDING JUDGE KORNER: [14:23:00] Well, all right. We'll look at it on
20 the screen.

21 THE WITNESS: [14:23:07](Interpretation) I'm sorry, I already mentioned Article 21,
22 as well as Article 25, concerning participation and abetting, in yesterday's session.

23 PRESIDING JUDGE KORNER: [14:23:19] You did, sir. I wasn't going to argue with
24 Mr Laucci for that.

25 MR LAUCCI: [14:23:25] Okay. Then my apologies to both the Court and

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 the witness.

2 Q. [14:23:30] Well, I tried to find out what is the most straightforward way and
3 rapid way to move forward. We have identified the articles in the code - thank you,
4 Witness - Article 21 to 26.

5 Let me, rather, propose to you some form of behaviour and you will tell me if,
6 according to you, that may constitute an offence. Are you -- do you agree if we
7 proceed that way? Instead of going from the article to the offence, we just try to
8 identify the offences.

9 A. [14:24:17] You will define and determine the events or the facts, and I can tell
10 you to what article it applies. Is this the method that you are suggesting?

11 Q. [14:24:29] Not specific facts, but some form of behaviour. Let's take the first
12 example, so you have a clear idea of what I want to ask you. Would recruiting
13 persons to participate in a rebel movement constitute an offence?

14 A. [14:24:47] You took me back several years ago when I was still a student.
15 However, during -- however, I -- later on I never worked on theories, I just practised,
16 when it comes to the alphabetical principles and things within the law.

17 Q. [14:25:14] That's -- that's fair, Witness. I will leave it -- leave that here. We
18 have the articles of reference and -- and that will be it for this line of questioning.
19 I doubt I can get better.

20 PRESIDING JUDGE KORNER: [14:25:32] Well, I was going to say, if this is not
21 something he's particularly familiar with, then it's not fair to ask him to opine on it.

22 MR LAUCCI: [14:25:44] Precisely. That's the reason why I -- I move on.

23 Sorry, public. The next topic is the one I announced before the break and it requires
24 closed session.

25 PRESIDING JUDGE KORNER: [14:25:57] All right. Okay, Mr Laucci.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

- 1 Apologies to the public gallery, but I'm afraid we're going to go into private session.
- 2 (Private session at 2.26 p.m.)
- 3 THE COURT OFFICER: [14:26:14] We're in private session, Madam President.
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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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13 Page redacted – private session

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Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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Page redacted – private session

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

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- 11 (Open session at 2.50 p.m.)
- 12 THE COURT OFFICER: [14:50:52] We're back in open session, Madam President.
- 13 MR LAUCCI: [14:50:56]
- 14 Q. [14:50:56] Mr Witness, I will now proceed to what is called here putting my case.
- 15 I'm sure that you are much more familiar than I am with what it is. But what I will
- 16 propose you to do is the following: I will now state a list of conclusions that can be
- 17 reached, according to me, on the basis of your evidence. And for each one I
- 18 will -- after each one I will stop and you will just tell me if you agree or disagree with
- 19 what I'm saying.
- 20 Do you follow?
- 21 A. [14:51:49] And these conclusions you've reached through my previous answers?
- 22 Q. [14:51:55] Yes, of course.
- 23 A. [14:52:00] Okay. I hope that it stays the same.
- 24 Q. [14:52:05] First conclusion, Mr Witness, you have confirmed in the course of
- 25 your appearance that the act of participating or aiding and abetting rebellion was

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 a criminal offence incurring death penalty in Sudan?

2 PRESIDING JUDGE KORNER: [14:52:27](Overlapping speakers) No, because we
3 never got to the articles about aiding and abetting. He said taking part -- he agreed
4 (Overlapping speakers)

5 MR LAUCCI: [14:52:34] Okay, participating in rebellion. Okay, fine.

6 PRESIDING JUDGE KORNER: [14:52:37] Yeah.

7 MR LAUCCI: [14:52:47]

8 Q. [14:52:49] Do you agree with that --

9 A. [14:52:51] It is a crime, of course, according to the 1991 code.

10 Q. [14:52:58] Yes, indeed. And since we were talking about Article 50, that's an
11 article that refers to death penalty.

12 A. [14:53:15] It is prescribed and identified, so I think maybe we don't need to
13 repeat the same things that we said before. I think we're wasting time by doing that.

14 Q. [14:53:30] It will not be long. You're almost there.

15 You have confirmed that the persons joining in the counterinsurgency as members of
16 the militia fell under Article 4, and I think you specified Article 4(f) of the People's
17 Armed Forces Act 1986. This is the article that makes the code -- the act -- the
18 People's Armed Forces Act 1986, applicable to the person joining
19 the counterinsurgency.

20 A. [14:54:25] Well, in the beginning I understood this question in a different way.

21 But I agree I might put it in a more accurate phrase. The militia, such as the People's
22 Defence Forces and the border intelligence, yes, the Armed Forces Act applies to
23 them.

24 Q. [14:54:59] Thank you. As such, these persons belonging to the militias were
25 under an obligation to obey orders and may have incurred death penalty for not

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 doing so under Article 48(c) of the People's Armed Forces Act, 1986?

2 A. [14:55:29] The article that I spoke about has got a stipulation. This stipulation
3 is that those people must be aware of the laws, or the founding laws, and we have to
4 find out if those people are considered part of the armed forces or not.

5 Unfortunately, I did not look at this article. I mean by that the act applicable to
6 the border intelligence unit.

7 Q. [14:56:17] Thank you.

8 A. [14:56:21] So maybe you can amend what you just said.

9 Q. [14:56:29] What you answered is on record, so I think that -- that will be it.

10 A. [14:56:39] No, but you have recorded that these forces, according to Article 4 of
11 the People's Armed Forces Act, are considered part of the armed forces and they
12 should obey orders. My answer is this is in accordance with the founding law of
13 these forces. So I don't know the law that stated the foundation of these groups. So
14 I don't know if the People's Armed Forces Act is applicable to them or not because
15 I didn't read the founding law.

16 Q. [14:57:25] Thank you, Mr Witness. Your full answer is on record, you can be
17 sure, and will be considered -- considered as such.

18 You have confirmed that, under the rule of President al-Bashir, extrajudicial arrest
19 and detention, torture and extrajudicial execution were common practice, particularly
20 so for political offences falling under the jurisdiction of the National Security
21 Intelligence Service, the NSIS, and particularly so when the state of emergency was
22 declared in 1999 onwards.

23 PRESIDING JUDGE KORNER: [14:58:18] Yes. Well, I'm going to stop you there,
24 Mr Laucci, because this is one of the matters I wanted to come back on; (a), you've
25 wrapped up a number of different periods together into one question, and I think

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 that's -- that's a complication which certainly we need clarification on.

2 So you're talking about two different periods. First of all, you're talking about before
3 the law -- the emergency law was promulgated and then after.

4 MR LAUCCI: [14:58:54] Actually, my question is under the rule of
5 President al-Bashir, take the full period, and particularly once the state of emergency
6 was declared.

7 PRESIDING JUDGE KORNER: [14:59:05] Well, all right. I think then -- then
8 the witness should -- first of all, do you agree there's no difference in, as Mr Laucci
9 puts it, torture, extrajudicial arrest and execution, between the period before the state
10 of emergency under President al-Bashir and that after the declaration?

11 THE WITNESS: [14:59:49](Interpretation) Okay. The answer to this question, I
12 think that the Defence counsel doesn't really know a lot about the situation.

13 Al-Bashir was the president for 30 years. At the beginning it was the result of a coup,
14 and one of the first things that he did was to declare the emergency law. That's how
15 he started his rule. And then he started executing people and detaining people
16 in -- in different areas of Sudan since 1989 until -- until the beginning of the '90s,
17 maybe 1992, 1993. And then after he strengthened his rule, these crimes disappeared
18 for a while.

19 But regarding the case that we are -- the situation that we are talking about here, there
20 was, obviously, emergency law declared. I can't remember exactly the date, but it
21 was during the events. I think it was 2003-2004 emergency state was declared
22 during that time. This is the answer to the first part of your question.

23 MR LAUCCI: [15:01:30]

24 Q. [15:01:31] Thank you, Mr Witness.

25 I will not discuss. We -- we have -- I have shown -- shown to you that the state of

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 emergency actually had been declared in December 1999 and been expanded
2 throughout the period of 2003/2004 and even after, but that's fine. It's a detail. I'm
3 satisfied with your answer.

4 PRESIDING JUDGE KORNER: [15:01:53] Well, I'm sorry, Mr Laucci, you may be.
5 But, I mean, we've still got to understand.

6 THE WITNESS: [15:01:59](Speaks English) Okay.

7 PRESIDING JUDGE KORNER: [15:02:01] We've still got to understand that
8 this -- was there, sir, any difference in the extrajudicial -- the form of -- of torture, of
9 the lack of fair trials between the period prior to 1999 and that after 1999 until 2004?

10 THE WITNESS: [15:02:45](Interpretation) Are you addressing me by that question?

11 PRESIDING JUDGE KORNER: [15:02:49] Yes. I'm sorry, sir. Yes, I am.

12 THE WITNESS: [15:02:55](Interpretation) Yes, of course there is difference between
13 the period before declaring the state of emergency and after declaring the state of
14 emergency, especially after the appearance of the rebellion movements since 2003.
15 Of course, the number of detention cases increased, and the security services were
16 the ones responsible for that.

17 As I mentioned yesterday, and I don't want really to repeat that, but there -- there was
18 no reporting, or reports accepted by the prosecutors or discussed in front of judges
19 regarding the events that happened in villages, burning down villages and all of that.
20 I hope that I've answered the question.

21 PRESIDING JUDGE KORNER: [15:04:09] Yes.

22 Well, Mr Laucci, at the moment it isn't clear to me whether your suggestion is that
23 torture, arbitrary arrest, and no fair trial guarantees, and by that I take it you mean
24 the right to be represented, the right to be informed of the charges and all
25 the guarantees under Article 6.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 MR LAUCCI: [15:04:42] And the right to a judge.

2 PRESIDING JUDGE KORNER: [15:04:43] And the right to a judge.

3 Are you suggesting to the witness that all of those had been present up until 1999, but
4 disappeared after 1999?

5 MR LAUCCI: [15:05:06] My precise suggestion is that all these rights were
6 already -- had unfortunately many exceptions or, let's say, violations, especially when
7 the NSIS came into place, and that the situation worsened even more after the state of
8 emergency.

9 PRESIDING JUDGE KORNER: [15:05:30] Right. Well, that's fairly straightforward,
10 and I think the witness has agreed with you.

11 But can you just confirm, sir, that that's the case.

12 THE WITNESS: [15:05:52](Interpretation) I think that I have answered the question
13 already, but okay, I will answer one more time.

14 Although the Defence counsel is the one who -- is the one who identified the date for
15 the declaration of the state of emergency, he is the one who said that date as 1999.

16 But what I can confirm is that since 1999, and since 2002, I think that things were
17 almost normal. But it worsened tragically after 2003.

18 MR LAUCCI: [15:06:36] I'm satisfied. If you are, I can move forward.

19 PRESIDING JUDGE KORNER: [15:06:45] Yes.

20 MR LAUCCI: [15:06:45]

21 Q. [15:06:46] You have described that the recruitment of the militia for
22 the counterinsurgency was done on the basis of tribal affiliation, with
23 the consequence that those who did not form part of the dominant tribes were left
24 aside?

25 A. [15:07:20] I don't really understand what you mean by the dominant tribes.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 Can you clarify.

2 Q. [15:07:27] Yes. Very clear. In a locality you have various people, a population
3 of Arab people. Some belong to a tribe and this tribe has the majority in the locality.
4 This would be through this tribe that the recruitment of the militia would be done
5 and those who were outside this affiliation were not really considered.

6 A. [15:08:02] Do you mean by the dominant tribes on the Arab side or everybody
7 that --

8 Q. [15:08:11] No, I'm talking about the Arab side, because I'm talking about
9 recruitment of militia for the counterinsurgency, and I understand that this was on
10 the Arab side only.

11 A. [15:08:26] The recruitment was open for all the Arab tribes, whether they had
12 the majority or the minority via the *umdaqs*. And this was the answer that I gave this
13 morning when you asked me about a couple of people that I mentioned in my
14 statement. I told you that there was some kind of distinction between the localities
15 that had (Overlapping speakers)

16 Q. [15:08:59] Before you carry on, I want to remind you we are in open session, so
17 be careful about what you say.

18 A. [15:09:08] Well, you are the one who asked for an answer. Can we then move
19 to a private session so I can -- if you insist on asking me about this topic.

20 Q. [15:09:18] I do not. Let me simplify it. Was the recruitment of militia done
21 through the *umdaqs* within the tribal network?

22 A. [15:09:41] Via the *umdaqs*. It was a governmental project and the government
23 sought assistance from the *umdaqs* in order to recruit the militia members.

24 Q. [15:09:57] Thank you.

25 And my last point is that you have provided evidence, and I'm talking about

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 the WikiLeaks document, without saying more, that the Sudanese authorities have
2 been trying, for years, to manipulate and mislead the Court in order to protect
3 President Al-Bashir and senior Sudanese officials from prosecution, including by
4 using the case of a man designated as Ali Kushayb as a fall guy or, to use a word that
5 I have already used in this case, a scapegoat.

6 A. [15:11:04] No, I don't think so. Well, the government tried to mislead in
7 different ways. They were trying to gain time, including the declaration by
8 the justice minister regarding the case of Kushayb.
9 Another justice minister announced that some investigations will be conducted with
10 Ahmad Harun, and I think that's what caused disagreement within the ruling party.
11 But the fact what you said about that Kushayb was used as a scapegoat or not, I really
12 can't agree with that.

13 MR LAUCCI: [15:12:10] Thank you, Mr Witness.

14 And I'm done, Madam President, with my cross-examination. And thank you to
15 your Honours and my colleagues on the other side for having arranged that amount
16 of time for me. Thank you.

17 PRESIDING JUDGE KORNER: [15:12:30] Yes.

18 You said there was no re-examination.

19 MS MORRIS: [15:12:34] Correct.

20 PRESIDING JUDGE KORNER: [15:12:34] Is there re-examination at all?

21 MS MORRIS: [15:12:37] No, Madam President.

22 PRESIDING JUDGE KORNER: [15:12:40] Right.

23 We'll start with you, yes.

24 JUDGE ALEXIS-WINDSOR: [15:12:47] Good afternoon. Thank you,
25 Madam President.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 I think I have two or three questions for you, sir.

2 In paragraph 17 of your statement, and it's -- I don't think this needs to be said in
3 closed session, you mentioned a village called Mara. I will not say where you were
4 going, but you mentioned a village called Mara and you said it had been burnt down
5 and there was still smoke.

6 I'd like you to describe the scene that you saw. Were there still houses standing?
7 Were there still trees, was everything burnt, or not? So my question is please
8 describe the scene that you saw.

9 THE WITNESS: [15:13:44](Interpretation) It is a private session or not?

10 PRESIDING JUDGE KORNER: [15:13:46] No, you're in public session at the moment,
11 sir. If you feel that by giving a description --

12 THE WITNESS: [15:13:55](Interpretation) The answer might reveal --

13 PRESIDING JUDGE KORNER: [15:13:59] I think all you're being asked to do, sir, is
14 give a description of what you saw.

15 THE WITNESS: [15:14:15](Interpretation) So I don't have really to tell where I came
16 from or where I was going to? Okay.

17 Okay. That was approximately April or May of 2004. I arrived this village and
18 when I arrived the vehicle that we were in overheated and we had to stop so that it
19 can cool down a bit.

20 So I walked around the vehicle a little bit and I went up a hill. And I saw
21 the aftermath of this burnt village. Most of the villages over there were
22 built -- the walls were built of mud and then the roof is made of wood and straw. So
23 this village was entirely burned down. You can only see the walls that are made of
24 mud. But he can see the -- that they were burnt. And also I could see smoke rising
25 from some houses. Maybe they had some crops stored in these houses and that's

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

- 1 why the smoke kept coming for a long time.
- 2 And the other things that I noticed also, that some herders were walking around this
- 3 village and I noticed that one of the children was chasing a chicken.
- 4 JUDGE ALEXIS-WINDSOR: [15:16:28] Thank you. I have one other question.
- 5 I don't think it's a private session question, but better to be safe than sorry, I say. So
- 6 perhaps we should go to a short closed session.
- 7 (Private session at 3.16 p.m.)
- 8 THE COURT OFFICER: [15:16:51] We're in private session.
- 9 JUDGE ALEXIS-WINDSOR: [15:16:54] Thank you.
- 10 Sir, you said that there were umdahs who could not gather enough persons to get
- 11 heavy artillery and to get vehicles. My question is: Even if they did not get heavy
- 12 artillery and they did not get vehicles, were they still given weapons?
- 13 THE WITNESS: [15:17:25](Interpretation) Yes, they were given light weapons.
- 14 I don't know if I have to mention the names of these weapons, for instance,
- 15 Kalashnikovs.
- 16 JUDGE ALEXIS-WINDSOR: [15:17:39] Thank you, Witness. Sir, those were all of my
- 17 own questions.
- 18 Thank you, Madam President.
- 19 JUDGE ALAPINI-GANSOU: [15:17:50](Interpretation) Thank you,
- 20 Madam President. I will speak French.
- 21 Mr Witness, I would like to ask you two questions. The first deals with the state of
- 22 emergency which you spoke of earlier. I would like to have an answer that is more
- 23 general about the notion of a state of emergency.
- 24 Can a state of emergency justify acts of torture, violence, refusal to have a fair trial in
- 25 a given country?

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

- 1 PRESIDING JUDGE KORNER: [15:18:39] We're actually still in private session, but I
2 think we can go into open session. Yeah. Absolutely.
3 Should we go into open session, please.
- 4 JUDGE ALAPINI-GANSOU: [15:18:51](Interpretation) This is a very general question
5 and I would like to have your opinion on this question. The fact of – of enacting the
6 state of emergency in a country, does that justify violations of human rights and
7 refusal to the right to a fair trial and other acts such as torture or invading people's
8 privacy, violating their private lives? How should I put it? Other, let's say, situations
9 where people cannot have a fair trial.
- 10 PRESIDING JUDGE KORNER: [15:19:37] Can I just check, we're now in open
11 session?
- 12 THE WITNESS: (No interpretation)
- 13 THE COURT OFFICER: [15:19:44] One moment.
14 Let's go into open session, please.
15 (Open session at 3.19 p.m.)
- 16 THE COURT OFFICER: [15:19:53] Thank you.
17 We're in open session, your Honours.
- 18 PRESIDING JUDGE KORNER: [15:19:57] Yes, if you carry on, sir, with your answer.
- 19 THE WITNESS: [15:20:04](Interpretation) Thank you.
20 In my legal opinion, when it comes to the state of emergency, this would only cover
21 military operations. However, having a state of emergency being applied to civilians,
22 having them tortured and deprived of their rights, I think this cannot be justified.
- 23 JUDGE ALAPINI-GANSOU: [15:20:40](Interpretation) Thank you.
24 Another concern relates to Article 63 of the criminal code. Yesterday we went
25 through this quickly, and today again. And what worries me relates to political life

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 in Sudan at that point, how political life was. I think that there were opposition
2 parties. Do you have any idea of the number of opposition parties in Sudan at the
3 time?

4 THE WITNESS: [15:21:26](No interpretation)

5 PRESIDING JUDGE KORNER: [15:21:38] I'm sorry, sir. There's no translation
6 (Overlapping speakers)

7 THE WITNESS: [15:21:44](Interpretation) I have no idea about the number of
8 opposition parties, and no idea as well about the rebellion movements, the number of
9 rebel movements. There is chaos now prevailing in Sudan.

10 JUDGE ALAPINI-GANSOU: [15:22:00](Interpretation) But there were enough?

11 THE WITNESS: [15:22:11](Interpretation) Yes, but I do not know about the number
12 of parties in Sudan or even about the armed movements in Sudan presently.
13 The situation is very strange now.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 PRESIDING JUDGE KORNER: [15:22:57] I think we'd better go into private session.

18 (Private session at 3.23 p.m.)

19 THE COURT OFFICER: [15:23:11] We're in private session.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Private Session)

ICC-02/05-01/20

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Open session at 3.26 p.m.)

25 THE COURT OFFICER: [15:26:28] Your Honours, we're back in open session.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 THE WITNESS: [15:26:36](Interpretation) First and foremost, I wish to extend my
2 thanks to the Court, to the honourable bench, the very skilled people, as well as
3 the representatives of the Prosecution, the victims, as well as the representative of
4 the Defence and his team.
5 I would like to apologise from the representative of the Defence because I refused to
6 meet him. As per the Sudanese law, getting in touch with the representative of
7 the opponent is considered illegal and in contradiction with the ethics of our practice.
8 And what -- during the chief examination, I said that the Prosecution can also ask
9 leading questions, and this struck my attention and this does not exist in our system.
10 Such questions in the chief examination process and the re-examination are not
11 allowed in my country. It took us also some time to dwell on the opinion and this is
12 not acceptable. Usually there is an expert agreed upon by the two parties and who
13 will appear before the court, usually.
14 I would like to encourage the accused for standing before the trial, and we also call
15 upon all other accused to do like him. At the end of the day, our aim is to establish
16 the truth. We do not wish any guilty person to go without being tried, or vice versa,
17 and at the end I would like to address the new ICC Prosecutor, to tell her so far there
18 is still a state of impunity and more offences are being committed.
19 Given my modest knowledge of the Rome Statute, I know that the case concerning
20 Darfur is still open, and despite all of this several murders have been perpetrated,
21 such as the Kreinik events lately. Therefore, I would like to call upon her excellency
22 the Prosecutor to investigate these crimes, since I know that investigation is ongoing
23 in Darfur.
24 Once again, I wish to thank you and, despite my long-standing experience in my field,
25 I really benefited a long from these hearings. Thank you so much.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

- 1 PRESIDING JUDGE KORNER: [15:30:09] Thank you very much again, sir, and I'm
2 sure your words will be heard.
3 So thank you very much. If you'd like to go with the court officer, that concludes
4 your testimony before this court.
5 (The witness is excused)
6 PRESIDING JUDGE KORNER: [15:30:47] Yes, Mr Nicholls.
7 MR NICHOLLS: [15:30:49] May I raise one matter, or would you prefer to --
8 PRESIDING JUDGE KORNER: [15:30:53] No, you raise it now.
9 MR NICHOLLS: [15:30:55] Thank you. Just very quickly, this -- it's a question
10 about the process of formally submitting exhibits following the testimony by
11 the calling party. I'm just referring -- I won't say what the document was, but P-0651,
12 on Tuesday the Defence submitted to include a document that they used on
13 cross-examination, and there was a -- a very lengthy submission regarding that
14 document. And we don't object to it being introduced.
15 PRESIDING JUDGE KORNER: [15:31:34] I'm sorry, what tab is that in?
16 MR NICHOLLS: [15:31:37] 651.
17 PRESIDING JUDGE KORNER: [15:31:41] 651.
18 MR NICHOLLS: [15:31:43] The witness from a couple of days ago, a few days ago.
19 PRESIDING JUDGE KORNER: [15:31:47] Sorry.
20 MR LAUCCI: [15:31:48] It's not related to this witness.
21 MR NICHOLLS: [15:31:50] No, no.
22 PRESIDING JUDGE KORNER: [15:31:51] Oh, 65 -- oh, sorry. Oh, sorry, the one --
23 MR LAUCCI: [15:31:49] It's not related to this witness.
24 MR NICHOLLS: [15:31:49] No, no.
25 PRESIDING JUDGE KORNER: [15:31:50] Sorry. The one that -- yes, that there's

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 been this email correspondence over?

2 MR NICHOLLS: [15:31:57] Yes. And so I'll -- sorry, it's been sort of a long day,
3 even though it's a short day.

4 But just to make it clear, our understanding, and I spoke to Mr Laucci about it during
5 one of the breaks, is that when we submit for formal submission these documents, we
6 would -- we would prefer that we just list them and see if there's an objection.

7 Because now there's a document being formally submitted, that we do not object to,
8 but it's got a very long, you know, rather aggressive, actually, series of argument that
9 we -- would normally come in the final brief as to the weight why it's important.

10 And we don't object.

11 So what we think is the best practice is the party just list the documents it wants to
12 submit.

13 PRESIDING JUDGE KORNER: Yeah.

14 MR NICHOLLS: And the other party will then either object or not. And then we
15 can get into the litigation, if that makes any sense.

16 PRESIDING JUDGE KORNER: [15:32:51] Yeah, it's a rather -- yeah, it's one of
17 the oddities, I suppose, one of the spin-offs of the submission method rather than
18 the admission at the time method.

19 But are you referring to the document which Mr Laucci referred to in passing and
20 then you objected to?

21 MR NICHOLLS: [15:33:17] No.

22 PRESIDING JUDGE KORNER: [15:33:18] You're referring to a completely different
23 document. I have no idea what you're referring to.

24 MR NICHOLLS: [15:33:23] Can we go into private session for minute?

25 PRESIDING JUDGE KORNER: [14:05:25] Yes, let's go into private session.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 MR LAUCCI: [15:33:25] Maybe just to clarify, without going into private session,
2 this was my colleague Iain Edwards who was in charge of this witness and relied on
3 one document which formed part of the - yeah, I can say it - immigration record for
4 the -- for the witness. That was no more than that.

5 PRESIDING JUDGE KORNER: [15:33:45] Oh, I see, yes. I'm now -- I'm being given
6 some guidance. Okay. Yes, it was the form for the authorities that he -- that he
7 filled in.

8 And I think only one part was referred to, that I recall.

9 MR NICHOLLS: [15:34:02] Yeah, but my point -- the real point I'm trying to make is
10 we don't object to the whole thing coming in, but there's this huge lengthy submission
11 in the email that, really, we would need to respond to the arguments in it, even
12 though --

13 PRESIDING JUDGE KORNER: [15:34:17] Even though -- I see (Overlapping
14 speakers)

15 MR NICHOLLS: [15:34:17] Even though we don't object.

16 PRESIDING JUDGE KORNER: [15:34:19] Right.

17 MR NICHOLLS: [15:34:19] Because we don't agree with that submission. But we
18 would rather not get into a litigation by email process over something we don't object
19 to.

20 PRESIDING JUDGE KORNER: [15:34:25] Yeah.

21 MR NICHOLLS: [15:34:25] So it's easier to just list the item and then argue about it
22 later, is what I'm saying inarticulately.

23 PRESIDING JUDGE KORNER: [15:34:37] Yes, that's fine.

24 No, I mean, it seems to me that if you don't object, then you don't object. And save
25 the arguments for the ones where there really are arguments, where you do object, or

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 the other side object.

2 But, but, but, but, please, both sides - all sides, actually, not just both - it would help,
3 rather than submitting a whole document of which one page has been referred to, if
4 you could be selective. Because at the end of the day everybody, that is to say you
5 when you're doing your final briefs, us when we're dealing with the judgment, would
6 have to plough through 30 pages for one line that is actually relevant.

7 So, basically speaking, when you're asking for documents to be -- or when you're
8 submitting documents for the purposes of the judges' judgment in the end, I suppose,
9 please would you just produce the parts that are actually relevant, unless there's
10 a good reason to produce the whole thing.

11 MR NICHOLLS: [15:35:50] Yes, we will do that.

12 PRESIDING JUDGE KORNER: [15:35:52] Yeah.

13 MR LAUCCI: [15:35:53] Yes, of course, we will do that. There are some documents
14 on which -- which are produced in respect to one witness, but we perfectly know that
15 this document will be used again and again and again with other witnesses. Like,
16 for instance, the list of attacks of the rebellion, we submit the full documents, but I
17 think that it's not reopening your instruction. I think we understand each other.

18 PRESIDING JUDGE KORNER: [15:36:17] No. Well, no, obviously, as I say,
19 Mr Laucci, we depend on counsel to use their common sense and knowledge of
20 the case. If, obviously, a document is going to be referred to over and over again,
21 and different parts of it, then by all means submit the whole document.

22 MR LAUCCI: [15:36:35] Fully understood.

23 And to answer my colleague, we fully support his approach. We -- we discussed
24 the reason why this email was exchanged and that's over.

25 PRESIDING JUDGE KORNER: [15:36:45] All right.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

- 1 And one of the suggestions I'm seeing is that, if you submit the whole document,
2 could you just also add a reference to the parts that have -- that have been referred to
3 by the witness. It just helps with sorting it all out.
4 Two other housekeeping matters, I suppose.
5 We now break until 9 May, I think it is. The Prosecution is going to produce, I think,
6 its list of witnesses by next Friday, 6 May, that are coming up. Is that right?
7 MR NICHOLLS: [15:37:34] Well, I think yesterday you ordered us to do it today.
8 PRESIDING JUDGE KORNER: [15:37:38] Did I? Right.
9 MR NICHOLLS: [15:37:40] And then gave us some more time via an email. But we
10 will send the list, I think, today.
11 PRESIDING JUDGE KORNER: [15:37:47] Yeah. All right. Well, if you've got it,
12 that's even more helpful.
13 Secondly, any chance of the glossary before we meet again?
14 MR NICHOLLS: [15:37:55] Yes, your Honour. And, again, I spoke with Mr Laucci
15 yesterday, and I'm grateful. We have not had a chance to actually agree on all of
16 the items, but we will send it, what we have today. It's still a work in progress.
17 And then if there are any disputes about terms, the Defence and we can try to agree.
18 So we can send a product today but it --
19 PRESIDING JUDGE KORNER: [15:38:20] Well, I mean, as I said, what we would
20 like is the product before we hear the next witness.
21 MR NICHOLLS: [15:38:26] Well, that -- that -- if we have a little bit more time, then I
22 think we can agree on the terms and we will make sure it is sent before the next
23 witness testifies.
24 PRESIDING JUDGE KORNER: [15:38:34] Yeah, well I think that seems -- that
25 probably seems the most sensible. So if we can have it then before 9 May.

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

- 1 Right. And there are, I still -- I was checking, there's the outstanding matters which
- 2 we have to rule on are the Regulation 34 matter, Mr Laucci's yet another leave to
- 3 appeal, and the Rule 68(2)(c) matter. I think those are the three. Those will be dealt
- 4 with next -- by next week.
- 5 Yes. Anything else? No.
- 6 Very well. Then this case is adjourned until 9 May. I've no idea which court either.
- 7 Anyhow.
- 8 THE COURT USHER: [15:39:33] All rise.
- 9 (The hearing ends in open session at 3.39 p.m.)