

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Al Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Sentencing Hearing - Courtroom 1
9 Wednesday, 19 November 2025
10 (The hearing starts in open session at 9.34 a.m.)
11 THE COURT USHER: [9:34:13] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:34:40] Yes, good morning all.
15 Actually, we'll start with the Prosecution this morning.
16 MR NICHOLLS: [9:34:47] Good morning, Madam President. Good morning, your
17 Honours. Good morning to everybody in the room. We are the same composition
18 as yesterday. Thank you.
19 PRESIDING JUDGE KORNER: [9:34:56] Thank you, Mr Nicholls.
20 The representatives of the victims.
21 MS VON WISTINGHAUSEN: [9:35:00] Yes, good morning, Madam President, your
22 Honours, dear colleagues. Good morning to everyone in and around the courtroom.
23 The composition of our team, the legal representatives of victims, is the same as
24 yesterday. Thank you.
25 PRESIDING JUDGE KORNER: [9:35:14] Thank you very much,

1 Ms von Wistinghausen.

2 And the Defence.

3 MR LAUCCI: [9:35:17] Good morning, Madam President. Good morning, your
4 Honours. Good morning, colleagues. Same composition as yesterday, with the
5 noticeable addition of Madam Eva Kalb. But before, this is our last day, our last
6 hearing today, allow me to take one minute of your time, please, to thank a last time
7 the wonderful team that has supported me all over these years. Some are in this
8 courtroom today. Some are in the Defence office. Others have gone their way in
9 life and have now moved to another step in their professional career. I wish all of
10 them success and I thank them for having passed some time next to me. I will name
11 them all, with your permission, by chronological order.

12 The Defence team members: Ahmad Issa, Vanessa Grée, Marion Carrin,
13 Mohamed Manaa, Nina Guilloux, Camille Divet, Paola Pallot, Eva Kalb, Mohamed
14 El Rahi, Marcela Velarde, Audrey Mateo, Haneen Ghali and Omar Soliman. Our
15 wonderful interns: Laurence Boudreau, Marguerite Remy, Nour Ouardani,
16 Iman Leroy-Hajee, Esteban Oya, Drusilla Bret-Robertson, Thomas Chatelet,
17 Pénélope Foures, Claire Chauffard, Salomé Fischer, Valeria Holub. And our visiting
18 professional, Wilson Yuh Acho. And last but not least, my outstanding partner and
19 perfect match, Counsel Iain Edwards. I hope I forgot none.

20 I thank them all and their memory will remain precious in my heart. Thank you.

21 PRESIDING JUDGE KORNER: [9:37:37] Yes, well, thank you very much, Mr Laucci.
22 I have no doubt your team will appreciate that. I should say I don't think it's the last
23 appearance, because we've actually got to pass sentence and that will be done in open
24 court. But, nevertheless, I take the sentiment.

25 Yes, so if we can now return, I think, Mr Nicholls, you were, if I can put it that way, in

1 full flood yesterday.

2 MR NICHOLLS: [9:38:02] Yes, your Honour, and for literally one minute could we
3 go into private session.

4 PRESIDING JUDGE KORNER: [9:38:07] Yes, private session, please.

5 MR NICHOLLS: [9:38:16] Your Honour, my computer -- oh.

6 (Private session at 9.38 a.m.)

7 THE COURT OFFICER: [9:38:20] We are in private session, Madam President.

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 (Redacted)

25 (Redacted)

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 (Open session at 9.41 a.m.)

18 THE COURT OFFICER: [9:41:34] We're back in open session, Madam President.

19 MR NICHOLLS: [9:41:37] Thank you, your Honours.

20 Turning now to some of the case law and just responding to my friends. Earlier,

21 I think on Monday, Mr Laucci went through some of the case law at the ICTY, talking

22 about how that affects, or how it could inform, your sentencing. Yesterday my

23 friend, Mr Edwards, pointed out correctly, of course, that you're not bound by any of

24 that ICTY or other ad hoc jurisprudence. But some of it is instructive, and just

25 responding to Mr Laucci where he was going through Galíć and some other cases,

1 talking about the high rank and serious crimes of genocide in the ICTY which drew
2 life sentences.

3 I think one case that wasn't mentioned that is worth looking at is the case of
4 Milan Lukić. He was sentenced to life imprisonment, and I'll just look at
5 paragraph 1084 of the July 2009 trial judgment, and this is under the headings in that
6 case of "Findings with regards to the offences committed by Milan Lukić".

7 Paragraph 1084:

8 "Having considered all the evidence related to sentencing, including matters of
9 mitigation, the Trial Chamber maintains the position that on the basis alone of Milan
10 Lukić's guilt for personally, physically and in cold blood killing the five people at
11 Drina river, the seven people at Varda factory, the 59 people in the Pionirska street
12 fire, [and the] 60 people in the Bikavac fire and Hajra Korić, a total of at least 132
13 people, the maximum penalty is warranted."

14 And there were some parallels between Milan Lukić in this case, because Milan Lukić
15 was a paramilitary leader. He wasn't a regular VRS - equivalent of SAF - member,
16 he was a leader of the White Eagles or Avengers when he committed these crimes in
17 Bosnia and Herzegovina. So in some sense a parallel to a Janjaweed leader also and
18 a regular unit which fought alongside government forces and committed the crimes
19 alongside government forces. So Lukić got life and the total number was 132
20 persons that they found that he had murdered, 81 less than the accused in this case.
21 He was -- yes, your Honour.

22 PRESIDING JUDGE KORNER: [9:44:48] I know Stakić originally got life. You say
23 Lukić got life. Was that upheld on appeal?

24 MR NICHOLLS: [9:44:52] Yes.

25 PRESIDING JUDGE KORNER: [9:44:53] It was, was it?

1 MR NICHOLLS: [9:44:54] Milan Lukić, not his cousin or brother.

2 PRESIDING JUDGE KORNER: [9:44:56] No. Yeah.

3 MR NICHOLLS: [9:44:57] Not Sredoje.

4 PRESIDING JUDGE KORNER: [9:44:58] No. All right.

5 MR NICHOLLS: [9:44:59] So he was convicted of extermination, a different -- which,
6 as we know, is murder on a massive scale. But, nevertheless, 132 people, 81 less than
7 the accused, and the Chamber thought that -- well, not thought, they passed a
8 sentence of life imprisonment. That was upheld on appeal and again shows that the
9 core issue is not the rank, the de jure rank of the accused, but -- or whether the crime
10 was genocide, but the individual circumstances of the crime.

11 I should say in the Lukić appeals judgment - you asked about, your Honours - which
12 upheld the life sentence, they did reduce the number of victims in one unit -- excuse
13 me, in one incident, that Pionirska street incident from 59 to 53. So, it's not 132, it's
14 129 or something. But the Appeals Chamber wrote:

15 "However, the Appeals Chamber considers that the crimes for which Milan Lukić has
16 been convicted are extremely grave. These crimes included extermination,
17 persecution[s], and other inhumane acts as crimes against humanity, as well as cruel
18 treatment and murder [in] violation of the laws or customs of war. In these
19 circumstances, the Appeals Chamber finds that the reduction of the number of
20 victims of the Pionirska Street Incident does not impact the sentence imposed by the
21 Trial Chamber. Consequently, the Appeals Chamber affirms Milan Lukić's sentence
22 of imprisonment for the remainder of his life."

23 That was para 669.

24 A little bit now on the -- I'll respond to the arguments relating to mistake of law and
25 obeying orders.

1 I won't rehash or repeat the submissions the LRV made on this, but you found in the
2 trial judgment that the accused/a reasonable person could not believe that the acts
3 and conduct were legal at the time. At para 59 of the judgment -- I won't read out
4 the entire paragraph, but you wrote:

5 "Considering that, as noted above, the Accused held a high-ranking position as a
6 senior *Janjaweed* leader with a substantial set of responsibilities and powers, and that
7 he spent a considerable part of his career in the SAF, the Chamber is satisfied that a
8 reasonable person in the position of the Accused would not have been 'deceived' into
9 believing that his acts and conduct during the charged events were legal or justified."

10 So, in my submission, that issue is done. Trial's over. That is what you have found.

11 And this is where we come a bit to the balance of probabilities mitigating argument.

12 I fully accept what my friend Mr Edwards said that the Chamber, of course, for any
13 individual witness it's not all or nothing. You can find parts of the testimony
14 credible, parts not credible, give weight to some, give -- not give weight to others.

15 But at paragraph 32 of their submissions, the Defence essentially assert that the
16 Chamber should reconsider -- I'll wait till you find the paragraph.

17 Essentially asking you to reconsider your finding in paragraph 59, that I just read
18 from, on the basis of a lower standard of proof, or probabilities, balance of
19 probabilities in order to find mitigation. That doesn't work because you've already
20 made a positive finding on this point that he did not act under a mistake of law and
21 there's no evidence that such a mistake was made.

22 PRESIDING JUDGE KORNER: [9:49:53] (Microphone not activated)

23 MR NICHOLLS: [9:49:58] Yes. So -- and what the Defence are asking you to do
24 there again is look at a different standard, but -- and they analogise in a different part,
25 I believe, to the -- to duress and say that, "Well, as the article -- Rule 145(2)(a)(i)

1 shows -- states, even if the positive defence as duress is not made out, some of the
2 circumstances may be mitigating." That's a very different animal. If you look at
3 Article 31(1)(d) of the Statute, in order for the defence of duress to be made out, the
4 Chamber must find that the person raising the defence acted necessarily and
5 reasonably to avoid the threat and did not cause -- did not intend to cause a greater
6 harm than the one sought to be avoided.

7 So one can imagine a situation, something like Erdemović, where -- I'm not speaking
8 about the accused, but a person finds themselves being forced, being ordered to carry
9 out executions and they will be harmed if they do not. They could put forward that
10 defence. A trial chamber could say: No, it isn't made out. Because you were
11 avoiding harm to yourself, that doesn't allow you -- that is not a defence to murdering
12 a hundred people, defence doesn't fly.

13 However, the Chamber could say in mitigation, though, "We do take into account that
14 you had a gun to your head and that you were under incredible pressure at the time."
15 That doesn't transfer to, "Did you know or not know that these acts were criminal and
16 that you could be punished for them." There's no halfway point there.

17 So I don't think the Defence -- I don't think you can look at your ruling you've already
18 made and say, "Yeah, but maybe he didn't know that much, or he understood it but
19 not really well." It just is not analogous and it doesn't work. That's my submission.

20 I'll move on now to foreseeability and the change in law issue. Again, we all know it
21 that the trial is over. Your Honours found that a reasonable person in the position of
22 the accused would know that they could be prosecuted for crimes for criminal
23 conduct analogous to the ones for which he has been convicted. Again, paragraph
24 59 of your judgment and also paragraph 60. I'll read out paragraph 60:

25 "On the basis of the evidence before it, and having rejected all of the Defence's

1 challenges, the Chamber is satisfied that the requirement of *nullum crimen sine lege*,
2 found in Article 22(1) of the Statute, is met in this case."
3 Sudanese law is not applicable in this Court, not to the crimes, the elements of the
4 crimes, not to the penalties attached to those crimes. A Chamber in this Court may
5 only take into account when assessing foreseeability of crimes and punishment
6 this -- the law of this Court and, potentially, international law as well in the sense that
7 even under international law, the accused could have been aware that his conduct
8 was criminalised and had serious penal consequences. That's noted in paragraph 88
9 of the Appeals Chamber judgment on the jurisdictional challenge. There, the
10 Appeals Chamber wrote:
11 "In applying the foreseeability test to this case, the Appeals Chamber finds that
12 Mr Abd-Al-Rahman was reasonably capable of taking steps to comprehend and
13 comply with his obligations under international law, and he was capable of
14 appreciating the attendant penal consequences."
15 Now, to the extent your Honours would consider Sudanese law for purposes of
16 foreseeability of penalties attaching to these crimes - rape, murder, torture, looting,
17 et cetera - as we read in D-16's statement, recent statement, paragraphs 24 and 33,
18 those crimes carried extremely severe sentences domestically, death, crucifixion, and
19 a reasonable person in the position of the accused would have known that. A
20 reasonable person in the position of the accused would know that serious sentences
21 could be imposed both domestically and internationally. He could have been
22 sentenced to death in Sudan for just one murder, let alone 213.
23 So once the Chamber is satisfied that serious penalties were foreseeable at the time of
24 the crimes, then it will apply the sentences in accordance with the Rome Statute and
25 the Rome Statute exhaustively. That jurisprudence is settled. We cite to these cases

1 at paragraph 22 of filing 1248, and those are the Lubanga appeals judgment, para 32;
2 Bemba et al. sentencing, appeals judgment, para 77.

3 And the Defence acknowledge in their sentencing submissions, paras 118, 122 and 133,
4 properly, that Sudanese law doesn't form part of the applicable law of this Court.

5 And so as I mentioned at the end -- I think at the end yesterday of the hearing, your
6 Honours also noted this in your decision number 1257 at paragraph 17 that you are
7 not bound by domestic sentencing practices and laws. And I'll just read that out
8 very quickly. Paragraph 17 of your decision on the presentation of additional
9 evidence:

10 "However, the Chamber accepts the CLRV's submissions (while deferring to the
11 Chamber's discretion the admission of D-0016's evidence), that the Court is not bound
12 by domestic sentencing practices and laws. Accordingly, while the Chamber
13 authorises the submission of D-0016's new statement, it recalls that its reliance
14 thereon for the purposes of sentencing may be limited given the clear provision in the
15 Court's statutory framework."

16 But as I said, what the new statement does show is that severe penalties, much more
17 severe than could be imposed in this Court, were possible at the time in Sudan that
18 the accused committed the crimes.

19 And again, I'll just cite, I won't read it out, to paragraph 26 of the Ongwen sentencing
20 judgment. Actually, I will read it out because it's -- there, their Honours wrote:

21 "Article 23 of the Statute provides that a person convicted by the Court may be
22 punished only in accordance with the Statute. In turn, Article 77 of the Statute
23 specifies - exhaustively - the penalties to be imposed for the commission of crimes
24 within the jurisdiction of the Court."

25 And that's it. That's it. That's the end of the analysis. Following the referral of the

1 situation in Darfur to the Court by the Security Council, the Rome Statute, the Rules
2 of this Court are the only applicable legal framework for sentencing in this Court.
3 There's been no change in law of the Statute or the Rules to warrant any consideration
4 of Article 24. The CLRV made reference and spoke about the Ruto and Sang, so I
5 won't repeat that. I'll skip ahead.

6 Well, again, I'll just go back to the Galić appeals judgment, para 397 to 398. There,
7 the Defence for General Galić tried to argue and rely on sentencing practices in the
8 former Yugoslavia, and that was rejected by the Chamber. The Appeals Chamber in
9 that case stated: "[...] the principle of *lex mitior* [...] is not applicable to the
10 relationship between the law of the International Tribunal and the law of the national
11 courts of the former Yugoslavia."

12 And the Galić Appeals Chamber recalled in paragraph 398, I'll just read it out:

13 "It is an inherent element of [the] principle [of *lex mitior*] that the relevant law must be
14 binding upon the court. Accused persons can only benefit from the more lenient
15 sentence if the law is binding, since they only have a protected legal position when
16 the sentencing range must be applied to them. The principle of *lex mitior* is thus only
17 applicable if a law that binds the International Tribunal is subsequently changed to a
18 more favourable law by which the International Tribunal is [...] obliged to abide."

19 That's para 398.

20 So the only relevant law binding your Honours for sentencing is the Statute and the
21 Rules. There's been no change to them that would warrant a 24(2) analysis. So
22 whether or not Sudanese law for some of these crimes imposed is seven years,
23 10 years or 20 years is irrelevant. If Sudan -- in Sudan he could be executed,
24 crucified is also irrelevant to what sentence you pass in this case.

25 And if you think about it, to find otherwise and to really what I think the Defence are

1 saying, looking at the time that the crimes were committed, 2003 and '04, for their
2 argument to really come together, the reasonable person in the accused's position
3 would have to have gone through the process of foreseeing if he committed these
4 crimes in 2003 and '04 in Darfur, that the Security Council could later refer the
5 situation to the Court, which would issue an arrest warrant for him, after which, the
6 Rome Statute would govern the sentencing obviously. But he would evade justice
7 until he was in his 70s, then surrender to avoid problems in Sudan. Following that
8 conviction, he would not be able to be sentenced to life for 30 years because he was
9 over 70 and the Sudanese law should still apply. Therefore, it's unfair and he should
10 be given the benefit of the change in the law. It just doesn't make sense. He knew
11 his conduct was criminal. He knew his conduct could result in severe penalties to
12 him in 2003 and '04 domestically. He should be now sentenced pursuant only to the
13 Rome Statute and the Rules and, as we've said, I won't repeat it, the arguments,
14 sentenced to a term of life imprisonment.

15 And I'll stop there. Thank you.

16 PRESIDING JUDGE KORNER: [10:03:54] Yes, thank you very much, Mr Nicholls.

17 Yes, I think we now go -- we return to Ms von Wistinghausen.

18 MS VON WISTINGHAUSEN: [10:04:36] Yes, Madam President, your Honours.

19 First I would like to address very few of the submissions the Defence has made and
20 then I will turn to what I call my conclusions, my wrap-up on behalf of the victims.

21 Mr Laucci spoke about the efforts made by his client to compensate the victims. And
22 this is exactly what Rule 142(2)(ii) says, it speaks about any efforts by the person to
23 compensate the victims.

24 So we are not talking about efforts made by the Defence, or here, lead counsel. I'm
25 personally really not sure that the sending of 160 emails to State and non-State Parties

1 to ask for earmarked donations came from Mr Abd-Al-Rahman himself. At least I
2 didn't hear this from you.

3 In any event, I've already stated what I think about this move and of the fact that I
4 consider it to be maybe unfortunately even counterproductive, which again I don't
5 think Mr Abd-Al-Rahman realises himself. It may be a nice sentiment, I give you
6 that, but it's just not based in law, any of what you are trying to do. And it's
7 misleading, in my view, the public and therefore also the victims, and more
8 specifically the participating victims who I represent.

9 PRESIDING JUDGE KORNER: [10:06:39] Is your computer saying it wants to
10 update?

11 MS VON WISTINGHAUSEN: [10:06:43] It's just my private computer that kind of
12 broke down. But it's okay, I'm managing.

13 So I am saying it's -- in my view, it's even misleading and therefore quite problematic
14 because -- I've lost my -- I've lost my *mon file rouge*, as you say in French.

15 PRESIDING JUDGE KORNER: [10:07:20] Do you want -- do you want an
16 adjournment, or is it --

17 MS VON WISTINGHAUSEN: [10:07:24] No, no, no, no. No, I just -- I just -- I just
18 jump. Okay.

19 What you have said, Mr Laucci, as well, which I think is wrong also, legally wrong, is
20 that the victims would receive reparations. And I think we need to be very careful
21 when we talk about these things in public. You said that, and I quote from transcript
22 164, page 72, lines 16 to 19, that "the Defence will request and insist that victims [will]
23 be afforded reparations nevertheless ..." whatever the outcome of the appeal.

24 So, clearly, Article 75(2) speaks about the convicted person. And as I already said on
25 Monday, there would be absolutely zero reparations if Mr Abd-Al-Rahman was

1 quitted on appeal. This is exactly what happened in the Bemba case and there is a
2 Trial Chamber decision to the effect, a final decision on the reparations proceedings.
3 So I'm certainly not saying that the current ICC legal framework is the best for
4 participating victims, I'm actually very far away from saying this. But as it stands,
5 all the activities of the Defence have absolutely no bearing whatsoever on reparations
6 my clients may ever receive, if ever. So I really don't see how the Chamber can
7 consider any of this as a mitigating factor for the sentencing of Mr Abd-Al-Rahman.
8 It may be regrettable that the Trust Fund has nothing in place yet regarding
9 reparations for the participating victims in this case, but I'm afraid this doesn't get any
10 better by the actions undertaken by Mr Laucci. And I insist that I, you know, I
11 sympathise with the intentions of counsel, but here we have to look at activities or
12 efforts made by Mr Abd-Al-Rahman, and nothing else.

13 I also disagree that it would be unfair, and I think it's Mr Edwards who said that, to
14 bar an indigent accused from benefiting from a reduced sentence by demonstrating
15 efforts to compensate victims. If I may say it a bit, like, clumsily or bluntly, that's life,
16 you know. There's no rule stating that every convicted person should be able to
17 benefit from all and the same mitigating factors. This is obviously very different
18 from one convicted person to another and must be assessed by the Trial Chamber
19 depending on personal situations and other circumstances.

20 Further, the Defence keeps repeating that Mr Abd-Al-Rahman explained solidarity
21 towards the victims, "the victims". So I still don't know actually which victims
22 Mr Abd-Al-Rahman is talking about. Is he speaking about all the victims of the
23 conflict in 2003 and 2004? Is he speaking of all the victims from 2003 until today?
24 Is he speaking of all the victims of the crimes committed in Bindisi, Kodoom, Deleig
25 and Mukjar? Is he speaking about the participating victims in particular? It's still

1 completely unclear to me, and the submissions of Mr Laucci, I'm afraid, hadn't
2 enlightened me in any way.

3 So, in any event, I explained before that my clients don't accept this solidarity, given
4 the harm and trauma that they have lived because of the crimes committed by
5 Mr Abd-Al-Rahman. Yes, I agree Mr Abd-Al-Rahman has no control on his
6 expressions of solidarity are received by the victims, but it's also the result of the three
7 defence lines that he has chosen, and I think he has to bear the consequences.
8 So this is just what I wanted to say in response of what the Defence said yesterday
9 and on Monday.

10 And now I would like to move on to my final conclusions, and it will take me about
11 20 minutes.

12 So we've set out in detail the voices of my clients in our written observations, and I'm
13 not going to repeat this. It's publicly available. And as we said during this hearing,
14 we addressed everything that the Defence has said in their written submissions.

15 There is one point I want to pick up on, is a suggestion, or a question, actually, the
16 Presiding Judge had to Mr Nicholls, and it was about the question on the
17 psychological harm suffered by the victims. And without going further into detail
18 here, because I think we have addressed it *in extenso*, but we can refer the Chamber to
19 our final trial brief in a section entitled "Psychological and emotional harms" at
20 paragraph 317 to 330 for a, we think, very comprehensive overview of the
21 psychological harm suffered and what more specifically it means.

22 So what do my clients expect from me to say here today? And of course a lot of
23 what I say is my translation of what they have said to me. And as you know, when
24 we can, we use quotes and I will do again, but when I don't, I stress it's -- it is indeed
25 my translation and I hope I get it right.

1 So they say justice for them is not an abstract concept. It's not just a line in the
2 judgment. It's the recognition of a truth that was long denied to them.
3 Because what happened to them, it was not an accident of war, it was a campaign of
4 extermination, humiliation, and displacement conducted and ordered by no one else
5 than Mr Abd-Al-Rahman and nothing more, but also nothing less, it's what they
6 asked to be reflected in the sentence that you would impose on him.
7 His conviction in the trial before this Chamber for the participating victims and the
8 wider community in Darfur, we agree with the Defence, is historic and the first
9 arising from a Security Council referral and addresses the situation in Darfur in 2003
10 and 2004. It was certainly long awaited by the people of Sudan, and victims in
11 particular. And we saw it, actually, after the judgment, people were on the street
12 and it was very visible reactions, not only the participating victims.
13 It is the first acknowledgment that the people of Darfur were not victims of mere
14 intertribal conflict or something alike. They were victims of a deliberate
15 campaign - the Chamber made it very clear - orchestrated by those in power and
16 executed by the Janjaweed led by Mr Abd-Al-Rahman in Wadi Salih region, under the
17 authority of the Government of Sudan, even if not specifically ordered by anyone in
18 particular.
19 I found this a very interesting reaction that we got from clients after the judgment,
20 and we connected to them via video, is that they addressed exactly this, that for them
21 it was also very important that the historic record was - how do you say that - the
22 record was -- you put the record straight, I think this is what you say, for them.
23 Because still in the community there's a lot of discussion of what has happened and
24 why. And the summary that you gave, for them, was a -- was a relief, actually, you
25 know, to get a clear account of what it is actually that happened, and not a purely

1 tribal thing.

2 So this judgment already carries a symbolic weight far beyond the walls, but a
3 historical weight until -- unless -- at least for the victims. It finally tells the people of
4 Darfur that the world has not forgotten them. That's also an important aspect. And
5 that even after twenty years justice is possible. The reaction of the judgment,
6 messages and pictures we received, are worth a thousand words - I already
7 mentioned this - but it's important to reiterate, to demonstrate how meaningful such a
8 trial is in times where the Court and its relevance and the meaning and the weight of
9 international criminal law is subject of constant very controversial debates.

10 So before I speak about law, I must speak about the people who we constantly
11 mention here, as unanimously but also as anonymously, actually, as we do: the
12 participating victims.

13 Since the beginning of these proceedings, and I have rehashed this time and time
14 again, my team and I have sought the views and concerns. And we try to do this
15 across Darfur and the refugee camps in Chad, which, given the circumstances, is a
16 quite difficult undertaking.

17 Despite the war, despite displacement, despite poverty, despite the resulting constant
18 stress, many of the participating victims found the strength to individually speak to
19 us, with the wish that we convey to you through letters, audio messages, and
20 meetings under the most fragile circumstances, and that we make it clear they do not
21 call for vengeance and they do not call for hatred. Because they are smart and they
22 know it wouldn't help at all, even though it would be the most natural and
23 understandable avenue, the first thing that comes to mind, even, I think to all of us, if
24 we're honest, leaving aside our supposedly clever mind as educated jurists.

25 The victim's approach is actually minimalistic, but so clear and much more resilient.

1 They call for justice, for acknowledgment, and they are asking for peace, peace built
2 upon accountability. That's the only thing we can provide in this courtroom. They
3 of course have their own views on how this would best be achieved. It may require
4 translation again. But at the end of the day they call for protection from ever again
5 living in fear of the man who once commanded their destruction. It is as simple as
6 that. It doesn't require much legal debate on which law to apply, my colleague
7 Ms Beaulieu Lussier has very well explained. Sudanese law wouldn't spare
8 Mr Abd-Al-Rahman for an inch given the gravity of the crimes he committed, also
9 under his own jurisdiction, and Mr Nicholls has repeated this today.

10 Your Honours, the words we heard most often were these: "He must never return to
11 Darfur." This is the primary concern.

12 For many, even the thought of his return causes trembling and panic. The memories
13 of his presence are carved into his mind. They have seen his men drag fathers from
14 their homes, burn their villages, and assault their mothers and daughters.

15 One man has said to us: "If he comes back, he will start again. He will commit new
16 crimes." End of quote.

17 Another said, in simple words: "If he returns, the pain will return too. Let him stay
18 where he belongs - in prison." End of quote.

19 I'm told to slow down.

20 Your Honours, the crimes committed in Kodoom, Bindisi, Mukjar and Deleig did not
21 end when the killings stopped. Entire families were annihilated. Those who
22 survived have carried the grief of their dead for twenty years. Many could not even
23 bury their loved ones, a cruelty that deepens the wound every day, until today.

24 The victims also spoke of the loss of entire ways of life.

25 Displacement was not only a physical uprooting. It was a tearing apart of culture,

1 tradition, and social order.

2 The Fur people lost their elders, their *sheikhs*, their *umdaahs*, their *shartays*, the
3 traditional leaders who held their society together. Without them, a whole system of
4 governance and identity completely collapsed. And the women, your Honours, the
5 women of Darfur have carried the heaviest burden. They were left to raise their
6 children and orphans alone, in camps, without security, without resources, without
7 justice. Too many of them have been raped widowed and humiliated. Yet, they
8 still stand firmly, they raise their children, even those born out of rape. But they are
9 exhausted. However, they say they will not give up until justice comes.

10 V-4, you may remember him, when he addressed your Honours, highlighted the role
11 of and the respect for women in the Darfuri society. And this was in transcript 127,
12 page 60, lines 13 to 19.

13 And he said: "The Darfurian women ... remain dignified, firm. They are iron ladies
14 and justice will be rendered, hopefully, and the future will carry the best for them.
15 We respect and appreciate women. Women are mothers, sisters and everything.
16 And to quote a poet," - it's him quoting a poet, it's not me - "'the hand that rocks the
17 cradle is the hand that rules the world'."

18 However, these are not stories of the past. They are stories of the present and come
19 from the participating victims in this trial. These women still live in Kalma camp
20 and in camps close to Bindisi, Kodoom, Deleig and Mukjar, where -- where the
21 villages were, and some as well in Chad. Today, just as the day of my opening
22 address on 5 June 2003 it was, they still suffer from hunger and fear. But the
23 difference now is that your Honours have decided and publicly stated that the
24 accused is guilty of the crimes that he was accused of and he bears individual
25 criminal responsibility and that what was done to the participating victims was

1 fundamentally wrong. Many of my clients didn't even believe something like your
2 judgment was within the realm of realistic possibilities during their lifetime.

3 So turning to the legal requirements for sentencing, your Honours, I will make it short
4 because you know -- you know it very well, the Rome Statute provides a clear
5 framework for sentencing.

6 You must consider three things: the objectives of sentencing, gravity of the crimes,
7 and the individual circumstances of the convicted person.

8 So starting with the objectives. The Court has often affirmed that the main purposes
9 are retribution and deterrence. Retribution, not as vengeance, but as the moral
10 condemnation of what the international community considers or has agreed to be the
11 consensus. The Court said it in Bemba, retribution is not to fulfil a desire for revenge
12 but to express the international community's condemnation of the crimes, to
13 acknowledge the harm inflicted on the victims and to promote peace and
14 reconciliation. I believe this is a very high aspiration, but maybe we can try to get
15 near this high aspiration.

16 The victims of Darfur understand this distinction deeply. They do not want
17 retribution to destroy, but they ask for retribution to restore. They want this
18 sentence to stand as a declaration that their lives matter and that their suffering is not
19 invisible.

20 Also, the sentence must serve as a warning to anyone who believes they can
21 command militias, burn villages, rape women and destroy communities with
22 impunity.

23 As one victim, I call him Abkar, told us: "Let this be a lesson to all those who think
24 they are above the law."

25 Many participating victims see that their hope materialised and that justice eventually

1 comes, no matter how long it takes and how small it is compared to the real sufferings.
2 However, a sentence also needs to be adequate to discourage a convicted person from
3 recidivism and for history to repeat itself.

4 A possible scenario, as expressed by a group of victims from Goz Beida, this is a camp
5 in Chad, is that, and I quote: "The moment he returns and sets foot on Sudanese soil,
6 he will pick up his axe and continue what he has always done." This fear is real, as
7 unrealistic as it may seem to us in our comfortable European lifestyle. It is not made
8 up. Many participating victims can't erase the pictures that they are carrying with
9 themselves now for decades.

10 As a result, I respectfully disagree with the Defence's argument that the age and
11 health of Mr Abd-Al-Rahman render this consideration irrelevant. For ordering, a
12 mode of liability your Honours convicted him for, young age and perfect health are
13 not necessary.

14 Regarding the gravity of the crimes, your Honours, you have now repeatedly heard
15 from all of us that the crimes for which Mr Abd-Al-Rahman was convicted are among
16 the gravest ever heard and debated before this Court. As the Chamber has found,
17 they are systematic, committed on a large scale and motivated by discrimination.

18 They targeted civilians - men, women and children equally - solely because they were
19 Fur and therefore deemed enemies of the state. The attacks on Bindisi and Kodoom
20 were carried out with deception and cruelty. The Janjaweed told the villagers they
21 would not be harmed, then they surrounded the villages and slaughtered the
22 inhabitants, killing men, women and children alike. Many were burned alive in
23 their homes. Others were beaten with rifle butts, whipped or executed after being
24 tied up. Women and girls were raped, often in public in front of their families, to
25 degrade and terrorise the community. Some were murdered immediately

1 afterwards.

2 We can all read this in your judgment. These acts were not isolated incidents. They
3 were part of a deliberate plan to humiliate -- to humiliate, destroy and erase the Fur
4 people.

5 The murders, torture, the looting, the persecution, the forced displacement all were
6 components of a single coordinated policy of extermination. Even after the attacks,
7 the cruelty continued. Men and boys were detained, tortured and executed in
8 Mukjar and Deleig. One detainee had his ear cut off in the presence of

9 Mr Abd-Al-Rahman. Others were beaten until they could no longer hear, walk or
10 speak. Some died from starvation and disease in detention. This was not chaos.

11 It was control. This was not a spontaneous uprising. It was a policy. And the
12 Chamber found that Mr Abd-Al-Rahman was right at the centre of these events,
13 leading, ordering, encouraging and taking part.

14 Your Honours, the suffering of the participating victims is not confined to the past.

15 Many still live in displacement camps struggling for survival. And you've heard
16 from some of them here in the courtroom. We have extensively demonstrated this
17 throughout the proceedings, in writing and orally. And, as you will appreciate, they
18 all remain impoverished, traumatised, invisible to the world, in a country at war
19 again.

20 The Rapid Support Forces, born from the same Janjaweed structure, are now fighting
21 the Sudanese army. The victims of 2003 now witness their own children facing the
22 same horrors. This reality adds urgency to today's proceedings.

23 Your Honours, the victims' demands are remarkably consistent and reasonable.

24 They call for a sentence that reflects the enormity of the crimes and that doesn't allow
25 for Mr Abd-Al-Rahman to ever again set foot on Sudanese ground.

1 Following discussions and explanations regarding the judicial process, because I've
2 tried to explain to them -- or I have explained to them and they well understood the
3 legal framework, most of the victims have demonstrated a high degree of
4 understanding and have largely reaffirmed their trust in the proceedings and in your
5 Honours. Ultimately, they have no choice and accept the legal and jurisprudential
6 framework as it stands, without excessive criticism, even though it's far away from
7 their own national legal framework.

8 Still, following the Defence's submissions on the appropriate sentence, a group of
9 participating victims from Goz Beida in Chad voiced this clear view just on Monday,
10 and I'm quoting:

11 "We wonder that at the same time that we, as victims, are told that we cannot demand
12 his execution, although such penalties fall under Sudanese domestic law, how is it
13 now acceptable for Sudanese law to be used in his favour?" End of quote.

14 They questioned how Sudanese law can be used to shield Mr Abd-Al-Rahman now
15 when that same system failed to protect them, failed to prosecute him, and failed to
16 uphold even the most basic standards of justice.

17 And another quote is the following:

18 "He is currently detained and tried by the International Criminal Court that is
19 governed by its own rules and regulations. Therefore, he has to be held accountable
20 solely under these provisions." End of quote.

21 I concede that this is just a view of a participating victim, not a lawyer, not a jurist, but
22 I think it's interesting to share with you what the feeling of justice is amongst the
23 community.

24 They even state that, and I quote:

25 "If Sudanese laws had been properly applied, the people would not have

1 turned -- would not have turned to and supported the ICC in the first place. It was
2 precisely due to the failure of the courts, the injustice of the judiciary and the lack of
3 impartiality and enforcement of the law that people accepted and supported the ICC's
4 intervention." End of quote.

5 Further, understandably, and in line with the principle of proportionality, one victim
6 said, and I quote: "His natural place is in prison for many years so that he may also
7 feel the suffering that was inflicted upon us in the camps." End of quote.

8 And another said, and I quote: "We want him to live the same number of years in
9 prison as we have lived in the camps - in displacement and suffering." End of quote.

10 This group of victims from Goz Beida expressed the clear and consistent wish that,
11 and I quote again, "the accused remain imprisoned for life". They explained this
12 request by saying that even if he were to live only one additional year, they needed
13 the reassurance that he would spend that year in detention, having lost the right to
14 freedom that he denied to them. They viewed a life sentence as the only punishment
15 proportionate to the sentence that he imposed upon them and they continue to live to
16 this day.

17 These participating victims also expressed grave concern that if the accused were ever
18 to return to Sudan, he would immediately resume the conduct for which he was
19 convicted.

20 The wish of these participating victims I would say is not cruel. It's profoundly
21 human. They definitely ask that he never return to Darfur, not only for the sake of
22 punishment per se, but also to protect their peace and dignity. For them, justice
23 means more than imprisonment. At least this is my understanding from what they
24 told me. It means recognition that their pain is heard, their stories recorded, their
25 dignity restored, the first step of which the judgment on 6 October was, with the

1 important historical record it encompasses.

2 We often heard from clients that they want the world to know that they were targeted
3 because of who they are. They were not rebels. They were human beings, innocent
4 civilians. Another fact that needs to be reflected in the sentence.

5 And yet, many victims also expressed humility and trust in this Chamber. I heard
6 from them, after having explained the ICC legal framework, and I quote: "We are
7 not lawyers. We leave the judgment to the judges. We only ask that the
8 punishment be just." End the quote.

9 But justice means speed because time itself has become another form of suffering.

10 Victims have waited 20 years. Many have died waiting. Those who remain hope to
11 live long enough to find closure. They want to see the sentencing decision come
12 quickly. they seek acknowledgement and they seek assurances that what happened
13 to them will never happen again, not in Darfur, not anywhere.

14 So for these reasons, I respectfully urge this Chamber to impose a sentence that fully
15 reflects the gravity, cruelty and enduring impact of Mr Abd-Al-Rahman's crimes, a
16 sentence that affirms the humanity of the victims and the authority of the law, a
17 sentence that tells the participating victims in this case that some form of justice has
18 finally arrived.

19 Thank you.

20 PRESIDING JUDGE KORNER: [10:36:25] Yes, thank you very much,
21 Ms von Wistinghausen.

22 Yes, Mr Laucci. Mr Laucci, I'm proposing to sit through to finish so you said you
23 were going to take one session.

24 MR LAUCCI: [10:36:44] Yes, precisely, Madam President. It's one session. I've
25 heard my learned friends and yesterday I made the request for the favour to have a

1 short break before I start in order to digest --

2 PRESIDING JUDGE KORNER: [10:36:58] Oh, you did, you're quite right. You're
3 quite right.

4 MR LAUCCI: [10:37:00] Can I offer, because that would be enough, for -- actually,
5 I'm not offering, I'm proposing that the courtroom takes the break a little bit earlier
6 than usual, but the length of the break does not need to be longer.

7 PRESIDING JUDGE KORNER: [10:37:18] No, well, I'm not going -- I was actually
8 going to shorten the break.

9 MR LAUCCI: [10:37:23] Okay, sorry.

10 PRESIDING JUDGE KORNER: [10:37:26] On the basis that 20 minutes would be
11 sufficient.

12 MR LAUCCI: [10:37:28] It is.

13 PRESIDING JUDGE KORNER: [10:37:30] Right. In which case -- well, I suppose,
14 actually, there's not much difference, is it. All right. We'll say 11 o'clock.

15 Just one -- yes, just one matter. You appreciate that if Al-Rahman wants to say
16 something, he needs our leave. Are you asking for that?

17 MR LAUCCI: [10:37:55] Yes, we are.

18 PRESIDING JUDGE KORNER: [10:37:57] And how long?

19 MR LAUCCI: [10:37:58] The assumption is maximum 10 minutes -- well, the -- 10 to
20 15 maximum, absolute maximum.

21 PRESIDING JUDGE KORNER: [10:38:08] I want to make it clear ...

22 (Discussion between the Chamber and the court officer)

23 PRESIDING JUDGE KORNER: [10:38:29] All right, well, best laid plans and all the
24 rest of it. I'm told that because the public gallery have got people in it to clear, we
25 have to have the full half hour. So that will be -- so we'll sit again at 10 past 11 it

1 looks like by that clock.

2 Yes, you also mentioned that he may want to repeat the request he's already made

3 twice before in respect --

4 MR LAUCCI: [10:39:04] Oh, no.

5 PRESIDING JUDGE KORNER: [10:39:06] -- of asking for silence.

6 MR LAUCCI: [10:39:09] No. No, no.

7 PRESIDING JUDGE KORNER: [10:39:10] He's not?

8 MR LAUCCI: [10:39:13] No.

9 PRESIDING JUDGE KORNER: [10:39:14] Right. Okay. Thank you very much.

10 Yes. All right, then, 10 past 11.

11 THE COURT USHER: [10:39:17] All rise.

12 (Recess taken at 10.39 a.m.)

13 (Upon resuming in open session at 11.13 a.m.)

14 THE COURT USHER: [11:13:20] All rise.

15 Please be seated.

16 PRESIDING JUDGE KORNER: [11:13:38] Yes, Mr Laucci.

17 MR LAUCCI: [11:13:50] Thank you, Madam President.

18 I have only one word of reply to add that it is not covered in my submissions, so I will

19 address it here, it now. This is with respect to the Lukić case. I referred to it, if you

20 remember, on Monday. It's the transcript 164, ET, page 86, lines 19 to 23. And I

21 mentioned the Lukić case precisely to illustrate that extermination, which Lukić was

22 found guilty of, was a crime of extreme gravity. Lukić was sentenced to life. This

23 was upheld in appeal, on extermination count.

24 On Monday, in the opening of my oral submissions, I referred to the views and

25 concerns of victims, as reflected in the legal representatives' submissions, written

1 submissions. These were repeated this morning by my learned friend, so I don't
2 need to repeat these again -- just no vengeance, justice, the just and fair application of
3 the law. This is what is expected from you, your Honours. This is what is expected
4 from the Court.

5 The application of the law is enshrined in the Rome Statute. As I said also on
6 Monday, this Court is the beacon of international criminal justice. As such, it is
7 crucial that it enforces the highest standards of criminal justice and fair trial. In the
8 case Mr Abd-Al-Rahman, this role is devolved to you, your Honours. The beacon is
9 your beacon.

10 If it succeeds in doing so, in implementing the highest standards provided in the
11 Statute, your beacon will lead States Parties towards the safe havens of compliance
12 with the rule of law where democracies flourish.

13 Should it fail in giving flesh and effectivity to these fundamental principles of
14 criminal justice, your beacon will mislead the States Parties on the dangerous reefs
15 where the rule of law and democracies are sinking.

16 This, the time has come, your Honours, for you to tell us where your beacon is
17 leading us. Is it the safe havens where democracies flourish, or is it the dangerous
18 reefs where the democracies sink? It is your choice and it is ultimately the most
19 fundamental aspect of the determination that you have to make.

20 Among the most fundamental, non-derogable principles of international criminal
21 justice - the Appeals Chamber used the words *jus cogens* to describe these - are those
22 enshrined in Article 22 to 24 of the Rome Statute -- *nullum crimen, nulla poena sine lege*
23 and the non-retroactivity *ratione personae* of criminal laws.

24 With respect to sentencing, compliance with these principles requires that "in the
25 event of a change in the law applicable to a given case prior to a final judgment, the

1 law more favourable to the person being convicted shall apply". That is Article 24(2)
2 of the Rome Statute.

3 The insertion of the principle of non-retroactivity *ratione personae* was an innovation in
4 1998, a significant progress, turning the page of *ex post facto* international tribunals,
5 created by the international community in Nuremberg, Tokyo, the former Yugoslavia,
6 Rwanda, Sierra Leone, Cambodia, Lebanon and others. That was to fill the gap of
7 the absence of a truly permanent international court. The principle of
8 non-retroactivity *ratione personae* did not exist before these other tribunals. There is
9 thus no mystery if in Blaskić, as cited by my learned LRV friend on Monday, or in
10 Galić, as cited by the OTP this morning, the principle of non-retroactivity did not
11 appear. The only relevance of quoting Blaskić or Galić is precisely to emphasise the
12 added value of Article 24(2) of the Statute, compared to these other tribunals, which
13 were *ex post facto*.

14 At paragraph 123 of its written submissions, the Defence has referred to the relevant
15 case law of regional courts in charge of enforcing human rights in relation to
16 non-retroactivity *ratione personae*. Those quotes are unanimous. The European
17 Court's Grand Chamber in *Del Rio Prada v Spain*, the African Court in *Kabalabala*
18 *Kadumbagula v Tanzania*, and the American court in *Velez Loor v Panama*, all find
19 that the punishment imposed on a convict shall not exceed the limits fixed by the
20 provisions in force at the time of his action. The same principle applies to all crimes
21 irrespective of their gravity. We referred to a judgment from the Supreme Court of
22 Benin in relation to a mundane traffic offence. But we also quoted the European
23 Court's Grand Chamber in *Maktouf and Damjanović v Bosnia and Herzegovina*.
24 This was a war crimes and crimes against humanity-related case. So, even for the
25 most serious crimes of concern to the international community as a whole, the crimes

1 under the jurisdiction of this Court, the principle of non-retroactivity *ratione personae*
2 applies, according to the European Court of Human Rights. Their gravity does not
3 make them an exception to this principle.

4 The only case law from this Court that the Defence was able to identify - but it seems
5 that the other parties were not more successful - is paragraph 303 of the decision on
6 the confirmation of charges in the Lubanga case. It is quoted at paragraph 121 of the
7 Defence sentencing submissions. I read it:

8 "[...] there is no infringement of the principle of legality if the Chamber exercises its
9 power to decide whether Mr Thomas Lubanga Dyilo ought to be committed for trial
10 on the basis of written (*lex scripta*) pre-existing criminal norms approved by the
11 States Parties to the Rome Statute (*lex praevia*), defining prohibited conduct and
12 setting out the related sentencing (*lex certa*) which cannot be interpreted by analogy in
13 *malam partem (lex scripta)*."

14 I believe my learned friend on the legal representatives' side missed this reference on
15 Monday. It is transcript 0164, ET, page 61, lines 20 to 25, when she said that there is
16 a consensus that *nulla poena* principle does not bear the requirement of *lex certa*, that is
17 specific sanctions. *Nulla poena sine lege* does require *lex certa*. When the Rome
18 Statute is applicable, like in Lubanga, this requirement is fulfilled by Article 77 of the
19 Rome Statute. When the Rome Statute is not applicable, like in Sudan in 2003 and
20 2004, the Appeals Chamber has told us in its judgment 0A8 that we should look
21 "beyond the Statute", in the law that was applicable at the time. This is what your
22 Honours did in the Trial Judgment, by looking at the Sudanese 1991 Criminal Act. I
23 submit that consistency with the Trial Judgment requires your Honours to follow the
24 same path now with respect to penalties.

25 What are the consequences of this fundamental principle on the case of

1 Mr Abd-Al-Rahman?

2 The crimes he has been convicted for were committed in 2003 and 2004. In that time,
3 Sudan was not a State Party to the Rome Statute; it is still not. This makes that there
4 was no link between Mr Abd-Al-Rahman, a Sudanese citizen, acting on the territory
5 of Sudan, and the law of the Court at the time of the crimes. The law of the Court,
6 the Rome Statute, was not applicable to him.

7 What made the Rome Statute applicable to Mr Abd-Al-Rahman, is Resolution 1593,
8 passed by the UN Security Council on 31 March 2005. This is the pivotal date.

9 From that date on, the Rome Statute became applicable to all nationals of Sudan and
10 to all crimes committed in Sudan. This constituted "a change in the law applicable"
11 to Mr Abd-Al-Rahman, pursuant to Article 24(2) of the Statute.

12 On Monday, my learned friend on the Legal Representative of Victims' side,
13 suggested that Resolution 1593 did not amount to "a change in the law applicable",
14 pursuant to Article 24(2). This is the transcript of Monday, 164, ET, page 64, line 19,
15 to page 65, line 4. According to her submissions, the only possible change in the law
16 that may trigger non-retroactivity *ratione personae*, under Article 24(2), would be an
17 amendment to the Rome Statute.

18 I pause a minute to consider the argument before turning to the clear and
19 unambiguous answer provided by the Appeals Chamber. An amendment to the
20 Rome Statute is not labelled a "change in the law" in the Rome Statute. It is called an
21 "amendment". You can see that at Article 121 of the Rome Statute. Also, the Statute
22 itself is not called "the law", but "the Statute". If the intention of the drafters of the
23 Statute would have been to limit the scope of Article 24(2) to the occurrence of an
24 amendment, they would have used that word. Article 24(2) would read:
25 "In the event of an amendment to the Statute."

1 But not, as it does, "In the event of a change in the law".

2 PRESIDING JUDGE KORNER: [11:29:15] Just pausing there, for a minute, Mr Laucci.
3 You assert that with great force, if I may say so. Do you have any authority for
4 saying that?

5 MR LAUCCI: [11:29:25] For saying?

6 PRESIDING JUDGE KORNER: [11:29:26] For saying that the -- had the Statute
7 intended that it meant to change the Statute, it would have said "an amendment to the
8 Statute", rather than the change in the law.

9 MR LAUCCI: [11:29:37] I'm referring to the plain and normal meaning of the words.
10 An amendment is an amendment, and Article 121 confirms that. The law is the law,
11 and it's not only the Statute.

12 PRESIDING JUDGE KORNER: [11:29:56] Okay. You don't have any authority for
13 saying that, is the simple answer. This is your reading of the --

14 MR LAUCCI: [11:30:03] Yes.

15 PRESIDING JUDGE KORNER: [11:30:04] Thank you.

16 MR LAUCCI: [11:30:05] I can concede that an amendment to the Statute changes the
17 law, but these are not, and by far, the only possible changes in the law. Restricting
18 the scope -- or maybe what I'm going to say will answer your question,
19 Madam President. Restricting the scope of Article 24(2) to the sole occurrence of an
20 amendment, as proposed, is nothing else than emptying the principle of
21 non-retroactivity *ratione personae* from the essential of its substance in total -- in a total
22 opposite direction from the case law of the European court, African court and
23 American court that I quoted earlier. Follow that restrictive interpretation, your
24 Honours, and your beacon will lead us straight on the perilous reefs of
25 authoritarianism and non-respect for the rule of law that I mentioned earlier. Your

1 Honours don't want that. Even if the findings of the trial judgment were right,
2 retribution to the old man sitting behind me would not be worth that.

3 Also, my learned friend omits that Article 24 is not entitled "non-retroactivity", it is
4 entitled "non-retroactivity *ratione personae*". What is, and I ask this out of pure
5 rhetoric, the *ratione personae* dimension of an amendment to the Rome Statute? Can
6 an amendment be *ratione personae*? Would States Parties bother amending the
7 Rome Statute, vis-à-vis a specific individual, like, for instance, Mr Abd-Al-Rahman?
8 The *ratione personae* qualificative is proof that the non-retroactivity of relevance here is
9 the non-retroactivity of the law applicable to the convicted person, any law applicable
10 to him. It can be his national law or it can be the Rome Statute, as clarified by the
11 Appeals Chamber. And, by the way, this morning my colleague from the Office of
12 the Prosecutor acknowledged and confirmed what I just said. I quote from page 2,
13 lines 7 to 9, of today's transcript: "Following the referral of the situation in Darfur to
14 the Court by the Security Council, the Rome Statute, the Rules of this Court, are the
15 only applicable framework for sentencing."

16 We fully agree, "Following the resolution", not before.

17 In its judgment OA8, the Appeals Chamber was considering the application of the
18 principle *nullum crimen* under Article 22 of the Statute. But its ruling applies
19 similarly to the application of the correlated principle of non-retroactivity *ratione*
20 *personae* under Article 24. These are inseparable. The law and case law referred by
21 the Appeals Chamber -- referred to by the Appeals Chamber at paragraphs 84 and 85
22 of the OA8 judgment encapsulate both, without distinction. And what the Appeals
23 Chamber has to say is the following, I am quoting paragraph 86:
24 "For conduct that takes place on the territory of a State that is not a Party to the
25 Statute, it is not enough that the crimes charged can be found in the text of the Statute.

1 In interpreting article 22(1) of the Statute in a manner consistent with human rights
2 law, a chamber must look beyond the Statute to the criminal laws applicable to the
3 suspect or accused at the time the conduct took place."

4 End of quote. For non-States Parties, the Statute is not enough. The Chamber must
5 look at the criminal laws applicable to the convict at the time of his conduct, that is in
6 2003 and 2004.

7 Why that? Precisely because the Statute was not applicable to these non-States
8 Parties prior to the UN Security Council resolution referring the situation on their
9 territory to the Court. This, once again, is the pivotal date. Before the resolution,
10 the Statute does not apply. After the resolution, the Statute does apply. For
11 nationals of the relevant party -- state, of the relevant state, not state party, that
12 amounts to a change in the law. Until 30 March 2005, no Rome Statute applicable in
13 Sudan to Sudanese people. As of 31 March 2005, they become liable for the crimes
14 under the jurisdiction of the Court with no more requirement of foreseeability or
15 accessibility.

16 PRESIDING JUDGE KORNER: [11:36:07] I don't want to interrupt, but this is exactly
17 what you argued before, and before the Appeals Chamber delivered its judgment,
18 that there was no jurisdiction to try your client.

19 MR LAUCCI: [11:36:18] My submissions back in this time were related to Article 22
20 *nullum crimen sine lege*.

21 PRESIDING JUDGE KORNER: [11:36:20] Yes.

22 MR LAUCCI: [11:36:21] My submission of today is related to Article 24(2),
23 non-retroactivity *ratione personae*.

24 PRESIDING JUDGE KORNER: [11:36:33] All right. So you're saying totally
25 different principles apply to that than applied to your argument on the -- before the

1 Appeals Chamber?

2 MR LAUCCI: [11:36:43] I say that *nullum crimen, nulla poena* and non-retroactivity
3 are the same facets of the principle of legality, but the way these have to be addressed,
4 indeed by this Court, are different and I'm coming to this.

5 PRESIDING JUDGE KORNER: [11:36:58] All right.

6 MR LAUCCI: [11:37:05] Your Honours, I have applied this judgment OA8 at
7 paragraph 28 to 60 of your trial judgment. As instructed by the Appeals Chamber,
8 you have looked beyond the Statute to the relevant applicable law in 2003 and 2004 in
9 Sudan -- that is, the 1998 constitution, the 1991 Criminal Act, and the 1986 People's
10 Armed Forces Act. These were in force. These were applicable. At paragraph 34
11 of your trial judgment, you find, and I quote: "the 1991 Criminal Act [...]
12 unambiguously described the prohibited conduct and defined the crimes" end of
13 quote.

14 And you refer, in footnote 46, to various provisions of the 1991 Criminal Act. This is
15 the way your Honours reached the conclusion that the *nullum crimen sine lege*
16 standard was satisfied.

17 Now, turning to the non-retroactivity *ratione personae* aspect, with respect to the
18 determination and sentence, judgment OA8 similarly requires you to "look beyond
19 the Statute to the criminal laws applicable to" Mr Abd-Al-Rahman in 2003 and 2004,
20 those which provided the penalties applicable for these crimes.

21 But, and this is where I answer your question, Madam President, if there is one
22 difference between the principle *nullum crimen, nulla poena sine lege* and the
23 non-retroactivity *ratione personae* principle, it is precisely the applicability and
24 relevance of the foreseeability and accessibility test. This test applies to *nullum*
25 *crimen* and *nulla poena*. It requires that the person must have been aware of the

1 criminal nature of his acts and of the penalties punishing it. But there is nothing
2 such in the non-retroactivity *ratione personae* principle. What the person knows and
3 can foresee does not matter.

4 Unlike what my learned friend on the legal representative bench told you on
5 Monday - transcript 164, ET, page 62, lines 3 to 22 - and my learned friend in the OTP
6 this morning - I'm at page 12 of the transcript, line 15, to page 14, line 8 - so unlike
7 what they said, whether Mr Abd-Al-Rahman was aware of the penalties under the
8 Rome Statute or not in 2003 and 2004 bears no relevance. It is no longer a subjective
9 test. It is a very objective rule. In case of change in the law defining the penalties
10 for his acts, the more favourable, more lenient law shall prevail, irrespective of the
11 offender being aware of that change or not.

12 So, the non-retroactivity *ratione personae* test does not require you to run again a
13 foreseeability/accessibility test into your sentencing judgment. It is much simpler
14 than that. It only requires you to compare the penalties under the Statute, Article 77,
15 with the penalties that applied in Sudan in 2003 and 2004, and then opt for the most
16 lenient of the two.

17 To assist you in this exercise, the Defence called back Witness D-0016. His written
18 statement is in evidence and he appeared before you yesterday morning. The Office
19 of the Prosecutor and the Legal Representative of Victims chose not to cross-examine
20 Witness D-0016. According to your Honours' rule, I quote:

21 "[...] that if the non-calling party challenged the accuracy or veracity of the evidence
22 being given by a witness, then this challenge should be included in the questioning of
23 the witness".

24 That's your trial judgment, paragraph 199. The fact that they did not cross-examine
25 Witness D-0016 means that they do not challenge his evidence. For each crime

1 Mr Abd-Al-Rahman is found guilty of, Witness D-0016 is telling which penalty was
2 applicable, in his opinion, in Sudan in 2003 and 2004. His responses do not rely only
3 on the 1991 Criminal Act, he is also seeking responses in the 1986 People's Armed
4 Forces Act whenever necessary to complete the first.

5 I compared, yesterday, his responses with the OTP's submissions on applicable
6 sentences. Can we have the slide again, please. And this time it has been
7 corrected -- on the screen, on the desk screen.

8 (Counsel confers)

9 MR LAUCCI: [11:42:58] Okay, I don't need it.

10 Ah, here it is.

11 So you have seen this chart already. This was the first part of the exercise. On the
12 basis of the responses from Witness D-0016 in the right column, the Defence submits
13 that the heaviest individual sentence that a convict may be imposed for the crimes is a
14 term of 14 years' imprisonment, that the proposal of OTP under count 1 in the left
15 column. Mr Abd-Al-Rahman may also be imposed lower sentences for the other
16 counts.

17 If we stopped here, your Honours may impose to Mr Abd-Al-Rahman individual
18 sentences up to a maximum of 14 years proposed by the Prosecution under count 1,
19 and lower sentences with respect to other counts. The sentences would fall within
20 the category of the more lenient penalties applicable to him before and after the
21 "change in the law", dated 31 March 2005. Your Honours may then impose a joint
22 sentence of no less than 14 years' imprisonment and reaching a maximum that could
23 theoretically go up to 30 years, pursuant to Article 78(3) of the Rome Statute, under
24 the condition that you would find a proper justification for stepping over the gap
25 between 14 and 30 years.

1 But there is a second part to this exercise. It consists in applying the law on
2 sentences to Mr Abd-Al-Rahman. If I managed to get and keep the attention of your
3 Honours this morning, they may have noticed that my demonstration so far was on
4 the applicable principle without applying to the specific case of my client. I do that
5 now.

6 The crux of the matter when applying these principles to him is his age, 76 years.

7 As found by your Honours in the trial judgment, the applicable law includes, in the
8 first place, the 1991 Criminal Act. And on sentencing, the 1991 Criminal Act
9 contains a provision - that is, Article 33(4) - which excludes the passing of a sentence
10 of imprisonment upon a person who has reached the age of 70 years. It is on the
11 screen. Thank you.

12 Let me read it:

13 "With the exception of armed robbery (*hiraba*), the imprisonment penalty may not be
14 passed upon a person who is seventy years of age, and where the term of
15 imprisonment is retracted, or remitted by reason of attainment of 70 years of age,
16 there shall apply to the offender the penalty of expatriation for the term of
17 imprisonment prescribed."

18 I hope that the plain reading of 33(4) will bring clarity to my learned representative
19 for victims friend, as to the applicable exception to the rule excluding imprisonment
20 after 70 years. That is the transcript of Monday, T-164, page 63, line 6, to page 64,
21 line 8. The only exception is the offence of *hiraba* -- not murder, not rape; *hiraba* only.

22 The provision is clear, "the imprisonment penalty may not be passed".

23 This is not a mechanism converting a term of imprisonment that is imposed on a
24 convict older than 70 years into something else. It is a provision forbidding, in the
25 first place, the imposition of term of imprisonment on a convict who is older than 70

1 on the day of the sentencing judgment.

2 This conversion mechanism, requiring the taking of another decision converting
3 imprisonment into expatriation, is only used when the convict reaches 70 years of age
4 while serving his term of imprisonment. In that case, and in that case only, there is a
5 need for another decision to retract or remit the term of imprisonment. But when the
6 convict is already older than 70 years at the time of determining his sentence, like
7 Mr Abd-Al-Rahman, no term of imprisonment is possible.

8 The only exception is imprisonment imposed for *hiraba*. Under Article 168(1)(c) of
9 the 1991 Criminal Act, *hiraba* can, as an option, be punished by a term not exceeding
10 seven years of imprisonment.

11 In its written statement, Witness D-0016 is providing evidence assisting the Chamber
12 in its determination as to whether *hiraba* may be analogous to count 4, pillaging as a
13 war crime. I intended to explore this aspect further with Witness D-0016 yesterday,
14 but I did not have that opportunity.

15 PRESIDING JUDGE KORNER: [11:49:26] Well, actually, you could have explored
16 that. You decided to wait, because you thought there was going to be
17 cross-examination. So I'm afraid that was your mistake.

18 MR LAUCCI: [11:49:37] Thank you, Madam President.

19 I will, nevertheless, limit my demonstration on Witness D-0016's second written
20 statement, which is in evidence and is not challenged by the Prosecution.

21 Based on his evidence, and on the definition of *hiraba* under Article 167 of the 1991
22 Criminal Act, the Defence submits that *hiraba* differs from count 4 on at least two
23 aspects. Can we have it on the screen? Here it is.

24 First, as found at paragraph 370 to 376 of the Trial Judgment, Kodoom, Bindisi
25 qualified as urban areas, whereas *hiraba* is committed "away from urbanisation,

1 whether on land, water or air".

2 Second, the attacks were launched in the presence of members of the Central Reserve
3 Forces. We have that at paragraph 404, 416 and 420 of the Trial Judgment. About
4 the CRF, your Honours found that they were an integral part of the police forces and,
5 as such, were governed by the Police Act. That's paragraph 310 of your judgment.

6 In Sudan, like in any other country, the basic function of the police is to maintain
7 order, to prevent the commission of offences and to arrest offenders. *Hiraba* is
8 precisely committed when the targeted victims are without any rescue. At
9 paragraph 32 of his second written statement, Witness D-0016 clarifies what "without
10 any rescue" means. I quote, it means:

11 "[...] in the absence of governmental, police, armed forces, any other authority like
12 Sheikhs or Umdahs that could and should intervene to protect the victims of the
13 "Hiraba" offenders. This is when the offenders take advantage of the absence of
14 governmental, police, armed forces, or any other authority like Sheikhs or Umdahs to
15 commit armed robbery. If governmental, police or armed forces are present, they
16 should rescue or protect the victims. There is thus no "Hiraba", but capital theft or
17 simple robbery under Article 170 or Article 175, in such a case."

18 End of quote.

19 All this was Witness * D-0016.

20 This evidence was not challenged by the Prosecution. The fact that the CRF did not
21 protect the population of Kodoom and Bindisi, but actually participated in the attack,
22 as you found in your judgment, is immaterial. The important is that the attackers
23 did not take advantage of the absence of law enforcement forces. Law enforcement
24 forces, the CRF, were present during the attack.

25 For at least these two reasons - commission in urban area and in the presence of CRF

1 forces - count 4, pillaging as a war crime, could not constitute *hiraba* under the
2 Sudanese law applicable in 2003 and 2004, but fell under the offences of capital theft,
3 Article 170, or robbery, Article 175, of the Criminal Act. The maximum seven years'
4 sentence for *hiraba* under Article 178(1)(c) of the 1991 considering Act, thus, does not
5 apply. The *hiraba* exception to the exclusion of imprisonment sentence for convicts
6 under 70 years of age is therefore not applicable.

7 Which led me to prepare a slightly amended chart, that is now on your screen, with a
8 third column on the right, which is the applicable law in 2003 and 2004, to a person
9 who, at the time of your sentencing judgment, would be above 70 years of age. This
10 is the same -- again the same chart that you have already seen, comparing OTP
11 proposals with Witness D-0016's evidence. We now have this third column for
12 convicts over 70 years of age, pursuant to Article 33(4) of the 1991 Criminal Act, in the
13 last column on the right. As you can see, the most lenient of the three solutions
14 between OTP proposals, Witness D-0016's analysis of the counts, and the application
15 of Article 33(4) of the 1991 Criminal Act, is always found in the last column on the
16 right.

17 Under Article 24(2) of the Rome Statute, this most lenient penalty applicable to
18 Mr Abd-Al-Rahman in 2003 and 2004 shall be preferred. As a result of Article 33(4)
19 of the 1991 Criminal Act, in the absence of *hiraba*, there is, thus, no term of
20 imprisonment that can be imposed on Mr Abd-Al-Rahman in light of his age, 76 years
21 old. That's the Defence's conclusion in principle.

22 In the alternative, should I have failed this morning in my demonstration that *hiraba*
23 did not apply, the highest term that your Honours may apply is 70 years - ah, 70,
24 sorry - seven years under count 4. In the absence of applicable imprisonment
25 sentence for the other counts, Article 78(3) would not apply, so no joint sentence.

1 Even in that case, the maximum prison sentence compatible with the principle of
2 non-retroactivity *ratione personae* would be seven years.

3 As the Defence envisaged at paragraph 137 of its written submissions, your Honours
4 may also be tempted to look at all these things in a radically different way and decide
5 that, whatever Sudanese law provides, the law applicable before this Court is the
6 Statute and that the only applicable sentences are those of Article 77 and that these are
7 sufficient for your determination. The issue would look much simpler. No need to
8 question Sudanese law. Your Honours apply Article 77(1) and impose a sentence
9 not exceeding 30 years of imprisonment, or life imprisonment. End of the story.

10 But the Statute to which your Honours would give prevalence under this reasoning
11 includes Article 24(2) non-retroactivity *ratione personae*, and this article of the Statute
12 requires, "in the event of a change in the law" the application of the more lenient
13 penalty to the convict. There was "a change in the law". The Appeals Chamber told
14 you so in its judgment OA8. Before 31 March 2005, the Statute was not applicable.
15 This is the reason why your Honours had to go through their determination of *nullum*
16 *crimen sine lege* in the trial judgment. There would have been no need for that
17 exercised, had the Statute been applicable to Mr Abd-Al-Rahman in 2003 and 2004.
18 This "change in the law" requires you now to look at the more lenient penalties in
19 concur, and as far as imprisonment is concerned, the Sudanese law excluding
20 imprisonment for convicts of 70 years and more is, by far, the most lenient. The
21 application of the Statute can lead to no other conclusion, unless the beacon that your
22 Honours embody elects to lead us towards the perilous direction of the reefs of
23 non-compliance with the non-retroactivity *ratione personae* fundamental,
24 non-derogable principle enshrined in Article 24(2) of the Statute, that is an essential
25 component of the rule of law.

1 PRESIDING JUDGE KORNER: [11:59:46] And what do say in respect of this
2 argument as regards the Appeals Chamber's decision in Bemba and Ongwen?

3 MR LAUCCI: [11:59:58] In Bemba, we were in Central African Republic, a State
4 Party. In Ongwen, we were in Uganda, a state which at first accepted the
5 jurisdiction of the Court and then became a State Party. So this is not the same
6 situation.

7 PRESIDING JUDGE KORNER: [12:00:14] I see. So you say the defining difference
8 is, is whether a country is a State Party or isn't a State Party?

9 MR LAUCCI: [12:00:23] I'm not the one saying that. The Appeals Chamber said it
10 in OA8.

11 PRESIDING JUDGE KORNER: [12:00:30] All right. Thank you.

12 MR LAUCCI: [12:00:32] Have no doubt, your Honours, that I fully measure the
13 radical divergence between the public opinion and expectations expressed by the
14 Office of the Prosecution, the views and concerns of the victims expressed by the
15 Legal Representatives and the consequences of the strict and plain application of the
16 law exposed by the Defence. Mr Abd-Al-Rahman was found guilty of all crimes he
17 was accused of on 6 October 2005, but there is no imprisonment sentence applicable
18 to him, other than maybe a term of seven years if you compare count 4 to *hiraba*.
19 This is abrupt. I dare even say it is vertiginous.
20 But this is the only reasonable consequence of the application of the law of the Court,
21 especially Article 24(2) of its Statute, the non-retroactivity *ratione personae* principle.
22 In introduction to my oral submissions on Monday, I insisted on the importance of
23 this fundamental principle, a *jus cogens* norm according to the Appeals Chamber. *Jus*
24 *cogens* literally means constraining law. I am convinced that you don't like the
25 outcome of it. The Prosecution does not like it. The victims will not like it. And if

1 I authorised myself, for the first time in five years, to express an opinion based on the
2 only findings of your trial judgment, my background working in humanitarian
3 organisations and as a legal adviser for Chambers before sister international tribunals
4 makes that I don't like it either. But the law is constraining us all. It constrains me,
5 in the first place, to ask you to apply no prison sentence or, at worse, a seven years'
6 sentence to my client. And it constrains you, I'm afraid, to accept it.

7 Your Honours cannot --

8 PRESIDING JUDGE KORNER: [12:03:17] That's what your submission is,
9 Mr Laucci --

10 MR LAUCCI: [12:03:16] This is my submission.

11 PRESIDING JUDGE KORNER: [12:03:17] You're not --

12 MR LAUCCI: [12:03:22] Everything is my submission.

13 PRESIDING JUDGE KORNER: [12:03:23] Yes, thank you.

14 MR LAUCCI: [12:03:26] Your Honours cannot disregard, empty or nuance the
15 non-retroactivity *ratione personae* principle without taking the risk of comforting the
16 most authoritarian, non-democratic and most repressive systems of the world, like
17 Sudan in 2003 and 2004 and, unfortunately, today.

18 The International Criminal Court will honour itself by complying with Article 24(2) of
19 its Statute. It is a fundamental pillar of the rule of law. The only consideration that
20 may tempt you to disregard this fundamental principle or empty it from its
21 effectiveness are -- been mentioned by my learned friend in LRV this
22 morning - retribution to Mr Abd-Al-Rahman, deterrence towards the other offenders
23 in Sudan, and the satisfaction of victims. Let me address these one by one.
24 Retribution to the old man sitting behind me is not worth the risk of sacrificing a
25 fundamental principle of international criminal justice, such as the non-retroactivity

1 *ratione personae*. As far as we can pretend to understand Mr Abd-Al-Rahman's
2 beliefs, it seems that a real retribution for him cannot come from the justice of men,
3 but only from another justice. Disregarding the fundamental principle of
4 non-retroactivity would amount to giving credit to what he represents according to
5 the findings of your trial judgment, that is the brutality and cruelty of lawlessness.
6 The world will be neither worse than better if Mr Abd-Al-Rahman returns home.
7 The fears, legitimate fears expressed by the victims, that he may start again criminal
8 activities, has no materiality. He is too old for that. But the world will be
9 significantly worse if the Court sacrifices a fundamental principle of international
10 criminal justice to keep him in jail.
11 Deterrence towards the offenders. There are two categories of offenders that your
12 Honours may want to consider. I start with the easy part: those committing crimes
13 in Sudan at the time I am talking. The strict and fair application of Article 24(2) of
14 the Rome Statute will not - not - benefit those. They are committing international
15 crimes under the empire of the International Criminal Court, which they entered on
16 31 March 2005, and never left. If some of these get arrested and transferred to this
17 Court - let's all wish so - your sentencing judgment applying no prison sentence to
18 Mr Abd-Al-Rahman out of respect for the principle of non-retroactivity *ratione*
19 *personae* will have no bearing on their case.
20 The second category are those already wanted by the Court and still at large: Harun,
21 Hussein, al-Bashir and Banda. Very easy regarding the last one. The crimes of
22 Banda -- the crime, sorry, the crimes Banda is charged with were committed in 2007,
23 that is under the rule of the Rome Statute. Non-retroactivity *ratione personae* cannot
24 benefit him.
25 I turn to the three others, and I have prepared a chart to help in my explanation. As

1 you can see on the slide, these are but a few - a few - examples of crimes falling under
2 the jurisdiction of the Court that were committed in Darfur, Sudan, after 31 March
3 2005, that is, once the law of the Court had become applicable in Sudan. These
4 examples were found in open source with the limited means available to the Defence
5 team. The Defence has no doubt that the Office of the Prosecutor investigators
6 already know more and are capable of investigating other crimes committed over that
7 period.

8 In 2008, in West Darfur, various localities were attacked in a coordinated action
9 between Janjaweed and Sudan Armed Forces.

10 PRESIDING JUDGE KORNER: [12:08:59] We can -- you don't need to read this out.
11 We can all see it.

12 MR LAUCCI: [12:09:03] Okay, I summarised. Just to say that with these only four
13 examples running from 2008 to 2016, Mr al-Bashir was the president of Sudan all over
14 the period. The rule of non-retroactivity would not apply because it's after 2005, so
15 the age limits under Sudanese law would not be applicable; he can be sentenced.

16 The same for Minister Hussein, except the last one in 2016. I speak --

17 PRESIDING JUDGE KORNER: [12:09:41] Mr Laucci, I'm going to stop you, because
18 this is all speculation as to whether they would be charged or whatever.

19 MR LAUCCI: [12:09:47] I fully agree.

20 PRESIDING JUDGE KORNER: [12:09:49] We are just here -- just a moment, let me
21 finish, please. We are here simply to deal with the case of your client and not worry
22 about people who are not before the Court.

23 MR LAUCCI: [12:09:57] Okay. Madam President, I just wanted to reassure you
24 that not applying a prison sentence to my client will not prevent the prosecution of
25 other people like these, the three gentlemen named in this chart, by this Court. I

1 stop here.

2 Anyway, I doubt the Office of the Prosecutor would suggest that Harun, Hussein and
3 al-Bashir only committed crimes before the adoption of Resolution 1593. That gives
4 a lot of solutions to prosecute them. This is the proper answer to my learned
5 friend --

6 MR NICHOLLS: [12:10:46] Your Honour, I'm --

7 MR LAUCCI: [12:10:46] -- of the Prosecution yesterday --

8 MR NICHOLLS: [12:10:51] Your Honour, I'm sorry, I thought you made a ruling.

9 PRESIDING JUDGE KORNER: [12:10:54] I did. You're still carrying on, Mr Laucci.

10 MR LAUCCI: [12:10:57] I need to reply to what my learned friend in the Prosecution
11 said yesterday, when he said, "You know, you just have to wait home until you are 70
12 and then you come to the Court and you will be safe because you cannot be in jail". I
13 need to answer this argument.

14 PRESIDING JUDGE KORNER: [12:11:12] Yes, well, that -- I don't think you need
15 answer that. I think that was Mr Nicholls in full flow, and I don't think you need to
16 answer it. This is not an answer to it in any event.

17 MR LAUCCI: [12:11:23] Yes, it is. I want to say that it's only -- what matters is
18 precisely what the Office of the Prosecutor is prosecuting. Not my colleague, not
19 those sitting on this bench, but their predecessors made the fundamental mistake of
20 prosecuting crimes committed before --

21 PRESIDING JUDGE KORNER: [12:11:47] Yes, all right.

22 MR LAUCCI: [12:11:50] -- the resolution.

23 PRESIDING JUDGE KORNER: [12:11:51] Mr Laucci, I can assure you all three of us
24 here have absorbed your argument that the only sentence your client can receive is
25 one that means his immediate release.

1 MR LAUCCI: [12:12:02] If you are convinced by my demonstration, however, yes.

2 PRESIDING JUDGE KORNER: [12:12:07] That is your argument, that is your
3 submission and we've heard it.

4 MR LAUCCI: [12:12:11] Finally, the last element that may tempt you not to follow
5 my submission, after retribution and deterrence, is the satisfaction of victims. That is
6 certainly the most difficult aspect, and the most painful.

7 It is not my intention to address it the easy way by referring again to the quotations
8 from the LRV's written submissions where the victims say they are expecting justice,
9 not vengeance, and try to suggest that they will celebrate your judgment releasing
10 Mr Abd-Al-Rahman. Certainly, I will not do that. The victims deserve better and
11 more.

12 The decision that I am asking you, your Honours, to take today will be terrible for the
13 victims. It will take much more than that for them to accept it. Outreach services
14 will face a heavy burden. As I always said to them, to the outreach services, the
15 Defence will avail itself without limit to support outreach activities in explaining the
16 rationales of your Chamber's decision and the reasons why it was the only fair
17 solution compliant with the Rome Statute.

18 The most important message to convey to the victims will be explaining that the
19 release of Mr Abd-Al-Rahman has no impact on your Trial Judgment of
20 6 October 2025.

21 PRESIDING JUDGE KORNER: [12:14:01] Mr Laucci, I'm now going to stop you,
22 because I don't think you appreciate just how insulting your present submissions are
23 to this bench. You have urged us that the Rome Statute allows only, as you say, the
24 sentence that would have been applicable in Sudan. That is your submission. The
25 Prosecution and the CRLV disagree.

1 But what you are now suggesting is that we would deliberately flout the law, if you're
2 right, because of the fears of victims or what might happen to other accused.

3 MR LAUCCI: [12:14:40] No, it's not my suggestion.

4 PRESIDING JUDGE KORNER: [12:14:41] We will, as you suggest, submit and, as we
5 have taken an oath to do, apply the appropriate law, Mr Laucci. The fact that if we
6 apply it in your favour, it may not go down well with the victims, obviously is not
7 something that we can take into account. We are obliged to follow the law. We
8 will do so.

9 Now, is there anything more you want to say?

10 MR LAUCCI: [12:15:19] I understand, Madam President. I thought it was useful to
11 encourage you, but I see it is not useful. So I will stop here for that.

12 The last thing that I would like to say is that, because that's also important for the
13 victims, your decision on the sentencing will have no impact on the full application of
14 Article 75(2) on reparations. Even without a prison sentence, Mr Abd-Al-Rahman
15 would remain convicted and the condition for reparations to victims will remain
16 fulfilled. Releasing Mr Abd-Al-Rahman pursuant to Article 24(2) of the Statute will
17 not prevent reparations for victims. To some extent, one may say that it will make
18 these reparations even more imperious.

19 And, finally, and that's also the reason why -- I skipped a paragraph, sorry -- the
20 reason why the reparation will happen anyway is that if Mr Abd-Al-Rahman gets to
21 be released, the Defence will, of course, have to see with him what are his intentions
22 regarding his appeal. Without making any presumption as to his decision, it may
23 well result in your judgment of 6 October 2025 reaching its finality much sooner than
24 expected.

25 The moment is solemn. Your Honours are facing a difficult decision. The Defence

1 did its utmost to assist them in taking it. I have no more to say. I shall stop here
2 and, with your permission, give the floor to Mr Abd-Al-Rahman for his last words
3 before this Chamber.

4 PRESIDING JUDGE KORNER: [12:17:49] Yes, very well.

5 (Microphone not activated)

6 Yes, Mr Abd-Al-Rahman, I gather you want to address us. You may do so.

7 MR ABD-AL-RAHMAN: [12:18:42](Interpretation) In the name of Allah, the most
8 merciful, the most compassionate, I ask God to accept the victims and martyrs in

9 Al Fasher and in Kordofan, and to heal the wounded and free the prisoners. We ask
10 the warring parties to stop the fighting in Al Fasher and all over Sudan.

11 I thank the honourable judges for the opportunity to speak with you today at the
12 conclusion of my trial.

13 My Defence team has explained the judgment, your judgment, which finds me guilty
14 of many crimes.

15 The Defence team has also explained to me the ruling and that it opens the door for
16 the reparations phase for the victims. I'm glad, thank God, that the victims of 2003
17 and 2004 will finally be able to receive reparations. They have suffered a lot, waited
18 long and they are still suffering. They are in dire need for these reparations.

19 Since my first discussions with the counsel in June 2020, he informed me of the
20 existence of reparations for the victims before the Court. I didn't know this before I
21 surrendered myself. I think this is great.

22 During the trial, I heard accounts of the attacks in Kodoom, Bindisi, and Mukjar, and
23 the executions in Mukjar and Deleig. It was horrible. The people who underwent
24 these events have undoubtedly suffered greatly. They and their families continue to
25 suffer today.

1 Since these people have suffered, the least that can be done is to provide them with
2 reparations. It wasn't necessary for them to wait five years until the end of this trial
3 to do so.

4 I have asked my lawyer to propose the start of reparations and that they begin
5 immediately, since 2020, but the Court has refused and said that it must wait.

6 The victims had to wait and they suffer. However, today, the trial is over and the
7 conditions set by the Court to award reparations to victims has been met. Therefore,
8 I ask again the victims of Kodoom, Bindisi, Mukjar and Deleig, those who you have
9 heard their tragedy and suffering, they need reparations, and they have the right to
10 them. They have been long overdue. Let these reparations be provided to them
11 without further delay.

12 I have nothing. I have been poor for a long time. The life of my family depends on
13 the little that we have. I wish I had the means to alleviate the suffering of the poor,
14 which is the case of all the victims of war in Sudan. If I had the means, I would have
15 done that without hesitation. But I don't have the means.

16 Mr Laucci has explained to me that there is a Trust Fund for Victims that can provide
17 them with compensation. I do not know how this fund works, but it is a good
18 initiative.

19 At my request, the counsel has visited this fund and discussed with them how to
20 enable the victims of Sudan to receive reparations and how I can contribute. My
21 lawyer told me that the fund receives donations that can be allocated to the victims of
22 Darfur. From this rostrum, I make a solemn appeal to the generosity and humanity
23 of all states of the world to provide charitable funds and to all the people of
24 conscience to make voluntary contributions to the fund for the benefit of victims in
25 order to finance the reparations allocated to the victims of Darfur.

1 The Sudan is a country devastated by war and this war brings with it famine,
2 epidemics and much suffering endured by innocent citizens who only want to live in
3 peace.

4 The donations will help alleviate the suffering of the victims of the Darfur war of 2003
5 and 2004. The victims of today also need assistance, especially humanitarian
6 assistance and peace.

7 I would like also to express my gratitude to the Defence team for their efforts in
8 seeking to collect donations, and I urge them to continue this work.

9 Throughout the trial, I have been praying every day to God for the salvation of the
10 victims and to end their suffering, and that of their families. I continue to pray today
11 as the epidemic of war continues to devastate Sudan.

12 What's happening today in my country is a cause of sorrow and despair. People are
13 still suffering, dying, and fighting among themselves, while all of us should have
14 lived in peace and unity under God across our different tribes, cooperating to rebuild
15 our beautiful and bright Sudan, and make it fruitful to feed our children, secure a
16 future for them and bring them out of the miserable situation we are living in today.
17 Misery, despair and war are not inevitable. It is up to every man of goodwill, no
18 matter his status, tribe or profession, it's up to them to reject war, to revive hope and
19 to seek to lift the united Sudan out of misery, through the path of God and peace,
20 which leads to harmony and prosperity.

21 I'm an old man, I have no resources, far from my country. My life is coming to an
22 end and I will soon stand before the justice of God. I await it, because God is
23 forgiving and merciful.

24 Since the Court has allowed me to speak, and my speech will be broadcast and heard,
25 especially in Sudan, I would like to take this opportunity to make a simple and last

1 sober appeal for peace and reconciliation. I speak as a simple man, a Sudanese, a
2 father, an elderly man on the cusp of meeting his lord, waiting for his judgment. I
3 have no authority and I have nothing but prayer and supplication.
4 I appeal to my compatriots, regardless of their tribes, Arabs or non-Arabs, all of
5 whom are equally Sudanese, especially the youth, to lay down their arms and refuse
6 the fight and to reconcile. I implore the military in the Sudan and all those who have
7 authority over my Sudanese brothers, to put an end to the fighting and to work hard
8 for the return of lasting peace and prosperity.

9 To the warring parties, Major General Abdel Fattah Burhan, Major General
10 Hemedti Abdel Fattah, Dagalo, you have children, the war you are fighting is a curse
11 for your children, for the salvation of your children, your grandchildren and the
12 children of Sudan. I ask you, as a father, a grandfather, to put an end to this war.

13 It's not necessary.

14 Honourable judges, thank you for giving the floor to an elderly man who is suffering.
15 You are fulfilling your duty to achieve justice as much as human justice allows. My
16 fate is in your hands. The rest of my life is not long.

17 And, finally, I ask you not to look only at the elderly man standing before you,
18 regardless of the charges you see against me, because behind this man is a family,
19 children. He has family, children, grandchildren, living in a country devastated by
20 war, deprived of resources so much so that his children had to drop out of school
21 because they need him. Please, do not forget them and keep their chance to see him
22 one day before I, myself, stand before God.

23 I thank you very much. May God bless you and reward you. Thank you.

24 PRESIDING JUDGE KORNER: [12:31:24] Yes. Very well, if there are no other
25 matters, then that concludes this hearing.

- 1 I repeat what I said, but I think it was in private session, that we will deliver our
- 2 sentence on 9 December at 9.30 in the morning.
- 3 THE COURT USHER: [12:31:47] All rise.
- 4 (The hearing ends in open session at 12.31 p.m.)