

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 3
9 Wednesday, 6 April 2022
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:52] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:32:12] (Microphone not activated)
15 THE INTERPRETER: [9:32:22] Microphone, Judge Korner, please.
16 PRESIDING JUDGE KORNER: [9:32:26] Not breaking the habit of forgetting to put
17 on the microphone.
18 Good morning to all.
19 And, Registrar, could you call the case please.
20 THE COURT OFFICER: [9:32:36] Thank you, Madam President.
21 The situation in Darfur, Sudan, in the case of The Prosecutor versus Ali Muhammad
22 Ali Abd-Al-Rahman ("Ali Kushayb"), case reference ICC-02/05/-01/20.
23 And for the record, we are in open session.
24 PRESIDING JUDGE KORNER: [9:32:56] Thank you very much.
25 Yes. Appearances for the Prosecution, please.

1 MR NICHOLLS: [9:32:59] Good morning, Madam President, your Honours.

2 Julian Nicholls, with Claire Sabatini, Pubudu Sachithanandan, and Alison Whitford.

3 Thank you.

4 PRESIDING JUDGE KORNER: [9:33:08] Thank you.

5 For the Defence.

6 MR LAUCCI: [9:33:12](Interpretation) Good morning, Madam President,

7 your Honours.

8 On -- with the Defence this morning, together with Mr Ali Abd-Al-Rahman, Nina

9 Guilloux, in charge of evidence; Mr Ahmad Issa, case manager; Vanessa Grée, legal

10 assistant; and lead counsel, myself, Cyril Laucci.

11 PRESIDING JUDGE KORNER: [9:33:45] You have lost Mr Edwards this morning,

12 have you?

13 MR LAUCCI: [9:33:50] Not lost. We know where he is.

14 PRESIDING JUDGE KORNER: [9:33:53] Yes. Legal Representatives of the Victims,

15 please.

16 MS VON WISTINGHAUSEN: [9:33:55] Yes. Good morning, Madam President,

17 your Honours, dear colleagues.

18 The victims today are represented by my colleague, who's attended remotely,

19 Mr Nasser Amin Abdalla; associate counsel, Anand Shah; behind me, case manager,

20 Idriss Anbari; and myself, Natalie von Wistinghausen. Thank you.

21 PRESIDING JUDGE KORNER: [9:34:12] Yes. Thank you very much,

22 Ms von Wistinghausen.

23 Yes. Right. We'll continue with the Prosecution opening. It's you still, I think,

24 Mr Sachithanandan, yes.

25 MR SACHITHANANDAN: [9:34:26] That's correct, your Honour.

1 Your Honour, I'll be covering persecution today, and it'll run for about 10, 15 minutes.

2 After which, I'm afraid I'll have to leave immediately to prep a witness. No

3 disrespect to the Court intended.

4 Your Honour, yesterday, I concluded my submissions on Mukjar, but it's useful to

5 dwell briefly on the nature of the victim population that I mentioned yesterday.

6 Regardless of whether the victim was a 75-year-old community leader or

7 a 10-year-old child who was a Koranic scholar, all the victims in Mukjar were Fur,

8 were male, and were accused of being rebels or supporting rebels -- the victims who

9 were killed at the execution sites.

10 Similarly, the prisoners at Mukjar police station who were tortured were, again, Fur,

11 again male, again accused of supporting rebels or being rebels. It is because of this

12 targeted discriminatory nature of the abuse at the police station, the killings at the

13 execution sites, the use of certain discriminatory grounds to target these victims, that

14 Mr Abd-Al-Rahman is charged with the crime of persecution in the context of Mukjar.

15 He's charged with persecution on the exact same basis for crimes at Deleig and on

16 a similar basis for crimes at Kodoom and Bindisi.

17 If I can start with Kodoom and Bindisi. These were both predominantly Fur villages,

18 and because they were predominantly Fur, they were presumed to support the rebel

19 armed groups. And the attacks were carried out against the civilian Fur population

20 of these towns resulting, as Ms Simms described in detail yesterday, in mass murder,

21 rape, destruction of property, forced transfer of Fur persons.

22 Now, similarly at Mukjar and Deleig, the men and boys abused and executed were

23 predominantly Fur and were selected by the perpetrators again because of their

24 perceived support for the rebels.

25 It's important to bear in mind, as you can see in this image, that Mr Abd-Al-Rahman

1 is charged with persecution on political and ethnic grounds for Kodoom and Bindisi,
2 if you can see on the -- on the right side of this Venn diagram. And for Mukjar and
3 Deleig, Mr Abd-Al-Rahman is charged with persecution on political, ethnic grounds
4 as well as the grounds of gender. These multiple intersecting discriminatory
5 grounds best describe and fully capture the way in which the accused and others
6 carried out their discriminatory targeting. Mr Abd-Al-Rahman and other
7 perpetrators of the charged conduct, they intended to discriminate against the
8 predominantly Fur males in Mukjar and Deleig, and also intended to discriminate
9 against the predominantly Fur population of Kodoom and Bindisi, because they were
10 perceived as supporting the rebel armed groups.

11 Now this intent is evident in the statements made by the accused and fellow
12 perpetrators at each charged incident. For purposes of clarity, I'll discuss this
13 discriminatory intent separately for political, ethnic and gender grounds.

14 And let me begin with political grounds.

15 All three targeted groups, that is to say, the predominantly Fur population of
16 Kodoom and Bindisi, the predominantly Fur males in Mukjar, and the predominantly
17 Fur males in Deleig were targeted for their perceived support for or association with
18 the rebel armed groups. So this is targeting on political grounds.

19 If I can provide an example from Bindisi.

20 During the attack on Bindisi, Witness P-15 saw women being raped, while attackers
21 were saying, I quote, "We have taken the *tora bora's* wives, praise be to God."

22 Again, "*tora bora*" here, is a shorthand reference to rebel.

23 Moving on to Mukjar, during the events that I described yesterday in February,

24 March 2004, Abd-Al-Rahman called a community leader - that he was striking with
25 his axe - "*Kabir El Tora Bora*," meaning, the leader of the rebels.

1 Also in Mukjar, shortly after the torture at the police station, when the detainees were
2 being taken in a convoy towards the execution sites, Witness 913 saw
3 Abd-Al-Rahman walking towards the convoy, shouting, I quote, "*tora bora* is over,
4 prepare their graves." End quote.

5 Again, a reference to rebel affiliation.

6 Similarly at Deleig, when Fur males who had been displaced to Deleig were being
7 rounded up, when they were being arrested, as Ms Whitford will discuss in detail
8 shortly, they were again referred to as "*tora bora*", rebels.

9 Later, also at Deleig, when these detainees were kept in Deleig and then later killed,
10 they were again accused of having links with rebels.

11 In sum, your Honours, there's a common thread that runs through every single
12 incident that we have charged - and that is the targeting of persons for their perceived
13 support for or association with the rebel armed groups - and this discriminatory
14 intent is pervasive and is obvious throughout every charged incident.

15 Moving on to ethnic grounds.

16 The targeting of persons during the charged events was also on ethnic grounds
17 because the Fur ethnicity was used as a proxy - a proxy for identifying rebel
18 supporters - and members of the Fur tribe were targeted on the basis of their ethnicity
19 because of this approach of using a proxy.

20 So if I can use an example from Bindisi. Women were called by the Janjaweed, I
21 quote, "black *Nubas*", end quote. Again, a derogatory term linked to their ethnicity.

22 Also at Bindisi, you heard Prosecutor Khan mention the word "*abid*", slaves or
23 servants. And again, this term was used by Janjaweed attackers when they were
24 carrying out their attack at Kodoom and Bindisi.

25 Similarly, moving forward in time to Mukjar, when Abd-Al-Rahman first entered the

1 cells at Mukjar police station and threatened the prisoners, as I mentioned yesterday,
2 he told the prisoners that Harun had authorised him to take the property of the Fur
3 and to eliminate the Fur, again a clear targeting based on ethnicity.

4 If we can move on Deleig.

5 When these Fur males were being arrested in Deleig, as I mentioned earlier, they were
6 not only referred to as "*tora bora*", they were also referred to as slaves. Again,
7 a derogatory reference to ethnicity.

8 While hiding from arrest, one witness could hear Militia/Janjaweed shouting words
9 like, I quote, "Fuck the Fur", end quote. And, I quote, "Kill the slaves", end quote.

10 Finally, in Deleig, Abd-Al-Rahman told a group of arrested men, I quote, "Fur, this is
11 your last day, we are taking you to God." End quote.

12 If I can move on now to the final ground of -- discriminatory ground, the ground
13 based on gender.

14 The targeting of males in Mukjar and Deleig was because of their presumed or
15 stereotypical role in society as either current fighters or perhaps potential rebel
16 fighters, and this was on the ground of gender.

17 As I mentioned yesterday, in the context of Mukjar, Witness P-905 describes how
18 Abd-Al-Rahman, before leaving to attack Sindu, had told the head of police at Mukjar:
19 Arrest any man coming from Sindu. Again the stress here, in this context, is on the
20 word "man".

21 If we can move on to the next example.

22 Witness 877, when he was fleeing an attack and coming into Mukjar in February 2004,
23 just before being arrested, in fact, he was told at the checkpoints I described yesterday,
24 I quote:

25 All males have to go to the police building. End quote.

1 P-919 also describes how he was arrested - just like all the other witnesses who were
2 arrested - how they were arrested with numerous other Fur males.

3 Interestingly, in the context of Deleig, again, it was well understood that Government
4 of Sudan forces and the Janjaweed were looking for males. One witness says that he
5 was given a woman's dress by a local resident and told to put it on for his own
6 protection, again, because it was men who were being hunted.

7 Finally, in Deleig, another witness, P-584, also confirms that it was men who were
8 coming from outside of town that were being arrested.

9 Your Honours, that brings me more or less to the end of the examples that I was
10 discussing of persecution. But I would like to stress even though I have
11 disaggregated these examples into political, ethnic and gender grounds, that's not
12 how we should be addressing the overall persecution charge. We should, of course,
13 be looking at how all these factors intersected and worked together, and I suggest that
14 that is the way this evidence makes the best sense.

15 This brings me to the end of my submissions, your Honour, but I will just remind you
16 of the sheer extent of the number of victims who were subject to persecution in
17 Kodoom, in Bindisi, 63 murders; in Mukjar, 122 murders; and in Deleig, 137 murders.
18 Thank you, your Honours, I'll end there.

19 PRESIDING JUDGE KORNER: [9:46:37] Thank you very much. (Microphone not
20 activated)

21 MS WHITFORD: [9:46:46] I will be the next speaker, your Honour, but we just need
22 a moment to switch places.

23 PRESIDING JUDGE KORNER: [9:47:12] It's Ms Morris, is it? No.

24 MR NICHOLLS: [9:47:15] Ms Whitford, your Honour.

25 PRESIDING JUDGE KORNER: [9:47:18] Ms Whitford, all right.

1 MS WHITFORD: [9:47:20] Good morning, Madam President, your Honours. My
2 name is Alison Whitford and I'll be addressing you in relation to the crimes
3 committed by the accused in Deleig and surrounding areas, reflected in counts 22 to
4 31 of the confirmed charges.

5 Over the course of about three days in early March 2004, the accused, with Janjaweed
6 and government forces, arrested some 200 males in Deleig.

7 They targeted males of the Fur ethnicity, in particular, those who had been displaced
8 to Deleig by attacks on villages in the surrounding areas, who they perceived as
9 rebels or rebel sympathisers.

10 The accused and his co-perpetrators brought the arrested males to the police station
11 in Deleig. They forced many of them to lie face down on the ground outside in the
12 hot sun for several hours. They walked on their backs and heads, beat them, and
13 insulted them with words like "slave" and "criminal".

14 They crammed others into a single, overcrowded cell inside the police station.

15 The accused personally murdered three detainees by striking them to the head with
16 his axe. Then, on the accused's orders and under his supervision, the Janjaweed and
17 government forces loaded the detainees onto vehicles, drove them to locations
18 outside of Deleig, and shot them to death. Over the course of just three days, they
19 murdered at least 137 people.

20 At the time, the accused was the highest-ranking Janjaweed leader in the locality.

21 He had considerable power and influence over the Janjaweed as well as members of
22 government forces with whom he worked hand-in-hand to commit the crimes in and
23 around Deleig.

24 The evidence will show that the accused had an essential role in those crimes: He
25 was present. He participated. He gave orders, and he himself directly perpetrated

1 crimes.

2 Madam President, your Honours, the evidence presented during the course of this
3 trial will prove beyond a reasonable doubt that the accused is guilty of war crimes
4 and crimes against humanity for his role in Deleig. These crimes - now listed on
5 your screen - are torture, other inhumane acts, cruel treatment, outrages upon
6 personal dignity, murder, attempted murder and persecution.

7 As you have heard from my colleague, Mr Sachithanandan, the crime of persecution
8 is charged in both Mukjar and Deleig based on the same three discriminatory grounds:
9 political, ethnic and gender.

10 While the accused and his co-perpetrators targeted Fur males who they perceived as
11 rebels or rebel sympathisers, in fact most of the victims of their crimes were civilians
12 taking no direct part in the hostilities. These people were protected under the laws
13 of armed conflict, which also protect persons *hors de combat*.

14 The accused was prohibited from targeting such civilians, and from torturing or
15 summarily killing any rebel fighter who was in his power. These are fundamental
16 and well-known principles of the laws of armed conflict.

17 Madam President, your Honours, the evidence of the crimes committed in and
18 around Deleig will consist primarily of the first-hand accounts of victims and other
19 direct witnesses.

20 The accused, Janjaweed and government forces carried out much of their conduct in
21 Deleig in plain view. The accused was a well-known figure in the region and many
22 witnesses saw and recognised him in Deleig during the events. Among these were
23 members of government forces, some of whom had known the accused for many
24 years.

25 To begin, I will explain the context in which these crimes occurred. On your screens

1 now is a map showing Deleig, in Wadi Salih, Darfur. Deleig is seen towards the top
2 of the map.

3 The town of Garsila is located approximately 17 kilometres to the south-west of
4 Deleig, and to drive from Deleig to Garsila would take around 30 minutes.

5 North of Deleig the road continues to Zalingei, more than 50 kilometres away, beyond
6 the borders of this map.

7 In the weeks and months preceding the Deleig incident, government forces and
8 Janjaweed jointly attacked villages in this region, including Arawala, Forgo, Taringa,
9 Andi, Fere, Kaskeidi and Um Jameina.

10 Thousands of civilians from predominantly Fur villages sought shelter in Deleig and
11 Garsila. People were displaced to Deleig from at least 18 different villages, as shown
12 on the map.

13 People made arduous and often dangerous journeys to Deleig in search of food,
14 shelter and safe haven. Witness P-980 describes how he fled to Deleig after an attack
15 on his village, quote: "It was chaos. Some people died on their way to [the]
16 mountains, because they were injured or [were] too old, some were killed by the
17 attackers who went after them in the mountains. Disabled and blind people were
18 left on their own. Families were looking for missing relatives, mothers were looking
19 for a missing child or a husband. We stayed hidden in the mountain for a week but
20 there was no water and no food. [...] The absence of food and the constant threat of
21 being attacked forced the people to flee towards Deleig."

22 By early March 2004, there were so many displaced people in Deleig, they were
23 forced to stay in the streets, under trees, in empty fields, in camps, and in and around
24 the primary school. These displaced people, in particular, Fur males, were the
25 primary target of the arrest and killing operation perpetrated by the accused in

1 Deleig.

2 Madam President, your Honours, yesterday, my colleague, Mr Sachithanandan,
3 described the accused's role in the murder of at least 122 defenceless men and boys in
4 Mukjar in late February, early March 2004. After these events, the accused returned
5 to the town of Garsila.

6 On the screen now, we see a satellite image of Garsila. In Garsila was a base of the
7 Sudanese Armed Forces, the location of which is now marked on the image. Within
8 this base was a military intelligence office.

9 At the time, military intelligence was detaining people inside this army base. Some
10 of the people detained here were arrested on the orders or at the instigation of the
11 accused. Six of these detainees, including several Fur community leaders, were later
12 killed during the Deleig incident, and, later, in my presentation, I will explain how
13 those people came to be in Deleig and the accused's role in their murders.

14 On about Friday, 5 March 2004, the accused went to the army base in Garsila. It was
15 from here that he deployed to Deleig, along with government forces and a large
16 number of Janjaweed. Among the government forces were several people who the
17 accused cooperated with to commit the crimes in Deleig.

18 Three of those people were members of military intelligence. One was Lieutenant
19 Hamdi Sharaf-Al-Din Sid Ahmad. And my colleague, Mr Jeremy, spoke yesterday
20 about the close relationship between the accused and Lieutenant Hamdi, who was
21 also a perpetrator of crimes in Mukjar.

22 Also from military intelligence were officers Mussadiq Hassan Mansur and
23 Abd-Al-Muni'm, also known as Abu Lahab.

24 The accused was also joined by an officer of the Popular Defence Forces, Abd
25 Al-Rahman Dawud Hammudah, also known as Hassaballah.

1 My colleague, Mr Jeremy, also spoke about the relationship between the accused and
2 Hassaballah, who was a perpetrator in all three criminal incidents charged in this
3 case.

4 Over the course of approximately three days, from Friday to Sunday, the accused and
5 his co-perpetrators carried out the Deleig operation. The main day of the operation
6 took place on Friday.

7 In the early hours, Janjaweed and government forces surrounded Deleig. They went
8 through the streets, and from house-to-house, searching for Fur males from outside
9 Deleig.

10 People in Deleig quickly understood who they were searching for. Men and boys
11 hid. A local resident handed one man a woman's dress and told him to put it on to
12 protect him against arrest. Witness P-850 hid for a whole day with four boys inside
13 a *dabanga*, a small dry storage area inside a house. He describes his experience as
14 follows:

15 "Whilst in the Dabanga I continually heard shouting from outside and the use of the
16 words 'kill the slaves' and 'Fuck the Fur, fuck the slaves.' I heard screaming from
17 houses nearby. [...] I was shaking with fear and could not feel my legs. The air
18 inside the Dabanga was hot. The five of us had to urinate and defecate where we
19 crouched, we could not move or make a noise; we were terrified."

20 The Janjaweed and government forces whipped and beat people, and insulted them
21 with words like *himar*, meaning donkey, and *tora tora*, meaning rebels.

22 The Janjaweed tied one boy, who was only about 15 years old, to a tree, beat him, and
23 stabbed him in the foot with a bayonet. As one arrested man lay helpless on the
24 ground, the Janjaweed stabbed him in the arm. Later they put a rope around his
25 neck, pulled him with it, and beat his face and head.

1 The accused was seen in the courtyard of a house kicking a man, while Janjaweed and
2 government forces beat him with their firearms, and restrained his screaming wife
3 and children.

4 The accused also participated in the search and arrest operation near the market, at
5 one of the mosques, and in a camp for displaced people.

6 Witness P-671 saw the accused arrest his father and brother in one of these camps.

7 He describes this scene as follows:

8 "I heard the soldier say something similar to, 'Your honour Ali Kushayb, where do
9 you want us to put these' The person who was addressed as Ali Kushayb was in the
10 front passenger seat [and] said something similar to, 'Put them in this vehicle'. Two
11 soldiers then picked up my father by the legs and shoulders and carried him to the
12 rear of the [...] vehicle before throwing him in the back. They then went and picked
13 up my brother the same way and threw him in the vehicle. Some members of my
14 family started screaming and crying."

15 As I will describe later in this presentation, days later, Witness P-671 found the bodies
16 of his father and brother outside of Deleig, shot to death.

17 Madam President, your Honours, on your screens now is a satellite image of Deleig.

18 Marked on the satellite image is an area of Deleig, which contains a number of
19 important locations.

20 I will now show an aerial photograph of this approximate area, which was taken in
21 January 2005.

22 In the centre of this image are the premises of the primary school. Large numbers of
23 displaced people were staying in and around the school, and multiple arrests
24 occurred here.

25 To the right of the image is an Ansar Al-Sunna mosque. The Janjaweed and

1 government forces surrounded the mosque after the main Friday prayer, and
2 questioned and arrested males who tried to leave the building.

3 Adjacent to the mosque was the area of the market. And to the left of the image is
4 the Deleig police station. Between the police station and Ansar Al-Sunna mosque
5 was an open field that witnesses say was often used for playing football.

6 The accused, with Janjaweed and government forces, brought at least 100 - and, likely
7 more than 200 - arrested males to the police station. They made them lie face down
8 on the ground outside in this approximate location.

9 The detainees lay directly in the hot sun for several hours without food, water or
10 access to the toilet. Some had their hands tied behind their backs and some were
11 blindfolded. This was a public place in the centre of town.

12 The police station was also on higher ground, so people could see what was
13 happening around it, even from a distance. Twenty-four Prosecution witnesses saw
14 the arrested males detained at this place. Several witnesses were themselves
15 detained here.

16 The Janjaweed and government forces walked on the backs and heads of the
17 detainees, kicked them, and beat them with rifle butts, whips and sticks. One soldier
18 stabbed a detainee in the eye with a bayonet where he lay on the ground.

19 Witness P-994 observed, quote:

20 "The Janjaweed had no mercy, and if any detainee would lift his head or attempted to
21 look around, they would hit him and sometimes, they would stamp on a detainee's
22 head. Everything was permitted: the detainees were beaten with the fist, whip, stick
23 and boot."

24 Multiple Prosecution witnesses saw the accused at this location. They saw him
25 stand and walk on the backs of detainees, hit them with his axe, kick them and

1 verbally abused them with words like "slave" and "criminal".

2 Witness P-924 heard the accused tell the detainees, quote:

3 "Fur this is your last day, we are taking you to God."

4 Some males were detained inside the police station. One witness describes the
5 conditions in the cell as follows, quote:

6 "The prison cell was so crowded that some people were laying on top each other.

7 Prisoners' faces were so close together that they would touch making it hard to

8 breathe. Most were unable to sit properly and crouched. [...] The conditions were

9 terrible in the cell. It was hot and people had to go to the toilet where they crouched.

10 We were treated as animals."

11 The abuse of the arrested males not only caused them severe mental and physical

12 pain and suffering, it also humiliated, degraded and violated their dignity as human

13 beings.

14 The accused questioned detainees and could decide whether or not they would be

15 released. He ordered the release of some detainees who could prove that they were

16 from Deleig or were studying there.

17 One of these detainees was Witness P-178, a teenager who had been arrested with his

18 three cousins. He explains how the accused released him, but refused to release his

19 cousins, quote:

20 "[My teacher] explained that my cousins had attended the school but were on

21 previous registers. Ali Kushayb would not accept this and instructed his militia to

22 place my cousins behind me where the other captives were lying on the ground.

23 This was the last time I saw my cousins [...] alive."

24 Madam President, your Honours, it was here, in or near Deleig police station, that the

25 accused murdered three detainees by striking them to the head with his axe.

1 Yesterday, my colleague, Mr Sachithanandan, spoke about this axe, which the
2 accused was known to carry with him, and which he wielded against several
3 detainees in Mukjar, including leaders of the Fur community.

4 On the screen now, we see sketches drawn by different witnesses of this axe. In
5 Deleig, the accused used this weapon to kill Sheikh Adam Adam Abd-Al-Rahman of
6 Massa village, who had the nickname Motor, and a man named Musa Youssef from
7 Gaba.

8 The accused's third victim was a Fur man, who was the coordinator of the Popular
9 Defence Forces in Garsila, named Adam Abd-Al-Rahman, also known as Jenif. The
10 accused was heard to tell Jenif, quote, "I will not lose on you one bullet", end quote,
11 before swinging his axe into his head twice, splitting it open.

12 The accused then ordered the Janjaweed and government forces to load the detainees
13 who were lying on the ground onto the backs of vehicles. They piled the detainees
14 on top of each other, and threw some of them onto the vehicles like sacks of grain.
15 The accused was present and supervised the loading. He poked some of the men
16 with his axe as they climbed on, and told them, quote, "you are going to your God."
17 End quote.

18 The loaded vehicles drove out of Deleig in different directions. They returned,
19 empty of detainees, and the process was repeated several times. The accused and
20 his bodyguards went with some of the vehicles.

21 Onlookers realised that the detainees could not have been taken to Garsila, the nearest
22 town, in such a short space of time. Some people in Deleig heard the sound of
23 shooting coming from outside town. One man, who was detained outside the police
24 station, saw the vehicles return empty. Believing that he would be killed, he decided
25 to escape. He jumped up and ran away. And he was shot at, but the bullets only

1 grazed his body and he survived.

2 The vehicles loaded with detainees drove to different locations outside of Deleig
3 where the Janjaweed and government forces unloaded the detainees and shot them to
4 death.

5 On your screens now, is a map showing the areas surrounding Deleig. Marked on
6 the map are villages that Prosecution witnesses use as reference points to describe the
7 directions of travel of the vehicles as they headed out of Deleig.

8 The accused went with the vehicles to an execution site to the north-west of Deleig.

9 This location was west of the road running from Garsila in the direction of Zalingei,

10 now indicated on the map. Here, the accused ordered the Janjaweed and

11 government forces to unload the detainees. As in Mukjar, they were made to lie on

12 the ground on their stomachs and the accused then said, quote, "Implement the

13 orders on these people." End quote.

14 The Janjaweed and government forces opened fire on the detainees with

15 Kalashnikovs and a machine gun. Afterwards, they drove away and left the bodies

16 behind.

17 The evidence of witnesses will establish that there were multiple other execution sites

18 all around the town of Deleig. Executions took place to the west of Deleig, near the

19 villages of Douro and Fere, and to the east, near Andi. There were also multiple

20 execution sites to the south of Deleig, near Koska and Ordo.

21 Several Prosecution witnesses discovered dead bodies that had callously been left

22 behind in this area following the executions. Some of the bodies had their hands tied

23 behind their backs. Most appeared to have been shot to the head or back.

24 Witness P-671, who days earlier had seen his father and brother arrested by the

25 accused in Deleig, found between 20 and 40 dead bodies in this area. He states,

1 quote:

2 "Among the bodies, I managed to find my father and brother who were lying apart
3 from each other. Although both [...] had swollen faces, I was sure it was them. The
4 villagers and I started digging to bury the bodies near the areas [where] they were
5 found. I buried my father and brother myself in a separate grave."

6 One of the victims of the executions that took place to the south of Deleig near Koska
7 was a man named Abdallah Mussa, also known as Mulenqwe. Despite being
8 gravely injured, he managed to return to Deleig that same evening.

9 Witness P-725 saw him there. He stated, quote:

10 "Abdallah Mussa was in a terrible condition and it shocked us. He had what
11 appeared to be a gunshot wound to his temple and a hole through his eye socket. I
12 think it was his right eyeball that was missing and the wound was bleeding heavily.
13 Three fingers of his right hand were missing and his hand was also bleeding heavily.
14 He was in a distressed state and told us that everyone [who] had been taken away
15 from Deleig had been executed."

16 Abdallah Mulenqwe died of his injuries later that night.

17 Some victims who sustained terrible injuries survived. On the day after the killings
18 began, Witness P-850 visited a man who had been found on the -- injured on the
19 outskirts of Deleig and brought back into town. P-850 saw that his intestines were
20 spilling out and there was soil mixed in with the wound. In relation to the people
21 who had been detained with him, the survivor told P-850, quote: "tell their families
22 to stop looking for them, they are dead."

23 Madam President, your Honours, earlier, I spoke about six victims who were initially
24 detained at the military intelligence office in Garsila. These men are among the most
25 widely known victims of the Deleig executions. Five of these six men were killed in

1 a group outside of Deleig on or about Sunday, 7 March 2004. In this group were
2 four leaders of the Fur community. Their story exemplifies the targeting by the
3 accused of Fur community leaders, such as *umdahs* and sheikhs.

4 On the Friday morning, before deploying to Deleig, the accused went to the military
5 intelligence office in the army base in Garsila. He tried to take custody of three
6 detainees and was very upset to learn that these men had in fact been released.

7 Their names were: *Umdah* Adam Adam Deguis Ahmed Abdulshafa of Forgo,
8 widely known by the name Kindiri; *Umdah* Jiddo Khamis Abdelkarim of Gaba; and
9 Adam Abd-Al-Rahman, known as Jenif, the Popular Defence Forces coordinator in
10 Garsila.

11 The accused took custody of three other detainees. He said that he was taking them
12 to the military intelligence office in Zalingei. Instead, he took them to Deleig. Their
13 names were: *Umdah* Mohamed Suleiman Abdulshafa of Tanako, also known as
14 Dirbo; Sheikh Ismail Abdulaziz of Garsila, also known as Dikobi; and Hassan Adam
15 Musa, a Fur man from Garsila.

16 In Deleig, the accused ordered his men to hunt down and arrest the three detainees
17 who had earlier been released. All three were arrested in Deleig that same day.

18 The accused personally participated in the arrests of two of them: *Umdah* Adam
19 Kindiri and Jenif.

20 As I have already described, the accused then personally murdered Jenif with his axe.
21 The remaining five men were detained inside the Deleig police station.

22 Two days later, on or about Sunday, 7 March 2004, the accused returned to the Deleig
23 police station. He or his men took out the five detainees. These men were last seen
24 by multiple witnesses in a convoy of vehicles with the accused on that day. The
25 evidence presented at trial will show that these detainees never reached the military

1 intelligence office in Zalingei. To the contrary, news quickly reached Deleig that
2 they had been killed and their bodies found in the area of Fere, outside of Deleig.
3 In total, at least 12 Fur community leaders were killed during the Deleig incident.
4 As you have heard, the targeting of community leaders was also evident in Mukjar in
5 the preceding weeks, where the accused was responsible for the murders of three
6 *umdahs* and four sheikhs from the Fur community.

7 Madam President, your Honours, as you will recall, the accused was the
8 highest-ranking Janjaweed leader in the region at the time of the Deleig events.
9 During the Deleig operation, the accused gave orders to members of both Janjaweed
10 and also government forces, and his orders were complied with.

11 The accused's authority over the Janjaweed in particular, is well described by Witness
12 P-994, who stated:

13 "I believe Ali Kushayb was commanding the Janjaweed on that day because he was
14 the main commander, he was the one and only commander. [...] He was supervising
15 the Janjaweed and monitoring their work. [...] It was obvious and very clear to me
16 that Ali Kushayb was giving instructions. [...] The instructions I am talking about
17 are all the different actions that the Janjaweed carried out on that day: bringing the
18 detainees, forcing them to lie on the ground, beating them and loading them onto the
19 truck."

20 The evidence presented during the trial will prove that the accused contributed to the
21 crimes committed in and around Deleig in multiple ways, each one of them critical:
22 The accused ordered and participated in the search and arrest operation, he
23 questioned detainees and decided whether or not they would be released. The
24 accused personally murdered three detainees and tortured, humiliated and degraded
25 others. The accused ordered and supervised the loading of detainees onto vehicles

1 that transported them to execution sites around Deleig. And the accused was
2 present at one of those execution sites and directly ordered Janjaweed and
3 government forces to shoot and kill a group of detainees.

4 There can be no question that the accused's conduct, as will be established by the
5 evidence presented at trial, was essential to the commission of the crimes in Deleig.

6 Madam President, your Honours, as least 137 people were murdered during the
7 Deleig incident. More than 12 survived attempts to kill them. As many as 200 were
8 detained, tortured and degraded. In just three days, the Fur community lost at least
9 12 of its leaders, including four *umdaahs* and seven sheikhs.

10 Some villages like Zarey, Forgo and Massa, each lost at least 17 men or boys. Some
11 families lost multiple members. One young man, Witness P-671, lost both his father
12 and brother. Another lost his brother and nephew, who was only about 16 years of
13 age. About his nephew, he said, quote:

14 "He was a very quiet person due to hearing problems; I believe he was unable to
15 explain that he was a teenager and a student. [...] He was laying down beside me the
16 whole day until he was taken away in a Land Cruiser. I never saw him again after
17 that day."

18 The impact of these crimes on the families of the victims, and, indeed, the whole Fur
19 community was, of course, immense.

20 I would like to end today with a few words from Witness P-1018, who spoke about
21 the importance of justice for the crimes committed in Deleig and the value of
22 documenting the names of all of the persons killed during those three days.

23 "[H]istory shows no mercy. And, inshallah, one day, our Lord will bring us better
24 days, when the situation is different and when these people, who committed those
25 crimes, are punished. Because these people died unjustly and wrongly and these

1 people's deaths were unwarranted, and must be recorded."

2 Madam President, your Honours, I thank you for your attention. I'll now give the
3 floor to Mr Nicholls to present our closing remarks

4 PRESIDING JUDGE KORNER: [10:25:39] Thank you very much. Mr Nicholls.

5 MR NICHOLLS: [10:25:48] Thank you very much, your Honours.

6 Just very briefly, that concludes our opening statements. And we are confident that
7 we will meet our burden in this trial, and, at the end of the case, you will find the
8 accused guilty of all counts. Thank you.

9 PRESIDING JUDGE KORNER: [10:26:04] (Microphone not activated) ... my
10 microphone again.

11 MS VON WISTINGHAUSEN: [10:26:40] Yes, Madam President, your Honours,
12 thank you for giving me the opportunity to address you on behalf of the Common
13 Legal Representatives of Victims. I'm leading this team with the colleagues who I
14 have already introduced today, but I also want to mention our legal assistant, Diana
15 Constantinide. She's assisting us from London. And very importantly, our field
16 assistants, Oumda and Ibrahim, who I specifically want to mention as the
17 communication with our clients, which lies at the heart of our role, will just be
18 impossible without them.

19 So the trial against Mr Abd-Al-Rahman offers the first opportunity to see one of the
20 purported leaders said to be responsible for massive crimes allegedly committed in
21 Darfur nearly 20 years ago, facing prosecution.

22 It is, you can imagine, a long-awaited moment for victims and communities terrorised
23 by the notorious Janjaweed militia and government forces in Darfur. In the face of
24 having no other credible options, the ICC is the crucial court of last resort for Darfuris.
25 We stand here before you aware of this weighty responsibility resting upon the Court,

1 the Trial Chamber, and all parties and participants in these proceedings. Probably
2 no one else than our clients have greater expectations and interests in an expeditious,
3 fair and clear outcome of this trial.

4 Your Honours have made a preliminary determination that 142 of our clients - men,
5 women, as well as children at the time of the events - have suffered harm as a result of
6 the alleged crimes that took place in 2003 and 2004, around the towns of Kodoom,
7 Bindisi, Mukjar, Deleig in West Darfur State.

8 If your Honours have recognised a victim as such, even on a preliminary basis, it
9 already serves as some acknowledgment of what that person has suffered as a result
10 of the charged crimes. The harm is physical, through the effects of torture or sexual
11 violence, for example; psychological, through the mental impact of the crime on the
12 victim, or having witnessed crimes committed against family or members of the
13 community; and the harm is material, through destruction, lost or theft of property, or
14 having to flee one's home.

15 The 142 individuals who have thus far been admitted to participate as victims in these
16 proceedings are by no measure all of the persons who have suffered grievous harm
17 from the commission of crimes in Darfur over the last two decades, or even during
18 the attacks on the villages of Kodoom, Bindisi, Mukjar and Deleig, which are the
19 subject of this case. The total number of Darfuris impacted by crimes within this
20 Court's jurisdiction is likely greater than a million. The number of potential victims
21 of the attacks charged in this case, particularly when considering the crime of forcible
22 transfer, are likely in the thousands. However, given the legal framework of the ICC,
23 only those persons who suffered harm arising from the specific charges confirmed in
24 this case can be recognised as participating victims. Moreover, given the current
25 circumstances in Sudan, the victim application process faces many challenges.

1 Your Honours may appreciate that this reality causes understandable frustration and
2 is just a small glimpse of what has happened in Darfur since July 2002, the
3 commencement date of Security Council's referral of the Situation to the Court. It is
4 distressing that potential international crimes are still occurring in Darfur. Only two
5 weeks ago, we were informed by one of our clients that his brother was killed in
6 a region of Darfur, relevant to the current proceedings, allegedly by members of
7 militia that Darfuris still refer to as Janjaweed. That is the reality in Darfur today.
8 Chambers of the ICC have stressed the need for legal representatives to ensure victim
9 participation is as meaningful -- is as meaningful as possible and to present the
10 genuine perspective of victims to the Court.

11 Both the former and the current Prosecutor have also underlined the importance of
12 the ICC for victims.

13 Former Prosecutor Fatou Bensouda stated, and I quote:

14 "Victims are the reason this Court exists, and they are our primary motivation."

15 And --

16 "[...] the Court does not do popularity contests but stands as a beacon of hope for
17 victims of atrocity crimes who would otherwise have no recourse to justice."

18 In the same spirit, Prosecutor Karim Khan expressed, in his questionnaire for
19 candidates to the 2020 election of the ICC Prosecutor that, and I quote:

20 "Victims participation is a cornerstone of the Rome Statute system and I would aim to
21 help ensure victim participation works as effectively as possible, within the bounds of
22 my own responsibilities as Prosecutor. Certainly, victims' groups have a right to an
23 effective voice and to have meaningful participation in proceedings."

24 The right and ability of victims to independently participate in proceedings at the ICC
25 was one of the most significant innovations of the Rome Statute, and we, the Legal

1 Representatives, are here to guarantee that in this trial, this aim and bold vision of the
2 drafters of the Statute is a reality and not simply empty sentiments. We must and
3 shall ensure that the rights and interests of our clients are remembered and respected
4 at all times.

5 Before this Trial Chamber, victims are not merely potential witnesses or passive
6 observers of the proceedings. Victims have official status and rights as participants,
7 which they will exercise through us.

8 However, the role of the participating victims and their Legal Representatives is not
9 that of an accessory prosecutor, and we will endeavour not to trespass this line, and
10 thereby contribute to the fairness of the proceedings. Where the personal interests of
11 the victims are affected, the Trial Chamber will permit the victims' views and
12 concerns to be presented and considered at stages of the proceedings determined to
13 be appropriate, and in a manner which is not prejudicial to or inconsistent with the
14 rights of the accused and a fair and impartial trial.

15 We will also request the Chamber's permission to question witnesses called by the
16 Prosecutor or Defence whenever matters that impact the personal interests of victims,
17 such as the harm and losses suffered by the witnesses or others, remain to be
18 addressed.

19 Today, and the following weeks and months, are the Prosecutor's time in the
20 courtroom. On behalf of our clients, we reserve the right to present a case with a full
21 and substantive opening statement, after the conclusion of the Prosecution case and
22 before the beginning of the Defence case. It is the assessment of the Legal
23 Representatives, on behalf of our clients, that it is too early at this stage to make a full
24 opening statement. Consultations with our clients are ongoing, and, given the
25 current circumstances in Darfur and the other places where our clients had to flee,

1 communication is challenging and requires time and patience.

2 Throughout the trial proceedings, our clients, including any additional victims who
3 may be admitted by the Chamber as participating victims, will be represented by us
4 in the courtroom every day. We may then call, with the Chamber's permission,
5 a small number of witnesses to provide testimony that is relevant to the personal
6 interests of the victims and that will assist the Trial Chamber in the search for the
7 truth.

8 Additionally, the Trial Chamber may grant victims permission to directly present
9 their views and concerns to the judges, in person or through written statements. The
10 purpose of victim participation is to ensure an independent voice for victims in the
11 proceedings, to protect the interests of victims during trial, and provide victims the
12 opportunity to contribute to this Trial Chamber's truth-seeking function and the
13 judicial process.

14 While we represent a large group of people, it is composed of individuals, each of
15 whom have suffered particularised harm from the crimes allegedly perpetrated by the
16 accused. Many of them live in some of the largest refugee camps in the world in
17 Darfur and in Chad, but also in the diaspora, very far away from their home country.
18 In these circumstances, the question is, what does an independent voice mean, when
19 each story and individual harm suffered is different from one victim to another, and
20 the consequences on life, body, soul and family may look similar on the face of it, but
21 are factually and personally distinct? Our aim is to give a voice, and convey to
22 your Honours the views of individuals, not simply a collective.

23 I will share with you during this short opening, the words of one of our clients, now
24 a young man, but who was eight years old at the time of the attack on his home and
25 family in Bindisi in 2003. We asked him what he would like us to convey to

1 your Honours about his hopes for this case, for his future, and for the future of the
2 people in Darfur. He stated the following, and I quote:
3 "We want to return to our land. Our land is there in Sudan, for us to live in peace
4 and decide our future for ourselves, and our kids, and our future generations. That
5 is my dream. This war has devastated us and brought too many political and social
6 problems. None of that can come without justice. Justice is very important to us."

7 End of quote.

8 I would like to conclude by addressing a sensitive but crucial aspect of victims'
9 participation, including the right to reparations in the event the accused is convicted.
10 If victims are merely passive observers or limited to the role of witness, they may be
11 less likely to feel that the proceedings matter to them, and perhaps less likely to be
12 satisfied with the trial and its outcome. Not all affected victims want to participate,
13 but for some, it can help them to live better or even move forward with their lives
14 after what has happened.

15 But very rarely will a criminal trial, including the current proceedings, fulfil the full
16 expectations that victims may very understandably have. This is an unfortunate
17 truth that lies in the delicate connection between aspiration and reality. But we, as
18 Legal Representatives, will make sure at every moment of this trial to live up to the
19 humble role envisioned by the Rome Statute, and the mandate that has been
20 entrusted to us by our clients and the Trial Chamber.

21 Thank you for your attention.

22 PRESIDING JUDGE KORNER: [10:39:27] Yes. Thank you very much,
23 Ms von Wistinghausen.

24 Yes. Now, Mr Laucci, we -- you asked us whether the accused
25 could -- Mr Al-Rahman could make a statement, and we've agreed, but I think I ought

1 to check with you that you've confirmed that again with him and that you've advised
2 him of potentially the problems.

3 MR LAUCCI: [10:39:56] Madam President, the statements that Mr Abd-Al-Rahman
4 would like to make is something that has been thoroughly discussed, and I think he
5 fully understands what is the difference between the kind of statement that he's about
6 to make and any sort of witness appearance that he may ask permission to -- to have
7 in the course of the -- of the Defence case, if at all.

8 But he is aware of his rights to remain silent and not to say anything that may
9 incriminate him.

10 PRESIDING JUDGE KORNER: [10:40:34] Yes, very well.

11 Then, Mr Al-Rahman, you have five minutes to address the Court.

12 MR ABD-AL-RAHMAN: [10:40:47](Interpretation) In the name of God, and may his
13 prayers and peace be upon his Prophet.

14 First, I thank the presiding judge and the honourable judges for granting me this
15 opportunity to speak today as the humble person I am.

16 Speaking in my own name, Ali Muhammad Ali Abd-Al-Rahman, a grandchild of
17 Khalif Abdullah Al-Ta'aishi, I was born on January 1st of 1949, in Sudan, in the
18 locality of Rahad al-Berdi, and I come from the tribe of Ta'aisha, a child of Ta'aisha
19 parents, and I am not connected to any other tribe.

20 The leader of the Ta'aisha is Abdel Rahman -- Mahmoud Abdel Rahman Bishara Ali
21 Al-Senussi Othman, a grandson of Khalif Abdullah Al-Ta'aishi. Khalif Abdullah
22 Al-Ta'aishi is the founder of Sudan, and he has marked the history of Sudan since
23 2016 -- pardon -- since 1916.

24 The Ta'aisha tribe is in no conflict with any other tribes, such as the Fur, Masalit,
25 Zaghawa, or any other tribe in Sudan. The Ta'aisha is a tribe of peace and harmony.

1 My second point is, what I -- what brought me here to the Netherlands, I came of my
2 own free will. No one brought me here, and, I came here to correct the misleading
3 falsehoods attributed to me and I congratulate the International Criminal Court for
4 being a fair court of law.

5 My third point, to the gentlemen in charge of the Transitional Military Council in
6 Sudan, under the command of General Abdel Fattah al-Burhan, the chairman of the
7 Transitional Military Council; General Muhammad Hamdan Dagalo al-Mahamid, the
8 deputy chairman; General Shams El-Din Kabbashi, member of the Transitional
9 Military Council; General Atta, a head at the Transitional Military Council, to them, I
10 say, you ought to prioritise the Sudanese people and their security in the hope that
11 the elections of 2023 be held properly. It is my hope that you will be successful and
12 that the people of Sudan be successful, and that they live in peace and security.

13 Lastly, we pray for the souls of the martyrs, who gave their lives in Sudan, from all
14 tribes, during the tribal disputes, the act of rebellion, and during protests. And we
15 pray for their souls and for God to receive their souls in his eternal heaven.

16 My last point is to extend my gratitude to the presiding judge and the honourable
17 judges for granting me this opportunity in this Court.

18 Thank you very much.

19 PRESIDING JUDGE KORNER: [10:44:33] Yes, thank you, Mr Abd-Al-Rahman.

20 Right. I think your first witness, Mr Nicholls, who's calling the -- Mr de Waal?

21 MR NICHOLLS: [10:44:54] That will be Mr Jeremy, your Honour. And, I'm afraid,
22 we would need the break.

23 PRESIDING JUDGE KORNER: [10:45:00] Right.

24 MR NICHOLLS: [10:45:01] We're not ready just at this moment, so we would need
25 the break, please. We miscalculated a little bit the time.

1 PRESIDING JUDGE KORNER: [10:45:05] Yes. All right. I now was thinking to sit
2 at quarter past 11, but are you saying you need the full bit, till half past 11?

3 MR NICHOLLS: [10:45:13] I'm sorry, I'd have to say I don't know exactly; that's a
4 good question and it may be up to -- to the VWS who would have the witness now.
5 So I'm able to come back and check. I apologise. I'll see if I can find that out while
6 I'm standing up, but ...

7 PRESIDING JUDGE KORNER: [10:45:35] Yes. I'll just do some checking.
8 The court officer says that the VWS have been in touch and he's ready to start at 11.30.

9 MR NICHOLLS: [10:45:53] Okay.

10 PRESIDING JUDGE KORNER: [10:45:54] All right. I'm a bit -- I hope that we're not
11 going to go on losing time like this, but I appreciate at the beginning of the trial it's all
12 the more difficult.

13 MR NICHOLLS: [10:46:01] I understand, your Honour. We'll try to coordinate this
14 better for the next witnesses.

15 PRESIDING JUDGE KORNER: [10:46:08] Yes. Very well. All right.

16 We'll adjourn now until 11.30. Thank you.

17 THE COURT USHER: [10:46:11] All rise.

18 (Recess taken at 10.46 a.m.)

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

20 THE COURT USHER: [11:32:45] All rise.

21 Please be seated.

22 PRESIDING JUDGE KORNER: [11:33:00] (Microphone not activated)

23 Before we start Mr de Waal's evidence, can I take it, Mr Laucci or Mr Edwards, that
24 there's no dispute about it -- as this is an agreed expert, there's no dispute about his
25 expertise?

Trial Hearing
WITNESS: DAR-OTP-P-1042

(Open Session)

ICC-02/05-01/20

- 1 MR LAUCCI: [11:33:34] The expertise is fully supported.
- 2 PRESIDING JUDGE KORNER: [11:33:40] Good. Thank you very much, Mr Laucci.
- 3 Yes, if Mr de Waal can take the declaration, please.
- 4 WITNESS: DAR-OTP-P-1042
- 5 (The witness speaks English)
- 6 THE WITNESS: [11:33:54] Thank you. And I solemnly declare that I will speak the
- 7 truth, the whole truth and nothing but the truth.
- 8 PRESIDING JUDGE KORNER: [11:34:00] Yes, Mr Jeremy.
- 9 MR JEREMY: [11:34:07] Thank you, Madam President, your Honours. And good
- 10 morning to you and everyone in the courtroom.
- 11 QUESTIONED BY MR JEREMY:
- 12 Q. [11:34:13] And good morning, Professor de Waal.
- 13 We last met during the witness preparation session a few days ago, but again, for the
- 14 record, my name is Edward Jeremy and I will be asking you questions on behalf of
- 15 the Prosecution today.
- 16 If any of my questions are not clear, then please ask me to clarify, and, as I mentioned,
- 17 since we are both English speakers, then we will need to be careful with the pause
- 18 between my question and your answer -- and your answering my question.
- 19 Mr de Waal, could you please state your full name for the record.
- 20 A. [11:34:50] Thank you. My full name is Alexander William Lowndes de Waal.
- 21 Q. [11:35:01] And could you please state your date of birth.
- 22 A. [11:35:04] 22 February 1963.
- 23 Q. [11:35:07] Professor de Waal, did you provide an expert report entitled, "The
- 24 Conflict in" Sudan -- "The Conflict in Darfur, Sudan: Background and Overview"?
- 25 A. [11:35:15] I did.

1 Q. [11:35:16] And did you do so at the joint request of the Prosecution and the
2 Defence?

3 A. [11:35:21] I did so at the joint request of the Prosecution and the Defence.

4 Q. [11:35:26] Your Honours, I now ask the court officer to please bring to our
5 screens a document that is tab 1 of the Professor's binder, and that is ERN
6 DAR-OTP-0220-1623.

7 Professor de Waal, the document at tab 1 and on your screen, is this the expert report
8 that you wrote for these proceedings?

9 PRESIDING JUDGE KORNER: [11:36:13] Mr Jeremy, before we go any further,
10 because you are both speaking English, which is native to both of you, I have been
11 asked by the interpreters to please make sure you leave a pause between the answer
12 and the following question and do not speak too fast.

13 MR JEREMY: [11:36:35] Well noted, your Honour.

14 THE WITNESS: [11:36:39] Yes, I can -- I confirm this is the document that I
15 prepared.

16 MR JEREMY: [11:36:46]

17 Q. [11:36:46] And if we please go to page 61 of this report, it's the last page and the
18 ERN is DAR-OTP-0220-1623 at 1683.

19 Do you see this last page, Professor?

20 A. [11:37:21] I do.

21 Q. [11:37:22] And do you see a signature there?

22 A. [11:37:25] I do. It is my signature.

23 Q. [11:37:29] And I see it is dated 1 February 2022. Is that the date that you signed
24 the report?

25 A. [11:37:42] That is correct.

1 Q. [11:37:47] Professor, when we met during the witness preparation session a few
2 days ago, you identified some corrections that you wanted to make to the expert's
3 report, and I will now ask you to confirm those corrections for the record, and I will
4 lead you through them.

5 So if we go, please, to page 1627 of the same document on our screens. And,
6 Professor, that's paragraph 4 on pages 4 to 5. Could you confirm that the
7 African Union High-level Panel for Darfur was mandated in 2008 and not 2009?

8 A. [11:38:45] I confirm.

9 Q. [11:38:48] Thank you. And if we go to page 1673 in the electronic version.
10 And in your hard copy, Professor, that's pages 50 to 51, paragraph 126. Could you
11 confirm that you would like to add the air force to the list of counter-insurgency
12 forces that you provide?

13 A. [11:39:23] I confirm.

14 PRESIDING JUDGE KORNER: [11:39:30] I'm sorry, I missed that, Mr Jeremy.
15 What was the paragraph again?

16 MR JEREMY: [11:39:33] It's paragraph 126.

17 PRESIDING JUDGE KORNER: [11:39:36] Thank you.

18 MR JEREMY: [11:39:39]

19 Q. [11:39:39] Professor, in relation to paragraph 146 and 151, these are -- these are
20 not now corrections, but I understand you wanted to make some clarifications to
21 those paragraphs and we can do that during the course of my questioning and your
22 answers, so I think there is no need to do it right now.

23 With the exception of the corrections that I have just identified and to which you have
24 agreed, is your expert report true and correct to the best of your knowledge?

25 A. [11:40:18] To the best of my knowledge, it is true and correct.

1 Q. [11:40:23] Can we please go to tab 2 of your court binder, Professor, and that's
2 ERN DAR-OTP-0220-1686. And, Professor, if you can look at pages 1 to 3 in this tab
3 2, and could you please confirm that these are maps -- that these maps you see are
4 annexes to your report and that they are correct?

5 A. [11:41:05] They are annexes to my report and they are correct.

6 Q. [11:41:10] And if I turn your attention to tab 3 of your physical binder, which is
7 ERN DAR-OTP-0220-1689, and again, Professor, if you could please look at pages 1 to
8 4 in this tab 3, and I would ask you to again confirm that these maps are annexes to
9 your report and that they are correct.

10 A. [11:41:49] I confirm that they are annexes to my report and that they are correct.

11 Q. [11:41:55] Professor, do you consent to the submission of your expert report and
12 associated exhibits -- or annexes into evidence in this case?

13 A. [11:42:11] I consent.

14 PRESIDING JUDGE KORNER: [11:42:12] It would be a bit unfortunate if he didn't
15 consent, Mr Jeremy.

16 MR JEREMY: [11:42:20] Yes, your Honour, I understand it's a formality of Rule
17 68(3).

18 Q. [11:42:25] Professor, did you provide a CV?

19 A. [11:42:30] I did provide a CV.

20 Q. [11:42:33] Could we please go to tab 5 of the court binder, in the physical binder,
21 and that's DAR-OTP-0220-1696.

22 Professor, do you recognise the document on our screens and in your tab?

23 A. [11:42:58] I recognise it and it is my CV.

24 Q. [11:43:02] Okay. I want to just briefly focus on a few aspects of your work that
25 is most relevant to your expertise in Darfur. I understand your expertise is not -- not

1 challenged by the Defence, but nevertheless, I think it's -- it's worth bringing out a few
2 of the main aspects of your work and expertise in relation to Darfur.

3 Professor, when did you begin your academic work in relation to Darfur?

4 A. [11:43:40] I -- I began studying Darfur in 1984. I first travelled to Darfur in 1985,
5 and, in 1986, I lived for some weeks in a small village close to Deleig where the events
6 that you have been describing over the last day and a half unfolded.

7 Q. [11:44:08] And what has been the focus of your academic work in relation to
8 Darfur?

9 A. [11:44:17] I -- let me pause. Initially, I began studying for my PhD or DPhil, as
10 it is called at Oxford where I studied, in social anthropology, I was focusing especially
11 on the -- at that time on the responses of people in the villages and nomadic
12 encampments of Darfur to the drought and famine that unfolded.

13 Subsequently, I went to work for Human Rights Watch documenting human rights
14 issues in Sudan as a whole, and continued to do that at Human Rights Watch and in
15 other human rights organisations.

16 I worked also on -- in support of the peace negotiations to resolve the conflict between
17 Sudan and South Sudan and humanitarian operations.

18 And, in 2005, 2006, I joined the African Union as an adviser to the attempt to resolve
19 the conflict in Darfur and obtain a peace agreement.

20 And subsequently, I was a member of the experts advising the African Union panel
21 on Darfur in 2009.

22 Q. [11:45:53] (Microphone not activated)

23 THE INTERPRETER: [11:45:59] Microphone, please.

24 MR JEREMY: Forgive me.

25 Q. [11:46:00] In the course of these positions that you have outlined and while you

1 were in Darfur, did you have the opportunity to conduct fieldwork there?

2 A. [11:46:09] I conducted fieldwork in Darfur from September 2005 to March of
3 2007 with some interruptions. And I then conducted some subsequent research in
4 Darfur in -- between 2007 and -- 2006 and 2009, including some very widespread
5 consultations with community leaders, displaced people, nomads, civil society
6 people.

7 Q. [11:46:53] And have you written multiple books and articles in relation to
8 Darfur and Sudan?

9 A. [11:47:01] My -- my first book on Darfur was a revised version of my doctoral
10 thesis, which was published in 1989 on -- the title was, "Famine that Kills: Darfur,
11 Sudan" 1984 and 1985. I co-published with my friend and colleague, the journalist,
12 Julie Flint, a book initially called "Darfur: A Short History of a Long War". That
13 was in 2005. We revised and updated it in 2008, under the title, "Darfur: A New
14 History of a Long War". And subsequently, I've published numerous articles and
15 book chapters on the conflict and related humanitarian, human rights, political
16 aspects.

17 Q. [11:48:04] And in your current position, do you continue to work on issues
18 related to Darfur and Sudan?

19 A. [11:48:14] For the last nearly 11 years, and when I have been the executive
20 director of the World Peace Foundation and the -- and a professor at the Fletcher
21 School of Law and Diplomacy at Tufts University, I have continued to -- to be
22 associated with and do some work with the African Union High-Level
23 Implementation Panel for Sudan, which is the follow-up to the panel on Darfur.
24 And I have not done any fieldwork in Darfur during this last 10 years, but I continue
25 to write based upon the work that I did previously and responding to current events.

1 Q. [11:49:06] Professor, did you provide a personal statement as part of your
2 instructions as a joint expert?

3 A. [11:49:18] I did.

4 Q. [11:49:21] I'd like to refer your attention to paragraph -- to -- sorry, to tab 6 of
5 your binder, and that is ERN DAR-OTP-0220-1712.

6 Professor, do you recognise the document on the screen before you?

7 A. [11:49:48] I recognise it as the personal statement that I provided.

8 Q. [11:49:54] And briefly, during our witness preparation session, you -- you
9 wanted to confirm a small -- a couple of small updates to this personal statement, in
10 particular, that the -- the book you reference "Sudan's Unfinished Democracy" has just
11 been published, is that correct?

12 A. [11:50:23] I understand it is available as of yesterday.

13 Q. [11:50:29] And you also wanted to confirm that the other book you reference,
14 a history of peacemaking efforts is -- is progressing, but it's not finished?

15 A. [11:50:44] That's correct.

16 Q. [11:50:47] And finally for the formalities, Professor de Waal, if I can refer you to
17 tab 4 of your court binder, and that is ERN, DAR-OTP-0220-1693.

18 And while that's coming up, Professor de Waal, were you provided with a letter of
19 instruction as part of your instruction as an expert?

20 A. [11:51:23] I was provided with a letter of instruction and the -- what I have in
21 front of me is that letter.

22 Q. [11:51:30] Thank you.

23 Now, Professor, we will move to the main part of your examination, and to give you
24 and everyone following a broad roadmap of my examination, in the time remaining
25 of my approximately three hours, my intention is to work through your reports,

1 broadly in sequence with a focus on the 2003, '04, '05 period, that is of particular
2 relevance to this case with a focus on the West Darfur location.

3 And I -- I'll note that the report has an index on page 2 and on page 3, acronyms and
4 a glossary to the extent that that is useful to the judges and others following.

5 Can I ask that Professor de Waal's report is, please, brought to our screens. At tab 1
6 of your binder, Professor. And it's DAR-OTP-0220-1623.

7 Professor, to begin, can you tell us the meaning of Darfur?

8 A. [11:53:14] Darfur -- the name Darfur has -- there are two words. There is "Dar",
9 meaning land or domain. And there is "Fur", which refers to the -- the Fur people.

10 That said, historically Darfur was a kingdom, a sultanate in which the rulers were
11 drawn from the Fur people, but the subjects of the rulers were many different
12 ethnicities and tribes, not just the Fur.

13 PRESIDING JUDGE KORNER: [11:53:57] Sorry, again, I'm sorry to interrupt, Mr
14 Jeremy, but I think it would help if you refer us to the paragraph - and, the court
15 officer - because I can see you're referring there to paragraph 5, but it's still stuck on
16 the first page.

17 MR JEREMY: [11:54:16] Yes, Madam President, I'll do that.

18 Q. [11:54:21] Professor, we'll -- we'll begin by going through the geography of
19 Darfur. And in paragraph 5, which is page 1627, you refer to a map of Darfur within
20 Sudan. And I'd like to look at that map now. It's tab 2 of your court binder, and the
21 OTP will show this map on channel EVD2.

22 Professor, does this -- do you recognise this map and does it show the states of Darfur
23 during the 2003 and '04 period?

24 A. [11:55:54] I recognise the map and it does show the states of Darfur during that
25 period.

1 Q. [11:56:00] And Professor, following the 2003-04 period, did the states of Darfur
2 change?

3 A. [11:56:12] They did change. They were divided -- further divided from three
4 states into five states. And Western Darfur was divided into two states, one of them
5 being retaining the name Western Darfur, with its headquarters at Geneina, the other
6 becoming Central Darfur with its headquarters at Zalingei. And I would add that
7 Central Darfur includes the contemporary -- Central Darfur includes Wadi Salih and
8 the towns of -- and Mukjar.

9 Q. [11:56:53] And do you recall approximately when those Darfur states changed?

10 A. [11:57:01] It would have been -- I am -- approximately 2010, I believe. But I
11 may be wrong.

12 Q. [11:57:20] Professor, you mentioned the localities of Mukjar and Wadi Salih, and
13 I would like to show you next a map, that is tab 14 of your court binder, and the ERN
14 is DAR-OTP-0219-3235.

15 And the Prosecution will again be showing this map on EVD2.

16 And if we can focus in on the west side, on the left side, towards the bottom.

17 Professor, on this map, can you identify the localities of Mukjar and Wadi Salih?

18 A. [11:58:34] I -- yes, I can identify them.

19 MR JEREMY: [11:58:39] And I don't think there is a need to mark the map, but I note
20 for the record that this is an agreed map in this case between the Prosecution and the
21 Defence.

22 PRESIDING JUDGE KORNER: [11:58:52] Well, I'm assuming that - unless you say to
23 the contrary - everything is agreed.

24 MR JEREMY: [11:59:00]

25 Q. [11:59:01] Professor, within the localities of Wadi Salih and Mukjar, are you

1 familiar with any other -- more specifically, with any other locations within those
2 localities through your work?

3 A. [11:59:17] The -- one of the first places in -- that I did fieldwork where I stayed
4 for -- in a village was a town, as I mentioned earlier, just -- a village, I should say, just
5 south of Deleig which is called Nankose. And I'm trying to see it on this map. I
6 don't see it marked here. It was very small. And I'm -- so I'm familiar with Deleig,
7 with Garsila, and some of the -- the small villages around there.

8 Q. [11:59:58] Thank you. And we've -- we've finished with that map.
9 Professor, you say in paragraph 6 of your report, which is ERN DAR-OTP-0220-1623
10 at 1627, there, you say that the population of Darfur was approximately 6 million in
11 2003. Can you give an estimate of the approximate population of West Darfur
12 during that period, just an approximation?

13 A. [12:00:47] The -- at that time when West Darfur included the two states that are
14 now West Darfur and Central Darfur, it would have been approximately 2 million.

15 Q. [12:01:07] And can you give a brief introduction, a sense of the -- of the
16 landscape and the geography in West Darfur, and, if possible, with a focus on those
17 Wadi Salih and Mukjar localities?

18 A. [12:01:25] The -- that part of Darfur is the area of the region that is the most
19 agriculturally fertile and the most prized. It's a land which is -- it has some low
20 rocky hills. Right in the centre of Darfur there is a -- an extinct volcano, a mountain
21 known as Jebel Marra that rises to about 3,000 metres. And then to the west and
22 south-west of that mountain -- and the reason why it is prized is the monsoon rains
23 come from the south-west, so the south-western part of Darfur is the most -- the best
24 water, it has the most fertile soil -- fertile soils and the longest growing season.
25 And the -- there are several large seasonal rivers. A seasonal river in Darfur is

1 known as a "wadi". And so the largest is Wadi Azoum. Wadi Salih is another one.

2 And then there are numerous other smaller wadis. And along the -- the rich clay
3 soils adjacent to these wadis, it is possible for diligent skilled small farmers, such as
4 the -- the Fur people are, to grow a variety of crops.

5 And then in the -- as you move away from the -- those river valleys, the soils are
6 sandier, less fertile and the main crops that are grown are millet and -- well, millet is
7 the main food grain that is -- that is grown there.

8 There is also -- or there was plenty of semi-forested areas, not thick forest canopies,
9 but savanna-type forest where people can graze their animals and which can sustain
10 livestock herds.

11 Q. [12:03:45] And you mentioned the -- the growing of crops, the growing season.

12 In this case, those seasons, the rainy season, the growing season are sometimes used
13 to date events. So could you -- could you tell us when the rainy season would
14 happen on -- on average in West Darfur in these locations?

15 A. [12:04:15] The rains would start in West Darfur in late May or June and would
16 continue until September. There's only one rainy season during -- during the
17 calendar year. The harvest would be gathered starting in October through to
18 January, depending on the type of crop and the type of soil. And then the second
19 part of the dry season, from January until April, is when it is the hottest time of year.
20 It's the time of year also when the -- that part of Darfur would receive nomadic
21 herders from the north coming with their -- with their animals.

22 Q. [12:05:10] And you mention "nomadic herders". Can you give us an idea of the
23 main livelihoods of persons living in -- in West Darfur, if possible, in these Wadi Salih
24 and Mukjar localities?

25 A. [12:05:27] The majority of the population -- some 30 years ago when I was there,

1 the majority of the population are smallholder farmers. They would have relatively
2 small areas of land, you know, a couple of hectares. If they are more
3 prosperous -- and the prosperity here is relative, all these people are extremely poor
4 by international standards, but if they are relatively prosperous, they would be able to
5 irrigate some land on the thick clay soil close to the wadi, maybe using a simple rope,
6 a bucket and a hand-dug well; or, if they have a little bit more money, they could use
7 a diesel pump. Most of the farmers would also have some livestock, some -- some
8 goats and maybe one or two cows.

9 The area was also inhabited for much of the year by livestock herders who
10 would -- who would be known as *Baggara*, from the Arabic "*bagar*"
11 meaning -- meaning cow; so livestock herders who herd cows who would be there for
12 most of the year. And at the time when I was there, they lived in relative harmony
13 with the -- the -- with the farmers. And then, in the -- during the dry season, there
14 would also be nomadic groups from Northern Darfur with camels, known as *Abbala*,
15 after -- as camel herders who would -- who would come and visit for shorter periods.

16 Q. [12:07:22] Now you mentioned the poverty in these regions, and, indeed, in
17 your report, you refer to that as well and I'd like to briefly focus on that.

18 If I can refer your attention to paragraph 21 of your report, which is page 9 in your
19 copy and it's page 1631, the electronic page, 1631.

20 Now, there, Professor, you say that - to paraphrase - Darfur is the poorest region of
21 Sudan and that shortly before the war in the early 2000s, on every indicator of health,
22 nutrition, child survival and education, Darfur ranked the lowest. And you -- you
23 provide a table on page 11 of your report, which is page 1633.

24 And if we can zoom in on that table at the top of the page, please.

25 And, Professor, looking at this table and focusing on the Darfur region, can you give

1 us a basic introduction to what we see here, please.

2 A. [12:08:57] I can. Let me give one small correction to what you said, which is
3 that Darfur is the poorest region of Northern Sudan. There are parts of much of
4 Southern Sudan, which is now the independent Republic of South Sudan,
5 was -- had -- was poorer, it had lower indicators.

6 One of the really striking things about Sudan as a whole and Darfur, in particular, is
7 the combination of inequality and poverty. So that if you were to travel to
8 Khartoum, you would see a city that is a middle-income city. It would not be out of
9 place in -- on the southern shores of the Mediterranean.

10 You travel to Darfur, and you are in some of the poorest places of the planet, and, the
11 infrastructure, the basic infrastructure for life of -- any sort of developed life is
12 extremely rudimentary.

13 So that when I was living in Darfur in 19 -- from 1985 to 1987, most small towns
14 would have a clinic. In half of those cases, the clinic would have lost its roof, it
15 would have been so neglected over the previous few years, there would not have
16 been a pharmacist, there would have been no supplies, and it would have become so
17 dilapidated that the roof would have collapsed.

18 During my months in Darfur, nearly 18 months, I think I used a telephone twice.

19 The -- there were two metalled roads. One was not -- one was a tarmac road from
20 the town of Nyala to Zalingei, about 200 kilometres. The other was a gravel road
21 between Nyala and Al Fasher, also 200 kilometres.

22 This is in a region which is the size of France. So that to travel from one town to
23 another -- I mean, we are here in the Netherlands, the -- you expect to -- to calculate
24 your travel time in hours and minutes. In Darfur, at that time, you would calculate
25 it in days. There was a railway timetable, from -- there was one -- a single-track

1 railway connecting Nyala to Khartoum and the railway timetable was notable for its
2 simplicity. I went to the railway station to ask when the train will leave, and they
3 said, "The train will leave on Monday sharp."

4 And it would take -- I said, "When will it arrive in Khartoum?" They said, "If
5 you're lucky, three days. If you are unlucky, one week." And the -- I mean, I had
6 never seen -- I've traveled in many places in Africa, I have never seen a place with
7 such low levels of health care and education. It is -- it is truly shocking.

8 Q. [12:12:39] And the table on our screens and your report refers to these
9 inequalities within Sudan, Northern Sudan, as you clarified. What accounted for
10 those inequalities, if you can set that out, briefly, please?

11 A. [12:13:07] The inequality began historically during the -- the era of British
12 colonial occupation in which the -- the colonial administration was interested in the
13 more productive parts of Sudan where cotton could be grown for export, and, one or
14 two other crops, such as gum Arabic could be obtained.

15 For Darfur was of interest, really, only, in the most rudimentary sense, as a place that
16 would be kept out of the hands of other imperial powers.

17 So, at any one time, there would probably be no more than a dozen colonial officers in
18 this one region. There was almost no investment. The value of Darfur to the British
19 was really that migrant labourers from Darfur would travel to work on the irrigated
20 schemes of the Nile, and sometimes they would come and also sell their livestock.

21 But the area was neglected. It was run absolutely in the most economic and cheap
22 possible manner, and the post-colonial government - Sudan became independent in
23 1956 - continued this pattern. So there was an enormous underinvestment in basic
24 facilities, and this underinvestment applied to all groups in Darfur. In fact, the -- I
25 think it would be fair to say that the nomadic groups were actually -- received less

1 investment than the sedentary groups, the farming communities.

2 Q. [12:15:13] And I note that this, the table of inequality, is dated 1999 to 2000.

3 What impact, if any, did the conflict in 2003-04 and onto '05 have on these indicators
4 in education and health, in broad terms?

5 A. [12:15:38] The -- in 1999, Sudan became an oil exporter, and so it had been -- the
6 previous 10 years, the government had been running under conditions of extreme
7 austerity, so that in the -- the whole of the country was extremely poor, and then
8 Darfur was the poorest.

9 Oil money began to come in, which meant that the national budget expanded
10 enormously in the years from 1999 and then the subsequent 10 years, by a factor of
11 approximately 15.

12 During the first few of those years, there was an attempt to increase investment
13 in -- in Darfur, but it was lagging so far behind that the catch-up was -- was modest to
14 non-existent.

15 When the conflict began, and as the conflict spread, the devastation that it
16 caused - the destruction of infrastructure, the loss of livelihood, the forced
17 displacement - meant that the -- these indicators will only have worsened.

18 Q. [12:17:12] Okay. I want to move forward in your report now and direct your
19 attention, please, to paragraph 31, on page 13. In the electronic version, that's 1635.
20 Professor, what is the predominant religion in Darfur?

21 A. [12:17:41] Overwhelmingly, the people of Darfur are Muslims. They are Sunni
22 Muslims. The great majority are -- have affinities to Sufi sects.

23 Q. [12:18:01] And what are the main languages spoken in -- in West Darfur in 2003
24 and '04?

25 A. [12:18:11] The lingua franca, the language of the market, the language of

1 administration, entirely Arabic. But in the villages, you would hear the Fur
2 language, in Wadi Salih. Of course if you go further west to the areas which are
3 Masalit areas, which are obviously not under consideration right now, you would
4 hear the Masalit language.

5 Q. [12:18:41] And in terms of the different ethnic groups, what were the -- the
6 largest non-Arab -- non-Arab tribes in West Darfur in 2003 and '04 period?

7 A. [12:18:55] The two most significant are the Fur and the Masalit.

8 Q. [12:19:06] And if you are able, can you indicate the largest non-Arab tribes in the
9 Wadi Salih locality and then in the Mukjar locality, if you know.

10 A. [12:19:21] In Wadi Salih and Mukjar, overwhelmingly Fur.

11 Q. [12:19:38] Turning to the -- the Arab tribes in Darfur -- and I'll refer you to your
12 report, paragraph 40, that's page 16 in the physical copy, and ERN 1638.

13 Now, Professor, you identify the labels Arabs and Africans. I understand it's
14 complicated, but can you -- can you explain the relevance of those labels.

15 A. [12:20:18] When -- when I lived in Darfur in the 1980s, the term "African" was
16 not used. Everyone was an African. The terms that were used were "the Arabs",
17 which referred to those whose first language was Arabic, and that would include the
18 indigenous Arabs of Darfur, who were overwhelmingly livestock herders, the Arab
19 tribes of Darfur, if you like, but also the Arabs who came from the central part of
20 Sudan, who were either traders or administrators.

21 The groups that were called "non-African", were this wide range of different ethnic
22 groups indigenous to Darfur, of which the Fur were the single largest.

23 Others -- there are numerous others - Masalit, Tama, Gimir, Birgid, Berti, and the list
24 is long - these groups began to call themselves "African", only at -- only in the late
25 1980s.

1 In fact, I recall, just as I was leaving Darfur, they were beginning to -- to assert an
2 identity or -- let me be clearer. Some of the intellectuals and leaders of these groups
3 were beginning to say, "We are African," and to claim that as a political identity, as
4 opposed to the -- the Arabs. And that was -- that claim was being made in the
5 context of the wider war between North and South Sudan, which was a war
6 characterised by many as Arab versus African.

7 So they were beginning to have that political consciousness about a broader ethnic or
8 racial identity.

9 Q. [12:22:29] And were those labels and those identities between Arab and African,
10 were they a feature of the -- or did they play any kind of role in the -- in the conflict in
11 2003 and '04?

12 A. [12:22:47] The -- historically, the -- the labels were both -- the boundary between
13 Arab and African was something that was fluid and was one that it was possible to
14 cross. It was possible over time, especially over generations, for -- for a family to
15 shift into the Arab category or to be in an ambiguous category. And, the categories
16 were not hostile to one another. They were complementary to one another.

17 In -- beginning -- throughout the late '80s, 1990s, into the 2000s, we began to see the
18 Arab and African identities being used in a -- in a polarising manner as opposites, and
19 this became particular prominent in 2003 and 2004. Not everywhere and not among
20 all people, but notably so.

21 Q. [12:24:18] And -- well, before I move on, Professor, I'll -- I'll ask the same
22 question as I asked for the non-Arab tribes in relation to the Arab tribes in the Wadi
23 Salih and Mukjar localities. If you know, what were the predominant Arab tribes in
24 those localities, and, in particular, in the 2003 and '04 period?

25 A. [12:24:42] The -- if I may digress slightly. The Arab tribes in Darfur can be

1 categorised in -- according to those who have a Dar or a land jurisdiction of their own
2 and those who do not. And the larger Arab tribes of south Darfur, which would
3 include the Rizeigat, the Habbaniya, the Beni Halba, and the Ta'aisha, each of them
4 have their own Dar or their own homeland, dating back to the era of the sultanate of
5 Darfur in the 17th and 18th century, and recognised by the British after 1916.

6 The boundaries of these were never clearly delineated on any map. We have maps
7 that show approximately where they were, but the boundaries were often contested.

8 But, nonetheless, the -- these groups had their territories, and the territory of Dar Beni
9 Halba is immediately to the -- to the east of Wadi Salih and Mukjar. The territory of
10 Dar Ta'aisha, immediately to the south. That said, those boundaries, although they
11 may look -- on a map may look clear, they were never that clear on the ground, and
12 people would cross those boundaries and live on the other side.

13 The other category of Arab groups are those who were not awarded a territory of this
14 nature, and those were primarily the camel herding groups of north Darfur and some
15 of the groups that were relatively recent immigrants from Chad.

16 There's a long history of a drift of a migration, a century's old history of a migration
17 eastward across the savannahs of Sudan. So in the Wadi Salih and Mukjar areas, the
18 main group that was present from -- that had moved into that group was the Salamat,
19 who were cattle herders, *Baggara*, but they did not have any demarcated land or Dar
20 of their own. They lived in their own settlements, which would be close to the -- to
21 the villages.

22 In addition, there would be groups from the north who would come down on
23 a seasonal basis, so that the -- at any one time, particularly during the dry season, if
24 you were to take a snapshot, as it were -- if you could take a map and say which were
25 the Arab locations and which were the Fura or non-Arab locations, it would be a bit

1 like a chessboard, with black and white squares, with the -- the majority -- there
2 would be more black squares than white squares, but the -- that is more Fur villages
3 than there would be nomadic or semi-nomadic settlements of the Arabs, but
4 nonetheless they would be interspersed.

5 And so those would be -- the principal non-Arab groups in that area would have been,
6 number 1, the Salamat, who -- who had -- whose numbers were growing as they
7 migrated in; secondly, you would have numbers of the Ta'aisha and Beni Halba from
8 next door; and then you would have nomadic Arabs coming from the north who
9 would be members of different camel herding tribes.

10 Q. [12:29:05] Now I want to return to the -- to this issue of the African and Arab
11 identities and you've explained that they became more polarised in the 2003 and '04
12 period.

13 In your report at paragraphs 48 and 49, pages 18 to 19, and ERN 1640, it also goes
14 over the page but we can start at 1640, you say that in the -- in the context of slavery,
15 the -- denigrating names were used for South Sudanese people and people of a dark
16 complexion. And what I want to do is put some terms to you, which we are aware
17 of, and ask you to comment on those, please, and if you have any knowledge about
18 them, in particular, their meaning and the context perhaps in which those terms were
19 used. And if you can relate it to the 2003 and '04 period, but that's maybe a --

20 A. [12:30:20] Yeah.

21 Q. [12:30:21] -- but if you can.

22 So "*zurqa*" is one term I'd like you to comment on, please.

23 A. [12:30:31] So anyone who goes to Sudan will notice immediately the -- the great
24 range of skin colours of the Sudanese. And the Sudanese will, in their colloquial, in
25 the vernacular, will talk about Sudanese who are red, who are brown, who are dark

1 brown, who are yellow, green and blue. Blue, "*zurqa*", being the darkest shade of all.
2 So -- so dark that you are almost blue. And that can carry with it, often does carry
3 with it a -- the connotation that these are people -- that you are a -- I mean, an inferior
4 person. It's a Sudanese -- it can be a Sudanese version of the N-word.

5 Q. [12:31:39] And the next term I'd like to put to you is *abid*, *abid*.

6 A. [12:31:42] That means slave. Historically, the -- the people of -- historically the
7 whole Nile valley and Darfur has been a place of slave raiding and relations of
8 enslavement. And even though slavery was formally abolished by the colonial
9 authorities, the racial attitudes associated with slavery continued. And it is an -- and
10 the term *abid*, meaning slave, is an everyday term of abuse and denigration.

11 Q. [12:32:31] The next term is *nuba*?

12 A. [12:32:35] *Nuba* is a term that has been used over the centuries by the people of
13 the -- the southern shore of the Mediterranean and the lower part of the Nile valley,
14 Cairo and so on, to refer to darker people to their south. Hence the term Nubian has
15 been -- historically over the millennia been used to refer to people who live on
16 the -- along the Nile and on the border lands of -- of Egypt and -- and Sudan. And
17 the term "*nuba*" was used primarily for the indigenous peoples of what is now South
18 Kordofan - who were people who were not of Arab origin, who were dark, who
19 followed customary religions and so on - also, as a term of abuse.

20 In the case of the "*nuba*", this was one of the terms that was also used by activists from
21 that community to assert their identity proudly. So they were proud to be -- to be
22 *nuba*. But it is -- but that sense of -- of pride in being *nuba* was not -- was not a sense
23 that was shared by their former oppressors from -- from parts of Northern Sudan.
24 So "*nuba*" is also used as a -- as a term of abuse.

25 PRESIDING JUDGE KORNER: [12:34:14] Mr Jeremy, this is quite -- obviously quite

1 important evidence, given what's going to be described by witnesses. Is this in the
2 report? Because I can't see it at the moment.

3 MR JEREMY: [12:34:29] It's -- it's not in the report.

4 PRESIDING JUDGE KORNER: [12:34:31] I see. So you're asking outside --

5 MR JEREMY: Yes, yes.

6 PRESIDING JUDGE KORNER: All right. Thank you.

7 MR JEREMY: [12:34:34]

8 Q. [12:34:36] Professor, the next term I wanted to put to you is "*tora bora*".

9 A. [12:34:45] The term "*tora bora*" is -- was used in the vernacular to -- to refer to
10 rebels. It was -- it was something that was -- I never heard before in the '80s and '90s,
11 and was -- came in to -- to common usage for the first time around 2003, 2004. And
12 from my understanding, I was not in Darfur in villages at the time, was -- was used as
13 a term of abuse, specifically against the rebels.

14 Q. [12:35:34] And the last term I wanted to put to you is *khadim*, which -- *khadim*,
15 K-H-A-D-I-M.

16 A. [12:35:46] *Khadim* is -- is a servant, a person who -- not a slave, but a junior
17 person, a client, someone who is expected to serve.

18 Q. [12:36:11] Okay, let's move forward through your report and I want to focus
19 now on the issue of gender, which you begin to address in paragraph 50 of your
20 report, page 19 in your copy, Professor, and it's ERN page 1641.

21 PRESIDING JUDGE KORNER: [12:36:33] Sorry, Mr Jeremy, would you mind
22 pausing a moment, there's a question that Judge Alexis would like to ask.

23 JUDGE ALEXIS-WINDSOR: [12:36:47] Yes, thank you.

24 I'd like to know whether there is a relationship between colour and identifying as
25 black and/or Arab in Sudan, or specifically in Darfur.

1 THE WITNESS: [12:37:02] That's a very -- it's a very good question, and the answer
2 is that there is in -- in Sudan as a whole, there is a colour spectrum, and, in Darfur,
3 perhaps slightly less of a colour spectrum, but nonetheless a spectrum.
4 If one were to take at random a dozen Darfurians, you -- and were to say -- and half of
5 them were to be people who identify as Arab and half of them who identify as
6 non-Arab or African, you might get half of them right, but you would probably get
7 half of them wrong.

8 There are -- it's -- it is very difficult to ascertain the -- the identity of someone as Arab
9 or non-Arab by skin colour alone. Sometimes it is, Arabs being paler and non-Arabs
10 being darker, but very often it is not. And the -- there are long, long histories of
11 intermarriage among these -- among the different Darfurian peoples and -- which
12 mean that the palette has become very mixed.

13 JUDGE ALEXIS-WINDSOR: [12:38:23] Thank you.

14 MR JEREMY: [12:38:26] Thank you, your Honour.

15 Q. [12:38:28] Professor, you say in your report in relation to the issue of gender that
16 I now want to discuss, you say that, quote:

17 "Darfurian society today is [...] patrilineal and patriarchal." Can you in brief terms
18 explain that, please?

19 A. [12:38:48] During the -- first of all, the Arab groups, the Arab societies for
20 centuries, for as long as we have known, have been patrilineal, which means that
21 identity is handed down in the male line and so that an individual's name will
22 be -- let's say, Mohamed, that is your given name, if your name is Mohamed Ahmed
23 Abdallah, your name is Mohamed, your father is Ahmed, your grandfather is
24 Abdallah, and then you would go on and on and on, all the way back to as far as you
25 can go, maybe to the founder of your -- your tribe. So that is patrilineal.

1 Patriarchal is the value system that goes with that, which is gender inequality, the
2 men having the power, the men enjoying greater rights than -- than women in law, in
3 the domestic sphere, in culture et cetera.

4 The Arab groups have always been patrilineal. The non-Arab groups historically, if
5 we go back in history, many of them were matrilineal and -- and women had more
6 power. But in the last century, 150 years, virtually all the groups, in fact, I think,
7 without fear of contradiction, I can say all the groups have become both patrilineal
8 and very patriarchal.

9 Q. [12:40:32] And if I may -- if I may refer you to paragraph 52 of your report, and
10 that's the next page on our screens, you say that violence against civilians in the 2003
11 to '05 period was gendered. Can you explain that, please, Professor?

12 A. [12:40:59] It was gendered in the sense -- in several senses. First of all, many,
13 many accounts of very widespread sexual violence and -- and rape. And the
14 implications of rape for a woman, for her children, for her position within the family
15 are very disturbing and profound in a -- in a very conservative society, such as rural
16 Darfur, and -- shall I stop there for now and we can return to it or ... ? But the --

17 Q. [12:41:54] We'll come to that part of your report, the consequences of war --

18 A. [12:41:56] Yes, yes.

19 Q. [12:41:56] -- where we address the issue of rape.

20 A. [12:42:04] And then the -- the -- there's the issue of the social and economic
21 vulnerability of women in a -- in a society in which their rights to land are limited,
22 particularly under the Islamist government that was in power in 2003-2005, the
23 options of women for having a livelihood were -- were restricted. Their -- some of
24 the activities that -- whereby women who were particularly very poor or women
25 driven from their home, whereby they would gain an income, by, for example, selling

1 alcohol or even -- even selling tea, which is not prohibited under Islamic law, selling
2 alcohol is prohibited, of course, all these activities would expose them to the -- the
3 unwanted attention of the police. And especially a group called the Popular Police,
4 which is the -- the rather poorly trained neighbourhood police drawn -- recruited by
5 the Islamic movement, who would enforce these rules, often using a great deal of
6 their own individual discretion, often extracting bribes and other favours from the
7 unfortunate women who were at their mercy.

8 Q. [12:43:40] And remaining on this paragraph 52, you refer to this accentuation of
9 the patriarchal values in -- in times of war and you refer to men being pushed into
10 identities constructed around, I think you say power and violence.

11 Can you just elaborate on that a little bit, please.

12 A. [12:44:13] One of -- I mean, one of the notable things, having been visiting Sudan,
13 spending time in Sudan between the 1980s and today, the impact of war - and, here, I
14 will talk about more generally about war, not just about the Darfur war - is that the
15 requirement among -- on young men to show these martial values has all sorts of
16 implications.

17 And one of them, for example, a very practical example is that during the 1990s, it
18 was a requirement for university graduates, if they were male, to join the Popular
19 Defence Force. The Popular Defence Force, as we may get on to this issue later, is
20 a paramilitary force drawn from citizens, and it had many different types of unit.

21 But if a requirement for a young man was to have military training, this
22 had -- obviously, the training itself was brutalising, but also in order to avoid the
23 training, in order to avoid forcible -- or the requirement to be conscripted into the
24 Popular Defence Force, men would avoid going to university, would avoid taking the
25 steps that would -- that would require them to be recruited. So many men were

1 foregoing an education and instead were going into commerce or other -- other
2 activities. Ironically this meant that more women were getting educated.

3 And so we have -- in Sudan, we have a generation of really rather well-educated
4 women, who have had their opportunities for social and political advance -- have
5 been blocked by -- by the government. But that is a different story.

6 Q. [12:46:30] And did these identities constructed around this focus on
7 militarisation -- or, I think you referred to the term "martial," did that have an impact
8 on the perception of men in Darfur and their role within a community?

9 A. [12:46:56] Let me answer first of all by saying I was not -- I was not able to do
10 the kind of research or work in the field where I would be able to observe this
11 quite -- in quite a sensitive manner. However, one -- one thing that was very notable,
12 returning to Darfur in the immediate aftermath of the war, was -- was a change in the
13 status of the male elders of tribes. So the -- the tradition of the tribal hierarchy, is
14 that you have these senior men who are -- who are in positions of authority
15 over -- over the tribe, and it is very patrilineal and patriarchal, but also there is
16 a commitment to certain values of civility and courtesy and respect.

17 And it was so that the elders of -- of the tribe, the *umdahs*, the sheikhs, the *nazirs*
18 et cetera, were -- yes, they -- you know, they enjoyed their position partly because
19 they were men, but also there was an expectation on them that they were the
20 protectors of everybody.

21 And what we clearly saw - and was repeatedly confirmed by people - was that the
22 authority of these older, more civic-minded men had been undermined and that
23 the -- as part of the military mobilisation for these different groups, the Janjaweed, the
24 different militia, which we -- I'm guessing we will be talking about later on, young
25 men who were freed from the -- the conventions of society, many of whom were

1 criminals or vagabonds, who were not educated, who -- perhaps whose only
2 exposure to formal training was a few months in a military camp, suddenly these
3 young men had a lot more power. And they had the power to challenge their elders,
4 they had the power to override social norms and customs, the power to -- to mistreat
5 women with -- with impunity.

6 Q. [12:49:36] Now, I want you to talk about the experiences of women and the
7 impact that gender had on those experiences in the conflict, but -- but I think we'll do
8 that in the later section when we talk about the consequences of -- of war.

9 So now, Professor, I'm going to move on to another topic and that is administration
10 and land rights in -- in Darfur. And I will refer you to paragraph 53 of your report,
11 page 21 in your copy and ERN 1643.

12 Now, Professor, in relation to administrative structures and land rights in Darfur,
13 you -- you draw a distinction in your report to, well, formal structures and more
14 customary structures.

15 Can you give a brief introduction to that distinction, please.

16 A. [12:50:47] The -- I think the first thing to bear in mind when -- when talking
17 about any form of administration in Darfur is the question of distance, and I spoke
18 about this a little bit before, just how far away everything is. And what this has
19 meant is that -- distance and lack of communication, and what this has meant is that
20 over the years, over the decades, whatever edict or regulation comes from Khartoum
21 will be interpreted by whoever is in power at a local level and watered down and
22 adapted to the local circumstances.

23 So the -- we have in Darfur, since the colonial occupation -- and it was the last major
24 piece of territory to be absorbed into the British Empire on 1 January 1917. So from
25 that date, there were a number of laws, regulations, edicts that were issued by the

1 governor-general in Khartoum and by the authorities -- the post-colonial
2 governments in Khartoum after 1956, when Sudan became independent. And those
3 formalised and regularised the -- the role and the powers of the -- what they call the
4 native administration, in Arabic, *al idarat al ahlia*, or the -- which are the powers of the
5 chiefs. And those -- those powers gave the chiefs sort of quasi-despotic powers over
6 their -- their subjects, in principle. In practice, the chief was required to be attentive
7 to two constraints on his -- and they were all male, on his authority. One was that
8 the chief would serve at the discretion of the colonial officer, or after 1956, the -- the
9 government. And the second is that if a chief were unpopular or brutal or were
10 a drunkard or were in some way incompetent, the people could leave, could vote
11 with their feet, could simply depart and -- and look for somewhere else.
12 And so chiefs had to be attentive to some standards of -- of performance. They also
13 had to be attentive to the public opinion of -- of the people over whom they
14 were -- they were presiding.
15 And so all the regulations that come -- that determine their -- their power, the
16 authority they have over land has to be interpreted in -- within the understanding
17 that they are there in a locality and the Khartoum and the formal authorities are
18 a very long way away and don't have much communication with them.
19 The -- can I ask you what particular issues you want me to -- you would like me to
20 explore?
21 Q. [12:54:31] I think that's a helpful introduction and I'm going to make it a little bit
22 more -- more concrete now.
23 So you've mentioned the native administration, and actually, I'd like to put a few
24 terms to you and ask you to comment on those terms. Now some of them are
25 mentioned in your reports, but they are also mentioned in a -- in a historical sense.

1 At times you sketch the progression or sketch out -- chart the progression of
2 a particular position within the native administration, but I would like to try and take
3 a snapshot of the 2003-04 period to ask you the significance and role of persons in the
4 positions that I will now mention to you.

5 So, firstly, I'm going to put the position of a sheikh to you and ask you to please
6 comment on that position, and if you can focus it on the 2003 and '05 period, if
7 that's -- if that's possible.

8 A. [12:55:36] Okay. The most important thing to know about the term "sheikh" in
9 Darfur is that it is not a religious term. It is -- primarily refers to the chief of a village.
10 It is the lowest level in the -- in the tribal hierarchy. It's just that it is the individual
11 with authority over a village, who will preside over a -- the lowest level of court that
12 will deal with routine civil matters in the village.

13 Sheikh is also used to refer to religious teachers, but the -- but those religious teachers,
14 who are also known as "*faki*", if they are local teachers in Koranic schools or local holy
15 men, they don't have any role in the administration.

16 Q. [12:56:34] And is there an ethnic dimension to that term, "sheikh"?

17 A. [12:56:38] No.

18 Q. [12:56:42] The next position is an '*omda*'.

19 A. [12:56:46] The term '*omda*' was introduced -- I'm sorry to give you a history
20 lesson here, but it was introduced in the 19th century by the Egyptian administration.
21 And the '*omda*' is, to this day, the key figure in the local native administration. The
22 '*omda*' is the individual who has a local court, administers land in that area,
23 collects -- collects taxes.

24 In the Fur areas -- and I may be getting ahead of you here, but sometimes the '*omda*'
25 is also referred to by the traditional Fur term "dimlich" (phon) because that was the

1 functional equivalent before the colonial period. And the '*omda*' is, again, across all
2 different ethnic groups.

3 Q. [12:57:43] I think I have time just to put a couple more terms to you, Professor.
4 "*Shartai*"?

5 A. [12:57:59] "*Shartai*" is the indigene -- the term for a senior chief or administrator
6 in the -- from the Fur sultanate. And in the colonial and post-colonial eras,
7 though, the term was kept, so it is specific to the Fur. If you go into -- that said,
8 there are one or two other groups that will also use the term *Shartai*. And if you
9 were to travel to the Masalit area, you would call -- the same position would be called
10 a *fursha*.

11 PRESIDING JUDGE KORNER: [12:58:40] How are you spelling "*shartai*" as a matter
12 of interest?

13 THE WITNESS: [12:58:38] S-H-A-R-T-A-I or S -- or it could be a Y at the end.

14 MR JEREMY: [12:58:52]

15 Q. [12:58:52] And the final term in the time we have, Professor, is "*nazir*",
16 N-A-Z-I-R.

17 A. [12:59:00] The term "*nazir*" is used almost exclusively for the paramount chief of
18 an Arab tribe. So a relatively -- it's a relatively -- it's quite a high position in the tribal
19 hierarchy.

20 Q. [12:59:22] Thank you.

21 PRESIDING JUDGE KORNER: [12:59:27] It seems a suitable place to break for
22 lunch.

23 Professor de Waal, as I'm sure you've been told, you're in the middle of giving
24 evidence and you mustn't discuss your evidence with anybody until you have
25 concluded.

1 And we'll sit again, please, at 1 -- 2.30. Yes, thank you.

2 THE COURT USHER: [12:59:47] All rise.

3 (Recess taken at 12.59 p.m.)

4 (Upon resuming in open session at 2.30 p.m.)

5 THE COURT USHER: [14:30:44] All rise.

6 Please be seated.

7 PRESIDING JUDGE KORNER: [14:31:02] Yes, Mr Jeremy. And I'm apologising for
8 calling you Jeffrey most of the morning.

9 MR JEREMY: [14:31:21] No problem, your Honour. Thank you.

10 Q. [14:31:24] Professor de Waal, before the break, I was asking you some questions
11 about positions in the native administration, and we left and you told us what the
12 position of "*nazir*" was.

13 I want to now ask about the position of *agid* and *agid al-ugada*. So let's go to your
14 report, which we have on our screens. And if we can go to page 1646, which is
15 page 24. And I'm looking at paragraph 61.

16 So you set out what the position of *agid* is and also the position of *agid*
17 *al-ugada* -- *ugada*, excuse me. And I'm not going to revisit that now because it's in
18 your report, but I want to focus on the final sentence of the paragraph at paragraph 61
19 where you refer to the *agid al-ugada* as being the commander of the lower-level
20 commanders. And then you say that: "In all cases these are functional posts not
21 specified in law [...]" and that the authority is derived from the invocation of
22 tradition - often loosely interpreted - combined with the demands of immediate
23 circumstance and the demonstrated abilities of the individual chosen.
24 And my question to you is, if you -- if you know what sort of abilities would -- would
25 one typically exhibit to be chosen for one of those positions, to your knowledge?

1 A. [14:33:24] Thank you. Back in the peaceful days, which I was more familiar
2 with when I was living in Darfur, the position of *agid* was symbolic and it was
3 someone -- it was an individual who would be called upon to organise some
4 communal activity that required the people of a village to work together. And there
5 was some awareness that this was -- you know, that historically a hundred years prior,
6 such an individual might have had a military function. But in the law and the
7 formalisation of native administration, the military functions had all been stripped
8 out. No one who had a position as -- with a formal position would -- as a sheikh or
9 an *'omda* or a *nazir* would have a military position. That was not envisioned.
10 The -- all the policing and military activities were assigned to officials of the
11 government.
12 During the outbreaks of violence and strife of the late 1980s and 1990s, this position
13 came back in a more informal manner. And in -- during the reorganisation of the
14 native administration in the mid-1990s -- actually, even slightly before that, when the
15 Islamist government was declaring jihad in the south and parts of the -- south
16 Kordofan, north of the boundary, but not in Darfur, they reintroduced the position of
17 *amir*, *amir* being a prince. And this was an attempt to give military authority to
18 senior figures in the native administration. And most of those chiefs resisted. They
19 did not want to take on those positions. They saw it as beyond their remit, they saw
20 it as divisive and so on.
21 And I think that what we therefore -- and what we saw in Darfur in the -- 2003, 2004,
22 was a variation on that in that most -- not all, but most of the formal -- the recognised
23 tribal authorities did not want to get closely involved, or involved at all, in -- in the
24 conflict, in mobilising. And the -- that the position of *agid* was, therefore, one that
25 emerged either from the self-defence of a village or a community, or would be

1 bestowed by the -- as the commander of a militia.

2 Q. [14:36:32] Thank you, Professor de Waal.

3 You mentioned the -- you also mentioned the position of *amir*, which you refer to in
4 your report.

5 In addition, you refer to this position of "*amir al mujahideen*" and that's in paragraph 89,
6 which is 1658. Can you explain this position.

7 A. [14:37:06] The particular circumstances in which this arose was the mobilisation
8 of counterinsurgency in the neighbouring region of Kordofan in 1991 and 1992. This
9 was characterised by the most militant phase of Islamism of the government of
10 President Omar al-Bashir and his -- and his regime, so they were declaring jihad.

11 And it was characterised by the fact that the -- as is common in most Sudanese
12 military campaigns, the regular army had neither the numbers, the weaponry, the
13 training, nor the doctrine to mount an effective counterinsurgency, and, repeatedly,
14 the professional military officers were deeply frustrated that they were not given the
15 means to run the counterinsurgencies as they would have liked. That said, I don't
16 quite know how they would have done it if they had resources and training.

17 Counterinsurgencies are -- can be extremely ugly, as we know.

18 And therefore, what the government at that time did was it -- it sought to mobilise the
19 tribes of Kordofan, the Arab tribes of Kordofan next door, as mujahedin, as holy
20 warriors, within -- under the rubric of the Popular Defence Forces under the Popular
21 Defence Act, which had been recently been passed. And the title that they bestowed
22 upon the tribal authorities who were leading these units was "*amir al mujahideen*", the
23 prince of the holy warriors.

24 And when the war broke out in Darfur some 10 years later, the politics of Islamism
25 had shifted in that the government was no longer in a militant Islamic -- Islamist

1 phase. And, in fact, many of the -- its most ardent Islamists who were in Darfur had
2 actually joined the opposition. So if the government -- so appeals to jihad and to
3 holy war would not have carried very much conviction, but nonetheless, on occasion
4 they did try and entice some -- some tribal leaders with -- with these -- with these
5 titles.

6 Q. [14:40:07] Okay, let's move forward and I'm going focus your attention on the
7 section of your report dealing with inter-communal conflicts and conflict resolution.
8 So if I can direct your attention to paragraph 68, it's page 27 of your copy and it's 1649,
9 please, the electronic version.

10 So, Professor, you deal with these inter-communal conflicts and conflict resolution in
11 your report with a number of paragraphs, 68 to 74, so we won't spend much time on
12 them now, I don't think it's necessary.

13 But in general terms, to what extent, in your view, were these inter-communal
14 conflicts, which you describe in this chapter related to territory, resources, water, to
15 what extent were they a factor in the conflict in Darfur in 2003 and '04?

16 A. [14:41:29] There are several different -- if I can elaborate going into more detail
17 than I have here. There are several different types of inter-communal conflict that
18 existed in Darfur. There are conflicts over tribal boundaries, and the system of
19 administration and land - as it was developed over many decades - did allocate
20 certain lands and territories to certain groups and often those boundaries were
21 contested. And often in the -- the contested boundaries would lead to armed clashes
22 between members of the different tribes over who was entitled to settle and cultivate
23 or graze their animals in particular spots or get access to particular water resources,
24 reservoirs, or deep wells for their animals.

25 And these types of conflicts are intertribal conflicts in -- not only in the sense that the

1 groups that are in conflict are identified by tribal or ethnic -- as tribal or ethnic groups,
2 but also in that the organisation of the forces that would be conflicting would be
3 organised on the tribal basis. So if there is a conflict on -- over a particular piece of
4 land, usually very senior members of the tribe would think -- would be wanting to lay
5 claim to that, and therefore would be helping to both organise the conflict, but then
6 also would be involved in the settlement afterwards.

7 Another type of conflict was the conflict that arose when groups that had no
8 recognised claim to land were making that claim. And this was the case, for
9 example, in Wadi Salih, where the Salamat group had -- had no historically
10 recognised claim for land. The land was -- had been allocated to the -- to the Fur,
11 and they wanted some claim to it. And that type of conflict tended to become much
12 more political because the claim to land would be manifest in the appointment of
13 a senior chief, a *nazir* or somebody of comparable rank. And without having a chief
14 of that rank, it would be very difficult to -- to claim that piece of land and therefore
15 that type of land -- that type of conflict would have a different dimension.

16 Then there were other conflicts that would occur associated with the -- with contest
17 over migratory routes for pastoralists, where they were -- where, for example, farmers
18 might have blocked the land that was used by pastoralists for their migration or
19 preventing them from getting access to water.

20 So these different types of conflict would each be organised in a slightly different way
21 and would be subject to slightly different forms of conflict resolution and mediation.
22 Nonetheless, all of them could, in principle, be resolved by the existing mechanisms
23 of conflict resolution, which are loosely called *judiya* and *musallaha*. *Judiya* being the
24 formalised process of arbitration over a dispute, and *musallaha* being the intertribal
25 reconciliation.

1 The legacy of these disputes, and, in particular, the legacy of the failure to resolve
2 them, was undoubtedly a factor in 2003, 2004 and the conflict of those years. And if I
3 may make one final point on this, which is that the largest conflict that occurred,
4 which was between 1987 and 1989, is described by the scholars of Darfur who studied
5 it as an atypical traditional dispute, in that the -- it was a dispute that was -- involved
6 the governmental authorities and could not be resolved by any traditional methods
7 because of the scale of the violence involved and the ambition of the claims to
8 controlling land by the confederation of Arab groups that were involved in the
9 conflict. There was no -- their claim to land went beyond what could be justified
10 according to custom, and so it was not amenable to that type of resolution and the
11 legacy of these conflicts was alive in the minds of people in 2003-2004.

12 Q. [14:47:12] Can you give an indication of how significant those factors were in
13 your mind to the outbreak of this -- of the conflict in 2003?

14 A. [14:47:26] I think they were -- one of the factors that led to the outbreak, there
15 were a number of different elements at that inter-communal level and at a higher
16 political level that contributed to it, and they were certainly a very important element
17 in escalating the conflict. So once the conflict had begun, this -- and was spreading,
18 the communities and community leaders on each side, on the one hand, they would
19 have had the fear that this type of widespread inter-communal conflict - and,
20 especially conflict over land - they would have a fear that that would spread like
21 wildfire.

22 Meanwhile, those who sought to gain or profit from the conflict would also see their
23 opportunity to -- to do so by organising themselves to take advantage of the -- of the
24 mayhem, of the chaos, of the breakdown of law and order.

25 Q. [14:48:44] Okay, Professor, I want to move forward and we'll go to the section of

1 your report dealing with the organisation of civil wars in Sudan since 1983.

2 So if I can direct your attention to paragraph 75 to 77, pages 29 to 31 in your copy.

3 And it's electronic 1651, the page, please.

4 In fact, we'll move forward to paragraph 76 on page 1652, please.

5 So, Professor, you've touched on this point in some of your answers today, but I want
6 to direct your attention to paragraph 76, where you refer to, quote:

7 "[...] confusing ... lines of military mobilization, [and] command and control, which
8 has arisen partly by design and partly [by] *ad hoc* response to military emergency."

9 And here, you identify this as a feature of the civil wars in Sudan and I wanted to
10 give you the opportunity just to expand on that a little, if I may.

11 A. [14:50:30] So I think this is -- this is a very fundamental point to understanding
12 how wars are fought, and how they escalate, and their repercussions because it's
13 conventional to think of a war as having two sides: You have the army, in this case,
14 the Sudan Armed Forces on one side, and the rebels on the other.

15 Sudan's wars may start like that, but they very rarely stay like that for very long.

16 What happens is that the opposition is -- the opposition to the government is deeply
17 rooted in rural communities that have a history of being ostracised and traumatised
18 and dispossessed by the central authorities. They have been subject to deprivation,
19 often they have been subject to land seizure, so all sorts of abuses. And those abuses
20 are often accompanied routinely by violence, so that when people lose their land, let's
21 say to a commercial farm, that is associated -- the bulldozers will move in, they will
22 move in with policeman, with paramilitaries and people will see their -- you know,
23 their communities, their livelihoods, destroyed before their eyes. This didn't happen
24 very much in Darfur. It happened in other places, the -- sort of the bulldozing of
25 traditional farms and villages. But what it means is that there are deep-seated

1 grievances and a readiness to take up arms. And in Darfur the dynamics of
2 grievance was slightly different, but no less deep.
3 The government, when it is faced with a population in arms, an insurgency that has
4 deep roots in the communities, finds that its instruments for policing, intelligence and
5 repression are not up to the job, so the police are overwhelmed, the intelligence
6 services are also overwhelmed and they lose their -- their ability to gain good
7 intelligence about what is going on. And this was particularly important in Darfur
8 2003, because the intelligence services -- the internal intelligence had been very
9 closely associated with the Islamist movement. And the Islamist movement was
10 very strong in Darfur and the Islamist movement split in 1999 and the great majority
11 of the Darfurians either went into opposition or withdrew from politics. So the eyes
12 and ears of the government in Darfur were closed, as it were. It didn't really know
13 what was going on. And so in response to -- to an outbreak of violence and
14 insurgency for which they -- the police were not up to job, the intelligence didn't give
15 them good information and the -- and the army had neither the numbers, the material,
16 the training nor the doctrines, they would turn to ad hoc mechanisms. And the ad
17 hoc mechanisms would include -- the most important one would be militia, would be
18 finding whatever militia they could in that locality who would be ready to fight on
19 their behalf if offered money, guns, and a licence to -- to act within impunity.
20 So very often the government would have -- would be short of money, desperately
21 short of money, and so the key reward on offer would be the licence to loot, to pillage,
22 to take land, to commit sexual crimes et cetera.
23 And repeatedly over the years of -- and sadly decades of Sudanese civil war, we saw
24 this cycle whereby a different configuration of militia would be mobilised on each
25 occasion and given these privileges. The militia would go and maraud and commit

1 heinous abuses. The government would win tactical victories in that the rebellion,
2 whether it was in the south or the Nuba Mountains or the east or Darfur, would
3 be -- would come to a halt, but the government would not be able to consolidate its
4 victory. We like to think if there's a civil war and the rebels are -- are defeated on the
5 battlefield, normality can return.

6 This is not the case in this kind of war. What you have instead is the land is then
7 ruled by these militia who have been empowered by the government, and the
8 challenge that actually then faces the government is what do you do with these militia
9 who have been armed, empowered, organised ad interim in that emergency? And
10 they usually then try and pay them off in some way or another and that creates
11 another cycle of problems.

12 Q. [14:56:21] Now, you've spoken about this pattern of the use of militias and
13 counter-insurgencies in the 2003 conflict, but also conflicts prior to that war. And I'd
14 like to take you to one of the graphs in your report. That's at page 32 in your copy
15 and it's number 1654, please.

16 And if we can zoom in on the -- on the top of the page, please So, Professor,
17 you -- you explain -- well, allow me to give you an opportunity to briefly introduce
18 this graph. You explain it in some detail in your report, but if you could just briefly
19 introduce it.

20 A. [14:57:17] Okay. This graph, what it shows is the best estimates of the number
21 of Sudanese and South Sudanese citizens who have perished of violence, hunger and
22 disease related to the war over successive campaigns from the outbreak of the second
23 civil war in 1983 up until approximately 2013. And the graph has -- a graph for
24 southern Sudan, the dark blue, and a graph for northern Sudan, which includes
25 Darfur and the Nuba Mountains which is the slightly paler grey, greyish blue.

1 You'll see that there are four big spikes. The spikes, each one seems to be a bit lower
2 than the last. I would argue please don't put too much store on that. The figures
3 are estimates and the -- if you were to take the Darfur figure, which is the one on the
4 furthest right, that has -- covers two years. And if you were to put those two years
5 together into one spike, the spike would be about twice as high. And, also, the very
6 first spike on the far left, the figures are not very reliable and they may be
7 exaggerated. But even if they are exaggerated, instead of -- you know, if it
8 were exaggerated by a factor of two instead of 500,000, if it were 250,000 that is -- that
9 is still a terrible death toll.

10 The striking thing -- the significance of each of these spikes is that each of these spikes
11 represents one of those incidents that I was just describing, where the government
12 was facing an insurgency in the first -- in 1985-86 in South Sudan on the borders, '91,
13 92, in two places, in South Kordofan and again in South Sudan and et cetera, and then
14 2003, 2004 in Darfur, as we know. And in each case the response was this
15 overwhelming mobilisation. And the basic message being given to the commanders
16 of the militia, who were recruited from whoever was willing to take up a gun,
17 organise a militia and fight, was, "Do what is necessary and don't report back."
18 From the 1980s onwards, what the social scientists in -- of the Sudanese academy,
19 they would call "the ethnics-free zone", the "ethics-free zone" the area in which
20 anything goes, and, these periods are the ethics-free periods as it were.

21 And then when the immediate threat is met and the two sides have fought each other
22 to a standstill, the level of violence subsides. But the problem is not solved. The
23 problem comes back because the grievances, the bitterness, the impulse to stage
24 another rebellion against the injustices and the -- with the grievances of the atrocities
25 that have recently been suffered, that comes back and there is another spike.

1 And the other element in here, which is not immediately relevant to 2003, 2004, but is
2 there in the minds of the commanders, is that some of those who staged the later
3 rebellions were themselves involved in the counter-insurgency of the previous one.
4 And so they would say, you know, "We were called upon by the government to fight
5 and then the government blamed us." They said, "It wasn't us who committed these
6 atrocities, it was these militia in such-and-such a place." And these groups,
7 sometimes they would call themselves the "neglected soldiers" or the "betrayed
8 soldiers" would also mount rebellions of their own.
9 So in a sense, even those who were called upon to fight and committed atrocities
10 themselves, they were genuinely victims and saw themselves as victims, which is one
11 of the peculiar tragedies of this story.

12 Q. [15:01:59] And, Professor, in relation to these -- these peaks, and I should say
13 we'll -- we'll shortly come to the peak in relation to northern Sudan. But in relation
14 to these peaks which you have now said, you know, reflect this ethics-free zone,
15 which is also an expression you use in your report, you -- you say in your report that
16 the peaks and the way that those conflicts were fought showed certain patterns in the
17 way that counter-insurgencies were organised. And maybe you've already touched
18 on some of those patterns, but I also want to give you an opportunity to give any
19 more detail in relation to observable patterns.

20 A. [15:02:47] One of the important patterns is the indiscriminate nature of the
21 violence against civilians and the extent of pillaging of essential resources, objects
22 indispensable for people to have a livelihood and survive, and land. And I'll
23 draw -- there's a very interesting comparison here that can be drawn. There was an
24 attempt at an insurrection in Darfur in 1991, which hardly figures in the casualty scale,
25 and the reason why, why it does not -- I mean, there were battles, people were killed,

1 but the reason why it does not figure on this chart is that at that time, the Government
2 of Sudan and its intelligence services had a very good intelligence about who was
3 who in Darfur, and they were able to round up the individuals one by one, the named
4 individuals. They were also aided by the fact that the principal insurgent, a man
5 called Daud Bolad, was a scrupulous note-taker, and his diaries and notes were
6 captured by the government, so they had all the names and they simply rounded
7 them up. And that targeted repression meant that the insurrection could be
8 suppressed without much bloodshed. There was bloodshed, but not much.
9 That was exceptional. What you generally saw was the type of violence that
10 involves the burning of villages, the destruction of crops, the looting of livestock and
11 other essentials, driving people from their homes, often into camps for displaced
12 people where they -- if they were lucky, they would be cared for by humanitarian
13 agencies and indiscriminate killing on an ethnic basis. Because if you don't know
14 who is who, the implication of do what is necessary, is that everybody from this
15 particular community should be targeted.

16 So does that answer your question?

17 Q. [15:05:08] It does, thank you.

18 On the same theme, I want to move forward to the evolving organisation of
19 counter-insurgency. If we can go to page 34 in your report, which is 1656, please.
20 Now, in paragraph 82, Professor, you refer to the different logics for the use of
21 counter-insurgency forces in conflicts, and you refer to this phenomenon that you
22 explain as coup-proofing, counter-insurgency on the cheap, and the fact that the
23 concept of proxy forces against neighbouring states. And I want to focus on one of
24 those factors and that is counter-insurgency on the cheap. That is something I know
25 you have also written about separately in an article that you reference in your report

1 of the same name. And I wanted to give you an opportunity to explain that term to
2 the Court in general terms. And if it is applicable to the conflict in Darfur in 2003
3 and '04, then if you can also make that connection, please.

4 A. [15:06:43] The article which bore that name was about Darfur. It -- and it
5 referred very specifically to the strategy of empowering militia to fight a war
6 with -- with little or no pay. So the requirement -- so there was -- the demand on the
7 Sudanese treasury, on the budget of the army, on the logistics of the army of
8 authorising the Janjaweed to go out and loot and pillage and kill, the burden on -- the
9 budgetary burden was very light in the short term. The bill, of course, became due
10 later on and the human cost is here before this Court.

11 There is a political cost also - and this is a slight digression, but if you'll forgive
12 me - which is that those who are empowered by this strategy become very powerful
13 themselves and they -- and the cost of paying them off is actually in many ways what
14 bankrupted the Government of Sudan and contributed to its -- to its overthrow.
15 But the counter-insurgency on the cheap also has a cost in terms of devastation. Just
16 the economic devastation, the fact that millions of people are deprived of the ability to
17 feed themselves, to contribute to the economy, it's a -- as the Sudanese also sometimes
18 like to say, it is a shortcut to hell.

19 Q. [15:08:59] Okay, Professor, I want to now move forward to the part of your
20 report that deals directly with the conflict in 2003 and '04. That's --

21 A. [15:09:10] Actually, with -- with your permission, may I just make one
22 additional footnote, which is that one of the -- because this is a recurrent pattern, one
23 of the things I try and emphasise in paragraph 82, is that there were military officers
24 themselves over the years who warned against this. And I would like to emphasise
25 that point, that there -- that none of this was unforeseen because it had all been seen

1 before.

2 Q. [15:09:49] And on that point, Professor, in paragraph 82, you -- I think you refer
3 to a General Suleiman expressing warnings, foresight for what may eventuate. Are
4 you aware of who those warnings were expressed to?

5 A. [15:10:11] So, the governor briefly of northern Darfur, who was a former chief of
6 staff of the army, General Suleiman, expressed those warnings I believe to President
7 Omar al-Bashir. I would be surprised if he expressed them -- I would be surprised if
8 he did not express them directly to the president, whom he knew well, but he would
9 certainly have expressed them to, you know, the vice-president, the current -- the then
10 current chief of staff of the army and others.

11 Q. [15:10:56] Okay, so we will move forward now to the section of your report
12 dealing with the belligerents in Darfur and the course of the conflict. That is page 48
13 in your copy, Professor. And it's 1670, please, for the court officer. Thank you.
14 So, Professor, in paragraph 120 of your report, if we could go to the next page,
15 thank you, at the top of the page, you provide some basic introduction to the rebel
16 forces to the SLM/A, the Sudan Liberation Movement/Army, and JEM, Justice and
17 Equality Movement.

18 Could you just give a brief introduction to the objectives of those groups?

19 A. [15:12:12] The two groups had very different character and origin. The Sudan
20 Liberation Movement began with an underground movement among Darfurian
21 students, principally ethnic Fura, but also including Arabs, and they actually made
22 a specific point of trying to make their movement inter-ethnic to represent all the
23 groups of Darfur. Originally they called themselves the Darfur Liberation Front.
24 They made contact with the rebels in South Sudan under the late John Garang, the
25 Sudan People's Liberation Army, SPLA. The SPLA at that time was both -- was

1 negotiating a peace agreement with the Government of Sudan, but was also interested
2 in escalating the military pressure on the Government of Sudan. And so the SPLA
3 provided them with weapons. Also, there were some individuals from Darfur who
4 were within the SPLA -- within the SPLA ranks who assisted them, and also helped in
5 drawing up their manifesto.

6 So the political declaration or manifesto of the Sudan Liberation Movement and
7 indeed its very name shows a great consistency with the -- their manifesto and the
8 thinking of the SPLM in South Sudan.

9 And this was one aspect actually that led to considerable anger in the Government of
10 Sudan because they felt that the SPLM is making peace with us on -- with one hand
11 and fighting us with the other.

12 The students who founded this were not soldiers, they had very little military
13 capacity. They -- and they -- but they had, they were able to recruit some former
14 soldiers and some of the self-defence militia who had been active in Fur villages
15 during the previous conflict.

16 There was also among them a group of Zaghawa from northern Darfur. And the
17 significance of the Zaghawa is partly to do with the fact that they had links with Chad.

18 The Government of Chad was then headed by President Idriss Déby. It's now
19 headed by his son. Idriss Déby is an ethnic Bidayat, which is a branch of the
20 Zaghawa, they speak the same language, from the border between Sudan and Chad.

21 And many of his close kinsmen were in senior positions in the military and security in
22 Chad and were able to provide support across the border. And the particular
23 military support that they provided was a type of -- was vehicles and a type
24 of -- vehicles, Land Cruisers, Land Rovers, for a type of desert warfare for which was
25 a completely new phenomenon for Sudan. The Sudanese army had been

1 accustomed to fighting in South Sudan against the SPLA, which is an infantry army,
2 and in these -- in those areas, it was not accustomed to highly mobile desert warfare,
3 which the Chadians had perfected. They had been fighting against Colonel Gaddafi
4 in Libya for many years across the Sahara Desert and had had this very -- had these
5 skills which meant that the Sudanese army was at a disadvantage.

6 The other group of rebels was a very different group. It -- the Sudanese Islamists,
7 who took power in 1989 in a military coup, had both a civilian and a military wing
8 and they had support both among -- in the central region of Sudan in Khartoum
9 and -- and around there, but also in Darfur.

10 And in -- the story of the intrigues within the Islamists, I won't go into, but the quick
11 version is the Islamists split in 1989. The civilian but more radical group, headed by
12 Dr Hassan Al-Turabi wanted to sideline President al-Bashir. They didn't succeed.
13 He, President Bashir moved against them. He declared a state of emergency, he
14 expelled many of them from the party, including many of the -- those from Darfur.

15 And in 2000, many of the Darfurians published a samizdat, a clandestine publication
16 called the Black Book. And I have cited -- we were referring to the statistics from it
17 earlier, and the Darfuranian Islamists, their complaint was: "We supported the
18 Islamist government expecting that we would be treated equitably, and we were not.
19 We were defrauded." In the words of one of them, "We were too black for the
20 Islamist project." And therefore they -- discontented, they moved into rebellion and
21 they founded the Justice and Equality Movement, which was smaller but much better
22 organised than the Sudan Liberation Movement. The leaders were also ethnic
23 Zaghawa with some links to Chad.

24 And in the early days of the rebellion, these two groups, the Sudan Liberation
25 Movement and the Justice and Equality Movement, they worked very closely together.

1 Later on they split, but in the -- in the early days, they were effectively a single
2 fighting force.

3 Q. [15:18:40] Could you just date that split, if possible?

4 A. [15:18:43] Well, the -- they began to diverge as the rebellion gained momentum
5 in 2004, 2005. I should also add that the Sudan Liberation Movement and Army also
6 split with the founder Abd al-Wahid al-Nur, retaining the allegiance of the majority,
7 but one of his key military commanders, Minni Minawi, who is an ethnic Zaghawa,
8 criticising him for ineffective leadership and leading a breakaway group, so that
9 when the peace talks began between the Darfurian rebels and the Government of
10 Sudan, very soon there were three groups represented on the rebel side, the JEM and
11 the two groups of the SLM/A.

12 Q. [15:19:38] And in relation to the organisation of those rebel groups, so in the
13 context of the SLM/A, you mentioned that they were -- the SPLA provided some
14 equipment and you also mentioned that the Zaghawa element within the SLM/A
15 received some vehicles and so on from Idriss Déby in Chad.

16 What -- were there any other ways that those rebel groups, the SLM/A and JEM,
17 obtained weapons and military equipment during this period at the outbreak of the
18 war, so in around, you know, March, April 2003?

19 A. [15:20:28] Let me correct one small point there. President Déby himself
20 was -- in 2003, 2004, was eager to end the war and did not want to see it escalate
21 because he foresaw correctly it would be a problem for him. It was his commanders
22 rather than he himself who -- or some associated with his entourage and group in
23 power who were providing clandestine assistance, rather than the president himself.
24 The other main way in which the rebels were able to expand their base of armed
25 constituents was that the first response of the general commanding the western

1 command in Al Fasher, after the war escalated in April of 2003, was to call upon the
2 Popular Defence Forces, which had been the standby paramilitary militia for the
3 previous 15 years.

4 What he found almost immediately was that the Popular Defence Forces split. That
5 those groups that were non-Arab, and particularly the Tunjur and one or two other
6 groups, which are non-Arab groups - the Tunjur are, as it were, first cousins of the
7 Fur, their close to the Fur - many of them defected to the rebellion. The Arabs did
8 not. The Arab -- the Arab groups stayed with the government. So some of the
9 government weapons found their way to the other side.

10 Q. [15:22:42] Professor, you mentioned the general who was head of the western
11 command in Al Fasher, in Darfur. Do you recall his name?

12 A. [15:22:48] That would be General Ismat al Zain.

13 Q. [15:23:01] Professor, in your report you refer to the attack on Al Fasher Airport
14 in April 2003. Can you give an indication of the significance of that attack for the
15 rebel armed groups?

16 A. [15:23:23] The spark for the attack was that the -- the rebels, and, at that stage,
17 they were still one consolidated group, had a base in a place -- small village called Ain
18 Siro, which is somewhere north of the mountain massif of Jebel Marra. And one of
19 the first response -- and since the war had begun to escalate some two months prior,
20 the government had been sending bomber aircraft, they had been bombing this area.
21 Not very accurately, they didn't have a well-equipped air force, but they were
22 bombing the areas where they believe the rebels had hideouts.
23 The rebels decided that they would strike a blow against the air force and they
24 organised a remarkably bold attack which overran the main air force base in the city
25 of Al Fasher, and overran certain neighbouring areas of the city. They came in and

1 out in a single day. They destroyed a number of aircraft, I can't remember how
2 many. They captured an air force general. He was hiding in a walk-in fridge, and
3 one of the rebels was looking for a Coca-Cola to refresh himself and found the general
4 hiding in there, and so they took him captive.

5 The -- in all the years of war in southern Sudan, 20 years of war that had gone on in
6 southern Sudan, the Sudanese air force had never suffered a loss comparable to this.
7 They'd never had a raid on one of their principal bases that destroyed aircraft in this
8 way. So it was a major blow, a material blow, and a major blow to the confidence
9 and self-esteem and sense of self-worth of the army. And they were -- and the air
10 force, of course, and they were extremely angry about it.

11 It's interesting as a footnote that the government response was not immediate and
12 they delayed until the intertribal mechanism for conflict settlement could be initiated
13 to secure the release of the detained general. He was not released through any
14 official negotiation between the government and rebels, but by an intertribal
15 negotiation. And after he had been released, then they -- then they escalated their
16 attacks.

17 Q. [15:26:23] And can you give us a sense, an overview of what that response was,
18 what that escalation of attack amounted to.

19 A. [15:26:34] That really was, as it were, when the -- when the dam burst. That
20 was when the Government of Sudan threw all the resources that it could muster and
21 mobilise against the rebellion in Darfur and those areas that -- those communities that
22 it believed were supporting the rebellion.

23 Q. [15:27:12] And in terms of those resources that you say the government threw at
24 the communities that they considered to be supporting the rebellion -- in fact, I should
25 say which -- which communities were perceived to be supporting the rebellion?

1 A. [15:27:29] The principal targets were three ethnic groups, Fur, Zaghawa and
2 Masalit, and especially in the immediate term, the Fur and the Zaghawa.

3 Q. [15:27:49] And what was the reason, if you know, for why those three ethnic
4 groups were the three -- were the principal targets?

5 A. [15:28:01] The leadership of the SLM/A and of JEM were drawn
6 overwhelmingly from those three groups. As I said earlier, there were some Arab
7 individuals within the SLM/A leadership, and there were also at that time attempts by
8 some Arab communities and by some in the SLM/A to not make this an inter-ethnic
9 conflict. They wanted the -- they wanted the Arabs either to side with them in the
10 rebellion or to stay neutral, but that did not succeed.

11 Q. [15:28:48] So within these ethnic groups, were the targets limited to the -- to the
12 rebel armed groups or were they -- were they broader?

13 A. [15:28:59] The attacks went much broader. They -- essentially, the entire
14 communities of Fur, Zaghawa, Masalit, and indeed to, and perhaps a slightly lesser
15 degree, other non-Arab groups in the vicinity, they were all targeted.

16 Q. [15:29:35] Okay. Now in the next part of your report, you refer to some of the
17 formal forces - I'll describe them as - on the Government of Sudan side, who were
18 involved in the conflict. But you've -- you've touched on a number of those in your
19 report and through the course of my examination, so I'm going to skip forward to the
20 Janjaweed militia, which you refer to in your report. And that's in paragraph 126,
21 pages 50 to 51.

22 And in the -- for the court officer, it's 1672 to 1673, please.

23 And if we can go to the next page, please, 1673, and focus on the top of that page.

24 Thank you.

25 So, Professor, directing your attention to, in fact, paragraphs 127 and 128, you refer to

1 an individual called Musa Hilal, you say that he was one of the proxy forces involved
2 in the counterinsurgency, and you note that he had the biggest proxy forces.

3 Just briefly, where, in Darfur, was Musa Hilal and his forces operating in the 2003 and
4 '04 period, if indeed he was operating then?

5 A. [15:31:37] So Musa Hilal, actually, by way of preface, the very first location
6 where I did some fieldwork in Darfur in 1985, was within the nomadic encampment
7 of Musa Hilal's father, Hilal -- Sheikh Hilal Mohamed Abdalla, in a place in north
8 Darfur called Amo -- Amo, close to -- to Kutum. And the -- the Hilal senior, who
9 was renowned as a very upstanding man, a man of -- of -- who dispensed fair and
10 swift justice in his chief's court, he was incapacitated in the -- shortly after I met him,
11 and his son, Musa, took over as chief of his lineage, his subgroup, the Um Jalul group
12 of the Mohamed -- of the Rizeigat of northern Darfur.

13 This was a group that did not have an allocation of land under the traditional system,
14 so it was, as it were, a group in search of a place to call home and in search of the
15 authority position that would go with that control over land.

16 And Musa Hilal himself was very active during the war of the late 1980s, shortly
17 of -- '87-'89. At the time, he was -- where he was assuming the chieftainship of that
18 group. His father was still alive but incapacitated. He then, later on, he had the
19 favour -- he was in favour of the government, especially one of the governors, General
20 Abdallah Safi el Nour, and established a base at a place called Misteriha. Now
21 Misteriha is in northern Darfur, slightly to the west of the main Jebel Marra massif, so
22 some distance from the small place, Amo, where I knew his -- his father.

23 And he appeared to enjoy very good relations with the national intelligence and
24 security, with the military intelligence, and with the political authorities, and his -- his
25 militia force, which became the Border Intelligence Brigade, was built up as the first

1 and largest - and, I dare say - most feared of the Janjaweed groups.

2 Q. [15:34:53] Now in addition to Musa Hilal and his forces, who you've indicated
3 were in the Misteriha area in the northern state of Darfur, were other Janjaweed forces
4 involved in the conflict in 2003 and '04?

5 A. [15:35:10] I'm sorry, there was one element I should have said, which is that
6 under the -- when Ibrahim Suleiman, the governor whom we mentioned as warning
7 against the mobilisation of the Janjaweed, when he was -- when he was governor, he
8 considered Musa Hilal, and a number of others, to be troublemakers and had them
9 arrested, and then they were released shortly after the Al Fasher attack. And it's
10 interesting to note the -- I think there were 21 of them, Musa Hilal was really the only
11 one with senior standing in the tribe. The others were, as it were, more -- some of
12 them were criminals, some people with less standing. Although their base was
13 Misteriha, their area of operations was much wider across northern Darfur. At that
14 time, the government also called for other groups that had active -- that had had
15 active militias in the recent past to join its counter-insurgency and many of them
16 refused. So -- and the two notable ones who refused were the southern Rizeigat, the
17 Rizeigat are divided into two, there are those who have camels in the north and Musa
18 Hilal is prominent among them, and then those who are cattle herders who are in the
19 south, adjacent to South Sudan, are a much larger and better-off group under a *nazir*
20 whose name is -- family name is Madibu. And they had, probably the most
21 formidable militia in Darfur and -- which had been formalised under the Popular
22 Defence Forces.

23 This militia had been mobilised to fight against the SPL/A from South Sudan in the
24 1980s and they refused. He said, "I will not join this fight." He said, "I don't have
25 a quarrel with the Fur. I don't have a quarrel with the SLA and please don't involve

1 me."

2 And it's notable throughout this period that the -- actually, the -- sort of the most
3 senior members of the tribal aristocracy, and especially those who had -- who were
4 chiefs of tribes that had established land, they tried to stay out of it. They didn't
5 always succeed, but they tried.

6 The other was the -- there was a group, the Beni Halba, and their *nazir* was Al-Hadi
7 Issa Dabaka and he had -- and his militia had fought against the -- an incursion from
8 South Sudan in 1991, and their group were known as the Fursan, the cavalry, or
9 knights, or horseman. And again, he initially refused. Some in his tribe did join,
10 but the government struggled to gain support from the major -- these major Arab
11 tribes and it turned to smaller ones - including many of those who had come recently
12 from -- recently in the previous 10, 20, 30 years from Chad - and those that did not
13 have a senior position, well-established positions in the tribal map or the tribal
14 hierarchy.

15 Q. [15:39:06] And since we are now talking about these Janjaweed, can you tell us
16 what was the meaning of that term at this time period in the conflict in 2003 and '04?

17 A. [15:39:21] The term "Janjaweed", the first time I heard it was in the late 1980s,
18 when it referred actually to a militia that had come from Chad as part of an Arab
19 militia from Chad as part of the Chadian civil war, and it was referred to as the
20 overall term for the Arab militia that fought in the internal conflict of 1987, 1989.
21 Thereafter, the Government of Sudan and the Arabs in Darfur have - on the
22 whole - refused to use that term. They say the Janjaweed are common criminals;
23 they are nothing to do with this -- with this militia. The term is widely held to derive
24 from the two words "jinn", meaning spirit or devil and "jawad", referring to horse, so
25 devils on horseback. I can't -- and I'm not really in a position to comment on

1 whether that etymology is correct or not, but it became a generic term for all those
2 militia that were actively involved in the conflict in 2003.

3 Q. [15:40:41] Thank you. And I note for the record, we don't need to go into it, but
4 you provide some alternative terms for Janjaweed in paragraph 30 -- 130 of your
5 report.

6 A. [15:40:51] Mm.

7 Q. [15:40:51] Now Professor, what I'd like to focus on now is why, why did the
8 government get the Janjaweed involved at this time, why did they mobilise them?
9 And you've perhaps answered that partially in some ways so far, but if you could
10 address that point now, please.

11 A. [15:41:20] In the article I wrote at the time called, Counter-Insurgency on the
12 Cheap, I used the phrase, which I actually now regret, and I'll explain why I regret it, I
13 called it, "genocide by force of habit." And I regret using the word "genocide"
14 because I think I was -- this Court would likely agree, it has a very specific legal
15 meaning, which is extremely contentious in this context.

16 But the "force of habit" is what is important here, which is that this was the way in
17 which the leaders of the Sudanese military security apparatus routinely conducted
18 their business. This is how they had responded recurrently to military threats over
19 the previous 20 years, which was to throw everything they had into a -- some kind of
20 combined assault, including the air force, the regular forces and every irregular force
21 that they could muster, and they would -- they would establish the -- the hierarchy
22 and the lines of command and control as they went. So it is not as though they had,
23 as it were, a carefully worked out battle plan or campaign strategy, they would
24 improvise as they went, and, if those in the field in command of particular units went
25 beyond their orders, acted to excess, so be it. They would not be -- they would rarely

1 be reprimanded.

2 Q. [15:43:24] Now in terms of the coordination of these different forces, the regular
3 government forces, the irregular government forces, the Janjaweed, as you've
4 mentioned, you say in your report, in paragraph 126, on your page 51, it's -- for the
5 court officer -- 1673, please, at the top of the page, you refer to a "complex military
6 ecosystem" and you say that that required a coordinator amongst these groups within
7 this ecosystem, and you say that Ahmad Haroun was one such person who played
8 this role.

9 Can you expand on that -- on the role that he played and perhaps why he was
10 selected to play this role?

11 A. [15:44:27] I'm not in a position to go into detail about his particular role, beyond
12 the observation that somebody who was well connected with security, the ruling
13 party, the ministry of interior and the army, was the appropriate person.
14 It's interesting to note that the most senior figures in the government at that
15 time -- the president, the minister of interior and the minister of defence, head of
16 national intelligence and security et cetera, they were all close friends and comrades.
17 They -- despite their different institutional roles, they -- they were very much part of
18 the same cabal, if you like, that was running the country.

19 Q. [15:45:39] And you say that Ahmad Haroun was well connected with security.
20 What did you mean by that?

21 A. [15:45:46] The national intelligence and security had both internal and external
22 elements, which had been fused in the previous couple of years under the leadership
23 of the director general of national intelligence and security, General Salah Abdallah
24 Gosh. The internal security was very well -- was very closely connected with the
25 ruling party, the National Congress Party and my understanding of Ahmad Haroun's

1 position was that he was in that nexus.

2 Q. [15:46:33] Professor, I want to take you back in your report, but we are staying
3 on the same topic; so if I can direct your attention to paragraph 88, page 36, for the
4 court officer, page 1658, please.

5 Professor, in this paragraph, 88, in the context of the government's militia strategy,
6 you refer to the response to the Darfur insurgency in 2003 and '05, and you refer to
7 what you call, I quote, "a spiral of militarization."

8 Was this spiral evident in the conflict at this time?

9 A. [15:47:32] It was not only evident, it was imminent. The spiral and its
10 consequences were entirely foreseeable.

11 Q. [15:47:45] In what sense?

12 A. [15:47:46] In the sense that it would generate mass atrocities, a humanitarian
13 crisis, and the social fracture of Darfur across the board, including not only the
14 fracture of the communities that were directly impacted by the attacks, but also the
15 fracture of the communities that were involved in the attacks.

16 Q. [15:48:19] Staying with this paragraph, 88, again, in the context of this "spiral of
17 militarization", you refer to in 88(a) the --

18 [...] *ad hoc* accelerated mobilization" - you said - "driven by fiery rhetoric and appeals
19 to deeply-held values of faith, race and nation, exaggerated for the purpose of
20 motivating combatants."

21 Was this a feature of the conflict in Darfur in 2003 and '04?

22 A. [15:49:00] Yes, it was.

23 Q. [15:49:03] In what way?

24 A. [15:49:05] A lot of the language used by -- from the president downwards was
25 highly inflammatory. There was language that was -- language of vengeance,

1 language that was racist, language that was full of hatred and one of the -- if I may,
2 one of the curious things about this language is that even -- is that many of those who
3 were using these -- these exaltations to extreme violence and, you know, very
4 derogatory and racist language, in their personal lives and their personal relations,
5 could actually behave quite differently. And I actually, personally, at one point, I
6 challenged Musa Hilal on this said. I said, "Why did you say some of these things?"
7 We know that -- I forget, on his mother's side he has Zaghawa ancestry. He's not
8 a pure Arab. And, in fact, later on, a few years later, his own daughter, Amani,
9 married Idriss Déby, a Zaghawa, and you see the pictures of them, you know, the
10 Zaghawas and the Arabs dancing together at the wedding. And his response was,
11 "We would do that in the moment and then we would forgive and make up."
12 But the -- there was no indication at the time that they intended to forgive or make up.
13 No public message that this might be anything other than an absolute, you know,
14 commitment to extreme violence.

15 Q. [15:51:39] Now, Professor, we will be ending today's session shortly, but I want
16 to go to the issue of recruitment of the Janjaweed and that will take us to paragraph
17 129 of your report, page 51, and -- for the court officer, it's 1673, please.

18 So Professor, in this paragraph 129, in relation to the mobilization of the militia - is the
19 expression you used here - you say that this was done in an ad hoc and fluid way.
20 And I wondered if you could expand a little more on the fluid nature of this
21 mobilization and organisation.

22 A. [15:52:40] When I was writing the -- reflecting on what I should write about the
23 organisation of the militia, I -- the challenge I had was that none of the notes or -- and
24 records and interviews I had from that period made a clear or consistent picture of
25 how these -- the Janjaweed were organised. So for every description of it, the force

1 being organised as certain brigades, there was another one that seemed to contradict
2 that. For everyone that said that the reporting line was through military intelligence
3 or to the -- or, whatever, there was another one that said it was different.

4 And my conclusion, which is a conclusion that is very hard to elaborate upon, is that
5 it was done in a manner that was very ad hoc and circumstantial. That the particular
6 lines of authority depended upon what was happening at a particular time in
7 a particular place, and who was -- who was able to provide the -- what was needed
8 for the conduct of operations, be it fuel, be it vehicles, be it ammunition, be it armed
9 men.

10 Q. [15:54:11] And earlier we discussed your expression "counter-insurgency on the
11 cheap". Was that a feature of the conflict at this time?

12 A. [15:54:21] Very much so.

13 Q. [15:54:23] In what sense?

14 A. [15:54:24] In the sense that most of those who were involved in the militia
15 activities were not on the payroll and that the equipment that was mobilised for the
16 purposes of the -- of their operations was -- some of it was stolen, some of was
17 obtained from local merchants or local government on terms that were not entirely
18 clear.

19 Q. [15:55:05] And in terms of equipment and support that was provided to the
20 militia, do you know what equipment the Government of Sudan provided?

21 A. [15:55:20] There -- every indication, and it is, you know, every sort of report,
22 every little anecdote, is that the government would provide ammunition, they would
23 provide weapons, they would provide transport, they would provide
24 communications equipment. They would provide what it was that they had to
25 complement whatever was being done in terms of the sort of ad hoc mobilization by

1 the militia themselves.

2 Q. [15:56:00] Thank you, Professor.

3 Now, the next part of my outline is the final chapter, it's the impact on the civilian
4 population, which -- there won't be time to finish today. I estimate I probably have
5 about 30-more minutes with the Professor, so I'm in your Honour's hands. I can
6 begin this chapter or I can stop as you wish, Madam President.

7 PRESIDING JUDGE KORNER: [15:56:35] No, I think probably it would be better if
8 we hear it all in one go.

9 What I wanted also just to mention was I think we are moving, are we not to
10 a crime-based witness after this witness, and I don't know whether counsel discussed
11 amongst themselves, if the witness, for example, is a practicing Muslim, whether he's
12 bound by the restrictions of Ramadan and whether that's going to make any
13 difference to our sittings, because if it is, then we really need to know now.

14 Has any discussion taken place between counsel on this?

15 No.

16 MR JEREMY: [15:57:26] Yes, I discussed -- I discussed it briefly with Mr Edwards at
17 the break, and our understanding is that the witness is respecting Ramadan, but we
18 are unclear at this point the impact that that may or may not have on his testimony.
19 So that would be something that we will explore with him now --

20 PRESIDING JUDGE KORNER: [15:57:48] Yes, well, I think it ought to be explored
21 with that and any other witnesses who are coming within the Ramadan period,
22 whether there needs to be an adjustment of the timings of sittings to compensate for
23 the fact that I don't believe you can eat or drink, can you, until sunset, which is very
24 late.

25 MR NICHOLLS: [15:58:07] Sorry, excuse me, your Honour. Yes, that is something

1 we've actually been talking about and it is slightly tricky, and sometimes different,
2 witness to witness; so it is something we're working on with the next witness and we
3 will discuss it with our colleagues and we may need to discuss it with your Honours
4 as well, possibly in a small open or possibly partially private session.

5 PRESIDING JUDGE KORNER: [15:58:31] Yes, all right. Well, I mean, so long
6 as I -- all I was wanting to check was that everybody has thought about it and the fact
7 that it may impact on the actual sitting.

8 MR NICHOLLS: [15:58:43] And breaks may need to be adjusted --

9 PRESIDING JUDGE KORNER: [15:58:46] Well, that's --

10 MR NICHOLLS: [15:58:46] -- as well.

11 PRESIDING JUDGE KORNER: [15:58:47] Well, this is what we were discussing.
12 Yes, Mr Laucci.

13 MR LAUCCI: [15:58:51] No, it's just to thank you, Madam President, for taking
14 care about this, and this is certainly something that we fully support, especially so
15 since Mr Abd-Al-Rahman is also in the same situation.

16 PRESIDING JUDGE KORNER: [15:59:05] And you're quite right, Mr Laucci, to
17 remind me of that. Obviously, if Mr Al-Rahman is finding the days too long or
18 prefers breaks to come earlier, then you will let us know.

19 Yes, Professor de Waal, thank you very much. You're still - as I say - testifying, so
20 again you can't discuss your evidence with anybody at all. And we'll see you
21 tomorrow morning, please, ready to start at 9.30.

22 Thank you.

23 THE COURT USHER: [15:59:42] All rise.

24 (The hearing ends in open session at 3.59 p.m.)