

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Opening Statements - Courtroom 3
9 Tuesday, 5 April 2022
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:27] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:32:58] Yes, Mr -- could the court officer call the
15 case, please.
16 THE COURT OFFICER: [9:33:04] Good morning, Madam President.
17 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus Ali
18 Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), case reference ICC-02/05-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE KORNER: [9:33:23] (Microphone not activated) Appearances,
21 please, for the Prosecution.
22 Yes, Mr Khan.
23 MR KHAN: [9:33:37] Madam President, your Honours, my name is Karim Khan,
24 Prosecutor of the ICC. I'm joined by senior trial lawyer, Julian Nicholls, who sits
25 behind; Claire Sabatini, who's to my left; Edward Jeremy, who is right at the back;

1 Laura Morris; and just to the back on the left, Mr Pubudu Sachithanandan.

2 Thank you.

3 PRESIDING JUDGE KORNER: [9:34:00] Thank you very much, Mr Khan.

4 Yes. Appearances for the Defence, please.

5 MR LAUCCI: [9:34:11](Interpretation) Good morning, your Honours.

6 As well as Abd-Al-Rahman, who is here behind me in the room this morning, I would
7 like to present you Madam Eva Kalb, Madam Camille Divet, and Paola Pallot, who
8 are seated to my left who are here in charge of analysis of evidence. Behind me,
9 Ahmad Issa, in charge of -- our case manager. Vanessa Grée, legal assistant. And
10 to my right my co-counsel, Iain Edwards. I myself am lead counsel, Cyril Laucci.
11 Thank you.

12 PRESIDING JUDGE KORNER: [9:35:00] Yes, thank you, Mr Laucci.

13 Then for the victims representatives, please.

14 MS VON WISTINGHAUSEN: [9:35:07] Yes, good morning, Madam President,
15 your Honours, dear colleagues.

16 The Common Legal Representatives of Victims are represented today by my
17 colleague Nasser Amin Abdalla, who is joining us remotely. To my right, associate
18 counsel Anand Shah; behind me our case manager Idriss Anbari, and myself is
19 Natalie von Wistinghausen. Thank you very much.

20 PRESIDING JUDGE KORNER: [9:35:34] (Microphone not activated)

21 THE INTERPRETER: [9:35:35] Microphone, Judge Korner.

22 MS VON WISTINGHAUSEN: [9:35:39] I can't see him on the screen, but he should
23 join any moment. He's attending remotely, that's for sure.

24 PRESIDING JUDGE KORNER: [9:35:50] (Microphone not activated)

25 THE INTERPRETER: [9:35:51] Microphone, please.

1 PRESIDING JUDGE KORNER: [9:35:53] Anybody appearing from Registry? No.

2 Right.

3 Then can I start by briefly, for the purposes of the case, deal with the background.

4 On 27 April 2007, the Court issued a warrant of arrest against Mr Abd-Al-Rahman.

5 A second warrant of arrest was issued on 16 January 2018.

6 Mr Al-Rahman surrendered himself to the Court and made his first appearance on 15

7 June 2020 and Pre-Trial Chamber II confirmed the charges against Mr Al-Rahman on

8 9 July of 2021. And it is those charges that are now before the Chamber.

9 Rule 134(2) requires me to say the following:

10 During the first status conference before this Chamber on 8 September 2021,

11 the Chamber set the date for commencement of trial and the deadlines which applied.

12 The Chamber set the deadline of 3 December 2021 for the filing of any motions

13 requiring resolution prior to the commencement of trial. Having noted this rule,

14 the Chamber will now ask the parties whether, save for any pending requests before

15 the Chamber, they have any remaining objections or observations concerning

16 the conduct of the proceedings which have arisen since the confirmation hearings.

17 In accordance with Rule 134(2), no such objection or observations may be raised

18 during the trial proceedings without leave of the Chamber.

19 I will start this time with the Defence.

20 Mr Laucci, anything you want to say?

21 MR LAUCCI: [9:38:16](Interpretation) Thank you, Madam President. Everything

22 we had to say and to write has already been submitted. Thank you.

23 PRESIDING JUDGE KORNER: [9:38:27] Thank you very much.

24 Yes, Mr Khan.

25 MR KHAN: [9:38:29] Not from the Prosecution. Thank you.

1 PRESIDING JUDGE KORNER: [9:38:32] And from the Legal Representatives of
2 the Victims?

3 MS VON WISTINGHAUSEN: [9:38:35] Nothing from us, Madam President. Thank
4 you.

5 PRESIDING JUDGE KORNER: [9:38:39] Thank you very much.

6 Right, we will now proceed to the reading of the charges.

7 Before we do so, Mr Laucci, could you confirm that you are content that a summary
8 of the charges are put to Mr Al-Rahman?

9 MR LAUCCI: [9:39:04] Absolutely, Madam President.

10 PRESIDING JUDGE KORNER: [9:39:06] In accordance with Article 64(8)(a) of
11 the Statute, the charges will now be read to the accused, following which
12 Mr Al-Rahman will be afforded an opportunity to make an admission of guilt or to
13 plead not guilty.

14 And I will ask the court officer to read those charges.

15 THE COURT OFFICER: [9:39:35] Thank you, Madam President.

16 The counts of the charges against Mr Abd-Al-Rahman are as follows:

17 Count 1, intentionally directing attacks against the civilian population of Kodoom and
18 Bindisi and surrounding areas as such, as a war crime, between 15 and
19 16 August 2003, pursuant to Article 8(2)(e)(i) and Article 25(3)(b) (inducing) of
20 the Rome Statute.

21 Count 2, murder as a crime against humanity, concerning 51 persons listed in
22 Annex 1, who were killed in Kodoom, Bindisi and surrounding areas, between 15 and
23 16 August 2003, pursuant to Article 7(1)(a) and Article 25(3)(b) (inducing) of
24 the Rome Statute.

25 Count 3, murder as a war crime, concerning 51 civilians not taking direct part in

1 hostilities, or persons *hors de combat* who were at the material time in the power of
 2 the Militia/Janjaweed or GoS Forces (listed in Annex 1), between 15 and
 3 16 August 2003 in Kodoom, Bindisi and surrounding areas, pursuant to
 4 Article 8(2)(c)(i) and Article 25(3)(b) (inducing) of the Rome Statute.

5 Count 4, pillaging as a war crime, in Kodoom and Bindisi, between 15 and
 6 16 August 2003, pursuant to Article 8(2)(e)(v) and Article 25(3)(b) (inducing) of
 7 the Rome Statute.

8 Count 5, destruction of property of an adversary, without military necessity, as a war
 9 crime, in Kodoom and Bindisi, between 15 and 16 August 2003, pursuant to
 10 Article 8(2)(e)(xii) and Article 25(3)(b) (inducing) of the Rome Statute.

11 Count 6, other inhumane acts as a crime against humanity, in Bindisi and
 12 surrounding areas, between 15 and 16 August 2003, pursuant to Article 7(1)(k) and
 13 Article 25(3)(b) (inducing) of the Rome Statute.

14 Count 7, outrages upon personal dignity as a war crime, in Bindisi and surrounding
 15 areas, between 15 and 16 August 2003, pursuant to Article 8(2)(c)(ii) and
 16 Article 25(3)(b) (inducing) of the Rome Statute.

17 Count 8, rape as a crime against humanity, concerning 16 Fur women and girls, listed
 18 in Annex 1, in Bindisi and surrounding areas, between 15 and 16 August 2003,
 19 pursuant to Article 7(1)(g) and Article 25(3)(b) (inducing) of the Rome Statute.

20 Count 9, rape as a war crime, concerning 16 Fur women and girls, listed in Annex 1,
 21 in Bindisi and surrounding areas, between 15 and 16 August 2003, pursuant to
 22 Article 8(2)(e)(vi) and Article 25(3)(b) (inducing) of the Rome Statute.

23 Count 10, forcible transfer as a crime against humanity, concerning the expulsion of
 24 Fur persons lawfully present in Kodoom and Bindisi, between 15 and 16 August 2003,
 25 pursuant to Article 7(1)(d) and Article 25(3)(b) (inducing) of the Rome Statute.

Count 11, persecution as a crime against humanity, on political and ethnic grounds, concerning the predominantly Fur population of Kodoom, Bindisi and surrounding areas perceived as belonging to, or being associated with, or supporting the rebel armed groups, by way of the criminal acts listed in Counts 1-10, between 15 and 16 August 2003, pursuant to Article 7(1)(h) and Article 25(3)(b) (inducing) of the Rome Statute.

Count 12, torture as a crime against humanity, concerning a large number of Fur men in Mukjar police station, between late February and early March 2004, pursuant to Article 7(1)(f) and Article 25(3)(a) (direct perpetration and co-perpetration) and Article 25(3)(b) (inducing) of the Rome Statute.

Count 13, torture as a war crime, concerning Fur men in Mukjar police station, between late February and early March 2004, pursuant to Article 8(2)(c)(i) and Article 25(3)(a) (direct perpetration and co-perpetration) and Article 25(3)(b) (inducing) of the Rome Statute.

Count 14, other inhumane acts as a crime against humanity, concerning Fur men in Mukjar police station, between late February and early March 2004, pursuant to Article 7(1)(k) and Article 25(3)(a) (direct perpetration and co-perpetration) and Article 25(3)(b) (inducing) of the Rome Statute.

Count 15, cruel treatment as a war crime, concerning Fur men in Mukjar police station, between late February and early March 2004, pursuant to Article 8(2)(c)(i) and 25(3)(a) (direct perpetration and co-perpetration) and Article 25(3)(b) (inducing) of the Rome Statute.

Count 16, outrages against personal dignity as a war crime, concerning Fur men in Mukjar police station, between late February and early March 2004, pursuant to Article 8(2)(c)(ii) and Article 25(3)(a) (direct perpetration and co-perpetration) and

1 Article 25(3)(b) (inducing) of the Rome Statute.

2 Count 17, murder as a crime against humanity, concerning the 49 persons listed in

3 Annex 1, outside of Mukjar, between late February and early March 2004, pursuant to

4 Article 7(1)(a) and Article 25(3)(a) (co-perpetration) and Article 25(3)(b) (ordering

5 and/or inducing) of the Rome Statute.

6 Count 18, murder as a war crime, concerning the 49 persons listed in Annex 1, outside

7 of Mukjar, between late February and early March 2004, pursuant to Article 8(2)(c)(i)

8 and Article 25(3)(a) (co-perpetration) and Article 25(3)(b) (ordering and/or inducing)

9 of the Rome Statute.

10 Count 19, attempted murder as a crime against humanity, concerning two detained

11 Fur males, outside of Mukjar, between late February and early March 2004, pursuant

12 to Article 7(1)(a) and Articles 25(3)(f) and 25(3)(a) (co-perpetration) and

13 Articles 25(3)(f) and 25(3)(b) (ordering and/or inducing) of the Rome Statute.

14 Count 20, attempted murder as a war crime, concerning two detained Fur males,

15 outside of Mukjar, between late February and early March 2004, pursuant to

16 Article 8(2)(c)(i) and Articles 25(3)(f) and 25(3)(a) (co-perpetration) and Articles 25(3)(f)

17 and 25(3)(b) (ordering and/or inducing) of the Rome Statute.

18 Count 21, persecution as a crime against humanity, on political, ethnic and gender

19 grounds, concerning Fur males perceived as belonging to, or being associated with, or

20 supporting rebel armed groups, by way of the criminal acts listed in Counts 12-20, in

21 Mukjar and surrounding areas, in late February/early March 2004, pursuant to

22 Article 7(1)(h) and Article 25(3)(a) (direct perpetration and co-perpetration) and

23 Article 25(3)(b) (inducing and/or ordering) of the Rome Statute.

24 Count 22, torture as a crime against humanity, concerning between 100 and 200 Fur

25 males in Deleig, between 5 and 7 March 2004, pursuant to Article 7(1)(f) and

1 Article 25(3)(a) (direct perpetration and co-perpetration) and Article 25(3)(b)
 2 (inducing) of the Rome Statute.

3 Count 23, torture as a war crime, concerning between 100 and 200 Fur males in Deleig,
 4 between 5 and 7 March 2004, pursuant to Article 8(2)(c)(i) and Article 25(3)(a) (direct
 5 perpetration and co-perpetration) and Article 25(3)(b) (inducing) of the Rome Statute.

6 Count 24, other inhumane acts as a crime against humanity, concerning between 100
 7 and 200 Fur males in Deleig, between 5 and 7 March 2004, pursuant to Article 7(1)(k)
 8 and Article 25(3)(a) (direct perpetration and co-perpetration) and Article 25(3)(b)
 9 (inducing) of the Rome Statute.

10 Count 25, cruel treatment as a war crime, concerning between 100 and 200 Fur males
 11 in Deleig, between 5 and 7 March 2004, pursuant to Article 8(2)(c)(i) and
 12 Article 25(3)(a) (direct perpetration and co-perpetration) and Article 25(3)(b)
 13 (inducing) of the Rome Statute.

14 Count 26, outrages upon personal dignity as a war crime, concerning between 100
 15 and 200 Fur males in Deleig, between 5 and 7 March 2004, pursuant to
 16 Article 8(2)(c)(ii) and Article 25(3)(a) (direct perpetration and co-perpetration), and
 17 Article 25(3)(b) (inducing) of the Rome Statute.

18 Count 27, murder as a crime against humanity, concerning the 34 persons listed in
 19 Annex 1, in Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to
 20 Article 7(1)(a) and Article 25(3)(a) (direct perpetration and co-perpetration) and
 21 Article 25(3)(b) (ordering and/or inducing) of the Rome Statute.

22 Count 28, murder as a war crime, concerning the 34 persons listed in Annex 1, in
 23 Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to
 24 Article 8(2)(c)(i) and Article 25(3)(a) (direct perpetration and co-perpetration) and
 25 Article 25(3)(b) (ordering and/or inducing) of the Rome Statute.

Count 29, attempted murder as a crime against humanity, concerning 12 detained Fur males, in Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to Article 7(1)(a) and Articles 25(3)(f) and 25(3)(a) (co-perpetration) and Articles 25(3)(f) and 25(3)(b) (ordering and/or inducing) of the Rome Statute.

Count 30, attempted murder as a war crime, concerning 12 detained Fur males, in Deleig and surrounding areas, between 5 and 7 March 2004, pursuant to Article 8(2)(c)(i) and Articles 25(3)(f) and 25(3)(a) (co-perpetration) and Articles 25(3)(f) and 25(3)(b) (ordering and/or inducing) of the Rome Statute.

Count 31, persecution as a crime against humanity, on political, ethnic and gender grounds, concerning Fur males perceived as belonging to, or being associated with, or supporting rebel armed groups in Deleig and surrounding areas, between 5 and 7 March 2004, by way of the criminal acts listed in Counts 22-30, pursuant to Article 7(1)(h) and Article 25(3)(a) (direct perpetration and co-perpetration) and Article 25(3)(b) (ordering and/or inducing) of the Rome Statute.

PRESIDING JUDGE KORNER: [9:54:42] Yes. Thank you very much, court officer. Mr Laucci, could you please confirm that you've explained the nature of the charges to Mr Al-Rahman and that he has the right to plead guilty or not guilty to all the charges.

MR LAUCCI: [9:55:04](Interpretation) Madam President, that has been explained.

PRESIDING JUDGE KORNER: [9:55:08] Thank you, Mr Laucci.

Mr Al-Rahman, would you rise, please.

Mr Al-Rahman, do you understand the nature of the charges which have been read to you today?

MR ABD-AL-RAHMAN: [9:55:24](Interpretation) I do.

PRESIDING JUDGE KORNER: [9:55:29] Do you wish to plead guilty to any or all of

1 the counts?

2 MR ABD-AL-RAHMAN: [9:55:40](Interpretation) Not a single one. I reject all of
3 these charges. I am innocent of all of these charges. I -- I'm not accused of any of
4 these charges.

5 PRESIDING JUDGE KORNER: [9:55:55] Yes. Thank you, Mr Al-Rahman, you can
6 sit down again.

7 Yes, we'll now move to the opening statement, first of all from the Prosecution,
8 followed by the Legal Representatives for Victims. And then, as I understand it,
9 the accused wishes to make a short address to the Court.

10 Yes, Mr Khan.

11 MR KHAN: [9:56:28] *Bismillah Arrahman Arraheem*, Madam President,
12 your Honours.

13 These are the first few days of the Muslim holy month of Ramadan, in which millions
14 of Muslims throughout the world, including in Sudan, abstain from food and drink
15 between dawn and dusk. They look forward to breaking the fast in the evening, an
16 occasion called Iftar. There has been another fast that they have been partaking, not
17 because of their choice, but is the fast waiting for justice.

18 And from that perspective, this is a momentous day. It is an Iftar of sorts for
19 the millions of Sudanese throughout the world that have been yearning for this day to
20 come and for independent and impartial judges of the International Criminal Court to
21 start a process of deliberations of hearing evidence, weighing evidence to assess
22 criminal responsibility.

23 This of course was the first situation referred to the ICC by the United Nations
24 Security Council on 31 March 2005. This of course is the first trial arising out of that
25 situation, and in a critically important moment, the Council found that the situation in

1 Darfur represented a threat to international peace and security.

2 During the course of this trial, Madam President, your Honours, you will see that was
3 a very prescient and necessary and well-judged determination, with respect, by
4 the United Nations Security Council.

5 The information and the allegations that were in the public domain as of
6 31 March 2005 were legion: rapes against women and girls; children being targeted
7 and attacked and abducted; men and boys, amongst others, being executed and killed;
8 homes being wantonly destroyed; people fleeing with nothing. For many, their lives
9 never to be the same again.

10 On 18 September 2004, the United Nations Security Council formed and established
11 a commission of inquiry to look at the events that were increasingly well known.

12 And in January 2005 they reported, and they found at that time that there had already
13 been, early on, 1 million internally displaced persons and more than 200,000 refugees.

14 And that number, tragically for so many, only burgeoned; it only increased over
15 the coming years.

16 Your Honour -- Madam President and your Honours will hear a whole spectrum of
17 evidence in the course of this trial in support of the 31 charges to which

18 Mr Abd-Al-Rahman, Ali Kushayb, has pleaded not guilty just now.

19 And I'm not going to repeat all of that that my learned colleagues for the Prosecution
20 will say after me, but with your leave I would wish to emphasise children. For far
21 too long, for far too -- far too often, they are the invisible casualties of war, conflated
22 with the civilian population or just ignored. But the effect on them is profound. It
23 was profound and it remains profound and it remains lasting. Seventeen years have
24 gone by and those that witnessed crime, tragedy, haemorrhaging of their family life
25 and their village life and their community life, have grown up. But life is not

1 the same by any metric.

2 An example of the scale of the tragedy for children is evidenced by a number of

3 factors: Firstly, most fatalities amongst the children were those that were under five

4 years of age. The most innocent, the most vulnerable members of humanity. You

5 will hear in the course of this trial, Madam President, your Honours, from many

6 witnesses, and we will do our best as the Office of the Prosecutor to highlight

7 the effect these crimes have had on children and how children were directly targeted.

8 But Witness P-087 gives a flavour of the tragedy that occurred. And I quote what

9 the witness says. You will hear the witness say: "I saw two corpses; one boy was

10 breastfeeding from his mom while she was dead ... they were shot with ammunition."

11 And when the investigator asked for clarification about what he meant, the witness

12 continued: "This little boy was ... his mom was dead and he was breastfeeding from

13 her. His age should be 4 or 5 months."

14 That is simply one example of the human tragedy that your Honours will be listening

15 to in the course of this trial, and adjudicating whether it is true and whether

16 Mr Abd-Al-Rahman is responsible for that and other crimes.

17 Even those that fled didn't leave to safety. So many endured unimaginable hardship

18 trying to flee with their lives.

19 You will hear another mother describing anguish as her 10-month-old child died of

20 dehydration and malnutrition after fleeing from their home. A Witness P-0834 will

21 say, and I quote: "My son of 10 months died while we were in Mukjar. He was sick

22 and while fleeing I could not feed him enough. It was raining a lot and he had

23 diarrhoea. Many children of a young age as well as elderly people and pregnant

24 women died during this time due to the harsh conditions they had to live under."

25 A young man from the village of Kaskeidi describes walking for days after an attack.

1 He was accompanied by terrified women and children.

2 And P-0850 will say, and I quote: "We were exhausted and extremely hungry and

3 thirsty. Our feet were cut and swollen as we were walking barefoot. My clothes

4 were infested with lice. The children could no longer walk, requiring them to be

5 carried. Mothers did not have enough clothes to cover their babies."

6 Again, in a snapshot, Madam President, it shows this caravan of people fleeing an

7 attack, feet cut as they're trying to limp to some kind of safety but an absolutely

8 uncertain, unpredictable future.

9 Your Honours, there's many examples of this. And again I'm raising it deliberately

10 to highlight the plight of families.

11 The next example, P-943, these are not, by any stretch of the imagination, military

12 people, combatants, legitimate targets. P-0943 is a mother that describes in

13 somewhat pathetic terms, if I may be permitted to describe it in those terms, of an

14 inability to provide shelter for the many, many young children that she was travelling

15 with.

16 She says, and I quote: "My family and I spent three days in the forest. It was very

17 hard. It was raining a lot and we had nowhere to go so we stayed under trees.

18 There were Janjaweed behind us and in front of us. At this time, I was with my

19 older sister ... and her six children ... They were all minors and my sister was pregnant.

20 My brother's wife ... and her four children ... were with us. The children were all

21 minors ... My younger brother ... and my mom were also with us."

22 Madam President, this was a modern-day exodus, this creeping tide of humanity,

23 terrified, trying to flee with their lives.

24 As we see around the world today, unfortunately and tragically conflicts, east and

25 west, north and south, it's all too easy to forget why the Security Council referred this

1 matter to this Court.

2 Many watching may not even remember what occurred in Darfur, and for that reason,
3 Madam President, with your leave, I wish to show a montage of different video clips.
4 I'm extremely grateful in fact to my learned friend Mr Laucci for agreeing that these
5 could be played. And I want to emphasise they are not being presented for the truth
6 of their contents. It's not evidence, it's simply to provide context as to what was in
7 the consciousness, what was in the mind of the members of the Security Council that
8 compelled such an eventful referral to this Court.

9 And I'll start, if I may, with a video from Global News, which is a major Canadian
10 broadcast. Now some of these clips may seem to be disjointed, but what they
11 perhaps show is that by the time the Security Council referred the matter, there was
12 ample opportunity, every opportunity, I would say, for those individuals who had
13 guns and arms and aeroplanes to cease and desist, to put humanity first, not power,
14 not politics and certainly not prejudice and persecution, and yet the repeated pleas
15 from a whole variety of actors that you will see in a moment fell tragically for
16 the millions of Sudanese and Darfuris on deaf ears.

17 So perhaps we could play first Global News from 2003.

18 (Viewing of the video excerpt)

19 MR KHAN: [10:09:40] Madam President, your Honours, very briefly we'll move
20 straight to the next clip, it's from Darfur Nine -- Darfur Now. It's a documentary
21 produced in 2007, but it's very clear from the -- from the documentary that the clips
22 we're about to show relate to 2003 and 2004.

23 And perhaps that could be played.

24 (Viewing of the video excerpt)

25 MR KHAN: [10:10:35] I will then seek to show two additional clips. They're

1 prepared in fact by the United Nations Office for Coordination of Humanitarian
2 Assistance in 2004. The first will show just a sample, really a fleeting glimpse of
3 the variety of means used as part of the pogroms against the Darfuri people. You'll
4 see Antonov planes dropping bombs, and then also we'll see from the ground
5 the village and the towns that were affected.

6 And perhaps those two clips could be played now.

7 (Viewing of the video excerpt)

8 MR KHAN: [10:12:17] And, your Honours, you'll see even from those few seconds
9 the bit of the landscape of Darfur, the very often arid ground, the very frequently very
10 simple buildings, and some of the people that -- the Darfuri people that were affected.
11 They have shown for -- well, since antiquity, a remarkable resilience to work that land,
12 to have the stamina to survive in those inclement conditions. What prised them
13 away from their land were not the elements or the soil or the climate, it was
14 a deliberate targeting of them for multiple reasons, but principally in this case you'll
15 hear because of prejudice and persecutionary reasons.

16 It's not just buildings that were destroyed. People's lives were obviously. And
17 your Honours will have the opportunity of hearing in the course of this trial from
18 Darfuris themselves, and you will assess, of course, what has hit me every time I've
19 interacted with Darfuris, and actually survivors throughout the world, is their dignity
20 and remarkable resilience.

21 This can be expressed in many different ways, but the clip I'm going to show you
22 from a BBC Panorama documentary called The New Killing Fields in November 2004
23 shows but one example of a very dignified and collected lady who has endured awful,
24 awful things already. And I'll ask you to watch out, you'll hear two words in this
25 clip in Arabic, the subtitle underneath it, *abid abid*. You'll hear it in the openings of

1 my learned friends that follow me, *abid* meaning slave. And the feeling that she
2 enunciates that because she's black she's viewed as less by those that were targeting
3 her. Her life did not have value and that reason alone, the colour and the ethnicity
4 was a reason to extinguish life from her and her communities.

5 And perhaps that Panorama documentary clip could be played now. Thank you.

6 (Viewing of the video excerpt)

7 MR KHAN: [10:15:27] The things, matters did not abate, and people fled internally
8 in Sudan but also in refugee camps. For example, in Chad. And the next clip in
9 fact is from the Touloum refugee camp on the border of Sudan but inside of Chad.

10 And many that will be watching these proceedings around the world, a good number
11 of them will be in those camps even today.

12 And I'd ask that that clip please be played.

13 (Viewing of the video excerpt)

14 MR KHAN: [10:16:46] So gradually the murmurings that had been heard around
15 the world and the whispers that something was not right, the broadcasts that
16 journalists had brought to international attention finally started penetrating even
17 the corridors of power, even the highest echelons of the United Nations.

18 And the clip that we'll show in a moment, we'll see the former late Secretary-General
19 of the United Nations Kofi Annan on 25 June 2004 talk -- underlining that what was
20 occurring appeared to be universal crimes and that those that were committing them
21 were put on notice that there would be accountability for what was taking place.

22 Unfortunately, the dove of peace that you'll see on his lapel was really more a prayer,
23 it didn't land in his lifetime and it hasn't landed today. But I think this process and
24 this trial, in addition to its core responsibility for your Honours to assess the strength
25 of evidence and whether or not liability is established, it is an important moment in

1 trying to wake peace from its slumber and move it, mobilise it into action.

2 But perhaps that clip could be played. Thank you.

3 (Viewing of the video excerpt)

4 MR KHAN: [10:18:45] Again, those words fell on deaf ears and a few months later,
5 three months later, the Security Council again became seized of the Sudan situation.

6 And the next clip is from the British permanent representative -- the then British
7 permanent representative to the United Nations, Ambassador Emyr Jones Parry.

8 And he emphasises that clearly there's widespread violations of international
9 humanitarian law, that it emerged, that a commission of inquiry was required to
10 establish the facts, and that violations of IHL required justice.

11 And perhaps that could be played, please.

12 (Viewing of the video excerpt)

13 MR KHAN: [10:19:57] By this time, casting our mind back, the ripples of concern
14 had become much more of a movement. Civil society was engaged, celebrities,
15 actors, politicians, everybody in so many parts of the world realised action was
16 needed. And many leaders -- for example, the next clip is from the former foreign
17 minister of Germany, Joschka Fischer, highlighting - because there's no
18 abatement - the time had come to ensure that those who were found guilty would be
19 brought to justice and punished.

20 And perhaps that bit could be played, please.

21 (Viewing of the video excerpt)

22 MR KHAN: [10:20:50] There's no sound on this, but this is -- this was what was
23 reported. Also, great significance is the fact that the UN Independent Commission
24 of Inquiry has taken up its work of investigating the severe human rights violations in
25 Darfur. Injustice must be exposed and criminals must be punished.

1 The commission of inquiry gave its report in January 2005. Again, no abatement, no
2 secession of violence. And we see then within a couple of months, the end of
3 February, 28 February 2005, the High Commissioner for Human Rights herself,
4 Louise Arbour, speaks to this very matter. And perhaps that -- that clip could be
5 played, please.

6 (Viewing of the video excerpt)

7 MR KHAN: [10:22:10] So there we are. Situation such, an unwillingness to stop, an
8 unwillingness to comply with the norms of customary international law, the basic
9 requirements of international humanitarian law. And we have the High
10 Commissioner for Human Rights realising the ICC is a court of last resort and that
11 tragically, in her view, we had reached the end, that the only option was referral.
12 And this brought the Council into action on 31 March 2005.

13 And that's the last clip which was -- well, if that could be played, please.

14 (Viewing of the video excerpt)

15 MR KHAN: [10:22:59] So there we have it. Resolution 1593, the Security Council
16 bound together what they did in 1992 in establishing the ICTY, and 1994 the ICTR, in
17 deciding that justice was an important aspect to maintain international peace and
18 security in referring this grave matter to this Court.

19 Eleven countries voted in favour of that resolution. And if I may be permitted just to
20 read those out, Argentina, Benin, Denmark, France, Greece, Japan, Philippines,
21 Romania, the United Kingdom, Republic of Tanzania. And I think it's to the very
22 great credit that the only permanent member of the Council that is not a State Party,
23 namely, the Russian Federation, voted in favour of this referral.

24 The Russian Federation in 2005 voted in favour of justice. And whilst Algeria, Brazil,
25 China and the United States abstained, in their statements they spoke in favour of

1 the Court.

2 No country, not one, voted against this resolution.

3 So I think it was clear by any -- from any vantage point that the referral was thought
4 a very good thing to get to the truth and to try to improve the situation.

5 Over these 17 years, I think the victims I've spoken to, even before I became
6 Prosecutor, have had really remarkable patience. And very often I find unbelievable
7 belief that justice would come even in moments when it seemed an absolutely vain
8 hope.

9 In my view, Madam President, your Honours, this trial will begin to vindicate
10 the decision of the Security Council to refer this matter to your Honours and to this
11 Court.

12 Now if I may be permitted to zoom in a little bit on the case regarding
13 Mr Abd-Al-Rahman.

14 Mr Abd-Al-Rahman, also known as Ali Kushayb, was a member of the Janjaweed.
15 And one of the cornerstones of these -- the brutal counterinsurgency campaign that
16 the Sudanese government embarked upon was by relying hand in glove, in cahoots
17 with the Janjaweed or Arab militia.

18 Now the word "Janjaweed" comes from two root words in Arabic. *Jinn*, which is
19 the hidden or the unseen, and *ajawid*, which is horse. And in common parlance very
20 often Janjaweed are referred to as devils on horseback.

21 They were known -- their signature movement was riding horses or camels and
22 coming in very frequently in morning attacks, very often at dawn, attacking villages,
23 killing and destroying, and committing some of the crimes that are alleged in
24 the charges before you.

25 One witness recalls a morning, a little bit later, not at the morning prayer, but about

1 9 o'clock, Witness 7, 007. And Witness 007 says this:

2 "At about 9 o'clock -- 0900 hours, the Janjaweed and government soldiers attacked
3 the town from the east. I was in my house with my wives and children when they
4 arrived. ... The Janjaweed were on horseback and camelback. Some of the Janjaweed
5 were on foot. They started firing randomly."

6 And during the course of the trial, the Prosecution, members of this team and perhaps
7 others, will ask these witnesses what affect that had on them. What was the effect,
8 what was the trauma, if any, that that experience by itself, even before we get to
9 killings and rapes and destruction of property, what did that have -- what effect did
10 that have? These morning attacks, when you're awoken from your slumber or
11 interrupted in your prayers, what effect did it have or does it have on them?

12 Mr Abd-Al-Rahman, the Prosecution say, is one of the key senior Janjaweed/militia
13 leaders that the Government of Sudan relied upon heavily, that they worked with
14 closely. He was, the Prosecution say, a willing and knowing participant in crimes.

15 And indeed you'll see, not by way of rhetoric, but from the actions and the evidence
16 that will be led, you will see that he took pride in the power that he thought he
17 exerted and the authority that he had, and a strange glee in a feared reputation.

18 You will hear evidence, your Honours, that his forces and himself rampaged across
19 different parts of Darfur, Wadi Salih, Mukjar localities in West Darfur, inflicting
20 severe pain and suffering on women and children and men in the villages that he left
21 in their wake or displaced, and in also Kodoom, Bindisi, Mukjar and Deleig. And
22 my colleagues, learned friends after me, will address you on those.

23 The attacks really were against the Fur people, the Fur villagers, at their places. And
24 the executions, the sexual and gender-based crimes, the crimes against children and
25 the underlying persecutory intent in so much of this really is the bedrock

1 underpinning this case and is brought to life in some way at least, however
2 imperfectly, in the 31 counts that your Honours will determine in due course.
3 Rape was frequently and deliberately inflicted. It wasn't the odd individual
4 committing criminality. It is clear it was deliberately inflicted as part of the attacks
5 against the civilian population.
6 One witness you'll hear said it was very common. But an example of it, and an
7 example of the consequences of it in any culture anywhere in the world, but in Darfur
8 will be brought to life by P-0015. And that witness will say, and I quote: "Some of
9 the women and girls who were raped during the conflict attempted suicide." She
10 adds, and I quote: "In my community, a girl who has been raped has no value."
11 And we see this very often. The individual is targeted, and particularly with
12 the crime of rape, they're targeted. And had -- have this crime inflicted upon them
13 immediately in the situation. But it has a consequence that is well known in
14 different cultures, that the victim is then far too frequently ostracised, separated and
15 cut asunder even from the wider family.
16 The same witness describes that how during an attack on Bindisi, that one Janjaweed
17 member came on his -- literally on his high horse and forcibly picked up a girl of
18 15 years of age, put her on the back of the horse and rode away. She describes also
19 that the Janjaweed and *asakir* - and *asakir*, you'll hear in the course of the trial, are used
20 to denote those members of the security forces or law enforcement personnel of
21 Sudan that are wearing uniforms - that they had preselected between 10 to 15 girls
22 and women. And she says that they took them to a location, and then I think what
23 comes next should be read verbatim, with your leave, Madam President.
24 The witness says: "The Janjaweed and *asakir* tore off the inner clothes of these girls
25 and women" so that "by the time the girl and women were on the ground she was

1 naked."

2 And the witness continued that "in the case of young girls, they were held down by
3 one of them while another worked on her."

4 "Worked" being, you know, her -- the witness's own terminology.

5 She continues that if the victim "seemed strong or resisted" she was "held down by
6 two" instead of one. One by the legs and another by the chest and a third "worked"
7 her. The man "working", a euphemism for raping, and that's clear in the evidence
8 that you'll hear. The man raping "raised up his *jallabia*", took off her
9 underwear -- took off his underwear and then raped.

10 Madam President, in this witness's account that you will hear and your Honours will
11 hear, the women and girls being raped, that 10 to 15 group, down by where
12 groundnuts were being kept, included a mother and her two daughters. And all
13 the girls that were raped were between 15 to 18 years of age. All of the girls raped
14 were being -- were between 15 to 18 years of age. They had so much to look forward
15 to before the -- before the events that were inflicted upon them. And the sole
16 exception to those between 15 to 18 was one mother of two girls who was about 30 or
17 40 years of age.

18 Madam President, unfortunately there's many accounts of this and we will do our
19 best efforts, given where we are in proceedings, to highlight cases of sexual and
20 gender based crimes to the best of our ability so your Honours can determine
21 relevance and the responsibility of Mr Abd-Al-Rahman and also understand
22 the depth of suffering that has been caused.

23 Not even infants were spared brutality in the attacks in Kodoom and Bindisi. One
24 witness describes that on the attack on 16 August 2003, another woman called Fatma
25 had a baby on her back. A Janjaweed on horseback asked her to put it down and she

1 refused. And when he took the baby and lifted the child, the little infant up and saw
2 it was a boy, he threw the child in the air and it landed about a metre, perhaps
3 a metre and a half from where the witness was standing.

4 She will describe, and I quote in fact her statement, that "When the child hit
5 the ground he laid there without breathing; an old woman picked him up and he
6 started breathing slowly. All the women started shouting for help and were saying ...
7 God help me."

8 Within Mukjar, you will hear in the course of the opening and throughout the trial,
9 a tale of woe and despair and hardship within the cramped, squalid confines of the
10 Mukjar police station. And you will hear evidence from multiple witnesses how
11 they had to squat almost cheek to jowl, they had to defecate where they stood or
12 where they squatted. They were not -- it was very hot and overcrowded and
13 the stench was overwhelming.

14 One witness put it in this manner, and I quote: "People were stacked on top of each
15 other. They were Fur, Fur with black skin, ... just crammed into the cell ... The cell
16 had [hardly] any air and it was very hot."

17 And another witness describes that it wasn't just a random Janjaweed, it wasn't just
18 uniformed members of the Sudanese security forces that were inflicting these
19 conditions on them. It was, the witnesses say, Mr Abd-Al-Rahman, Ali Kushayb
20 himself. He was not remote. He was an active participant.

21 And one witness, P-0919, describes that whilst at that station Ali Kushayb was
22 beating the *umdahs*, the elders, and you'll hear quite some evidence of that, the elders
23 being particularly targeted as if to break the will, the honour and the cohesion of
24 the community.

25 Another will describe -- another witness will describe how Ali Kushayb's men

1 shaved -- forcibly shaved, I should say, two detainees with knives to the scalp,
2 thereby injuring them. And he watched and saw three detainees have their ears cut
3 off in front of his eyes, their ears fall to the ground, and profuse bleeding of course
4 naturally occurred. He says -- the witness says that he didn't know what happened
5 to those three but states he didn't see them later. The detainees were just crying
6 because it was unbearable and Ali Kushayb then left the cell.

7 The Prosecution say he was there. He was not passive, but an active participant.
8 And unfortunately for P-919, he was not a spectator to the misery of others, he didn't
9 only have the misfortune to see those beatings, those ears being cut off, but he himself
10 had a hot iron taken to his skin as part of an interrogation and he was burnt. And he
11 will describe in the course of this trial, Madam President, how the Abu Taira, who are
12 an organised central reserve force of the Government of Sudan, tried to interrogate
13 him and ask him about the *tora bora*, the rebels, and he said he didn't even know what
14 the *tora bora* were, he didn't even know that that phrase meant rebels. And he was
15 terribly treated and he says many others in that cell were inflicted with that hot iron
16 and they had burns, either on their shoulders, on their thighs or on their back.

17 And in the course of this trial, Madam President, your Honours, you will see, you will
18 see some of these burns, you will see some of the marks that the Prosecution allege
19 Ali Kushayb, Mr Abd-Al-Rahman, sitting in this courtroom, inflicted with his axe on
20 the precious skin of the witnesses that you will see and hear about.

21 There was a wanton disregard for basic humanity.

22 We've heard and you will hear in the course of this trial examples of deliberate
23 targeting. We've talked about rapes, but deliberate targeting of *umdaahs*, the senior
24 members, the leaders of the community.

25 And as an example that Witness 0129 will give, that he was sitting and he was hit

1 with the handle of Mr Ali Kushayb's, Ali Kushayb's axe, "We were ... sitting on the
2 floor [and he was] hitting us." And there was an *umdah*, Yahya, an elderly Fur leader,
3 and there was a small child sitting next to -- next to *Umdah* Yahya, and when Ali
4 Kushayb brandished his cold axe and it hit *Umdah* Yahya, it either intentionally or
5 recklessly also hit that child.

6 That was not, of course, the only child victim in Mukjar. In a really chilling episode,
7 your Honours will hear evidence of a roadside execution where it's said the accused
8 ordered the killing of five children aged between 10 to 12 and also their religious
9 teacher.

10 This is Witness P-0905, who describes that there was a *sheikh*, who were students in
11 his *Khalwa*, in his Koranic school, and when the Janjaweed came and
12 Mr Abd-Al-Rahman came, they were shaking. His words were, "the young ones,
13 they were scared, they were shaking, shaking." And this *sheikh* said, "... I am not
14 scared of death. You can kill me. But these five children, they are poor ... they are ...
15 my responsibility, and they're orphans." And despite that, your Honours will hear
16 evidence that those children were shown no mercy, but were killed.

17 The *sheikh* saw that and knew he was going to be next and asked if he could say two
18 *rakats* of Nawafil, two *rakats* of prayer, two movements of prayer. Witness 905
19 explains that he was permitted by Mr Abd-Al-Rahman to perform those two *rakats* of
20 prayer and then continues, and I quote: "The religious man, he finished his two *rakats*,
21 he finished his prayer, they finished with him."

22 Your Honours, there's so many examples of abuse, not just using his axe, not just
23 killing people or ordering the execution of children or -- or men, allowing rapes and
24 participating in all of the allegations that are charged and are before you, but just
25 really beastly abuse.

1 An example is given by P-976 regarding detention in Mukjar, and *Umdah* Yahya
2 Ahmad Zarruq's name was called, in the presence of the accused, the *Umdah* Yahya
3 Ahmad Zarruq came forward, and the evidence you will hear is that
4 Mr Abd-Al-Rahman called him -- Ali Kushayb called him a criminal, to which
5 the *umdah* just had the temerity or the honour to shake his head. And because of that,
6 it seems Abd-Al-Rahman struck him on his head with an axe. The *umdah* fell to
7 the ground, understandably, perhaps, unable to stand, and as Ali Kushayb, as
8 Mr Abd-Al-Rahman was walking past, he pulled his ears, this aged *umdah's* ears, and
9 said, "I'm going to ride the donkey. I'm going to ride the donkey."
10 This dehumanising, debasing, unacceptable treatment was not limited, of course, to
11 Mukjar. It's seen in almost all of the locations. P-907 describes how in Deleig men
12 were lying on the ground on their stomachs in front of the police station in a square
13 and that he was also asked to lie down.
14 When one detainee said to Mr Abd-Al-Rahman: Who are you to force us to lie down
15 supine on the ground? Mr Abd-Al-Rahman answered, "I'm the one in charge here, I
16 do whatever I want" and struck the detainee with his axe.
17 The witness describes the bleeding and also that Ali Kushayb, not -- not sufficient
18 perhaps to be standing on them lying, literally trod on their rights, trod on their
19 dignity by treading on their backs.
20 And that's not just a lone witness, Witness 671, 0671 also saw Mr Abd-Al-Rahman
21 standing on some prisoners and kicking them, deliberate, targeted debasing treatment
22 to humiliate, to break will.
23 The Witness 907 stated, "I have never heard about such treatment, no one does that
24 anywhere in the world."
25 The impact on children really can't be emphasised enough, Madam President,

1 your Honours. We've seen examples or heard examples already in my opening
2 regarding infants assaulted in Bindisi, how children were shot and killed in Mukjar.
3 But I think if I may be permitted just to highlight a few examples of the very real
4 trauma, heartbreak and anguish that we say the conduct of this accused wrought
5 deliberately on these children.

6 P-0955 was about 15 years of age at the time. Sudanese, Darfuris, like most kids in
7 the world, love soccer, they love football. But instead of having memories of playing
8 football with his friends and having a normal life that his family would have expected,
9 he describes seeing his father detained in a vehicle after he was arrested in Deleig.

10 Perhaps knowing or sensing what was to come, he states this, and I quote: "My
11 father looked over in my direction and made eye contact with me. On seeing me, he
12 became emotional and we both started crying. ... That would be the last time I was
13 able to see my father alive."

14 Another witness, P-0714, gives a vivid account, in my submission, and your Honours
15 will hear it for yourselves, regarding fleeing from his home in Taringa in 2003. After
16 the Azan was called, the call to prayer before Fajr prayer time, he states this:

17 "I was in bed and my father was awake and washing to prepare for prayers. The call
18 to prayer was always around 4 a.m. and this was happening when I heard gunshots ...
19 My father shouted to the family to get up ... I came out of our home and saw flames
20 around the village. I heard people screaming and shouting and saw them running in
21 our direction. The gunshots appeared to be coming from many directions ... I was
22 scared and it was a chaotic situation. I saw the Janjaweed firing their weapons [and]
23 I escaped and heard the gunfire."

24 But like many, and almost every witness will have a story, Madam President,
25 your Honours, in the immediate aftermath the terror didn't stop, because the witness

1 then states, fleeing for his life: "We stayed in the mountain for about two weeks and
2 survived on some flour that had been brought along. For the two weeks in
3 the mountain I heard continuous gunfire around the area."

4 And the longer term damage is also synthesised and brought into stark relief by this
5 witness, because he states very clearly, and I quote: "Because of the conflict and
6 insecurity in my area, I could not continue my education further."

7 So those that think whilst the temporal scope of the charges may not be expansive,
8 the consequences have been extremely expansive. They continue for far too many
9 right to the present day.

10 One mother, P-011, describes this reality. Because of criminality, the Prosecution say,
11 because of the knowing and deliberate actions of the accused in this case, along with
12 others, this witness had to flee. And she says, and I quote: "The conflict in Darfur
13 also split up my family [...] now my mother and son are in Darfur while I am in Chad.
14 I am constantly thinking about them and I am only able to communicate through
15 the Red Cross system which is very slow. It is also very painful to see your relatives
16 humiliated and detained for no reason. I know I have to be brave in [the] refugee
17 camp to cope with life otherwise I [...] lose everything."

18 Another witness, P-671, a teenage boy, again a child, describes the lasting pervasive
19 trauma of seeing his father and other brother arrested in Deleig and then finding their
20 executed bodies on the ground and then burying them. Nobody, and certainly no
21 teenage boy, should have to endure that, in the submission of the Prosecution.

22 The witness states, and I quote: "The images I saw stay with me and cause me severe
23 nightmares. I try not to think about what happened to my brother and father but
24 when I do it makes me extremely [sad]."

25 And this story is - is replicated. It's -- they are samples, they are specimens of

1 a much wider issue of the various communities. And many of those individuals
2 grew up in refugee camps like the Kalma camp and others.

3 Your Honours, this is not, in my respectful submission, a complicated case. It's not
4 a case of command responsibility where the military superior or civilian, you know,
5 the military commander or the military superior is far removed from the battlefield.
6 It's a case where there is multiplicity of evidence from different sources that
7 the accused killed, he ordered, he encouraged a full range of crimes, the full range of
8 crimes that are before your Honours, he participated and he ordered.

9 It seems his defence is, "It's not me." And when you hear in a moment my learned
10 friend, Julian Nicholls, we'll see -- you'll hear some additional arguments that will be
11 presented in the course of the trial, additional evidence will be foreshadowed that will
12 be led, and your Honours will determine whether or not that is a -- a true position or
13 an insult to the truth.

14 Witness after witness saw him, heard him, recognised him. Witness after witness
15 knew Mr Abd-Al-Rahman from before. This is, the Prosecution say, a strong case.
16 But we are confident that when you have heard all the evidence and assessed
17 the submissions and questions from the Defence, you will be satisfied so that you are
18 sure that you will be able to convict Mr Abd-Al-Rahman.

19 I'm very cognisant, Madam President, your Honours, that here we are in our robes
20 thousands of miles away from Darfur, with wonderful technology in front of us, in
21 a new court building. And this seems very alien. This seems very far removed.
22 And it is in truth very far removed, in every sense of the word, from the reality that
23 many Darfuri victims, survivors, are living in today, either in refugee camps in Chad
24 or internally displaced people in Sudan, or the diaspora trying to assimilate as best
25 they can as foreigners fleeing in their life from different countries.

1 But at the same time, with your leave, Madam President, I wish to emphasise that
2 they're not forgotten. I think they are very much in our collective mind's eye today.
3 And I'm confident that they will be heard and they will be listened to by
4 your Honours, and your Honours will see what took place through their eyes and
5 objectively. And after hearing all the evidence, in my respectful submission, there
6 will be only one outcome.
7 This is really the end of my part of the opening speech.
8 Perhaps I can just outline the structure.
9 Senior trial attorney, Julian Nicholls, will present next on the identity of the accused.
10 I think each of my learned friends for the Prosecution will take about 30 to
11 40 minutes.
12 He will be followed by Mr Edward Jeremy, who will discuss and present two topics,
13 the contextual elements of war crimes and crimes against humanity. And then
14 secondly, the accused's position of authority and influence.
15 He will be followed by Ms Melissa Simms, who will join us after the break, and she'll
16 present the crimes committed in Kodoom and Bindisi and the surrounding environs.
17 And then Mr Pubudu Sachithanandan will speak to two issues, crimes in Mukjar and
18 its surrounding areas, and charges of persecution in relation to all of the charged
19 episodes, whether it's Kodoom, Bindisi, Mukjar or Deleig.
20 And then finally, Ms Alison Whitford will present on the crimes in Deleig and
21 surrounding areas.
22 In my respectful view, this situation, this case that your Honours are going to hear,
23 that Madam President you will preside over, is precisely the type of situation,
24 precisely the kind of case for which this International Criminal Court was created.
25 In my respectful submission, this is precisely the kind of situation that

1 the Security Council should have referred, and they should be proud that they did, in
2 furtherance to the UN Charter. With the bringing and starting of this case, and by
3 the end of this trial, I'm confident that the first few drops of justice will land on what
4 has hitherto been a desert of impunity in Darfur.

5 With that, with your leave, I would like to cede the floor to Mr Julian Nicholls.

6 Thank you so much.

7 PRESIDING JUDGE KORNER: [10:56:53] Yes, thank you, Mr Khan.

8 In fact, with perfect timing we've reached the break. And so we'll take the break
9 now and sit again at 11.30, when Mr Nicholls can take over.

10 MR KHAN: [10:57:09] Thank you.

11 PRESIDING JUDGE KORNER: [10:57:10] Thank you very much. Yes.

12 THE COURT USHER: [10:57:11] All rise.

13 (Recess taken at 10.57 a.m.)

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

15 THE COURT USHER: [11:31:22] All rise.

16 Please be seated.

17 PRESIDING JUDGE KORNER: [11:31:44] Yes, Mr Nicholls.

18 MR NICHOLLS: [11:31:46] Thank you, Madam President, your Honours.

19 Let me now turn to the accused.

20 The man sitting there, Mr Abd-Al-Rahman, is Ali Kushayb. He is the Janjaweed
21 leader in West Darfur, in Wadi Salih and Mukjar localities, who was widely known
22 by his nickname Ali Kushayb throughout 2003 and '04 and as well before and after
23 that period.

24 He now denies that his name is Ali Kushayb. He disputes that Ali Kushayb even
25 existed. But there's no mistake. The evidence will show that it is Ali Kushayb in

1 the courtroom finally facing trial.

2 What do we know about his background?

3 Well, first, he was born in Rahad Al-Berdi, South Darfur, in Sudan. He's a national
4 of Sudan from the Ta'aisha tribe. He was a member of the Sudanese Armed Forces,
5 or SAF, up until around the middle 1990s, and when he was in that army he was part
6 of the medical corps.

7 Upon retirement from the SAF, he opened a shop in Garsila where he sold medicine.

8 And by at least 28 July 2005, the accused was affiliated with
9 the Central Reserve Forces, or CRF.

10 And each of those facts that I have just gone through or put on the screen are agreed
11 with the Defence.

12 I'll go through now just some of the evidence from many sources, just some of it,
13 which we will bring to this Court in the trial that establishes that Abd-Al-Rahman is
14 Ali Kushayb.

15 These sources include: First, the accused's own conduct; second, evidence from
16 witnesses, many witnesses who knew the accused before, during and after the conflict
17 by his legal name Ali Muhammad Ali Abd-Al-Rahman and also knew him by his
18 nickname Ali Kushayb; and third, facts shared by the person widely known as
19 Ali Kushayb, the notorious Janjaweed leader who owned a pharmacy in Garsila and
20 the accused who owned a pharmacy in Garsila.

21 And witnesses also speak of Mr Abd-Al-Rahman and Ali Kushayb, that person
22 having a position of authority in the Janjaweed.

23 I'll run through just a few examples of this type of evidence now.

24 Conduct: The conduct of the accused confirms that he is the Janjaweed leader
25 Ali Kushayb.

1 How did the accused end up here in the courtroom with us today? He voluntarily
2 surrendered on a warrant issued for a suspect named Ali Muhammad Ali
3 Abd-Al-Rahman ("Ali Kushayb"). The date of that warrant as, Madam President,
4 you said in the beginning, 27 April 2007.

5 The Chamber wrote in issuing that warrant that it "Hereby issues", quote, "a warrant
6 of arrest for Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb" end
7 quote.

8 To surrender on that warrant, issued in his legal name and clearly the alias
9 Ali Kushayb, the accused voluntarily travelled secretly through the jungle, across
10 the border from Sudan into the Central African Republic. He wasn't arrested at
11 a police checkpoint, no helicopter swooped down and arrested him. He came to
12 surrender to the Court.

13 The Defence states that that surrender was difficult and dangerous.

14 And when he surrendered - this is in our trial brief at paragraph 9 - when he
15 surrendered he never once contested to the representatives of the Court, who were
16 there to meet him, nor to the Central African Republic authorities that he was
17 Ali Kushayb. He had duty counsel, he had an interpreter, he never contested his
18 identity.

19 There's also evidence that the accused was known by the nickname Ali Kushayb in
20 official documentation issued before the first ICC arrest warrant for his arrest in 2007.
21 Back in 2006 he was interviewed in Sudan, in Khartoum by the Sudanese authorities
22 who were investigating events in Darfur. In that interview the accused was referred
23 to by the authorities by his legal name, Ali Muhammad Ali Abd-Al-Rahman, and
24 clearly by the nickname or alias Ali Kushayb.

25 And if we could take a look at that interview from November 2006 by

1 the Government of Sudan, the interview record begins:

2 "In accordance with the instructions of the esteemed Deputy of the Ministry of Justice,

3 I undertake the questioning of Ali Muhammad Ali Abd-Al-Rahman (Kushayb) over

4 the incidents pertaining to the conflict in Darfur, as follows:" And then we see

5 the name of the person being interviewed: "Name: Ali Muhammad Ali

6 Abd-Al-Rahman (Ali Kushayb)."

7 This interview continues to refer to the person being interviewed as Ali Kushayb as

8 the questioning continues. When the interview is continued on a following day,

9 the interviewer states, if we could bring that up, Claire: "We are continuing

10 the questioning of Ali Kushayb." Refers to him directly by his nickname.

11 At the conclusion of this interview conducted over more than one day, the accused

12 signed this statement with his legal name, the statement which clearly identified him

13 with the alias Ali Kushayb. He signed that statement at the conclusion after

14 correcting parts of the statement from the questioning the day before.

15 And in addition to the name and nickname, this 2006 interview contains several

16 details about the person being interviewed, Mr Abd-Al-Rahman, also known as

17 Ali Kushayb, which match agreed facts concerning the accused: His membership in

18 the CRF, agreed fact 13; that he had a pharmacy in Garsila, agreed fact 11; his place of

19 birth, agreed fact 7; and his belonging to the Ta'aisha tribe, agreed fact 4.

20 So just to summarise the evidence from his own conduct: The accused undertook

21 a difficult, dangerous covert journey across the border from Sudan to the Central

22 African Republic to surrender; he surrendered on an arrest warrant captioned for

23 a suspect with the alias Ali Kushayb; and over 15 years ago in 2006 signed a statement

24 taken by the Government of Sudan which included the alias Ali Kushayb.

25 I'll move on now to witnesses in the case.

1 Many knew the accused during the relevant period and they will testify that
2 Abd-Al-Rahman was known by his nickname Ali Kushayb.
3 These include: P-769, who states that "Ali Muhammad Ali Abd-Al-Rahman is also
4 known as Ali Kushayb."
5 P-0117, "Ali Muhammad Ali Abd-Al-Rahman ... ha[d] the nickname of 'Ali Kushayb'."
6 P-012, "Ali Kushayb's ... real name is Ali Muhammad Ali."
7 P-643, "Ali Kushayb is more a title than his actual name ... I knew him to be Ali
8 Muhammad Ali."
9 P-0926, who often saw Ali Kushayb, and states, "... the name Kushayb is a nickname ...
10 [his] real name is Ali Mohamed Abdoul Rahman."
11 Again, your Honours, this is really just a sample. There will be more witnesses who
12 testify along the same lines at trial. Many more.
13 Also consider, since the accused's surrender nearly two years ago, the heavy publicity,
14 social media and other media reports surrounding his arrest, the public court
15 hearings, the confirmation hearing which was widely viewed in Sudan, not a single
16 witness, not a single victim has come forward and said, "This is the wrong man, this
17 isn't Ali Kushayb." To the contrary, witnesses who knew the accused during
18 the conflict immediately recognised him when his surrender and arrest were made
19 public.
20 643, P-0643 saw television coverage of the proceedings at the ICC and he instantly
21 recognised the accused as the Janjaweed leader he knew as Ali Kushayb.
22 P-0868 also recognised the accused as Ali Kushayb in a report aired soon after his
23 arrest.
24 Other witnesses who knew the accused well, who had known him for a long time,
25 who were familiar with him recognised and confirmed that a 2006 photo of

1 the accused, the person with us in the courtroom, is Ali Kushayb.

2 And we can bring that up, please, Claire.

3 P-0994, who knew the accused very well from before the start of the conflict and for

4 more than 20 years. P-874, who knew Mr Abd-Al-Rahman since 1991. P-1021, who

5 had known him prior to 2003. P-0885, who had known Mr Abd-Al-Rahman since

6 1984. All of them recognised the 2006 photo of the accused as Ali Kushayb.

7 I'll discuss now the pharmacy owned by the accused in Garsila during the relevant

8 time period and its -- its significance.

9 Now the Defence stated in the confirmation hearing, that was on 25 May last year at

10 page 84, that the accused sold medicine from his pharmacy in Garsila at the time of

11 the events. It's an agreed fact that he sold medication from his shop, which was

12 situated near the Agricultural Bank in Garsila. It's agreed facts 11 and 14.

13 And many witnesses, again I'm only going to show a few, will testify that the man

14 they knew as Ali Kushayb owned a pharmacy in Garsila.

15 P-0935, "Ali Kushayb was a retired soldier, who had started a pharmacy at the local

16 market in Garsila following his retirement."

17 P-0990, "Ali Kushayb's pharmacy was the only one located near

18 the Agricultural Bank."

19 P-878, "Ali Muhammad Abd-Al-Rahman Ali, better known as Ali Kushayb ... retired

20 from the military as a warrant officer ... and started a pharmacy selling veterinary

21 drugs."

22 And as I said, there will be much more similar evidence from the accused -- from

23 witnesses, excuse me, on that pharmacy owned by the accused.

24 Other witnesses also make clear that the accused they knew by his legal name, who

25 they also knew by the nickname Ali Kushayb, was a leader of the Janjaweed. These

1 include P-0012 and P-0643.

2 And just for example, P-0012 states: "Ali Kushayb, whose real name is Ali
3 Muhammad Ali, was the *agid al-ogada* for the whole of Wadi Salih."

4 Your Honours, I've briefly outlined just some of the evidence we will lead at trial on
5 this issue, but there is no doubt, there is no room for doubt. The accused in the
6 courtroom with us today, Mr Abd-Al-Rahman, is the Janjaweed leader known as
7 Ali Kushayb.

8 I'm now going to talk briefly just for a few minutes about the chronology of
9 the incidents in this case and some of the evidence we will lead to prove the case
10 before we continue.

11 As the Prosecutor has stated, this case is about crimes against humanity and war
12 crimes in the Wadi Salih and Mukjar localities in West Darfur state, Sudan, in
13 the period relevant to this trial, August 2003 through April 2004.

14 During these months the armed forces of the Government of Sudan and
15 the Janjaweed attacked villages inhabited by civilians, burned and looted homes and
16 businesses, beat, tortured, raped, murdered, persecuted and forced the civilians who
17 lived in these two localities from their homes.

18 And you'll see that the majority of the victims of the crimes in this case are from
19 the Fur tribe, the Fur community of this region.

20 Let me show you quickly, if I can, a map of the area where the crimes were
21 committed.

22 First Sudan, and this shows the boundaries as they existed in 2003 and 4, which have
23 changed since then.

24 Next, we'll zoom out on the map of Darfur to the west and again zoom in on the state
25 of Western Darfur, which is the state where our crimes were committed, we say.

1 And you can see in the south the two localities, Wadi Salih and Mukjar localities.

2 And just for some reference when looking at this map, West Darfur had a population

3 at the time of approximately 1.7 million, the majority of whom were Fur and Masalit.

4 And when you see Wadi Salih in the box, in the rectangle within the map on the left,

5 that those two localities comprise approximately 1400 square kilometres. So that,

6 that is the setting for the crimes in this case.

7 And I'll give just a very brief background now to the armed conflict.

8 In 2003 the Government of Sudan was facing a serious problem, a serious armed

9 rebellion in Darfur. The Government of Sudan facilities, personnel were attacked by

10 rebel groups.

11 Two main rebel groups were the Justice and Equality Movement, or JEM, and

12 the Sudan Liberation Movement/Army, or SLM/A.

13 These rebel groups largely drew their members from certain tribes, the Fur, Masalit

14 and Zaghawa, in Darfur.

15 Two notable rebel attacks that you'll hear about during the trial, a very famous attack

16 25 April 2003, a coordinated attack on the airport at Al Fasher in North Darfur. But

17 much closer to home for this case, in July and August 2003, rebel attacks on

18 Government of Sudan personnel and facilities, including, in particular, police stations

19 in Bindisi and Mukjar. And you will hear evidence of the response to those attacks

20 in Bindisi and Mukjar.

21 The Government of Sudan responded to these attacks with a plan to crush

22 the rebellion and this resulted in a non-international armed conflict in Darfur. And

23 we have agreed that fact with the Defence. It's agreed fact 1.

24 However, the Government of Sudan response and plan also incorporated and relied

25 on a brutal attack on the civilian population in Darfur. The Fur, Masalit and

1 Zaghawa people were perceived as supporting the rebels. And the Government of
2 Sudan, in addition to its regular armed forces, decided to deploy the Janjaweed,
3 largely drawn from Arab tribes, in order to supplement its regular armed forces. In
4 the state policy of the Government of Sudan you will see expressly included the use
5 of these Janjaweed forces in the conflict.

6 We set this out in our brief at paragraphs 51 to 52, where we state -- I'll just read just
7 one part:

8 "The attack against the civilian population was not spontaneous or isolated acts of
9 violence. Rather, the attack was carried out pursuant to, and in furtherance of,
10 a State Policy by the Government of Sudan to commit an attack against the civilian
11 population in Wadi Salih and Mukjar Localities ..."

12 And further:

13 "An integral component of this campaign was the use of Government of Sudan Forces
14 and members of Arab tribes, in particular Militia/Janjaweed, to target villages and
15 civilians that were perceived as being associated with or supporting the rebel armed
16 groups."

17 And importantly, the substance of this state policy is clearly reflected in the national
18 security plan of the Government of Sudan for 2004.

19 And Mr Jeremy will soon discuss the state policy and national security plans and
20 detail how they included the targeting of the Fur, Zaghawa and Masalit villages.

21 And importantly also, the assassination, the killing of community leaders or *umdaahs*
22 who were considered rebel sympathisers. That's the context of the crimes in this
23 case committed by the accused.

24 Let me just quickly go through the chronology of the crimes in these locations that
25 you will hear about today.

1 First - and we see this to the lower portion to the left - the attack on Kodoom and
2 Bindisi on about 15, 16 August 2003. The accused, Abd-Al-Rahman, Ali Kushayb,
3 leads the convoy of armed Janjaweed and GO forces in this attack on the civilian
4 population. At least 16 women and girls are raped. At least, minimum, 63 persons,
5 including men, women and children are murdered as a result. The surviving
6 civilians in Kodoom and Bindisi are displaced. Their property stolen or destroyed.
7 Next, moving chronologically, we come to Mukjar, which we see to the right or east.
8 These crimes, the crimes committed in Mukjar, set out in counts 12 to 21, were
9 committed in late February, early March 2004. The evidence will show that Fur men
10 were held in police stations in Mukjar - as the Prosecutor talked about this
11 morning - and other nearby detention facilities in horribly inhumane conditions. At
12 these detention facilities, the accused present, beat prisoners, he selected prisoners for
13 execution, he ordered the execution of prisoners and, ultimately, at least 122 - again,
14 minimum figure, 122 - Fur men, some young boys and children, were murdered.
15 One witness describes the convoy of prisoners being taken away to detention sites in
16 Mukjar, from there, out of town, where Ali Kushayb ordered that they be taken off
17 the vehicles and shot.
18 And you'll hear the evidence, your Honours, who were these victims? Who were
19 these people detained, beaten, loaded on to vehicles and then murdered on
20 the accused's order? The evidence is that they were simply traders, farmers, other
21 Fur civilians, many of whom had been displaced from their homes in earlier attacks.
22 They'd fled to Mukjar in an effort, which ultimately failed, to survive.
23 Finally, we come to Deleig - a bit up north on the map in front of you - Deleig and
24 surrounding areas. Crimes here occurred shortly after the crimes in Mukjar. They
25 were committed about 5 to 7 March 2004. And you will see that they follow a similar

1 pattern to the crimes in Mukjar.

2 In and around Deleig, the accused, personally, beats detained Fur men, personally
3 murders prisoners with his axe, supervises the process of prisoners being forced on to
4 vehicles for transportation to execution sites, orders the execution of detainees, and
5 this results in the murder of at least, minimum, 137 Fur males.

6 Again, as in Mukjar, you will see from the evidence these victims were displaced Fur
7 people, citizens, who had fled to Deleig following earlier attacks on their homes and
8 other villages.

9 And again, as in Mukjar, the evidence is clear: Fur community leaders, *umdahs*, are
10 especially targeted for violent crimes against them.

11 Your Honours, the evidence in this case will prove that from at least August 2003,
12 through April 2004, the accused, Mr Abd-Al-Rahman, Ali Kushayb, is leading
13 the attack on the civilian population, leading the convoy of Janjaweed and GoS Forces
14 in the attack on Kodoom and Bindisi, shouting to the troops, ordering to the troops,
15 "Wipe out and sweep away", after which those attacking forces murder, rape, displace
16 that civilian population and pillage and destroy their properties. During this time
17 you will see he's inflicting -- throughout this period he's inflicting severe violence on
18 civilians, beating prisoners.

19 In Mukjar and Deleig he's hunting down, he's searching for displaced Fur men from
20 earlier attacks. He murders prisoners directly himself with his axe. He supervises
21 the process of taking the victims, the detained persons, to be murdered by others at
22 other locations. He orders that the prisoners, the victims be shot and killed. And as
23 he's standing there, he watches as they die and he demands that there be no
24 survivors.

25 That is the case that we will lead, the evidence we will show you, your Honours,

1 during this trial.

2 And I thank you. I'm followed now by Mr Jeremy.

3 PRESIDING JUDGE KORNER: [11:58:14] Yes, Mr Jeremy.

4 Thank you, Mr Nicholls.

5 MR JEREMY: [11:58:41] Madam President, your Honours, in the next 35 minutes or
6 so I will address two topics.

7 First, I will briefly focus on the contextual elements of war crimes and crimes against
8 humanity, to frame the conflict and provide the broader context in which the accused
9 committed the charged crimes.

10 Second, I will focus on the accused's position of authority and influence, which was
11 central to his responsibility for the charged crimes.

12 So firstly, the contextual elements of war crimes.

13 Your Honours, in this case, on the basis of agreed facts 1, 2 and 4, paraphrased on our
14 screens, the Prosecution and the Defence agree that from at least April 2003, until at
15 least April 2004, an armed conflict not of an international character was ongoing in
16 Darfur.

17 The parties to that conflict were the GoS Forces on the one side, and on the other, as
18 we have heard, two main rebel groups, the Sudan Liberation Movement or Army,
19 the SLM/A, and the Justice and Equality Movement, or JEM.

20 Now, in terms of who the various entities fighting on the side of the Government of
21 Sudan were, namely, the GoS Forces who were fighting in this counterinsurgency, as
22 we see on our screens, they included the following:

23 The Sudanese Armed Forces, or the SAF, they were the official armed forces of Sudan
24 and they included the Military Intelligence Branch.

25 These forces also included the Popular Defence Forces, or the PDF, an official

1 paramilitary reserve force of the SAF.

2 Various police forces were also involved: The regular police.

3 The Central Reserve Forces, or CRF, also known as Abu Taira - and we have heard

4 about their involvement in crimes from the Prosecutor already - and the Popular

5 Police Forces, or PPF, a local reserve police force.

6 Your Honours, of critical importance in this case, the Militia/Janjaweed were also

7 allied with these GoS Forces in the armed conflict.

8 This term "Militia/Janjaweed" is used by the Prosecution as a general description for

9 the irregular fighters who fought in the armed conflict alongside the GoS Forces.

10 And it is used, as you will hear, by witnesses in the same way.

11 While the Militia/Janjaweed were mainly drawn from Arab tribes, it is not

12 the Prosecution's case that all Arab tribes in Darfur were involved in this conflict on

13 the side of the government.

14 Your Honours, the Militia/Janjaweed were known by a variety of names, including

15 Fursan, Bashmerga and Mujahidin.

16 As the evidence in this case will prove, the Government of Sudan and its forces

17 coordinated closely with the Militia/Janjaweed. And during the charged period, in

18 the charged locations, the accused was the senior leader in the Militia/Janjaweed and

19 he worked closely with all elements of the GoS Forces. And in this way, he was well

20 aware that the crimes he committed took place in the context of this armed conflict.

21 Madam President, your Honours, I turn now to the contextual elements of war crimes.

22 The broader circumstances in which the charged crimes against humanity were

23 committed.

24 As set out on our screens, in the course of this trial the Prosecution will demonstrate

25 that between at least August 2003 and at least April 2004, Government of Sudan

1 Forces and the Militia/Janjaweed committed a widespread and systematic attack
2 against the civilian population in the Wadi Salih and Mukjar localities. And that this
3 attack was carried out pursuant to, and in furtherance of, a state policy to attack these
4 civilian populations.

5 Madam President, your Honours, the locations that form the main basis of
6 the charges against the accused are indicated by the four red dots on the map on
7 the screen before you. And they are spread across two separate localities and
8 the names of those localities are marked in yellow. So we see Kodoom, Bindisi and
9 Deleig in the Wadi Salih locality, and Mukjar in the Mukjar locality.

10 As we see, the attack was widespread, and as you will hear today, although not an
11 additional legal requirement, these locations were also subject to a systematic attack
12 over a series of eight months. Hundreds of civilians were murdered, many were
13 raped, and thousands forcibly displaced from their homes and livelihoods. These
14 acts alone are sufficient to establish not only the widespread but also the systematic
15 nature of this attack.

16 However, these attacks do not stand alone. As the Prosecution will show in
17 the course of this trial, other locations were also attacked during the charged period,
18 and these are shown by the green boxes marked "A" on our screens.

19 Your Honours, I turn now to the state policy pursuant to which, and in furtherance of,
20 this attack was committed.

21 Now, during the course of this trial the Prosecution will present significant and varied
22 evidence of this policy, parts of which -- parts of this evidence is set out on the screen
23 before us. For example, official documentation from the Government, evidence of
24 meetings and public speeches, use of public resources for the Militia/Janjaweed. I
25 have referred to the evidence of the systematic pattern of violence.

1 We will also lead evidence of a deliberate failure to investigate and prosecute crimes
2 and shield perpetrators.

3 Taken together, this evidence will demonstrate that in response to the rebel attacks in
4 Darfur that began - for the purposes of this case - in April 2003, the Government of
5 Sudan devised a policy to use its forces and Militia/Janjaweed to target villages and
6 civilians that were perceived as supporting rebel armed groups.

7 Your Honours, Witness P-140 was one of the many -- is one of the many Prosecution
8 witnesses that were used by the Government of Sudan to implement this state policy,
9 and he expresses it in simple terms. Quote: "We understood it as a [...] total war
10 and we should [...] destroy or annihilate all villages."

11 "We found ourselves not fighting [...] an armed force [...] all the fighting [...] was
12 against [...] civilians [...] villages were burnt down [...] looted [...] women were raped."

13 This state policy was executed by government officials and institutions at the national,
14 the state and locality level.

15 And at the ground level, your Honours, in the Wadi Salih and Mukjar localities, this
16 policy was implemented by the accused and his Militia/Janjaweed, acting together
17 with Government Forces.

18 Your Honours, to explain the existence of the state policy, I will focus on one category
19 of evidence, and that is the official documentation from the Government of Sudan.

20 And more specifically I'll focus on one example of this official documentation,
21 the National Security Council's 2004 plan for Darfur.

22 Just before we turn to this plan, as we will in a moment, some background on this
23 National Security Council or NSC. As we will hear from witnesses in this case, this
24 body was the highest organ of security related decision making in Sudan.

25 Typically, the NSC would issue Sudan-wide yearly strategic plans for the year ahead.

1 But when the circumstances required, the NSC would also issue emergency plans, in
2 addition to this annual plan.

3 A witness in this case will testify that in around May 2003, shortly after the attack on
4 the Al Fasher airport, the NSC issued such an emergency plan for Darfur. And this
5 plan formed the basis for the government to launch its counterinsurgency campaign
6 in the Wadi Salih and Mukjar localities.

7 Of particular relevance, your Honours, this emergency plan stated that the police and
8 the reservist forces such as the CRF, did not have sufficient resources to fight
9 the rebels, and on that basis a decision was taken to use Arab tribes in the conflict.

10 A number of elements of this emergency plan are contained in
11 the National Security Council's plan from 2004 for Darfur. The Prosecution, during
12 the course of this trial, will present a copy of this plan and it will be described by
13 witnesses, and we will look at it now.

14 So, your Honours, on the screen we see the front page of the NSC document. On
15 the right side, the Arabic original. On the left side, in larger font, the English
16 translation.

17 This first page is a covering letter, dated 18 December 2003, by which the Minister of
18 Defence and the NSC rapporteur Bakri Hassan Salih sent this 2004 plan to the director
19 general of the National Security Service.

20 As we see in the bottom left corner, those copied included then President, Omar
21 al-Bashir, and then Minister of the Interior, Abdel Raheem Muhammad Hussein.

22 If we look at the original on the right side, we see it is stamped, dated and signed.

23 The next page is the first page of the 2004 plan, having looked at the covering letter.

24 We see that it is dated 18 December 2003 and I note that it is labelled "Top Secret".

25 We see the subject is "National Security Council 2004 plan for ending the rebellion in

1 the states of Darfur".

2 In broad terms, your Honours, this plan provides an introduction to the rebellion and
3 then proposes a plan to end that rebellion, listing objectives, means of implementation,
4 general orders and an assessment of the situation.

5 Let's look at the objectives on page 3.

6 Objective number 3 is, quote: "Imposing control over all the villages and the regions
7 to which rebel leaders belong (Fur, Zaghawa and Masalit)."

8 Next we see "Means of implementing the plan: # 1. Creating semi-regular forces
9 from Arab tribes."

10 As your Honours will hear from witnesses in this case, this is a reference to
11 the Militia/Janjaweed forces. And here, in the NSC's first annual plan since the start
12 of the conflict, we see the reflection of a policy that was already in existence since
13 the May 2003 emergency plan.

14 As we will hear from expert Witness P-1042, the use of proxy militias to fight conflicts
15 was by this time an established pattern of behaviour by the government, and this
16 militia strategy was tried and tested from previous conflicts in Sudan.

17 Moving forward we see, quote: "Purposes of creating semi-regular forces". And at
18 number 2 we read, quote: "Carrying out assigned tasks, such as assassinating rebel
19 leaders and the sympathisers from among community leaders (*umdahs*) and local
20 administration officials."

21 Your Honours, as you will hear, this is a reference to the assassinating of civilian
22 leaders in the non-Arab tribes in Darfur.

23 *Umdahs* were trusted authority figures in the community, trusted and respected elders
24 who would represent civilians across multiple villages. A few months after this plan,
25 as your Honours will hear in detail from my colleagues, the accused would play

1 the central role in the murder of a number of *umdahs* and community leaders in
2 Mukjar, and a short time later in Deleig.

3 Turning to final page of this plan, we see from the original at the bottom on the right
4 side, it is stamped, dated and signed.

5 And under the heading "Assessment of the Situation" we read, quote:

6 "The field of operations will be the rebel movements' camps. The villages of
7 the leaders and the soldiers shall also be considered as a field of operations because
8 they offer them shelter and hide-out after they carried out -- after they carry out their
9 operations against government targets."

10 This aspect of the plan, to target villages and civilians that was considered
11 linked -- that were considered linked to the rebel groups, exemplifies the continued
12 policy of targeting civilian areas, such as Kodoom and Bindisi, which had already
13 begun following the earlier May 2003 emergency plan.

14 Your Honours, the accused, Abd-Al-Rahman, well knew that he was implementing
15 this policy to attack the civilian population.

16 Your Honours will hear from Witness P-1021, who heard the accused tell officials in
17 Mukjar, quote: "I know that the rebels come from inside the towns, so I'm going there
18 and hitting hard, everybody. I don't care if it's elderly, or kids, or anyone."

19 Days later, in Kodoom and the town of Bindisi, this is exactly what he did, leading his
20 forces into those locations and targeting elderly children and anyone who got in their
21 way.

22 Madam President, your Honours, I turn now to the second part of my presentation.

23 And this previews some of the evidence that you will hear during the course of this
24 trial, which will clearly show that the accused was in a position of authority and
25 influence, which he used to commit, order and induce the charged crimes.

1 This evidence will demonstrate that the accused was a senior militia leader who
2 cooperated with and influenced, to varying and increasing degrees, political and
3 military figures at the national, the state and the locality level.
4 And, your Honours, I will focus on three aspects of this evidence that demonstrates
5 the accused's authority and influence, as shown now on our screens.
6 So first I will look at his position as *agid al-ogada*, which began in around March 2003.
7 Second, his response to the rebel attack on Mukjar in August 2003.
8 And third, his meetings with senior political and military figures during late 2003 and
9 early 2004, during which he was provided with weapons and money.
10 Taken together, these factors demonstrate the increase in the accused's authority and
11 influence as his network of relationships with GoS officials and members of the GoS
12 forces expanded and grew during the course of the charged period.
13 First then his position as *agid al-ogada*.
14 Within Arab tribes there was a long-standing arrangement where men would be
15 chosen to lead the fighters within a tribe. These military leaders were called *agids* or
16 colonels or sometimes referred to as an emir. The head of the *agids* within
17 a particular area was called the *agid al-ogada*, or the colonel of colonels.
18 During the relevant period in the relevant locations, Abd-Al-Rahman, Ali Kushayb,
19 was known as the *agid al-ogada*.
20 During this trial your Honours will hear from P-12, who as we see on our screens,
21 explains that, quote: "*Agid ogada* made Kushayb the highest ranking *agid* in
22 Wadi Salih."
23 P-12 further explains that he was appointed to this position in around March 2003, so
24 before the start of the charged crimes, quote, "because of his military experience and
25 education."

1 Your Honours will also hear from witnesses such as P-883, who as we see on our
2 screens, recalls that the accused was, quote, "an experienced military officer and
3 known as a fearless warrior." And as we have heard, the accused's prior military
4 experience is not in dispute in this case.

5 Your Honours will also hear from witnesses such as P-905, who recalled, in reference
6 to the accused, quote: "In front of his shop, ... you will find the *umdahs* of different
7 Arab tribes ... he is very keen on ... the leadership, or being the chief of the Arabs."
8 And here, your Honours, P-905 is describing how, as a prominent member of his
9 community, Arab *umdahs* from different Arab tribes would come to the accused's
10 shop or pharmacy - his ownership of which, as we've heard, is also not in dispute in
11 this case - to seek his guidance and his advice. And P-095 emphasises the accused's
12 focus on leadership and his ambition.

13 The last entry on the slide refers to P-643's evidence, that in Garsila, the main town in
14 the Wadi Salih locality, in around August 2003, the accused was appointed to head
15 a newly created Mujahidin committee which was used to recruit and arm
16 the Janjaweed.

17 P-643 will explain to your Honours that this appointment was made at the suggestion
18 of Mujahidin Garsila commissioner, Ja'afar Abd-Al-Hakam, and was based on
19 the accused's existing role as *agid al-ogada* of the Arab tribes.

20 Your Honours, owing to this pre-existing leadership position, the accused was
21 therefore already in a position of authority prior to the charged period. His power
22 grew with his appointment to this Mujahidin committee, and as we will see, it
23 expanded further following the attack by the rebels on Mukjar in August 2003.

24 Your Honours, as we have heard, in early August 2003, armed rebel groups attacked
25 the police station in the CRF base in Mukjar. Immediately following this attack,

1 the accused and his forces entered Mukjar, and as this quote on our screens of P-103
2 demonstrates, Kushayb, quote, "denied [the rebels] from controlling the area of
3 Mukjar." End quote.

4 Your Honours will recall that I have already mentioned that the emergency plan of
5 the National Security Council from around May 2003 stated that the police and
6 reserve forces did not have sufficient numbers to fight the rebels. And this attack on
7 Mukjar police station was a clear demonstration of that deficiency.

8 Following the rebel attack and the accused's arrival in Mukjar, a high-level delegation
9 of political and military figures arrived in Mukjar to meet and express their thanks
10 and public support to the accused.

11 In particular, as we see in the second quote, P-878 heard state minister for
12 the ministry of the interior, Ahmad Harun, tell the assembled Janjaweed/Militia forces
13 in Mukjar, quote: "As of today, we consider you as government forces."

14 Your Honours will recall the National Security Council plan for 2004 that we viewed
15 earlier, and its reference to the need for creating, quote, "semi-regular" forces from
16 the Arab tribes.

17 This episode in Mukjar is a clear demonstration of that need. In the context of its
18 counterinsurgency campaign, the Government of Sudan had a resource problem and
19 through this Mukjar episode, the accused and his forces demonstrated that they were
20 a ready-made solution to that problem.

21 In this way, as we see in the third quote of P-643, "Kushayb became the link between
22 the *agids* and the politicians." And as P-12 recalls in this final quote, after this event,
23 Kushayb's influence grew and he "started to operate outside the area of Wadi Salih."
24 Your Honours, the third key indicator that I mentioned was the accused's -- in
25 relation to the accused's position of authority and influence and its growth is

1 the series of high-level meetings that he attended in Garsila and Mukjar in this role as
2 the link between the Government of Sudan and the militia on the ground.

3 At a number of these meetings, as witnesses in this case will testify, the accused
4 would receive weapons, equipment and money.

5 Your Honours will hear from a witness who refers to a signal communication in
6 around December 2003 from a senior minister, stating that weapons and uniforms for
7 the accused would be delivered to the Sudanese armed force military base in Garsila
8 in around December 2003.

9 The Prosecution will also lead evidence, as we see in the second bullet, that Harun
10 and senior military officials would meet Abd-Al-Rahman in the Garsila barracks in
11 multiple occasions, including in February 2004.

12 Harun would also meet the accused in Mukjar during the same period and witnesses
13 saw him provide the accused with boxes assumed to contain weapons and money.

14 Your Honours, Witness P-41 was present at one such meeting in Mukjar in late 2003
15 or early 2004. And he recalls that the accused, Harun, Commissioners Ja'afar

16 Abd-Al-Hakam and Torshein were present at that meeting. He took some photos of
17 this event in Mukjar and, while almost 20 years old, they nevertheless give an
18 impression of these meetings.

19 The first photo on our screens shows a number of the Arab militia, the Janjaweed
20 present in Mukjar on their horses and camels gathering for this meeting.

21 In the second photo we see a number of the civilian officials who were present at the
22 meeting.

23 And in this last photo, circled, we see a Land Cruiser vehicle operated by
24 the Central Reserve Forces.

25 Your Honours, as these few basic examples of the accused's authority and influence

1 demonstrate, he was in a position of authority and influence throughout the charged
2 period and his relationships with senior officials in the Government of Sudan further
3 reinforced his power and his ability to commit crimes.

4 To quote Witness P-883: "Kushayb would always do whatever he wanted as people
5 were afraid to challenge him because of his authority and his ... connections ... such as
6 ministers of interior and defence."

7 And such influence and power is also echoed by P-1021 who stated, quote: "[a]ll
8 the governors and ... commissioners knew ... that he" - referring to
9 Abd-Al-Rahman - "was the commander."

10 P-1021 further states, quote: "He will not obey any instructions except those [which
11 come] from Omar al-Bashir, Abdel Raheem Muhammad Hussein and Ahmad
12 Harun."

13 And as your Honours are aware, each of these witnesses were well placed observers.
14 Your Honours, through his own words the accused also emphasised his position of
15 authority.

16 P-92 recalls the accused making the following announcement in a public meeting in
17 October 2003. Quote: "I am the *agid* [*al-ogada*] of the Fursan. I supplied you with
18 weapons, military equipment and everything."

19 Abd-Al-Rahman, Ali Kushayb, also confirmed his position during his interview with
20 the Government of Sudan in 2006, referred to earlier by Mr Nicholls, during which he
21 stated, quote: "I was the emir of the Fursan of the Mujahidin in Garsila."

22 Your Honours, as I move to the end of my presentation, I will now provide an
23 overview of the accused's extensive network.

24 This penultimate slide of my presentation is a public version of annex 6 to the trial
25 brief. And this provides an overview of the accused's network, with an indication of

1 the differing relationships that he had with those in his network at varying levels of
2 authority and influence, many of whom were involved in the charged crimes, as we
3 will shortly hear.

4 As the evidence will show, the accused cooperated closely with State Minister Harun,
5 meeting him on multiple occasions and communicating with him in relation to
6 charged crimes in Kodoom and Bindisi and Mukjar.

7 He also cooperated with Garsila Commissioner Abd-Al-Hakam, including in relation
8 to the attack on Kodoom and Bindisi, and Mukjar Commissioner Torshein in relation
9 to crimes in Mukjar.

10 As regards his relationship with the GoS forces, he cooperated closely with Military
11 Intelligence Officer Hamdi, who, as we will hear, was also involved in the crimes in
12 Mukjar and Deleig.

13 He cooperated and influenced CRF Officers Himeidan, especially in relation to
14 the attack on Kodoom, and Al-Tayyib, including in relation to the charged crimes in
15 Mukjar.

16 He also cooperated with PDF Officer Hareika, who was also involved in charged
17 crimes in Mukjar.

18 And in a further expansion of his network, the accused also cooperated and
19 influenced Popular Defence Force members, officials Hassaballah and Zakariya, in
20 the course of the crimes in Kodoom and Bindisi, as we will hear, and Hassaballah was
21 also involved in crimes in Mukjar and Deleig.

22 And lastly on this slide, your Honours, the evidence will show that the accused
23 cooperated, influenced and issued orders to the other Arab militia leaders in the area,
24 some of whom are listed below him in this chart, including, in particular, Al-Dayf
25 Samih and Adam Bonjouse. As we will hear, both were involved in crimes in

1 Kodoom and Bindisi, and Samih was also involved in crimes in Mukjar.

2 Madam President, your Honours, I will end with an overview of the accused's

3 activities in the Wadi Salih and Mukjar localities between August 2003 and April 2004.

4 And they are set out on this final slide, which is annex 5 to the Prosecution's trial brief.

5 And these activities arose from, but they also reinforced the accused's position of

6 authority and influence.

7 The evidence in this case will establish that, as the senior Janjaweed/militia leader in

8 the Wadi Salih and Mukjar localities, Abd-Al-Rahman was at the heart of multiple

9 activities: Recruiting, training and financing Militia/Janjaweed; cooperating with

10 senior GoS officials and members of the GoS Forces who provided support and

11 supplies, as we were heard; cooperating with senior GoS officials in relation to armed

12 operations; and cooperating with and exerting influence over members of

13 the GoS Forces and also, in certain circumstances, issuing them orders.

14 And lastly, crucially, he of course lead the Militia/Janjaweed operations and

15 participated in the charged crimes.

16 Madam President, your Honours, combined, the totality of the evidence, including

17 evidence that you will hear from witnesses like P-140, will demonstrate that

18 the accused had the typical profile of a senior Janjaweed leader in Darfur. Militia

19 leaders like the accused were recruited by the government because of their past

20 military experience. They were recruited because of their pre-existing authority and

21 their pre-existing leadership roles among Arab tribes. They were recruited because

22 they already had men under their command. And once recruited, these senior

23 militia leaders were supplied with weapons, money and they gained direct access and

24 developed strong relationships with senior political and military officials.

25 In a clear reflection of the state policy, this was the profile of senior Janjaweed leaders

1 across all of Darfur, Janjaweed leaders that the Government of Sudan used to fight its
2 counterinsurgency and attack civilians perceived to be connected to the rebel groups.

3 In this respect, your Honours, the accused was not unique. He may not be the most
4 famous or the most notorious Militia/Janjaweed leader in all of Darfur.

5 Yet in the Wadi Salih and Mukjar localities of West Darfur, people, especially his
6 victims, knew exactly who he was and what he did.

7 And in the course of this trial, witness after witness will describe the way in which
8 Abd-Al-Rahman, Ali Kushayb, used his authority, and his influence, to commit
9 the charged crimes that devastated the civilian population in the Wadi Salih and
10 Mukjar localities, starting in Kodoom and Bindisi, as my colleague Ms Simms will
11 next describe.

12 Thank you.

13 PRESIDING JUDGE KORNER: [12:37:46] Thank you very much, Mr Jeremy.

14 Before you sit down, can you just answer one question. I meant to ask Mr Nicholls,
15 but I forgot.

16 Is the interview that was conducted with the -- in Sudan of the accused, was that
17 videoed or was it just in a written document?

18 MR JEREMY: [12:38:05] It's just a written document, Madam President. Yes.

19 PRESIDING JUDGE KORNER: [12:38:07] Yes, thank you very much.

20 Yes, thank you, Mr Jeremy.

21 Yes, Ms Simms.

22 MR NICHOLLS: [12:38:15] We'll need one minute to rearrange, your Honours.

23 (Pause in proceedings)

24 MS SIMMS: [12:38:54] Madam President, your Honours, my thanks for the time
25 afforded to us to make adjustments to our seating.

1 As indicated by the learned Prosecutor earlier today, Prosecutor Khan, Queen's
2 Counsel, and my colleague Edward Jeremy, I will address the Chamber on the
3 evidence relating to Kodoom, Bindisi and the surrounding areas which concerns
4 the first 11 counts on the Document Containing the Charges, which were read to the
5 accused earlier today and to which he has entered not guilty pleas.
6 These four areas of the evidence, your Honours, firstly, relates to an overview of
7 events and the charged areas prior to the attack.
8 Secondly, a focus on the areas, the non-charged and charged areas, which are relevant
9 to the charges in Kodoom, Bindisi and the surrounding areas.
10 Third, I will outline the evidence relating to the context of the attack, which will
11 establish that the civilians were targeted.
12 Finally, in terms of the evidence that I will speak to, I will look at the criminal
13 responsibility of the accused specific to Kodoom, Bindisi and the surrounding areas.
14 Your Honours, the -- there are several witnesses that the Chamber will hear from who
15 will speak to the fact that prior to the attack on Kodoom, Bindisi on about 15 or
16 16 August 2003, that there was some relative peace in those areas, that as the majority
17 ethnic group, they lived with some harmony with other members from minority
18 tribes.
19 The witnesses will speak to the first signs of change in their communities. And one
20 of the first signs, your Honours, was the fact of civilians from other villages moving
21 into Bindisi, in particular, as a result of events in those outer villages.
22 Another significant event that the witnesses will speak to was the attack on
23 the Bindisi police station sometime in July and early August 2003, where the rebel
24 groups went into Kodoom and attacked the police station.
25 The other significant event relating to the rebel groups, which my colleague

1 Mr Jeremy spoke to earlier, was a rebel attack in Mukjar itself sometime after, a few
2 days after the rebel attack in Bindisi.

3 Your Honours, the result of these attacks are known to the civilians in Kodoom and
4 Bindisi, was that it led to a meeting, a planning meeting in Mukjar, where the accused
5 was present with senior members of the Government of Sudan and senior members
6 from the Sudan's Armed Forces, as well as other militia leaders, where they discussed
7 their efforts or operations to come relating to clearing rebels from the Wadi Salih area
8 in which Kodoom, Bindisi and the surrounding areas are located.

9 To this effect, your Honours, I invite the Chamber to look at your screen, and on
10 the screen we are seeing an overview of several villages. And these areas are
11 broadly located in two areas in the Wadi Salih locality, the Mukjar locality and
12 the Bindisi locality.

13 We will first look at the area of Mukjar. Your Honours, Mukjar is relevant to
14 the Kodoom and Bindisi charges in two ways. Firstly - and my colleague Mr Jeremy
15 spoke to it earlier - in terms of the planning meetings that took place in Mukjar which
16 eventually led to the attack on Kodoom, Bindisi and the surrounding areas, and so I
17 won't trod over ground that has already been addressed to the Chamber.

18 The other relevance of Mukjar, your Honours, is that this is the village where many
19 civilians from Kodoom, from Bindisi, will explain to the Court that they had to walk
20 or run to as they sought to seek safety or shelter from the unfolding attack in Kodoom,
21 Bindisi and the surrounding areas. You will hear the witnesses speaking about, you
22 know, hiding in the mountains, staying away from the main roads, and just
23 the general distress that they encountered as they walked or ran from Kodoom,
24 Bindisi and the surrounding areas.

25 In terms of the distance of Mukjar from the charged areas of Kodoom and Bindisi,

1 Mukjar is about 19 kilometres away from Bindisi and about 14 kilometres away from
2 Kodoom.

3 The other village that we will move to, your Honours, is Nyerli. And Nyerli is
4 a non-charged village, but this area, your Honours, is very relevant to our charges, as
5 the Prosecution will lead evidence that the accused was present in Nyerli, and that in
6 Nyerli he gave an order or encouragement to members of the Militia/Janjaweed or
7 GoS Forces.

8 In particular, Witness 921 will speak of this, your Honour, and this witness is
9 categorised as an insider witness, firstly, because of the vantage point that he had
10 during the unfolding attack, and secondly, because of his access to the accused.

11 I also want to underscore that 921 knew the accused prior to the charged events, and
12 this witness will explain to the Court that the accused ordered, "Cut the straw, eat
13 it raw." And this witness will further explain that he understood it to mean that they
14 were not to leave even a single strand, green strand of straw behind.

15 A moment, your Honours.

16 The second witness who will place the accused in Nyerli is Witness 878, and this
17 witness is also an insider witness because of his access and his proximity to
18 the accused at a particular time. And this witness will speak of another statement
19 given by the accused where he shouted to members of the Militia/Janjaweed and
20 GoS Forces, "Allahu Akbar! Allahu Akbar! Wipe out and sweep away."

21 Your Honours, the progression of the attacking forces, which was led by the accused,
22 then moved on to the village of Tiro. And here again, the evidence that
23 the Prosecution will adduce will establish a repeat of the pattern and some behaviour
24 on the part of the accused.

25 We will then see that the attacking party, led by the accused, then travelled to

1 the village of Kodoom. And Kodoom and Bindisi are both highlighted
2 here -- should be highlighted in the red circle to indicate that these are our charged
3 areas. And between Kodoom and Bindisi, it's about 9 kilometres away.
4 These two villages, the attacks in those villages has been charged as a single attack
5 based on the evidence, based on the fact of the perpetrator and the events which
6 the witnesses will speak to.
7 Your Honours, the -- I had earlier indicated, your Honours, that the accused had
8 made some statement in Nyerli, and again the Prosecution will adduce evidence that
9 he repeated those statements in Kodoom where he blew his whistle. And the issue
10 of the accused having a whistle and using it, the Chamber will see that this is
11 a defining quality of the accused or associated with the accused, because after he blew
12 the whistle, he shouted to members of the Militia/Janjaweed and GoS forces, "Let's go!
13 Allahu Akbar! Allahu Akbar! Wipe out and sweep away." The evidence will
14 demonstrate that once this order was given, the attack commenced, and the witnesses
15 will speak of what they endured.
16 Your Honours, we will now move on from this slide, the overview of the villages, and
17 we are now looking at the -- a map, an overhead map of the area called Kodoom.
18 And in relation to Kodoom, your Honours, the witnesses will speak of three areas as
19 indicated on the map, and this is Kodoom Tineh, Kodoom Derliwa and Kodoom
20 Ronga Tass.
21 Again, your Honours, the Prosecution will adduce evidence relating to the presence
22 of the accused in the area of Kodoom Tineh.
23 There is -- the Chamber will hear from Witness 29. And here again, your Honours,
24 we have a witness who knew the accused prior to the charged events, as he would
25 buy animal medicine from him. And importantly, this witness describes the accused

1 as having a deformed hand. This witness, your Honour, will indicate that he saw
2 the accused in Kodoom Tineh get off a truck, onto a horse, he blew his whistle and he
3 distributed the attackers across the area.

4 The Chamber will also hear from Witness 986, and due to the particulars of his
5 account, your Honours, I will not repeat it here, in order to remain in the public
6 session, but this witness will also give evidence that he knew the accused prior to
7 the charged events and will outline a series of interactions with the accused in
8 the area of Kodoom Tineh.

9 Moving on from the overview map of Kodoom, we are now looking at overhead
10 imagery of the area of Bindisi town. And when we look at this imagine,
11 your Honours, we see the startling blue stream which runs through the landmass,
12 dividing it into two areas. The Prosecution's witnesses will speak of these two areas
13 in distinct terms.

14 To the north, that's the upper part of Bindisi, you will hear them speak of it as north
15 Bindisi, upper Bindisi and new, new Bindisi.

16 In terms of the lower part, your Honours, which is divided by the Wadi Salih river,
17 you will hear the witnesses speak of that area as south, lower Bindisi and old Bindisi.
18 And the witnesses will speak about areas in these two areas, north and south.

19 In particular to the north, many of the witnesses will speak about the *zakat* office,
20 which is an important building office in the evidence and partly explains what
21 occurred in the -- in the attack in Bindisi. The witnesses will also speak of
22 the locality building, the grand market, the mosque, the hospital and the police
23 station.

24 For the south area of Bindisi, you will hear the witnesses speak of the mosque,
25 the police station, and importantly, the daily market and the CRF base.

1 The Wadi Salih river, your Honours, not only does it divide the area into north and
2 south, it is also relevant as many of the witnesses will speak to the Wadi Salih as
3 a point of reference as they describe fleeing from the attack and as they describe some
4 of the criminal episodes that they survived.

5 Thank you, your Honours.

6 Your Honours, in relation to the crimes, I now turn to the third issue, and here I am
7 dealing with the context of the attack, and the Prosecution will adduce evidence of
8 how the attack unfolded and the targeting of the civilians in ways that will establish
9 that they were defenceless and essentially at the mercy of the accused.

10 PRESIDING JUDGE KORNER: [12:54:38] So are you moving on to a new topic, then,
11 Ms Simms?

12 MS SIMMS: [12:54:42] Yes, your Honour.

13 PRESIDING JUDGE KORNER: [12:54:43] Well, then in that case we'll take the break
14 now.

15 MS SIMMS: Very well.

16 PRESIDING JUDGE KORNER: [12:54:45] And sit again at, what is it, 2.30, and sit
17 again at 2.30.

18 Can I just remind, Ms Simms, still you are on your feet, that because there are matters
19 that I want to raise with -- with both counsel, to stop at 3.30.

20 MS SIMMS: [12:55:01] Will do, your Honour.

21 PRESIDING JUDGE KORNER: [12:55:04] For whoever is next after you. Thank
22 you.

23 MS SIMMS: Very well.

24 PRESIDING JUDGE KORNER: [12:55:02] Yes, very well, 2.30, please.

25 THE COURT USHER: [12:55:09] All rise.

1 (Recess taken at 12.55 p.m.)

2 (Upon resuming in open session at 2.33 p.m.)

3 THE COURT USHER: [14:33:07] All rise.

4 Please be seated.

5 PRESIDING JUDGE KORNER: [14:33:38] (Microphone not activated) standing up,

6 Mr Nicholls, for a purpose, or?

7 MR NICHOLLS: [14:33:41] Yes, your Honour. Just to say that Mr Khan,

8 the Prosecutor, has had to leave the courtroom, but we are joined by Alison Whitford.

9 PRESIDING JUDGE KORNER: [14:33:49] Yes, thank you very much, Mr Nicholls.

10 Yes.

11 Right, Ms Simms, you were going to carry on, I think.

12 MS SIMMS: [14:33:55] Yes, your Honours.

13 Just to indicate, at the time we took the break I was just going on to deal with

14 the context of the attack.

15 In relation to the evidence which the Prosecution will adduce, in particular from

16 witnesses 7, 29, 932, 986, and other witnesses, the Chamber will hear from them that

17 the members of the Militia/Janjaweed and GoS Forces, that they were well armed.

18 They came into the areas on Land Cruisers which had Dushkas atop them, and some

19 of the attackers had Kalashnikovs, bladed weapons. And Witness 986 in particular

20 will speak about some of the attackers carrying fire sticks.

21 The issue of rebel presence, your Honours, is an important context to the attack,

22 because several of the witnesses will explain to the Chamber that at the time they

23 lived there, prior to and during the attack, they were not aware of any rebel presence.

24 In particular, the Chamber will hear from Witness 15, who will describe that the first

25 time she heard the term *tora bora* - which was the words used by members of

1 the Militia/Janjaweed and their associates, was really from that community - which is
2 used to describe rebels, at the point when she was accused of being the wives of
3 rebels.

4 There are witnesses, such as Witness 12, who the Court will hear from, the Chamber
5 will hear from him indicating that he would have assisted in burying a number of
6 the bodies. And from his observation, he will explain that he determined that none
7 of the deceased victims were fighters, as they were not wearing any military clothing
8 and he did not find any weapons on their persons.

9 When we look at the nature of the violence, the Prosecution will lead evidence that it
10 was extreme.

11 There is one insider witness who will explain from his vantage point in Kodoom, that
12 the violence was so extreme that he was led to observe, and I quote him directly, that
13 "the revenge of Ali Kushayb and his comrades against the village of Kodoom was
14 immense. They were trying to beat one another, to getting to the village, pillaging
15 and burning it to appease their anger."

16 The Prosecution will further adduce evidence relating to some of the deceased victims
17 which will establish that, at the time they were murdered, some of them were
18 completely defenceless or were in fact running away from the attackers.

19 I invite the Chamber to look again at the screen, and here we have a list of 63 civilians
20 who were murdered.

21 I pause to observe to the Chamber that the Prosecution will also be leading evidence
22 relating to the murder of unidentified victims, some of whom were buried together in
23 single graves.

24 The first -- one of the first victims, your Honour, your Honours, is Mr Isa Ahmad, and
25 we will hear from Witness 29 that this person was shot in his head and chest in his

1 presence. And there are three victims that we will speak to now, and these are
2 Ms Koni Haroun and Ms Hussein.

3 Witness 7 will describe to the Court that in the first wave of the attack on Bindisi, that
4 these women were raped by members of the Militia/Janjaweed or GoS Forces, and
5 killed.

6 There is also a third victim listed there, Ms Halima Isa, and here again, your Honours,
7 Witness 7 will describe that the witness was killed as she was fending off the attackers
8 who were making attempts on her person.

9 The other victim that we will speak to is Mr Mohammed Khamiss, and several of
10 the witnesses will give evidence that they saw the body of the deceased. And there
11 is one witness in particular, Witness 12, who was present at the time that
12 Mr Mohammed Khamiss was killed. And this victim, your Honours, is universally
13 identified as the town's tailor.

14 The other victim, Mr Mudassir Ibrahim Garad, the circumstances of his murder
15 highlights the motion of the attack. As Witness 868 will describe to the Chamber,
16 that this victim was shot in his back as he was running away from the attackers.

17 I had spoken earlier about the importance of the Wadi Salih river in Bindisi, and here
18 again we'll hear from Witness 11 who will describe making attempts with members of
19 her family to flee across the river. And one member of the family was shot in his
20 chest as he turned to see if others were following behind him.

21 There's also Witness 589. Again, this witness will speak of the murder of Mr Abu
22 Issa. And this victim, your Honour, was also shot in the back as he was making
23 attempts to flee.

24 The Prosecution has particularised count 3, which is murders committed in
25 the context of the violation of Common Article 3. And in relation to this count,

1 your Honours, there are three witnesses that the Prosecution, the circumstances of
2 their murder, the Prosecution will speak to. And this is Mr Adam Bosch,
3 Mr Rashid Issa and Mr Nasir. The Prosecution will lead evidence that the two of
4 these men, Mr Bosch and Mr Issa, that they were restrained, they were placed
5 forward on the ground and they were shot to death with -- this witness identifies that
6 the attackers used a Kalashnikov.

7 The other victim, your Honour, Mr Nasir, somehow evaded the -- the exchange of
8 bullets -- the firing, and they determined to kill him by beating him. This Witness 11
9 will speak to the circumstances under which he was beaten to death.

10 In relation to outrages -- other inhumane acts and outrages upon the personal dignity,
11 the Prosecution will adduce evidence from victims as it relates to the degrading and
12 humiliating treatment that they encountered. The Prosecutor earlier today spoke
13 about the circumstances of one of the victims who would have narrated seeing
14 women being stripped of their clothing.

15 I won't repeat that evidence, your Honour, but just to indicate to the Chamber that we
16 will lead evidence in terms of statements made to some of these women while they
17 were being violated, such as the preselection of some of the women and girls, and
18 the attackers saying to them, essentially, "We will take the beautiful ones as wives and
19 the ugly ones will be servants to our wives."

20 The witnesses will also speak about men who were detained and how the attackers
21 called them by various names such as *abeed*, as explained earlier, meaning slave;
22 *khadim*, which is in English servant; and speaking to them using the term *nuba*. One
23 witness, your Honour, will further explain that they were told by the attackers that
24 they were sent to kill every black thing, except the Laloba and Daylabe trees, which
25 are also black.

1 The additional evidence to come in relation to this incident, your Honour, will show
2 that the victims were told that they were of no benefit and that the attackers had
3 gotten the permission "to wipe us out, to kill us, to chase us away." So here we're
4 seeing the attackers essentially mirroring words earlier spoken by the accused as he
5 gave orders for the attack to begin, the sweep away, the wipe away.

6 In relation to the acts of rape, there's a context which the Prosecution will adduce in
7 its evidence as it relates to the sexual violence. There's one insider witness, 921, who
8 will explain to the Chamber that he observed about 50 women who had fled to
9 the village of Mukjar, and he observed that some of these women were either naked
10 or they were wearing torn clothing.

11 The further evidence to come, your Honours, is that there were a group of
12 Militia/Janjaweed leaders in Bindisi and the accused would have been in that area.
13 However, this witness speaks about one of the militia leaders, along with other
14 attackers, boasting about the women that they had raped in Bindisi.

15 I again invite the Chamber to look at an excerpt from a witness statement, this is
16 Witness 15. And this witness, your Honour, narrates the violence that was meted
17 out to -- to victims of the Militia/Janjaweed or GoS Forces. And if we look at the
18 statement, your Honours, we will see this witness saying that they -- some of
19 the women, in order for them to be silenced, that their mouths were stuffed with their
20 own clothing. And this witness will further narrate, describe that, as they raped
21 some of the women, the reaction of members of the Militia/Janjaweed and GoS Forces
22 was to celebrate by saying, "We have taken *tora bora* wives." This witness,
23 your Honour, will also indicate that at points when women who were raped bled,
24 the attackers would fire in the air and shout, "I have taken -- I have found a virgin
25 woman", celebrating the violation of these women.

1 As I move the Chamber forward in relation to the issue of pillaging, your Honours,
2 and destruction of property, the Prosecution will adduce evidence from several
3 witnesses establishing the pattern of the attack, the focus on pillaging, the collecting
4 of livestock, taking items from the homes, and the systematic destruction of the *zakat*
5 building, the houses, the mosque and other buildings of importance within their
6 community.

7 Specific to the pillaging, the Prosecution will adduce evidence relating to the conduct
8 of the accused in Kodoom, that he gave instructions to members of
9 the Militia/Janjaweed and GoS Forces to take away items belonging to a member of
10 the Kodoom community, and the attackers complied, immediately went and took
11 away the items.

12 The other evidence to come, your Honours, is the specific targeting of property
13 belonging to members of the Fur community. And here we'll have the evidence of
14 Witness 12, who will explain to the Chamber that what he saw was that there were
15 some areas in the shop that had a special marking, and that throughout the pillaging
16 and the destruction of the area, these shops were left untouched. However, in
17 relation to the other areas, the Militia/Janjaweed and GoS Forces pillaged the areas of
18 their content, such as sugar and other items.

19 The effect of this complete violence, your Honour, the widespread, the systematic
20 violence within these communities ultimately forced the civilian population in
21 Kodoom and Bindisi to seek safe shelter in Mukjar. The Prosecution will bring both
22 documentary and testimony -- testimonial evidence to establish the size of
23 the population affected and the number of persons who were essentially left homeless,
24 landless as a result of the violence.

25 In relation to the counts relating to persecution, my colleague, Mr Sachithanandan,

1 will outline the evidence that the Prosecution will lead in relation to this.

2 I now turn, your Honours, to the final scheme of evidence that the Prosecution will
3 adduce in relation to the accused, and this relates to his criminal responsibility for
4 the crimes committed in Kodoom, Bindisi and the surrounding areas on about 15 and
5 16 August 2003.

6 Again, I invite the Chamber to have a look at the screen and here, your Honours,
7 the associations of the accused is depicted. And here we're seeing the accused at the
8 pyramid of this relationship. And below there is Hassaballah, who is a PDF officer;
9 Samih, who is also -- well, is a member of the Militia/Janjaweed; and Bonjouse, who is
10 also a militia, a leader.

11 Earlier, your Honours, my colleague, Mr Jeremy, had indicated -- had focused on
12 a particular statement which was made by the accused in Mukjar. And his statement
13 was, your Honour, is, "I know that the rebels comes from inside the towns, so I'm
14 going there and hitting hard, everybody. I don't care if it's elderly, or kids, or
15 anyone."

16 The context of this statement attributed to the accused, your Honours, was
17 the intervention of persons in the meeting, essentially saying, "We do not believe it is
18 appropriate to target women, children, and the elderly." That was the response of
19 the accused.

20 The further evidence that the Prosecution will adduce in terms of the accused's
21 authority was his ability to move the attackers from one village to the other through
22 the orders that he gave to Samih, and the evidence will show that Samih complied
23 with the order.

24 And in 874's testimony, the Chamber will hear that Samih identified the accused as
25 a general commander and that he, Samih, was an assistant to the accused.

1 We'll also lead evidence, your Honour, in relation to Hassaballah, a PDF officer who
2 is not a part of the Militia/Janjaweed, however on the day the accused had
3 the authority to give him instructions in terms of moving from village to village.

4 I now turn specifically to deal with the conduct of the accused. And the evidence,
5 your Honours, that will be adduced will show that the accused was actively directing
6 attackers throughout the incident, as well as giving them orders.

7 Again, the Prosecution will lead evidence that persons present sought to intervene, to
8 stay the intensity or level of the violence, yet the accused is quoted as saying, as
9 saying -- and this is in relation to the intervener saying the level of this violence will
10 not please Allah. Stop.

11 The response of the accused, your Honour, as this witness will explain, is that, "[...]
12 this is our work, don't teach us how to do it. If you don't like our work, go ahead
13 and ask for one of the horses in front of you, get on it and leave, or just leave us
14 alone."

15 This command to others who disagreed with him, your Honours, is also reflected in
16 the evidence to come from Witness 874, who also intervened based on the level of
17 the violence. And again the accused's response was, "If you do not agree with what
18 is happening here, go, leave."

19 The Prosecution will demonstrate that so established was the accused's authority on
20 the ground, that his command to this witness to leave was reinforced by others who
21 also joined in, telling this witness to leave.

22 Your Honours, the -- finally, the Prosecution, on the evidence that we will adduce for
23 the Kodoom, Bindisi and surrounding areas charges, will establish that the accused is
24 guilty for the act of attacking the civilian population, the murder, pillaging,
25 destruction of property, the other inhumane acts, the outrages upon personal dignity,

- 1 the rape, forcible transfer and persecution.
- 2 If it pleases you, your Honours, I thank the Chamber for its time.
- 3 PRESIDING JUDGE KORNER: [14:55:27] Yes, thank you very much, Ms Simms.
- 4 Who's going next?
- 5 Yes.
- 6 MR SACHITHANANDAN: [14:55:33] It's me, your Honour.
- 7 PRESIDING JUDGE KORNER: [14:55:34] All right, Mr Sachithanandan.
- 8 MR SACHITHANANDAN: [14:55:37] If you just give me 30 seconds to switch over.
- 9 PRESIDING JUDGE KORNER: [14:55:42] I'll do that, yeah.
- 10 MR SACHITHANANDAN: [14:56:14] Your Honour, as Prosecutor Khan mentioned,
- 11 I'll be dealing with both Mukjar and persecution.
- 12 Looking at the clock, I think I'll run to the end of Mukjar and probably stop there, to
- 13 make sure that we handle the rest of the housekeeping litigation today.
- 14 PRESIDING JUDGE KORNER: [14:56:34] Yes, thank you very much.
- 15 (Trial Chamber confers)
- 16 PRESIDING JUDGE KORNER: [14:56:49] (Microphone not activated)
- 17 MR SACHITHANANDAN: [14:56:50] Yes. And, your Honour, please let me know
- 18 if you have trouble hearing me and I'll definitely speak up. Usually the criticism is
- 19 the -- is the opposite, but -- all right.
- 20 Your Honours, as the evidence unfolds during the course of this trial, regarding
- 21 the events that occurred in Mukjar and its surrounding areas between late
- 22 February 2004 and March 2004, it will become clear that Mr Abd-Al-Rahman had
- 23 a common plan, shared a common plan with a group consisting of members of
- 24 the Janjaweed and forces of the Government of Sudan.
- 25 So who were these members of the common plan?

1 You will notice a familiar name, that is to say, Janjaweed leader Al-Dayf Samih, since
2 Ms Simms already mentioned him in the context of Bindisi and Kodoom. But he
3 was indeed also an active participant in the common plan relating to Mukjar.
4 Additionally, there was Military Intelligence Officer Hamdi, who was the head of
5 Military Intelligence at the Garsila military base. Not only will you hear of him from
6 me regarding Mukjar, but you will also hear of Mr Hamdi in the context of Deleig
7 from Ms Whitford, sitting behind me, since he was also involved in that particular
8 attack.

9 And of course, finally we have Mr Abd-Al-Rahman, who was the central or key figure
10 in this common plan, and indeed in all the charged crimes, having participated in
11 Kodoom, Bindisi, Mukjar and Deleig.

12 The fact that Samih participated in Kodoom and Bindisi, and the fact that Hamdi also
13 participated in Deleig, is an indicator of how the members of the Mukjar common
14 plan had a close cooperative relationship, a matter that Mr Jeremy has mentioned
15 already.

16 So what indeed was this common plan?

17 It was to target persons in Mukjar, including those persons displaced to Mukjar from
18 locations in the surrounding areas, perceived as belonging to, associated with, or in
19 some way supporting the rebel armed groups.

20 And this targeting was meant to take place by means of torture, other inhumane acts,
21 cruel treatment, outrages upon personal dignity, murder and persecution. And that
22 is precisely why those types of conduct, those charges are reflected in the charges
23 brought against Mr Abd-Al-Rahman in the context of Mukjar.

24 So this, in essence, was the Mukjar common plan. And the existence of the common
25 plan is evident in the joint and coordinated nature of the actions of

1 Mr Abd-Al-Rahman and his co-perpetrators, as well as the statements made by
2 the accused and his co-perpetrators at that time, that you will hear throughout
3 the next few months.

4 What exactly was the role of Mr Abd-Al-Rahman in this plan?

5 He made an essential contribution to the plan and the charged crimes by: Firstly,
6 ordering and carrying out arrests of Fur males in Mukjar, and then detaining them at
7 Mukjar police station. Verbally abusing the detainees at Mukjar police station,
8 including by threatening them with death. Physically assaulting the detainees.
9 Taking the detainees into his custody. Selecting detainees to be removed from
10 Mukjar. Supervising the transport. Then assaulting physically again the detainees
11 at least one execution site. And then, finally, giving the order and prompting
12 Janjaweed forces and the forces of the Government of Sudan to shoot, and kill,
13 the detainees.

14 It is evidence regarding these actions and statements of Mr Abd-Al-Rahman that
15 the Prosecution will lead in the coming months, and it is to that evidence that I turn to
16 now.

17 In February 2004, the accused carried out an armed operation in the area of Sindu, as
18 you can see in this image before you.

19 During this operation, as the forces travelled north-west towards Sindu, they attacked
20 a number of villages that you will see identified here and surrounded by a black box,
21 hopefully if this PowerPoint is working, as it is indeed.

22 These villages included a number of villages that will be important for the Mukjar
23 case: The villages of Nyerli, Abirla, Korofata, Tendy, Arada, and a number of other
24 villages in the vicinity of Mukjar.

25 As these attacks took place, hundreds, if not thousands of civilians in these villages

1 were forced to flee and head towards Mukjar. As you can see in this image. This
2 includes at least seven Prosecution witnesses whose evidence will be led before you,
3 either orally or otherwise.

4 And this in turn brings us to Mukjar.

5 You will see before you here a satellite image of Mukjar with some key locations
6 indicated. You can see, for example, the Mukjar police station, as well as the road
7 leading northwards towards Garsila, which again is crucial for this criminal episode,
8 as well as a number of other relevant locations.

9 Importantly, by the time these civilians were fleeing their attacked villages and
10 coming to Mukjar, the Janjaweed and Government of Sudan forces had set up
11 a number of checkpoints. They were at least towards the north of Mukjar and
12 towards the east of Mukjar, as evident in the image.

13 Why were these checkpoints set up? We have one indication as to why.

14 Witness 905 says that prior to departing from Mukjar to Sindu for the Sindu attack,
15 the accused had instructed the head of police of Mukjar, I quote: "Any man coming
16 down from Sindu, he has to be ... kept ... And if this does not happen ... you will bear
17 responsibility." End quote.

18 And so, predictably, as the displaced people, principally Fur civilians, flooded into
19 Mukjar, the Janjaweed and Government of Sudan forces arrested hundreds of
20 predominantly Fur males at locations including the checkpoints indicated in the map,
21 as well as during house-to-house searches and elsewhere.

22 Crucially, the Janjaweed and Government of Sudan forces perceived these displaced
23 Fur males as belonging to or associated with or somehow supporting the rebel armed
24 groups.

25 Mr Abd-Al-Rahman and his co-perpetrators were key actors in this arrest process.

1 At least three witnesses will describe how Mr Abd-Al-Rahman and Samih conducted
2 arrests in Mukjar. Witness P-12, for example, states that, I quote: "Yahya Ahmad
3 Zarruq, the brother of the *shartay* of Mukjar, was arrested by Kushayb himself." End
4 quote.

5 Upon their arrest, at least 122 Fur males were taken to Mukjar police station. You
6 can see highlighted in this image this location. And if we can zoom in somewhat,
7 you will see two buildings and these detainees were kept principally in the small
8 northern building which was at one point sketched by one of the detainees. You will
9 see that his sketch, that is the sketch by Witness 877, matches the structure in
10 the satellite photo, and indeed the witness has indicated where he himself was
11 detained with many other detainees, as well as a number of other very small rooms
12 where other detainees were kept.

13 The detainees were civilians, some were very old, some were very, very young and
14 overwhelmingly again, males of the Fur ethnicity. They included at least nine
15 witnesses, nine Prosecution witnesses whose evidence will be led before you in
16 the coming months.

17 They also included the local Fur community leader that I mentioned earlier *Umdah*
18 Yahya Ahmad Zarruq, who was the *umdah* of Mukjar, about 62 years old, and indeed
19 he was accompanied in the prison by at least eight other civilian Fur community
20 leaders, including the *umdah* and head of the court of Mukjar, Issa Haroun Nour, who
21 had been detained with other members of his family. *Umdah* Nour had also been
22 fleeing one -- from one of the attacked villages and had been arrested when he arrived
23 in Mukjar. It also included another fur community leader, *Umdah* Adam Husayn
24 Abdelm Mahmoud.

25 Your Honours, there is a reason I'm particularly mentioning these community leaders,

1 it is because they were leaders of the Fur community and therefore harm directed
2 against them was, in a symbolic sense, harm directed against the Fur community.
3 Targeting such Fur civilian leaders was, as mentioned by Prosecutor Khan, an explicit
4 policy of the Government of Sudan. And indeed, as mentioned by Mr Jeremy, it is
5 even contained in the official documentation of the Government of Sudan, this policy.
6 There were also present a wide variety of civilians from different walks of life. There
7 was a doctor or medical assistant, again a relative of the -- of *Umdah* Zarruq. There
8 were police officers such as Abdul Aziz El Kas. There was Adam Nahid Numan,
9 who was a guard of the *shartay* of Mukjar. Again, every single person a Fur man.
10 And indeed Adam Nahid was fleeing the village of Tendy since it was attacked by
11 Mr Abd-Al-Rahman's forces, which is why he was in Mukjar when he was arrested by
12 Mr Abd-Al-Rahman's forces.
13 There were also farmers and traders such as Hassan Abdalla, who was arrested with
14 members of his family, as well as Yahya Sharaf-al-Din Abdallah, who too was
15 detained with other members of his family. There were also students such as
16 Abd-Al-Khalik Yahya Ishaq Musa, of whom much will be said later, as well as
17 Abd-Al-Karim Abd-Al-Rahman Muhammad, who was another student from Tendy.
18 Finally, there were even a few orphan boys between the ages of 9 and 12 who had
19 been studying the Koran at a *Khalwa* or Koranic school nearby with an elderly *sheikh*
20 and who had also been arrested by the police.
21 So, your Honours, as you can see, a broad variety of detainees, all male, all
22 overwhelmingly of the Fur ethnicity, kept in Mukjar police station, which is where
23 their suffering truly began.
24 Over the next few days the large group of detainees were detained in rooms so
25 crowded that there was no access to toilets, detainees were forced to urinate and

1 defecate where they squatted. Some were given dirty water to drink and a stale loaf
2 of bread to split between 10 prisoners, while others received nothing.
3 Notably, some of the community leaders were also undressed, adding to their
4 humiliation in the squalid fetid conditions of the prison.
5 Detainee Witness P-877 describes how in the middle of the night a member of
6 the Sudanese Armed Forces put his head inside the cell and told the detainees to pray,
7 adding, I quote, "not all of you will be alive tomorrow." End quote.
8 While these Fur males were detained at the police station, short statements were
9 taken from them. Abd-Al-Rahman reviewed a few of these statements, ripped them
10 up and threw them on the floor. Meanwhile, he was also conversing with Minister
11 Harun regarding the influx of displaced Fur civilians. One witness saw
12 Abd-Al-Rahman speaking on his satellite phone. The witness says, I quote: "I heard
13 Harun tell Ali Kushayb that he had a free pass to do whatever he wanted ...
14 Al-Tayyib", that is to say, the head of the CRF in the Mukjar police station, "Al-Tayyib
15 and Ali Kushayb then had an argument, during which Ali Kushayb told him he had
16 permission to burn Mukjar to the ground." End quote.
17 Admittedly, this statement is general in nature and not necessarily about
18 the detainees at the police station. But it is a useful window into the state of mind of
19 Abd-Al-Rahman and his co-perpetrators at that time about the Fur civilians arriving
20 in Mukjar as well as the Fur civilians who were living in Mukjar at that time.
21 This very state of mind, and the authorisation from Harun to carry out crimes is also
22 made clear by another account. Witness 129 describes how Abd-Al-Rahman,
23 Janjaweed leader Samih and intelligence officer Hamdi entered the cell where he and
24 other detainees were imprisoned. And Abd-Al-Rahman stated, I quote: "Don't you
25 know that I am Ali Kushayb?" End quote. The witness continues: "...

1 Ali Kushayb said we were '*Magus*' meaning 'people who don't have any beliefs' ... he
2 said that Ahmad Harun had authorised them to confiscate the property of the Fur and
3 eliminate the Fur."

4 Similarly Witness 919 describes how when he was detained "... Ali Kushayb came into
5 the cell with about 10 of his men ... he introduced himself to the *umdahs* in the cell that
6 he was Ali Kushayb, the leader of the Janjaweed. He further said," I quote, "'I am
7 going to fuck you today' ..." End quote.

8 At the same time, Samih told the detainees, I quote: "you *Toro Boro* we will finish
9 you." End quote.

10 Your Honours, these were not idle threats. This was a blunt promise of what was to
11 come. Because at this point began a period of hell for the detainees.

12 Janjaweed co-perpetrators Samih, Hamdi and Abd-Al-Rahman tortured the detainees
13 using axes, knives, sticks, whips and other weapons.

14 Several witnesses describe how Abd-Al-Rahman personally attacked a number of
15 community leaders with his axe. Witness 129 describes, for example: "... I saw him
16 hit *Umdah* Isa Harun on the head with an axe. The *Umdah* fell flat ... *Umdah* Yahya
17 and a child who was sitting [next to] *Umdah* Yahya were [also] hit by the sharp end of
18 Ali Kushayb's axe."

19 Witness 990, yet another detainee witness, describes how he himself was assaulted.

20 He says, I quote: "... Ali Kushayb swung the axe in an underarm motion and it struck
21 me near the inner calf muscle of my leg."

22 P-990 bears the scars of Abd-Al-Rahman's axe to this very day, as you can see in this
23 image.

24 I should mention at this point that Abd-Al-Rahman's axe is a recurring leitmotif
25 throughout this case. In Mukjar alone you will hear 11 Prosecution witnesses speak

1 of the accused wielding this axe. And Ms Whitford behind me will list an equal

2 number, if not more, mentioning the same in Deleig.

3 The absolute brutality of what Abd-Al-Rahman and his co-perpetrators were doing is

4 highlighted by the mutilations they carried out.

5 As Witness P-919 describes, and as was briefly mentioned by the Prosecutor this

6 morning: "... Kushayb was beating the *umdahs* at this time. Three detainees had

7 ears cut off which fell on the ground ... The Janjaweed did not say why they cut their

8 ears. Three of them did not receive any treatment, they were bleeding, there was

9 a lot of blood ..."

10 Detainee Witness 919 describes other horrific events that he was subject to. He says

11 that after Ali Kushayb had left the cell, the Abu Taira, the Central Reserve Forces,

12 brought in a clothes iron with which he was burned, because the CRF wanted him to

13 confess to being a rebel. He was not alone and he saw many other detainees being

14 burned at the same time.

15 Similarly, other witnesses provide accounts of being burned by using melted plastic

16 bottles on the skin of detainees.

17 Coming back to Witness 919 who was burned with the iron, almost 20 years later,

18 today, he still carries on his body a vivid reminder of the agony that he suffered that

19 day. You can see here images of both his leg and his arm.

20 Your Honours, many other detainees carry less visible but equally painful scars from

21 their experience. Emotional scars.

22 However, unlike these detainees who bear today either physical or emotional scars,

23 most, if not the majority of detainees who were at Mukjar police station, will not be

24 able to tell their story at trial. They will not have that opportunity because they did

25 not survive their detention. And it is to their lives or it is what happened to them

1 that I will discuss now.

2 At this point, after these days of torture, together with his co-perpetrators,
3 Abd-Al-Rahman played a key role in obtaining custody of the detainees into his
4 hands.

5 On the day of the executions there was a meeting in the yard of the police station
6 featuring Abd-Al-Rahman, Hamdi, Samih and others, and detainee 129, peering
7 through the bars of his detention cell, saw this and thought that they must have taken
8 a decision at this meeting, because immediately after the meeting the co-perpetrators
9 came right over to the detention cell to open the doors and start taking persons out.

10 Witness P-905, a witness with a different vantage point, makes it clear how
11 Abd-Al-Rahman obtained custody. He says that Abd-Al-Rahman stated to the head
12 of police in Mukjar, I quote: "[t]hese people, we want to take them to Garsila, and then
13 we take them to Zalingei to investigate with them [...] because they're all accused [...] they're all suspects." End quote.

15 Abd-Al-Rahman ordered a police officer to open the doors in the presence of the head
16 of police and other Government of Sudan leadership and ordered, I quote: "[a]ll
17 these are no good. All of them, put them out for us. Pack them up for us." End
18 quote.

19 Detainee Witness 919 also describes how Abd-Al-Rahman started calling out
20 the names of individual community leaders. This included *Umdah* Yahya Ahmad
21 Zarruq, *Umdah* Issa Harun Nour and *Umdah* Adam Husayn Abdelmahmoud.

22 P-877 describes how, as they walked out, Abd-Al-Rahman hit them with his axe
23 around his -- their head, neck and shoulder.

24 And indeed, he went to great lengths to humiliate the detainees, as mentioned by
25 the Prosecutor this morning. How *Umdah* Yahya Zarruq's name was called, at which

1 point Ali Kushayb struck him on the head with an axe. And when the *umdah* could
2 not stand, Ali Kushayb pulled at his ears and said, "I am going to ride the donkey."
3 Under the supervision of Abd-Al-Rahman, his co-perpetrators piled the prisoners into
4 cars like sacks, ordered them to lie down, face down, and some detainees were indeed
5 blindfolded.

6 He then distributed his men amongst the various Land Cruiser vehicles and then
7 walked towards the convoy shouting, I quote: "... *tora bora* is over, prepare their
8 graves." Ends quote.

9 This process of loading these detainees to be taken out for execution was seen by no
10 less than 15 Prosecution witnesses, whose evidence will be led before you, orally or
11 otherwise.

12 Any vehicles that were fully loaded with detainees left Mukjar police station,
13 followed by others soon after.

14 As you can see in this image, Abd-Al-Rahman, Samih, Hamdi and others packed
15 the detainees into vehicles next to this police station, the Mukjar police station.

16 And if you view this video image, you can see that the convoy travelled northwards
17 along the Garsila-Mukjar road, passing to their left the location where in the future
18 a UNAMID base would be built, passing again a few riverbeds to finally arrive at
19 a particular location where a riverbed intersected with the Mukjar-Garsila road.

20 Next to, as you can see in this satellite image, a number of sycamore trees.

21 We have footage of the actual location, taken some years later. My apologies. Ah,
22 there we are. My apologies, your Honour.

23 So as you can see in this -- we have footage of the location where the Mukjar-Garsila
24 road intersected at that particular riverbed. And where this intersection occurred, at
25 least six Prosecution witnesses say that there was an execution involving a number of

1 community leaders.

2 One witness says, I quote: "I saw the *umdahs* as they were being unloaded from

3 the first vehicle. [...] I saw Ali Kushayb use his axe and Al-Dayf Samih use

4 a Kalashnikov, whip and stick to hit the prisoners as they came out of the vehicle."

5 Another witness, P-905, describes what Mr Abd-Al-Rahman did next: "He's

6 standing like this, he has [...] a stick [...] about 1 metre [...] around him are his guards

7 with their weapons [...] he says to them, 'Bullet [them] bullet them'." The witness

8 explains, "'Bullet them' means 'kill them'."

9 He continues: "Make sure ... don't leave me one person alive." End quote.

10 The witness continues to describe Abd-Al-Rahman's orders:

11 "[H]e's saying, 'Immediately, come down, come down, come down! Shoot! Shoot!

12 Shoot! Immediately! Shoot immediately! ...

13 Repeat for these people. Maybe there are some that you have missed. Repeat for

14 these people!"

15 The witness explains what he means by repeat:

16 "... when you are shooting someone, Tak! Tak! Tak! Tak! ... then you come

17 again and you do the same thing. This is repetition." End quote.

18 Another witness -- I apologise, the same witness, P-905, confirms Abd-Al-Rahman's

19 central role during the course of the executions. He says, I quote: "Nobody talks.

20 Only Ali Kushayb talks. The instructions [are] from him." End quote.

21 Importantly, other witnesses confirm that the persons who shot and killed these

22 persons at this location, including the community leaders, were either subordinates of

23 Abd-Al-Rahman or close associates of Abd-Al-Rahman.

24 At this point when a number of detainees had already been shot and killed, the head

25 of the Mukjar police force arrives in his jeep. He has heard the shooting. He tells

1 Mr Abd-Al-Rahman that he handed over the detainees under the condition that they
2 were taken to Garsila and Zalingei. He did not hand them over to be killed.
3 The head of police tried to indeed negotiate with Abd-Al-Rahman that at least some
4 detainees not be killed.
5 The accused did not respond and merely said, "Let's go." As a result, the convoy
6 travelled a very short distance away from the first execution site, just until Mukjar
7 town was out of sight, and then halted.
8 It is useful at this point to recall the words of Prosecutor Khan this morning when he
9 mentioned the five students between the ages of nine and 12 who were studying
10 the Koran under the tutelage of an elderly *sheikh*. I say that because at this point in
11 time those children were still alive.
12 However, Abd-Al-Rahman stated, "[t]hese people, offload them [...] we terminate
13 them."
14 The prisoners were given a chance to speak to their families and say goodbye.
15 One detainee spoke of having come from Nyala, another of having been robbed of
16 livestock. The *sheikh* himself begged for the lives of his children, the five orphans,
17 who were shaking with fear and standing nearby.
18 Abd-Al-Rahman responded, I quote: "There is no time. Don't tell me 'I'm coming
19 from Nyala or I have cows or [...] I'm a religious man; we don't have time.'" End
20 quote.
21 He then instructed, I quote: "Implement the operation." Which the witness explains
22 means kill them.
23 And then he explains that all of these people, the five boys and some other persons
24 who were in the same vehicle were killed. One boy tried to run away, but this was
25 fruitless for he himself was again shot and killed.

1 As for the elderly *sheikh*, the Koranic scholar who was managing the *Khalwa* and
2 taking care of the five children, he begged, as the Prosecutor mentioned, for some
3 time to make ablution. There was of course no water by the execution site, so he had
4 to use soil or sand from the ground. He was allowed to pray two movements of
5 prayer, or two sets of movements, after which (Redacted) explains, "And then
6 the religious man, he finished his two *rakats*, he finished his prayer, [and] they
7 finished with him." (Redacted) was asked by investigators of the Office of the Prosecutor
8 whether the person -- the shooter who carried out those killings was ever punished,
9 and he responded, I quote: "No. Who ... who will punish him? He got his orders from
10 Ali Kushayb." End quote.

11 After witnessing this first execution, which was grouped near that initial location near
12 the UNAMID base where the wadi intersects the Garsila-Mukjar road, the convoy
13 starting move again, as you can see in this video image.

14 They once again left Mukjar to the south, left the location of the future UNAMID base
15 to the south and headed again towards Garsila. Again, there was Abd-Al-Rahman,
16 Hamdi, Samih and some remaining detainees contained in this convoy. They
17 crossed, as some witnesses say, one large wadi, or river, and then arrived at another
18 location near the burnt out village of Nyerli. Nyerli, as I mentioned earlier, was
19 attacked by Abd-Al-Rahman's forces before the events in Mukjar.

20 And then they finally stopped in this location. We do have some footage of
21 the actual site itself taken some years later.

22 Here too, just like before, Abd-Al-Rahman ordered, I quote: "unload them", after
23 which the detainees were told to get out of the vehicles and lie down rather neatly on
24 the ground.

25 As the detainees were lying next to each other, in lines, Witness 905 -- I apologise,

1 a different witness explains, I quote: "[...] Suddenly, they opened fire. [...] There was
2 continuous shooting for a while. [...] They were spraying with every type of gun they
3 had. They reversed their cars, turned their DHKAs [...]" - that is to say heavy
4 machine guns - "and fired them."

5 A witness describes the consequences of this shooting. He says, I quote: "I saw
6 Abkar Yahya" - that is to say one detainee - was alive, but had been badly injured.
7 He tried to get up, but could not. His waist was broken and his chest was full of
8 blood. I believe he died soon afterwards."

9 Regarding another detainee, a witness states: "Bar-al-Din Idris was shot. He got up
10 and started running. They shot him again."

11 Members of the Militia/Janjaweed and Government of Sudan forces walked on top of
12 the dead bodies to make sure they were dead. One soldiers called them "slaves",
13 referring to a victim, and took some money from the body of the dead victim.

14 Having heard the gunfire and seeing the vehicles of the convoy return empty,
15 the residents of Mukjar deduced what had just occurred.

16 Some days after the killings, they ventured out to search for the bodies. At a valley
17 or dry riverbed near Mukjar police station, just north of the UNAMID base that I
18 mentioned already, they discovered some bodies.

19 In fact, Witness P-877 sketched -- drew a sketch of that location. And you can see
20 the sketch, when compared with the satellite image, shows the same relationship of
21 the Mukjar-Garsila road and the riverbed cutting across.

22 The sketch also corresponds further to what the witness had drawn. The witness
23 recalled that there was a small -- there was a smell of decaying corpses, that many
24 corpses had been discovered, and indeed the corpses are indicated in this image by
25 a black square. And if we can isolate that black square, the witness discovered,

1 identified or recognised the bodies of particular individual victims.

2 He recognised - if we get one click more, please. Yes - *Umdah* Yahya Ahmad Zarruq,

3 *Umdah* Adam Husayn Abdelmahmoud, Adam Nahid Numan, and Abd-Al-Khalik

4 Yahya Ishaq Musa, all of whom you have heard of before and all of whom had been

5 detained with Witness P-877 in prison when they were detained together.

6 Heartbreakingly, Abd-Al-Khalik, the Fur student that I mentioned, was discovered by

7 his own father.

8 When the residents of Mukjar, including some of our witnesses, travelled further

9 north to Nyerli, bodies were found at another execution site, the second execution site

10 that I mentioned.

11 Here too a witness drew a sketch of that location, and here too you can seek with

12 careful study some parallel between the sketch and the -- and the satellite image.

13 Here too witnesses found bodies stacked together, used cartridges. And, in fact,

14 the witness -- the victim who had tried to run during the execution, detainee

15 Bar-al-Din Idris, was found in this location and identified and buried.

16 Thus, your Honours, ended the lives of 122 detainees. They were civilians,

17 community leaders, doctors, policemen, farmers, students, children.

18 One of the sources we used to compile this list was -- was drawn by a witness who

19 had been detained at that police station who had written the names of his fellow

20 detainees on his sleeve in the dark.

21 He explains, "I did this as I believed many of us would be killed and I wanted to

22 make a record of those who had died so one day people would know what had

23 happened."

24 Your Honours, as I conclude, I would like to remind you that this duty, to make sure

25 that these persons are not faceless, nameless or forgotten, cannot be borne by

1 the fragile shoulders of just one witness, one detainee. It must be borne by us in this
2 courtroom, and it must in particular be borne by this Court.

3 Thank you, your Honours. I will end my submissions at this point.

4 PRESIDING JUDGE KORNER: [15:35:36] Yes, thank you very much,
5 Mr Sachithanandan.

6 Yes. (Microphone not activated)

7 THE INTERPRETER: [15:35:42] Microphone, Judge Korner, please.

8 PRESIDING JUDGE KORNER: [15:35:47] As I indicated at the end, just before
9 the luncheon adjournment, we'll adjourn the opening here and deal with what I think
10 is being called some housekeeping matters.

11 So, for the purposes of the -- public, I don't think there's any reason to go into private
12 session over any of them. But the parties I think have been notified of the matters
13 that I want to discuss, briefly.

14 First of all, the Defence have sought written leave to appeal the number of hours
15 allocated to them for cross-examination during the Prosecution case.

16 The Trial Chamber indicated through the legal officers that there was no necessity for
17 the Prosecution to respond, or indeed the Legal Representative of Victims. However,
18 it was brought to bear upon me that I ought to see whether they wish to respond.

19 So, Mr Nicholls, does the Prosecution wish to respond?

20 MR NICHOLLS: [15:36:55] No, thank you. We'll stay out of that one, your Honour.

21 PRESIDING JUDGE KORNER: [15:36:57] All right.

22 And I'm assuming that the Legal Representative for Victims don't have a dog in this
23 game either?

24 MS VON WISTINGHAUSEN: [15:37:04] Yes, Madam President, I will do you this
25 favour.

1 PRESIDING JUDGE KORNER: [15:37:09] Yes. We will give an oral ruling at the
2 conclusion of tomorrow's proceedings. So, again, wherever we get to, then we'll do
3 that.

4 Now, the next matter, which is slightly longer.

5 And, Mr Edwards, I think you've been dealing with this aspect of matters.

6 At the last status conference, we discussed -- and that was -- just let me get
7 that -- the date, that was on 23 March. We discussed the -- as it were, the addition to
8 the pretrial brief, or the -- I think it's more the explanation of paragraph 27 of
9 the pretrial brief. And, really, the relevant parts are -- I start at page 49 of
10 the transcript from that status conference.

11 And what we indicated, and what the Trial Chamber couldn't have been clearer about,
12 was that we wanted to deal with the general principle of whether the Prosecution
13 could be allowed to call evidence which it had obtained after the confirmation
14 hearing, in other words, June -- sorry, May of 2021. And this was in order to stop
15 unnecessary filings, whether formal filings or by way of email, to the legal officers in
16 respect of witnesses to whom the Defence objected on the grounds the evidence was
17 obtained after what they considered to be the cut-off date.

18 And the Prosecution was ordered to respond to this by, I think, tomorrow, or the day
19 after. I can't remember which.

20 MR NICHOLLS: [15:39:32] 7 April, your Honour.

21 PRESIDING JUDGE KORNER: [15:39:33] 7 April. Thank you.

22 Instead of which, what we have had from the Defence is two separate filings; one in
23 relation to Witness 903, and one in relation to Witness 990, which repeat the identical
24 submissions. To be precise, paragraph 11 of the submission 9 -- for Witness P-0903 is
25 repeated at paragraph 6 of the next in identical terms.

1 Mr Edwards, the whole point was that we don't have this repetitious type of filing
2 and that we could look at the general principles, decide on the general principles, and
3 then, if there were matters which arose for any of the up and coming witnesses which
4 were unique to those witnesses, if you like, then we would -- obviously you could file
5 something. But the general principle which you're making, that the Prosecution
6 should be prevented from calling any evidence like this, is something we wish to
7 decide.

8 Now, do I understand that you didn't understand that?

9 MR EDWARDS: [15:41:00] No, that's not right, your Honour.

10 We understood what you wanted.

11 PRESIDING JUDGE KORNER: [15:41:08] You just weren't prepared to give it?

12 MR EDWARDS: [15:41:11] Well, with respect, I think we did.

13 The filing relating to Witness 0903, I think we had made -- in the last status conference,
14 if I -- if I recall correctly, one or other of us was reminded that there was a witness
15 who was in the first tranche of -- of those in the list about to testify, 903. And so our
16 thinking was that we had -- we had already made the submissions of principle in
17 a document called, in French, the *clarification*.

18 PRESIDING JUDGE KORNER: [15:42:00] Yes. Which is what I referred to. That's
19 how this all started off.

20 MR EDWARDS: [15:42:05] Yes. That's right.

21 PRESIDING JUDGE KORNER: [15:42:07] And I asked you -- sorry, Mr Edwards,
22 I'm sorry to interrupt you, but I -- you're absolutely right. And then I asked you
23 whether you wanted to add to it, because we wanted to deal with it as a matter of
24 general principle.

25 MR EDWARDS: [15:42:20] Well, yes. Our position has always been - and we say

1 that that position is supported by well-established case law now, which is set out in
2 the filing - that it is not the correct approach, with great respect, to deal with this
3 particular question merely as a matter of principle. It can only properly be dealt
4 with by looking at a particular witness or a particular piece of evidence or a particular
5 class of evidence on a case-by-case basis.

6 Your Honour will recall in fact that during the last status conference, you -- you made
7 a comment to my learned leader in these terms: "What at the moment I'm at a loss to
8 understand is why you say there's any cut-off date."

9 The purpose of this document, this filing, 903, was specifically to address
10 your -- your Honour's question and to explain precisely why we say that there is
11 a cut-off date. That as a matter of principle, there is -- there can be a cut-off date.
12 But in order to apply the principle to any particular piece of evidence in relation to
13 any particular witness, the context of how that witness came to have his or her
14 evidence collected after what we call is the -- call the cut-off date, i.e., the confirmation
15 of charges hearing, that must be looked at on its own merits.

16 And so this filing of 1 April was specifically to address your Honour's comment to my
17 learned friend to revisit the well-established case law and then to apply that principle
18 to a concrete example, that concrete example being 903, that we raised in the last
19 status conference as being a forthcoming witness, in order, we thought, to assist
20 the Trial Chamber in -- well, in order to assist, we -- we hoped, the Trial Chamber to
21 see things through our eyes.

22 PRESIDING JUDGE KORNER: [15:45:00] Yes, but -- sorry. First of all, Mr Edwards,
23 you're absolutely right, that was the comment I made. And what I was expecting
24 was -- and what we were expecting, was that you would be addressing in your next
25 filing that general principle, which you do to a certain extent. Although you rely on

1 the case of Gicheru, the very recent judgment, but you've taken the quote right out of
2 context of all of this. And it was a completely different set of situations from that
3 that apply in this case. Nor does the ruling purport to set out any kind of standard.
4 So what I am trying to avoid is repetitive filings, which as we're already seen, you
5 apply, you say, in the case of P-903, at paragraph 11, the Prosecutor has been willing
6 and able to conduct its investigations in Sudan since the signing of the memorandum
7 of understanding between the OTP, et cetera, et cetera. And you say the identical
8 thing at paragraph 6 of the filing in respect of Witness 990.

9 Do you see, people have to plough through these. And if this is dealt with, if we
10 came to the conclusion that, as a matter of principle and law as applied in this
11 tribunal, there is no such thing as a cut-off date, then what you have to look at is
12 the circumstances which are specific to a witness, which is there are no more than it
13 was taken after that particular date, it doesn't take you anywhere.

14 Is that clear, Mr Edwards?

15 MR EDWARDS: [15:46:55] Well, it's clear what it is that you would like in future,
16 yes. So what I can say is that in the future, we -- we absolutely take on board
17 your Honour's comments and concerns and we will make more use of the formula of,
18 you know, incorporating by reference.

19 But your Honour's point is -- is exactly what we wish to address. We say that these
20 applications can -- in fact, can only be dealt with on their own merits, on a
21 case-by-case basis.

22 PRESIDING JUDGE KORNER: [15:47:44] I understand -- no, there are
23 two -- Mr Edwards, I -- I don't think I'm getting across to you. I perfectly accept that
24 for each witness to which you take objection there may be specific circumstances
25 which take it out of the normal realm. But if the only circumstance is that

1 the Prosecution took the witness statement after May 21 -- after May 2021, and we
2 decide - and can I emphasise we have come to no decision yet at all about this - we
3 decide that really no such cutoff point is available to the Defence because it doesn't in
4 law exist at this tribunal. The law, let us say for the sake of argument, is that
5 the Prosecution can carry on investigating. It then becomes, as you say rightly,
6 a matter for the circumstances in which each individual witness statement was taken.

7 MR EDWARDS: [15:48:53] Yes, yes, absolutely.

8 And I feel that -- that we do have to defend ourselves. That is precisely what we
9 have done in the last two filings. There may have been a degree of repetitive leading
10 in to the particular submissions about these particular witnesses, but once we then
11 move into the case-by-case approach, it's my submission that each of these motions
12 does deal with the particular circumstances of how each of these witnesses came to
13 give their evidence to the Prosecution, or perhaps more correctly, how each of -- how
14 the Prosecution came to collect the evidence of each of these witnesses.

15 And our attempt in the -- in these two filings is to suggest that the way in which
16 the evidence was collected from the Prosecution discloses a certain lack of diligence
17 on the Prosecution's part.

18 PRESIDING JUDGE KORNER: [15:50:02] Yes. All right. But -- it may not be
19 the exact same words, but it's very much the same argument in respect of 903 and 990,
20 isn't it? It's effectively that the Prosecution should have taken it before May 2021.

21 And I'm right, aren't I -- Mr Edwards, sorry, just one other matter, the other difference
22 between these witnesses and that in Gicheru is that all of these witnesses were
23 disclosed to you, even though they may not have appeared on the Prosecution's
24 witness list to be called, or in fact they may have been on that.

25 MR EDWARDS: [15:50:44] I -- I'd have to go back to check my notes on this. I think

1 there's -- I think there's -- I think there's certainly one witness, I may be thinking about
2 a different witness, whose evidence is in the form of audio recordings which were
3 only the -- the Arabic versions of which have been disclosed to us, the English
4 translations of which have not yet been disclosed to us. That -- that may in fact
5 be -- I think that in fact is a filing I'm working on at the moment which I hope will be
6 with your Honours in the next day or so.

7 But -- but I think our argument is that whether they were disclosed to us or not,
8 the lack of diligence on the part of the Prosecution in obtaining these witness
9 statements long ago when they ought to have done, militates in -- in favour of their
10 exclusion.

11 PRESIDING JUDGE KORNER: [15:51:55] Well, that's -- we're going -- actually, we're
12 going around in circles, I mean, because that's the reason why I asked whether you
13 wanted to make any further submissions on the actual general principle on what you
14 really are arguing, which is if they haven't got their act together by May 2021, then
15 they should be precluded from calling the evidence. That's what it amounts to, isn't
16 it?

17 MR EDWARDS: [15:52:20] Well, yeah. And as far as that -- those arguments of
18 principle, we have said all that we wish to say.

19 PRESIDING JUDGE KORNER: [15:52:26] Right. All right. Well, that's all I
20 wanted to know. Thank you very much, Mr Edwards.

21 Mr Nicholls, I take it there's nothing you want to ...

22 MR NICHOLLS: [15:52:34] Well --

23 PRESIDING JUDGE KORNER: There is something you want to say.

24 MR NICHOLLS: [15:52:35] Just very briefly. I can't help myself, your Honour. I
25 mean I think you were very clear. And I've been listening to my friend. None of

1 this -- their objections make sense unless you do tie it to that general principle. 903

2 was disclosed over six months ago, before trial, there is zero prejudice and so we will

3 respond on the 7th and we have our time. But unless you tie it back to that principle,

4 they're lost. They -- they are making this diligence argument using the cornerstone

5 of the confirmation hearing.

6 So we will respond in writing, but I just had to say something.

7 PRESIDING JUDGE KORNER: [15:53:10] Yes, all right. Well, I raised it simply

8 because, as I say, it seemed to me that the arguments were addressed to specific

9 witnesses and are not dealing with what I was looking for, or we were looking for.

10 Yes, all right. Thank you all very much. We'll resume again tomorrow morning

11 with the Prosecution opening at 9.30. And, as I say, we'll give a ruling -- sorry,

12 Mr Edwards, you want to add something, do you?

13 MR EDWARDS: [15:53:41] Was there anything your Honours wanted to say about

14 Regulation 35 applications?

15 PRESIDING JUDGE KORNER: [15:53:49] Not that I'm aware of. Was I going to say

16 something about (Overlapping speakers)

17 MR EDWARDS: [15:53:53] It was on the agenda.

18 PRESIDING JUDGE KORNER: [15:53:55] Oh, right. I'm not sure -- I'm not sure

19 what it was. If I think of it tomorrow morning, Mr Edwards, I'll mention it

20 tomorrow morning.

21 Yes, very well. So 9.30 tomorrow morning we'll resume the opening.

22 And the first witness is then the expert, Mr Nicholls; is that right?

23 MR NICHOLLS: [15:54:14] (Microphone not activated)

24 Correct. And I think we probably have less than an hour to conclude the opening

25 statement.

1 PRESIDING JUDGE KORNER: [15:54:26] Right. Well, then we'll probably -- well,
2 if it's less than an hour --

3 MR NICHOLLS: [15:54:31] It will probably be fairly - guys help me - it will be a little
4 bit under an hour, and then there are some other matters, so we -- it may work out
5 best to call the witness at the start of the second session is my guess.

6 PRESIDING JUDGE KORNER: [15:54:48] Well, that's what I was just wondering.
7 But not -- I think it makes it difficult if we alter the breaks completely, so -- for
8 the staff. But I was just wondering whether you needed to do any -- anything in
9 particular that -- so that you needed a break before the witness starts.

10 MR NICHOLLS: [15:55:07] No, your Honour, I do not believe so because
11 (Overlapping speakers)

12 PRESIDING JUDGE KORNER: [15:55:11] Well, then we'll see how it goes. I mean,
13 if it's -- if it's something like quarter to 11, well, then we'll -- we'll adjourn then and
14 start the witness after the break.

15 Yes, thank you all very much. Thank you.

16 MS VON WISTINGHAUSEN: [15:55:22] Madam President, just to remind you that
17 you have allocated us the time tomorrow for --

18 PRESIDING JUDGE KORNER: I'm sorry, I didn't hear that.

19 MS VON WISTINGHAUSEN: [15:55:28] Just to remind you that you have allocated
20 a little -- a little time to our small opening and of course to the accused as well. I
21 think (Overlapping speakers)

22 PRESIDING JUDGE KORNER: [15:55:37] You are quite -- you are quite right.

23 MS VON WISTINGHAUSEN: [15:55:39](Overlapping speakers) I think the first
24 session will do for all of us but (Overlapping speakers)

25 PRESIDING JUDGE KORNER: [15:55:47] Yeah, you're absolutely --

- 1 MS VON WISTINGHAUSEN: (Overlapping speakers)
- 2 PRESIDING JUDGE KORNER: -- right to remind me. Thank you very much,
- 3 Ms von Wistinghausen. I had forgotten that part where you said you wanted a little
- 4 time and that Mr Al-Rahman wants to make a short statement. Yes.
- 5 All right. Well, that will certainly take us to the first break.
- 6 THE COURT USHER: [15:56:01] All rise.
- 7 (The hearing ends in open session at 3.56 p.m.)