

Trial Hearing  
WITNESS: DAR-V47-V-0005

(Open Session)

ICC-02/05-01/20

1 Trial Chamber I

2 Situation: Darfur, Sudan

3 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali

4 Kushayb") - ICC-02/05-01/20

5 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet

6 Alexis-Windsor

7 Trial Hearing - Courtroom 2

8 Thursday, 19 October 2023

9 (The hearing starts in open session at 9.35 a.m.)

10 THE COURT USHER: [9:35:14] All rise.

11 The International Criminal Court is now in session.

12 Please be seated.

13 PRESIDING JUDGE KORNER: [9:35:35] Yes, good morning all.

14 Could we have the appearances? Again, we'll start with the representatives of the  
15 victims.

16 MS VON WISTINGHAUSEN: [9:35:47] That's very kind, thank you,

17 Madam President.

18 Good morning, your Honours, dear colleagues. Good morning to everyone in and  
19 around the courtroom.

20 The participating victims today are represented by my associate counsel, Anand Shah;

21 next to me my case manager, Saif Kassis; and behind me our visiting professional,

22 Charlotte Imhof; and myself, Natalie von-Wistinghausen. Thank you.

23 PRESIDING JUDGE KORNER: [9:36:08] Thank you very much. Yes,

24 Prosecution.

25 MR NICHOLLS: [9:36:12] Good morning, Madam President. Good morning, your

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1 Honours. Good morning, everybody. Myself, Julian Nicholls, with Alison

2 Whitford, Claire Sabatini and Rachel Mazzarella. Thank you.

3 PRESIDING JUDGE KORNER: [9:36:23] Thank you. And the Defence.

4 MR EDWARDS: [9:36:26] Your Honours, for Mr Abd-Al-Rahman, there's Thomas

5 Chatelet, our intern; Marcela Velarde, our assistant, evidentiary assistant; Ahmad Issa,

6 our case manager; immediately behind me to my left, Audrey Mateo; and myself,

7 Iain Edwards.

8 Mr Laucci is otherwise engaged this morning, but he'll be with us this afternoon.

9 PRESIDING JUDGE KORNER: [9:36:50] Yes. Well, you can tell him that he will, no  
10 doubt, be cheered up to hear that his words of wisdom in opening may well be  
11 streamed live, probably via Facebook as opposed to anything else.

12 But, if not, the YouTube will be up within a matter of some hours, I gather.

13 So you can pass that on to him.

14 MR EDWARDS: [9:37:24] Thank you.

15 PRESIDING JUDGE KORNER: [9:37:25] Right. Ms Von Wistinghausen, this, of  
16 course, is a Fur-speaking victim.

17 MS VON WISTINGHAUSEN: [9:37:36] Yes.

18 PRESIDING JUDGE KORNER: [9:37:37] So I'm sure that you understand the  
19 necessity for very, very short questions, if possible, without a lead-up, if even more  
20 possible.

21 Right.

22 Madam, good morning to you.

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24 (The witness speaks Fur)

25 (The witness gives evidence via video link)

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1 THE WITNESS: [9:38:07](Interpretation) Good morning, I am well. How are you  
2 this morning?

3 PRESIDING JUDGE KORNER: [9:38:17] Yes. I'm glad that you can hear and  
4 understand me. And before --

5 THE WITNESS: [9:38:24](Interpretation) Indeed, I do hear you well.

6 PRESIDING JUDGE KORNER: [9:38:37] Is the picture supposed to be like this?  
7 That's what I thought.

8 Sorry, say it again.

9 (Presiding Judge and Court Officer confer)

10 PRESIDING JUDGE KORNER: [09:38:59] Yes. All that I'm going to say is you  
11 know Ms Von Wistinghausen, who is going to ask you questions. And if you need a  
12 break outside the one we will take in about just over one hour, then please say so  
13 straightaway.

14 THE WITNESS: [9:39:48](Interpretation) Certainly.

15 PRESIDING JUDGE KORNER: [9:39:49] Yes, thank you.

16 Yes, Ms Von Wistinghausen.

17 QUESTIONED BY MS VON WISTINGHAUSEN:

18 Q. [9:39:59] Good morning, Madam. It's very good to see you this morning. I  
19 hope that you had a good rest.

20 Just a few things I would like --

21 A. [9:40:14] I am well, indeed, thank God.

22 Q. [9:40:21] As I have discussed with you yesterday, it's very important that we  
23 speak slowly and that we make short sentences so that the interpreters get everything  
24 we say, and, more importantly, the judges get the full account of what you want to  
25 tell them today.

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1 So, as I also explained yesterday, if your answers get too long, I will just raise my  
2 hand like this, which, as I explained, is of course no disrespect, but just to give you a  
3 sign to stop, to wait for interpretation and to continue. All right? Okay. Good.

4 A. [9:41:16] All right. And I will raise my hand if I have anything to express or  
5 any problem.

6 Q. [9:41:46] Absolutely, that's a very good idea.

7 MS VON WISTINGHAUSEN: [9:41:49] Madam President, can we very shortly go  
8 into closed session, please. It will just take two minutes.

9 PRESIDING JUDGE KORNER: [9:41:54] Yes. We'll go into private session.

10 (Private session at 9.41 a.m.)

11 THE COURT OFFICER: [9:42:01] We are in private session, Madam President.

12 (Redacted)

13 (Redacted)

14 (Redacted)

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12 (Open session at 9.46 a.m.)

13 THE COURT OFFICER: [9:46:07] We are back in open session, Madam President.

14 MS VON WISTINGHAUSEN:

15 Q. [9:46:27] Madam, your home village was Kodoom. Can you tell us how many  
16 families, how many people, approximately, lived in Kodoom before the attacks,  
17 before you had to leave your home village?

18 A. [9:46:42] We were all of -- we were all Fur -- we were in majority Fur. There  
19 were some Arabs and some different tribes among us.

20 Q. [9:47:41] Can you give us an idea of how big your home village was -- how  
21 many families, more or less, lived there?

22 A. [9:47:54] There were many families from the neighbouring villages, Ronga Tass,  
23 Kodoom, and Nyerli. The approximate number was -- of families, was a thousand.

24 Q. [9:48:49] And when you were growing up, who did you live with in your house?

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- 1 A. [9:49:12] I used to live with my mother, father, and 10 of my siblings.
- 2 Q. [9:49:35] And your family home, what did it look like? What type of house  
3 was it?
- 4 A. [9:49:43] Our houses were made of straw and wood sticks.
- 5 Q. [9:50:14] And what kind of work did your family do, including yourself?
- 6 A. [9:50:22] We were engaged in farming and in other activities. My father was a  
7 shop owner.
- 8 Q. [9:51:09] Did you have animals?
- 9 A. [9:51:13] We only had a few animals -- goats, that is.
- 10 Q. [9:51:32] And did you go to school?
- 11 A. [9:51:44] Yes.
- 12 Q. [9:51:51] Until which grade did you go to school?
- 13 A. [9:51:57] I went to school until fourth grade in elementary school.
- 14 Q. [9:52:18] And were other family members in Kodoom or in nearby villages such  
15 as Bindisi, and did you see these other family members on a regular basis?
- 16 A. [9:52:34] Yes, I had family members in Kodoom and Nyerli. I also had  
17 maternal uncles in Bindisi. We were in touch regularly.
- 18 Q. [9:53:37] And can you tell us about the relationship between the people who  
19 lived in Kodoom and other villages?
- 20 A. [9:53:48] We were like one family and we were in touch on happy occasions and  
21 on sad occasions, and I had maternal aunts in the other villages whom we used to  
22 visit and they used to visit us as well.
- 23 Q. [9:54:42] And can you describe some traditions or events that your family and  
24 the community would celebrate all together?
- 25 A. [9:54:54] Indeed, we used to hold occasions.

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1 Q. [9:55:29] Can you describe such occasions so that we get a better idea of what it  
2 is that you celebrated and how you celebrated it?

3 A. [9:55:41] We are Muslims. We fast in the month of Ramadan.

4 THE INTERPRETER: [9:57:07] The Fur interpreter says that he is not able to  
5 understand the second part of the answer because she speaks too slowly.

6 MS VON WISTINGHAUSEN: [9:57:25]

7 Q. [9:57:25] Madam, I apologise to stop you. Can you try to get a bit -- a little bit  
8 closer to the microphone and speak a little bit louder so that the interpreters can hear  
9 you better. Thank you.

10 A. [9:58:07] We are Muslim. We fast in the month of Ramadan. After the month  
11 of Ramadan, we used to celebrate the post-Ramadan Eid and on that occasion we  
12 would put on nice clothes, visit with neighbours and you would see children playing  
13 in the streets in celebration of the Eid.

14 Q. [9:58:38] I would like to ask you about one of your cousins on your mother's  
15 side, and for that I need one minute in private session, please.

16 PRESIDING JUDGE KORNER: [9:58:56] Yes.

17 (Private session at 9.59 a.m.)

18 THE COURT OFFICER: [9:59:15] We are in private session, Madam President.

19 (Redacted)

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6 (Open session at 10.03 a.m.)

7 THE COURT OFFICER: [10:03:16] We are back in open session, Madam President.

8 MS VON WISTINGHAUSEN:

9 Q. [10:03:22] We are back in public session, so don't mention again the name of  
10 your cousin.

11 I just want to clarify with you, he was around 25 to 30 in 2003 and you had a very  
12 close relationship to him, he was like a brother to you; is that correct?

13 A. [10:03:46] Yes, that's correct.

14 Q. [10:04:03] And he was a student in Bindisi at the time?

15 A. [10:04:08] Yes, he was a student.

16 Q. [10:04:22] A few more details about you. We understand that in 2003 you were  
17 recently married, yes?

18 A. [10:04:38] Yes, I got married in the summer of 2003.

19 Q. [10:05:03] (Microphone not activated)

20 MS VON WISTINGHAUSEN: [10:05:23] Okay. Sorry.

21 Q. [10:05:26] Was there a marriage celebration, a ceremony, and who attended?

22 A. [10:05:42] We didn't hold a large celebration because there were -- there was a  
23 lot of unrest during the time in the country, so we only invited close relatives.

24 Q. [10:06:21] And you and your husband, after your marriage, did you have your  
25 own home or did you build a new home for the two of you?



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1 A. [10:06:34] Yes, we were in a separate house.

2 Q. [10:07:02] And how many children do you have today and how old are they?

3 A. [10:07:14] Yes, I have seven children. The eldest is 20 years old. After him,  
4 18 years old; 15 years old; 12 years old; eight years old; a six-year-old and the last one,  
5 the youngest, is four-year-old.

6 Q. [10:08:34] I want to talk to you about the attacks on Kodoom, and there were  
7 several.

8 So let's first speak about the attack of 15 August 2003, all right?

9 A. [10:09:12] All right.

10 Q. [10:09:15] Can you explain to the judges what happened in Kodoom on  
11 15 August 2003? What did you see?

12 A. [10:09:25] Yes, I will relay everything in details.

13 Q. [10:10:01] Go ahead, please.

14 A. [10:10:05] Well, the attack happened on Kodoom on 15 -- 15 August 2003. It  
15 started at 6:00 in the morning, with the prayer in the morning. People were still  
16 getting ready to go to the mosque to pray, and the attackers shoot heavy fires on the  
17 village.

18 We were scared. With our children, we headed to the forest and we remained there.

19 Q. [10:11:49] Did you, yourself, see anyone being killed or injured during the attack  
20 and before hiding in the forest?

21 A. [10:11:52] Yes. When the attack took place, I saw so many bodies. One of  
22 them was the body of Abdul Razik Al-Faki Al-Jahna (phon), the body of Abdul also,  
23 and there was one grand scholar called Sobi (phon) was killed as well. Halima  
24 (phon) was also pregnant and she could not run with the people, so she died later.

25 Q. [10:13:59] Did you see houses on fire?

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1 A. [10:14:08] Yes, I saw flames. I saw the attackers coming on horses, on vehicles,  
2 and they burned the whole village down. After this, they went back and they looted  
3 everything in the village -- the cattle, donkeys, sheep, and everything in the village.  
4 All the belongings and the properties in the village, it was all looted.

5 Q. [10:15:51] You said that you fled to the forest. Was that with your husband or  
6 other family members, and how long did you stay in the forest?

7 A. [10:15:54] I was not with my husband during that time. When we went to seek  
8 safety in the forest, I was with my mother-in-law and she had grandchildren from her  
9 daughter. We remained in the forest for about two days. On the third day we  
10 headed to Mukjar.

11 Q. [10:17:02] Before heading to Mukjar, did you go back to Kodoom and did you  
12 see what the village looked like after the attack?

13 A. [10:17:28] Before we headed to Mukjar, while we were in the forest, we were  
14 able to return to the village in secret, because the village was not that far -- from the  
15 village. And we were able to see the burning houses in other villages, as well as  
16 ours.

17 Q. [10:18:34] Did you see dead or injured persons, and could the injured persons be  
18 treated?

19 A. [10:18:43] Those who were killed were our neighbours, the ones that I  
20 mentioned earlier. As for the injured people, and those who got injured in this battle,  
21 one of them was a woman, the one that I mentioned who was pregnant. She was  
22 already in the ninth month of her pregnancy and she died later.  
23 There was another woman who got injured and she could not find treatment, and she  
24 was with her aunt and they were crying because they didn't know where to head to  
25 find some treatment.

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1 Q. [10:20:51] Did anything happen to your home and your property? Was  
2 anything -- or everything taken away from you?

3 A. [10:21:08] The attackers and the looters didn't leave anything behind in the  
4 village. They took everything. My house was new and all the personal properties  
5 and belongings therein were also new. They didn't leave anything, even clothes.  
6 They took everything, so I just left home with the clothes that were already on me. I  
7 didn't -- I was not able to take anything with me.

8 Q. [10:22:25] It has now been 20 years since this attack. Can you tell the judges if  
9 this is something that you still think about today and how it impacts you?

10 A. [10:22:56] Yes. I still remember many things. We in the camps suffer a lot.  
11 We suffer with children and women simply because there is no source of livelihood  
12 with which we can provide for our families. The economic situation is very difficult  
13 in the camp. Some people go to the forest to bring firewood and some  
14 people -- some women work in the market to sell tea, and the young men and women  
15 don't have work or jobs, so everybody suffers.

16 Q. [10:25:21] There were two attacks on your village on Kodoom. After the first  
17 attack that you described, you returned to the village and what did you do? Did you  
18 try to repair your house before the second attack on 30 August?

19 A. [10:25:43] In the forest, we did not stay long. We stayed for 14 days, two weeks.  
20 After that, we returned to the village at about 10 or 11 in the morning. We did not  
21 stay there long before the attack returned, more severely though, and they killed the  
22 people who were unable to run, children and elderly, and they looted whatever was  
23 found or left behind, all the properties and the cattle. And they also raped all the  
24 girls that they found outside of the village. I remember there was one woman and a  
25 girl that they were -- that were raped.

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1 Q. [10:28:26] I'm sorry that I stopped you. That was for the sake of interpretation,  
2 of course. Please continue and tell us what you saw.

3 PRESIDING JUDGE KORNER: [10:29:27] Is she actually speaking?

4 THE WITNESS: [10:29:37](Interpretation) Yes, when we returned again to the  
5 village and the second attack happened, I remember that there was a woman who  
6 resisted the rapers. She was able to resist the first raper, but another Arab man shoot  
7 her dead.

8 Also children were running and the elderly were running from the village. Those  
9 were targeted, directly killed.

10 MS VON WISTINGHAUSEN:

11 Q. [10:30:15] This is something you saw with your own eyes, and where was it?

12 A. [10:30:20] When she met the Janjaweed, they tried to rape her, but she resisted.  
13 But another person hit her with a stick, not with a weapon. She lives with us in the  
14 same village and she is a relative -- rather, she is close to us, not that far.

15 THE INTERPRETER: [10:31:32] Message from the Fur interpreter: The first segment  
16 of the answer, there was a disconnection or connection problems and I couldn't hear  
17 it.

18 MS VON WISTINGHAUSEN:

19 Q. [10:31:46] Madam, can I ask you to repeat your answer because there were  
20 connections problems, when I asked you whether you saw the rapes with your own  
21 eyes and where that was? Can you please repeat the answer?

22 A. [10:32:04] This incident happened in Kodoom, as we were leaving Kodoom.  
23 Two women ran into Janjaweed members. That is when the Janjaweed members  
24 raped them. The other woman, who ended up killed, resisted and refused to be  
25 raped, so a Janjaweed member threw her to the ground, undressed her, and as he

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1 tried to rape her another Janjaweed member came and hit her with a stick on her head  
2 and so she died.

3 Q. [10:34:07] Those women who survived this violence, do you still know them and  
4 do you know how they are doing today, if you know?

5 A. [10:34:25] Yes, they are now fine. The elderly lady works with me at the same  
6 association where I work. They were both treated in Mukjar with hot water and  
7 herbs. Now they are doing fine.

8 Q. [10:35:34] Thank you.

9 So, after the second attack on Kodoom, you left your village for good and went to the  
10 forest. Can you tell us what the living conditions were in the woods?

11 A. [10:36:01] At the forest the situation was very bad, given the lack of food and  
12 drink. This war coincided with the fall season. There was a lot of rain. However,  
13 we did not find anything to eat or drink. There was a woman who had some grains.  
14 She boiled those grains and distributed them on people. We, as adults, we had no  
15 appetite for eating, given the incidents of killing and burning that occurred in our  
16 village. And so we distributed that little food to children only. We had no appetite  
17 for food.

18 Q. [10:38:01] I stopped you, so if there is anything you want to add, please do so.  
19 And I also wanted to ask you if anyone was sick and injured from your family during  
20 your stay in the forest?

21 A. [10:38:17] At the forest, a maternal cousin of mine had a wound in his leg. He  
22 was shot in his leg --

23 THE INTERPRETER: [10:39:34] Correction: his foot.

24 THE WITNESS: (Interpretation) [10:39:38] But it was a simple wound. We treated  
25 him with the use of penicillin, then we let him ride a donkey to go to Mukjar to seek

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1 treatment.

2 MS VON WISTINGHAUSEN:

3 Q. [10:40:05] What about your mother?

4 A. [10:40:08] My mother was exhausted and her health situation deteriorated  
5 significantly due to the rain and the tiredness. Consequently, we went to Mukjar.  
6 After Mukjar we arrived in Bindisi. We tried to provide her with treatment. Her  
7 disease continued for a long time and she did not -- she was not healed. When  
8 we -- by the time we reached Bindisi, she passed away not long afterwards.

9 Q. [10:41:46] We understand that from the forest you travelled on to Mukjar. Can  
10 you tell us how long this journey took and if many people were travelling with you,  
11 and what happened on this journey?

12 A. [10:42:16] We were moving in daytime, so we spent the night in the forest.  
13 That was the first night, the second night as well, and due to the rain, the tiredness - it  
14 was raining cats and dogs - we then moved to Mukjar. On the way nothing  
15 happened because we moved in night-time and we had children with us. The  
16 children were particularly exhausted and their legs or feet were swollen out of  
17 tiredness.

18 Eventually we reached Mukjar, that is, myself, my mother and my siblings, who were  
19 younger and whom we carried on our backs until we reached Mukjar.

20 Q. [10:44:58] When you arrived in Mukjar, I suppose there were many displaced  
21 persons there. Where did you find shelter?

22 THE INTERPRETER: [10:46:21] The Fur interpreter indicates he is not able to hear  
23 because of the interruption in the sound feed.

24 MS VON WISTINGHAUSEN: [10:46:29] To the interpreter: Did you hear the first  
25 part of the response or nothing at all?

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1 THE WITNESS: [10:46:46](Interpretation) When we moved from the forest to  
2 Mukjar, we reached Mukjar right outside the village. We were a large number, and  
3 therefore we were not able to go to the homes of our relatives, so we stayed outside  
4 the village and we prepared the famous *asida* dish. By evening time we managed to  
5 visit our relatives to let them know of our arrival there.

6 MS VON WISTINGHAUSEN:

7 Q. [10:47:26] Madam, the connection was not good, but after you arrived at your  
8 relatives' house in Mukjar, could you stay with them or did you have to stay  
9 somewhere else?

10 A. [10:47:49] When we reached Mukjar, we went to the market. We spent some  
11 time at the market. Afterwards, a gentleman who had a restaurant, upon seeing the  
12 state in which we were, he provided us with a *guttiya*, a hut made of straw and mud,  
13 and we entered that hut. Especially the children entered the hut.

14 Q. [10:49:36] And how was the food and water situation for you and your siblings?

15 A. [10:49:45] When we reached the market and when the aforementioned  
16 gentleman provided us with a small hut for the sake of our children, our habit became  
17 to allow the children every morning to go to the restaurant owner to work. By  
18 staying near the restaurant, we were blocking his ability to work. Actually, we were  
19 leaving during daytime to spend the time under a tree and would come back at  
20 night-time to stay at the hut. We would also go search for firewood, which we used  
21 to prepare food. As regards water, it was the fall season and we did not have a  
22 problem regarding access to water.

23 Q. [10:52:00] Were there diseases amongst the displaced persons?

24 A. [10:52:11] When we went to Mukjar, there was a huge number of flies that  
25 appeared due to the many displaced persons who ended up in Mukjar, and also due

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1 to rain. The flies caused diseases, especially diarrhoea, diarrhoea that afflicted  
2 children and the elderly. There was consequently a large number of deaths among  
3 children and among the elderly. The suffering was intense.

4 Q. [10:53:54] You and your family stayed in Mukjar for about four months; is that  
5 correct?

6 THE INTERPRETER: [10:55:07] The Fur interpreter indicates that the later part of  
7 her answer could not be heard.

8 THE WITNESS: [10:55:15](Interpretation) Indeed, we spent four months in Mukjar,  
9 beginning from August through November. Due to the huge number of flies and  
10 due to overcrowding, we went back to Bindisi. We depended on the crops we  
11 left -- we had left behind. We used corn sticks. We ate them as our main staple.

12 MS VON WISTINGHAUSEN:

13 Q. [10:55:56] You never returned to your home village Kodoom, did you?

14 A. [10:56:09] We would only occasionally go back to Kodoom. The elderly, in  
15 particular, would go back to Kodoom. Given their elderly age, they would not be  
16 stopped or questioned by the Arabs, and so we would rely on the elderly. We  
17 would send the elderly to go back to Kodoom to bring fava beans for children and  
18 also to bring corn used to make bread for us to eat.

19 MS VON WISTINGHAUSEN: [10:57:52] Madam President, this would be a good  
20 moment for the break, because I'm changing the topic.

21 PRESIDING JUDGE KORNER: [10:58:00] Yes.

22 Madam, there will be a break now for 30 minutes. After that, you will resume giving  
23 your views and concerns, and we trust that you will be able to finish by lunchtime.  
24 So, thank you very much, we'll see you in half an hour.

25 THE COURT USHER: [10:58:38] All rise.



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1 THE WITNESS: [10:58:40](Interpretation) Fine.

2 (Recess taken at 10.58 a.m.)

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

4 THE COURT USHER: [11:32:10] All rise.

5 Please be seated.

6 MS VON WISTINGHAUSEN:

7 Q. [11:32:44] Good morning, again. I hope you had a good break.

8 And I would like to ask you a few questions about the cousin you mentioned this

9 morning, but please don't mention his name, all right? We'll just call him your

10 cousin.

11 Can you tell us --

12 A. [11:33:30] Very well.

13 Q. [11:33:31] Can you tell us what happened to your cousin after the fighting in

14 Sindu that was in early 2004?

15 A. [11:33:55] My cousin was taken from home to an unknown location. We didn't

16 know where he was taken to and we would ask people secretly about him. Later we

17 were informed that he was killed with another group of young men in the out -- in the

18 openness.

19 Q. [11:35:28] Was it to Mukjar that he was taken?

20 A. [11:35:38] Yes, he was taken to Mukjar. And other young people were taken

21 and put in prisons. And after spending some time in prison, they would kill them.

22 Q. [11:36:24] And when and how did you find out what happened to him?

23 THE INTERPRETER: [11:37:15] Message from the Fur interpreter: There was a

24 discontinuation in the voice and the last -- the latter part was not rendered.

25 MS VON WISTINGHAUSEN: [11:37:27] Would you mind translating the first part

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1 and then I can take it from there? Thank you.

2 THE WITNESS: [11:37:36](Interpretation) He -- they were taken to Mukjar and we  
3 would ask people about him, because the people who were captured were numerous.  
4 So we would ask about him in secret. And there was a campaign, an arrest  
5 campaign for the young people and many young people would hide in  
6 hay -- in -- inside hay or straw in fear of being arrested.

7 MS VON WISTINGHAUSEN:

8 Q. [11:38:17] Madam, the connection was not very good. Can I ask you again how  
9 you found out what happened to your cousin? Who was it who told you?

10 A. [11:38:27] There was a campaign against young people so there were some  
11 people roaming in the villages looking for the youth. That's why the number of  
12 arrested people was big. Some young people would climb the trees to hide there.  
13 However, they were captured at the end. So they would capture and detain these  
14 young people, collect them in one place, gather them and load them in vehicles taken  
15 to Mukjar, outside the city, and then the vehicle would return empty without any  
16 person.

17 This happened by people that we all knew.

18 Q. [11:40:39] I stopped you for the sake of interpretation.

19 Is there anything else you wanted to say about this?

20 A. [11:40:49] No, but this campaign -- in this campaign a large number of the youth  
21 was detained and this happened in public, not in secret. And they were looking for  
22 people everywhere, in the streets, in the farms and outside the villages. And they  
23 said that they were taking these people, these young people -- after they detained  
24 them they said, "We would like to -- we are going to take them to prison", but they  
25 did not take them to prison. After a while, we discovered that those people were

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1 killed outside the city. People who were taken outside the city, or people who  
2 would go outside the city, would find the bodies in the *khors* and in the farms.

3 MS VON WISTINGHAUSEN: [11:42:56] And Madam President, just for the record, I  
4 note that the name of our client's cousin is listed in evidence that has been submitted  
5 on record, namely, lists of the persons said to have been executed in the charged  
6 Mukjar events. That's DAR-OTP-00000014 at page 3, row 9 and  
7 DAR-OTP-0220-5723-R01 at row 3. Thank you.

8 Q. [11:43:34] Madam, we will now move to your life in the IDP camps and, as we  
9 have agreed, we won't mention the name of the camp where you are staying.  
10 We understand that after you left Mukjar, your family arrived at a displaced persons  
11 camp in the Wadi Salih locality; is that correct? But don't mention the name of the  
12 camp.

13 A. [11:44:27] Yes, that's correct.

14 Q. [11:44:31] Can you describe to us what life was like for you and your family in  
15 the camp, specifically regarding housing, food, water? I may stop you in between  
16 for the sake of interpretation and then you can continue, all right?

17 A. [11:45:00] The situation currently in the IDP camps is very difficult. People  
18 suffer a lot simply because they do not -- they can't work and they don't have a  
19 chance or opportunity to work. So the situation is difficult. The circumstances are  
20 very difficult. Even if you try to go to the farms, in light of the current issues and  
21 events, you fear to go to the farms. The circumstances, the conditions, are very  
22 difficult.

23 Q. [11:46:39] Please continue. And my understanding is that you moved from one  
24 camp to another, the one you are staying in now, and maybe you can include to your  
25 answer the development, you know, starting in 2004 until today, if anything changed

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1 in the camps?

2 A. [11:47:06] The situation generally speaking in IDP camps is very difficult. We  
3 live in these camps, we have been living there for 20 years, and there is scarcity in  
4 health services, there is scarcity in employment or jobs whereby people can earn their  
5 livelihood. This is one of the challenges.

6 The other one is that there is a wide spread of diseases and there is no health  
7 insurance or medical services. So, when someone falls ill, we are unable to foot the  
8 bill of treatment. This is one of the difficult situations that we experience in the ID  
9 camps.

10 Q. [11:49:42] Did or do you get any support from help organisations?

11 A. [11:50:14] At the beginning when we got displaced in the first camp, then we  
12 moved to the second camp. The situation was very good because organisations used  
13 to provide services and foodstuff. They would provide this to the IDPs. The  
14 situation was somehow very good.

15 Yet, after dispelling these organisations, this resulted in people suffering, so the  
16 situation exacerbated. It became even worse and we live in this difficult situation  
17 until now.

18 Q. [11:51:39] In the first camp, what type of work did your husband do and what  
19 was actually the reason for moving to another camp?

20 A. [11:51:53] When we were in the first camp things -- the situation exacerbated.  
21 Diseases were widespread, like diarrhoea, and the death rate was very high,  
22 especially amongst the infants and the elderly. So we moved to the next camp, or  
23 the other camp, because we couldn't find a good environment in the first one. That's  
24 why we moved to the second one. There was no flies or diarrhoea where we stayed  
25 for a period of time.

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1 Q. [11:53:35] And how did your situation develop, then, in the second camp?

2 A. [11:53:48] In the first camp, we were in a very difficult situation and it -- life  
3 there was very risky. That's why we tried to move to the next camp, and after we  
4 did that we found some attention from the organisations. Relief and humanitarian  
5 organisations would give us some blankets, foodstuff, and they built health centres.  
6 If a person would fall ill, the organisations would help treat this person. The  
7 situation was very good.

8 Q. [11:55:19] How many people, approximately, live in the camp today, in the  
9 camp where you stay, and in what type of house do you live with your children?

10 A. [11:55:38] The camp where I live currently is inhabited by thousands of IDPs.  
11 The number is not small.

12 As for the type of buildings, houses in the camp are built of hay or straw.

13 Q. [11:56:33] And your children, were or are they able to attend school?

14 THE INTERPRETER: [11:57:14] There is connection instability. I couldn't hear the  
15 last part.

16 MS VON WISTINGHAUSEN: [11:57:24] Can you translate for me the first part so  
17 that I can then go back to the victim?

18 THE WITNESS: [11:57:39](Interpretation) Yes, my children were -- are able to go to  
19 school, some of them, yet the eldest ones -- the older ones work and help us in the  
20 house to buy some things in the household, both for the siblings and for us.

21 MS VON WISTINGHAUSEN:

22 Q. [11:58:09] The connection was not good, so our understanding is that the smaller  
23 children go to school and the older children are at home and help you with the  
24 household, or any kind of work that there is to do; is that correct?

25 A. [11:58:25] My children go to school -- three of them go to school. The others

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1 work and help us with the financial needs to buy school materials and other things,  
2 and they don't ask us for money. They work -- these work while they study.

3 The other one, the middle child, studies in the Koran school. The youngest ones  
4 don't work and don't go to school.

5 Q. [12:00:08] And those who work, what type of work do they do?

6 A. [12:00:17] My eldest son works in a traditional bakery. The second one works  
7 in a workshop. The third works in a restaurant, and the third one is the one who  
8 studies in the Koran school. The other four, I pay the education fees for. The  
9 youngest ones study in the Koran school because the situation is difficult.

10 Q. [12:01:55] Can you tell us what it has been to raise seven children in an IDP  
11 camp?

12 A. [12:02:10] The father of my children used to help me. However, he passed  
13 away four years ago, so afterwards I had to work at the market selling *tamia* dishes.  
14 Sometimes in the fall season I would go work in farms to earn my living.

15 Q. [12:03:48] You mentioned that, very sadly, your husband passed away a few  
16 years ago. Can you explain to us under what circumstances he died?

17 A. [12:04:01] When he was alive, my husband worked to help raising and  
18 educating the children. He used to work at a shop where fuel and gas was sold.  
19 Suddenly at 10 a.m. on a Friday morning, as he was trying to supply a client with fuel  
20 -- and as he tried to pour the fuel in the tank, or in the container that the customer  
21 used at the time, the fuel shop went into flames and he burned while inside the shop.

22 Q. [12:06:26] I'm very sorry to hear about this accident, madam, and I would like to  
23 ask you if these kind of accidents or fires are common in the camps? Does this  
24 happen very often?

25 THE INTERPRETER: [12:07:53] The Fur interpreter indicates that he was not able to

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1 hear parts, given the intermittent connection.

2 THE WITNESS: [12:08:01](Interpretation) It is common for fires to occur in the camp  
3 because houses are very adjacent to each other and they are built with materials such  
4 as grass and straw, which contributes to the fast spreading of fires. Also, children  
5 sometimes play with flames, which can cause fire.

6 A few days ago a little girl burned in the camp. These fires happen constantly at the  
7 camp.

8 MS VON WISTINGHAUSEN:

9 Q. [12:08:45] I would like to discuss now with you your own work in the camp.  
10 You are working for a women's association. Can you explain to the judges what this  
11 association does?

12 THE INTERPRETER: [12:09:40] The Fur interpreter indicates that the sound feed is  
13 not clear.

14 MS VON WISTINGHAUSEN:

15 Q. [12:09:53] I'm very sorry, madam. We will have to ask you to repeat your  
16 response from the beginning, because the interpreters couldn't hear you very well,  
17 okay. Can you please start again? I'm sorry about that.

18 A. [12:10:17] Our association is called {ICR: (Redacted)}. We started by collecting  
19 some fava beans and dried okra, and as regards funding, we used to collect  
20 100 pounds from every member. Later on, we increased the monthly membership  
21 contribution to 200 pounds.

22 In addition to fava beans, corn was added and our association expanded gradually,  
23 and that is how our state stands now.

24 Q. [12:11:45] Is it correct that your association raises money from the community  
25 for a kind of trust fund to help women and families in need -- those who are impacted

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1 by sickness, death or fire, perhaps?

2 A. [12:12:10] Yes. We collected wheat, corn, okra and fava beans which we stored  
3 at the house of the head of the association. Later, if something wrong occurs, such as  
4 sickness, we would provide aid to the sick.

5 Also, if a fire happens in a person's house, we would also take some of the  
6 association's money and also some fava beans, wheat and other things available to the  
7 association to provide aid to the person whose house was afflicted.

8 Q. [12:14:14] And do you organise women to go and collect wood, and why do you  
9 do that?

10 THE INTERPRETER: [12:15:03] The Fur interpreter indicates that the sound  
11 connection is intermittent.

12 THE WITNESS: [12:15:15] Yes, we organised women go into the wilderness to  
13 collect firewood. We did that because in the event of any attack or aggression by  
14 whomsoever, we would help each other and stand by each other's side. It was a way  
15 to protect ourselves.

16 MS VON WISTINGHAUSEN: [12:15:43]

17 Q. [12:15:45] Is it the case that women frequently get attacked when they, for  
18 example, collect wood outside of the camps?

19 A. [12:15:54] No, it was solely for the sake of protection. Sometimes we would  
20 hold workshops out in the wilderness. In my view, this was a good way to go about  
21 things, because being in a large number helps us do things in a better way.

22 Q. [12:17:06] Can you say something in general about the situation of women in the  
23 camps, many of which, like you, have lost their husbands in different circumstances?  
24 Is there a big solidarity amongst the women?

25 A. [12:17:30] Indeed, we do help each other. If a sister of ours is -- goes through a



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1 rough patch, we would give her help, especially in the fall seasons where  
2 circumstances are particularly dire given the lack of crops and the lack of capital.  
3 And, hence, we would extend a helping hand to any sister going through a rough  
4 patch, facing a disease; we would help with the crops and okra we have at the  
5 association.

6 Q. [12:19:07] Earlier today you told us about three incidents of rape that you  
7 witnessed when you were fleeing from Kodoom to Mukjar in 2003. Can you tell us if  
8 sexual violence is something that is discussed within the Fur community, within the  
9 families, amongst women, sisters, or is it something that people don't talk about -- is it  
10 a taboo?

11 A. [12:19:53] The case of rape was shocking and was very tough for everyone.  
12 The women who were raped, some of them are our sisters, our -- our own kin. It is  
13 difficult for us to talk about them because that would be embarrassing to them. In  
14 order for them to feel at ease and to feel part of society, we will avoid -- we avoid  
15 talking about these things, otherwise we would prevent them from integrating into  
16 society. We would keep such subjects aside. We would treat them normally, as if  
17 nothing had happened in the past, in order for them to feel reassured and at ease as  
18 members of the community.

19 Q. [12:22:08] If a woman would need help or medical treatment because of the  
20 consequences of sexual violence she survived, would she -- is there a place where she  
21 could get help, and what kind of help?

22 A. [12:23:31] If a sister of ours is subjected to rape, we would report this to the  
23 sheikh. The sheikh, in his turn, would report the matter to organisations.  
24 Consequently, the organisations would provide the necessary treatment, remedy.

25 Q. [12:24:19] Do you know what kind of treatment we are talking about, what kind

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1 of treatment they would receive?

2 A. [12:24:22] Rape causes pain in the womb. It is therefore a very difficult thing to  
3 deal with. Usually we would take the raped woman to the hospital to receive  
4 treatment. The healing takes place consequently.

5 Q. [12:25:18] Our understanding is that, sadly, many women were raped during  
6 the conflict and many children were born out of rape. Can you say something about  
7 the situation of children who were born out of rape and what their standing is in your  
8 community, if they carry a stigma or if they are completely accepted and integrated?

9 THE INTERPRETER: [12:26:59] The Fur interpreter indicates that the sound feed is  
10 unclear.

11 MS VON WISTINGHAUSEN: [12:27:08]

12 Q. [12:27:09] I apologise, madam, I will have to ask you to repeat your response  
13 that wasn't well heard on this side of the channel.

14 A. [12:27:26] People know full well that rapes did occur and, therefore, they avoid  
15 embarrassing a child before his peers that he is a child out of wedlock. And,  
16 therefore, it is the community's habit to accept and integrate a person. It is our habit  
17 not to -- our custom not to embarrass anyone. Such person, hence, would live  
18 normally among his peers. And his mother gets married, he would call his  
19 stepfather "dad", just like his half siblings. So such child would be accepted, not  
20 rejected. After all, he's a human being.

21 Q. [12:29:30] Is there anything else you would like to add specifically about the  
22 situation of women and children in the camp that I haven't asked you and that you  
23 see during your daily work in the camp?

24 A. [12:29:49] We, women, are done a lot of injustice to. When I saw all these  
25 horrors myself, I saw how women suffer. They work well and I appeal to the heads

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1 and chairs of organisations to pay extra attention to the situation and the status of  
2 women, because they are being wronged.

3 Q. [12:31:38] Can you, madam, tell us how -- if and how the situation in the camp  
4 has changed since the new outbreak of the conflict in April of this year?

5 A. [12:31:53] The situation in the camps has become very difficult after the recent  
6 war, because before the war we used to have access to some limited services, such as  
7 hospitals, as well as the presence of organisations. Yet, after this war, the situation  
8 has exacerbated.

9 Q. [12:33:14] We understand, or we know, that you had a very, very long and  
10 difficult journey in order to be able to appear before the judges today. Would you  
11 like to explain to them why it was so important for you to leave your children behind  
12 in the circumstances and to come here to speak with them?

13 A. [12:33:46] We in the camps have been oppressed and marginalised for  
14 20 years - we have been there for 20 years in the camps - and this led me to seek a  
15 place where justice could be established and I said as long as there is a place where  
16 justice could be established, I would definitely go. As for my children, I entrusted  
17 them to Allah God until I returned to them.

18 THE INTERPRETER: [12:35:18] Message from the Fur interpreter: There was a  
19 later disconnection and I could not catch the latter part of the witness's testimony.

20 MS VON WISTINGHAUSEN:

21 Q. [12:35:42] I don't really know if this is something that you can put into words,  
22 but if you tried to describe the impact of what has happened to you and to your  
23 family, to your community, the impact it had at the time and until today, is it  
24 something you can put into words?

25 THE INTERPRETER: [12:36:27] Message from the Fur interpreter: we don't see or

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1 hear the participant.

2 PRESIDING JUDGE KORNER: [12:36:35] Yes. Well, I hope that was just a blip, but  
3 it may be more than that.

4 It appears that the connection has been cut, but it's going to be reconnected, we hope.

5 MS VON WISTINGHAUSEN: [12:37:22] I don't know if my question has been  
6 translated to the victim. Shall I rephrase or ...

7 Q. Madam, did you hear my question --

8 PRESIDING JUDGE KORNER: [12:37:39] Just a moment.

9 MS VON WISTINGHAUSEN: [12:37:41] -- before the connection was cut?

10 PRESIDING JUDGE KORNER: [12:37:43] Well, no. I mean, can the interpreters  
11 answer, please?

12 THE WITNESS: [12:37:54](Interpretation) Kindly repeat the question again.

13 MS VON WISTINGHAUSEN: [12:37:57]

14 Q. [12:38:00] I know this is difficult, but one of the reasons why you wanted to  
15 speak to the judges -- can you put into words the impact on you, on your family, on  
16 the community, of what has happened to you in 2003 and 2004 and, of course, the  
17 past 20 years. It is a very long time, but if you try to put it in words, that would be  
18 good.

19 A. [12:39:09] The conditions are very difficult for me personally. I suffer from  
20 very difficult conditions, especially with the children. I have difficulty raising my  
21 children and educating them. My siblings also have the same difficulty; they cannot  
22 provide any assistance or help raising these children.

23 Education is very difficult. For example, if a child is able to read and write, the  
24 others cannot because of the situation. Those who are better off and their parents  
25 can have some revenue-generating work, they can continue their children's education.

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1 As for the orphans and the children of the poor people, they cannot continue their  
2 education as a result of this difficult situation their families are in.

3 Q. [12:41:12] Can you tell us something on the impact the conflict and the  
4 displacement had on the Fur culture. Is the Fur culture and the traditions something  
5 that you succeed in teaching your children and living in your day-to-day life, or is  
6 that very difficult in the camps?

7 A. [12:41:42] Yes, that is very difficult. The conditions are extremely difficult.  
8 And in the Fur community, yes, education is highly valued. When a child does not  
9 go to school or drops out of school as a result of economic situation, people call that  
10 person an illiterate, and this is a very bad title or word to call a person and it has a  
11 grave impact on people. So a person would not drop out of school unless for  
12 extremely difficult conditions. Currently, we live in very difficult conditions in the  
13 camps.

14 Q. [12:43:42] Is there anything that you would like to tell the judges about the  
15 meaning for you and for your community of this very specific trial? Is it something  
16 that you're interested in, that you're following? Is it important for you that this trial  
17 is happening?

18 A. [12:44:12] We need all the help possible from the Court. We appeal to -- we  
19 urge the Court to provide security, education, hospitals and places where we can get  
20 water, or water sources, because we go -- we have to walk for approximately an hour  
21 to get water. And we carry water on donkeys, in order to be able to get two bags of  
22 water, plastic bags of water. We live in very difficult situations and we would like to  
23 request help. And also we are interested in justice.

24 Q. [12:46:38] Now, looking to the future, what would you say are your very  
25 personal hopes for the future, and what are the hopes for your family and maybe for

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1 the community? I'm sure that you often speak about this when you sit together.

2 A. [12:48:21] I appeal to the Court to provide security and safety, because we  
3 struggle a lot because of the lack thereof. I would like to have -- enjoy this sort of  
4 security whereby I can walk to the openness or to the forest without being worried,  
5 without worrying of being followed.

6 I would like also to request the ICC to disarm the Janjaweed who still commit -- who  
7 commit crimes and unspeakable horrors in Darfur.

8 Also, we would like to request that safety and security for our communities in the  
9 camps.

10 Q. [12:49:14] Is it a wish for you and other members of your community to return  
11 to your land?

12 A. [12:49:20] Yes, indeed, we hope to return to our places of origin and our areas.  
13 When there is peace and security in our areas and there is no one to threaten people  
14 on the road, of course we would return to places of origin. No one would refuse to  
15 return to their places. Everyone hopes to live in their place of origin.

16 In the camps, the condition and the situation is very difficult. The farms are very far  
17 and we cannot continue to go all the time. We suffer from this, so we would like to  
18 have peace and security in the camps.

19 Q. [12:51:17] Thank you, madam. I unfortunately had to interrupt you several  
20 times today, so is there anything that you wanted to say and that I stopped you from  
21 saying, then please feel free to do that now?

22 A. [12:51:38] We request from the Court to provide services in the camps and to  
23 separate between men's and women's services in the organisations, because men  
24 oppress -- oppress women. So we would like to have a special branch for women to  
25 organise women's affairs. We need to separate between these two things. Men do

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1 not care for women and oppress them all the time.

2 The second part I would like to request from the Court is to try to provide

3 employment in the camps. Some people work three shifts and hardly it is enough.

4 We suffer from very difficult conditions in the camps.

5 Q. [12:53:50] I would like to thank you very much for the enormous efforts that you

6 made to be able to appear before the judges today. As you may have felt - or not

7 felt - it was very quiet here in the courtroom. Everyone was listening very carefully.

8 And I also want to thank you on behalf of our participating victims, because they

9 cannot all come here and speak to the judges. So it's very important that you took

10 this role of expressing the voice, and the views and concerns, as we call it, of the

11 victims.

12 Thank you very much and have a safe journey back home, and we will be in touch,

13 that's for sure.

14 A. [12:55:21] Thank you very much. I thank you all and I am grateful to you and

15 all those who work in this court.

16 May God bless you all.

17 PRESIDING JUDGE KORNER: [12:55:36] Yes, thank you, Ms Von Wistinghausen.

18 Madam, that concludes what you have to say to the Court.

19 And, like Ms Von Wistinghausen, we, the judges, thank you for the enormous efforts

20 that you made to come and tell us what happened to you and your family.

21 Regrettably, we cannot, because we are a Court --

22 THE WITNESS: [12:56:34](Interpretation) And I, in return -- in turn, thank you

23 personally and thank the judges and everyone, because you provide an established

24 justice to us and we hope that our aspirations and hopes are realised.

25 PRESIDING JUDGE KORNER: [12:56:55] I need perhaps to say this to you that,

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1 regrettably, we cannot do anything, this Court cannot do anything, about your living  
2 conditions or your security or your education and hospitals, all of which are vital  
3 aspects of life with which you should be provided by other organisations.

4 But the words that you have uttered, if the time does come, an appropriate time, will  
5 remain with the judges and be taken into account.

6 So, once again, we thank you.

7 THE WITNESS: [12:58:42](Interpretation) God willing. Thank you all.

8 PRESIDING JUDGE KORNER: [12:58:49] Yes, thank you very much, madam. That  
9 concludes your time with us and you can leave wherever you are now, thank you.

10 Yes. Yes, Ms Von Wistinghausen? Yes, can we cut the feed?

11 THE WITNESS: [12:59:13](Interpretation) Thank you, thank you.

12 (The witness is excused)

13 MS VON WISTINGHAUSEN: [12:59:23] Well, yes, Madam President, just a few  
14 words because we are concluding the presentation of our witness case. And, given  
15 the circumstances, it was split into two pieces. But I would -- all of us -- I would like  
16 to let all of us be reminded of the appearances of the three other victims, Hassan  
17 Hassan, who appeared from Canada by video, and V-1 and V-3 who came all the way  
18 from Chad to The Hague and spoke to you here in person, and now, yesterday and  
19 today, V-4 and V-5.

20 I can only reiterate how important it was for them to undertake this mission, if I may  
21 say. They are only five out of more than 750 participating victims we are now  
22 representing in this case and, yes, I am grateful that they had some space, some  
23 appropriate space, within these proceedings. And, of course, we hope that the  
24 judges, as you said, at the appropriate time will take their views and concerns into  
25 consideration. Thank you.



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1 PRESIDING JUDGE KORNER: [13:00:44] Yes, thank you very much,  
2 Ms Von Wistinghausen. And, as you say, the 750 who have -- who are participating  
3 in this case are but a small proportion from the evidence that we have heard of those  
4 who suffered as a result of the conflict now 20 years ago.

5 Yes, thank you very much.

6 That then, as you say, concludes the victims' views and concerns in this case.

7 So, Mr Edwards, can I take it that you and Mr Laucci are prepared to start at  
8 2 o'clock?

9 MR EDWARDS: [13:01:21] Certainly. It will be Mr Laucci who addresses you this  
10 afternoon.

11 PRESIDING JUDGE KORNER: [13:01:26] At 2.30, I'm reminded. Yes, I'm going  
12 back to other lunch hours. Yes, 2.30.

13 MR EDWARDS: [13:01:34] 2.30, yes.

14 PRESIDING JUDGE KORNER: [13:01:35] Yes, thank you very much.

15 THE COURT USHER: [13:01:37] All rise.

16 (Recess taken at 1.01 p.m.)

17 (Upon resuming in private session at 14.41 p.m.)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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12 (Open session at 2.47 p.m.)

13 THE COURT OFFICER: [14:48:11] We are back in open session, Madam President.

14 PRESIDING JUDGE KORNER: [14:48:14] Yes, thank you.

15 Mr Laucci, this is your opportunity to tell the public about your case and, indeed, us.

16 MR LAUCCI: [14:48:28](Interpretation) Thank you, Madam President.

17 Madam President, your Honours, dear colleagues, ladies and gentlemen, members of

18 the public who are viewing the proceedings from the gallery and those who are

19 listening in by way of the Internet, I have learned that broadcasting will be resuming

20 and thus I address everyone throughout the world, and particularly, those in Sudan.

21 It is with great humility that the Defence rises today to begin the presentation of our

22 exonerating evidence in favour of Mr Ali Muhammad Ali Abd-Al-Rahman, who is

23 also known as Abu Nasser. We feel so humbled because we realise that this occasion

24 is a solemn one and a serious one.

25 We are the first Defence team to address the Court during the first trial in relation to

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1 the first situation referred by the Security Council to the Court, and I'm speaking of  
2 the situation in Darfur, Sudan, with -- as a backdrop, a bloody conflict that once again  
3 ravages this poor country, since 15 April 2023.  
4 During this conflict, the same horrors, the same crimes as in 2002 and 2003 are still  
5 being perpetrated. The proceedings against Mr Bahar Idris Abu Garda, Mr Omar  
6 Hassan Ahmad Al-Bashir, Mr Ahmad Harun, Abdel Raheem Muhammad Hussein,  
7 Saleh Mohamed Jerbo Jamus and my client have clearly not been sufficient to deter  
8 General Abdel Fattah al-Burhan or General Muhammad Hamdan Dagalo, who also  
9 goes by the alias Hemeti, and their respective supporters from plunging their country,  
10 once again, into the bloodshed, the frenzied bloodshed of 20 years ago.  
11 Truly, the Sudanese authorities have not learned anything.  
12 Such sadness for this great and fine country with a history that goes back millennia,  
13 a country that could feed the entire African continent, if only the country were left in  
14 peace.  
15 What a pity for the poor people of this nation who find themselves condemned to  
16 endure the countless, the endless agony of war, after glimpsing for a few months  
17 between 2019 and 2021, after glimpsing faint hope of democracy and rule of law.  
18 No people anywhere in the world deserves that.  
19 The worthy people of Sudan, so cruelly *affligé* in the past, do not merit this, no more  
20 than any others. We have heard from a number of representatives of the worthy  
21 Sudanese people before this Court, just this morning, in fact. My first thoughts go to  
22 the victims who appeared before the Court to express their views and concerns.  
23 The tragedy that these worthy people is, once again, confronted with in the year 2023,  
24 is no less tragic, and I would like to begin my pleadings by expressing my thoughts  
25 and my deepest solidarity with the people of Sudan, as well as with all the other

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1 people subjected to violence and worse throughout the world.

2 In another part of the world, actually, three members of my team - two of whom are  
3 present here in the court - saw only a few days ago their own country plunged once  
4 again into chaos, fire, bloodshed and human madness. They're worried about the  
5 safety of their family and their friends.

6 Thus, I would not wish to exclude any victim, any martyred people, any member of  
7 the international group of civilians struck so harshly by war. I would not want to  
8 exclude any of them from my thoughts.

9 This Court was established in the hope that repression and the horrors of war would  
10 one day come to an end, and one must have the humility to acknowledge that this  
11 vain wish is still but a wish, while the twisted minds of this -- of this madness  
12 continue to turn their wheel, the infernal wheel, and crush their victims - children,  
13 women, men, the elderly - both in Sudan and elsewhere.

14 I would like to explain to the people of Sudan what the role of the Defence is here at  
15 this Court. I would like to explain that my client cannot be convicted unless he is  
16 found guilty beyond reasonable doubt after a fair trial that is conducted with full  
17 respect for the rights that the Defence team must uphold.

18 History is littered with far too many examples of these rights being violated in all  
19 regions of the world and it -- during all times, thus producing tragedy.

20 In my own country, in the 13th century, a papal edict galvanised the crusaders  
21 against the heresy of the Cathars: "Kill them all, God shall recognise his own." This  
22 utterance became famous and has been uttered a million times since.

23 "Burn the witch!" people chanted in Salem in the 17th century. "*Haksa Hamsa!*"  
24 and -- the current Sudanese variation of this fierce cry that we have heard -- that we  
25 have discovered during this trial.

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1 In the year 2004, the presumption of innocence and the right to a fair trial were what  
2 was missing for the victims of the Mukjar and Deleig executions. The role of the  
3 Defence is to prevent another injustice from being added to this long list, and, above  
4 all, not before the International Criminal Court, which was established to embody the  
5 universal model of justice, whose calls for a conviction without a fair trial represent  
6 a total and utter negation.

7 There is a man sitting behind me in this courtroom. Until his name was first  
8 mentioned in an arrest warrant made public by the Court in 2007, this man was  
9 utterly unknown. He was not a member of the Sudanese government at the time;  
10 nor is he now a member of the government. He was not a general commanding any  
11 army corps in Sudan. He is not a politician; he is not a tribal chief.

12 This man has spent more than 20 years working within the health services of the  
13 Sudanese Armed Forces. The health services are the people who take care of the  
14 injured, the wounded. \* The service is not responsible for conducting fighting or  
15 military operations. The highest rank that my client ever held in his life was warrant  
16 officer, *musaid* is the exact word. When he left the army early in the 1990s with  
17 a medical assistance certificate, he opened up a pharmacy at the market in Garsila, in  
18 the Wadi Salih province in Darfur.

19 Regarding the pharmacy - and given that the public must not think that this was  
20 some sort of special or grandiose kind of pharmacy - I'm talking about four walls and  
21 a roof with some shelving inside where the medications were stored. There was one  
22 table as one comes into this pharmacy, and all of this is in the middle of a market, in  
23 a small town in Darfur, a place that no one outside of Darfur ever heard of before this  
24 case began.

25 This man has been accused of crimes that were committed 20 years ago. According

1 to the Prosecution's case record, on 15 August 2003, the villages of Kodoom and  
2 Bindisi were attacked during a joint operation led by the Sudanese Armed Forces and  
3 a number of Arab militia. These militia often are referred to with the mysterious  
4 name of the "Janjaweed", or the devils on horseback. Once again, according to the  
5 OTP and their records, between February and March 2004, men from the Fur tribe  
6 were arrested and detained, mistreated in the localities of Mukjar and Deleig. Some  
7 were even executed.

8 What is the connection between the events of Kodoom, Bindisi, Mukjar and Deleig on  
9 the one hand, and on the other hand, this pharmacist in Garsila? The Prosecution is  
10 trying to demonstrate that there is a connection. One must pay tribute to their  
11 performance. Normally a pharmacist is not the first suspect that comes to mind  
12 when one thinks of events such as the ones that are described in the charges.

13 The OTP could have chosen a much easier demonstration by choosing a suspect  
14 whose *de jure* or *de facto* authority over the protagonist for the charged crimes was  
15 obvious; it could have been a member of the government or a military officer, for  
16 example. Instead, the Prosecution decided to charge an anonymous pharmacist.

17 This is the first riddle that the Defence had to work very hard to solve. And this was  
18 not the last of our troubles. I shall begin by giving you an account of the major  
19 difficulties that our team came across while conducting our investigations and  
20 preparing to present our evidence, before my colleague, Mr Edwards, moves on to  
21 more substantive measures.

22 In the OTP's account of the events of 2003 and 2004 in Kodoom, Bindisi, Mukjar and  
23 Deleig, the role of the various protagonists has been described perfectly.

24 First of all, who do we have? Omar Al-Bashir, the president and dictator of Sudan at  
25 the time, who called upon Arab militia to mobilise and to crush the rebellion



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1 underway in Darfur.  
2 Who else do we have? Ahmad Harun, Secretary of State for the Interior, who  
3 travelled from Khartoum to pass on President Al-Bashir's orders.  
4 Then we have the local commissioners, Ja'afar Abd-Al-Hakam and Abdullah Torshein.  
5 They were in charge of representing the government in Wadi Salih and in Mukjar.  
6 As for the military side of things, we have Major Muhammad Musa Adam Khatir  
7 Bakhat, battalion commander of the 96 brigade based in Garsila.  
8 We have Colonel Abdullah Himeidan, commander of the Central Reserve Forces,  
9 *Al-Ihtiyati Al-Markazi*, based in Mukjar.  
10 We have the coordinator of the paramilitary militia, the Popular Defence Forces,  
11 *Al-Difa' Al-Sha'bi*, from Garsila.  
12 We have a gentleman by the name of Abd-Al-Rahman Dawud Hammudah, also  
13 known as Hassaballah.  
14 And the military intelligence officer stationed in Garsila, Lieutenant Hamdi  
15 Sharaf-Al-Din.  
16 The roles of these various protagonists have been described in the OTP's brief. The  
17 brief sets out how Omar Al-Bashir issued a call for a counter-insurrection officially  
18 intended to fight the rebels of the Sudan Liberation Movement, the SLM/A, and JEM,  
19 the Justice and Equality Movement. This call allowed for the organisation of joint  
20 military operations by the Sudanese Armed Forces and Arab militia, made up of the  
21 Popular Defence Forces, the Popular Police Forces, *Al-Shurta Al-Sha'bia*, and the  
22 border guards. These operations targeted Fur locations in August 2003, particularly  
23 Kodoom and Bindisi, and led to the arrest, detention and, ultimately, the execution of  
24 men who were suspected of belonging to the rebellion in Mukjar and Deleig in  
25 February and March 2004.

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1 Each protagonist that I have listed represents one of the components of this operation:  
2 first, the government, Omar Al-Bashir, Ahmad Harun, Ja'afar Abd-Al-Hakam,  
3 Abdullah Torshein; second, the armed forces, Major Bakhat, Lieutenant Al-Din; and  
4 third, the militia, Hassaballah. No one was missing.

5 And yet, the Office of the Prosecutor added one last man to this list of protagonists:  
6 Ali Kushayb, saddled with the mysterious title of *agid al-ogada*. This person, Ali  
7 Kushayb, was not a government official, nor was he an officer of the armed forces.  
8 The OTP has never claimed that he was a member of the Popular Defence Forces, or  
9 the Popular Police Forces, or the border guards. Yet, this perfect stranger has been  
10 described by the Office of the Prosecutor as the conductor, the great organiser of all  
11 these people.

12 According to the Office of the Prosecutor, he was allegedly responsible for directing  
13 and commanding all the operations; he dealt directly with the highest-placed  
14 members of government; he had authority to give orders or exercise influence upon  
15 officers from various armed groups; he allegedly recruited and commanded  
16 thousands of militiamen and liberally distributed weapons, equipment and money to  
17 them.

18 And who is this eminent military leader, this all-powerful leader of the Janjaweed,  
19 according to the OTP? No other than Mr Abd-Al-Rahman, a pharmacist in Garsila.  
20 If, rather than being a pharmacist, Mr Abd-Al-Rahman had been a tailor, the  
21 Prosecution's case would have been nothing else than a Sudanese variation of  
22 a famous fairytale by the Brothers Grimm.

23 And how did it come to be that the Prosecution added this anonymous figure to the  
24 list, this list of protagonists in the events of 2003 and 2004? Where did this person  
25 come from? Why him and none of the other men that I previously mentioned whose

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1 *de jure* and *de facto* roles were clearly established by the administrative and military  
2 organisation prevailing at the time? Why did the OTP trouble themselves to show  
3 the significance of this mysterious *agid al-ogada*, rather than referring to the clearly  
4 defined titles and functions of secretary of state, commissioner, major, colonel,  
5 lieutenant or coordinator?  
6 Why did the Office of the Prosecution decide to go fishing in these murky waters  
7 while there were big fry who were swimming right under their noses in crystal-clear  
8 water?  
9 The Defence has asked this question time and time again, ever since the beginning of  
10 this case and throughout the trial. We have our answer -- we have found our answer,  
11 but this answer was hidden in the thousands of documents received during  
12 disclosure of evidence by the OTP, without any description of its importance. And  
13 the importance of this point escaped us too, but another document disclosed by the  
14 OTP on 5 October 2023, scarcely two weeks ago, finally has shed light on this  
15 matter -- the importance of this document.  
16 I refer to a letter by the Prosecutor of the day, Luis Moreno Ocampo, dated 5 --  
17 THE INTERPRETER: [15:14:04] Correction --  
18 MR LAUCCI: [15:14:08](Interpretation) -- 6 November 2006, \*DAR-OTP-0000-5578.  
19 In this letter, the Prosecutor asks Sudanese authorities to give him the names of  
20 people who are being investigated for crimes committed in Darfur.  
21 And what was the purpose of this letter? He wanted to make sure that his own  
22 investigations would not clash with the principle of complementarity. We have  
23 already seen the response from the Sudanese. I refer to a letter dated 9 December  
24 2006, bearing the reference number DAR-OTP-0123-0002.  
25 In this letter, the authorities forwarded the Prosecutor a list of 14 people. Only one

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1 of the names that I mentioned earlier is to be found on this list, the lowest-ranked  
2 person of all the ones I have mentioned.

3 Here, we read:

4 "Hamdi Sharef el Din (an officer of the Armed Force)".

5 He was the military intelligence officer in Garsila.

6 The 13 other names are names of people who are utterly unknown.

7 One of the names is "Ali Muhammad Ali Abdul Rahman, also known as Ali Koshein".

8 There is no mention of his duties, no mention of his title or whether he might belong  
9 to any military or paramilitary faction. Nor is there mention of his date of birth, the  
10 place he was born, no mention of his place of residence, no mention of his profession.

11 The person referred to in the letter of 9 December 2006, named "Ali Muhammad Ali  
12 Abdul Rahman, also known as Ali Koshein" is a perfectly anonymous figure. This is  
13 the first time that he appeared on the record of the case.

14 A pharmacist in Garsila would not have been more known, and, yet, no doubt, this is  
15 one of the coincidences that the sleuths of the OTP relied upon to demonstrate his  
16 identity with my client. Since they are both unknown figures, they must be the same  
17 person.

18 And so, you see, it was the Sudanese authorities who threw out his name to the  
19 wolves of the OTP as a person suspected of crimes committed in Darfur.

20 But the letter of 9 December 2006 makes no mention of President Al-Bashir; no  
21 mention of Defence Minister Hussein; no mention of the Secretary of State for the  
22 Interior, Ahmad Harun. The Sudanese authorities gave the Prosecutor of the Court  
23 barely anything; merely the names of the small fry and, thus, they protect their senior  
24 dignitaries, even though they are the ones who bear primary responsibility for the  
25 events in Darfur.

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1 So to turn the Prosecutor's attention away from the people primarily responsible for  
2 the events, at least for a few moments, the authorities decided that the person who  
3 would be designated as the primary accused person for these crimes would be the  
4 pharmacist from Garsila, the one with an alias that does not belong to him, just to add  
5 to the confusion.

6 Some of the people in the OTP might have been troubled by this anomaly, but after all  
7 we are talking about the year 2006. At that time, the strategy of the OTP was to go  
8 after the small fry in order to pluck the low-hanging fruit. Once a trial was  
9 over -- a trial that shouldn't take very long so that the new International Criminal  
10 Court might quickly prove itself, prove its efficiency.

11 I think -- we remember that this was the justification of Luis Moreno Ocampo for  
12 charging Thomas Lubanga Dyilo, indeed, in the year 2006. Since then, we have seen  
13 the results in terms of easy convictions and fast trials. This perfectly anonymous  
14 figure, saddled with the nickname "Ali Koshein" or "Ali Kushayb" -- who cares how  
15 it's pronounced, so this person, this was a real deal, a bargain for the OTP when it  
16 came to following their strategy alongside the true challenges: Ministers Ahmad  
17 Harun and Muhammad Hussein and President Al-Bashir.

18 Too bad that it makes no sense to charge a simple pharmacist with suddenly  
19 becoming an all-powerful warlord, and yet there is a certain logic for the authorities  
20 of Sudan. It makes sense for them to accuse this pharmacist from Garsila for the  
21 crimes that occurred in Darfur. The first advantage for them, of course, was that  
22 they were able to draw the Prosecutor's attention away from those who bore primary  
23 responsibility.

24 One can understand this logic. One merely has to consider the etymology of the  
25 word "pharmacist".

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1 "Pharmacist" comes -- the Greek word "pharmakos". The pharmakos - before this  
2 person was the person who sold medications - was actually the person who was  
3 sacrificed, sacrificed in atonement for the sins of others. This is a translation in  
4 Greek of the Hebrew tradition of the "goat for Azazel", which, in modern language,  
5 gave rise to the word "scapegoat".  
6 This Hebrew tradition originates in Leviticus, chapter 16, verses 21 and 22, which I  
7 shall recite to illustrate the logic of the Sudanese when they accused  
8 Mr Abd-Al-Rahman:  
9 "Aaron" -- here we shall pronounce it "Harun", "shall lay both his hands on the head  
10 of the live goat, confess over it all the iniquities of the children of Israel" -- in this case,  
11 we could speak of the Sudanese authorities -- "and all their transgressions, concerning  
12 all their sins, putting them on the head of the goat, and shall send it away into the  
13 wilderness by the hand of a suitable man" -- let's say, Luis Moreno Ocampo.  
14 "The goat will carry on itself all their sins to a remote place" -- let us call this place, the  
15 Netherlands.  
16 As you can see, accusing this pharmacist from Garsila of all the iniquities of the  
17 Sudanese authority, this made perfect sense. If you follow this fine logic, your  
18 Honours, then you will assuredly convict Mr Abd-Al-Rahman.  
19 Yet, obviously, when the goat rebels and rises up against this fine logic and, instead of  
20 placidly allowing itself to be sacrificed, when this scapegoat decides to rebel and  
21 voluntarily surrenders himself to the Court to seek justice - and these were the very  
22 words of Mr Abd-Al-Rahman when he first appeared before the Court - and when he  
23 dares to conduct investigations to prove his innocence and to demonstrate that the  
24 Sudanese authorities merely made fools of Prosecutor Luis Moreno Ocampo and his  
25 teams by drawing their attention away from the people who were truly responsible

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1 for the crimes in Darfur, that goes against the greatest traditions of the good book.  
2 This is intolerable and, indeed, this was not tolerated by the Sudanese authorities.  
3 The Defence received no cooperation from the Sudanese authorities during our  
4 investigations. No cooperation. No responses to our requests for judicial assistance.  
5 The purpose of these requests was to obtain essential documents, such as, the civil  
6 status documents of Mr Abd-Al-Rahman, his military records or his criminal record.  
7 Ever since we were designated in June 2020, and despite our constant requests, the  
8 Defence has received but a single visa valid for 30 days to travel to Sudan; and,  
9 obviously, we rushed and we did travel there in June 2022.  
10 We were allowed only to travel to Khartoum, which is very far away from Darfur  
11 where our investigations had to be conducted.  
12 So, naturally, the Defence complained to the Court about this state of affairs, the lack  
13 of any response for our requests for documents and the lack of visas.  
14 The first application in this regard dates back to 20 January 2021, quite a long time  
15 ago, and this was a request made to the Pre-Trial Chamber. The application bore the  
16 number 263. There is a public version thereof. It was dismissed as being without  
17 any -- ungrounded without leave to appeal. That was just the first.  
18 For months all the requests, both the written requests and oral ones to make a finding  
19 of non-cooperation by Sudan, all these requests were systematically dismissed by  
20 your Chamber and the requests -- rather, the applications for leave to appeal were  
21 also denied.  
22 Your Chamber asked Sudan to justify themselves, granting them a certain amount of  
23 time, then another delay, yet another delay. Time went on and the Defence  
24 remained blocked, unable to conduct investigations, even when your Chamber made  
25 a commitment to take decisions once the observations from Sudan had been received.

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1 I refer to paragraph 14 of your decision, 695, dated 24 May 2022. There is a public  
2 redacted version.

3 Ultimately, the Chamber did not do so and, ultimately, once again, the Defence had to  
4 make yet another request. Because the Defence continued to insist, time and time  
5 again, ultimately the Sudanese authorities were forced to cooperate. Were they  
6 going to provide the documents that were indispensable to the Defence of  
7 Mr Abd-Al-Rahman, documents that could prove that our client was completely  
8 innocent and that they had made a mockery of Prosecutor Luis Moreno Ocampo and  
9 his teams by giving them a false lead?

10 No, of course not, because that would threaten the impunity of the authorities who  
11 truly bear responsibility for the crimes that Mr Abd-Al-Rahman has been charged  
12 with. No question of running such a risk. Thus, the Sudanese authorities decided  
13 to escalate matters. The escalation took the form of a communication dated 12  
14 January 2023.

15 As I prepared my opening remarks today, I asked for leave to reveal the content of  
16 this communication in public. I refer to filing 1029, dated 6 October 2023, and I do  
17 note that there is a public redacted version of the filing.

18 The OTP opposed the request in filing 1031. The Prosecution feared that making this  
19 escalation on the part of the Sudanese authorities public, there could be serious  
20 consequences for their investigations underway in other Sudanese cases. I refer to  
21 filing 1031, paragraphs 10 to 12.

22 How can Mr Abd-Al-Rahman's right to have a trial held in public be dependent upon  
23 the hopes of the OTP investigating other cases? Would it have been better to have  
24 asked the Sudanese authorities for their opinions or should --

25 MR NICHOLLS: [15:32:17] Your Honour, I'm very sorry to stand up, but he is



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1 getting so close to the line. I won't say more in public session. It's absolutely  
2 irrelevant to anything, and we can go into private session if we want to discuss this,  
3 but I have to stand up, the way this is going.

4 PRESIDING JUDGE KORNER: [15:32:37] I was beginning to wonder, Mr Laucci,  
5 about this. Unfortunately, I didn't read far enough ahead to see what you proposed  
6 to say.

7 I don't really think this is -- what is a complaint, effectively, one which you have  
8 repeated, is really telling the public about your -- what your case is, and you are  
9 beginning to tread a very fine line, as Mr Nicholls says.

10 I mean, if you want to argue it, then I think we'll go into private session.

11 MR LAUCCI: [15:33:09](Interpretation) This won't be necessary, your Honour, but  
12 eyes are, yes, indeed, looking very closely at that line and the line shall not be crossed  
13 over. I refer to my client's right to his case being heard in public.

14 PRESIDING JUDGE KORNER: [15:33:35] Yes, but just a moment. Are you  
15 proposing -- you're on page 12 of your opening, as far as I can see. Are you  
16 proposing to finish the paragraph, the long first paragraph on that page?

17 MR LAUCCI: [15:33:58] That's my intention, your Honour.

18 PRESIDING JUDGE KORNER: [15:34:02] Mr Nicholls, were you provided with a  
19 copy of what he was going to say?

20 MR NICHOLLS: [15:34:05] No, your Honour.

21 PRESIDING JUDGE KORNER: [15:34:10] All right. I'm sorry,

22 Mr Laucci, I think we will have to go -- I'm sorry to interrupt you, but we will go  
23 briefly into private session.

24 (Private session at 3.34 p.m.)

25 THE COURT OFFICER: [15:34:38] We are in private session, Madam President.

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16 (Open session at 3.44 p.m.)

17 THE COURT OFFICER: [15:44:09] We are back in open session, Madam President.

18 PRESIDING JUDGE KORNER: [15:44:18] Yes. Thank you.

19 Yes.

20 MR LAUCCI: [15:44:23](Interpretation) The consequence of the communication of

21 12 June 2023 was that the Defence did not obtain that -- the documents that we were

22 requesting and had to give up on the idea of travelling to Sudan for once and for all,

23 or subsequent to this communication, the Defence would have been running the risk

24 of being arrested or abducted.

25 Incidentally - this is a side bar, so to speak - the previous Registrar of the Court was of

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1 the view that he was not bound by the slightest duty of care for members of the  
2 Defence team. This position was set out in a letter dated 22 March 2022 and is to be  
3 found on the case record, under reference number 643, annex B.

4 I would call upon all those who are concerned about the rights of court counsel  
5 working before the Court and their associates to refer to this, people who are  
6 concerned about their rights and working conditions.

7 This absence of duty of care means that unlike the Court officials arrested in Libya in  
8 2012, unlike OTP staff members, the members of the Defence teams who have to buy  
9 a personal insurance policy for each one of their missions, this implies they cannot  
10 count on any assistance from the Court if they are arrested in Sudan or disappear in  
11 that country.

12 Under these conditions, it goes without saying that the escalation of 12 January 2023,  
13 signaled the death knell of the slightest hope that the Defence team members could  
14 deploy to the Sudan -- to Sudan and it also meant that the Defence had to find other  
15 solutions to conduct our investigations.

16 Once again, this is another aspect of the violation of the principle of equality of arms  
17 which did not result in the Chamber intervening and correcting the matter.

18 The escalation of 12 January 2023, no matter how intolerable, prejudicial to the rights  
19 of the Defence, no matter how unjustified it may have been, was yet accepted without  
20 anyone batting an eyelid, and this allowed Sudan to benefit from yet another delay to  
21 rationalise their actions. I refer to decision 853 of 20 January 2023.

22 In response, you asked the Defence to shorten our list of documents requested of  
23 Sudan. Your decision 857, 27 January 2023, I recall that at least twice, paragraph 13  
24 of your ruling 695 of 24 May 2022, and paragraph 18 of your decision 806 for  
25 December 2022, the Chamber did find that obtaining the documents requested by the

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1 Defence was essential to ensure the principles of a fair trial and equal arms.  
2 But in response to the escalation by Sudan on 12 January 2023, which infringed upon  
3 Mr Abd-Al-Rahman's right to prepare his defence, the Chamber gave up on  
4 upholding these principles and opted for appeasement, appeasing Sudan.  
5 As history shows us, a strategy of appeasement is naturally doomed to failure and  
6 that is exactly the outcome that we saw. Your ruling 853 was simply ignored by  
7 Sudan, there was no answer to the reduced requests from the Defence and Sudan did  
8 not even deign to appear when summoned to attend the hearing of 19 April 2023.  
9 And then what happened? Your Chamber paid lip service and found that Sudan  
10 was non-cooperative, but refused to resort to the only mechanism set out in the Rome  
11 Statute to force the country to cooperation. And I refer to the possibility of  
12 a Security Council referral.  
13 Use of this mechanism was requested by the Defence. Decision 913 of 31 March  
14 2023 - and a public version of this ruling was registered on 31 May 2023 - turned  
15 down this request.  
16 Refusal to make use of this mechanism has deprived the Defence of its only solution  
17 under the core legal text of the Court to obtain cooperation -- Sudan, particularly, the  
18 granting of visas to investigate in Sudan and documents that are essential that they  
19 have requested since November 2020.  
20 Your Chamber was not -- has certainly not been curious. The Chamber recognised  
21 the essential nature of some of these documents, but gave up rather easily on seeing  
22 them. All the same, I will provide some illustrations to show that these documents  
23 are essential.  
24 The Defence asked for disclosure of Mr Abd-Al-Rahman's civil status documents.  
25 Not only were these documents essential to verify the nickname Ali Kushayb, a name



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1 by which he is charged, but also the Court has been asking for these documents in  
2 order to assess whether my client is indigent and whether he is eligible for legal aid  
3 paid by the Court.

4 The OTP passed on those requests, nothing was obtained, and during your  
5 deliberations you will have to do without these essential documents to verify the  
6 alias.

7 Secondly, the Defence asked for disclosure of Mr Abd-Al-Rahman's military records,  
8 records that could very well contain evidence of his partial alibi for the events of  
9 February and March 2004, in Mukjar and Deleig.

10 This -- the Sudanese authorities refused to provide the document. The OTP also  
11 passed on the request from the Defence and did not receive the documents either.

12 Once again, your deliberations will -- as you deliberate, you will have to do without  
13 this essential document to verify whether or not Mr Abd-Al-Rahman was present in  
14 Mukjar and Deleig in February and March 2004.

15 Third, the Defence also requested disclosure of Mr Abd-Al-Rahman's criminal record.

16 This is something you could call criminal investigation 101, the very basics. This  
17 document was also essential insofar as the Sudanese authorities claim that my client  
18 was the subject of proceedings in 2006, in relation to the Darfur events. Those  
19 proceedings should be found in his criminal records. So the request was legitimate.  
20 It was essential to obtain this document. In any country, anywhere in the world,  
21 a person's criminal record is the first document that is placed on the record of the  
22 case.

23 The OTP never asked for it, and merely passed on the request from the Defence, once  
24 again, for which there was no answer. And nothing was obtained. There was no  
25 response. Once again, during your deliberations you will have to do without this

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1 document so essential to verify the identity of Mr Abd-Al-Rahman, alias Ali Kushayb.  
2 Finally, the Defence requested disclosure of public documents such as the rules of  
3 engagement that prevailed within the Sudanese Armed Forces. And the Defence has  
4 been troubled by the fact that the OTP never thought to request disclosure of this  
5 essential document and made a request for the first time only when passing on the  
6 request from the Defence.  
7 Is this really how investigations are conducted concerning allegations of crimes  
8 committed during military operations? Particularly, when one considers just how  
9 essential this document is, the rules of engagement within the armed forces. Any  
10 other court would have demanded them. This is not very professional.  
11 It is never too late to finally do a good job. The OTP did pass on the request at the  
12 request of the Chamber and did not get anything by way of rules of engagement.  
13 Once again, when you deliberate, you will have to do without this essential document,  
14 this document so necessary to understand the conduct of military operations that are  
15 mentioned in the charges.  
16 Your Chamber found that these documents were essential, but refused to implement  
17 the means provided for by the Statute of the Court so as to obtain them, thus failing to  
18 meet your obligation to ensure a fair trial under Article 64(2) of the Statute.  
19 Facing the considerable doubt that the lack of all these documents maintain on the  
20 substance of the matters that you will adjudicate, how will your Chamber apply the  
21 principle of *in dubio pro reo* found in Article 66(3) of the Statute of the Court?  
22 Will this principle be affirmed, once again, but not given body, as already has been  
23 the case, as was the case with the principles of a fair trial and equality of arms in  
24 ruling 695 and 806, which I have already mentioned?  
25 The impossibility of obtaining essential documents that the Defence has asked for was

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1 favoured by your Chamber's refusal to do what it could and should have done to  
2 ensure a fair trial.

3 Under Article 66(3) of the Statute, the lack of these documents can result only in the  
4 acquittal of Mr Abd-Al-Rahman of all the charges standing in his name.

5 And I see the time, your Honour, and I would suggest leaving it at that for this  
6 afternoon.

7 PRESIDING JUDGE KORNER: [15:58:20] Yes. Well, I was about to stop this  
8 diatribe at this stage as well, Mr Laucci.

9 Yes, we will go into private session, please.

10 (Private session at 3.58 p.m.)

11 THE COURT OFFICER: [15:58:40] We are in private session, Madam President.

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- 14 THE COURT USHER: [16:01:40] All rise.
- 15 (The hearing ends in private session at 4.01 p.m.)