

Trial Hearing

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Al Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Monday, 13 November 2023
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:10] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:39] Yes, good morning, all.
15 And could we have the appearances for the Defence, please.
16 MR LAUCCI: [9:33:48] Good morning, Madam President. Good morning, your
17 Honours. Good morning, colleagues. Good morning to the public. Together with
18 Mr Ali Muhammad Ali Abd-Al-Rahman today present in the courtroom,
19 Mr Thomas Chatelet, our intern; Madam Nina Guilloux, assistant evidence reviewer;
20 Mr Ahmad Issa, case manager; Madam Audrey Mateo, our legal adviser; and
21 Iain Edwards and myself, Cyril Laucci, counsel.
22 PRESIDING JUDGE KORNER: [9:34:24] Yes, thank you.
23 Prosecution.
24 MR NICHOLLS: [9:34:28] Morning, Madam President. Good morning, your
25 Honours. Good morning to everyone. Myself, Julian Nicholls, with Diana Saba,

1 Edward Jeremy, Rachel Mazzarella and Claire Sabatini. Thank you.

2 PRESIDING JUDGE KORNER: [9:34:38] All right.

3 And the representatives of the victims.

4 MR SHAH: [9:34:41] Good morning, Madam President. Good morning, your
5 Honours. Good morning to everyone in and around the courtroom. Anand Shah,
6 associate counsel on behalf of the participating victims today, and accompanied by
7 our -- by our visiting professional, Charlotte Imhof. Thank you.

8 PRESIDING JUDGE KORNER: [9:35:05] You had to think about that one, Mr Shah.

9 Yes, all right. We'll go into private session briefly before we come back to the main
10 questions this morning just to deal with some housekeeping matters.

11 So can we go into private session.

12 (Private session at 9.35 a.m.)

13 THE COURT OFFICER: [9:35:38] We're in private session, Madam President.

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Trial Hearing

(Private Session)

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13 (Open session at 9.42 a.m.)

14 THE COURT OFFICER: [9:42:54] We're back in open session, Madam President.

15 PRESIDING JUDGE KORNER: [9:42:57] Yes, thank you.

16 Now, Mr Laucci, before we deal with the question of whether he is an expert or an
17 expert in all matters on which he gives an opinion, there are a number of things that
18 I would like to know.

19 Firstly, the report is written as though it were a philosophical thesis in many respects.

20 I had to -- actually, when I got to paragraph 10, I spent some time having to look up

21 on the internet what the first sentence meant, and the second sentence beginning

22 "This axiom regards Kelsen's single basic norm" meant absolutely nothing to me.

23 And a lot of this report falls into that category.

24 Now, the point about the expert -- an expert is that he's there to help the triers of fact

25 by giving opinion. But if the triers of fact, or at least some of them - I'm not going to

1 say that either of my colleagues didn't understand every word perfectly - don't
2 understand even a sentence, that's not going to help a lot. So you're really going to
3 have to get him to explain in what I call the French or English language what he
4 means by a lot of what he says.

5 So that's the first thing.

6 MR LAUCCI: [9:44:42] In answer to that, I can say no more than this was the full
7 topic and purpose of the preparation session.

8 PRESIDING JUDGE KORNER: [9:44:53] Right. I'm sure it was well spent.

9 Right. That's the first matter.

10 The second is this: I know you responded to the Prosecution's objections, but I really
11 would like to know in simple English or French what the points at issue are between
12 you and the Prosecution, and why -- the Prosecution says a lot of this evidence has
13 already been given by the agreed expert, so why should he give it again? And that's
14 really the question that -- because this is likely to be a lengthy process, it seems to me,
15 to get him to explain his report.

16 MR LAUCCI: [9:45:38] With your permission, Madam President, I will answer your
17 question, noting that it will be my colleague Iain Edwards who will deal with the
18 voir dire today. The part of the voir dire will be for Iain Edwards, but I can answer
19 this question.

20 Well, first of all, to address the difference with expert Alex de Waal, Alex de Waal
21 was a tremendous expert, and I'm not disputing that, but he was an anthropologist.
22 He was not a lawyer. He was not focussed on legal aspects of what he was talking
23 about.

24 And this expert witness is a lawyer, a professor in law, and this is, because of that, a
25 different focus that he will give on issues which are not the same either, because some

1 are common, but the main issue on which Professor Gout will testify is essentially
2 Sudanese law. And we did not hear from Professor de Waal anything about that.
3 We heard from Witness D-16, but with a different, once again, perspective. D-16
4 was testifying about his own experience, whereas this expert will testify on the basis
5 of his academic knowledge and studies.

6 So the topics regarding this witness are, first of all, what are --

7 PRESIDING JUDGE KORNER: [9:47:23] It's not the topics. What is actually in
8 dispute? I mean, I simply want to know where you say, firstly, what is relevant
9 about his evidence and, second, where there's a dispute between you and the
10 Prosecution.

11 MR LAUCCI: [9:47:35] Well --

12 PRESIDING JUDGE KORNER: [9:47:37] I don't want you to go through all the
13 topics you're going to go through.

14 MR LAUCCI: [9:47:47] Sure. But what is -- what is sure is that if you consider
15 our -- the three lines of defence, plus the issue of *nullum crimen sine lege*, which is still
16 pending after the decision -- the second decision of the Appeals Chamber OA8 and on
17 which your Chamber will have to enter a determination, identifying --

18 PRESIDING JUDGE KORNER: [9:48:09] I'm sorry, can I interrupt, I'm sorry, because
19 it's -- and I didn't hear it, the issue of what?

20 MR LAUCCI: [9:48:14] *Nullum crimen sine lege*, the principle of legality.

21 PRESIDING JUDGE KORNER: [9:48:18] Oh, right. Yes, yes.

22 MR LAUCCI: [9:48:20] So on this aspect having expert evidence on the sources of
23 law applicable in Sudan and on the way international law conventions, international
24 customary law and UN resolutions can or cannot be applicable in Sudan domestic
25 system is of key relevance for at least the principle of legality.

1 And for our third line of defence --

2 PRESIDING JUDGE KORNER: [9:48:51] All right, just a moment. So you say, the
3 applicability of international law in Sudanese law at the time?

4 MR LAUCCI: [9:48:55] Precisely. And that --

5 PRESIDING JUDGE KORNER: [9:48:58] Hang on. I'm just making a note.

6 So -- so does this go back to the 1986 military act and the 2007 one; is that -- is that
7 what the purpose is?

8 MR LAUCCI: [9:49:24] Not exactly. I mean, what I was mentioning right now was
9 the applicability of international sources - once again, conventions, international
10 customary law, and UN resolutions - whether they are applicable in Sudanese law
11 and whether they need to be incorporated; and, if they need to be incorporated,
12 whether they were incorporated at the relevant time, that is 2003-2004. That's, in a
13 nutshell, the first big topic with this witness.

14 PRESIDING JUDGE KORNER: [9:50:00] Isn't that a matter of law for us to decide
15 whether or not, even if, for example, crimes against humanity were not part
16 of -- specifically part of Sudanese law?

17 MR LAUCCI: [9:50:13] Exactly, Madam President. And that's precisely, we have
18 identified the need of this expert because he is expert in Sudanese law in the domestic
19 system and he can assist the Chamber in understanding how in the specific Sudanese
20 context these international sources can find their way and become applicable. Of
21 course, he will not testify about the theory of public international law before you.
22 That's certainly not his topic. But the thing is he will clarify how international
23 sources can become applicable and where, or not, applicable in the Sudanese
24 domestic system at the relevant time. And that is essentially an analysis of the
25 constitutional -- the constitution of Sudan, the one that was applicable, 1998, and how

1 under the constitution and the existing legislation at the time, these international
2 sources were or were not incorporated.

3 After the consequences of their incorporation or lack of incorporation are entirely for
4 the determination of your Chamber, but he will just state the simple facts: What was
5 the situation regarding incorporation of international sources in domestic system by
6 the time?

7 PRESIDING JUDGE KORNER: [9:51:46] But he didn't go there until 2000 and
8 whatever it was -- I've forgotten what he says. So the applicability of, as you put it,
9 international sources in Sudanese law in 2003 is something, what, that you say
10 he's -- well, I suppose we can find out from him, but you say he's learnt through study
11 or from talking to people?

12 MR LAUCCI: [9:52:16] He's not a witness of fact. That is clear. We call him
13 because of his academic expertise.

14 PRESIDING JUDGE KORNER: [9:52:23] Okay. Yes, all right. So that's the first
15 issue.

16 MR LAUCCI: [9:52:26] The second issue -- so that covers -- in your email of
17 yesterday you wanted to have the paragraph, so the sources of law are 10 to 65, the
18 articulation between international law and Sudanese law are paragraphs 73 to 96.
19 And I also include in that first topic the impact of the state of emergency because, of
20 course, that may have an impact on the applicable law in Sudan by the time,
21 paragraph 102 to 134. That's the first topic.

22 And then we have someone, this expert, who has completed his PhD on -- I mean, I
23 don't have the exact topic here, but that is --

24 PRESIDING JUDGE KORNER: [9:53:18] (Overlapping speakers) peace process it
25 was.

1 MR LAUCCI: [9:53:20] Sorry?

2 PRESIDING JUDGE KORNER: [9:53:22] It was to do with the peace process, wasn't
3 it?

4 MR LAUCCI: [9:53:25] Yes, but it was essentially about customary -- customary law,
5 Sudanese customary law. Yes. I have it in French here, but it's the way the legal
6 customary order -- well, no, I cannot translate this on the spot.

7 PRESIDING JUDGE KORNER: [9:53:42] Well, yes, if -- the translation doesn't make
8 any more sense.

9 MR LAUCCI: [9:53:47] Ah, yeah, here: Understanding the customary and
10 intrastate legal order through international law: The Sudanese peacebuilding
11 experience.

12 So this witness through his PhD but also more broadly throughout his academic
13 research and career has explored and analysed the customary institutions and
14 customary -- customary law and customary institutions inside Sudan.

15 And the tribal aspect is something that is essential to our second line of defence, that
16 is how the call of President Al Bashir to the counterinsurgency was received within
17 the tribes and whether -- whether the tribes could or could not refuse to join that call
18 and whether they did or not. That's the second aspect, the second line of defence.

19 And to apprehend that second line of defence, we believe that the Chamber will be
20 assisted by understanding better the functioning of the tribes in Sudan and the way
21 the tribes could coordinate with each other and coordinate with the central state.

22 That --

23 PRESIDING JUDGE KORNER: [9:55:21] Is this your -- the part of your defence you
24 referred to where you say it's inconceivable that a member of the Ta'aisha tribe could
25 (Overlapping speakers)

1 MR LAUCCI: [9:55:31] Yes, to go to that point, to reach that point. Yes, precisely.
2 And so what the witness -- the expert witness Professor Gout will testify on is his
3 knowledge of customary institution and, more specifically, intertribal coordination
4 mechanisms existing. He identifies some of them in the report and in his PhD so that
5 we can understand better, and we hope the Chamber will be assisted by that, how the
6 tribes could coordinate and could provide a response to, once again, a call coming
7 from the state, the head of state or the government of Sudan to participate and join in
8 the counterinsurgency.

9 And, finally, that goes actually within that because the expert will clarify that this
10 has -- this comes from Sudanese customary law, the two specific topics of *hiraba* and
11 *ghanima*, which are relevant for the charges as far as looting is concerned, and I think
12 specifically about Kodoom and Bindisi.

13 So what is *ghanima*, what is *hiraba* and whether what happened in Kodoom and
14 Bindisi could be an application of either or one or the other of these two notions of
15 customary law and practices.

16 PRESIDING JUDGE KORNER: [9:57:20] All right. Well, that's fairly helpful.
17 I mean, we'll have to see how he deals with the matter of his expertise and certainly
18 matters two and three.

19 MR LAUCCI: [9:57:32] Precisely, but I really insist and invite the Chamber to focus
20 and take the maximum evidence from this expert witness on what was - and we'll try
21 to assist of course in that process - what was the specific situation regarding these
22 topics that I mentioned in Sudan and at the time. This is where we think he can
23 assist and give for the Chamber a picture on the basis of which you will be -- you will
24 have more information, I hope sufficient information to draw legal consequences.

25 PRESIDING JUDGE KORNER: [9:58:13] Well, obviously you will have a chance at

1 the end of his evidence and cross-examination to address us on what the test is. I
2 mean, that's clear.

3 All right. Well, that's very helpful. Thank you, Mr Laucci.

4 Yes, I don't know, who is dealing with it? Is it you, Mr Jeffery?

5 MR JEREMY: [9:58:35] Yes, Madam President.

6 PRESIDING JUDGE KORNER: [9:58:37] Jeffery, I've done it. Jeremy it is.

7 Do you want to say anything at this stage? I think, really, I just wanted to know in
8 brief before we heard from the witness.

9 MR JEREMY: [09:58:53] Yes. I mean, we've set out our challenge in filing 1018.
10 Our position is that to the extent that this -- Mr Gout's evidence overlaps with the
11 jointly instructed expert, then that really defeats the purpose of (Overlapping
12 speakers)

13 PRESIDING JUDGE KORNER: [9:59:01] No, well, I follow that. I simply want to
14 know do you agree that those are real issues between you and the Defence? That's
15 what I want to know.

16 MR JEREMY: [9:59:12] Well, yes, I agree that those issues are in contention. We
17 don't believe that Mr Gout has the expertise (Overlapping speakers)

18 PRESIDING JUDGE KORNER: [9:59:22] No, as I say, that's a different matter and
19 we'll deal with that when we've heard from him. Yes, all right.

20 Mr Edwards, yes.

21 MR EDWARDS: [9:59:31] Yes.

22 Just before he comes in, can I just clarify one thing, because my learned friend has
23 referred to filing 1018, and I don't know if your Honours have it.

24 PRESIDING JUDGE KORNER: [09:59:44] Which one is filing 1018?

25 MR EDWARDS: [09:59:47] Well, it was the -- it's the filing that kicks this all off. It's

1 the Prosecution's response to our request for (Overlapping speakers)

2 PRESIDING JUDGE KORNER: [9:59:47] Yes, I've got that. And I've also got
3 Mr Laucci's response to the Prosecution's response.

4 MR EDWARDS: [9:59:52] Yes. But in 1018, can I make it very clear that it is in fact
5 the six discrete topics which are set out in Roman numerals from paragraph 7 that the
6 Prosecution have placed us on notice saying that they don't accept, they contest the
7 witness's expertise, and it is in respect of these six matters that I propose to take --

8 PRESIDING JUDGE KORNER: [10:00:35] Well, hang on, they've put you on notice
9 about -- they sent a list of further issues that they contested.

10 MR EDWARDS: [10:00:44] Yes.

11 PRESIDING JUDGE KORNER: [10:00:46] So just let me have a look. I mean, some
12 of them -- I started to mark up the report and I had so many lines that I couldn't work
13 out anything.

14 MR EDWARDS: [10:00:58] Yes.

15 PRESIDING JUDGE KORNER: [10:01:00] But in paragraph 9 -- well, they add
16 something, that he relies on a single interview.

17 MR EDWARDS: [10:01:20] Yes. Can I --

18 PRESIDING JUDGE KORNER: [10:01:22] But, I mean, I suppose that goes to issue 6.

19 MR EDWARDS: [10:01:25] Can I make -- can I just make the point that the topics are
20 enumerated at paragraph 7. The following paragraphs down to paragraph 15
21 fleshes out those matters that are in contention, and they will of course be dealt with
22 by Dr Gout. But where the Prosecution go into detail from paragraph -- from
23 paragraph 16 down to paragraph 23, well, that's a challenge relating to overlapping
24 of -- sorry, topics that, according to the Prosecution, this Chamber won't be assisted
25 by the -- by the witness (Overlapping speakers)

1 PRESIDING JUDGE KORNER: [10:02:19] Yes, well, that's a matter I suppose --

2 MR EDWARDS: [10:02:22] Because they are duplicative. But this witness can't
3 answer that and I'm not going to ask this witness any questions about overlap with
4 another expert. That's a matter for legal submission.

5 PRESIDING JUDGE KORNER: [10:02:33] Yeah, I agree.

6 MR EDWARDS: [10:02:35] Similarly -- similarly, at C, so from paragraph 24 of the
7 Prosecution's response, the report covers topics that seek to usurp the Chamber's
8 function. I'm not going to ask him about that, because that's a matter for submission.
9 I'm focussing exclusively on the matters which are set out summarily at paragraph 7
10 and then fleshed out a little bit more in the following paragraphs down to paragraph
11 15. I want that to be clear as much to your Honours as to my learned friends.
12 Now, of course, if your Honours feel that there are other matters that the expert needs
13 to flesh out in terms of his expertise, then of course that will -- your Honours will ask
14 the questions, I accept that, but really I am -- I'm focussing on the matters in the
15 paragraphs that are set out in paragraphs -- the paragraphs of his report that are
16 enumerated at paragraph 7 of the Prosecution's reply and which were then very
17 helpfully reiterated in Mr Nicholls' email of 18 October.

18 PRESIDING JUDGE KORNER: [10:03:57] Yes, all right. We've got that.

19 MR EDWARDS: [10:03:59] If there's anything else, then I'd like to hear before I start.

20 PRESIDING JUDGE KORNER: [10:04:05] Yes. Mr Jeremy.

21 MR JEREMY: [10:04:06] Yes, Madam President.

22 So it's -- I appreciate my colleague pointing to this email that we'd sent at his request
23 where we clearly set out the paragraphs of the report that we do challenge. We're
24 not limited by paragraph 4 and 5 of our challenge. There are -- the way that the
25 challenge itself was set out, it's certain paragraphs we say he had -- certain parts of his

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WITNESS: DAR-D31-P-0023

1 report he has no expertise whatsoever. Other parts we say are not of assistance to
2 the Chamber and that may be (Overlapping speakers)

3 PRESIDING JUDGE KORNER: [10:04:41] Well, that is -- but that's not a matter for
4 him.

5 MR JEREMY: [10:04:43] (Overlapping speakers) partly because it overlaps with the
6 witness, Madam President, but partly also because he has no expertise.

7 Now, I'm not suggesting that as part of the voir dire process we explore with this
8 witness what he said versus what Professor de Waal said. I don't think anyone has
9 suggested that other than -- other than my colleague, but that's -- that's not something
10 that we'll be intending to do. But I think we very clearly set out both in our filing
11 and in the subsequent email the parts of the report that we challenge.

12 PRESIDING JUDGE KORNER: [10:05:13] Yeah, all right.

13 Yes. Right, shall we have the witness in?

14 (The witness enters the courtroom)

15 PRESIDING JUDGE KORNER: [10:06:28] Yes, good morning, sir.

16 I think you know why you're here and what's going to happen next. So would you
17 be kind enough to take the solemn declaration and then Mr Edwards is going to ask
18 you questions.

19 If you could read it out, please, either in English or French. I think it's in front of
20 you.

21 WITNESS: DAR-D31-P-0023

22 (The witness speaks French)

23 THE WITNESS: [10:07:02](Interpretation) I solemnly declare that I shall tell the truth,
24 the whole truth and nothing but the truth.

25 PRESIDING JUDGE KORNER: [10:07:07] Yes, thank you very much.

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1 Just so that you know, we'll be sitting until 11 o'clock, then there will be an 11:30
2 break -- then there will be a break until 11:30 and then we go through till lunchtime,
3 but I think it's probable that your evidence will then finish at this stage.
4 So the one thing I should say to you is, you have now started giving evidence, that
5 means that you cannot speak to either Mr Laucci or Mr Edwards thereafter. Though,
6 I don't know, I suppose a voir dire is slightly different, but we'll see.
7 Yes, all right.

8 QUESTIONED BY MR EDWARDS:

9 Q. [10:07:56] Good morning, Dr Gout. We can stay in public session. Your
10 evidence will be in public session throughout, I suspect.

11 Just by way of an introduction, we talked about this over the weekend, keep your
12 answers short, please. If you have to give a long answer, break your answer down
13 into small sections so that the interpreters can do their work and also try and speak
14 slowly.

15 A good rule of thumb is to keep your eye on the screen in front of you, you can see
16 the speed that the stenographer is typing at, and if your speech follows that speed,
17 that's a good indication that you're doing all right.

18 I'm going to start by focussing my questions on the question of your -- on the issue of
19 your expertise, and Mr Laucci will question you later on the substance of your report.
20 So let's -- let's make a start.

21 Please state your full name and your date of birth.

22 A. [10:09:09] Philippe Gout, 3 October 1984.

23 Q. [10:09:19] Could you turn to tab 11 in the black binder that is in front of you. It
24 contains your CV. It contains, in fact, a translation of your CV in English because I'll
25 be working off that translation for now at least.

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- 1 MR EDWARDS: [10:09:39] And your Honours, it's DAR-OTP-00005971.
- 2 PRESIDING JUDGE KORNER: [10:09:51] Yeah, we've got it.
- 3 MR EDWARDS: [10:09:56]
- 4 Q. [10:09:59] Dr Gout, would you prefer to give your evidence in French or in
5 English now that you're actually sitting here. How are you feeling in terms of the
6 language?
- 7 A. [10:10:14] I'd prefer to testify in French, if possible, if that's suits you.
- 8 PRESIDING JUDGE KORNER: [10:10:21] Well, that's fair enough. It's his native
9 language, Mr Edwards, even if his English is good.
- 10 MR EDWARDS: [10:10:30]
- 11 Q. [10:10:31] You're a lecturer in public law at Toulouse Capitole university?
- 12 A. [10:10:43] Exactly.
- 13 Q. [10:10:45] And tell us, how long have you been a lecturer at that university,
14 please.
- 15 A. [10:10:56] I was recruited in May 2022, I believe, and I took up my duties in 2022,
16 September 2022.
- 17 Q. [10:11:16] Now, what is it you teach students now, please?
- 18 A. [10:11:24] Public international law, exclusively in English and in French at the
19 undergraduate level and at the master's level, all areas of international public law.
- 20 Q. [10:11:40] You completed your doctorate at the University of Paris 2
21 Panthéon-Assas. Was that awarded in 2019 after you defended it in a viva?
- 22 A. [10:12:01] No, in December 2019, early in December.
- 23 Q. [10:12:07] Okay. We're going to deal with this now. The title in French -- I'm
24 going to switch into French for a moment. The title of your thesis was
25 (Interpretation) "Apprehension of customary law between states through

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1 international law. The Sudanese experience of peacebuilding."

2 (Speaks English) We've --

3 PRESIDING JUDGE KORNER: [10:12:45] Yes, it's been translated in his translation
4 of his CV as "understanding" --

5 MR EDWARDS: [10:12:46] Yeah.

6 PRESIDING JUDGE KORNER: [10:12:47] -- not "apprehension".

7 MR EDWARDS: [10:12:56] Indeed. We're going to unpack that now, your Honour.

8 PRESIDING JUDGE KORNER: [10:13:02] Okay, right.

9 MR EDWARDS: [10:13:03]

10 Q. [10:13:04] Now, Mr Witness, it may be that the translation of the word
11 "*appréhension*" into English has created difficulties. By "*appréhension*", did you -- was
12 it essentially what you were trying to suggest that it's the treatment of
13 international -- sorry, the treatment of customary law under international law, the
14 way it's -- the way it's -- the way it's applied?

15 A. [10:13:45] Exactly. That's quite the case. An alternative title, yes, there
16 could -- it could be phrased in a different way.

17 Q. [10:13:59] And I fear that this isn't the last time we're going to have to look in a
18 bit more detail at some of the language in your report.

19 PRESIDING JUDGE KORNER: [10:14:08] I'm afraid that's right because -- and it's
20 one of the things I had to personally look up.

21 It was translated, Professor Gout, into: "Understanding the sub-State [...] legal order",
22 and somewhere I think in your report you gave an explanation of "sub-state". But
23 are you now saying that, in fact, that the title could be, "The treatment of international
24 law in Sudanese law"? Is that -- is that the general topic?

25 THE WITNESS: [10:14:54](Interpretation) No, your Honour. Rather, it's the

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1 contrary. It's actually the way that the non-state law in Sudan has been treated
2 under international law, and their status under international -- not the way -- you
3 see, I worked on -- during my research, I studied these issues, but that was not the
4 actual title of my thesis.

5 MR EDWARDS: [10:15:35]

6 Q. [10:15:36] Dr Gout, just explain to us, what is meant by the French term
7 "*infra-étatique*"? Explain to us in concrete terms what that means.

8 A. [10:15:55] I use that term to refer to legal orders that are distinct from the state
9 legal order. The standards, the procedures that make up this order located in Darfur
10 are not based on the Sudanese constitution. They are different. They are local in
11 nature at the level of the municipality, for example, or at the level of a locality within
12 Darfur.

13 PRESIDING JUDGE KORNER: [10:16:34] So you're saying the standard procedures,
14 legal procedures in Darfur are local in nature and not derived from a central authority,
15 if you like, or the constitution?

16 THE WITNESS: [10:16:55](Interpretation) No, your Honour. I wouldn't put it that
17 way. State law does exist in Darfur. It is applied as much as possible in Darfur, but
18 at the same time, alongside that law, there are procedures and processes that exist
19 independently with no link to -- there's no --

20 PRESIDING JUDGE KORNER: [10:17:31] I'm afraid the interpreters have lost you.
21 You've got to be -- I think particularly when you're explaining quite complicated legal
22 concepts, go more slowly.

23 Can you say that again. You said state law applies -- is applied in Darfur, but
24 alongside so are procedures and processes which are independent.

25 THE WITNESS: [10:18:03](Interpretation) Yes, exactly, your Honour.

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1 PRESIDING JUDGE KORNER: [10:18:06] Okay.

2 MR EDWARDS: [10:18:06]

3 Q. [10:18:07] And the interpreters also got lost. You were -- you said that exist
4 independently with no link to ...

5 Just expand on that, with no link to what? And why that would be the case.

6 A. [10:18:27] Without a link of validity to state law. For a standard to be valid and
7 applicable and deemed to be likely to produce legal effect, there has to be a
8 foundation. Generally speaking, that state foundation comes from something from
9 the state constitution. These customary standards can't have a basis that -- or a
10 foundation that is not at all from the state constitution. It does not need to be
11 justified under state law. It exists on an autonomous basis. Why? That is another
12 issue. That is the issue of the institutional history of contemporary Sudan and
13 the -- the dismantling one regime after another of former institutions that used to be
14 state institutions but survived constitutional reform, they were dismantled and have
15 been replaced by other regional structures.

16 So these former state institutions do exist, they have survived, they are maintained in
17 practice and they still have authority, funding, and they are -- they are no longer
18 recognised under state law, but they still exist.

19 Q. [10:20:10] Okay. Now, in due course, later on this week, you'll be asked in
20 much more detail about some of these more customary legal systems, but just so that
21 the Court and -- well, not just the Court, everyone in this room can really pin down
22 what you're talking about, can you give one very brief example of a customary legal
23 order that exists or existed independently of state institutions and state legal -- the
24 state legal order, if I can put it that way?

25 Just give us one really simple example.

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1 A. [10:21:07] I can give you a previous example, previous to the armed conflict that
2 began in 2003 and 2004. And this has to do with the Dar, the territory area and the
3 Rezeigats of Darfur in the east, the Dar of El Daein.

4 A Dar is a customary territory led by a supreme leader. This person may be -- well,
5 can be termed in different ways depending on the tribe and this person administers a
6 number of rules and this person manages the territory administratively, settles
7 disputes, and so on and so forth. Why do I mention this Dar? The existence of
8 Dars has been criticised by the central government after the armed conflict began
9 because the Dars refused to --

10 THE INTERPRETER: [10:22:25] Inaudible.

11 THE WITNESS: [10:22:27](Interpretation) -- the counterinsurgency.

12 MR EDWARDS: [10:22:31]

13 Q. [10:22:32] Let me just pause you for a moment.

14 The Dars were --

15 PRESIDING JUDGE KORNER: [10:22:38] Yes, sorry, just a moment. Mr Jeremy.

16 MR JEREMY: [10:22:39] Not an interruption, just for the purposes of the transcript
17 I think one of the words was translated as "supreme leader" and I thought I heard
18 "sheikh", but maybe it's something to get clarified.

19 MR EDWARDS: [10:22:53]

20 Q. [10:22:54] Two things. Did you say a "*un chef suprême*" or "*un sheikh suprême*"?

21 A. [10:22:57] I said a supreme leader, *chef suprême* in French. I said supreme
22 leader, and it's a generic wording that I used in my thesis to describe these people
23 who lead the Dars.

24 MR EDWARDS: [10:23:14] (Overlapping speakers)

25 PRESIDING JUDGE KORNER: [10:23:19] Okay, sorry, Professor Gout, it's really

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1 important, if you don't mind, that you keep your voice up even with the microphone
2 because the interpreters have got to be able to hear what you say. Okay?

3 MR EDWARDS: [10:23:32] Thank you.

4 Q. [10:23:34] And, Dr Gout, a moment ago there was something that you said that
5 was inaudible. I just want to come back to that: Criticisms of some of the Dar
6 "because" - I'm trying to find it -- "because the Dars refused to" something "the
7 counterinsurgency". What did you say there?

8 A. [10:24:08] I was referring specifically to Dar Rezeigat, El Daein, and the family,
9 the supreme authority, who belongs to the Madibo family, always refused to join the
10 counterinsurgency because he didn't think there was anything in it for them, they
11 already had their territory and so they did not want to gain any more territory by
12 taking part in the counterinsurgency.

13 There are other ways of providing an example with this Dar.

14 PRESIDING JUDGE KORNER: [10:24:54] I'm sorry, Mr Edwards, so the head of this
15 Dar refused to join, but why is that an example of procedures and processes which
16 are independent of state law? It's simply somebody saying "I refuse".

17 THE WITNESS: [10:25:23](Interpretation) Thank you, your Honour. Thank you.

18 That allows me to return to the other example from the 1990s, the Zaghawa
19 communities who were living close to El Daein who were very much present, in
20 numerical terms, in that territory were able to mobilise state mechanisms through
21 election to gain primacy over others and confirm, and indeed beef up, their authority
22 in that area. They were able to reinforce their authority over the territory through
23 state institutions as opposed to traditional authorities that were mismanaged, the
24 Madibo family. And I developed these points further in my thesis.

25 MR EDWARDS: [10:26:38]

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1 Q. [10:26:39] So, again, I really don't want to dwell too long on these particular
2 examples, we're going to come to these a bit later, one hopes, but again just to really
3 make it clear so that their Honours understand, in what way did the stance of the
4 supreme chief, the supreme leader of some of the refusenik Dars, how is that an
5 example of a legal order which is outside the state legal order?

6 A. [10:27:22] No, the example is -- well, the second element I gave had to do with
7 the competition between the Zaghawa and the Rezeigat in one particular region. It
8 should be noted that the habitual legal orders, the foundation of the validity of all the
9 norms, standards that were developed by traditional authorities, that foundation was
10 the family, the noble family that managed that Dar because they were the supreme
11 authority. If that family was opposed to the state authorities, they would produce
12 norms in a completely independent way without any reference to state law to -- so,
13 you see, these norms or standards might be quite incompatible with state law. So,
14 you see, it was the noble family responsible for the Dar that developed these
15 standards.

16 PRESIDING JUDGE KORNER: [10:28:49] I think, Mr Edwards, you were right.
17 We're going to get a bit buried in this, and for the purposes of the voir dire, I don't
18 think we need to have a complete comprehension of this. At a later stage, we may.
19 At the moment, can I say, I don't think we're entirely clear, but let's leave that.

20 MR EDWARDS: [10:29:14]

21 Q. [10:29:14] You will speak about the nobility families I hope later, but again let's
22 just nail that down now. Is that the *Nafar*?

23 A. [10:29:27] Exactly.

24 Q. [10:29:32] And reference to the *Nafar* - again, I don't want it to get lost in the
25 transcript - is at paragraph 25 of the report.

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1 All right. Let's come back to your expertise, Dr Gout. Has your thesis been
2 recognised or received any particular distinction?

3 A. [10:30:00] Yes, on several occasions. Two distinctions in 2020, two second
4 prizes, two second thesis prizes, one prize awarded by the Joinet in 2020 and also a
5 prize by l'Harmattan publishers in 2021. And a few days ago I received a special
6 thesis prize from the European Commission and that was awarded as part of a
7 scientific colloquium in the town of Tours, first prize.

8 Q. [10:30:46] Has your thesis been published yet?

9 A. [10:30:56] It is in the process of being published by a publishing house,
10 LDJ (phon). It's a Parisian publishing house, and the prize I received I think will
11 help get the thesis published more quickly.

12 Q. [10:31:15] You had your viva in 2019. How long in total did it take for you to
13 research and then write up your thesis from beginning to end?

14 A. [10:31:37] It took me a lot of time. To give you a time frame, generally
15 doctorates in international law take about four to five years. It took me seven years
16 because I did two years of field work in Sudan between 2012 and 2016. I returned
17 there and those two years of field work made it possible for me to have important
18 context, and then afterwards I drafted my thesis over a period of five years like the
19 other colleagues.

20 Q. [10:32:29] Okay. You said two years of field work in Sudan between 2012 and
21 2016, which is a four-year period, so were you coming and going?

22 A. [10:32:43] Yes, indeed.

23 Q. [10:32:45] And what was the longest period you spent in Sudan at any one time
24 during this four-year period?

25 A. [10:32:54] Nine months.

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- 1 Q. [10:32:55] Have you ever been to Darfur?
- 2 A. [10:33:04] No, I was not able to go to Darfur.
- 3 Q. [10:33:08] Why is that?
- 4 A. [10:33:11] Because of civil responsibilities and my research requirements, I could
5 not go to Darfur. That was decided in 2012 when I was in Khartoum.
- 6 Q. [10:33:31] Okay. Civil responsibility, that doesn't really mean very much.
7 What do you mean? Who was it decided by and why could you not go to Darfur?
- 8 A. [10:33:44] The former coordinator of the research centre of social sciences in
9 Khartoum explained to me that they could not take the risk to allow me to go to
10 Khartoum and that they could not assume responsibility for me. That's why I
11 mentioned responsibility.
- 12 Q. [10:34:12] It's been translated as: "They couldn't take the risk to allow me to go
13 to Khartoum." Did you say --
- 14 A. [10:34:19] *Non*.
- 15 Q. [10:34:20] -- Khartoum or Darfur?
- 16 A. [10:34:22] Darfur.
- 17 Q. [10:34:24] Darfur, okay.
18 And when you talk about risk, is it -- just, in a word, is it for security reasons or
19 something else?
- 20 A. [10:34:34] Yes, indeed security reasons.
- 21 Q. [10:34:38] Before 2012, had you ever been to Sudan before?
- 22 A. [10:34:46] Before 2012? No, never.
- 23 Q. [10:34:50] Where did your interest in Sudan come from?
- 24 A. [10:34:58] Well, family reasons, I grew up in Egypt. And I don't know whether
25 I need to elaborate. I grew up in Cairo, so these were family reasons and I had

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1 wanted to always go to Sudan and look about peacebuilding, that's something I
2 always wanted to do.

3 Q. [10:35:31] Okay. And, in total, how long did you live in Cairo? You say you
4 grew up in Cairo. What sort of period of time are we talking about?

5 A. [10:35:45] 18 years.

6 PRESIDING JUDGE KORNER: [10:35:50] So you speak and read Arabic, do you?

7 THE WITNESS: [10:35:56](Interpretation) Well, I cannot claim to be a bilingual
8 Arabophone, but I can manage in Egyptian Arabic, and I took courses while I was a
9 child and I also took courses in Khartoum, so I think I can manage, I can read, but
10 doing my thesis, I tried to verify the understanding of the documents by consulting
11 colleagues who translated those documents for me.

12 MR EDWARDS: [10:36:40] Okay.

13 PRESIDING JUDGE KORNER: [10:36:42] I think that's -- sorry, Mr Edwards, we
14 might as well deal with that now.

15 That's the point. Are you -- the sources that you were consulting for the purposes of
16 your thesis, were you able to read the originals yourself or did you need to have
17 translation?

18 THE WITNESS: [10:37:04](Interpretation) Your Honour, it depends on the period
19 that we are talking about. At the beginning, in Sudan I had actually lost contact with
20 the Arabic. I actually started Arabic courses once again. I started to relearn writing
21 Arabic, and when I was interacting with my colleagues, it made it possible for me to
22 scan documents to have an overview of what I was seeing without necessarily
23 understanding everything. And it was in order to understand everything that I
24 decided to cross-check with my colleagues, Sudanese colleagues, and particularly
25 jurists sometimes.

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1 MR EDWARDS: [10:38:17]

2 Q. [10:38:18] Okay. Was it necessary for you to obtain and ultimately rely on
3 Sudanese legal texts translated into French or English, or was it the case that you
4 always relied on the Arabic texts but relied on colleagues to help you with difficult
5 words that you weren't familiar with?

6 A. [10:38:56] Well, the two cases were used. If you look at some of the annexes
7 relating to *judiyyas* included in the Khartoum urban areas, you will find that there are
8 certain terms that are strange, I had never come across them - I don't have an example
9 at hand - so these Sudanese vernacular terms which are not known in Egyptian or
10 classic Sudanese Arabic, so I consulted colleagues and they helped me translate them
11 and then I would verify my translations.

12 Q. [10:39:49] Okay. But, again, let's just focus on the question. Were they being
13 translated into English or French or were they just -- or were they being translated, as
14 it were, into easier to understand Arabic?

15 A. [10:40:08] Now I understand you. I understand you. It was translations into
16 French and English. I could ask for translations specifically in French.

17 Q. [10:40:20] Okay. Thank you.

18 Now, in your report, the report that you provided in answer to the Defence's request
19 for your expertise, there are any number of references, there's about 150, 160-odd
20 references, footnotes, including a number of Sudanese legal texts. Were you able to
21 actually have access to and physically read every single one of the Sudanese legal
22 texts that are referenced in your report?

23 A. [10:41:12] No, not every single one of the texts. We really have to understand.

24 Q. [10:41:21] Right. Okay, yes. My next question was to ask you to help us
25 understand what it was -- what it was like researching in Sudan, all right? If you

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1 could just give us an overview. Well, was it -- was it similar to carrying out research
2 in France or the UK or the US, or not?

3 A. [10:41:49] Well, it really had nothing to do with that because we don't have full
4 libraries or online libraries that would make it possible for you to look at all legal texts
5 in Sudan. When you go to Sudan, nobody knows you and then you ask to meet
6 for -- to meet with practitioners and researchers. It takes a lot of time. I spent a lot
7 of time -- I spent a lot of time lying down on sofas and looking at fans.

8 And then it depends on also what you are looking at, and you ask them to show you
9 the Sudanese laws, you look at them, you discuss with them, and sometimes one of
10 them would say "This belongs to me, I cannot share it with you." And sometimes if
11 I'm unlucky, I do not take away anything.

12 So initially it was quite difficult, but I think maybe that's how many
13 researchers -- how -- the way many researchers work in Darfur, they also rely on
14 scientific articles and media, which makes it possible for them to cross-check the
15 substance of their research.

16 Q. [10:43:27] Okay. Thank you. I'm just going to ask you from now on to slow
17 down, please, with your answers, okay? There's a lot that I'm hearing you being said
18 in French that is simply not being translated or not being translated accurately.

19 You said "the way many researchers work in Darfur", did you say -- did you say that?

20 A. [10:43:55] Yes, I said that. That is a general way, a common way that they
21 work.

22 Q. [10:44:01] And then you also said, and I don't know if you finished the idea, "I
23 spent a lot of time lying on sofas and looking at fans." What's the point you're trying
24 to make by saying that?

25 A. [10:44:16] I was trying to say that it was very complicated to have access because

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1 there are networks of practitioners and researchers, because when you have the
2 context, you need to meet these people, you have to make them want to meet you,
3 and you may not necessarily receive such and such a document. They can provide
4 information to you and at the end of discussions with people -- and then by reading
5 scientific articles from Sudanese researchers and then consulting the media, that is
6 what I said.

7 Q. [10:45:03] What -- sorry, your Honour.

8 PRESIDING JUDGE KORNER: [10:45:06] Sorry, Mr Edwards. I'm still not clear at
9 all.

10 MR EDWARDS: Okay.

11 PRESIDING JUDGE KORNER: [10:45:06] I mean, are you going to pursue this a bit?
12 Because if you are, go ahead.

13 MR EDWARDS: [10:45:16] I mean, I -- I actually thought it might be helpful to lead.

14 Q. [10:45:18] But I mean, is it -- are you essentially saying that you spent a lot of
15 time waiting around in hotel rooms or whatever for meetings that sometimes
16 never -- never happened?

17 A. [10:45:34] That was especially at the beginning, the first month. After that,
18 things really accelerated.

19 Q. Okay.

20 PRESIDING JUDGE KORNER: [10:45:42] What I still don't understand is I thought
21 you were researching into, first of all, Sudanese state law and then the allied local
22 whatever. What was the problem about going to a law library in Khartoum and
23 looking up what the law was?

24 MR EDWARDS: [10:46:06]

25 Q. [10:46:07] Did law libraries like that exist?

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1 A. [10:46:12] I know about one which was an international law library in Sudan
2 which was managed by a professor of Sudanese law and at one point it was locked.
3 From the moment this professor opened a law library, all his stocks were seized and
4 then the library was locked. So sometimes all you could do was to look him up,
5 meet with him, discuss the documents with him. Sometimes that worked,
6 sometimes it didn't.

7 Q. [10:47:13] And then in terms of practitioners and academics that you met with,
8 that you developed relationships with, if you wanted a copy of a particular text, a
9 particular decree, a particular law, a particular constitutional amendment, how easy
10 did you find it to persuade your contacts to let you see copies of these documents?

11 A. [10:47:49] It was very complicated. There had to be a common interest. I had
12 to be able to give documents in exchange, or we could be colleagues, co-publishing an
13 article and I was able to obtain documents in that way. I also had documents
14 through contacts with former professors. And then there are others that I could not
15 obtain because the people had paper copies in their offices and they could not go to
16 their offices at that time, so they said they could not make those documents available.

17 Q. [10:48:37] So in circumstances where you never actually physically were able to
18 get hold of legal texts, how did you go about learning the contents of these documents
19 so that you could rely on them in your thesis?

20 A. [10:48:57] There were fewer problems in this area. You just had to continue
21 interacting with those academics who were working on those documents and who
22 were publishing articles on those documents, on the contents of those documents, and
23 who sometimes considered themselves major academics in those domains in Sudan.
24 That is how I worked.

25 Q. [10:49:33] So does this summarise the position: Sometimes you had to rely on

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1 articles that discussed legal texts to understand what those legal texts said?

2 A. [10:49:51] Yes, indeed. This was one of the means, but it was not enough.

3 Subsequently, you had to multiply discussions with academics, talking about the
4 same texts, then you read media articles on those texts, then also you looked at the
5 training that you had -- the information that you had received.

6 Q. [10:50:27] Okay.

7 PRESIDING JUDGE KORNER: [10:50:30] Sometimes you actually neither saw an
8 article or any kind of a text, it was a conversation with another academic that told you
9 about the contents of a document; is that right?

10 THE WITNESS: [10:50:50](Interpretation) Your Honour, but that was not the only
11 way. We could discuss with two, three, four academics and then you could read
12 three, four articles on that text. So you make a triangulation that makes it possible to
13 cross-check. So you are sufficiently trusting to establish that information. I should
14 add that I had some colleagues who were working in Darfur who published reports
15 for OICD and their sources were discussions during which they talked about such
16 and such a text for *fédéré* states or national documents but without necessarily having
17 to have seen those documents.

18 PRESIDING JUDGE KORNER: [10:51:56] Okay. Firstly, I'm not sure who OICD
19 are.

20 THE WITNESS: [10:52:06](Interpretation) ICG.

21 PRESIDING JUDGE KORNER: [10:52:09] ICG, the crisis group, International Crisis
22 Group. Right.

23 Sorry, Mr Edwards, can I -- okay.

24 Where -- where your -- in your eventual thesis where the information that you are
25 giving was based on secondary sources, that is to say, articles or conversations, was

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1 that indicated in your thesis?

2 THE WITNESS: [10:52:42](Interpretation) Yes, your Honour. It is indicated in the
3 introduction in the paragraphs on methodology. I talked about two types of sources,
4 primary sources, and it is there in the annex, and then secondary sources with my
5 sources during discussions, and sometimes those could also be considered as primary
6 sources.

7 MR EDWARDS: [10:53:16] Your Honour, the French translation, the translator -- the
8 translator is doing a sterling job, is making a sterling effort, but there is a lot that is
9 being missed. It's not his fault. This is a -- this is a dense topic.

10 Q. [10:53:34] Dr Gout, listen, would you -- would you be prepared to have a crack
11 at answering some of my questions in English?

12 A. [10:53:48] (Speaks English) Sure. Let's give it a try.

13 Q. [10:53:50] Yeah.

14 PRESIDING JUDGE KORNER: [10:53:51] You say that, Mr Edwards, but, firstly, we
15 have a French-speaking judge --

16 MR EDWARDS: [10:53:58] Yes.

17 PRESIDING JUDGE KORNER: [10:53:59] -- with us, who I have no doubt has been
18 waiting a long time to have somebody speak in her own language.

19 MR EDWARDS: Yes, yes.

20 PRESIDING JUDGE KORNER: [10:54:04] Apart from Mr Laucci. But it's also I
21 don't think fair on the witness. I appreciate his English is fluent, but there is a
22 difference between French intellectual language, unfortunately, and English, I think.
23 But at the moment all we're trying to establish, Mr Edwards, is the basis of his
24 expertise.

25 MR EDWARDS: [10:54:32] All right.

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1 PRESIDING JUDGE KORNER: [10:54:30] But I am also concerned that sometimes
2 the English translation is not correct.

3 MR EDWARDS: [10:54:40] Yeah.

4 PRESIDING JUDGE KORNER: [10:54:42] And I think all we can do, it's
5 not -- it's -- Dr Gout, I suppose -- Dr Gout, is to ask you again to speak slowly.

6 MR EDWARDS: [10:54:53] All right. Okay, we'll carry on in French then. It's only
7 fair.

8 Q. [10:55:02] Your CV that I asked -- that I asked you have a look at, at page -- well,
9 pages 10 and 11, certainly in English, there's a section of your CV entitled "Works and
10 Publications" and there's a whole list of articles and book chapters that you've -- that
11 you've authored or contributed to.

12 Firstly, these articles, are these articles published in peer-reviewed journals?

13 A. [10:55:44] Yes, they are considered as published in specialised academic
14 documents, and I found that information each time and I was told that, yes, you can
15 consider that this is published in a -- in a review.

16 Q. [10:56:21] Oh, okay. When I say "peer reviewed", what I mean is you submit
17 an article, a proposal of an article, it is read and considered by the editorial staff of a
18 journal, comments are made, it's either rejected or accepted. That's what I mean by
19 "peer reviewed". Do you understand? Just yes or no for now.

20 A. [10:56:46] *Oui*.

21 Q. [10:56:48] Okay. Were your articles set out in this CV, part 2, are these
22 peer-reviewed journals?

23 A. [10:57:02] Yes, yes, yes.

24 Q. [10:57:06] Thank you. And tell us, you've completed postdoctoral research as
25 well, have you?

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1 A. [10:57:19] Mmm. Yes, I did one in particular. And I had another post as a
2 lecturer, researcher in a Parisian university.

3 Q. [10:57:41] Let's just focus on your postdoctoral research. This is at page -- this
4 is at page 4 in the English, I think it's page 4 in the French as well, receiving funding
5 from the Crisis Centre of the Ministry for Europe and Foreign Affairs. Can you tell
6 us a little bit about what that postdoctoral research was, please.

7 A. [10:58:13] It was not a post -- well, very well --

8 Q. [10:58:22] Wait a minute. Just stop. Postdoctoral research, in other words,
9 research that you carried on after having finished your PhD thesis. Post as in after,
10 all right? Okay.

11 A. [10:58:39] It was a budget that had been allocated by the French government to
12 its Khartoum research centres and they distributed several funds to researchers,
13 mostly postdoctoral but also doctoral, to carry out research everywhere but based
14 on -- based in Khartoum. And I was funded to work in Darfur, but not directly, in
15 South Kordofan, peace initiatives between the federal government and the popular
16 movement of North Darfur because at that time there were already dissensions
17 between the two branches. So I worked in the field in 2020 and that made it possible
18 for me to work with other people within this framework.

19 Q. [11:00:01] And how long did you spend in Sudan on this research in South
20 Kordofan?

21 A. [11:00:12] No, not a long time. About a month, if I remember correctly.
22 I believe it was a month, but I can't confirm that. I would have to ...

23 Q. [11:00:24] Okay. Now, does the name Professor Alex de Waal mean anything
24 to you?

25 A. [11:00:40] Of course. His name is one of the first names you hear when you get

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1 to Sudan.

2 Q. [11:00:45] Have you ever worked with him?

3 A. [11:00:47] No, I haven't had an opportunity to meet him. I don't think we've
4 ever been in the same place at the same time in Sudan. We've never met.

5 Q. [11:00:59] Have you read the transcript of the evidence that he -- the public
6 testimony that he gave to this -- to this Chamber in 2022?

7 A. [11:01:11] Yes, I did read that. I don't remember necessarily all of it, but I did
8 read it, yes.

9 Q. [11:01:17] Do you remember disagreeing with anything that he said?

10 A. [11:01:29] All in all, not at all. Perhaps just to specify one point that had to do
11 with the traditional justice mechanisms in customary law, but nothing other than that.

12 MR EDWARDS: [11:01:43] I see the time, your Honours. I was just going to come
13 on to counsel's letter of instruction. There are a few points I just wanted to highlight,
14 but that can be after the break.

15 PRESIDING JUDGE KORNER: Yes, I --

16 MR EDWARDS: [11:01:52] It's a natural point.

17 PRESIDING JUDGE KORNER: [11:01:57] No, no, that's fine. I'm just -- and then
18 you're going to go on to the various disputed --

19 MR EDWARDS: [11:02:04] Quite.

20 PRESIDING JUDGE KORNER: [11:02:05] Okay. It seems to be unlikely,
21 Mr Edwards, we're going to finish this today at the rate we're going.

22 MR EDWARDS: [11:02:12] It's certainly going slower than I was hoping, but also a
23 good chunk of the first session was taken up with housekeeping matters.

24 PRESIDING JUDGE KORNER: [11:02:22] All right. I'm just -- what I'm a little
25 concerned with is -- and I raise it because you're bringing over your next expert for

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1 Friday.

2 MR EDWARDS: [11:02:30] For Friday, yes.

3 PRESIDING JUDGE KORNER: [11:02:32] I'm just wondering in the end result
4 whether that's going to be realistic, but we'll see how we go today.

5 MR EDWARDS: [11:02:40] We will move heaven and earth to make sure that
6 that -- that our Friday expert comes and testifies on Friday.

7 PRESIDING JUDGE KORNER: [11:02:47] All right.

8 Yes, thank you.

9 THE COURT USHER: [11:02:51] All rise.

10 (Recess taken at 11.02 a.m.)

11 (Upon resuming in open session at 11.36 a.m.)

12 THE COURT USHER: [11:36:09] All rise.

13 Please be seated.

14 PRESIDING JUDGE KORNER: [11:36:35] (Microphone not activated)

15 MR EDWARDS: [11:36:38] Thank you, your Honour.

16 Q. [11:36:40] Dr Gout, when answering the rest of my questions -- okay, just speak
17 louder, slower and more simply, okay, because everything that you say is being
18 translated from French into English and it's very important that the interpreter
19 understands everything that you say so that an accurate interpretation is given. All
20 right.

21 Could you please pull up the -- or pull out of the binder the letter of instruction, dated
22 13 June 2023 that lead counsel wrote. It's at tab -- well, the English version is at tab 7
23 and the French original, I think, is at tab 6. Do you have it? Okay. And then you
24 see that in that letter there's -- there are 10 topics in total that lead counsel asked you
25 to consider, and then a whole load of subtopics as well.

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1 Is it the case that at some point that the Defence team asked you to consider the topic
2 of the *agid al-ogada*?

3 A. [11:38:37] Yes, that is the case.

4 Q. [11:38:40] And we see that there's nothing in your report about this
5 phenomenon of the *agid al-ogada*. Were you comfortable to touch on the subject of
6 *agid al-ogada* in your final reports to the -- sorry, in your reports to the Defence?

7 A. [11:39:12] No, not at all, I wasn't at ease with the idea of dealing with that matter
8 which I had not studied in particular.

9 Q. [11:39:20] Okay. Similarly, were you asked if there was anything that you
10 could say specifically about the workings of the Ta'aisha tribe in Darfur?

11 A. [11:39:40] I have answered very clearly that I did not have any specific
12 knowledge about that tribe and I was not in a position to -- in a position to answer.

13 Q. [11:39:53] So where you have discussed and analysed in some detail in your
14 report the topics that you were asked to look at, can the Trial Chamber be satisfied
15 that you considered that you were in a position to answer those questions?

16 A. [11:40:37] Could you rephrase, please?

17 Q. [11:40:41] So, in the report you treat -- you deal with, you address, a number of
18 subjects. Is it possible -- can we infer from that that you -- that the topics that you do
19 deal with in your report are topics that you felt comfortable as an expert to write
20 about?

21 A. [11:41:07] Exactly. These are topics that I thought I was sufficiently competent
22 to deal with.

23 Q. [11:41:14] Yes, thank you.

24 Now, as you know, the Prosecution complains that your report addresses a number of
25 topics that fall outside your area of expertise. And what I'm going to do now is to

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1 move on to those topics one by one to explore what is in fact your level of expertise,
2 okay.

3 In fact, before I do that, let's have a look at the subjects, or the paragraphs of your
4 report that the Prosecution have not challenged.

5 PRESIDING JUDGE KORNER: [11:42:06] (Microphone not activated)

6 MR EDWARDS: [11:42:07] No, not many, but there are some.

7 Q. [11:42:11] Do you have the report in front of you?

8 A. [11:42:14] Yes.

9 Q. [11:42:16] It will be the first -- I suspect the first item on your -- yeah, okay. I'll
10 put it on the record. It's the first tab and the French original is at tab 1,

11 DAR-031-00000134. Is that right? And the English version is DAR-OTP-00005970.

12 I take this opportunity of thanking the Prosecution for providing the English
13 translation.

14 I turn to paragraph 22, sir. Well, in fact, paragraphs 22 to 25 come under a
15 sub-chapter, 1.2, entitled "Relationship between Sudanese positive law and customary
16 law". Do you see that?

17 A. [11:43:36] Yes.

18 Q. [11:43:37] I've included paragraph 25 because I think I'm right in saying the only
19 thing that the Prosecution says is irrelevant, essentially -- not that it's outside of your
20 competence, but it's irrelevant -- is this concept of the *Nafar*, the nobility family.

21 Define, please, for us what you mean by "positive law"? Explain it to us like we're
22 first-year university students.

23 A. [11:44:25] Before that, could I specify one thing?

24 Q. [11:44:32] (Overlapping speakers)

25 A. [11:44:33] The expression "positive law" was used by -- by the Defence team

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1 when they sent me all the questions that they wanted to have my expertise for, so
2 I did want to specify that point.

3 Now, positive law is the law that is placed or in legislative -- legal instruments,
4 legislative instruments by way of a legal procedure, along with organs of the state if
5 you talk about Sudanese law. Formal law that is established by way of proceedings.

6 Q. [11:45:31] And is there -- is there a difference between that and *droite étatique*,
7 state law, that you referred to -- that we touched on earlier this morning?

8 A. [11:45:49] To my mind, I think you can consider them to be synonymous, all the
9 same. One can also see Sudanese law from a broader perspective, so I think it is
10 necessary to clarify. Sudanese customary law is Sudanese positive law. But in a
11 broader context, you can see it as something broader.

12 Q. [11:46:34] Okay, thank you.

13 THE INTERPRETER: [11:46:37] Overlapping speakers.

14 THE WITNESS: [11:46:40](Interpretation) National law, customary law, state law.

15 MR EDWARDS: [11:46:44] Thank you.

16 PRESIDING JUDGE KORNER: [11:46:48] Customary law is not something that is
17 usually placed into some kind of legal document by a legal procedure, is it? It's law
18 that's developed, as it says, by custom, as opposed to legislation?

19 THE WITNESS: [11:47:23](Interpretation) Thank you, your Honour, for your
20 question. I don't at all agree with that interpretation. To my mind, according to my
21 field research in Sudan, Sudanese customary law exists by way of proceedings and
22 they have led to standards, norms. In some cases, the customary law is not part of
23 state law. In some cases, customary law exists alongside state law.

24 PRESIDING JUDGE KORNER: [11:48:02] I'm really sorry. I accept that entirely,
25 but what you said was -- that's why I was querying it - positive law is the law that is

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1 placed in the legislative instruments by way of a legal procedure, blah, blah, blah.

2 And then Mr Edwards asked you is there a difference between something - and he
3 said something in French, which the live note didn't catch - and state law, and you
4 said they're "synonymous".

5 "One can also see Sudanese law from a broader perspective, so I think it is necessary
6 to clarify [that] Sudanese customary law is Sudanese positive law."

7 That's what I'm just querying.

8 Even though it's not entered into legislation by statutory procedures but has grown
9 up as a custom and is used, you say that's positive law.

10 THE WITNESS: [11:49:27](Interpretation) Yes, your Honour, that is what I'm saying,
11 but it can also leave -- well, there may be a misunderstanding about positive law and
12 customary law. It's not necessarily state law; but it is true, you are correct, your
13 Honour.

14 PRESIDING JUDGE KORNER: [11:49:50] Yes.

15 MR EDWARDS: [11:49:52]

16 Q. [11:49:53] Is -- okay, here's another way of putting it: Is Sudanese customary
17 law ever or even sometimes written down?

18 A. [11:50:08] Of course. That's quite possible.

19 Q. [11:50:11] And does that formalise it in some way?

20 A. [11:50:20] Exactly. That's exactly what I mean.

21 Q. [11:50:23] All right. Now, these paragraphs, 22 to 25 -- well, 25 save for *Nafar*.
22 In order to be able to deal with this subject of the relationship between Sudanese
23 positive law and customary law, is it necessary to be able to understand, to have an
24 expert knowledge of the hierarchy of sources of Sudanese law?

25 A. [11:51:13] It is absolutely necessary. It is impossible to work on Sudanese

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1 customary law if you cannot situate it in relation to or within Sudanese state law and
2 within the hierarchy of norms. You have to make a distinction here. You have to,
3 first, work on Sudanese --

4 THE INTERPRETER: [11:51:40] Inaudible. Interpreter correction: Sudanese state
5 law.

6 MR EDWARDS: [11:51:48]

7 Q. [11:51:48] Okay, again, keep your voice up a little bit, okay.

8 All right, let's have a look at paragraph 23.

9 PRESIDING JUDGE KORNER: [11:52:00] I'd like an explanation, please - although,
10 I looked at it - of "normativist axiom".

11 MR EDWARDS: [11:52:13] I'm ahead of you, your Honour.

12 Q. [11:52:16] Paragraph 23 is -- well, I'm going to make a distinction between a
13 mere practitioner and someone like Dr Laucci who sent you the instruction letter.
14 Didn't understand it at all. So, paragraph 23, you say this -- well, first of all, does
15 paragraph 23 deal in terms with the hierarchy of legal norms in Sudan placing the
16 constitution at the top of that hierarchy?

17 Just say yes or no for now.

18 A. [11:53:07] Yes.

19 Q. [11:53:07] Now, there's a sentence that I may not be the only one to have not
20 understood.

21 "These customary" -- read it with me.

22 "These customary legal orders are based on a normativist axiom exclusively in the
23 current circumstances where they would be absorbed by a normative body of another
24 nature -- State or insurrectional -- itself based on the normativist axiom."

25 Now, we're just going to pause for a moment.

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1 (Counsel confers)

2 MR EDWARDS: [11:53:43]

3 Q. [11:53:44] You're going to have to explain that to us in simple French, which is
4 going to be translated into simple English, please.

5 A. [11:54:12] The foundation of the legal order is not a constitution. There is no
6 hierarchy of norms in a customary legal order except when this legal order is
7 absorbed in the -- in state law or is absorbed in an institutional grouping of an
8 insurrectional group.

9 In that case, one finds oneself with a state conception of law founded on the hierarchy
10 of norms.

11 Q. [11:55:10] And, in practice, how does a customary legal order become absorbed
12 into state law? Again, say -- tell us in as simple terms as possible.

13 A. [11:55:30] In that case an illustration: Quite simply when, after peoples have
14 been expelled from their territory by armed groups, the state -- the state authorities
15 attribute various duties, the duties of an *umdah*, for example, to populations that
16 weren't in that territory beforehand.

17 The foundation of that -- such duties or that title is state law because it was state
18 authorities who attributed those duties or functions.

19 So that is an example of the state recognising this authority. So this is a -- one could
20 believe that this is a customary or traditional authority.

21 Q. [11:56:38] I see. Thank you. And then if we look at paragraph 24, the last line
22 of paragraph 24, you introduce the concept of -- you've introduced the concept of
23 elements of the non-state customary legal order.

24 And then in the last sentence, you say:

25 "These elements will be presented successively."

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1 And -- do you then in your report go on to present those elements successively in
2 your report?

3 A. [11:57:21] That is -- is that a statement or a question? I haven't understood.

4 THE INTERPRETER: [11:57:27] Overlapping.

5 MR EDWARDS: [11:57:31]

6 Q. [11:57:31] Let me start again. Do you see the last sentence of paragraph 24?

7 A. [11:57:35] Yes.

8 Q. [11:57:37] Do you then in your report, in the paragraphs that follow, go on and
9 present these elements and explore these elements?

10 A. [11:57:52] Yes, that's what I do.

11 Q. [11:57:54] Now, the Prosecution has complained about these successive
12 paragraphs, not based on a lack of expertise on your part, but on the basis that they're
13 just not relevant or they overlap with other evidence that the Court has heard.

14 PRESIDING JUDGE KORNER: [11:58:18] I think it's only -- paragraph 25, isn't it?

15 Oh, no, 26, 35 as well, yes.

16 MR EDWARDS: [11:58:25] (Overlapping speakers) 26, we have to then move on to --

17 PRESIDING JUDGE KORNER: [11:58:27] Actually, all the way to 61 virtually.

18 MR EDWARDS: [11:58:30] Exactly. No, not even -- no, even -- no, we have to move
19 all the way, your Honour, to paragraph 73, before we slam into outwith the
20 expert's -- the witness's expertise.

21 PRESIDING JUDGE KORNER: [11:59:02] (Microphone not activated) Yes, 73 is
22 objected to.

23 MR EDWARDS: [11:59:07] Yes.

24 PRESIDING JUDGE KORNER: [11:59:08] To 84.

25 MR EDWARDS: [11:59:17] I think the point I'm making, your Honour, is that from

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- 1 paragraphs 25 onwards, there's no challenge to his expertise.
- 2 PRESIDING JUDGE KORNER: [11:59:26] Yes.
- 3 MR EDWARDS: [11:59:29] All right.
- 4 Q. [11:59:31] The Prosecution argue that you don't have any legal training in
5 Sudanese law; is that right?
- 6 A. [11:59:52] Could you specify what you mean by "legal training"?
- 7 Q. [11:59:58] You haven't had training to become a Sudanese practising lawyer.
- 8 PRESIDING JUDGE KORNER: [12:00:08] Well, they certainly (Microphone not
9 activated).
- 10 Well, to be accurate, this is paragraph 13 you're looking at, the Prosecutor --
- 11 MR EDWARDS: [12:00:15] Yes.
- 12 PRESIDING JUDGE KORNER: [12:00:15] That certain --
- 13 Dr Gout, what's said is that you have no obvious expertise in Sudanese constitutional
14 law, because you didn't receive any training in Sudanese law and your research
15 doesn't focus on constitutional law.
- 16 MR EDWARDS: [12:00:44] But, your Honour, forgive me. But before the witness
17 answers, I'm looking at paragraph 6.
- 18 PRESIDING JUDGE KORNER: [12:00:46] The sixth --
- 19 MR EDWARDS: [12:00:47] This is where it starts off and the criticism is, of no legal
20 training in Sudanese law, Sudanese military legislation or Islamic law.
- 21 PRESIDING JUDGE KORNER: [12:01:00] Well, I know, but they -- I think to be fair,
22 they go on and specify.
- 23 MR EDWARDS: [12:01:05] Yes.
- 24 MR JEREMY: [12:01:06] And what was put in is that we say you haven't had
25 training to become a Sudanese practising lawyer -- that's -- that's not written in our

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1 challenge.

2 MR EDWARDS: [12:01:13] Well, no, I was paraphrasing. No legal training in
3 Sudanese law; that may have been my fault in reading into that phrase something of a
4 vocational -- a vocational training, but if I'm not right about that, then ...

5 MR JEREMY: [12:01:33] I would make another -- I think it's clear what we've written.
6 I'd make another point. I think if Mr Edwards is going to explore the witness's
7 expertise, he should just explore it, rather than setting out what the Prosecution's
8 position is and then ask him to comment on that. I think he can ask him, explore,
9 "What expertise do you or do not have in Sudanese law?" Rather than taking a
10 position that the Prosecution is saying, "You don't have any experience in Sudanese
11 law, what do you say about that?"

12 MR EDWARDS: [12:02:04] Your Honour, I-- I'm not going to just say, "What do you
13 say about that?" That's not the purpose of it. I'm just -- we're moving on from one
14 topic to another. It's important that -- this isn't an eyewitness. This is a witness,
15 and I think it's fair for him to understand when I'm moving on to a different topic and
16 what I want to deal with as we move through his evidence-in-chief, so --

17 PRESIDING JUDGE KORNER: [12:02:34] I suppose it's slightly leading in the sense.
18 I think what Mr Jeremy is saying is that you should effectively ask him about his
19 training in Sudanese law, in particular, constitutional law, military legislation or
20 whatever it is.

21 MR EDWARDS: [12:02:58] Yes. Okay.

22 Q. [12:03:03] Have you had any legal training in Sudanese law?

23 A. [12:03:13] If you understand by that university training for a first degree or
24 masters, no, I did not have any specific training on Sudanese law.

25 Q. [12:03:31] And the same question relating to Sudanese military legislation -- any

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1 specific training on that?

2 A. [12:03:49] Military training, Sudanese military training, no.

3 PRESIDING JUDGE KORNER: [12:03:56] (Microphone not activated)

4 MR EDWARDS: [12:03:58] Military legislation.

5 PRESIDING JUDGE KORNER: [12:04:00] Yes, he said military training (Microphone
6 not activated).

7 MR EDWARDS: [12:04:05] Yes. Let me start again.

8 Q. [12:04:07] On military legislation -- training on military legislation?

9 A. [12:04:13] No.

10 Q. [12:04:15] What about Islamic law?

11 A. [12:04:21] Same answer.

12 Q. [12:04:24] Okay. Now, how then did you obtain -- explain to their Honours,
13 how did you explain your knowledge and your understanding of Sudanese law more
14 broadly?

15 A. [12:04:46] It refers back to what I said during the first session. I had in-depth
16 exchanges and scientific collaborations with Sudanese researchers, the best Sudanese
17 practitioners, Sudanese lawyers, practitioners of Islamic law, specialists of
18 constitutional law -- constitutional law, specialists in international -- in public law.
19 This -- these elements that made me over time in Sudan to be able to construct
20 knowledge of Sudanese legal contexts. Am I too fast?

21 Q. [12:05:44] No, that is fine. Scientific collaborations, just explain what that
22 means please?

23 A. [12:05:55] This means collaborating with researchers, including Sudanese people
24 in a research programme which led to scientific outcomes and a publication of
25 scientific books. In the bibliography you have collaboration with a Sudanese

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1 professor in Khartoum which was in fact on customary law and Sudanese law.

2 I can't remember it -- exact title.

3 Q. [12:06:44] Do you remember the name of your collaborator in that -- the
4 Sudanese professor in Khartoum? Just say yes or no, whether you remember his
5 name now.

6 A. [12:06:52] Yes.

7 Q. [12:06:57] I'm not going to ask you to say his name in open session for now.
8 Maybe we'll come back to it later.

9 PRESIDING JUDGE KORNER: [12:07:03] I'm sorry, "scientific" in English has a
10 completely different meaning from what you're saying. Scientific means you
11 research chemistry or, I don't know, demographics or whatever it is, but it doesn't
12 involve law, normally. So what do you mean, please? Actually, I'm going with
13 Mr Edwards because I think there's a real difference here between French and English.
14 Could you tell us in English what you mean by "scientific" please?

15 THE WITNESS: [12:07:35](Interpretation) Your Honour, I think there is a problem of
16 translation. In French, scientific is synonymous with university academics,
17 researchers in social sciences, including jurists working in research in collaboration
18 with the French research centre based in Khartoum; that is, from an academic
19 perspective.

20 MR EDWARDS: [12:08:13]

21 Q. [12:08:13] Is "scientific" in French, is it synonymous with "academic"?

22 A. [12:08:23] Yes, it is quite synonymous.

23 Q. [12:08:28] Okay. What we call a *faut ami* in French?

24 PRESIDING JUDGE KORNER: [12:08:41] (Microphone not activated)

25 MR EDWARDS: [12:08:45]

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1 Q. [12:08:45] Has your lack of formal legal training in Sudanese law, in Sudanese
2 military legislation, in Islamic law, impacted on your ability to come to understand
3 Sudanese --

4 PRESIDING JUDGE KORNER: [12:09:09] It's a question he really can't answer
5 because if he hasn't done the training, how do you know whether or not it would
6 have impacted on his ability to understand?

7 MR EDWARDS: [12:09:20] Well, I mean, that may be a matter for submissions, and
8 I would be very happy to answer your Honour, although perhaps -- and I'm very
9 happy to explain to your Honour in the hearing of the witness, but my learned friends
10 may have other ideas.

11 PRESIDING JUDGE KORNER: [12:09:34] Well, at the moment, I can't see -- because
12 if you've never had the training, you don't know whether it would have helped or
13 hindered, do you? All right, never mind, go ahead. He can answer the question.

14 MR EDWARDS: [12:09:53] All right. Okay.

15 Q. [12:09:54] Let me put it another way.
16 Has your lack of formal legal training in Sudanese law had any impact on your ability
17 to write and publish about Sudanese law in peer-reviewed articles -- sorry,
18 peer-reviewed journals?

19 A. [12:10:20] No, I never had any comments in my articles -- in articles that
20 mentioned my lack of knowledge in Sudanese law or Islamic -- Sudanese -- Islamic
21 law. I can mention here, for example, an article published at -- in Brill magazine,
22 which was on the domains in which I never studied, but I had knowledge of the
23 subject.

24 Q. [12:11:07] (Microphone not activated)

25 A. [12:11:12] Brill publisher, Brill.

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1 Q. [12:11:22] (Microphone not activated)

2 THE INTERPRETER: [12:11:24] Microphone.

3 MR EDWARDS: [12:11:25]

4 Q. [12:11:26] Is that one of the documents in your list of publications, sir?

5 A. [12:11:35] Yes, *a priori*, it shows an article written in English. It's one of them.

6 Q. [12:11:52] We'll come back to that. All right. Let me focus on Islamic law.

7 So at paragraph 13 of your report you refer to article 65 of the 1998 constitution. Do
8 you have that, sir, paragraph 13?

9 A. [12:12:28] Yes.

10 Q. [12:12:31] When you refer to Islamic law as being one of the two sources of
11 Sudanese law, is that synonymous with Sharia, or is Sharia something different?

12 A. [12:12:54] It is mainly the Koran and the Sunnah. The two elements that are
13 constitutive of Muslim law as conceived in the constitution of '98.

14 Q. [12:13:21] Is it possible to understand Sudanese constitutional law without
15 understanding Islamic law?

16 A. [12:13:35] It is very complicated, because Islamic law is one of the constitutional
17 sources of -- of the sources of constitutional law. All constitutional law and all
18 legislation derives from there, and -- and must be -- must take into account this
19 Muslim law. I have had experience in that in my scientific research and --

20 Q. [12:14:15] Academic?

21 A. [12:14:23] And I have had experience in that with the Muslim law to understand
22 how certain provisions, constitutional provisions have been implemented.

23 Q. [12:14:29] Did your understanding, did your knowledge of Islamic law in the
24 Sudanese context, did it derive exclusively from the time you spent living and
25 working in Sudan?

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1 A. [12:14:51] For the most part, yes, except my research days at the Max Planck
2 Institute, and then there were seminars in offices where we looked at the research
3 from everyone and there were documents that we worked specifically on related to
4 Muslim law in other contexts, and that made part of my research.

5 PRESIDING JUDGE KORNER: [12:15:36] Sorry, Mr Edwards, but I still don't know
6 whether he actually did any research into Islamic law in order to understand the
7 constitution or not.

8 MR EDWARDS: [12:15:48] Yes, yes.

9 Q. [12:15:48] When you were in Sudan what, if any, research -- what, if any, work
10 did you carry out to develop an understanding specifically of Islamic law?

11 A. [12:16:04] To a certain extent I did it. This means that I worked on the legal
12 statute of Muslim norms in Sudan, through field work on land expropriations as from
13 2012 in the Khartoum neighbourhood. This was also related to the construction of
14 Christian churches and this made it possible for me to meet Sudanese judges and
15 representatives of religious communities and Muslim lawyers. And within that
16 framework I got about having a good measure of Sudanese Muslim law -- Sharia, as
17 you have described it, as applied in the non-Muslim communities. It is all in that
18 article that I mentioned a short while ago.

19 Q. [12:17:22] Sorry, you mentioned Christian churches. Did you say construction
20 or destruction of Christian churches?

21 A. [12:17:36] Expropriation and destruction.

22 THE INTERPRETER: [12:17:42] Interpreter error, sorry.

23 MR EDWARDS: [12:17:52]

24 Q. [12:17:56] So, again, if you can very briefly just explain to their Honours, you've
25 already touched on it, but the place of Islamic law in the hierarchy of Sudanese law,

1 both positive, strictly speaking, and customary, all right?

2 A. [12:18:34] (No Interpretation)

3 Q. [12:18:35] Well, how did you come to learn, how did you come to understand
4 where Islamic law sat in that hierarchy?

5 A. [12:18:54] On the one part, field work, methodology of work; and also on the
6 basis of my knowledge of constitutional law in international law, which made it
7 possible for me to realise the core position of Islamic law in Sudanese constitutional
8 law.

9 And through the prism of Islamic law and Sharia, and the fact that all
10 provisional -- all conventional provisions applicable were implemented and applied
11 in Sudanese law, it's on the basis of this accumulating knowledge that at the end of
12 my specialisation and on the basis of my research in the field that I realised that the
13 representatives of the Christian community that I talked to, I also realised that this
14 law has a core position.

15 Q. [12:20:11] Is it necessary to have read, for example, the Koran or the Sunnah to
16 obtain an understanding of Sharia law?

17 A. [12:20:33] The Sharia, as applied or implemented in Sudanese law, no, I don't
18 think so. I think the important thing is to meet with the specialists and practitioners,
19 and they'll give you explanations. And if you want to carry out a study on theology,
20 then that would be useful.

21 PRESIDING JUDGE KORNER: [12:21:02] (Overlapping speakers) What happened if
22 the lawyers or judges or representatives of the civil society disagreed about an
23 interpretation or what Islamic law said? How did you decide who was right?

24 THE WITNESS: [12:21:25](Interpretation) It seems to me that that happens on a
25 daily basis. It depends on the stakeholders involved. But I think there is a

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1 Sudanese legal order that makes it possible to determine the interpretation to be given
2 to the provisions of the Koran as it is to be interpreted in accordance with the
3 Sharia -- that is, the law to be interpreted in accordance with the rules adopted by the
4 Sudanese authorities.

5 MR EDWARDS: [12:22:16]

6 Q. [12:22:17] Dr Gout, just following on from her Honour's question, if it can be
7 said that disagreements about particular application of Sharia in a given situation is
8 something that could result in disagreements on a daily basis between practitioners,
9 how would that disagreement be resolved in Sudan?

10 A. [12:22:58] If we are talking about specialists, academics, they talk of a jihad in
11 general. That is an interpretation of Islamic law, those academic practitioners, so it
12 depends on the jurisdictions of the Islamic law and the judges. That is the way
13 I understand it, but I don't think I fully understood your question. Maybe that was
14 not the meaning of your question.

15 Q. [12:23:43] Well, let me put it another way. Hypothetically, if two Sudanese
16 legal experts well versed in Sharia law had a disagreement, would that mean -- could
17 it be said that neither was an expert in Islamic law?

18 A. [12:24:16] It seems to me that the definition of experts really means that they will
19 not agree on the interpretation of certain things, so I think it is normal that two
20 experts would not agree.

21 PRESIDING JUDGE KORNER: [12:24:43] Dr Gout, you've expressed opinions in
22 your report for the Court based on your research and studies whilst you were in
23 Sudan and outside, and you've told us now that your knowledge of Sharia Islamic
24 law was derived from discussions with a number of different people. And, as you
25 say rightly, experts do disagree. But how did you decide when two experts

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1 disagreed, which one of them was the right opinion which you yourself would adopt
2 in your thesis and now before this Court, if you didn't go back to the original source?

3 THE WITNESS: [12:25:53](Interpretation) Very well. Your Honour, I have the
4 impression that -- well, in my case, this did not happen. I did not meet with experts
5 that were not in agreement. My topic of studies was the treatment of Muslims in the
6 agglomeration of Khartoum. There was no conflict of interpretation between experts
7 on Sudanese law in that area.

8 So, subsequently, one has to determine which is the good interpretation, and to do
9 that you have to look at the practices, the practices such as those that I studied on the
10 matter in the area around Khartoum.

11 You would find annexes on that subject published on this subject which coincides
12 with the administrative documentation relating to the practices of that office. It's
13 within this framework that I carried out my research on Islamic law, Sudanese Islamic
14 law mainly.

15 PRESIDING JUDGE KORNER: [12:27:23] Right. Thank you, can you just say again
16 because I didn't catch it. You said:

17 "My topic of studies was the treatment of Muslims in" something "of Khartoum".

18 THE WITNESS: [12:27:39](Interpretation) That is the agglomeration; in other words,
19 the federated state of Khartoum.

20 PRESIDING JUDGE KORNER: [12:27:57] The treatment of Muslims by whom?

21 MR EDWARDS: [12:28:03] Yes. Again, I think something --

22 Q. [12:28:03] Was it the treatment of Muslims or the treatment non-Muslims in the
23 agglomeration of Khartoum?

24 A. [12:28:13] Non-Muslims.

25 Q. [12:28:14] I see, okay. And treatment by -- as her Honour asked, treatment by

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1 whom?

2 A. [12:28:26] By the authorities of the Khartoum government, not the federal
3 government -- that is, the government of the state of Khartoum.

4 Q. [12:28:42] And in your research, in your fieldwork, did you ever come across the
5 treatment of non-Muslims and Shia being justified or explained through the prism of
6 Islamic law?

7 A. [12:29:10] Yes, of course.

8 Q. [12:29:19] Yes, okay. And just so that I'm clear, this was -- was this -- was this
9 issue of the treatment of non-Muslims in Khartoum, was that an important part of
10 your thesis or was it a peripheral part of your thesis?

11 THE INTERPRETER: [12:29:37] And the witness said, "It was the concept of Dima."

12 THE WITNESS: [12:29:47] In fact, it was the core of my thesis. When I realised that
13 the application of Islamic law did not cover what was considered as minorities in the
14 legal sense, I turned towards the study of the ethnic groups and then I arrived at my
15 thesis subject. So I can repeat and rephrase if that is necessary.

16 PRESIDING JUDGE KORNER: [12:30:29] Okay. Sorry, Mr Edwards, but I really
17 want to stick to this point for the moment because it is important.

18 Your area of study for your thesis was the treatment of non-Muslims by the
19 government of Khartoum, not the state government, not the president and any of his
20 Ministers.

21 THE WITNESS: [12:30:59](Interpretation) I got to Sudan and my idea was to work
22 on the topic of religious minorities as dealt with under international law and the
23 Sudanese constitution. After studying the non-Muslim communities and Shiite
24 communities, I found that there was really not too much to be said in relation to that
25 topic and international law. So I turned my attention to customary law and the

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1 study of ethnic groups and that is what I focused my research on, your Honour.

2 PRESIDING JUDGE KORNER: [12:31:45] I absolutely -- I have understood that,
3 I think. But for this particular aspect, which includes Dima, it was the state
4 government of Khartoum -- I mean, the state government, not the -- not Bashir and
5 his ministers, but how the -- one level down in Khartoum. Is that -- is that what
6 you're telling us?

7 THE WITNESS: [12:32:18](Interpretation) Yes, yes; obviously that's what I'm saying.
8 All the same, that required the study of constitutional law as well because the state
9 law has to be in keeping with constitutional law.

10 PRESIDING JUDGE KORNER: [12:32:33] But, as you know, what we are talking
11 about in this case is Darfur. So what is the basis for your assertions about what was
12 happening in Darfur if you didn't go -- leave aside go there, but you never studied it?

13 THE WITNESS: [12:33:06] Your Honour, my doctoral research, after studying
14 Khartoum, only bore upon Darfur. I was talking about research I conducted at the
15 beginning of my doctoral research. I was sort of exploring the grounds so to speak,
16 and, ultimately, I decided to choose one particular topic -- customary law in Darfur
17 and southern Kordofan. And that is what I've done. And, actually, I spent
18 two years in the field, but I can say that the first topic was interesting but not
19 necessarily the true focus of my research.

20 PRESIDING JUDGE KORNER: [12:33:57] (Overlapping speakers) All right. Okay.
21 All right. Thank you.

22 Sorry, Mr Edwards, but I obviously ...

23 MR EDWARDS: [12:34:03] No, absolutely.

24 Q. [12:34:04] I mean, does it boil down to this: You went to Sudan, you had
25 initially some ideas about what might be interesting, you carried out some research,

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1 you realised this doesn't actually interest me that much and the focus of your research
2 changed?

3 A. [12:34:27] I couldn't have put it better myself.

4 Q. [12:34:31] And in that initial research that turned out not to be very interesting
5 at all, did that involve needing to develop an understanding of how Islamic law
6 works in the Sudanese context?

7 A. [12:34:55] Yes, of course; it was absolutely indispensable.

8 Q. [12:35:00] And then, later -- one of the subjects I wanted to ask you about, and
9 yes, perhaps now is a good time to do it. You speak about the concepts of *hiraba* and
10 *ghanima* in your report. Okay, I'm jumping ahead, but now seems a good enough
11 place to deal with it.

12 How did you come to --

13 MR EDWARDS: [12:35:29] So this is from paragraph 97, your Honours -- 97 to 101 in
14 the report.

15 Q. [12:35:32] How did you -- well, first of all, what's the relationship between the
16 Sharia and the concepts of *hiraba* and *ghanima*? Can you just very, very simply
17 explain what the relationship between those two things are, please?

18 A. [12:36:15] These are concepts from Muslim law, issues that have -- or topics,
19 rather, that have been developed. And, truly, these were developed in Muslim law
20 at first before being translated into Sudanese law -- Sudanese state positive law.

21 Q. [12:36:41] And were these concepts that you came across in the course of your
22 research in Sudan?

23 A. [12:37:09] I haven't understood your question.

24 Q. [12:37:12] Did you come across -- did you -- did you ever develop a familiarity
25 of the concepts of *hiraba* and *ghanima* during your doctoral research in Sudan?

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1 A. [12:37:32] Yes, yes.

2 Q. [12:37:33] How did you develop that familiarity?

3 A. [12:37:38] Of course, during my doctoral research, I became aware of these
4 concepts through, well, two means that complemented one another. First of all, by
5 interacting with internationally recognised experts working on Darfur. That was
6 one way.

7 And also I interacted with Sudanese lawyers working in Khartoum defending
8 supposed rebels who had been accused of committing these offences.

9 Q. [12:38:32] Well, which offences?

10 A. [12:38:44] War booty, spoils of war and *hiraba* as well.

11 Q. [12:38:51] What is rabai (phon)?

12 A. [12:38:59] (Speaks English) What is what? *Hiraba*?

13 Q. [12:39:05] Oh, sorry. Forgive me, *hiraba*. Sorry, sorry. Okay. And *hiraba*.
14 Okay, I've got it.

15 All right. Did you ever attend any of these trials?

16 A. [12:39:16](Interpretation) It was suggested to me. One of the lawyers that
17 I worked with suggested that I come along with him to one of the trials, one of the
18 hearings in Khartoum. And I was still a young PhD student familiarising myself
19 with the field and I wasn't comfortable with the idea of attending the hearing. And
20 I'm -- in actual fact, I'm not so sure that I would have even been allowed into the
21 courtroom.

22 Q. [12:39:51] Just explain very briefly why you were not comfortable with the idea
23 of attending a hearing? It may be very obvious to you, but just spell it out please?

24 A. [12:40:04] Security reasons. I didn't want to be identified as someone
25 supporting possible rebels.

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1 Q. [12:40:14] Okay. So we have discussions with experts and lawyers. Did you
2 ever read -- did you ever carry out any -- did you ever carry out any specific research
3 into the concepts of *ghanima* and *hiraba* by reading texts, by reading articles, by
4 reading laws?

5 A. [12:40:49] Yes, indeed. I did read some nonlegal articles, some academic
6 articles that were not legal in nature, articles from the field of anthropology that dealt
7 with these matters, social anthropology, and I realised -- I won't go into the details,
8 but I realised that that really didn't correspond with the institutions that I wanted to
9 see at work within Sudanese customary law.

10 Q. [12:41:29] Well, you say that you don't want to go into the details. I don't know
11 if this is something that perhaps we'll go into the details of it later, later in the week.

12 MR EDWARDS: [12:41:41] Unless your Honour wanted the witness to deal with it
13 now in the context of this voir dire (Overlapping speakers).

14 PRESIDING JUDGE KORNER: [12:41:51] I think -- no, I think that can be dealt with
15 at a later stage, if required.

16 MR EDWARDS: [12:41:56] Okay.

17 Q. [12:41:57] So just by way of an example, turn to paragraph 98, please, of the -- of
18 your report.

19 And here you explain how the Sudanese Penal Code of 1983 already enshrined *hiraba*,
20 and then later on you talk about the Criminal Act of 1991.

21 Were these laws, were these criminal codes or criminal acts which you yourself
22 obtained and read and studied?

23 A. [12:42:56] The Criminal Act of 1991, yes, I was able to consult in. I no longer
24 recall whether I was able to look at the Penal Code of '83.

25 Q. [12:43:12] Well, perhaps 1991 is what's -- what interests us most.

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1 And you refer to a case there, government of Sudan v Mubarak Yunis Hamad
2 et al 1997.

3 A. [12:43:35] Yes.

4 Q. [12:43:37] Footnoted there is a citation to a case and an interview with a lawyer
5 in February 2019.

6 I don't know if you can answer this now, but did you ever have sight of that case or is
7 your knowledge of the case exclusively from your interview with the lawyer, if you
8 can remember?

9 A. [12:44:11] That case is well known. In actual fact, indeed, my knowledge is
10 based mainly on that interview. But I also -- well, I didn't have access to -- I had
11 access to the jurisprudence and I and -- I added to -- well, during the -- I had the
12 interview with the person, but I also read some academic writings written by experts,
13 experts in Sudanese Islamic law.

14 I could specify which articles, but I do believe I sent them to those -- I believe I did
15 send those articles to the Court, those academic articles.

16 Q. [12:45:09] Now, turning to the question of *ghanima*, which translates as spoils of
17 war or booty.

18 You refer in paragraph 101 to the concept of retaliation. Did your research -- did
19 your doctoral work involve a study of the similarities or differences between *ghanima*
20 and the concept of retaliation?

21 A. [12:45:50] Yes, indeed. I was very careful in my thesis not to use the term
22 "*ghanima*" or even "*hiraba*" to describe the practices of retaliation by tribal groups in
23 Darfur. To my mind those are two completely different things.

24 Q. [12:46:17] A moment ago you, sir, you mentioned the term "*ghanima*" or even
25 "*heraba*" (phon).

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1 A. [12:46:27] *Hiraba*.

2 Q. [12:46:41] Oh, yeah, yeah. All right. Fine. Yes.

3 But how is *ghanima* different to in international humanitarian law, for example, we
4 would describe as retaliation?

5 MR JEREMY: [12:46:45] Madam President, this seems to be going very much into
6 the content of the report now.

7 PRESIDING JUDGE KORNER: [12:46:51] (Microphone not activated)

8 MR EDWARDS: [12:46:52] Oh, okay. All right. Again, what I'm trying to do is
9 establish that he's got a knowledge, he's got a fundamental understanding.

10 PRESIDING JUDGE KORNER: [12:46:59] (Microphone not activated) Sorry. At the
11 moment, all we're concerned with is how he gained what he said is his expertise in
12 these areas.

13 MR EDWARDS: [12:47:09] (Microphone not activated)

14 THE INTERPRETER: [12:47:12] Microphone please.

15 Q. [12:47:14] Sir, you told us about how you came to know about and gain an
16 understanding of *hiraba*. What about *ghanima*? Were your sources the same or
17 different?

18 A. [12:47:40] It's mainly the same. Some other researchers working in Darfur and
19 also some of their contacts, in particular former members of insurrectional
20 movements with whom I was able to meet in Khartoum to discuss these practices.

21 Q. [12:48:04] (Microphone not activated)

22 THE INTERPRETER: [12:48:07] Microphone, please, Mr Edwards.

23 MR EDWARDS: [12:48:11] Thank you.

24 Can we just go into private session for one or two minutes?

25 PRESIDING JUDGE KORNER: [12:48:14] Yes.

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- 1 (Private session at 12.48 p.m.)
- 2 THE COURT OFFICER: [12:48:35] We're private session, Madam President.
- 3 (Redacted)
- 4 (Redacted)
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1 (Redacted)

2 (Recess taken at 1.07 p.m.)

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

4 THE COURT USHER: [14:33:15] All rise.

5 Please be seated.

6 MR EDWARDS: [14:33:40] Thank you, your Honour.

7 Q. [14:33:42] Dr Gout, we're going to try to pick up the pace a little bit this

8 afternoon and get through the rest of my questions fairly speedily.

9 Before the break, we were talking about Islamic law. Let me move on more broadly
10 to the question of hierarchy of sources of Sudanese law. That's what I want to talk
11 about now, okay?

12 To what extent did your research involve a study of the hierarchy of sources of
13 Sudanese law, both positive and customary?

14 A. [14:34:31] That was the first study that I conducted to determine the hierarchy of
15 sources of Sudanese law.

16 Q. [14:34:49] And can you give us -- can you give us an idea of how long that first
17 study took?

18 A. [14:35:05] A general idea, I suppose -- my memory is not all that fresh, but that
19 is a study that I carried out between my first field trip to Sudan to conduct research
20 and my second, between 2012 and 2013, perhaps, three or four months of study -- of
21 studying those issues.

22 Q. [14:35:35] And how did you in concrete terms carry out that study? What
23 methods did you use to carry out that study?

24 A. [14:35:53] It was always the same method, the method I mentioned this morning,
25 for the study necessary to draft this article which I mentioned; that is to say, I spoke

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1 with Sudanese university people and I spoke to people from the non-Muslim
2 community in Khartoum and I also spoke with a Sudanese --

3 THE INTERPRETER: [14:36:26] Inaudible.

4 THE WITNESS: [14:36:29](Interpretation) That did not include the study of
5 non-state customary law. I was really focusing on -- rather, I was focussing on
6 Sudanese state law.

7 MR EDWARDS: [14:36:41]

8 Q. [14:36:41] Okay. Now, you have given us examples involving --

9 PRESIDING JUDGE KORNER: [14:36:45] Sorry, there was something that was
10 inaudible. You're obviously listening to the French, but it's in the middle. I don't
11 where it is. The interpreter said something "inaudible", but it's not recorded on the
12 transcript.

13 MR EDWARDS: [14:37:07] "I spoke with Sudanese university people and I spoke to
14 people from the non-Muslim community in Khartoum and I also spoke with
15 a Sudanese" --

16 And then something inaudible.

17 Judges?

18 THE WITNESS: [14:37:22](No interpretation)

19 MR EDWARDS: [14:37:23] A Sudanese judge, okay.

20 THE INTERPRETER: [14:37:25] "A Sudanese judge", says the witness.

21 PRESIDING JUDGE KORNER: [14:37:27] Sorry -- you've maybe even asked this,
22 Mr Edwards, I'm sorry.

23 Why non-Muslim community? Why not the Muslim community?

24 THE WITNESS: [14:37:38](Interpretation) Well, that had to do with my first field of
25 research on religious minorities in the Sudan. I was asked about my work method

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1 and it was thanks to that method that I came to talk to people about the rules that
2 applied to that community, and that led me to the hierarchy of sources of Sudanese
3 law.

4 MR EDWARDS: [14:38:09]

5 Q. [14:38:09] Now, apart from -- see, what the Judges want to know, what I want to
6 know, is, when you say that you were speaking with Sudanese -- a Sudanese judge or
7 Sudanese university people, is this a chat over a coffee once in a while, it is a single
8 chat, is it something more formal? Give us an idea of what it was actually like, how
9 you organised it, how it was arranged and what you did? How is it recorded?

10 A. [14:38:43] Well, my answer may be quite long because, in actual fact, all those
11 methods were used depending on the person I was speaking to. Sometimes I had
12 semi-directive discussions -- that didn't work at all, having a chat over a coffee, and
13 we would see one another several times; or even I would record the audio of the
14 discussion with my counterparts. That didn't work all that well. There would
15 always be a fan going or the AC would be going and that noise -- the noise of the fan
16 or the AC would interfere with the recording.

17 PRESIDING JUDGE KORNER: [14:39:42] While Mr Edwards is thinking, what
18 about notes? Did you take note of these conversations, which apparently are your
19 only source of information?

20 THE WITNESS: [14:39:56](Interpretation) That was not at all my only source of
21 information, your Honour. Yes, of course, I took notes because I provided the Court.
22 I had to travel in France to get to some of my records and I did find those records and
23 the Court is aware that I took notes during some of those discussions. Other notes I
24 could not locate.

25 Just one point about my sources of information, I would refer you to the 150 pages

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1 appended to my thesis that makes mention of the primary sources.

2 MR EDWARDS: [14:40:38] Thank you. The notebooks, or some of the notebooks
3 containing the notes of these interviews, are contained at tabs 26 to 33. There are
4 some eight notebooks containing details of those notes and they've been served on the
5 Prosecution as well.

6 And there's a -- at 34, there's a letter, I think, that clarifies the contents of some of
7 those notes. Thank you.

8 Q. [14:41:14] You said that the interviews weren't the only -- this wasn't the only
9 source of your information. What were the other sources of your information, if it
10 wasn't from interviews?

11 A. [14:41:26] I hope there's no misunderstanding in terms of what I mean by
12 sources of information. Sources of information for academic research are discussions
13 with others and primary sources, and it would depend on which topic I was looking
14 at. But in addition to discussions with people, it could be things like -- well, the
15 literature doctrinal articles and, as I was saying, information from media sources that
16 can provide additional complementary information.

17 Q. [14:42:09] I see, okay. And, for example, the -- the reading of literature
18 doctrinal articles, was that sort of reading of primary sources exclusively done in
19 Sudan or was that research that could have been and was carried out elsewhere,
20 outside of Sudan?

21 A. [14:42:40] I must say that it was mostly in Sudan. The documents from the
22 research centre where I conducted the research was very useful, I got quite a lot of
23 academic literature there. Also in Europe, I did additional reading.

24 Q. [14:43:10] Okay. Are you able to give us an idea - and I appreciate it might be
25 difficult - but if the whole thesis from beginning to end took about seven years, how

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1 much of that time was spent on the pure research and the reading and the interviews
2 and so on? And how much was spent on the writing up, if it is possible to say?

3 A. [14:43:46] Yes, it is possible. The research in its entirety, not to count the
4 fieldwork in Sudan, I would say it was about four years, and the rest was three years
5 of writing, drafting. Of course, chronologically things didn't happen quite that way,
6 but to sum up, the amount of time for each activity, I would say four years and three
7 years.

8 Q. [14:44:18] And focusing for a moment on the work that you did before going to
9 Sudan, before your first field trip, what did that consist of?

10 A. [14:44:31] Do you mean before my first field trip to Sudan? Purely academic
11 reading; that's the only thing I had access to, things I could find online. Not just in
12 France, in Cambodia, and I tried to find out what I could about Sudanese law and
13 armed conflict in Sudan. There was a great deal of doctrine available online and I
14 was able to get in touch with the research centre in Khartoum who offered me
15 a research grant once I had registered for my thesis in Paris, after I came back from
16 Cambodia.

17 Q. [14:45:23] So, focusing on the topic of hierarchy of sources of Sudanese law,
18 focusing on the place of international -- public international law and international
19 treaties on Sudanese law, was that research you were able to do outside of Sudan
20 before your first field trip to Sudan?

21 A. [14:45:52] Partly, yes, some documents were available but to understand the
22 interactions between international law and Sudanese constitutional law, I could only
23 complete that understanding once I had got to Sudan.

24 Q. [14:46:15] Yes. Let me ask you this question. I don't know how this is going
25 to be translated, but was this an already richly mined vein of academic research,

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1 Sudanese law? By that I mean, was there a lot of material out there that you could
2 refer to or were you a bit of a pioneer?

3 A. [14:46:50] No, there was quite a bit of literature. I can say that during the entire
4 period of time that I was in Sudan, I was the only legal person admitted to the centre.
5 I was the only person with legal training. The others were geographers or
6 anthropologists between 2012 and 2016.

7 Q. [14:47:27] And you say "admitted to the centre". Just so that we nail this down,
8 be clear, what do you mean? What is the centre you are talking about?

9 A. [14:47:41] The CEDEJ, the research and documentation centre in social law,
10 headquartered in Cairo, but which has a branch office in Khartoum, the centre that
11 funded my research. I got funding from that centre and from the ministry of foreign
12 affairs, and since I was a funded -- well, I was a funded researcher and I was the only
13 legal person. The centre does also work with Sudanese jurists.

14 Q. [14:48:27] Thank you. And then just the last thing I want to ask you about on
15 this topic, in terms of the contents of your thesis on -- *infra-étatique* thesis, what
16 proportion of your thesis would you say dealt specifically with a study of the sources
17 of Sudanese law?

18 A. [14:49:08] Well, if you're talking about the specific study of sources of Sudanese
19 law, I think you have to look at the first chapter of the thesis in actual fact, truly, since
20 the interact- -- since my thesis has to do with the -- between the -- links between the
21 two forms of law. I think you'll find material throughout the entire thesis about that.

22 Q. [14:49:37] Okay, yes. I'm not too sure if we've covered this yet. Your thesis
23 itself, it's in the blue binder there, by the time it was submitted, how many -- how
24 many pages did it come to, excluding the annexes?

25 A. [14:49:59] About 700 pages, I think. That's the kind of thing you tend to forget,

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1 you know.

2 Q. [14:50:11] Is it? Oh, gosh. All right, that's fine. I'm going to move on from
3 sources.

4 A. [14:50:27] Yes, more than 700 pages.

5 THE INTERPRETER: [14:50:31] Confirms the witness.

6 MR EDWARDS: [14:50:32]

7 Q. [14:50:33] And then given the specific title of your thesis involving, as it did, an
8 exploration of the relationship between Sudanese law and international law --

9 PRESIDING JUDGE KORNER: [14:50:52] I'm just checking that, because I recall this
10 was all with an emphasis on peace building.

11 MR EDWARDS: [14:50:58] Yes.

12 PRESIDING JUDGE KORNER: [14:51:01] So -- just so that we understand, Mr Gout,
13 was all your research on Sudanese law and international law and its relationship, if
14 any, with the goal of explaining the Sudanese peace-building experience?

15 THE WITNESS: [14:51:40](Interpretation) Yes, your Honour. You could put it like
16 that. I was wondering to what extent international organisations that were taking
17 part in peace building in Sudan were relying on Sudanese law to re-establish state
18 law.

19 So yes, that is indeed the case.

20 PRESIDING JUDGE KORNER: [14:52:07] Right. Okay, thank you.

21 MR EDWARDS: [14:52:10]

22 Q. [14:52:10] And did your study -- did your thesis involve a study of how
23 international law -- international law norms are incorporated into Sudanese domestic
24 law?

25 A. [14:52:31] Yes, indeed. That is covered in my thesis.

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1 Q. [14:52:36] And why was that important to cover in your thesis? What was the
2 relevance of that to your thesis?

3 A. [14:52:48] Because it determined the international rules applicable to those
4 customary legal orders. There were -- there is a whole set of international norms
5 that have to do with customary law -- for example, the declaration from the United
6 Nations, and also there are other international legal instruments that will have to be
7 implemented in Sudan and it has to be determined whether such implementation
8 means transposition or incorporation into Sudanese domestic law, in particular.

9 Q. [14:53:40] Okay. Tell us, how many other experts are there out there who have
10 done the same sort of research as you into the relationship between international law
11 and Sudanese law?

12 A. [14:54:07] To my knowledge, there are no others. There are no others and that
13 is what -- that's why I think I can say I am ultra-specialised in this field.

14 Q. [14:54:31] If you know, did the fact that you are an ultra-specialist in this field,
15 did that play any role in you being awarded the prize that -- or the prizes that you've
16 received for your work?

17 A. [14:55:01] I think that the prizes are recognition of work, and, you see, it took me
18 more time than some colleagues to get a position at a university because they were
19 more generalists in comparison to me and I was criticised for being extremely
20 specialised, just focusing on Sudan.

21 Q. [14:55:33] Yes, okay, thank you.

22 I want to move on to what you say about the special and specialised courts for Darfur.
23 This will be at paragraphs 110 to 115 and 120 in your report. When did you -- when
24 did you first come across the existence of these special and specialised courts for
25 Darfur? When did you first learn of their existence?

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1 A. [14:56:11] Very quickly, in actual fact. I got to Sudan in 2012, and already in
2 the Sudanese context they were well-known institutions; so I learned about their
3 existence right away when I got to the country.

4 Q. [14:56:27] And how did you learn of their existence?

5 A. [14:56:33] By having discussions with other researchers or with Sudanese
6 lawyers, and I had a number of interviews. I'm not so sure that I provided all my
7 notes that took account of my discussions with the Darfur bar association, but I was
8 told about these special courts, for example, and also I spoke to researchers who were
9 specialists in Darfur. I talked to them about that topic.

10 Q. [14:57:17] Now --

11 PRESIDING JUDGE KORNER: [14:57:20](Microphone not activated) Is that the
12 same specialists you mentioned before lunch? But they were anthropologists, not
13 lawyers.

14 THE WITNESS: [14:57:34](Interpretation) Yes, your Honour, you are correct. They
15 were anthropologists but, all the same, they were aware of the existence of those
16 courts and they were working on armed conflict in Darfur, so they were confronted
17 with the reality of those courts.

18 MR EDWARDS: [14:57:54]

19 Q. [14:57:54] Were these courts open to the public to visit?

20 A. [14:58:00] I have no idea, I can't tell you.

21 Q. [14:58:10] As far as -- this may sound like a stupid question, but as far as you
22 know, where were these courts -- where were the hearings at these courts being held?

23 A. [14:58:25] In -- on the territory of the federated states of Darfur at the time.

24 Q. [14:58:34] And you said earlier why it was that you weren't able to go to Darfur
25 during your field trips in Sudan. Did -- apart from that, were there any other

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1 reasons why you weren't able to go to Darfur or why you couldn't visit these courts
2 yourself?

3 A. [14:58:56] No, no. There were no other reasons.

4 Q. [14:58:59] Was there any literature that you're aware of about the functioning of
5 these special and specialised courts in Darfur?

6 A. [14:59:13] Not particularly. Well, there was one report that led to the opening
7 of the situation in the Darfur -- and a few NGO reports.

8 Q. [14:59:28] Was it -- were the workings of these courts in Darfur well publicised
9 by the Sudanese government?

10 A. [14:59:47] Not to my knowledge.

11 Q. [14:59:49] So in terms of the reality of the situation, apart from discussions with
12 the person that you say you spoke to, what other sort of sources were available to you
13 to find out about how these courts worked?

14 A. [15:00:13] About those courts specifically, that was my primary report --

15 THE INTERPRETER: [15:00:23] Correction --

16 THE WITNESS: [15:00:32](Interpretation) My primary source, the report and
17 discussions.

18 MR EDWARDS: [15:00:33]

19 Q. [15:00:33] Now, I think it's right to say, isn't it, that in your thesis itself you don't
20 really talk about these courts. Can you point to any publications -- any publications
21 of yours by reference, if you like, to your CV, in which you make reference to these
22 courts or discuss these courts?

23 Have a look at your CV and have a look at the list of publications, please. Tab 10 in
24 the French, tab 11 in the English.

25 A. [15:01:42] In English, I'm going to go to my CV in English. So, is there a page

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1 number?

2 Q. [15:02:03] In the English CV, your list of publications is -- at the bottom, it's
3 paginated 0011. Do you see the list of publications and articles?

4 A. [15:02:15] Yes.

5 Q. [15:02:15] About halfway down that list of articles, do you see -- is there an
6 article that jumps out at you? Yes? Tell the judges, please.

7 A. [15:02:32](Speaks English) "The tribulations of international criminal justice: a
8 chronicle of prosecutions worrying the former Sudanese president".

9 (Interpretation) That's a translation, I think of -- by the Office of the Prosecutor.

10 Now, in this article, there is the question of the special court for the events in Darfur,
11 but not the special -- specialised court.

12 Q. [15:03:05] Okay. While --

13 PRESIDING JUDGE KORNER: [15:03:11](Microphone not activated)

14 MR EDWARDS: [15:03:14] If your Honour has a look quickly at paragraph 7(ii) of
15 the Prosecution's response.

16 PRESIDING JUDGE KORNER: [15:03:24](Microphone not activated)

17 THE INTERPRETER: [15:03:27] Microphone.

18 PRESIDING JUDGE KORNER: [15:03:29] Just a moment. And, indeed, I'm not at
19 all clear at the moment what his basis for opining about them is other than what he
20 has been told, I mean, literally hearsay evidence, as opposed to investigating himself.

21 MR EDWARDS: [15:03:48] Yes, yes. The point I was going to make is that there are
22 two animals: There's something called the special court and one called the specialised
23 court, confusingly enough.

24 PRESIDING JUDGE KORNER: [15:03:56] Which one is he talking -- which one are
25 you talking about, sir?

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1 Dr Gout, which court are you actually talking about in your article that you spoke
2 about?

3 THE WITNESS: [15:04:20](Interpretation) In this article, I'm talking about the
4 ECCED.

5 MR EDWARDS: [15:04:30]

6 Q. [15:04:31] Is that the special court or the specialised court for Darfur?

7 A. [15:04:34](Speaks English) I think it's the third one.

8 PRESIDING JUDGE KORNER: [15:04:39] What's the third?

9 THE WITNESS: [15:04:41](Interpretation) It's the court -- the special court, Special
10 Court for the events in Darfur.

11 MR EDWARDS: [15:04:48] All right.

12 THE WITNESS: [15:04:50](Interpretation) Which is more recent and I'm wondering
13 now -- well, I can't confirm it now if in the article --

14 PRESIDING JUDGE KORNER: [15:04:57] I'm sorry, at the moment you are being
15 asked which court are you talking about in the article that you have been referred to?

16 THE WITNESS: [15:05:07](Interpretation) Your Honour, I thought I answered, the
17 special court for the events in Darfur, that is not, to the best of my knowledge, the
18 special court or a specialised court.

19 PRESIDING JUDGE KORNER: [15:05:22] So it's got nothing to do with the court
20 that was dealing with the rebels?

21 THE WITNESS: [15:05:30](Interpretation) In principle, yes, your Honour. In
22 principle, it is.

23 PRESIDING JUDGE KORNER: [15:05:34] Okay. Actually, I'll leave that for the
24 time being, we are just interested at the moment --

25 MR EDWARDS: [15:05:44] I'm going to move on, if I may, your Honour.

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1 PRESIDING JUDGE KORNER: [15:05:47] Yes.

2 MR EDWARDS: [15:05:48]

3 Q. [15:05:49] Okay. Now, did a -- to what extent, if any, did a study of the
4 declaration of a state of emergency in Darfur play any part in your research and the
5 writing up of your thesis?

6 A. [15:06:21] Well, it's an important element to the extent that this declaration made
7 it possible to set up the derogatory regime for common law in the region, and, as such,
8 there was a study on the consolidation of peace and it's important, to the best of my
9 knowledge, to have this declaration of a state of emergency on the one hand, and in
10 order to define the scope thereof of the application of law -- of state law in its territory
11 by opposition to customary law.

12 Q. [15:06:57] Was there one declaration of a state of emergency in Darfur only?
13 Were there several? How far back in time was the first declaration?

14 A. [15:07:18] To the best of my knowledge, the first declaration was -- previously
15 was related to the -- it was conducted on several occasions. It was first in 1999 and
16 then it was repeated thereafter. And it would seem to me after the attack on Al
17 Fasher in 2003, I would think in 2004, this declaration was made for the counter -- the
18 military counteroffensive in Darfur.

19 Q. [15:07:46] Did you ever read the decrees or the laws or the secondary
20 legislation -- or whatever it was -- that put in place the state of emergency?

21 A. [15:08:01] I would have been able to read some of these laws or some of these
22 decrees, yes.

23 Q. [15:08:13] And without having been able to get to Darfur, what were your
24 sources of knowledge about the impact of the declaration of a state of emergency in
25 Darfur?

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1 A. [15:08:36] Still the same elements -- that's to say, this secondary legislation, these
2 decrees, because I could have access to them. If not, my exchanges with colleagues,
3 with lawyers, still the same sources.

4 Q. [15:08:56] I see. And were there media -- were there media reports about the
5 state of emergency and its impact?

6 A. [15:09:11] Yes, of course. There were reports in the media -- Sudanese media,
7 in particular. I'm thinking of Radio Dabanga, the Sudan Tribune; you could find
8 information in that. At least when I was in Sudan, I was able to find some
9 information about that in these media reports, beyond the NGOs.

10 Q. [15:09:34] Yes, you have pre-empted my next question. What NGOs were in
11 Sudan or writing about Sudan and the declaration of the state of emergency at the
12 time?

13 A. [15:09:56] That I can think of spontaneously: I think Human Rights Watch;
14 Amnesty International above all; ICJ, that was a good source of information as well.

15 Q. [15:10:14] In terms of the authors of these reports, the NGO employees, were
16 there any in Khartoum when you were in Khartoum?

17 A. [15:10:39] So I met some NGO employees during my research, but not
18 necessarily with regards those aspects; so I can't reply to that question with regards to
19 the treatment of the state of emergency in Darfur.

20 Q. [15:10:58] Okay. Well, seeing as we're talking about NGOs for a moment, were
21 NGO workers a source of information for any specific features of your PhD research?

22 A. [15:11:17] Sometimes. I'm thinking of the Japanese NGO, JVC, which was set
23 up in Darfur and in South Kordofan as well, and that made it possible to gather
24 certain information with regard to the ethnic identities or the construction of ethnic
25 identities in South Kordofan.

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1 Q. [15:11:53] Do you know what JVC stands for? Is it JVC?

2 A. [15:11:58](Speaks English) Japanese International Volunteer Centre,
3 (Interpretation) I think.

4 Q. [15:12:06] And did you form -- were you able to form any kind of impression
5 about the reliability of the information you could obtain from JIVC staff?

6 A. [15:12:27] Well, I got reports -- internal reports from them with regards to the
7 activities of the organisation which made it possible to check, indeed, if the accounts
8 were correct. With regards to the office leader, I was provided that as well.

9 Q. [15:12:45] And what methodology would you use to check if the accounts were
10 correct -- if the information that were contained in these reports was reliable or
11 correct?

12 A. [15:13:05] Well, you have to proceed in the way that all academics proceed.
13 You have to triangulate the sources and you read articles about the region and the
14 topic. You have to have reports as well -- not necessarily from NGOs, but also from
15 special reporters, United Nations, human rights reporters, and, by triangulating this
16 information, then you can verify the accuracy or reliability of the accounts.

17 Q. [15:13:45] During your viva, when you were defending your thesis, was this
18 a topic of questioning -- your methodology and your methodology in terms of
19 corroborating the accuracy of information -- triangulation, as you put it?

20 PRESIDING JUDGE KORNER: [15:14:06](Microphone not activated) ... perhaps you
21 would like to explain what you mean by "triangulation"?

22 MR EDWARDS: [15:14:21] You heard her Honour's question.

23 PRESIDING JUDGE KORNER: [15:14:26] As French and English appear to be very
24 different.

25 THE WITNESS: [15:14:35](Interpretation) Triangulate, that means to put some

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1 information against the other with at least two other complementary and different
2 sources, comparing them where it concerns the source of the same type or another
3 type.

4 To go back to the question relating to the support for my thesis or defending my
5 thesis, my methodology of gathering sources absolutely was not questioned during
6 my viva. It was appreciated, and there were questions with regards to my
7 theoretical approach, the concepts that were used, which is quite normal in the case of
8 defending your thesis, but in terms of my methodology, that was not questioned.

9 PRESIDING JUDGE KORNER: [15:15:21] I'm sorry, Mr Edwards, I'm trying to find
10 the actual paragraph in his report that deals with the state of emergency effect.
11 Which one is it?

12 MR EDWARDS: [15:15:34] Well, the Prosecution moans about paragraphs 106 to
13 122 -- takes issue with paragraphs 106 to 122.

14 PRESIDING JUDGE KORNER: [15:15:48] I think that's a politer way of putting it.

15 MR EDWARDS: [15:16:02] But it's in the context, your Honour of -- sorry, I'll just
16 bring it up.

17 PRESIDING JUDGE KORNER: [15:16:07] I had a look to see what the letter of
18 instructions said.

19 MR EDWARDS: [15:16:33] It's point 7 in the letter of instruction.

20 PRESIDING JUDGE KORNER: [15:16:36](Microphone not activated). It
21 doesn't -- well, it says he is to talk about the effect of the state of emergency, but I'm
22 not sure, really, at the moment, how -- I just want to see the report -- how he is
23 qualified to talk about any of that.

24 It's not a legal matter. What he's relying on is reports of NGOs and others which are
25 also, in fact, hearsay because they rely on the people he talked to about what

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1 happened. But unless there is a direct correlation to the -- to the state of
2 emergency --

3 MR EDWARDS: [14:17:53] Okay.

4 PRESIDING JUDGE KORNER: [14:17:55] In other words, if somebody -- well, I
5 don't think it matters. If somebody says to him, "Look, this is what the effect of the
6 state of emergency has had, the actual promulgation of the law" --

7 MR EDWARDS: [15:17:48] Yes, but classically, for example, in states of emergency
8 one hears about the suspension of habeas corpus, one hears about the suspension of
9 jury trials, for example, one hears about the suspension of moratoria on the death
10 penalty, that sort of thing.

11 PRESIDING JUDGE KORNER: [15:18:04] Yes, and?

12 MR EDWARDS: [14:18:27] Well, that's -- I mean, I'm only giving those as examples,
13 but you've got -- you've got the imposition of a -- I don't want to give evidence.

14 PRESIDING JUDGE KORNER: [15:18:16] No, all right. Again, I think this is
15 probably something -- but at the moment I have to say, I'm very unclear how either
16 his research or his background or his knowledge makes him an expert on what
17 happened as a result of the state of emergency and why it is, in any event, relevant.

18 MR EDWARDS: [15:18:42] Relevance is something that Mr Laucci could
19 certainly -- I mean, I could as well, but I'm conscious that we don't take up too much
20 time today or --

21 PRESIDING JUDGE KORNER: [15:18:54] All right. Well, let's finish. It may -- it
22 may well be this is a matter for argument.

23 MR EDWARDS: [15:18:58] Yes.

24 Q. [15:19:01] Dr Gout, you -- in your report from 100 -- paragraph 106 on, you deal
25 with issues -- such as, the infringement of fundamental rights such as the right to

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1 a fair trial, right to security, right to life, right not to be tortured, and so on to
2 paragraph 122.

3 What's your basis for saying that these things occurred as a result of the imposition of
4 the state of emergency in Darfur?

5 A. [15:19:44] Well, first of all, there's what -- there's hearsay, what
6 Madam President calls hearsay, reports of the NGOs, there are the interviews, but I
7 would also have to state - this is something I didn't say earlier - that I did take the
8 trouble to read the case decided on by the African court and Amnesty International
9 and others against Sudan, which involved the commission, and it was based on this
10 report of a special court at the time from the United Nations Commission on Human
11 Rights, which was admitted into evidence in this case, and it also fed into this idea, at
12 least, or the findings of violations -- of human rights violations in Darfur in
13 application of the state of emergency situation. But I have to say it doesn't appear in
14 my report.

15 Q. [15:20:49] In your research, was there anything in particular that interested you
16 academically in terms of the effect of the conflict in Darfur on people's lives, on
17 day-to-day lives?

18 A. [15:21:15] Well, you said the word day-to-day life, daily life. What I was
19 particularly interested in, truly, in my research wasn't the armed conflict in itself, it
20 was to see to what extent - outside of the armed conflict or despite the armed
21 conflict - law continued to govern relations between persons and groups. Did this
22 law continue to exist -- as such, customary law?

23 And so I don't know if that's answered your question. That's what comes to mind
24 when I -- when you mention daily life.

25 Q. [15:21:54] And again, in concrete terms, please explain to us how were you able

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1 to conduct your research? How are you able to obtain the information and
2 knowledge that you did obtain relating to people's day-to-day lives in Darfur under
3 this state of emergency?

4 A. [15:22:22] Well, this was related to my research on customary law and I had the
5 support of researchers as well as members of the tribal community, in particular,
6 Beni Halba I'm thinking of, who communicated to me. They sent documents to me,
7 and they were jurisdictional documents of customary law, which made it possible to
8 look at the extent to which this daily life was affected, because sometimes you have
9 disputes which are quite simple -- litigation which is quite simple, with regards to
10 property or ownership of goods.

11 So this is documentation -- this is a primary source documentation that I'm speaking
12 about here.

13 Q. [15:23:12] Now, if you were based in Khartoum, where were your sources
14 based -- the Beni --

15 MR JEREMY: [15:23:23] Sorry for the interruption. I just -- I didn't see a time
16 period. I think it may be just helpful to understand the period of time we're talking
17 about here.

18 MR EDWARDS: [15:23:31]

19 Q. [15:23:31] Okay, well, before you go to my question, just answer that question,
20 please. When you were receiving this information from researchers and members of
21 the Beni Halba tribe, what period of time are we talking about here?

22 A. [15:23:46] Yes, that was after 2006, indeed. It was between -- the documents
23 that I obtained concerned the period 2008 to 2014-2015.

24 Q. [15:24:10] Were you ever able to obtain documentation relating to the period
25 2003-2004?

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1 A. [15:24:19] I did get one peace agreement which was concluded -- well, I don't
2 have the details anymore, but I must have had that document, which was concluded
3 under the aegis of Musa at the time, and, perhaps, I think, it was even before that
4 period, in fact. So I'm just thinking of that spontaneously, it's possible that I would
5 have other previous documents.

6 Q. [15:24:54] Okay. Now --

7 PRESIDING JUDGE KORNER: [15:24:55] Hold on. It's probably my fault. Are
8 you saying that all the reports and everything that you read about the effect of the
9 state of emergency were all written in -- between 2008 to 2014? I mean, none of them
10 were contemporaneous reports for 2003 and '04?

11 THE WITNESS: [15:25:32](Interpretation) No, your Honour, I didn't want to say that.
12 Of course there were contemporaneous reports as well. That's what I read to inform
13 myself with regards to the courts and the state of emergency in Darfur.

14 PRESIDING JUDGE KORNER: [15:25:47] I see. All right.

15 MR EDWARDS: [15:25:48]

16 Q. [15:25:48] And just again, I don't want to dwell on it too long, when you were
17 receiving these documents and reading these documents, have I got this right, were
18 you in Khartoum or were you outside of Sudan at this point?

19 A. [15:26:04] It was always easier for me to get documents in Khartoum, even if I
20 travelled in Sudan, but Sudan was very centralised and it was very easy to meet
21 interlocutors in Khartoum itself, even if daily life was outside.

22 Q. [15:26:20] And the members of the Beni Halba tribe, for example, where were
23 they getting their -- where were they getting their material -- their source material
24 from? Where in Sudan were these documents coming from, geographically?

25 A. [15:26:48] Well, it depends, depends on the document. Certain documents

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1 came from Darfur and others were produced when the customary authorities were
2 established in neighbourhoods of Khartoum and they could be directly produced
3 there. But everything would depend on the nature of the document and its origin.

4 Q. [15:27:12] And how is it that you developed these relationships with persons
5 who could get documentation from Darfur?

6 A. [15:27:25] Well, it's because I obtained help from colleagues. They put me in
7 contact with people who were able to obtain such documentation.

8 Q. [15:27:38] And what was the nature of this documentation? Give us some
9 examples of the nature of this kind of documentation.

10 A. [15:27:47] There were lots of different types of documents. There were
11 documents which could be assimilated -- well, perhaps they could be nominated -- or
12 codification of applicable law between different ethnic groups in Darfur. These
13 documents -- well, there's an excerpt from the documents in the report and they were
14 provided by a Sudanese researcher. And there were other documents that were
15 rather legal acts and which were produced by customary law -- or allegedly
16 customary law, which were provided -- I was provided with that contact.
17 But it was also -- documents were also provided by western researchers as well.

18 Q. [15:28:36] And how did these documents allow you to form opinions about the
19 impact of the state of emergency with regard to, for example, rights to a fair trial,
20 rights to security, a right to life and so on?

21 A. [15:28:54] Well, in a very indirect way, I would say that these documents
22 demonstrated that there were judicial mechanics -- parallel judicial mechanisms
23 which made it possible to resolve disputes between tribal groups without having
24 recourse to the application of Sudanese criminal law.

25 Q. [15:29:20] But in terms of, for example, the right to a fair trial specifically, just

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1 take that as an example, what -- what sort of information was contained in the
2 documents you were able to get via your Beni Halba intermediaries that permit you
3 to form opinions about, for example, the impact of the state of emergency on rights to
4 a fair trial?

5 A. [15:29:59] Where it concerned the documents provided by the Beni Halba, first
6 of all, it was more than just documents. There was also the participation in sessions
7 that they did and -- reconciliation sessions, which was done by the arbitration courts,
8 and there were also different groups who were involved. And I was able to be a
9 witness to a case during which -- I was able to witness a case in which the involved
10 court decided to -- to give grace to two guilty persons for assassination. And in
11 applying this customary arbitration sentence, the state of Khartoum decided to
12 provide grace to those people condemned to death and therefore not to apply -- or not
13 implement the sentence.

14 So you could see that there was a means or a method that could be used in order to go
15 around the regime of Sudanese criminal law, whether it was in Khartoum in
16 application of the state of emergency.

17 Q. [15:31:20] Okay. All right. Well, I think I'm going to stop there in regard to
18 state of emergency. I'm going to go on to the last point that I wanted to raise with
19 you and it relates to your paragraph 16 -- your paragraphs 16, 98, 102 and 105. And
20 it relates to your expertise in Sudanese civil and criminal law, generally, okay?
21 Look, in your PhD thesis or in your report, do you discuss the whole range of
22 Sudanese civil and criminal law?

23 A. [15:32:17] That would -- that seems to be a bit unreasonable to summarise all of
24 that in a doctoral thesis. Some aspects are dealt with, yes.

25 Q. [15:32:28] So paragraph 98, you are talking about the concept about *hiraba*,

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1 which we spoke about a little earlier on today. In citing provisions of Sudanese civil
2 law, criminal law, whilst specifically talking about *hiraba*, where did you get the
3 information about Sudanese domestic law?

4 And you're talking about the penal code, for example, at paragraph 98, in the context
5 of *hiraba*?

6 A. [15:33:09](Speaks English) Mm-hmm, yeah.

7 Q. [15:33:10] Where did your information -- where did your knowledge of
8 Sudanese criminal law come from in the context specifically of *hiraba*?

9 A. [15:33:20] Well, what I was saying earlier was that the code of 1991, I was able to
10 look at that thanks to my exchanges with a number of Sudanese lawyers, one
11 Sudanese lawyer, in particular, at 150 -- no, 119, footnote 119, and thanks to him I was
12 able to familiarise myself with that concept.

13 But he was not the only person that I dealt with in this regard. I also spoke to
14 a number of anthropologists who discussed inter-tribal conflicts and they, too,
15 mentioned this concept of *hiraba* as part of the discussions with me.

16 PRESIDING JUDGE KORNER: [15:34:27] Sorry, in paragraph 98, sir, you
17 specifically -- and, really, for the first time, refer the reader to a specific code,
18 a criminal act, articles of the code. I understood from that that you had actually
19 looked at those. Are you now saying you didn't?

20 THE WITNESS: [15:34:53](Interpretation) No, not at all. I said I consulted the
21 Criminal Act of '91 because I was able to gain access to it in the office of the lawyer,
22 and I mentioned that at footnote 119. There is no doubt about that, and he himself
23 familiarised me with the jurisprudence mentioned in paragraph 98, and then I was
24 able to look at that knowledge and cross-check with other information, and I sent this
25 to the Court in relation to -- well, cross-check, verify the information.

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- 1 PRESIDING JUDGE KORNER: [15:35:38](Overlapping microphones) Yes, sorry, sir.
2 That's all I was trying -- because you don't actually say that you saw -- what you
3 actually say in footnote 119, it says you had an interview with a lawyer, which
4 suggests a chat again. It doesn't say there, but for this, that's all I'm -- you know, all
5 I'm asking you to confirm is you actually saw and read the provisions of this act
6 yourself?
- 7 THE WITNESS: [15:36:11](Interpretation) Yes, yes.
- 8 PRESIDING JUDGE KORNER: [15:36:12] Thank you.
- 9 THE WITNESS: [15:36:14](Interpretation) Yes, your Honour.
- 10 MR EDWARDS: [15:36:15] Your Honours can cross-reference to evidence the
11 witness gave at page 69, lines 20 to 22 of the transcript. Thank you.
- 12 Q. [15:36:27] Paragraph 105, where you are speaking about the concept of
13 *ghanima* - again, in the context of the Sudanese Criminal Act of 1991 - have you got
14 anything further to say about that? Anything different to what you have already
15 said about your sources for talking about *hiraba*? The interplay between *hiraba* and
16 the criminal law?
- 17 A. [15:37:13] No, I'll stick to what I've said in the report.
- 18 Q. [15:37:20] And then finally, I think, well, at paragraph 102, again, you are
19 talking about the application of *hiraba* and *ghanima* to the Darfur context and its
20 relation to the state of emergency -- page 100, where are we? 102, but again, we're
21 talking about *ghanima* and *hiraba* in the context of the criminal law.
22 I think we've probably dealt with that.
- 23 Finally, paragraph 16, the place of -- the place of Sudanese customary law and the
24 jurisprudential hierarchy of sources of law.
- 25 In your PhD research, did you look at black letter? Did you look at sort of

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1 substantive criminal and civil law and its place in the hierarchy of legal norms in
2 Sudan?

3 A. [15:38:30] I -- obviously, I did study that law having to do with civil and
4 criminal matters. I think it's important here, is the relationship between that and the
5 constitution and how it is applied and interpreted in Sudan.

6 Q. [15:39:09] All right.

7 MR EDWARDS: [15:39:12] Your Honour, I think I'm going to pull stumps now. I
8 see the time, yes. Those are my questions on this voir dire.

9 PRESIDING JUDGE KORNER: [15:39:22] Yes, thank you, Mr Edwards. Yes,
10 Mr Jeremy.

11 MR JEREMY: [15:39:36] Thank you, Madam President, your Honours.

12 QUESTIONED BY MR JEREMY:

13 Q. [15:39:40] Good afternoon, Mr Gout -- Professor Gout.

14 A. [15:39:45] Good afternoon, counsel.

15 Q. [15:39:48] Okay, so in the time that we have today, I'm just going to focus a little
16 bit more on your prior experience, with a focus on your -- particularly your work in
17 Sudan in 2012 to 2016 time period.

18 So as you have made clear, the main focus of your work in Sudan related to the work
19 that you did on your thesis, is that fair?

20 A. [15:40:19] Yes, that's completely fair.

21 Q. [15:40:30] And as you make clear in your CV - and, I think, in the course of
22 today as well - one of the main focuses of that PhD thesis was this concept of peace
23 building, is that accurate?

24 A. [15:40:51] Yes, I was trying to study that concept through the Sudanese example.

25 Q. [15:41:01] And just to define what that concept means, I'm going to put

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1 a definition to you which, I hope, you will agree with -- I've taken it from your CV.

2 So you say that peace building in the context of Sudan is, quote:

3 The establishment of a liberal rule of law at the end of a transitional period during
4 which the law of the beneficiary state must be rearranged and strengthened. End
5 quote.

6 Does that sound broadly accurate with some translation possible varieties?

7 A. [15:41:42] Yes, I think that's an appropriate definition, but to be more specific, if
8 I could add a little bit of information -- a few elements of information.

9 Q. [15:42:01] Please.

10 A. [15:42:04] That's a modality for re-establishment of peace, a sustainable peace
11 enhancing the rule of law, enhancing principles of democracy, enhancing protection
12 of human rights; so that's simply put what is meant by peacekeeping --

13 THE INTERPRETER: [15:42:33] Correction --

14 THE WITNESS: [15:42:34](Interpretation) -- peace building.

15 MR JEREMY: [15:42:35]

16 Q. [15:42:36] Okay, and maintaining this focus on peace building, I also read in
17 your CV that the aim of your thesis was to study ways in which international law
18 relating to peace building denies legal statuses to sub-state customary law.

19 Is that accurate?

20 A. [15:43:01] That wasn't the purpose of my research. It was the outcome of my
21 research after establishing all these relationships between state law and customary
22 law, I saw that it, customary law, could enhance. I think -- I saw that international
23 law could enhance Sudanese law and that meant using elements of customary law.

24 Q. [15:43:43] And when we speak of Sudanese law, the main focus is this sub-state
25 customary Sudanese law; is that accurate?

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1 A. [15:43:57] That's quite so, that customary law is defined. It is not sub-state, it is
2 infra-state, in principle.

3 Q. [15:44:13] So customary law at the local -- at the local level?

4 A. [15:44:20] Yes, quite so.

5 Q. [15:44:24] Okay, and in relation to your CV, it's quite extensive. I take it it's
6 accurate and up to date?

7 A. [15:44:41] I suppose so.

8 Q. [15:44:49] Now in terms of the results of your research, you have touched on
9 some of those already. One of them related to the central place of the legal
10 institution of the trust in the implementation of peace building; is that correct?

11 A. [15:45:17] I think it was mistranslated. I think the word in French would be
12 *fiducie*, for trust; that is one of the -- that is to be found in my last chapter of my thesis,
13 the financial and organic structure of consolidation of peace, which is founded
14 upon --

15 PRESIDING JUDGE KORNER: [15:45:57] Mr Jeremy, where is that bit about trust in
16 his CV?

17 MR JEREMY: [15:46:02] It should be page 10 of the English; page 8 of the French.

18 PRESIDING JUDGE KORNER: [15:46:13] Oh, yes, I, in fact, highlighted that, yes, the
19 second result. Yes, got it.

20 So, Dr Gout, you are saying that it shouldn't be trust, but the fiduciary aspect, is that
21 right, in the implementation of peace building?

22 THE WITNESS: [15:46:41](Interpretation) Yes, yes, the same structure as the -- for
23 example, UN *trusteeship, "*waqf*" in the Muslim world.

24 MR JEREMY: [15:47:06]

25 Q. [15:47:07] So if I understand correctly - and, if the translation is accurate - it also

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1 relates to this financing of peace-building operations through international trust
2 funds; that's one of the core outcomes of your thesis?

3 A. [15:47:27] That is one of the elements of my thesis that allowed me to determine
4 the regime of responsibility of ...

5 THE INTERPRETER: [15:47:44] I'm just checking the translation.

6 THE WITNESS: [15:47:48](Interpretation) The regime of responsibility of
7 intergovernmental organisations in the case of harm caused to local communities.

8 MR JEREMY: [15:48:03]

9 Q. [15:48:05] Okay, thank you for those clarifications.

10 Turning to your methodology, which you have spoken about quite extensively today,
11 it's fair to say, sir, that your work had a strong anthropological focus. Would you
12 agree with that?

13 A. [15:48:32] Well, from a legal point of view, yes, but I did work quite a bit with
14 anthropologists and I don't think they would agree with that observation.

15 My methodology was to try to gather as much documents as possible about the legal
16 practices of that community, in addition to Sudanese law.

17 Q. [15:49:06] But we can agree that your thesis had both social science
18 anthropological aspects to it as well as legal aspects?

19 A. [15:49:22] That's what I would have liked, but in actual fact, I tried hard to rely
20 myself on a very legal foundation, and that was very strategic so that my committee,
21 my thesis jury would not criticise me for engaging in or working in the field of
22 anthropology, and, I think, that is what delayed my getting a position at a university.

23 Q. [15:50:06] And in relation to this particular point, you say in the second
24 paragraph of 1.1.3 of your CV that international law scholars would say that your
25 study doesn't belong to legal science. Is that what you're referring to?

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1 A. [15:50:32] Yes, that was one justification of the methods used in my thesis; that
2 was the fear, of course. If I had relied upon methods that were too anthropological
3 in nature, I would be criticised. So I was very careful. I chose a topic that was
4 mostly dealt with by anthropologists, but I took more of a legal approach.

5 Q. [15:51:03] Okay, I want to move on now to some of the interviews that you
6 conducted. The interviews, you said they range from formal interviews, casual
7 conversations taking place between 2012 and 2016 when you were in Sudan. You
8 clarified that you were there -- or you said from the start, you were there for a
9 two-year period, but you were there for two years over a four-year period?

10 A. [15:51:30] Two years in all, yes.

11 Q. [15:51:33] Now, you say that you conducted a number of interviews with
12 various actors from the political and legal scene among others in -- while you were in
13 Khartoum, yes?

14 A. [15:51:48] Yes, yes, indeed.

15 Q. [15:51:55] And we read your thesis, we've read your articles, your notebooks
16 which you kindly retrieved; that's where you referenced these interviews, is that
17 correct?

18 A. [15:52:10] Yes, and that's also something that bears witness to the legal approach,
19 that is to say, for the thesis defence, and, for that particular goal, I understood with
20 my thesis supervisor that I would not put the -- that I would not put the interviews as
21 an annex, because she didn't want this to be seen as a piece of anthropological
22 research.

23 Q. [15:52:59] Okay, I want to focus now on those who you did and did not
24 interview.

25 First, a preliminary point. So the charged incidents in this case relate to the former

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1 West Darfur state and after 2003 and '04 the boundaries changed. I'm not sure if you
2 are aware of that?

3 A. [15:53:26] I'm sorry, I haven't understood your question.

4 Q. [15:53:40] So, I want to ask you about the interviews that you carried out, and
5 I'm actually going to have a focus on the particular locations that the charges in this
6 case relate to --

7 A. [15:53:51] Mm-hmm.

8 Q. [15:53:52] -- and the relevant state in 2003 and '04 was West Darfur state, and I'm
9 just informing you - I don't think there is any dispute - that the boundaries
10 changed after that point --

11 A. [15:54:03](Overlapping speakers)(Speaks English) Yes.

12 Q. [15:54:04] -- so when I refer to West Darfur state in the 2003 and '04 context, I
13 mean before that boundary changed, just so that's clear to you.

14 PRESIDING JUDGE KORNER: [15:54:13] I think your question was, was he aware
15 the boundaries had changed.

16 THE WITNESS: [15:54:21](Speaks English) Of course.

17 (Interpretation) Of course I knew that. Yes, I certainly was aware that the borders
18 had changed. I can offer some anecdotes in that regard, but I won't -- but I'll spare
19 you the anecdotes.

20 MR JEREMY: [15:54:39]

21 Q. [15:54:40] Maybe there will be time for the anecdotes in the next few days, sir,
22 but I'm going keep going with these questions.

23 So I don't see any reference to any interviews with any members of the military or the
24 police from the former West Darfur state in 2003 and '04.

25 A. [15:55:00] (Speaks English) Okay.

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1 Q. [15:55:01] I don't see any reference in your thesis --

2 A. [15:55:04] Mm-hmm.

3 Q. [15:55:05] -- or your articles or your notebooks, is that -- can I conclude that you
4 didn't carry those out?

5 A. [15:55:09] That is correct.

6 Q. [15:55:13] Okay. And the same question in relation to pro-government militia
7 groups within this location during the same period, my understanding is you didn't
8 carry out any interviews with them?

9 A. [15:55:27] No, I don't think so.

10 Q. [15:55:34] Okay, and similarly for members of the tribal administration, the
11 *idara ahliya* in West Darfur in 2003 and '04, my understanding is you didn't carry out
12 any interviews with any persons from that group?

13 A. [15:55:56] I would have to check that point in my publications. I'm not entirely
14 sure. I can't give you a definite yes or no.

15 Q. [15:56:06] By all means for -- for some of these points where you have to check,
16 and, it's understandable, you have your binder there with you and I think you can
17 take the opportunity either in the break or --

18 A. [15:56:19] (Speaks English) Okay.

19 Q. [15:56:19] -- overnight to check some of those points.

20 A. [15:56:22] (Interpretation) Thank you.

21 Q. [15:56:24] So same point, sir, in relation to state-level political representatives, so
22 either the *walis* of West Darfur or the commissioners of the localities, I take it you
23 didn't interview any of them who were in West Darfur for the 2003 and '04 period?

24 A. [15:56:53] I would give you the same answer as a few moments ago, I would
25 have to check that point. I believe I did meet some, but I didn't necessarily have

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1 formal interviews with local commissioners.

2 Q. [15:57:13] Okay, thank you, sir, the focus of my question related to more formal
3 interviews that you would remember.

4 Now, you say in your report or perhaps in your CV that you collected around 50 legal
5 documents written in Sudanese Arabic, do you recall that?

6 A. [15:57:41] Yes, I have many. They were not all used for my research.

7 Q. [15:57:50] Okay, but we can agree that you didn't provide any copies of those
8 documents --

9 A. [15:57:57] (Speaks English) No.

10 Q. [15:57:58] -- other than whatever you referenced in your report; is that accurate?

11 A. [15:58:07](Interpretation) No, indeed, you have an additional group of
12 documents appended to my thesis, but as for the report, yes, that is true.

13 Q. [15:58:20] And I take it that you included all documents that you considered
14 relevant to the report within the report -- you, at least, made reference to them?

15 A. [15:58:32] Documents that I used, yes. Amongst the documents that I used, I
16 used the ones that seemed to be the most relevant. Some of the documents that I
17 never used for my thesis might have been relevant, but I would have to check that.

18 Q. [15:58:51] Yes, again, please do check.

19 During your preparation session with the Defence you carried out over the last week,
20 you said that you read the jurisprudence of Sudan for your PhD; do you recall saying
21 that?

22 A. [15:59:14] (Overlapping speakers)

23 Q. [15:59:17] Now, we could only see two decisions of Sudanese courts cited in
24 your PhD thesis, does that sound accurate to you?

25 A. [15:59:29] In the report or in the thesis? I want to make sure I don't get it

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1 wrong.

2 Q. [15:59:36] In your thesis, yes.

3 A. [15:59:42] (Speaks English) Yes. (Interpretation) I think these were decisions
4 from the Supreme Court. Isn't that so?

5 Q. [15:59:54] Well, sir, they were --

6 A. [15:59:58] No, there's a mistake. There were some jurisprudence that I cited
7 that you will find in the bibliography of my thesis, and there is some jurisprudence
8 that I used -- some extracts of jurisprudence in the appendices to my thesis. In any
9 event, I only used jurisprudence that was relevant to support the contentions of my
10 thesis.

11 Q. [16:00:30] Okay, sir, and of the -- of the decisions that you cited in your
12 PhD - and, as I mentioned, we saw two - you cite one of them in your report -- the
13 expert report that you provided and that's the Goldenburg case, you recall that?
14 And I'm right in thinking you don't have a copy of that case, is that correct?

15 A. [16:01:04] No, I don't have a copy. In that regard, I would refer you to what I
16 said this morning about gathering sources of information. It's a rather well-known
17 case, quite central. It has to do with the personal status of non-Muslim people in
18 Sudan.

19 Q. [16:01:24] So you didn't read that case, but you triangulated information about --

20 A. [16:01:29] (Speaks English) Yeah.

21 Q. [16:01:30] -- the case?

22 A. [16:01:34](Interpretation) I didn't -- or, how do I put this? I don't have the
23 judgment -- the case in my possession, but I was able to read articles with the
24 people -- from lawyers, and, as I was saying, these lawyers -- these researchers, these
25 teachers, they wanted to show the documents, but obviously their sources -- their

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1 resources, they're not necessarily going to share them with you.

2 So that was the case for this case in point.

3 Q. [16:02:13] That's understood, sir.

4 MR JEREMY: [16:02:16] Madam President, I see the time.

5 PRESIDING JUDGE KORNER: [16:02:18](Microphone not activated)

6 THE INTERPRETER: [16:02:24] Microphone.

7 PRESIDING JUDGE KORNER: [16:02:25] I know you can't finish today, Mr Jeremy,
8 but are you going on to a separate topic? Because otherwise I was going to sit a little
9 longer if you're just going on straight --

10 MR JEREMY: [16:02:33] I'm going on to a separate topic, but I can --

11 PRESIDING JUDGE KORNER: [16:02:36] Okay, all right.

12 MR JEREMY: [16:02:37] -- I can continue.

13 PRESIDING JUDGE KORNER: [16:02:37] All right.

14 But can I just check, sir, you said a moment ago at line -- page 122, lines 13 to 14, that:

15 "I only used jurisprudence that was relevant to support the contentions of my thesis."

16 Can you just expand on that?

17 THE WITNESS: [16:02:58](Interpretation) Well, it was jurisprudence that was

18 relevant for the topic, and that was dealt with in my thesis.

19 PRESIDING JUDGE KORNER: [16:03:05] Right. Okay, by "support", you didn't
20 mean that you ignored jurisprudence --

21 THE WITNESS: [16:03:10](Interpretation) No, not at all.

22 PRESIDING JUDGE KORNER: [16:03:13](Overlapping microphones) -- that was
23 relevant but didn't support your (Overlapping microphones)

24 THE WITNESS: [16:03:16](Speaks English) No. (Interpretation) Useful for the
25 analysis -- useful for the legal analysis, obviously.

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- 1 PRESIDING JUDGE KORNER: [16:03:21](Overlapping microphones) Right.
- 2 Probably just as well to clear that up now.
- 3 Yes, thank you.
- 4 Yes, sir, we're going to adjourn and then tomorrow morning until -- at 9.30 --
- 5 THE WITNESS: [16:03:32](Speaks English) Okay.
- 6 PRESIDING JUDGE KORNER: [16:03:33] -- where you will carry on with this -- with
- 7 questions from Mr Jeremy. Then the bench may have some questions for you, and
- 8 then we'll have a break to decide on where we go from here, as it were.
- 9 Again, overnight, you mustn't talk to your lawyers. You can, of course, consult your
- 10 own report or your thesis or anything you want to check yourself. So don't worry
- 11 about that, but you just can't talk to your lawyers.
- 12 Yes, thank you very much.
- 13 9.30 tomorrow morning.
- 14 THE COURT USHER: [16:04:11] All rise.
- 15 (The hearing ends in open session at 4.04 p.m.)