

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Closing Statements - Courtroom 2
9 Wednesday, 11 December 2024
10 (The hearing starts in open session at 9.35 a.m.)
11 THE COURT USHER: [9:35:19] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:36:14] Yes. Good morning to everyone.
15 Could we call the case, please.
16 THE COURT OFFICER: [9:36:20] Good morning, Madam President. Good
17 morning, your Honours.
18 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus Ali
19 Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
20 And for the record, we are in open session.
21 PRESIDING JUDGE KORNER: [9:36:40] Yes. Thank you very much.
22 Appearances, please, then, for the Prosecution.
23 MR KHAN: [9:36:45] Good morning, Madam President, your Honours.
24 Karim Khan, KC, for the Prosecution. Mr Julian Nicholls, assisted by
25 Edward Jeremy, Alison Whitford, Diana Saba, Laura Morris, Rachel Mazzarella,

1 Claire Sabatini, and Dahirou Sant-Anna.

2 PRESIDING JUDGE KORNER: [9:37:09] Yes. A pleasure to see, Mr Khan.

3 Yes, Defence, please.

4 MR LAUCCI: [9:37:16](Interpretation) Good morning, Madam President,
5 your Honours.

6 The Defence team for Mr Ali Muhammad Ali Abd-Al-Rahman, who's in the room, is
7 represented by Claire Chauffard. The legal officers are Nina Guilloux, Ahmad Issa,
8 Haneen Ghali and Marcela Velarde. The legal defence for the Defence is
9 Audrey Mateo and myself, Cyril Laucci. And there's Iain Edwards, who's registered
10 at the Bar of Wales and England.

11 PRESIDING JUDGE KORNER: [9:38:01] Also a pleasure to see you, Mr Laucci, after
12 how many months is it since we all met?

13 And you, Mr Edwards.

14 Yes. And the representatives of the victims, please.

15 MS VON WISTINGHAUSEN: [9:38:12] Yes. Good morning, Madam President,
16 your Honours, dear colleagues, good morning to everyone in and around
17 the courtroom. The participating victims are represented today by associate counsel
18 Anand Shah to my right, case manager Saif Kassis behind me, and myself, Natalie
19 von Wistinghausen. Thank you.

20 PRESIDING JUDGE KORNER: [9:38:28] Also same for you, Ms von Wistinghausen.

21 A pleasure to see you.

22 Yes. Is there anything that needs to be said or done before the final addresses begin?

23 No. Very well.

24 In that case, we'll hear from the Prosecution.

25 MR KHAN: [9:38:55] Madam President, your Honours, this is obviously a very

1 important day for justice, for the Office, for the Court, for victims. And not only
2 the victims, the civil society that are in the gallery, but those that are watching or
3 waiting for justice that they have yearned for for almost 20 years.

4 Your Honours, during the course of this trial, you've heard from numerous witnesses,
5 you've had the opportunity to assess their demeanour and hear their accounts, and
6 they have so eloquently and clearly made -- underlined how deeply they crave justice,
7 they want peace, and they want to return to their homes, their homes that they have
8 left and sometimes they moved from again and again.

9 It's obvious that this Chamber and the Rome Statute - thank you - can't turn back
10 the clock. We can't wish away the tragedy, the heartbreak and the loss that so many
11 have endured and continue to endure. And there's no way, there's no tool, there's no
12 statute, there's no piece of paper, there's no normative value that can erase the layers
13 of generational trauma that have been inflicted upon innocent women and children
14 and men. And, obviously, nor can this trial, nor can justice stop the ongoing conflict
15 which has reverberated continuously over the last 20 years. But what this process
16 can do, what it is doing, and what we sincerely believe will occur is tangible evidence
17 that the rule of law means something. It is felt and vindicated by a fair trial, due
18 process, by independent and impartial judges.

19 And that quest, that craving for justice is not to be underestimated. And it's
20 important to underline, your Honours, what you have seen and what all
21 the participants in the Court have seen, that, looking at the haemorrhage,
22 the heartbreak and consequences of the crimes alleged in 2003 and 2004 that were
23 the subject of this trial, inflicted particularly on the Fur people of Darfur, they have to
24 be uppermost in our thoughts and in this trial, because they have not sat down as
25 spectators waiting for justice, they have clamoured for it, demanded it and have been

1 in every way, shape and form, active participants in the investigation, in
2 the proceedings, seeking your ruling after the trial is over. And so we reach this
3 critically important day, the first trial concluding from the first ever referral by
4 the Security Council of the United Nations to this Court, by dint of Resolution 1593,
5 almost 20 years ago, on 31 March 2005.

6 And your Honours may recall that during my opening speech for the Prosecution, the
7 team put together a montage, a video, showing a sample, a flavour, of the types of
8 crimes that were being committed in Darfur at the time the Security Council decided
9 to refer the situation to this Court.

10 But one thing may have struck your Honours, the testimony, the accounts that you've
11 heard tested by the Defence, paints a far more poignant and painful picture of
12 criminality, heartbreak and determination by individuals that had the courage to
13 speak up in these proceedings.

14 And it's, we say, clear that, overwhelmingly, the evidence demonstrates that
15 the conduct that has been alleged by the Prosecution has been committed. And
16 we've proved it, we submit, beyond reasonable doubt, in relation to all of the charges
17 by the conduct of the accused in this case, Mr Abd-Al-Rahman, also known as
18 Mr Ali Kushayb.

19 And we say, your Honours, not only have we established in relation to the charges
20 the elements of the offence, but also, importantly, that at all material times
21 the accused in this case was a senior Janjaweed member, a leader, and was actively
22 involved in the commission of offences, willingly and enthusiastically, and that whilst
23 the Government of Sudan and others were arming the Janjaweed, ostensibly to deal
24 with a rebellion, the stark reality is the targets in this case were not rebels, but
25 civilians. They were targeted, they have suffered, they've lost their lives. They've

1 been scarred physically and emotionally in myriad different ways.

2 And 81 Prosecution witnesses have been heard or presented to your Honours by
3 the Prosecution and they have detailed accounts of mass murder, torture, rape,
4 targeting of civilians, burning and pillaging of entire villages, and displacement of
5 millions of Fur civilians that, to this day, have not been able to return to the land that
6 they feel such a connection with, their communities that their generations have lived
7 on.

8 And that includes the consequences that are experienced by so many, the children
9 that were not there in 2003 and 2004, but they were born, they have been born in
10 displacement camps, whether it's Kalma, or children that we saw again more recently
11 displaced to Adre on the border of Darfur in Chad.

12 And your Honours have heard evidence of hundreds of Fur males, community
13 leaders, fathers, sons, brothers, subjected to torture, detention, and execution in
14 Mukjar and Deleig on the hands -- at the hands, we say, of the accused in this case.
15 And their lives were very frequently summarily taken, executed callously without
16 respite, nor with any remorse at all. And that has left and continues to leave after
17 tremors that affect families and the communities in the most profound manner.

18 And your Honours have also heard how rape was perpetrated by the Janjaweed
19 militia, and indeed we've presented evidence that this was part of a policy by
20 the Janjaweed and Government of Sudan, a strategy against the Fur population.

21 And your Honours have heard numerous types of evidence, I'm not going to give,
22 with your leave, all the references because it can be provided later, but it's in the brief.
23 But examples are the most humiliating types of rapes, in front of family members,
24 such as the account given by P-1073.

25 Committed against children. Your Honours will recall the powerful evidence of

1 P-11 and P-1073, who was a child herself when she was raped by the Janjaweed.
2 And you've heard evidence from numerous different witnesses, such as P-1073, 1074,
3 of physical harm, but also profound psychological harm. And the consequences that
4 have been -- penetrate even deeper, that have caused even more difficulties because of
5 the cultural situation of the individuals concerned.
6 P-11's testimony is worth, with your leave, recalling, and I'll quote what P-11 said:
7 "Women who were raped ... they are now disillusioned. I know some of them who
8 committed suicide, they killed themselves. Some of them lost their minds due to this
9 rape. They were living in isolation, they could not socialise with the others."
10 And that extract of the transcript is found at transcript 91 at page 34.
11 And P-11 went on to speak about her own experience, stating, and again I quote:
12 "I could not complete my education because of the rape. Because ... it was a stigma.
13 I could not sit in the same classroom with my classmates, I was ashamed."
14 The same transcript 91 at page 31.
15 And witness after witness explained that survivors of rape very frequently had no
16 access at all to medical care, such as P-921. The effect of stigma because of cultural
17 norms, that they didn't even feel able to have the support of their families by speaking
18 about it, such as P-15 or P-1073. And those realities, those intersecting and
19 overlapping conditions, realities for these witnesses, has further compounded
20 the suffering that we say the accused is criminally responsible for.
21 And your Honours will never forget the accounts of children born of rape that has
22 been presented to this Court.
23 P-11 told the Court, and again I quote:
24 "People, when they pass by the road, they would finger point at a child who was born
25 out of rape and would consider him the son of an Arab man or would say he is

1 the son of an Arab man. Also, the women feel disappointment, because they are left
2 with a child of the enemy, the child that resulted from rape. Society looks
3 disdainfully at such children and on the road, they would point at that child,
4 considering him a child of rape."

5 Transcript 91 at page 65.

6 And P-15 gives broadly similar evidence as to that witness's experience.

7 And your Honours would have seen, the world would have heard the impact on
8 a variety of actors. I think no part of the community, the old or the young, men or
9 women, boys or girls, have been unaffected by the crimes of the accused in this case
10 and their own lived experiences. But focusing on children, we see around the world
11 and in this situation the sad reality that so often children are the silent victims of war
12 and so frequently their plight is lost in the broader narrative, conflated so frequently
13 with the general civilian population. But we have heard, your Honours have seen in
14 the record numerous examples of the profound and enduring harm that's been
15 inflicted. And P-15 has described that. And I'll quote, if I may, P-15's testimony.
16 "Everyone was living in peace and security and we didn't have any problem at all.
17 Children were feeling safe, they were not scared of anything. They were going to
18 school and they were playing and enjoying their life. There was no problems. And
19 in 2003, when the war started, the children got severely affected. They never
20 experienced such things before."

21 That's transcript 93 at page 13.

22 And that's really the juxtaposition of peace and war, of before and after and today,
23 how lives were torn apart not by accident, not by a tsunami of the weather or climate
24 change, by deliberate decisions to ride roughshod over the rights of our fellow
25 humanity. Those conscious decisions, those conscious deliberate decisions of

1 the accused in this case we say demonstrate all the elements of the charges and give
2 rise to the criminal responsibility we say has been proved before your Honours.
3 And it is clear that children were not just caught up in conflict, but were the targets of
4 attacks. P-15 described that children and the elderly were vulnerable. Children
5 were detained in Mukjar, for example. You've recall, your Honours, the testimony
6 of P-129. Detained and killed not only in Mukjar, but also in Deleig. The testimony
7 of P-907.

8 And in the second wave of consequence of those crimes, how many children died of
9 starvation? P-15 recounted children dying on the road to Mukjar, and that's detailed,
10 for example, in the transcript 93 at page 14.

11 Children who survived and who didn't die of starvation lived in the most miserable,
12 the most appalling conditions that could be imagined.

13 P-1042, at transcript 28, recalls that Witness P-916 paints a hellish picture, a hellish
14 picture. And that witness states, and I quote:

15 "[When people came to Mukjar] when they came, they were living in very harsh
16 conditions. And children who were under five years old, many of them died. I can
17 say that about two or three children died every day." Transcript 75, page 16.

18 And those that managed to survive suffered a denial of education. P-955, transcript
19 63, recalls that. Many were orphaned.

20 And, your Honours, when the team and myself had the opportunity to visit Darfur,
21 and also see more recently in Chad, one sees the incessant consequences that is being
22 triggered by the events that have been led in this trial before your Honours.

23 And the witnesses who lost everything and the suffering that they endure today is an
24 echo of what has been presented and has been subject to this particular trial.

25 Your Honours, witnesses feel, the community feels they've been failed time and time

1 again, because they have. This trial represents a moment of hope, where the world
2 is not too busy or too distracted to look at other suffering and other crimes, but to
3 focus on evidence, not polemics, to separate truth from fiction. And it's a remarkable
4 trial for many reasons, in my submission. I think and I'm sure and I hope I speak for
5 all parties, legal representatives of the victims, and the Defence, as well as the
6 Prosecution, that with the excellent trial management of your Honours this has been
7 a very efficiently run trial, in difficult circumstances, in the midst of a second wave of
8 conflict.

9 And in the course of this trial your Honours have heard from more than a hundred
10 witnesses. 1800 items of evidence have been formally presented. Twenty Defence
11 witnesses, 17 viva voce. The Prosecution has led 81 witnesses; 56 have testified live;
12 25, the evidence of 25 witnesses have been submitted in the record. Good
13 cooperation in many areas with the Defence, 134 facts agreed. And, also, I'm proud
14 of the team and the Office for really sincerely assisting, offering assistance and
15 supporting the Defence in contacting, locating, and facilitating the appearance of
16 Defence witnesses, as well as attempts to obtain documents for the Defence from
17 the Government of Sudan. And this trial also is a first in terms of the first trial to
18 present charges of persecution on gender, ethnic and political grounds, reflecting
19 the reality, the intersecting nature of discrimination which detained males suffered,
20 particularly in Mukjar and Deleig.

21 And it's also important for a wider purpose. As I alluded to at the outset, the first
22 trial is drawing to an end, with the leave of your Honours, from the first
23 Security Council referral, and with all the criticism and perhaps dysfunction that we
24 see all too often in the Council today, it harkens back to a better time in 2005 when
25 the Council made this very important decision to refer the situation in Darfur to an

1 international court, realising that accountability and the rights of individuals was
2 necessary to address a threat to international peace and security, a time when
3 the rights of people were not automatically trumped by power or strategic rivalries.
4 And, your Honours, it's only right to also thank those members of the Council that
5 continue to support the Court and the quest for justice. Your Honours, when I
6 became Prosecutor I said I wanted to prioritise Security Council referrals. The team
7 that has been so ably led by Mr Julian Nicholls, but all the team in the Court and
8 those outside and everybody in the courtroom, the work that has been done by this
9 institution is an effort to show that these cases and the rights of Darfuris should not
10 be forgotten, that cases should not be allowed to meander. And when I have said to
11 the Security Council in my first briefing on Sudan that referrals should not be
12 never-ending stories, today we are approaching, pending your final judgment,
13 the end of the first chapter of a story which hopefully will vindicate the promise that
14 has been made to victims.

15 Your Honours, the meat of the submissions, as is apparent of what I have said, and
16 the responses to the questions that your Honours have given, will be addressed by
17 the members of my team.

18 First, Mr Julian Nicholls will outline, with your leave, the overarching issues with
19 the Defence case, including the fairness of the trial. They'll respond to the Defence
20 assertions and case that the accused, Mr Abd-Al-Rahman, was never known as
21 Mr Ali Kushayb.

22 And then Mr Jeremy will focus on Defence arguments relating to the Janjaweed
23 militia and Mr Abd-Al-Rahman's leadership role in the counterinsurgency in
24 the Wadi Salih and Mukjar localities. And then he'll also cover Defence arguments
25 on jurisdiction and also then deal with Defence submissions regarding Kodoom and

1 Bindisi.

2 And he'll be followed by Ms Morris, who will respond to the Defence points again on
3 Mukjar and deal with some Defence submissions or contentions regarding
4 with -- regarding the crime of persecution that's alleged by the Prosecution in this
5 case.

6 Ms Alison Whitford will then handle issues relating to Deleig, the scope of
7 the charges, and certain aspects of Facebook evidence that is in the Court record.

8 And, finally, Mr Julian Nicholls will close the submissions for the Prosecution.

9 Your Honour, at this particular moment there's a lot of questions about the utility of
10 international justice, in a whirlwind that is the environment we inhabit. I sincerely
11 do believe that this trial represents a step forward in the quest for justice, the demand
12 for justice, and the beginning of really demonstrating, with all the difficulties that
13 have been encountered by every participant in the courtroom, that justice can move
14 forward in a way that is meaningful to the international community, to the Sudanese
15 people, and to the Darfuri people that have been so awfully -- that have so awfully
16 suffered the crimes we say have been proven by the Prosecution in this case.

17 With your leave, Madam President, your Honours, Mr Julian Nicholls will take
18 the floor. Thank you.

19 PRESIDING JUDGE KORNER: [10:03:09] Yes. Thank you, Mr Khan.

20 Mr Nicholls. Just before you start, Mr Nicholls, if you're going to deal with some of
21 the questions, which, as I know -- sorry, as you know, we said you didn't have to, we
22 could deal with them later, could you indicate which question you're dealing with.

23 MR NICHOLLS: [10:03:29] Yes, I will try to do that. What I plan to do,
24 your Honours, is just try to foresight that when -- I've tried try to weave it in a bit, but
25 I will give a little notice that I am now dealing with a question.

1 PRESIDING JUDGE KORNER: [10:03:44] Thank you. That would be very helpful
2 for us.

3 MR NICHOLLS: [10:04:05] Could I ask that our slide show be brought up.
4 Good morning, your Honours. Good morning to my friends. Good morning to
5 everybody in the courtroom.

6 I'll begin today where I did in my statement at the opening of this trial. I'll say it
7 again, the militia leader who terrorised Wadi Salih, Mukjar in 2003 to 2004,
8 Ali Kushayb, is in the courtroom with us today. He's sitting over there behind his
9 counsel.

10 I said we would prove it, and we have.

11 The trial has proven, beyond any reasonable doubt, that the accused with us here
12 today is the man responsible for the charged crimes committed in Kodoom and
13 Bindisi, Mukjar and Deleig.

14 What I'm going to do first, your Honours, is discuss just some of the testimonial and
15 documentary evidence that the accused is the person criminally responsible for
16 the charged crimes.

17 The evidence is overwhelming. On the slide in front of you, you see 16 Prosecution
18 witnesses who knew the accused Abd-Al-Rahman by both his legal name and
19 Ali Kushayb. I won't read them all out, I did it earlier in practice and it took too long,
20 but there are 16 of them.

21 And there I'll refer you to -- your Honours to para 9 in annex -- of our brief and
22 annex 26.

23 And these witnesses are not all the same. The Prosecution interviewed and called
24 witnesses before your Honours who knew the accused personally and professionally,
25 before, during and after the charged crimes.

1 These witnesses came from a wide range of backgrounds. And, your Honours, for
2 confidentiality reasons, I'll show one -- I'm trying to stay in open session for
3 everything I say, but a couple of slides I won't broadcast.
4 So if we could go to the next slide, which should not be broadcast, please.
5 And there you see, your Honours, examples of the types of witnesses we called in this
6 case that knew the accused.
7 And just, again, sorry -- for -- to be very careful, I won't read through all of these
8 categories, but you see that it is from a wide range of backgrounds.
9 I won't repeat what's in our brief. I'll refer you to paras 9 to 27, and again annex 26,
10 for examples of persons who were familiar with the accused and knew him quite
11 well.
12 But I will just touch on a few examples.
13 P-643 knew the accused in Garsila for five years before the events and visited him in
14 his undisputed pharmacy in Garsila many times.
15 P-643 interacted with him in 2003 and '04, invited the accused to events, and saw him,
16 knew him as a *musa'id* in the CRF after the charged events.
17 P-883 knew the accused since the late 1990s or early 2000s, long before these incidents,
18 bought medicine from him, the accused, in his pharmacy in Garsila. And, again,
19 knew him after the charged events when he was in the CRF in Rahad Al-Berdi and
20 had trained in El-Obeid, allegedly. And also knew about the assassination attempt
21 in Nyala that was discussed during the trial.
22 P-905 had known the accused since 2000, visited his pharmacy, sometimes went into
23 him multiple times a day, and knew some of his family. And P-905 will probably be
24 discussed quite a bit over the course of this closing, but he interacted with him, as
25 the evidence shows. Again, knew of him as a *musa'id* in the CRF in Rahad Al-Berdi

1 following the charged crimes.

2 Finally, very quickly, 874, P-874, knew the accused since around 1991 or 1992, and

3 would interact with him around once a month when he went to his business.

4 This is laid out in paragraphs 16 to 19, your Honours, what I've just gone through.

5 Documents and documentary evidence also show that Abd-Al-Rahman is the person

6 widely known as Ali Kushayb. Here, your Honours, I will try to be addressing your

7 questions 3, 5 and 6, at least in part.

8 I'll run through some of this documentary now. Essentially, paragraphs 28 to 51 of

9 our brief is where the focus is on these.

10 Now, first, I'll remind your Honours that the accused was known by his full -- by his

11 legal name and as Ali Kushayb by the Government of Sudan when it investigated him

12 for the 2004 crimes in Deleig and elsewhere.

13 And they -- they began their investigation, you'll see, very, very shortly after

14 the incidents in Deleig. Well before the issuance of the ICC, the first arrest warrant

15 for Mr Abd-Al-Rahman.

16 The National Commission of Inquiry, or NCOI, as we call it, was created on

17 8 May 2004 to investigate violations in Darfur. So, again, really quite soon after

18 the mass killings, notorious mass killings in Deleig. And its report was published in

19 January 2005.

20 As part of its investigation, the NCOI met with National Council members from

21 the states of Darfur on 1 June 2004 and in this meeting a member from Garsila stated

22 that Lieutenant Ali Muhammad Ali, nicknamed Kushayb, liquidated 127 people

23 outside of Deleig. That's on the slide in front of you.

24 The NCOI further report -- further stated that, on the basis of witness accounts,

25 the leader of the Fursan armed militia Muhammad Ali Kushayb took detainees to

1 the police area on Friday, 5 March 2004 and supervised them being killed and buried.
2 I will give the English ERN for that, your Honours. It's DAR-OTP-0116-0380.
3 As an aside, the Defence claim that the NCOI, at least I understand they claim, was
4 part of a grand conspiracy that I'll talk more about later, to feed their client to the OTP
5 to deflect attention from, quote -- quoting the Defence at para 52, "Perpetrators with
6 senior positions within [the] government or army".
7 In other words, the NCOI tried to fit up Mr Abd-Al-Rahman to draw attention away
8 from the real killers.
9 It's worth noting that in the document provided to us, "Kushayb" appears once in this
10 166-page document, on page 73.
11 The Prosecution has made submissions in our brief about the authenticity and
12 reliability of the accused's interview with the GoS public prosecution from 2006. I'm
13 not going to repeat all those arguments in full. It's at paragraphs 28 to 41 of our brief.
14 And Mr Jeremy, following me, will discuss some points of this interview. But here
15 I'm going to question 5, which was about corroboration of the interview by a witness.
16 Again, I'll speak carefully to stay in open session, so it may sound slightly oblique to
17 your Honours.
18 The evidence of this witness, the one that your Honours asked about, says that in 2007
19 a request was received from the prosecutor's office in Sudan, the domestic
20 prosecutor's office, not the ICC, to send somebody named Ali Kushayb from
21 a relevant unit in Wadi Salih to Khartoum to be interrogated. The evidence of this
22 witness is that it was reported back to the prosecutor's office in Khartoum that there
23 was nobody by that name, Ali Kushayb.
24 So the request was made again, shortly after, and this time to send Ali Muhammad
25 Ali Abd-Al-Rahman for interrogation by the Sudanese prosecution in Khartoum.

1 And that's -- I'll give you the reference, your Honours, DAR-D31-00000274, pages 4 to
2 6.

3 This person testified as well and, since we went through what I said, but
4 the important point, I'll move a little quicker, the witness stated:

5 "And so it was first in 2007 that I heard it that they", the Government of Sudan,
6 the office of the prosecutor, "were referring to Ali Kushayb and Ali Muhammad Ali
7 Abd-Al-Rahman as the same person."

8 That's T-151 at page 20.

9 That same Abd-Al-Rahman that was sent to be interviewed in Khartoum by the office
10 of the prosecutor there was the accused in this courtroom.

11 So is the interview reliable? Yes. This witness, answer to your question 5, confirms
12 that before the interview takes place the general prosecutor referred to the person
13 they needed to meet to interview by both Ali Kushayb and his full name Ali
14 Muhammad Ali Abd-Al-Rahman.

15 And you see on the slide before you just part of the interview itself which confirms
16 that.

17 Just a couple of quick points regarding this interview.

18 Well, we know, in fact, from the witness I just talked about, as well as the documents,
19 that the accused was interviewed under his full name and nickname by
20 the prosecutor's office in Khartoum on 28 and 29 November 2006.

21 P-643 stated in his testimony that the man he knew as Ali Kushayb was in Khartoum
22 under house arrest while serving in the CRF about this time.

23 And finally, the witness referred to in question 5 said that he didn't remember
24 the month that this happened, but he remembered it in 2007. I'll submit that's not
25 a huge issue when the interview was at the end of November 2006. That many years

1 later, the witness got the year slightly wrong.

2 So short answer to your question provides great corroboration that the interview took
3 place.

4 Moving along, I'll just go through, your Honours, some of the biographical details
5 very quickly. Uncontested. I believe all of them showing biographical details
6 shared by Mr Abd-Al-Rahman, the accused here, with the person that we can see
7 from the interview. I won't go through all of them, your Honours, but they are up in
8 the slide in front of you. That comes out of the interview.

9 I'll move on now. Further corroboration for this interview, and also the clear fact
10 that the accused is a person known as Ali Kushayb. Our meetings between
11 the Prosecution and the Government of Sudan in Khartoum that occurred in January
12 and February 2007, and Defence may talk about these as well. Before these meetings
13 took place, and there was a degree of cooperation at that early stage that was better,
14 on 9 December 2006 -- I'll continue until I hear another "bong".

15 Now, before these meetings, on 9 December 2006, this is 10 days after the interview
16 we've just discussed of the accused in Khartoum. Can I continue?

17 Okay, again, on 9 December 2006, 10 days after the interview of the accused in
18 Khartoum, the Government of Sudan Ministry of Justice sent the OTP a letter listing
19 suspects who had been arrested based on evidence of their involvement in the Deleig
20 and other crimes. Number 2 on that list was "Ali Mohammad Ali Abdul Rahman,
21 also known as Ali Koshein." At this point, "Koshein". That's DAR-OTP-0123-0002
22 at 0003.

23 Following this letter, meetings were held on February 1, 2007, and in that meeting
24 Government of Sudan representatives told the Prosecution, correcting the nickname,
25 that Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb, had been

1 arrested on 28 November 26 -- 2006 and interviewed while being held in custody.
2 So very shortly after this interview in Khartoum, OTP visits Khartoum at that time,
3 2007. Thirteen years before we even see this interview, the GoS confirmed that they
4 had -- and we'll see why in a minute, but they confirm that they had arrested the
5 accused and interviewed him.
6 And they gave the correct date, even, of the interview, which we know was from 28 to
7 29 November 2006.
8 After these meetings, the Prosecution, or during these meetings, requested to
9 interview the accused who had been identified by the name Ali Muhammad Ali
10 Abd-Al-Rahman and Ali Kushayb.
11 On 31 January 2007 the Government of Sudan sent us a letter, sent the OTP a letter
12 refusing our request to interview Ali Muhammad Ali Abd-Al-Rahman, also known as
13 Ali Kushayb, based on complementarity.
14 So we'll take a quick look at that letter. I think there's a pop out possibly.
15 And here we see in this letter that interviews, not of suspects, but interviews with
16 the National Investigation Commission went very well. We can all read what it says.
17 And then it states that: "In particular they [the OTP] have requested to interview
18 under Article 55 Hamdi Sharef el Din and Ali Mohammad Ali Abdul Rahman, also
19 known as Kosheib."
20 The letter continues -- again, for time, I won't read through all of this, but
21 the government invokes complementarity, stating: "Though the Court has a general
22 jurisdiction over the crimes alleged to have been committed in Darfur, however it
23 would actually assume such jurisdiction under in accordance with the principle of
24 complementarity enshrined in the Rome Statute."
25 And then goes on to say how they are investigating these crimes.

1 So this is, again, your Honours, strong evidence the interview is authentic. OTP
2 meets with the GoS in January/February 2007, the interview corroborates key details
3 of the -- the meetings corroborate key details of the interview that we don't have till
4 much later.

5 And I'll just, I'll respond to some of the Defence arguments later, but the constant
6 theme the man in the courtroom is a scapegoat from the GoS suggests, your Honours,
7 it's a bit strange if the GoS is trying to set up Abd-Al-Rahman for all of their crimes
8 that, one, they refuse to allow us to interview him, two, they say we don't have
9 jurisdiction to prosecute him, based on complementarity. So the person being set up,
10 they won't let us prosecute, and they refuse to surrender him for 13 years after
11 the warrant comes out. Not a very affective frame job.

12 Coming now, your Honours, to question 3 of -- that you posed to us. And this is
13 about whether or not we tried to do more to authenticate that interview by finding
14 and interviewing persons present during the interview of the accused.

15 We did try. I don't think this came up in -- I can't remember if this came up in any
16 argument in the trial before, but we did investigate. We had the file, the interview
17 of the accused, there were names of certain people who were taking part in the
18 interview from the Government of Sudan side. We wanted to interview them, of
19 course. We tried, we weren't able to do so.

20 But what we did introduce in evidence and bring before your Honours was
21 a different form of authentication of that interview, which is two witnesses, P-878 and
22 P-883, who had been interviewed as part of this very same enquiry and were able to
23 authenticate their interviews.

24 Defence makes the point that if you look at the interview that we received from
25 the Government of Sudan of their client, it looks different from the interviews of

1 witnesses 878 and 883.

2 First of all, I'll note that when they showed this -- the interview to their own expert
3 witness, D-16, they didn't put any questions to him about -- about this -- about these
4 other interviews and seeing if they matched. They ignore that part of his testimony.
5 But the point I would make is that you would expect these documents to look
6 different, in the sense that one is of a suspect interview, it's the equivalent of a 55(2)
7 interview in the Office of the Prosecutor, a very formal setting, compared to these
8 other witness interviews, so you would expect it. It's not surprising that it looks
9 different, since it's a completely different type of interview of a different person -- a
10 different -- by a different -- in a different setting.

11 I'll move on now to some more questions about documents, and this will go to
12 question 6, your Honours, that you posed to us.

13 Again, trying to stay in open session the whole time, I'll refer to these documents as A,
14 B, C, D and E, as you did in your question, if that's all right, rather than -- in order to
15 stay in open session. And you asked about the indicia of reliability for these
16 documents.

17 Starting first with documents A and B on your list, these date from before the arrest
18 warrant was issued and deal with the accused. These are two documents provided
19 by one witness, so they can be dealt with together.

20 First of all, both documents A and B provided by the same witness, the witness
21 testified how they come from the same collection of documents, the same place of
22 storage, and they both mention Ali Kushayb.

23 First document a - again, I won't bring that up, because it's confidential - but several
24 details in that document match well what we know about the accused as Ali Kushayb.
25 He's described in document A as an *agid al-ogada*, commander of the Fursan, that he

1 had a deputy named Bonjouse. And the Defence concede in paragraph 791 in their
2 brief that Bonjouse was Ali Kushayb's deputy. That he joined the CRF around 2005.
3 He had the rank of *musa'id*, warrant officer. And he was leader of the CRF in
4 Rahad Al-Berdi.

5 Coming to document b, again, same type of document, from the same place, from
6 the same witness. I won't go through it in detail. You can find our discussion of
7 that in paragraph 44, your Honours.

8 In this document, which is from 2006, so a couple of years after the Deleig incident,
9 the last crime charged, again, the biographical details match: Ali Kushayb is
10 mentioned as the commander of the Al Fursan, otherwise known as the Janjaweed by
11 some people. Again mentioned with Bonjouse, who at this point he is having some
12 difficulties with and tensions with.

13 The reliability of these two documents can be discussed from question 6(a) and (b)
14 can be discussed together because they came from the same source, P-547. They've
15 been authenticated by that witness in his testimony. And I'll point you especially to
16 how the witness carefully described the chain of custody and the process, where
17 the documents were stored, how he had access to where they were stored, how he
18 physically obtained them, how he retained them and encrypted them, and then how
19 he finally delivered them.

20 And, your Honours, that's at T-50-CT3, page 13 to page 21.

21 MR LAUCCI: [10:30:53] Sorry, colleague, I'm informed that there is no interpretation
22 in Arabic at the moment.

23 MR NICHOLLS: [10:31:03] I'll stop for a moment, then.

24 MR LAUCCI: [10:31:10] I have a sign that now it works.

25 MR NICHOLLS: [10:31:27] Defence of course cross-examined the witness

1 extensively on this point, we say failed to make any dent in the reliability of these
2 documents.

3 According to one exchange, P-547 addressed this challenge and attack from
4 the Defence and he stated very articulately that there was not a scintilla of evidence
5 from the Defence, this cross-examination, to show that the information he provided
6 was untrue, and he was right. That's T-51-CT2, page 73.

7 He also testified and verified in his testimony and explained how he could see that
8 there was no tampering with those documents before he -- before they came to
9 your Honours.

10 And, finally, he explained to your Honours how it was really impossible, given
11 the nature of the documents and where they were stored, that any of these documents
12 could have been fabricated before he obtained them. Because the purpose of these
13 documents and where they put them meant that the information had to be correct and
14 had to be authentic.

15 He did, in answer to questions from your Honours, actually say now he couldn't say
16 that everything in every document was correct, but that those documents were
17 authentic and reliable.

18 And just to finish off on these two, our friends have provided no evidence whatsoever,
19 or credible argument, to show that these documents were fabricated or tampered with
20 in any way.

21 Moving on to the document c in your question 6, your Honours, and I hope it's okay
22 if I refer to them that way.

23 This one actually I think can show. This is a Ministry of Defence document, I don't
24 need to be quite so careful with one.

25 It's from a different source than the first two I just described. And it shows that in

1 2005, again after the charged crimes, the accused received weapons - pop out,
2 please - from the GoS in his full legal name, Ali Muhammad Ali Abd-Al-Rahman,
3 two years before the warrant was issued.

4 And we don't have the translation up here, but I'll note that the accused, Ali
5 Muhammad Ali Abd-Al-Rahman, is listed at number 5 of this document as receiving
6 vehicles and weapons from the Ministry of Defence.

7 Number one on the list is Sheikh Musa Hilal.

8 And the witness who provided this document and it was introduced through towards
9 your Honours explained how this document was found in a folder or file under
10 the name Ali Kushayb, the Ali Muhammad Ali Abd-Al-Rahman supply document
11 under the file Ali Kushayb.

12 Very briefly, your Honours, as with the previous documents I discussed from
13 the other witness comes from a credible witness. If you look at his profession and
14 where he was -- and where he was at the time, it's clear he had a position to access
15 and obtain these documents. He provided a detailed account of the database and
16 how he had access to this document and what types of documents were contained in
17 that database and why this one would be there, and the chain of custody again
18 abundantly clear. And how he found this document in essentially a routine way.

19 Again, I'll discuss it more later, but Defence arguments, these are all forgeries in order
20 to frame their client. It's a document from a year after any of the charged crimes just
21 saying that he released weapons. There is no evidence whatsoever of fabrication by
22 the accused.

23 I'll have to speed up a little bit, your Honours.

24 Documents d and e, which are about destroying Bindisi, I'll be really quick on these,
25 your Honours.

1 I can discuss them together, because, again, they're from the same source, they were
2 hand copied under the same circumstances. The witness explained that. We deal
3 with this in our final trial brief at paras 49, 170 and 260.

4 But just the points I'll make quickly, your Honours. Of course, these are handwritten,
5 it's a different story than the other ones we've gone through. But I'll make these
6 points.

7 The witness who explained -- who introduced these documents and copied them was
8 very close, which my friends ignore, to the official's office where he took them from.

9 He was trusted by that official. He would have been allowed to wait in the office,
10 that was routine. The Defence make the argument it's impossible that anybody

11 could just wander in and start looking at these documents. He wasn't just anyone.

12 He was somebody very close, who worked with that official, the office they came
13 from.

14 He had no other way to preserve this evidence other than to hand copy it, because he
15 didn't have a cell phone with a camera on it, he couldn't take them to a copier.

16 The only thing he could do to preserve and copy what he thought was important to
17 was hand copy them the way he explained. These aren't huge long documents, it
18 wouldn't -- and the witness explained how it didn't take that long to copy them. He
19 was able to do it quickly. Fortunately, before he was seen.

20 The Defence argue that it would be illogical that he put all these details into
21 the documents, including headers and things like that. But if you look at this
22 witness's background, what he did, where he worked, they're trained to preserve
23 detail and to make -- he wanted to make as accurate a copy as possible.

24 Finally, the witness was Fur and he had seen documents expressly directing
25 the destruction of his people. It's not incredible that he would decide he wanted to

1 preserve those.

2 PRESIDING JUDGE KORNER: [10:38:34] Mr Nicholls, can I just say something very
3 quickly.

4 As I said -- as we said in our clarification note, we appreciate that some of these
5 questions require somewhat lengthy answers and we -- we don't want you to divert
6 from what you actually want to say to answer our questions, we can deal with them
7 later. So if you want to cut out ...

8 MR NICHOLLS: [10:38:57] Your Honours, I may cut some points then.

9 Now, dealing still though with a question, question 1, the videos. We come to
10 the videos now. And you asked questions about those in question 1.

11 There is no dispute that it is the accused, Mr Abd-Al-Rahman, who's in the courtroom
12 in all three of the videos. That is not contested at this point.

13 For all of these, your Honours, I'll rely on and try not to reiterate too much what's in
14 paragraph 9 to 11 and 62 of our brief, but I will make a couple more points.

15 First, what we call the surrender video. Let's recall, the accused provided this video
16 stating his full name and nickname through his contact P-869 to the OTP.

17 In the video, I'm only going to play the first few seconds, he states, "I am Ali
18 Muhammad Ali Abd-Al-Rahman, and my nickname is Kushayb".

19 Let's play the video, please.

20 (Viewing of the video excerpt)

21 MR NICHOLLS: [10:40:36] There is no evidence of duress, coercion, anything
22 regarding this video where he sent to the Office of the Prosecutor stating truthfully
23 that his nickname is Kushayb.

24 There is no issue of source, there is no issue of chain of custody.

25 The video should be given great weight, your Honours, we say, as to the proof of

1 the link between Abd-Al-Rahman and the nickname Ali Kushayb. We don't need
2 this video to prove it, but it is a strong, clear piece of evidence which does prove that
3 it is him.

4 The Defence in their paragraph 187 state that your Honours can infer - they haven't
5 presented any evidence on it - that the accused had a burning desire to clear his name
6 and surrender. You wonder why, if that's the case, he waited 13 years to do so, until
7 after his protector, President Bashir, was deposed. The Defence also make
8 the argument that the accused sent this video and surrendered because he is
9 frightened, essentially, that the Government of Sudan would arrest him, as they had
10 President Bashir, Hussein and Harun, also on warrants.

11 Well, I'll just make the point, your Honours, if that was what was in the accused's
12 mind when he sent that video to surrender, he should have testified about that. His
13 lawyers can't testify for him.

14 And the Defence made a truly absurd argument, your Honours, and I say with
15 respect, that somehow the Office of the Prosecutor would not have accepted
16 the accused -- would not have accepted the surrender unless he said his nickname
17 Ali Kushayb.

18 Why did he say, plainly, his full name and his nickname is Ali Kushayb?

19 Your Honours, often the simplest answer is the correct one, he said it because it is his
20 name.

21 Now, the other two videos, your Honours, we commonly refer to as the teacher video
22 and the Um Sory video. Many witnesses, including Defence witnesses, recognise
23 the accused in these two videos.

24 Defence initially contested that it was their client in these two videos, put us to our
25 proof, wouldn't say it was him, until their own witnesses confirmed that it was

1 the accused in these videos. And at paragraph 93 they note that they do not dispute
2 this any longer.

3 The teachers video, your Honour, for time I'm not going to play it, your Honours
4 have seen it before. Defence Witness D-1, D-5, D-8 confirm that it is the accused in
5 this video. D-8 was -- well, I'll skip that for confidentiality reasons.

6 This video, for everyone, the accused seen in this video, it's from around 2019/20 after
7 the fall of President Omar al-Bashir, you can tell that from the context of the video,
8 and the accused is addressing a crowd in Rahad Al-Berdi about a problem with
9 a teacher in his capacity as a warrant officer in the CRF.

10 The main point I want to just make here, in addition to the video showing how
11 charismatic and what a good speaker and presence the accused has when he is acting
12 as a leader there in Rahad Al-Berdi, is at the end of the video which we have on
13 the slide a person in the crowd salutes the accused, praises the accused by shouting,
14 "Long live Ali Kushayb!"

15 And we can take that down now.

16 I will note the Defence's explanation, your Honour, for why somebody in the crowd,
17 Rahad Al-Berdi, 2019 or 2020, calls their client Ali Kushayb in a friendly positive
18 manner. This is Defence final trial brief, paragraph 194:

19 "But naturally enough, as more people became aware of the Court's interest in
20 Mr Abd-Al-Rahman, the more the community would have become aware of
21 the association between him and the name by which the Court invariably referred to
22 him. Thus did he become increasingly, albeit involuntarily, linked to the nickname
23 Ali Kushayb. That being the case, it is understandable that an excitable member of
24 the crowd during the speech depicted in the teachers Video may have wanted to
25 show his or her support of Mr Abd-Al-Rahman's robust view of young persons who

1 are disrespectful of or even assault teachers in the town, and to have wished long life
2 to Mr Abd-Al-Rahman using the name by which, by that date, he had
3 become - against his will and as a result of the OTP's actions - closely associated."
4 That is a pretty contorted argument, your Honours. In order to show support for
5 their client, who is not Ali Kushayb, a member of the crowd saluted him using
6 the name of a notorious Janjaweed criminal wanted by the ICC for murder, rape and
7 other serious crimes.
8 And the Defence here appear to be saying that everyone in Rahad Al-Berdi would
9 have known in 2019 that the accused, the head of the CRF and a prominent person in
10 their area, was known as -- by the nickname Ali Kushayb.
11 Just to point out, that's an evolving defence throughout this trial. They took
12 the opposite position in their opening.
13 In their opening my friends claimed that many witnesses never even heard the name
14 Kushayb until the news surrounding his arrest. That wasn't working very well, so it
15 changed mid-defence and everybody knew about him.
16 Let me just take you to what they said in the opening, and this is regarding
17 Witness D-32. It's T-129, your Honours, at page 23:
18 "But if Mr Abd-Al-Rahman had been known by the nickname Ali Kushayb after 2004,
19 D-32 would know about it.
20 He will testify that never once in the entire time that he knew Mr Abd-Al-Rahman,
21 over many years, never once did he call Mr Abd-Al-Rahman Ali Kushayb, never once
22 did he hear someone else call Mr Abd-Al-Rahman Ali Kushayb."
23 So he never heard somebody yell "Long live Ali Kushayb", as we saw in the video:
24 "He too will say that the only nickname he ever heard anyone calling
25 Mr Abd-Al-Rahman was Abu Nasser. Abu Nasser, and nothing else."

1 Here's the line, your Honours:

2 "The first time D-32, in common with many other witnesses, in fact, heard the name
3 Ali Kushayb was in connection with the defendant in the context of his surrender to
4 the custody of the Court."

5 So that was the theory that was promised from D-32 in the opening, he never even
6 heard the name Ali Kushayb until the accused surrender.

7 And I'll talk later about how in fact when he testified D-32 admitted he'd heard that
8 name all the time since 2003.

9 Finally, the Um Sory video, I see it's already up.

10 I'm going to try to speed up a bit, your Honours.

11 But, again, in his CRF uniform, this video was filmed, we've learned from Defence
12 witnesses, in Um Sory, which was in the area of responsibility of the CRF,

13 Rahad Al-Berdi. And this speech is sometime between 2013, we don't know exactly
14 when the accused is speaking here.

15 Again, uncontested now that it is him. D-1, D-3, D-5, D-32, D-39 all say the man we
16 see in this video we're about to play is the Defence's client, Mr Abd-Al-Rahman.

17 I'll play part of that video, which is about a minute and 40 seconds, your Honours,
18 from 04:06 to 05:47 of the video.

19 If we could play that, please, Claire.

20 (Viewing of the video excerpt)

21 MR NICHOLLS: [10:51:40] Abd-Al-Rahman, heard here saying to a large group of
22 people supporting him, 20 people filming him with their cell phones, talking about
23 a tribal conflict, he says, "We'll spray them with blood."

24 He talks about his direct link to President Omar al-Bashir, brags about it, and
25 supplying President al-Bashir. Which is kind of a strange thing for a humble retired

1 pharmacist to say.

2 He's also heard, your Honours, bragging, "What Radio Dabanga says is true because

3 I've killed a great many people and I'm still going to kill people."

4 Here's what Radio Dabanga had to say about Ali Kushayb.

5 One thing Radio Dabanga says about him is that he's a military -- militia leader,

6 excuse me, wanted by the Criminal Court. The accused says, "What Radio Dabanga

7 says about me is true." He's saying: I am a militia leader, I'm the person wanted by

8 the ICC.

9 He says that surrounded by supporters who are filming him and chanting their

10 support.

11 In this Radio Dabanga article, probably from around the same time, regarding

12 the conflict with the Salamat which the accused led and fought in, it states -- again,

13 what I've just said about him being a the militia leader wanted by the Criminal Court:

14 "... Ali Kushayb, who commands the Abu Tirah Forces, attacked the area and

15 surrounding villages with 15 armoured Land Cruisers, reinforced by Military

16 Intelligence Services' troops under the Sudanese army."

17 And he described the mobilisation of Ali Kushayb of the Abu Tirah forces, the CRF.

18 The Radio Dabanga articles are a clear reference to the head of the CRF Ali Kushayb.

19 When the accused says "what Radio Dabanga says about me is true" he is saying, "It's

20 true I am Ali Kushayb." It doesn't make any sense otherwise that's he's responding

21 to that.

22 So just to sum up, your Honours.

23 In the video he sent to the Court via his contact, P-869, very simply introducing

24 himself, the accused says, "My nickname is Kushayb."

25 In the teachers video he is saluted by the cheer "Long live Ali Kushayb."

1 In the Um Sory video he brags that he will kill more people, says what
2 Radio Dabanga about him, Ali Kushayb, is true. And in fact it is true, he was
3 speaking honestly there when he said "What Radio Dabanga says about me is true."
4 Plain, simple, reasonable, sane examination of each video can only lead to the only
5 rational conclusion, the accused here in the courtroom who's in those videos is
6 Ali Kushayb.

7 Let me very quickly now, your Honours, can I ask are we going to 11 or are you going
8 to go a little bit longer because we started a bit late?

9 PRESIDING JUDGE KORNER: [10:55:29] We can. I mean, we'll have the break at
10 some stage, but whenever suits you, Mr Nicholls.

11 MR NICHOLLS: [10:55:38] Let me briefly address - I'm done with the videos in your
12 question 1 - briefly address, excuse me, a recurring misstatement that appears many
13 times in the brief. Paragraph 60 is where the Defence lays it out. And I think this is
14 important as a way to look at how the Defence are arguing their case.

15 It's up on the slide. I won't read it all out because of the timing. But we see in
16 the middle that the Defence are talking about an exchange. They only put two
17 lines of the transcript in. My friend, Mr Laucci:

18 "Is my learned friend suggesting that the identity of the person indicted was not an
19 important information?"

20 Mr Nicholls: [me] No, it was not, because we knew that Mr Abd-Al-Rahman was
21 Ali Kushayb at that point and that [that] issue had not been raised."

22 Now, the language of paragraph 60, how did they characterise those four lines? It
23 shows, proves that the OTP seriously breached its obligations under Article 54(1)(a)
24 such that there was "a fatal blow to the fairness of the proceedings. The OTP never
25 complied with its duty to investigate, adequately or at all, exculpatory evidence.

1 [The OTP] conducted its whole investigation under the blinkered assumption that
2 [the accused] was Ali Kushayb, without ever asking itself the question of whether this
3 really was one and the same person. [...]
4 There could be no better admission", than what I said there, "no better admission that
5 the OTP never considered [...] its duty to investigate exculpatory evidence. [...]
6 [The OPT's] investigation was 100% focused on collecting incriminating evidence, and
7 [we were] blind to making the most basic enquiry into the identity of the suspect."
8 And that the senior trial lawyer admitted all of what I have just said, all of these
9 terrible, unethical failings as a -- in a surprisingly candid admission.
10 And then they note, apparently trying to imply that you said us, the OTP, failing to
11 do all these things was a good one, calling the admission a good one. That's a plain
12 reading of paragraph 60.
13 And this goes to, your Honour, a point I'll make later and you'll see from my
14 colleagues, when the Defence say something in their brief, you really, really, have to
15 check the cites, you really have to look at the transcript, you really have to look at the
16 witness statement, you really have to look at the document because sometimes, we'll
17 have some examples later, they'll cite that a person was never in a room, you look at
18 the transcript, the testimony is that they were in the room. This is an example of that,
19 your Honours. I'm sure we've made some mistakes, but this is truly extreme, what
20 you see in the Defence's brief.
21 What was actually said in court that my friends did not include in their brief, this is at
22 T-102, page 15, line 8 to page -- yeah, a problem with the cite there. Anyway, it's
23 T-102, page 15, going on to the next page, I believe.
24 This came about because I objected to the Defence characterising that in 2016 there
25 was a gross problem with a witness not saying in a statement that he knew that

1 Ali Kushayb, his name was Ali Muhammad Ali Abd-Al-Rahman. I made the point,
2 saying, "We're talking about the statement of 2016?" That was confirmed. I then
3 responded to my friend, "There was no important issue under that rubric", not a very
4 good answer, "at that time."
5 And then we get to the exchange: "Is my learned friend suggesting that the identity
6 of the person indicted was not important information?"
7 My response: "No, it was not, because we knew that Mr Abd-Al-Rahman was
8 Ali Kushayb at that point and that issue had not been raised."
9 And then your Honours -- your Honour, in fact, when you say that it "is a good one"
10 state: "I think the point that Mr Nicholls is making, Mr Laucci, which is a good one,
11 [is that] until your client appeared [...] nobody knew [was] that he was going to deny
12 [being] one and the same person."
13 And, of course, in 2016, much of the evidence we've already discussed, not all of it,
14 was known to us. We'd been investigating for all this time, the Prosecution had
15 already then ample evidence beyond reasonable doubt in our possession that
16 Abd-Al-Rahman was the accused, had the nickname Ali Kushayb, and we never
17 knew and couldn't have known that somebody was going to surrender under
18 a warrant in his name and Ali Kushayb and then say he's not Ali Kushayb. We
19 never would have thought - and of course anything is possible - that the Defence
20 would have gone along this line, which has, we say, proven to be quite, quite farcical,
21 in fact.
22 And, your Honours, they appear to tarnish you by suggesting in the way this is
23 written that the Prosecution made some horrible admission of misconduct, never
24 investigating exculpatory information, and you said, yeah, that's a good one. So it's
25 just grossly misleading.

1 I spent all that time on that because it appears throughout the brief, this admission
2 which proves that the trial was unfair and has to stop.

3 PRESIDING JUDGE KORNER: [11:02:18] Would that be a good place to break?

4 MR NICHOLLS: [11:02:21] Yes, your Honour, thank you.

5 PRESIDING JUDGE KORNER: [11:02:23] Right. We'll have the break until 11 -- I
6 think we'd better say 11.35 because of the delay. Yeah, thank you.

7 THE COURT USHER: [11:02:35] All rise.

8 (Recess taken at 11.02 a.m.)

9 (Upon resuming in open session at 11.39 a.m.)

10 THE COURT USHER: [11:39:13] All rise.

11 Please be seated.

12 MR NICHOLLS: [11:39:43] Thank you, your Honours.

13 I will continue. I will try to speed up a little bit.

14 First, two quick points. We are joined by Antonella Giordano in this session.

15 Second, I meant to mention earlier in regard to the authenticity of the interview of the
16 accused by the attorney general's office that Defence witness D-16, at T-131, page 76,
17 when shown the document stated:

18 "In its appearance, this document pertains to probes carried out by the Prosecution or
19 the attorney general".

20 So, authentically, hadn't seen that document before, but recognised it as a correct
21 format that you would expect for that type of document.

22 I will continue now talking a little bit about the Defence in this case, and, well, the
23 nature of the Defence, I will leave it at that.

24 We can bring up that slide, please. It's a multi-layered Defence, your Honours. The
25 Defence argues, one, on and off this came up, sort of abandoned, Ali Kushayb did not

1 exist, he's some kind of mythical figure that may not have existed. That came up at
2 least on one occasion.

3 It's actually at T-31 --

4 PRESIDING JUDGE KORNER: [11:41:10] I will just stop you there very quickly.

5 My understanding is, and the Defence can deal with it, that that was abandoned. I
6 agree, it was run at the beginning of the case and then it never --

7 MR NICHOLLS: [11:41:21] No, it has been abandoned, that's not in dispute.

8 Second, if Ali Kushayb existed, he is not the accused. There is no evidence of
9 another individual named Ali Kushayb fitting this same description.

10 Third, if he was the accused, he did not have a position of authority.

11 Four, if he is the accused and he has a position of authority, he committed no crimes,
12 contradicted by reams of witness evidence of persons who knew him for years.

13 Five, if he was the accused and had a position of authority and committed the crimes,
14 he had no way of knowing that they were unlawful or that he could be punished.

15 Six, if he knew his actions were illegal and that he could be punished, he was under
16 duress. Even though duress has not been pleaded as a defence, we have heard on
17 and on this could be an offence under the state, the punishment could be capital
18 punishment, et cetera.

19 And then, seven, back and forth about an alibi where essentially now it's clear there is
20 no alibi.

21 Your Honours, forgive me, but it just reminds me of what we used to call the four dog
22 case defence, which is: First of all, I don't have a dog; two, if I have a dog, it doesn't
23 bite; three, if I had a dog and it does bite, it didn't bite you; and, four, if I had a dog
24 and it did bite, and it bit you, then it's your fault because you provoked my dog.

25 Essentially what we have here in this trial is an expanded version of that defence.

1 Moving on, briefly, there was no conspiracy - I have talked about this a bit - by the
2 GoS to frame or blame an innocent pharmacist named Abd-Al-Rahman. The
3 Defence have argued that, that at least since 2007, the Bashir regime had been trying
4 to set up their client.

5 One point I'd like to make there is if that was the case, if the Bashir regime had been
6 falsely leading the Prosecution to prosecute their client, why, if he hadn't done
7 anything, if he hadn't been involved in this conflict, and the "real criminals", Al-Bashir,
8 Hussein and Harun, had been arrested following the fall of the Bashir regime, why do
9 they say that the new government in that transitional period would have carried on
10 this conspiracy, would have carried on scapegoating their client?

11 And, again, it just doesn't make any sense that President Bashir and his government
12 and cronies would randomly pick a nobody pharmacist from Garsila in order to set
13 up as a Janjaweed leader, and there's nothing in the GoS's behaviour from 2007
14 onwards that would indicate they wanted us to prosecute him.

15 I already discussed how they refused to surrender him and wouldn't let us interview
16 him.

17 If that had been the intent of the GoS, to set up Mr Abd-Al-Rahman, as the Defence
18 argued, to draw attention away from themselves, it really didn't work very well, did
19 it, since his name first appeared along with Harun, who ostensibly would have been
20 one of the persons they were trying to protect on our warrants, and that we then got
21 two warrants for President Al-Bashir and one for Hussein, the exact people the
22 conspiracy was meant to protect.

23 It's also been argued - I will do this briefly - that the witnesses from insiders, victims,
24 persons who knew him in different contexts, as I showed on that confidential slide,
25 that they are all part of a conspiracy dating back 20 years.

1 On that point, I would make the point again, your Honours, as we made in the
2 opening, that throughout this trial, before the trial following the arrest, nobody has
3 come forward to say, "You've got the wrong guy there, that's not Ali Kushayb".
4 Nobody wanting justice has come forward and said, "I know Ali Kushayb, he burned
5 down my village, he stole everything I had, he killed members of my family, I want
6 the real Ali Kushayb to face justice, you've got the wrong person".
7 Not a single one has come forward.
8 For the scope of this conspiracy to work, which they argue continues to this day, it
9 would have to span the Government of Sudan, the National Intelligence and Security
10 Service, the Ministry of Defence, the Sudanese Office of the Prosecutor, the National
11 Commission of Inquiry, the UN Commission of Inquiry, Human Rights Watch,
12 Radio Dabanga, Facebook and others. And, of course, all the Prosecution witnesses
13 from all walks of life.
14 I touched on this before, but in the beginning, in the opening of the trial, the Defence
15 made the argument referring mainly to their witnesses - I won't read it again - that the
16 name "Ali Kushayb" was not widely known and associated with their client in
17 Rahad Al-Berdi.
18 I won't read it again in full, but my friends made the point that D-32 would be the
19 person to know, listen to D-32, and that D-32 in common with many other witnesses
20 in fact heard the name "Ali Kushayb" only in connection and at the time of the
21 surrender.
22 As I said, by the end of his testimony, and I will be careful on what I say in open
23 session, D-32 admitted that he had heard the name Ali Kushayb in 2003, 17 years
24 before when the Defence told us, and he heard that in the town where he was at the
25 time, which I won't mention.

1 I will take your Honours to T-141, page 29, starting at line 21 and going over to the
2 next page:
3 "The people were talking about a man named Ali Kushayb. That's the truth, isn't it?"
4 The answer from D-32:
5 "Yes, that's correct."
6 In the town:
7 "[...] in 2003 and 2004, right?"
8 A. Yes, right, people were talking, but I didn't know anything about that. I've
9 heard [that] name all the time".
10 All the time he heard the name Ali Kushayb, at the time of the crimes.
11 And, even more revealingly, the witness was asked a question by your Honours
12 towards the end of his testimony. Your Honour Judge Alapini-Gansou asked D-32 a
13 very relevant question. Your Honour asked D-32, who knew the accused
14 Abd-Al-Rahman well:
15 "Why did you never ask the accused why people called him Ali Kushayb?"
16 The witness's answer:
17 "It wouldn't be proper for me to do so".
18 At first he said, "I was too young". Later, your Honour put to him, "Well, in 2013
19 you weren't a child, why didn't you ask him then? Why didn't you ask
20 Abd-Al-Rahman, who you knew, why people call him Ali Kushayb?" And he said,
21 "I just couldn't, I just couldn't".
22 The answer was not, "What are you talking about? Why would I ask him that? I
23 had never heard him called that". The answer was not, "Because he never had that
24 nickname". The answer was, "I just couldn't do it."
25 I will skip that, your Honours. As I've said, I was going to give some examples, but

1 please check the brief carefully, the cites.

2 Moving on now, your Honours, I'm going to talk a little bit about the fairness of the
3 trial and I'll start very quickly with the visa issues which we have heard about and
4 was hammered by the Defence during this trial.

5 Throughout the trial, in its final brief, and I expect to continue in this courtroom in the
6 next couple of days, the Defence has relentlessly complained about supposed
7 unfairness. One example, Defence constantly complaining about not being able to
8 go on mission to Sudan because of visa issues.

9 Your Honours, I say these are a typical and good example of Defence efforts, frankly,
10 to create an illusion of unfairness or undue prejudice.

11 First, when the visas were ready at the Sudanese embassy in Sudan - I won't go
12 through it all - they didn't pick them up. They didn't pick them up when they heard
13 they were ready. Second, they received six-month multi-entry visas in June 2022,
14 but they only went on one mission during those six months. And those visas had a
15 30-day limit on them, meaning that each stay during the six-month period could not
16 exceed 30 days, but what it does mean is that for the six months from June 2022 on,
17 before there was any unfortunate high-level armed conflict, they could have gone to
18 Khartoum for six 30-day missions, they could have staggered, as the Prosecution did,
19 its presence in Khartoum to have a semi-permanent effect. They could have gone on
20 12 two-week missions if they wanted. They could have gone over and over and over
21 again during that period, yet they only went once. And they met witness D-1 there
22 when they went and he confirmed the correctness of what I'm saying. This is at
23 T-154, page 80, lines 11 to 17:

24 "So my question is -- and I'm not -- I'm not criticising you in any way, is that when
25 you met the Defence, did they tell you that they had six-month multi-entry visas for

1 Sudan, did they tell you that in June?"

2 A. Yes, they told me.

3 Q. Okay. So you could have met them in July, August, September, October or
4 November 2022 in Khartoum, correct?"

5 "Yes" is the answer.

6 Now, look at how they describe their ability to visit Khartoum in the final trial brief.

7 Paragraph 49:

8 "The Defence received its only visas to enter Sudan allowing it to go once on mission
9 to Khartoum only in June 2022."

10 Paragraph 61:

11 "The Defence was granted visas for only one mission, in June 2022, and to Khartoum
12 only."

13 And that's true, that it was to Khartoum only.

14 This issue of the gross unfairness and the gross damage by not having visas,
15 apparently, and being limited to one mission, was raised four times in the opening
16 statement. That's how much weight they have put on this.

17 I won't go through all of them, but the first one is on page 47: "Ever since we were
18 designated in June 2022, and despite our constant requests, the Defence has received
19 but a single visa valid for 30 days to travel to Sudan; and, obviously, we rushed in
20 and we did travel there in June 2022."

21 I won't go through them. There are three more similar references in the opening,
22 carefully worded complaints noting the 30 days, but strongly trying to imply there
23 was only one chance to go, "We were limited, we went one time and we could only go
24 one time".

25 We have corrected that misrepresentation before, but I felt like we had to do that

1 again today.

2 I'll just note on D-1, they never got a statement from him. They had two screenings.

3 They didn't get a statement from him when they went in June 2022, they never went

4 back to see him and they talked about the difficulty of getting him and getting a

5 statement, which they in fact never got, just two screenings.

6 The Defence also make much in their -- a lot of noise and a lot of argument in their

7 brief - I won't go through it all, it's in paragraph 65 - about how hard it was for their

8 witnesses to travel to the third country where they testified and how unfair it was and

9 how it violated equality of arms, and it was such a level of hardship.

10 Your Honour, that's just not true. It was not hard, it was not unfair, it didn't violate

11 anything. The Prosecution assisted the Defence in getting their witnesses to this

12 place where they could testify from, because we had to go there and prove that it was

13 possible to travel there by public transport, that it could be done in just a few days,

14 that it was reasonably safe, that the government of that third country would issue

15 permits and would cooperate and assist.

16 All of that, we had to show and prove was possible, and then the Defence got their

17 witnesses there exactly that way in the end. And, of course, to the best of my

18 understanding, every Defence witness who came on that route returned home safely

19 and was not harmed there or back. What may have assisted was the fact that in part

20 of the area of control that these witnesses had to travel there, there wasn't fiery active

21 combat at the time, although there was in other parts of Darfur and Sudan, and the

22 commander of that region was from the accused's tribe.

23 One of the really sort of bizarre claims in the brief and in the trial that I just want to

24 address quickly is that the Prosecution met with a man named Ali Kushayb in

25 Khartoum in June 2006. I don't quite understand what the allegation is, but that we

1 interviewed him or tried to interview him and met with him. This is at the Defence
2 brief 68 to 72. We are accused of this grotesque disclosure violation for not
3 disclosing the transcript and notes of a meeting with Ali Kushayb who we met in
4 Khartoum in June 2006.

5 Your Honour, this meeting never happened. The Prosecution never met with the
6 accused in Khartoum or any other phantom Ali Kushayb. There was, and is, nothing
7 to disclose about the meeting which never happened. The Defence were informed
8 that there was no meeting and nothing to disclose. The correspondence I referred to
9 earlier, the letters from the GoS, showed that they refused to allow us to meet with
10 the accused, and the one witness the Defence rely on for this entire saga, D-16,
11 testified that he did not know if the supposed meeting happened or not. That's at
12 T-132, page 21, and then it comes up at different places.

13 So this meeting never happened, we made it clear to the Defence that this meeting
14 never happened, we have never met and interviewed or spoken to Ali Kushayb in
15 Khartoum. How does the Defence in their brief impact the fairness of this disclosure
16 violation? Paragraph 72:

17 "The occurrence of that meeting, or tentative meeting, provides strong evidence that
18 the man called Ali Kushayb who was at least due to meet with the OTP was not
19 Mr Abd-Al-Rahman. This evidence is not only proof of an irreparable breach of
20 fairness of the proceedings by the OTP, for not having kept and disclosed a record of
21 that event. It creates extensive doubt surrounding the OTP's allegation that
22 Mr Abd-Al-Rahman is Ali Kushayb."

23 It's just astounding, your Honours.

24 Very quickly, and I don't mean this -- I'm sure this is an inadvertent error, but the
25 Defence do on occasions cite materials in their brief that are actually not in evidence,

1 not in the record. A few times we have made that mistake, possibly, I hope not.
2 They cite two press releases from the ICC website, that's in paragraphs 99, 102 and
3 696 of their brief, which are not in evidence; they cite two investigation notes that are
4 not in evidence, that's at paragraph 53, footnote 114; two investigative reports, I
5 believe; and they cite two witness statements of a viva voce witness, so the witness
6 statement was not a witness where the statement came in on paper, but they cite to
7 the statement. Nevertheless, that's witness 1073, paragraph 738, footnote 2774.
8 Your Honours, this trial throughout was fair. You ensured it was scrupulously fair
9 to the accused, and this is true despite the best efforts of the Defence to paint it
10 otherwise. And, as I said, I expect there will be more baseless allegations of
11 unfairness coming in the next couple of days.
12 If you look at the record, the Defence was able to put on a solid case, calling witnesses
13 from Darfur and from outside Sudan. They put their witnesses on. There was no
14 inequality of arms.
15 Your Honours made a number of accommodations and helped the Defence to put
16 their case on. First of all, I won't be specific, but there was some pretty innovative
17 AVL in this case that helped, with everybody working together, to get their witnesses
18 able to testify on two occasions. Your Honours granted the Defence two
19 postponements and one delay of the resumption of the case. The point is, they were
20 given plenty of time to prepare -- plenty of time to investigate, prepare, put on their
21 case, and they did.
22 Yet, this is how the Chamber characterises your Honours' measures to ensure a fair
23 trial. This is Defence brief, paragraph 689:
24 "Throughout the proceedings, the Defence suggested creative remedies and sought
25 the intervention of the relevant Chambers to take measures within their jurisdiction

1 and powers to compel Sudan to cooperate. All solutions proposed by the Defence
2 were ignored or denied by the Chamber."

3 Your Honours, the only unfairness in this trial is the way you've been described by
4 the Defence.

5 The Prosecution had its last witness on 14 and 15 February 2022 and formally closed
6 its case at the end of the month. The Defence case did not start until over a year and
7 a half later. It didn't formally close its case until September 2024. Creative
8 remedies they are talking about? The one creative remedy, the most obvious one
9 that they chose not to follow, was go to Sudan, go to Khartoum when you have six
10 months to investigate.

11 They make a lot of points about how they couldn't go to Darfur. The OTP's never
12 been able to go to Darfur to investigate. There have been a couple of visits by the
13 Prosecutors, but not investigative. We have never been able to do that. What we
14 did is when we were able to go to Khartoum, during that window we brought
15 witnesses from Darfur, as the Defence did with D-1, and one other witness at least, to
16 meet with us and we took statements. They could have done that. They chose not
17 to.

18 I will skip ahead a bit.

19 Your Honours, I won't even show this slide. This is a confidential decision, but I'd
20 urge you, everything you need to know about the allegations of unfairness in this case,
21 it's a confidential decision, but if you look at decision 1097, the Appeals Chamber
22 decision of March 24, paragraphs 55 and 56, this should not be broadcast, that tells
23 you all you need to know, your Honours. Unfortunately, I can't read it out.

24 I won't go through it but your Honours, of course, have found that the delays in the
25 preparation and investigation of the Defence case were at least partially attributable

1 to the Defence, and that's in your postponement decision 916, paragraph 39. I won't
2 read it out.

3 I'll talk a little bit about the failure of the GoS to answer Defence RFAs, and I believe
4 this was a question -- well, I'm coming to question 10, sorry, your Honours. GoS
5 didn't supply the Defence with all the documents it requested. That did not render
6 the trial unfair, and the argument that these documents would have assisted the
7 Defence is truly raw speculation.

8 The GoS did send a response on 22 October of this year indicating that some of the
9 files were inaccessible due to the current conflict. They provided some materials
10 about courses and curricula and training in IHL. I won't describe it further, I think
11 it's technically still confidential, although it should not be, probably.

12 The Defence acknowledges in their brief at paragraph 50 that this partial
13 non-cooperation of Sudan - and I am not defending the GoS not responding to some
14 RFAs - does not make the trial unfair. As your Chamber has decided and made clear,
15 and said more than once, cooperation is often not to be expected in trials before an
16 international court like this one.

17 Your Honours said this at decision 990, paragraph 12:
18 "Given the nature of this court, neither an ongoing conflict nor a lack of State
19 cooperation are exceptional in nature and should not be insurmountable, nor lead to
20 impunity, nor prevent achieving justice for victims."

21 So, coming to question 10 regarding Sudan's failure to provide certain records
22 requested by the accused, I understand that we didn't object, the Defence just received
23 a response relating to criminal records, but the Defence makes absolutely speculative
24 claims that these documents would "definitively establish" that Abd-Al-Rahman is
25 not Ali Kushayb. They say these were the utmost importance to the case and that,

1 again, "The trial cannot be fair because we didn't get everything we asked for".
2 There is no reason to believe that all civil registration documents, all of these
3 documents, would include the nickname of the individual or other individuals, or
4 that the absence of the nickname on such a document was proof that the person did
5 not contain a nickname. And many of these documents, given the ability to keep
6 records, the length of time, going back to 2003 and 2004, they may not even exist.
7 They might have been unattainable even with the best will in the world.
8 And, as I said in the beginning, or earlier, there is no alibi defence in this case. This
9 is something that the documents were purportedly going to be decisive on, but their
10 own witness, rather than quote, I'll cite it, DAR-D31-00000274, pages 5 to 6,
11 paragraphs 20, 22 and 23, their own witness confirms that he wouldn't have been in
12 El Obeid joining the RSF at the time of the Deleig incidents.
13 And, frankly, if you look at some of the documents I've shown you today from the
14 Government of Sudan, some of the ones that were referred to in your questions A, B,
15 C, D and E, the Defence is probably fortunate that more official documents about their
16 client weren't provided.
17 In conclusion, there was no actual harm, there was no undue prejudice ever identified
18 for lack of cooperation. There was none, which is why it has been impossible for
19 them to establish it. They were afforded by your Honours a scrupulously fair trial.
20 You worked hard to make it so all the way throughout.
21 I am coming to the end, your Honours.
22 All this raises the question: Why did the Defence complain incessantly in this case
23 about unfairness when there wasn't any? Why did they continuously manufacture
24 this appearance of unfairness or prejudice where there wasn't any?
25 The answer to that question is clear. It's in an effort to avoid this case being tried

1 and decided on the merits, on the facts, on the evidence. It's the unspoken
2 recognition that their defence doesn't fly and that, based on the evidence, their
3 defence will fail.

4 I don't like saying this, your Honours, but from the beginning, that strategy, creating
5 a record of non-existent prejudice, unfairness, is aimed at the Appeals Chamber and
6 all you need to know to know that that is correct, is to look at their opening statement.
7 I put it on the slide. It's their opening statement. This is before they have called
8 their first witness. They are addressing your Honours:

9 "So faced with this simple and true presentation of this sad reality, this comparison
10 between, on the one hand, the time, the facilities and the means given to the [OTP]
11 with, on the other hand, the blame reserved for the Defence and the inflexibility in
12 granting it the little time it has requested to continue its investigations, would that
13 situation stand up for a single second to an examination of the fairness of this trial by
14 a reasonable observer? The answer is clearly no.

15 In this case, the fairness of the trial has been definitively ruined by all, or tarnished by
16 all the reasons that I have mentioned. The Chamber will of course - [your
17 Honours] - not be in agreement with my analysis and it is up to another chamber to
18 note this obvious fact hereafter. It is a question of patience. The evidence cannot
19 always be denied. It is too obvious. It will come."

20 That is their strategy, complaining that the trial was definitively ruined before they
21 even called their first witness.

22 Your Honours, based on everything I've gone through today and everything you've
23 heard throughout this trial, the accused, Mr Abd-Al-Rahman, is Ali Kushayb, the
24 Ali Kushayb who committed these crimes. The evidence is overwhelming, it's
25 beyond reasonable doubt, he is guilty of each and every one of these charged crimes.

1 I'm done. I will turn it over to Mr Jeremy.

2 PRESIDING JUDGE KORNER: [12:13:49] Thank you, Mr Nicholls. Yes, Mr Jeremy.

3 MR JEREMY: [12:14:01] Thank you, Madam President, your Honours.

4 Your Honours, I expect to address you over approximately one hour and 15 minutes,
5 and I will address four topics.

6 I will speak about the Janjaweed/Militia, Abd-Al-Rahman's position of authority and
7 influence, issues in relation to jurisdiction, and also the Kodoom and Bindisi attacks.

8 Your Honours, first I will deal then with the Janjaweed/Militia, and these submissions
9 are partly responsive to your question number 12. I will look at what the Janjaweed
10 were, why the Government of Sudan used them and how they interacted with the
11 Government of Sudan forces.

12 Your Honours will have noted that the term "Janjaweed" is defined in paragraph 80 of
13 our final brief and, in so doing, we rely in part on the testimony of joint expert P-1042,
14 Alex de Waal, and on the screen before you, you will see his definitions of
15 "Janjaweed", including a term "used to refer generically to pro-government militia in
16 2003-5, forces mobilised on an ad hoc basis, different Arab clans forming brigades
17 known as Janjaweed".

18 Your Honours will also recall that Professor de Waal noted that the Government of
19 Sudan and a number of Arab tribes in Darfur at the time preferred to say that the
20 Janjaweed are common criminals, that they are nothing to do with the Arab militia.
21 You will recall that, notably, Abd-Al-Rahman himself took this very position in the
22 interview that he provided to the Government of Sudan that Mr Nicholls has
23 mentioned in his submissions.

24 We see here that he states:

25 "Of course, we are not the Janjaweed. The Janjaweed are people that engage in

1 plunder and are bandits. We are Fursan who fight against those who attack the State,
2 and in accordance with the directions from the State itself."
3 Now, your Honours will note here Abd-Al-Rahman's use of the word "Fursan", and,
4 as we set out in our final brief, for example paragraphs 80, 130, 131, multiple
5 witnesses confirm that this term "Fursan" was one of the various ways of referring to
6 the Janjaweed/Militia.
7 For example, P-547 described the accused as a Fursan commander, a position which
8 he described as:
9 "... a field role in order to [...] end the conflict in Darfur. This obviously meant
10 military operations, killing, rape, burning down villages."
11 That's in paragraph 131 of our final brief.
12 P-0883 and P-1021 also described Abd-Al-Rahman as the leader of the Fursan, which
13 they both confirmed was another word for Janjaweed. And documentary evidence,
14 including from the Government of Sudan, also referred to Abd-Al-Rahman in the
15 same terms, and I will give one example from the National Commission of Inquiry
16 report that stated, in reference to the executions in Deleig:
17 "The detainees were taken to the Deleig police area by the leader of the *Fursan* armed
18 militia, Muhammad 'Ali Kushayb".
19 Just one moment, your Honours, my live note has gone down.
20 Your Honours, I will turn now to the question of why the Government of Sudan
21 needed to mobilise the Janjaweed to fight the counterinsurgency. In their brief,
22 paragraph 313, the Defence state that the Prosecution do not provide:
23 "... any beginning of explanation as to how and why non-military, non-police, normal
24 citizens of Sudan, would suddenly get mobilised, equipped, trained, paid and
25 structured to undertake the perilous task of fighting against a well-armed,

1 well-structured and powerful rebellion."
2 To the contrary, your Honours, this explanation for why, why the Janjaweed were
3 used, is set out clearly in our final brief, paragraphs 100 to 103.
4 Briefly, your Honours will recall the evidence in this case in relation to plans issued in
5 relation to Darfur, the Darfur conflict, in 2003 by the National Security Council. You
6 will recall that that was a body that set out the policy for the counterinsurgency
7 campaign in Darfur, and you will recall that those plans - firstly the emergency plan
8 issued shortly after the attack at Al Fasher airport in April 2003, and the annual plan
9 issued on 18 December 2003 - made it clear that the members of the SAF, the
10 Sudanese Armed Forces, and the Popular Defence Forces could not be trusted to
11 participate in the counterinsurgency because the majority were from Darfur and the
12 government feared that they would defect to the rebel forces.
13 And, again, it is notable, your Honours, and I highlight it now, that this issue of
14 distrust among Fur members of the Government of Sudan forces is also something
15 that Abd-Al-Rahman referred to in his interview with the Government of Sudan
16 where he noted, for example, as we see on the slide before us, at the time the rebellion
17 started, most of the police were Fur, they handed their weapons over to the rebels,
18 they joined the rebellion and some members of the army also joined.
19 You will recall, your Honours, from the testimony that we refer to in paragraphs 101
20 to 103 of our final brief, from, for example, P-0547, P-0769, they testified that pursuant
21 to these plans, the Government of Sudan took the decision to recruit Arab militias to
22 fill this gap in manpower, to fight against the rebels in the counterinsurgency.
23 Your Honours will also recall, again, the joint expert, Professor de Waal, confirmed
24 that this recruitment of irregular forces in this way was entirely consistent with the
25 way that the government fought and had fought counterinsurgencies in Darfur for

1 the last 20 years. As we set out in our footnote 387, he also noted that the
2 mobilisation of such forces since the 1980s regularly resulted in widespread and
3 indiscriminate attacks on entire communities, forced displacements, rape, and
4 indiscriminate killings of civilians.

5 You will recall that he used a particular phrase, a particular way of explaining this use
6 of irregular forces. He used the term "counterinsurgency on the cheap". He
7 explained it was cheap because, in the short-term, the budgetary burden was light on
8 the government because the Janjaweed, as de facto forces, received little or no pay.

9 However, he did note the longer-term cost of this policy, stating:

10 "The bill, of course, became due later on and the human cost is here before this court".

11 Lastly on this issue, your Honours, you will confirm that various witnesses confirmed
12 the coordination role played by, in particular, former minister of the interior,
13 Abdulraheem Hussein, and state minister for the interior, Ahmad Harun, in
14 coordinating the various forces of the counterinsurgency.

15 You will recall, as we set out in our final brief, for example, paragraphs 160 to 170, the
16 substantial evidence about the close coordination between the accused and these men,
17 in particular Ahmad Harun.

18 Your Honours, I now want to move to the relationship between the Janjaweed and the
19 Government of Sudan forces. I will discuss this in general terms, but the more
20 specific relationships in relation to the charged incidents will be discussed throughout
21 the presentations in the Prosecution's closing. You see on the slide before you we
22 have set out on the left side the various formal forces within the Government of
23 Sudan's counterinsurgency effort, and on the right side the Militia/Janjaweed.

24 Now, your Honours, the evidence demonstrates, and I will come to this, that during
25 the charged period in 2003 and 2004, Abd-Al-Rahman, Ali Kushayb, was in command

1 of these forces on the right side, the Militia/Janjaweed forces, in the Wadi Salih and
2 Mukjar localities.

3 We note here that they are known by various names, and we provide additional
4 names in the brief. I have mentioned the name Fursan. Multiple witnesses said
5 that this meant the same thing as Janjaweed. They are also known as Mujahadin.
6 And witnesses such as P-0954 stated that this was another term for Janjaweed. The
7 reference for that, your Honours, is DAR-OTP-0221-0571, paragraphs 20 and 27.
8 Your Honours, as we set out in our brief, paragraphs 81 to 83, and throughout the
9 brief in relation to charged incidents, the evidence proves that Abd-Al-Rahman's
10 forces existed independently of these other forces, but coordinated closely with them.
11 As examples of this coordination, the government would provide money and
12 weapons and they would also conduct joint operations together. We refer to various
13 of those operations in our brief and in the context of the charged incidents.

14 Again, turning to the joint expert, he, as well as various other witnesses, made clear
15 that the belligerent forces in this conflict in Darfur were not static, well-formed,
16 well-structured groups; instead, he explained that their organisation was ad hoc, it
17 was circumstantial, he explained that the lines of authority depended on what was
18 happening in a particular time and in a particular place.

19 And, as a consequence, your Honours, the evidence demonstrates that there was no
20 standard model, no one-size-fits-all model for how the Militia/Janjaweed were
21 organised, or how it coordinated with the Government of Sudan forces. It depended
22 on the events on the ground in a given time and place.

23 In this case, your Honours, there is ample evidence of how those events transpired on
24 the ground; in particular, how Abd-Al-Rahman commanded his Militia/Janjaweed
25 and how he interacted with those other forces, including during the commission of

1 the charged crimes.

2 That evidence, your Honours, which we will emphasise during this closing,
3 consistently demonstrates that, notwithstanding this ad hoc coordination with the
4 Government of Sudan forces, Abd-Al-Rahman remained the most senior
5 Janjaweed/Militia commander in the Wadi Salih and Mukjar localities, and that
6 during operations, joint operations, with the Government of Sudan forces, he
7 maintained his command over his men throughout.

8 As regards his relationship with the PDF, the evidence shows, as set out in paragraph
9 78 of our final brief, that the PDF was one of those forces that coordinated closely
10 with the Militia/Janjaweed, often to the extent that in practice, de facto, many
11 considered them to be the same forces.

12 Your Honours will recall that there is a significant body of evidence in this case that,
13 as well as being referred to as a Fursan commander, and an *agid al-ogada* - and I will
14 come to that particular term - that Mr Abd-Al-Rahman, the accused, was also known
15 as an "*emir*".

16 Now, P-0547, as your Honours will recall from paragraph 131 of our final brief,
17 described that term as a war-time commander and the evidence demonstrates that
18 this term "*emir*", like "*agid al-ogada*", was simply another term to denote leadership of
19 the Janjaweed/Militia.

20 And witness evidence, again including from our joint expert, confirmed that leaders
21 during the conflict sometimes used the term "*emir*", other times they used the term
22 "*agid al-ogada*", and sometimes they would use both.

23 That reference is transcript T-28, page 44.

24 Again, your Honours, I will bookend this point by referring to Abd-Al-Rahman's
25 Government of Sudan interview where he referred to himself as the *emir* of the Fursan.

1 The Fursan, of course, as I have explained, was simply another word for the
2 Janjaweed.

3 So, given this close coordination, your Honours, between the PDF and the Janjaweed
4 and their close de facto relationship, many witnesses used the term interchangeably,
5 and we expressly recognise this in our final brief, paragraph 82, and the Defence brief,
6 as you have seen, devotes a considerable amount of space to this issue, paragraphs
7 323 to 334, for example.

8 However, despite this occasional blurred distinction in labelling, the evidence
9 overwhelmingly demonstrates that Abd-Al-Rahman's Militia/Janjaweed in the
10 Wadi Salih localities during 2003 and 2004 were not de jure part of any Government
11 of Sudan force, including the PDF.

12 Indeed, as we heard from P-1042, a feature of the counterinsurgency operation is that
13 these militia forces were not formally part of the government's army or the police.
14 That's why they were required. And the evidence further demonstrates that this de
15 facto coordination between the government and the Janjaweed had no impact, no
16 dilution on Abd-Al-Rahman's command role. Indeed, the evidence, your Honours,
17 demonstrates the opposite. I will give one example of that.

18 Your Honours will recall P-0905's evidence, and he gave evidence about the Sindu
19 operation. We have included some excerpts on the screen before you. He
20 explained that this operation involved a convoy comprised of 33 soldiers, 13 PDF, and
21 thousands of Janjaweed. So we see he drew a clear distinction between the SAF, the
22 PDF, and Janjaweed commanders by the accused. He explains that the commander
23 of the convoy was a major, but the leader of the Janjaweed present during the
24 operation was the accused.

25 Your Honours will also recall on this issue the evidence from P-1021. I won't give

1 his position, but you will recall he is someone very well-placed to give a view on this
2 issue. He readily accepted that there was an agreement between the government
3 and the Janjaweed, it's not something he shied away from, but he forcefully rejected
4 the suggestion, when put to him, that the Janjaweed and the PDF were essentially the
5 same. That's T-81, pages 58 to 59.

6 Again, your Honours, to close this point, I will refer to Abd-Al-Rahman's
7 Government of Sudan interview where he, too, drew a clear distinction between the
8 PDF and the Fursan, stating:

9 "During our conflict with the Fur, we were, of course, a mix of People's Defence and
10 *Fursan*."

11 Now, your Honours, we do acknowledge in paragraph 81 of our final brief that the
12 Militia/Janjaweed were eventually recruited into the GoS forces on a de jure basis, but
13 the evidence demonstrates that this happened after the charged events.

14 In the accused's case, as we set out in paragraph 81, he completed his evolution from
15 Janjaweed leader to a de jure member of a GoS force in 2005, when he joined the CRF.
16 Similarly, one of his *agids* who I will mention, Bonjouse, he joined the border guards
17 at a similar time. We made that point in paragraph 44 of our final brief.

18 Your Honours, I move now to the second of my four topics, Abd-Al-Rahman's
19 position of authority and influence during the charged crimes. I will focus on his
20 evolution from a member of the SAF to a Janjaweed/Militia leader during the charged
21 period in 2003 and 2004.

22 Now, your Honours will have seen that in their brief, the Defence take the position
23 that, for example, in paragraph 61:

24 "Mr Abd-Al-Rahman has never been in a position of authority over the
25 Janjaweed/Militias."

1 In paragraph 3 of their brief they state:
2 "He earned an honest and modest living by selling medicines in a shop [...] his life
3 was that of a humble Sudanese citizen."
4 Your Honours, the Prosecution's final brief tracks Abd-Al-Rahman's rise to his
5 position of authority and influence, and we do that in paragraphs 127 to 200.
6 I want now to briefly look at a timeline of that evolving experience and authority.
7 Although not citing to any evidence, the Defence suggests in their brief that
8 Abd-Al-Rahman joined the SAF in around 1964, when he was approximately 15 years
9 old. At paragraph 300 of their brief, the Defence say that: "Mr Abd-Al-Rahman has
10 never been an *agid*".
11 Your Honours, this is directly contradicted by Defence witness D-28. D-28 said that
12 the accused, Abd-Al-Rahman, was an *agid* when he was a child, when D-28 was a
13 child, in around the 1980s.
14 We make that point in paragraph 68 of our brief.
15 You will recall that an *agid*, your Honours, was a tribal military leader.
16 P-0883 corroborates, to an extent, D-28's evidence that Abd-Al-Rahman was an *agid* of
17 the Ta'aisha tribe during the 1980s by confirming that he was "a prominent person" in
18 "fighting the Salamat tribe" on behalf of the Ta'aisha tribe in the 1980s. That's T-74,
19 page 4. Notably, the Defence relies on this evidence from P-883 in paragraph 148 of
20 its brief.
21 Moving to Abd-Al-Rahman's active service in the military, the Defence asserts in their
22 final brief that Abd-Al-Rahman never deployed on a combat operation and never had
23 a command role. That's paragraphs, for example, 3 and 789 of their brief.
24 To the contrary, your Honours, various witnesses in this case, as you will recall,
25 testified about Abd-Al-Rahman's prior military experience. For example, P-883

1 stated that Abd-Al-Rahman was in command of forces in the conflict in south Sudan.
2 He explained that:
3 "Before he got his [...] credentials, he was a military service member. He was a
4 warrior. After he got his credentials, he received a certificate and started doing
5 health care work, but originally he is a military service member."
6 The evidence from D-39 also confirmed that Abd-Al-Rahman was in the SAF for what
7 he said was six to seven years before he moved to a medical field. We made that
8 point in paragraph 671 of our final brief, your Honours.
9 Now, in the early to mid-1990s, focusing back on our timeline, Mr Abd-Al-Rahman
10 retires from the SAF. Based on an excerpt of his interview to the Government of
11 Sudan, after retiring, after going to Garsila, he appears to have continued to be in a
12 command role of armed men in Garsila and to perform duties remarkably consistent
13 with his previous role as an *agid* in Rahad Al-Berdi.
14 For example, focusing on the second part of the interview on the screen, he explained:
15 "Whenever an incident of looting occurred, I would request weapons from the army
16 and the police, but mostly from the army. I would next assemble the available force,
17 usually as a group of 100 or 50. I oversee the group. If the cattle were returned,
18 there would be no armed confrontation. But if they refused, we would fight it out
19 with them."
20 Next in the timeline, your Honours, prior to 2003 and 2004, the evidence
21 demonstrates that within Garsila, within the Wadi Salih localities, Abd-Al-Rahman
22 became an *agid al-ogada*, simply the head of the *agids* or colonels, the colonel of
23 colonels. We set out that evidence in paragraph 138 of our brief.
24 The evidence confirms that this appointment, this position, was based on his prior
25 military experience and his experience of warfare.

1 Your Honours heard evidence that in Garsila, the leaders of the different Arab tribes
2 that were present there, they came together and they agreed to appoint
3 Abd-Al-Rahman even though his tribe was far away. I have put that excerpt on the
4 screen for your Honours.

5 I will emphasise the last line, that all of those leaders agreed to appoint just one
6 person, and they all agreed that that person should be Ali Kushayb.

7 Moving forward, in around early August 2003, your Honours will recall the evidence
8 that the accused was appointed the head of a Mujahadin committee. This was a role
9 that required him to equip, prepare and mobilise men for warfare. We set out that
10 evidence in paragraphs 140, 172 and 173 of our brief.

11 Witness P-0643 explained that this appointment was based on, one, his military
12 experience; two, the fact that as *agid al-ogada* he was "well-positioned to know all the
13 colonels and their positions and functions, because that was at the heart of what this
14 role was and what his work was".

15 Again, your Honours, I want to focus your attention on an excerpt of the accused's
16 interview with the Government of Sudan where he appears to explain that he
17 performed this very role. We refer to this in paragraph 174 of our final brief, and in
18 this interview Abd-Al-Rahman refers to assembling his force, distributing weapons to
19 his *agids*, addressing their security committee in Garsila in relation to the distribution
20 of weapons, all functions that echo the evidence in relation to his role within this
21 Mujahadin committee.

22 The next major event in the timeline of the evolution of the accused's authority, your
23 Honours, is the rebel attack on Mukjar. Evidence about this is set out in our final
24 brief, throughout the brief, particularly paragraph 141. But, your Honours, the main
25 point to emphasise here is the following: In late July and August 2003, following an

1 attack by rebels on Mukjar, Abd-Al-Rahman and his Janjaweed/Militia entered
2 Mukjar and, in so doing, they were credited with preventing the rebel forces taking
3 over Mukjar.

4 In this way, your Honours, the accused demonstrated his value to the Government of
5 Sudan, to Harun and senior members of the Government of Sudan's forces who had
6 travelled to Mukjar shortly after the attack and met the accused.

7 Earlier, your Honours will recall that I spoke about the resource gap that the
8 Government of Sudan was experiencing at the start of this counterinsurgency. Your
9 Honours will recall the evidence from Professor de Waal that the lines of authority
10 depended on what was happening in a particular time, in a particular place, and who
11 could provide what was needed for the conduct of operations, be it ammunition or
12 armed men.

13 In providing security to the Government of Sudan forces in Mukjar, the accused
14 demonstrated that he could fill that resource gap, that he had command over the
15 Militia/Janjaweed who could fight with the government in the counterinsurgency in
16 that particular time, in that particular place, and this is exactly what the Government
17 of Sudan needed.

18 As a consequence, your Honours heard the evidence that senior figures in the
19 Government of Sudan, including Ahmad Harun, endorsed Abd-Al-Rahman, offered
20 him money and weapons for his men. Again, your Honours, it is notable and I
21 emphasise that in his Government of Sudan interview, the accused, as we see on the
22 excerpt on the screen before us, refers to receiving money and weapons from Harun
23 and the PDF coordinator. You will note, in particular, that he quotes at the end of
24 the penultimate sentence of the first paragraph of text:
25 "They agreed that the weapons would be for my force."

1 As we set out in our final brief, your Honours, in particular section E, after the
2 accused had demonstrated his value to the Government of Sudan in this way, he
3 began to cooperate and coordinate not just with Harun, but with other senior political
4 and military officials. These relationships are reflected in annex 6 of our final brief,
5 which is partly reproduced on the slide before you. I won't go through all of those
6 relationships, but I will again note that in his Government of Sudan interview,
7 Abd-Al-Rahman expressly refers to his relationship with many of these individuals,
8 including Harun, Army Commander Bakhit, Lieutenant Hamdi, PDF Commander
9 Al-Harika, PDF coordinator Hassaballah, and GoS locality Commissioner
10 Abd-Al-Hakam, and CRF Commander Himeidan.

11 Following these events, your Honours, the evidence clearly demonstrates that at this
12 point, Abd-Al-Rahman is the senior military Janjaweed leader in the Wadi Salih and
13 Mukjar localities, the only leader with these relationships that I have just outlined,
14 and he was tasked by the government to lead armed men to fight the
15 counterinsurgency.

16 And here I want to pause and remind your Honours of the profile of a typical
17 Janjaweed/Militia leader that P-0547 provided. It's on the screen before us. I have
18 highlighted the relevant parts. He emphasised:

19 "The main relevance in this is how that person can conduct the mission given to him
20 by the Sudanese government, and this is how they used to use the Arab tribes for
21 military purposes against African tribes."

22 He went on to say:

23 "What mattered was for him to be an Arab person from Darfur and that he be capable
24 of performing an activity or something that could help the Government of Sudan in
25 countering the rebellion."

1 Here, P-0457 is giving the profile of a Janjaweed leader in a general sense. He's not
2 referring specifically to Abd-Al-Rahman, but you will note, your Honours, that the
3 profile describes the accused exactly.

4 Moving to the general structure of the Militia/Janjaweed in the Wadi Salih and
5 Mukjar localities in 2003 and 2004, we set that out in basic terms on the slide before
6 you. At the top, we see that the accused was a senior Militia/Janjaweed leader, also
7 known as *agid al-ogada*, as I mentioned, and also known by other terms including
8 "emir".

9 The Prosecution case, and this is demonstrated by the evidence, is that, as the senior
10 leader, the accused had authority over the *agids* operating in this region, as well as the
11 men subordinated to those *agids*.

12 Notably, again referring to the accused's interview with the Government of Sudan, he
13 estimated that his force was made up of 2,500 men. The reference there is
14 DAR-OTP-0219-7007 at 7011.

15 Now, your Honours, as you've heard, as I have mentioned, the Defence of course take
16 the position that at this time, August 2003, their client, the accused, is a simple
17 pharmacist in Garsila, and they say that he couldn't have been a senior
18 Militia/Janjaweed leader, or the *agid al-ogada*, and they say that this was for a number
19 of reasons. I will touch on some of those.

20 They suggest, your Honours, in paragraph 288 - the Defence suggests - that the
21 authority of an *agid al-ogada* was limited to *agids* of the same tribe. In making that
22 assertion, they rely in part on Professor de Waal, among others.

23 In fact, Professor de Waal said the opposite during his testimony, your Honours. He
24 said that when irregular militia were being formed at the time of the
25 counterinsurgency, whenever possible, the government would simply enlist "people

1 who had prior military experience to organise and lead their forces". He was then
2 asked, "Well, what about the tribe of that leader?"
3 He said, "It would not matter".
4 That's P-1042, transcript page 29, page 22.
5 Another argument that the Defence asserts as the reason for why their client could not
6 be the foremost Arab militia leader during the charged period is that this couldn't
7 have been possible because the Ta'aisha tribe were not formally, were not officially,
8 involved in the counterinsurgency and, therefore, Abd-Al-Rahman, as a member of
9 that tribe, couldn't have been involved. They make those arguments in paragraphs
10 770 to 773.
11 In making those arguments, they again rely in part on the joint expert, Professor
12 de Waal. They say that he purportedly confirms that there would be significant
13 consequences for an individual who went against the wishes of a tribal leader, as well
14 as his family, in terms of social standing and esteem within the community. Again,
15 your Honours, that's not what Professor de Waal said. What he said is that while
16 consequences for social standing and esteem within the community could be
17 significant, there would be few material consequences.
18 Asked if there would be consequences for a person's family, he simply said, "I
19 imagine so". He went on to say, and I will put this on the screen before you -- no, I
20 won't, but I will quote it -- he went on to say:
21 "In most cases -- and especially if an individual were outside the immediate domain
22 of the tribal chief -- the individual could challenge the tribal authority with very little
23 recourse."
24 And he went on to say so that with the growth of towns, people residing in the towns
25 and cities felt that they did not really feel the ties of allegiance to tribal authorities."

1 That's T-28, page 72.

2 Your Honours will recall the evidence in this case, that Garsila was a major town in
3 the West Darfur state.

4 On this same issue, your Honours, the joint expert also stated that the Government of
5 Sudan would mobilise militia regardless of the position taken by the tribal chief. He
6 stated that the government "could simply go around" the tribal chief. That's T-28,
7 page 71.

8 The next reason why Abd-Al-Rahman couldn't have been a tribal leader, why he
9 couldn't have led the Janjaweed forces in the counterinsurgency, the Defence asserts,
10 is because the Janjaweed/Militias in Wadi Salih and Mukjar were "predominantly
11 Salamat". That's paragraph 336 of the Defence brief. They say that the Janjaweed
12 were predominantly Salamat.

13 Here, the argument goes that because the accused was fighting the Salamat 20 years
14 earlier - you recall 883's evidence about this, you recall D-28 says he was an *agid* at the
15 time - then in 2003 and 2004, he couldn't possibly lead members of the Salamat tribe
16 who constituted the majority of the Janjaweed, because they wouldn't follow him
17 because of that conflict.

18 Now, the main flaw in that assertion, your Honours, is the Defence rely on Professor
19 de Waal for asserting that, but that's not what Professor de Waal said. He did not
20 say, as the Defence suggested he did, that the majority of the Janjaweed in Wadi Salih
21 came from the Salamat tribe. That's what the Defence say in paragraph 336. Again,
22 in fact, when it was put to the joint expert that the Salamat were significantly
23 represented - not the majority tribe, significantly represented - he said, "I've heard it
24 reported so". This isn't evidence, your Honours, that the Salamat were the majority
25 or the predominant tribe in the Janjaweed. The joint expert also went on to say that

1 he had not studied the organisation of the Salamat militia, or the response of the
2 Salamat tribal leadership to calls for mobilisation.

3 To close this point, your Honours, on the slide before you, the slide with
4 Abd-Al-Rahman as *agid al-ogada* and the *agids* below him as the senior militia leader,
5 you will see that we have plotted the evidence from the various witnesses about the
6 tribes of the *agids* subordinated to the accused. You see that those tribes are Rizeigat,
7 Beni Halba, Misseriya, Ta'aisha, Tama, Maharihya, again Rizeigat, and again
8 Misseriya. Your Honours will have noted that one tribe in particular is missing, the
9 Salamat tribe.

10 To close this point, your Honours, and I'm conscious of the time, contrary to the
11 Defence brief, paragraphs 238 and 239, the evidence overwhelmingly demonstrates
12 that Abd-Al-Rahman was at the top of the *agids* in the Wadi Salih and Mukjar
13 localities, and regardless of whether those *agids* who were subordinated to him were
14 called *agids* or *agid al-ogadas* by some witnesses, the evidence demonstrates that
15 whenever he was on the ground, he was the senior, the foremost Militia/Janjaweed
16 leader, and that evidence, your Honours, is set out in paragraph 128 to paragraph 148.
17 I will conclude. This is a good time to break, your Honours. Thank you.

18 PRESIDING JUDGE KORNER: [13:01:19] Mr Jeremy, I was just wondering, you've
19 got about another half hour after lunch, is that right, on your own -- you said you
20 were going to be an hour and a quarter and you've had three quarters. I mean, I'm
21 not holding you to it, I'm just trying to work it out.

22 MR JEREMY: [13:01:37] If I've had 45 minutes, then I have got 30 minutes more.

23 PRESIDING JUDGE KORNER: [13:01:43] All right.

24 And then, as I understand it, Ms Whitford's going to be addressing us?

25 MR JEREMY: [13:01:49] Ms Morris will follow me, and then Ms Whitford.

1 PRESIDING JUDGE KORNER: [13:01:53] Right. So you are going to take the rest
2 of the afternoon.

3 MR JEREMY: [13:01:58] Yes.

4 PRESIDING JUDGE KORNER: [13:01:59] All right, thank you.
5 We will adjourn until, I think we'll say, 2.15. We will knock 15 minutes off the
6 normal hour and a half.

7 Thank you.

8 THE COURT USHER: [13:02:15] All rise.
9 (Recess taken at 1.02 p.m.)
10 (Upon resuming in open session at 2.17 p.m.)

11 THE COURT USHER: [14:17:07] All rise.
12 Please be seated.

13 PRESIDING JUDGE KORNER: [14:17:28] Mr Jeremy, just before you carry on, I
14 gather that over the adjournment you sent a response to a question in writing
15 or -- and that the whole point, it has become really confused and I'm really sorry we
16 began this exercise, is that we gave you and the Defence advance notice of questions
17 we were -- or, Mr Nicholls, of advance notice of questions we might, underline, ask
18 and said it was up to you whether you chose to answer them during the course of
19 your final submissions.

20 The Defence have already done that and we pointed out that we weren't expecting
21 answers in writing, although we accepted what you did, but now you're starting this,
22 and the problem is the Defence filed theirs, but you have put them in an email and it's
23 not on the record.

24 So, can we just say, if you want to answer the questions, either side, in the course of
25 your final submissions, that's fine by us, but otherwise we'll just ask them if we decide

1 at the end of listening to everything you said that we still need to ask them. It may
2 well be that we don't. But, please don't answer it in -- and certainly not by email, I
3 think at some stage or other you have to put it on the record.
4 Also, very helpfully, you filed a list of references that you -- you didn't file, sorry, you
5 provided us with a list of references to what you -- what you -- what you were going
6 to be citing in your final address, very helpful, but it needs to somehow or other go on
7 the record.

8 MR NICHOLLS: [14:19:21] Thank you, your Honour.

9 I apologise for sending the email. That was my fault (Overlapping speakers)

10 PRESIDING JUDGE KORNER: [14:19:30] Don't worry, no. I mean --

11 MR NICHOLLS: [14:19:27] I had thought my friends had done it that way and it had
12 been accepted.

13 PRESIDING JUDGE KORNER: [14:19:27] I know, but -- but -- but I said in the -- we
14 said we did not expect answers in writing. But we accept Mr Laucci's, we accept
15 yours, but somehow you have got to file it.

16 MR NICHOLLS: [14:19:43] Right. Otherwise we can just do it orally as well.

17 PRESIDING JUDGE KORNER: [14:19:47] Right.

18 MR NICHOLLS: [14:19:50] Something -- no.

19 Sorry, your Honours, just before Mr Jeremy continues, I made a mistake in -- this
20 morning, and I apologise to my friends and to your Honours. This is at page 53,
21 lines 25, continuing on to page 54, I misspoke and I said that we had closed our case
22 in February 22. I was a year off and my math was wrong about the Defence starting
23 their case. So I apologise for that error. Of course it was --

24 PRESIDING JUDGE KORNER: [14:20:24] Twenty three.

25 MR NICHOLLS: [14:20:27] Twenty-three.

1 PRESIDING JUDGE KORNER: [14:20:24] That's fine. Thanks, Mr Nicholls.

2 Yes?

3 MR LAUCCI: [14:20:29] Before we close that, Madam President, how do you want
4 us to proceed for the table of authorities?

5 PRESIDING JUDGE KORNER: [14:20:34] That's a very good question. I suppose
6 file them.

7 What's the answer to that?

8 I'm waiting for instructions, as you can see.

9 I'm told the Registry -- I'm sorry, Mr Laucci, I'm told the Registry will simply enter it
10 on to the record. Thank you.

11 Yes, well all of that discussion doesn't count against your time, so off you go,

12 Mr Jeremy.

13 MR JEREMY: [14:21:13] Thank you, Madam President, your Honours.

14 I move now to my third topic, jurisdiction. And I'll briefly, briefly

15 outline the evidence that we say proves Abd-Al-Rahman, the accused, could

16 reasonably have expected to face prosecution for the charged crimes. And our

17 arguments on this issue are set out in paras 664 to 682 of our brief.

18 Your Honours are aware of the Appeals Chamber decision on this issue, an excerpt of

19 that is on our screen. And, in essence, on the basis of their reasoning, you'll recall

20 that Appeals Chamber found that the accused was reasonably capable of taking steps

21 to comprehend and comply with his obligations under international law and he was

22 capable of appreciating the attendant penal consequences.

23 Now, your Honours will consider this issue as part of your Rule 74 judgment, and

24 based on the majority decision of the Appeals Chamber, the question for this

25 Trial Chamber, we submit, is a simple one: Could the accused have reasonably

1 expected to face prosecution under international law or domestic law for the charged
2 crimes?

3 Put another way, when the accused and his forces murdered and raped civilians in
4 Kodoom and Bindisi, forcing them to flee their homes, which were pillaged and
5 burned down, when he detained, tortured and executed well over a hundred men
6 outside of Mukjar and did the same thing outside of Deleig, could he have reasonably
7 have expected to face prosecution for this conduct?

8 The evidence demonstrates that he could have this expectation. And to briefly
9 demonstrate this I want to go back through the timeline we looked at earlier of
10 the accused's professional experience and I want to plot on to that the various ways
11 that Abd-Al-Rahman could have known that his conduct was criminal.

12 Your Honours will recall that the Government of Sudan confirmed that an interest in
13 international humanitarian law within the Sudanese Armed Forces dates back to the
14 establishment of that force in 1925, quote, "when the first generations of human rights
15 and the customs and traditions of war appeared in the Queen's orders to the British
16 Army". End quote.

17 And that's in paragraph 673 of our brief.

18 Next, on the timeline we see that Sudan signed the UN Charter in 1956; 1957 it
19 accedes to the Geneva Conventions.

20 In 1960, within the SAF, we learned from the Government of Sudan that these
21 Queen's orders were updated by what was called the list of individuals and that that
22 list stipulated the protection of rights and vulnerable groups, women, children, and
23 civilians in the context of the armed conflict.

24 So by the time the accused joins the SAF, your Honours, in Defence say 1964, there is
25 already an established framework regarding the protection of international

1 humanitarian law in Sudan.

2 As mentioned in paragraph 672 of our brief, in the 1970s a witness testified that
3 military college students studied military, civil and criminal law and that there were
4 also, quote, "some lectures about the international law, but in a very concise way".
5 End quote.

6 Another witness also confirmed not only that he knew that it was wrong to commit
7 crimes against civilians, but that, as a soldier, it was his duty to protect civilians and
8 not murder them, as that would be against the principles of being in the military.

9 And your Honours will recall that this evidence came from someone with a rank far
10 more junior than that achieved by the accused but that that witness, and we see
11 the quote on the screen before us, was nevertheless aware that if he killed a citizen he
12 would be held accountable, not only by God, but by a court.

13 So for these persons who were part of the SAF at a similar time to the accused, it was
14 accessible, it was foreseeable that crimes could not be committed against civilians and
15 that provisions of IHL needed to be observed.

16 Moving forward, in 1986 Sudan signs a number of human rights treaties which
17 establish the protection of fundamental rights.

18 We heard from a witness that in 1988, that there was an approach, he heard about an
19 approach to IHL within the SAF and that he was aware of training manuals that were
20 issued in the '90s.

21 The criminal code applicable at the time was enacted in 1991 and much of the charged
22 crimes were criminalised under that particular act, which a witness confirmed was
23 applicable to persons subject to military justice.

24 And we outline that evidence in paragraph 667 of our brief.

25 And it is also notable, your Honours, that while the accused was in the SAF, based on

1 his rank, he would have been promoted five times. And your Honours will recall
2 the evidence from a witness that stated that promotion within the armed forces is
3 linked to time and the gaining of further qualifications.
4 And I refer your Honours to transcript 130, page 11, and the Armed Forces Act of
5 1986, DAR-OTP-00006136, page 16.
6 Your Honours heard evidence that in 1996 there was training on general guidelines of
7 IHL which was provided to SAF forces going on operations.
8 In 1998, you heard that there was a new Sudanese constitution which contained a bill
9 of rights.
10 And you'll recall the evidence that we heard about the training manual from the year
11 2000 that was used by the SAF to train troops of various ranks, including
12 non-commissioned officers.
13 And you'll recall that notably in this manual it's stated that the Geneva and the Hague
14 Conventions include much of the contents of Islamic teachings from 14 centuries
15 earlier, in particular the principles of distinction and proportionality.
16 And your Honours will recall that that evidence is supported by evidence from D-16
17 and D-8.
18 In 2002, Sudan signed an agreement with the SPLM in which the parties undertook to
19 comply with their obligations under international law, including Common Article 3 of
20 the Geneva Conventions.
21 Moving forward to the 2003 and 2004 conflict, your Honours will recall the evidence
22 we outline in paragraph 677 of our brief, which was significant. We heard that
23 the military justice department of the Sudanese Armed Forces had offices in units in
24 Darfur and that legal advisers would provide briefings on IHL before operations in
25 Darfur.

1 And your Honours will also recall that in the course of attacks, in the course of
2 charged attacks, the accused himself was confronted by individuals concerned by
3 the immorality and illegality of his actions and that he dismissed those objections.
4 We have one quote on the screen before us from Witness P-878, transcript 78, page 41,
5 who recalled an *umdah* said to the accused during the Kodoom and Bindisi operation,
6 quote:
7 "Ali, what you are doing here does not please God and doesn't please his prophet.
8 And you said that you're not going to hit any person, nor kill any person, nor burn
9 any house. You said you will only do that to anybody who's carrying a weapon and
10 resisted you. But what you're doing now is not right."
11 And, your Honours, here I want to focus on something that the Defence say in
12 paragraph 796 of their brief, where they, quote, "warn against any legitimate cultural
13 bias that the Western legal education of all protagonists of the trial...may induce."
14 End quote.
15 They also state that, quote, "one shall not assume that the most basic principles of IHL
16 were known and understood by any Darfur layperson in 2003-4."
17 Now, your Honours, I would respectfully suggest that this is a deeply flawed and
18 rather insulting characterisation of Darfurians. The evidence clearly demonstrates
19 that even for witnesses who did not have Abd-Al-Rahman's military experience, who
20 did not have his leadership role, his proximity to senior members of government and
21 military, it was foreseeable and accessible that the charged crimes were criminal.
22 And a further demonstration of this clear criminality of the accused's conduct is
23 demonstrated by the various justice mechanisms, your Honour, however flawed they
24 may have been, that were set up by the Government of Sudan after the charged
25 crimes, many with the specific mandate to investigate human rights and IHL

1 violations.

2 And your Honours are aware of one such investigative body which interviewed

3 Abd-Al-Rahman in 2006, and during that interview he demonstrated an

4 unambiguous understanding of the need to protect civilians in conflict. And we see

5 a quote from that interview on the slide before us, where again he states: "We were

6 fighting against people who were outlaws, and not ordinary citizens." Earlier he

7 says we were acting "in accordance with instructions from the State for the purpose of

8 protecting civilians".

9 Now, your Honours, we would submit that this -- in this interview, the accused is

10 obviously seeking to protect himself, but nevertheless he clearly demonstrates that far

11 from being a perfect layman, as the Defence suggest, he could reasonably have

12 expected to face prosecution for his conduct under both international law and

13 domestic law.

14 Your Honours, this brings me to the fourth and final topic of my submissions,

15 the Kodoom and Bindisi attack.

16 The evidence led in this trial proves that on around 15 and 16 August 2003, Janjaweed

17 and GoS Forces, led by the accused, attacked several predominantly Fur villages,

18 culminating in an attack on Kodoom and Bindisi.

19 As demonstrated by the evidence listed at paragraph 267 of our brief, there was no

20 rebel presence in the villages attacked, although there was resistance by a few armed

21 individuals.

22 In this regard, I want to highlight that, in its brief, paragraph 358, the Defence refer to

23 evidence from Witness P-87 to suggest that there were rebels in Kodoom, and in

24 doing so they refer to paragraph 157 of that witness's statement.

25 As your Honours will see when you go to that paragraph, the witness is not referring

1 to rebels in Kodoom, but, rather, rebels in Kutum, which is 300 kilometres away.

2 Now, your Honours, in the course of this continuous attack, in addition to the attacks

3 on Kodoom and Bindisi, the civilian population in Nyerli, in Tiru, Seder, Merly, and

4 Drangal were also attacked.

5 Turning to the crimes committed specifically in Kodoom and Bindisi and commenting

6 briefly on the general reliability of evidence in relation to this incident, as we set out

7 in paragraph 266 of our brief, the evidence of this attack was provided by 27

8 witnesses, four of whom were very well placed insiders from very relevant

9 backgrounds whose evidence overlapped considerably, particularly in relation to

10 the modus operandi of the attack and the accused's command role.

11 In relation to this command role, we set this out in paragraphs 349 and 393 of the brief,

12 but the evidence shows that the accused was present and leading the operation that

13 left from Mukjar and culminated in the attacks on Kodoom and Bindisi.

14 We submit, your Honours, that the Defence efforts to contest his leadership role have

15 no proper basis. I'll briefly go through some of that evidence now.

16 The Defence somewhat bizarrely suggest that Abd-Al-Rahman was not even present

17 in Bindisi during the operation. In making that assertion they rely on the evidence

18 of P-905. And you'll recall that P-905's evidence related to the Sindu operation late

19 December, in the early months of 2004. And he stated that, in the course of that

20 operation, one of the accused's deputies, Al-Dayf Samih attacked Bindisi before

21 joining the accused on the Sindu operation.

22 As your Honours will see from that evidence, transcript T-88, page 51 to 53, he's

23 clearly referring to a different attack on Bindisi to the one that we charge in

24 August 2003.

25 The accused's authority, his command, his control is confirmed by multiple witnesses.

1 And contrary to the Defence submissions, for example, in paragraph 356, it wasn't
2 diluted by the presence of members of other forces such as the CRF or the PDF.
3 As regards the CRF, the evidence does demonstrate that CRF were present.
4 However, as witness evidence makes clear, for example, in paragraph 353 of our brief,
5 the CRF commander could not oppose the accused and told his forces not to intervene
6 and comply with the accused's request for ammunition.
7 A witness, during -- a witness also testified that he was, quote, "not in a position to
8 address [the accused] because he had an overwhelming force". End quote. That's
9 paragraph 353.
10 PDF coordinators were also present, but the evidence demonstrates that they too were
11 subordinate to Abd-Al-Rahman.
12 One of them stated that he couldn't question the accused's authority during the attack,
13 otherwise he would become, quote, "road kill". That's paragraph 353 of our brief.
14 And, more generally, the evidence demonstrates that the PDF coordinators were
15 civilians without a command role. That's paragraph 76 of our final brief.
16 Now, through his position and authority, his words and conduct, the accused ordered
17 and induced the Janjaweed and militia forces under his command to commit the
18 charged crimes, including his *agids*, Bonjouse and Samih, who in turn passed those
19 orders to their men.
20 And this evidence, your Honours, is set out in paragraphs 355 to 382 of our brief and
21 I'll provide a brief overview of it now.
22 The first villages attacked in the operation were Nyerli and Tiro.
23 Your Honours will recall that P-921 saw burning, killing and beating in Tiro and
24 the Militia/Janjaweed throw people, including children, into burning houses.
25 And the evidence shows that persons in Tiro, in Nyerli, were murdered, raped, and

1 chased, and property was looted and burned. The accused gave orders in Nyerli,
2 ordering his men to move towards the village and ordering the PDF coordinator to
3 move behind him.

4 He also ordered the Militia/Janjaweed present to attack by shouting "*Allahu Akbar*.
5 Wipe out and sweep away. *Amsah aksah*." And a witness also heard the accused
6 saying to Militia/Janjaweed "Kill everybody. Wipe out and [...] cut the straw and eat
7 it raw", in the midst of the ongoing "[b]urning down and killing".

8 And as we set out, your Honours, in paragraphs 360 to 362 of our brief, these
9 expressions, when considered in their proper context, were orders to the men under
10 Abd-Al-Rahman's command to attack the civilian population in these villages.

11 Contrary to the Defence submissions, they were not motivational chants intended to
12 lift the morale of the troops.

13 Moving forward to Kodoom, upon reaching Kodoom after the attack continued in
14 Tiro, the accused issued orders to Hassaballah about where to go within Kodoom and
15 insider witnesses are consistent in describing the same *modus operandi*, the same
16 pattern of attack, which was employed in Kodoom as was employed in the preceding
17 villages. And that pattern included, as we set out in paragraph 276, attackers
18 "chasing people, women", "like a dog chasing its prey, as if they were not humans".
19 People were murdered and raped, items were pillaged and homes destroyed.

20 In Kodoom a witness, as we set out in paragraph 275, heard the accused give orders
21 to Samih and Bonjouse, his *agid*, sub-*agid* commanders, to continue working and
22 saying, "Anyone you see, kill him."

23 And a witness also heard the accused use the same motto, "Cut the straw and eat it
24 raw", while the attackers were busy shooting and burning the village.

25 The accused's convoy then moved to Bindisi, and upon arriving in north Bindisi,

1 Militia/Janjaweed continued their attack, they continued to looted, they continued to
2 burn, to murder and to rape, as we set out in our final brief.

3 Following that attack, on the 15th there was a pause, as your Honours will recall, an
4 overnight pause in the attack, and during that pause the accused took the opportunity
5 to offer praise to his men. He aggressively countered objections to his conduct and
6 he ordered the attack to continue on the next day.

7 The evidence makes clear that in that evening, while they were camped, the accused
8 gathered 15 to 20 of his Janjaweed Militia sub-leaders or *agids* and he told them, quote,
9 "You've taught the enemy a lesson that the enemy will never forget. The Fur will
10 never forget this us lesson. And, God willing, tomorrow [...] we will go to Garsila
11 where a big celebration will be held for us by Ja'afar Abd-Al-Hakam."

12 And then the next morning your Honours will remember that the evidence is that
13 the accused then changed his orders. He summoned his forces again, he said he had
14 new instructions and those instructions were to continue the attack on Bindisi. Clear
15 orders, your Honours, for the continuation of this attack. And, indeed, that is
16 exactly what happened, as we set out in our brief. The attack continued in Bindisi on
17 the 16th and notably witnesses, including P-12, saw him in south Bindisi giving
18 orders to Militia/Janjaweed as they looted, killed and burned, and the *agids* in turn
19 relayed his orders to their men.

20 Moving to my final point on this attack, your Honours, the rape charges, the evidence
21 demonstrates that rapes, outrages upon personal dignity and other inhumane acts
22 occurred on around 15 and 16 August 2003 during this attack.

23 Evidence is provided by direct victims P-11, 1073, 1074, as well as direct eyewitnesses.
24 And we set those out in our brief, paragraph 323.

25 As regards your Honours' question 20, which focuses on the accused's *mens rea* in

1 relation to counts 8 and 9, the core of that evidence that proves that Abd-Al-Rahman
2 is responsible for the crime of rape is set out in the final brief, paragraphs 7 -- excuse
3 me, 379 to 391. And we set out bullet points of that evidence in brief on the slide.
4 I won't go through it all now, but I will emphasise the rape and mistreatment that
5 occurred in villages attacked immediately prior to and after Bindisi.
6 And then the last indicia, which is Abd-Al-Rahman's orders to commit violent crimes,
7 and it's on this final category that I just want to briefly focus your Honours. And in
8 doing so I want to highlight case law from the Ntaganda trial judgment that we
9 reference in footnote 1328 of our final brief.
10 Now, as I've made clear, the evidence clearly demonstrates that during the course of
11 the operation to attack Kodoom and Bindisi, the accused issued orders to his men to
12 carry out attacks, in the course of which rapes occurred.
13 These orders included saying "*Amsah aksah*. Cut the straw and eat it raw", and
14 multiple witnesses testified that these were orders to commit violent crimes against
15 civilians.
16 For example, 91 stated that in Kodoom, following Abd-Al-Rahman's order, following
17 his use of this expression cut the straw and eat it raw, the Janjaweed started looting,
18 killing, burning and raping. That's paragraph 380.
19 Now, the Ntaganda trial judgment considered the significance of an expression
20 commonly used by commanders to convey orders to soldiers. For example, in
21 paragraph 415 of their judgment they found that this was an expression that was
22 commonly used in commander's orders to soldiers and that it was understood by
23 the soldiers to mean, quote, "attacking all the Lendu, including civilians, and to loot
24 their property."
25 Now, as regards acts of sexual violence in that case, the Ntaganda Chamber found

1 that the way that the operations unfolded showed that the acts of sexual violence, like
2 the killings, like the other physical violence, were a tool used by the commanders and
3 the soldiers to achieve their objective to destroy the Lendu communities in
4 the localities under assault.

5 Similarly, your Honours, in this case, acts of rape, like other violent crimes, were used
6 as a tool to achieve the objective of attacking, destroying these communities in
7 the Bindisi locality.

8 For example, acts of rape and the other charges charged under counts 6 to 9 also
9 overlapped, were committed in the course of other violent crimes such as murder and
10 looting. And in this way, when it was an integral part of what a witness described
11 as, quote, "the operation to kill, rape, displace and burn the population of those
12 villages." That's T-78, page 23.

13 The Ntaganda chamber also found that during the rapes the perpetrators would
14 compare their victims to nonhuman elements. Similarly, in Bindisi, as set out in
15 paragraph 380 of our brief, while committing rapes, the Militia/Janjaweed would use
16 derogatory language, calling their Fur victims Nuba and *tora bora*. While they
17 committed rape, they would thank Omar al-Bashir for giving them the opportunity to
18 do that. They would state that they were the men of Ali Kushayb and they would
19 state that they had permission from the Government of Sudan to wipe the victims out,
20 kill them and chase them away as if they were of no benefit.

21 Again, your Honours, we see the same pattern in this case as we set out in our final
22 brief, in particular paragraphs 333 to 335.

23 And owing to the devastating impact of the way that these rapes were carried out,
24 and the humiliating ways that the rapes were perpetrated, the rape committed in
25 Bindisi was used as a way to destroy not just the women as the community, but

1 the community as a whole.

2 And the Ntaganda Chamber concluded that in giving orders for troops to attack
3 using this particular expression from that case, Ntaganda necessarily meant to attack
4 everyone and everything, targeting civilians and their properties and committing
5 rapes and murders.

6 And we respectfully submit, your Honours, that, similarly, in this case, it is clear that
7 sexual violence, like other violent acts, were integral to the attack led by the accused
8 on Kodoom and Bindisi.

9 Sexual violence, like other violent acts, were therefore integral to the orders he issued
10 during the attack, orders conveyed using the expression "cut the straw and eat it raw",
11 using the expression "wipe out and sweep away." And in issuing these orders, he
12 meant to attack everyone and everything, an attack that he knew would include
13 violent acts. And, of course, an integral part of that, of those violent acts, would be
14 sexual violence.

15 Thank you, your Honours. That concludes my submissions.

16 PRESIDING JUDGE KORNER: [14:52:06] Yes. Thank you very much, Mr Jeremy.
17 Yes.

18 MS MORRIS: [14:52:47] Good afternoon, your Honours.

19 My name is Laura Morris and I will be addressing the arguments raised by
20 the Defence in relation to Mukjar and persecution.

21 Your Honours, the accused bears criminal responsibility for the mistreatment of
22 detainees at Mukjar police station in early March 2004.

23 The accused bears criminal responsibility for the murder of 177 detainees transported
24 to locations outside of Mukjar and the attempted murder of two men who
25 miraculously survived.

1 Despite the fact that it was a staffed and functioning police station, the evidence
2 shows that the accused had unimpeded access to hundreds of detainees at Mukjar
3 police station.
4 The accused oversaw the mistreatment by Militia/Janjaweed and government forces.
5 The accused was also an active participant, striking several detainees with his
6 signature weapon, an axe.
7 The accused had the authority to enter the cells and remove detainees.
8 The accused oversaw the detainees being loaded on to vehicles in the presence of
9 the commissioner of Mukjar, Abdullah Torshein, and the head of the police and
10 Central Reserve Forces, the official in charge of Mukjar police station, Mustafa
11 Al-Tayyib.
12 The accused's vehicle was lead in the convoy as it departed Mukjar police station.
13 Your Honours, the accused had control over the fate of these detainees. In a matter
14 of hours, an estimated 177 males were driven to three sites outside of Mukjar and
15 summarily executed.
16 Their bodies were left to decompose in piles for villagers to discover, until around
17 a month later when GoS Forces hastily reburied some, leaving mounds of soil and
18 bloodstained clothing strewn around the site.
19 The accused's pattern of mistreatment and execution of detainees would be repeated
20 again in Deleig about a week later, as my colleague will discuss.
21 The Defence strategy is to insist that the accused had no authority. They minimise
22 his role, inflate the authority of others, and even try to pin criminal responsibility on
23 to others.
24 They argue that the local government and military infrastructure left, quote, "no room
25 for the accused to hold any position of authority, despite the evidence clearly

1 showing otherwise."

2 The evidence the Prosecution relies on comes from those physically present at the

3 police station during the charged events. It comes from witnesses who were in those

4 cells. It comes from witnesses the accused personally struck with his axe, who still

5 have gashes on their limbs 20 years later to prove it.

6 It also comes from witnesses who were present in their official capacity, as military or

7 police officers, and who identified the accused as the one who possessed

8 the authority.

9 Your Honours, the evidence from the 20 witnesses that the Prosecution rely on for

10 Mukjar is credible, reliable and corroborated and, when viewed as a whole, it

11 demonstrates, beyond a reasonable doubt, that the accused is criminally responsible

12 for the charged crimes.

13 My submissions will first address the issue of the accused's authority, then the arrest

14 of males, the mistreatment and torture of detainees at the police station, including by

15 the accused. The loading of detainees on to vehicles for execution, and the execution

16 of detainees in three locations following the accused's orders.

17 In paragraphs 450, 484 and 496 of the Defence final brief, in an attempt to minimise

18 the accused's role, the Defence spent pages setting out the purported local military,

19 administrative and political structures in Mukjar at the time and conclude that there

20 was no room for the accused to have authority.

21 Despite this effort, the evidence on record shows that by early March 2004,

22 the accused was cooperating with senior government officials, including at

23 the locality level; cooperated with and exerted authority and influence over certain

24 members of government forces at the locality level; and issued orders to members of

25 GoS Forces, particularly of lower rank. And this is the Prosecution final brief

1 paragraph 127, your Honours.

2 While cross-examining Witness P-984, the Defence suggested to him that because
3 the accused was not from Mukjar, he had no authority there. P-984 flatly rejected
4 this, making it clear that when it came to the accused, local government and military
5 structures were rendered meaningless.

6 Quote: "This person [he] was getting his orders from the centre, from Khartoum
7 directly. All the leaders who were in the area of Wadi Salih were under his
8 command. No one was higher than him in the hierarchy."

9 And that's at transcript 66, page 9 to 10.

10 The accused used his direct line and material support from state minister for
11 the Ministry of the Interior, Ahmad Harun, as a means of exerting his authority over
12 local officials, including Commissioner Torshein and the head of police Al Tayyib,
13 when they dared challenge him.

14 During a 2004 meeting between the accused, Torshein and Al-Tayyib, the accused
15 was upset he had lost so many men in combat and wanted revenge by killing
16 the internally displaced persons in Mukjar. Torshein and Al Tayyib tried to reason
17 with the accused. Furious, he replied, and I quote, "I can communicate directly with
18 the minister. Who are you to tell me this? I would only waste one bullet to get rid
19 of you." This is 0218-0021 at paragraph 93.

20 Prior to removing the detainees from their cells on the day of the execution,
21 the accused told Commissioner Torshein, quote, "My instructions come from the
22 minister. I don't take my instructions from a *wali* or a *mu'atamid* or anyone. I take
23 my instructions from the minister himself." And that's the Prosecution final brief,
24 paragraph 481.

25 The Defence also tried to shift responsibility for the charged crimes on to others, such

1 as Lieutenant Colonel Al-Jilli, head of the police/PPF in Garsila.

2 At paragraphs 524, 526 and 541 of the Defence brief, they unsuccessfully suggest that

3 he was in a position of authority, not the accused.

4 The Defence claim Al-Jilli halted the convoy headed for execution, citing to P-931,

5 however misstates 931's testimony.

6 This witness actually testified that they left the police station, drove a short distance,

7 and the vehicle in front of his stopped, so Al-Jilli ordered the vehicle he was in to

8 stop.

9 The Defence go on to suggest that Al-Jilli also had the authority to order

10 the unloading of detainees - defence paragraph 526 and 541 - but they provide no

11 evidence to support this.

12 Notably, when the Defence suggested on cross that Al-Jilli had authority over

13 the executions, this line of questioning went nowhere. Attempts in the brief by

14 the Defence to suggest that Al-Jilli had authority should be afforded no weight. This

15 is at transcript 63, page 17.

16 Regarding the accused's role in arrests, at Defence paragraphs 468, 486, 543 and 544.

17 Contrary to the Defence argument that the accused did not play a role in arrests, this

18 is another effort by the Defence to not view the evidence in its entirety.

19 As set out in paragraphs 492 of the Prosecution brief, prior to departing Mukjar for

20 the Sindu operation, the accused instructed Al Tayyib to arrest anyone from

21 the direction of Sindu. The accused told Al Tayyib that, quote, "they must be

22 registered by you here and they must be kept until we return." The accused

23 threatened Al Tayyib that he would be held accountable should his instructions not

24 be followed. That's 492 of the Prosecution brief.

25 And follow he did, your Honours. Upon returning from the Sindu operation in

1 early March 2004, the accused went to Mukjar police station, where the cells were
2 packed with males arrested at checkpoints, coming from villages northeast of Mukjar
3 with detainees, just as he had instructed.

4 Regarding the targeting of Fur leaders, in the Defence brief paragraphs 471.
5 Contrary to the suggestion by the Defence that the targeting of Fur community
6 leaders was an explicit policy of the Government of Sudan, evidence from multiple
7 witnesses, including insiders, shows that community leaders arriving from outside
8 Mukjar were targeted and arrested because they were perceived as being affiliated
9 with or supporting the rebels.

10 This is paragraph 401 of the Prosecution final brief.

11 In his 2006 GoS interview, the accused himself stated that Fur *umdahs* were
12 responsible for leading the rebellion. That's 0219-7007 at 7015.

13 In support of the Defence argument that community leaders were not targeted,
14 the Defence cite the example of the *shartay* of Mukjar, Omar Ahmed Zarruq and his
15 sons. This is Defence brief 471.

16 The Defence misleadingly use the example of the *shartay's* two sons who expressed
17 sympathy for the rebellion and were arrested and detained but not executed.

18 Your Honours, the Defence are describing an incident that took place in August 2003,
19 not March 2004. They mischaracterise the evidence to support their argument in
20 the brief.

21 Evidence from this case actually shows that in early March 2004, one of the *shartay's*
22 sons, Dr Muhammad Umar Ahmed Zarruq, was arrested, he was detained and he
23 was executed by the accused, militia and Janjaweed forces. This is at paragraph 420
24 and 463 of the Prosecution brief.

25 His name appears in the list of victims, annex 17, number 134.

1 The Defence also argue that the arrest of hundreds of males, including at checkpoints,
2 cannot represent all or the majority of Fur males in the area. There is no numerical
3 requirement or threshold.

4 Furthermore, the fact that certain males were not arrested does not detract from
5 the targeting of the perceived group, contrary to Defence paragraph 543.

6 Regarding torture and mistreatment arguments in the Defence brief at paragraph 550.
7 Upon entering the cells at Mukjar police station, the accused had full custody and
8 control over the detainees. This is at paragraphs 411 and 432 of the Prosecution
9 brief.

10 The accused's custody and control is demonstrated by the evidence.

11 The accused had unimpeded access to detainees at Mukjar police station over
12 the course of two days.

13 The accused and his forces mistreated detainees, including important community
14 leaders, in the presence of the head of the police station, Al Tayyib, and CRF officer
15 and guard John Koj, both who the Defence say were in charge, responsible and had
16 authority over Mukjar police station. This is citing to Defence brief 496.

17 Prosecution brief 433 to 438 and 442 outline the responses.

18 There is no evidence in this case that other Torshein or Al Tayyib took any steps to
19 exert their supposed authority to stop or forbid the accused at any point during
20 the commission of those crimes.

21 These incidents took place in a fully staffed police station, where the police and CRF
22 were based. Yet the accused had authority to do as he pleased and no one dared to
23 stop him.

24 Regarding the specific purpose element for torture as a war crime, the evidence
25 shows that the pain or suffering was inflicted to punish, intimidate and to

1 discriminate.

2 A few examples: Upon entering the cell on the first day, the accused addressed

3 *Umdah* Yahya and, quote, said, "I detained you in the past and I released you, but this

4 time I'm going to kill you." The accused struck *Umdah* Yahya and then proceeded to

5 beat the other four *umdahs* and several detainees with his axe. This is Prosecution

6 brief 419 to 420.

7 In the accused's presence, Militia/Janjaweed used knives to shave the heads of two

8 detainees and cut the ears off of three others.

9 Hamdi pointed his gun in the faces of detainees demanding to know where someone

10 named Haroun and someone named Issa were and said, "*Tora bora* we will finish

11 you".

12 One soldier threatened detainees, saying "we will fuck you, we will rape you".

13 Another stomped on detainees with his boot. This is Prosecution brief 422.

14 Your Honours, whether there was some other purpose behind this violence is

15 immaterial. The jurisprudence of the ICC and ad hoc tribunals is unequivocal.

16 Citing to Ongwen trial judgment, paragraph 2706, I quote: "This specific purpose

17 [referring to the purpose element] must be part of the motivation behind the conduct

18 but it need not be the 'predominant or sole purpose'".

19 The evidence of mistreatment of detainees by the accused is credible, reliable and

20 corroborated, contrary to Defence arguments at paragraphs 501 to 506.

21 The Defence concede that the mistreatment of detainees at Mukjar police station is

22 corroborated by several witnesses.

23 However, cynically, they suggest the reason for this is because the detainees who

24 testified suffer from, quote, "[a] phenomena of collective memory". This is at

25 Defence brief paragraph 501.

1 Through quoting selective passages of testimony and mischaracterising the evidence,
2 the Defence proceed to allege witness contamination so as to conclude that these
3 witnesses should not be found credible.

4 If, as the Defence suggest, the witnesses had, quote, "shared stories for several years",
5 why are they not more identical, more uniform? This is no basis for this allegation.

6 The evidence witnesses provided are from the perspective of detainees in a
7 packed cell, fearing for their lives, witnessing various incidents of mistreatment by
8 the accused and Militia/Janjaweed and GoS Forces at the same time, in terrifying
9 circumstances. That a neat and clean account does not emerge is not expected, nor
10 would it be credible.

11 The Defence suggest collusion or contamination between some of these detainees,
12 including P-892 and P-877. However, checking the footnote one finds the allegation
13 is testimony from P-892 saying that P-877 at one point told him he was a detainee,
14 and nothing more.

15 Similarly, with no evidence in support, the Defence speculate that because P-877 and
16 P-932 met after the events, it, quote, "thus cannot be ruled out" that they discussed
17 the alleged events.

18 Notwithstanding the fact that some of these witnesses are direct victims of being
19 struck by the accused's axe or witnessed the accused strike members of their own
20 family, there is no evidentiary basis for the Defence to suggest anything other than
21 these witnesses were telling the truth.

22 At paragraphs 514 to 516 of the Defence brief, the Defence further attempt to chip
23 away at the strength of Prosecution evidence that the accused mistreated detainees,
24 by suggesting that there are three versions of events. This, your Honours, merits
25 correcting.

1 Multiple witnesses testify as to the following:

2 Both P-919 and 129 witnessed the accused enter the cell and strike *Umdah* Yahya with

3 his axe. This is at paragraph 419 of the Prosecution brief.

4 Witnesses 919, 129 and 190 witnessed the accused strike *Umdah* Issa Harun Nour with

5 his axe.

6 P-919 testified that during this same incident, militia and Janjaweed used knives to

7 shave the heads of two detainees and cut the ears of three others. This is the same

8 day, same events. Not a different version, as the Defence would like you to believe.

9 I refer your Honours to paragraph 411 and 423 of the Prosecution brief.

10 The Defence assertion that according to one witness, P-903, the accused did not come

11 inside the cell is evidence he gave about the second day of mistreatment, not the first.

12 Given the importance of P-129's evidence, the Defence take advantage of a moment of

13 confusion that P-129 experienced on cross-examination as to the timing of a public

14 speech he heard to suggest that all of his previous evidence relates to an entirely

15 different episode of detention.

16 To correct the record, your Honours, as a 68(3) witness, P-129's evidence as to

17 the sequence of events and mistreatment from the accused is clearly set out in his first

18 and third statement, as well his clarification log.

19 His evidence of mistreatment, loading on to vehicles and execution is corroborated by

20 both crime base witnesses and insiders.

21 For the Defence to argue that in P-129's first statement he did not specify if he saw

22 the accused during his first or second detention is illogical.

23 P-129 describes his second detention in great detail and the accused appears nowhere

24 in that account.

25 Your Honour, there is nothing in his testimony or statements to credibly suggest that

1 P-129's evidence about the charged events relates to his second detention. It is also
2 important that P-129'S trauma reliving events on the stand be factored into assessing
3 this momentary confusion he experienced. The Defence should not be able to
4 capitalise on this.

5 Turning to the evidence relating to the loading of detainees on to vehicles for
6 execution.

7 The authority of the accused during the loading of detainees in the presence of
8 Commissioner Torshein and head of police Al Tayyib was touched upon at the
9 beginning of my submissions. However, I wish to emphasise a few additional
10 points.

11 On the day of the executions, the accused and co-perpetrators Idriss, Abd-Al-Mun'im,
12 went inside the cells at Mukjar police station with a purported rebel they had
13 captured from Sindu. Instead of targeting those whom the rebel pointed out as
14 possible suspected rebels, the accused simply declared the detainees were, quote, "all
15 *tora bora*". This is Prosecution brief 233 and 432.

16 Commissioner Torshein and the head of police Al Tayyib were informed by
17 the accused that he was taking the detainees from Mukjar police station to Zalingei
18 prison.

19 The accused informed the head of police Al Tayyib that all detainees had to be
20 handed over to him.

21 The accused was not stopped or prevented from doing so, despite having struck at
22 least 14 detainees with his axe and despite these detainees being gravely injured and,
23 importantly, despite having no official, formal role, responsibility for these detainees,
24 as the Defence repeatedly insist in their final brief at paragraphs 450, 478, 79, 484, 496,
25 526, 527, 541, 553, 558 and 559.

1 The convoy departed Mukjar police station with the detainees loaded on to several
2 vehicles. The accused was in the lead vehicle. Hamdi, Hassaballah, Bakhat, Idriss,
3 Al-Jilli and Samih followed behind. Paragraph 442 to 444 of the Prosecution final
4 brief.

5 Your Honour, the evidence shows that Al Tayyib showed up at the first execution site
6 after the killing had started in an attempt to negotiate with the accused and perhaps
7 try and stop the killing. However, the accused simply told the police chief, "Well,
8 this is our operation. This is our work." Notwithstanding the effort from the head of
9 police, the convoy continued on.

10 Regarding Defence annexes 3 and 4, in an attempt to undermine the corroborative
11 evidence about the loading of over a hundred detainees on to six or more vehicles
12 destined for execution, the Defence have created two charts.

13 Annex 3 purports to summarise the evidence relating to the loading of detainees. It
14 attempts to create the impression that there is a large discrepancy regarding
15 the numbers of detainees loaded on to vehicles. However, the evidence relied on
16 mischaracterises the evidence and selectively quotes from testimony.

17 For example, P-12 clarified he did not count 52 detainees loaded on to vehicles, that
18 number merely refers to some of the bodies that were later found outside of Mukjar.

19 P-29 testified that he witnessed the accused hitting detainees with his axe outside and
20 load around 46 men on to two or three vehicles. However, his testimony suggests
21 that additional detainees may have been loaded on to other vehicles in the next
22 sentence of the transcript, when he speaks about 300 people being killed.

23 Contrary to what is listed in annex 3, P-129 denied hearing an order to take out 52
24 detainees. He corrected this number and said it was more accurately around 100.

25 This is at paragraph 72 of P-129's first statement, and third statement, paragraph 52.

1 This estimate is consistent with the other two well-placed witnesses who were present,
2 namely P-905 and P-919.

3 P-905 estimated about a hundred detainees loaded on to an estimated six vehicles.

4 P-919 provides a similar estimate of a hundred detainees loaded on to five vehicles.

5 Regarding the other two witnesses present, P-984 and P-931, P-984 said he did not
6 witness the loading and does not know the exact number, and P-931 provided no
7 estimates.

8 Your Honours, the estimates may vary, but the high number of a hundred or more
9 detainees loaded on to several vehicles is the consistent estimate.

10 Regarding the first execution site. The evidence relating to the accused ordering
11 the killings of detainees at the first execution site is corroborated by the five witnesses
12 who were present: P-919, 129, 905, 984, and 931.

13 The Defence argue, despite the fact that five witnesses were present, that the accused
14 did not have and could not have ordered the executions. They try to pin it again on
15 Al-Jilli, in a sentence that provides no supporting evidence. This is final brief of
16 the Defence, paragraph 541.

17 I wish to specifically address, briefly, the suggestion that P-919 could not recognise
18 the voice of the accused. Defence brief 539.

19 One does not need to see someone to recognise their voice.

20 By this point, 919 had heard the accused speak over the course of two days. There is
21 no reason he could not recognise his voice -- the accused's voice the next day.

22 When the Defence attempted to challenge him on cross about this, he was
23 unwavering, quote, "I recognised him because he visited us in prison twice; on[c]e in
24 the morning [and] one in the evening. And I heard him again at the execution site.

25 I recognised it. It was the same voice." That's transcript T-61, page 32.

1 Regarding annex 4, the Defence compiled another chart about the supposed
2 discrepancy over the name of the first execution site and the number of victims killed
3 at this location in an effort to make the evidence appear less corroborated than it is.
4 The fact that three of the four witnesses present were not from Mukjar and may not
5 have known the specific name of the *chor* is something the Defence do not
6 acknowledge.

7 The Defence are also silent on the fact that witnesses reference the location of the first
8 execution site as being near a sycamore tree and a *chor*.

9 Three witnesses, P-877, 129, and 984, refer to the location of the *chor* using
10 the sycamore tree as a reference point.

11 Two other witnesses, P-984 and 877, refer to the large sycamore tree beside the *chor* as
12 a marker to describe the location.

13 An additional five witnesses consistently locate the site near a *chor* close to where the
14 UNAMID base would later be located.

15 I refer your Honours to footnote 51 -- sorry, 1515 of the Prosecution final brief.

16 The Defence attempt to assert that the discrepancy about the numbers of victims cast
17 doubt on the reliability and credibility of P-905, 931, 984 and 919.

18 P-0905 estimates about a hundred detainees were executed.

19 P-931 did not see.

20 P-984 did not witness the beginning of the execution, so could not provide an
21 estimate.

22 One witness was not able to see, as explained at paragraph 449 of the Prosecution
23 final brief.

24 Regarding the third site, the Defence call into question the exact location, comparing
25 129's estimation with evidence from other witnesses who were not present.

1 That others subsequently heard about the location and provide less accurate estimates
2 is immaterial and does not impact P-129's credibility.

3 Your Honours, the evidence establishes beyond a reasonable doubt that the accused is
4 responsible for the charged crimes in Mukjar early March 2004.

5 Now, with your indulgence I will, in my remaining time, speak briefly about
6 the persecution charges.

7 The Defence primarily take issue with the framing of gender persecution charges
8 under counts 21 and 31, persecution on political, ethnic and gender grounds in
9 Mukjar and Deleig. My submissions in my remaining time will focus on those.

10 As your Honours have heard over the course of a few hours, the accused and his
11 forces loaded an estimated 177 males on to vehicles at Mukjar police station and
12 executed them. Around a week later, the accused and those same forces would
13 travel to Deleig. At Deleig police station they would load another 130 males on to
14 vehicles and execute them in a similar fashion.

15 Tragically for these over 300 males, and likely unbeknownst to them, their fate was
16 sealed because in the eyes of the perpetrators they fulfilled the criteria which put
17 them in the target group.

18 For Mukjar and Deleig, the factors or proxies for the perpetrators identifying their
19 target group were: Fur, male, from outside Mukjar, primarily of fighting age.

20 Persons fitting those factors or proxies were then assumed or perceived to be rebels or
21 rebel sympathisers.

22 The Defence agree on the factual foundation of the charges for gender persecution for
23 Mukjar. In their final brief, throughout they say rebels or men, Fur males in age of
24 combating perceived as rebels, majority Fur men.

25 In Deleig, they happen to all be males. Paragraph 646 of the Defence brief.

1 Your Honours, in Mukjar and Deleig, the male victims were targeted for arrest based
2 on these proxies without proper scrutiny. There is no evidence the perpetrators only
3 targeted individuals on the basis that they were rebels, but, rather, on their belonging
4 to a group.

5 The Defence submit that the perpetrators did not target the victims, quote, "by reason
6 of their group identity - but rather because they belonged to or supported
7 the rebellion and thus constituted the enemy-fighter". Defence brief 542 to 544.
8 There is no evidentiary basis to conclude that the victims actually belonged to or
9 supported the rebels.

10 The Prosecution do not say all men in Mukjar and Deleig were targeted, contrary to
11 paragraph 673 of the Defence brief, just those suspected of being rebels, i.e. primarily
12 Fur males coming from outside of Mukjar and Deleig. This is Prosecution brief 403.
13 The evidence shows that the majority of Fur males detained at the two police stations
14 were not questioned as to their actual involvement or support for the rebels, they
15 were simply presumed, based on the fact that they were Fur, and male, arriving from
16 certain areas outside Mukjar and Deleig.

17 The Defence attempt to depict the arrest at checkpoints as premised on a list.
18 Defence brief 486 and 649.

19 Your Honours, no Prosecution witness testified that the basis for their arrest was
20 because their name appeared on a list. To the contrary, the majority of witnesses
21 who testified had no idea why they were arrested or were not given a reason. This is
22 Prosecution brief 402 to 410.

23 The Defence cite to Witness 922's evidence that lists at checkpoints contained names
24 of prominent figures like *umdahs*, *sheikhs*, rebel leaders and influential people
25 suspected of having led or supported the rebels. However, one paragraph later,

1 P-922 goes on to say that those with no marks or whose names were not on the lists
2 but looked young and strong were suspected of rebel activity and would be arrested.
3 This is 0224-0023, paragraph 77.
4 This corresponds with the evidence which has emerged at this trial. Prosecution
5 witnesses and detainees denied having anything to do with the rebellion. They did
6 not support the rebellion, they were not questioned prior to their arrest about their
7 alleged association with the rebellion, even when having their belongings searched or
8 being checked for marks on their shoulder at checkpoints. They were not found
9 carrying weapons. They knew nothing of the rebel movement. They were fleeing
10 forces who had attacked their villages. They were seeking safety.
11 As the Defence point out, in Mukjar and Deleig a select number of detainees were
12 released from detention when and where their identity could be vouched for or when
13 a *sheikh* could promise good behaviour. The act of releasing detainees shows that
14 unless proven otherwise, all of those arrested were presumed or perceived to be
15 rebels.
16 At paragraph 676 the Defence argue that, quote, "the OPT decision to intersect
17 charges with additional grounds and acts appears to be aimed at introducing new
18 standards for gender persecution."
19 Your Honours, intersectionality is a tool to analyse the factual reality in a given
20 context to fully capture and describe forms of discrimination which would otherwise
21 be lost or factually not captured.
22 The notion of intersectionality of different discriminatory grounds simply recognises
23 the multiplicity of grounds as a matter of evidence, not as a matter of law.
24 These multiple intersecting discriminatory grounds on political, ethnic and gender
25 best describe and fully capture the reality of the ways in which the accused and others

1 carried out their discriminatory targeting.

2 Contrary to paragraph 667 and 670 of the Defence brief, the definition of gender as

3 "perceived social construct of men as rebels" is not a new ground for discrimination.

4 The Prosecution did not introduce a new ground, nor is it putting forward a novel

5 legal theory or standard for gender persecution. Perceived social construct is simply

6 a factual description as to how, in this case, discriminatory grounds played out and

7 were defined.

8 The definition of gender in Article 7(3) refers to the two sexes, male and female,

9 within the context of society.

10 Perceived social construct is not a ground, it is simply a way of expressing

11 the definition of gender within the Rome Statute. It is a way of defining, quote,

12 "within the context of society".

13 In addition to the sex-specific pattern of targeting in Mukjar and Deleig, the Defence

14 have acknowledged that in a patriarchal context of Sudanese society, male equal rebel

15 and rebel equal male.

16 This establishes that the perception of fighting-age Fur males as rebels is gender

17 based and their targeting is discriminatory on the grounds of gender as defined in

18 Article 7(3).

19 Your Honours, at paragraph 543 of the Defence brief, the Prosecution does not have

20 to prove that the perpetrators intended to destroy in whole or in part the group.

21 The Defence appear to conflate the two standards. This is paragraphs 543 and 647 of

22 the Defence brief.

23 In relation to the *mens rea*, my final point. The accused was sufficiently aware of

24 the consequences of his actions and the relevant factual context to meet the Article 30

25 knowledge standard.

1 For intent, including the specific intent to discriminate on the grounds of gender,
2 the accused was aware of his own actions in targeting males as perceived rebels and
3 the relevant factual context of patriarchal society at the time.
4 Being male, in addition to being Fur, of fighting age and not from specific locations,
5 was pivotal to the perpetrator's definition of their target group, as well as their
6 perception of individual victims as rebels and targeting them on that basis.
7 The accused was entirely aware and intentional in his targeting of men and boys in
8 a discriminatory manner, deprivation of their fundamental rights and commission of
9 related crime, all the elements of gender persecution.
10 Your Honours, this concludes my submissions and I will now pass the floor to
11 Ms Whitford who will present in the remaining time on Deleig.
12 PRESIDING JUDGE KORNER: [15:34:12] Thank you very much, Ms Morris.
13 Yes, Ms Whitford.
14 MS WHITFORD: [15:34:32] Good afternoon, Madam President, your Honours.
15 In the remaining time that we have, I will be addressing your Honours in relation to,
16 first, the consistency and reliability of the evidence establishing the Deleig criminal
17 incident.
18 Secondly, Abd-Al-Rahman's responsibility for the Deleig incident.
19 Third, a brief section on the scope of the charges, in particular the question of
20 additional victims.
21 And lastly, if time, on the Facebook material.
22 Beginning with the Deleig evidence.
23 During the course of this trial your Honours heard evidence from some 19 witnesses
24 to this incident. The core of that evidence consists of first-hand accounts of
25 witnesses who made direct observations of each phase of this incident.

1 Witnesses saw Abd-Al-Rahman and his co-perpetrators ready themselves and set off
2 from the Garsila army base. Witnesses saw the Janjaweed and government forces
3 surround Deleig and go through the streets and from house to house arresting Fur
4 males who had been displaced by attacks in the region.

5 Witnesses saw Abd-Al-Rahman at the Deleig police station, where some 200 Fur
6 males were brought and made to lie face down on the ground for hours in
7 the burning sun, without food and water, while being beaten and abused.

8 Witnesses saw Abd-Al-Rahman walking on the detainees' backs. They saw him take
9 his axe and hack into the heads of two of those defenceless men, killing them.

10 Witnesses saw and heard Abd-Al-Rahman give the order that detainees be loaded on
11 to Land Cruisers to be driven to sites outside Deleig, where some 130 of them were
12 shot and killed.

13 These witnesses were members of government forces, as well as ordinary civilians,
14 farmers, traders, students. Several witnesses recounted their own arrests and abuse
15 in Deleig. Many told of family members and friends killed in the executions.

16 Some witnesses were children at the time of these events. The impact of those
17 traumatic experiences, which for many lasts until today, some 20 years since
18 the events, was many times plain to see in this courtroom.

19 And the evidence of those witnesses weaves a cohesive narrative. Far from each
20 telling a different story of what happened in Deleig, as the Defence would have you
21 believe, there is a remarkable degree of consistency and corroboration across their
22 accounts.

23 First, regarding Abd-Al-Rahman's presence during the incident.

24 Fourteen Prosecution witnesses saw the accused either in Deleig or deploying to
25 Deleig from Garsila on the first day of the incident. Ten of those witnesses, the ones

1 marked in orange, had prior knowledge of the accused, they had seen or met him
2 before the Deleig events and they knew who he was.
3 Among those, P-883 and P-905 had a particularly strong basis of knowledge. And
4 we set this out at paragraphs 20 to 27 of our brief.
5 At paragraph 560 of the Defence brief, the Defence attempts to undermine P-905's
6 evidence by submitting that, quote, "P-905 was not even sure about seeing
7 Ali Kushayb in Deleig."
8 But in the same passage of testimony cited by the Defence, P-905 was definitive that
9 the accused was there. And when it was put to them in that passage, quote, "Even if
10 you were in Deleig, you did not see Ali Kushayb, did you?" He answered, quote,
11 "I was with him."
12 And I refer in particular to transcript 88 at page 82.
13 Regarding the evidence that Abd-Al-Rahman killed two Fur male detainees at the
14 Deleig police station with his axe.
15 Regarding the first victim, known as Jenif, we rely primarily on the first-hand
16 accounts of three witnesses, P-994, P-907 and P-905. These three witnesses,
17 unconnected to each other, saw this event from three different perspectives. And as
18 your Honours will note, in paragraphs 549 to 554 of our brief, and contrary to
19 the Defence's submissions, their accounts do not contradict each other, they fit
20 together.
21 And the same is true of the evidence of two direct witnesses we rely on to establish
22 the killing of the second victim, known as *Sheikh Motor*, P-907 and P-584. And we
23 set out their evidence at paragraphs 558 to 559 of our brief.
24 Both witnesses, again unconnected to each other, stated that Abd-Al-Rahman went to
25 *Sheikh Motor*, had a short conversation with him, hit him with an axe or stick, this

1 caused him to fall to the ground, and Abd-Al-Rahman then ordered his men to throw
2 his body or load it in a humiliating way on to the back of a Land Cruiser, which they
3 did. Again, their accounts fit together.

4 Regarding the evidence on the transport of detainees to execution sites. Our case is
5 and has always been that there were several transports to multiple sites. That is
6 what was confirmed by the Pre-Trial Chamber and what the evidence proves. There
7 is no lack of clarity on that point as the Defence claims at paragraph 607 of their brief.
8 There is also no merit in the Defence's assertion, in the same paragraph, that witness
9 accounts, quote, "differ dramatically" in relation to how many detainees were
10 transported and how many transcripts the vehicles made. And I refer your Honours
11 also to annex 6 to the Defence brief.

12 In our brief, at paragraphs 563 to 565 we set out the relevant evidence on those points
13 and your Honours will note that there is in fact a lot of consistency across those
14 witness accounts. Even without taking into account the different vantage points of
15 the witnesses, the fact that some witnesses did not see the whole loading process,
16 the passage of time, the traumatic nature of these events and so forth.

17 The evidence is more than sufficient to establish the material facts that the vehicles
18 were loaded, driven out of Deleig, that they returned empty and the process repeated
19 several times.

20 Regarding the evidence of execution sites outside of Deleig, the evidence establishes
21 that executions took place to the northwest of Deleig, in the area of Soja, and to
22 the south of Deleig in the area of Koska. And we explain this in our brief from 565 to
23 599.

24 Contrary to the Defence's submission, the evidence of what occurred at those sites is
25 direct, consistent, and corroborated.

1 For the site northwest of Deleig, where Abd-Al-Rahman was present and ordered
2 the execution, we rely on direct witness observations, information received by
3 witnesses from reliable sources, evidence of a mass grave and bodies found
4 subsequent to the executions, and evidence of efforts by Abd-Al-Rahman to conceal
5 traces of the bodies at that site. And I refer your Honours to paragraphs 564 to 579
6 of our brief.

7 For the sites to the south of Deleig, the evidence on those sites is again remarkably
8 consistent.

9 Your Honours are familiar with the satellite imagery now on the screen showing
10 the area south of Deleig. It was shown to witnesses during the trial. And we see
11 locations of Deleig and Koska on the imagery, and we have also marked various
12 landmarks that were identified by witnesses: We see Wadi Bookla, Tolda and Koska
13 mountain, and the road running between Deleig and Koska.

14 And as I will demonstrate in a moment, witnesses consistently identified this
15 approximate area circled in yellow as a location where executions took place.

16 On the screen now we see four images. On the left, two sketches drawn by
17 witnesses, and on the right two satellite images marked by witnesses.

18 On all four we see again the town of Deleig at the top of the image and the village of
19 Koska to the bottom left. In each we also see Wadi Bookla, now marked in blue, and
20 also the road running from Deleig to Koska, now marked in brown. And at the
21 bottom of each image we can see a mountain range.

22 In all four images, the witnesses marked this area, now circled in yellow, described as
23 a *chor* between Koska and Tolda mountains as the place where executions occurred
24 and where large numbers of bodies were found in the subsequent days.

25 And these are but a few examples of the high degree of consistency, corroboration

1 and reliability of the evidence establishing the Deleig incident.

2 Turning now, your Honours, to Abd-Al-Rahman's responsibility for the Deleig
3 crimes.

4 As your Honours are aware, Abd-Al-Rahman is charged under several modes of
5 liability for this incident: as a co-perpetrator, direct perpetrator, for ordering and for
6 inducing the crimes.

7 In the time that I have I will deal with Abd-Al-Rahman's position of authority and
8 influence, since this is relevant to several of the charged modes. I will then focus on
9 how the scope of the Deleig common plan is supported by the evidence. And this
10 relates to your Honours' question 23.

11 Mr Jeremy has already addressed your Honours in relation to Abd-Al-Rahman's
12 general position of authority and control, and what I would like to do is to highlight
13 some of the evidence specific to Deleig and respond to some of the Defence
14 arguments.

15 There is ample evidence of Abd-Al-Rahman's position of authority and influence in
16 Deleig.

17 As with Mukjar, the Defence would have your Honours focus on *de jure* positions and
18 formal hierarchies rather than look at the evidence of what actually happened on the
19 ground.

20 The evidence shows that when Abd-Al-Rahman gave orders to the Janjaweed and to
21 government forces in Deleig, his orders were complied with. And we give many
22 examples of this in our brief at paragraph 659. And they are important orders,
23 ranging from ordering that persons be arrested or released, ordering that
24 Land Cruisers be loaded, and ordering that detainees be shot and killed at an
25 execution site.

1 And there are plenty of other examples. At the Garsila army base, prior to
2 deploying to Deleig, Abd-Al-Rahman demanded that three detainees who were being
3 detained there by military intelligence be handed over to him. When he was told
4 that they should call the commander, he said, quote, "No, I am the commander.
5 I was with him and I do not have time to wait for the commander." And I refer
6 your Honours to paragraph 528 of our brief.

7 Abd-Al-Rahman then took custody of those detainees and transported them in his
8 convoy to Deleig. A military intelligence officer who was related to one of
9 the detainees was assigned to Abd-Al-Rahman's convoy to keep an eye on him.
10 However, as soon as the convoy arrived in Deleig, Abd-Al-Rahman made the military
11 intelligence officer leave his convoy and all three detainees were subsequently killed
12 in Deleig during the incident. I refer your Honours to paragraphs 528 and 568 of our
13 brief for that evidence.

14 At the police station, Abd-Al-Rahman ordered a police first sergeant to bring
15 a detainee out of the cell. And after Abd-Al-Rahman killed the detainee, he
16 instructed the first sergeant to throw the body outside. And I refer your Honours to
17 paragraph 553 of our brief.

18 And this last example is consistent with other evidence in the case demonstrating that
19 the police were powerless to stop this operation. The police were far outnumbered
20 by the Janjaweed and some police were Fur and were themselves afraid of being
21 targeted. They had no radio or communication device and, even if they did, who
22 would they call for help? And I refer your Honours to 534 of our brief for
23 the evidence on those points.

24 The Defence asserts, at paragraph 658 and 662 of their brief that the detainees were,
25 quote, "always under the direct control" of Sergeant Juma Hassan Fadhali, a police

1 officer who worked at the Deleig police station. There is no support for that
2 proposition. The two witnesses cited by the Defence, P-643 and 935, simply stated
3 that Fadhali was head of the police station at the time.

4 In another attempt to shift the blame on to anyone but Abd-Al-Rahman, the Defence
5 asserts that Military Intelligence Officer Hamdi was in charge of the entire operation
6 in Deleig, citing to Witness P-883. This argument is made at paragraphs 332, 583 and
7 645 of the brief.

8 P-883 stated that Hamdi oversaw the search. P-883 never stated that Hamdi
9 commanded, quote, "all operations in Deleig". In fact, when asked whether
10 the Deleig operation was, quote, "under the direct command and supervision of
11 the SAF" P-883 stated "No." And refer your Honours to transcript 74 at page 65 and
12 paragraph 627 of our brief.

13 At paragraph 606 of the Defence brief, relying on a selective reading of the evidence
14 of 643, the Defence asks your Honours to infer that, if anyone ordered the loading of
15 the detainees on to vehicles or that they be taken to execution sites, it must have been
16 Hamdi.

17 To begin with, there is no proper evidentiary basis from which your Honours could
18 draw that inference. But to draw that inference your Honours would also have to
19 discount the evidence of four direct witnesses who stated that Abd-Al-Rahman gave
20 the order for the vehicles to be loaded. The evidence of one of those witnesses, P-994,
21 who watched the loading, who knew Hamdi and who stated that he only saw Hamdi
22 near the Deleig army base that day and not at the police station. And I refer your
23 Honours to paragraph 66 of his statement.

24 And the evidence of P-883 who stated that, after the searches and arrests, Hamdi left
25 Deleig to go to Kailek and the events then unfolded. And that's in our brief,

1 paragraph 627.

2 As in Mukjar, the Defence's efforts to shift the blame on to others such as Hamdi fail.

3 The role of Hamdi or any other co-perpetrator in the event does not absolve

4 Abd-Al-Rahman of criminal responsibility. They are co-perpetrators, they were

5 working together. Abd-Al-Rahman made an essential contribution to the common

6 plan, he is therefore liable for all crimes that occurred within the framework of that

7 common plan where your Honours are satisfied what he intended those types of

8 crimes to be committed or knew that those types of crimes would be committed in

9 the ordinary course of events.

10 And brings me, your Honour, to the Deleig common plan and this relates to

11 your Honours' question number 23.

12 We see the wording of the plan now on the screen.

13 In simple terms, the evidence shows that the plan involved searching for and

14 arresting Fur males displaced from the conflict areas, abusing and humiliating them,

15 and then killing them.

16 In this case, the existence and scope of the plan is inferred from circumstantial

17 evidence. The wider circumstances in which the crimes occurred and the events on

18 the ground, in particular the concerted actions of the co-perpetrators, demonstrate

19 what the plan was.

20 What I'd like to do now is highlight some of the main features of the evidence that we

21 rely on to establish the common plan.

22 First, I'll talk about the overall context of the Deleig incident. Then I'll talk about

23 the events on the ground before, during and after the incident and, in particular

24 Abd-Al-Rahman's own acts and conduct.

25 Turning first to the overall context. The Deleig events occurred in the midst of

1 a large-scope counterinsurgency campaign in Wadi Salih and Mukjar, in which
2 Abd-Al-Rahman played a major role.
3 Having been chosen to lead the Janjaweed in those localities, Abd-Al-Rahman got
4 the government's backing to fight its counterinsurgency. The government gave him
5 money and weapons, and he formed relationships with senior leaders like Ahmad
6 Harun.
7 P-883 explained how the government's backing boosted the authority of
8 Abd-Al-Rahman. When asked whether the Garsila police ever conducted
9 investigations into the actions of Abd-Al-Rahman or his Janjaweed, P-883 responded,
10 quote, "No, they did not carry out any investigations, because, in essence, they had
11 neither the capability nor the authority to hold Ali Kushayb accountable." And
12 when asked to explain why, P-883 answered, quote, "Ali Kushayb back then had
13 prerogatives vested in him by a minister attached to the Ministry of the Interior", i.e.,
14 Ahmad Harun. "Probably those powers were granted even by a higher authority."
15 And I refer to transcript 72, pages 18 to 19.
16 Starting in August 2003, Abd-Al-Rahman led the Janjaweed in a series of joint
17 operations with government forces in Kodoom and Bindisi, Dereissa, Silik, Tanako,
18 Sindu and Mukjar before the Deleig incident in March 2004.
19 The events in Mukjar are especially significant for Deleig. The crimes in both
20 locations were committed only about a week apart, by many of the same perpetrators,
21 against the same targeted group, and with a strikingly similar *modus operandi*.
22 Like in Mukjar, Deleig was at the time filled with displaced people who had fled joint
23 attacks by Janjaweed and government forces in the region. Among them were
24 displaced people from the region of Arawala, which Abd-Al-Rahman had attacked as
25 part of the Sindu operation a short time before.

1 Abd-Al-Rahman and many of the same co-perpetrators as in Mukjar, including
2 Hamdi, Hassaballah, Abd-Al-Mun'im and Idriss, targeted Fur males from among
3 the displaced in Deleig who they perceived as belonging to, or being associated with,
4 or supporting the rebel armed groups. This discriminatory targeting using proxies
5 or shortcuts is how they decided who to arrest, humiliate, torture and kill in both
6 places.

7 And pursuant to essentially the same common plan, within about a week,
8 Abd-Al-Rahman and his co-perpetrators murdered at least 177 Fur men and boys in
9 Mukjar and at least 137 in Deleig.

10 As such, the Mukjar incident was, in many ways, a blueprint for the crime in Deleig.
11 Turning now to the initial stages of the Deleig incident. The evidence shows that the
12 co-perpetrators planned and prepared for the Deleig operation.

13 On the first day of the incident, co-perpetrator Idriss relayed instructions from
14 Commander Bakhat to members of the SAF as they stood in lines in the courtyard of
15 the Garsila army base. Idriss instructed the troops to ready themselves to deploy for
16 an operation in Deleig. And that's at 526 to 527 of our brief. That same day,
17 Abd-Al-Rahman came to the Garsila base. And as I mentioned earlier, he demanded
18 custody of three detainees being held by military intelligence. Abd-Al-Rahman had
19 ordered the arrest of two of those men, *Sheikh* Ismail Abdulaziz and Hassan Adam
20 Musa, and he had been chasing the third man, *Umdah* Mohamed Suleiman of Tanako
21 ever since he had fled Abd-Al-Rahman's Tanako operation some time before. Using
22 the same pretext as in Mukjar, Abd-Al-Rahman said he was taking the detainees to
23 Zalingei, but, in fact, all three were subsequently killed during the Deleig incident.
24 After taking custody of those detainees, Abd-Al-Rahman deployed to Deleig in
25 a convoy of around 13 Land Cruisers, including SAF and military intelligence.

1 Co-perpetrators Hamdi, Hassaballah, Abd-Al-Mun'im, Mansur and Idriss also
2 deployed from the Garsila base to Deleig.
3 Regarding the nature of this mission, just like in Kodoom and Bindisi incident, and
4 Mukjar, the evidence shows that there was no rebel armed group based in Deleig nor
5 any rebel attack to be repelled. This was not a combat operation, it was about
6 rounding up and hunting down displaced Fur males, just like they had done in
7 Mukjar about one week before.
8 Turning now to the evidence of what occurred on the ground during the incident,
9 starting with the search.
10 P-883 stated that Military Intelligence Officer Hamdi gave instructions for the search
11 and was assisted by military intelligence officers Abd-Al-Mun'im and Mansur.
12 Those two officers had been deployed in Arawala and so could identify people who
13 had fled from that area. And all three are named as co-perpetrators in the common
14 plan.
15 Although military intelligence gave instructions, the evidence shows that
16 Abd-Al-Rahman's Janjaweed forces were the largest force on the ground that day.
17 The fact that over several hours Janjaweed and government forces surrounded Deleig
18 and then systematically searched the town, going through the streets and from house
19 to house, arresting Fur males and bringing them to the police station in huge numbers
20 demonstrates that this was a coordinated effort.
21 And Abd-Al-Rahman himself participated in the search. Abd-Al-Rahman was
22 present and gave orders for the arrest of *Umdah* Adam Kindiri, the community leader
23 of Forgo, one of the major villages near Arawala. When family members protested,
24 Abd-Al-Rahman told them, quote, "if you step out and follow the vehicles you will be
25 shoot." And later, Abd-Al-Rahman was heard to tell *Umdah* Kindiri, quote, "This is

1 your last day on Earth, get ready for the doomsday." And *Umdah* Kindiri was
2 subsequently killed during the Deleig incident.

3 Your Honour, I note the time. It's now 4 o'clock.

4 PRESIDING JUDGE KORNER: [16:01:15] You can complete.

5 MS WHITFORD: [16:01:17] Carry on?

6 PRESIDING JUDGE KORNER: [16:01:18] Yeah. By our reckoning, you have got
7 another 10 minutes or so.

8 Well, I'm told six minutes. But no, you can certainly go on.

9 MS WHITFORD: [16:01:30] Yes. I can finish the Deleig section in about five
10 minutes. And then my submissions regarding the scope of the charges are only five
11 minutes, your Honour. In relation to the Facebook submissions, this was in response
12 to one of your Honours' questions. I'm prepared to address it, but we can also
13 (Overlapping speakers)

14 PRESIDING JUDGE KORNER: [16:01:48] No, we'll put it -- what we'll do is we'll put
15 over the Facebook question until Friday -- until everybody's speech is completed.

16 MS WHITFORD: [16:01:57] Very well. Thank you, your Honour.

17 Turning now to events at the police station. Ample witness evidence puts
18 Abd-Al-Rahman at the police station where likely more than 200 Fur males were
19 detained face down on the ground. Abd-Al-Rahman's acts and conduct at that
20 location again show that what was unfolding there was according to plan.

21 As the detainees lay helpless on the ground, surrounded by Janjaweed,
22 Abd-Al-Rahman walked on their backs. He patrolled around them, and told them,
23 quote, "You escaped from Arawala and then you came here [...] even if you fly to
24 the sky I will get you." That's in transcript 86 at page 45.

25 In front of local villagers, detainees, police and Janjaweed, Abd-Al-Rahman used his

1 axe to chop into the heads of two of the men detained there, killing them both.
2 Abd-Al-Rahman had brought one of those arrested men, Jenif, the former PDF
3 coordinator in Garsila, to the police station himself. And Abd-Al-Rahman accused
4 Jenif of giving weapons and ammunition to, quote, "the *tora bora*" in Arawala. Before
5 killing him with his axe, Abd-Al-Rahman told Jenif, quote, "I'm not going to even
6 spend one single shot on you because shots are expensive, we pay money for it. So
7 all what I'm going to use is this axe."
8 The second man was community leader *Sheikh* Motor from Massa village, not far from
9 Arawala. And before killing him with his axe, Abd-Al-Rahman humiliated
10 *Sheikh* Motor in front of the other detainees, telling him, quote, "You are a very fat
11 person. You must have eaten people's money."
12 And, of course, as we know, Abd-Al-Rahman did not stop there. He ordered
13 the Land Cruisers be loaded and at one execution site he ordered the detainees be
14 shot and killed.
15 Abd-Al-Rahman's own acts and conduct on the ground during the Deleig incident are
16 some of the clearest evidence that he was part of the common plan and what it
17 entailed.
18 Turning now to the evidence of what occurred after the Deleig incident.
19 The evidence shows that Abd-Al-Rahman received and complied with orders from
20 the SAF to move bodies left behind at the execution site northwest of Deleig in order
21 to conceal evidence of the executions. And we reference that in our brief at 578
22 to 579.
23 And we say this evidence corroborates that Abd-Al-Rahman was a member of
24 the common plan. And in support for that position I refer your Honours to the trial
25 judgment in the Popovic et al case from the ICTY in which the Trial Chamber found

1 that Nikolic's participation in the JCE to murder was corroborated by his participation
2 in the reburial operation. And I refer your Honours specifically to paragraph 1391 of
3 the trial judgment.

4 And at this point I can provide a very brief answer to question 18, your Honours.

5 I can indicate that of the types of evidence that are listed in that question, this reburial
6 evidence that I've just mentioned is the only evidence we rely on with respect to
7 Abd-Al-Rahman's criminal responsibility.

8 And I note that we also rely on this evidence in relation to the jurisdiction point as an
9 indicator that at the time the killing in Deleig was criminal, and that the Government
10 of Sudan and Abd-Al-Rahman knew it was criminal and that's why they tried to
11 cover it up. And we reference that at paragraph 679 of our brief.

12 To conclude on the Deleig common plan, I've tried in this short time to highlight some
13 major features of the evidence we rely on. In summary:

14 The overall context, including the pattern of crimes involving the same perpetrators
15 against the same targeted group, especially with regard to Mukjar.

16 The evidence of planning and preparation.

17 The evidence of coordination between the co-perpetrators during the incident.

18 And Abd-Al-Rahman's own acts and conduct before, during and after the incident,
19 including the evidence of his specific and deliberate targeting of community leaders.

20 We also point to Abd-Al-Rahman's pre-existing relationships with co-perpetrators.

21 And, lastly, to his position of authority and influence. He was no simple foot soldier,
22 your Honours, he was the leader of the Janjaweed, the largest force on the ground in
23 Deleig that day. And this fact, in combination with all of the other evidence in
24 the case, further demonstrates that Abd-Al-Rahman was a member of this common
25 plan.

1 In the next few minutes I'd like to very quickly address the scope of the charges, and
2 in particular the second part of question 14 relating to the number of charged victims.
3 The Defence submits that your Honours should only enter convictions for the crime
4 of murder with respect to the number of victims included in the confirmed charges.
5 And this argument is found in the Defence brief at paragraphs 415, 537 and 644 and
6 it's made in relation to all three of the criminal incidents. This issue is of course
7 relevant to the question of the scope of your Honours' Article 74 judgment, and
8 therefore Article 74(2) is relevant. And in particular, quote: "[That] the decision shall
9 not exceed the facts and circumstances described in the charges and any amendments
10 to the charges."
11 The position taken by the Defence on this issue is contrary to the decision of
12 the Pre-Trial Chamber in this case on the Prosecution's request to amend the charges.
13 And I refer your Honours to decision 626. In its final brief, the Defence asserts that
14 the Pre-Trial Chamber erred in law in rendering that decision. And it makes that
15 argument at paragraphs 537 and 644.
16 The Pre-Trial Chamber found that an amendment to the charges to include additional
17 victims was not necessary in this case. The Pre-Trial Chamber also made clear that
18 its findings in the confirmation decision on specific numbers of alleged victims was
19 not intended to limit or restrict the Trial Chamber. And I refer your Honours to
20 paragraphs 18, 20 and 22 of that decision.
21 And very quickly, because I think the text is important, if we can look at paragraph 18,
22 noting the limited purpose and scope of confirmation proceedings,
23 the Pre-Trial Chamber held, quote:
24 "Accordingly, such indication ought not to be understood as limitative or restrictive
25 [...] it is not a finding that there can be no further victims beyond those specifically

1 mentioned. Rather, as revealed by relevant portions of the Confirmation Decision,
2 the Chamber recognised that the extent of the victimisation in connection with
3 the confirmed charges of murder and rape was broader than the individual instances
4 it specifically mentioned."

5 The Pre-Trial Chamber goes on at paragraph 23 - I won't read it out - but, essentially,
6 the Pre-Trial Chamber is saying that so long as other persons who fall within the same
7 temporal and geographical parameters, as well as within the charged role of
8 the accused, a trial chamber assessing the evidence may include those persons in
9 the crimes as charged.

10 And I note that this approach is consistent with jurisprudence from
11 the Appeals Chamber on specificity of charging. In particular the Ntaganda appeals
12 judgment, paragraphs 326, 327.

13 And that was followed in the Al Hassan judgment on the Regulation 55(2) decision.
14 In the present case, the additional victims alleged for each of the criminal incidents
15 clearly fall within the facts and circumstances of the confirmed charges.

16 The material facts are the same. The temporal and geographical parameters are
17 the same, and the role of the accused is the same.

18 As a result, we submit that your Honours can and should enter convictions for
19 murder with respect to all victims established by the evidence and not only those
20 confirmed by the Pre-Trial Chamber.

21 And that concludes my submissions, your Honour. And thank you for allowing me
22 extra time.

23 PRESIDING JUDGE KORNER: [16:10:55] Yes. Thank you very much,
24 Ms Whitford.

25 So that concludes the final address by the Prosecution; is that right?

- 1 MR NICHOLLS: [16:11:03] Yes, it does, your Honours. And if I can just briefly
2 thank you for your attention today and throughout this trial and bearing with us.
3 Thanks to the Defence and the LRV teams as well for the collegiality.
4 We're confident we've met our burden and we're confident there'll be a just verdict.
5 Thank you.
- 6 PRESIDING JUDGE KORNER: [16:11:27] Yes. Thank you very much, Mr Nicholls.
7 So we'll sit again tomorrow morning at 9.30 and we'll hear then from the
8 representatives of the victims.
9 And I think you've got effectively a session; is that right, Ms von Wistinghausen?
- 10 MS VON WISTINGHAUSEN: [16:11:44] I've got a generous one and a half hours.
- 11 PRESIDING JUDGE KORNER: [16:11:49] Yeah. That's a session.
12 Yes. Thank you very much.
13 In that case, we'll adjourn until 9.30 tomorrow morning.
- 14 THE COURT USHER: [16:11:58] All rise.
15 (The hearing ends in open session at 4.12 p.m.)