

1 International Criminal Court
2 Pre-Trial Chamber II
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 Rosario Salvatore Aitala, Judge Antoine Kesia-Mbe Mindua and
7 Judge Tomoko Akane
8 Confirmation of Charges Hearing - Courtroom 3
9 Monday, 24 May 2021
10 (The hearing starts in open session at 9.36 a.m.)
11 THE COURT USHER: [9:36:31] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE AITALA: [9:37:03] Good morning, everyone.
15 Welcome to all parties and participants.
16 Good morning, Mr Abd-Al-Rahman.
17 I will introduce the Chamber first. To my right is Judge Antoine Kesia-Mbe Mindua,
18 to my left, Judge Tomoko Akane, and I am the Presiding Judge Rosario Salvatore
19 Aitala.
20 Court officer, would you please call the case.
21 THE COURT OFFICER: [9:37:37] Good morning, Mr President, your Honours.
22 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus Ali
23 Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), case number ICC-02/05-01/20.
24 And for the record, we're in open session.
25 PRESIDING JUDGE AITALA: [9:37:59] Thank you very much.

1 I remind everybody of the need of speaking slowly to allow the best possible live
2 interpretation and transcription of the hearing.

3 Now, I will start with the Office of the Prosecutor.

4 Madam Prosecutor, would you please introduce yourself and your colleagues.

5 MS BENSOUDA: [9:38:25] Thank you, Mr President.

6 Mr President, the Prosecution is represented today by Mr Julian Nicholls, senior trial
7 lawyer; case manager, Jasmina Suljanovic, case manager; and myself, Fatou Bensouda,
8 Prosecutor.

9 PRESIDING JUDGE AITALA: [9:38:55] Thank you very much.

10 Now, Mr Counsel, Defence for Mr Abd-Al-Rahman, please introduce yourself and
11 your colleagues.

12 MR LAUCCI: [9:39:05](Interpretation) Thank you, your Honour.

13 On the Defence bench today, Vanessa Grée, legal adviser; Ahmad Issa, case manager.

14 And I thank the Registry for allowing Ms Marion Carrin, who is responsible for
15 analysis of evidence and our person responsible for language analysis, to attend
16 remotely. And as for myself, I am Cyril Laucci.

17 PRESIDING JUDGE AITALA: [9:39:36] Thank you very much.

18 Now the Legal Representative of the Victims, starting with the principal counsel for
19 OPCV, please.

20 MS MASSIDDA: [9:39:43] Good morning, Mr President, your Honours.

21 A group of victims are indeed represented today by counsel from the Office of Public
22 Counsel for Victims. Appearing in courtroom today myself, Paolina Massidda,
23 principal counsel, accompanied by Ms Sarah Pellet, in the third row, counsel.
24 Following these proceedings remotely: Ms Ludovica Vetrucchio, legal officer;
25 Ms Mekka Abdelgabar, assistant to counsel; and Ms Ana Peña, case manager.

1 PRESIDING JUDGE AITALA: [9:40:25] Good morning, the other Legal

2 Representatives of the Victims, please.

3 MS CLOONEY: [9:40:30] Good morning, your Honour. My name is Amal Clooney.

4 I am the Legal Representative for Victims in this case and I am joined today in court

5 by Vera Padberg, legal assistant, to -- sorry, assistant to counsel. And also remotely

6 on behalf of our team you have Katharina Lewis, who is associate counsel;

7 Yasmine Chubin, who is also associate counsel; Samarth Patel, assistant to counsel;

8 and Patricia Peña, who is our case manager.

9 PRESIDING JUDGE AITALA: [9:41:11] Thank you very much.

10 So today we commence the hearing on the confirmation of the charges brought by

11 the Prosecutor against Mr Abd-Al-Rahman. I remind that at this stage of the pretrial

12 proceedings the Chamber will not decide on the guilt or innocence of the suspect

13 pursuant to Article 61(7) of the Rome Statute. Our duty is to determine whether

14 there is sufficient evidence to establish substantial grounds to believe that

15 Mr Abd-Al-Rahman has committed the crimes with which he has been charged.

16 I will also recall the general principles applying to the present hearing.

17 First, in accordance with Article 66 of the Rome Statute, the suspect shall be presumed

18 innocent until proved guilty before the Court.

19 Second, the burden of proof rests with the Prosecutor, who, as a result, will have to

20 provide sufficient evidence in order to prove the charges brought against

21 Mr Abd-Al-Rahman to the relevant standard under Article 61(7) of the Statute.

22 And third, the Defence will benefit of all rights under Article 61(6) and 67 of the

23 Rome Statute.

24 I also recall that while the general rule is that the hearing is public, and therefore it is

25 held in open session, it might occur that, with a view at protecting private or

1 confidential information specifically and particularly when it regards victims and
2 witnesses, parts of the hearing may be held in private or in closed session.

3 Pursuant to the order set in the schedule for the confirmation of charges hearing and
4 convening annual hearing on detention, filing 378 dated 5 May 2021, the parties and
5 participants shall have a session of one hour to present observations under Rule 122
6 of the Rules of Procedure and Evidence, as well as responses. The Prosecutor and
7 the Defence are each granted four hours to present their arguments on the merits and
8 45 minutes for closing statements.

9 The Legal Representatives of the Victims are, together, granted two hours to present
10 their arguments on the merits and one hour for closing statements, to be allocated as
11 they see fit.

12 The parties and participants are reminded that the oral submissions of the parties and
13 participants must be concise in nature and repetition should be avoided.

14 In particular, I recall that Rule 122 observations constitute an opportunity for raising
15 issues or objections that were not previously brought before the Chamber and
16 the parties and participants shall therefore refrain from repeating or reformulating
17 previous submissions.

18 Closing statements may not be used to raise new arguments, but only to respond to
19 arguments and questions raised during the hearing.

20 From a technical perspective, it is recalled that whenever parties and participants
21 refer to evidence, they must indicate its level of confidentiality and specify whether it
22 is necessary to move into private or closed session.

23 Also, when in public session parties and participants shall refrain from mentioning
24 the names of victims and witnesses and, rather, refer to their respective codes and
25 pseudonyms.

1 Now, pursuant to Rule 122(1) of the Rules of Procedure and Evidence of the Court,

2 I ask the court officer to read out the charges as presented by the Prosecutor.

3 Court officer, please.

4 THE COURT OFFICER: [9:46:15] Thank you, Mr President.

5 Summary of charges:

6 The Prosecutor brings 31 charges against Ali Muhammad Abd-Al-Rahman, also

7 known as Ali Kushayb, in particular:

8 1. Charges 1 to 11 concern crimes in relation to the attacks in Kodoom, Bindisi and
9 surrounding areas between about 15 and about 16 August 2003;

10 2. Charges 12 to 21 concern crimes in relation to Mukjar and surrounding areas
11 between the end of February 2004 and the beginning of March 2004;

12 3. Charges 22 to 31 concern crimes in relation to Deleig and surrounding areas
13 between about 5 and about 7 March 2004.

14 The crimes charged as part of these attacks are the following:

15 I. Crimes committed in Kodoom, Bindisi and surrounding areas between about
16 15 and about 16 August 2003 (Counts 1 to 11).

17 Count 1, intentionally directing attacks against the civilian population as such, as
18 a war crime, concerning Kodoom, Bindisi, and surrounding areas between about
19 15 and about 16 August 2003, pursuant to Article 8(2)(e).

20 Count 2, murder as a crime against humanity, concerning at least 100 persons, most of
21 whom were Fur, who were killed in Kodoom, Bindisi and surrounding areas,
22 between about 15 and about 16 August 2003, pursuant to Article 7(1)(a).

23 Count 3, murder as a war crime, concerning those civilians not taking direct part in
24 hostilities, or persons *hors de combat*, in particular those persons, from amongst the at
25 least 100 persons killed in Kodoom, Bindisi and surrounding areas, who were at the

1 material time in the power of the militia/Janjaweed or GoS forces, between about
2 15 and about 16 August 2003, pursuant to Article 8(2)(c)(i).

3 Count 4, pillaging as a war crime, concerning the looting of food supplies, livestock,
4 medicine and other property belonging to Fur persons from their homes, shops,
5 warehouses and other facilities in Kodoom, Bindisi and surrounding areas, between
6 about 15 and about 16 August 2003, pursuant to Article 8(2)(e)(v).

7 Count 5, destruction of the property of an adversary, without military necessity, as
8 a war crime, concerning the destruction by fire of the homes, shops, warehouses, at
9 least one mosque, Islamic books and other physical structures used by and belonging
10 to Fur persons in Kodoom, Bindisi and surrounding areas, between about 15 and
11 about 16 August 2003, pursuant to Article 8(2)(e)(xii).

12 Count 6, other inhumane acts as a crime against humanity, concerning Fur persons
13 who were beaten, verbally and physically abused and/or had to watch women being
14 raped and a baby being thrown in the air in Bindisi or surrounding areas, between
15 about 15 and about 16 August 2003, pursuant to Article 7(1)(k).

16 Count 7, outrages upon personal dignity as a war crime, concerning Fur persons who
17 were beaten, verbally and physically abused and/or had to watch women being raped
18 and a baby being thrown in the air in Bindisi or surrounding areas, between about
19 15 and about 16 August 2003, pursuant to Article 8(2)(c)(ii).

20 Count 8, rape as a crime against humanity, concerning at least 17 Fur women and
21 girls in Bindisi or surrounding areas, between about 15 and about 16 August 2003,
22 pursuant to Article 7(1)(g).

23 Count 9, rape as a war crime, concerning at least 17 Fur women and girls, in Bindisi or
24 surrounding areas, between about 15 and about 16 August 2003, pursuant to
25 Article 8(2)(e)(vi).

1 Count 10, forcible transfer as a crime against humanity, concerning the expulsion of
2 Fur persons lawfully present in Kodoom, Bindisi and surrounding areas, between
3 about 15 and about 16 August 2003, pursuant to Article 7(1)(d).

4 Count 11, persecution as a crime against humanity, on political and ethnic grounds,
5 concerning the predominantly Fur population of Kodoom, Bindisi and surrounding
6 areas perceived as belonging to, or being associated with, or supporting the rebel
7 armed groups by means of intentionally directing attacks against the civilian
8 population as such, murder, pillaging, destruction of property, other inhumane acts,
9 rape and/or forcible transfer, between about 15 and about 16 August 2003, pursuant
10 to Article 7(1)(h).

11 II: Crimes committed in Mukjar and surrounding areas between the end of
12 February 2004 and the beginning of March 2004. (Counts 12 to 21).

13 Count 12, torture as a crime against humanity, concerning at least 100 Fur men in
14 Mukjar police station, between late February and early March 2004, pursuant to
15 Article 7(1)(f).

16 Count 13, torture as a war crime, concerning at least 100 Fur men in Mukjar police
17 station, between late February and early March 2004, pursuant to Article 8(2)(c)(i).

18 Count 14, other inhumane acts as a crime against humanity, concerning at least 100
19 Fur men in Mukjar police station, between late February and early March 2004,
20 pursuant to Article 7(1)(k).

21 Count 15, cruel treatment as a war crime, concerning at least 100 Fur men in Mukjar
22 police station, between late February and early March 2004, pursuant to
23 Article 8(2)(c)(i).

24 Count 16, outrages against personal dignity as a war crime, concerning at least 100
25 Fur men in Mukjar police station between late February and early March 2004,

1 pursuant to Article 8(2)(c)(ii).

2 Count 17, murder as a crime against humanity, concerning at least 50 Fur men,
3 outside of Mukjar, between late February and early March 2004, Pursuant to
4 Article 7(1)(a).

5 Count 18, murder as a war crime, concerning at least 50 Fur men outside of Mukjar,
6 between late February and early March 2004, pursuant to Article 8(2)(c)(i).

7 Count 19, attempted murder as a crime against humanity, concerning at least two Fur
8 males outside of Mukjar, between late February and early March 2004, pursuant to
9 Article 8(2)(c)(i).

10 Count 21, persecution as a crime against humanity, on political, ethnic and gender
11 grounds, concerning at least 100 Fur males perceived as belonging to or being
12 associated with, or supporting rebel armed groups by means of torture, cruel
13 treatment, other inhumane acts, outrages upon personal dignity, murder and/or
14 attempted murder, in Mukjar and surrounding areas, between late February and
15 early March 2004, pursuant to Article 7(1)(h).

16 III: Crimes committed in Deleig and surrounding areas between about 5 and
17 7 March 2004 (Counts 22 to 31).

18 Count 22, torture as a crime against humanity, concerning between 100 and 200
19 Fur males in Deleig, between about 5 and about 7 March 2004, pursuant to
20 Article 7(1)(f).

21 Count 23, torture as a war crime, concerning between 100 and 200 Fur males in Deleig,
22 between about 5 and about 7 March 2004, pursuant to Article 8(2)(c)(i).

23 Count 24, other inhumane acts as a crime against humanity, concerning between 100
24 and 200 Fur males in Deleig between about 5 and about 7 March 2004, pursuant to
25 Article 7(1)(k).

1 Count 25, cruel treatment as a war crime, concerning between 100 and 200 Fur males
2 in Deleig between about 5 and about 7 March 2004, pursuant to Article 8(2)(c)(i).

3 Count 26, outrages upon personal dignity as a war crime, concerning between 100
4 and 200 Fur males in Deleig between about 5 and about 7 March 2004, pursuant to
5 Article 8(2)(c)(ii).

6 Count 27, murder as a crime against humanity concerning at least 100 Fur males in
7 Deleig and surrounding areas between about 5 and about 7 March 2004, pursuant to
8 Article 7(1)(a).

9 Count 28, murder as a war crime, concerning at least 100 Fur males in Deleig and
10 surrounding areas, between about 5 and about 7 March 2004, pursuant to
11 Article 8(2)(c)(i).

12 Count 29, attempted murder as a crime against humanity concerning at least 12
13 Fur males in Deleig and surrounding areas, between about 5 and about 7 March 2004,
14 pursuant to Article 7(1)(a).

15 Count 30, attempted murder as a war crime, concerning at least 12 Fur males in
16 Deleig and surrounding areas, between about 5 and about 7 March 2004, pursuant to
17 Article 8(2)(c)(i).

18 Count 31, persecution as a crime against humanity, on political, ethnic and gender
19 grounds, concerning Fur males perceived as belonging to, or associated with, or
20 supporting rebel armed groups in Deleig and surrounding areas, between about
21 5 and about 7 March 2004, by means of torture, other inhumane acts, cruel treatment,
22 outrages upon personal dignity, murder, and/or attempted murder, pursuant to
23 Article 7(1)(h).

24 Thank you, Mr President.

25 PRESIDING JUDGE AITALA: [10:00:24] Thank you very much, Mr Court Officer.

1 Now the Chamber is mandated under Rule 122(3) before hearing the matter on
2 the merits to ask the Prosecutor and the suspect whether they intend to raise
3 objections or make observations concerning an issue related to the proper conduct of
4 the proceedings prior to the confirmation hearing.

5 I remind that, pursuant to paragraph 4, at no subsequent point may the objections
6 and observations made under sub-rule of paragraph 3 be raised or made again in the
7 confirmation or trial proceedings.

8 I also kindly ask the parties to strictly adhere to the allocated time in presenting their
9 submissions.

10 We start with you, Madam Prosecutor, the floor is yours.

11 MS BENSOUDA: [10:01:26] Mr President, your Honours, the Prosecution does not
12 have any observations.

13 PRESIDING JUDGE AITALA: [10:01:34] Thank you very much, Madam Prosecutor.

14 Then Mr Counsel for the Defence, Mr Laucci, you have the floor to raise any
15 objections or make any submissions, if you so wish.

16 MR LAUCCI: [10:01:52](Interpretation) Thank you, your Honour.

17 I do have a number of observations to make under 11 -- correction: Rule 122(3).

18 PRESIDING JUDGE AITALA: [10:02:19] Mr Laucci, excuse me, hold on a second
19 because I've been told, I didn't realise that the Legal Representatives for Victims has
20 raised their hand.

21 Please, the floor is yours.

22 Excuse me, Mr Laucci.

23 MS CLOONEY: [10:02:34] Thank you so much, Mr President, and apologies for this
24 interruption. I just wanted to complete the process of introductions because my
25 colleague Mr Nasser Amin also wished to introduce himself and his team in the

1 Arabic language. Thank you so much, Mr President.

2 PRESIDING JUDGE AITALA: [10:02:54] Thank you.

3 Sir, the floor is yours, you're allowed to speak.

4 MR AMIN: [10:03:00] (Interpretation) Mr President, I would like at the outset to
5 introduce myself. I am Nasser Amin.

6 I'm sorry, the sound is not very good. It cuts out.

7 PRESIDING JUDGE AITALA: [10:03:31] We can hear you, sir. Please continue.

8 MR AMIN: [10:03:38] (Interpretation) I would like to introduce my team. I have
9 Mr Yara with me, who is also working with myself. I am Nasser Amin, the Legal
10 Representative of the Victims.

11 Thank you very much, Mr President.

12 PRESIDING JUDGE AITALA: [10:03:57] Thank you. Thank you very much.

13 Thank you very much, Mr Amin.

14 Now, Mr Laucci, the floor is yours again, please.

15 MR LAUCCI: [10:04:11](Interpretation) I'm sorry, I was listening to the French
16 interpretation and there was a bit of a lag and I didn't realise that the interpretation
17 was over.

18 The Defence will not be making any introductory remarks during the confirmation of
19 charges hearing. Everything that I am readying myself to say is based on Rule 122(3)
20 of the Rules of Procedure and Evidence and these remarks have to do with issues
21 dealing with the regularity of the pretrial proceedings.

22 I will make reference to a number of other submissions that have been made earlier.

23 I have three points to raise fundamentally. First of all, a revelation; secondly,
24 a clarification; and finally, an objection.

25 Now, for the first point, this relates to a confidential and very sensitive issue, so I find

1 myself obliged to ask if the Court could go into private session.

2 PRESIDING JUDGE AITALA: [10:05:25] Court officer, please, we'll go into private
3 session.

4 (Private session at 10.05 a.m.)

5 THE COURT OFFICER: [10:05:40] We're in private session, Mr President.

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- 25 (Open session at 10.12 a.m.)

1 THE COURT OFFICER: [10:12:51] We are back in open session, Mr President.

2 PRESIDING JUDGE AITALA: [10:12:56] Thank you very much.

3 Mr Counsel, the floor is yours again.

4 MR LAUCCI: [10:13:01](Interpretation) Thank you. Now the second point I wish

5 to address this morning is a clarification. It has not escaped the Defence's attention

6 that your honourable Chamber has expressed displeasure with a number of

7 submissions from the Defence that the Chamber deemed to be redundant or repetitive.

8 I wish to reassure the honourable Chamber that anywhere we -- they saw redundancy

9 or -- there was actually nothing but consistency in terms of rolling out our defence

10 strategy.

11 One example, Article 115(b) of the Statute, in June 2020 the Defence made an initial

12 application asking the Court to officially ask the United Nations to make catchup

13 payments for financial contributions that they -- that the Court should have received

14 since 2005 to pay for the Court's activities in relation to the situation in Sudan,

15 because they came -- the activities are based on a United Nations Security Council

16 referral.

17 Your Chamber requested the application. I then turned to the Presidency and

18 the Presidency rejected my application. Duly noted. There will be no UN

19 contribution to the funding of the Court's activities in Sudan, contrary to what is

20 specifically set out in Article 115(b) of the Statute.

21 All the same, the Defence must raise this violation as part of our challenge of the

22 legality of the UN Security Council resolution which referred this situation in

23 the Sudan to the Court. We have -- we are of the view that there is no jurisdiction.

24 Article 115 of the Statute is not a taboo. Compliance with that provision is

25 a condition of legality under the Statute. Asking to rule that Resolution 5983 is

1 illegal and thus the Court does not have jurisdiction in this case, that is a request that
2 has nothing to do with the request for the UN to pay the amounts in arrears. This is
3 not redundant, it is merely consistent, but the honourable Pre-Trial Chamber seems to
4 see this as a form of redundancy. Yet there is a clear difference, a clear distinction
5 between the two requests. Instead of considering the substance of the arguments
6 regarding illegality of Resolution 1593 on the basis of Article 115(b) of the Statute,
7 the Chamber chose to strongly censor the Defence on paragraph 29 on decision 384.
8 The purpose of these remarks is not to ask you to reconsider ruling 384 - the matter is
9 currently before the Appeals Chamber - but, rather, I wish to draw the honourable
10 Pre-Trial Chamber's attention to the fact that its propensity to reject defence
11 submissions as redundant and more broadly speaking as defiance that we see in
12 relation to the Defence undermines the regularity of the pretrial proceedings because
13 the arguments of the Defence cannot be considered -- the very substance of the
14 arguments are not being considered.
15 This leads me to my third point, which stems from the second, of course, and this is in
16 a number of ways an expansion of my earlier remarks.
17 The prejudice of Pre-Trial Chamber II and its multiple demonstrations of defiance
18 regarding the Defence seems to have something to do with a particular view of the
19 scope of the Defence -- the rights of the Defence during pretrial proceedings, and this
20 view is to be found at paragraph 37.
21 (Overlapping speakers)(Speaks English) "The confirmation stage is not by any means
22 an anticipation of the trial stage. The powers of the Parties to raise procedural
23 challenges and to conduct investigations must be seen in light of the above and
24 carefully balanced with the right of the suspect to be tried without undue delay,
25 particularly if in pretrial detention."

1 (Interpretation) Thus, the rights of the Defence that are set out in the Statute would be
2 less absolute during the pretrial proceedings and could be restricted, particularly in
3 relation to the right to make applications regarding proceedings, saying, "oh, it's not
4 so important, the Court will look at these matters during the actual trial."

5 This limited view of the use of the Defence's rights has taken material form in
6 the rejection of many applications from the Defence, for example:

7 Article 115(b);

8 The same thing holds true for the proposed additional principles for reparation to
9 victims under Article 75(1), and the proceedings for admission of victims without
10 the Defence having access to their participation forms;

11 And the Defence's submissions regarding the historical responsibility taken by the
12 Office of the Prosecutor in 2005 and 2007 regarding the lack of legality of activities
13 undertaken in the field by the Court, the danger posed to victims, witnesses and other
14 people at risk in the Sudan, including the Court staff and the staff of the Defence
15 teams and the LRV teams;

16 The institutionalised violation of the protection of information policy of the Court by
17 the OTP;

18 Equality of arms;

19 And, finally, the right to appeal decisions taken by Pre-Trial Chamber II.

20 The Defence has certainly noticed that the honourable Chamber II did authorise on
21 21 May 2021 an appeal in another case, the Mahamat Said Abdel Kani case, on
22 the very same issue raised by the Defence in this case regarding the legality of the A,
23 B, C approach in the system for admitting victims to participate under Rule 89(1) of
24 the Rules of evidence and procedure. I refer to decision ICC-01/14-01/21-79. I wish
25 the Defence team in the other case good luck. We were not lucky enough to bring

1 our arguments before the Appeals court.

2 These submissions are not intended to request reconsideration of the various
3 decisions made by Pre-Trial Chamber I, but, rather, to draw the Chamber's attention
4 to the fact that the restrictions that they are placing on the rights of the Defence in this
5 case, saying that these issues are inconsequential for the limited purposes of the
6 pretrial proceedings and could be solved during the trial, also seriously undermine
7 the regularity of the pretrial proceedings and represent an undue restriction of the use
8 of the rights of Mr Abd-Al-Rahman's Defence team.

9 The third aspect will also be part of the final assessment of the regularity of the
10 pretrial proceedings by the Defence.

11 I have concluded my preliminary remarks under regulation 122(3) of the
12 regulation -- of, pardon me, the Rules of evidence and procedure. Thank you.

13 PRESIDING JUDGE AITALA: [10:22:40] Thank you very much, Mr Counsel.

14 Now, Madam Prosecutor, you want to respond to submissions of the Defence?

15 MR NICHOLLS: [10:22:51] Thank you, Mr President, your Honours, we don't
16 believe a response is necessary.

17 PRESIDING JUDGE AITALA: [10:22:58] Thank you very much.

18 Now, fortunately we are ahead of schedule so now we will proceed to hearing
19 the submissions in the merits -- on the merits of parties and participants. We will
20 start with the Office of the Prosecutor.

21 Madam Prosecutor, the floor is yours.

22 MS MASSIDDA: [10:23:23] My apologies, your Honour, if I may. Just for
23 the record of the case, the Legal Representatives of Victims from the
24 Office of Public Counsel for Victims has equally no observations or responses
25 following the observation by the Defence. Thank you very much.

1 PRESIDING JUDGE AITALA: [10:23:42] Thank you very much.

2 And the other Legal Representatives, do they have any observation (Overlapping
3 speakers).

4 MS CLOONEY: [10:23:50] Mr President, my position is the same as that
5 of the Prosecutor and the OPCV. Thank you.

6 PRESIDING JUDGE AITALA: [10:23:57] Mr Amin?

7 MR AMIN: [10:24:09](Interpretation) Mr President, I do not have any comments
8 either. Thank you very much.

9 PRESIDING JUDGE AITALA: [10:24:15] Thank you very much.

10 Now, Madam Prosecutor, the floor is yours.

11 MS BENSOUA: [10:24:26] Thank you, Mr President.

12 Mr President, your Honours, Mr Ali Muhammad Ali Abd-Al-Rahman, also
13 commonly known as Ali Kushayb, is charged with 31 counts of crimes against
14 humanity and war crimes. And these include crimes of torture, rape and murder of
15 civilians in the Wadi Salih and Mukjar localities of West Darfur state between at least
16 2003 and at least April of 2004.

17 Counts 1 to 11 concern crimes committed in Kodoom, Bindisi and surrounding areas
18 in August of 2003.

19 Counts 12 to 21 concern crimes committed in Mukjar and surrounding areas in
20 February to March of 2004.

21 And counts 22 to 31 concern crimes committed in Deleig and surrounding areas in
22 March of 2004.

23 Let me now turn to Mr Abd-Al-Rahman.

24 Feared and revered in equal measure as the "colonel of colonels", he was a senior
25 leader of the infamous Janjaweed militia in the Wadi Salih and Mukjar localities

1 during the charged period.

2 During this period, Mr Abd-Al-Rahman and his Janjaweed militia forces, acting with
3 military and police forces of the then Government of Sudan, attacked predominantly
4 Fur towns and villages. In the course of these attacks in locations such as Kodoom
5 and Bindisi, between about 15 and about 16 August 2003, civilians were attacked,
6 raped and murdered. Their homes and villages were destroyed. Thousands were
7 forcibly displaced and many fled to larger towns desperately seeking sanctuary.

8 In these larger towns, rather than finding protection, civilians were rounded up,
9 arrested and detained in various locations. In these circumstances, in Mukjar in late
10 February and early March of 2004, and then shortly after in Deleig, men were loaded
11 onto vehicles, taken a short distance away and executed in cold blood.

12 Mr Abd-Al-Rahman was present at and directly participated in these callous crimes.
13 The evidence shows that Mr Abd-Al-Rahman was a knowing, willing and energetic
14 perpetrator of these crimes. He played a crucial role, leading attacks, committing
15 murders and ordering other murders.

16 The conduct that forms the basis of the charges in this case was part of an armed
17 conflict in Darfur between the then Government of Sudan, acting together with
18 Janjaweed militia forces on the one side and on the other, the Sudan Liberation
19 Movement or Army and the Justice and Equality Movement. And further, the acts
20 that were charged as crimes against humanity were committed as part of
21 a widespread and systematic attack against the civilian population in Wadi Salih and
22 Mukjar localities.

23 The victims of the suspect's crimes are countless and their suffering immense.

24 The pain inflicted on the victims of these crimes persists. The region of Darfur is still
25 grappling with the devastation brought about by these events. Entire villages were

1 destroyed. Many inhabitants of these targeted villages remain in camps for
2 internally displaced persons and refugees to this day, 14 years since the first arrest
3 warrant was issued in the Darfur situation.

4 And I stand here today in solidarity with the victims.

5 My office has worked in difficult times and against great odds to come to this point
6 where we are today. But we have remained focused when most had abandoned
7 hope of the progress in the situation and have looked at every opportunity to
8 progress the case.

9 Today, Mr President, is a culmination of those efforts. A hearing on
10 the confirmation of charges constitute an important and concrete step in the progress
11 of seeking to achieve justice for the victims through fair and transparent proceedings.
12 In this case today we seek justice for the victims of rape, of murder, torture, and other
13 crimes committed in Darfur. Our evidence, we submit, will bear out the facts,
14 the criminality and, ultimately, culpability in this case.

15 My team and I are ready to present the Prosecution's case for the purposes of these
16 confirmation of charges hearings.

17 Mr President, your Honours, through the course of the Prosecution's submissions,
18 you will hear the accounts of witnesses whose lives have been shattered by
19 the brutality and the mercilessness of Mr Abd-Al-Rahman and his Janjaweed militia
20 forces.

21 You will hear how the Janjaweed militia employed rape as a weapon to terrorise and
22 humiliate Fur women and girls. Witness P-0011 describes being captured by
23 a member of the Janjaweed as she fled the August attack on Bindisi. Let me quote
24 from her statement:

25 "He pulled me by the hand and threw me to the ground ... he had a knife and used it

1 to cut my skirt ... he tied my right leg on to a tree with a plastic cord ... He called me
2 wife of Tora Bora ... he put that [side] of his body ... into my vagina ... I screamed and
3 another Faris (Janjaweed) came with a sword, put it [in] my mouth and said he would
4 cut me if I screamed ..." End of quote.

5 Under my leadership as Prosecutor, we have made it abundantly clear that we will, as
6 a matter of strategic priority, pursue those who commit sexual and gender-based
7 crimes and use rape as a weapon or convenient crime in war and will charge
8 perpetrators where the evidence supports such charges. These crimes, Mr President,
9 must stop.

10 In another instance, your Honours, in Mukjar, one Fur man later told his family that
11 he was so severely tortured he would have preferred to have been killed.

12 The torture he endured changed his life and to this day he cannot sleep on his back,
13 his injuries are so severe.

14 In Deleig Witness 0850 describes traumatised Fur women and children fleeing to
15 Deleig after their village was attacked. Let me also quote from that witness:

16 "We were exhausted and extremely hungry and thirsty. Our feet were cut and
17 swollen as we were walking barefoot. My clothes were infested with lice.

18 The children could no longer walk, requiring them to be carried. Mothers did not
19 have enough clothes to cover their babies." End of quote.

20 Mr President, your Honours, on a more personal note, I have been involved in
21 investigating and prosecuting this case since the Darfur situation opened in 2005.

22 In this, perhaps my last court appearance as Prosecutor of the International Criminal
23 Court, it is my great privilege to be present here today when finally one of
24 the suspects in the Darfur situation is before this Court to face independent and
25 impartial justice.

1 Let me express my sincere respect and admiration for the courage, patience and
2 resilience of the Darfur victims who have waited for so long for this day to arrive.
3 Their patience has not been in vain and their courage in the face of great adversity, a
4 source of great admiration.

5 I seize the opportunity to express my heartfelt thanks and respect to the inspirational
6 witnesses, the victims and other individuals and organisations who continue to do
7 everything in their power to pursue justice and accountability for the atrocity crimes
8 committed in Darfur. I will be expressing this sincere sentiment when I visit Sudan,
9 including Darfur, next week in my last mission to the country as ICC Prosecutor.

10 The developments in Sudan give renewed hope for justice and accountability for the
11 victims of Darfur, and with this case and these hearings, we have begun that
12 necessary process to achieve that necessary and long overdue goal.

13 To conclude, Mr President, your Honours, the evidence in this case will demonstrate
14 that there are substantial grounds to believe that Mr Abd-Al-Rahman committed the
15 alleged crimes. I respectfully request that this honourable Chamber confirm all
16 charges and commit this case for trial.

17 And before I yield the floor, with your indulgence, Mr President, your Honours,
18 allow me to introduce the presentations my team will make in the remainder of our
19 time:

20 Mr Nicholls will now provide a brief overview of the case.

21 Mr Edward Jeremy, who will shortly join us following my departure from the
22 courtroom in observance of the COVID social distancing rules, will address the
23 contextual elements of war crimes and crimes against humanity, as well as the
24 common elements of Mr Abd-Al-Rahman's criminal responsibility.

25 Ms Melissa Simms will address the charges relating to crimes committed in Kodoom,

1 Bindisi and surrounding areas.

2 Mr Pubudu Sachithanandan will address the charges relating to crimes committed in
3 Mukjar and surrounding areas and also the persecution charges in this case.

4 Ms Alison Whitford will address the charges relating to crimes committed in Deleig
5 and surrounding areas.

6 Mr Nicholls will then conclude the Prosecution's presentation.

7 Thank you, Mr President, your Honours, for your time and for your attention.

8 Thank you.

9 PRESIDING JUDGE AITALA: [10:37:07] Thank you very much, Madam Prosecutor.

10 We take the chance, since it's your, as you mentioned, your last day in the courtroom,
11 to thank you for your service for the Court, and the Judges would like to wish you
12 and your family happiness and good health and a brilliant career in your future
13 endeavours. Thank you very much.

14 And now the floor is yours, Mr Nicholls.

15 MR NICHOLLS: [10:37:45] Mr President, your Honours, colleagues, the case we're
16 talking about today focuses on crimes against humanity and war crimes committed in
17 Wadi Salih and Mukjar localities in West Darfur state, Sudan during the period
18 August 2003 through April 2004.

19 During these months, armed forces of the Government of Sudan along with
20 Janjaweed militia attacked villages, burned and looted homes and businesses, and
21 beat, tortured, raped, murdered, persecuted and forcibly displaced the civilians who
22 lived in these localities.

23 The majority of the victims which form the basis of this case are from the Fur tribe,
24 the Fur community.

25 One of the persons most responsible for these crimes is in the courtroom today,

1 Mr Abd-Al-Rahman, also widely known by the alias Ali Kushayb.

2 At all times relevant to the charges he was a senior leader of the Janjaweed militia

3 forces in these localities. As Madam Prosecutor has said and we've heard, he's

4 charged with 31 counts of crimes committed in Wadi Salih and Mukjar. He

5 committed these crimes as charged in the DCC and as set out in much greater detail

6 in our Pre-Confirmation Brief or PCB.

7 In the time we have over just the next few hours, we will show you his individual

8 criminal responsibility for these counts and demonstrate, based on the facts, based on

9 the evidence, the standard of confirmation is met and that the case should be set for

10 trial on all counts.

11 We won't be able to cover all the legal points in the Pre-Confirmation Brief or all the

12 evidence contained in our list of evidence and submitted in support of the

13 Pre-Confirmation Brief and the DCC, and that's part of the record. However, we will

14 try to provide a clear guideline to his criminal responsibility and that the case should

15 proceed to trial.

16 Let me give a very brief background to the armed conflict in Darfur and the setting

17 for this case.

18 In 2003 the Government of Sudan had a major problem, an armed rebellion in Darfur.

19 GoS assets, GoS personnel were attacked by rebel groups. The two main rebel

20 groups were the Justice and Equality Movement or JEM, and the Sudan Liberation

21 Movement/Army or SLM/A.

22 These rebel groups largely drew their membership from certain tribes: The Fur,

23 Masalit and Zaghawa.

24 Just a couple examples of notable attacks by the rebel groups:

25 On 25 April 2003, a serious and coordinated attack on the Al Fasher airbase -- Airport,

1 excuse me, in north -- that's in North Darfur; and in the region most relevant to our
2 case today in July and August 2003 rebel attacks on GoS assets, including police
3 stations in Bindisi and Mukjar.

4 Now the GoS responded to these attacks with a plan to crush the armed rebellion.

5 The result was a non-international armed conflict in Darfur. And we and the
6 Defence have formulated this in agreed fact number 1.

7 However, the GoS plan and response also relied on and incorporated an attack on the
8 civilian population in Darfur, as the Fur, Masalit and Zaghawa were perceived as
9 supporting the rebels.

10 And the GoS -- the Government of Sudan, excuse me, decided to deploy irregular
11 forces, Janjaweed militia largely drawn from Arab tribes in order to supplement the
12 regular armed forces at their disposal of the Government of Sudan.

13 And the state policy of the Government of Sudan, which Mr Jeremy will discuss in
14 just a few minutes, probably right after the break, included the use of these Janjaweed
15 forces.

16 We have set this out in our Pre-Confirmation Brief at paragraphs 23 through 26 where
17 we state in part: The attack against the civilian population was not spontaneous or
18 isolated attacks or violence -- acts or violence. Rather, the attack was carried out
19 pursuant to, and in furtherance of, a state policy by the Government of Sudan to
20 commit an attack against the civilian population in Wadi Salih and Mukjar localities
21 of West Darfur.

22 Further, we state: An integral deponent of this campaign was the use of GoS forces
23 and members of Arab tribes, in particular militia/Janjaweed, to target villages and
24 civilians that were perceived as being associated with or supporting the rebel groups.
25 That's from paragraph 24.

1 Now, importantly, the state policy is clearly reflected in the national security plan of
2 the Government of Sudan for 2004.

3 Mr Jeremy will discuss the state policy and the national security plans and detail how
4 they included the targeting of Fur, Zaghawa and Masalit villages and the
5 assassination of community leaders, or *umdahs*, and others who were considered to be
6 sympathisers to the rebel groups.

7 I'll now turn to the defendant.

8 Mr Abd-Al-Rahman, widely known during these events, and later, as Ali Kushayb,
9 was one of the principal and notorious perpetrators of these crimes. He contests his
10 alias, but there's no mistake Mr Abd-Al-Rahman is the man who is known as

11 Ali Kushayb. Ali Kushayb -- the person known as Ali Kushayb is in the courtroom.

12 The evidence that Mr Abd-Al-Rahman was widely known as Ali Kushayb during
13 the material times is set out in our filing to the Court of 7 December 2020. There is
14 also some more information in the citations to footnote 1 of our Pre-Confirmation
15 Brief, and I won't repeat that information now.

16 As you hear our submissions today, your Honours, we would ask you to consider
17 Mr Abd-Al-Rahman, his position, his role as a senior Janjaweed leader, respected and
18 feared, who commanded thousands of troops during the charged crimes, he was
19 the strongman in Wadi Salih and Mukjar.

20 Consider his statements and his acts. His criminal intent and conduct is clear, as he
21 personally beats and murders prisoners and orders a firing squad, quote, "Don't leave
22 me one person alive." End quote.

23 Look at the part he plays, Mr Abd-Al-Rahman, Ali Kushayb to his associates and to
24 his victims, what he says and what he does during the criminal events that we will
25 discuss today.

1 Now, let me try to show you on the screen the area where the crimes were committed.

2 And I'm not sure, I'm sorry, what I need to do to broadcast this. I thought this was
3 ready to go. Is the slide showing on people's screen?

4 Thank you very much.

5 Now, first we have the map of Sudan of -- as the boundaries were in 2003 and in 2004,
6 which have changed, of course.

7 Next, in the blow-up, we can see a detail of the area of Darfur to the west of Sudan.

8 And next, West Darfur, the state of West Darfur. And in the rectangle to the south
9 you can see the highlight where Wadi Salih and Mukjar localities are located.

10 West Darfur, to give you an idea, had a population of approximately 1.7 million,
11 the majority of which were Fur. And in the rectangle where we see the borders of
12 Wadi Salih and Mukjar localities, that area comprises approximately 1400 square
13 kilometres.

14 I'll now outline just a few examples of the evidence of the crimes committed by
15 Mr Abd-Al-Rahman in these locations, all detailed in our Pre-Confirmation Brief that
16 you will hear about today.

17 First, chronologically, the attack on Kodoom and Bindisi and the surrounding areas.

18 This attack took place between about 15 and 16 August 2003. Abd-Al-Rahman leads
19 the convoy into the attack of armed Janjaweed and GoS forces on the civilian
20 population, where, as set out in counts 1 to 11, at least 17 women and girls raped, at
21 least 100 persons, including men, women and children, are murdered.

22 The surviving civilians are displaced, their property is stolen or destroyed.

23 You will hear from Ms Simms, when she discusses this crime base in greater detail,
24 that Abd-Al-Rahman led this joint attack which consisted of heavily armed

25 Government of Sudan forces and Janjaweed troops who were in Land Cruisers as

1 well as on camel and horseback.

2 One witness during the attack saw these attacking forces fire on fleeing villagers as
3 they were trying to run away and that these people were shot at, quote, "from all
4 directions", end quote. And he continues, quote, "The revenge of Ali Kushayb and
5 his comrades against the village of Kodoom was immense."

6 The witness also saw dead bodies in the street.

7 And as set out in paragraphs 187 to 192 of our Pre-Confirmation Brief, the forces led
8 my Abd-Al-Rahman in this attack stripped women and girls of their clothing and
9 raped at least 17 victims. And you will hear the evidence that at this time, as
10 the victims were being raped, a witness heard some of the attackers fire their guns in
11 the air in celebration and shout, "I have found a virgin woman."

12 Next, moving chronologically, I'll briefly address the crimes committed in Mukjar and
13 just outside of Mukjar.

14 These crimes were committed in late February, early March 2004. You will hear
15 Mr Sachithanandan describe how Fur men were held in the police station in Mukjar
16 and other nearby detention facilities in horribly inhumane conditions. He will take
17 you through the evidence that Abd-Al-Rahman beat prisoners, selected prisoners for
18 execution, ordered the execution of prisoners and that ultimately at least 50 detained
19 Fur men and some boys - and when I say "boys", I mean children - were murdered.

20 A witness present at the police station in Mukjar, where many of these Fur men were
21 held prisoner, saw Ali Kushayb personally beat detained Fur community leaders,
22 known as *umdahs*, while other assailants cut the ears off of three prisoners.

23 Another eyewitness describes how a convoy of prisoners was taken away from
24 the detention sites in Mukjar, out of town, where Ali Kushayb ordered that

25 the prisoners be taken off the vehicles and shot. At the execution site, Ali Kushayb

1 ordered the shooters to continue firing at the prisoners saying, quote, "Repeat!
2 Repeat for these people. Maybe there are some you have missed." End quote.
3 Another victim, an elderly *sheikh*, asked at the execution site for permission to say
4 a final prayer before being killed. Abd-Al-Rahman allowed him to do so and, after
5 his prayer was concluded, this elderly man too was shot and murdered.
6 And who were these victims detained, beaten, loaded onto vehicles, taken out of
7 town and then murdered on Abd-Al-Rahman's order? The evidence is that they
8 were simply farmers, traders, other Fur civilians, many of whom had been displaced
9 from their homes in earlier attacks, fled to Mukjar in a failed attempt to survive.
10 I will be done soon, your Honours.
11 Finally, Deleig and the areas just outside, shortly after the crimes in Mukjar. These
12 crimes are set out in counts 22 to 31 and were committed between about 5 to
13 7 March 2004. And I think you will see that they follow a similar pattern to
14 the crimes that were committed just a short while earlier in Mukjar.
15 In and around Deleig, Abd-Al-Rahman beats detained Fur men, personally murders
16 Fur prisoners with his axe, supervises the process of prisoners being forced onto
17 vehicles for transportation outside of town to execution sites, orders the execution of
18 the detainees, resulting in the murders of at least 100 Fur males.
19 Ms Whitford will discuss these crimes. She will tell you of one terribly injured
20 victim of the Deleig mass executions, Abdallah Musa, also known as Mulenqwe.
21 I can say his name, I don't have to say a P number because he's dead. He lived long
22 enough to tell his story of what had occurred that day to him and others before dying
23 from his gunshot wounds.
24 Another eyewitness saw his father and brother arrested by Ali Kushayb in Deleig.
25 Days later, this witness personally found the bodies of his father and brother laying in

1 the open amongst the corpses of other victims of Ali Kushayb's executions.

2 Now, again, as in Mukjar, who were these people? They were victims who had been
3 displaced from their homes and other villages in earlier attacks who had fled to
4 Deleig. Mainly Fur. And again, as in Mukjar, you will see the evidence shows that
5 community leaders, *umdaqs*, were especially targeted for victimisation.

6 Today, Mr President, your Honours, in the presentations that will follow, we will
7 discuss first the perpetrator, Mr Abd-Al-Rahman, known as Ali Kushayb, who he is.
8 Mr Jeremy will discuss his background and briefly his military history; his medical
9 background and his pharmacy in Garsila where he was based; his local leadership
10 position and authority in the Janjaweed; his position and role in these events, the *agid*
11 *al-ogada*, the colonel of colonels, the highest colonel of the Janjaweed forces in
12 Wadi Salih and Mukjar; and his critical role as the link between the Government of
13 Sudan and the Janjaweed during this campaign; and also his close relationship with
14 personnel in the Government of Sudan and Government of Sudan armed forces and
15 in particular and including with Ahmad Harun, then the state minister for the
16 Ministry of the Interior of Sudan.

17 As we set out the facts of the case today, what happened in Wadi Salih and Mukjar
18 localities from August 2003 through April 2004, we invite you, your Honours, look at
19 Abd-Al-Rahman's senior position, his authority and his power. Look at his central
20 role. Look at his statements. And look at his acts, his acts in relation to Kodoom
21 and Bindisi in relation to Mukjar and then in relation to Deleig. What is he doing,
22 what is he doing from August 2003 through April 2004? He's leading the attack on
23 the civilian population. He's leading the convoy of Janjaweed and GoS forces into
24 Kodoom and Bindisi, shouting to the troops, quote, "Wipe out and sweep away, wipe
25 out and sweep away." After which the attackers murder, rape and displace

1 the civilian population, pillaging and destroying their property.

2 He is inflicting severe violence on civilians. Beating prisoners. In Mukjar and

3 Deleig he is literally, literally hunting down displaced men from earlier attacks. He

4 murders prisoners directly himself with an axe. He supervises the transportation of

5 victims to be killed by others. He orders that they be shot and killed and watches as

6 they die and demands that there be no survivors.

7 If you consider the facts, you consider the evidence discussed today and set out in our

8 Pre-Confirmation Brief, we believe you will find that there are substantial grounds to

9 confirm all 31 counts in the DCC and we ask you to do so.

10 I am finished, your Honour, and I think we're at the break.

11 PRESIDING JUDGE AITALA: [11:00:55] Thank you, Mr Prosecutor.

12 Before I adjourn the hearing, for the records, for the parties let me say the Chamber

13 has taken notes of the observations of the Defence under Rule 122 and the Chamber

14 will rule on them in the confirmation of charges decision.

15 Now I adjourn the hearing for 30 minutes, we then will resume at 11.30.

16 Thank you very much.

17 THE COURT USHER: [11:01:26] All rise.

18 (Recess taken at 11.01 a.m.)

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

20 THE COURT USHER: [11:36:18] All rise.

21 Please be seated.

22 PRESIDING JUDGE AITALA: [11:36:57] Good morning again.

23 Mr Prosecutor, the floor is yours.

24 MR JEREMY: [11:37:04] Thank you, Mr President. And good morning,

25 Mr President, your Honours.

1 Your Honours, my name is Edward Jeremy and in the next 40 minutes or so I will
2 address two topics. First, I will briefly focus on the contextual elements of war
3 crimes and crimes against humanity. And second, I will set out the evidence
4 common to Mr Abd-Al-Rahman's individual criminal responsibility for the crimes
5 charged, focusing on his position of authority and influence.

6 So first the contextual elements of war crimes. The evidence establishing these
7 elements is set out in paragraphs 5 to 19 of the Prosecution's Pre-Confirmation Brief.

8 As Mr Nicholls has mentioned, a number of facts have been agreed between
9 the Prosecution and the Defence on this issue and they are listed on our screens.

10 As agreed facts 1, 2, 4 and 5 on the slide shows, it is not in dispute, and I will
11 paraphrase, from at least April 2003 until at least April 2004, a conflict not of an
12 international character was ongoing in Darfur. The parties to the armed conflict
13 were the Government of Sudan, defined as the GoS forces, who we will refer to as
14 "GoS forces" on one side, and on the other side, the Sudan Liberation
15 Movement/Army or SLM/A and the Justice and Equality Movement or the JEM. It is
16 also agreed that the conflict was of the requisite intensity.

17 In terms of who these GoS forces were, as we see on the slide before us, the various
18 entities included the Sudanese Armed Forces or SAF, who were the official armed
19 forces of Sudan. And the SAF also included the Military Intelligence Branch. They
20 also included the Popular Defence Forces or PDF, an official paramilitary reserve
21 force. There were also various police units, the regular police, also the Central
22 Reserve Forces or CRF, which had specialist expertise in, for example, riot control,
23 and also the Popular Police Forces or the PPF, a local reserve force.

24 The militia/Janjaweed were also allied with the GoS forces in the armed conflict.

25 This term "militia/Janjaweed" is used by the Prosecution as a description for irregular

1 fighters who fought in the armed conflict alongside the GoS forces. While
2 the militia/Janjaweed were drawn mainly from the Arab tribes, it is not
3 the Prosecution's case that all Arab tribes in Darfur were involved in the conflict on
4 the side of the GoS.

5 The militia/Janjaweed were known by a variety of names, including Fursan,
6 Bashmerga and Mujahedin. The close relationship between the militia/Janjaweed
7 and the Government of Sudan and its forces is explained in more detail in the course
8 of my submissions.

9 And as I will explain, during the charged period, in the charged locations,
10 Mr Abd-Al-Rahman was the senior leader in the militia/Janjaweed who worked
11 closely with all elements of the GoS forces.

12 Your Honours, as we have seen, the rebel armed groups comprise the SLM/A and
13 the JEM, and the evidence shows that at all material times they were sufficiently
14 organised. Indicators of this organisation is set out in paragraphs 13 to 15 of the
15 Pre-Confirmation Brief and they included their control of territory, their political and
16 military wings, and also their ability to carry out armed attacks.

17 Now with reference to the timeline of key events in this case, which is on the screen
18 before us, the following attacks demonstrate this organisation:

19 First, the large-scale and coordinated attack on the Al Fasher Airport on 25 April 2003,
20 and this attack is taken as the starting point for the armed conflict in this case. And
21 this is referred to in agreed fact 6.

22 Also the attacks on the police station in Bindisi in late July/early August 2003, and
23 the attack on Mukjar police station in early August 2003.

24 As we will see, Mr Abd-Al-Rahman's response to this Mukjar attack showed his value
25 to the Government of Sudan, and a few days later he would lead the attack on

1 Kodoom and Bindisi.

2 And lastly on this point, the organisation of the rebel armed groups is further shown
3 by their ability to sign ceasefire agreements with the Government of Sudan, and
4 the Darfur humanitarian ceasefire agreement signed on 8 April 2004 is taken as
5 the end date for the armed conflict in this case. And that's agreed fact 7.

6 As regards the nexus or connection between the charges and the conflict, as well as
7 Mr Abd-Al-Rahman's knowledge about the factual circumstances that establish
8 the existence of the conflict, the Prosecution relies on the evidence in paragraph 19 of
9 the PCB as well as our submissions during this confirmation hearing.

10 Mr President, your Honours, I turn now to the contextual elements for crimes against
11 humanity for which the relevant evidence is set out in paragraphs 20 to 56 of the PCB.

12 As set out on the slide before us, which I will again partly paraphrase, it is
13 the Prosecution's case that between at least August 2003 and at least April 2004, GoS
14 forces and militia/Janjaweed committed a widespread and systematic attack against
15 the civilian population in the Wadi Salih and Mukjar localities of West Darfur.

16 And this attack was carried out pursuant to and in furtherance of a state policy to
17 commit an attack and the attack was directed predominantly against civilian
18 members of the Fur tribe.

19 My submissions will focus on the state policy and I will also briefly touch on
20 the widespread and systematic nature of the attack.

21 So first the state policy. The evidence of this policy is set out in details in
22 paragraph 23 to 52 of the PCB.

23 This evidence includes, as we see on the screen, official documentation from the GoS,
24 or Government of Sudan, meetings and public speeches, the use of public resources
25 for the Janjaweed, the systematic pattern of violence and the joint coordination

1 between the GoS forces and the militia/Janjaweed, the failure to investigate and
2 prosecute crimes and efforts to shield perpetrators.

3 Taken together, this evidence shows that in response to the rebel attacks in Darfur
4 that began in April 2003, the Government of Sudan devised a policy to use GoS forces
5 and militia/Janjaweed to target villages and civilians that were perceived as being
6 associated with or supporting the rebel groups. And this policy was executed
7 by officials and institutions of the Government of Sudan at the national, the state, and
8 the locality level, and at the ground level it was executed by GoS forces and
9 the militia/Janjaweed.

10 I will focus on one category of evidence of the state policy, and that is the official
11 documentation of the Government of Sudan. And more specifically, I'll focus on one
12 example of this official documentation, the National Security Council's plan of 2004
13 for Darfur, also referred to in paragraphs 27 to 31 of the Pre-Confirmation Brief.

14 Just before we look at that plan, some background on Sudan's
15 National Security Council or NSC. This was a body of the highest national officials
16 who managed the Darfur counterinsurgency campaign, passing instructions from
17 central government to local civilian and military officials in Darfur. Typically
18 the NSC would issue Sudan-wide strategic plans at the end of each year for the year
19 ahead. And we will shortly look at the NSC's plan for 2004.

20 When the circumstances requires, the NSC would also issue emergency plans in
21 addition to these annual plans. And in around May 2003, shortly after the attack on
22 the Al Fasher Airport, the NSC issued an emergency plan for Darfur. And this
23 formed the basis for the Government of Sudan to launch its counterinsurgency
24 campaign in the Wadi Salih and Mukjar localities, as set out in detail in paragraph 29
25 of the Pre-Confirmation Brief.

1 Of particular relevance, this emergency plan stated that the police and reservist forces
2 such as the CRF did not have sufficient numbers to fight the rebels and on
3 the basis -- on that basis a decision was taken to use Arab tribes in the conflict.

4 A number of elements of this emergency plan are contained in the
5 National Security Council's 2004 plan for Darfur and the Prosecution has been able to
6 secure a copy of this top secret plan, which we will look at now.

7 On the screen we see the front page of this document. On the right side is the Arabic
8 original and on the left side in larger font the English translation.

9 Now this first page is a covering letter. It's dated 18 December 2003 and it's the letter
10 by which the Minister of Defence, Bakri Hassan Salih, sent this 2004 plan to
11 the Director General of the National Security Service.

12 And as we see on the bottom left corner, those copied included then President,
13 Omar al-Bashir, and then Minister of Interior, Abdel Raheem Muhammad Hussein.

14 If we look at the original, we see it is stamped, dated and signed.

15 So the next page is the first page of the 2004 plan and we see that it is dated
16 18 December 2003. And I note that it is also labelled "Top Secret". We see
17 the subject is the National Security Council 2004 plan for ending the rebellion in
18 the states of Darfur. In broad terms, this plan provides an introduction to
19 the rebellion in Darfur and then proposes a plan to end the rebellion, listing objectives,
20 the means of implementing the plan, general orders and an assessment of
21 the situation.

22 We'll go to the objectives of the plan on the next page and we'll focus on objective 3,
23 which reads as follows, quote: "Imposing control over all the villages and regions to
24 which rebel leaders belong (Fur, Zaghawa, Masalit)."

25 Below that we see the means of implementing the plan, and number 1 is, quote,

1 "Creating semi-regular forces from Arab tribes." End quote.

2 Your Honours, based on witness evidence, this is a reference to the militia/Janjaweed
3 and here, in the National Security Council's first annual plan since the start of the
4 conflict, we see a reflection of a policy that was already in existence since
5 the May 2003 emergency plan that I referred to earlier.

6 Moving forward, we see "Purposes of creating semi-regular forces." At number 2 we
7 read, quote:

8 "Carrying out assigned tasks, such as assassinating rebel leaders and the sympathisers
9 from among community leaders (*umdahs*) and local administration officials." End
10 quote.

11 This is a reference to the civilian leaders in the non-Arab tribes in Darfur.

12 *Umdahs* were important figures in the community who would represent villages in
13 multiple areas and had the authority to resolve conflicts between tribes.

14 A few months after this plan, as your Honours will shortly hear, Mr Abd-Al-Rahman
15 would play the central role in the murder of a number of *umdahs* and community
16 leaders in Mukjar, and a short while later in Deleig.

17 On the next page under the heading "Assessment of the Situation" we read, quote:

18 "The field of operations will be the rebel movements' camps. The villages of the
19 leaders and the soldiers shall also be considered as a field of operations because they
20 offer them shelter and hide-out after they carry out their operations against
21 government targets." End quote.

22 Here we see an intention to expand the field of operations beyond rebel movement
23 camps, to also include villages that were thought to be linked to the rebels in some
24 way, and this exemplifies the continued policy of targeting civilian areas such as
25 Kodoom and Bindisi which had already begun following the May 2003 emergency

1 plan.

2 PRESIDING JUDGE AITALA: [11:55:00] Mr Prosecutor, can you please quote
3 the number of the document you have shown or can you tell us whether do you
4 intend to file this presentation. I'm not sure, you may have said it but I, I didn't hear
5 it, if you did.

6 MR JEREMY: [11:55:15] Thank you, your Honour. I didn't read out the evidence
7 reference number for the document, which I can do.

8 PRESIDING JUDGE AITALA: [11:55:21] Please do. Please do.

9 MR JEREMY: [11:55:22] That's DAR-OTP-0215-4649. And I'd also be happy to
10 provide a copy of the presentation, if your Honours require.

11 PRESIDING JUDGE AITALA: [11:55:38] Yes, please do, to all parties and
12 participants of course. Thank you very much. Please continue.

13 MR JEREMY: [11:55:44] Your Honours, I was about to conclude looking at this
14 particular document, and we see that the conclusion refers to carrying out the plan in
15 order to "subdue the rebellion in the states of Darfur once and for all."

16 And looking at the original, we see again it's signed, dated and stamped.

17 Mr President, your Honours, the attack by the GoS forces and the militia/Janjaweed,
18 pursuant to and in furtherance of this policy of the Government of Sudan against
19 the civilian population in the Wadi Salih and Mukjar localities, was widespread and it
20 was also systematic.

21 The evidence supporting these contextual elements, as well as Mr Abd-Al-Rahman's
22 knowledge and his intent that his conduct was part of the widespread and systematic
23 attack, is set out in paragraphs 48 to 56 of the Pre-Confirmation Brief.

24 I will simply note that the locations that form the basis of the charges in this case,
25 namely Kodoom, Bindisi and surrounding areas, as shown on the screen before us,

1 Mukjar and surrounding areas, and Deleig and surrounding areas, I will note that
2 these locations are spread across separate localities, the Wadi Salih and Mukjar
3 localities, and they were attacked over a series of eight months. These attacks alone
4 are sufficient to establish the widespread and the systematic nature of the attack.
5 Hundreds of civilians were murdered, many were raped, and thousands forcibly
6 displaced.

7 However, the attack on these locations does not stand alone. As we see on the screen
8 before us, other locations were also attacked during the charged period, as indicated
9 in orange on this map. And paragraphs 51 and 52 of the Prosecution's

10 Pre-Confirmation Brief sets out the way in which the attacks on these locations
11 provides further evidence of the widespread and systematic nature of the attack.

12 Mr President, your Honours, I turn now to the second part of my presentation. And
13 this sets out the evidence that shows that Abd-Al-Rahman, as a senior

14 militia/Janjaweed leader, with a close relationship with senior politicians and
15 members of the armed forces, was in a position of authority and influence. And this
16 position of authority and influence is relevant to various elements of

17 Abd-Al-Rahman's individual criminal responsibility as required by Articles 25(3)(a),
18 (b), (c) and (d) of the Rome Statute. This is because it was central to his ability to
19 commit, order, induce, aid, abet and otherwise contribute to the commission of
20 charged crimes.

21 And for this reason, the relevant evidence on his authority and his influence is set out
22 in the Pre-Confirmation Brief in a section titled "Common Elements of Modes of
23 Liability". That's paragraphs 57 to 124 of the Brief.

24 Your Honours, the evidence of this -- of his position of authority and influence is
25 categorised as shown on the slide. To provide an overview, Abd-Al-Rahman was

1 a senior Janjaweed militia leader who cooperated with GoS officials and members of
2 the Government of Sudan forces of varying levels of seniority at the national, the state
3 and the locality level. He also exerted influence over some members of the GoS
4 forces, including an ability to issue orders to them.

5 In the time remaining I will focus on a few aspects of this evidence, and in particular I
6 will look at the following:

7 First, his position as *agid al-ogada*, which began in around March 2003.

8 I will look at his response to the rebel attack in Mukjar in August 2003.

9 Also his meeting in Mukjar with high-level GoS officials shortly after the rebel attack.

10 And finally, I will look at subsequent meetings with senior political and military
11 figures in the Government of Sudan during late 2003 and 2004.

12 Taken together, these will demonstrate the progressive increase in Abd-Al-Rahman's
13 authority and influence as his network of relationships with senior GoS officials and
14 military figures grew and expanded.

15 First then, his position as *agid al-ogada*.

16 Now, within Arab tribes there was a long-standing arrangement whereby military
17 leaders would be responsible for the fighters within a tribe. And these military
18 leaders were called *agids* or colonels. The head of the *agids* within a particular area
19 was called the *agid al-ogada*, or the "colonel of colonels".

20 During the relevant period, and in the relevant locations, Abd-Al-Rahman was
21 the *agid al-ogada*.

22 As we see on the slide, P-12 explains that, quote, "*Agid al-ogada* made Kushayb
23 the highest ranking *agid* in Wadi Salih". End quote.

24 And he said that he was appointed to this position in around March 2003, quote,
25 "because of his military experience and education". End quote.

1 As P-12, and others such as P-643 make clear, even before the start of the charged
2 crimes, Abd-Al-Rahman was in this position of *agid al-ogada*. And in this position, he
3 had authority over a number of *agids* in the Wadi Salih and Mukjar localities,
4 including notably Al-Dayf Samih, the militia/Janjaweed leader based in Mukjar.
5 And during armed operations, as P-905 makes clear, Abd-Al-Rahman's authority
6 extended to multiple *agids* and at times thousands of Janjaweed militia. And that's
7 paragraph 69 of the Pre-Confirmation Brief.

8 To quote P-905, quote, "He's a boss, someone who likes to be a chief." End quote.

9 P-12 states that Kushayb was appointed to this position because of his military
10 experience, as well as his education.

11 As we see on the slide, other witnesses, such as P-883, also refer to his reputation as,
12 quote, "an experienced military officer and known as a fearless warrior". End quote.

13 The evidence shows that Abd-Al-Rahman served with the Sudanese Armed Forces,
14 including in South Sudan during the 1980s and 1990s period, and that after leaving
15 the military Abd-Al-Rahman opened a pharmacy shop in Garsila in around 2002.

16 In the third quote we see that P-905 recalls, in reference to Abd-Al-Rahman, that,
17 quote, "in front of his shop [...] you find the *umdaqs* of different Arab tribes [...] he is
18 very keen on [...] leadership, or being the chief of the Arabs". End quote.

19 And here we see P-905 describing how, as a prominent member of the community,
20 Arab *umdaqs* would come to Abd-Al-Rahman's pharmacy to seek advice. And he
21 further emphasises his focus on leadership and his ambition.

22 The last entry on the slide refers to the witness in paragraph 62 of the
23 Pre-Confirmation Brief, who confirms that in Garsila, in around August 2003,
24 Abd-Al-Rahman was appointed to head a newly created Mujahedin committee,
25 which was used to recruit and arm militia/Janjaweed.

1 And this witness explains that this appointment was made at the suggestion of the
2 commissioner of Garsila, Ja'afar Abd-Al-Hakam and it was based on
3 Mr Abd-Al-Rahman's existing role as *agid al-ogada* of the Arab tribes.

4 Owing to this position, Abd-Al-Rahman was therefore already in a position of
5 authority and influence prior to the charged period. And his power grew with his
6 appointment to head the Mujahedin committee and it developed further, as we will
7 see, with the attack on Mukjar in August 2003.

8 Now, your Honours, I have mentioned that in early August 2003, armed rebel groups
9 attacked the police station and the base of the Central Reserve Forces in Mukjar.

10 Immediately following this attack, Abd-Al-Rahman entered Mukjar with his
11 militia/Janjaweed forces, and as shown in this quote on our screens before us of P-103,
12 he quote, "denied [the rebels] from controlling the area of Mukjar". End quote.

13 Your Honours will recall that I have already mentioned the May 2003 emergency plan
14 from the National Security Council, which stated that the police and reservist forces
15 such as the CRF did not have sufficient numbers to fight the rebels. And this rebel
16 attack on Mukjar is a clear demonstration of that deficiency.

17 Following the rebel attack, and Abd-Al-Rahman's arrival in Mukjar, a high-level
18 delegation of GoS officials and members of the GoS forces arrived in Mukjar to meet
19 and express thanks and public support to Abd-Al-Rahman.

20 In particular, as we see in the second quote of P-878, Minister of the Interior
21 Ahmad Muhammad Harun was part of this delegation and he told an assembled
22 group of Janjaweed militia forces, quote, "as of today, we consider you as government
23 forces". End quote. And that's paragraph 83 of the PCB.

24 Your Honours will recall the national security plan for 2004 which we had on our
25 screens earlier, and the reference in that document to the need for the creation of

1 semi-regular forces from Arab tribes.

2 This episode in Mukjar is a clear demonstration of that need. In the context of its
3 counterinsurgency campaign, the Government of Sudan had a resource problem and
4 through this Mukjar episode, Abd-Al-Rahman and his militia/Janjaweed
5 demonstrated that they were a ready-made solution to that problem.

6 In this way, as we see in the quote, the third quote on our screens of P-12,
7 Abd-Al-Rahman, quote, became -- Abd-Al-Rahman became the link, quote, "between
8 the *agids* and the politicians". End quote.

9 And as P-643 further states he, quote, "started to operate outside the area of
10 Wadi Salih". End quote.

11 And as we will shortly hear, it was a few days after this meeting that Abd-Al-Rahman
12 lead the attacks on Kodoom and Bindisi following coordination with, in particular,
13 Minister Harun and Commissioner Hakam.

14 In this role as the link between the Government of Sudan and the militia/Janjaweed,
15 on multiple occasions Abd-Al-Rahman met senior officials of the Government of
16 Sudan, including Harun and senior members of the Government of Sudan's forces in
17 Mukjar and Garsila.

18 And on a number of occasions, he received from them weapons, equipment and
19 money.

20 As we see on the screen, a witness refers to a signal communication, in around
21 December 2003, from a senior minister stating that weapons and uniforms for
22 Abd-Al-Rahman and his forces would be delivered to the Sudanese Armed Forces
23 Garsila base in around December 2003.

24 On multiple occasions in February 2004, Harun and senior military officials, including
25 a PDF brigadier general, arrived by helicopter to this base in Garsila and met with

1 Abd-Al-Rahman and others. And during this period also present was a Popular
2 Defence Forces officer known as Hassaballah and the head of the Military Intelligence
3 officer in Garsila, referred to as Lieutenant Hamdi. At one of these meetings
4 Abd-Al-Rahman was also provided with large boxes of money. And that's set
5 out -- that evidence is set out in paragraphs 86 and 87 of the Pre-Confirmation Brief.
6 Harun also met Abd-Al-Rahman during this period in Mukjar on a number of
7 occasions, and witnesses saw Harun provide Abd-Al-Rahman with boxes which they
8 assumed to contain weapons and ammunition.

9 Through these relationships, Abd-Al-Rahman reinforced his influence and power.
10 As P-883 states, quote, "Kushayb would always do whatever he wanted as people
11 were afraid to challenge him because of his authority and his [...] connections with
12 some officials [...] such as ministers of interior and defence". End quote.

13 And in the next quote, P-905 explains the significant nature of Abd-Al-Rahman's
14 *de facto* powers, stating that, quote, "even if there is a brigadier, [Kushayb] can give
15 him orders". End quote.

16 And the evidence in this case demonstrates that Abd-Al-Rahman had the power to
17 issue orders to other militia/Janjaweed leaders, to coordinators in the People's
18 Defence Forces, as well as members, other members of the Sudanese Armed Forces.
19 And as we see by the quote on this next slide, Abd-Al-Rahman also publicly
20 emphasised his own position of authority. P-92 recalls him making the following
21 announcement in an open meeting in October 2003. Quote, "I am the *agid* [*al-ogada*]
22 of the Fursan. I supplied you with weapons, military equipments and everything."
23 End quote.

24 The significant nature of Abd-Al-Rahman's position of authority is clear from
25 the evidence and it was central to his individual criminal responsibility for

1 the charged crimes, including, as we will shortly hear from my colleagues, his use of
2 his position of authority to issue orders to commit crimes and the use of his influence
3 to induce crimes.

4 Mr President, your Honours, as I move to the end of my presentation, I will now
5 provide an overview of Mr Abd-Al-Rahman's extensive network.

6 This penultimate slide on the screen before us, which is annex 4 to the Prosecution's
7 Pre-Confirmation Brief, provides such an overview of this network, with an
8 indication of the differing types of relationship that Abd-Al-Rahman had with those
9 in his network.

10 In particular, as I have indicated, he cooperated closely with state minister Harun,
11 meeting him on multiple occasions and also communicating with him in relation to
12 charged crimes in Kodoom, Bindisi and Mukjar.

13 He also cooperated with commissioners Hakam and Torshain. As mentioned, this
14 included with Hakam in relation to the attack on Kodoom and Bindisi, and also with
15 Torshain in relation to the crimes in Mukjar.

16 As regards his relationship with members of Government of Sudan forces, as I have
17 mentioned, he cooperated closely with Intelligence Officer Hamdi, and Hamdi was
18 also involved in crimes in Mukjar and Deleig.

19 He also cooperated and influenced Central Reserve Force officers Himeidan and
20 Al Tayyib, especially with the former in relation to the attack on Kodoom and Bindisi
21 and the latter in relation to charged crimes in Mukjar.

22 He also cooperated, influenced and ordered PDF officers Hassaballah and Zakariya in
23 the course of crimes committed in Kodoom and Bindisi and Hassaballah was also
24 involved in crimes in Deleig, as we will hear.

25 Lastly on this slide, he cooperated, influenced and ordered other *agids* in the area, in

1 particular the militia/Janjaweed leader in Mukjar, Al-Dayf Samih. And as we will
2 hear, Samih was also involved in crimes in Kodoom, Bindisi and Mukjar.
3 Your Honours, I will end my presentation with a focus on Abd-Al-Rahman's activities
4 in the Wadi Salih and Mukjar localities between August 2003 and 2004. This final
5 slide, which is annex 3 to the Prosecution's Pre-Confirmation Brief, gives an overview
6 of these activities and they arise from, but they also further reinforce, his position of
7 authority and influence.

8 As the evidence makes clear, as a senior militia/Janjaweed leader in the Wadi Salih
9 and Mukjar localities, and as the *agid al-ogada*, Abd-Al-Rahman was at the heart of
10 multiple activities: Recruiting, arming and financing militia/Janjaweed forces;
11 cooperating with senior GoS officials and members of the Government of Sudan's
12 forces who provided support and supplies; communicating with senior Government
13 of Sudan officials in relation to armed operations; and cooperating with, influencing
14 and ordering members of the GoS forces, including, as we will hear, orders to commit
15 crimes; and finally and most importantly, he used his authority and influence to
16 participate in the charged crimes that devastated the civilian population in
17 the Wadi Salih and Mukjar localities, starting in Kodoom and Bindisi, as my colleague
18 Ms Simms will now outline.

19 Thank you.

20 PRESIDING JUDGE AITALA: [12:19:17] Thank you very much.

21 Mr Senior trial attorney, what's your problem now?

22 MR NICHOLLS: [12:19:20] No problem, your Honours. I just say, that as the next
23 speaker comes in, hopefully immediately, we will need to shuffle our positions a bit
24 for the way we are presenting the next presentation. So we're not asking for a break,
25 but it will take us a couple of minutes to rearrange ourselves.

1 PRESIDING JUDGE AITALA: [12:19:39] That is fine, we will be waiting.

2 MR NICHOLLS: [12:19:41] Thank you.

3 (Pause in proceedings)

4 MS SIMMS: [12:21:43] Mr President, your Honours, I thank the Chamber for
5 affording us the time to make the transition between prosecuting counsel.

6 For the record, my name is Melissa Simms and, as indicated by Madam Prosecutor
7 and colleagues, I will address the Court on charges relating to Kodoom, Bindisi and
8 surrounding areas.

9 PRESIDING JUDGE AITALA: [12:22:11] Good morning. You're allowed to do so.

10 MS SIMMS: [12:22:15] Very well.

11 The Prosecution has charged Mr Abd-Al-Rahman with 11 counts relating to Kodoom,
12 Bindisi and surrounding areas. The evidence shows that Mr Abd-Al-Rahman,
13 through inducements or acts of aiding, abetting, or otherwise assisting in
14 the commission of crimes, or through common purpose caused the commission of the
15 crimes for which he has been charged.

16 I refer the Chamber to slide 1, which provides an overview of the charges, and for
17 these charges there are seven counts which are specific to Kodoom, Bindisi and their
18 surrounding areas. These are almost equally divided between war crimes and
19 crimes against humanity.

20 For the record, the counts relating to war crimes are intentionally attacking
21 the civilian population, murder, pillaging, destruction of the property of an
22 adversary.

23 In terms of counts which are specific to crimes against humanity relating to Kodoom
24 and Bindisi, these are murder, forcible transfer and persecution.

25 Mr President and your Honours, based on the evidence we have charged four counts

1 which are specific to Bindisi alone. These are almost equally divided between crimes
2 against humanity and war crime. They are other inhumane acts and rape as a crime
3 against humanity and outrages upon personal dignity and rape as a war crime.

4 For the attacks in Kodoom, Bindisi and surrounding areas, we have charged these as
5 a single continuous attack, which lasted at least two days between about the 15 and
6 about 16 of August 2003.

7 On both days, Mr Abd-Al-Rahman was present, giving directions and overseeing
8 the Janjaweed militia and Government of Sudan forces as they implemented
9 the instructions to wipe out and sweep away.

10 The next on your screen, your Honours, is an overview of Kodoom, Bindisi and their
11 surrounding areas. These villages are located in the Wadi Salih locality, with
12 the exception of Nyerli, Tiro and Mukjar, which are in the Mukjar locality.

13 From the evidence, Mr Abd-Al-Rahman was present in Nyerli, Tiro, Kodoom and
14 Bindisi, with the Janjaweed militia and Government of Sudan forces on about the 15
15 and about the 16 August 2003.

16 When we speak of areas surrounding Kodoom and Bindisi, this includes the villages
17 which surrounds these areas, as is reflected on the map. Among these are Gausir,
18 Seder and Tiro. We now explain the reasons for this.

19 As will be borne out by the evidence, Mr President and your Honours, there are two
20 things which took place during the attack. Once the civilians became aware that
21 they were under attack, they immediately started to flee the area.

22 In addition, the evidence shows that the attackers went in pursuit of the civilians as
23 they fled. Therefore, the evidence shows that the acts of murder, rape, inhumane
24 acts, outrages upon personal dignity and acts of persecution that were committed in
25 the surrounding areas resulted from the attack that originated in Kodoom and

1 Bindisi.

2 PRESIDING JUDGE AITALA: [12:27:34] Mr Counsel.

3 MR LAUCCI: [12:27:38](Interpretation) Thank you very much, Mr President.

4 Counsel for the Prosecution has just referred with regard to the surrounding areas to

5 a number of localities, of which Tiro, Seder, Gausir and others. However,

6 the document stating the charges says in paragraph 5 that said localities are not part

7 of the scope of the charges. So could we understand why it is that these localities are

8 being mentioned now?

9 PRESIDING JUDGE AITALA: [12:28:25] Mr Counsel, this is now the time for

10 the Prosecutor to make their submission. You will have the opportunity later to

11 challenge any of this, or any. This is not the moment to ask questions or

12 clarifications, is it?

13 MR LAUCCI: [12:28:43](Interpretation) I shall take note of that rule and I shall

14 adhere to it in the future. Thank you very much, your Honour.

15 PRESIDING JUDGE AITALA: [12:28:54] Madam Prosecutor, please continue.

16 MS SIMMS: [12:28:56] Much obliged, Mr President.

17 To have a better overview of the charged areas, the next slide shows more clearly

18 the areas of Kodoom, Bindisi and Mukjar.

19 For Kodoom and Bindisi, we had originally asserted in our Pre-Confirmation Brief

20 that the distance between those two villages was about 15 kilometres. However, on

21 further assessment, it's actually about 9 kilometres between the two villages.

22 For the village of Mukjar, this village is about 19 kilometres away from Bindisi, and

23 this village is an important part of the case as this is where many civilians fled to after

24 fleeing the attack in Kodoom and Bindisi and their surrounding areas.

25 In terms of Kodoom itself, Kodoom was divided or included several other areas such

1 as Kodoom Tineh, Kodoom Ronga Tass and Kodoom Derliwa. For Bindisi itself, it
2 was separated into two areas, old Bindisi and new Bindisi and, alternatively, as north
3 and south Bindisi.

4 On the next slide, Mr President and your Honours, it provides an overview of the
5 ethnic and population composition of Kodoom and Bindisi. For Kodoom, around
6 1600 families resided there. And for Bindisi, around 1800 families resided there.

7 When we look at the ethnic makeup of those areas, for Kodoom, the entire population
8 identified as Furs, while for Bindisi about 97 per cent of the population identified as
9 Furs. And the document in support of this evidence can be found at

10 DAR-OTP-0145-0237 at 0300 and including pages 0305 to 0306.

11 On the issue of rebels, the evidence shows that rebels attacked Bindisi sometime in
12 August or July of 2003. There are at least three Prosecution witnesses who speak to
13 the presence of rebels during the charged incident. For now I focus on the statement
14 of Witness P-15 and her statement is found at DAR-OTP-0088-0187 at 0206,
15 paragraph 97.

16 And this witness indicates that, "At the time I lived in Bindisi I did not know anything
17 about rebels, and only heard it from the people who called us wives of 'Tora Bora'.
18 This was the name the Janjaweed called the rebels. Even when I got to Mukjar I did
19 not know anything about rebels".

20 There's also Witness 12, and I'll provide the ERN to this witness at a later date. This
21 witness indicates that they would have buried a number of bodies and this witness
22 made observations of the bodies. This witness noted that the bodies that he saw,
23 that none of them were wearing uniforms. In addition, he did not find any weapons
24 on any of the bodies.

25 Notwithstanding, the Prosecution's case is that Mr Abd-Al-Rahman attacked Kodoom,

1 Bindisi and their surrounding areas as he believed that they supported the rebel
2 forces.

3 The evidence from the account of a witness, who was present during the attack and
4 assessed that "The revenge of Ali Kushayb" - and that's the name that this witness
5 calls him - "and his comrades against the village of Kodoom was immense."

6 For purposes of this submission, the Prosecution has redacted the witness code and
7 the ERN. However, these will be provided to the Chamber.

8 On the issue of Mr Abd-Al-Rahman's criminal responsibility, my colleague Mr Jeremy
9 has provided a clear outline of his criminal participation in the attacks charged across
10 the several incidents.

11 When we look at the evidence that is specific to Kodoom and Bindisi, it shows that
12 Mr Abd-Al-Rahman induced the commission of the crimes through the following
13 acts:

14 Witness 878 - and I refer to the ERN, it's *DAR-OTP-0215-9919 at 9947 - describes
15 the conduct and statement of the suspect Mr Abd-Al-Rahman. He says that
16 Mr Abd-Al-Rahman stated, "Let's go! Allahu Akbar! Allahu Akbar! Wipe out
17 and sweep away!" Immediately this witness saw smoke rising in the village,
18 indicating signs of an attack.

19 This witness further describes that one group of the Janjaweed were burning
20 the houses after another group had looted them right before they were burned. This
21 third group were chasing people. The scenes were repeated all over again, as has
22 happened before.

23 There is Witness 29, who saw Mr Abd-Al-Rahman in Kodoom Tineh. And he
24 describes that he saw the suspect getting off a truck, getting onto a horse, blowing
25 a whistle, and that he distributed the members of the Janjaweed militia and

1 the Government of Sudan forces across the village. This witness also observed that
2 Mr Abd-Al-Rahman had a weapon and he identifies this weapon as a Gim, while
3 the other attackers had Kalashnikovs.

4 Mr President, your Honours, for other witness evidence which supports the presence,
5 conduct and actions of the suspect, we refer the Chamber to paragraphs 200 to 204 of
6 the Prosecution's Pre-Confirmation Brief, where additional particulars are provided.

7 The evidence also establishes that Mr Abd-Al-Rahman decided the route of the attack.
8 Given the sensitivities associated with this evidence, we ask the Chamber to take note
9 of the narrative outlined in paragraphs 205 to 206 of the Prosecution's

10 Pre-Confirmation Brief. Among his instructions relating to the attacking group was
11 to instruct the Government of Sudan forces to take up positions at the northern
12 border of Bindisi next to the Garsila-Zalingei road.

13 The evidence also establishes that Mr Abd-Al-Rahman was the authority on the
14 ground. He overrode objections about the excessive or the intensity of the violence
15 and he also dealt with issues relating to which village to attack. The Prosecution ask
16 the Chamber to take note of paragraph 207 of the Pre-Confirmation Brief where
17 the evidence in support of this assertion is set out more fully.

18 Finally on the issue of Mr Abd-Al-Rahman inducing the members of the attacking
19 force, we bring to the attention of the Chamber a speech which the suspect

20 Mr Abd-Al-Rahman gave at the very end of the first day. And I quote -- again
21 the witness code and the ERN has been redacted. However, it will be provided to
22 the Chamber in due course. This witness remembers the suspect as saying:

23 "You have made an achievement and taught our enemies a lesson that they will never
24 forget. By the will of Allah, tomorrow morning we head for Garsila, and
25 the government will welcome us under the presidency of brother Ja'far

1 Abd-Al Hakam the governor of the region, together with the entire government."

2 The suspect went on to say, as remembered by the witness, and these are the words:

3 "I shall not forget to remind that you the Janjaweed groups are still pouring in in great
4 numbers from all directions in order to take the spoils."

5 Mr President, your Honours, this speech shows ownership of the attack, it shows
6 the suspect using the recognition from the government to encourage the conduct of
7 members of the Janjaweed militia and/or Government of Sudan forces, and it also
8 flags the impact or the effect of the spoils of war being available to these persons.

9 On the issue of Mr Abd-Al-Rahman's acts of aiding, abetting, or otherwise assisting in
10 the commission of the crimes in Kodoom and Bindisi, the evidence of Witnesses 29
11 and 878 shows that Mr Abd-Al-Rahman was directing the attackers in Kodoom.

12 Other accounts from witnesses establish that the suspect directed the attackers from
13 one village to the next over the course of at least two days, for the purpose of
14 attacking civilians in Kodoom, Bindisi and surrounding areas.

15 As outlined by my colleague Mr Jeremy, Mr Abd-Al-Rahman was present at a critical
16 planning meeting in Mukjar. He was there with senior government officials of
17 Sudan, and he was a part of the welcoming delegation for Mr Harun. He was also
18 present and prominently positioned when Mr Harun spoke to members that were
19 present. The Prosecution relies on paragraph 213 of the Pre-Confirmation Brief,
20 which sets out the further context of this meeting.

21 Mr President and your Honours, we submit that it is not coincidental that soon after
22 this meeting the suspect, along with members of the Janjaweed militia and
23 Government of Sudan forces, went and attacked Kodoom, Bindisi and their
24 surrounding areas.

25 On the issue of common purpose liability, my colleague Mr Jeremy has outlined

1 important elements of this plan in his submissions.

2 For the evidence which is specific to Kodoom and Bindisi, we identify the presence of
3 PDF officer Hassaballah, as reflected on the screen, as well as militia/Janjaweed leader
4 Samih and other members of the militia/Janjaweed and Government of Sudan forces,
5 including the suspect, as being a part of this common purpose.

6 In terms of the evidence, we have PDF officer Hassaballah, who was present during
7 the Kodoom attack, Bindisi and surrounding areas, and he acted on the instructions of
8 Mr Abd-Al-Rahman.

9 The militia/Janjaweed leader Samih was also present with the suspect during
10 the attack in Kodoom, Bindisi and acted as a conduit for instructions from
11 Abd-Al-Rahman to others. This person, the Janjaweed militia Samih also
12 participated in the criminal conduct.

13 He is seen by Witness 918 saying to the attackers who were present to hurry up and
14 keep moving up into the village. The reference for this can be found at
15 DAR-OTP-0218-0120 at 0128 at paragraph 28.

16 Witness 29 also speaks of Samih actually shooting at civilians during the Kodoom
17 attack, while Witness 12 saw Samih during the attack on Bindisi on about
18 16 August 2003.

19 Mr President, your Honours, it is clear on the evidence that Mr Abd-Al-Rahman
20 contributed to the furthering of the criminal activity or criminal purpose of the
21 Kodoom/Bindisi common purpose group. The further particulars of the evidence
22 are fully outlined at paragraphs 218 to 224 of the Prosecution's Pre-Confirmation
23 Brief.

24 The Prosecution now moves to provide a snapshot of the crimes committed in
25 Kodoom and Bindisi. However, before going into the evidence of these crimes, I

1 pause to note that Mr Nicholls and Mr Jeremy, through their submissions, have
2 outlined the context of these crimes as having occurred within the context of
3 a widespread and systematic attack, as well as within the context of
4 a non-international armed conflict.

5 Mr President and your Honours, for the crime of attacking the civilian population,
6 the evidence establishes that the militia/Janjaweed and Government of Sudan forces,
7 under the direction of Mr Abd-Al-Rahman, entered Kodoom, Bindisi and
8 surrounding areas and they were well armed and they were mobile. The evidence
9 shows that they arrived in camouflaged Toyota Land Cruisers, some of these were
10 mounted with Dushkas, others were on horses, camels and on foot.

11 Together, they were armed with high calibre weapons such as Kalashnikovs and
12 Gims - and the latter is an assault rifle - and they also had bladed weapons such as
13 machetes. And we submit that they used these weapons to intentionally injure and
14 kill civilians.

15 The witness evidence shows that Mr Abd-Al-Rahman was an active and directing
16 presence. He told the militia/Janjaweed to wipe out and sweep away.

17 The evidence of several witnesses, including Witness 7, indicates that the acts of
18 murder, destruction of property, other inhumane acts, outrages upon personal
19 dignity, rape, forcible transfer and persecution were largely or entirely against
20 the civilian population.

21 For murders, the evidence shows that Mr Abd-Al-Rahman, through inducements, or
22 acts of aiding, abetting, or otherwise assisting in the commission of crimes, or through
23 common purpose, caused the deaths of at least 100 civilians in Kodoom, Bindisi and
24 their surrounding areas.

25 We ask the Chamber to take note of annex 7 to the Prosecution's Pre-Confirmation

1 Brief, where we state the names and known particulars of 52 persons who were killed
2 during the course of the attack. The evidence shows that these persons were not
3 combatants and that at the material time some of the victims were unarmed and
4 defenceless.

5 For instance, Witness 878 - and here the Prosecution is setting out the context of
6 the attack and the intensity of the violence, as well as the direction against the civilian
7 population. Witness 878, who was present in Kodoom, he saw members of the
8 Janjaweed and GoS forces and he describes them in the following terms, that they
9 intensified their attack -- their gunfire at the escaping people from a far distance.

10 The ERN for this reference will be provided to the Chamber.

11 This reflects, Mr President and your Honours, that the civilians on the receiving end
12 of the attack were not trying to repeal the Janjaweed and the Government of Sudan
13 forces, instead they were trying to flee the attack.

14 Witness 878 further describes that he saw persons being shot at from all directions.

15 It's in the course of living through that experience that the witness came across two
16 deceased persons, *Faqih* Umar Yaqub Musa, the imam of the Kodoom Tineh mosque,
17 and *Faqih* Abd-al-Rahman Abdallah, an elderly man.

18 After attacking Kodoom, the militia/Janjaweed and GoS forces, including
19 Mr Abd-Al-Rahman, left Kodoom and went to Bindisi. From Witness 918, this
20 witness speaks about hearing heavy weapon artillery fire coming from the direction
21 of Bindisi after the militia/Janjaweed and Government of Sudan forces had left
22 Kodoom.

23 Witness 7 indicates that when these attackers entered Bindisi, they were killing
24 people and they set fire to the hut. They used the term *nuba*, which is a pejorative
25 term for black persons and they stated that they did not want any black person to

1 survive. This statement establishes that the militia/Janjaweed and GoS forces
2 intended to kill the civilians there and it also establishes the persecutory reasons or
3 some of the persecutory reasons for wanting to kill the civilians that they came across.
4 Finally, according to Witness 7, the militia/Janjaweed and GoS forces did not
5 differentiate between targets, as they killed young boys, men, women and children.
6 Reference for this can be found at DAR-OTP-0088-0060 at 0066 at paragraph 22.
7 To reiterate the defenceless state of the victims, we highlight the evidence of 868, who
8 narrates the shooting death of Mudassir Ibrahim Garat. This witness, Mr President
9 and your Honours, was actually shot in the back as he was running away from
10 the attack.
11 We also have Mr Mohamed Khamiss, who according to Witness 12 was shot and
12 killed, and the witnesses speak of Mr Khamiss as being a tailor.
13 We also have Witness 7 speaking to the rape and murder of Kony Harun and
14 Darasalam Husayn.
15 In addition to seeing the body -- the shooting death of Mr Khamiss, we have
16 Witness 12 who speaks of seeing five bodies and that these bodies were of old men
17 and, among the deceased victims, he saw a little girl and a woman. This underscores
18 that the witnesses were civilians and the age range shows that in any society some of
19 these persons would fall within vulnerable categories of the elderly, child or women.
20 Witness 718 recounts walking around the streets of Bindisi and seeing the bodies and
21 he observed that these persons were shot to various parts of their bodies. These
22 victims were buried into two holes, consisting of men and women.
23 Mr President, is this a convenient time to break for the lunch?
24 PRESIDING JUDGE AITALA: [12:56:03] We still have several minutes -- we still
25 have almost 10 minutes, you can continue.

1 MS SIMMS: [12:56:09] Very well. Very well.

2 For the murders committed in the context of the violation of Common Article 3, we

3 highlight the shooting death of some men, which is narrated by one of the witnesses.

4 And we wouldn't mention the witness code in the public session. But this witness

5 observed members of the Janjaweed militia and GoS forces detaining the men,

6 the men -- the hands of the men were tied behind their backs, they were laid face

7 down and they were shot to death with Kalashnikovs. Now, there was one man in

8 this group who actually wasn't killed by the discharge of gunfire. On realising this,

9 the Janjaweed militia and members of the Government of Sudan forces proceeded to

10 beat this man with the butt of their weapons and he was beaten to death.

11 The victims of this incident are Rashid Issa, Adam Bosch and Abd-al-Nasir.

12 We submit Mr President and your Honours, that the evidence illustrates the intent of

13 the militia/Janjaweed and Government of Sudan forces under the direction of

14 Mr Abd-Al-Rahman to kill protected persons, as they perceived them as belonging to,

15 or being associated with, or supporting the rebel armed forces.

16 If time allows I move on to acts of pillaging and the Prosecution refers the Chamber to

17 paragraphs 169 to 174 of the Pre-Confirmation Brief. However, I pause to highlight

18 that the -- we submit that the evidence shows that the militia/Janjaweed and/or

19 Government of Sudan forces under the instructions of Mr Abd-Al-Rahman,

20 appropriated property belonging to the civilians in Kodoom and Bindisi.

21 Further, that the conduct of the militia/Janjaweed and GoS forces in relation to these

22 properties, show that they intended and did in fact deprive the rightful owners of

23 their properties. Further, that these properties were appropriated for the private or

24 personal use of the attackers.

25 In the circumstances of the appropriation where the civilians were under attack, it is

1 clear that the owners of this property could not have consented to the taking away of
2 their property.

3 In Kodoom, for instance, we have a witness indicating that Mr Abd-Al-Rahman
4 actually instructed members of the Janjaweed militia and Government of Sudan
5 forces to take away items belonging to a prominent member of that community.

6 The evidence shows that the persons receiving the instructions acted on these
7 instructions and that the property was taken away.

8 In Bindisi we have Witness 11, and this witness observed that during the course of
9 attack they were taking away beds, bags, radios, big iron boxes and other things.

10 Furthermore, that these items were carried away in vehicles belonging to
11 the Janjaweed militia and members of the Government of Sudan forces.

12 For Witness 12, this witness provides evidence which shows the specific targeting of
13 Fur civilians. This witness states that, prior to the attack, members of that

14 community belonging to the minority ethnic tribe in Bindisi marked shops with
15 a green cloth and other special markings. During the course of the attack Witness 12,
16 who was present, observed that all of the shops were attacked and their items taken
17 away, except for the shops that had been specially marked and which belonged to
18 the minority ethnic tribe in Bindisi.

19 For the acts of destruction, the Prosecution refers the Chamber to paragraphs 175 to
20 179 of its Pre-Confirmation Brief, and there the evidence establishes that

21 the militia/Janjaweed and GoS forces under the instructions of Mr Abd-Al-Rahman
22 carried out acts of destruction in Kodoom, Bindisi and surrounding areas.

23 The targeted properties belonged predominantly to persons from the Fur ethnic
24 group.

25 We submit that these properties are protected under the law of armed conflict and

1 their destruction was not justified by military necessity.

2 Finally, the evidence shows that most of the items that were destroyed, or all of the
3 items that were destroyed were really the homes of the civilians and facilities that
4 were used in the daily life of civilians.

5 Is this a convenient time, Mr President?

6 PRESIDING JUDGE AITALA: [13:02:32] Continue for three or four minutes, please.

7 MS SIMMS: [13:02:34] Very well, Mr President.

8 In relation to Witness 29, who fled the attack in Kodoom and returned immediately
9 after, this witness speaks of about 72 houses that were destroyed during the course of
10 the attack.

11 For Witness 7, who was present in Bindisi, he speaks of the destruction of the
12 warehouse which stored the food that was owned by members of that community,
13 and he also speaks to the destruction of the mosque and its collection of Islamic
14 books.

15 In terms of other acts and outrages upon personal dignity, the Prosecution refers
16 the Chamber to paragraphs 180 to 186 of its Pre-Confirmation Brief. The evidence
17 shows that the militia/Janjaweed and/or GoS forces went in pursuit of persons fleeing
18 the attack and that they detained these civilians. The men and women were ordered
19 to stand in separate lines and the men were told to keep their backs turned to their
20 female counterparts.

21 One witness states that the militia/Janjaweed and Government of Sudan forces
22 "stripped [...] our outer clothing or tiban" -- others known it as a tube -- and this is a
23 "long cloth that Sudanese women [use to] wrap around their bodies." These women
24 were searched. We submit that, in the context of the culture of the region and their
25 religion, that this was a serious act of violence in and of itself against the detained

1 women.

2 In addition, the militia/Janjaweed and/or members of the Government of Sudan forces
3 treated the women as commodities as they proceeded to select the girls from
4 the women.

5 The women were asked about their Tora Bora husbands and were called *khadim*,
6 meaning servants.

7 The militia/Janjaweed and/or members of the Government of Sudan forces went even
8 further in the objectification of these women. Among the statements that this
9 witness recalls is the following:

10 "We will take the beautiful ones as wives and the ugly ones will be servants to our
11 wives."

12 The evidence shows -- very well, Mr President.

13 PRESIDING JUDGE AITALA: [13:05:27] Yes, Madam Prosecutor.

14 MS SIMMS: [13:05:29] I will pause here.

15 PRESIDING JUDGE AITALA: [13:05:30] We stop here.

16 I will now adjourn the hearing for one and a half hours so we will resume at 2.35.

17 MS SIMMS: [13:05:38] Very well, Mr President.

18 THE COURT USHER: [13:05:43] All rise.

19 (Recess taken at 1.05 p.m.)

20 (Upon resuming in open session at 2.36 p.m.)

21 THE COURT USHER: [14:36:14] All rise.

22 Please be seated.

23 PRESIDING JUDGE AITALA: [14:36:44] Good afternoon, everyone.

24 We will then continue with the submissions of the Office of the Prosecutor.

25 Madam Prosecutor. Or, Mr Prosecutor, the floor is yours.

1 MR NICHOLLS: [14:36:56] Thank you very much, your Honours. Just very briefly,
2 at transcript page 9 today, line 17, we read out an ERN number which was for
3 the 2004 national security plan and we were off by one digit. The correct ERN
4 number is DAR-OTP-0215-4648. Thank you.

5 PRESIDING JUDGE AITALA: [14:37:34] Thank you very much. We have taken
6 note of the right number.

7 And now, Madam Prosecutor, the floor is yours again.

8 MS SIMMS: [14:37:43] Thank you, Mr President, your Honours.

9 With the permission of the Chamber can I address the objection that was raised earlier
10 by Defence counsel during my remarks, during my submissions?

11 PRESIDING JUDGE AITALA: [14:37:56] Yes, absolutely, anything that would help
12 the Chamber understanding is useful, and the Defence doing their job is always
13 useful. Of course you can.

14 MS SIMMS: [14:38:06] Very well, Mr President and your Honours.

15 In response to Defence counsel's objection, I refer to filing 325, confidential filing
16 annex 1, corrected number 2, and at paragraph 5 we did indicate that the villages that
17 were mentioned, Gausir, Seder, were not among the charged attacks. Instead, to
18 make clear from my presentation today, when we speak of the surrounding areas in
19 respect of Kodoom and Bindisi, we are speaking about the outer limits such as
20 the fields and connected mountains.

21 If it pleases you, Mr President and your Honours, I now turn to --

22 PRESIDING JUDGE AITALA: [14:38:55] Just for the record - thank you - I will not
23 treat this as an objection, this was a clarification, which was given by the Prosecution,
24 so I will not give the floor back to the Defence or to the Legal Representative of
25 Victims.

1 Please continue with your presentation.

2 MS SIMMS: [14:39:11] Thank you, Mr President.

3 In respect to other inhumane acts and outrages upon personal dignity, we refer
4 the Chamber to paragraphs 180 to 186 of the Pre-Confirmation Brief, which sets out in
5 further details the evidence in support of those counts.

6 I now turn to the issue of rape and, as indicated and as agreed, there was
7 a non-international armed conflict which was taking place in Darfur, Sudan, and
8 against the backdrop serious violations took place, including murders. We
9 refer -- including rapes. We refer the Chamber to annex A8, which sets out
10 the known particulars of at least 17 women who were raped during the course of the
11 attack.

12 In terms of our evidence, we refer to Witness 921, who -- and his particulars as
13 a witness who had clear overview of the attack and persons who participated in
14 the attack is set out at paragraph 60 of our Pre-Confirmation Brief. This witness
15 observed about 50 women who were coming into Mukjar, having fled Bindisi, and he
16 observed that these women were either partially naked or were wearing torn clothing.
17 We also have further evidence from a witness whose code we will not put on
18 the public record, but this witness, at the end of the day of the attack in Bindisi,
19 overheard members of the Janjaweed militia or of the Government of Sudan forces
20 talking about incidents where they had raped women in Bindisi. Among
21 the persons who were speaking about these episodes of rape is a close associate of
22 the suspect Mr Abd-Al-Rahman.

23 Furthermore, in terms of the evidence, we have a witness who clearly states that she
24 was penetrated during the attacks. In addition to having been vaginally penetrated
25 by the attackers, she witnessed other women and girls being raped.

1 We also have a second witness who speaks about four women and girls being
2 selected. One of them was raped in her full view and the others were taken away
3 and they were raped. She heard their screams and, when next she saw them, she
4 saw that they were wearing torn clothing.

5 In relation to the further particulars, we refer to the Pre-Confirmation Brief.

6 In respect of acts of forcible transfer, I would have made mention of evidence which
7 supports this count and I refer the Chamber to paragraphs 193 to 196 of our
8 Pre-Confirmation Brief.

9 In terms of acts relating to persecution, my colleague Mr Sachithanandan will address
10 the Court on the persecution count relating to Kodoom, Bindisi and the other charged
11 incidents.

12 Finally, Mr President, your Honours, the -- we submit that the entirety of the evidence
13 shows that the suspect -- shows that there is some substantial grounds to believe that
14 the suspect, with the militia/Janjaweed and GoS forces, committed the acts that have
15 been outlined from counts 1 to 11.

16 Mr President and your Honours, I thank you for your time.

17 PRESIDING JUDGE AITALA: [14:43:31] Thank you very much.

18 Mr Nicholls, do you want to tell us -- (Overlapping speakers)

19 MR NICHOLLS: [14:43:38] Thank you, your Honours. We will now have

20 Mr Sachithanandan come in and we will again quickly switch. This will be the last
21 switch.

22 PRESIDING JUDGE AITALA: [14:43:47] Thank you.

23 (Pause in proceedings)

24 MR SACHITHANANDAN: [14:45:12] Good afternoon, your Honour.

25 PRESIDING JUDGE AITALA: [14:45:17] Good afternoon, sir. The floor is yours.

1 MR SACHITHANANDAN: [14:45:20] Thank you, sir.

2 My name is Pubudu Sachithanandan and I will be making submissions on the crimes
3 charged with regard to Mukjar and surrounding areas, as well as the charges relating
4 to persecution.

5 Can I just check whether the presentation is being broadcast, the PowerPoint?

6 THE COURT OFFICER: [14:45:46] Your Honours, it is on evidence channel 1.

7 PRESIDING JUDGE AITALA: [14:45:49] We can see it. Please go ahead.

8 MR SACHITHANANDAN: [14:46:00] Your Honour, as we discuss today the events
9 that occurred in Mukjar and surrounding areas in late February and early March 2004,
10 it will become clear that Mr Abd-Al-Rahman shared a common plan or agreement
11 with a group of persons, including members of the Janjaweed and Government of
12 Sudan forces.

13 The persons sharing the common plan, as you can see in this image, included
14 Janjaweed leader Al-Dayf Samih, as well as Military Intelligence officer Lieutenant
15 Hamdi. Lieutenant Hamdi was the commander of the Military Intelligence unit at
16 the nearby Garsila base. And of course several others members of the Janjaweed and
17 Government of Sudan forces.

18 Now, as described by Mr Jeremy already, Mr Abd-Al-Rahman had a close
19 cooperative relationship with several of these co-perpetrators, including Samih and
20 Intelligence Officer Hamdi.

21 This cooperative relationship is evidenced by the fact that these key actors also
22 participated in other charged crimes that are charged in this case. For example, as
23 you already heard from the submissions of Ms Simms, Al-Dayf Samih was not only
24 involved in the Mukjar criminal episode but was also involved in the crimes that
25 occurred in Kodoom and Bindisi.

1 Similarly, Intelligence Officer Hamdi is not only involved in the Mukjar criminal
2 episode, but, as you will hear from Ms Whitford, was also involved in the Deleig
3 criminal episode.

4 And, of course, needless to say, as evident from the Prosecution charging document,
5 Mr Abd-Al-Rahman is the key common denominator, having played a key central
6 role in all three of these charged criminal episodes.

7 But coming back to the common plan. What was the content of the common plan?

8 It was to target persons in Mukjar, including those displaced to Mukjar from
9 the surrounding areas, who were perceived as belonging to, associated with, or
10 supporting the rebel armed groups.

11 And, indeed, the manner in which the plan was to be implemented was by, amongst
12 other things, committing the crimes of torture, other inhumane acts, cruel treatment,
13 outrages upon personal dignity, murder and persecution.

14 Now, the existence of the common plan is evident from the joint and coordinated
15 nature by which these actions were carried out by Mr Abd-Al-Rahman and his
16 co-perpetrators. It is also evident from the statements made by Mr Abd-Al-Rahman
17 and his co-perpetrators at the time of the commission of the crimes.

18 In other words, the common plan is evident from the way it was implemented. And
19 Mr Abd-Al-Rahman and his co-perpetrators implemented this common plan by
20 arresting men in Mukjar, almost entirely of the Fur ethnicity, detaining them at
21 Mukjar police station, threatening them with death, verbally assaulting them,
22 physically assaulting them, removing them from Mukjar police station, packing them
23 into vehicles, taking them to a number of execution sites, again physically assaulting
24 them and then executing the detainees with gunfire.

25 And what precisely was the role of Mr Abd-Al-Rahman in this common plan?

1 Your Honours, as you can see from this image, if you can look at the upper half of this
2 image, you will see that Mr Abd-Al-Rahman made an essential contribution to
3 the common plan by, throughout the timeline of the charges, ordering arrests,
4 contributing to arrests by means of his presence while being in a position of authority,
5 threatening and verbally abusing the detainees, physically assaulting the detainees,
6 obtaining custody of the detainees from the police station, selecting detainees to be
7 removed, to be taken to the execution sites, providing some of the vehicles used to
8 transport the detainees, supervising the transport of the detainees and then again
9 assaulting the detainees at the execution sites and, finally, ordering Janjaweed militia
10 as well as Government of Sudan forces to shoot and kill the detainees.

11 If you look, your Honours, at the bottom half of this image, you will see the relevant
12 crimes to which Mr Abd-Al-Rahman contributed.

13 At the Mukjar police station he contributed to the crimes of torture, other inhumane
14 acts, cruel treatment, and outrages upon personal dignity.

15 Later, at the execution sites he contributed to the crimes of murder and attempted
16 murder.

17 And finally, throughout the period of the charges, he contributed to the crime of
18 persecution, with the other charged crimes operating as the relevant underlying
19 conduct for the crime of persecution.

20 Now it is to these actions and statements of Mr Abd-Al-Rahman that I will turn.

21 However, to examine this correctly, it is necessary to take a few steps back and
22 consider some context. During the charged period, Mukjar was a town, as you can
23 see from this image, in Mukjar locality in West Darfur, and indeed it was
24 approximately 49 kilometres southeast of Garsila, 59 kilometres south of Deleig,
25 19 kilometres, roughly, east of Bindisi and, finally, 14 kilometres east of Kodoom.

1 Between late February and early March 2004, Janjaweed and Government of Sudan
2 forces attacked a number of villages in the area surrounding Mukjar, as you can see
3 from this image within the red box. These villages included Tendy, Abirla, Arada,
4 Nyerli, Artala, Kirarow, Sindu and a number of other locations.

5 Several of these attacks involved Mr Abd-Al-Rahman, as well as his co-perpetrators
6 Hamdi and Samih. At the same time Mr Abd-Al-Rahman also deployed on
7 a mission to a nearby location in Sindu.

8 Now, while this is happening, as a result of these attacks on these surrounding
9 villages, a number of displaced persons were forced to seek shelter in Mukjar.

10 As you can see, they travelled from all of the attacked villages.

11 And, indeed, at the same time as these villages, men, women, children, livestock,
12 were flooding into Mukjar, Mr Abd-Al-Rahman also returned from Sindu to Mukjar.

13 Importantly in this context, while these civilians were coming in, Janjaweed and
14 Government of Sudan forces set up checkpoints in Mukjar, as you can see from this
15 image of Mukjar.

16 You will see in the middle the police station, the market area, the locality premises,
17 but importantly for our purposes you will see that, towards the north, there was one
18 checkpoint or a set of checkpoints, and towards the east there was another set of
19 checkpoints.

20 And as people are flooding into Mukjar, Janjaweed and GoS forces, or Government of
21 Sudan forces, arrested hundreds of predominantly Fur male persons, men and boys.

22 Now, they arrested them at locations including the checkpoints, but also in the course
23 of house to house searches.

24 The Janjaweed and the Government of Sudan forces perceived the displaced Fur
25 males as belonging to, or as being associated with, or supporting the rebel armed

1 groups.

2 Now, as I mentioned, Mr Abd-Al-Rahman had returned from Sindu to Mukjar at this
3 point and he and his co-perpetrators were key actors in the arrest process.

4 Witnesses describe, for example, and I cite to paragraph 263 of the Pre-Confirmation
5 Brief, Witness P-12 explains Yahya Ahmad Zarruq, a local community leader, a Fur
6 community leader, the brother of the *shartay*, another community leader, was arrested
7 by Kushayb himself.

8 P-105 also states that he saw Abd-Al-Rahman present on two or three occasions
9 where people were arrested and taken in vehicles to detention centres. And of
10 course, your Honours, his presence is important because of the position of authority
11 held by Mr Abd-Al-Rahman.

12 One final point about the arrests, Witness P-905, cited in the same paragraph of the
13 PCB states, I quote -- my apologies, states that Abd-Al-Rahman instructed the head of
14 Mukjar place, I quote, "Any man coming down from Sindu, he has to be [...] kept [...]
15 And if this does not happen [...] you are going to bear responsibility." End quote.

16 So as you can see, a significant role played in the arrests by Mr Abd-Al-Rahman.

17 And it is after these arrests that the key events underlying the charges occurred.

18 Upon their arrest, at least 100 men and boys, overwhelmingly of the Fur ethnicity,
19 including community leaders, were taken to the Mukjar police station you see
20 highlighted in this slide.

21 This was quite a small location, as you can see from the zoom-in version of the image,
22 especially for if you consider it a space to contain more than a hundred detainees.

23 Indeed several of the detainees, including P-877, sketched the location of their
24 detention. And this sketch is of course the location cited by P-877, who states that he
25 was detained with almost a hundred other men in one location. As you can see from

1 the image, he was also detained -- he was also interrogated in another room, and in
2 yet another room he saw other detainees.

3 So who were these detainees? They included Adam Husayn Abdelmahmoud, an
4 *umdah* or local community leader, as well as Abdallah Ahmed Hasan, a *sheikh* who is
5 also a community leader.

6 You will notice that their areas of responsibility, as indicated in the image, included
7 villages such as Kirarow, Artala, as well as Tendy, which were some of the villages
8 that were attacked in the precursor attacks that I mentioned a few minutes ago.

9 Similarly, also present was Issa Harun Nour, a Fur community leader, and

10 Mohammad Ali Bolot, aka Jobbor, a *sheikh*. They were both male, both Fur.

11 Issa Harun Nour was 60 years old and *Sheikh* Jobbor was 59, also Fur, and again they
12 bore responsibility as community leaders for a number of the locations that were
13 attacked in these precursor attacks that I mentioned earlier.

14 Last but not least, was also *Umdah* Yahya Ahmad Zarruq, an iconic very well-known
15 Fur community leader who also was part *umdah* of part of Mukjar, as well as Arada
16 and a number of other locations that were attacked and, as I mentioned earlier,
17 the brother of the *shartay* of Mukjar, another important Fur community leader.

18 It is useful at this point to pause and note a few things about the gentlemen that I
19 mentioned. Firstly, they're civilians, Fur male civilians. Secondly, they were
20 community leaders within the Fur community. Therefore, any harm directed
21 towards these leaders are, in a symbolic sense, also directed against the Fur
22 community.

23 And one final point, targeting such civilian community leaders was an explicit policy
24 of the Government of Sudan at that point, as Mr Jeremy has already explained in his
25 presentation.

1 Of course, although I only mention these gentlemen in my presentation, there were
2 upwards of a hundred detainees in this detention area from all walks of life, of all
3 ages, but they were male, and they were overwhelmingly of the Fur ethnicity.

4 And it is at Mukjar police station that the suffering of these detainees began.

5 The conditions of detention, Mr President and your Honours, were inhumane.

6 The cells were filthy, they were cramped. And over the course of the next few days,
7 more than 100 detainees were detained in rooms measuring approximately 5 by 7
8 metres.

9 The men were afraid, they were thirsty, tired.

10 They had no access to toilets, they had to urinate and defecate where they squatted.

11 Some detainees were given dirty water to drink and a loaf of stale bread to be split
12 between 10 men, and others, they received nothing.

13 Witness 877, your Honours, mentions how during the night, a man wearing
14 the uniform of a Sudanese Armed Forces soldier put his head inside the cell and said,
15 I quote, "... pray, not all of you will be alive tomorrow". End quote. This is at
16 paragraph 105 and 106 of his statement.

17 Your Honours, conditions were so bad that, fearing that he will be killed, one
18 detainee spent the night secretly writing down the names of his fellow detainees. He
19 wanted to make a record so that people one day would know what happened to them.

20 This is at paragraph 237 of the Pre-Confirmation Brief.

21 Meanwhile, your Honours, statements were being taken from the various detainees
22 inside the police station. One witness, who was in a position to know the contents of
23 these statements, summarised them for the Office of the Prosecutor. He stated, I
24 quote:

25 "[t]hey would say that an army on horseback arrived, including Kushayb and many

1 other men and burned their homes, and so they were forced to flee [...] Mukjar.
2 These people were farmers. They said they did not have any weapons." End quote.
3 Paragraph 235 of the PCB.
4 Your Honours, these statements were then handed over by the head of Mukjar police
5 to Abd-Al-Rahman. And one witness says what Abd-Al-Rahman did with them.
6 He reviewed a few of the statements, ripped them up and threw them on the floor.
7 The witness assumed that Abd-Al-Rahman was angry because the statements
8 indicated that these people were Fur, but did not record any crimes committed by
9 them.
10 Meanwhile, your Honour, Abd-Al-Rahman was already conversing with Minister of
11 State Harun regarding the influx of these displaced villagers into Mukjar, in
12 the presence of his co-perpetrator, Intelligence Operator Hamdi, as well as Mukjar
13 commissioner Torshain.
14 One witness describes, I quote:
15 "I saw Ali Kushayb speaking on his satellite phone. I heard him say, 'Hello, Judge
16 (*Mawlana*) Mohamed Harun'? Kushayb said that there were many people outside
17 and he asked what he should do with them.
18 "... a moment later he dropped the phone from his ear and he turned to Torshain and
19 said 'there is an order to kill all the people'." End quote.
20 Your Honours, the witness himself interpreted this statement to mean that
21 Abd-Al-Rahman was referring to Fur civilians currently at the locality building in
22 Mukjar, having been displaced to that location from the villages outside. However,
23 this statement is still indicative of the state of mind of Abd-Al-Rahman and his
24 co-perpetrators at this time regarding Fur civilians in Mukjar.
25 And now this interpretation, or my interpretation that I just put to you, is

1 corroborated or confirmed by Witness P-129 who describes how, shortly after
2 Minister Ahmad Harun visited Mukjar while 129 was detained, Abd-Al-Rahman,
3 Janjaweed leader Samih and Intelligence Officer Hamdi arrived at the Mukjar police
4 station where Kushayb referred to the Fur detainees as "*magus*", or "*magus*", which is
5 to say "idol worshippers", a derogatory term. "Then he said that Ahmad Harun had
6 authorised them to confiscate the property of the Fur and eliminate the Fur.
7 He said words to the following effect: "Don't you know that I am Ali Kushayb?"
8 Al-Dayf Samih also introduced himself as the deputy of Ali Kushayb when he entered,
9 and Hamdi was also present.
10 Yet another witness, Witness 919, describes Ali Kushayb came into the cell with about
11 10 of his men, the Janjaweed. He introduced himself to the *umdahs* in the cell that he
12 was Ali Kushayb, the leader of the Janjaweed. He further said, I quote, "I am going
13 to fuck you today." End quote.
14 Your Honours, Mr President, with this visit -- or with these visits, began another
15 period of hell for the detainees.
16 Over the next few days, Abd-Al-Rahman, the Janjaweed and GoS or Government of
17 Sudan co-perpetrators, including Samih and Hamdi, tortured the detainees using
18 sticks, whips, as well as an axe.
19 Several witnesses describe how Abd-Al-Rahman struck the well-known *umdah*
20 Yahya Ahmad Zarruq.
21 Witness 919 describes, for example, I quote, "Kushayb beat the *umdahs* in the cell with
22 his axe ... Kushayb hit *Umdah* Yahya Ahmad Zarruq with his axe on the shoulder and
23 broke his shoulder bone, and his shoulder became swollen."
24 Several other witnesses, of different backgrounds and from different vantage points,
25 confirm having seen on other occasions, at the same time in the same area, where

1 Abd-Al-Rahman tortured and humiliated *Umdah* Yahya.

2 Witness P-188, for example, states that *Umdah* Yahya was brought before

3 Abd-Al-Rahman in the presence of a number of government officials, including police

4 and CRF chief Mustafa Al Tayyeb, Mukjar commissioner Torshain and, perhaps most

5 importantly, Abd-Al-Rahman's fellow co-perpetrator, Intelligence Officer Hamdi.

6 P-188 describes how *Umdah* Yahya was brought before Kushayb while Mustafa,

7 Kushayb and Torshain and Hamdi were present. He states, I quote:

8 "*Umdah* Yahya was made to kneel before Kushayb. Kushayb had a small axe in his

9 right hand and he pointed at Yahya and [he] said something like 'Here is one of the

10 great rebels.' Then Kushayb hit him in the top of the head with his axe. He had to

11 shake the axe slightly to dislodge it from Yahya's head. *Umdah* Yahya fell to

12 the ground. But he was not dead. He was picked up and returned to the prison."

13 End quote.

14 The witness continues, your Honour, I quote:

15 "Anyone with compassion would have to turn their face away from something like

16 that. I even saw Torshain drop his head ... No one said anything to Kushayb. No

17 one said anything at all."

18 Similarly, your Honours, Witness 919 describes the attack by Abd-Al-Rahman on

19 Adam Husayn Abdelmahmoud, a Fur community leader, and Issa Harun Nour. He

20 describes:

21 "Kushayb beat the *umdahs* in the cell with his axe. *Umdahs* Issa and Doorri were

22 beaten on the head with the axe and they got injured. Kushayb also beat *Sheikh*

23 Jobbor ..."

24 Now, it was not only the community leaders that were assaulted in the detention

25 centre.

1 Witness 919 states:

2 "One of the Janjaweed, whose name I do not know, beat me on the head with a stick
3 and I was injured. He did not say why he hit me. I bled until the bleeding stopped
4 on its own, I did not get any treatment. Kushayb hit me at the back with his whip."

5 Similarly, your Honours, Witness 129, another detainee states:

6 "I was ... hit with the handle of Ali Kushayb's axe. We were all sitting on the floor as
7 they were hitting us. There were other people who were seriously injured. There
8 was a boy of 12 or 13 years who had already been in a comma for about 2 days even
9 before I arrived at the prison. He had been injured in the head."

10 Mr President, your Honours, the absolute brutality of what Abd-Al-Rahman and his
11 co-perpetrators were carrying out is made clear by the mutilations they carried out on
12 the bodies of these detainees.

13 Witness 919 describes, I quote:

14 "Some of Kushayb's men shaved two detainees, with knives to the scalp and injured
15 them. ... Kushayb was beating the *umdahs* at this time. Three detainees had ears cut
16 off which fell on the ground. ... The Janjaweed did not say why they cut their ears.
17 Three of them did not receive any treatment, they were bleeding, there was a lot of
18 blood."

19 The detainees, your Honour, cowered on the floor as Abd-Al-Rahman and his
20 co-perpetrators tortured, mutilated and humiliated the detainees.

21 Now, at this point, after playing a central role in the mistreatment of the detainees,
22 Abd-Al-Rahman played an equally central role in obtaining custody of these
23 detainees into his hands and the hands of his co-perpetrators.

24 Witness 905 mentions that Abd-Al-Rahman did so by stating to the head of police in
25 Mukjar, I quote: "[t]hese people, we want to take them to Garsila, and then we take

1 them to Zalingei to investigate with them [...] because they're all accused [...] they're
2 all suspects." End quote.

3 Witness P-913 corroborates this statement by P-905, confirming that Al Kushayb with
4 his Janjaweed came to the place camp and asked the head of police to collect
5 the prisoners since he wanted to transfer them to Garsila. This, your Honours, was
6 the pretext on which he obtained custody of the prisoners.

7 Abd-Al-Rahman selected many of the detainees to be removed, and his authority over
8 the people surrounding him is exemplified by the fact that when Abd-Al-Rahman
9 ordered a police officer to open the doors of the Mukjar police station he did so in
10 the presence of the head of police of Mukjar, as well as other local Government of
11 Sudan forces leadership.

12 You will recall that I mentioned Abd-Al-Rahman's journey to Sindu. In Sindu,
13 Abd-Al-Rahman captured a rebel informant who was brought to Mukjar and who
14 was present at this point.

15 Abd-Al-Rahman got the informant to point out certain members of the detainees, and
16 the informant did so. However, as described by Witness 905, instead of only taking
17 the persons who were indicated, Abd-Al-Rahman ordered "[a]ll these are no good.
18 All of them, put them out for us. Pack them up for us."

19 As a result, as summarised in paragraph 267 of the PCB, many of the prisoners were
20 taken out, and not only the prisoners pointed out by the rebel informant.

21 Abd-Al-Rahman ordered militia/Janjaweed and Government of Sudan forces to take
22 the detainees from their cells and load them onto the trucks or Land Cruisers that
23 were waiting outside.

24 Abd-Al-Rahman also personally ordered detainees, including Yahya Ahmad Zarruq,
25 the *umdah*; Issa Harun Nour, another community leader; Adam Husayn

1 Abdelmahmoud, another community leader, to leave the cells and get into
2 the vehicles.

3 However, as they were leaving, as they were getting up from the cell and walking out
4 of the cell, Witness P-877 and P-913 describe how Abd-Al-Rahman struck *Umdah*
5 Yahya with his axe. *Umdah* Yahya fell to the ground, bleeding, and members of the
6 Janjaweed beat him with sticks and whips, then brought him to the vehicle.

7 Abd-Al-Rahman similarly hit *Umdah* Issa Harun Nour, Adam Husayn
8 Abdelmahmoud, as well as two other men, Ahmed Mohamed Barbayi and Yusuf
9 Muhajir around their head, neck and shoulder.

10 As an aside, your Honours, I will remind you that some of these vehicles to which
11 these detainees were being taken were indeed proved by Abd-Al-Rahman. And,
12 once they were brought to the vehicles, he supervised the loading of these -- these
13 vehicles with these detainees.

14 The Janjaweed and Government of Sudan forces stacked the detainees on top of each
15 other in the vehicles, ordered them to lie face down, not to raise their heads.

16 Some were blindfolded, while others were crying and screaming.

17 Indeed, Witness 905 describes how when one soldier complained about the piling up
18 of the prisoners, Abd-Al-Rahman responded that if that particular soldier did not like
19 it, he could be added to the group of detainees.

20 Finally, before these prisoners from the Mukjar police station were taken away to
21 the execution site, Witness P-913 mentions at paragraph 110 of his statement that he
22 saw Abd-Al-Rahman walking towards the convoy of vehicles and shouting, I quote,
23 "Tora Bora is over, prepare their graves." End quote.

24 And, your Honours, shortly after this the meaning of "prepare their graves" became
25 clear.

1 As you can see in this image, the prisoners were loaded on the western side of the
2 Mukjar police station and then taken northwards towards Garsila. Abd-Al-Rahman
3 was in the first vehicle, as was *Umdah* Yahya Ahmad Zarruq, and in fact several of the
4 Fur community leaders were in the first vehicle with Abd-Al-Rahman. Intelligence
5 Officer Hamdi was in the second vehicle, and the other co-perpetrator, Janjaweed
6 leader Samih, was also in the convoy.

7 Members of the militia/Janjaweed and Government of Sudan forces accompanied
8 the detainees and, in fact, continued beating and mistreating the detainees on their
9 way northwards.

10 One witness cited in paragraph 139 of the PCD states that he could hear detainees
11 crying and screaming while the Janjaweed were saying, I quote, "Tora Bora we are
12 going to fuck you." End quote.

13 And thus, your Honours, the convoy travelled northwards and brought these
14 detainees to several locations along the Mukjar-Garsila road.

15 Your Honours, we have identified at least three separate locations where detainees
16 were taken to. We cannot pinpoint with perfect accuracy where these were, but we
17 know they were between Mukjar and Nyerli on the Mukjar-Garsila road.

18 We can, however, describe with pinpoint accuracy what happened at those locations
19 due to the benefit of multiple witness statements from eyewitnesses who had
20 different vantage points at these sites.

21 At one of these sites, one witness saw the *umdahs* being unloaded.

22 Witness 129 states:

23 "After the vehicles stopped, the prisoners in the first vehicle were ordered to get
24 down. I saw the *umdahs* as they were unloaded from the first vehicle. I could see
25 a bit through the window. I saw Ali Kushayb use his axe and Al-Dayf Samih use

1 a Kalashnikov, whip and stick to hit the prisoners as they came out of the vehicle."
2 Hamdi was also present.
3 Another witness describes -- or, rather, Witness 129 continues: "The prisoners
4 were on their feet as Kushayb and Al-Dayf Samih continued to beat them. They
5 were then asked to lie face down on the ground."
6 Witness 919, also present, states: "When our car stopped I heard Kushayb say[ing] ...
7 step down *umdahs*; he also said ... step down boys; he further said ... run and sleep on
8 your stomach" talking to the detainees.
9 And one witness describes, Witness 905, what happened next.
10 Describing Abd-Al-Rahman he says: "He's standing like this ... he has a stick, a cane,
11 about 1 metre, and he's standing like [this]. And around him are his guards with
12 their weapons. And he just says nothing. ... then, ... he says to them, 'Bullet ... bullet
13 them.' 'Bullet them' means 'kill them'."
14 And he says make sure, when they start shooting, "make sure doesn't leave me one
15 person alive." He concludes, "All these people who were down were shot."
16 As the Janjaweed and Government of Sudan forces fired, Witness 129 adds -- or,
17 rather, I apologise, Witness 905, yes, he says, "Immediately come down, come down,
18 come down! Shoot! Shoot! Immediately shoot!"
19 And he said, "Repeat! Repeat for these people. Maybe there are some that you
20 have missed. Repeat for these people." The investigator asks, "Okay. What does
21 he mean by 'repeat'? Can you explain?"
22 And the witness says, "When you are shooting something, tak! Tak! Tak!
23 The witness is moving his hand from right to left with his hand pointed like a gun ...
24 then you come again and you do the same thing. This is repetition."
25 Another witness, P-129, adds:

1 "I saw Ali Kushayb and Al-Dayf Samih standing next to the soldiers as they opened
2 fire. There were more than 10 armed soldiers who opened fire on them. They were
3 armed with GM3 and Kalashnikovs. [And] after they had opened fire, the first
4 vehicle reversed and fired a Dushka on the dead prisoners."

5 Your Honours, a Dushka is a 12.7 mm heavy machine gun which is actually mounted
6 on the back of a weaponised Land Cruiser.

7 Your Honours, Witness 905 confirms Abd-Al-Rahman's central role during the course
8 of these executions, as cited in paragraph 271 of the PCB. I quote P-905: "Nobody
9 talks. Only Ali Kushayb talks. [...] The instructions [...] is from him." End quote.

10 I quote again, "around him are his guards with their weapons." End quote.

11 Indeed, another witness describes how members of the Janjaweed and Government of
12 Sudan forces walked on top of the dead bodies to make sure that they were dead. In
13 fact, one soldier said that one of the, quote, "slaves" unquote, referring to a victim, had
14 money on him and took it off him.

15 Incidentally, by this time, because of the sound of the shooting, the head of the

16 Mukjar place had arrived on scene. The head of the Mukjar police told

17 Abd-Al-Rahman that he had handed over the detainees under the condition that

18 Abd-Al-Rahman would take them to Garsila and Zalingei for interrogation, not to
19 take them to be killed.

20 And importantly at this point, a few detainees were still alive. This included an
21 elderly *sheikh* who had been captured in Sindu who had been teaching the Koran to
22 five of his students. These students were between 10, 11 and 12 years old. As
23 described by P-905.

24 The head of the police tried to negotiate with Abd-Al-Rahman that the detainees from
25 at least this vehicle be not killed.

1 The head of police told -- or asked Abd-Al-Rahman why they were killing
2 the prisoners when he had been told that the prisoners would be taken to Garsila for
3 interrogation. Abd-Al-Rahman did not respond and merely said "Let's go".

4 The convoy travelled a short distance, until they left Mukjar behind, and then they
5 halted again.

6 At this point, your Honours, Abd-Al-Rahman stated to a Sudanese Armed Forces
7 soldier who was present with him, "[t]hese people, offload them. [...] we terminate
8 them."

9 One detainee spoke of having come from Nyala, another spoke of having been robbed
10 of livestock. The elderly *sheikh* begged for the life of his students and requested that
11 he perform a prayer.

12 At this point, Witness 905 states: "Here Ali Kushayb said, '... implement
13 the operation. ... No need for Nyala, no need for cows. Implement the operation,
14 let's go.' And after that they bring them from the car, they shoot. They bring them
15 from the car, they shoot. They bring them from the car, he runs, then they shoot.
16 They all shot them, hit them like that."

17 The investigators asks, for clarification: "What happened to the people in the car,
18 the people who were alive, could you tell me again?"

19 Witness replies: "They killed them. ... Because Ali Kushayb said 'there is no time.
20 Don't tell me, I'm coming from Nyala, or I have cows, or I am a migrant for Quran, or
21 I am a religious man; we don't have time, implement the operation.' It means 'kill
22 them.'"

23 As for the elderly *sheikh* who pleaded for the lives of his students, Witness 905
24 continues: "... the old man said, 'just [give me] a minute, give me time to make
25 ablution for prayers ... with sand and ... to pray two *rakats*.'"

1 A rakat, your Honour, is a series of movements carried out during the course of
2 Islamic prayer and the old man requested permission to pray two *rakats*. He says, "I
3 want to make a short prayer." And this was allowed.

4 Meanwhile, the other detainees were being killed. P-905 explains, "All of these, they
5 killed them." When one boy tried to run off from the car, they shot him from far
6 away.

7 Finally, P-905 describes how the elderly *sheikh* met his end. He says, I quote: "And
8 then the religious man, he finished his two *rakats*, he finished his prayer, they finished
9 with him." End quote.

10 Your Honours, the same witness adds, in response to a question from the investigator,
11 as to whether the person who carried out the killings, the Sudanese Armed Forces
12 soldier were ever punished for his actions. The witness states, I quote: "No.

13 Who -- who [...] will punish him? He got his orders from Ali Kushayb." End quote.

14 And thus ended the lives of at least 50 men and boys.

15 To date, the Prosecution has identified many of the people who died that day in those
16 multiple execution sites. These persons are listed in annex 1 to the DCC and annex
17 A10 to the PCB.

18 They are not just names, your Honours, they're also human beings.

19 And some time after these killings, Witness P-877, about 10 days after the killings,
20 states that he discovered a number of bodies in a small dried riverbed north of Mukjar
21 police station.

22 He states that the decaying corpses were lined next to each other, all face down.

23 There were cartridges around the bodies.

24 P-877 recognised from their clothing the bodies of *Umdah* Yahya Ahmad Zarruq,

25 Adam Husayn Abdelmahmoud, and another person called Adam Nahid Numan.

1 Importantly, P-877 had seen these very same people be loaded onto the Land Cruisers
2 before they left Mukjar.

3 These were civilians, your Honour. Many were old men. Community leaders.
4 Not a threat to anyone.

5 And perhaps most importantly of all, a number of them were just children, 10, 11,
6 12 years old.

7 Your Honours, this brings me to the end of my submissions on Mukjar. But before I
8 move on to persecution, it would be useful to look closely at the profiles of the victims
9 of Mukjar.

10 You will have noticed that all of the victims killed at Mukjar, regardless of whether
11 they were 10, 11, 12, on the one hand, or 75 on the other, had a number of common
12 characteristics: They were Fur, they were male, and they were suspected or accused
13 of being rebels or rebel supporters.

14 The same applies to the prisoners who were tortured at Mukjar police station: Fur,
15 male, suspected rebels or rebel supporters.

16 Now, it is because of this targeted, discriminatory nature of abuse at the police station,
17 and at the execution sites, that Mr Abd-Al-Rahman is charged with the crime of
18 persecution in the context of Mukjar. Now, he is also charged on the exact same
19 legal basis in the context of Deleig, and he is charged on a similar basis for the crimes
20 that were committed in Kodoom and Bindisi.

21 And it is to these charges of persecution that I will turn to now.

22 Abd-Al-Rahman committed the crime of persecution with respect to three -- or with
23 respect to each of the three charged incidents, as charged in Counts 11, 21 and 31.

24 Now I will discuss these charges briefly, beginning with the persecutory campaign of
25 the government forces and Janjaweed, and more particularly focusing on the criminal

1 conduct and discriminatory intent of Abd-Al-Rahman.

2 During the period of the charges, that is to say, beginning sometime in August 2003
3 and heading into the middle of 2004, Government of Sudan forces and Janjaweed
4 targeted for attack that part of the population of Darfur perceived to be supporting
5 the rebel groups. This was used as a sort of shorthand to talk particularly about
6 the civilians from the Fur, Masalit and Zaghawa tribes.

7 Now, in the Wadi Salih and Mukjar localities in particular, the discriminatory
8 targeting was against the Fur. This is because the population of Wadi Salih and
9 Mukjar was predominantly Fur.

10 The Fur in Wadi Salih and Mukjar were assumed to be supporters of the rebels and
11 ergo opposed to the Government of Sudan.

12 This brings us to the charged attacks: Bindisi/Kodoom, Mukjar and Deleig.

13 Beginning with Bindisi and Kodoom, both of these towns or villages were
14 predominantly Fur and therefore presumed to support the rebel armed groups, and
15 the attacks there were carried out against the civilian population, resulting in mass
16 murder, rape, destruction of property, and the forced transfer of the Fur.

17 At Mukjar and Deleig the targeting was slightly different. However, the men and
18 boys abused and executed were predominantly Fur and they were handpicked by
19 the perpetrators because of their perceived support of the rebels.

20 So what are the crimes that form the underlying conduct for the charge on
21 persecution?

22 As you can see from the left of this image, the charged crimes at each incident
23 constitute the underlying conduct of the counts of persecution since they amount to
24 severe deprivations of fundamental rights, including the right to life, bodily integrity,
25 private property, freedom of movement and residence, and, very importantly,

1 the right not to be subject to rape, torture, or cruel, inhuman or degrading treatment.
2 Now, as you can see from the right side of this image, the fact that the charged crimes
3 were committed with the appropriate discriminatory intent or requisite
4 discriminatory intent is demonstrated by the public speeches of Abd-Al-Rahman and
5 several prominent Government of Sudan officials and Janjaweed leaders,
6 the discriminatory intent displayed by Abd-Al-Rahman and his co-perpetrators
7 through their statements and actions during the charged incidents, as well as pattern
8 of conduct during the incidents involving Abd-Al-Rahman during the charged
9 period.

10 Now, in the context of Kodoom and Bindisi, it's important to bear in mind that
11 Mr Abd-Al-Rahman is charged on political and ethnic grounds, that is to say
12 Abd-Al-Rahman and Janjaweed, Government of Sudan forces targeted Kodoom and
13 Bindisi for attacks because they were predominantly Fur villages and therefore
14 assumed to harbour supporters of rebel armed groups.

15 Somewhat differently in the context of Mukjar and Deleig, Abd-Al-Rahman is
16 charged with persecution on the basis of political, ethnic, and gender-based
17 persecution. That is to say, Abd-Al-Rahman and his co-perpetrators targeted Fur
18 males, men and boys, because they were perceived as supporting or associated with
19 the rebel armed groups. Fur males were therefore arrested, detained, and tortured,
20 and executed in Mukjar and Deleig on the suspicion of being rebels.

21 These multiple intersecting discriminatory grounds best describe and fully capture
22 the way in which Mr Abd-Al-Rahman carried out the discriminatory targeting in
23 these particular incidents. That is to say, in the context of political -- or persecution
24 on political grounds, all three targeted groups, the predominantly Fur population of
25 Bindisi and Kodoom, the predominantly Fur males in Mukjar and Deleig, were

1 targeted for their perceived support for, or association with, the rebel armed groups.

2 So this is targeting on political grounds.

3 With regard to targeting on ethnic groups, the targeting was on ethnic grounds since
4 Fur ethnicity was used as a proxy, or a kind of shorthand, for identifying rebel
5 supporters, and members of the Fur tribe were targeted on the basis of their ethnicity.

6 And finally, in the context of gender, during the Mukjar and Deleig incidents,
7 the targeting of males, men and boys, because of their presumed role in society as
8 either current fighters or future fighters was on the ground of gender.

9 So, at Mukjar and Deleig, the victims' Fur ethnicity, combined with
10 the socially-constructed gender role which presumes that males, that is to say men
11 and boys, are fighters, underpinned Mr Abd-Al-Rahman's and his co-perpetrators'
12 perception of them as rebels or rebel sympathisers.

13 Now, it's important to know that the case law of the ICC already supports this type of
14 charging in the context of gender.

15 This is the Pre-Trial Chamber in the Al Hassan case, in their confirmation decision,
16 where they found that persecution may be gender based where male and female
17 members of the same group are targeted in different ways or for different forms of
18 violence depending on their gender. That is to say, killing the men and raping
19 the women.

20 Your Honours, Abd-Al-Rahman, and other perpetrators of the charged conduct in
21 this case, intended to discriminate against the predominantly Fur males in Mukjar
22 and Deleig, and also intended to discriminate against the predominantly Fur
23 population of Bindisi and Kodoom because they were perceived as supporting the
24 rebel armed groups.

25 For the purposes of clarity, I will briefly discuss examples of discriminatory intent,

1 organised by the various grounds of discrimination.

2 If we can start with discrimination on political grounds. In 2003, in a location call

3 Um Jameina, the -- as P-905 describes, the subordinates of Abd-Al-Rahman carried

4 out the murder of a person accused of being Tora Bora. Tora Bora is a term, as I

5 mentioned, your Honours, indicating a rebel or a rebel supporter. And they also

6 killed his wife, who was in labour at this time.

7 Similarly, during the charged attacks in Bindisi and Kodoom, as described already by

8 Ms Simms, the Janjaweed raped several women while saying, I quote, "we were taken

9 Tora Bora's wives, praise be to god." End quote. This is P-15.

10 Similarly, as I described a few minutes ago, the arrest of Fur persons, who were

11 fleeing to Mukjar from Sindu and other villages, were carried out on the suspicion

12 that they were rebels.

13 Again, during the same criminal episode, you will recall Abd-Al-Rahman hit *Umdah*

14 Yahya Ahmad Zarruq on the head and said, "Here is one of the great rebels."

15 Finally in the context of Mukjar, males who were detained at the police station were

16 executed because of their affiliation with rebels. Abd-Al-Rahman shouted, for

17 example, "Tora Bora is over, prepare their graves."

18 Finally, Ms Whitford will describe how in the context of Deleig, in the context of the

19 charged crimes in Deleig, as displaced Fur Mali were arrested, Janjaweed referred to

20 them as "Tora Bora".

21 And indeed, the detainees at the police station in Deleig were also killed because

22 the Janjaweed accused them of having links with the rebels.

23 Moving on to persecution on ethnic grounds.

24 As early as August 2003, state minister Ahmad Harun authorised Abd-Al-Rahman to

25 treat, I quote, "any Fur village as a rebel village." End quote.

1 And following on from this kind of instruction, Witness P-905 recalls Abd-Al-Rahman
2 issuing instructions to kill any man from the Zurga tribe. And, your Honours,
3 the term Zurga is used as a derogatory term for black Africans, but is also
4 included -- or is also meant to include members of the Fur tribe in this context.

5 In Mukjar in August 2003, before the charged crimes in this case, Janjaweed and
6 Government of Sudan forces arrested and tortured Fur males on the suspicion of
7 being rebels.

8 And similarly, in the context of our own charges in Bindisi, Witness P-15 states that
9 the Janjaweed called the women of Bindisi, I quote, "black *Nubas*", end quote.

10 And as I have also described in the context of the crimes in Mukjar, most of the
11 prisoners in the Mukjar police station were Fur, except for three or four Masalits, and
12 indeed a number of witnesses state that almost all the detainees in Mukjar police
13 station were Fur.

14 And in fact you may recall that Abd-Al-Rahman, when he came into Mukjar police
15 station to begin beating the detainees stated, as per Witness 129, Ahmad Harun had
16 authorised them to confiscate the property of the Fur and eliminate the Fur.

17 And finally, you will hear from Ms Whitford, in the context of Deleig, that as
18 displaced Fur males were arrested they were called, quote, "slaves", end quote. And
19 the Janjaweed yelled words like, I quote, "fuck the Fur", end quote, and, I quote, "kill
20 the slaves." End quote.

21 Finally, coming to the ground of gender, Janjaweed and Government of Sudan forces
22 arrested and tortured Fur males on the suspicion that they were rebels, in 2003 in
23 Mukjar.

24 And, interestingly, in September 2003 in Mukjar, one witness says that he used
25 the clothes of a woman to dress as a female in order to leave Mukjar because

1 the Janjaweed and Government of Sudan forces, I quote, "were still arresting males in
2 Mukjar." End quote.

3 And as I mentioned, perhaps half an hour ago, your Honour, prior to the Mukjar
4 criminal episode, when Abd-Al-Rahman was leaving Mukjar for Sindu for a brief
5 operation he instructed the head of place, I quote, "Any man coming down from
6 Sindu, you must arrest." End quote.

7 In fact, Witness P-877, again speaking of the arrests in Mukjar that I described a few
8 minutes ago states, at one of the checkpoints, P-877 was told that "all males have to go
9 to the place building." End quote.

10 And during the same criminal episode, of course, all witnesses confirm 100 per cent
11 that the detainees at the police station were all male.

12 You will hear also in the context of Deleig that another witness was given a woman's
13 dress by a local resident and told to put it on to prevent himself from being arrested
14 because, as is obvious, only men were being arrested.

15 And, finally, you will also hear in the context of Deleig, that all the men -- all the men
16 who came into town from outside were arrested.

17 Your Honours, even though I have discussed these indicators separately as political,
18 ethnic, and gender grounds, of course in real life this targeting did not operate in this
19 way. These grounds worked together and, for clarity and when assessing
20 the -- whether these grounds are established to the grounds of substantial grounds to
21 believe, it is important to analyse them as multiple intersecting discriminatory
22 grounds.

23 And it is useful to bear in mind, your Honours, that the Inter-American Court has
24 held in the case of Gonzales Lluy versus Ecuador in 2015, I quote:

25 "... intersectional discrimination refers to multiple reasons or factors that interact to

1 create a unique and distinct burden or risk of discrimination. ... the reasons or
2 the factors are analytically inseparable because the experience of discrimination
3 cannot be disaggregated into [separate] reasons." End quote.

4 Your Honours, this brings me to the end of my submissions on persecution, but
5 perhaps it is appropriate here to pause and think of the sheer extent of victimisation
6 in these charged locations.

7 The Prosecution has identified at least 150 victims in Kodoom, Bindisi, Mukjar and
8 Deleig.

9 These are not just names, your Honours, these are not just numbers, they were people,
10 they were young, old, men, women, and children.

11 Thank you, your Honours.

12 PRESIDING JUDGE AITALA: [15:49:47] Thank you very much.

13 Mr Nicholls, where are we with your -- I think you have taken a bit more than three
14 hours so far, of your four hours, so where are you now with your presentation?

15 MR NICHOLLS: [15:50:07] Thank you.

16 PRESIDING JUDGE AITALA: [15:50:08] You have some 50 minutes left,
17 40 -- 49 minutes.

18 MR NICHOLLS: [15:50:13] What I can tell you, your Honours, is we have one
19 presentation left by Ms Whitford that takes 43 minutes.

20 PRESIDING JUDGE AITALA: We start now. We start now.

21 MR NICHOLLS: [15:50:21] You prefer to start.

22 PRESIDING JUDGE AITALA: [15:50:22] We do, we do start now, yes.

23 MR NICHOLLS: Yes, your Honour. Thank you.

24 PRESIDING JUDGE AITALA: [15:50:24] For 15 minutes, yes.

25 (Pause in proceedings)

1 MS WHITFORD: [15:52:09] Good afternoon, Mr President, your Honours.

2 I understand that I have 15 minutes in today's session.

3 PRESIDING JUDGE AITALA: [15:52:16] Good afternoon. You have between 15
4 and 20 minutes, yes. Please start. I will let you know when -- when you're over.
5 Thank you.

6 MS WHITFORD: [15:52:26] Very well, your Honour.

7 My name is Alison Whitford and I will present the evidence in support of Counts 22
8 to 31 of the Document Containing the Charges, relating to crimes committed in Deleig
9 and surrounding areas by Mr Abd-Al-Rahman, widely known as Ali Kushayb.
10 Over the course of approximately three days in early March 2004, Abd-Al-Rahman,
11 with Janjaweed and government forces, rounded up between 100 and 200 males in
12 Deleig. They targeted males of the Fur ethnicity, in particular those displaced by
13 attacks on villages in the surrounding areas.

14 Abd-Al-Rahman and the other perpetrators brought these males to the police station
15 in Deleig. They forced many of them to lie down, face down on the ground, outside
16 in the hot sun for several hours. They walked on their backs and heads, beat them,
17 and insulted them, using words like "slaves" and "criminals".

18 Abd-Al-Rahman personally murdered at least two detainees by striking them to
19 the head with an axe or stick.

20 Then Abd-Al-Rahman, with Janjaweed and government forces, loaded the detainees
21 onto vehicles, drove them to locations outside of Deleig, and shot them to death.

22 Over the course of about three days, they murdered at least 100 Fur males.

23 As you will hear in this presentation, Abd-Al-Rahman was present, participated and
24 played an essential role in the crimes committed in Deleig and surrounding areas.

25 At the time, Abd-Al-Rahman was the highest ranking Janjaweed leader in

1 the Wadi Salih locality, where Deleig was located. However, his position of
2 authority and influence was not limited to the Janjaweed. During the events in
3 Deleig, Abd-Al-Rahman not only cooperated with members of the government forces,
4 but also influenced, assisted and, in some cases, directly ordered those forces to
5 commit crimes.

6 Mr President, your Honours, there are substantial grounds to believe that
7 Mr Abd-Al-Rahman is responsible for both crimes against humanity and war crimes
8 for his involvement in Deleig. These crimes, now listed on your screen, are torture,
9 other inhumane acts, cruel treatment, outrages upon personal dignity, murder and
10 attempted murder.

11 In addition, Abd-Al-Rahman and the other perpetrators targeted these crimes at
12 a particular group of people. The group, as you have heard, was males of the Fur
13 ethnicity, who they perceived as belonging to, or being associated with, or supporting
14 the rebel armed groups. In targeting this group, Abd-Al-Rahman deprived them of
15 fundamental rights, such as the rights to life and not to be subjected to torture or cruel,
16 inhumane or degrading treatment. Therefore, Mr Abd-Al-Rahman also committed
17 the crime of persecution on political, ethnic and gender grounds.

18 The crimes committed by Mr Abd-Al-Rahman in and around Mukjar in the preceding
19 weeks targeted people based on the same three criteria. He used similar methods to
20 commit those crimes. In addition, in both Mukjar and Deleig, Abd-Al-Rahman
21 specifically targeted leaders of the Fur community, such as *umdahs* and *sheikhs*.

22 Earlier, my colleague Mr Sachithanandan explained the three intersecting grounds,
23 political, ethnic and gender, underpinning both the Mukjar and Deleig persecution
24 charges.

25 Mr President, your Honours, although Abd-Al-Rahman and the other perpetrators

1 targeted people in Deleig who they perceived as rebels or rebel sympathisers, in fact
2 most of the victims of their crimes were civilians taking no active part in the hostilities.
3 These people were protected under the laws of armed conflict, which also protect
4 persons *hors de combat*. Abd-Al-Rahman was prohibited from summarily killing
5 rebel fighters who were in his power. These are fundamental, widely-known
6 principles of the laws of the armed conflict.

7 Mr President, your Honours, the evidence of the crimes committed in and around
8 Deleig consist primarily of the first-hand accounts of victims and other direct
9 witnesses.

10 Several Prosecution witnesses survived the executions. Others were arrested, but
11 escaped or were released. Some discovered dead bodies in the areas around Deleig
12 in the days following the killings.

13 Abd-Al-Rahman, the Janjaweed and government forces carried out much of the
14 conduct in plain sight, in the full view of onlookers. Abd-Al-Rahman was
15 a well-known figure in the region, and many people saw and recognised him during
16 the Deleig events.

17 The Prosecution has also interviewed members of the government forces who give
18 critical evidence as to how these crimes were committed and Abd-Al-Rahman's role
19 in them.

20 It is through the eyes of these victims and witnesses that the story of what happened
21 in Deleig is best told, and I will try to use their words to tell that story today.

22 Mr President, your Honours, to begin, I will explain the context in which these crimes
23 occurred. On your screens now is a map showing the area around Deleig in
24 Wadi Salih, Darfur. Deleig is seen towards the top of the map.

25 The town of Garsila is located approximately 17 kilometres to the southwest of Deleig.

1 To drive from Deleig to Garsila takes around 30 minutes.

2 A road from Deleig goes north to the town of Zalingei, more than 50 kilometres away,
3 beyond the borders of this map.

4 In the weeks and months preceding the events in Deleig, government forces and
5 Janjaweed jointly attacked villages in this region, including Arawala, Forgo, Taringa,
6 Andi, Fere, Kaskeidi and Um Jameina. Thousands of civilians from predominantly
7 Fur villages sought shelter in Deleig, Garsila and other towns.

8 People were displaced to Deleig from at least 19 villages in this region, as shown on
9 the map. These locations are based on the evidence from Prosecution witnesses and
10 are mainly villages from which the witnesses themselves were displaced.

11 Witness P-60, who fled to Deleig from a group of villages to the south, spoke about
12 the large numbers of displaced people, quote:

13 "I cannot say the exact figure of civilians who fled towards Deleig and Garsila but
14 there was a long line of people from about 19 villages and to walk the length of that
15 line would have taken about an hour." End quote.

16 And I refer your Honours to paragraph 50 of his statement.

17 By early March 2004, there were so many displaced people in Deleig that they were
18 forced to stay in the streets, in empty fields in and around the primary school, in
19 camps, and in the houses of relatives and other residents.

20 These displaced people, in particular males of the Fur ethnicity, were the primary
21 target of the arrest and killing operation perpetrated by Abd-Al-Rahman and others
22 in Deleig.

23 Mr President, your Honours, this operation began on or about Friday, 5 March 2004.

24 In the early hours, Janjaweed and government forces surrounded Deleig. They went
25 through the streets, and from house to house, looking for Fur males from outside of

1 Deleig.

2 People in Deleig quickly understood who they were searching for. Men and boys
3 hid. A local resident handed one man a woman's dress and told him to put it on to
4 protect him against arrest.

5 Witness P-850 hid for a whole day inside a *dabanga* with four other boys, a small dry
6 storage inside a house. They were too terrified to move or make a sound, and were
7 forced to urinate and defecate where they crouched. Outside, Witness P-850 heard
8 people shouting - and, your Honours, I will use the direct words of the
9 witness - quote, "Kill the slaves" and "Fuck the Fur, fuck the slaves." End quote.

10 I refer your Honours to paragraph 67 of his statement.

11 The Janjaweed and government forces used other insulting and demeaning language
12 towards the Fur. They called them Tora Bora, meaning rebels, *abid*, meaning slave,
13 and *himar*, meaning donkey. As Witness P-592 watched her uncles be arrested, she
14 heard the soldiers tell them, quote, "you slaves come along with us." End quote.

15 I refer your Honours to paragraph 89 of her statement.

16 Witness P-714 heard the Janjaweed yell as his mother, quote, "we want to kill
17 everyone from Arawala." End quote. See paragraph 48 of his statement.

18 Abd-Al-Rahman was seen in a residential compound kicking a man while Janjaweed
19 and government forces beat him with their firearms and restrained his screaming wife
20 and children. Abd-Al-Rahman also participated in the search and arrest operation
21 near the market, at one of the mosques, and in a camp for displaced people.

22 Witness P-671 saw his father and brother arrested in one of these camps. At
23 paragraphs 32 to 33 of his statement he describes this, quote:

24 "I heard the soldier say something similar to, 'Your honour Ali Kushayb where do
25 you want us to put these'. The person who was addressed as Ali Kushayb was in

1 the front passenger seat [and] said something similar to, 'Put them in this vehicle'.

2 Two soldiers then picked up my father by the legs and shoulders and carried him to
3 the rear of the first vehicle before throwing him in the back. They then went and
4 picked up my brother the same way and threw him in the vehicle. Some members of
5 my family started screaming and crying."

6 As I will describe in this preparation, Witness P-671 found the dead bodies of his
7 father and brother outside of Deleig just days later.

8 Mr President, your Honours, on the screen now is an aerial photograph of the centre
9 of Deleig taken in January 2005. A number of key locations can be seen in this
10 image.

11 In the centre of the image are the premises of the primary school. Large numbers of
12 displaced people were staying in and around the school, and multiple arrests
13 occurred here.

14 To the right of the image is Ansar Al-Sunna Mosque. After the main Friday prayer,
15 Janjaweed and government forces surrounded this mosque. They checked males
16 and arrested those who were not from Deleig.

17 On the left of the image is Deleig police station. Between the police station and
18 Ansar Al-Sunna Mosque was an open field that witnesses say was often used for
19 playing football.

20 Because the police station was on higher ground, people could see what was
21 happening around it, even from a distance. For example, Witness P-725 watched
22 the events from a rooftop at Ansar Al-Sunna Mosque.

23 People watched as Abd-Al-Rahman, with Janjaweed and government forces, brought
24 the arrested males to the police station. Some were detained inside, in overcrowded
25 conditions, but most were kept outside. These detainees were made to lie face down

1 on the ground in an open area near the police station, in this approximate location.

2 Witness P-607 was among those arrested. At paragraphs 46, 48 and 51 of his

3 statement, he described the scene as follows, quote:

4 "We were all herded like animals to the yard of the police station [...]. As we

5 approached [...] I saw Kushayb standing and walking on the backs of detainees who

6 were lying face down on the ground. I saw there were many young men lying face

7 down on the ground, and I would estimate their number to be over 100. Those

8 already lying down were lying down in lines, like systematically. [...] I saw Kushayb

9 appeared to be inspecting each new batch of detainees as they approached the police

10 station. I along with the [...] young men with me were made to lie down on the

11 ground, face down and were ordered not to look to either side [...]." End of quote.

12 Between 100 and 200 predominantly Fur males were arrested on this day. Outside

13 the police station, they were made to lie directly in the hot sun, for several hours,

14 without food, water, or access to the toilet. Some had their hands tied behind their

15 backs, and some were blindfolded.

16 These males were held in a public place, in the centre of town. At least 16

17 Prosecution witnesses saw these detained males, or were detained in this place

18 themselves. Witness P-585 asked a member of the Janjaweed who the people on the

19 ground were. He replied, quote, "they were Tora Bora and that they were all going

20 to be killed." End quote. I refer your Honours to paragraph 86 of his statement.

21 PRESIDING JUDGE AITALA: [16:10:36] You have a couple of minutes and then I

22 think we'll ...

23 MS WHITFORD: [16:10:41] I'll just finish this section, your Honour.

24 PRESIDING JUDGE AITALA: [16:10:44] Yes, please.

25 MS WHITFORD: [16:10:46] Multiple Prosecution witnesses saw Abd-Al-Rahman at

1 this location. They saw him stand and walk on the backs of the detainees, hit them
2 with a stick or axe, kick them, and verbally abuse them, using words like "slave" and
3 "criminal".

4 Witness P-106 heard Abd-Al-Rahman loudly proclaim, quote, "you Fur kept saying
5 Allah, Allah but your God will not protect you from us. Bashir is our God!" End of
6 quote.

7 The Janjaweed and government forces also walked on the backs and heads of the
8 detainees, beat them with rifle butts and sticks, and insulted them. One soldier
9 stabbed a detainee in the eye with a bayonet where he lay on the ground.

10 The mistreatment of these people, including the conditions of their detention, caused
11 them severe mental and physical pain and suffering. It also humiliated, degraded
12 and violated their dignity as human beings.

13 Your Honour, this might be a good place to stop for today and pick up in
14 the morning.

15 PRESIDING JUDGE AITALA: [16:12:06] Thank you very much.

16 MS WHITFORD: [16:12:07] Thank you, your Honour.

17 PRESIDING JUDGE AITALA: [16:12:09] So, Mr Nicholls, you're left more or less
18 with half an hour tomorrow morning. Then we will continue with the Legal
19 Representative of Victims.

20 So now, if there is nothing else, then I will adjourn the hearing, not before having
21 thanked everyone for being here and the interpreters and all the personnel in
22 the courtroom, and also the participants and parties who are following the hearing
23 remotely.

24 Thank you very much, and have a nice evening. And we resume tomorrow morning,
25 all being well, at 9.30. Thank you very much.

- 1 THE COURT USHER: [16:12:51] All rise.
- 2 (The hearing ends in open session at 4.12 p.m.)