

Trial Hearing  
WITNESS: DAR-OTP-P-1042

(Open Session)

ICC-02/05-01/20

1 International Criminal Court  
2 Trial Chamber I  
3 Situation: Darfur, Sudan  
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman  
5 ("Ali Kushayb") - ICC-02/05-01/20  
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and  
7 Judge Althea Violet Alexis-Windsor  
8 Trial Hearing - Courtroom 3  
9 Thursday, 7 April 2022  
10 (The hearing starts in open session at 9.32 a.m.)  
11 THE COURT USHER: [9:32:05] All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE KORNER: [9:32:29] Yes, good morning, everybody.  
15 Could we call the case, please.  
16 THE COURT OFFICER: [9:32:34] Thank you, Madam President.  
17 The situation in Darfur, Sudan, in the case of The Prosecutor versus Ali Muhammad  
18 Ali Abd-Al-Rahman ("Ali Kushayb"), case reference ICC-02/05-01/20.  
19 And for the record, we are in open session.  
20 PRESIDING JUDGE KORNER: [9:32:51] Thank you.  
21 Unless there are any differences from yesterday in the appearances from any of  
22 the teams, can we take it it's the same personnel as yesterday? I'm just having a look.  
23 MR NICHOLLS: [9:33:07] Good morning, your Honours. It is the same personnel  
24 but were not put on the record yesterday as it changed during the hearing yesterday.  
25 So perhaps I (Overlapping speakers)

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1 PRESIDING JUDGE KORNER: [9:33:15] Oh, all right. Well, then perhaps we  
2 better -- yes, you better announce everybody.

3 MR NICHOLLS: [9:33:19] Thank you. And good morning, Madam President.  
4 Good morning, your Honours. Good morning, colleagues. Good morning,  
5 Mr Witness. Today it's Julian Nicholls, myself, with Claire Sabatini, Edward Jeremy,  
6 Rachel Mazarella and Mohanad Elkholy. Thank you.

7 PRESIDING JUDGE KORNER: [9:33:37] Yes.  
8 The Defence.

9 MR LAUCCI: [9:33:39] Good morning, Madam President and your Honours. In  
10 addition to Mr Abd-Al-Rahman, who is present in the courtroom this morning,  
11 the Defence is represented by Madam Eva Kalb, assistant evidence reviewer;  
12 Mr Ahmad Issa, case manager; Madam Vanessa Grée, legal adviser; my colleague,  
13 Iain Edwards, associate counsel; and I am Cyril Laucci, lead counsel.  
14 If you allow me, we are before the International Criminal Court and we are 7 April,  
15 which is 20 years after the starting date of the genocide in Rwanda. On this occasion,  
16 please allow me to have a thought and pay my deepest respect in the memory of all  
17 the victims of human murderous madness, be it in Rwanda, in Sudan, in Auschwitz,  
18 in Cambodia, in former Yugoslavia, Ukraine, I cannot unfortunately cite them all, but  
19 just to have a thought for the victims. Thank you.

20 PRESIDING JUDGE KORNER: [9:34:51] Yes, thank you, Mr Laucci.  
21 Yes, victims.

22 MS VON WISTINGHAUSEN: [9:34:54] Good morning, Madam President,  
23 your Honours, dear colleagues. On behalf of the victims, my colleague Nasser Amin  
24 Abdalla is joining us remotely; next to me, Anand Shah, associate counsel; behind me,  
25 Idris Anbari; and Natalie von Wistinghausen, myself. Thank you.

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1 PRESIDING JUDGE KORNER: [9:35:12] Yes, thank you very much,

2 Ms von Wistinghausen.

3 Yes, Professor de Waal, you're going to finish -- well, no, you're going to continue but

4 I anticipate finish your evidence today. So thank you very much.

5 Yes, Mr Jeremy.

6 MR JEREMY: [9:35:26] Thank you, Madam President, good morning. Good

7 morning, your Honours, colleagues. And good morning, Professor de Waal.

8 WITNESS: DAR-OTP-P-1042 (On former oath)

9 (The witness speaks English)

10 QUESTIONED BY MR JEREMY: (Continuing)

11 Q. [9:35:37] Professor, we will conclude my examination of you in the next

12 30 minutes or so, perhaps a little extra. And as I indicated yesterday, I'd focus on

13 the final part of your report.

14 So if I can ask for that report to please be brought to our screens. It's evidence

15 reference number DAR-OTP-0220-1623. And it is page 55, Professor, of your hard

16 copy. And page 1677, please, court officer.

17 And I should say, your Honours, that Professor de Waal's report can be broadcast

18 publicly. I think it was not yesterday. And it can be, please.

19 So, Professor, if you have this chapter in front of you, paragraph 143, and I would like

20 to ask you about the first sentence, actually, of this -- of this first paragraph where you

21 say that "The impact of the methods of insurgency and counterinsurgency was

22 foreseeable." And I'd like you to begin by please explaining what you meant by that.

23 A. [9:37:13] Thank you. And good morning, Madam President and

24 your Honours.

25 The approach of the Sudanese government towards fighting the counterinsurgency

1 was essentially similar -- it had essentially the similar components to what had  
2 occurred in recurrent -- in response to recurrent rebellions insurgencies over  
3 the previous 20 years.

4 And in each of those cases what we had seen, as I described yesterday, was  
5 the mobilisation of an array of forces, regular and irregular, which launched very  
6 widespread, indiscriminate attacks on entire communities.

7 And what we'd seen from the early 1980s onwards was that in each of those instances  
8 there were very widespread and very intense episodes of forced displacement, of  
9 pillage, of destruction of livelihoods, of rape and other forms of sexual violence, of  
10 starvation and of widespread and indiscriminate killing of civilians.

11 And there was every reason to believe that if the same instruments were deployed,  
12 the -- in the normal course of events, you would see the same consequences unfold.

13 And yesterday there -- I drew attention, there was a -- a graph, if I could find it, of  
14 the three spikes, three previous spikes of -- of large numbers of civilian casualties.

15 And the expectation was that this would recur. And at the time in commentaries by  
16 myself and others, a very large-scale humanitarian crisis was foreseen. And indeed I  
17 would add that senior humanitarian officials, no sooner had the conflict broken out,  
18 began to mobilise humanitarian assistance, even before the -- the mass displacement  
19 had occurred on a very large scale. The -- one of the senior officials of the US  
20 Agency for International Development, Roger Winter, travelled to Darfur as early as,  
21 I believe July of 2003, and that same month the American administration began  
22 mobilising the large-scale food aid.

23 And the distances and the logistics are such that it would take six to eight months for  
24 that food aid to arrive. So it was -- it was a -- an action that was taken in  
25 the reasonable anticipation that a humanitarian crisis of similar proportions to those

1 that had been seen in Sudan over the previous 20 years would occur.

2 Q. [9:40:55] Now, Professor, you -- you referred to a graph that you had looked at,  
3 that we looked at yesterday, and I'd like to show you another graph in relation to  
4 patterns of mortality. That's on the next page of your report, page 56.  
5 1678, please, court officer.

6 And, Professor, in paragraph 144, in relation to mortality, you speak of the mortality  
7 among the combatants and the civilians in Darfur following two overlapping patterns  
8 which you say are consistent with conflict in Sudan over the previous 20 years. So in  
9 reference to that, I'd like you to -- to explain what we're looking at in this graph,  
10 please.

11 A. [9:41:53] So Figure 4 is a more detailed disaggregated picture of the best  
12 estimates that we have for the numbers of fatalities due to violence, on the one hand,  
13 and hunger and disease on the other.

14 And they follow different patterns. They follow different patterns according to  
15 space, time and the -- the profile of the victims.

16 These data are derived from some -- a number of sources that were very extensively  
17 reviewed by statisticians and epidemiologists based at the centre for the research of  
18 epidemiology in disasters in Belgium. And they were considered by an expert  
19 review panel to be the most credible. And I would say they are towards the lower  
20 end of the -- most of the figures that have been provided. So we could -- so the  
21 figures -- the real figures may well be higher, they are unlikely to be lower. And  
22 the figures that you see and the patterns you see are shocking enough.

23 So the dark green -- the dark blue line on this -- on this chart represents the deaths  
24 through direct violence, that is through people who were killed in battle or through  
25 direct violence against civilians, who -- who were shot to death, were tortured to

1 death. And you'll see it is a jagged line, it rises and falls. There was two -- there are  
2 two peaks and those two peaks coincide with the two major offensives that were  
3 conducted by the Government of Sudan and allied forces in the middle of 2003 and  
4 the early months of -- of 2004, beginning actually in around December 2003.  
5 And it then falls away to a level that is still quite significant, but is -- is -- these are  
6 numbers of deaths per month, still quite significant but not as horrific as during those  
7 peaks.  
8 The majority of those who were killed by violence would be adults and would be  
9 male, though there is a -- there are also women who were being killed and -- and  
10 children.  
11 But that is distinct from the second line, which is the line of those who perish from  
12 hunger and disease, and I would also add exposure, exposure and thirst, but  
13 overwhelmingly hunger and disease. And this line is a -- there is a lag. The lag  
14 occurs because the displacement and the -- the forced destitution that is imposed by  
15 these attacks takes some time to have its human impact.  
16 For an individual to -- to starve to death, for a healthy adult individual to die  
17 of -- from lack of food would take approximately 60 days. In most of the situations  
18 in which we are dealing with, it is not outright starvation, people have some food,  
19 they have some -- some sustenance, and most of those who perish are children under  
20 the age of five and elderly people. And the majority of the deaths that are -- that you  
21 see during -- that are attributable to hunger and disease, and this small -- the second  
22 curve are children, probably 60 per cent of -- of those who are contained in this -- this  
23 curve.  
24 The curve, as I said, has a lag because the impact takes some -- some weeks and  
25 months to really be felt. It then climbs as the -- the numbers of people who are

1 displaced and affected grows.

2 It -- you will notice that it peaks in April of 2004 and begins to fall. The reason for it

3 beginning to fall was two related events that occurred in April of 2004. The first was

4 that the food aid that I mentioned earlier having been made available by

5 the United States through the World Food Programme, and other donors stepped up,

6 began to arrive. But more significantly, on 8 April 2004, a ceasefire agreement was

7 signed in N'Djamena between the SLM/A on one side -- and JEM on one side and

8 the -- the Government of Sudan on the other.

9 The -- the reason why the ceasefire was signed was partly because the Government of

10 Sudan felt that its objective was -- its military offensive, that secretary military

11 offensive was running out of steam, it had -- it was achieving its main goals and it

12 was ready to -- to stop.

13 Secondly, the Government of Sudan came under intense international pressure,

14 including from the African Union. The then chairperson of the African Union

15 Commission, the former Malian president Alpha Oumar Konaré, visited Khartoum

16 on -- actually, on this same day, April 7, on his way to the memorial for the victims of

17 the genocide in Rwanda and informed President Bashir that international opinion

18 was now growing so strong against what was happening in Darfur that

19 the -- the constitutive act of the African Union contains a provision, a unique

20 provision of non-indifference, the right of the union to intervene in the affairs of

21 a member state pursuant to what it calls grave circumstances, which are war crimes,

22 crimes against humanity and genocide. It has never been invoked, but

23 President Konaré in his meeting with President al-Bashir said that if steps were not

24 taken to end the bloodshed in Darfur, he would feel compelled to invoke it. And so

25 the pressure was -- was felt by the Government of Sudan and they signed that

1 ceasefire.

2 The ceasefire was not fully respected by any means, but what it did -- but it did bring  
3 about the deployment of African Union ceasefire monitors and the opening of access  
4 routes for humanitarian assistance, especially to the very large camps for internally  
5 displaced people. So the curve of mortality for humanitarian reasons began to go  
6 down more quickly than it might otherwise have -- have done.

7 I can see that you want to pose another question. I can continue on this topic or ...

8 Q. [9:50:08] Well, I was going to ask about the -- the data from the general  
9 accountability office from the US in relation to mortality figures. And I know that  
10 you -- you wanted to make a small clarification in relation to your access to that data.

11 A. [9:50:23] These -- there was a -- sorry, let me pause.

12 There was great controversy over these data, and in particular there was some very  
13 high -- extremely high figures, several times higher than these numbers that were  
14 being cited in -- at the end of 2005, early 2006. I should say, in aggregate these data  
15 speak of - during this particular time period of 2003-2004 - about a minimum of 30,000  
16 people killed through violence and about 130,000 excess mortality above what would  
17 normally be expected for hunger and disease.

18 And there was a great controversy and the US Office of -- the general accountability  
19 office convened a group of experts in early 2006 to review the data. I was asked to  
20 be a member of that team because my expertise had been in studying famine in  
21 humanitarian crises. I was not able to join. I reviewed the data, I -- and I agree  
22 with the conclusions of the -- of the GAO. And that is -- and the source that they  
23 considered most credible is the one that I've been using here.

24 PRESIDING JUDGE KORNER: [9:51:55] Mr Jeremy, if you're moving to another  
25 topic, could I just ask Professor de Waal to clarify one matter. And that's -- you said



1 that the second curve -- I actually stopped it. Yes, "the second curve are children,  
2 probably 60 per cent". Can I just ask you what are you calling the second curve on  
3 your -- on this graph?

4 THE WITNESS: [9:52:27] The second curve is the lighter grey one, that slightly  
5 smoother one. So that --

6 PRESIDING JUDGE KORNER: [9:52:30] Right. So you're saying, generally,  
7 the deaths represented by that are children?

8 THE WITNESS: [9:52:37] Generally speaking, yes.

9 PRESIDING JUDGE KORNER: [9:52:38] I see. Thank you.

10 Sorry, Mr Jeremy.

11 MR JEREMY: [9:52:42] Thank you, Madam President.

12 Q. [9:52:44] Professor, I want to move forward through this chapter and to the topic  
13 of sexual violence.

14 A. [9:52:55] Before doing that, may I make one other remark?

15 Q. [9:52:59] Please.

16 A. [9:53:00] Or two linked remarks about that second curve.

17 The -- the first is that in these circumstances the -- a case was sometimes made that  
18 Darfur was exposed to environmental distress and seasonal hunger, and therefore  
19 levels of hunger and starvation were, as it were, normal in Darfur. I would not  
20 subscribe to that view - I studied the topic of drought-induced hunger - and the levels  
21 of mortality that you would expect from a -- a crisis due to -- to drought and  
22 desertification and, as it were, normal distress are an order of magnitude lower than  
23 what we see here. This -- these levels of starvation are many times greater than what  
24 one would observe through that kind of distress.

25 In these circumstances, starvation is not a natural event, starvation is an act, it is

1 something that people do to one another.

2 The second point about starvation that I wanted to make, and I didn't include this in  
3 my evidence, but it's something that I think will relate to points that you -- that then  
4 come up, is a -- in the words of a colleague of mine, a professor at the Fletcher School,  
5 Tom Dannenbaum, starvation is a form of societal torture.

6 And what I mean by that and what he means by that, but what I specifically mean by  
7 that is that starvation is not just the -- the individual experience of hunger. But if  
8 you consider what it is to be the parent of young children who are deprived of  
9 everything that is necessary to keep them alive, and you think about the very painful  
10 choices you have to make, you maybe have enough money to buy medicine for one  
11 child, but not for another. You maybe are faced with your nephews and nieces  
12 equally in need, begging you for some food, but you turn them from your door  
13 because you say what little I have is for my own children. You are forced to sell, let  
14 us say, the jewellery, the few things that you inherited from your mother or your  
15 grandmother for a pittance to buy food.

16 And after the experience of starvation like that, then the number one emotion that  
17 people feel, that parents feel, who have not only undergone these cruelties but had to  
18 inflict cruelties on others, is a deep sense of shame, of failure themselves. And that is  
19 the memory they carry with them.

20 It is for that reason, I believe, that it was in the case of the famine in Ireland of  
21 the 1840s, it was more than a hundred years before they were able to construct  
22 memorials to those who perished. It was more than 60 years before the government  
23 of Ukraine was able to construct memorials to those who perished in the famines of  
24 the 1930s, because overcoming that sense of shame. And I think this is one of  
25 the experiences that the people of Darfur have -- have undergone which they will find

1 very difficult and very painful to articulate before -- before this Court.

2 Q. [9:57:05] Professor, focusing your attention on paragraph 151, page 58, and  
3 electronic page 1680, please, in relation to sexual violence, you say in this  
4 paragraph that it was widespread and you note that women and girls were raped,  
5 often in brutal and humiliating ways.

6 You say in this same paragraph that the extent of rape was impossible to quantify.  
7 Can you explain what you meant by that, please.

8 A. [9:57:42] I think around the world it's a regrettable but true fact that only  
9 a minority of the survivors of sexual violence come forward and report on their  
10 experience. I think that is likely to be even more the case in a very conservative  
11 society where the deep sense of shame and stigma by -- felt by a woman or a girl who  
12 was -- who has survived this experience is such that she really wants only to hide.  
13 It is complicated additionally by the fact that the Sudanese authorities were  
14 particularly sensitive to the charge that their forces had inflicted these crimes, and  
15 they made it particularly difficult for medical staff, including staff of Sudanese and  
16 international voluntary organisations, to investigate and report on -- on these crimes.

17 Q. [9:59:19] Professor, in relation to this difficulty that you indicated the Sudanese  
18 government presented, I want to show you a report. And in fact it's the -- it's  
19 the African Union high-level panel report on Darfur, which as you say in your own  
20 expert report, I think at footnote 5, that you were an adviser to the African Union and  
21 you attended all consultations in relation to this report. It's tab 9 of your binder.  
22 And for the court officer, it's evidence reference number DAR-OTP-0222-2979. And  
23 if we can look at the front page to begin, please.

24 Professor, do you have that report in front of you? Do you recognise the front page?

25 A. [10:00:52] I have it in front of me and I recognise the front page.

1 Q. [10:00:55] So I -- I note that this is -- it states it's the report of the African Union  
2 High-Level Panel on Darfur, and the date indicated in the top left corner is  
3 29 October 2009.

4 And if we can please go to page 119 in your hard copy, Professor.

5 And it's electronic page 3119, please, Madam Court Officer.

6 THE COURT OFFICER: [10:01:32] Can the document be broadcasted publicly?

7 MR JEREMY: [10:01:38] Yes, it can. Thank you.

8 Q. [10:01:44] Professor, if you have that page in front of you, you'd see the title is  
9 "Experts", and there's a list of individuals, and the final name is "Dr Alex de Waal,  
10 Program Director, Social Science Research Council, New York, US".  
11 You see that?

12 A. [10:02:08] Yes.

13 Q. [10:02:09] And that's obviously a reference to yourself.

14 If we can please go to one page of this report, and that's page 226.

15 And that's electronic page 3057.

16 Sorry, paragraph 226, Professor, page 57 in your hard copy. And 3 -- 3057 in  
17 the electronic version, please.

18 And if we can focus on paragraph 226, please.

19 So, Professor, there we read, quote:

20 "In addition to the inadequacies in the investigations of rape cases in Darfur,  
21 a broader, and perhaps more serious, issue is that currently the law, criminal  
22 procedures and rules of evidence in Sudan impose forbidding obstacles in the way of  
23 proving allegations of rape." End quote.

24 And if you are able, could you please elaborate on -- on the nature of those forbidding  
25 obstacles.

1 A. [10:03:35] I should say I'm not an expert in -- in law. This part of the -- report  
2 was written by the legal experts for the panel, not by me. And I -- I think you would  
3 be advised to get a -- an expert on -- on Sudanese law and procedure to give you  
4 a complete answer to this question.

5 Q. [10:04:09] That's -- that's fine. If that's your answer, that's ...

6 A. [10:04:15] Yeah.

7 Q. [10:04:16] I'd also like to draw your attention to another part of this report.

8 And it's on the -- it's on the previous page. And it's paragraph 223 and the title is  
9 "The Special Prosecutor for Darfur".

10 And I'll paraphrase the paragraph, Professor. It says, on 3 August 2008, the minister  
11 of justice appointed a special prosecutor to focus specifically on crimes committed in  
12 Darfur since 2003. It refers to the incumbent, Mr Nimr Ibrahim Mohamed, being  
13 assisted by three legal advisers and a committee of community notables, and  
14 the purpose is to identify witnesses and victims, to assess damages.

15 And it says the committee commenced work in three states of Darfur. And in  
16 February 2009, Mr Mohamed announced that three men, including Ali Kushayb, who  
17 was the subject of an outstanding ICC arrest warrant, has been charged with criminal  
18 offences.

19 PRESIDING JUDGE KORNER: [10:05:41] I think we can all -- Mr Jeremy, we can all  
20 read this. Is there a question coming?

21 And as Professor de Waal has said, he's not an expert in law. Is this a relevant  
22 matter for him?

23 MR JEREMY: [10:05:54] Well, my -- my question, Madam President, is that Professor  
24 de Waal said yesterday that he was involved in the -- the implementation panel  
25 that -- that followed this high-level report.

1 Q. [10:06:08] And in that capacity, I -- understanding that you didn't -- you were  
2 not involved in drafting this legal section, but are you aware of whether the -- how  
3 those cases played out in -- in Darfur and whether there were any prosecutions?

4 PRESIDING JUDGE KORNER: [10:06:29] Well, at the moment I don't see  
5 the relevance, Mr Jeremy. I'm sorry. How these cases may or may not have played  
6 out in Darfur is not relevant to this Court.

7 MR JEREMY: [10:06:42] Okay. I'll move on, Madam President.

8 Q. [10:06:46] Professor, in relation to your own report, if we can return to that,  
9 DAR-OTP-0220-1623, at page 1681. And I want to focus your attention, Professor, on  
10 the topic of forced displacement.

11 Now, you say in paragraph 154 that this was both a foreseeable outcome of  
12 the conflict and a central aim of at least some of the belligerents. Can you explain  
13 what you mean by that.

14 A. [10:07:41] Forced displacement was foreseeable because every similar episode in  
15 the Sudanese civil wars had led to forced displacement, and a routine and normalised  
16 tactic of the regular and irregular forces was to burn villages and destroy people's  
17 livelihoods and make it impossible, at least in the short-term, for people to live in  
18 those villages. The rationale of that being they would no longer be able to support  
19 the rebels.

20 The second element here, "also a central war aim of at least some of the belligerents",  
21 this refers to the fact that some of the irregular forces, especially the Janjaweed of  
22 northern Darfur, were -- and parts of Western Darfur, were seeking to take over  
23 the land. There they had long-standing -- long standing at least over the previous  
24 decades - long-standing objectives of creating territories for themselves, which would  
25 require the forced removal of the existing inhabitants.

1 Q. [10:09:21] Now in relation to this -- the forced removal, in paragraph 131 of your  
2 report, page 59, electronic page 1681, you -- you refer to the three large-scale  
3 offensives that you discuss in your report and that you've mentioned today and  
4 yesterday, and you reference a -- a map, map 6, which I would like to -- to show you  
5 now. And that's evidence reference number DAR-OTP-0220-1689 at 1691, and it's in  
6 tab 3, Professor, of your -- of your binder.

7 So, Professor, do you see that map?

8 A. [10:10:27] I do.

9 Q. [10:10:28] So the title is "Conflict-affected areas and IDP locations (March 2005)",  
10 and the legend indicates that the areas with the red slanted shading indicates areas of  
11 damaged villages. And we see from this map that there is a significant amount of  
12 red shading in the -- in the West Darfur state, and I wondered if you knew why that  
13 was the case.

14 A. [10:11:07] The West Darfur state is divided on -- between the more western part,  
15 Al Geneina, and the more central part. Here you can see Zalingei being the largest  
16 town, and then to the south of that you would see -- I'm not quite sure what those two  
17 blue dots represent, but they could be towns such as Deleig and Garsila.

18 In the -- there was a -- there were two offensives into those areas, that is the Zalingei,  
19 Garsila, Deleig area, involving large-scale destruction of villages. The first in  
20 the summer of 2003, July/August, the second between approximately December 2003  
21 and the end of March, beginning of April 2004.

22 Q. [10:12:17] (Microphone not activated)

23 THE INTERPRETER: [10:12:20] Microphone, please.

24 THE COURT OFFICER: [10:12:25] Microphone, please.

25 MR JEREMY: [10:12:26] Forgive me.

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1 Q. [10:12:29] Professor, I'd like to move to the final part of your report, and it's the  
2 subsection entitled "Anarchy and Societal Collapse", where you -- you refer to the  
3 consequences of the conflict.

4 And to -- to close, I'd like to ask you to make some final comments in reference to this  
5 paragraph on the lasting impact of the conflict on the civilian population of Darfur  
6 based on your expertise.

7 A. [10:13:09] The --

8 THE COURT OFFICER: [10:13:12] Could we have a page reference, please?

9 MR JEREMY: [10:13:16] It's page 60 in the professor's hard copy, and electronic  
10 page 1682 to 1683 in the report. Thank you.

11 THE WITNESS: [10:13:30] The tragedy of what happened in -- in Darfur in 2003 to  
12 2004, into 2005, was in the immediate sense an enormous human tragedy.

13 People -- many -- tens of thousands of people lost their lives, lost their livelihoods,  
14 lost their -- lost their futures.

15 And here I would add one point that I should perhaps have made when you were  
16 referring to -- to rape and survivors of rape, which is that a survivor of rape in -- in ...

17 MR LAUCCI: [10:14:34] Sorry. Apparently there is a problem of interpretation in  
18 Arabic.

19 Can the interpreter try?

20 THE COURT OFFICER: [10:15:50] Message for the Arabic booth: If you could  
21 please adapt your microphone so that your voice sounds louder. Thank you very  
22 much.

23 PRESIDING JUDGE KORNER: [10:16:02] Yes. Well, hopefully that's sorted.

24 So, yes, Mr Jeremy.

25 MR JEREMY: [10:16:09] Thank you, Madam President.



1 Q. [10:16:11] Professor, do I need to repeat the question, or?

2 A. [10:16:14] I can continue.

3 Q. [10:16:15] Thank you.

4 A. [10:16:16] So the -- first and foremost, it was an enormous human tragedy,  
5 the numbers of people who -- who perished in violence, who bear the scars of torture,  
6 who died of starvation, thirst, disease.

7 Many of those individual scars also become social scars. And in this respect I  
8 wanted to just draw attention to the fact that a survivor of rape may find it very  
9 difficult ever to have a family, to -- to become a -- you know, to achieve her  
10 aspirations of being a normal, you know, respected member of the community. And  
11 she may be condemned not only to -- to great, you know, physical pain, but -- for  
12 the rest of her life, but also to impoverishment, to destitution. She may not be able to  
13 provide for herself or her children, both because of the physical wounds, but also  
14 because of the -- the social ostracism, the inability to marry and become a recognised  
15 member of a community.

16 And that points to the damage that this war, and the way in which the war was  
17 fought against the civilian population, the damage that was done to the social fabric.  
18 So that when I lived in Darfur in the 1980s, the -- the society was intact. You felt that  
19 there was a set of norms and principles, customs that kept not only every ethnic  
20 group together, but also regulated the relations among them, so that the -- for  
21 example, every year when the Arab nomads would travel through Fur villages, they  
22 would be welcomed. They would be -- you know, they would be bringing things  
23 that the -- that the Fur villagers would want. They would be, you know, bringing  
24 their animals, who would fertilise the fields, they would bring meat, they would  
25 bring milk. They would be welcomed. They would be welcomed with -- with gifts

1 of grain, of fruits, and so on, that the nomads themselves did not have.  
2 When I returned to Darfur in the aftermath of this -- this war, that was shattered, that  
3 was gone. The -- the structure of villages, the structure of the Arab nomadic tribes  
4 themselves had changed. They'd become military formations. They'd become  
5 fearful of one another. Their interaction across ethnic lines had changed to one  
6 of -- of hostility. And there were still elders in the community who were trying to  
7 bring back what had existed before, but the -- the reality was that it was  
8 extraordinarily difficult for them to do that when they were -- the society as a whole  
9 was angry, was bitter, it was divided, it was -- it was traumatised. And  
10 the -- the loss of what was a -- a wonderful society to visit and -- and be part of as  
11 a guest was in some ways just as terrible a loss as the -- the loss of human life.

12 Q. [10:20:21] Thank you, Professor.

13 No further questions, your Honours. Thank you.

14 PRESIDING JUDGE KORNER: [10:20:27] Yes, thank you very much, Mr Jeremy.  
15 Yes, Mr Laucci?

16 MS VON WISTINGHAUSEN: [10:20:40] Excuse me, Madam President. We had  
17 asked for leave to ask some questions to Mr de Waal but could only make the final  
18 assessment obviously after the end of the questioning by the Prosecution. So if  
19 the Trial Chamber would give us leave to ask some questions, it won't be long, maybe  
20 20, 30 minutes, but I think there are some interesting questions for you and -- that  
21 should be posed also in the interest of our clients. I -- but I have no problem to go  
22 after Mr Laucci.

23 PRESIDING JUDGE KORNER: [10:21:13] Yes. No, you're absolutely right,  
24 Ms von Wistinghausen. I'm afraid I'm still working my way back into international  
25 trials.

- 1 MS VON WISTINGHAUSEN: [10:21:23] That's all right.
- 2 PRESIDING JUDGE KORNER: It's automatic for me.
- 3 MS VON WISTINGHAUSEN: It's the same for me.
- 4 PRESIDING JUDGE KORNER: [10:21:26] In fact, before you start, so you go next  
5 obviously, so that Mr -- absolutely, so Mr Laucci has the opportunity to deal with  
6 anything you ask. However, Judge Alapini-Gansou would like to ask one question  
7 before that happens.
- 8 Yes.
- 9 JUDGE ALAPINI-GANSOU: [10:21:53](Microphone not activated)
- 10 THE INTERPRETER: [10:21:57] Microphone, please.
- 11 JUDGE ALAPINI-GANSOU: [10:22:04](Interpretation) Thank you.
- 12 I was waiting for a question which hadn't come up since yesterday, and it is related to  
13 paragraph 143 of the report. And you were speaking about the leaders who had  
14 their own agenda.
- 15 What do you understand by that, Mr Expert? Could you give some more  
16 information regarding this notion of personal agendas on the part of the leaders.
- 17 THE WITNESS: [10:22:50] Thank you, your Honour. It is an extremely pertinent  
18 question. And it is an issue that particularly became very salient during the peace  
19 negotiations. So let me speak a little bit about that, because it -- what became clear to  
20 me in -- when I was part of the African Union mediation team, and dealing with those  
21 leaders who had instigated the war, was that -- the element of a personal agenda  
22 among many of them.
- 23 Some of them, and I would point here particularly to -- to some of the -- not all, but  
24 some of the -- the rebel leaders, did have an idealistic agenda of transforming Sudan.
- 25 Many of them, as the -- the negotiations progressed, were looking for individual

1 positions. They were looking for individual advancement, political and material  
2 advancement of themselves as individuals and their -- their followers.  
3 And they were seeking a resolution to the conflict in what we would call a payroll  
4 peace, payroll peace being defined as when the key element of the peace agreement is  
5 that the rebels are put on the payroll, that they get salaries for themselves and their  
6 troops, and so on. And on the -- the side of the government, similarly those who are  
7 pursuing the -- the counterinsurgency very often were looking for material rewards  
8 for themselves, their families and their followers, which could range from getting  
9 a more senior position in the military or in the tribal hierarchy, or getting wealth,  
10 material reward and becoming a -- a person of material means.

11 Sadly there was a -- the motive of greed was a very prominent factor in this war.

12 JUDGE ALAPINI-GANSOU: [10:25:50](Interpretation) Could we therefore conclude  
13 that all of this was done to the detriment of the population, to the detriment of  
14 the well-being of the population?

15 THE WITNESS: [10:26:07] Yes, your Honour, we can conclude that.

16 JUDGE ALAPINI-GANSOU: [10:26:11](Interpretation) Thank you.

17 PRESIDING JUDGE KORNER: [10:26:15] Yes, all right, sorry, we now move to  
18 Ms von Wistinghausen.

19 QUESTIONED BY MS VON WISTINGHAUSEN:

20 Q. [10:26:26] Yes, Professor de Waal, my name is Natalie von Wistinghausen. I'm,  
21 together with my colleagues, representing the victims. And obviously everything  
22 you're saying is very important to us and to lay the foundation to the Trial Chamber  
23 to understand the context of the events.  
24 I just want to go back to a few questions that haven't been touched upon and -- and  
25 that are of special interest to us.

1 Maybe for the court reporter, if you could leave the report of Mr de Waal on  
2 the screen, that could be helpful, and that's actually the only document that we're  
3 going to use.

4 So first I wanted to take you to paragraph 41 of your report. That's  
5 DAR-OTP-0220-1638. And in this paragraph you speak about Arab identity in  
6 Darfur which is defined by family lineage rather than by language or culture.

7 Could you explain to us how you would describe or encapsulate the Fur identity.

8 A. [10:27:49] Thank you. It is a very intriguing question actually historically, and  
9 I -- because the Fur historically were -- prior to 1916, were the dominant group in  
10 Darfur, and the Fur were expanding. So the original sort of house of the Fur,  
11 the original lineage of the Fur is a royal lineage called the Keira. And then the other  
12 Fur, the majority of the Fur groups constitute a group called the Kunjara. And  
13 I -- my command of the Fur language is very limited, but I understand that Kunjara  
14 means "gathered together". So these were groups that adopted the Fur identity,  
15 language, customs during the period of the rule of the sultans from the 17th century  
16 to approximately 130 years ago.

17 The Fur -- what these groups have in common is the Fur language, a tradition of  
18 affection for the -- the Fur -- the set of values associated with the historic sultanate,  
19 a very strong attachment to the land, feeling that their identity is very closely tied in  
20 with their control over the land. It doesn't mean that they control -- that they wanted  
21 to exclude others from the land. They have a long tradition of welcoming  
22 both -- welcoming strangers who they would allow to settle, and those strangers  
23 would, over the generations, become part of the community and become Fur. And  
24 of course also welcoming nomads.

25 So it is -- it is a set of -- of values along with culture, language and affinity to

1 a particular historical past.

2 Q. [10:30:18] Thank you. And would you say that there are any notable  
3 subdivisions or something like clans within the Fur community, or is it more proper  
4 to consider the Fur as a group or a more singular identity?

5 A. [10:30:36] There are subdivisions within -- within the Fur, but -- and the most  
6 important one being the one between the -- the aristocratic lineage of the Keira and  
7 the rest, but the -- at a social, political, community level, those are not very significant.

8 Q. [10:31:11] In this same paragraph, 41 of your report, you describe some naming  
9 conventions for Darfur's Arabs. Can you explain or do you know of naming  
10 conventions used by the Fur people? Is there anything similar within that  
11 community?

12 A. [10:31:35] Could you explain that a little bit more by what you ...

13 Q. [10:31:39] Yes. If we look at paragraph 41 of your report, you say, and I quote  
14 from line 4, at the end: "A man has his given name, followed by his father's,  
15 grandfather's, great grandfather's ..."

16 A. [10:32:03] Yeah.

17 Q. [10:32:03] So does anything alike exist within the Fur community?

18 A. [10:32:09] The Fur have a -- have a similar system.

19 Q. [10:32:15] You've already touched upon this a little bit, but if we talk about  
20 the nature of family relationships in the Fur community, family relations between  
21 extended family or close relations, I mean are these close relations or of more distant  
22 relations? Can you say something about family support structures?

23 A. [10:32:47] One of the features of all these societies, all these communities in  
24 Darfur is a tradition of -- of solidarity and mutual assistance within -- within  
25 the extended family. And the -- exactly how that is defined would vary between

1 a -- a nomadic group and a group -- a village-based group, so that among the Fur one  
2 of the one important institutions or practices is what is called the *nafir*. The *nafir*  
3 being a work party in which people will come together for the purposes of doing  
4 a collective work. So it could be building terraces, it could be digging irrigation  
5 ditches, it could be harvesting or threshing after the harvest, et cetera. So  
6 the -- the -- being a -- being invited to be part of the *nafir* would reflect being included  
7 in the community.

8 Q. [10:34:08] So it will probably also be very common for extended family members  
9 to assist or to support each other in some fashion, be it like child care, sharing of food  
10 or resources, money?

11 A. [10:34:21] Yes, very much so.

12 Q. [10:34:24] I want to ask you about the storing of wealth in Fur communities, if  
13 this is something you can talk about. How would wealth be stored in the Fur  
14 community prior to the outbreak of the conflict? And if I mean wealth I mean land,  
15 animals, goods, gold.

16 A. [10:34:51] The banking system in Darfur was rudimentary, and so relatively few  
17 people in rural areas would keep their assets at the bank. Sometimes people would  
18 store bundles of bank notes under their mattresses or in these little -- in little tin  
19 boxes.

20 Women in particular would have wealth in the form of jewellery, which was very  
21 much treasured, treasured beyond the monetary value that it might have.

22 The -- the number one source of wealth and investment of wealth is the land, but  
23 in -- in Darfur it is almost all the land. And here, especially if we're talking about  
24 the Wadi Salih area, Zalingei, Wadi Salih, Mukjar area, almost all the land is small  
25 holder farms belonging to families. You don't have large commercial farms. So if

1 you are a prosperous farmer, it is -- you can perhaps acquire a bit more land, but you  
2 cannot get it -- you cannot get wealthy by -- by farming alone.

3 So a wealthier farmer - and of course everyone here is poor, but relative to  
4 others - would acquire livestock, would acquire cattle, and -- especially which would  
5 be a way of becoming -- having a greater store of wealth.

6 Q. [10:36:47] And can you say something about the significance of gold as a means  
7 of wealth. You've mentioned jewellery. And also the question whether it has any  
8 significant cultural meaning within the Fur or for the Fur people.

9 A. [10:37:07] All I can -- the -- I can't give you an authoritative answer really on that,  
10 beyond what I mentioned earlier, which is that the -- that the value that is ascribed to  
11 artefacts, to -- and to gold and silver artefacts goes beyond their -- their monetary  
12 value. If you need a more elaborate explanation, you would need someone who  
13 is -- is a specialist in the -- in the anthropology of the Fur people.

14 Q. [10:37:55] Thank you. Thank you for your answer.

15 I will move on to the last part of the report, which obviously is of greatest importance  
16 to our client, and I would like to take you to paragraph 151. Mr Jeremy has already  
17 discussed it with you.

18 In this paragraph you say survivors faced a high level of trauma and fear of  
19 stigmatisation and ostracism - difficult word for me - ostracism, and also that  
20 the implications of rape for a woman and her position are very profound in  
21 a conservative society, and you've already elaborated a little bit on this.

22 I just wanted to ask you if rape had different implications for married or unmarried  
23 victims, and also if you can say anything about the treatment of children who were  
24 born as a result of rape.

25 A. [10:39:02] Those are very important questions and I can't actually give you an



1 authoritative answer.

2 PRESIDING JUDGE KORNER: [10:39:12] Sorry, Ms von Wistinghausen. In fact,  
3 because I was going to ask the professor about this.

4 When you gave your evidence earlier about the effect of rape in these circumstances,  
5 on what were you basing that, and indeed your whole paragraph 151?

6 THE WITNESS: [10:39:33] During the immediate post-war period I made several  
7 visits to Darfur. And then -- first of all, there was a -- I went there for  
8 the African Union, United Nations to -- just to make an assessment of what  
9 the situation was, and then later with the African Union panel on Darfur. And I met  
10 with a number of health professionals, workers with voluntary organisations, NGOs,  
11 who reported on -- on this. So I've not studied it myself, so my information is -- is  
12 second-hand.

13 PRESIDING JUDGE KORNER: [10:40:28] Yes, thank you.

14 MS VON WISTINGHAUSEN: [10:40:30]

15 Q. [10:40:32] I'm moving on, Professor de Waal, to the question of displacement,  
16 which you have addressed as well in paragraph 156 of your report. That's  
17 page 1681.

18 And you're talking about the occupational settling of the farmland of displaced  
19 persons by Arab tribal groups, and you're saying: "To date there have been no  
20 large-scale returns: the displacement is taking on an air of permanence."

21 Can you tell us if there are any government or inter-communal mechanisms that have  
22 been created or proposed to try and address the return of land to displaced persons,  
23 or compensation for the loss that they lived?

24 A. [10:41:26] This -- this is an issue that has recurred in peace negotiations and in  
25 local peace negotiations over the last 15 years or -- or so.

1 And I've not -- I've not studied it in -- in detail. What is striking is that every time  
2 the issue has arisen in the discussion, the peace discussions to which I've been party,  
3 the -- it has been raised in the context of saying, these commitments to return and  
4 rehabilitation were made, you know, in such-and-such an agreement, the Darfur  
5 Peace Agreement, the Doha Document, this document, that document. It hasn't yet  
6 happened. From which I take it that these -- either the commitments were not made  
7 in good faith or that they were undermined.

8 Q. [10:42:43] So it's still up in the air, because I was going to ask you about  
9 the practical impediments to displaced persons regaining control of their land, but  
10 probably that's something that cannot really be addressed at this stage.

11 A. [10:43:00] I would -- I would be able to point you to people who could answer  
12 that question, but I can't answer it myself.

13 Q. [10:43:11] I suppose we will be in contact then.

14 Briefly, Professor de Waal, about the impact of displacement on the Fur as a people.  
15 In your report at paragraph 157, that's page 1682, you're saying, and I quote: "Many  
16 tribal chiefs were displaced and became refugees or IDPs. There was an  
17 administrative vacuum in rural areas."

18 And then you're speaking about new authorities that emerged in the camps and the  
19 Darfurians, who describe the situation as *fawda* --

20 A. [10:43:59] *Fawda*.

21 Q. [10:43:59] *Fawda*. So anarchy, if I understand correctly.

22 "... and characterised this as no less serious than the large-scale massacres that had  
23 preceded", these are your words.

24 Could you expand on your statement regarding this vacuum and this *fawda* and the  
25 seriousness of the impact of displacement on Fur and other communities.

1 A. [10:44:22] The -- if you were to go to an IDP camp near one of the major cities of  
2 Darfur today, you would begin to -- you would see that they no longer resemble  
3 the -- the camp -- an emergency temporary settlement with tents. You would  
4 see -- in the central parts of it you would see what has grown up is really a small town.  
5 And if you were to -- to ask to meet with the people, the most influential people in  
6 the camp, they would not -- they might take to you the house of the former *shartay* or  
7 some chief, but actually the real authority now lies with others who have grown up  
8 who -- who were able in the context of the camp to obtain influence, power, wealth,  
9 because of the disruption so that those who arrived earliest at the camp were able  
10 often to establish themselves as -- as *de facto* authorities. Those who were more  
11 militant and aligned with the -- the rebel leadership of Abdul Wahid al-Nur were able  
12 to gain credibility and influence.

13 And so the whole -- the whole structure of the society has substantially changed.  
14 And should they -- these people then be going back to the locations where they lived  
15 before, it would be very hard to see how those old systems would be re-established.

16 Q. [10:46:30] You've now spoken about the structures in the camps, and if I  
17 remember correctly you said yesterday - and I refer to yesterday's transcript, page 50,  
18 line 41 - that you did fieldwork in Darfur from September 2005 to March 2007, right?  
19 So I think that what you just said is your assessment from your own experience being  
20 in the camps at that time; is that correct?

21 A. [10:47:08] The -- not exactly. The -- the -- that time when I was in Darfur was  
22 well before the conflict, so that is the -- as it were, the baseline, the comparison. And  
23 then my more recent visits of -- of 10 or 12 years ago would then be my point of  
24 comparison to say this is how -- this is how the structures have changed.

25 Q. [10:47:34] And apart from the structures, can you say anything about the living

1 conditions of the people in the camps, like food, housing, sanitary conditions, schools,  
2 security inside and outside the camps?

3 A. [10:47:54] I have not spent more than a single night, actually, in any of  
4 these -- these camps, and that was more than 10 years ago. So for a better opinion, I  
5 would -- I'm sure there are others who can -- who can give a more detailed and  
6 accurate assessment.

7 What I would say is that the -- when the camps were first established the conditions  
8 were absolutely desperate, they were truly terrible. And rates of disease,  
9 malnutrition were very high, sanitation was very poor.

10 During the period from the end of 2005 onwards, Darfur was the location of one of  
11 the world's largest international humanitarian efforts, and that translated into  
12 a remarkable reduction in -- in malnutrition, a remarkable reduction in disease level,  
13 and the provision of, at any rate, elementary schools. So -- and within the camps,  
14 the -- security was provided by the -- the international forces, UN and AU.

15 So the situation did stabilise and improve. But, of course, these people were not at  
16 home. The fundamental fact was they were living in -- in a situation which was an  
17 alien one, and they were relying on humanitarian aid, which was something  
18 profoundly dispiriting to -- to be reliant on charity for so many years.

19 Q. [10:50:00] Thank you, Professor de Waal.

20 One last question, which is much more pragmatic, if I may say. You've obviously  
21 talked about the Janjaweed yesterday, and also the term "Janjaweed", about what it  
22 means. That was in yesterday's transcript at page 98.

23 What I'm really interested in is to know, if you can testify to that, if the Janjaweed had  
24 a distinct identification in the way they looked, clothes, weapon, ways of  
25 transportation other than horses? Was there a way for people to see these are

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1 Janjaweed?

2 A. [10:50:48] Let me give a very unsatisfactory answer, which is yes and no. The  
3 yes being that the units of the Border Intelligence Brigade, commanded by Musa Hilal,  
4 had their own insignia, and so they would be instantly identified. Many others  
5 who -- who then were mobilised or joined them did not have those insignia,  
6 especially at the early stages.

7 Different units, like Central Reserve Police, like the Popular Defence Forces, would  
8 also have their -- their insignia and uniforms. And the army, of course.

9 Q. [10:51:46] In talking about training, do you know how these people were trained?  
10 Was this like an internal exercise? Was there some external support by Government  
11 of Sudan? Or did the government just take advantage of a very good, organised and  
12 well trained unit? Can you say anything to that?

13 A. [10:52:08] There were -- undoubtedly there were training camps. The best  
14 known being the two camps at Misteriya. And I believe there were others. I'm not  
15 sure of their locations.

16 Q. [10:52:28] Thank you very much. These were my questions. Thank you.

17 PRESIDING JUDGE KORNER: [10:52:31] Yes, thank you, Ms von Wistinghausen.

18 Yes, I think, Mr Laucci, you'll make a start at least, and we'll go on for the next -- until  
19 11 o'clock.

20 MR LAUCCI: [10:52:45] Thank you, Madam President.

21 And I have some introductory questions which we can cover now, so it's very  
22 convenient.

23 QUESTIONED BY MR LAUCCI:

24 Q. [10:52:59] Professor de Waal, I already said good morning, but I repeat it  
25 officially now.

- 1 I will start my questions with a reference to the Office of the Prosecutor's trial brief.
- 2 It's document 550, and it's paragraph 27. I will just read. No need to take it.
- 3 This is a quote from paragraph 27, I read:
- 4 "As at 1999, West Darfur had a population of more than 1.7 million [inhabitants]. ...
- 5 Fur and Masalit comprised the majority of the population of West Darfur. The Arab
- 6 tribes in West Darfur included Rizeigat, Beni Halba, Misseriya and Salamat."
- 7 Is that description correct according to -- to your knowledge?
- 8 A. [10:54:16] It is correct, but not entirely complete.
- 9 Q. [10:54:20] Do you want to complete it?
- 10 A. [10:54:24] Many -- you would find within West Darfur many -- members of
- 11 many other tribes in -- in smaller numbers.
- 12 Q. [10:54:38] So are you saying that this description is only covering the big,
- 13 significant numbers?
- 14 A. [10:54:53] I guess so.
- 15 Q. [10:54:54] Okay. I mean --
- 16 A. [10:54:53] Yeah.
- 17 Q. [10:54:53] -- if you want to elaborate further.
- 18 This brings me to -- to the next question, which is on the Fur side. And I thank
- 19 my -- my colleague, the Legal Representative of Victims, for asking some of
- 20 the questions that I was about to ask you.
- 21 But to understand correctly, on the Fur side, do they have like tribes - and I insist on
- 22 the "s" at the end of the word - or would you describe the Fur side as more
- 23 a monolithic group? What is the situation exactly?
- 24 A. [10:55:39] It's an interesting question. If one were to go back in history, you
- 25 would argue that -- you would see that the Fur is com -- the Fur as constituted, let us

1 say in the last hundred years, was composed of different groups that had come  
2 together to be the Fur.

3 The -- it is not normal to talk about Fur tribes in the plural. The Fur are, like most of  
4 the major non-Arab groups in Darfur - and that would include Masalit, Berti - are  
5 monolithic.

6 The term "tribe" is used in slightly different ways, and maybe you will want to get on  
7 to this, but the word "tribe" is often used to refer to administrative units  
8 where -- which are circumscribed by the authority of a -- a government-recognised or  
9 government-appointed chief. And they would be -- and there are many chiefs  
10 within the Fur.

11 But in contrast, let us say, with the Arab tribes, it would be so rare as to be almost  
12 unthinkable for the Fur tribe -- tribal chiefs to be in conflict with one another. So it is  
13 a routine occurrence, for example, for there to be a political or a territorial dispute, I  
14 should say. Let me not use the word "political". Territorial or other dispute  
15 between two Arab tribes. I am not aware of such disputes occurring among the  
16 chiefs of the Fur.

17 Q. [10:57:43] And if there were several chiefs, was there a chief of chief or king, or  
18 a single authority covering the whole Fur tribe?

19 A. [10:57:54] Until 1916 there was a sultan. His name was Ali Dinar. When  
20 he -- when he was killed and the -- Darfur was occupied, he was not replaced. There  
21 was no -- there was no overall sovereign for the Fur. There were the -- Darfur had  
22 been divided into -- under the sultan into four major provinces, each of which had its  
23 senior-most representative of -- of the Fur. So for Zalingei and that part of Darfur, it  
24 would be a man with the title of *dimangawi*. For the area of Nyala and South Darfur,  
25 it would be *magdum*.

1 Q. [10:58:49] Okay. Thank you very much.

2 Going back, and forgive my -- the simplicity of what I am going to say, the meaning  
3 of the word "Darfur", does that mean that the whole Darfur, meaning the five  
4 provinces, are all together the *dar* of the Fur?

5 A. [10:59:18] The -- the term "*dar*", meaning homeland, has two distinct meanings in  
6 this respect. One is the -- you would -- in Darfur -- within Darfur, you would talk  
7 about, let us say, *dar* Rizeigat, meaning the homeland of the Rizeigat, as established  
8 by the -- the political -- the governing authorities to say this is the land that is  
9 allocated under the jurisdiction of the Rizeigat chief.

10 Q. [10:59:52] And this is within Darfur?

11 A. [10:59:56] This is within Darfur. So you have --

12 Q. [10:59:59] Thank you.

13 A. [11:00:00] And then the "Dar" in Darfur refers to the -- as it were, the imperial  
14 domain of the sultan, which would include the subordinate *dars*.

15 No one speaks about Darfur in the sense of the particular land belonging to the Fur.  
16 That that would be -- it would be logical to do so, but it is not what is.

17 Q. [11:00:21] And if I follow up to your response, do I understand correctly if I say  
18 that then there would be several *dars* for the Fur within Darfur?

19 A. [11:00:33] That is not the way it is expressed in the normal vernacular, but you  
20 could -- that interpretation would be a -- a logical one. Yes.

21 Q. [11:00:44] So if you follow that logical - thank you for  
22 the compliment - interpretation, were there a *dar* of the Fur in the Wadi Salih?

23 A. [11:00:56] Wadi Salih would fall -- let me give a pause.

24 Q. [11:01:02] Yeah, and I have to do that too.

25 A. [11:01:07] Wadi Salih would be part of the *dar*, the land allocated to the Fur.



- 1 PRESIDING JUDGE KORNER: [11:01:13] Yes. Well, on that enlightening note, we  
2 will take the break. Thank you, Mr Laucci.  
3 Yes, we'll resume again at 11.30. Thank you.  
4 THE COURT USHER: [11:01:23] All rise.  
5 (Recess taken at 11.01 a.m.)  
6 (Upon resuming in open session at 11.32 a.m.)  
7 THE COURT USHER: [11:32:50] All rise.  
8 Please be seated.  
9 MR LAUCCI: [11:33:30] Thank you, Madam President.  
10 Q. [11:33:34] Professor de Waal, we stopped just before the break with my question  
11 about whether the Wadi Salih was -- could be considered -- whether they  
12 were -- there was a *dar* of the Fur in the Wadi Salih, so to say.  
13 I start again with the same question, but for Mukjar.  
14 A. [11:33:56] The answer is the same. Mukjar is part of the -- the way that it  
15 would be expressed in Darfur is that it would be a *hakura*, which is a -- the *hakura* is  
16 the land grant given by the sultan.  
17 Q. [11:34:18] Okay.  
18 A. [11:34:19] Yeah.  
19 Q. [11:34:20] And that applies to Wadi Salih as well?  
20 A. [11:34:21] Wadi Salih as well.  
21 Q. [11:34:25] Okay. Thank you very much.  
22 Were there a population of the Fur in South Darfur as well?  
23 A. [11:34:35] Yes.  
24 Q. [11:34:35] Okay. And same question, more specific to the locality of Rahad  
25 El Berdi in south Sudan -- in South Darfur, sorry.

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1 A. [11:34:54] Rahad El Berdi is the administrative headquarters or capital for  
2 the Ta'aisha, and that would be -- it would be part of -- it would have  
3 its -- the Ta'aisha were one of the large Arab tribes that were awarded their own *dar*  
4 or homeland according to the -- even from the days of the sultan and under  
5 the British and under their current system.

6 PRESIDING JUDGE KORNER: [11:35:26] And I think you had better spell it because  
7 I've looked at LiveNote and they haven't quite got that, I don't think.

8 THE WITNESS: *Hakura* is --

9 PRESIDING JUDGE KORNER: No --

10 THE WITNESS: Oh, Ta'aisha. Ta'aisha is --

11 PRESIDING JUDGE KORNER: [11:35:32] No, they've changed it. Yes. Thank  
12 you.

13 THE WITNESS: [11:35:37] Okay.

14 MR LAUCCI: [11:35:38] That reminds me that I did not put the transcript in front  
15 of me. Thank you, Madam President.

16 Q. [11:35:48] So now can you describe, and of course it's in general terms, what  
17 would be the -- the structure of the Fur tribe?

18 A. [11:36:01] So the Fur tribe in contemporary times has the most senior Fur chiefs.  
19 I mean, let us take the Western and Southern Darfur. So for Western Darfur,  
20 the most senior chief is the *dimangawi* from the family of Sese Atim. And he would  
21 have jurisdiction over the western slopes of Jebel Marra, the locality of Zalingei,  
22 the locality of Wadi Salih, the locality of Mukjar. He would not have jurisdiction  
23 over the other part of Western Darfur, which is the Masalit area. For that, there  
24 would be -- the sultan of Masalit has the jurisdiction.

25 For South Darfur it is more complicated because the most senior Fur chief there is

1 the *magdum*, family of Adam Rijal. The *magdum* is, as it were, a governor of  
2 a multi-ethnic province. So with -- under -- South Darfur includes the Fur, who live  
3 on the southern slopes of Jebel Marra and in a few other locations, and the four major  
4 Arab tribes, that would be the Ta'aisha, the Beni Halba, the Habbaniya, the Rizeigat.  
5 A number of other Arab tribes, Misseriya - there is a larger Misseriya group in next  
6 door Kordofan, but they have a group there - the Ma'alia, the Terjem and some others.  
7 And other non-Arab tribes, including a group of Masalit, a group of Tama, and  
8 a group of West African -- people of West African origin known as Falata. So you  
9 have -- in South Darfur you have a multi-ethnic mosaic. And the most -- until 1994  
10 the most senior member of the native administration, that is the chief, would be  
11 the *magdum* of Nyala.

12 Are you going to be asking me about the 1994 changes (Overlapping speakers)

13 Q. [11:38:37] I will have some questions on 1994 reform, yes.

14 A. [11:38:41] Okay. Let me -- let me stop at that point.

15 Q. [11:38:43] Okay. But thank you. That's the situation at least until 1994. This  
16 is what we were looking.

17 Can I kindly ask you to spell the words *dimangawi*.

18 A. [11:38:54] *Dimangawi* is D-I-M-A-N-G-A-W-I.

19 Q. [11:39:00] And *magdum*.

20 A. [11:39:02] M-A-G-D-U-M.

21 Q. [11:39:07] Thank you very much.

22 And still generally speaking, how would you compare that structure of the Fur tribe  
23 with the general structure of Arab tribes?

24 A. [11:39:21] The structure of an Arab tribe is based upon what an anthropologist  
25 would call a segmentary lineage system, and what this means is that every individual

1 in an Arab tribe will trace -- every male individual will trace his ancestry by his name,  
2 his father, grandfather, et cetera. And what that means is that at any one level of  
3 the generations, it is possible to have a family tree of the descendants of that  
4 individual ancestor.

5 Some of those individuals become renowned as the founders of a tribe or a lineage,  
6 and usually that tribe would then be named after them, then their chosen name.

7 So the -- so in principle all the members of an Arab tribe are related to one another  
8 through the male line.

9 In practice, it's more complicated. In practice, people become absorbed, et cetera,  
10 et cetera, but that is -- that is the principle.

11 So each Arab tribe will have a -- the paramount chief, who is normally called the *nazir*,  
12 and then other subordinate chiefs who are themselves head -- the most senior figures  
13 of the clans or the sub-clans of those tribes.

14 Q. [11:41:01] Thank you. And, for instance, this prominent position of paramount  
15 chief, the *nazir* in the Arab tribes, what would be the equivalent in the Fur tribe?

16 A. [11:41:13] The closest equivalent, there is no exact equivalence, but the closest  
17 equivalent would be a *shartay*.

18 Q. [11:41:24] And another clarification, what is the difference between the *shartay*  
19 and the other position of *dimangawi* and *magdum* that you earlier mentioned?

20 A. [11:41:39] *Dimangawi* and *magdum* is senior.

21 Q. [11:41:42] There are several *shartays*?

22 A. [11:41:44] Yeah. So there would be multiple *shartays*, exactly.

23 Q. [11:41:47] Okay. Thank you.

24 Are there *umdahs* in the Fur tribe?

25 A. [11:41:50] There are.

- 1 Q. [11:41:52] And which level do they --
- 2 A. [11:41:54] That would be the next level below the *shartay*.
- 3 Q. [11:41:59] Thank you.
- 4 A. [11:41:59] And the same is true for an Arab tribe as well.
- 5 Q. [11:42:02] And are there some *sheikhs* as well?
- 6 A. [11:42:07] And then each village will have its *sheikh*.
- 7 Q. [11:42:10] Okay. Do you know, by any chance, I understand it's a bit complex,
- 8 but what were -- who, sorry, was the paramount chief for the Fur tribe, be it a *shartay*
- 9 or an *umdah*, I don't know, in the Wadi Salih in 2003, 2004?
- 10 A. [11:42:36] I don't know.
- 11 Q. [11:42:39] Okay. And if I ask the same question from Mukjar, same response?
- 12 A. [11:42:45] I couldn't tell you the names of the --
- 13 Q. Thank you.
- 14 A. [11:42:48] -- the individual chiefs.
- 15 Q. [11:42:49] No, that's fine.
- 16 At paragraph 61, which is -- I will actually quote three paragraphs, so I think it's not
- 17 necessary to put them on the screen because we cannot see them all, they are on
- 18 different pages. But I quote the paragraph and the electronic page for the record.
- 19 Paragraph 61, that is on page 1646; paragraph 103, which is on page 1664; and
- 20 paragraph 114, which is on page 1668 of your report.
- 21 You refer to positions of *agids* and *ugada*, but you describe them as Fur
- 22 position -- positions. Is *agid* and/or *ugada* a Fur title, or does it exist outside the Fur
- 23 tribe?
- 24 A. [11:44:02] It is a -- used generally in -- in Arabic. The specific reason for
- 25 referring to it as -- as -- in the context of the Fur was that the -- the term was used

1 during the 1987 to '89 war to refer to the self-defence militia of -- the men who were  
2 organising the self-defence militia of the Fur. But the term can be used more -- more  
3 broadly.

4 Q. [11:44:38] Okay. And outside this context of 1987-1989, do you have  
5 knowledge of non-Fur *agids* or *ugadas*?

6 A. [11:44:57] I heard the term used. I did not know of specific individuals to  
7 whom it was (Overlapping speakers)

8 Q. [11:45:05] And would they --

9 A. [11:45:05] -- referred.

10 Q. [11:45:06] Yeah -- I need to respect the break. Sorry.

11 And would they fit in your understanding of the -- the structure of the Arab tribes,  
12 these titles?

13 A. [11:45:25] The -- it depends upon the context.

14 Q. [11:45:28] Okay.

15 A. [11:45:29] About how the -- the -- for what reason the tribe or members of  
16 the tribe were being mobilised for -- for military action. But there is -- but I see no  
17 reason why it would not also be -- be used.

18 Q. [11:45:49] Okay. And I will have questions on the structure of the Arab tribes.  
19 I will -- I will move to that a little bit later. I stay on the -- the structure of the Fur  
20 tribe for the moment.

21 Can you tell us, elaborate a little bit more, because it's already in your report, about  
22 the functions and the authority of the Fur *agid* or *ugada*?

23 A. [11:46:19] The -- at the time in the pre-war era in which I was most familiar,  
24 the *agid* would simply be used in an informal way to refer to an individual who  
25 helped organise a community activity. I was not in Darfur during the -- the time of

1 the war of 1987-89. I'm not familiar with how the term was developed at that time.  
2 During the 2003-2004 war, the -- the major references to commanders were to -- to  
3 the SLA, to the -- the organised opposition of the SLA rather than to the Fur  
4 self -- village self-defence. But I -- but I was not present on the ground. I am not  
5 familiar with exactly how the self-defence was organised.

6 Q. [11:47:23] Do I understand that the SLA leaders had this title of *agid* or ...

7 A. [11:47:37] It was -- I never heard it used for them.

8 Q. [11:47:38] Okay. So maybe I'm -- let me read again your answer.

9 Okay. But what prompted your mentioning the SLA in response to my -- my  
10 question about *agid*? I think -- I'm not sure I understand the -- the link.

11 A. [11:48:13] So the purpose of your question was to find out  
12 whether -- the reference of the term "*agid*" to the -- the units, the military units  
13 organised in Fur areas?

14 Q. [11:48:28] Yes.

15 A. [11:48:29] Yeah. The -- the -- insofar as I studied the -- the organisation of  
16 the rebellion and the organisation of the military forces of the Fur, the information  
17 I was provided were it concerned the SLA, the formed units of the SLA and their  
18 commanders. And I was told there were also village militia.

19 Q. [11:49:02] Okay. I see.

20 A. [11:49:03] And the term "*agid*" was loosely used with reference to -- to the  
21 militia.

22 Q. [11:49:12] To the defence militia?

23 A. [11:49:14] Yeah.

24 Q. [11:49:14] Okay. Thank you. So not specifically with respect to the SLA  
25 leaders?

1 A. [11:49:19] The -- when the SLA was being -- was constituting itself in 2002-2003,  
2 they called upon those who had experience of the prior war, military experience,  
3 which would include the *agid*. Whether or not they continued to use that title, I don't  
4 know.

5 Q. [11:49:40] Okay. So those -- you said those who had experience in the former  
6 war were, at that time at least, referred to as "*agid*"?

7 A. [11:49:50] That's correct.

8 Q. [11:49:52] Okay. Thank you.

9 And apart from the *agid* or for the other prominent person in the Fur tribe, I'm talking  
10 about the *shartay*, the *umdahs* or the *sheikh*, did they play a role in the organisation of  
11 insurgency or, more generally, warfare?

12 A. [11:50:24] Entirely depending on the individual.

13 Q. [11:50:26] Okay. So that would not form part of their functions?

14 A. [11:50:32] No. (Overlapping speakers)

15 Q. [11:50:33] They would do it if they were willing to?

16 A. [11:50:35] Correct.

17 Q. [11:50:38] And any clue about what the prominent persons in the Wadi Salih did?  
18 Did they engaged?

19 MR NICHOLLS: [11:50:50] Very sorry to interrupt. No objection at all. Just  
20 the answer wasn't recorded at page 49, line 3. There was some overlap and  
21 the answer is not in the transcript.

22 PRESIDING JUDGE KORNER: [11:51:04] Yes. Thank you, Mr Nicholls.

23 You need to be careful, Mr Laucci, not to start the next question until the answer --

24 MR LAUCCI: [11:51:14] I've just been told so. Yes, very sorry.

25 PRESIDING JUDGE KORNER: [11:51:17] I'm afraid that I don't recall what



1 the -- the question -- I think maybe you better repeat the question, which was whether  
2 the -- the *shartay* "play[ed] a role in the organisation of the insurgency or, more  
3 generally, warfare". And then you say -- and the answer was "Entirely depending on  
4 the individual."

5 "So that would not form part of their functions."

6 And then it's the answer that you gave, Professor, that's gone.

7 THE WITNESS: [11:51:53] That's correct, it is not. Military organisation is not part  
8 of the function of a member of the native administration. Let me be very clear.

9 MR LAUCCI: [11:52:05]

10 Q. [11:52:05] Okay. Thank you very much.

11 Yes. And I had a follow-up question. I start again.

12 Since it depended on the individuals, do you have any knowledge of what  
13 the individuals in charge in the Wadi Salih decided to do, if they decided to get  
14 involved in organising the insurgency or not?

15 A. [11:52:37] I --

16 Q. [11:52:38] You don't know?

17 A. [11:52:39] I don't know.

18 Q. [11:52:39] Same question for Mukjar.

19 A. [11:52:42] Same answer.

20 Q. [11:52:42] Same answer. Thank you.

21 I move now -- I think I'm done with the structure of the Fur tribes, for now at least. I  
22 move to the -- the Arab tribes.

23 And if you can go at the figure 1 of your report, paragraph 42, which is  
24 page -- electronic page 1639 of your report. Got it.

25 So you represent what you described as a "Simplified genealogical chart of the Abbala

1 Arabs of Darfur". And you explain that Abbala means camel herders and refer to  
2 Arabs from the northern belt of Darfur, whereas the Arabs from the southern belt are  
3 known as Baggara, meaning cattle herders.

4 First question: Can you explain why you did focus on the Abbala tribes in that chart  
5 specifically as part of your report.

6 A. [11:54:11] I was simply selecting one of the many genealogical charts I could  
7 have done. I chose that one because the -- of the significance of the northern Rizeigat  
8 in the emergence of the Janjaweed. And you will -- and the -- what the chart shows  
9 is the Rizeigat on the north had three major segments, Mahamid, Mahariya and  
10 Eteifat, and a group of Ereigat, which was also generally taken to be part of them,  
11 though its relationship was a little more complex.

12 And then within the Mahamid there were six clans, and one of them being Um Jalul,  
13 and the Um Jalul being the clan of Musa Hilal.

14 And if one were to then identify the -- the leaders of these different -- numerous  
15 different groups and say, "Were they part of Janjaweed? Were they not part?" Or  
16 "Did they join early? Did they join late?" That you would see them all having  
17 a slightly different answer.

18 Q. [11:55:32] I see. Thank you.

19 So -- no, I don't need to rephrase. I think your answer was -- was very clear.

20 But, generally speaking, since you make the difference between Abbala and Baggara,  
21 does that mean that there was a different level of involvement in the -- the war of 2003  
22 and 2004 on the two sides?

23 A. [11:55:59] The -- there was a different level and a different type. The -- one of  
24 the distinguishing features of the -- the Abbala tribes was that they did not have  
25 a homeland, they did not have a *dar*. Whereas the Baggara tribes - and particularly I

1 expect you to be focusing on the Ta'aisha - did have a *dar*. And for that reason,  
2 the Abbala tribes were more involved in the first war of 1987-89 and were -- and were  
3 more militarily mobilised and had more long-standing conflicts with the farming  
4 communities, especially the Fur, during the 1990s up to the outbreak of the war. So  
5 they were more mobilised.

6 And the pre-eminent figure, of course, being Musa Hilal, they were then ready and  
7 available as a paramilitary force when the war escalated.

8 Q. [11:57:17] Thank you very much.

9 Actually, I forgot to ask one question of clarification so that we all understand  
10 perfectly the structure of the different tribes. So you have the tribes, including those  
11 which are mentioned on that chart, and you have these two group of Baggara and  
12 Abbala. And I explained what this distinction meant; north, camel herders; south,  
13 cattle herders. But does that mean that you could be -- irrespective of your tribe, you  
14 could be a Baggara, down, Baggara, or an Abbala? I hope my question is clear.

15 A. [11:58:02] So some of these tribes, and Rizeigat is a good example, have both an  
16 Abbala cattle -- cattle -- Abbala camel herding segment in the north and a Baggara or  
17 cattle herding segment in the south. And because of the -- the differences in location,  
18 lifestyle, and history, they are, to all intents and purposes, separate tribes. They just  
19 happen to have the same -- a similar name.

20 Q. [11:58:38] Okay. Fine. So you say it's two different tribes. It's not a single  
21 tribe across two -- two groups, or --

22 A. [11:58:51] Sometimes they would express affinity for one another.

23 Q. [11:58:56] Okay.

24 A. [11:58:56] But in administrative terms, and especially this became very  
25 important during the war, they were separate.

1 Q. [11:59:06] Okay. That's very clear. Thank you.

2 PRESIDING JUDGE KORNER: [11:59:08] Sorry, can I -- I'm getting slightly confused  
3 by this one, but you told us that the Rizeigat, if I'm pronouncing it correctly, were part  
4 of the Abbala and therefore had land, had a *dar*.

5 THE WITNESS: [11:59:27] Not -- not exactly. So the -- the Rizeigat are -- I mean, if  
6 you go back in history they are one, but they divide -- as they moved into Darfur in  
7 the 18th century - this is a very summary version of history - the larger part moved  
8 into South Darfur, where they became cattle herders, and they were awarded a *dar*  
9 adjacent to South Sudan. Others remained in the north and kept their camels, where  
10 they did not get a *dar*, they were without land. And this was a continuing source of  
11 disaffection and one of the reasons why they were involved in so many disputes and  
12 so heavily militarised.

13 MR LAUCCI: [12:00:13]

14 Q. [12:00:13] Just as a last clarification following Madam President's question, these  
15 Rizeigat from the north, you describe them as a different tribe from the Rizeigat from  
16 the south?

17 A. [12:00:25] For our political, administrative, military purposes, different.

18 Q. [12:00:33] Okay. Thank you. Can we go at page 1665, electronic page,  
19 paragraph 104 of your report.

20 Yes. This is where you mention the armed militia the Beni Halba tribe, which you  
21 write were known as the Fursan, meaning horsemen or cavalry. You explain that  
22 they defeated the SPLA rebellion in 1991.

23 Is the term "Fursan" limited to this Beni Halba cavalry, or can it have a different  
24 meaning?

25 A. [12:01:32] The word "Fursan" in Arabic means horseman or cavalry.

1 Sometimes it is used for -- they say knights, as in the medieval usage as -- and so  
2 the term "Fursan" was specifically used for the Beni Halba militia in 1991. And, in  
3 fact, in honour of their victory over the SPLA, the -- their main town, which had been  
4 called Idd al Ghanam, was changed -- the name was changed to Idd al Fursan. So  
5 that is a specific reference. But Fursan can be used more widely for any -- any group  
6 of armed men on horseback, so it could be used for groups other than the Beni Halba  
7 as well.

8 Q. [12:02:23] Thank you very much.

9 As you predicted, I move to the Ta'aisha tribe. So first question, I think you already  
10 answered, but for -- so that is clear, does the Ta'aisha tribe form part of the Baggara  
11 group?

12 A. [12:02:47] It does.

13 Q. [12:02:49] Thank you. Okay, that I don't need.

14 Where is the Ta'aisha tribe traditionally located?

15 A. [12:03:03] It is traditionally located on - in South Darfur in the far south-western  
16 part adjacent to Central African Republic. And in fact, historically one of  
17 the complaints of the Ta'aisha was when the colonial powers, Britain and France,  
18 drew the boundary, they were -- many of their grazing lands, which were no longer  
19 so readily accessible because there was a -- a boundary and the French had colonised  
20 that part of African.

21 I should add, having been to that boundary I don't see how anybody could possibly  
22 police it. You just -- it just goes through wilderness, forest and anyone can pass,  
23 but ...

24 Q. [12:04:05] So do I understand from your last remark that this border between  
25 Central African Republic and Sudan -- South Darfur, if I'm correct, is not really -- is

1 extremely porous and can be travelled across very easily without noticing even that  
2 you are changing from one country to the other?

3 A. [12:04:29] Correct.

4 Q. [12:04:32] Thank you. Is it the same with Chad?

5 A. [12:04:40] Pretty much the same with Chad. It's in more -- Chad -- in more  
6 populated areas further to the north, the boundary is -- is often clearer.

7 Q. [12:04:55] Okay. And is it a situation that has changed since 2003-2004 or it  
8 was pretty much the same situation, on the border with Chad, first?

9 A. [12:05:14] The -- in 2009 the -- there was an agreement signed -- no, February of  
10 2010, an agreement signed between Sudan and Chad for joint monitoring of their  
11 border. So the armed forces of the two countries were then monitoring the border,  
12 so I'm sure that that border was -- was more (Overlapping speakers)

13 Q. [12:05:47] Strengthened.

14 A. [12:05:48] Yeah. For Central African Republic, so far as I know the border has  
15 been -- is -- is easily crossed without any -- any border guards being present.

16 Q. [12:06:06] Thank you. If we can look at paragraph 35 of your report, that's on  
17 page 1636. This is where you recount an episode of Sudan history with a prominent  
18 role played by the Ta'aisha tribe back in time at the end of the 19th century.

19 First question, generally, does this episode of history form part of the live national  
20 memory of Sudan?

21 A. [12:06:46] Yes.

22 Q. [12:06:46] And is it vivid in the -- in the memory of its population?

23 A. [12:06:50] Yes.

24 Q. [12:06:55] And nowadays does that episode of history have an impact on  
25 the way the Ta'aisha tribe is perceived in Sudan?

1 A. [12:07:12] I would -- I have not -- I've not asked anyone this specific question in  
2 Sudan. What I would say is that currently the -- one of the most powerful men in  
3 Sudan, the number two in the military council, Deputy Mohamed Hamdan "Hemedti"  
4 Dagalo. His nickname is Hemedti, which means "little Mohamed" because he has  
5 youthful features, who is an Arab from Darfur, the commander of a very powerful  
6 Darfur force, the Rapid Support Force.

7 For many people in Khartoum, the presence of General Hemedti and his troops is  
8 a reminder of the -- what they consider the very unwelcome presence of  
9 the Darfurians in central Sudan, in Omdurman and Khartoum, during this historical  
10 period of the 1880s. And the reason I say Omdurman is that while the national  
11 capital is usually called Khartoum, the headquarters, the capital of the Mahdists was  
12 on the other side of the river, Omdurman, so that is their -- that is their city.

13 Q. [12:08:53] Yes. And that is, unfortunately, a name that we hear about very  
14 often nowadays when we hear about the current strikes and protests in Sudan and  
15 the person who unfortunately get killed in these protests. We often -- I remember  
16 that we went -- we go very -- we are often talking about Omdurman.

17 A. [12:09:13] Yeah. Yeah.

18 Q. [12:09:14] Does that mean that there is a specific activity there compared to  
19 the rest of Khartoum?

20 A. [12:09:22] So Khartoum is where the two Niles meet, the Blue Nile and the  
21 White Nile and then they form the Nile. So the city has three parts. It is three cities.  
22 There's Khartoum, Khartoum north, Omdurman. I don't think that they -- that I  
23 would attach any particular significance to protests or the repression of protests in  
24 Omdurman as against Khartoum or Khartoum north.

25 Q. [12:09:49] Okay. Thank you. It was just an additional question that came to

1 my mind when you mentioned Omdurman.

2 And talking about the Ta'aisha tribe themselves, the way they perceive themselves,  
3 would you say that because of that episode in the history, 19th century or -- or any  
4 other reason -- they -- it is a tribe that can be described as having a particularly strong  
5 self-identity compared to the other tribes?

6 A. [12:10:22] There's no simple answer to that question.

7 Q. [12:10:27] It's not a simple one.

8 A. [12:10:33] May I give a little bit of history, as you have introduced the historical  
9 element.

10 So the *Khalifa* -- so Mohamed -- Abdullahi Mohamed Torshein, he came of -- he was of  
11 West African origin and his father or grandfather married into the Ta'aisha and he  
12 became, therefore, absorbed as a member of Ta'aisha. He was a -- a very devout  
13 religious man, a religious scholar, and a mendicant, and he was poor. Poverty  
14 was part of the character of those people. And if you go to the museum in  
15 Omdurman of the Mahdist period, you will see that the uniform of the Mahdist  
16 movement at that time is what is called the patched *jibba*.

17 Now, the *jibba* is the tunic that is worn by an ordinary person, a worker, a farmer.

18 Sudanese have these long *jalabiya* that goes right to the ground, very elegant, but not  
19 suitable for farming. If you are farming you will wear a *jibba*. And if you -- if your  
20 *jibba* is old and torn, it will be patched.

21 So the army, the followers of the Mahdi, their uniform was the patched *jibba*, which  
22 was a sign that they were holy and devout and poor, they were not interested in  
23 material things.

24 And there -- and what that reflects is that the -- that the base of the -- of Abdullahi  
25 Mohamed was among the poor and the religious, not among the tribal aristocracy.



1 He then recognised as al-Mahdi, the "expected one", Mohamed Ahmad al-Mahdi,  
2 a man from the Nile. And they formed together the Mahdist movement which  
3 defeated the Egyptians and the British, occupied Khartoum, established their Mahdist  
4 state in -- in Omdurman. The Mahdi died of an illness and the *Khalifa* then became  
5 the ruler. *Khalifa* meaning the deputy or successor, so he was -- he was a very  
6 prominent figure there.

7 He had a base in Darfur, but many of the -- the Darfurians were also opposed to him.  
8 So his -- the -- he sent an agent, in fact, to the -- the chief of the -- of the Ta'aisha  
9 whose -- whose name was then al-Ghazali Ahmad. And al-Ghazali Ahmad rejected  
10 this man. In fact, I may be correct, I think killed him.

11 After that there was a policy called *tajir* (phon). Now, the -- *tajir* is Arabic for forced  
12 migration. So he forced the Ta'aisha and other Arab tribes to come to Omdurman to  
13 provide an army and a force. And of course that was also not popular. So that  
14 the -- so there were quite a serious division among the Ta'aisha.

15 After the defeat of the Mahdists in 1898, the -- Darfur then became independent and  
16 the Ta'aisha -- and the Sultan Ali Dinar restored his power. But he was not a  
17 Mahdist, he was opposed to the Mahdists. So the Ta'aisha were not welcome back.  
18 So when Darfur was colonised by the British, the British had a -- faced a situation  
19 where the Ta'aisha were scattered. There were some in Omdurman, there were  
20 some who were in other parts of Sudan, there were some that were in Darfur. And  
21 they encouraged them to return, and they returned in a state of impoverishment, and  
22 they reconstructed a tribal authority from, as it were, the ruins of these decades of  
23 turmoil and bloodshed and forced displacement. And the British colonial  
24 authorities tried to re-establish their old tribal territory and give them a *nazir*. And  
25 there was a -- over the -- 20, 30 years there was a dispute among the -- between

1 the *nazir*, and his deputy, and one would overthrow the other and be dismissed and  
2 so on.

3 But they, over time - and I must refer to my notes here - they -- the -- the family of Ali  
4 al-Sanusi became the dominant family of -- of the Ta'aisha.

5 Q. [12:15:54] Thank you very much for these very interesting historical  
6 explanations.

7 And turning to nowadays, do you know about -- about any conflict or rivalry or  
8 antagonism that the Ta'aisha tribe would have today with other tribes?

9 A. [12:16:19] The Ta'aisha had conflicts with neighbouring Arab tribes over  
10 territory and grazing, which would include the Habbaniya tribe, the Falata who are  
11 actually West African immigrant -- well, I hesitate to call them immigrants. The  
12 descendants of West African immigrants. And the Salamat.

13 Q. [12:16:50] And you say when it -- these are neighbouring Arab tribes. Is it on  
14 the same -- basically same territory or -- I mean, if you say the *dar* of the Ta'aisha is in  
15 South Darfur, you mention right now that the Salamat were located more in  
16 the Wadi Salih, as you mentioned?

17 A. [12:17:16] My understanding of these conflicts is limited, but what I know is that  
18 in the '70s and '80s there were territorial conflicts over boundaries with the Habbaniya  
19 and the Falata who are within South Darfur.

20 I may be wrong on this, so it would be worth checking. The conflict with  
21 the Salamat arose because the Salamat were moving into Darfur from Chad, and so  
22 they were moving into Wadi Salih, Mukjar and adjoining areas. And I know there  
23 were conflicts and I imagine, my surmise would be that the conflict was due to  
24 the Salamat moving into Ta'aisha areas with their -- with their cattle.

25 Q. [12:18:11] That's very clear. Thank you.

1 This brings me to identifying what were the specific Arab tribes in the Wadi Salih in  
2 2003-2004. So it's a very specific question.

3 A. [12:18:25] In 2003-2004, the principal Arab tribe that would be present would be  
4 the Salamat. And on a seasonal basis there would be tribes from -- camel herding  
5 tribes, the Abbala, who would come through their seasonal migratory routes through  
6 that area, so that would include many of the -- the camel herding Arab tribes we were  
7 talking about earlier.

8 Q. [12:19:01] Okay. And these Salamat, so I focus on them because that's the main  
9 tribe, did they have some paramount chief, a *nazir*, *umdah*, I don't know?

10 A. [12:19:12] They had a number of *umdahs*. I believe I put the number in -- in  
11 the report, I can't remember, I think it was six. I would need to check. They did not  
12 have a *nazir*. They were lobbying hard for a *nazir*, but they did not have one.

13 Q. [12:19:30] What was the -- how would that be decided whether they would get  
14 a *nazir* or not?

15 A. [12:19:38] That is a decision of the government. It would be a decision taken  
16 either in -- in Khartoum or in the -- at the level of the West Darfur state.

17 Q. [12:19:55] Okay. Thank you.

18 Actually, in your report, and I think it's at page -- paragraph 67, which is page 1649,  
19 you mention about three Salamat chiefs from Chad who came in 1974. Is it what  
20 you are referring to?

21 A. [12:20:19] Yes.

22 Q. [12:20:19] And that number of three, would it have evolved towards 2003-2004  
23 to six or you ...

24 A. [12:20:29] I'm not sure.

25 Q. [12:20:30] Okay. And if you have several, three or six but several *umdahs*, do I

1 understand correctly if I say that they are covering different areas, fiefs, so to say?

2 A. [12:20:49] Yes.

3 Q. [12:21:01] Okay. Earlier this morning in -- I don't remember if it was in  
4 answering the questions from my colleagues in the Office of the Prosecutor or from  
5 the Legal Representative of Victims, but they will remember -- you said that one of  
6 the -- the motto of the Janjaweed was that they wanted to take over the land. How is  
7 it -- is there any link between that willingness to take over the land and what you just  
8 describe about the re-vindication of the Salamat to get more power and get a *nazir*  
9 eventually?

10 A. [12:21:49] Yes.

11 Q. [12:21:50] Does that mean that the Salamat were significantly represented  
12 among the Janjaweed?

13 A. [12:21:58] I heard it -- I have heard it reported so.

14 Q. [12:22:11] I will have questions about the -- how the Janjaweed were mobilised  
15 and the groupments, how it worked, but that comes a bit later.

16 I say that also for the judges who may wish to know the answer to that question, but  
17 that -- that will come.

18 Same questions about the Arab tribes in Mukjar in 2003-2004, what were the principal  
19 tribes?

20 A. [12:22:46] Salamat. Mukjar is adjacent to the lands of the Ta'aisha and  
21 Beni Halba, and so one would, I -- one would expect on a village-by-village basis to  
22 see Ta'aisha and Beni Halba there.

23 Q. [12:23:03] So see some of them. But your first answer is Salamat. Does that  
24 mean that in terms of number they would be the majority?

25 A. [12:23:12] I don't know, to be honest, I don't ...

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1 Q. [12:23:16] Okay. These three components.

2 A. [12:23:21] And also I should say Mukjar was also -- there is a map, one of my  
3 maps is of the migration routes. It is map number 4. And you will -- camel herding  
4 migration routes, it is -- shall I give you the reference? It is DAR-OTP-0220-1689.  
5 1689. It's in tab 3, so it is ...

6 PRESIDING JUDGE KORNER: [12:24:09] I think someone needs to assist  
7 the court officer on this, if it's going to be brought up.

8 THE COURT OFFICER: [12:24:20] Yes, Madam President, for clarification, tab 3 of  
9 the OTP binder.

10 MR NICHOLLS: [12:24:58] Just for my friend, his mic is on.

11 THE WITNESS: [12:25:10] Yes, that's the one. So you will see, if you look at this  
12 map, the Central African Republic on the far south -- on the far bottom left, and you'll  
13 see a little -- a dot on the border, a placed called Am Dafok, which is the border  
14 crossing point, and you will see the migration routes going up and down all the way  
15 from Northern Darfur through, through those areas. These should -- this map  
16 should not be taken as -- as gospel. It is indicative. But what it indicates is  
17 the extent to which those camel herders would also be going through these, these  
18 areas.

19 MR LAUCCI: [12:25:57]

20 Q. [12:25:57] Okay. And the reason why you are drawing our attention to  
21 the map is to illustrate that on a seasonal basis at least there would be some  
22 migration?

23 A. [12:26:11] Of camel herding Abbala Arabs.

24 Q. [12:26:16] Do you by any chance still have the previous binder, the one of our  
25 colleagues from the Office of the Prosecutor with you?

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1 A. [12:26:24] I do.

2 Q. [12:26:25] Okay. So if can take the document number 10 in that binder and I  
3 give the ERN, it's DAR-OTP-0222-4899. And I'm interested in showing the map that  
4 is on page 4900.

5 This map comes from -- so the document -- the title of the document is on page 4899  
6 and it's an article published in the Review of African Political Economy, an article that  
7 you signed, under the title "Counter-Insurgency on the Cheap." That's an article that  
8 we mentioned during the questioning of my colleagues.

9 And so if we can go to page 4900, to have the map. Actually, this is just to say  
10 that -- about the different location for -- for the Ta'aisha, at the -- close to the bottom,  
11 close to the Central African Republic border. And then, well, we can see Mukjar,  
12 even if it's spelled "Mugjir" on this map. So this is what you say when you say that  
13 the Mukjar was really close, I mean, bordering the Ta'aisha lands; is that correct?

14 A. [12:28:28] That's -- that's correct. The -- if I may, there's a map, map  
15 number -- in -- if we go to the binder of the Prosecutor, at tab 2, map 3. This is  
16 a difficult map to -- to decode, because the quality is not great. But if we could pull  
17 that one up.

18 MR LAUCCI: [12:29:05] I'm turning to my colleagues of the Registry. Yes.

19 THE WITNESS: [12:29:08] So it is ...

20 PRESIDING JUDGE KORNER: [12:29:16] Is that the 1928 one you're referring to?

21 THE WITNESS: [12:29:19] It -- yes, 1928 map of tribal areas of Darfur.

22 MR JEREMY: [12:29:26] Madam President, I can give the ERN. It's  
23 DAR-OTP-0220-1686 at 1688.

24 MR LAUCCI: [12:29:37] Thank you, colleague.

25 THE WITNESS: [12:29:39] So if we can zoom in on the -- the bottom left quadrant.

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1 Now it's -- my apologies, these maps are -- are confusing, are difficult, but you will  
2 see it's spelt Ta'aisha rather than Ta'aisha, referring to the land. The green is the tribal  
3 boundary. The red is the boundary of Darfur.

4 And there are two things I would note about this -- this map -- well, three. One is  
5 you notice the boundary with the Habbania there, which was, as I mentioned,  
6 a matter of dispute.

7 The second is that the -- the tribal territory of the Ta'aisha, according to this map,  
8 extends across the border into Central Africa.

9 The other thing of which -- which is interesting, and I can't give any comment on it  
10 other than observing it, is that the -- the land that is allocated to the *dar* of the Ta'aisha  
11 in this 1928 map includes southern parts of Mukjar locality.

12 Q. [12:31:06] (Microphone not activated)

13 THE INTERPRETER: [12:31:11] Microphone, please.

14 MR LAUCCI: [12:31:14] Sorry.

15 Q. [12:31:15] I was asking if we can move, but this has been done, a little bit  
16 northern -- on the north of the map to include to see where Mukjar is located.

17 A. [12:31:24] Okay. It's -- or I may be -- it is very hard to see actually on -- exactly  
18 where everything is on this map.

19 Q. [12:31:38] Well, I think we can have a general idea.

20 A. [12:31:41] Yeah, I think it just -- I think it just overlaps slightly, but I am not --

21 Q. [12:31:48] Yeah. And what I can see also is in the north square, I mean north  
22 compared to the limits between the border between the Ta'aisha and the -- the title of  
23 the tribe that is written in oblique is Fur?

24 A. [12:32:06] Yeah. Yeah.

25 Q. [12:32:07] So which would mean that we would be really in Fur land in that

1 area?

2 A. [12:32:12] That may be it, yeah.

3 Q. [12:32:13] Yeah. Thank you very much.

4 A. [12:32:23] I would interpret these maps with extreme caution, tribal maps from  
5 the 1920s.

6 Q. [12:32:31] I mean in terms of whether they are still valid or?

7 A. [12:32:35] Yeah, in terms of -- I mean the British have a habit of drawing lines on  
8 maps and causing problems for succeeding generations.

9 Q. [12:32:48] Thank you very much. Coming back to the ...

10 PRESIDING JUDGE KORNER: (Microphone not activated)

11 MR LAUCCI: [12:32:58] I was not thinking for that, Madam President, I promise.

12 Coming back to the Arab tribes in Mukjar, do you know about any paramount chief  
13 there? Once again, *a nazir, umdahs*.

14 A. [12:33:16] The same observation concerning the -- the Salamat in Wadi Salih also  
15 applies to -- to Mukjar, in that the -- the -- in the 1980s, when I was in Darfur, Mukjar  
16 and Wadi Salih were the same locality. It was divided later. I don't know what  
17 time. And the -- the Salamat, who moved into Wadi Salih in the 70s and 80s, moved  
18 also into Mukjar.

19 Q. [12:33:56] So about the three or six *umdahs* that you mention in the Wadi Salih,  
20 would that be the same persons in -- in Mukjar?

21 A. [12:34:07] Quite possibly it would be. Because the Wadi Salih referred to  
22 in -- in the '70s and '80s incorporates Mukjar. Sorry, I should have -- I should have  
23 clarified that earlier.

24 Q. [12:34:21] Now it's done.

25 A. [12:34:22] Yeah.



1 Q. [12:34:29] Thank you. I don't want to repeat questions which have already  
2 been answered. So, yes, talking about the structure of the Arab tribes, I already  
3 asked about the *nazir*, about the *umdah*, about the *sheikh*. There is one title which I  
4 did not ask about, and that is -- the question was asked by my colleague, but I would  
5 like to revisit that, about the *amir*.

6 A. [12:34:57] The title of *amir* has a resonance going back to the Koran and going  
7 back to the forces -- the most senior followers of the Prophet Muhammad and  
8 the military forces that he mobilised.  
9 In the -- it means prince. And in the salvation government, so-called, the Islamic  
10 government that took -- Islamist government, let me be precise. The Islamist  
11 government that took power in 1989, one of the things that it did was it tried to use  
12 the native administration as a tool for military mobilisation, which was a -- a new  
13 development. And in doing that, they bestowed the title of *amir* or amir  
14 al-Mujahideen, prince of the holy warriors, on certain tribal leaders. They did so in  
15 Kordofan, which in the 1990s was the fulcrum of the war.  
16 There was talk about doing so in Darfur, and some of -- and I'm -- I'm scratching my  
17 head and thinking -- and some of the military leaders in -- tribal leaders in Darfur  
18 may have used that title for themselves. But as I explained yesterday, there was -- it  
19 was very difficult for the government to call jihad in Darfur because its adversaries  
20 were -- nobody could question their Islamic credentials. They could not be called  
21 unbelievers.

22 Q. [12:37:00] Thank you. And then what would be the difference between an *amir*  
23 and an *agid*?

24 A. [12:37:07] *Amir* would be more senior.

25 Q. [12:37:13] And -- okay. And then let me ask, what would be the difference

1 between an *amir* and an *agid al-ogada*?

2 A. [12:37:24] Noting that the post of *amir* is one bestowed by the government, and  
3 *agid al-ogada* is not necessarily bestowed. It is a -- it can be a -- it's more likely to be  
4 a vernacular term. The -- the two may or may not match. So somebody who is an  
5 *amir* could equally well be called, you know, commander of commanders.

6 Q. [12:38:08] Okay. If we can go to paragraph 74 of your report. That's on  
7 page 1651, please.

8 You explain there that tribal chiefs also become *de facto* military commanders or  
9 mobilisers of militia. Can you develop a little bit on that.

10 A. [12:38:51] This was the -- there's two points here. One is the specific point to  
11 which I was referring about the -- the -- bestowing the title of *amir* on tribal leaders in  
12 order for them to mobilise forces to fight jihad in South Kordofan in 1992.

13 The other element is the -- where the term *amir* would not be used, was -- occurred  
14 earlier in 1985, when the SPLA first -- SPLA, to remind your Honours, was in  
15 south Sudan, when its forces were crossing the border into the north. The -- the  
16 government at the time did not have the military capability of responding and,  
17 therefore, mobilised the militia adjacent -- mobilised the tribes adjacent to  
18 south Sudan as militias.

19 And the -- the significance of this for Darfur is that one of the tribes that was  
20 mobilised in this way was the southern Rizeigat. So whereas the northern  
21 camel-herding Rizeigat were -- 20 years later were the -- to be the backbone of  
22 Janjaweed, the southern ones were mobilised in the 1980s against the incursions of  
23 SPLA.

24 And the -- the difference -- and there's some important differences between those two  
25 mobilisations and conflicts, the first being that the mobilisation against the SPLA

1 could be and was portrayed as a mobilisation against an infidel, against non-Islamic  
2 groups. And -- whereas, this was not possible for the Darfur or ...  
3 The second being that the -- the dispute in both cases, in -- the mobilisation built upon  
4 prior disputes, but the disputes were of different nature. So there was a dispute  
5 between the -- the Baggara tribes of -- including the Rizeigat and their southern  
6 neighbours, the Dinka, over a boundary. It's a dispute that continues to this day.  
7 But when you have a boundary dispute, you tend to mobilise the whole tribe, because  
8 it is a tribal issue. Whereas, the -- the mobilisation for the disputes in -- in Darfur in  
9 2003-2004, for the Baggara, was not a boundary issue. They had no boundary  
10 dispute. So the Rizeigat and the Ta'aisha did not have a boundary dispute with  
11 the Fur. So there would be no reason to mobilise the tribe.

12 Q. [12:42:04] On the side of the Baggara?

13 A. [12:42:07] Yeah.

14 Q. [12:42:07] And on the other side?

15 A. [12:42:09] On the -- you mean on --

16 Q. [12:42:10] Abbala.

17 A. [12:42:11] -- on the Abbala?

18 The difference with the Abbala, which also would extend to the Salamat, is that they  
19 had a land claim against the Fur, which was not exactly a boundary claim because  
20 they did not have any land -- any demarcated land that they could call "this is our  
21 land". So they wanted to create such lands, and that could be done only at the  
22 expense of the Fur or other groups.

23 Q. [12:42:36] And then because that included a land dispute dimension, then what  
24 you write at paragraph 74 did apply, that the -- the tribal chiefs would play a role in  
25 the commandment or the mobilisation of the militias?

1 A. [12:42:56] What we saw with the Abbala Rizeigat - so Musa Hilal being  
2 the prime example - is that he -- he had inherited the chieftainship of the Um Jalul  
3 Mahamid group, and so he was trying to mobilise his tribe. And many of them were  
4 going along; not all of them, of course. And some of the other sections of -- of  
5 the Abbala Rizeigat, Mahariya and others, were mobilised in a similar manner.  
6 One of the things that the -- that the administration of North Darfur did was it created  
7 a new -- what they called a locality called al-Waha, meaning oasis. Now this was a  
8 locality that had the administrative authority, the accoutrements of a district with,  
9 you know, administration and chiefs, et cetera, but it did not have land. And it was  
10 to represent the interests of those nomadic groups in North Darfur that did not have  
11 a *dar*, a land to call their own. And one of the things that the government could do  
12 and did do was then to hand out chiefly titles to the leaders of these different groups,  
13 calling them, for example, *nazir*, which would give those individuals and their  
14 groups -- it looked like a promissory note that, "You will get land to justify that title  
15 that we are giving you."  
16 Now when you go to South Darfur and you're talking about the Ta'aisha or  
17 the Beni Halba or the Rizeigat, these people already had land. So there was  
18 no -- nothing similar was happening there.

19 Q. [12:45:03] Yeah. Thank you for your answer.  
20 I understand for the northern Rizeigat, for this al-Waha locality for the nomads tribes.  
21 What about the Salamat here?

22 A. [12:45:21] So the Salamat are -- I think the easiest way to explain this is to go to  
23 the 1994 administrative reform. Is that -- would you permit me to do that?  
24 So in 1994 Darfur was divided into three states; north, south, and west. And  
25 the -- this had -- and at the same time the -- there was a reform and restructuring of

1 the native administration in the different states. And in certain places this had  
2 far-reaching consequences, because it is these figures in the native administration  
3 who have authority over land. So that in South Darfur there was an overall *magdum*,  
4 the *magdum* of Nyala, who was the most senior chief. And he was an ethnic Fur, but  
5 as I was explaining this morning, it is a multi -- multi-ethnic domain. And -- and so  
6 you would -- you know, his -- the real authority was -- was vested in the *nazirs* of  
7 the different tribes.

8 But what the administrative reform did in 1994 was it gave -- it made -- it restricted  
9 the authority over -- of the *magdum* purely to the Fur. So it gave a signal to the other  
10 groups that this was -- that there would be a -- an opportunity to assert claims over  
11 land which they had not asserted before. Now this did not apply to the -- to these  
12 big Baggara tribes because they already had their boundaries, but there were smaller  
13 groups in the -- in areas which were predominantly Fur where the chiefs had been  
14 more directly subservient to the *magdum*.

15 One of them, for example, being the Tergem group. And we will see, if you look at  
16 what happened in 2003 and 2004, the Tergem were one group, an Arab group that  
17 joined the militia on the government side.

18 In the far west of Darfur, the Dar Masalit area, the government introduced new  
19 chieftaincies which they gave the -- the Arab tribes, and they introduced a new  
20 system where the sultan of the Masalit would be elected for a term of - I forget how  
21 many years - five, eight years, by an electoral college of the senior chiefs. And by  
22 introducing that electoral college system and by making the majority of the electoral  
23 college Arabs, not Masalit, they were basically sending a signal, next time the election  
24 comes around, sultan of Masalit, you will no longer be -- you know, your customary  
25 position as, you know, the paramount chief, the sultan of this area, will go, and it will

1 become an Arab who will be the sultan with the land -- the authority over land that  
2 follows. So that provoked armed resistance from the Masalit.  
3 Now what is interesting here is in-between this -- these two, South Darfur and  
4 West Darfur -- and the far west of Darfur, we have what is now Central Darfur, which  
5 was then the Fur dominated area of West Darfur. And there was no similar  
6 empowerment of the Arab tribes in West Darfur at that time. So the Salamat who  
7 were -- had been agitating for many years that they wanted a paramount chief and  
8 a land claim were not given it. And the implication of that is that the -- part of  
9 the intention of the reform was to reward the Fur or to assuage the fears of the Fur by  
10 saying, "At least you get these districts. At least you get Zalingei, Wadi Salih,  
11 Mukjar and Jebel Marra."

12 Q. [12:49:57] Okay. But then, once again, do the Salamat paramount chiefs in  
13 Wadi Salih, I understand these are *umdahs*?

14 A. [12:50:12] *Umdahs*.

15 Q. [12:50:13] Did -- do they fall in that category that you describe at paragraph 74  
16 of the paramount chiefs who were *de facto* interested with the function of mobilising  
17 and/or playing a military role?

18 A. [12:50:30] The Salamat were agitating politically for -- to have  
19 a paramount -- a *nazir*. So they said our numbers are sufficient that we should have  
20 a *nazir* and that would give us claim on this land in Wadi Salih and -- and Mukjar.

21 Q. [12:50:50] Okay. But what does that imply in terms of what the Salamat  
22 *umdahs* did or did not do? The counterinsurgency, I mean?

23 A. [12:51:04] The groups -- I -- to be honest, I've not studied properly  
24 what -- the organisation of the militia, the Salamat militia. But the -- what I have  
25 on -- on -- I don't know quite -- what I've been told, I've not -- which has not been

1 studied -- which I have not researched myself, is that they were mobilised as part of  
2 this. As part of the militia.

3 Q. [12:51:35] Through -- yeah, so through the tribal --

4 A. [12:51:38] Though the -- when the -- some groups were organised directly  
5 through tribal authority. And that would be, for example -- you know, the prime  
6 example being the Mahamid of northern Darfur.

7 Q. [12:52:01] Yes.

8 A. [12:52:02] Others were organised against the wishes of the tribal leadership. So  
9 you would take the Rizeigat of South Darfur where the tribal leadership stayed  
10 as best -- tried to stay, as best as it could, out of the conflict and rebuffed  
11 the government when the government said, "Look, we want your -- your very  
12 formidable militia to fight on our side." The *nazir* of the southern Rizeigat said, "No,  
13 I'm not doing that." Same with Habbaniya. Same with Beni Halba, although  
14 the Beni Halba became a bit split.

15 The -- I'm not -- I don't know the response of the tribal leadership of Ta'aisha or  
16 Salamat to those calls. But in the cases where the tribal leadership was weak or  
17 divided or could be undermined, what the government did was it found individuals  
18 from within those tribes who would answer the call to arms.

19 Q. [12:53:17] Thank you. Last question on this, which is about the structure of  
20 the Arab tribes. At paragraph 62 of your report, that's page 1646, this is where you  
21 mention heredity as the usual way of transmitting authority from father to son.  
22 Would that apply only to the position of *nazir* or would that apply to the other titles  
23 that we mentioned, *umdahs*, *sheikh*, *amir*?

24 A. [12:54:00] *Amir* is a special case because it is a particular Islamist appointment.  
25 The presumption of these positions is that it goes in the male line. The eldest son

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1 would have priority, but it would be chosen according to -- to ability and aptitude  
2 and willingness.

3 That said, there are many cases in which for one reason or another the assembled  
4 elders of the tribe would say we want somebody who is not, you know, who is not  
5 from that family. But the presumption would be the hereditary first, the hereditary  
6 principle comes first.

7 Q. [12:54:50] Thank you.

8 Madam President, I'm about to start with a new chapter of my questioning, so that  
9 could be a nice time for the break.

10 PRESIDING JUDGE KORNER: [12:55:00] (Microphone not activated)

11 THE INTERPRETER: [12:55:01] Microphone, please, Madam President.

12 PRESIDING JUDGE KORNER: [12:55:03] The only thing that I was wondering,  
13 Mr Laucci, is whether you're going to ask the witness about what your client said  
14 about his tribe yesterday when he opened. You may want to have another look at  
15 what he said.

16 MR LAUCCI: [12:55:19] It was not in my questions, but of course the Court is free  
17 to -- to ask the questions.

18 PRESIDING JUDGE KORNER: [12:55:24] Well, I don't want to ask questions if  
19 you're going to ask them, so, as I say, you may want to have a look and see -- before  
20 you leave this topic and see whether you want to ask about it, over the break.

21 MR LAUCCI: [12:55:35] Yeah.

22 (Counsel confer)

23 MR LAUCCI: [12:55:43] I will have to --

24 PRESIDING JUDGE KORNER: [12:55:47] Sorry, Judge Alexis --

25 (Trial Chamber confers)



1 PRESIDING JUDGE KORNER: [12:55:58] Yes. Sorry, Mr Laucci, yeah.

2 MR LAUCCI: [12:56:01] I will have to read again the declaration of my client to  
3 figure out exactly what you are referring to, and I propose to do that immediately  
4 after the break.

5 PRESIDING JUDGE KORNER: [12:56:11] Yes. If you have a look at the transcript  
6 of yesterday, you'll see that your client, Mr Al-Rahman, made certain assertions about  
7 his tribe. And I was just wondering whether you were going to get the witness  
8 to -- to ask about it. If not, maybe the Prosecution will ask in re-examination, or we'll  
9 ask if you don't. It's up to you entirely.

10 MR LAUCCI: [12:56:41] I'm happy to -- I'm happy to do so.

11 PRESIDING JUDGE KORNER: [12:56:43] Yeah, right. Yes, very well.

12 Yes, we'll adjourn until -- I suppose I ought to ask you, Mr Laucci, do you have any  
13 idea how much longer you're going to be?

14 MR LAUCCI: [12:56:55] I will definitely continue tomorrow.

15 PRESIDING JUDGE KORNER: [12:56:57] You're going into tomorrow. All right.

16 So that the witness protection -- witness service, whatever they're called.

17 Yes, thank you very much.

18 MR LAUCCI: [12:57:07] Thank you.

19 THE COURT USHER: [12:57:08] All rise.

20 (Recess taken at 12.57 p.m.)

21 (Upon resuming in open session at 2.30 p.m.)

22 THE COURT USHER: [14:30:56] All rise.

23 Please be seated.

24 PRESIDING JUDGE KORNER: [14:31:11] Mr Laucci, if you could leave five minutes  
25 at the end, because we're going to give you our decision on the request to leave to

1 appeal.

2 MR LAUCCI: [14:31:23] Just let me know when that is the time.

3 MR SHAH: [14:31:37] Yes, Madam President. Thank you. Good afternoon.

4 PRESIDING JUDGE KORNER: [14:31:41] Sorry, hang on a minute. I'm just going  
5 to put my earphones on.

6 Yes.

7 MR SHAH: [14:31:45] Good afternoon, Madam President, your Honours. I just  
8 wanted to place on the record that Ms von Wistinghausen will not be present for this  
9 last session. She will be back tomorrow morning. Thank you very much.

10 PRESIDING JUDGE KORNER: [14:31:53] That's fine.

11 I'll say straightaway, if any one counsel from a team cannot be present, there's no  
12 need to announce it at all, provided somebody's there to cover.

13 MR SHAH: [14:32:06] Understood. Thank you. Thank you, Madam President.

14 PRESIDING JUDGE KORNER: [14:32:12] Yes, Mr Laucci.

15 MR LAUCCI: [14:32:18] Thank you, Madam President, Madam Judges, welcome  
16 back.

17 Q. [14:32:23] I will start straightaway with the question that you kindly suggested.

18 Professor de Waal, welcome back as well. And yesterday morning at the -- at the  
19 end of the commencement of the trial, the preliminary presentations before you -- you  
20 joined, Mr Abd-Al-Rahman has made an unsworn statement which essentially had  
21 the function of introducing himself and conveying whatever important messages  
22 he -- he wished to convey.

23 And in this short statement he speaks about his trial, and I will just read. I'm at the  
24 page 32 of the -- the provisional transcripts that we have received yesterday, page 32,  
25 I will read from lines -- from line 15 to line 22.

1 Yes, yes, the transcript. He speaks about the tribe and not the trial, correction for  
2 the transcript.

3 So I read: "... I come from the tribe of Ta'aisha. A child of Ta'aisha parents. And  
4 I am not connected to any other tribe. The leader of the Ta'aisha is  
5 Abd-Al-Rahman -- Mahmoud ..." I understand that there are some words missing.  
6 "... a grandson of Kalif ..." some words missing, "Al Ta'aisha is the founder of Sudan  
7 and he has marked the history of Sudan since 1916. The Ta'aisha tribe is in no  
8 conflict with any other tribes such as the Fur, the Salamat or -- other an other tribe.  
9 The Ta'aisha is a tribe of peace and harmony."

10 The question is simple: Do you generally agree with that -- the content of that  
11 statement or is there anything that --

12 PRESIDING JUDGE KORNER: [14:35:03] I think you're going to need to break it  
13 down --

14 MR LAUCCI: [14:35:07] Sorry.

15 PRESIDING JUDGE KORNER: [14:35:08] -- Mr Laucci, because it's -- firstly, we've  
16 got the tribe apparently being something to do with the founding of Sudan. Then  
17 we've got the tribe is not in conflict with any other tribe. And it is -- and the third  
18 aspect is the Ta'aisha is a tribe of peace and harmony. So there are three separate --

19 MR LAUCCI: [14:35:30] So the reference -- thank you, Madam President.

20 Q. [14:35:33] The first, the reference to the leader of the Ta'aisha being  
21 "Abd-Al-Rahman Mahmoud ... a grandson of Kalif" and "Al Ta'aisha is the founder of  
22 Sudan and he has marked the history of Sudan since 1916."

23 A. [14:35:53] Excuse me. Thank you. And it's good to be back.

24 I think the more precise would be to say not 1916 but 1885. The *Khalifa* was, along  
25 with the Mahdi, the founder of the nationalist movement of Sudan that expelled

1 the colonial conquerors in the 1880s and therefore had -- can claim the -- that  
2 preeminence of being a symbol, a leader of the anticolonial nationalist movement  
3 from the 1880s.

4 I think that would be probably a more correct way to -- to -- to express that -- that  
5 general sentiment.

6 Q. [14:36:48] Thank you, Professor de Waal. Of course, the statement is an  
7 unsworn statement and is the -- the views expressed is the views of  
8 Mr Abd-Al-Rahman. So of course we need to take it as it is.

9 A. [14:37:03] Yeah.

10 Q. [14:37:05] The second aspect is, "the Ta'aisha tribe is in no conflict with any  
11 other tribes such as the Fur, the Salamat or other -- another tribe."

12 A. [14:37:19] The -- all tribes in Darfur have had tension and conflict with -- with  
13 their neighbours. However, that being said, I think it would be fair to say that the  
14 Ta'aisha, as a whole, have not had -- are not in a state of large-scale or sustained  
15 conflict with their neighbours.

16 PRESIDING JUDGE KORNER: [14:37:43] Can we just put a time on this. I mean  
17 obviously we're talking -- we're talking about the 1980s through to 2004 or '05.

18 THE WITNESS: [14:37:56] That would be correct, Madam President, yes.

19 MR LAUCCI: [14:37:59]

20 Q. [14:37:59] And finally, "the Ta'aisha is a tribe of peace and harmony."

21 A. [14:38:02] I think that is an -- I would take that as an aspirational statement.

22 MR LAUCCI: [14:38:08] Anything else, Madam President?

23 PRESIDING JUDGE KORNER: [14:38:11] No. Thank you very much, Mr Laucci.

24 MR LAUCCI: [14:38:14] My pleasure.

25 Q. [14:38:17] We stopped this morning -- I was done with the tribal aspects of my

1 questions, and I move to the more institutional aspects within Sudan, the official, so  
2 to say. And there is a transition between the two, which is precisely the question  
3 about how the tribal authority and institution articulate with the national legal  
4 authorities of the government and the localities.

5 First question on this aspect: Was there a division of competences between the tribal  
6 administration and authority and the -- the official one?

7 A. [14:39:18] Under the British colonial rule between 1922 and 1932, a series of  
8 ordinances were enacted that formalised the powers of the native administration, of  
9 the chiefs, giving them their courts, giving them certain jurisdiction over -- over land,  
10 giving them authority to arrest offenders, bring them before courts, but also limiting  
11 their powers so that cases of major crimes, such as murder, would not be tried in  
12 a chief's court but would go to an official court.

13 Over time, with administrative reforms in the end of the colonial period and after  
14 independence in 1956, the local -- the formal local authorities increased their powers  
15 at the expense of the native authorities.

16 And in 1970 the government of then President Jaafar Nimeiri officially abolished  
17 the native administration. So they were -- they were, strictly speaking, dissolved.

18 The dissolution of the native administration was more in law than in fact. What  
19 tended to happen, especially in Darfur, which was very remote and where it was  
20 simply not feasible to bring in the structures of a normal civil administration, many of  
21 the particularly junior native administrators continued in their day-to-day functions,  
22 either just -- without any recognition of the law being changed, or they took positions  
23 as the head of what were called the rural councils or the district or area councils. So  
24 the native administrations authority was -- was undermined, but they did not go  
25 away.

1 And then in the late 19 -- in the 1980s, and even more so in the 1990s, their powers  
2 were reconstituted and brought back. But in the meantime, a great deal of damage  
3 had been done to their authority and their capacity.

4 Q. [14:42:01] Thank you.

5 And in the 1980s when this authority was brought back, how did that concretely work?  
6 How was this authority back in the game of play, so to say?

7 A. [14:42:22] I'm not familiar with the exact statute that was introduced, first of all,  
8 by the government of then Prime Minister Sadiq al-Mahdi. The -- but it was to  
9 recognise, as I understand it, to recognise that they had an advisory role. But in  
10 practice, that meant that they were given more executive positions, or the executive  
11 positions that they had never really relinquished were recognised, in fact.

12 Q. [14:42:59] With that situation, is the scenario of conflict between - and I speak in  
13 the more generic term - an instruction coming from the legal official authorities line,  
14 with an instruction coming from the tribal native authorities? Is that scenario  
15 imaginable?

16 A. [14:43:33] A contradiction between the two?

17 Q. [14:43:35] Yeah, contradiction, a conflict.

18 A. [14:43:39] Yeah, that is perfectly possible, that the tribal authorities would have  
19 one position and the government would have another.

20 Q. [14:43:49] And so if that scenario is imaginable, how would that situation be  
21 resolved?

22 A. [14:43:57] The -- increasingly the -- the government is more powerful,  
23 the government is in a position to intervene, to reduce the power of a tribal leader.  
24 For example, by -- if a tribal leader is -- presides over a domain in which there are  
25 minority groups, those minority groups could be given tribal leaders of equal stature.

1 So the one who is being challenged would reduce -- have his stature reduced. He  
2 could be replaced. He could be challenged and discredited. Or the government  
3 could simply go around him and select those people that it wants to carry out  
4 a particular policy, especially if that were a policy enacted by -- outside  
5 the administrative chain of command. So in the case of a militia, for example, they  
6 could simply mobilise the militia regardless of the position taken by the tribal chief.

7 Q. [14:45:34] And now I'm turning to the -- the person, the citizen receiving these  
8 conflicting orders or instructions. How -- what would be, for a citizen,  
9 the consequence of refusing to comply with - and forgive the general term that I'm  
10 using - the instruction coming from the legal official authorities on the ground that his  
11 *nazir* or tribal authorities disapproves?

12 A. [14:46:21] It would depend upon circumstance. And let me give you an  
13 example. When I was in Darfur in 1985, the first time there -- and remember, this  
14 was a time when the native administration, strictly speaking, had been abolished, did  
15 not exist. I travelled to Al Geneina, the headquarters of -- of the western district, and  
16 I went to the palace - it is a grand name for a modest structure - the palace of  
17 the sultan of Dar Masalit. He was Abd-Al-Rahman Muhammad Bahr al-Din. And  
18 it was like going into the presence of royalty. He -- he commanded respect. He  
19 expected respect.

20 The commissioner - who was appointed by the minister of interior - who came with  
21 me, paid his respects and was treating me as -- as a senior, as someone who -- who  
22 was in command. And this was at a time when that individual, the sultan, had no  
23 official power at all.

24 That was the exception. And that was, as it were, a relic of the past, of the previous  
25 era, which was fading.

1 In most cases, the -- and especially if an individual were outside the immediate  
2 domain of the tribal chief, the -- an individual could -- could challenge the tribal  
3 authority with very little recourse, especially -- well, on any matter other than  
4 the specific issues where the authorities have particular jurisdiction, such as land.

5 Q. [14:48:17] When you say "outside the tribal authority", do you mean  
6 geographically, or more like a -- not feeling bound as a subject, or ...

7 A. [14:48:35] Primarily geographically. So that with the growth of towns, people  
8 residing in the towns and cities felt -- really did not feel the ties of -- of allegiance to  
9 the tribal authorities.

10 One of the things -- if I may add, one of the things that was brought in by the -- the  
11 government in the 1990s was a new institution, which was the *shura*, S-H-U-R-A.  
12 *Shura*, meaning consultative council. And with the growth of modern government  
13 and the growth of Khartoum, but an attempt by the government, a programme of  
14 what it called "return to the roots". So "return to the roots" was an attempt to sort of  
15 cultivate more traditional values and respect. What the -- the government did was  
16 it -- it created these tribal consultative councils which would be of senior members of  
17 the tribe who would meet -- who would generally be people who were more  
18 educated, or were, let's say, wealthy businessmen or army officers or professors  
19 or -- you know, the -- the educated elite of a tribe, who would meet and have  
20 a council, usually in Khartoum, which would then be an interface, an opportunity for  
21 the government to consult with that tribe.

22 And the tribal leadership would be represented in the council, although the -- the  
23 head of the tribe would usually be staying back home. But if you were an old man,  
24 his sons would be there. One might be a diplomat, one might be a lawyer, one might  
25 be a professor, one might be a colonel in the army. And the *shura* would be also



1 a means whereby the government could exert influence over the tribe, and vice versa.

2 Q. [14:50:39] Is it the way it worked for the southern Rizeigat that you mentioned?

3 A. [14:50:45] The southern Rizeigat would be a good example of how this works,  
4 yes.

5 Q. [14:50:55] So I understand from your answer that the -- even the moral authority  
6 of the *nazir* or other subordinate paramount chiefs really depended on -- essentially,  
7 from person-to-person?

8 A. [14:51:16] That would be -- that would be correct, and according to  
9 the particular circumstances.

10 Q. [14:51:27] And would you say that a person who is leaving the land necessarily  
11 will break the -- the level of -- will be away from the authority, the tribal authority of  
12 his tribe or could -- how does that work? Does that automatically work together?

13 A. [14:51:57] There would be -- if we had been meeting 60, 70 years ago  
14 the -- the line of authority, both moral and -- and legal would have been very clear.  
15 Those links have been very much frayed now. So, yes, an individual who has  
16 moved to a city would still have an affection, would still pay respects to  
17 the -- the tribal elders and chief back home, but would have a great deal more liberty  
18 to do as he or she pleased.

19 Q. [14:52:35] Okay, so distance is not necessarily a contradiction with loyalty?

20 A. [14:52:45] Not necessarily.

21 Q. [14:52:46] Okay. But can have an impact on it. I took the point.

22 A. [14:52:51] Yes. Yeah.

23 Q. [14:52:54] And turning back to what happens in the tribe, so you have one of  
24 these subject who will follow the instruction he receives or, in any case, disregard  
25 the authority of the tribe. Within the tribe, what sort of consequences would that

1 have for that person?

2 A. [14:53:24] The material consequences would be few. The consequences in  
3 terms of social standing, esteem within the community, could be significant.

4 Q. [14:53:46] Is it more -- is it like a question of honourability within the tribe or ...

5 A. [14:53:55] I think that would be fair, yes.

6 Q. [14:53:57] Okay. Did you ever hear about a person been outcasted?

7 A. [14:54:05] In the strict sense of somebody being banished from their tribe,  
8 not -- not in recent times.

9 Q. [14:54:22] When you say "not in recent times", is -- how remote is that?

10 A. [14:54:27] I'm thinking back in the colonial era, then it was a -- a practice that  
11 the -- that the chiefs would -- would implement.

12 Q. [14:54:54] And still talking about the same person who has disregarded  
13 the authority of his tribe, would there also be consequences on the person's family?

14 A. [14:55:10] I imagine so.

15 Q. [14:55:16] And finally, that will be my last question on this conflict, not  
16 resolution, but dealing with diverging instructions and loyalty, would you say that  
17 the age of the person can have an impact on his loyalty, at least in terms of  
18 expectation?

19 A. [14:55:45] I think as a general rule older people would -- would be more inclined  
20 to observe customary authority than younger people.

21 Q. [14:55:58] I did not --

22 A. [14:55:59] Older people would be more inclined to respect customary authority  
23 than --

24 Q. [14:56:06] Than the young ones.

25 A. [14:56:07] Than the young ones.

1 Q. [14:56:09] Thank you.

2 A. [14:56:10] You will not be surprised.

3 Q. [14:56:12] I think I'm done with the tribe now.

4 Each state in Sudan had a governor who was appointed by the government of Sudan.

5 For West Darfur, can you confirm that the governor was Mr Suleiman

6 Abdullah Adam in 2003-2004?

7 A. [14:56:35] I believe that is the case, yeah.

8 Q. [14:56:42] My apologies, I should have asked the question differently and asked  
9 you if you knew who was the governor of West Darfur. Beginner's mistake.

10 PRESIDING JUDGE KORNER: [14:56:52] No, you're allowed to lead in  
11 cross-examination, Mr Laucci.

12 MR LAUCCI: [14:56:58] It is not cross-examination, Madam President.

13 PRESIDING JUDGE KORNER: [14:57:02] Very true.

14 Q. [14:57:07] Okay. So I take note of that.

15 Generally, what is the function and the authority of the governor?

16 A. [14:57:17] Let me preface what I'm about to say with an observation that may be  
17 relevant, which is that the -- when the Islamic movement in Sudan split in 1999, one  
18 of the issues on which it split was the question of who appoints the governor. And  
19 President Bashir insisted that the president would appoint the governors.

20 The position of the Islamic movement as a whole, that of Hassan al-Turabi and  
21 the majority in Darfur, was that governors should be elected by the electorate of their  
22 state.

23 And this was a point of contention precisely because governors had extensive powers.

24 And the most important power of the governor is the governor convenes

25 the state -- the security council at the level of the state, which will bring

1 together -- the governor will chair and it will be the police commissioner,  
2 the representative of national security, the most senior military officer and the -- I'm  
3 not sure who else would be on that, but senior officials within -- within the state.  
4 And have considerable power to -- to dispatch police forces, invite the central  
5 government to -- to send whatever forces are -- were considered needed to respond to  
6 the situation.

7 The governor also had the power to appoint and dismiss senior members of  
8 the native administration. And that in some cases that extended to actually creating  
9 the positions themselves. And that, for example, was the case in North Darfur for  
10 this -- the special district for the nomads, al-Waha district.

11 Q. [14:59:49] Thank you. Same question about the functional authority of  
12 the commissioner of a locality?

13 A. [14:59:54] The commissioner would -- is more junior and so would have much  
14 more limited power, and especially more limited power vis-à-vis the security services.

15 Q. [15:00:10] Okay. And as far as you know, would a governor or a commissioner  
16 necessarily or usually have also whatever authority -- tribal authority within a tribe,  
17 or is that totally different?

18 A. [15:00:31] That would be normally different.

19 Q. [15:00:37] Thank you. I move to the reform of 1994.

20 You already about -- you already talked about it and explained what had happened at  
21 this time. I would like to ask more clarifications on what was the situation after that  
22 reform.

23 And you said that essentially the reform has for effect of tribalisation of the local  
24 authorities, meaning that the *umdah* of the Fur would have authority only on the Fur  
25 after that reform. Would that mean that if -- with a locality with several components,

1 several tribes, there would be different *umdahs*, for instance, or *sheikh*, or whatever?

2 A. [15:01:54] The 1994 administrative reform had a number of different impacts.

3 The first was that it divided the Fur themselves. The Fur as -- and I think actually  
4 there's a useful table in -- this will be in my own report, so the -- the OTP document.

5 And I will see if I can find it. It's a --

6 MR JEREMY: [15:02:26] If I can assist, Professor, it's page 44 of your report, 1666,  
7 electronic page.

8 THE WITNESS: [15:06:00] Thank you. Yes, there we are.

9 MR LAUCCI: [15:02:36] Actually, I should have asked to put that on the screen.  
10 Thank you.

11 THE WITNESS: [15:02:42] And what you will see from this is that the Fur tribe,  
12 although they were about 30 per cent of the total population - in the whole of Darfur,  
13 Darfur had 62 members of parliament - they were slightly over represented, so nearly  
14 half, which meant that they would be in a position when -- if allied in the -- in -- with  
15 some friendly tribes, if you like, to have a majority in the state. What  
16 the -- a political majority, that is.

17 What the division into three states did was it gave them a majority in Western Darfur,  
18 and you will see the Fur -- actually there is -- I can see there is an arithmetic mistake  
19 there, and I'm not quite sure how that crept in, because the total of -- on the first  
20 line of "Fur" does not add up to 29. I am ...

21 Q. [15:04:02] It should be 18.

22 A. [15:04:03] It should be 18. And I -- to be quite frank, I cannot tell you if I  
23 introduced that error or if I -- if it was in the original. I think I should take  
24 responsibility for it anyway.

25 But the point being that the -- that before the -- before the administrative re-division,

1 the Fur - even though they were a minority - were in a position to have a -- to build  
2 a sufficiently large block in the Darfur region as a whole. After the re-division you  
3 will see they are reduced in Northern Darfur and Southern Darfur to small minorities,  
4 whereas in Western Darfur, the Fur, along with Masalit, are an overwhelming  
5 majority, a super majority. And so the political influence of the Fur was therefore  
6 being concentrated in Western Darfur, and in fact Western Darfur was later  
7 subdivided into Western and Central and those Fur MPs would all have been in  
8 the Central Darfur, in Jebel Marra, Zalingei, Wadi Salih and Mukjar.  
9 So the influence of the Fur in the other parts of Darfur was reduced and therefore  
10 their influence over -- over the region as a whole was reduced.  
11 The other impact of this reform was it came alongside reform of the status of  
12 the native administration chiefs in different localities.  
13 And just to recap on the points I made earlier, in the Masalit areas, new Arab chiefs  
14 were introduced at the level of the -- let me go back a stage. The Masalit had five  
15 chiefs at the level of what they called *fursha*, which is the equivalent of *shartay* or *nazir*.  
16 And these five were junior to the sultan and the sultan was a hereditary position.  
17 The Masalit now had eight additional posts created which therefore created  
18 a majority and that -- those -- these, the eight plus the five created an electoral college  
19 to elect the Masalit sultan. So that obviously changed the balance of power.  
20 And in South Darfur the most senior Fur chief, the *magdum*, had his power, his  
21 authority severely circumscribed, so he no longer presided over all the tribes of the  
22 Southern Darfur, but only over the -- those relatively few who were themselves ethnic  
23 Fur. So his -- his jurisdiction was severely limited.  
24 This did not happen in Western Darfur -- I mean, sorry, this did not happen in those  
25 districts of Western Darfur which were dominated by the Fur. That was at that time

1 the substantial change.

2 Q. [15:07:26] Thank you. And talking about a locality with various components,  
3 tribal components of the population, let's take Wadi Salih, but if you are not  
4 comfortable with that example, you can answer with another one. Wadi Salih, you  
5 explained there were Furs, there were Salamat. With that -- after that reform of 1994,  
6 would that mean that whatever local paramount chief would have jurisdiction only  
7 on the Fur and that there would be another paramount chief for the Salamat?

8 A. [15:08:07] Now this is an interesting case, because in principle it would have  
9 been perfectly consistent with the way the administrative reform was implemented  
10 elsewhere for that reform to have happened in Salamat -- in Wadi Salih and indeed in  
11 Mukjar. They could have created -- alongside the Fur *shartays*, they could have  
12 created a *nazir* for the Salamat. That did not happen.

13 Q. [15:08:44] But there were some *umdahs*?

14 A. [15:08:46] There were *umdahs* already existing and they may have created more,  
15 I couldn't tell you. But the *umdahs* do not -- but the -- had they created a paramount  
16 chief, a *nazir*, they could have created -- the implication would have been that there  
17 would have been a claim to a tribal land in that area.

18 Q. [15:09:08] I get the point, but my question is more in terms of jurisdiction. And  
19 so if -- still talking about the Wadi Salih, you said there was, on the Fur side there was  
20 *shartay*?

21 A. [15:09:29] There were *shartay*.

22 Q. [15:09:30] So the *shartay* had authority on the Fur, am I correct?

23 A. [15:09:34] Yes.

24 Q. [15:09:35] And who had authority on the Salamat?

25 A. [15:09:39] The *shartay* continued to have the overall authority over the Salamat.

1 So the -- yeah, the -- over matters within his -- his jurisdiction, yes.

2 Q. [15:09:55] Okay. So the tribalisation had some limits, it was not ...

3 A. [15:10:01] Yes. And this caused unhappiness among the Salamat.

4 Q. [15:10:07] I see. So it means that in case of a conflict between members of  
5 the Fur tribe and the Salamat tribe, the *shartay* within his own competence would be  
6 the authority?

7 A. [15:10:29] In theory. In practice, the -- that -- the dispute was a political dispute  
8 because the Salamat *umdahs* did not want to follow the authority of the Fur *shartay*.

9 Q. [15:10:50] Which means that they would just refuse it and -- and not accept his  
10 competence to settle the -- to resolve the dispute?

11 A. [15:11:01] Correct.

12 Q. [15:11:06] And so how would the dispute be resolved in that case?

13 A. [15:11:11] It depends upon the dispute, but the -- it would go to  
14 the -- the commissioner of -- of the locality would be required to resolve, or more  
15 commonly fail to resolve the dispute.

16 Q. [15:11:41] Okay. In your report you -- you -- you touch upon the -- the judicial  
17 institutions in Darfur, and I would like to -- if we can have on the screen paragraph 58  
18 of your report, which is on page 1645.

19 Thank you.

20 Thank you. Here you speak about -- you describe the authority of the *sheikh*, which  
21 includes running the local courts at the level of the village and sitting as magistrate  
22 for minor offences, adjudicating disputes and collecting taxes.

23 If the *sheikh*, or *sheikh*, sorry for pronunciation, served as magistrate for the minor  
24 offences, who was competent for more serious offences?

25 A. [15:13:02] Depending on the kind of dispute, so more significant land disputes



1 could go to the court of the *shartay*, but any criminal offences would -- would go to  
2 the regular courts.

3 Q. [15:13:16] Regular courts. Okay. Where were those regular courts sitting?

4 A. [15:13:25] Usually they would sit in the district headquarters, so in -- in Zalingei  
5 or in Garsila or in Mukjar.

6 Q. [15:13:36] Thank you. Was it a permanent court or --

7 A. [15:13:40] They would --

8 Q. [15:13:44] -- a moving one?

9 A. [15:13:46] I'm not entirely sure. I believe most of them were permanent.

10 Q. [15:13:55] And going back to the role of the *sheikh*, once again for the minor  
11 offences and what was under their jurisdiction, did the reform of 1994 have an impact  
12 on the limits, the limits of their jurisdiction in terms of tribal parties?

13 A. [15:14:18] I don't believe so.

14 Q. [15:14:19] No, okay. I thought you were answering that you did not  
15 understand my question. So thank you for understanding.

16 And would the reform also result in the appointment of more than one *sheikh* per  
17 village?

18 A. [15:14:42] I don't know. I wouldn't have thought so. I would see no reason  
19 why that would happen.

20 Q. [15:14:54] If we can go at paragraph 69 and 70, that's on page 1649. This is  
21 where you speak about the -- the customary mode of conflict resolution called *judiya*  
22 which was facilitated by the *ajawid*. Who were the *ajawid* and who appointed them?

23 A. [15:15:30] The *ajawid* would be appointed according to the circumstance and  
24 the level of -- of the dispute. They are, so far as I know, all men. They are men  
25 who -- and the criteria for their appointment would be they would be older men,

1 respected by the community, of good standing, with a reputation for civility and good  
2 judgment, fair judgment and not being hot-headed.

3 Q. [15:16:09] But did I understand correctly that it was an ad hoc appointment on a  
4 case-by-case basis?

5 A. [15:16:16] Generally speaking, yes, though sometimes a -- a group of *ajawid*  
6 could sit for a protracted period.

7 Q. [15:16:26] Okay. And who appointed them again?

8 A. [15:16:30] They're appointed -- well, they're appointed by consensus among  
9 the parties.

10 Q. [15:16:36] More like an arbitration tribunal so to say?

11 A. [15:16:40] Yes.

12 Q. [15:16:43] Okay. Clear. Thank you.

13 If we can move, paragraph 71, which is on page 1650.

14 There you speak about what happens in case of serious crimes and especially the case  
15 of homicide. And you write that "... the government authorities and the family of a  
16 homicide victim have the right to take the case to a government court ..."

17 When you write that they have this right, I understand that this is thus not an  
18 obligation, which prompts the question what if -- what happens for serious offences  
19 which are not submitted to formal courts, government courts?

20 A. [15:17:45] Normally speaking, a -- in a peaceable era a serious offence like  
21 homicide would go to a government court. If there is, let's say, an intertribal clash at,  
22 you know, a water well or something and a dozen men are killed and some camels  
23 are stolen and property is destroyed, then it's likely that rather than treating the case  
24 through -- through the normal courts, when -- which would be complicated by  
25 matters such as the defendant arguing self-defence, in which case the whole context

1 of the clash would be -- would be -- become a question for -- for the court, it would be  
2 the -- the parties which would be organised tribally would decide to settle the case  
3 through a -- strictly speaking the term is *musallaha*, which is a reconciliation process,  
4 which is not quite the same as *judiya* but in practice over the years they have become  
5 merged and the same.

6 So the two parties would agree to a series of, I think as you call them arbitrators, who  
7 would be respected individuals, neutral in the conflict, who would assess what  
8 happened in the conflict, who was responsible, and -- and agree for the payment  
9 of -- of blood money, *diya*, from the community that had inflicted the homicide to the  
10 victim -- to the family of the victims and vice versa across the tribal lines.

11 Q. [15:19:40] So if that is reconciliation and a payment of *diya*, it means that there is  
12 no -- nobody gets punished or ...

13 A. [15:19:53] There is still the -- the individual victim retains the right of -- of  
14 demanding a -- a regular court trial and punishment of the perpetrator.

15 The complication comes if you have automatic weapons. So, you know, 150 years  
16 ago, if there's a fight and it uses spears, everyone knows -- you can identify  
17 the -- the weapon, the bladed weapon, the spear that killed or injured a certain person  
18 and who threw the spear. When you have a Kalashnikov that can spray a large  
19 number of bullets in one go, nobody knows. So it become -- so in many of the cases,  
20 the fatalities cannot be -- it's harder to attribute an -- you know, an individual  
21 responsibility.

22 That said, the -- the arbitrators, the *ajawid*, can also say, such-and-such an individual  
23 is a troublemaker and should be sentenced to -- to a prison term. And they may find  
24 a reason in the context of that particular dispute, or they may find a pretext outside it,  
25 that such-and-such an individual has been making trouble and should be brought to

1 court for some other offence, and so they will find a good reason to lock away a -- a  
2 wrongdoer.

3 Q. [15:21:33] But that that would go to a formal court if --

4 A. [15:21:36] Yeah.

5 Q. [15:21:37] In order to have a real sentence, real punishment, you need to go to  
6 the -- the formal court?

7 A. [15:21:43] That's correct.

8 There are also cases where people have been detained under national security laws  
9 without going through.

10 PRESIDING JUDGE KORNER: [15:21:56] Mr Laucci, I mean this is really interesting,  
11 but does all of this have any relevance to the issues that are before this Court? I  
12 mean it's a very interesting --

13 MR LAUCCI: [15:22:10] The answer I have to give you is "yes", but you will want to  
14 have an explanation of that "yes".

15 PRESIDING JUDGE KORNER: [15:22:17] No. If you assure me it's relevant --

16 MR LAUCCI: [15:22:19] Yes, it is.

17 PRESIDING JUDGE KORNER: [15:22:20] I mean, I'm merely querying it. That's all.  
18 Right.

19 MR LAUCCI: [15:22:24] Yeah, it is.

20 Q. [15:22:26] Thank you. I'm done with the judicial part.

21 Last question though, since the -- the referral of the Darfur situation to the Court, to  
22 this Court, ICC, by the UN Security Council in 2005, or since the issuance of the first  
23 warrant of arrest against Mr Abd-Al-Rahman and Mr Harun in 2007, have you been  
24 in Sudan?

25 A. [15:22:53] I have been in Sudan.

1 Q. [15:22:54] And when was that, sorry?

2 A. [15:22:55] I was -- had been -- was repeatedly in Sudan from 2007 until -- often  
3 until 2012 and -- when was the last time? I can't remember, but ...

4 Q. [15:23:15] During that visit, how did you perceive the people? Were they open  
5 to speak about the -- what was happening with the referral to the ICC in the first cases  
6 and warrant of arrest?

7 A. [15:23:28] The -- I think it would -- let me give a pause.

8 I think it would be fair to say that opinions were divided, if not polarised. There  
9 were -- in -- among -- let me give some specific examples.

10 I travelled to the displaced camps in Darfur in 2009, and there was enormous  
11 enthusiasm for the ICC, and especially for the arrest warrant against President Omar  
12 al-Bashir. I think there was an unrealistic assessment that -- that -- when  
13 the Prosecutor had issued the arrest warrant, that the -- that President Bashir and  
14 the others would be apprehended quickly, and that would be followed by many,  
15 many other arrest warrants too. They expected this Court to be trying dozens, if not  
16 hundreds, of -- of individuals, and there was a lot of enthusiasm.

17 On the side of the Government of Sudan, and many of those who were associated  
18 with the Arab groups in particular, the opposite was true. They saw the -- they saw  
19 an international conspiracy to promote regime change by force, which would include  
20 the dispatch of international troops to Darfur. And the -- enacting the arrest warrant  
21 against the head of state and other senior figures, and they saw the -- the actions  
22 of the Prosecutor as being politically motivated and unfair.

23 So there was very extreme positions and a few people in the middle.

24 Q. [15:25:46] Thank you for explaining these various -- variety of opinions. My  
25 question was actually simpler than this. It was whether the people would

1 be -- be -- would openly speak about it without fear or ...

2 A. [15:26:14] That would depend upon context. In the -- people who were in  
3 the vicinity of where they suspected people would be telling the government,  
4 reporting on their views to the government, people would be reluctant to express  
5 a view in support of ICC. They would -- they would give the government ...

6 Q. [15:26:35] Okay. Quite understandable.

7 Yeah. Understandable, but why that, is asking my colleague?

8 A. [15:26:45] I think because the -- the -- because the Government of Sudan felt that  
9 it was the target of a conspiracy led by the United States for regime change. And  
10 they saw what had happened in Afghanistan and Iraq, and they thought they were  
11 next. And ...

12 Q. [15:27:08] Did you hear about anybody being or feeling threatened or arrested,  
13 or somebody who had disappeared as a result of having been suspected of  
14 cooperating with the Court?

15 A. [15:27:26] I did. I cannot remember the details. I would be able to find you  
16 details. But there -- yeah, there are -- I know of individuals.  
17 Disappeared, I'm not sure, but certainly people who were arrested, intimidated.

18 Q. [15:27:48] Yeah, okay. So your answer is that, if that happened - and I take  
19 the point that you are not firm on that - that would -- sorry?

20 A. [15:28:01] I'm firm that it happened.

21 Q. [15:28:02] Okay.

22 A. [15:28:03] I -- because I can recall one particular case especially, and I know that  
23 there were others.

24 Q. [15:28:11] Okay. And in that particular case, or maybe others, if you know, did  
25 that follow a formal process, like the person being arrested, taken to jail, questioned,

1 maybe presented before a judge?

2 A. [15:28:25] Normally -- the cases that I'm thinking of where it was national  
3 security agents who would arrest and detain and mistreat people without any due  
4 process of law, and it was -- in order to get them released required political  
5 intervention, not -- not legal.

6 PRESIDING JUDGE KORNER: [15:28:56] Well, I -- Mr Laucci, I know why you're  
7 going down this road. I don't imagine that Professor de Waal does.  
8 Professor de Waal, I want to know whether or not this is something that you have  
9 documentation about, and if you can give a time period. Because the specific  
10 question was whether people -- whether you are aware of cases of people being  
11 arrested or in some way incarcerated because they cooperated with the International  
12 Criminal Court.

13 THE WITNESS: [15:29:35] I'm not aware of anyone who actually was cooperating  
14 with the Court being arrested and detained. I know of people who were suspected  
15 of having done so.  
16 And I would -- I hadn't prepared myself to answer this question, so I'm afraid I don't  
17 have --

18 PRESIDING JUDGE KORNER: [15:30:04] No. As I say, but are you able to give  
19 a date when this happened?

20 THE WITNESS: [15:30:10] The case I'm thinking of, 2009.

21 PRESIDING JUDGE KORNER: [15:30:13] Thank you.

22 MR LAUCCI: [15:30:15] Just, Madam President, to answer your remark, you may  
23 guess one of the two directions where I'm trying to go, but I doubt you can already  
24 detect the second one.

25 PRESIDING JUDGE KORNER: [15:30:29] Well, you can surprise me, Mr Laucci.

1 MR LAUCCI: [15:30:31] I hope -- I hope I will.

2 Q. [15:30:39] You just said 2009. Did that situation change, according to you, after  
3 the departure of President al-Bashir in 2019?

4 A. [15:30:56] Unfortunately, much to my regret, I was not able to travel to Sudan  
5 after 2019 because of the -- the --

6 Q. [15:31:05] COVID.

7 A. [15:31:05] -- COVID. And so I -- I missed the opportunity of being present  
8 when Sudan had its democratic spring.

9 Q. [15:31:17] Okay. I stop there on this line of questioning, and I move to  
10 the armed conflict, 2003-2004. And I will start -- there are two parties to that conflict.  
11 There is the rebellion; there is the counterinsurgency. I will start with the rebellion.  
12 Can we go at paragraph 119 of your report, that's on page 1670.

13 In that paragraph you identify three tribal components of the rebellion. That is  
14 the Fur communities in the highlands of Jebel Marra, the Zaghawa in the far north,  
15 and the Masalit on the border with Chad.

16 My first question is: Who took the decision to engage into rebellion - for these three  
17 components - sorry?

18 A. [15:32:38] The rebellion came about through the convergence of several different  
19 elements. So there was a local intertribal element, especially between the Zaghawa  
20 and the Arabs in the north. There was -- and there was a recurrent tension in the far  
21 west with the Masalit and Arabs. There had been -- subsequent to  
22 the -- the administrative reform of 1994, there was fighting there in 1995 and again in  
23 1999, and that -- that situation remained unresolved.

24 The -- the rebellion was led by two groups. There was the -- a group of radical  
25 revolutionary students, a mixture of -- most of them Fur, led by Abdul Wahid al-Nur,



1 who set up a base in Jebel Marra and began to organise armed resistance, and  
2 the leaders of the dissident Islamists of the Justice and Equality Movement, led by  
3 Khalil Ibrahim.

4 Q. [15:34:10] And did the paramount leaders of the three tribes that you  
5 mentioned - the Fur, the Zaghawa and the Masalit - play a role in the decision to -- to  
6 go and to engage into the rebellion, or was it taken outside of their control or  
7 intervention?

8 A. [15:34:28] The tribal authorities were not involved.

9 Q. [15:34:35] Thank you. If we can go at paragraph 113. That is on page 1668.  
10 This is where you explain the -- especially on the JEM side, the role of Mr al-Turabi  
11 and his vision of radical Islamist transformation, and his split with  
12 President Al-Bashir and the Government of Sudan in 1999.

13 Can you briefly remind us who was Mr al-Turabi.

14 A. [15:35:16] So here the term "*sheikh*" is appropriate in its religious meaning, as  
15 a -- as a religious leader. So *Sheikh* Hassan al-Turabi was the -- one of the founders of  
16 the Muslim Brothers branch in Sudan back in the 1960s. He was a jurist, a political  
17 philosopher, a political activist and a political chameleon. He was in the 1960s an  
18 advocate for a -- as a democratic modernising form of Islamism, including giving  
19 greater respect for the rights of women, greater latitude to the arts, and so on, a rather  
20 tolerant form of Islamism.

21 He became -- he took a more militant turn in the 1970s. He switched, he was active  
22 in building a -- a sort of a -- a very far-reaching Islamic project in Sudan that  
23 penetrated all sectors, the military, commerce, the media, et cetera.

24 He was the *éminence grise* behind the 1989 military coup that brought Omar al-Bashir  
25 to power. And he very much saw Omar Al-Bashir as his front man, the man

1 controlled by him. He thought that the president was a not very well-educated  
2 soldier who could easily be manipulated.

3 Al-Turabi in the 1990s took a very radical turn. He -- he was -- invited Osama  
4 bin Laden of Al-Qaeda to Khartoum, and other radical Islamists. He sponsored  
5 militant Islamist groups in neighbouring countries, notably Egypt, and that earned  
6 Sudan a place on the State Sponsors of Terrorism list of the United States, so very  
7 serious sanctions.

8 He -- his ambition was to create an Islamic State in Sudan, and in 1999  
9 he -- President Omar al-Bashir felt he had overreached. He was trying to institute  
10 some constitutional reforms that would have reduced the president to a figurehead.  
11 Omar al-Bashir struck back, imposed a state of emergency, put Turabi in prison,  
12 clamped down on his movement. And this -- and many of those who had followed  
13 Turabi, including especially those in Darfur at that time, felt this was the time to go  
14 into armed resistance.

15 Q. [15:38:27] Yes. At paragraph 113 that we have on our screen you write that  
16 Mr al-Turabi supporters took up arms in rebellion, forming the JEM.  
17 Are you aware of any equivalent link with the SLA, which is the other part of  
18 the rebellion?

19 A. [15:38:47] But I should clarify that when they took up rebellion they did not  
20 explicitly -- they did not identify themselves as al-Turabi supporters, and in fact  
21 he -- for the rest of his life, he had a very carefully ambiguous position of not  
22 supporting one side or the other.

23 The -- in the case of the SLA, they had sympathies with the late Dr John Garang,  
24 the head of the Sudan People's Liberation Movement, an advocate of a revolutionary  
25 agenda for transforming Sudan into a new Sudan. Most of the rank and file of

1 the SPLM, and its army the SPLA, were from south Sudan and were separatists; they  
2 wanted south Sudan to separate. John Garang did not. He wanted Sudan to  
3 remain unified. But for what the marginalised majority of Sudan from the south,  
4 from Darfur, from other regions, who were the demographic majority who had  
5 historically been disadvantaged in Sudan to rule the country, they said -- his  
6 argument was why should we separate when we are entitled to rule the whole thing.  
7 And the -- Abdul Wahid al-Nur and his group were very sympathetic with  
8 that -- with that view, and they received material support from the SPLA as well.

9 Q. [15:40:29] So if I understand correctly -- if I understand correctly, there was -- I  
10 mean, the SLA was created separately from al-Turabi but there were some common --

11 A. [15:40:46] JEM, you mean.

12 Q. [15:40:47] JEM, yes, sorry. Okay. Thank you.

13 This one is done.

14 Did you ever hear about reports saying that the JEM was receiving at least financial  
15 assistance from the organisation called Al-Qaeda?

16 A. [15:41:10] I did not.

17 Q. [15:41:13] Okay. If I can ask you to take the document number 19 in your  
18 binder. I give the -- in the Defence binder, yes. That's the document  
19 DAR-D31-0004-0200. And this is a press article from The Sunday Times dated  
20 25 November 2001 and entitled "US targets three more countries".

21 If we can scroll down a little bit, it's the twelfth paragraph, actually, starting with  
22 "American officials hope".

23 I saw it. Yes, we have in front of us.

24 Okay. It's already highlighted, I hear, but not -- not on my screen.

25 So it says there that Mr al-Turabi provided a five-year sanctuary in Sudan to

1 Mr Osama bin Laden until 1996, and that Osama bin Laden even married one of  
2 Mr al-Turabi's nieces.

3 Do you -- are you aware of that?

4 A. [15:42:55] I'm aware of press reports.

5 Q. [15:42:57] Okay. But was it -- are you referring to this article specifically or you  
6 read other?

7 A. [15:43:07] Other.

8 Q. [15:43:08] Other, okay. But do you have any knowledge if that is true or ...

9 A. [15:43:16] I don't.

10 Q. [15:43:16] No. Okay. That's what I understood.

11 The Chamber will hear evidence that the rebels were sometimes referred to as  
12 "*tora bora*", and you were asked about this name in the list of derogatory terms that  
13 were sometimes used.

14 Well, the *tora bora*, the way I knew it until I entered in that case, was the mountain  
15 range in Afghanistan where Al-Qaeda and the Taliban were alleged to fight US forces.

16 Does that ring a bell, that other meaning of *tora bora*, to you?

17 A. [15:44:08] That, it does ring a bell.

18 Q. [15:44:11] Thank you. And is it still on press reports or direct knowledge?

19 A. [15:44:15] I have not been to Afghanistan .

20 Q. [15:44:15] Okay. Thank you.

21 A. [15:44:16] I have not visited the caves where Osama bin Laden was residing.

22 Q. [15:44:23] You cannot be a universal expert. That's not possible, I think.

23 But according to you, was it the -- maybe your knowledge. Was it the rebels  
24 themselves who adopted the name *tora bora*, or was it a name that was given to them  
25 by their opponents?

1 A. [15:44:44] My understanding is it was a name given to them by their opponents.

2 Q. [15:44:50] If you can go to the document -- actually document number 18 in  
3 the same binder, which is another press article from the newspaper the Independent  
4 dated 16 August 2004. The ERN is DAR-D31-0004-0196 and it is entitled "Tora bora  
5 army strikes back at the Janjaweed".

6 Maybe I will let you have a look at this article, page 2. Basically, that's an article  
7 where there is a description of a rebel group in Sudan celebrating a victory against  
8 the persons they call the Janjaweed. And referring themselves, apparently rather  
9 proudly, as *tora bora*.

10 There is -- maybe we can -- yes, can we zoom on the last paragraph. The ...

11 So "the fighters" -- I read what is on the screen:

12 "The fighters, about 70 of them, were resting at a sprawling abandoned village  
13 north-east of Nyala, the capital of South Darfur. They were a mixture of  
14 tribes - Masalit, Fur, Zaghawa, Birgit and Daju - from the hills of Jabal Marra and  
15 Toor. They had adopted their name - from the Afghan mountain where the Taliban  
16 and its Al-Qa'ida allies fought one of their last battles - to symbolise their own martial  
17 prowess."

18 Does that fit with your understanding that this name was actually chosen by  
19 the enemies of the rebellion?

20 A. [15:47:26] This is the first and only occasion on which I've seen a journalist  
21 describing the rebels using that name in that way.

22 Q. [15:47:39] Okay. I thank you very much for that. We can leave that document  
23 and go back to your report.

24 I'm watching the clock, Madam President. If I engage in the next series of question I  
25 will not be done by five to 4, I'm afraid.

- 1 PRESIDING JUDGE KORNER: [15:48:11] (Microphone not activated)
- 2 THE INTERPRETER: [15:48:13] Microphone, please, Judge Korner.
- 3 PRESIDING JUDGE KORNER: [15:48:16] Okay.
- 4 Make a start, Mr Laucci, but -- and if you have to carry on tomorrow morning, then
- 5 you have to carry on.
- 6 MR LAUCCI: [15:48:27] Okay. I just start.
- 7 Q. [15:48:28] Can we go at paragraph 122 of your report. This is on page 1671.
- 8 And then there you write that, by the end of 2003, the SLA effective were estimated at
- 9 6,000 to 7,000 men and JEM nearly 1,000 men. That's at the very last line of
- 10 the paragraph.
- 11 First question, these numbers, do they correspond to full-time regular fighters
- 12 wearing uniform and occupying a rank in the military hierarchy of the group?
- 13 A. [15:49:24] I believe they do.
- 14 Q. [15:49:28] Where were these persons based, please?
- 15 A. [15:49:34] They would be based in a number of locations scattered through
- 16 northern and western, and one or two places in south Darfur.
- 17 Q. [15:49:50] Did they occupy a territory at some point in time?
- 18 A. [15:49:56] The -- the SLA and JEM were -- actually, the SLA had two styles of
- 19 military organisation. In the Fur areas around Jebel Marra and Zalingei and
- 20 Wadi Salih, they were essentially an infantry force that was occupying areas.
- 21 In the north, where the SLA had Fur and Zaghawa forces, and JEM, which was
- 22 overwhelmingly Zaghawa, was a much more mobile force, so that they had their
- 23 bases in some mountainous and remote areas and they had some safe areas on -- on
- 24 the border with Chad, but they were much more mobile.
- 25 Q. [15:50:57] Thank you. Can we go at paragraph 120, please.

1 There you write that -- thank you -- in February 2003, I quote: "... the rebel forces were  
2 a mixture of village defence militias that had emerged during the previous  
3 fifteen years of turmoil and mobile units using Land Cruisers in the Chadian style of  
4 desert warfare."

5 First question: Did that composition vary over -- over the conflict from 2003 to 2004?

6 A. [15:51:50] Not substantially.

7 Q. [15:51:54] When you speak about village defence militias, do I understand  
8 correctly that they were already armed from the 15 years of warfare, or did they need  
9 to be armed afresh?

10 A. [15:52:16] I would say a bit of both. There were some that had been armed  
11 from before and others who were acquiring new -- new weapons.

12 Q. [15:52:31] And do you know where these new weapons came from?

13 A. [15:52:35] The -- the SPLA provided weapons, but I believe that the SPLA  
14 weaponry went mainly to the regular -- of course they were all irregular forces, but  
15 the -- the uniformed forces, as it were. And the -- some were being supplied across  
16 the border from Chad as well.

17 The other main source of supply was the -- in the early days of the response,  
18 the military command, the government military command that is, armed additional  
19 Popular Defence Force units who then defected to -- to the rebels.

20 Q. [15:53:22] Okay. Do you know if there is any specific Arabic term to -- which  
21 designate those village defence militias on the rebellion side?

22 A. [15:53:42] I'm not aware of one.

23 PRESIDING JUDGE KORNER: [15:53:47] (Microphone not activated)

24 MR LAUCCI: [15:53:48] Okay, I -- let me just write down where we stop, and I'm  
25 with you.

1 PRESIDING JUDGE KORNER: [15:53:55] (Microphone not activated)

2 THE INTERPRETER: [15:53:58] Microphone, please, Judge Korner.

3 PRESIDING JUDGE KORNER: [15:54:03] My own voice sounds loud enough to me.

4 First of all, I just have to deal shortly with one legal matter. Then we'll adjourn this

5 afternoon. And I'm sorry I think I said you'd finish today, but you will finish

6 tomorrow.

7 The Chamber will now give its ruling on the Defence application for leave to appeal

8 its decision with the number 648 on the length and timing of the Prosecution case.

9 On 29 March of this year the Chamber issued a written ruling in which it granted

10 the Prosecution 280 hours to present its case and the Defence 365 hours for

11 cross-examination of Prosecution witnesses. Prosecution had asked for 320 hours.

12 The Defence for 455.

13 On 1 April of this year the Defence filed a written application for leave to appeal that

14 decision in French.

15 In summary, the grounds for this request are that there has been a breach of

16 the equality of arms in a lack of proportionality in the reduction of the hours and,

17 incidentally, and really irrelevantly as regards this issue, in respect of its earlier ruling

18 with regard to the security of the Defence's field missions.

19 Second, the time allowed, it is submitted, is insufficient to enforce

20 Mr Abd-Al-Rahman's rights under Article 67(1) and that a manifest error has been

21 made by the Chamber in its assessment of the facts, as well as ignoring the obligation

22 of the Prosecution to prove its case.

23 Neither the Prosecution nor the Common Legal Representatives for Victims wish to

24 respond.

25 Article 82(1)(d) of the Statute states that either party may appeal the Chamber's



1 decisions provided, a, "the decision involves an issue that would significantly affect  
2 the fair and expeditious conduct of the proceedings" - and I emphasise the word  
3 "expeditious" - "or the outcome of the trial, and" - because this is a conjunctive  
4 test - "in the opinion of the ... Chamber, an immediate resolution [of which] by the  
5 Appeals Chamber would materially advance the proceedings."

6 The Chamber in its decision of 2 December 2021 set out its legal interpretation of  
7 the article.

8 The Chamber has become extremely familiar with the terms of this article as a result  
9 of the number of requests which have already been made by the Defence for leave to  
10 appeal over the course of the last six months. On this occasion it should be noted  
11 that the Defence offered the Chamber the alternative of reconsideration, that is  
12 contained in paragraph 5, rather than granting leave.

13 In respect of the test of significance as set out in Article 82(1)(d) of the Statute, it is  
14 worth pointing out that experience of trials before international tribunals has shown  
15 that time elements have to be imposed. An efficient and expeditious trial is in  
16 the interests, first and foremost of the accused, who is the person on trial, second,  
17 the victims, and third, the best use of limited resources which are available for such  
18 trials.

19 Assessment of the time needed by the parties to properly conduct their respective  
20 cases is never an easy one. The basis of such assessment made by a Trial Chamber is  
21 the information it receives from the parties about the nature of the evidence to be  
22 called and what is likely to be in issue, as well as the Chamber's own evaluation of  
23 the evidence and those issues during the pretrial period.

24 The reasons for arriving at the allocated times in this case are fully set out in  
25 the impugned decision. Those reasons arise from the Chamber's careful

1 consideration of the information it has received since it became seized of the case.

2 Should unforeseen and exceptional circumstances arise which mandate that further  
3 time should be granted, then the remedy, the proper remedy is for an application to  
4 be made to the Chamber at the appropriate time.

5 Moreover, in respect of the requirement that immediate resolution by  
6 the Appeals Chamber may materially advance the proceedings, the Appeals Chamber  
7 is in no position to make such an assessment, as indeed is recognised by the Defence  
8 when they offered the alternative course of reconsideration, which, as I have already  
9 said, is the proper course.

10 The Chamber is satisfied that this request does not fulfil the requirements of  
11 Article 82(1)(d) for the reasons just given and therefore refuses leave to appeal.

12 Yes, so we will resume Professor de Waal's evidence -- sorry, Mr Nicholls.

13 MR NICHOLLS: [16:00:02] Very sorry, your Honours. Just before you end, I  
14 wonder if we could have some guidance on when to bring the next witness tomorrow.  
15 Rather not have the witness waiting longer than necessary. And these things are not  
16 as easy to change on the fly, as I can see. So just some guidance.

17 PRESIDING JUDGE KORNER: [16:00:25] Mr Laucci, any -- are you able to assist on  
18 how much longer you're going to be tomorrow?

19 MR LAUCCI: [16:00:31] With difficulty, I would say I need the first session, that's  
20 for sure. Will I go over in some of the second session? That's the question mark  
21 that is still in my mind. But that will be it for sure and we'll be done before the end  
22 of the second session.

23 MR NICHOLLS: [16:00:55] That's fine. Thank you. We'll bring the witness --

24 PRESIDING JUDGE KORNER: [16:00:57] Well, I mean, I don't know whether there's  
25 going to be any re-examination. From discussion amongst ourselves, it's likely

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- 1 the Chamber may put one or two but not many questions I feel.
- 2 MR NICHOLLS: [16:01:10] I don't want to speak for Mr Jeremy, but at this stage, no,
- 3 no re-examination. That could change a bit, but I don't anticipate it. Thank you.
- 4 THE COURT USHER: [16:01:25] All rise.
- 5 (The hearing ends in open session at 4.01 p.m.)