

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor vs Ali Muhammad Al Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Rosario Salvatore Aitala, Judge Antoine Kesia-Mbe Mindua and
7 Judge Tomoko Akane
8 Confirmation of Charges Hearing - Courtroom 3
9 Tuesday, 25 May 2021
10 (The hearing starts in open session 9.35 a.m.)
11 THE COURT USHER: [9:35:44] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE AITALA: [9:36:07] Good morning, everyone. Welcome back
15 in the hearings for the case, the confirmation proceedings in the case against
16 Mr Abd-Al-Rahman.
17 Court officer, would you please call the case.
18 THE COURT OFFICER: [9:36:27] Good morning, Mr President, your Honours.
19 This is the situation in Darfur, Sudan, in the case of The Prosecutor vs Ali
20 Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), case number ICC-02/05-01/20.
21 And for the record, we are in open session.
22 PRESIDING JUDGE AITALA: [9:36:44] Thank you very much, Mr Court Officer.
23 So I give the floor to the Prosecution. You are left with 23 minutes. Thank you.
24 MS WHITFORD: [9:37:08] (Microphone not activated) Apologies.
25 Good morning, Mr President, your Honours. Yesterday I commenced my

1 submissions in relation to the crimes committed in Deleig and surrounding areas.
2 Counts 22 to 31 of the Document Containing the Charges.
3 I spoke about the displacement of civilians to Deleig following attacks on
4 predominantly four villages in the surrounding areas.
5 I spoke about the search and arrest operation perpetrated in Deleig by
6 Abd-Al-Rahman with Janjaweed and government forces which targeted the displaced
7 persons, in particular Fur males who they perceived as rebels or rebel sympathisers.
8 I then described how Abd-Al-Rahman and the other perpetrators brought the
9 arrested males to the Deleig police station and the ways in which they tortured and
10 humiliated them there.
11 I will now pick up the narrative from this point.
12 Abd-Al-Rahman, with members of the Janjaweed and government forces, questioned
13 detained Fur males about who they were, where they came from, and whether they
14 were *tora bora*, meaning rebels.
15 Some arrested males were released. For example, if they could show that they were
16 studying in Deleig or if they paid money to the perpetrators.
17 Witness P-718 was released by Abd-Al-Rahman after his teacher showed proof that he
18 was a student in Deleig. But Abd-Al-Rahman did not release his cousins. At
19 paragraph 71 of his statement, P-718 says, quote:
20 "[My teacher] explained that my cousins had attended the school but were on
21 previous registers. Ali Kushayb would not accept this and instructed his militia to
22 place my cousins behind me where the other captives were lying on the ground.
23 This was the last time I saw my cousins [...] alive." End quote.
24 Mr President, your Honours, it was in or near Deleig police station that
25 Abd-Al-Rahman murdered at least two detainees by striking them to the head with

1 an axe or stick. One of these victims was a Fur community leader from Massa
2 village known as Motor. Witness P-584 witnessed this murder. At paragraph 107
3 of his statement, he says, quote:
4 "[Ali Kushayb] was carrying a stick with a rounded end. He [...] then struck Motor
5 to the rear of the head with the stick causing him to fall to the ground. I saw Motor
6 on the ground and he was making unusual noises before he went silent." End quote.
7 A second victim was a Fur man widely known by the name Jenif, who was the
8 coordinator of the Popular Defence Forces in Garsila. One Prosecution witness
9 heard Abd-Al-Rahman say, quote: "I will not lose a bullet on you", end quote, before
10 striking Jenif to the head with an axe twice, splitting open his head and killing him.
11 I refer your Honours to paragraph 303 of the Pre-Confirmation Brief, in particular,
12 footnotes 958 and 959.
13 Abd-Al-Rahman then ordered the Janjaweed and government forces to load the
14 detainees who were lying on the ground onto the backs of vehicles. They used
15 vehicles from Abd-Al-Rahman's own convoy. Abd-Al-Rahman was present and
16 supervised the loading. Some people were thrown onto the backs of the vehicles like
17 bags of grain.
18 Multiple Prosecution witnesses saw the loaded vehicles drive out of Deleig in
19 different directions. And they saw the vehicles return empty of detainees and the
20 process repeated several times. Some onlookers realised that the detainees could not
21 have been taken to Garsila, the nearest town, in this short space of time. Others in
22 Deleig heard the sound of shooting coming from outside.
23 One man who was detained near the police station saw the vehicles return empty and
24 believed that he would be killed. He decided to escape. As he ran away from the
25 police station, he was shot at, but the bullets only grazed his body and he survived.

1 Mr President, your Honours, the vehicles loaded with detainees drove to different
2 locations outside of Deleig where the Janjaweed and government forces unloaded the
3 detainees and shot them to death. Abd-Al-Rahman went with the vehicles to one of
4 these execution sites. He ordered Janjaweed and government forces to unload the
5 detainees. Then he said, quote, "Implement the orders on these people." End quote.
6 This was an order to kill. The Janjaweed and government forces shot the detainees
7 with Kalashnikovs and a machine gun. And when they finished, they left the bodies
8 behind.

9 I refer your Honours to paragraph 309 of the Pre-Confirmation Brief in relation to
10 these facts.

11 Some people survived executions such as this. I will now read an account from one
12 of these survivors:

13 "I heard someone say 'Help! Help!' in Fur, so I walked in the direction of where the
14 voice was. Although it was dark I noticed I was stepping in a large pool of blood. I
15 tried to focus my eyes in the moonlight and saw bodies everywhere lying face down,
16 some with blood over them. I could hear a male crying for help and I saw someone
17 slightly raise their head amongst the bodies. I went over to him and recognised him
18 as Abdallah Mulenqwe. He was severely injured and he had been shot in his
19 stomach. He told me he was dying and he asked me to give a message to his family
20 that he loved his children. I told him I could not and said that he would do it
21 himself in order to raise his morale." End of quote.

22 I refer your Honours to paragraph 310 of the Pre-Confirmation Brief.

23 Among these bodies, this survivor also found his own cousin who had been shot to
24 death.

25 Abdallah Mulenqwe, also known as Abdallah Musa, made it back to Deleig.

1 Witness P-725 saw him there. At paragraphs 79 to 80 of his statement he says, quote:
2 "Abdallah Musa was in a terrible condition and it shocked us. He had what
3 appeared to be a gunshot wound to his temple and a hole through his eye socket.
4 I think it was his right eyeball that was missing and the wound was bleeding heavily.
5 Three fingers of his right hand were missing and his hand was also bleeding heavily.
6 He was in a distressed state and told us that everyone that had been taken away from
7 Deleig had been executed." End of quote.

8 Abdallah Mullenqwe died later that night.
9 Some victims survived despite sustaining horrific injuries. Witness P-850 visited one
10 such survivor on or about Saturday, 6 March 2004, the day after the killings began.

11 At paragraph 72 of his statement, he describes this, quote:

12 "[He] was badly wounded, I could see his intestines were spilling out and soil was
13 mixed in his wound. I was deeply affected seeing him in such pain. He was weak
14 and mumbled that he had been taken on Friday with the other prisoners to a riverbed
15 somewhere [near] Koska and Ordo. They had their hands tied and were blindfolded
16 before being shot. He managed to survive and wrapped his wound with his shirt,
17 but was still bleeding when he was found the following morning." End of quote.

18 In relation to the people who had been taken prisoner with him, this survivor told
19 Witness P-850, quote, "tell their families to stop looking for them, they are dead."
20 End of quote.

21 Mr President, your Honours, on your screen now is a map of the areas surrounding
22 Deleig. As I mentioned earlier, Prosecution witnesses saw vehicles loaded with
23 detainees heading out of Deleig in different directions. Marked on the map in
24 orange are locations that witnesses used to describe the direction of travel taken by
25 these vehicles. These annotations do not indicate the final destinations, but rather

1 the directions that the vehicles were headed towards when they left Deleig.
2 As you will see, the directions of travel are consistent with the approximate locations
3 of execution sites described by survivors. They are also consistent with areas where
4 witnesses discovered dead bodies in the days following the executions.
5 Your Honour, I note that the areas which will be marked on this map are approximate
6 only. They are intended as a visual aid to guide the Chamber's assessment of the
7 evidence.
8 As you have previously heard, Abd-Al-Rahman went with a convoy of vehicles to
9 one execution site. This convoy travelled on the main road running from Garsila in
10 the direction of Zalingei. And the main road is marked on the map for your
11 reference. The convoy then turned west where it reached a dried riverbed and it was
12 here that Abd-Al-Rahman ordered the execution of a group of detainees.
13 To the west of Deleig, an execution site was identified by a survivor near the village
14 of Douro. In addition, approximately 15 dead bodies were discovered, all of them
15 shot, in a location near Fere village. Among the dead bodies found near Fere village
16 were Witness P-718's three cousins who Abd-Al-Rahman had refused to release near
17 the police station days earlier.
18 To the east of Deleig, a survivor identified an execution site near Andi.
19 To the south of Deleig, survivors identified execution sites in the direction of the
20 mountains in Arawala, near Koska mountain, and between Koska and Ordo.
21 Also to the south, Witness P-714 found about 20 dead bodies in an area near Koska
22 mountain. Most appeared to have bullet wounds in the backs of their heads and
23 their clothing was soaked with blood.
24 Also to the south of Deleig, Witness 651 found more than 40 dead bodies. The
25 bodies were lying face down with their hands tied behind their backs. They

1 appeared to have been shot to the back or side of the head and there were large pools
2 of blood amongst them.

3 Witness P-671, who, as I described yesterday, saw his father and brother arrested by
4 Abd-Al-Rahman in a camp days earlier, helped to bury bodies in an area to the south
5 of Deleig. At paragraphs 52 to 54 of his statement he described this, quote:

6 "I saw the adult male bodies of 20 to 40 prisoners who were executed. I noticed they
7 were all lined up next to each other, all suffering gunshot wounds mostly in their
8 backs and heads. The majority were lying face down while some were twisted on
9 their sides and backs. There was a strong smell in the area. Some of the bodies that
10 I viewed had their hands tied behind their backs, wearing civilian clothes with a large
11 amount of dried blood around them. Some bodies had their hands untied. I
12 presumed they were some of the prisoners I saw lying face down near the Deleig
13 police station days earlier. Among the bodies, I managed to find my father and
14 brother who were lying apart from each other. Although both [...] had swollen faces,
15 I was sure it was them. The villagers and I started digging to bury the bodies near
16 the areas where they were found. I buried my father and brother myself in a
17 separate grave." End of quote.

18 Mr President, your Honours, although the main search and arrest operation took
19 place on or about Friday, 5 March 2004, the Janjaweed and government forces
20 continued to arrest people in Deleig for at least two more days. The killings also
21 continued.

22 On or about Sunday, 7 March 2004, another group of detainees was taken to an area
23 outside of Deleig and killed. There were at least five detainees in this group,
24 including four leaders of the Fur community. Their names, now seen on your screen,
25 were: *Umdah* Adam Kindiri, also known as Adam Adam Deguis of Forgo;

1 *Umdah* Jiddo Khamis of Gaba; *Umdah* Mohamed Suleiman Abdulshafa, also known as
2 Dirbo, of Tanako; Sheikh Ismail Abdulaziz, also known as Dikobi, of Garsila; and
3 Hassan Adam Musa, a Fur man from Garsila.

4 To understand Abd-Al-Rahman's role in these killings, it is important to understand
5 his involvement in the arrests and detention of these victims.

6 On your screen now is a map of the Deleig region. The towns of Deleig, Garsila and
7 Zalingei are all seen on this map. Located in Garsila was a Military Intelligence
8 Office belonging to the Sudanese Armed Forces, which was used by Abd-Al-Rahman
9 and others during this period as a place of detention.

10 Each of the five men who I have just named were detained here just prior to the
11 Deleig events. Two of them had been arrested on Abd-Al-Rahman's orders.

12 Another had been arrested following Abd-Al-Rahman's allegation that he
13 collaborated with the rebels. Also detained here was Jenif, the coordinator of the
14 Popular Defence Forces in Garsila.

15 On or about Friday, 5 March 2004, Abd-Al-Rahman went to the Military Intelligence
16 Office in Garsila and tried to take custody of *Umdah* Adam Kindiri, *Umdah*
17 Jiddo Khamis and Jenif. He was very upset to learn that these three men had in fact
18 been released. Instead, he took custody of *Umdah* Mohamed Suleiman Abdulshafa,
19 Sheikh Ismail Abdulaziz, and Hassan Adam Musa. Abd-Al-Rahman said he was
20 taking the detainees to the Military Intelligence Office in Zalingei. Instead,
21 Abd-Al-Rahman took the detainees to Deleig.

22 In Deleig Abd-Al-Rahman ordered a search for *Umdah* Adam Kindiri, *Umdah*
23 Jiddo Khamis and Jenif. Janjaweed and government forces arrested these three men
24 in Deleig on or about Friday, 5 March 2004. And as you heard earlier,
25 Abd-Al-Rahman then killed Jenif by striking him to the head with an axe.

1 Two days later, on or about Sunday, 7 March 2004, Abd-Al-Rahman was seen by
2 multiple witnesses in Deleig in a convoy of vehicles with the five detainees that I have
3 named. There is no evidence that these detainees ever arrived at the Military
4 Intelligence Office in Zalingei. To the contrary, within days, news reached the
5 people of Deleig that this group of detainees had been killed, and their bodies found
6 in a location near Fere village, approximately here.

7 The targeting of Fur community leaders in Deleig fits the pattern of killings in Mukjar
8 in the preceding weeks where Abd-Al-Rahman was responsible for the murders of at
9 least three *umdahs* and three sheikhs from the Fur community.

10 Mr President, your Honours, of course Abd-Al-Rahman did not act alone. He
11 committed the crimes in and around Deleig together with members of the Janjaweed
12 and government forces.

13 Such persons included, in particular: Lieutenant Hamdi Sharaf-Al-Din Sid Ahmed,
14 of Military Intelligence, who was also involved in the crimes committed in Mukjar:
15 Mussadiq Hassan Mansur, also of military intelligence; and Abd-Al-Rahman
16 Dawud Hammudah, also known as Hassaballah, an officer of the Popular Defence
17 Forces, who was involved in the crimes committed in Kodoom, Bindisi and
18 surrounding areas. Each of these persons made contributions to the commission of
19 crimes in and around Deleig.

20 As you have heard throughout this presentation, Abd-Al-Rahman's contribution was
21 essential.

22 Abd-Al-Rahman ordered and participated in the search and arrest operation. He
23 questioned detainees and decided whether or not they would be released.

24 Abd-Al-Rahman himself murdered at least two detainees and tortured, humiliated
25 and degraded others.

1 Abd-Al-Rahman ordered and supervised the loading of detainees onto vehicles that
2 transported them to execution sites around Deleig.

3 Abd-Al-Rahman was present at one of these execution sites and directly ordered
4 Janjaweed and government forces to shoot and kill a group of detainees.

5 Through these actions, Abd-Al-Rahman not only directly committed crimes himself,
6 but ordered, influenced, and assisted members of the Janjaweed and government
7 forces to also commit crimes.

8 PRESIDING JUDGE AITALA: [9:59:07] Madam Prosecutor, you are left with
9 one minute.

10 MS WHITFORD: [9:59:12] Mr President, your Honours, the crimes committed by
11 Abd-Al-Rahman in Deleig had a great number of victims. Between 100 and 200
12 predominantly Fur males were detained, tortured and degraded. At least 100 were
13 murdered. To date, the Prosecution has established the identities of 34 of the more
14 than 100 persons killed, and their names now appear on your screen. In addition, at
15 least 12 other Fur males survived attempts to kill them.

16 But, of course, there were many more victims than these. Each of these men and
17 boys had a family and came from a community. Through the arrests and killings in
18 Deleig, Abd-Al-Rahman sent a chilling warning to the whole Fur population. Even
19 the leaders of their communities were not safe.

20 One witness describes the moment when he heard that the males who had been taken
21 from Deleig had been killed. Quote: "I heard what sounded like many women
22 crying in Deleig. It sounded like the whole town was crying." End of quote.

23 The suffering caused by these crimes remains until today. The impact was described
24 by one witness. And, your Honour, with your permission I would end my
25 presentation with this quote from the witness. It may take me slightly over the one

1 minute.

2 PRESIDING JUDGE AITALA: [10:00:47] Conclude in one or two minutes, not more,
3 please.

4 MS WHITFORD: [10:00:51] As your Honour pleases.

5 Quote: "I could not bear talking about what I had experienced in Wadi Salih. I
6 avoided all discussions on what happened in Deleig with anyone and would leave the
7 room if the matter was raised. [...] I have the memories of running for my life and
8 seeing the old people from our villages crawling as they were attempting to flee. But
9 from all the painful memories I have from my past, what happened in Deleig is the
10 most painful one. I escaped Deleig but so many stayed behind and died."

11 As you've heard, there is ample and compelling evidence establishing substantial
12 grounds to believe that Mr Abd-Al-Rahman committed the crimes in Deleig and
13 surrounding areas as alleged in the Document Containing the Charges.

14 Mr President, your Honours, I thank you for your attention and I'll now give the floor
15 to my colleague, Mr Nicholls.

16 PRESIDING JUDGE AITALA: [10:01:52] Thank you very much.

17 Mr Nicholls.

18 MR NICHOLLS: [10:01:58] Thank you very much, your Honours. Just to say we
19 have concluded our presentations. We thank you and we ask that all counts be set
20 down for trial.

21 PRESIDING JUDGE AITALA: [10:02:09] Thank you very much.

22 Now we turn to the oral submissions of the Legal Representatives of the Victims.

23 Before doing this, I would kindly ask Madam Principal Counsel of the OPCV, would
24 you please explain to the Chamber how you have divided the time allocated to the
25 Legal Representatives of Victims. You have, as you know, two hours for all of you.

1 Please.

2 MS MASSIDDA: [10:02:41] Good morning, Mr President, your Honours. Thank
3 you. The presentation of the Legal Representatives will start today with the
4 presentation of Ms Clooney, followed by the presentation of Mr Amin, and I will
5 conclude. The presentations of Ms Clooney and Mr Amin should take an hour and
6 my presentation should take between 47 and 48 minutes.

7 PRESIDING JUDGE AITALA: [10:03:11] Thank you very much.

8 Then this hour will take us to the next break, so I immediately give the floor to
9 Madam Clooney, the first Legal Representative of Victims.

10 The floor is yours, please.

11 MS CLOONEY: [10:03:27] Thank you very much. Mr President, your Honours,
12 good morning. It is a privilege to appear before you today on behalf of victims of
13 crimes against humanity committed during the war in Darfur.

14 Almost 20 years ago, the forces of Sudanese President Omar Al Bashir launched a
15 campaign against the citizens of the Darfur region of Sudan that the UN estimates has
16 killed 300,000 civilians and displaced over 2 million others. The Sudanese
17 government conducted this campaign hand in hand with Janjaweed militiamen.

18 And as you have heard from the Prosecution, the *agid al ogada*, commander of
19 commanders, is a man in the room here today: Ali Abd-Al-Rahman, widely known
20 as Ali Kushayb.

21 I wish that all the survivors could be with us in this courtroom today. Victims of
22 these atrocities have waited 18 long years for this moment, 18 years to see a Janjaweed
23 commander finally face justice for war crimes and crimes against humanity. As
24 violent clashes continue today in this region of Sudan, with civilians attacked by the
25 Janjaweed's successor, the Rapid Support Forces, we see the price that is paid for

1 impunity. Cycles of violence continue. Victims' wounds cannot heal. And
2 reconciliation is forestalled.

3 Your Honours, this case is in many ways unusual. This Court has put presidents on
4 trial and many cases involve questions about what a senior official, remote from a
5 crime scene, mobilised others to do. That is not the case here. This suspect is
6 accused of being a senior leader, but not one who simply approved battle plans from
7 a distant capital. He is accused of using his whistle to give orders to Janjaweed
8 fighters from his horse. He is accused of stomping on detainees' backs as they lay
9 face down on the ground. He is accused of murdering civilians by hacking them to
10 death with an axe.

11 My clients include the direct victims of these crimes and eyewitnesses to them. They
12 saw the suspect face to face. And indeed many of the victims in this case knew the
13 suspect before the conflict. One victim said just last week, quote:

14 "I want my lawyer to tell the judges that ... [before the conflict] Ali Kushayb used to
15 come to our house ... because my father was an *umdah* [meaning chief] ... he used to
16 send me to run errands."

17 Other victims know the suspect from his pharmacy in Garsila. And a young Fur
18 mother from Garsila told me that she grew up calling him "Uncle Ali". So this is
19 personal and a chance for a reckoning that many victims had long given up hoping
20 for.

21 Your Honours, my submissions today will proceed in three parts: First, an
22 introduction about the victims I represent and why they have chosen to participate in
23 this process; second, I will describe their views and concerns about the charges that
24 the Prosecutor has presented for confirmation; and third, I will outline their views
25 and concerns about the scope of these charges.

1 Mr President and your Honours, it is a sobering responsibility to represent the
2 interests of 126 survivors who have so much hope in what this Court can do. The
3 victims in this case are orphans and widows. They discovered the corpses of their
4 brothers, fathers, childhood friends. They witnessed the rape of their wives and
5 sisters. They are themselves victims of such crimes. They are refugees. But before
6 that, they were farmers, drivers, cooks, traders, teachers and students. Many of
7 them lost everything they owned and their potential to live a happy and healthy life.
8 Some still bear the scars of torture. Others lost the ability to ever have children.
9 And, your Honours, of the 126 victims I represent, more than three-quarters still live
10 in a camp for the displaced. That's almost two decades after the devastation that
11 was unleashed in Darfur.

12 Your Honours, life in the camps means fighting each day to get enough food, water
13 and medicine. It means knowing that any woman who leaves the camp to collect
14 firewood is at risk of being attacked. It means knowing that without education or
15 opportunity, there is no way out. And knowing that there is nowhere to go, because
16 those who put you in the camp are still out there. One of the parents who is in a
17 camp told me that, quote, "we are living a very humiliating and undignified life" here.
18 Yet many children have known no other home.

19 Your Honours, the victims I represent are members of the Fur tribe. That is of course
20 no accident. As the Prosecution evidence shows, the Fur were systematically
21 persecuted by Janjaweed forces, acting in concert with the Sudanese military. And
22 the unimaginable pain they have suffered has been rendered more acute by the
23 complete absence of accountability. Instead of seeing the perpetrators in handcuffs
24 or in a dock, victims have had to watch them go back to a normal life, something the
25 victims can never have.

1 Indeed, Janjaweed leaders are today serving in government and the one senior leader
2 who was imprisoned in Sudan was held on unrelated charges and pardoned and
3 released earlier this year.

4 This is why the victims are all determined to pursue accountability for the crimes in
5 Darfur and why this case is the only chance they've got. This case is their first
6 opportunity to see justice. And they don't just want to watch, they want to
7 participate.

8 One victim I represent told me at the end of an interview, "I have to go now ... I'm
9 going into labour". She delivered a baby girl later that day. But she said she found
10 it so important to speak to her lawyers because, as she put it to me, "for 17 years,
11 nobody has asked me what happened to me".

12 Women who are victims of sexual violence have said that they haven't even told
13 their husbands what happened to them, but that they would be willing to speak about
14 it before this Court if invited to do so by the Prosecutor.

15 Your Honours, this determination is humbling and it is widespread. As one victim,
16 a male nurse who lives in an IDP camp in Sudan has put it: "I am ready to testify,
17 even if I have to walk to the Court alone."

18 In anticipation of this hearing, I asked my clients: What does justice mean for you?
19 They all seek reparations for the harm they have suffered, but they affirmed that
20 justice goes far beyond that.

21 Many victims highlighted that justice means an acknowledgment of the truth. I
22 quote: "Justice is recognition of what was done to us, of our suffering." Another
23 victim, a man suffering from malnutrition at a camp, echoed this idea saying, quote:
24 "Ali Kushayb should be tried and held accountable for his crimes in order to elevate
25 the pain ... suffered by his victims."

1 For others, justice means security and the ability to go home. In the words of one
2 victim, quote: "For me, justice means the safe return to our lands and villages and
3 the ability to exercise our rights freely as we did before the conflict."
4 Many victims said that justice also means stopping the cycle of violence. A Fur
5 teacher living in West Darfur said that a lack of justice would, quote, "embolden [the
6 suspect's] associates who are still roaming around with their arms and committing
7 crimes". Victims also highlighted that justice is for the next generation. As a Fur
8 farmer who is almost 70 years old put it: "If I live until the judgment day of
9 Ali Kushayb's trial, I would like to take a photo with my legal team so that I can leave
10 it to my children as a memory."
11 Finally, a number of victims said that justice empowers those who were powerless
12 and helps to restore the rule of law. As one survivor from Amjamena put it, quote:
13 "We were harmless. We didn't even have cane sticks. And [yet they] came with
14 machine guns." This was also the conclusion of another survivor, a Fur man who
15 still lives in a camp with his wife. He concluded that, quote: "Humans ... created
16 laws to [stop] evil from prevailing. When those laws are rightfully applied, evil is
17 stopped, and human dignity is restored. This is what justice means to me."
18 Your Honours, I would like to move now to the second part of my submissions,
19 where I will convey the views and concerns of the victims about the charges that have
20 been put before you for confirmation. It is my submission that, as the Prosecutor has
21 argued, there is ample evidence before you to confirm the charges and commit this
22 case to trial.
23 Under Article 61 of the Rome Statute, the Chamber must confirm the charges against
24 a suspect if it determines that there is, quote, "sufficient evidence to establish
25 substantial grounds to believe that the person [has] committed the crime charged."

1 And in the Yekatom case this Chamber clarified that the standard is met when the
2 Prosecutor offers, quote, "proof demonstrating a clear line of reasoning" underpinning
3 the allegations.

4 Your Honours, the Prosecution's theory of the case is clear. It is that Sudanese
5 soldiers and Janjaweed militiamen committed crimes against humanity and war
6 crimes in two municipalities of West Darfur and that this was in furtherance of a state
7 policy to attack the predominantly Fur civilian population in this area. Specifically
8 their case involves three key allegations: First, that there was an attack around
9 Kodoom and Bindisi in August 2003 that resulted in mass killings, rapes, pillage and
10 displacement; second, that about six months later, Fur men were rounded up,
11 detained, tortured and executed in and around the Mukjar police station; and third,
12 that shortly after that, the same thing happened in and around the Deleig police
13 station.

14 Your Honours, my submission is that, as my learned colleagues from the Office of the
15 Prosecutor summarised yesterday, the Prosecution has presented sufficient evidence
16 to meet the substantial grounds test for each of these charged incidents and each of
17 the 31 counts underlying them. And as a result, this case should proceed to trial.

18 Mr President, I need not repeat what you have already read in the case file and heard
19 from the Prosecution. But on behalf of victims I can, pursuant to Article 68 of the
20 Rome Statute, convey their views on these charges.

21 First, in relation to Kodoom and Bindisi, the views of the victims are fully aligned
22 with what the Prosecutor submits. Victims who were present in these areas have
23 described the impact of a large Janjaweed and Sudanese government force attacking
24 these areas in Land Cruiser vehicles, on horses, camels and on foot. One female
25 survivor recounts how she started running for her life as she witnessed, as she put it,

1 people, quote, "falling on the ground like locusts". Another victim, who is a mother
2 of seven, reports the anxiety, anger and fear she still feels after witnessing these
3 attacks during which her family was killed in front of her and her entire village burnt
4 to the ground.

5 The Prosecutor charges sexual violence as part of this incident as well and this is
6 supported by victims who have relayed harrowing accounts of rape and gang-rape at
7 these locations.

8 The Prosecution's description of pillage also mirrors the harm suffered by many
9 victims who shared that their homes, livestock and crops were burnt and who seek, as
10 one put it, to, quote, "rebuild what the war has destroyed" by participating in this
11 case.

12 Finally, the Prosecution alleges that the attacks in Kodoom and Bindisi served, quote,
13 "to expel ... the predominantly Fur population of these places" by forcing them to flee
14 into surrounding mountains and forests. I have heard from victims who found
15 themselves in this exact situation, forced to flee into the wilderness without food or
16 shelter as it was the only option in the words of one victim, quote, "to save" ourselves.

17 Your Honours, the second set of charges relates to the events in Mukjar. This
18 incident is of course connected to the first because, as the Prosecution explained
19 yesterday, victims fled the devastation in Kodoom and Bindisi seeking refuge in
20 nearby towns. But instead of finding sanctuary, they walked straight into an
21 execution site. The Prosecution submits that Janjaweed and government forces
22 arrested hundreds of predominantly Fur men and then transferred detainees to
23 Mukjar police station, where they were mistreated and ultimately executed.

24 Here too the Prosecution's charges align with what victims recount suffering in
25 Mukjar at this time. For instance, the accounts of Prosecution witnesses that the

1 suspect struck an *umdah* named Yahya Zarruq to his skull and shoulder bone with an
2 axe are consistent with the views of a number of victims who saw this gruesome
3 attack. And many of my clients were, like Prosecution witnesses, detained at Mukjar
4 police station. One victim had his leg broken from a beating in detention, and a
5 50-year-old Fur farmer and father of six was beaten so badly that he was left with
6 medical issues affecting his kidneys and pelvis to this day. Others report severed
7 nerves as a result of stab wounds and one of my clients had to have his shoulder
8 amputated after being stabbed in his shoulder with a bayonet. So the victims fully
9 support the inclusion of these charges.

10 Finally, as your Honours know, the third charged incident took place in Deleig in
11 March of 2004. The Prosecution submits that Janjaweed and Sudanese government
12 forces arrested between 1- and 200 Fur men in one day and then tortured and
13 murdered detainees at the police station and nearby locations. According to
14 Prosecution witnesses, at least two Fur men detained at the police station were beaten
15 to death with an axe-like object by the suspect himself.

16 Victims fully support the inclusion of these charges as well. My clients include
17 victims who witnessed the deaths of detainees who are alleged to have been killed by
18 the suspect. They include a family member of one of the *umdahs* who was allegedly
19 killed during these incidents and a family member of three victims identified by the
20 Prosecution as having been killed during these events.

21 The Prosecutor's allegation that detainees were forced to lie down outside the station
22 in the hot sun while they were walked on and beaten, including by the suspect, also
23 describes the experience of many of my clients. Victims described being forced to lie
24 face down with their open mouth in the dirt and being beaten with a bayonet or with
25 a stick. And like a number of Prosecution witnesses, many victims recount the

1 trauma of witnessing the suspect beating detainees and stomping on their backs with
2 his boots. Such victims have spoken of the severe sorrow that resulted from
3 witnessing these events, and also of rage because, as one victim put it, "the mass
4 killing happened before my eyes, [and] I was helpless, unable to do anything".
5 Finally, the victims have spoken of the harm they suffered as a result of the campaign
6 of persecution described in the charges. The Prosecution submits that the suspect
7 and his men targeted and denigrated Fur civilians. And this is unfortunately
8 entirely in line with the harm described by victims I represent, who have recounted
9 that they were called, quote, "sons of dogs, "slaves", "Nubian[s]" and '*zarga*', meaning
10 blue, on account of their darker skin.

11 Your Honours, this concludes the second part of my submissions. And before I close
12 I have a third issue to briefly address. This is to follow up on my written
13 submissions filed in advance of this hearing summarising the views and concerns of
14 victims about the scope of the charges.

15 Your Honours, as you have recognised in a previous case, the victims' right to present
16 their views and concerns may include concerns as to the choices made by the
17 Prosecutor in the formulation of the charges. And as I explained in my written
18 submissions, the victims are concerned that the charges as presently formulated are
19 unduly narrow.

20 Your Honours, I am well aware that once a trial has begun at this Court, the factual
21 basis of the charges cannot change. So my submissions at this stage focus on the
22 need to expand the investigation before the start of trial to include additional crimes
23 within the geographic scope of the case in Arawala, Mukjar and Garsila, but also
24 critically to focus on crimes of sexual violence.

25 The Prosecutor has confirmed in her Policy Paper on sexual and gender-based

1 violence that she will, quote, ensure that charges for such crimes are brought
2 whenever there is sufficient evidence to support them. And she repeated this
3 commitment yesterday. Yet, your Honours, at the moment, two of the three
4 incidents covered by the charges relate only to male victims. And the only charges
5 of sexual violence relate to a two-day period in 2003 when Janjaweed and government
6 forces are alleged to have raped at least 17 women, including one rape victim who
7 was relied on yesterday at the hearing by the Prosecution.

8 This tiny slice of accountability leaves so many women excluded. One of my clients,
9 a father of eight daughters, stated that this exclusion is, quote, "very frustrating and
10 shocking" since, quote, "the Janjaweed used rape as a weapon" and female survivors
11 "are ready to testify before the Court". In the words of another victim, who was only
12 15 when he saw his mother shot to death as she tried to prevent his sister being raped,
13 quote: "Rape is a very serious crime because it destroys communities" and if rape is
14 not charged "ongoing rape will never stop."

15 In my written submissions, I outlined the fact that the current charges do not reflect
16 the accounts of three victims I represent who have stated that this suspect personally
17 raped them within the time frame and at locations covered by the current charges.

18 These victims, and others highlighted in the submissions, believe that their accounts
19 must be fully investigated so that further charges can potentially be brought and so
20 that their voices are not silenced. Victims have also spoken of their concern that the
21 crime of genocide has not been charged and the issue of legal characterisation will be
22 addressed in due course.

23 Your Honours, Mr President, there is nothing more cowardly than what Ali Kushayb
24 and his men are accused of doing to innocent and defenceless civilians: Men shot in
25 the back as they tried to run away, young girls held down to be raped, children

1 ripped off their mother's backs and slaughtered. And yet I've never seen courage
2 like that of victims determined to tell their story and fight for justice even though they
3 risk violence from the same people in doing so.
4 So I stand here today on behalf of courageous victims in this case and on behalf of all
5 the victims of the Bashir regime and its Janjaweed allies, and I ask you to allow this
6 trial to go ahead. Because, your Honours, if perpetrators can continue to get away
7 with these crimes, they are destined to be repeated.
8 This is why, when Justice Jackson opened the trial at Nuremberg, he said: "The
9 wrongs ... we seek to condemn ... [are] so devastating, that civilisation cannot tolerate
10 their being ignored, because it cannot survive their being repeated."
11 Victims of the war in Darfur, who have had to watch the Janjaweed simply rebrand
12 themselves, be pardoned or even promoted, speak of the same imperative.
13 I'd like to end with a quote from a victim because I can't put it any more eloquently
14 than a young Fur man who was only nine when he witnessed the Janjaweed slaughter
15 his father and brothers. He said that, quote, justice "means preventing what
16 happened to us from happening to others by ensuring that criminals face the same
17 consequences as Ali Kushayb if they commit crimes like this" in the future.
18 Mr President, I hope that this hearing will mark a turning point in the history of
19 Darfur and that a trial in this case is only the beginning of the reckoning that the
20 victims deserve.
21 Your Honours, that concludes my opening submissions and I thank you very much
22 for your attention.
23 PRESIDING JUDGE AITALA: [10:32:39] Thank you very much for your
24 submissions, Madam Legal Representative of Victims.
25 Now Mr Amin, *sabah alkhayr*, good morning. The floor is yours.

1 MR AMIN: [10:33:11](Microphone not activated)

2 THE COURT OFFICER: [10:33:16] Counsel would need to turn on his microphone.

3 PRESIDING JUDGE AITALA: [10:33:19] Mr Amin, regretfully we haven't heard
4 anything because your microphone was off.

5 MR AMIN: [10:33:30](Interpretation) Mr President, your Honours, allow me in my
6 capacity as the Legal Representative of Victims to convey to you their views and
7 concerns in this hearing.

8 But before this, please allow me to thank the Court because it has allowed me to offer
9 my submission in the Arabic language, which is the language that is spoken mainly
10 by all of the victims. And this is a support, it's a mental support after all of the
11 suffering that they have suffered over 18 years ago.

12 Mr President, your Honours, I will speak about three key points: The first, a
13 corroboration of the evidence presented in the Prosecution's memo through the
14 accounts of the victims who I represent; secondly, a description of the harms that
15 afflicted the victims as a result of the crimes perpetrated against them; thirdly,
16 presenting the views and concerns of the victims in front of the Court.

17 Mr President, your Honours, now I will speak firstly about the corroborating
18 evidence presented in the Prosecution's memo through the victims' own accounts.

19 And here I would like to confirm that all of these crimes that have been suffered by
20 the victims are listed in the document CR2021/04694. And I have chosen only a few
21 to name, only these are just a few of the number of the victims who I have met myself
22 and I have heard to them personally and I represent them personally.

23 And here I would like to say that these victims confirm what has been presented in
24 the Prosecution's memo. It also confirms what we have heard yesterday and today
25 from the representative of the Prosecution in all of the crimes and charges that are

1 being charged against the -- Mr Ali Kushayb. We have examples of one of the
2 victims who have said, and here I quote: "Towards the end of 2003, my area was
3 attacked by the Janjaweed led by Ali Kushayb and Dayf Samih."
4 And here please consult annex A4 of the list of the evidence which is confirmed in the
5 Prosecution's memo through the victims, what the victims have suffered.
6 And here Ali Kushayb was accompanied by other people who were corroborating
7 with him. And here I continue and I quote that after the villages were burned, many
8 of the people had to flee to Mukjar, and the Janjaweed were arresting many of these
9 people who were fleeing out of Mukjar and they were persecuted and many of the
10 people were actually -- were arrested and especially Mayor Yahya Ahmad Zarruq.
11 And this is in annex A10 of the list of evidence.
12 This evidence, Mr President and the honourable Judges, supports what has been put
13 in paragraph 5, which addresses the contextual elements under Articles 7 and 8. It
14 also supports the paragraphs, numbers 73, 74, 77, 79, 80, 84, 85 and 89 of the
15 Prosecution's memo.
16 Another victim has said, and I quote: "Bindisi was attacked on August 14, 2003 by
17 the Janjaweed, who were led by Ali Kushayb and by one of their leaders called
18 Dayf Samih." Please consult annex A4. End of quote.
19 In this description in the way of the attack and all of the crimes that were committed
20 by the Janjaweed, he also said, and here I quote: "The Janjaweed were heading
21 towards Kodoom and during this attack Seder, Mele and Taringa were burned and
22 looted. And then they came from there to Bindisi, and once they arrived, they
23 burned and looted everybody's belongings. They also killed whoever they laid their
24 eyes on. (Redacted)
25 (Redacted)

1 (Redacted) He continues, and I quote: "We also lost all of
2 our belongings. We decided to leave on foot and to flee and we reached Mukjar.
3 And while we were there, anybody was facing arrest and even he had to face torture
4 until death. And at this point, I personally was arrested and they took me to the
5 camps where I was tortured physically and mentally."
6 And this is what happened in fact in what the Prosecution has presented. This
7 testimony corroborates the Prosecution's memo, in particular paragraph 5, addressing
8 the contextual elements under Article 7 and 8. It also corroborates paragraph 17 of
9 the common elements for modalities of individual criminal liability. It also supports
10 the points paragraphs 32, 36, 39, 41, 42, 55 and 56 of the Prosecution's memo, which
11 describes what happened just now that I have described.
12 Another victim has said, and I quote: "My village was burned completely in
13 December 2003 and so we moved to Deleig. And Ali Kushayb has attacked my
14 village and this was by Ali Kushayb, Mohamed Zain (phon) and Ali Omar. The
15 Janjaweed started to attack the area and they brought all of the men to a public square
16 which is called the square of Deleig and 120 of the men were killed, most of whom
17 were from the young adults and children." End of quote. Please consult
18 annex A12.
19 Mr President, your Honours, this is another evidence which supports and
20 corroborates what has been already mentioned by the Prosecution and especially here
21 it corroborates the Prosecution's memo, in particular paragraphs 2 and 5, addressing
22 contextual elements under Article 7 and 8. It also corroborates with paragraphs 17
23 and 19 of the common elements for modalities of individual criminal liability. And
24 it also corroborates with paragraphs 118, 119, 120, 126, 130 and 131 of the
25 Prosecution's memo.

1 Also another victim that I represent has said and -- has said to me personally: "On
2 August 14, 2003, our area was attacked by the Janjaweed militias led by Ali Kushayb.
3 They came from east Bindisi. During this attack, they killed everyone that they laid
4 their eyes upon by firing at them and setting the houses on fire, and they totally
5 demolished these houses, they destroyed the farms. The people's belongings were
6 looted and they burnt all the corpses and desecrated them." And he continues to say:
7 "A countless number of women were gang-raped by members of the Janjaweed. In
8 this event my parental aunt, my father's sister, was killed. And her name was
9 Kaltum (phon)." And here please refer to annex A7 of the list of evidence which
10 speaks about the aunt of the victim who was murdered on that day.
11 Mr President, this testimony corroborates the Prosecution's memo, in particular
12 paragraph 5, addressing contextual elements under Article 7 and 8. It also
13 corroborates with paragraph 17 of the common elements for modalities of individual
14 criminal liability, in addition to paragraphs 32, 36, 38, 41 and 55 of the Prosecution's
15 memo.
16 Another victim, and here I will mention the victims so that I support this, that there is
17 evidence that everything that has come here in the Prosecution's memo with regards
18 to the crimes that have happened, that there is evidence of that. This victim has told
19 me personally that, I quote: "Our area was attacked by the Janjaweed militias led by
20 Ali Kushayb and Abu Kassem (phon). Before this attack, there were many of the
21 vehicles which were government vehicles that came to tell the people that the militias
22 were coming to this locality to take their food. And here by "food", they mean the
23 food -- the corn that they have. And they warned the people not to be frightened of
24 them. A few hours later, the Janjaweed attacked and they set the villages on fire,
25 they killed the people, they raped the women, and they looted the livestock."

1 Mr President, here these quotes show us from the heart of these incidents what has
2 actually happened, in addition to the evidence that have been collected to confirm this.
3 This victim has also said, and I further quote: "We managed with my family and a
4 lot of other people to hide in the farms of -- in Wadi Baru (phon). And on the next
5 day, a second attack happened where the remaining -- whatever was remaining from
6 the previous day was also set on fire. On the same day, we went to Mukjar and we
7 stayed in Mukjar around eight months. Then we went back to Bindisi. After this,
8 Ali Kushayb has attacked once again and he killed, arrested and raped a number of
9 civilians."

10 This testimony, Mr President, also corroborates with the Prosecution's memo, in
11 particular paragraph 5, addressing contextual elements under Article 7 and 8, as well
12 as paragraph 17 of the common element of the modalities of individual criminal
13 liability, and also the paragraphs 32, 33, 36, 41, 51, 55 and 56 of the Prosecution's
14 memo.

15 Mr President, your honourable Judges, with all of my due respect with regards to
16 everything that has been attributed to Mr Abd-Al-Rahman, who is known as
17 Ali Kushayb, which constitute crimes against humanity as per Article 7 of the Statute
18 and as laid out in the Prosecution's memo, the Legal Representative of the victims
19 supports very strongly the Prosecution's memo's reference to these acts and believes
20 that Mr Abd-Al-Rahman, known as Ali Kushayb, knew that he committed these acts
21 as part of a widespread and systematic attack directed against the civilian population;
22 (b) that he intended for his behaviour to be part of this attack.

23 With regards to the acts attributed to Mr Abd-Al-Rahman, known as Ali Kushayb,
24 which constitutes war crimes as per Article 8 of the Statute and as laid out in the
25 Prosecution's memo, the Legal Representative of Victims represented by me, myself,

1 believe that Mr Abd-Al-Rahman, known as Ali Kushayb, knew that the people that he
2 targeted in these attacks which were included within and covered within the Geneva
3 Conventions of 1945. He also knew the factual circumstances proving this protected
4 status. And lastly, he knew the factual circumstances which proved the existence of
5 an armed conflict.

6 Mr President, your Honours, and now I will move to my second part of my
7 presentation which talks about the description of the harms that afflicted the victims
8 as a result of the crimes perpetrated against them by Mr Abd-Al-Rahman, known as
9 Ali Kushayb.

10 Mr President, your Honours, since 2003 and since all of these incidents happened, the
11 victims have been waiting for this moment where they can see those people that
12 represented to them a point of fear that they have been exposed to due to these crimes
13 that they have been exposed to so that the world would realise the brutality of these
14 acts committed against them and the atrocities they have been exposed to during this
15 time and in this locality.

16 Mr President, your Honours, the harms and losses that has affected the victims as a
17 result of these most serious crimes which have been committed against them by the
18 suspect, we cannot count actually and we cannot realise their negative impact on
19 these people and their families. And if we go through all of the acts that have been
20 perpetrated, we cannot number them because there are many negative impacts that
21 cannot be numbered. But it stays with the mentality of the people and it stays with
22 the -- in their lives, it stays as emotions and would only be removed by justice.

23 Mr President, your Honours, all of the victims have lost their families, they have lost
24 children, spouses, they have lost money, they have lost belongings. Some of them
25 were exposed to physical and mental torture, which they are still suffering from the

1 harms, material and psychological, and it remains with them until this moment.
2 Some of the women were raped and were also defenceless because they could not
3 resist -- they could not resist because it would have meant that they were killed.
4 Some had their belongings looted or destroyed.
5 The men felt subdued when they saw the women and the children being raped before
6 their own eyes without being able to protect these women because it would have
7 meant that they would have been immediately killed.
8 Some of the wives were severely subdued when they saw their own children killed
9 before their own eyes without being able to save them, which would have gotten
10 them killed too if they were to resist.
11 Some of the youngsters were repressed and terrified, deterring them from saving
12 their own families which would have also meant that they would have been killed if
13 they were to resist.
14 And lastly, after we described all of these atrocities, Mr President, your Honours, now
15 I would like to say that what has been committed by Mr Abd-Al-Rahman, known as
16 Ali Kushayb, and all of his men of all of these atrocities has put these victims in front
17 of two choices, either accept death immediately or continue the rest of their lives also
18 dead.
19 This in fact is what these victims are suffering right now. They feel that in fact
20 they -- because they have witnessed all of these crimes and atrocities, they were not
21 able to defend their own families, their wives, their children, their parents, their
22 fathers and their mothers.
23 Mr President, your Honours, I now move on to my third point and here I would like
24 to convey the concerns of the victims. Since the events have erupted, the victims
25 lives have collapsed and their hope to return home was lost. They have expressed

1 their views and their concerns as follows.

2 The victims that I represent have expressed how their suffering grew twofold. Not
3 only were they victims of the most serious crimes which have been committed in
4 those areas which we have talked about and during this time that we have talked
5 about as well, they have become now refugees with no rights or lacking from any
6 basic rights, living in very dire conditions out of their homeland. They have also
7 expressed to me that justice is delayed. And in truth, the slow justice is lack of
8 justice and they are all waiting 18 years now. They are hoping that one day they
9 would see with their own eyes that this justice would come true.

10 These victims do not feel safe anywhere they are, whether inside the country or
11 outside the country. This safety will only come to them if justice is served and if
12 those perpetrators are held responsible and accountable for these atrocities. The
13 victims in exile or in refugee camps are in the most severe forms of material and
14 mental suffering as they seek to earn a decent living. Their children are suffering
15 extremely in terms of their health and state of mind and they wish, and I wish as well,
16 that this justice would achieve security for them. I would hope that it would end
17 their suffering.

18 The victims look forward to achieve justice and to live in peace and to hold those
19 involved accountable, which upholds the principle of accountability and helping to
20 end impunity. Impunity leads to the repetition of these atrocities and crimes once
21 more.

22 Mr President, your Honours, one thing that is really also another concern of these
23 victims is that they hope to see justice. We hope that the path of the justice would
24 take up all of the investigation of other crimes as well, which we hope would -- that
25 there would be enough to put this case in front of a trial.

1 Mr President, your Honours, I finish my presentation and I thank you very much
2 now for listening to me. Thank you.

3 PRESIDING JUDGE AITALA: [10:58:17] Thank you very much, Mr Amin, for your
4 presentation. And indeed it was a pleasure for the Chamber to allow you speak in
5 your beautiful language and we thank the interpreters for translating your
6 submissions.

7 Well, now we will still have five minutes, but I deem it appropriate to break now. So
8 we'll adjourn for half an hour and when back, the floor will be for the principal
9 counsel for OPCV, Madam Massidda. Thank you very much.

10 THE COURT USHER: [10:58:55] All rise.

11 (Recess taken at 10.59 a.m.)

12 (Upon resuming in open session at 11.31 a.m.)

13 THE COURT USHER: [11:31:27] All rise.

14 Please be seated.

15 PRESIDING JUDGE AITALA: [11:31:47] Good morning. Welcome back.

16 So now the floor is for you, Madam Massidda, please.

17 MS MASSIDDA: [11:32:00] Thank you very much, Mr President.

18 I have provided the Chamber, parties and participants with a list of authorities which
19 I will not quote in my speech in order not to interrupt the flow. But the list is
20 available now. Thank you.

21 PRESIDING JUDGE AITALA: [11:32:20] Thank you. This is noted.

22 MS MASSIDDA: [11:32:23] Mr President, your Honours, the armed conflict between
23 the Government of Sudan and its allied militia, the Janjaweed, against the two rebel
24 groups, the Sudanese Liberation Movement, SLM, and the Justice and Equality
25 Movement, JEM, was ruthless and brutal in its impact on the civilian population.

1 The causes of the conflict in Darfur are numerous.

2 The word "*Dar*", as in Darfur is generally interpreted as "homeland". It can therefore
3 be concluded that Darfur was originally the land of the Fur people. In reality,
4 however, Darfurians represent a multitude of ethnic and linguistic groups. The
5 population is a complex mosaic of more than 80 Arab and African tribes. These
6 diverse groups share similar physical and cultural features.

7 A long history of internal migration, mixing and intermarriage in Darfur has created
8 remarkable ethnic fluidity. Ethnic labels are often used only as a matter of
9 convenience. For instance, in the Darfur context, for the most part, the term "Arab"
10 is used as an occupational rather than an ethnic label for the majority of the
11 Arabic-speaking groups who are pastoralists. On the other hand, most of the
12 non-Arab groups are sedentary farmers and include the Fur, the Masalit and the
13 Zaghawa. However, even those occupational boundaries are not set in stone.
14 For several centuries, the Fur were the dominant political power in the region,
15 particularly in the precolonial era. In the 17th century they established the Fur
16 kingdom which remained the leading regional power until 1874. Following the
17 overthrowing of the Turco-Egyptian rule in 1884 and then of the Mahdist state in 1898,
18 Sudan became an Anglo-Egyptian domain.

19 Since its independence in 1956, Sudan has been ravaged by a succession of civil wars
20 and political instability. This situation can be attributed to deeply rooted regional,
21 political and economic inequalities that have persisted throughout Sudan's colonial
22 and post-colonial history. These inequalities are exemplified by the political,
23 economic and cultural hegemony of a small group of Arabic-speaking Sudanese elites
24 who have held power and systematically marginalised the non-Arab and non-Muslim
25 groups in the country's peripheries.

1 Other contributing factors to the Darfur conflict were drought and famine. In the
2 1980s and 1990s, drought, desertification and population growth combined to
3 produce a sharp decline in food production and, with it, widespread famine and food
4 insecurity. This exacerbated the competition over resources and over land
5 ownership.

6 Land is yet another factor of the conflict. Under the Fur kingdom, land ownership
7 was based on the *hakura* system. The term "*hakura*" in Arabic means ownership.
8 According to this system, each group was given a *hakura*, or *Dar*, which is regarded as
9 the property of the whole community. The local chief was the custodian of the *Dar*
10 and responsible for its allocation to members of the group for cultivation. The *Dar*
11 was revered by the people of Darfur. Belonging to a *Dar* became an integral part of
12 the person's identity.

13 Successive rulers of Darfur allocated land to specific individuals such as high-ranking
14 officials of the kingdom for personal ownership. Under British colonial rule, the
15 system was modified and land assigned following the system of native administration
16 where specific territories were assigned to each ethnic group.

17 In this context, conflict between pastoralists and sedentary farmers became an
18 important cause of the Darfur violence. There was indeed frequent friction between
19 the settled tribes and the nomadic tribes mainly due to the lack of resources such as
20 land, livestock, water and other ecological resources.

21 Environmental degradation and competition over resources are undoubtedly some of
22 the principal causes of the conflict in Darfur. However, the conflict was also the
23 result of a long history of ethnic marginalisation by Sudan's ruling elite. In Darfur,
24 Arab tribes considered they were not sufficiently represented in the Fur-dominated
25 local administration, and in 1986, a number of Arab tribes formed what would

1 become known as the Arab alliance, aimed at establishing their political dominance
2 and control of the region. Meanwhile, Fur leaders mistrusted the increasing
3 tendency of the government to favour the Arabs.

4 This fear of Arab domination was exacerbated by the Sadiq El Mahdi government,
5 which between 1986 and 1989 adopted a policy of arming Arab Baggara militia from
6 Darfur and Kordofan known as Murahleen.

7 Similar to militia involved in the Darfur conflict in 2003, the Murahleen formed a
8 militia based in Darfur, employed by El Mahdi government and its military successor
9 for almost 20 years as counterinsurgency force against the southern-based rebels, the
10 Sudan People's Liberation Movement/Army, SPLM/A. The Murahleen primarily
11 focused on raiding, looting, displacing, enslaving and punishing the Dinka and Nuer
12 civilians living in SPLA territory from which community the latter forces were in part
13 drawn.

14 In 1988, 1989, the intermittent clashes in Darfur evolved into full-scale conflict
15 between the Fur and Arab communities. Rather than working to defuse tensions
16 and implement peace agreements, the Khartoum government inflamed those by
17 arming the Arab tribes and neglecting the core issues underlying the conflict over the
18 resources: The need for rule of law and socioeconomic development in the region.
19 The conflict which raged Darfur from 2003 has therefore deep routes.

20 Your Honours, the victims' accounts of the events corroborates the Prosecution's case.
21 In 2003, the tension increased in Darfur and triggered multiple episodes of violence.
22 As a result, a conflict of a non-international character started between the
23 Government of Sudan and Janjaweed militia on one side and rebel armed groups on
24 the other side.

25 As a reaction to the SLA attacks of August 2003 in the Mukjar area, following a policy

1 initiated in other parts of Darfur, the Government of Sudan recruited and mobilised
2 militia forces in West Darfur. This force was conceived as a key addition to the small
3 number of army troops deployed in the region and to the use of aerial bombardments.
4 These militias included mainly nomadic or semi-nomadic groups of Arab origin.
5 The government-backed militias became known by the victims as Janjaweed.
6 The Sudanese government and the Janjaweed militia had a clear hierarchy. They
7 were well structured and organised, armed and able to plan and successfully carry
8 out hundreds of attacks against the civilian population. They not only had effective
9 tactics in implementing attacks, but had significant military power.

10 Mr Abd-Al-Rahman, known to the victims as Ali Kushayb, was aware of the existence
11 of the armed conflict and engaged in military operations. In the course of the attack,
12 several crimes were committed, including murder, torture, cruel treatment, pillaging
13 and rape.

14 All these elements correspond to the contextual elements and underlying acts of war
15 crimes as established by the practice of this Court described in the Document
16 Containing the Charges and in the Prosecution Pre-Confirmation Brief.

17 The account of events provided by the victims reveals that government forces and
18 militia targeted unarmed women, men and children. Victims suffered from a series
19 of acts of violence or, put in other words, a campaign or operation carried out against
20 the localities where they lived. The campaign involved the multiple commission of
21 acts referred to in Article 7(1) of the Statute against a part of the civilian population
22 because of its perceived assimilation and support to the rebel groups.

23 Clearly, your Honours, the victims of the attacks were not taking active part in the
24 conflict which was raging in Darfur at the time relevant to the charges. They were
25 instead part of the civilian population.

1 In accordance with the chapeau of Article 7(1) of the Statute, the attack against a
2 civilian population has to be widespread or systematic in the sense of the attack being
3 massive, frequent, carried out collectively with considerable seriousness, directed
4 against a multiplicity of victims, or involving patterns of crimes in the sense of
5 non-accidental repetition of similar criminal conduct on a regular basis. And indeed,
6 in the present case the attack was both widespread and systematic.

7 The victims' accounts of events reveal that the crimes they suffered from were neither
8 spontaneous nor isolated acts of violence. They were instead part of a planned,
9 directed and organised attack against them because of their ethnicity and because
10 perceived as supporters of the rebels.

11 A victim describes the attack in the village of Kodoom as follows, and I quote:

12 "I was awakened by the sound of heavy artillery and approaching Janjaweed. The
13 Janjaweed were in front and then there were two cars from the police behind them
14 carrying the ammunition." End of quote. While many fled the village and survived,
15 a lot of elderly or sick people who could not flee were killed. I quote again:

16 "Everyone ran away to save their lives. Most of the old men were killed that day.
17 Everyone who didn't run was killed." End of quote.

18 Victims describe the attacks to the villages in a consistent way. The first sign was a
19 threatening drone of a plane: Old Russian Antonovs flying over remote Sudanese
20 villages, dispatching their load of bombs. They exploded among the straw-roofed
21 huts sending terrified families rushing for safety, but there was none.

22 Next came the Janjaweed, mounted on camels and horses backs with communications
23 equipment such as Thuraya satellite phones, and armed with AK-47 rifles and whips.
24 The Janjaweed murdered any man and boy of fighting age, gang-raped the women,
25 often in front of their families, and burnt their houses. The villagers' cattle were

1 stolen, all their possessions carted off. Other victims say they were attacked by
2 helicopter gunships. The survivors of aerial bombardment were attacked in
3 follow-up offences led by Janjaweed, regular government soldiers, or both.
4 Janjaweed are invariably said to use horses and camels, while government soldiers
5 are described as travelling in military vehicles. Both dressed in combat fatigues and
6 both well-armed.

7 Some victims talk of being stripped and repeatedly whipped or beaten with the butt
8 of a gun. The Janjaweed round up herds of cattle, camels and goats and steal all
9 their other possessions. The theft on livestock was aimed at rendering the villagers
10 destitute for life. Your Honours, livestock is the main form of wealth in Darfur.
11 Throughout much of the region, pastoral population count their wealth in the head of
12 livestock they possess. The impact of the theft of livestock on the lives and
13 livelihoods of millions of people in the region was colossal.

14 Villages that were destroyed and emptied of their population were selected on the
15 basis of ethnicity. Burned Fur and, to some extent, Zaghawa and Masalit villages
16 were sometimes in close proximity to villages belonging to other ethnicities that have
17 not been touched and in which the population continued to live. The intact villages
18 sometimes belong to Arab and other non-Zaghawa, non-Masalit, or non-Fur ethnic
19 groups.

20 The attack launched against the civilian population was conducted pursuant to or in
21 furtherance of an organisational policy.

22 The evidence presented by the Prosecution suggests that since the beginning of the
23 rebel insurgency in February 2003 and in particular since the escalation of the conflict
24 in mid-2003, the Government of Sudan pursued a military strategy, deliberately
25 targeting the civilian population through a combination of indiscriminate and

1 deliberate aerial bombardments, a scorched earth campaign, and denial of access to
2 humanitarian assistance. The evidence points to a systematic campaign by
3 government forces and allied militias to violently force rural civilians from their
4 homes and render them destitute and corralled in government towns and camps.
5 Villages were not attacked randomly, but were emptied across wide areas in
6 operations that reportedly lasted for several days or were repeated several times until
7 the population was finally driven away.

8 The evidence also points at mass executions of men belonging predominantly to the
9 Fur tribe in Wadi Salih. The men were killed on the same day in different places in
10 Mukjar and Deleig.

11 In particular, at the beginning of March 2004, Sudanese forces, including local officials,
12 police and Janjaweed militias, rounded up and killed more than 200 displaced Fur
13 men, including community leaders in a coordinated sweep of Garsila, Deleig and
14 Mukjar areas. People displaced from villages east of Garsila and Deleig were
15 specifically targeted.

16 A victim of the events in Deleig recalls, I quote:

17 "The soldiers and the Janjaweed went to Sindu to fight the rebellion. When they
18 came back they surrounded Deleig and caught a lot of people - maybe 100-120 - and
19 collected them in the police station over three days. Then they took them away in
20 groups and they never came back. People saw them being taken away in groups of
21 forty, twenty-five - they were killed in different places. The killed men were buried
22 in mass graves. We could not properly buried and mourn our loved ones." End of
23 quote.

24 The operation was clearly planned and coordinated over a wide geographic area.

25 Amongst the men taken were sheikhs and *umdah*. A victim who survived one of the

1 mass executions explains, I quote:

2 "We were taken in trucks and cars to a valley a few miles from Deleig. Then they
3 lined us up, made us kneel down and bend our heads - and shot us from behind.
4 I was left for dead. When the Janjaweed left, I waited for some time, maybe half an
5 hour, and then I ran as fast as I could back to Deleig. When I arrived at home, my
6 wife was scared and terrified in seeing me. My clothes were covered in blood and
7 I was in really bad state." End of quote.

8 Victims who survived, managed to escape or were released, all recall the atrocities
9 they suffered from: Obligated to lay down on their stomach for hours in the
10 overcrowded police station or tied to trees or in the ground in the open area outside
11 the police station, with no water or food, some for days, repeatedly humiliated,
12 mistreated, tortured.

13 In Mukjar events followed a similar pattern.

14 These elements correspond to the interpretation by different Pre-Trial Chambers of
15 this Court of the policy requirement and of the notion of organisation which cannot
16 be understood in a restrictive way.

17 All these factors correspond to the contextual elements of crimes against humanity, as
18 identified in the practice of the Court, described in the Document Containing the
19 Charges and in the Prosecution Pre-Confirmation Brief.

20 In May 2004, the United Nations High Commissioner for Human Rights issued the
21 report on the situation of human rights in the Darfur region of Sudan. He stated that
22 the situation in Darfur was characterised by the following features, I quote:

23 "(a) [r]epeated attacks on civilians by the military forces of the Government of the
24 Sudan and its proxy militia; (b) [t]he use of indiscriminate aerial bombardments and
25 ground attacks on unarmed civilians; (c) [t]he use of disproportionate force by

1 government and Janjaweed ...; (d) ... Janjaweed operated with total impunity and in
2 close coordination with the forces of the Government of Sudan; (e) ... the attacks
3 appeared to have been largely ethnically based with the groups targeted being
4 essentially Fur, Zaghawa, Masalit tribes, which are reportedly of African origin [...];
5 (f) [t]he pattern of attacks on civilians includes killing, rape, pillage, including of
6 livestock, and destruction of property, including water sources; and (g) ... there has
7 been massive, often forced, displacement of much of the population of Darfur."
8 End of quote.

9 Your Honours, I will not address in detail the charges against the suspect. The
10 Prosecution has provided ample illustration of the type of crimes committed.
11 For the purpose of my presentation today, I will limit my observations to two specific
12 matters of specific importance for the interests of the victims we represent: First, the
13 crime of persecution; second, the crime of forced displacement.
14 The commission of the crime of persecution under Article 7(1)(h) of the Statute
15 requires the infliction of serious bodily or mental harm amounting to intentional and
16 severe deprivation of fundamental rights contrary to international law by reason of
17 identity of a group or collectivity committed against any identifiable group or
18 collectivity on political, racial, national, ethnic, cultural, religious, gender or other
19 grounds universally recognised as impermissible under international law.
20 Victims recall the particular cruelty of the Janjaweed acts. According to them,
21 murders of civilians were widespread. So were the rapes. Victims also put
22 emphasis on the crimes of pillaging, looting, destruction of properties and land.
23 They explain that the militia took everything they owned, pans, cups, clothes,
24 livestock, representing the key source of income of the affected people. All these acts
25 were clearly intended to cause suffering and injury to the members of a targeted

1 group. Victims indicate that they were targeted because belonging to the ethnicity of
2 a rebels group and therefore assimilated to them.

3 Victims also explain that it was notorious that the government wanted to target them.

4 I quote: "They targeted us because we are Fur." End of quote. Quote again: "We
5 knew that they would have attacked us because they thought that we were on the
6 side of the rebels." End of quote.

7 These are sentences frequently used by victims to explain why they were targeted.

8 Therefore, the recognition of the crime of persecution in connection with the attacks
9 and the events in Deleig and Mukjar is an important element that they hope will be
10 retained by your Honours.

11 Another important aspect of the victimisation in this case is the forcible displacement
12 and its extent.

13 The accounts of the victims corroborate the evidence presented by the Prosecution on
14 the displacement of mainly Fur civilians from their places of residence. Victims
15 recall that they were forced to flee to escape their systematic extermination,
16 abandoning their goods, sometimes their relatives, trying to survive. The exodus
17 was particularly challenging since victims were left with no means of transportation
18 and had to proceed mainly by foot. Some of them managed to be transported in
19 trucks transporting millet. The journey from hell to a relatively safe place was long,
20 with little or no food available. As a result, a number of victims died along the road,
21 mostly elderly and babies or young children.

22 All elements of the crimes of forced displacement are present in this case:

23 One, victims did not have a free or genuine choice to remain in the territory where
24 they were present. In the words of the ICTY Appeals Chamber, the displacement is
25 a crime when is "forced, carried out by expulsion or other forms of coercion such that

1 the displacement is involuntary in nature, and the relevant persons had no genuine
2 choice in their displacement." It is indeed the absence of genuine choice that makes
3 the displacement unlawful. And the jurisprudence of the ad hoc tribunals
4 interpreted the word "forcible" to include threats, the use of force, fear of violence and
5 illegal detention.

6 Second, the forceful character of a displacement is determined not only by physical
7 force but also by coercion, such as that caused by fear of violence, duress, detention,
8 psychological oppression, abuse of power, or taking advantage of a coercive
9 environment. In the words of the investigating judges in the second case at the
10 Extraordinary Chambers in the Court of Cambodia, "[t]he population movement
11 occurred by force since the population was coerced to move by threats, physical
12 violence, or by orders which they felt would lead to serious danger if disobeyed."

13 Three, several acts amounting to coercion were committed. In this regard, in the
14 Kenyan cases, Pre-Trial Chamber II considered that "acts of burning, destruction of
15 property and killing [...] resulted in coercing [victims] to flee the area" and
16 "destruction of homes [...], the brutality of the killings and injuries, the rape of
17 perceived ODM supporters, and the public announcements to the effect that 'all Luos
18 must leave', amounted to coercion, which caused the attacked residents [...] to leave
19 their homes and seek shelter in IDP camps."

20 This leads me, your Honours, to the issue of the criminal liability to
21 Mr Abd-Al-Rahman.

22 The evidence adduced by the Prosecution suggests that the suspect played a key role
23 during the period covered by the charges. In particular, the evidence shows that he
24 was directly involved in the establishment of the objectives and strategies of the
25 campaign of attacks against part of the civilian population, including ordering the

1 attack and brutalise civilians.

2 According to the victims, one of the leaders of the Janjaweed militia forces in the area
3 was a man named Ali Kushayb who was based in Garsila. He was known in the
4 area because he was the owner of a shop, pharmacy, for animal products in Garsila
5 where a lot of farmers bought material. This explains why and how victims are able
6 to identify Mr Abd-Al-Rahman, known to them as Ali Kushayb, as the leader of a
7 militia.

8 Mr Abd-Al-Rahman made an essential contribution to the commission of the crimes
9 charged, being present at the location of the crimes, ordering the crimes, participating
10 directly in the commission of the crimes. He had knowledge and intent in the
11 meaning of Article 30 of the Statute.

12 Mr President, your Honours, the charges brought by the Prosecution today against
13 Mr Abd-Al-Rahman represent an infinitesimal part of the crimes committed in
14 West Darfur during the relevant period.

15 Victims indicate that between at least August 2003 and March 2004, Janjaweed and
16 government forces attacked several villages, predominantly Fur, in the areas
17 surrounding Deleig, Garsila, Mukjar and Shattaya, including Arawala, Forgo, Taringa,
18 Andi, Fere, Kaskeidi, Seder, Gausir, Um Jameina, Tendi and Tiro.

19 In their accounts, victims recall that between 14 and 17 August 2003 at least seven
20 villages in the area were attacked by government and militia forces.

21 By November 2003, towns like Bindisi and Mukjar more than tripled in size due to the
22 arrival of displaced people from the surrounding villages. In accordance with
23 Human Rights Watch reports, more than 80 villages in the areas were attacked, looted
24 and burned, sometimes more than once.

25 After the collapse of the ceasefire talks between the government of Sudan and the

1 rebel groups in December 2003, the then Sudanese President Omar Al Bashir
2 promised, as reported by Agence France Presse on 31 December 2003, I quote, "to
3 annihilate the hirelings, traitors, agents and renegades". End of quote.

4 Following these words, the Sudanese government, together with allied militias,
5 conducted a massive offensive throughout Darfur in January and February 2004,
6 impeding access to humanitarian agencies which tried to assist hundreds of
7 thousands of homeless internally displaced persons.

8 Mr President, your Honours, it is a history of unrest, disorder, lost chances and
9 opportunities which had, still have and will have an impact on generations. What
10 has been the impact of the crimes on the victims?

11 There are no precise figures and estimates vary, but according to the United Nations
12 High Commissioner for Human Rights on Impunity and Accountability in Darfur for
13 2014, by that time over 300,000 people have been killed in Darfur since the conflict
14 started in February 2003. In October 2020, the United Nations Mine Action Service
15 concluded that the conflict in Darfur resulted in the death of up to 300,000 people and
16 the displacement of over 2.6 million people, majority of whom are still in internally
17 displaced persons camps.

18 The conflict had profound and devastating consequences for the victims. All of
19 them endured psychological trauma and physical suffering. The murder of their
20 loved ones is indelibly marked in their memory and often associated with
21 development of post-traumatic stress disorder symptoms.

22 Abuses against women and girls have been widespread and systematic. The
23 Janjaweed targeted women and girls in their villages, while fleeing, and in IDP camps
24 in total impunity and with the acquiescence of the government forces. Victims
25 report gang-rapes, sexual slavery, rapes of pregnant women, while women who have

1 resisted rape have been beaten, tortured, sometimes killed, or had their legs broken to
2 prevent their escape. Used as a tactic of war by the Janjaweed, the main goal of
3 rapes was community destabilisation.

4 Rape was used as a means not only to abuse and degrade the woman, but also to
5 humiliate the male members of the family and community by exposing their inability
6 to protect the women. This practice has been marked by relentless cruelty. Many
7 amongst the women who were pregnant at the time are reported to have been killed
8 as symbolising the enemy and its reproductive capacity.

9 Because of the war and the gender dimension of the violence during the conflict, in
10 which men were essentially killed and women raped, many men have died or
11 disappeared. As a consequence, a large number of women were left alone to care for
12 their children, with no possible access to adequate treatment or counselling. Fear of
13 retaliation, shame and stigmatisation also prevented them from accessing appropriate
14 health care.

15 All the victims were also materially affected having lost their means of subsistence
16 and resources. They are lacking an income today and some of them live in extreme
17 poverty.

18 Because of the attacks, life in the villages became impossible. The widespread
19 destruction of property undermined the chances of most victims to return to their
20 places when peace is eventually achieved and security conditions allow.

21 The raids displaced millions of civilians and led to long walks to displacement camps,
22 during which victims were exposed to further attacks in addition to the terrible
23 conditions of the displacement, suffering from hunger, thirst, lack of medical care.

24 Many victims still live today in exile, either in camps for internally displaced people
25 or in refugee camps outside Sudan.

1 In many of the countries where victims fled, such as Egypt or Israel, they live at the
2 margin of the society in dire economic and health conditions. A significant number
3 of them report that after more than 15 years, they are still waiting for the
4 determination of their status of refugee, a condition which will allow them to receive
5 some assistance. Such precariousness prevents them from finding a decent job, let
6 aside the possibility to receive medical treatment and/or an education.

7 The displacement has indeed long-lasting consequences on the life of victims. When
8 narrating their personal stories and sufferings, they also provide details about their
9 living conditions and challenges faced today in the IDP camps or as refugees or
10 asylum seekers.

11 Remarkably, however, your Honour, they still have hope. When asked about their
12 future, most of the victims say they want to go back to Darfur when Darfur is safe and
13 when they can get back their lands.

14 Mr President, your Honours, the start of these proceedings has finally given victims
15 hope. When contacted for the purpose of explaining them their right to participate
16 and helping them to complete application forms, they unanimously expressed their
17 gratitude for being able to finally convey their story and sufferings to someone.

18 They want the judges to know what happened to them, but they also insist on
19 indicating that their quest for justice will be satisfied only when the full extent of the
20 crimes committed and of their victimisation will be recognised. For victims, these
21 proceedings represent a starting point. They hope that the trial will follow and that
22 further investigations will be conducted.

23 Victims expect an independent, impartial, transparent and efficient justice, capable of
24 establishing the truth with regard to the crimes they suffered from.

25 Participation in the proceedings is first and foremost an individual step, which

1 enables each victim to share his or her story and knowledge of the events. Victims'
2 participation is also a matter of fighting impunity, making accountable the ones
3 responsible for the crimes so that justice is done and moving towards reconciliation
4 becomes possible.

5 We can assure you, your Honours, that the mere fact of being represented and the
6 ability to voice their concerns is part of what could be referred to or considered as
7 reparation in the broad meaning of the term.

8 This concludes, your Honour, the presentation of the victims participating in these
9 proceedings. We thank you, on behalf of the victims that we represent and of the
10 applicants that hopefully will participate in the future of the proceedings, for listening
11 today to their views and concerns.

12 PRESIDING JUDGE AITALA: [12:19:44] Thank you very much.

13 I thank the three Legal Representatives of Victims for their submissions on the merits.

14 This now takes us to the submissions of the Defence. It's 12.20. Very good.

15 Mr Laucci, the floor is yours.

16 MR LAUCCI: [12:20:14](Interpretation) Thank you, Mr President. Should I count
17 on having 40 minutes ahead of me for this session?

18 PRESIDING JUDGE AITALA: [12:20:26] Yes. I will let you know when the time
19 has gone. Please proceed.

20 MR LAUCCI: [12:20:31](Interpretation) Very well.

21 Mr President, your Honours, I would also like to greet Madam Prosecutor who is
22 present this morning, doing me the honour of being present this morning. And I am
23 addressing the Court before you today with great humility, great humility in taking
24 the floor after the presentations that we have heard, full of eloquence and compassion
25 on the part of the three Legal Representatives for Victims.

1 Now, what the Defence intends to expose over the four hours to come will not be
2 agreeable for the victims. It might be a source of deception and frustration. And as
3 an introduction, I would like to ask for their apology.

4 And as the Defence intends to demonstrates, Mr Ali Muhammad Ali Abd-Al-Rahman
5 is not the right individual, is not the correct suspect, is not Ali Kushayb, and to send
6 him to trial to be potentially convicted would be nothing more than another further
7 injustice, which would be additional to those injustices outlined by the Legal
8 Representatives for Victims.

9 We are at a critical stage or juncture of the legal process. The Office of the
10 Prosecutor, who represents no less than international public order, has presented its
11 charges, has presented its evidence and has requested that Mr Ali Muhammad Ali
12 Abd-Al-Rahman be sent to trial.

13 The Legal Representatives for Victims have, on their part, or for their part, presented
14 the views and concerns of the victims and have imparted the suffering that these
15 victims and witnesses have endured as set out in the charges presented by the Office
16 of the Prosecutor.

17 And at this critical juncture, there is only one way forward, one way forward that
18 should and will be heard, that of the Defence, which alone is standing in court today
19 against the victims, against international public order to ensure that justice is
20 rendered in this Court and that it corresponds to the justice that is expected by the
21 victims and corresponds indeed to the truth.

22 So to convict the wrong person cannot be a form of justice expected by the victims, in
23 particular, because those truly responsible for the crimes that they suffered and
24 endured would continue to benefit from immunity and to prosper.

25 The sufferings of the victims need reparation and the Defence, as you know, has

1 made a number of detailed proposals and innovative proposals for them to receive
2 reparation immediately. And whatever the outcome of the proceedings against
3 Mr Ali Muhammad Ali Abd-Al-Rahman, these are public in nature, 02/05-01-98 (sic).
4 And it is -- it behoves the Legal Representatives for Victims to take them in their
5 hands and obtain reparations for the victims. And as Ms Clooney specifically
6 requested, if the Legal Representatives take hold of these, then the Defence can assure
7 them that they will be at the ready to support them in this approach as long as these
8 reparations are without prejudice as to the determination of guilt or innocence of
9 Mr Ali Abd-Al-Rahman.

10 This being said, the Defence shall now show the reasons why the Office of the
11 Prosecutor has not met their burden of evidence which would enable -- which would
12 make it possible for Mr Ali Abd-Al-Rahman according to the standard of proof fixed
13 by this Chamber in its decision on the confirmation of charges in the case of
14 Mr Yekatom Ngaïssona, and at paragraph 17: "The Prosecutor has to produce
15 concrete evidence to show that there is a clear direction in the reasoning
16 underpinning the specific allegations." End of quote.

17 The demonstration on the part of the Defence shall be in two points.

18 The first point has already been announced to you, namely, that the Office of the
19 Prosecutor has not borne the evidence according to the standard that I have just made
20 mention of because Mr Ali Abd-Al-Rahman whether he be implicated in any manner
21 whatsoever in the charges. And the OTP has not brought the evidence that
22 Mr Ali Abd-Al-Rahman also bore the nickname of Ali Kushayb. That will be the
23 first point of my presentation.

24 And the second matter to be broached tomorrow will show that the Office of the
25 Prosecutor has omitted to bring or even make mention of the demonstration of a

1 constitutive element common to all of the crimes charged, namely, the psychological
2 element, the knowledge, according to Article 30(3) of the Statute. And my
3 presentation of tomorrow will be given over to this notable absence of knowledge.

4 Now let us start by talking of Mr Ali Abd-Al-Rahman.

5 I have heard from the Office of the Prosecutor and also from the LRVs, some of the
6 LRVs, that Mr Ali Abd-Al-Rahman was at the time of the events a pharmacist in
7 Garsila and that he sold medications principally for livestock. And I also heard that
8 he had a military past, that for a number of years he had been in the army. And I'm
9 going to be a little bit more specific right from the get-go, Mr Ali Abd-Al-Rahman left
10 the army in 1990 and he left it as a warrant officer.

11 I would suggest that we start from this basic premise, a pharmacist in Garsila with a
12 little bit of military experience, as a point of departure with a view to ascertaining
13 whether this individual might have become at another moment in his life

14 Mr Kushayb, the chief Janjaweed militiaman, commander of the Janjaweed, capable of
15 heading up millions of Janjaweed under his orders and talking to ministers, rubbing
16 shoulders with ministers of the Sudanese government, giving orders including to
17 officers of the Sudanese army, receiving millions of cash -- in cash in order to finance
18 operations, to distribute weapons and uniforms, et cetera, et cetera.

19 So this is how the Prosecutor suggests that we go from pharmacist to Ali Kushayb.

20 So I will start with the pharmacist from Garsila with his civil status.

21 Mr Ali Abd-Al-Rahman's civil status is established. We have a number of elements
22 to attest to the fact, and this has been given by the Office of the Prosecutor.

23 Document DAR-OTP-0216-0765, which is his ID card, his identity card, this identity
24 card that has been reproduced at 0766, and it's dated 9 February 2010. And his civil
25 status is as I said.

1 Mr Abd-Al-Rahman was born -- and here I'm not going to be very precise, I'm going
2 to give the date of 1 January '49, please remember '49, and take 1 January as an
3 approximation. Whatever the case, the official estimation that's made in the
4 document DAR-OTP-0216-0777, which is a certificate which is estimating his age from
5 6 October 1980. And that means that at the time of the events alleged by the
6 Prosecutor 2003 to 2004, he was around 55 years old. And today the man before you
7 is 72 years old.

8 He is from - please excuse my pronunciation, perhaps I'm not exact - Rahad al-Berdi,
9 which is a locality in southern Darfur. He is from the Ta'aisha tribe. He is the
10 husband of three wives and he had the blessing of having 18 children.

11 Just to say a small part about the -- how his name is made up. Ali Muhammad Ali
12 Abd-Al-Rahman, how is that made up?

13 If you forget the family names and how they are composed as we know in Europe,
14 here we are talking about four different first names, and you have to read them by
15 generation. So I will start from the left to the right. The first, Ali, is the one which
16 belongs to him. That would be his first name in our uses, as my first name is Cyril.
17 The second first name is Muhammad, the name of his father, first name of his father.
18 The third, Ali, was the name of his grandfather. And the forth first name,
19 Abd-Al-Rahman, is the name of his great grandfather. And that explains how his
20 civil status name is composed.

21 As I said, he left the army on 4 September and the year appears -- on 4 September,
22 I would state again if you take this as an element on which I would like to bring to the
23 proceedings, so in 1990. And that is important information. And when he
24 withdrew, he had the grade of warrant officer. This is a sub-officer.

25 And I would add, to finish with the portrait of Mr Abd-Al-Rahman, you have the

1 document DAR-D31-0001-0005, which is a copy of his registration with the council of
2 auxiliary medical professions, dated 1984. And that clarifies the fact that including
3 in the period when he was in military service, he also already exercised medical
4 functions and he had been trained for that. And furthermore, there's lots of evidence,
5 which I shall come back to in my presentation, from the Office of the Prosecutor
6 where it says that he was part of the medical corps in the army.

7 Now where it concerns the document DAR-D31-0002-0007, now this a document
8 which is dated 28 July 2005. Now, this doesn't just concern my client, it's an order
9 for new recruits to the group. So it's number 58 to Garsila in the Central Police
10 Reserve. And there's a long list. And at number 189 you have the name of my
11 client Ali Muhammad Ali Abd-Al-Rahman with the number 189 in the list. And you
12 have the mention of *débutant*, starter. So he is new, or blue in common language.
13 So that's on the start, 2005, he was completely new in the Central Police Reserve.
14 So I've finished with the presentation of the first points with regards to
15 Mr Abd-Al-Rahman and I'll go on to the alias Ali Kushayb.

16 If we look at the initial hearing of Mr Abd-Al-Rahman, you will remember very well,
17 your Honour, that immediately revealed that this question was an issue, a question
18 which would have to be dealt with. It was subject to submissions at the request of
19 the Chamber. In the month of December the Prosecutor made submission
20 ICC-02/05-01/20-224 in which he replied to the invitation of the Chamber to present its
21 evidence of the alias. Now the Defence answered in its submissions
22 ICC-02/05-01/20-235.

23 Now this question which is so important because the first footnote in the Prosecution
24 brief prior to confirmation is dedicated to it. And the Office of the Prosecutor adds
25 or selects, you can see things in different ways, it selects six new

1 evidence -- evidentiary items which it uses in support of the alias. And it is in this
2 submission and this footnote number 1 that the senior trial lawyer, Mr Nicholls,
3 invites the Chamber to refer to by way of the introduction to this hearing.
4 During this hearing the different representatives of the OTP spoke one after another,
5 presenting the facts and the evidence, referring to Mr Ali Muhammad Ali
6 Abd-Al-Rahman. And in doing so, they did nothing more than implement an
7 instruction that you had given during the initial hearing, initial appearance. And the
8 Defence has nothing to say in that regard.

9 The only problem is that all the evidence upon which the Prosecutor relies is not
10 relating to Ali Muhammad Ali Abd-Al-Rahman. It relates to Ali Kushayb. And of
11 course that means that this question of the alias is a fundamental and central question.
12 The Prosecutor is aware of this issue since the initial appearance and we have to see
13 together what evidence the Prosecutor brings to light in this regard.

14 Here I would like to show, if possible, I would like to show a document without it
15 being seen by the public, so it's only seen by the people within this Chamber. And
16 this is document DAR-OTP-0214-0226 (sic).

17 Please tell me when it's on the screen.

18 THE INTERPRETER: [12:39:55] DAR-OTP-0219-2586 and page 2587 thereof.

19 MR LAUCCI: [12:40:05](Interpretation) Now I'm going to start -- continue speaking
20 before it's shown. This is from 3 September 2006 and it is presented as -- it's
21 presented as a minutes or a report of an interview.

22 Here it is. This was carried out by the Popular Defence Forces and the coordinator.
23 I don't think it's useful to say the name of that person in open session. But if we can
24 go a bit further down the document. Thank you very much.

25 So we are -- I explained that here this is the interview of Mr Ali Muhammad Ali

1 Abd-Al-Rahman and then in brackets you have afterwards "(Ali Kushayb)".
2 Occupation, and its written in English "warrant officer" - this corresponds with
3 "*adjudant*" in French - in the Central Reserve Police. And it is described as being
4 aged -- he's described as being aged 40. And there's a telephone number.
5 So this document dates from 2006. And that's written further up, I believe. Can we
6 see that on the screen?
7 Thank you, please stop.
8 3 September 2006. And if Mr Abd-Al-Rahman is born when the evidence says, in '49,
9 this in 2006 he's 57. So the document, which is an official document from the police,
10 a document which should have a probative value in judicial proceedings, this must be
11 a serious document, it's not just a document quickly made up. And after verification,
12 it would appear that the person who is interviewed is aged 40 years old. So you've
13 got 40 years and you've got 57 years.
14 Now, error is of course possible.
15 Now, if we go a bit further down in the page, if you would be so kind. A bit further.
16 If you could go up a bit. If you could stop there.
17 I'm looking for the passage, excuse me, where he is described as the emir of Mujahid
18 vigilantes in Garsila.
19 Oh, it's at the top, "Emir of Mujahid vigilantes in Garsila". That's it, just below
20 telephone on the screen. (Overlapping speakers)(Speaks English) "I was in South
21 Darfur in the area of Garsila. I was settled in that area. I was Emir of Mujahid
22 vigilantes in Garsila, West Darfur", et cetera.
23 (Interpretation) There's a lot of interesting information here. Firstly, the mention of
24 the occupation of the person who is interviewed, a warrant officer.
25 If you could go back up a bit, please. I'm sorry.

1 A warrant officer with the Central Reserve Police. This is in 2006. And I'll remind
2 you that in 2005, in July 2005, Mr Abd-Al-Rahman joined the police as a new recruit
3 without a grade. And he very quickly in 2006 has the grade of warrant officer.
4 Now we are told that he had the title of emir of Mujahid vigilantes in Garsila at the
5 time of the events. And I compare that with the document DAR-OTP-0037-0016,
6 which is an information report from the High Commissioner for Human Rights, in
7 which the person who is interviewed explains that Ali Kushayb received his
8 instructions from the Emir Mahmoud Sousel Aissa and from the emir -- so we have
9 an emir from Mujahid vigilantes who is at the time receiving instructions and orders
10 from two other emirs. I don't claim to be an expert in the Sudanese hierarchy. I just
11 observe that.

12 And furthermore, what is interesting is the reference that's made to the PDF, the
13 Popular Defence Forces. So at the time of the events, Mr Ali Kushayb was said to
14 have been a member of the Popular Defence Forces. Now we've never heard this in
15 the Prosecution's case file. This has never been pleaded. He's described as a
16 Janjaweed chief, yes, but his affiliation with Popular Defence Forces is not part of the
17 case file.

18 And furthermore, if we look at paragraph 29 of the pre-trial brief, and here I will read
19 therefrom (Overlapping speakers) (Speaks English) "In around mid-May 2003, the
20 NSC" National Security Council "issued an emergency plan that formed the basis for
21 the Government of Sudan to launch its counter-insurgency campaign. The
22 emergency plan stated that members of the SAF" Sudan Armed Forces "and PDF"
23 Popular Defence Forces "could not be trusted to participate in the counter-insurgency
24 campaign because the majority were from Darfur, and police and reservist forces such
25 as the CRF did not have sufficient members to combat the rebels."

1 (Interpretation) So these are the considering parts which are before the substantive
2 parts of the brief about the mobilisation of the militia with regards to the
3 counter-insurrection. So what we are told here by the Office of the Prosecutor and
4 what we are also told on the basis of this statement that you have the witness -- in
5 DAR-OTP-0214-0534-R01 and the page is 0550, 0551 and paragraph 64 thereof, you
6 have the PDF who were excluded from the counter-insurrection because the
7 Government of Sudan did not trust them.

8 So the person who is interviewed in the document on your screen was a member of
9 that body and he didn't have -- it didn't have the trust of the Government of Sudan to
10 participate in the counter-insurrection and would have participated as an emir, not
11 the grade but the title of emir, receiving instructions allegedly.

12 I can see that perhaps I'm speaking a bit too fast and I would like to excuse -- I'd like
13 to apologise to the interpreters.

14 So I've finished with this document which is on the screen.

15 The second reference at the -- in footnote 1 of the brief is a reference to Witness P-878,
16 I'm not going to give you the precise page, but the passage mentions the fact that
17 Ali Kushayb was the leader of the Janjaweed, a soldier, that he withdrew from the
18 army -- left the army with a grade of adjutant and that he started a pharmacy in
19 Garsila to sell medicine for animals. He established a veterinary pharmacy for
20 medicine for animals.

21 So leader of the Janjaweed, that doesn't make it possible to make the link.
22 So he's retired from the army, he started a pharmacy, he sells products for animals.
23 That could correspond.

24 If we look at -- there's another reference at the bottom of page 1, which takes to
25 another page which has nothing to do with it. It was inserted by error so I won't

1 spend any time on that.

2 But the fourth reference is P-905, DAR-OTP -- 1321 (sic), where it is indicated that in
3 page 1343 that Ali Kushayb -- this witness is perhaps not totally informed when he
4 states that because when he speaks about Mr Abd-Al-Rahman, it's -- this witness says
5 that he had two girls, but this is something we contest.

6 Now when it comes to the other witness, he says that Ali Kushayb was the
7 commander of the Janjaweed. Very well. But that doesn't make the link with
8 Abd-Al-Rahman.

9 Now the Witness 912, and this is the last reference, talks about a shepherd belonging
10 to one of the tribes in Darfur with a light skin but not as light skinned as some of the
11 people of the north. I'm not going to spend any time on that.

12 But those are the six elements of evidence presented by the Office of the Prosecutor in
13 its brief on the confirmation hearing to establish the link between Mr Abd-Al-Rahman
14 and the alias Ali Kushayb.

15 So it would be an injustice to the Office of the Prosecutor if we just limit ourselves to
16 footnote 1. In order to have a complete overview, you also have to look at its
17 December submission and the numerous annexes, December 2020. And these, as I
18 said, in the document ICC-02/05-01/20-224.

19 So a certain number of witnesses talk about the pharmacy in Garsila and that is
20 something I mentioned, but I'm not going to spend much more time on that.

21 So if we go to Witness P-11, we are told in the document DAR-0088-0219, pages 0234,
22 0235, paragraphs 91 to 92 that Ali Kushayb had a pharmacy, that he had several
23 houses and that he was a commander of the Fursan. Very well.

24 Witness P-12, DAR-OTP-0119-0503, page 0510 to 0512, tells us that he was appointed
25 as *Aqid* in March 2003 because of his military experience and education. Very well.

1 I don't have any evidence to show you, but I would indicate by way of information
2 that Mr Abd-Al-Rahman, he left the -- finished his education at the
3 beginning -- middle of secondary school, that he left the army services as a warrant
4 officer and that he was attached to the medical corps within the army. And
5 furthermore, the registration with the auxiliary medical council, that's already been
6 mentioned and attests thereto.

7 So we're talking about military experience and education. Let's be reasonable, here
8 we are speaking about the education of somebody who finished his studies at the
9 middle of secondary school and he got to the rank of warrant officer within the army.
10 So this same Witness P-12 also tells us that Ali Kushayb was slave of the Rizeigat tribe,
11 and he states he's partly Rizeigat. Now, this is information that's interesting. I'd
12 ask the Chamber to focus on this. I already mentioned that Mr Abd-Al-Rahman was
13 Ta'aisha. He's not a Rizeigat. But remember the name Rizeigat because you're
14 going to hear about the tribe a bit later in my presentation when I will speak about the
15 other Janjaweed chiefs who are known and in particular one with Hemeti -- with the
16 name of Hemeti.

17 Witness P-12 states that Mr Abd-Al-Rahman is from East Darfur, eastern Darfur,
18 and -- no, he doesn't speak about him. Otherwise, by way of error, he speaks about
19 Ali Kushayb. He says Ali Kushayb is from eastern Darfur and from the locality of
20 Al Deain. Mr Abd-Al-Rahman, and this is why this error is important, is from
21 southern Darfur from Rahad al-Berdi, from that locality.

22 Now I'll go on to Witness P-44. No, that's not very interesting. He talks about the
23 pharmacy.

24 Let's go on to P-60, that's what I want to talk about. P-60, DAR-OTP-0097-0328, page
25 0334, paragraph 22 he describes a tall man with a dark complexion who used to sell

1 medication for animals in the market. And he has a very precise memory in this.
2 He remembers that Ali Kushayb in 1993 (Overlapping speakers) (Speaks English) "...
3 when he would ride his bicycle into the markets to sell the medication".
4 (Interpretation) So according to this witness, Ali Kushayb in '93 would -- was
5 delivering products via his bicycle, delivering medical products. Now in 2003, the
6 Janjaweed commander and commands thousands of people, orders the army, is
7 deciding over life and death of all people who the Office of the Prosecutor and the
8 Legal Representatives of Victims speak about. Now this describes the Sudan as a
9 country in which the social ladder or the social lift is broken and it hardly functions
10 there, and in ten years you can go from being a bicycle delivery person to a
11 omnipotent commander. So Slumdog Millionaire, this is a very nice film, but it is
12 fiction. And I think that it's difficult to believe that in ten years the same person
13 could have gone from being a bicycle delivery boy to an omnipotent commander.
14 I will stop at P-92, DAR-OTP-0112-0175, page 0183 thereof, and he describes
15 Mr Kushayb, and he speaks about him as a Nuba. Very well. He's Ta'aisha,
16 Mr Al-Rahman. And he states that he allegedly became the *agid*. The term
17 *Agid Al-Kheid of the Fursan*. *Agid Al-Kheid of the Fursan*. That he was promoted
18 before the presidency of Mr Al Bashir. The presidency of Mr Al Bashir started in
19 1995. The Office of the Prosecutor explained to us yesterday that
20 Mr Abd-Al-Rahman became *agid al-ogada* in 19 -- the Office of the Prosecutor tells us
21 that he would have been so before 1989.
22 With regard to P-117, he states that Ali Kushayb was recruited at the time when the
23 conflict started into the Popular Police Forces. And this is DAR-0TP-0128-0042 and
24 page 071 thereof. We've never heard anyone speak about the recruitment of
25 Mr Abd-Al-Rahman in the Popular Police Forces in the Prosecutor's presentation or in

1 his -- in their brief.

2 So I will continue just until you stop me, your Honour. Anytime is good.

3 PRESIDING JUDGE AITALA: [13:00:12] Unless you are finishing a specific point,
4 please stop here (Overlapping speakers)

5 MR LAUCCI: [13:00:19](Interpretation) I've got one more page of references from
6 the submissions of the Office of the Prosecutor. It's perhaps a bit long. I could take
7 it up after the break.

8 PRESIDING JUDGE AITALA: [13:00:33] No, no. We will adjourn the hearing now.
9 Thank you, Mr Laucci.

10 And the hearing is adjourned to 2.30. Thank you very much.

11 THE COURT USHER: [13:00:42] All rise.

12 (Recess taken at 1.00 p.m.)

13 (Upon resuming in open session at 2.31 p.m.)

14 THE COURT USHER: [14:31:10] All rise.

15 Please be seated.

16 PRESIDING JUDGE AITALA: [14:31:31] Good afternoon, everyone.

17 Mr Counsel, the floor is yours again.

18 MR LAUCCI: [14:31:38](Interpretation) Thank you very much, your Honour.

19 I would like to wish everybody a good afternoon.

20 I shall therefore continue from where I stopped with a review of evidence of the alias

21 Ali Kushayb, annex to the submissions of the Office of the Prosecutor,

22 ICC-02/05-01/20-224.

23 And I will go straight to another source which is Witness P-119, DAR-OTP-0124-0196,

24 0215. And he explains to us, and this is an explanation that has importance in the

25 preparation of the Defence, because he says that Kushayb is a term -- is a variety of

1 local alcohol. And he also explains to us that Ali Kushayb was responsible for the
2 Popular Defence Forces in the district of Garsila. And here I refer to the previous
3 reference to say that it was never alleged that Mr Abd-Al-Rahman was a member of
4 the Popular Defence Forces.

5 Now, Witness P-123, DAR-OTP-0209-0029, speaks to us on page 0034 of an enormous
6 transfer of money allegedly that Ali Kushayb received. (Speaks English) "480 with
7 numerous zeros behind it." (Interpretation) This is a massive sum. And you will
8 see that if Mr Abd-Al-Rahman had had in his possession such an amount of money,
9 then there's nothing left of it. It does not correspond with his standard of life.

10 When it comes to P-617, DAR-OTP-02-1496 (sic), now he tells us on page 31 that
11 Ali Kushayb (Speaks English) "was appointed *agid al ogada* in the 1990s when Daud
12 Bolad attacked." (Interpretation) The Defence has not researched which event the
13 Daud Bolad attack was, but it will just refer to the '80s. The Prosecutor presented
14 yesterday that according to the Office of the Prosecutor, Ali Kushayb had been -- that
15 according to the Office of the Prosecutor Mr Abd-Al-Rahman allegedly was
16 designated *agid al ogada* in March 2003, which doesn't correspond to the '90s stated
17 here.

18 And furthermore, I'm now going on to a series of references, of press articles
19 essentially. And I'm not going to mention all the different references, that would be
20 too much, but there are a certain number of them which all have the characteristics
21 when it comes to the Office of the Prosecution trying to demonstrate the alias. All
22 the different press articles of the Office of the Prosecutor have this point in common,
23 that they are subsequent to 2007 and refer to the arrest warrant issued by the Court.
24 So the probative value of articles which tell us that Mr Abd-Al-Rahman is
25 Ali Kushayb because he was accused by the Court on this basis, you will understand

1 that we are having self-proving evidence, and this leads us to no other conclusion
2 apart from saying that in indeed in 2007 an arrest warrant was issued against
3 Abd-Al-Rahman and presented as his alias Ali Kushayb.

4 And I shall now go on to the document DAR-OTP-01 -- 0672 (sic). And this is an
5 article entitled "Darfur, A New History of a Long War" which dates from 2008 and it
6 is cosigned by Madam Julie Flint and Mr Alex de Waal. And this is another annex of
7 the Office of the Prosecutor. What I observe in this document is that it only contains
8 one reference to Ali Kushayb and this is on page 0743 and this reference is a reference
9 to the arrest warrant of the Court in 2007. Same remark as to its relevancy.

10 The article also tells us on the same page that (Overlapping speakers)(Speaks English)
11 "Kushayb was known in Zalingei as a member of the Borgo tribe that hailed from
12 eastern Chad and was therefore not Arab at all. He was Borgo himself, with Borgo
13 scarification, but portrayed himself as an Arab."

14 (Interpretation) We've already said that Mr Abd-Al-Rahman -- well, perhaps he'll
15 have to take his mask off, but you can see that he doesn't have any scarring on his face.
16 I'm talking about his face, because when we talk about the physical description, there
17 are witnesses who talk about scarring on his face. So I will come back to that. It's
18 not correct.

19 The next document comes from Human Rights Watch and this is document
20 DAR-OTP-0107-1151 called "Entrenching Impunity" from December 2005. And
21 indeed it speaks about Ali Kushayb as a Janjaweed militia leader. (Speaks English)
22 "The principal coordinator of the Janjaweed militias in the Wadi Salih area"

23 (Interpretation) and it mentions, and this will be undoubtedly evidence about which
24 there will be the greatest doubt (Speaks English) "Apparently a nom de guerre of Ali
25 Mohammed Ali, an ex-army soldier based in Garsila." (Interpretation) And here

1 indeed this source establishes the beginning of a link. And I would remind
2 ourselves here with regards to the Human Rights Watch report, it's a public report, it
3 doesn't indicate its sources, and the probative value thereof has to be subject to
4 reservations.

5 Now the next document is document DAR-OTP-0124-0726, and this is an
6 interview -- well, not a judicial interview, but it's more of a media, a press interview,
7 an interview with a person who presents himself as Ali Kushayb. And this
8 interview isn't dated. The author of the interview says that he's writing a telephone
9 number or putting in a telephone number which he says corresponds to -- was
10 Ali Kushayb's at the time, and he gets somebody on the other end of the phone
11 without being able to ensure that the person he is speaking to -- or make sure who it
12 is. And the other person at the other end of the line who pretends to be Al-Kushayb
13 or claims to be Ali Kushayb says, (Speaks English) "I was born in 1944 in the desert."
14 (Interpretation) Well, already the date, that does not correspond, five years more.
15 And (Overlapping speakers)(Speaks English) "I was given a -- I was given the
16 nickname in my childhood. I had a happy childhood but it was a tough one. My
17 young friends thought that I was courageous and that I feared nothing. Because of
18 my ferocity, I was called Kushayb. It's a popular word among the Darfuri people."
19 (Interpretation) Now there, I have to say that if there's one thing that does not
20 describe the word "kushayb" it's the description of it as popular. It was necessary for
21 a lot of time and a lot of effort to be put in by the Defence in order to understand and
22 find the sense or the meaning of this word "kushayb". It's not an Arab word. It's
23 not from the Arab language, and truly it is a very local word. So it cannot be said
24 that it's popular.

25 And the last document from the series of evidentiary items from the submission is

1 DAR-OTP-0215-4658, and this is a letter stamped "top secret" dated 6 November 2005,
2 and it mentions this time the name Ali Muhammad Ali Abd-Al-Rahman for the
3 delivery of 30 Land Cruisers and hundreds of weapons. And I will recall the date,
4 6 November 2005. July 2005, Mr Abd-Al-Rahman started as a new recruit without a
5 grade in the police reserves. How do you explain that hardly five months later he
6 is -- he gets 30 Land Cruisers and hundreds of weapons. There is no explanation
7 provided in the Office of the Prosecutor's submission in this regard.
8 So I've finished with a review of the evidence annexed to the document. And you
9 will see with me that there's not much left.
10 Now the Defence has been proactive and it has carried out research as to how a link
11 can be established with this Ali Kushayb and Mr Abd-Al-Rahman. And the link was
12 meant to be alcohol. It's mentioned in the submissions of the Prosecutor, and that's
13 in paragraph 7(a) with reference to Witness P-884. And we mentioned a moment
14 ago there was the Witness 127 (sic) who speaks about a type of alcohol. And
15 Witness P-119, DAR-OTP-0124-0196, 0215, paragraph 121 also says that "kushayb" is a
16 word for a local type of alcohol.
17 And here I would also mention two items of evidence which were shown in the
18 Defence evidence and the document DAR-OTP-004-0194 (sic), this is a reaction on the
19 internet to the initial appearance and in this the person who's commenting, he says,
20 "So Kushayb is a local wine in Darfur. It's not given for nothing. This means,
21 speaking of Mr Abd-Al-Rahman, that he is an alcohol addict."
22 And finally the document D31-0004-0194, which is a type of poem entitled "The
23 Voyage of Al Andaya" and it uses the word "kushayb" and I will -- "having been
24 drunk on Al Kushayb, it would seem that he doesn't resist it which comes like a
25 waterfall from Jebel Marra." End of quote. So this is open to everybody.

1 This word is not popular or known and it's necessary to have a lot of time because it's
2 linked to alcohol. So if you come from a bar which is in a famous town for its
3 aniseed drink, I have to tell you that when a person has alcohol, then this generally
4 means that this person has a tendency to have a high consumption of it -- high
5 consumption of it. And this means that he is Ali, the drunk.

6 And can that correspond with Mr Abd-Al-Rahman? First response which is -- only
7 commits himself, Mr Abd-Al-Rahman is described as a practising Muslim and he
8 doesn't consume alcohol. Now the Defence has carried out with a medical expert
9 report, the objective of which was to determine whether we could detect or whether it
10 could be detected signs or any type of history of consumption linked to addiction to
11 alcohol. And the result -- and this expert report was addressed by Professor
12 Emmanuel Pinto from the university of Liege. And I would like to thank the
13 Chamber for having accepted the extension of the time made, which made it possible
14 for it to be filed, because it wasn't easy to make it, but we've finished the report. This
15 is DAR-D31-0005-0012.

16 And I'm not going to read it in detail because the details are very technical, it's
17 medical language, and I don't have much time, but what I would take from the
18 conclusion is that in light of the medical tests which were carried out, and comparing
19 them with the medical tests which were carried out at the time of his admission to the
20 detention centre in 2020, then the expert, who is an expert in this field dealing with
21 addiction particularly to alcohol, said that there is no clinical sign that could come
22 from significant consumption of alcohol over a sufficiently long period for there to
23 have been an alcohol addiction on the part of Ali Kushayb.

24 So the analysis of the name hasn't given anything either. Let's go back therefore to
25 the fundamental aspects and let's look at what the physical descriptions say about

1 Ali Kushayb in the Prosecutor's evidence.

2 So you will see that numeral -- numerous people say that this is somebody who is tall,
3 who is thin, that this is somebody -- the age varies, you'll see how we have different
4 documents which speak to us about somebody who will be 17 years younger than the
5 reality, and there's even a reference -- an older reference, but generally he is described
6 as somebody in -- somebody significantly younger, around 40 years old at the time of
7 the events. And as we have seen, he was a lot older, at least 10 years older. And so
8 I mentioned, and we've seen on our screens this morning, the interview that was
9 carried out with the judicial authorities in Sudan who tell us that in 2006 Ali Kushayb
10 was 40 years old instead of 57.

11 And then I will also mention another document and this is one of the documents
12 which is subject to my third application for the exclusion of evidence, but I just want
13 to mention one of the passages therefrom. And this is the document
14 DAR-OTP-0202-15 (sic) and on page 0217 the Sudanese authorities having an
15 interview with the authorities -- the Prosecutor's office says that speaking about
16 Ali Kushayb (Overlapping speakers) (Speaks English) "he gave his age as 40 and we
17 calculated it", (Interpretation) now for an interview with Ali Kushayb, which would
18 have taken place a short time before autumn 2006. So once again, we are told
19 Ali Kushayb was 40 years old.

20 Furthermore, there are physical descriptions of him which really are completely
21 incompatible with Mr Ali Muhammad Ali Abd-Al-Rahman that you see behind you.
22 With DAR-OTP-0204-05-R01 (sic), page 05 (sic), paragraph 24 and 25, he speaks to us
23 about the tribal markings, and with regards to his face, it says that he has a tribal
24 piercing and -- from 3 to 4 -- 5 -- he has a scar or mark on the side of his face, possibly
25 the right side, of 3 to 5 millimetres. So he has no scarring of this type.

1 Now, with regards to the other witness, DAR-OTP-0216-0503-R01, page 0512,
2 paragraph 44, speaks to us about a large piercing in one of his -- on his left ear. And
3 if we say that there is an error left, right, Mr Abd-Al-Rahman has no piercing -- or
4 pierced ear. This comes up again with Witness P-0581, DAR-OTP-16-0560-R01 (sic)
5 at 0565, paragraph 27, which speaks about a tribal piercing on one of his ears.
6 So there again the physical description does not correspond and does not make it
7 possible to reconcile the fact that Mr Abd-Al-Rahman is -- he is short or tall and he
8 has dark skin, this doesn't correspond with the description of Ali Kushayb.
9 So because we don't get there, we have to look at the problem differently because
10 we're not able to say that Mr Abd-Al-Rahman corresponds with the description which
11 is made of Ali Kushayb. What we've tried to do is see what is said by the Office of
12 the Prosecutor about Ali Kushayb and whether that could correspond with
13 Mr Abd-Al-Rahman.
14 And here, if I had more time, I would have gone through the document indicating the
15 charges, but it was already stated by the Office of the Prosecutor yesterday. So to
16 save time, I will go on. I'll just very quickly state that a leader, a senior leader of the
17 militia/Janjaweed in the Wadi Salih and Mukjar localities, a great influence, colonel of
18 colonels, *agid al ogada*.
19 And I look at the interpreters. I'm concerned, but they seem to be managing this.
20 A central role and it speaks directly about the ministers who lead the Janjaweed and
21 thousands of combatants, et cetera, et cetera.
22 All these descriptions which the Office of the Prosecutor gives to us of Ali Kushayb
23 raise several questions unanswered and these are questions which I propose delving
24 into now. Now, these questions are of three different types: They are about the
25 time before, during and after.

1 Now, before, before the events, before 2003, 2004, who was Ali Kushayb? Where
2 does his authority come from? Now, we have heard yesterday from the Office of the
3 Prosecutor that Ali Kushayb is -- or that he grew up -- or that he was designated as
4 colonel of colonels, *agid al ogada* in 2003.

5 Now, the witness states at DAR-OTP-0059-R01 (sic) and page 91 -- on page 175 (sic),
6 explains to us that (Speaks English) "Ali Kushayb gained military experience while
7 serving in the Sudanese Armed Forces, including in South Sudan in the '80s and/or
8 '90s when he was deployed with the medical corps and attained the rank as a master
9 sergeant"; he "earned a reputation as an experienced military officer and a fearless
10 warrior."

11 (Interpretation) Sudan is quite a country in which a fearless warrior is attached to a
12 medical corps within an army.

13 Witness P-617 tells us in DAR-OTP-0202-14 (sic), page 21 (sic) that Ali Kushayb was
14 appointed *agid al ogada* in the 1990s.

15 Witness P-92, without repeating the reference, says -- I'm sorry.

16 MR NICHOLLS: [14:57:45] I'm very sorry to interrupt and stand up. No objection.
17 It's just that some of the ERN numbers are incorrect that are being read out. I'm not
18 saying that it's intentional. It may be the speed and the translation, but I just have
19 been noting it from my colleagues that there have been several. So I just think it's
20 possibly the speed. Sorry to interrupt.

21 PRESIDING JUDGE AITALA: [14:58:13] One thing, Mr Laucci, I mean if there are
22 any numbers that you want to repeat, it's fine. Otherwise, okay. It would be on the
23 records on the transcripts.

24 THE INTERPRETER: [14:58:25] Message from the interpreters: If the numbers
25 could be read out slowly, that would help. Thank you.

1 MR LAUCCI: [14:58:31](Interpretation) I'm sorry if I made any errors.

2 PRESIDING JUDGE AITALA: [14:58:34] Try to read the numbers more slowly for
3 the interpreters. This is of course in the best interests of justice that we are able to
4 pick the right documents. So try to read them out slowly for the interpreters and
5 then that's it. Thank you.

6 MR LAUCCI: [14:58:49](Interpretation) I'm going to follow this advice. I would
7 like to thank the Prosecutor for the intervention and I'm going to follow your advice,
8 your Honour. Perhaps we will -- at the end we will have a summary of the different
9 references, perhaps that's something that could be done.

10 So I will continue.

11 Now with regards to the witness, yes, I was speaking about the witness who said that
12 Ali Kushayb had been appointed *agid al ogada* even prior to Al Bashir's presidency,
13 that is before 1989. This was Witness P-092.

14 I would also like to be shown in the same way as a moment ago, and that is just for
15 the persons present in this courtroom without it being visible to the public, the
16 document DAR-OTP-0215-6789, and page 6791 thereof. This document which is
17 going to be shown is presented as a curriculum vitae of Ali Kushayb.

18 While I'm waiting, I could perhaps add that the origin of this document is unknown,
19 but I will read. So the document says that (Speaks English) "Ali Kushayb joined the
20 armed forces" -- (Interpretation) it's in the middle of the second paragraph. He
21 (Speaks English) "joined the armed forces in 1965. He worked at the Western
22 Command, as he joined the medical corps. He moved to several places throughout
23 Sudan, and finally settled in Garsila, in the state of West Darfur, where he gained
24 fame and became well known."

25 (Interpretation) Same comment as I made earlier. I think it's quite unusual for a

1 soldier, warrant officer at the most, in the medical corps to become famous in any
2 way.

3 The document then continues in its third paragraph. (Speaks English) "He retired in
4 1965" (Interpretation) which is in fact the same year that he joined. Let's assume
5 there's an error there. (Speaks English) "Having received his retirement benefits, he
6 started a pharmacy in the Garsila area, where he settled." (Interpretation) Now the
7 fourth paragraph. (Speaks English) "When the tribal war broke out, he was chosen
8 to be a colonel of colonels and led war against the Fur tribe - the highest position
9 within the armies of Arab tribes."

10 (Interpretation) I've got a problem with this rather vague expression "when the tribal
11 war broke out". The distinguished representative of victims, Paolina Massidda, gave
12 us the background of the long many years of tribal wars in Sudan, so it's not exactly
13 clear which era is being referred to here. But a little further in the same paragraph it
14 says (Overlapping speakers)(Speaks English) "In early 2000, he was chosen to be a
15 warrant officer in the police, with the Central Reserve Forces, (commander of the
16 people's police militias)."

17 (Interpretation) And then this detail here, it's in the alleged CV of Ali Kushayb, we
18 can no longer be talking about Mr Abd-Al-Rahman.

19 At the beginning of 2000 he's an adjutant, a warrant officer in the police and the
20 commander of the people's police militias. Beginning of 2000, the Prosecutor said,
21 everybody said that at that stage he was a pharmacist in Garsila. He was not in the
22 police at that time. If he entered the police, it was after the fact in 2005, and he
23 entered as a rookie with no rank.

24 That's all I wanted to say about this document now. Thank you.

25 I've already mentioned the document from the OTP which described the emir of

1 Garsila, an emir that obeyed other emirs.

2 The Witness 119, DAR-OTP-0124-0196, 0124-0196, page 215, paragraph 121 says that

3 Ali Kushayb was responsible for the Popular Defence Forces in the district of Garsila.

4 The Prosecutor did not say that.

5 Another document which is included in the third application for exclusion of

6 evidence is document DAR-OTP-0202-0190, 0202-0190, at page 0197, line 248,

7 Ali Kushayb is described as (Speaks English) the chief superintendent with the police,

8 chief superintendent with the police (Interpretation) and this is at the time of the facts.

9 This has nothing in common with what was described by the Prosecutor.

10 P-117, DAR-OTP-0128-0042, page 71 talks of (Speaks English) "a soldier in the army.

11 He used to work for the administrative unit of medical treatment"; "when the conflict

12 started, he was recruited into the PPF", the Popular Police Forces.

13 (Interpretation) Once again, this information does not tally with the description from

14 the OTP.

15 And I will bring this point to a close with the PCB, paragraph 64, which is based on

16 the evidence of P-643, who says: (Speaks English) "Ali Kushayb was the head of the

17 Mujahidin committee in the Wadi Salih locality, which he" (Interpretation) "he" being

18 the witness in this case, (Speaks English) "described as a small committee at the

19 locality level." A small committee at the locality level.

20 (Interpretation) So this head of this small committee at local level has the level of

21 power described by the OTP in its presentation, heading the Janjaweed, talking to

22 members of the government, gives orders to army officers. I find that somewhat

23 difficult to believe.

24 So what's -- what's missing? I'm still talking about the period prior to the facts.

25 What's missing from the prosecutor's dossier? Where are the command lines?

1 Where are the different elements of the armed groups and the description of the way
2 these components interact? Where is the description of their various areas of
3 responsibility of their commanders? Who are the Janjaweed? What are the
4 Janjaweed? How and when were they established? Other than Ali Kushayb,
5 according to the OTP, who were their leaders? And if Ali Kushayb became a
6 Janjaweed leader, how did that happen and where does his authority come from?
7 I would remind you that we've had a description of a simple soldier who made it up
8 to the rank of warrant officer, who left in 1990 and who was a pharmacist in Garsila.
9 During our exchanges with the Office of the Prosecutor, there were in their findings a
10 proposal which we rejected. It described the following: (Speaks English) "From at
11 least April 2003 until at least April 2004, the parties to the armed conflicts on both
12 sides were well organised and armed."
13 (Interpretation) We rejected this because we were missing information relating to this
14 organisation. The parties to the conflict, including the Janjaweed, how were they
15 structured and organised? Well, we simply wish to see the organisation, the
16 structure. All courts do that. ICTY, Rwanda tribunal, we look at the -- one looks at
17 the structures, the chains of command, and then one can position the suspect in the
18 hierarchy.
19 But we have no hierarchy to which we can refer, apart from *agid al ogada*.
20 So there are also inconsistencies with the publicly available information. The conflict
21 in Darfur has one characteristic and that is that there was enormous media coverage,
22 a lot of information, a lot of detail. This press media coverage identifies Janjaweed
23 leaders. I can name a few, the main ones, with a reservation which is everything that
24 I will say about any individual described by the journalists as a Janjaweed leader is of
25 course based on their presumption of innocence and does not contain any accusation

1 towards them by the Defence.

2 The first is Mohamed Hamdan Dagolo, known also as Hemeti. He was the head of
3 the Rapid Support Forces. He was the grandson of nazir of the Arab tribe Mahariya
4 Rizeigat.

5 You're going to say this is the second time I've mentioned Rizeigat. I mentioned it
6 this morning when a witness described Ali Kushayb as being a slave of the Rizeigat.

7 So, once again, we have the name of this tribe.

8 Mr Hemeti, I will use his alias, was designated by President Al Bashir as his personal
9 protector, "*Hamayti*".

10 I neglected to mention the document I'm referring to. They are on the Defence
11 evidence list. And I mentioned here DAR-D31-0004-0021. He is seen as one of the
12 main participants in the overthrow of President Bashir. He was in control of the
13 whole gold mining district of Jebel Amer, DAR-D31-0004-0137, pages 144 and 145.

14 So that's the first Janjaweed leader, which one can say at the very least that the social
15 level, economic level, political level attributed to him, there's nothing in common with
16 that attributed to Mr Abd-Al-Rahman.

17 The second Janjaweed leader, according to the journalists I'm referring to, was Musa
18 Hilal. He is described as the leader of the Janjaweed. He was -- if the Janjaweed
19 was, as the OTP says, was a structured organisation with a single head, that would be
20 Mr Musa Hilal. So leader of the Janjaweed, nazir of the Mahamid tribe and first on
21 the US department's list of suspected war criminals in Darfur. DAR-D31-0004-0031,
22 page 48, referred to by Mr Richard Dicker of Human Rights Watch as the poster child
23 of atrocities in Darfur, DAR-D31-0004-0137.

24 A third leader mentioned by journalists is Moussa Assimeh, self-proclaimed general
25 during his campaign which he carried out in the Central African Republic as

1 head -- military head of the Seleka. I believe this Chamber is familiar with this other
2 conflict. This was D31-0004-0137 at page 142.

3 And finally, I don't want to spend too much time on this, General Awad Ibn Ouf, who
4 was appointed vice president of Sudan by General Al Bashir in February 2015, who is
5 also on the list of American sanctions for genocide in Darfur since 2007 and he was
6 replaced recently within the transition committee which heads Sudan at the
7 (inaudible) by the first name I mentioned, Mohamed Hamdan Dagolo, Hemeti. And
8 I'm talking here for Ibn Ouf. I'm referring to document DAR-D31-0004-0015.

9 So we read an awful lot about the heads of the Janjaweed, but nothing about
10 Ali Kushayb, nothing before the arrest warrant of 2007. After that day, there is
11 abundant literature which refers to the fact that the International Criminal Court has
12 accused Ali Kushayb. That we know, and that is not evidence.

13 If we compare this with Mr Abd-Al-Rahman, he is not the nazir of his tribe, as others
14 have mentioned. He is not related to the current Ta'aisha nazir, Mahmoud
15 Abd-Al-Rahman Shera Ali Senoussi, as Hemeti is, he is a grandson of the head of the
16 tribe. He's not a general, he's not an officer, as those known as Hemeti, Moussa
17 Assimeh or Awad Ibn Ouf are. He really does not have the profile of the other
18 Janjaweed leaders. If one were to seek to find errors here, I think we would find
19 them.

20 I would now like to refer to a document DAR-31 -- I'm sorry, I was looking at the
21 clock. 0004-0031, (Speaks English) "Beyond 'Janjaweed': Understanding the
22 Militias of Darfur" (Interpretation) a document written by Ms Julie Flint.

23 A word about this document and its author. It was published by Small Arms Survey,
24 which is a Swiss organisation, with the support of the Swiss ministry of foreign affairs
25 and the governments of the following countries: Germany, Australia, Belgium,

1 Canada, Denmark, Spain, US, Finland, France, New Zealand, Netherlands, Norway,
2 United Kingdom, Sweden and a number of UN agencies. I'm not saying that it has
3 to be a clear expression of truth, I'm just explaining what a serious publication it is.
4 It's a very interesting, very useful document if one wishes to understand the situation
5 in Sudan, including in relation to the crime covered in the charges, to such an extent
6 that I must say that I'm very surprised not to have seen it in the evidence submitted
7 by the Office of the Prosecutor.

8 The first useful information provided by this document on the page which has the
9 code 0082 is that it explains the word "Janjaweed". And I quote:

10 (Speaks English) "The very word 'janjaweed' is, in Arab eyes, an insult. For Arabs, a
11 'janjaweed' is a thief, someone who works for himself - not the tribe. The origin of
12 the word is pure speculation. Some say it is a combination of *jawad* (horseman),
13 *jiim* (the G3 rifle), and *jinn* (devil). Others say it passed into common currency as a
14 result of the exploits of a notorious robber from the Shattyia tribe, nicknamed Hamid
15 'Janjaweed', in west Darfur in the 1970s."

16 (Interpretation) Ms Flint's document explains things which we heard from the OTP
17 yesterday, the strategy of the militias, in particular, fighting in the
18 counter-insurrection and how this was carried out because the PDF and the army
19 were not ones that could have committed sin.

20 And then there is the call to arms, another document which is -- dates from after the
21 attack of the Al Fasher airport on 24 -- 25 April 2003, and on page 54 it says: The
22 Arab tribes with *dars* - which is the Beni Hussein of North Darfur, the Baggara of
23 South Darfur, the Rizeigat from the south, the Habbaniya, the Beni Halba and the
24 Ta'aisha - very important - all tried to remain neutral when there was a call to join the
25 counter-insurgency and refused to participate in the repression of the rebellion. She

1 adds, (Speaks English) "Others were seduced by promise of money and power for
2 themselves."

3 (Interpretation) Mr Abd-Al-Rahman is a Ta'aisha, so he belongs to a tribe which,
4 according to Ms Flint and her study, refused to take part in the counter-insurgency.
5 So either Mr Abd-Al-Rahman was in the category of those decided to join the
6 counter-insurgency against their tribe by getting money and power, or there's
7 something wrong.

8 So if Mr Abd-Al-Rahman joined the counter-insurgency for money or power, his
9 operation was not very successful. I would remind you that in July 2005 he enters as
10 a rookie into the police central reserve. If one has power, one would not do that.

11 In -- later he has his pharmacy to have his -- to find a way of making a living.

12 And now document 0002-0006 gives the salary scales of the police group to which
13 Mr Abd-Al-Rahman belongs in July 2020 -- 650 Sudanese shillings a month, which is
14 13 euros 20, and given the catastrophic devaluation of the Sudanese pound, 1 euro 35
15 in May 2021.

16 So he has no power, he has no money, he has no tribe. So what was Mr Ali
17 Muhammad Ali Abd-Al-Rahman doing here in this business? I paraphrase Moliere.
18 Madam Flint talks a lot of Mr Musa Hilal, this Janjaweed leader. Musa Hilal,
19 according to her, on page 48, followed his father as a nazir at the age of 26.

20 (Overlapping speakers)(Speaks English) "Musa Hilal claims direct authority over
21 300,000 Mahamid in North Darfur, and says he enjoys the 'respect' of another 200,000
22 in South Darfur. First on the US ... Department's list of suspected war criminals in
23 Darfur, and target of a UN Security Council financial and travel ban imposed for
24 reportedly obstructing peace, he was appointed [as] special adviser to the Ministry of
25 [Foreign] Affairs in January 2008."

1 (Interpretation) The profile of Mr Abd-Al-Rahman I think is quite clear on the
2 difference. Ms Flint talks of the repression of the SPLA and the JEM and she
3 explains that it has two components of a military nature and four paramilitary. So
4 we have the Sudanese armed forces and the police central reserve, a gendarmerie
5 under the authority of the minister of the interior, which, according to Ms Flint,
6 answered to the National Intelligence and Security Service of Salah Gosh.
7 In the paramilitary groups we have the Popular Defence Forces, the Border Guards,
8 who are under the control of Military Intelligence and who are primarily Rizeigat of
9 the north, with a rapid intervention group directly commanded by Musa Hilal,
10 known gently as the "Quick and Horrible Forces", the name of this detachment
11 reporting directly to Musa Hilal. And finally, the nomad police, mounted on camels
12 and under the authority of the ministry of the interior.
13 As well as these military and paramilitary groups, Ms Flint speaks of the Janjaweed
14 on page 0055, explaining that there are three types of Janjaweeds: The Border
15 Guards, including the Quick and Horrible Forces of Musa Hilal. The Popular
16 Defence Forces, the PDF, who received uniforms, guns, ammunition, food, but no
17 salary. They could earn up to 100,000 Sudanese pounds, 39 US dollars, per operation
18 in which they took part. And the final category of Janjaweed was the Mustanfareen,
19 the reserves. They were forced recruits. They received uniforms but no salary. If
20 they refused to take part or be part of an operation, they had to pay a fine of five
21 camels or they would be thrown into prison.
22 So to which of these forces did Ali Kushayb belong? We've got no answer to that in
23 the Prosecutor's case file. We have the word "Janjaweed" and apparently we have to
24 be content with that.
25 I would now like the document of Madam Flint to be shown in order to carry out

1 some checking.

2 When it's online, I would like to look for the word "Kushayb" in this document.

3 Among how many pages? 68 pages.

4 First result, page 28, ERN 58. The word "Kushayb" -- oh, yeah, the page number,

5 sorry. We're on page 58. There are two results. You can see it on your screens if

6 we could enlarge them. I'm going to read it.

7 (Speaks English) "By 2009, many Arabs active in counter-insurgency were rewriting

8 history" (Interpretation) I'm going to say it in French because my accent is really

9 detestable. They are rewriting history in 2009. And I'll take it up again.

10 (Overlapping speakers) (Speaks English) "By 2009, many Arabs active in

11 counter-insurgency were rewriting history, to some degree, and blaming the worst of

12 the abuses of 2003-2004 on these smaller tribes - whom they called 'the Arabs of 2002',

13 the year of the first rebel attacks. In this category many included Ali Kushayb, the

14 militia leader indicted by the ICC in March 2007, noting that he was of mixed

15 parentage - Arab Ta'aisha on one side but on the other Borgo, a section of the Maba ...

16 of eastern Chad who are scattered across West Darfur, without a *dar*. 'Ali Kushayb

17 killed so many to prove that he was more Arab than the Arabs,' an advocate for the

18 nomads said. 'The Arabs of 2002 - Kinin, Goraan, Hotiya, Tama, northern

19 Gimr - have brought a big problem for the real Arabs!"

20 (Interpretation) I'm going to repeat what I already said. So Mr Abd-Al-Rahman is

21 Ta'aisha. But the most important thing in this story, in this passage of Madam Flint's

22 book are the words which I translate into French. In 2009, when the Court started to

23 put -- have the arrest warrant, they were starting to rewrite history and to blame for

24 the crimes that were committed, they were blaming people who were not part of the

25 group that they had the intention to protect.

1 So going further, looking for further examples of the words, you've got page 34, and
2 this is just a reference to the arrest warrant of 2007.

3 So we then move on and -- do you have it?

4 On page 44, so 0074, Ali Kushayb is described as a government envoyé in
5 January 2008 to carry out certain actions and negotiations -- operations, sorry, not
6 negotiations.

7 I would remind you here. So July 2005, he joins the Central Police Reserves as a new
8 recruit. And in July -- in January 2008, he is accorded leading -- the leadership of the
9 operations.

10 Now, so if we go on to next result.

11 We there have -- this is page 45 and this is page 75, where it's stated that he was
12 arrested in 2008. So he -- but Mr Abd-Al-Rahman was never arrested, never put into
13 detention.

14 In 2008, we know that he was working for the Central Police Reserves as a new recruit.
15 And he has his pharmacy school license, which he got in 2012. And in January 2020,
16 he was hardly a warrant officer in the police, had only just become that, and for that
17 to be necessary after having been the great Janjaweed leader, he then went back down
18 in 2005 to new recruit in the police, to go back up in 2008, to have attributed to him
19 the leadership of important operations, to then descend again in 2012 to conduct his
20 pharmaceutical license and then warrant officer in the police.

21 And the final result, and I know that it's the last because I am informed thereof, we
22 are on page 0084, which speaks about the arrest warrant.

23 So in this document, which is quite remarkable and documented within about the
24 events of interest to you, we have seven occurrences, no more, on five pages of the
25 word "Kushayb". And by way of comparison, if you carry out the same exercise for

1 Musa Hilal, you will obtain 32 results. And for Hemeti, you will get 46. So none of
2 these excerpts speak about the involvement in the commission of any crimes or
3 attacks of the position of Mr Abd-Al-Rahman as leader of the Janjaweed or in position
4 of authority whatsoever that he ever occupied before, during and after the events in
5 question.

6 I have finished with the period prior to the facts.

7 I'll now go on to the period during the events. And it's not exactly during the events,
8 but it is just afterwards, in fact.

9 When the role -- the alleged role of Ali Kushayb in the crimes described in the charges
10 becomes known -- when did it become known?

11 Well, despite the major role that Ali Kushayb is allegedly -- allegedly played in the
12 crimes of 2003, 2004, it has to be noted that his role goes completely under the radar
13 and he's completely unknown until approximately the end of 2006.

14 Just a few quotes.

15 Witness -- the document, please excuse me, DAR-OTP-0202-0215 - and I've finished
16 with the document - namely at 0233, 609 to 620, this is one of the documents which is
17 subject to the third application for the exclusion of evidence.

18 The OTP: (Speaks English) "Did you know before September of last

19 year" - (Interpretation) this is in 2007, so we're speaking about

20 September 2006 - (Speaks English) "Did you know about Ali Kushayb before

21 September 2006?" (Interpretation) Answer from the Sudanese authorities: (Speaks

22 English) "For sure not because Ali Kushayb was questioned after he was found in

23 November 2006."

24 (Interpretation) Very well. And I would recall what Madam Flint writes with regard

25 to Sudan: History is being rewritten so that the real perpetrators of the crimes that

1 we speak about are not investigated while others are.

2 And the last part, after the events, and this is since the commissions of crimes in 2003,
3 2004 to the present day, what has become of the Janjaweed chiefs?

4 If you carry out a comparison between them.

5 Mr Hemeti, on 23 March 2006, he signed an agreement in JEM in Abeche in Chad.

6 And we find from Madam Flint, we find this out on page 62.

7 And in 2008, he becomes "Hamayti", so the protector of Al Bashir.

8 In 2013, he found the Rapid Support Forces and he becomes their chief. Still Madam
9 Flint, page 21 to 0023.

10 In April 2015, the Rapid Support Forces participate in combat against the Darfur
11 rebels.

12 November 2017, Mr Hemeti takes the control of gold mines of Jebel Amer in Darfur,
13 which constitutes one of the main sources of revenue of exports from Sudan. And
14 how is it that after that, Mr Hemeti controls the two main sources of export from
15 Sudan, so mercenaries, Rapid Support Forces and gold.

16 On 11 April 2019, he joins the army within the framework of a coup d'état against
17 Al Bashir and he decides on the -- it is this that decides on the fate of Al Bashir. On
18 13 April 2019, Mr Hemeti is named deputy head of Transitional Military Council by
19 Mr Al-Burhan, replacing General Awad Ibn Ouf, the other Janjaweed chief who I
20 mentioned earlier. This is document DAR-D31-004-0001 on page 0002 and 0006.

21 On 3 June 2019, the Rapid Support Forces occupy Khartoum. They carry out a
22 campaign of terror, over 100 deaths, rapes. So DAR-D31-0004-0021 at page 0025.

23 And today, at the moment, Mr Hemeti is the deputy head of the Transitional Military
24 Council, which means number 2 in Sudan. DAR-D31-0004-0001 at 0002 and
25 DAR-D31-0004-0134.

1 Now, if we speak about Musa Hilal, in 2006 he also signed a nonaggression
2 agreement with the JEM in Chad. And that is in document DAR-D31-0004-0031 on
3 page 62 thereof.

4 In January 2008, he was promoted special adviser to President Al Bashir.
5 DAR-D31-0004-0117 and DAR-D31-0004-0109.

6 In 2017, things got worse for him. He was put under house arrest in Khartoum, but
7 on 11 March 2021, he was freed, having been pardoned by the supreme council.
8 DAR-0004-0119 and DAR-D31-0004-0188.

9 And those are the main leaders.

10 So, but more generally, what's happened to the Janjaweed today?

11 Well, the Rapid Support Forces have taken advantage of their withdrawal of the
12 UNAMID forces -- of the UN forces, which I spoke to you about before, to take
13 possession of their camp, their deserted camp. DAR-D31-0004-0021, page 0025
14 thereof.

15 So this withdrawal of UNAMID relaunched the violence in Darfur. This is in
16 DAR-D31-0004-0131.

17 And on 16 January 2021, the camp -- displaced camps in Krinding, which is near
18 Al Geneina, was attacked by the Janjaweed and the Rapid Support Forces, forcing
19 180,000 new displaced persons among the population. And that's
20 DAR-D31-0004-0011. I'll just say the last four numbers: 0122, 0150 and 0173.

21 On 6 April 2021, there was -- another camp next to Al Geneina was attacked,
22 Camp Abu Zar was attacked by the Janjaweed. DAR-D31-004-0163. And on
23 27 April 2021, the office of coordination -- for coordination of humanitarian affairs,
24 OCHA, put the number of new displaced persons in Darfur since 1 January 2021 at
25 237,000 due to the renewed violence following the departure of UNAMID.

1 DAR-D31-0004-0158.

2 And Mr Ali Muhammad Ali Abd-Al-Rahman, what about him in all this? What
3 happened to him?

4 Well, I'm going to repeat. In July 2005, he went into the police reserves with the level
5 of new recruit.

6 And April 2012, he passed his pharmacy exams. I don't know if I've
7 got -- DAR-D31-0001-0006. This is his pharmaceutical qualification from
8 10 April 2012.

9 And I think that -- no, I think it's a mistaken reference. Is it correct? Yes, it is.

10 And the document DAR-D31-0002-0006, this is the salary slip, salary table,
11 January 2020, Mr Abd-Al-Rahman, and 660 Sudanese pounds, so 13 euros 20 in
12 January 2020, it's now 1 euro 35 in 2021. So that's far from the huge transfers of
13 money (Speaks English) "480 with numerous zeros behind" (Interpretation) as
14 described by Witness P-123.

15 We are also far from the description given of Ali Kushayb by Witness P-131 in the
16 reference DAR-OTP-0158-1359, page 1400, which speaks about Musa Hilal and
17 compares Musa Hilal and Ali Kushayb as being at the same level of authority, but
18 responsible for different areas. And here I quote, this is in lines 1450 to 1453:

19 (Overlapping speakers)(Speaks English) "According to the intelligence I
20 gathered ..." - I being the Witness P-131 - "... Ali Kushayb conducts his operations in
21 this area and Musa Hilal conducts his operations in this area." (Interpretation) Two
22 different zones. (Speaks English) "OK. And this line is line ... this line is not an
23 official line between north and south sector."

24 (Interpretation) So we have two sectors which are different. One under the control
25 of Musa Hilal and the other under the control of Ali Kushayb at the same level.

1 Musa Hilal described by the press and reserves his presumption of innocence as the
2 leader of the Janjaweed and appointed adviser to President Al Bashir, and he was
3 now in a social situation and political situation, economic situation which has nothing
4 to do with that of Mr Abd-Al-Rahman, the delivery man -- the bicycle delivery man
5 from the market 1993.

6 So where are we with this concluding part?

7 I will just conclude by saying or by asking you, in light of everything that I have said,
8 that the Defence ask honourable Pre-Trial Chamber II to conclude that the Office of
9 the Prosecutor has not given evidence to support reasonable grounds to believe that
10 Mr Ali Muhammad Ali Abd-Al-Rahman, behind me, is Ali Kushayb, or that he was
11 involved in any way whatsoever with the events referred to in the charges.

12 He does not have the profile of other known Janjaweed leaders. He is neither nazir
13 nor related to a nazir nor is he an officer in the army. He is a simple citizen who sold
14 medicine from his pharmacy in Garsila at the time of the events.

15 The Office of the Prosecutor has not given any evidence or information in the slightest
16 as to the origin of the authority that it alleges that Mr Abd-Al-Rahman as Ali Kushayb
17 would have had during the events.

18 The Office of the Prosecutor has not established the chain of command, nor the
19 respective areas of competence and authority in a structure that it proposes to admit
20 as structured and hierarchical: No written order, no military booklets, no evidence
21 whatsoever.

22 Mr Abd-Al-Rahman has manifestly received none of the profits, whether it be money
23 or power, that the other Janjaweed leaders enjoyed, such as Mr Hemeti or Musa Hilal.
24 The evidence and the case file of the Prosecutor contains great amounts of
25 contradictory information as to his age, his tribe, when he would have become leader

1 of the Janjaweed or *agid al ogada*. We have different information. It doesn't concord
2 on these different points.

3 And with regards to his description, they do not coincide either. He's often stated to
4 be 17 years younger. He does not have any piercing on either of his ears. He has
5 no ritual scar on his face. He does not have any clinical sign either of a history of
6 addiction to alcohol, as is the sense of the word "kushayb", as that word would
7 suggest.

8 And that is the reason why principally and primarily, and that was the point of my
9 presentation today, I would ask you not to confirm the charges, which furthermore,
10 as regard the demonstration made by the Defence today, this means in no way that
11 the crimes described by the Office of the Prosecutor were not committed. But what it
12 does mean only is that Mr Abd-Al-Rahman did not participate or at least that the
13 evidence of his participation has not been sufficiently demonstrated to bring him to
14 trial.

15 I have finished for today and I thank you for your attention, unless you would like me
16 to start immediately with the second part. But it would seem to me to be a bit near
17 the end.

18 PRESIDING JUDGE AITALA: [15:57:19] Well, taking into account that we have only
19 3 minutes before 4, I think we can adjourn the hearing now. Then you will continue
20 tomorrow morning.

21 MR LAUCCI: [15:57:34](Interpretation) Thank you very much.

22 PRESIDING JUDGE AITALA: [15:57:36] I thank everyone, parties and participants.
23 I thank very much our interpreters and all the court staff for allowing this hearing to
24 take place. And I wish everyone a pleasant afternoon and evening.

25 Thank you very much.

- 1 THE COURT USHER: [15:57:51] All rise.
- 2 (The hearing ends in open session at 3.57 p.m.)