

Trial Hearing
WITNESS: DAR-D31-P-0032

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Wednesday, 29 November 2023
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:52] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:34:13] Yes, good morning, all.
15 Appearances. Defence, please.
16 MR LAUCCI: [9:34:20](Interpretation) Good morning, your Honour, your Honours,
17 dear colleagues. The same composition as yesterday. Mr Abd-Al-Rahman is in the
18 room and Iain Edwards is participating from a distance.
19 PRESIDING JUDGE KORNER: [9:34:33] Yes, Prosecution.
20 MR NICHOLLS: [9:34:36] Good morning, Madam President, good morning,
21 your Honours. The same as yesterday.
22 PRESIDING JUDGE KORNER: [9:34:39] And victims.
23 MS VON WISTINGHAUSEN: [9:34:43] Good morning, Madam President,
24 your Honours. Anand Shah, our visiting professional, Charlotte Imhof and myself,
25 Natalie von Wistinghausen for the participating victims.

1 PRESIDING JUDGE KORNER: [9:34:58] Thank you very much.

2 I have asked for the witness just to be kept out of the room, just to raise a couple of
3 matters.

4 Firstly, Mr Nicholls, I don't know how long you are going to be, but because we all
5 anticipated the witness would finish in one day, one of our number has got an
6 appointment which they can't miss, so we will finish at 11 and, if necessary, start
7 again at 2. So, I mean that's the way it will work. I mean, do you think you'll be
8 going up to the break, anyhow?

9 MR NICHOLLS: [9:35:33] I think I can try to do it in an hour.

10 PRESIDING JUDGE KORNER: [9:35:38] Right. Well, don't worry, because that's
11 the next thing I want -- I want to say.

12 Mr Laucci, just so you know, unless I'm mistaken, because it's not on the list, the
13 Prosecution don't intend to ask the witness about the second video. As I explained
14 when we showed the first video to the first witness, the video is part of the evidence
15 that is before the Trial Chamber, but we've had not a great deal of evidence about it.
16 And this man, firstly, was in the CRF and secondly, obviously, knows Mr Al-Rahman.
17 And it seems to me that as we're enjoined to receive as much evidence which is
18 relevant to issues in the case so that the truth can be established, we really need to
19 know what this witness is going to say -- would say about the video.
20 You didn't show it to him, it doesn't look as though the Prosecution are going to, so
21 the Judges are going to. But what I suggest we do is, in the same way as last time,
22 before you re-examine, when the Prosecution have finished so that you can ask any
23 questions which arise out of that. I hope that's clear.

24 MR LAUCCI: [9:37:02] Very clear, Madam President, and I did not need to receive
25 explanation or justification from the Chamber on the questions that he intends to ask

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1 to a witness. It's your discretion.

2 PRESIDING JUDGE KORNER: [9:37:16] Yes, but last time you did -- you did raise
3 a sort of semi-objection, though you accepted our explanation on the last occasion.
4 So I thought this time I'd give you any chance to do that again.

5 MR LAUCCI: [9:37:27] To be exactly clear, my objection was against the use in
6 cross-examination, not against the use by the Bench.

7 PRESIDING JUDGE KORNER: [9:37:34] All right. All right, thank you very much.
8 That's very helpful, Mr Laucci.

9 All right, well, let's have the witness back in again.

10 MR NICHOLLS: [9:38:37] Your Honours, we'd want to have just a few questions in
11 private session and then we'll go into open for most of the rest.

12 PRESIDING JUDGE KORNER: [9:38:47] Right. Thank you.

13 THE COURT OFFICER: [9:39:10] (Interpretation) Message for my colleagues, is it
14 working?

15 (Witness enters the video-link room)

16 PRESIDING JUDGE KORNER: [9:39:39] Yes, good morning, sir, can you hear and
17 understand me?

18 WITNESS: DAR-D31-P-0032 (On former oath)

19 (The witness speaks Arabic)

20 (The witness gives evidence via video link)

21 THE WITNESS: [9:39:43](Interpretation) Good morning, I can hear you and all is
22 good.

23 PRESIDING JUDGE KORNER: [9:39:46] Thank you very much.

24 Sir, in a moment, Mr Nicholls is going to carry on asking you questions to begin with
25 in private session so that nobody can hear your answers.

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1 Just before that, however, can I ask you please to try and listen to the question quite
2 carefully before you answer, because sometimes your answers don't seem to have
3 much to do with the question. So just listen, wait for it to finish, and then give your
4 answer. All right?

5 Yes, we'll go into private session.

6 (Private session at 9.40 a.m.)

7 THE COURT OFFICER: [9:40:36] We are in private session, Madam President.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Open session at 9.43 a.m.)
11 THE COURT OFFICER: [9:43:42] We are in open session, Madam President.
12 MR NICHOLLS: [9:43:49]
13 Q. [9:43:52] (Microphone not activated)
14 Sorry, I didn't have my mic on.
15 Witness, I'm going to take you back to something you testified to under oath
16 yesterday. This is page 34, lines 14 to 20.
17 You were asked by Mr Laucci: "Do you know yourself what 'Janjaweed' are?"
18 And your answer was: "I heard about the Janjaweed from a distance but I did not
19 know what they were. I don't know them."
20 Question from Mr Laucci: "What did you hear about the Janjaweed, sir?"
21 Answer: "I heard people say the word Janjaweed, but I did not know what it means."
22 Question: "Were you curious, you have no idea what this word means?"
23 Answer: "No."
24 Do you remember saying that yesterday?
25 A. [9:45:03] No, I don't know this. I don't know.

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- 1 Q. [9:45:10] Okay. Then on the next page 35, you were asked, line 7:
2 "[...] did you hear about [any] attacks in 2003 and 2004?"
3 Answer from you: "What attacks?"
4 Question from Mr Laucci: "Attacks on the villages in Wadi Salih, for instance?"
5 And your answer was: "No."
6 Do you remember saying that yesterday?
7 A. [9:45:42] Yes, I said that yesterday. And the attacks, I heard about these attacks
8 from afar, but I -- I didn't witness anything in person.
9 Q. [9:45:57] Well, what you said yesterday was:
10 "Did you" --
11 The question was:
12 "[...] did you hear about attacks in 2003 and 2004?"
13 "What attacks?"
14 "Attacks [on the] villages in Wadi Salih, for instance?"
15 And your answer was: "No."
16 That's what you said yesterday, that's my question, right?
17 A. [9:46:24] Yes. True.
18 Q. [9:46:26] Okay. Once again, I'm going back to your statement which we've
19 established you said you were truthful in and that you had time to check.
20 Paragraph 27, you were asked just a couple of months ago about the defence by the
21 Janjaweed. And you said:
22 "I never saw [the] Janjaweed in Garsila although I had heard of Janjaweed in other
23 parts of Darfur. By Janjaweed, I understand this term to mean thugs and thieves,
24 criminals who robbed and killed innocent people. I never heard Uncle Ali mention
25 the Janjaweed or Fursan or Mujahidin."

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1 So, sir, this is just another example of you not being able to keep your story straight,
2 isn't it? You testify under oath here yesterday that you don't know what the word
3 "Janjaweed" means. Two months ago, you understand the term to mean thugs,
4 thieves and criminals who robbed and killed innocent people.

5 Why did you tell the Judges you don't know what the word "Janjaweed" means?

6 A. [9:47:46] The word "Janjaweed" was a word used by people and I was able to
7 hear the word in the radio -- on the Radio Dabanga, on Radio Dabanga and on TV,
8 but I didn't witness this myself and I didn't know them. Yes, there were some thefts
9 and looting and thugs, but I don't know if they -- they were the Janjaweed who were
10 doing this or other people.

11 Q. [9:48:23] Right. So when you said to the Judges yesterday that you had no idea
12 what the word means, you were not being truthful, were you?

13 A. [9:48:37] I was telling the truth.

14 Q. [9:48:43] You also said in your statement:

15 "Of course" --

16 This is at paragraph 28:

17 "Of course, in 2003-2004 I heard that villages in Darfur were attacked by the
18 Janjaweed. I did not witness any such attacks myself. I just stayed in Garsila.
19 When I spent time in Mukjar during my service with the CRF, I heard that Mukjar
20 and villages in Wadi Salih had been attacked by the Janjaweed some years earlier and
21 that people had been robbed and killed."

22 A. [9:49:26] (No interpretation)

23 Q. [9:49:28] Wait for the question. Wait for the question.

24 Yesterday you said to the Judges under oath:

25 Question: "[...] did you hear about attacks in 2003 and 2004?"

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1 "What attacks?"

2 Question: "[About] attacks of villages in Wadi Salih, for instance?"

3 Answer: "No."

4 Once again, you weren't truthful to the Judges in your testimony yesterday, were
5 you?

6 A. [9:50:03] I speak the truth, the truth. And about the -- those attacks in Garsila, I
7 heard about these, I heard about these, that they were committed by the Janjaweed
8 and the thugs, but I never witnessed this.

9 Q. [9:50:24] Well, I'll move on, sir, but that's not what your statement says and it's
10 not what your testimony says. Your testimony yesterday was that you never heard
11 about this. That was not true, correct?

12 I'm not asking you whether you witnessed it.

13 A. [9:50:39] Well, as I mentioned, I heard about the Janjaweed, but they do not exist
14 in -- inside Garsila. I only heard about them.

15 Q. [9:51:03] Did you hear about mass executions in Wadi Salih? Not about attacks.
16 About mass executions where many people, say a hundred, over a hundred people
17 taken out and murdered.

18 Did you hear -- not see, did you hear about that?

19 A. [9:51:29] No, I did not hear.

20 Q. [9:51:32] Okay. You never heard that there was a mass execution in Mukjar?

21 A. [9:51:43] No, I didn't.

22 Q. [9:51:44] You never heard there was a mass execution just outside Deleig?

23 A. [9:51:53] No, I never heard about that.

24 Q. [9:51:57] You're hearing about that today for the first time from me?

25 A. [9:52:06] Yes, from you. I never heard about this. If I -- if I ever heard about it,

1 I would have told you immediately.

2 Q. [9:52:14] All right. But you did hear -- you told me that yesterday at page 96
3 that you did hear about the *sheikh* from your neighbourhood, Dikobi, *Sheikh* Ismail,
4 being taken out and killed in Deleig. You did hear about that, right?

5 A. [9:52:39] I heard that he was killed, but who killed him, I didn't know.

6 Q. [9:52:44] And you had no idea till today when I'm telling you that he was killed
7 in a mass execution outside Deleig?

8 A. [9:52:55] No, I didn't know. Whether he was killed in a mass execution or
9 elsewhere, I don't know.

10 Q. [9:53:01] I should have said in connection with the executions in Deleig.
11 All right, you lived in {ICR: (Redacted)} when you were a boy, your father was {ICR:
12 (Redacted)}, right?

13 {ICR: (Redacted)}

14 MR NICHOLLS: [9:53:25] Sorry, that should maybe be redacted.

15 Q. [09:53:26] You served in Bindisi in the CRF for a period?

16 A. [9:53:41] For six months approximately.

17 Q. [9:53:42] And during that six months in Bindisi, did you ever learn that the town
18 you were in, the area you were in, Bindisi, had been attacked and burned down in
19 2003?

20 A. [9:53:59] Yes, it was burnt in 2003, I heard it from people but I never witnessed
21 that. I was very young, I didn't know anything.

22 Q. [9:54:11] Well, you weren't that young. You were in the CRF serving as
23 a policeman.

24 A. [9:54:21] In 2003, I was not. I was not in the CRF.

25 Q. [9:54:26] Okay. I'm talking about when you were serving in the CRF, when

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1 you were a policeman/soldier in the CRF. Yesterday you said as part of your duties
2 in the CRF, you were in Bindisi, right?

3 A. [9:54:44] Yes, I was in Bindisi, but at that time --

4 Q. [09:54:45] Stop.

5 A. [09:54:48] -- it was safe.

6 Q. [9:54:52] Stop, stop. You answered my question when you said yes.

7 Now, while you were in Bindisi in the CRF, did you learn about the attack on Bindisi
8 in 2003?

9 A. [9:55:06] Yes, I heard, but I didn't know anything about that.

10 Q. [9:55:11] Okay. So once again, when you said yesterday you hadn't heard
11 about any attacks in Wadi Salih, that wasn't true, was it?

12 A. [9:55:23] Wadi Salih is big, there is -- there is Bindisi in Wadi Salih, there are
13 other areas.

14 PRESIDING JUDGE KORNER: [9:55:34] Sorry, Mr Nicholls.

15 In 2003, you were in Garsila you told us, that's right, isn't it?

16 THE WITNESS: [9:55:43](Interpretation) Yes, I was.

17 PRESIDING JUDGE KORNER: [9:55:46] During the course of 2003 and indeed in
18 2004, weren't there refugees coming to Garsila from the various places that had been
19 attacked?

20 THE WITNESS: [9:56:00](Interpretation) Yes, there were refugees.

21 PRESIDING JUDGE KORNER: [9:56:05] And you never heard from any of the
22 refugees or from anybody who had spoken to them that their villages had been
23 attacked, burnt, looted? Nothing like that?

24 THE WITNESS: [9:56:23](Interpretation) I heard from people, but I didn't witness
25 myself.

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1 PRESIDING JUDGE KORNER: [9:56:36] Okay. So you did hear that these villages
2 had been attacked, burnt, and looted?

3 THE WITNESS: [9:56:42](Interpretation) Yes.

4 PRESIDING JUDGE KORNER: [9:56:53] Thank you.

5 Yes, sorry, Mr Nicholls.

6 MR NICHOLLS: [9:56:56]

7 Q. [9:56:57] Do you know what the accused Mr Abd-Al-Rahman is accused of in
8 this case? Do you know what incidents and crimes he was charged with, or do you
9 have no idea about that?

10 A. [9:57:14] I don't know anything about these crimes.

11 Q. [9:57:19] Okay, listen to the question. I'll put it a different way. Do you know
12 that the man who, you know, very well became your father, in effect, do you know
13 what he is accused of in this trial? Do you know what crimes he is accused of?

14 A. [9:57:41] Well, I heard, but I don't know anything about him.

15 Q. [9:57:54] So --

16 PRESIDING JUDGE KORNER: [9:57:57] I'm sorry, Mr Nicholls, that answer wasn't
17 clear. I think you better ask the question again.

18 MR NICHOLLS: [9:58:03] Yes, okay, I was going to just move on, but --

19 Q. [9:58:10] Do you know what crimes Mr Abd-Al-Rahman, the accused in this
20 case, is charged with? Do you know what he is on trial for?

21 A. [9:58:25] Sorry, these crimes I don't know anything about, these -- the ones he's
22 charged -- Mr Ali Abd-Al-Rahman is charged with. I heard from people, but I don't
23 know anything about...

24 Q. [9:58:45] Okay. Let me continue.

25 Do you know that he's been charged with mass executions in Mukjar?

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1 A. [9:58:56] I heard, but I didn't see.

2 Q. [9:59:01] Okay, and did you also hear that he's been charged with the mass
3 execution in Deleig?

4 A. [9:59:10] I also heard about that, but I didn't see.

5 Q. [9:59:15] Okay, you didn't see it. It also means that about five minutes ago,
6 when you said you were hearing about those mass executions from me for the first
7 time today, you weren't telling the truth.

8 A. [9:59:30] I said the truth.

9 Q. [9:59:35] Okay. You were stationed in Mukjar with the CRF, right? After
10 you -- after you completed your training, right?

11 A. [9:59:47] Yes. Yes, true.

12 Q. [9:59:54] And your job there was as a driver?

13 A. [9:59:59] Yes, true.

14 Q. [10:00:01] Okay. There's a road -- I mean, you know that area well, obviously.
15 You've lived there and you've driven there. There's a road going from Mukjar to
16 Garsila. It goes through Nyerli, right?

17 A. [10:00:16] Excuse me?

18 Q. [10:00:20] Could we have tab --

19 A. [10:00:25] I'm sorry. I didn't hear.

20 Q. [10:00:27] Okay. Well, let's bring up tab 20. That might help.

21 It's DAR-OTP-0220-4739. And, your Honours, that's a map in the map book of the
22 Mukjar area.

23 Okay, I'm going to show you a map now, sir. And I know that you have -- you
24 know, you don't read and write well, but you must be able to read maps to some
25 extent if you're a driver and you don't have a smartphone with GPS.

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1 So can you recognise this here? The town on the -- the big town on the bottom right
2 is Mukjar, and above it along the road we see Nyerli.

3 Do you recognise this area, sir?

4 A. [10:01:28] I know Mukjar and Kassa (phon), but I don't know anything about
5 this map.

6 Q. [10:01:49] Okay. Do you know there is a road from Mukjar that goes north to
7 Nyerli?

8 A. [10:01:57] I never went in this road. I never saw this road.

9 Q. [10:02:06] Okay, so you've lived in this area since -- your entire life. You've
10 been stationed at Mukjar. You're a driver. You've never driven on this main road
11 from Mukjar to Nyerli? You've never driven down that road?

12 A. [10:02:29] To Nyerli? No, I didn't drive in this road. I usually go from Mukjar
13 to Garsila and Bindisi, and from the other side, Artala.

14 Q. [10:02:48] Okay. I'm going to ask you a different way. Let's try to move
15 along.

16 You were stationed in Mukjar. You're a driver in that area. You know that there
17 was a UNAMID base built there, not in 2003 and '04, after that, there was a UNAMID
18 base just north of Mukjar, right?

19 A. [10:03:13] Yes, yes. The UNAMID base, I know that. It's there.

20 Q. [10:03:20] Okay. And you have driven by that location where the base is,
21 right?

22 A. [10:03:27] Yes.

23 Q. [10:03:28] All right. And that's also where there's a *khor* that is called Khor
24 Taliba; right?

25 A. [10:03:46] Khor Taliba?

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1 Q. [10:03:49] Yes. It's also sometimes called Khor UNAMID. You know that
2 (Overlapping speakers) --

3 A. [10:03:55] Yes, I heard. Yes, I heard about Khor Taliba, yes, the UNAMID *khor*,
4 yes.

5 Q. [10:04:05] And you know, don't you, that that is the site of a mass execution and
6 a mass grave, where over 100 men were murdered in 2004?

7 A. [10:04:30] No, I only heard about that now from you. That there is a mass
8 grave in this *khor*? No, I didn't hear about that, only now from you.

9 Q. [10:04:44] So you're in Mukjar, serving in the CRF, you're a policeman and you
10 don't know about this mass grave that you have driven by, by the UNAMID base; am
11 I correct?

12 A. [10:05:03] I used to drive by it, but I didn't hear about it. I don't know anything
13 about it -- I didn't hear about a mass grave there.

14 Q. [10:05:17] Right. And then I take it you also haven't heard that the other name
15 for that horrible execution site is "Khor Kushayb"?

16 A. [10:05:33] Khor Kushayb? I didn't hear this name.

17 Q. [10:05:45] You didn't hear it ever from anyone while you were there afterwards
18 that that *khor*, that execution (Overlapping speakers)

19 A. [10:05:54] I heard this name, but -- I heard that name, but Khor Kushayb, no. I
20 never heard this name. Only now from you.

21 Q. [10:06:11] Okay.

22 PRESIDING JUDGE KORNER: [10:06:12] I'm sorry. What did you mean when you
23 said, "I heard this name"?

24 THE WITNESS: [10:06:25](Interpretation) I heard the name "Kushayb". I heard it
25 on TV, I heard it on the Dabanga radio, but I don't know that there is a *khor* called

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1 Khor Kushayb. As I said before, I heard this name "Kushayb" before, but I don't
2 know anything about it.

3 MR NICHOLLS: [10:06:59]

4 Q. [10:07:00] Now, sir, so while you were there serving in the CRF, driving the
5 accused, Uncle Ali, he never said to you, "Let's go by this *khor*. It's a mass grave
6 site"?

7 A. [10:07:30] Never. Never. He was in Mukjar -- he wasn't with me in Mukjar.
8 In Mukjar, I was driving a military vehicle. He wasn't with me. He was -- we used
9 to change our base every six months -- sometimes in Mukjar, sometimes in Bindisi,
10 sometimes in Garsila, sometimes in Artala. When I was in Mukjar, he wasn't with
11 me, so he didn't tell me anything about that. No, I didn't hear about this at all.

12 Q. [10:08:04] Okay, well, again, I'm going to have to bring you back to your
13 statement. And I'm a little confused, because at paragraph 26 of your statement,
14 your truthful double-checked statement, you say:

15 "As mentioned above, I was in the CRF from 2005 to 2017. During that time, I was
16 assigned {ICR: (Redacted)}

17 There's nowhere in your statement where you say, "I was with him and drive him
18 everywhere except for Mukjar".

19 A. [10:08:50] Yes. I was not a personal driver to him. I was working in the
20 government. I was working in the CRF and then when he used to come, he would
21 say to me, "I need to go on a certain mission," or, "Come and drive me to my home,"
22 or something like that.

23 I was not driving his private car, I was driving a military vehicle that he used to use
24 for his missions.

25 Q. [10:09:35] Yes. Just to be clear, so you don't have to say that again, if I ever ask

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1 you about driving him, I am talking about you driving when -- in the CRF period, I'm
2 talking about you driving him in a government car, okay. Do you understand?

3 A. [10:09:58] Understood.

4 Q. [10:10:09] All right. You said yesterday, I think at page 52, something about
5 how -- when you -- before you went to Rahad al-Berdi in 2011, you came there from
6 Khartoum. Do you remember that?

7 A. [10:10:29] I was in Khartoum and I was in Zalingei. And then I went to
8 Khartoum, and then from Khartoum to Rahad al-Berdi in 2011.

9 Q. [10:10:41] Okay, thank you very much. And how long were you in Khartoum?

10 A. [10:10:46] I was in Khartoum for about three months, and, after that, I went to
11 Rahad al-Berdi.

12 Q. [10:10:57] Okay. So was that in 2010 or '11? It doesn't matter if you do not
13 remember, but was it 2010 (Overlapping speakers)

14 A. [10:11:07] I don't -- I don't remember exactly.

15 Q. [10:11:09] Okay. So while you were in Khartoum, you heard about the arrest
16 warrant for your President, President Omar Al-Bashir; right?

17 A. [10:11:29] I heard about it on TV.

18 Q. [10:11:35](Overlapping speakers) I'm not asking if you witnessed it. Okay, you
19 heard about it on TV. And that was big news, right; everybody knew about
20 that -- the President being issued an arrest warrant by a foreign court?

21 A. [10:11:53] Correct.

22 Q. [10:11:54] And, similarly, you heard about the arrest warrant for Raheem
23 Muhammad Hussein, who was the minister of the interior, effectively your boss;
24 there was also an arrest warrant for him, right?

25 A. [10:12:16] I didn't hear about Abdel Raheem Muhammad Hussein. I heard

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1 about Al-Bashir, but I don't know anything about those people.

2 Q. [10:12:30] I'm not asking you about them. Just listen to the question.

3 Did you hear about the warrant which was also big news for Ahmad Harun when
4 you were in Khartoum?

5 A. [10:12:49] Yes, I heard.

6 Q. [10:12:53] Did you hear about the arrest warrant for Ali Kushayb?

7 A. [10:13:01] No. I don't know anyone with the name Ali Kushayb. I heard it
8 from the radio, but I don't know who Ali Kushayb is.

9 Q. [10:13:17](Overlapping speakers) You answered. You answered. You
10 answered. I'm not trying to stop you explaining, but you answered when you said
11 you didn't hear about the warrant.

12 Did you hear about a warrant for Ali Muhammed Ali Abd-Al-Rahman -- Uncle Ali, in
13 his name?

14 A. [10:13:43] Yes, I heard. I heard about that from the Dabanga radio and I heard
15 people also talking about this.

16 Q. [10:13:52] Right. So when you heard about the arrest warrant for Ahmad
17 Harun, you heard about that but you didn't hear about the other person on the exact
18 same arrest warrant, your Uncle Ali?

19 A. [10:14:10] I heard about these names but I don't know anything about them.

20 PRESIDING JUDGE KORNER: [10:14:30](Microphone not activated) We're trying to
21 establish when he heard -- I'm not very clear on that at the moment.

22 MR NICHOLLS: [10:14:36]

23 Q. [10:14:36] Well, I won't do it in leading.

24 When did you hear about the arrest warrant for Ali Muhammad Ali Abd-Al-Rahman,
25 aka Ali Kushayb? You spoke about that yesterday, but please tell their Honours

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1 when you heard about it?

2 A. [10:14:58] I heard about it when I was in Nyala. I was in Nyala and I heard that
3 the abovementioned has surrendered himself to the ICC in order to prove that he is
4 innocent. That's what happened.

5 PRESIDING JUDGE KORNER: [10:15:31] Because that's why -- I mean, you were
6 asking him about Khartoum in 2000 and, whatever it was, '10.

7 You didn't hear about any of the arrest warrants for your uncle or anybody called Ali
8 Kushayb until there was a surrender? Is that -- is that what you're saying?

9 THE WITNESS: [10:16:01](Interpretation) No, I heard, I heard about it, I heard about
10 this talk, I heard that there is somebody wanted with the name of Ali Kushayb, but I
11 didn't know if that person was arrested or handed themselves in, I don't know.

12 PRESIDING JUDGE KORNER: [10:16:19] Yes, but when did -- when was the first
13 time that you heard about an arrest warrant for anybody named Ali Kushayb or
14 Al-Rahman?

15 THE WITNESS: [10:16:38](Interpretation) I think that was in 2004, I think, 2001, 2002,
16 I don't know. I don't know but I heard this piece of news.

17 PRESIDING JUDGE KORNER: [10:17:04] Well, can you tell us in which town you
18 were when you heard it? Were you still in the CRF?

19 THE WITNESS: [10:17:17](Interpretation) I was in Nyala, I was in Nyala.

20 PRESIDING JUDGE KORNER: [10:17:22] Yes, were you still in the CRF?

21 THE WITNESS: [10:17:26](Interpretation) No. I left it in 2017. I was just a civilian
22 at the time.

23 MR NICHOLLS: [10:17:35]

24 Q. [10:17:35] Sir, well, let me try to remind you by reading what you said
25 yesterday.

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1 Yesterday you said you heard about the arrest warrant approximately in 2022; is that
2 right? That's the first time you heard about there was an arrest warrant for the
3 person you call Uncle Ali, Mr Abd-Al-Rahman. In other words, last year?

4 A. [10:18:13] I heard -- I heard about it, but I didn't see anything with my own eyes,
5 that's correct.

6 Q. [10:18:19] Okay, last time. I'm not asking what you saw. Don't worry about
7 being asked about what happened. The first time that you learned of an arrest
8 warrant for Ali Muhammad Ali Abd-Al-Rahman was last year approximately,
9 correct?

10 A. [10:18:43] No, that was not the first time. I heard about it before.

11 PRESIDING JUDGE KORNER: [10:19:04](Microphone not activated) ... have a
12 LiveNote reference for that, please.

13 MR NICHOLLS: [10:19:12] 27, I believe, your Honour.

14 Q. [10:19:35] Okay. And the entire time that you were in the CRF from 2007 until
15 you retired in 2016, none of your CRF colleagues said, "Did you know there's
16 a warrant for our boss, *Musaid* Abd-Al-Rahman"?

17 A. [10:20:13] I heard about it. I said that there is an arrest warrant, but I don't
18 know anything about them.

19 Q. [10:20:25] Did you hear about it from 2007 to 2016 from your CRF colleagues
20 when you were in the CRF?

21 A. [10:20:41] No, nobody talked to me about this same talk.

22 Q. [10:20:57] Right. And the whole time you were driving him,
23 Mr Abd-Al-Rahman never said, "You know there's an arrest warrant for me, they're
24 calling me Ali Kushayb, but I'm innocent"?
25 He never said that to you, right?

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1 A. [10:21:19] I don't know Ali Kushayb. I know Ali Muhammad Ali

2 Abd-Al-Rahman, Abu Nasser.

3 Q. [10:21:34] Okay --

4 A. [10:21:35] I don't know this name.

5 Q. [10:21:37] Let's talk about 2013. Yesterday, right at the end of the day, you told
6 me that you were in Rahad al-Berdi in the CRF in 2013, right? You served that year
7 in Rahad al-Berdi.

8 A. [10:21:58] Yes. Correct.

9 Q. [10:22:03] Thank you. And you've also said that -- words to the effect that the
10 job of the accused, Mr Abd-Al-Rahman, when he was head of the CRF in Rahad
11 al-Berdi was to protect the security there, to protect people there; right?

12 A. [10:22:29] Correct.

13 Q. [10:22:37] And you were his driver of his government vehicle at that time, right?

14 A. [10:22:44] Correct.

15 Q. [10:22:50] So you know all about the violent clashes between the Salamat tribe
16 and the Ta'aisha tribe in Rahad al-Berdi in 2013, right?

17 A. [10:23:07] Yes, I know everything about these clashes. This was a tribal
18 problem that is not connected with the government. Of course, the military was
19 there, the police were there and the CRF were there, but that was a tribal clash
20 between the Salamat and the Ta'aisha. There were clashes between them, and there
21 were problems, yes.

22 Q. [10:23:43] All right. Thank you.

23 Let me take you -- could we please have tab 7 up on the screen, your Honours.

24 That's the translation. There's no point in the Arabic because the witness has
25 difficulty reading.

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1 Sir, I'm going to show you a news report from Radio Dabanga from 16 April - that's
2 the radio station you listen to - 2013. And the title of this report from 16 April 2013,
3 when you were in the CRF, when you were in Rahad al-Berdi, is:
4 "Within hours, Ali Kushayb shatters the agreement to end hostilities signed between
5 the Ta'aisha and the Salamat in Rehed al-Birdi."

6 Can we go to the next page, please.

7 Yes, thank you. You can stop there.

8 This news broadcast also says, this story says:

9 "Alternatively, Musa Al-Bashir Musa, a member of the Legislative Council for
10 South Darfur State and a notable Salamat, revealed that the hostilities perpetrated by
11 the militia leader wanted by the International Criminal Court, Ali Kushayb, had
12 restarted yesterday in the [Fandug] area, in the district of Rehed al-Birdi, and that
13 they constituted a clear breach of the two agreements of Umd Dukhn (between the
14 Salamat and Misseriya) and of Rehed al-Birdi [...]"

15 And I'll stop reading there.

16 It then says:

17 "On Radio Dabanga" -- that's your station -- "Musa announced that Ali Kushayb, who
18 commands the Abu-Tirah Forces, attacked the area and the surrounding villages with
19 15 armoured Land Cruisers, reinforced by Military Intelligence Services' troops under
20 the Sudanese army."

21 Now the commander of those forces was Ali Muhammad Ali Abd-Al-Rahman,
22 commander of the Abu-Tirah, right?

23 A. [10:26:56] No, not attacks. From our camp, we did not attack anybody. This
24 is not correct.

25 PRESIDING JUDGE KORNER: [10:27:10](Microphone not activated) ... because

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1 what does Abu-Tirah mean? The CRF?

2 MR NICHOLLS: [10:27:14] That means CRF, your Honours. And I don't think
3 that's in dispute from anybody.

4 Q. [10:27:20] Well, who commanded the Abu-Tirah in 2013 in Rahad al-Berdi?
5 Who was the *musaid*?

6 A. [10:27:31] The *musaid* was Ali Muhammad Ali Abd-Al-Rahman. And as I said,
7 this was a tribal problem between the Misseriya and the Salamat. And then it turned
8 against the Ta'aisha as well and problems started between the Ta'aisha and the
9 Salamat. But as I said, it's nothing to do with the government, but we, as the
10 government forces, we had to secure all the towns and the villages and make sure
11 that women and widows and children are safe. But we did not go in a mission with
12 13 armoured Land Cruisers. We don't even have 13 armoured Land Cruisers and
13 we did not attack anybody.

14 Q. [10:28:34] You never heard Mr Abd-Al-Rahman called Ali Kushayb, it was on
15 Radio Dabanga at the time you were in the CRF, and it stated that your commander,
16 the commander of the Abu-Tirah forces in Rahad al-Berdi was Ali Kushayb?
17 You never heard that?

18 A. [10:29:10] No, I didn't hear this name. I know that the commander was Ali
19 Muhammad Ali Abd-Al-Rahman.

20 PRESIDING JUDGE KORNER: [10:29:23](Microphone not activated) ... ever say to
21 you, though, "Look, Radio Dabanga is saying he's Ali Kushayb, wanted by the
22 International Criminal Court"?

23 THE WITNESS: [10:29:45](Interpretation) I heard this talk, but I don't know Ali
24 Kushayb. I know Ali Muhammad Ali Abd-Al-Rahman.

25 PRESIDING JUDGE KORNER: [10:29:53] Yes, I'm sorry, just listen. You say you

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1 heard talk. Did you hear talk -- is that what you're saying, that the radio was saying
2 that the man you knew as Uncle Ali was, in fact, Ali Kushayb wanted by this Court?

3 THE WITNESS: [10:30:24](Interpretation) Yes, I heard this talk, but I don't know
4 anything about this name.

5 PRESIDING JUDGE KORNER: [10:30:37] All right. Go on, Mr Nicholls.

6 MR NICHOLLS: [10:30:39]

7 Q. [10:30:40] Because now you're changing your story again. You just agreed with
8 me that it was about a year ago that you heard the name Ali Kushayb for the first time.
9 Now you're saying you knew about it in 2013 and 2014 when you were working in
10 the CRF?

11 A. [10:31:02] Yes, correct. The first time I heard this name -- and I heard about
12 Radio Dabanga and that he was wanted by the ICC, but I know his full name is
13 Ali Muhammad Ali Abd-Al-Rahman. I know nothing about Ali Kushayb, but I
14 heard the name.

15 Q. [10:31:30] Right, let's move to your statement now.

16 This was in your statement, paragraph 30:

17 "I heard the name Ali Kushayb for the first time on television on the news after
18 Uncle Ali had surrendered himself to the Court. This was about three years ago. I
19 recall that I was driving in Darfur on my way back from Chad. I had stopped to eat
20 or drink at a place that had a television. The news was on and they mentioned the
21 name Kushayb."

22 So that was not true what you told the Defence in your statement; you knew about Ali
23 Kushayb all along?

24 A. [10:32:42] I know nothing about it all along. I didn't know anything about this
25 name. I know about the name Ali Muhammad Ali Abd-Al-Rahman, and I heard

1 that on TV.

2 Q. [10:32:53] Well, I'm -- I'm going to try to speed it up a bit now sir, but what I'm
3 putting to you now is you're not being truthful with this Court. You're struggling
4 with every answer to try to give the right answer for the accused, which is why you're
5 being completely inconsistent, right?

6 You are trying to help him so you're making it up as you go along, right?

7 A. [10:33:18] This is the truth. I speak the truth and this is the truth. I don't
8 know anything about this. I know Ali Muhammad Ali Abd-Al-Rahman. I heard it
9 on the news, on the radio, on TV. I heard the name Ali Kushayb, but I don't know
10 that name. I know Ali Muhammad Ali Abd-Al-Rahman.

11 Q. [10:33:40] I'm going to show you one more document, and this is at tab 9, the
12 English, please, DAR-OTP-00006587.

13 Sir, this is another article, again from your station, Radio Dabanga, dated 17 April
14 2013.

15 Now, do you remember the time around mid-April 2013 when 250 Salamat families
16 left Rahad al-Berdi and went to Nyala? Yes or no; do you remember that
17 happening?

18 A. [10:34:33] I know this, they left Rahad al-Berdi and they went to Nyala. I saw
19 them, I witnessed this personally.

20 Q. [10:34:42] Okay. Thank you.

21 If we could go to the next page of this document.

22 And did you hear about it on the radio at the time as a kind of a big thing?

23 A. [10:34:55] Excuse me?

24 Q. [10:35:08] Did you hear about the 250 Salamat families leaving at that time?

25 Did you hear about it on the radio or in the media?

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1 A. [10:35:22] I didn't hear it on the radio. I saw it myself that they left from Rahad
2 al-Berdi to Nyala.

3 Q. [10:35:33] And the reason these 250 families left was because of the conflict
4 between the Ta'aisha and the Salamat that you were talking about, right? Some of
5 their homes had been burned of the Salamat, and some of the shops looted in Rahad
6 al-Berdi, right?

7 A. [10:36:01] Well, I didn't see their stuff being looted, but there was a problem,
8 a tribal problem between the Salamat and the Ta'aisha, which I -- I don't know about
9 the cause of this conflict. But there was -- yes, there was a conflict, a tribal conflict
10 and people left from Rahad al-Berdi to Nyala.

11 Q. [10:36:24] Right. And the people who left -- the Salamat left because they were
12 scared, right?

13 A. [10:36:32] They must have been scared because that was a tribal issue.

14 Q. [10:36:40] Yes. So as a member of the CRF, the police in Rahad al-Berdi, why
15 didn't the CRF protect these Salamat families so they wouldn't have to leave?

16 A. [10:36:59] We protected them. We transported them in trucks. They refused
17 to stay in town, so we accompanied them and protected them until they reached
18 Nyala.

19 Q. [10:37:27] And that protection, saving those people, that was run by the *musaid*,
20 Mr Abd-Al-Rahman, right? He protected those 250 Salamat families taking them to
21 safety?

22 A. [10:37:45] Yes, he took them to the police and from the police they went to
23 Nyala.

24 Q. [10:37:54] Okay, let me read you part of the article.

25 "In the same location, Khalid" --

1 Who is a Salamat notable, that is, Khalid Husayn Isma'il -- "revealed that attacks by
2 the al-Ta'aisha against the Salamat had been happening since Friday in the town of
3 Rehed al-Berdi. They included the burning of 45 shops of the Salamat, after the
4 looting of their merchandise, and the pillaging and burning of 70 Salamat homes in
5 Rehed. Further, Khalid confirmed that Ali Kushayb, the individual wanted by the
6 International Criminal Court in the Hague, had participated in the incidents and that
7 an additional 250 Salamat families who been relocated from Rehad al-Berdi could
8 reach Nyala at any time."

9 Once again, it was on the radio. Everybody knew your boss was Ali Kushayb.

10 A. [10:39:26] As I said, I don't know Ali Kushayb. I know Ali Muhammad
11 Ali Abd-Al-Rahman; and, yes, these issues took place, a tribal issue. We took
12 them -- we safeguarded them and we accompanied them to the police and from the
13 police to Nyala.

14 Q. [10:39:49] I'm going to move on to a different topic.

15 Now, we spoke yesterday about a CRF soldier Ahmad Yusuf al-Balul who was
16 unfortunately killed. He was martyred. Do you remember we talked about him
17 yesterday?

18 A. [10:40:20] Yes. We spoke about him yesterday.

19 Q. [10:40:24] And, unfortunately, he was killed in Nyala in 2013; right?

20 A. [10:40:40] Yes, correct. He was killed in 2013.

21 Q. [10:40:45] Excuse me. Were you with him when he was killed?

22 A. [10:40:51] I was not with him, I was in Khartoum. I was on the way to
23 Khartoum when I heard Al Fasher -- I heard about this news that there was some
24 clashes between the CRF and the rebels or thugs, but I heard this news, yes.

25 Q. [10:41:14] Right.

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- 1 A. [10:41:15] But what exactly was the problem, I didn't know.
- 2 Q. [10:41:18] Okay. And why were you going to Khartoum then?
- 3 A. [10:41:26] I was on annual leave. I went to some -- to run some errands for my
4 father who was in the police. They -- these errands are related to his pension.
- 5 Q. [10:41:42] Okay, well, I know -- I don't like talking about your father who died,
6 but you told us your father died in 2001?
- 7 A. [10:41:58] Yes. He passed away in 2001.
- 8 Q. [10:42:03] Okay. I understand, sir.
- 9 So this was a personal trip? You're not working for the CRF when you go to
10 Khartoum?
- 11 A. [10:42:15] It was for a personal -- it was a personal trip, yes, that concerned only
12 me.
- 13 Q. [10:42:22] Right. And we finally got to it yesterday that the CRF in Rahad
14 al-Berdi was around 30 individuals, right, roughly? I know some people go on leave
15 like you were, but around 30 or so soldiers in the CRF in Rahad al-Berdi, right?
- 16 A. [10:42:41] Yes, that's correct.
- 17 Q. [10:42:47] And it's a fairly big deal when a member of the unit is killed in action,
18 killed in duty, when they become a martyr?
- 19 A. [10:43:04] He was martyred. There was a third party I don't know anything
20 about. I was on annual leave. I was on the road. I didn't know anything about
21 that.
- 22 Q. [10:43:21] Right. But he was martyred as sort of a hero, right, because he was
23 protecting Mr Ali Muhammed Ali Abd-Al-Rahman when he was killed. He may
24 have saved Mr Abd-Al-Rahman's life, right?
- 25 A. [10:43:48] I think this is correct, but I was not there. I was not present.

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1 Q. [10:43:55] And also, unfortunately, Mr Abd-Al-Rahman was injured in that
2 attack, wasn't he, but luckily he survived?

3 A. [10:44:05] That is correct.

4 Q. [10:44:13] Thank you.

5 Now I'm going to move on -- one moment.

6 (Counsel confers)

7 MR NICHOLLS: [10:44:41]

8 Q. [10:44:42] I'll move on to something else, sir. We will try to do this quickly.
9 I'm going to ask you about another unfortunate incident, and this is the incident
10 where Mr Abd-Al-Rahman's son, Salah, unfortunately died recently.

11 You know that he died, correct?

12 A. [10:45:13] Who exactly died?

13 Q. [10:45:16] Mr Abd-Al-Rahman's son, Salah.

14 A. [10:45:22] I don't know anyone by this name.

15 Q. [10:45:24] Okay.

16 A. [10:45:26] His name is Salah, not Saleh.

17 Q. [10:45:31] Okay, that's my fault. So it's Salah. That's who I'm talking about.
18 You lived with him in Garsila. He was like a brother you said.

19 A. [10:45:42] {ICR: (Redacted)}

20 (Redacted)}

21 Q. [10:45:51] Right, and very unfortunately he died last year.

22 A. [10:45:59] Yes. I heard -- I was not present, but I heard that there was an issue,
23 people were saying -- talking about this issue between the army. People spoke about
24 this. I was not present.

25 Q. [10:46:18] I didn't say you were present. I don't think you were present. I'm

1 not asking if you were present, okay?

2 A. [10:46:29] Yes, but I'm just telling you the truth.

3 Q. [10:46:32] All right.

4 Could I have tab 17, please. This is DAR-OTP-00000811, the translation.

5 Is it up? It's not on my screen. Tab 17, if I said it wrong.

6 Yes, next page, please. Okay.

7 Can you see the picture of the young man well, sir?

8 A. [10:47:31] Yes, I can see it.

9 Q. [10:47:40] This is a picture of Salah, yes?

10 A. [10:47:47] Yes.

11 Q. [10:47:48] All right. This is an article about his death in a Nyala paper outfit,

12 dated 7 June '22. And this young man in the article is referred to as Salah Ali

13 Kushayb, aka Bush Kushayb. The question is, did you ever hear Salah having the

14 nickname "Bush"?

15 A. [10:48:36] I don't know this name. I know Salah Ali Muhammad Ali

16 Abd-Al-Rahman. I don't know Bush or Saleh Kushayb. I know Salah Muhammad

17 Ali Abd-Al-Rahman.

18 Q. [10:48:50] And you never ever ever heard his son calling himself Kushayb?

19 A. [10:48:57] I never heard. If I heard, I would have said that I heard. But I

20 never heard.

21 Q. [10:49:08] Now, sir, I won't go over when you first heard the name Ali Kushayb

22 because we've talked about it a lot and there were different times that you've told us,

23 but you've told us you've never heard the name Ali Kushayb, you didn't hear that in

24 Garsila in 2003 and '04 when he and his forces were attacking and destroying towns

25 and villages, right? You never heard that name in Garsila?

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1 A. [10:50:05] I didn't hear the actual truth but I heard people speaking in public
2 places. People were talking. I didn't see on my own.

3 Q. [10:50:22] Okay. The people were talking about a man named Ali Kushayb.
4 That's the truth, isn't it?

5 A. [10:50:35] Yes, that's correct.

6 Q. [10:50:37] In Garsila in 2003 and '04, right?

7 A. [10:50:43] Yes, right, people were talking, but I didn't know anything about that.
8 I've heard about this name all the time.

9 Q. [10:50:53] All right. All the time.

10 Your Honours, can we go to private session for one moment. I'm almost done.

11 PRESIDING JUDGE KORNER: [10:51:03] Yes, we can.

12 (Private session at 10.51 a.m.)

13 THE COURT OFFICER: [10:51:07] We are in private session, Madam President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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- 20 (Recess taken at 11.07 a.m.)
- 21 (Upon resuming in open session at 2.05 p.m.)
- 22 THE COURT USHER: [14:05:09] All rise.
- 23 Please be seated.
- 24 PRESIDING JUDGE KORNER: [14:05:31] Yes, Mr Nicholls.
- 25 MR NICHOLLS: [14:05:45]

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1 Q. [14:05:48] Good afternoon, sir. Can you see and hear me?

2 A. [14:05:52] Yes.

3 Q. [14:05:59] Well, sir, I'm at the end of my questions for you.

4 I put it to you that you know very well that the man on trial here, Mr Abd-Al-Rahman,
5 was also known by the name Ali Kushayb and that he commanded the Janjaweed
6 forces in 2003 and 2004, and that you came here to lie out of loyalty to him. You can
7 answer that with a yes or no, if you like.

8 A. [14:06:41] I came here not to lie. The Janjaweed period about which you talk, I
9 was young in 2003. I did not know the first thing about the Janjaweed or anything
10 like it back then. All I heard was people's chatter about the Janjaweed. I don't even
11 know what the Janjaweed look like. I only hear about the word "Janjaweed".

12 MR NICHOLLS: [14:07:10] No further questions at this time, thank you.

13 PRESIDING JUDGE KORNER: [14:07:12] Yes, thank you, Mr Nicholls.

14 All right, as I said before, I will deal with the video now, and then you can, of course,
15 re-examine, Mr Laucci.

16 Sir -- hang on a moment.

17 First of all, can I ask you about a place. Did you as the CRF in Rahad al-Berdi also
18 work -- did you cover the area of Um Dukhun? I hope I'm pronouncing this
19 correctly.

20 THE WITNESS: [14:08:15](Interpretation) I did not work in Um Dukhun.

21 PRESIDING JUDGE KORNER: [14:08:19] No, did your -- is Um Dukhun close to
22 Rahad al-Berdi?

23 THE WITNESS: [14:08:28](Interpretation) It is close. However, I did not work
24 there.

25 PRESIDING JUDGE KORNER: [14:08:37] Well, does it come under the area of

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1 responsibility of the CRF base in Rahad al-Berdi?
2 THE WITNESS: [14:09:04](Interpretation) Its authority does not extend to
3 Um Dukhun. Um Dukhun falls under the authority of West Darfur.
4 PRESIDING JUDGE KORNER: [14:09:14] Right. And what about a place called
5 Um Sory?
6 THE WITNESS: [14:09:31](Interpretation) Excuse me?
7 PRESIDING JUDGE KORNER: [14:09:32] Well, I hope I'm pronouncing it correctly.
8 Um Sory -- S-O-R-Y. Does that come under the authority of Rahad al-Berdi?
9 THE WITNESS: [14:09:45] Um Sory?
10 PRESIDING JUDGE KORNER: Yes.
11 THE WITNESS: [14:09:52](Interpretation) Is it Um Sory?
12 PRESIDING JUDGE KORNER: [14:09:54] Well, I hope so.
13 THE WITNESS: [14:09:56](Interpretation) Um Sory, yes. Um Sory does fall within
14 the authority of Rahad al-Berdi.
15 PRESIDING JUDGE KORNER: [14:10:06] All right. I want you, please, then to
16 have a look at parts of a video, please.
17 I'm really sorry, I have forgotten the parts that I want to start with, but I want to
18 start -- does anybody -- I lost the piece of paper that I had which gave the -- I want to
19 start at the end bit.
20 Okay. Apparently, it's been cued up. And I want you to have a look at the speaker
21 and I just want you to identify, if you can, the uniform that the speaker is wearing.
22 (Viewing of the video excerpt)
23 PRESIDING JUDGE KORNER: [14:11:39] Is it on evidence 1 or 2? One. Yes, can
24 we -- yes.
25 Okay, can you just pause it there?

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1 Sir, can you recognise the uniform?

2 THE WITNESS: [14:11:53](Interpretation) Well, I need to see the person's face to be
3 able to identify.

4 PRESIDING JUDGE KORNER: [14:11:57] No. For the moment, don't worry about
5 the person's face. It's just the uniform itself.

6 THE WITNESS: [14:12:15](Interpretation) This is an official uniform of a person who
7 has the rank of a warrant officer.

8 PRESIDING JUDGE KORNER: [14:12:22] And in what -- a warrant officer in
9 what -- official uniform for what? Which organisation?

10 THE WITNESS: [14:12:46](Interpretation) This uniform belongs to the CRF.

11 PRESIDING JUDGE KORNER: [14:12:49] Right. Thank you. And the rank you
12 can see there, you say, is a warrant officer.

13 THE WITNESS: [14:12:59](Interpretation) Yes.

14 PRESIDING JUDGE KORNER: [14:13:02] Sorry. Is that -- interpreters, is that
15 *musaid*?

16 THE INTERPRETER: [14:13:09] Your Honour, he said yes. The interpreter
17 rendered your question in Arabic as: "Is this rank that of a warrant officer or a
18 *musaid*?"

19 We gave him both and he said yes to both.

20 PRESIDING JUDGE KORNER: [14:13:25] I see. Thank you very much. All right.
21 Now, I want to go back to an earlier part and I want you to have a look, please, at the
22 speaker. And we'll play it -- play it with the sound, please?

23 (Viewing of the video excerpt)

24 PRESIDING JUDGE KORNER: [14:13:50] No, sorry, just pause it for a moment,
25 please.

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1 Sorry, isn't that the later part? I want the earlier part of the video, please. We're
2 still on the bit where he has identified the uniform.

3 (Viewing of the video excerpt)

4 PRESIDING JUDGE KORNER: [14:14:30] Yes, we have got the uniform. Can we go
5 back, please, to the earlier part of the video.

6 (Viewing of the video excerpt)

7 PRESIDING JUDGE KORNER: [14:16:25] Sorry, can we pause for a minute.

8 Sir, do you recognise the speaker?

9 THE WITNESS: [14:16:31](Interpretation) I do.

10 PRESIDING JUDGE KORNER: [14:16:38] And who is it, please?

11 THE WITNESS: [14:16:42](Interpretation) This is Ali Muhammad Ali.

12 PRESIDING JUDGE KORNER: [14:16:55] Yes, sorry, can you give his full name,
13 please?

14 THE WITNESS: [14:17:00](Interpretation) Ali Muhammad Ali Abd-Al-Rahman.

15 PRESIDING JUDGE KORNER: [14:17:09] Yes, thank you very much, sir.

16 Yes. That's all that I want to ask about that.

17 So, Mr Laucci, we'll save our questions for the normal, when you've finished.

18 QUESTIONED BY MR LAUCCI:

19 MR LAUCCI: [14:17:24] Thank you, Madam President, I will be brief. I have only
20 two small topics.

21 Q. [14:17:29] Mr Witness, do you hear me?

22 A. [14:17:33] I hear you.

23 Q. [14:17:37] Yes. Following to the cross-examination by my colleague in the
24 Office of the Prosecutor, I have two questions for you.

25 The first question: It was suggested during your cross-examination that you have

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1 given different dates about the first time you heard the name Ali Kushayb.

2 So I ask you for the last time, and once and for all, when was it that you heard the
3 name Kushayb for the first time?

4 A. [14:18:23] Well, I've heard of this name, but I am not at all familiar with that
5 name.

6 Q. [14:18:43] I know. My question is when did you hear about the name
7 Ali Kushayb for the first time? When? That's it.

8 A. [14:19:00] The first time I heard of that name was in 2003.

9 Q. [14:19:04] Thank you.

10 Second question, where did you learn to drive, sir? Where? Where?

11 A. [14:19:15] The place where I learned is Nyala. I was an assistant/warrant
12 officer in a -- on a vehicle, then I started driving myself.

13 THE INTERPRETER: [14:19:40] Interpreter's observation: Interpreter is not clear
14 whether his use of the word "*musaid*" is in reference to a simple assistant or rank.

15 MR LAUCCI: [14:19:53] Okay. Do we understand, sir, that you are referring to a
16 rank within the Central Reserve Forces?

17 A. [14:19:59] No, not a CRF warrant officer. I meant an assistant driver. There is
18 the principal driver. The word that is derived from French, commonly used, is
19 "*apprenti*".

20 Q. [14:20:19] Okay, but were you in the Central Reserve Forces when you learnt to
21 drive?

22 A. [14:20:26] No. I was not working at the CRF at that point in time. I was
23 merely a civilian.

24 Q. [14:20:44] So when was it?

25 A. [14:20:54] Approximately, it was in -- well, I don't remember when it was.

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- 1 Q. [14:21:06] {ICR: (Redacted)}
- 2 MR NICHOLLS: [14:21:21] We are in open.
- 3 MR LAUCCI: [14:21:25] Oh! Thank you.
- 4 PRESIDING JUDGE KORNER: [14:21:26] Do we need to go to private session?
- 5 MR LAUCCI: [14:21:28] No; no, I don't. It is gone and there will be nothing else.
- 6 Q. [14:21:41] Yes, please do not mention the name that I just mentioned. Just say
- 7 if that person, your brother, was in El Obeid with you or not?
- 8 A. [14:21:54] No, he was not with me.
- 9 PRESIDING JUDGE KORNER: [14:22:08] When did he join the CRF?
- 10 THE WITNESS: [14:22:23](Interpretation) That was in 2007.
- 11 MR LAUCCI: [14:22:32]
- 12 Q. [14:22:32] And do you know where your brother learned to drive?
- 13 A. [14:22:42] I taught him myself gradually until he became a driver.
- 14 Q. [14:22:54] Okay. And was it before or after his entry in the CRF?
- 15 A. [14:23:06] After he entered the -- after he entered.
- 16 Q. [14:23:14] So that was -- if he entered in 2007, that was after 2007; is that what
- 17 we understand?
- 18 A. [14:23:23] Yes.
- 19 MR LAUCCI: [14:23:27] That's all my questions, Madam President.
- 20 PRESIDING JUDGE KORNER: [14:23:30] Yes, thank you very much. Judge
- 21 Alexis-Windsor has some questions.
- 22 JUDGE ALEXIS-WINDSOR: [14:23:36] Good afternoon, Mr Witness.
- 23 In fact, out of an abundance of caution, please let's go into a closed session for a little
- 24 bit.
- 25 (Private session at 2.24 p.m.)

- 1 THE COURT OFFICER: [14:24:11] We are in private session, Madam President.
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15 (Open session at 2.40 p.m.)

16 COURT OFFICER: [14:40:33] We're back in open session, Madam President.

17 JUDGE ALAPINI-GANSOU: [14:40:33] Thank you, Madam President. I have a few
18 points of clarification questions to put to the witness.

19 The first question is linked to his recruitment in the Central Reserve Forces. I
20 believe -- I understood that you did not wear a uniform? Did you wear your
21 uniform as a member of the Central Reserve Forces?

22 THE WITNESS: [14:41:24](Interpretation) No. I was only wearing what the recruits,
23 the new recruits were wearing.

24 JUDGE ALAPINI-GANSOU: [14:41:44](Interpretation) Why, during the entire time
25 that you spent in the Central Reserve Forces, you did not wear a uniform, you

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1 continued wearing the clothes worn by new recruits?

2 THE WITNESS: [14:42:02](Interpretation) Yes. When you are being trained, you
3 would wear these -- this type of cloth, which is the T-shirt and the pants.

4 JUDGE ALAPINI-GANSOU: [14:42:18](Interpretation) Yes, but after you were
5 recruited, after you were recruited you needed to have a distinctive uniform, didn't
6 you?

7 THE WITNESS: [14:42:38](Interpretation) I don't know what uniform you're talking
8 about, like distinctive or special uniform you're talking about.

9 JUDGE ALAPINI-GANSOU: [14:42:53](Interpretation) I'm talking about the CRF
10 uniform. You must have had a CRF uniform, right?

11 THE WITNESS: [14:43:07](Interpretation) So you mean the khaki? Yes, if you say
12 the khaki, I would tell you. So after graduation, we wear this.

13 JUDGE ALAPINI-GANSOU: [14:43:25](Interpretation) So you were wearing that
14 uniform. Very well.

15 Now, were you the only driver assigned to Mr Abd-Al-Rahman? Were you the only
16 one driving him?

17 THE WITNESS: [14:43:52](Interpretation) I was not the only driver. I was a driver,
18 and when I am not there, there was another driver who would drive. So it's not only
19 one person. There are shifts, many shifts. During my shift, I would drive. So we
20 would do a rotation.

21 JUDGE ALAPINI-GANSOU: [14:44:10](Interpretation) Now, are we to understand
22 that you, as the nephew, in brackets, to him, you spent more time with him in private
23 life than your professional life?

24 THE WITNESS: [14:44:37](Interpretation) I was with him both in civilian life and in
25 military life.

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1 JUDGE ALAPINI-GANSOU: [14:44:44](Interpretation) Very well. So you spent
2 time with him in civilian life. Now, that leads me to a second question.
3 A short while ago, you said that you heard the name Ali Kushayb for the first time in
4 2003; is that correct?

5 THE WITNESS: [14:45:12](Interpretation) Correct. I heard it on the radio, like the
6 Dabanga radio, and I also heard people say it.

7 JUDGE ALAPINI-GANSOU: [14:45:25](Interpretation) Very well. So you are
8 talking about the radio. I'm interested in that. I wanted to come back to that.
9 So you heard that name for the first time over Radio Dabanga which you used to
10 listen to; is that correct?

11 THE WITNESS: [14:45:45] I did not have the habit of listening to that radio station.
12 I would listen to it every now and then.

13 JUDGE ALAPINI-GANSOU: [14:46:00](Interpretation) But you, at least, were in the
14 habit of listening to news over the radio, irrespective of the radio station, right?

15 THE WITNESS: [14:46:14](Interpretation) Correct. I follow the news on the radio
16 and also from the local public club.

17 JUDGE ALAPINI-GANSOU: [14:46:25](Interpretation) And so you heard that name
18 Ali Kushayb for the first time in 2003 and equally over the radio; is that correct?

19 THE WITNESS: [14:46:39](Interpretation) Correct.

20 JUDGE ALAPINI-GANSOU: [14:46:41](Interpretation) Very well. And in 2013,
21 you were still with Mr Abd-Al-Rahman; correct?

22 THE WITNESS: [14:46:56](Interpretation) In 2013, I was in Khartoum.

23 JUDGE ALAPINI-GANSOU: [14:47:02](Interpretation) Yes, but did you have
24 contact with Mr Abd-Al-Rahman during that period?

25 THE WITNESS: [14:47:19](Interpretation) There was no communication between us,

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1 not at all.

2 JUDGE ALAPINI-GANSOU: [14:47:27](Interpretation) In 2013, there was no
3 communication; is that correct?

4 THE WITNESS: [14:47:35](Interpretation) There was no communication. However,
5 I was with him. I would meet him regularly. I was with him in the house and so
6 on and so forth.

7 JUDGE ALAPINI-GANSOU: [14:47:48](Interpretation) Very well. But when you
8 heard the name Ali Kushayb, Ali Kushayb, didn't it occur to you to ask him why that
9 nickname was being assigned to him?

10 THE WITNESS: [14:48:14](Interpretation) Well, I was young back then. He was
11 many years my senior. It wouldn't have been proper of me to put such a question to
12 him.

13 JUDGE ALAPINI-GANSOU: [14:48:32](Interpretation) From a father to a son, you
14 think such a question should not have been put from a father to a son or from a son to
15 a father?

16 THE WITNESS: [14:48:47](Interpretation) I do not -- I could not.

17 JUDGE ALAPINI-GANSOU: [14:48:52](Interpretation) Very well. But in 2013, you
18 were no longer as young as that.

19 THE WITNESS: [14:49:05](Interpretation) I wasn't too young, nonetheless, I was not
20 able to put such question to him.

21 JUDGE ALAPINI-GANSOU: [14:49:12](Interpretation) Very well.

22 Madam President, I have no further questions. Thank you very much.

23 PRESIDING JUDGE KORNER: [14:49:25] I just want to ask you about the nickname
24 Abu Nasser.

25 You said that he was called that because that was the name of his eldest son.

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1 THE WITNESS: [14:49:49](Interpretation) Yes.

2 PRESIDING JUDGE KORNER: [14:49:50] Are you saying that anybody who has
3 children, particularly male children, would always have the nickname of the eldest
4 son, or eldest child?

5 THE WITNESS: [14:50:19](Interpretation) Of course, when a person has male
6 children, sons, yes, the eldest son is the person whose name would be used to
7 nickname the father. It is done so out of respect.

8 PRESIDING JUDGE KORNER: [14:50:35] Yes, okay, but are you saying this happens
9 in every case, so that every Sudanese father who had a boy would be called by that
10 kind of nickname?

11 THE WITNESS: [14:51:00](Interpretation) Yes.

12 PRESIDING JUDGE KORNER: [14:51:05] I see. Do you have a nickname? I don't
13 think you've been asked that.

14 MR LAUCCI: [14:51:15] You're in public, Madam President.

15 PRESIDING JUDGE KORNER: [14:51:21] I'm sorry. Sorry, can we go into private
16 session.

17 (Private session at 2.51 p.m.)

18 THE COURT OFFICER: [14:51:30] We are in private session, Madam President.

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15 (Open session at 2.57 p.m.)

16 THE COURT OFFICER: [14:57:17] We are in open session, Madam President.

17 PRESIDING JUDGE KORNER: [14:57:44] Sir, we are back in public session, but I've
18 just got this one last question, which I will repeat. Do you know how he was able to
19 afford the number of houses that he had?

20 THE WITNESS: [14:58:10](Interpretation) As I have said, the three houses in Garsila,
21 he had sold those long ago. Afterwards, he bought two houses in Rahad al-Berdi
22 where his children continue to reside.

23 PRESIDING JUDGE KORNER: [14:58:25] All right. Yes, thank you very much, sir,
24 that's all that I think we want to ask you about.

25 So that concludes your evidence. Thank you for coming to Court and you are now

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1 free to leave, and if you'd like to tell the person you are with that you are finished.
2 THE WITNESS: [14:59:04](Interpretation) I did not hear you clearly. What was that
3 again, please?
4 PRESIDING JUDGE KORNER: [14:59:09] That's it. Goodbye.
5 THE WITNESS: [14:59:18](Interpretation) Okay.
6 PRESIDING JUDGE KORNER: [14:59:20] Thank you very much, again.
7 THE WITNESS: [14:59:26](Interpretation) You're welcome.
8 THE COURT OFFICER: [14:59:33](Interpretation) The witness can leave the room,
9 thank you.
10 (The witness is excused)
11 PRESIDING JUDGE KORNER: [14:59:38] While he's doing that, can I just put on the
12 record, which I forgot to do at the time, that the video on which the witness
13 commented -- could somebody come and take him out of Court, please? All right.
14 The video on which he commented was DAR-OTP-0202-1377.
15 Right. Yes. Now, Mr Laucci, your request to reconsider -- I'm a bit confused with
16 your appeal going on at the same time, but it was reconsideration of the --
17 MR LAUCCI: [15:00:35] I can assist.
18 PRESIDING JUDGE KORNER: [15:00:37] The submission. The submission.
19 I'm not going to stop you, you can say anything you like, I've seen your written -- but,
20 don't forget, Mr Laucci, under the system that the Chamber has adopted you talk
21 about admitting it, but we haven't admitted anything. We have simply received as
22 part of the evidence, and we'll make a decision, as we do with all the other documents
23 under the submission system, when we come to make our decision.
24 So I'm not sure what you want us to reconsider at all. It's simply -- we haven't
25 rejected it outright, I think is the only way of trying to put it.

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1 MR LAUCCI: [15:01:27] Well, the request is precisely that this specific document
2 should not be considered as submitted.

3 PRESIDING JUDGE KORNER: [15:01:35] Right. And for the reasons -- do you
4 want to add to the reason -- I mean, the Prosecution in their response have pointed
5 out to you, as they do every time, the test for reconsideration. Do you want to add
6 anything to that?

7 MR LAUCCI: [15:01:55] No. There is nothing I want to add. As you can see and
8 appreciate, this was a very quick made by email instead of a proper motion and
9 everything. Well, we considered that this was the most straightforward way of
10 dealing with that issue, because -- I mean, these emails that we received about the
11 submission of documents and -- well, we just followed the procedure instead of
12 making a very comprehensive submission. We left it to that. I think that's -- the
13 point is very straightforward. This document, the Office of the Prosecutor tried to
14 submit it to the witness, we objected. This objection, this is our understanding, was
15 accepted and instead it was a question that was asked, actually, by you,
16 Madam President, to which the witness replied. So there is no room here for that
17 document in that sequence of the cross-examination.
18 That's our point.

19 PRESIDING JUDGE KORNER: [15:03:08] But, as I say, if -- I understand your
20 arguments about those and those are all arguments that we'll take into consideration
21 at the end of the case. But it is very different, isn't it, from a situation where we did
22 prevent the Prosecution, in fact, using the document because we said they'd failed to
23 disclose it at the proper time.

24 But this is simply one where, at the end of the day, isn't it, we decide whether or not
25 it's a document that -- it's clearly relevant to the case. The question is whether it

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1 has -- sorry, the question will be, when we come to consider these documents under
2 the Article 74 decision, whether we consider this is a document we should take into
3 account at all. Isn't that really the reality?

4 I'm not sure -- I mean, on what basis could I -- could we say that we weren't going to
5 accept it, at this stage, I mean. The whole -- obviously to me it's still a slightly new
6 system of documents just coming in.

7 MR LAUCCI: [15:04:43] Yes. Well, the answer is very -- is very simple, is that the
8 way the cross-examination unfolded and as it is reflected in the transcript, this
9 document was not used, and for that reason, we considered that it cannot, according
10 to the conduct of proceedings, it cannot be considered as submitted because it was
11 simply not.

12 Well, for the relevance of the document, I will reserve my comments on that for later.

13 PRESIDING JUDGE KORNER: [15:05:19] Well, you can't say it's not relevant to an
14 issue, but, in fact, as I recall, you did object, as the conduct of proceedings goes - or
15 Mr Edwards objected, who seems to have disappeared - but to documents that the
16 Prosecution proposed to use, and we made rulings at that stage.

17 This was one of the ones where we said they were entitled to show it. And once
18 they've shown it and it's reflected on the record, it's a bit difficult, isn't it, if we don't
19 have it there, to go back and see what on earth everybody's talking about.

20 MR LAUCCI: [15:06:04] Well, we believe, once again, the way the cross-examination
21 unfolded at this moment in time, I don't think there is any record to complete. The
22 question was asked to the witness, it was answered and without any linkage to that
23 document that the Prosecutor proposes to submit.

24 PRESIDING JUDGE KORNER: [15:06:26] No, I agree, this is where the man who
25 says he knew nothing about the internet explained to us how you can fake things on

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- 1 the internet. I do remember that one very clearly, Mr Laucci.
- 2 Yes, all right. I've got -- we've got the point.
- 3 Mr Nicholls, we've all seen your response. Anything you want to add?
- 4 MR NICHOLLS: [15:06:44] No, your Honour.
- 5 PRESIDING JUDGE KORNER: [15:06:45] All right.
- 6 We will obviously give the matter consideration and we'll -- reconsideration, and
- 7 we'll give a ruling again, as everything was done by email, we'll give it by email.
- 8 All right. Are there any other matters before we adjourn until Monday?
- 9 MR NICHOLLS: [15:07:07] No, not really, but just to make sure we're on the same
- 10 page, the only witness is Monday is Gout and that's it?
- 11 PRESIDING JUDGE KORNER: [15:07:14] Yes. As I understand it, there's no
- 12 prospect of your missing witnesses?
- 13 MR LAUCCI: [15:07:18] Unfortunately, that's the situation.
- 14 PRESIDING JUDGE KORNER: [15:07:20] Right. All right.
- 15 Very well. In that case, it's just Mr Gout. As I say, we'll see how we go, but if it
- 16 looks as though we may take a bit of time on Tuesday, we will be sitting at 9 o'clock
- 17 that morning.
- 18 All right. Thank you all very much.
- 19 THE COURT USHER: [15:07:38] All rise.
- 20 (The hearing ends in open session at 3.07 p.m.)