

Trial Hearing
WITNESS: DAR-OTP-P-0907

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 1
9 Friday, 11 November 2022
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:17] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:31:48] Yes. Good morning.
15 Can we call the case, please.
16 THE COURT OFFICER: [9:31:53] Good morning, Madam President. Good
17 morning, your Honours.
18 The situation in Darfur, Sudan, in the case of The Prosecutor versus Ali Muhammad
19 Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
20 And for the record, we are in open session.
21 PRESIDING JUDGE KORNER: [9:32:12] Yes. Appearances for the Defence. Same
22 as -- no, Mr Edwards is here.
23 MR LAUCCI: [9:32:19] Not exactly.
24 Good morning, Madam President. Good morning, your Honours. Good morning,
25 colleagues. Good morning, Mr Witness.

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1 Mr Ali Muhammad Ali Abd-Al-Rahman is in the courtroom today. And his defence
2 is represented by Mr Mohammad El Rahi, assistant evidence reviewer; my colleague,
3 Iain Edwards; and myself, Cyril Laucci, counsel.

4 PRESIDING JUDGE KORNER: [9:32:42] Thank you very much, Mr Laucci.

5 Yes, we will go -- Mr Shah, yes.

6 MR SHAH: [9:32:48] Good morning, Madam President. Good morning,
7 your Honours.

8 The participating victims are represented by myself, Anand Shah, today. Thank
9 you.

10 PRESIDING JUDGE KORNER: [9:32:56] Prosecution the same as -- well, less of you
11 this morning, actually.

12 MR NICHOLLS: [9:33:00] Yes. Yes, your Honour.

13 Good morning, Madam President. Good morning, your Honours. Good morning,
14 Mr Witness. Good morning to everyone.

15 Ms Whitford and Ms Sabatini, and myself, Julian Nicholls. Thank you.

16 PRESIDING JUDGE KORNER: [9:33:14] Yes, thank you.

17 Good morning to you, sir. I can promise you this will be the last time you will have
18 to appear in this court, and you should be concluded by no later than lunchtime
19 today.

20 Yes, Mr Laucci.

21 MR LAUCCI: [9:33:30] Thank you, Madam President.

22 WITNESS: DAR-OTP-P-0907 (On former oath)

23 (The witness speaks Fur)

24 QUESTIONED BY MR LAUCCI: (Continuing)

25 Q. [9:33:34] Good morning, Mr Witness. Are you well? Are you with me?

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1 A. [9:33:48] Thank you. I'm fine, thank God. I'm fine. Thank you.

2 Q. [9:34:00] No interpretation -- oh, yeah, sorry, I was on original. My mistake.

3 I'm glad to hear that. Mr Witness, you say that the Janjaweed were a creation of the
4 man you * call Ali Kushayb, at paragraph 33 of your statement, right?

5 A. [9:34:38] Yes.

6 PRESIDING JUDGE KORNER: [9:34:40] To be totally accurate, he said "for me they
7 were a creation of him", which is not quite the same thing as saying that it was.

8 MR LAUCCI: [9:34:52] Yes, yes, of course. I'm asking the evidence -- an opinion of
9 the witness of that.

10 Q. [9:34:59] When did the person you name Ali Kushayb create the Janjaweed
11 militia, please?

12 A. [9:35:36] The person called Ali Kushayb established the Janjaweed militia at the
13 beginning of 2003. Then he started -- or he launched his military campaign in 2004.

14 Q. [9:35:55] And you say that until the creation of the Janjaweed, there was no
15 tension between the Fur and the Arabs; is that correct?

16 A. [9:36:42] No. There were no tensions between us and the Arab tribes before the
17 establishment of the Janjaweed. There were no tensions and no conflicts among us.
18 We used to live together in one area. We used to go -- take our livestock for grazing
19 in the same places.

20 Q. [9:37:03] Did you ever hear about a rebellion led by a person called Daud Yahya
21 Ibrahim Bolad?

22 A. [9:37:38] Yes, I heard about the movement of Daud Yahya Bolad. However, I
23 didn't see him with my own eyes.

24 Q. [9:37:46] Thank you. You say that the Janjaweed militia was composed of Arab
25 tribes such as Beni Halba, Khuzam and Salamat. These three tribes that I mention,

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1 are they the main Arab tribes in Wadi Salih?

2 A. [9:39:07] Yes. These Arab tribes were among the social components of our area.
3 The Beni Halba tribe was located in Um Labasa, the Salamat tribe was in Massa and
4 Khuzam tribe was located in Kutiyya area.

5 Q. [9:39:36] Do you want to add something?

6 A. [9:40:16] These three Arab tribes, Beni Halba, Salamat and Khuzam, were there.
7 And there was the Misseriya tribe as well. They also brought other Arab tribes to
8 our area.

9 Q. [9:40:37] So do I understand that these four tribes that you mention were the
10 main tribes in Wadi Salih; is that what you say?

11 A. [9:41:21] Yes. The three tribes that you mentioned are -- were the main tribes in
12 the Wadi Salih area. They lived with us in the same area for a long time. However,
13 there were tribes that migrated recently to Wadi Salih, such as * Awlad Sharafa tribe.

14 Q. [9:41:47] Did I interrupt you? You wanted to mention another tribe?

15 A. [9:42:26] Yes. The tribes that migrated and were brought to Darfur were
16 * Awlad Sharafa, as well as Rashaida tribe. These tribes live in our region now.
17 They divided or they distributed our lands on them, and they are farming our lands
18 at the moment.

19 Q. [9:42:54] Thank you. You mentioned Um Labasa. Is that where the two
20 Janjaweed leaders that you saw in Forgo, Adam Kamaser and Ali Fajaq, were coming
21 from?

22 A. [9:43:56] Yes. Adam Kamaser and Ali Fajaq were -- or originated from Um
23 Labasa. When they came to attack our village, they came from Um Labasa. After
24 attacking the village and burning it, they retreated towards the east, which means
25 towards Um Labasa.

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1 Q. [9:44:21] And Um Labasa is the territory of the Beni Halba, right?

2 A. [9:44:51] Yes. The locality of Um Labasa belongs to Beni Halba tribe since the
3 beginning of my day, since I was born.

4 Q. [9:45:04] Was the person you call Ali Kushayb from Um Labasa?

5 A. [9:45:29] No. Ali Kushayb was not a resident of Um Labasa but resident of
6 Garsila.

7 Q. [9:45:35] Was that person a Beni Halba?

8 A. [9:46:00] No. Ali Kushayb did not belong to the Beni Halba tribe, and I wasn't
9 able to know to which tribe exactly he belongs.

10 Q. [9:46:12] So what is the link between -- that you make between Ali Kushayb and
11 Um Labasa? Can you explain.

12 A. [9:47:09] The things that link Ali Kushayb with the people of Um Labasa are the
13 cooperative councils. There were two councils, one called Limo and another one
14 called Baraka. So the people of Um Labasa used to go to Garsila in order to buy
15 sugar.

16 Q. [9:47:46] Is your answer complete?

17 A. [9:47:59] I would like to add something. The link or the relationship between
18 Ali Kushayb and Um Labasa was through the councils or the *majlis*. And then they
19 used to hold some meetings. I used to see the Arabs coming on horsebacks and
20 camelbacks going to the governorate in order to attend meetings. Ali Kushayb was
21 the mediator in these meetings.

22 PRESIDING JUDGE KORNER: [9:49:11] Okay. How do you know that he was the
23 mediator?

24 THE WITNESS: [9:50:07](Interpretation) The Arab tribes had a prince or emir in
25 Garsila. His name was Hussein Al-Hilu. This emir used to invite the Arabs outside

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1 of Garsila to come to Garsila to attend the meetings. And when these people came to
2 Garsila, Ali Kushayb was their leader.

3 PRESIDING JUDGE KORNER: [9:50:31] Yes. But you weren't there, were you?

4 THE WITNESS: [9:51:23](No interpretation)

5 PRESIDING JUDGE KORNER: [9:51:26] Okay. You need to stop so we can get
6 translation.

7 THE WITNESS: [9:51:30](Interpretation) I was not present in this meeting because I
8 did not receive any invitation to attend. And I was not appointed to represent
9 somebody in this meeting. I was asking people around. I used to ask the people
10 who did not have any problem with us about this meeting, and they told me that this
11 meeting was for the Arab tribes.

12 PRESIDING JUDGE KORNER: [9:51:56] Right. And so did the same people tell
13 you that it was Ali Kushayb who was the -- what did you call it -- the mediator?

14 THE WITNESS: [9:52:58](Interpretation) Yes, because the Arab tribes that we used
15 to meet in the *abar* when -- or the wells, when we used to give water to our cattle, they
16 used to tell us that they were going to Garsila following an invitation from Ali
17 Kushayb to attend the meeting.

18 PRESIDING JUDGE KORNER: [9:53:16] Thank you very much, sir. You've
19 explained it.

20 Sorry, Mr Laucci.

21 MR LAUCCI: [9:53:22] You're welcome, Madam President.

22 Q. [9:53:24] And this function of mediator is something you describe in your
23 statement, paragraph 77, as being the role of the *agid*. So do I understand that both
24 the *agid* and the *agid al-ogada*, as you said, had essentially the same function as
25 mediator? Is that what you say?

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1 MR NICHOLLS: [9:54:03] Sorry, no objection, I just think -- no objection to the
2 question, but it's not completely clear. Maybe if we read paragraph 77 to the
3 witness.

4 MR LAUCCI: [9:54:12] Yes, I can do that.

5 MR NICHOLLS: [9:54:13] Because I think the reference to 77, he won't understand
6 what that means without reading it.

7 MR LAUCCI: [9:54:18] Thank you. I can do that.

8 Q. [9:54:22] I read what is -- to refresh your memory, what is in your statement,
9 Mr Witness. You said:

10 "'*Aqid*' is the title of a person who has the same level as a *sheikh*. His role is to
11 mediate and" --

12 PRESIDING JUDGE KORNER: [9:54:39](Microphone not activated)

13 MR LAUCCI: [9:54:42] I did not realise. Sorry for the interpreters. Apologies.

14 Q. [9:54:46] I repeat slowly:

15 "*Aqid* is the title for a person who has the same level as a *sheikh*. His role is to
16 mediate and find solutions with regards to conflict of stolen cattle or money.
17 Between *sheikhs*, he could play the role of intermediary."

18 Does that description apply to the position of *aqid* and *aqid al-ogada* as well?

19 A. [9:56:51] In our area, the position of *agid* -- so the *agid*'s function was to solve
20 conflicts related to any thefts. The *agid* gets instructions from the *sheikh* because the
21 *agid*'s position is lower than the *sheikh*'s position. As for the *agid al-ogada*, this is a
22 new position. We did not know it before.

23 Q. [9:57:16] Okay. But what you just said is that the person you call Ali Kushayb
24 was expected to play the role of mediator. That's what you said. Anyway, I will
25 move forward.

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1 A. [9:58:22] No. Ali Kushayb was not the mediator of tribes because he was not a
2 fair person. The position of *agid* was present in all tribes and the position was to
3 mediate, to solve conflicts between tribes. But Ali Kushayb did not do that. He
4 was only trying to kill the Fur, loot their money and properties, and he was biased
5 towards the Arab tribes on the expense of other tribes.

6 Q. [9:58:53] We have your evidence on record. I move -- I move on.
7 I know that you repeated several times that you didn't know the tribe of the person
8 you call Ali Kushayb, but could it be, according to you, a Khuzam?

9 A. [10:00:08] No. He does not belong to the Khuzam tribe. Nobody knew to
10 which tribe Ali Kushayb belonged until he was arrested and brought here before the
11 International Criminal Court. Then he introduced himself and he said that he is Ali
12 Muhammad Ali Abd-al-Rahman and that he belongs to the Ta'aisha tribe. This is
13 how I knew it.

14 Q. [10:00:36] Okay. Then my next question, if he was from the Salamat tribe, the
15 answer is also "no", right?

16 PRESIDING JUDGE KORNER: [10:00:47](Microphone not activated) pursue this,
17 Mr Laucci. He said he didn't know. All he knows is that when he got here, he said
18 he was a Ta'aisha. So pursuing it and saying you can say he is not this tribe or not
19 that tribe is not helpful.

20 MR LAUCCI: [10:01:06] Thank you.

21 Q. [10:01:07] So if the Janjaweed militia was, as you said, essentially composed of
22 Beni Halba, Khuzam and Salamat, how could a man who belonged to none of these
23 tribes create the Janjaweed?

24 A. [10:02:23] All what I knew was that Ali Kushayb was leading all the Arab tribes
25 in the area. We didn't know at the time to which tribe he belonged.

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1 Q. [10:02:36] Thank you. I will conclude on this chapter with some question you
2 can just answer by "yes" or "no" without repeating what you said.

3 Can you admit that the assertion that the person you call Ali Kushayb created the
4 Janjaweed militia is a pure assumption of yours?

5 A. [10:03:43] No. It wasn't just an assumption. This is correct because he was the
6 one who ordered the Janjaweed to burn the villages down and loot the properties of
7 the citizens.

8 PRESIDING JUDGE KORNER: [10:03:58] Yeah, okay. I think it's the way the
9 question was phrased.

10 What we understand you to be saying, sir, is that you concluded that he had created
11 the Janjaweed because he appeared to be in charge, or was in charge, according to
12 what you saw.

13 THE WITNESS: [10:05:03](Interpretation) Yes, Ali Kushayb is the one who created
14 the Janjaweed, because if he wasn't the one who created the Janjaweed, how come he
15 was the one who is leading them? How come he was the one who was giving them
16 orders and funding them?

17 MR LAUCCI: [10:05:27]

18 Q. [10:05:27] Mr Witness, can you admit that the allegation that the person you call
19 Ali Kushayb was *aqid al-ogada* is also an assumption?

20 A. [10:06:24] What we knew is that the position of *aqid* was a civilian position that
21 has nothing to do with politics. But Ali Kushayb was appointed by Ja'afar. Ja'afar
22 is the one who brought Ali Kushayb to take this position.

23 Q. [10:06:50] And, finally, can you confirm that you also assumed that the persons
24 who attacked Forgo were under the command of Ali Kushayb?

25 A. [10:07:49] No. We were not lying. I am not lying. I am saying the truth.

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1 We saw him and we saw what happened with our own eyes. Ali Kushayb was not
2 known before the start of the war. He only appeared suddenly as the war was
3 launched.

4 Q. [10:08:10] I move to the next chapter, Mr Witness, which is Deleig. But I want
5 just to answer to you that, assuming is not lying, and it is not what I was suggesting.
6 I move on.

7 Deleig. On Friday, 5 March --

8 THE INTERPRETER: [10:08:35] Message from the interpreter: Can we wait until
9 this part is interpreted, please.

10 MR LAUCCI: [10:08:42] Sure.

11 THE WITNESS: [10:08:52](Interpretation) I am saying the truth. I just want to say
12 that I am saying the truth. I'm not lying.

13 MR LAUCCI: [10:08:58]

14 Q. [10:08:58] I move on. Thank you, Mr Witness.

15 Deleig. On 5 March 2004, when a Janjaweed entered your shelter in Deleig and
16 asked you to give him your money, did you have money?

17 A. [10:09:57] Oh, I didn't have any money in my pocket. All what I had at the
18 time was 7 pounds.

19 MR LAUCCI: [10:10:13] Can the interpreters double-check. Is it 7 or 7,000?

20 THE WITNESS: [10:10:40](Interpretation) Seven pounds. Seven pounds.

21 MR LAUCCI: [10:10:43]

22 Q. [10:10:43] Mr Witness, did you say you had 7 pounds on that day?

23 A. [10:11:07] Yes. I only had 7 pounds. Seven pounds was quite a big amount of
24 money at that time.

25 Q. [10:11:36] If it was quite an amount of money, why did you not give him -- give

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1 it to the Janjaweed in order not to be arrested?

2 A. [10:12:16] The 7 pounds were hidden in one of my inner pockets. And when he
3 asked me, "Have you got any money," I told him, "No, I don't have any money."

4 Q. [10:12:31] And is the reason why you were arrested because you did not hand
5 over money to him? That's what he was asking.

6 A. [10:13:08] No. When I got arrested, I still had the money with me. They
7 didn't see that I had any money on me.

8 Q. [10:13:19] Yes, but if you had given that money, I'm suggesting that you would
9 not have been arrested, would you?

10 PRESIDING JUDGE KORNER: [10:13:29] Well, this is highly speculative, and is it
11 really getting us anywhere, Mr Laucci?

12 MR LAUCCI: [10:13:36] Thank you, Madam President.

13 Q. [10:13:37] Did you see other persons hand over money to the Janjaweed when
14 they came to them?

15 A. [10:14:38] No. I didn't see any person handing over money to the Janjaweed in
16 return for their release. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. [10:15:18] Okay. Is 2 p.m. --

21 THE INTERPRETER: [10:15:25] Correction from the Fur interpreters: (Redacted)

22 (Redacted)

23 MR LAUCCI: [10:15:36]

24 Q. [10:15:36] Is 2 p.m. the time when the Janjaweed came to your shelter and
25 arrested you?

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1 A. [10:16:20] I got arrested before that. I think it might be around 12.30 or 1 p.m.

2 Q. [10:16:59] Well, 2 p.m. is the time that is indicated at paragraph 42 of your
3 written statement. So are you correcting that?

4 A. [10:17:55] No, I wasn't arrested at 2 p.m. I know that it was somewhere
5 between half past 12 and 1 p.m. because I had had a shower and I was getting ready
6 to go to the Friday prayer. And I am quite sure of this time because the preacher
7 was coming in at that time and I was arrested around this time.

8 Q. [10:18:30] Fine. Thank you, Mr Witness.

9 I come back to this issue of money. On Wednesday, during your
10 examination-in-chief - I'm at page 48 of the transcript 94, lines 21 to 23 - you said the
11 following, and you are talking about the time when people are lying in front of the
12 police station in Deleig:

13 "They were calling people or selecting the people who owned money, and they were
14 releasing them, hoping to negotiate and probably get some money out of them."

15 Did you see that scene or not?

16 A. [10:20:37] No. I didn't see this scene with my own eyes, and I didn't see the
17 Janjaweed -- or rather, I didn't see the detainees giving any money to the Janjaweed,
18 because we were all laying on our front with everybody else. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. [10:21:25] Mr Witness -- yes, okay, go ahead.

23 MR NICHOLLS: [10:21:29] Apologies. No objection.

24 Your Honour, could we go into private session for literally one moment.

25 PRESIDING JUDGE KORNER: [10:21:35] Yes.

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1 (Private session at 10.21 a.m.)

2 THE COURT OFFICER: [10:21:49] We are in private session, Madam President.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Open session at 10.24 a.m.)

3 THE COURT OFFICER: [10:24:37] We are back in open session, Madam President.

4 MR LAUCCI: [10:24:41] Thank you, Madam President.

5 Q. [10:24:55] Mr Witness, I come back again on this issue about the time when you
6 were arrested. At paragraph 52 of your statement we also have another information
7 which says that the time when you arrived in front of the police station was 10 a.m.
8 Is that also incorrect?

9 PRESIDING JUDGE KORNER: [10:25:32] Do you know, honestly, Mr Laucci, I
10 would be absolutely amazed if anybody 20 years on virtually could remember the
11 exact time. I really don't think pursuing the exact time that he was arrested or
12 arrived at the police station is going to take this case any further.

13 MR LAUCCI: [10:25:55] Fair enough, Madam President. The only thing is that the
14 written statement of the witness is not in evidence, and if there are contradictions, I
15 have to put them on the record.

16 MR NICHOLLS: [10:26:08] Only if it helps. This is in the -- was clarified in the log
17 at paragraph t.

18 PRESIDING JUDGE KORNER: [10:26:15] Well, as I say, timings, like distance, are a
19 movable feast, Mr Laucci. I mean, if you want to pursuit it, then of course you go
20 ahead.

21 MR LAUCCI: [10:26:33] Yes. And if we cannot translate to the witness.
22 I'm trying to establish, one, when the witness arrived at the police station, because
23 that serves a purpose, and whether the person -- the person he calls Ali Kushayb was
24 present when he arrived. That's what is coming.

25 PRESIDING JUDGE KORNER: [10:27:05] I have no doubt that -- that that's what's

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1 coming, Mr Laucci. But you are not going -- you will have to work very hard to
2 persuade us that contradictions between the time that he got to the police station and
3 the time that he was taken off are such a major aspect of the evidence that the
4 contradictions therefore completely undermine his credibility, * which can be the only
5 reason for asking this.

6 MR LAUCCI: [10:27:45] Certainly not this one alone.

7 PRESIDING JUDGE KORNER: [10:27:47] All right.

8 MR LAUCCI: [10:27:54]

9 Q. [10:27:54] Mr Witness, the Janjaweed that came to your shelter and arrested you,
10 was he alone?

11 A. [10:28:32] No. There was a big number of Janjaweed, but they were all outside
12 the shelter. Only one of them came inside.

13 Q. [10:28:44] Okay. And were you walking alone with the Janjawees who
14 arrested you, or did you join a bigger group of prisoners on the way?

15 A. [10:29:31] When I was taken out of my house, I found that the Janjaweed had
16 gathered a group of people already, and we were all taken together to the police
17 station. I think the number was around 8 to 10 people.

18 Q. [10:29:51] Thank you. And on Wednesday, real-time transcript 94, page 41,
19 line 3 to 4, you said that the rest of that group of prisoners were released when you
20 got close to the police station. Why were they released?

21 A. [10:31:13] When we were taken from my house, some people were released.
22 Those who were not able to walk were released. There was also a person who was
23 limping, he was also released in that square before we were taken to the police station.
24 However, when we were taken to the police station and we arrived there, the children
25 and the elderly were released.

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1 Q. [10:31:52] Thank you. So, in the end, how many of the group of prisoners were
2 taken to the police station and kept there?

3 A. [10:33:02] In the location where we were all gathered, we were approximately 11
4 persons. However, some of us were released, such as the elderly who weren't able to
5 walk. Then nine persons, approximately, were taken to the police station, and then
6 other people were brought from the east.

7 Q. [10:33:28] Okay. I'm not sure I have the answer, but I move on.

8 How much time did you walk from your shelter to the police station? How long did
9 that take?

10 A. [10:34:18] The distance between my house and the police station usually -- so
11 walking from my house to the police station usually takes approximately 15 minutes.

12 Q. [10:34:36] When you arrived at the -- in front of the police station at the square,
13 was the man you call Ali Kushayb already there, or did he arrive later?

14 A. [10:35:29] When we arrived to the police station, Ali Kushayb was in the west
15 under a *lalob* tree. He was standing next to his vehicle with his guards. The
16 number of his guards was four to five soldiers.

17 Q. [10:36:06] You mentioned a car, the car of, you say, the man you call Ali
18 Kushayb. What kind of car was it?

19 A. [10:36:44] It was a car that was open, open. It was an open-back car.

20 Q. [10:36:53] Did it have a Dushka mounted on it?

21 A. [10:37:09] No. There was no Dushka installed on it or fixed on it.

22 Q. [10:37:14] And are you assuming that it was Ali Kushayb's car because you saw
23 him standing next to it?

24 A. [10:38:08] Yes, it was Ali Kushayb's vehicle because I saw him standing to the
25 east of the vehicle, and the vehicle was pointed towards the north. Behind the

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1 vehicle to the south, there were his men. They were still in the vehicle. So this is
2 how I knew that it was Ali Kushayb's vehicle.

3 Q. [10:38:32] Thank you. I want to read again from the transcript of your
4 appearance on Wednesday, real-time 94, page 42, line 8 to 11. I read what is written
5 that you said:

6 "After we were brought to the police station or the square, they asked us to lie down
7 approximately about 15 minutes after we had arrived. After that, Ali Kushayb came,
8 and he was stepping on people."

9 So isn't it the truth that the man you call Ali Kushayb arrived, at the very least, 15
10 minutes after you at the police station?

11 THE WITNESS: [10:40:40](Interpretation) When we were brought to the police
12 station, we found that Ali Kushayb was standing there. So when -- and then we
13 were asked to lie down, and our heads were towards the west. Ali Kushayb and his
14 men were standing to the south. When we lied down -- or 15 minutes after arriving
15 to the police station, we were lying down, and Ali Kushayb came and he was walking
16 on people -- was stepping on people.

17 MR LAUCCI: [10:41:13] As you can see, colleague, the witness is able to clarify by
18 himself.

19 PRESIDING JUDGE KORNER: [10:41:16] Yes. Well, Mr Nicholls, I was going to
20 raise it because it seemed to me that it could be said it was a misreading of what had
21 been said. But anyhow.

22 MR NICHOLLS: [10:41:26] And my -- if I may, your Honour, it is just not fair to put
23 to the witness the chosen part of the answer, in fact, which he just gave and put it to
24 him, "You said this yesterday, isn't that a contradiction," when in -- or Wednesday,
25 but it can confuse the witness to think, oh, is that all I said or is that what I said, and

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1 it's not fair.

2 PRESIDING JUDGE KORNER: [10:41:56] Yes, that is a proper objection to take,
3 Mr Laucci. You can't just cherry-pick what you want to put to the witness.

4 MR LAUCCI: [10:42:04] Madam President, I cannot repeat the whole statement
5 every time I want to refer to something. And the witness is perfectly capable, as we
6 just saw, to make the clarification. There was no trap in that.

7 PRESIDING JUDGE KORNER: [10:42:15] Yes, but it doesn't matter. You cannot
8 selectively quote. And, indeed, all you have to do is put to the witness that Ali
9 Kushayb only arrived 15 minutes after they were told to lie down, and he can then
10 say, "No, I don't agree with that." But you cannot just selectively take out parts of
11 the evidence which suit your point and leave out other parts which do not.

12 MR LAUCCI: [10:42:49] I move on.

13 Q. [10:42:51] Mr Witness, when you arrived at the police station, were you taken
14 inside the police station?

15 A. [10:43:57] No. When we arrived to the police station, we were placed in the
16 yard, facing the police station. That is because the number of prisoners was in the
17 hundreds. There were approximately 600 prisoners. So * there was no prison that
18 has the capacity for all of these prisoners. This is why they were kept in the yard of
19 the police station. The yard is located opposite the police station.

20 MR LAUCCI: [10:44:39] As per your instruction, Madam President, without quoting,
21 and just for the record, I refer the Court to page 41, line 4 to 5, of the Wednesday's
22 statement.

23 Q. [10:44:53] Mr Witness, did you enter the office of the police station for
24 registration?

25 A. [10:45:38] No. We were not asked about our names, and we were not taken to

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1 any office for any procedures. I don't know what happened with the prisoners who
2 came before us, whether they were interrogated or not. The only * thing that
3 happened was that they chose a place where we should go and sit. This is all I saw.

4 Q. [10:46:04] So nobody checked your name on a list?

5 A. [10:46:29] No, nobody asked us about our names. Nobody asked why we were
6 imprisoned or detained. They only brought us there and asked us to lie down on
7 our bellies.

8 Q. [10:46:42] Did you see that happen to other prisoners? Did other prisoners
9 have their name checked?

10 A. [10:47:22] No. They didn't ask anybody for a statement. They did not ask
11 anybody from which village they come from. They didn't ask anybody the reason
12 why they were arrested.

13 Q. [10:47:34] Did anyone ask you if you had a gun? And I insist on that place, in
14 front of the police station. Nowhere else.

15 A. [10:48:25] No. They did not ask us about any weapons. When we were
16 brought to the police station, we found that there were prisoners who were there
17 before us. They were lying flat on the ground, and we were ordered to lie flat on the
18 ground with them.

19 Q. [10:48:59] So if you say that when you arrived, people, prisoners were already
20 lying on the ground, how come you yourself were kept for about 15 minutes standing
21 or sitting prior to being ordered to lie down?

22 A. [10:49:57] No. When we arrived, we were immediately ordered to lie down.
23 They did not wait two or five minutes. We were ordered immediately to lie down,
24 and we were not allowed to raise our heads.

25 Q. [10:50:16] Thank you. Were you searched?

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1 A. [10:50:37] No. They did not search anybody.

2 Q. [10:50:44] So you were ordered to lie down, face down. Were you allowed to
3 raise your head?

4 A. [10:51:32] No. We were not allowed to raise our heads, but we could hear the
5 Janjaweed who were walking around the people. We could hear some of the
6 prisoners complaining to the Janjaweed. They were saying that they were thirsty
7 and they wanted to drink water, and the Janjaweed were declining their requests.

8 Q. [10:51:56] And you said that at a point you raised your head and you were
9 beaten on your back; is that correct?

10 A. [10:52:56] Yes. I raised my head when a *sheikh*, *Sheikh* Massa, was hit. He fell
11 on the floor to the north, to my north. During that time, I tried to raise my head.
12 This is why they beat me.

13 Q. [10:53:20] And on Wednesday you even said that the beating was so strong,
14 violent that you still -- you are still enduring the pain out of that; is that correct?

15 A. [10:54:03] Yes. I still feel the pain resulting from this beating because the
16 beating was very strong. The Janjaweed who beat me was holding the staff or the
17 stick with both his hands as if he was ploughing the land.

18 Q. [10:54:27] And after that, this means that you did not raise your head a second
19 time, isn't it?

20 A. [10:54:55] No. There is no way you can raise your head, because the beating
21 that I got was very hard. Therefore, I was afraid, and I didn't want to be beaten once
22 again.

23 Q. [10:55:09] Fully understandable.

24 What did the man you call Ali Kushayb wear on that day? The question is simple.

25 Uniform or civilian clothes?

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1 A. [10:56:06] When I was lying down, Ali Kushayb was wearing a camouflage blue
2 and white clothes.

3 THE INTERPRETER: [10:56:18] Correction: A green camouflage clothes.

4 THE WITNESS: [10:56:24](Interpretation) But I was not sure whether he was
5 wearing a headpiece or not.

6 MR LAUCCI: [10:56:29]

7 Q. [10:56:29] A green camouflage clothes. Is it a uniform?

8 A. [10:57:12] It was not a military uniform. We were scared, and I was only trying
9 to take some sneak peeks, because if you look Ali Kushayb in the eyes, you will have
10 a big problem.

11 Q. [10:57:36] Okay. Thank you. And you say -- actually, Madam President, it
12 may be the right time for the break.

13 PRESIDING JUDGE KORNER: [10:57:50] Are we moving away from this then?

14 MR LAUCCI: [10:57:53] I move to the scene where people are beaten -- hit.

15 PRESIDING JUDGE KORNER: [10:58:05] Yes, all right. (Microphone not activated)
16 break.

17 Sir, before you were beaten, you told us that you were -- I think you told us earlier
18 that you were looking to see what was happening.

19 Is that being translated to the witness? I can't hear anything.

20 THE INTERPRETER: [10:59:20] Can you repeat the question.

21 PRESIDING JUDGE KORNER: [10:59:26](Microphone not activated)

22 Sir, you told us that before you were beaten, you were looking to see what was
23 happening.

24 THE WITNESS: [11:00:08](Interpretation) Yes, because I was lying down close to the
25 people -- close to a person who was hit and who fell on the floor. Then he ordered

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1 his men to take this person who was beaten to the vehicle. This is when I raised my
2 head, and I was hit or beaten again.

3 PRESIDING JUDGE KORNER: [11:00:41] However, you said before this you saw Ali
4 Kushayb walking on the people who were lying on the ground.

5 THE WITNESS: [11:01:42](Interpretation) Yes. Ali Kushayb was walking on
6 people before the *sheikh* was beaten. This *sheikh* was brought after we were brought
7 there. This *sheikh* was going to prayer, and he was arrested while he was going to
8 prayer. So when he was brought there, Ali Kushayb asked him, "Who are you?"
9 He answered, "I am a *sheikh*."

10 PRESIDING JUDGE KORNER: [11:02:17] Okay, sir, sorry, I just want to ask one
11 thing. Don't worry about the *sheikh* anymore.

12 In order to see Ali Kushayb walking on the backs of others, did you have to lift your
13 head?

14 THE WITNESS: [11:03:37](Interpretation) Yes, I was lying down when Ali Kushayb
15 and his men came. So we were lying down in lines, our heads towards the east.
16 When Ali Kushayb came, he was walking on the people, each line on its own. When
17 he arrived to my line, I tried to raise my head to try to look at him.

18 PRESIDING JUDGE KORNER: [11:04:13] All right. You tried to raise your head.
19 Did you actually raise your head? Did you have to raise your head in order to see
20 him do this?

21 THE WITNESS: [11:04:50](Interpretation) I tried to take a sneak peek. There was
22 no way to raise my head completely. I raised my head somewhat, somehow, a little
23 bit.

24 MR LAUCCI: [11:05:03] Madam President, if that can help, this is something that I
25 will explore after the break.

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1 PRESIDING JUDGE KORNER: [11:05:10] All right, because I -- yes.

2 Okay, sir, we are going to take the break now until 11.35, 25 to 12. Yes, you can
3 leave the Court with the usher.

4 This needn't be translated.

5 Mr Laucci, I am sorry, because I was looking back at what he said earlier about it, and
6 I thought it was now becoming slightly unclear. But if you are going to pursue it,
7 that's fine.

8 (The witness exits the courtroom)

9 MR LAUCCI: [11:05:36] And the answer to your next question is, yes, that will be
10 done before lunch break.

11 PRESIDING JUDGE KORNER: [11:05:43] You will be completed before the lunch
12 break. Thank you.

13 THE COURT USHER: [11:05:49] All rise.

14 (Recess taken at 11.05 a.m.)

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

16 THE COURT USHER: [11:36:48] All rise.

17 Please be seated.

18 MR LAUCCI: [11:37:18] Thank you, Madam President.

19 Q. [11:37:22] Mr Witness, should be the last session of your examination. One
20 recommendation, though. If my answer -- my question can be answered by yes or
21 no, just say so without entering into a long explanation of things that you have
22 already said. That will save your time. It's in your interest.

23 A. [11:37:56] Very well.

24 Q. [11:37:57] I start over from where we stopped. You are lying face down on the
25 ground in front of the police station, under the guard of Janjaweed. Janjaweed are

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1 very brutal. They immediately hit you every time you raise your head. Is that the
2 situation?

3 A. [11:39:16] Yes. They were not allowing anybody to raise their heads. We
4 were surrounded by the Janjaweed from all directions, east, west, and north. But the
5 south direction was guarded by Ali Kushayb's men.

6 Q. [11:39:36] Okay. And, actually, you were beaten yourself once when you
7 raised your hands and saw the *sheikh* of Massa being beaten four to five footsteps
8 away; is that correct?

9 A. [11:40:49] I didn't raise my hand. I only tried to raise my head. I raised my
10 head when this person was brought. And then Ali Kushayb asked the question to
11 this person. He said, "Who are you?" And the person said, "I am a *sheikh*." At that
12 moment, I raised my head to see what was happening.

13 Q. [11:41:17] Actually, I said my head, but there was -- I was not understood. My
14 French accent, maybe, but this is exactly what I mean. Thank you.
15 And this is when the *sheikh* of Massa was beaten that yourself were also beaten at that
16 moment in time.

17 A. [11:42:11] Yes, that is right. I was beaten because I tried to raise my head when
18 *Sheikh* Massa was beaten and when he fell to the ground. That was the reason why I
19 raised my head at the moment. I just wanted to see what was happening to him, so I
20 got beaten as well for that reason.

21 Q. [11:42:32] Thank you. And then you say that the person you call Ali Kushayb
22 moves on and stops again at another person 10 to 15 footsteps from you and has a
23 short conversation with that person; is that correct?

24 A. [11:43:35] No, there wasn't another person speaking to Ali Kushayb.

25 Q. [11:43:41] I will clarify. Then you saw the person you call Ali Kushayb move

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1 on and stop at the person you call Jenif; is that correct?

2 A. [11:44:37] Ali Kushayb hit Jenif before they brought *Sheikh* Massa. The
3 detainees were lying on their fronts and Jenif was towards the northwest -- sorry, the
4 northeast. And then he said to Ali Kushayb, "Who are you to treat the citizens in
5 that way?" And that's the reason why he was beaten.

6 Q. [11:45:08] Was the person you call Jenif taken out of the police station or out of
7 the prison, or was he lying as well on the ground?

8 A. [11:46:09] Jenif was not arrested. He actually came to the police station by
9 himself. And when he arrived there, he found the citizens all lying on their front,
10 and he objected to what happened. And when he did so, he was beaten up.

11 Q. [11:46:32] So you say that Jenif arrived at the police station without being
12 escorted the way you had been by Janjaweed? He was totally free, and he arrived
13 out of his own decision?

14 A. [11:47:41] Jenif came from a different place, but he walked through the eastern
15 gate of the police station. He came to see why those people were arrested. And
16 when he saw this happening, he objected to it, and he started talking to Ali Kushayb.
17 And that's the reason why Ali Kushayb beat him.

18 Q. [11:48:06] Did the person you call Ali Kushayb ask his name, to Jenif?

19 A. [11:49:00] Ali Kushayb did not ask Jenif about his name, but Jenif is the one who
20 asked Ali Kushayb or addressed Ali Kushayb with a question. He said, "Why are
21 you torturing those citizens in this cruel way? And what kind of position are you
22 holding in order to do this?" And Ali Kushayb straight away started
23 beating -- beating Jenif very harshly until blood was pouring on his face. And then
24 he was taken to the prison.

25 Q. [11:49:40] So does that mean that Jenif did not know who he was talking to

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1 when he addressed the person you call Ali Kushayb?

2 MR NICHOLLS: [11:49:49] He can't answer that, what was in Jenif's mind at that
3 point.

4 MR LAUCCI: [11:49:55] I am asking about the appearance based on what he just
5 said.

6 PRESIDING JUDGE KORNER: [11:50:23] Sorry, I'm just having a look. I still didn't
7 understand the question. What do you mean "the appearance"?

8 MR LAUCCI: [11:50:29] I will rephrase the question.

9 Q. [11:50:31] Was it -- when you saw that scene that you describe, did it seems
10 like -- did it seem that Jenif did not know who he was talking to? If he asked him,
11 "Who are you," did you understand that he didn't know who he was talking to? Is
12 that what you understood?

13 PRESIDING JUDGE KORNER: [11:50:57] All right. It's a very complicated way of
14 doing this but ...

15 THE WITNESS: [11:51:52](Interpretation) I don't know. I don't know if Jenif knew
16 Ali Kushayb at the time or not. All I know is that Ali Kushayb came and asked Ali
17 Kushayb a question. He said, "Why are you doing this? Why are you torturing
18 those citizens in such a cruel way? And who appointed you to do so? Who
19 permitted you to do so?"

20 And Ali Kushayb did not say to him in a nice or a polite way, "Well, I was appointed
21 to do this job," or "I am doing this for that reason or that reason." No. He straight
22 away hit him in a very harsh way.

23 MR LAUCCI: [11:53:14]

24 Q. [11:53:14] Thank you. I want to refer you to paragraph 47 and 48 of your
25 written statement. Paragraph 47 is the paragraph where you describe the interaction

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1 of Ali Kushayb with the *sheikh* of Massa. And it's written:

2 "Ali Kushayb approached a person who was laying on the ground and asked him
3 who he was and where he was from."

4 Did you --

5 PRESIDING JUDGE KORNER: [11:53:51] Stop.

6 MR LAUCCI: [11:53:53] Yes.

7 Q. [11:53:53] Did you hear Ali Kushayb ask those questions to the *sheikh* of Massa?

8 A. [11:55:06] *Sheikh* Massa * was not lying on the floor, because we were the last
9 group that was brought to this yard or grounds, but they were brought later. It was
10 a group of about six or seven people. And then Ali Kushayb asked him while he
11 was still standing next to his Janjaweed members.

12 Q. [11:55:34] Did he ask who he was and where he was from?

13 A. [11:56:19] Ali Kushayb did not ask *Sheikh* Massa about his name. He is asking
14 him about his position. And *Sheikh* Massa replied, "I am a *sheikh*." And Ali
15 Kushayb told him that, "You are a very fat person. You must have eaten people's
16 money or taken people's money." And he started hitting him.

17 Q. [11:56:47] Thank you. And I move to paragraph 48, which is the paragraph
18 where you speak about the interaction with Jenif. Do you follow me?

19 A. [11:57:12] Yes, I follow. Yes.

20 Q. [11:57:15] So I read: "Ali Kushayb went to a second person a bit further away,
21 maybe 10 to 15 footsteps away from me, and asked him the same questions."

22 So did he ask about the position of Jenif?

23 A. [11:58:03] No. He did not ask him about his name nor his position. It was
24 Jenif who spoke to him straight away and addressed him with a question and said,
25 "What's this that you are doing?"

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1 Q. [11:58:17] And I carry on in the next sentence: "The person declared that he
2 was Adam Abd-Al-Rahman Jenif."

3 Did you hear Jenif tell his name to the person you call Ali Kushayb?

4 A. [11:59:06] No. Jenif did not even offer his name. He straight away asked Ali
5 Kushayb, "What is this that you are doing?" And for that reason, Ali Kushayb hit
6 him.

7 Q. [11:59:21] Jenif was hit. And at paragraph 70 of your statement, you say that
8 you saw him again on 7 March, two days later. Do you remember that?

9 A. [12:00:37] Yes. On the same day, when Jenif was hit and he was taken to
10 prison -- or he was taken away, I don't know where he was taken away. So I did not
11 see him on Friday. I did not see him on Saturday. However, on Sunday, when we
12 were in the bus and we were trying to travel -- so I was on the bus, sorry. I could not
13 see him on the bus, but other people saw the vehicle that was transporting the *umdahs*
14 and they saw Jenif in that vehicle.

15 Q. [12:01:17] Okay. So I come back to the scene in front of the police station.
16 Jenif is hit. What happens then? To him, sorry.

17 A. [12:02:08] After Ali Kushayb beat Jenif, he was taken and he was under custody,
18 and we could not go to him to check his injury and that is because we were
19 surrounded and we were afraid.

20 Q. [12:02:25] Where was he taken?

21 A. [12:02:42] He was taken to prison.

22 Q. [12:02:52] Thank you. Now, sir, this scene took place 10 to 15 footsteps away
23 from you. You had just been beaten hard because you had raised your head. How
24 did you see it?

25 A. [12:04:08] When Jenif was hit, the distance between me and him was a long

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1 distance because I was to the east and he was beaten on the west side. As per *Sheikh*
2 Massa, when he was beaten, he was nearby. He was not far from me.

3 Q. [12:04:31] I agree, but then I repeat my question. How could you see the scene
4 of Jenif beaten if you were lying on the floor under the threat of being beaten again if
5 you raised your head?

6 Colleague, I'm sure that what you will say will have not to be translated.

7 MR NICHOLLS: [12:05:05] Yes. Perhaps not.

8 Your Honour, sorry, not an objection, and if we could not translate this.

9 I'm looking for the cite, but the witness has said that Jenif was before Massa.

10 PRESIDING JUDGE KORNER: [12:05:21](Microphone not activated)

11 MR NICHOLLS: [12:05:23] And so that sequence, I'm sure inadvertently, is off to
12 what the witness has testified to. Page 30, line 14. Which is also what he said
13 previously. I don't have that cite, but it's page 30, line 14.

14 MR LAUCCI: [12:06:13] Colleague, in algebraic order, does 47 come before or after
15 48?

16 PRESIDING JUDGE KORNER: [12:06:22] I'm looking at the transcript of the first
17 day's evidence, what was that, Wednesday, and he talks -- I am sorry. My transcript
18 has been copied without page numbers coming out, but I think it's page 43. He talks
19 about what happened to Jenif, and then he says it was after that, going on through it,
20 that -- and this is at page 46, it looks like. Then Ali Kushayb hit another person,
21 *Sheikh* Massa. So my understanding is that it was Jenif and then Massa.

22 MR LAUCCI: [12:07:17] This is precisely the reason why I asked on the basis of the
23 written statement, which is not in evidence, and I want to put that contradiction on
24 the record.

25 PRESIDING JUDGE KORNER: [12:07:34] Yes, I see it. All right.

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- 1 MR NICHOLLS: [12:07:37] I understand. I didn't understand that's what --
- 2 PRESIDING JUDGE KORNER: [12:07:36](Overlapping speakers)
- 3 MR NICHOLLS: [12:07:36] -- was happening because he just said five pages earlier it
- 4 was the other way, that -- that Jenif and Massa first, so I thought my friend was
- 5 making a mistake.
- 6 PRESIDING JUDGE KORNER: [12:07:49] Okay. Right. Well, what's the -- okay.
- 7 Because I was going to look this up. Okay, you are referring to page 48 of his written
- 8 statement.
- 9 MR LAUCCI: [12:07:58] Paragraph, yes.
- 10 PRESIDING JUDGE KORNER: [12:08:00] Paragraph 48. Okay. I think there is a
- 11 simple way of just putting that, which is simply this: Well, do you know why you
- 12 told the investigators, therefore, that it was the *sheikh* who was hit first.
- 13 MR LAUCCI: [12:08:31] There will be no response to that question,
- 14 Madam President.
- 15 PRESIDING JUDGE KORNER: [12:08:34] Well, there * won't be any response anyhow.
- 16 He is going to say, well, in his recollection -- I think you have got the contradiction
- 17 and you are perfectly entitled to draw our attention to that.
- 18 MR LAUCCI: [12:08:47] I'm happy to move on on this point.
- 19 MR NICHOLLS: [12:08:51](Microphone not activated) so, your Honour, the problem
- 20 is what he put to the witness was: Well, how would you raise your head to look at
- 21 what happened to Jenif after you've just been beaten? So.
- 22 MR LAUCCI: [12:09:03] Yes --
- 23 MR NICHOLLS: [12:09:03] -- which is not clear to the witness that Mr Laucci is
- 24 talking about a contradiction in the statement. The witness thinks, I didn't say that,
- 25 because he didn't here in court the last few days. So the question was not just how

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1 do you explain this contradiction, it was putting to the witness that he had said
2 something or that happened which is the opposite of what he's just testified to,
3 which --

4 MR LAUCCI: [12:09:31] Colleague, I read paragraph 47 and 48 to the witness some
5 minutes ago. There is no mystery or anything hidden from him.

6 PRESIDING JUDGE KORNER: [12:09:40] Okay. Look, I really think that it is
7 becoming complicated and you have to remember, Mr Laucci - this is not being
8 translated to the witness - the level of education of many of these witnesses,
9 particularly this one. And it's got to be made absolutely clear what you are putting.
10 And it wasn't clear. But in any event, take it from me, we've all noted, and
11 particularly now after this discussion, the contradiction between his statement and
12 what he said before -- what he said earlier.

13 MR LAUCCI: [12:10:14] Which allows me to go to the next point. Thank you,
14 Madam President.

15 Q. [12:10:18] Mr Witness, forget my question. I move to another question.
16 Did the person you call Ali Kushayb walk on your back?

17 PRESIDING JUDGE KORNER: [12:10:50] Mr Laucci, repeat that because the
18 transcript says "overlapping speakers".

19 MR LAUCCI: [12:10:56]

20 Q. [12:10:56] I repeat the question because apparently it was not heard.
21 Did the person you call Ali Kushayb walk on your back?

22 A. [12:11:41] Yes. Ali Kushayb stepped on my back. And he came from the
23 northwest, and he started walking on the backs of people, and he reached me and
24 stepped on my back. And then he went towards the east.

25 Q. [12:12:01] Mr Witness, at that precise moment where Ali Kushayb is close to you,

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1 why don't you say, "Hey, Dr Ali, it's me. It's your customer. You know me.

2 Release me, please"? You knew each other very well.

3 A. [12:13:10] I wasn't able to say this to him because there were numerous people.

4 And you would not be able to ask such a question. If he had asked me who I was, I

5 would have replied and said that I am that person. However, he did not ask me

6 anything.

7 Q. [12:13:31] Wasn't he the boss?

8 A. [12:14:18] Yes, he was the leader of the people who were launching the

9 campaigns in the villages. Some of these people had come from the north. Some

10 others came from the south. Another group of his men came from the east. And

11 they were arresting people. Even people who were leaving mosques, they were also

12 being arrested.

13 Q. [12:14:49] So if you had reminded him who you are and if he had released you,

14 nobody was in a position to complain or challenge this, isn't it?

15 A. [12:15:46] No. You cannot ask him anything or request anything from him.

16 We were not allowed to raise any questions during that time. Ali Kushayb was

17 stepping on people and walking on people as if he was walking on trees. So this was

18 a very difficult time. This was a very difficult situation, and you would not be able

19 to raise any question.

20 Q. [12:16:08] You, as an anonymous prisoner, I agree, but you knew well each other.

21 You established that yesterday.

22 A. [12:17:11] Yes, I knew him in person. Despite this personal knowledge, I was a

23 prisoner, and I was not interrogated. I was supposed to be interrogated and they

24 were supposed to take information from me, and then I would be investigated.

25 However, none of this happened.

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1 Q. [12:17:39] Did you see the *umdah* of Deleig, Ismail, release prisoners?

2 A. [12:18:23] No, I did not see *Umdah* Adam Ismail. But I heard people saying that
3 *Umdah* Adam Ismail came and he called some of the Janjaweed, negotiated with them
4 and asked them -- following these negotiations, some people were released.

5 Q. [12:18:46] Mr Witness, at paragraph 49 of your statement, it's even written that
6 you could hear *Umdah* Ismail asking questions to prisoners on your northern side.
7 It's very specific. How can you now say the opposite?

8 A. [12:20:11] When we were lying down on the floor face down, we could hear the
9 voice or the sound of people speaking next to me or next to us. There was a group of
10 people talking, and they were standing to my west side. I was not able to know who
11 was talking. However, later on, I knew from people that the *umdah* came and
12 negotiated, and then some of the children were released.

13 Q. [12:20:50] Fair enough. You did not hear it was the *umdah*, but you heard what
14 they said, and you heard that what they said was about releasing people, isn't it?

15 A. [12:21:43] I only heard that *Umdah* Adam Ismail had come to the station and
16 negotiated with the people there. These negotiations led to the release of two or
17 three children. However, I am not sure of the identity or the appearance of these
18 children. That is because the station was full of people at that time.

19 Q. [12:22:15] Okay. So the contradiction with paragraph 49 of the statement is on
20 record.

21 Mr Witness, how were you feeling at that point in time? Were you afraid about
22 being here?

23 A. [12:23:29] Yes. When we were brought to the police station, I was really afraid
24 because we didn't just go to the police station to file a complaint. Because usually
25 our complaints or our conflicts would be solved by the *sheikhs* or like the civil

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1 administrations. None of us had gone before to the police station. And if
2 somebody goes to the police station to open a -- to file a complaint, people would find
3 it strange.

4 Q. [12:24:04] So you were afraid. Would you not try anything possible to get
5 released and out of that terrible situation?

6 A. [12:25:04] Yes, I was afraid. And at that time, I was not able to ask about
7 anything because the person who arrested me was beating me or was beating people,
8 torturing people and whipping people and ordering them to lie down on the floor
9 face down. So you would not be able to ask anything, because there wasn't even any
10 questioning going on.

11 Q. [12:25:30] And in that context, your doctor passes by, a person you knew very
12 well, and appears to be the boss of the one beating you, and you do not even try to get
13 your release from him. Is that your evidence?

14 PRESIDING JUDGE KORNER: [12:25:48](Microphone not activated) stop
15 translating. That is pure comment. You've heard what his evidence is. Move on,
16 Mr Laucci.

17 MR LAUCCI: [12:26:01] I consider the point is made, and I move on.

18 Q. [12:26:07] Mr Witness, on that day in Deleig, did you hear or witness the
19 landing of an aircraft in Deleig?

20 A. [12:26:46] No aircraft landed in Deleig at the time when I was there.

21 Q. [12:26:54] Did you notice any other person of authority other than the man you
22 call Ali Kushayb at the police station?

23 A. [12:27:27] No. At that time I did not see anybody who was in charge, any
24 prominent person.

25 Q. [12:27:37] Did you see people from military intelligence at the police station?

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- 1 A. [12:27:57] I did not see anyone there.
- 2 Q. [12:28:03] Do you know a person named Abd-Al-Mun'im?
- 3 A. [12:28:25] Yes, I know Abd-Al-Mun'im very well because he was at the Arawala
4 point.
- 5 Q. [12:28:38] Do you confirm that he works for the military intelligence in that
6 period?
- 7 A. [12:29:12] No, I didn't know his exact function, but I knew that he was in the
8 military and he used to wear the green khaki uniform.
- 9 Q. [12:29:24] Did you see Abd-Al-Mun'im on that day at the Deleig police station?
- 10 A. [12:29:48] No, I did not see Abd-Al-Mun'im with my eyes.
- 11 Q. [12:29:54] Did you see First Lieutenant Hamdi on that day at the police station?
- 12 A. [12:30:16] On that day, I did not see Hamdi with my own eyes, but I heard that
13 he was there.
- 14 Q. [12:30:27] When did you hear that?
- 15 A. [12:30:46] I heard that Hamdi was present there from other people. It's just the
16 talk of other people. That's all what I heard.
- 17 Q. [12:30:56] Did you hear that on that day?
- 18 A. [12:31:37] No. I heard about Hamdi after people were taken to the police
19 station. After all the events happened, after the people were forced to lie down and
20 also after the executions were committed. Maybe about three or four days later, I
21 heard the people -- I heard that Hamdi and another person called * Mussadiq were
22 present.
- 23 Q. [12:32:12] Did you hear that Abd-Al-Mun'im was present as well?
- 24 A. [12:32:29] Yes. I heard also that Abd-Al-Mun'im was there.
- 25 Q. [12:32:33] Did you hear about the presence of any other person of authority on

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1 that day at the police station?

2 * A. [12:33:54] On that day when the events happened, at the governmental police
3 station, I saw two buildings. The first was a closed large room located on the western
4 side, it opened to the south. The second building, which was the prison, was located
5 on the eastern side and opened to the west. There was a large room between the two
6 buildings. It is in the latter large room that officials were present. Purportedly,
7 Defense Minister Abdurraheem Muhammad Hussein and someone called Ahmad
8 Harun were present.

9 Q. [12:34:29] Thank you, Mr Witness. Is it First Lieutenant Hamdi who ordered
10 the loading of prisoners on the trucks?

11 A. [12:35:34] No. I don't know if Hamdi was the one giving instructions. I am
12 sure that it was Ali Kushayb who was giving instructions at the time because he
13 would go inside the police station and then come back to us, and then he obviously
14 walked over people's backs and all the other actions that he did. I don't know what
15 happened inside the police station. I don't know what happened between Ali
16 Kushayb and the rest of the leaders. But he was the one who was giving orders to
17 his soldiers to either load people in trucks or kill people.

18 Q. [12:36:12] Did you hear someone in civilian clothes exiting the police station and
19 saying something like, "Soldiers, let's start the work. Pick them up"?

20 A. [12:37:16] No. I didn't see anybody in civilian clothes who came to the police
21 station or was at the police station and said anything. I only saw Jenif who was
22 quarrelling with Ali Kushayb, but other than Jenif, I didn't see any other civilians
23 coming to this place.

24 PRESIDING JUDGE KORNER: [12:37:36] No, no, what's being suggested to you,

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1 that it wasn't Ali Kushayb who said, "Get the people into the trucks." It was a
2 completely different man who was in civilian clothes. MR LAUCCI:

3 [12:37:52](Microphone not activated)

4 PRESIDING JUDGE KORNER: [12:37:53] Who came from the police station.

5 THE WITNESS: [12:38:35](Interpretation) I don't agree with this opinion. No.

6 There was no way another civilian would do that when the leader of the Janjaweed
7 was present and he was giving instructions and orders to his soldiers, and they were
8 executing his orders straight away. There is no way another civilian was able to give
9 any orders at the time.

10 MR LAUCCI: [12:39:06]

11 Q. [12:39:06] Mr Witness, how many times did you see the person you call Ali
12 Kushayb enter the police station?

13 A. [12:39:49] Yes. I saw him maybe two or three times while we were lying on our
14 fronts. He was going and coming out -- going in and coming out many times. He
15 was going towards the east.

16 Q. [12:40:11] Thank you.

17 And I reached the point where I need to go in private session.

18 PRESIDING JUDGE KORNER: [12:40:16] Yes.

19 Private session, please.

20 (Private session at 12.40 p.m.)

21 THE COURT OFFICER: [12:40:30] We're in private session, Madam President.

22 (Redacted)

23 (Redacted)

24 (Redacted)

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- 15 (Upon resuming in open session at 2.31 p.m.)
- 16 THE COURT USHER: [14:31:31] All rise.
- 17 Please be seated.
- 18 PRESIDING JUDGE KORNER: [14:31:50] Mr Laucci, I think you were going to put a
- 19 part of your case in private still, weren't you? Or had you --
- 20 MR LAUCCI: [14:31:57] The conclusion on the last part of this morning.
- 21 PRESIDING JUDGE KORNER: [14:31:59] Yeah. All right. Let's just go briefly into
- 22 private session then.
- 23 (Private session at 2.32 p.m.)
- 24 THE COURT OFFICER: [14:32:15] We are in private session, Madam President.
- 25 (Redacted)

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19 (Open session at 2.33 p.m.)

20 THE COURT OFFICER: [14:33:38] We are back in open session, Madam President.

21 PRESIDING JUDGE KORNER: [14:33:41] Yes.

22 MR LAUCCI: [14:33:42]

23 Q. [14:33:42] What the Defence is taking position on, however, is that, and I put to
24 you, you never saw the man you call Ali Kushayb in front of the Deleig police station
25 when you were detained there, did you?

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1 A. [14:34:24] I disagree with you. I saw him with my own eyes in the Deleig
2 police station.

3 Q. [14:34:31] And, finally, I put to you that First Lieutenant Hamdi was the person
4 in charge in Deleig, he is the one who ordered the loading of the prisoners on the
5 truck, and it is his men who took them for execution.

6 A. [14:35:15] No. Hamdi was not there outside. Ali Kushayb was the one who
7 was there outside, and he was the one giving orders and instructions to his soldiers to
8 load the people on the trucks. He would also enter and exit from -- to and from the
9 police station. He was going to and fro.

10 Q. [14:35:47] I thank you, Mr Witness. I have completed my cross-examination.
11 Thank you, Madam President.

12 PRESIDING JUDGE KORNER: [14:35:51] Just one other thing, is it accepted that he
13 knew the person who ran the pharmacy in Garsila?

14 MR LAUCCI: [14:36:13] We take no position on this aspect as well.

15 PRESIDING JUDGE KORNER: [14:36:18] Yeah. All right.

16 Yes.

17 MR NICHOLLS: [14:36:21] Sorry, I think they do need a take a position.

18 Sometimes it's he doesn't exist, you didn't see him there, he is not this person. I
19 think we do need a specific base on what --

20 PRESIDING JUDGE KORNER: [14:36:38] I suppose if he says, "Well, he may well
21 have known me as the pharmacist in Garsila" -- I mean, I'm assuming that you've got
22 no specific instructions on this witness. But I suppose -- hang on, Mr Edwards.
23 Then you can give your advice to Mr Laucci. I suppose if -- well, yes, he says the
24 man who ran the pharmacy in Garsila is the man who was Ali Kushayb, and that you
25 dispute, don't you?

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1 MR LAUCCI: [14:37:25] We do.

2 PRESIDING JUDGE KORNER: [14:37:27] Yeah. Okay. Well, then I think that's
3 what you better put to him.

4 MR LAUCCI: [14:37:33]

5 Q. [14:37:34] Mr Witness, you never knew any man running a pharmacy in Garsila
6 or any other market and answering the name of Ali Kushayb.

7 A. [14:38:11] I know someone who was in Garsila who worked in the field of
8 medications, and he was called Ali Kushayb.

9 MR LAUCCI: [14:38:26] Unless there is -- so it's done.

10 PRESIDING JUDGE KORNER: [14:38:28] Yes. Right.

11 Any re-examination, Mr Nicholls?

12 MR NICHOLLS: [14:38:32] No, thank you, your Honour.

13 PRESIDING JUDGE KORNER: [14:38:33] Right.

14 Then Judge Alapini-Gansou has some questions.

15 JUDGE ALAPINI-GANSOU: [14:38:42](Interpretation) Thank you,

16 Madam President. I have three small questions to put to the witness.

17 Mr Witness, three days ago you told us -- are you following what I am saying to you,

18 Mr Witness?

19 THE WITNESS: [14:39:13](Interpretation) Yes, yes, I hear you very well.

20 JUDGE ALAPINI-GANSOU: [14:39:19](Interpretation) Very well. Thank you.

21 Three days ago, you indicated to us that -- you were telling us about the first attack
22 and you told us that you had seen flames coming from your village.

23 THE WITNESS: [14:40:08](Interpretation) Yes. After the village was looted and all
24 the possessions and properties were taken, they set everything on fire.

25 JUDGE ALAPINI-GANSOU: [14:40:33](Interpretation) Yes. And where were you

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1 at that time, after the fire, that is?

2 THE WITNESS: [14:40:55](Interpretation) At that point I was inside the forest, in the
3 forest, yet the flames in the village, I was able to see these flames and the smoke as
4 well. It was huge. You can tell that the fire was extremely big so that -- it's very big
5 so that a person from afar can see it.

6 JUDGE ALAPINI-GANSOU: [14:41:25](Interpretation) Thank you. My second
7 concern is with regard to (Redacted) Was he a dignitary from your
8 village?

9 THE WITNESS: [14:42:12](Interpretation) No. (Redacted)
10 (Redacted)
11 Everybody loved him.

12 JUDGE ALAPINI-GANSOU: [14:42:29](Interpretation) Madam President, a last
13 question with your leave.
14 With regard to the occupation of your region, you told us that currently your region is
15 still occupied by Malians and Chadians; is that correct?

16 THE WITNESS: [14:43:30](Interpretation) Yes. The new settlers are still occupying
17 our lands until this very day. We know that they were brought from outside, from
18 abroad, because nobody recognised them. They are strangers. They came and took
19 control of our lands.

20 JUDGE ALAPINI-GANSOU: [14:43:55](Interpretation) Should I understand from
21 this response that these individuals have not completed any immigration formalities
22 before coming to your country to date, that is?

23 THE WITNESS: [14:44:50](Interpretation) Yes. Those people did not have any
24 formal documents or papers. They just came, took over our area, invaded it and
25 settled down. They even started to grow -- to farm in our area. And then they sent

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1 their kids to join the rapid force and all their children now work there, in the rapid
2 forces -- rapid support forces.

3 JUDGE ALAPINI-GANSOU: [14:45:23](Interpretation) So you are saying that the
4 rapid support forces, that there are strangers, that is to say, Malians and people
5 hailing from Chad, amongst those rapid response forces, are there?

6 THE INTERPRETER: [14:45:57] Correction: Foreigners.

7 THE WITNESS: [14:46:03](Interpretation) Yes. These strangers, the children or
8 of -- of these children work in the rapid support forces, and they work in -- these
9 forces fight in Yemen these days.

10 JUDGE ALAPINI-GANSOU: [14:46:39](Interpretation) Madam President, I am
11 going to stop there. Thank you very much indeed.

12 Thank you very much, Mr Witness.

13 PRESIDING JUDGE KORNER: [14:46:47] Yes. Thank you.

14 Sir, I'm going to ask you to look, if you don't mind, at an aerial photograph which I
15 think you saw with Ms Whitford, but it would help us if you can tell us a few things.
16 I think it's probably better, isn't it, for him to have it in hard copy than seen it on a
17 screen, or do you think it's better on the screen? It's the photograph that's got the
18 numbers 0220-4767.

19 MR NICHOLLS: [14:47:36] I think, your Honour, the only advantage of the screen is
20 you may be able to zoom in.

21 PRESIDING JUDGE KORNER: [14:47:44] True.

22 MR NICHOLLS: [14:47:44] But we can provide a hard copy --

23 PRESIDING JUDGE KORNER: [14:47:46] All right. Let's try it zooming in. Can
24 we look -- could somebody change the -- does he need to have it changed or is it
25 already on?

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1 MR NICHOLLS: [14:47:52] One point, your Honour. Sorry. Depending on the
2 questions and how it goes –

3 PRESIDING JUDGE KORNER: [14:47:54] That's true.

4 MR NICHOLLS: [14:47:54] -- it may need to be in private session because of the
5 location.

6 PRESIDING JUDGE KORNER: [14:48:00] I think we better go into private session,
7 yes.

8 (Private session at 2.48 p.m.)

9 THE COURT OFFICER: [14:48:24] We are in private session, Madam President.

10 (Redacted)

11 (Redacted)

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- 23 (Redacted) (Upon resuming in open session at 3.15 p.m.)
- 24 THE COURT USHER: [15:15:38] All rise. Please be seated.
- 25 PRESIDING JUDGE KORNER: [15:16:04] Sir, good afternoon to you. Can you hear

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1 and understand me?

2 WITNESS: DAR-OTP-P-0769

3 (The witness speaks Arabic)

4 THE WITNESS: [15:16:20](Interpretation) Yes, I can hear you very well, and I can
5 see you well as well.

6 PRESIDING JUDGE KORNER: [15:16:26] Right. First of all, can I thank you for
7 coming here to give evidence. I'm afraid that we haven't got very long left this
8 afternoon, so your evidence will be going into next week.

9 Two things or three which I'm sure you've been told about but I simply want to
10 reinforce them. First of all, the evidence you give, as you realise, is being interpreted,
11 so please don't speak too quickly or for too long so that the -- what you say can be
12 interpreted either into English or French, and try and keep your answers short.

13 THE WITNESS: [15:17:34](Interpretation) Okay.

14 PRESIDING JUDGE KORNER: [15:17:35] Second, there will be -- sorry. Second, if
15 you don't understand a question, then say so straight away, and it will be repeated.
16 Third, because there are breaks during the proceedings when you will be with people
17 from the witness unit, please don't discuss any of the evidence you are giving with
18 any of the people from the witness unit.

19 And as I say, we won't be sitting longer than 4 o'clock this afternoon, and there are
20 regular breaks in a full day, but if you need a break at any time, just say so, and you
21 will get one.

22 Yes. So having said all that, Mr Jeremy.

23 Oh, the oath. In a moment.

24 Sorry. Before Mr Jeremy asks you questions, would you be good enough to read the
25 solemn declaration.

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1 THE WITNESS: [15:19:08](Interpretation) I solemnly declare that I will say the truth,
2 the whole truth and nothing but the truth.

3 PRESIDING JUDGE KORNER: [15:19:16] Thank you very much.
4 Mr Jeremy.

5 MR JEREMY: [15:19:20] Thank you, Madam President, your Honours, and good
6 afternoon.

7 QUESTIONED BY MR JEREMY:

8 Q. [15:19:27] Good afternoon, Mr Witness.

9 Just before we begin, your Honours, could I just confirm that you received the list of
10 topics for this witness? Yes.

11 PRESIDING JUDGE KORNER: [15:19:34] Very grateful, Mr Jeremy. Much to be
12 commended and to be followed by everybody else on the team, when there is a long
13 witness.

14 MR JEREMY: [15:19:44] Yeah, a team effort, Madam President. Thank you.

15 Q. [15:19:51] Good afternoon, sir. We have already met during the preparation
16 session, but for the record, my name is Edward Jeremy, and I will be asking you
17 questions on behalf of the Prosecution starting today and continuing on Monday.

18 A. [15:20:18] Okay.

19 Q. [15:20:20] And as Madam President has made clear, if any of my questions are
20 not clear to you, then please don't hesitate to tell me and I will rephrase.

21 A. [15:20:39] Okay.

22 MR JEREMY: [15:20:44] Madam President, your Honours, as you would expect,
23 given the nature of this witness, most, if not all, of his testimony will need to be in
24 private session.

25 PRESIDING JUDGE KORNER: [15:20:58] I rather thought that was going to be the

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1 case when I read through it. We appear to have some people in the public gallery at
2 the moment. So is there going to be anything that's being said in public this
3 afternoon.

4 MR JEREMY: [15:21:13] Unfortunately, not, Madam President.

5 PRESIDING JUDGE KORNER: [15:21:15] I imagine they heard all that. So into
6 private session, please.

7 (Private session at 3.21 p.m.)

8 THE COURT OFFICER: [15:21:33] We are in private session, Madam President.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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25 (Redacted)

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- 9 (The hearing ends in private session at 3.55 p.m.)