

Trial Hearing
WITNESS: DAR-OTP-P-0883

(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 2
9 Thursday, 1 September 2022
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:56] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:32:20] Yes. Good morning, everybody. Back to
15 the reconstituted Court 2.
16 Appearances for the Defence first this morning.
17 MR LAUCCI: [9:32:32] Good morning, Madam President. Good morning,
18 your Honours. Good morning, colleague. Good morning, Witness.
19 In addition to Mr Ali Muhammad Ali Abd-Al-Rahman, present in the courtroom this
20 morning, Madam Camille Divet, assistant evidence reviewer; Mr Ahmad Issa, case
21 manager; my learned colleague, Iain Edwards; and myself, Cyril Laucci, counsel.
22 PRESIDING JUDGE KORNER: [9:32:54] Thank you very much.
23 Yes, victims.
24 MR SHAH: [9:32:56] Good morning, Madam President, your Honours.
25 Idriss Anbari, case manager, and myself, Anand Shah, associate counsel for

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 the victims today. Thank you.

2 PRESIDING JUDGE KORNER: [9:33:08] And finally the Prosecution. Any different
3 from yesterday?

4 MR NICHOLLS: [9:33:11] Good morning, your Honours. Same as yesterday.

5 PRESIDING JUDGE KORNER: [9:33:14] Same as yesterday. Thank you,
6 Mr Nicholls.

7 And good morning to you, sir. You will be continuing being questioned by
8 Mr Laucci, as you know.

9 Mr Laucci, can we stay in open session? We do have some people --

10 MR LAUCCI: [9:33:31] Yes, we can, and -- yeah, for maybe the whole session
11 in -- in -- in open session.

12 PRESIDING JUDGE KORNER: [9:33:36] Thank you very much. Yes.

13 WITNESS: DAR-OTP-P-0883 (On former oath)
14 (The witness speaks Arabic)

15 QUESTIONED BY MR LAUCCI: (Continuing)

16 Q. [9:33:46] Good morning, Mr Witness. Are you well?

17 A. [9:33:50] Thanks be to God. Yes, I am fine.

18 Q. [9:33:53] Thank you. I carry on my examination. We already started
19 yesterday talking about the Sudanese Armed Forces and their structure and
20 functioning.

21 I want to -- to talk about this specific point in time when you mention the arrival in
22 Garsila of three very high ranking officers. You mention the Sudanese Armed Forces,
23 Major General Fa'iz; Sudanese Armed Forces, Brigadier General Muhammad Khamis
24 from the military intelligence in Khartoum; and a PDF brigadier general from
25 Khartoum.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 I'm at paragraph 126 of the statement.

2 Can you tell us or try to tell us when these three officers arrived in Garsila.

3 A. [9:35:11] They arrived approximately between the first and the second -- the first
4 of the first 2003. So between the first and the second days.

5 THE INTERPRETER: [9:35:28] A note from the interpreter: He said between
6 the first and the second. Then I thought he said the first of the first month, but then
7 he said between the first and the second day. He did not mention the month. Just
8 the day and the year.

9 MR LAUCCI: [9:35:45]

10 Q. [9:35:45] Thank you, Mr Witness.

11 Can you repeat your answer. The interpreter missed the month you were talking
12 about.

13 A. [9:36:05] As to the month, I am not sure. I think that the date was
14 the third -- no, the first or the second, that was the day, and that was in 2003. I'm not
15 exactly sure about the dates because it has been a long time, so I cannot recall
16 the dates exactly.

17 Q. [9:36:32] Let me try to help you. In your statement - I am at
18 paragraph 126 - you say that these three officers arrived a couple of days before
19 the release of the two *umdahs* and of PDF commander Jenif.
20 According to paragraph 103 of your statement, these three persons were released after
21 the attack on Arawala, Forgo and Gaba, which took place on 5 March 2004.
22 So do these information help you, and would you then say that these three officers
23 arrived in Garsila by early March 2004?

24 A. [9:37:46] Yes. Yes. They arrived at the beginning of March. That's true.

25 Q. [9:37:57] I'm happy to -- to have managed to refresh your memory.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 What was the purpose of the deployment of these three high ranking officers to
2 Garsila?

3 A. [9:38:18] First, General Fa'iz, he was the leader of the third division of
4 the infantry, and at the time, that was in Zalingei, and Zalingei was following
5 Al Fasher. So he came and he brought with him these two officers to see what is
6 happening in Wadi Salih.

7 Q. [9:38:53](Microphone not activated)

8 THE INTERPRETER: [9:38:57] Microphone, please.

9 MR LAUCCI: [9:39:00]

10 Q. [9:39:00] You say in your statement - I'm at paragraph 126 - that they were
11 deployed from Khartoum -- on the orders from Khartoum to monitor combat
12 operation in Wadi Salih area. What did the monitoring consist in, please?

13 A. [9:39:31] The Wadi Salih area at the time was the mainstay of the enemy. So
14 these areas were within the responsibility of the Wadi Salih area and the Wadi Salih
15 area followed Al Fasher. So the command in Khartoum wanted to know what is
16 happening in Wadi Salih. And that that's why they sent the command, or
17 the leaders, from Al Fasher to see what is happening. And the Fursan, they were
18 concentrated in the Wadi Salih area only. They were armed and given weapons in
19 the area of Wadi Salih. That's why the Fasher command came to verify
20 the information they received.

21 Q. [9:40:46] Just a clarification so that I'm sure we perfectly understand. When
22 you mention the Fursan, you are not talking about the enemy, right?

23 A. [9:40:58] Yes.

24 Q. [9:41:00] Thank you. Did these three high ranking officer deploy alone, or did
25 they come along with some military troops?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 A. [9:41:19] They came by helicopter, and they did not have any assisting forces.

2 Just the pilots and their guards.

3 Q. [9:41:35] Was that usual to have high ranking officers deploying in -- in an area
4 of active operation without their troops?

5 A. [9:41:52] Yes. The forces, they come by land, in vehicles, if necessary. But
6 the leaders, the commanders, they came to see what is happening in the area and they
7 wanted to talk with the command in that area.

8 Q. [9:42:16] So how did they concretely monitor their operations? What did you
9 see them do in -- in this monitoring?

10 A. [9:42:31] These are -- this is confidential information and this is something that
11 pertains only to the commanders. They used to meet at the officers' mess with
12 the commander and the *mu'atamid* and the head of the security apparatus and
13 the police. So they met together with them at the officers' mess. What they said is
14 not something that I was privy to.

15 Q. [9:43:06] Did you see them issue orders? And if so, to whom?

16 A. [9:43:22] Mr Muhammad Ali Abd-Al-Rahman would be the one to receive
17 the orders, and the orders were issued privately at the officers' mess. However, for
18 us, the rest of the employees, we were in our offices. We did not have any official
19 business with them to be able to know what they were saying.

20 Q. [9:43:54] Yes, indeed, your mention of -- you say Mr Ali Muhammad Ali
21 Abd-Al-Rahman confirms what you said yesterday -- no, not yesterday, the day
22 before. I'm referring to the real-time transcript 071, page 20, line 15 to 18, where you
23 said that Ali Muhammad Ali Abd-Al-Rahman or Ali Kushayb, you say that these are
24 two same persons, was -- sorry?

25 PRESIDING JUDGE KORNER: [9:44:34] It was Monday that --

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

- 1 MR LAUCCI: [9:44:37] Maybe.
- 2 PRESIDING JUDGE KORNER: [9:44:38] But is it the first or the second transcript?
- 3 I think it must be the second.
- 4 MR LAUCCI: [9:44:48] Yeah, it's a good question. I think it's the second transcript.
- 5 PRESIDING JUDGE KORNER: [9:44:50] If you could just make that clear if you're
- 6 going to refer us to it.
- 7 MR LAUCCI: [9:44:56] My assistant will double-check and we will confirm.
- 8 PRESIDING JUDGE KORNER: [9:45:00] Yes, it is -- it's the second.
- 9 MR LAUCCI: [9:45:03] Okay, yeah. Thank you.
- 10 Q. [9:45:04] So you said on Monday that Ali Kushayb was
- 11 accompanying -- accompanying these three high ranking officers all the time and was
- 12 taking orders from the military intelligence officer or the PDF general. Is it your
- 13 evidence -- was it your perception that those three high ranking officers had come
- 14 from Khartoum to Garsila for the specific purpose of supervising Ali Kushayb?
- 15 A. [9:45:52] They came from Al Fasher, not from Khartoum. They went from
- 16 Khartoum to Al Fasher, and from Al Fasher they went to Wadi Salih in Garsila. And
- 17 what they were doing was confidential business. It had to do with a war, with
- 18 monitoring the enemy. And the enemy had their headquarters in Wadi Salih, in
- 19 different areas in Wadi Salih. So they came in order to follow what is happening in
- 20 a secret way, in a confidential manner.
- 21 PRESIDING JUDGE KORNER: [9:46:31] Sorry, do you mind if I just ask this: Is
- 22 Al Fasher where the general staff of the armed forces were headquartered?
- 23 THE WITNESS: [9:46:51](Interpretation) Yes. Al Fasher has a command and has
- 24 a commander of the 6th division. And Muhammad Fa'iz was the leader or
- 25 the commander.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 MR LAUCCI: [9:47:07]

2 Q. [9:47:07] Okay, Mr Witness, but irrespective of the secrecy of the mission, what
3 you concretely saw was that these high ranking officers were often accompanied by
4 the person you call Ali Kushayb and were giving orders to him. Is that what you
5 concretely could witness of what these three high ranking officers were doing?

6 A. [9:47:46] I cannot say they were issuing orders to him, but he was accompanying
7 them the whole day. But was he receiving orders from them? However, he was
8 with them.

9 Ali Kushayb would start his movements from the base, from Wadi Salih. And at the
10 same time, the command from Al Fasher was in Wadi Salih. Maybe he received
11 orders from them, but these are things happened in secret, (Redacted)
12 (Redacted)

13 Q. [9:48:50] But what -- what other explanation have you for the fact that
14 Ali Kushayb was accompanying them all the time?

15 A. [9:49:11] Ali Kushayb maybe needed some support. Maybe he was asking
16 them for support.

17 PRESIDING JUDGE KORNER: [9:49:19] Okay. I'm sorry. But this is -- you're
18 asking the witness to speculate. He says he wasn't there. He's assuming that
19 orders were being given. That's the highest he can put it.

20 MR LAUCCI: [9:49:32] Madam President, I do not insist.

21 Q. [9:49:39] If these three high ranking officers were deployed to Garsila to monitor
22 the operations and one of their main interlocutors was Ali Kushayb, and after that
23 Ali Kushayb was going on -- on operation, how come these three high ranking
24 officers were talking to -- to Ali Kushayb instead of the real military structure, and
25 that is Major * Bakhat, about the monitoring of the operations in Wadi Salih?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 A. [9:50:40] Ali Kushayb was the leader of Al Fursan, and Al Fursan were large in
2 number. And they are the ones who undertook the operations in Wadi Salih. Had
3 it not been for Al Fursan under the leadership of Wadi Salih, Wadi Salih would have
4 been occupied. That's why they came and talked to Ali Kushayb.

5 The command in Garsila was small in number and the -- there were so many areas
6 that they needed to monitor at the same time. As opposed to that, the forces of
7 Ali Kushayb were not in one camp. However, whenever they were required to
8 assemble, they did that very quickly. They would send one *faris*, one knight, on
9 the back of a horse with a message, and people would assemble. So this was
10 the way that Al Fursan communicated.

11 As to Muhammad Khatir * Bakhat, he had very limited forces. He did not have
12 the capacity to crush the rebellion. And the command from Al Khartoum or from
13 Al Fasher, they came in order to make use of the forces that were the least costly in
14 this operation.

15 Q. [9:52:28] Mr Witness, you say Major * Bakhat did not have the capacity, but
16 Major * Bakhat had a full brigade under his command, that is many men, well trained,
17 well equipped, fully disciplined. Do you mean that this -- the capacity provided by
18 this fully trained brigade was inferior to the capacity of a totally undisciplined and
19 untrained Fursan?

20 A. [9:53:10] No. First of all, the command of the brigade number 78 that was led
21 by Major * Bakhat had to supervise several areas, Tanako, et cetera, and the forces
22 were dispersed in different parts.

23 As to the Fursan, they were seen as support. So any area where we received
24 information about the enemy, they would head to that area. And Ali Kushayb
25 helped to crush the rebellion, because the forces of Ali Kushayb, even though they

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 were not trained, they were facing an enemy that was -- also was not trained. So
2 they were acting in a random way. They arrived on the backs of camels, horses, and
3 donkeys in an unexpected way to the enemy. They would go to the military area of
4 the enemy and attack from behind the ranks.

5 That's why the government used them. And they were less costly because they did
6 not have vehicles or armoured vehicles. They would just mount their horses and go.

7 Q. [9:55:08] Mr Witness, you -- your answer is -- is actually confirming what I was
8 asking. You say that the troops under the command of Major * Bakhat were already
9 positioned in the full area of Wadi Salih. That is precisely the areas where
10 the military operations that you describe took place. So they were already present,
11 they were disciplined, they were trained. The Fursan were totally undisciplined, not
12 well equipped, not trained.

13 PRESIDING JUDGE KORNER: [9:55:45] Mr Laucci, that's so many questions rolled
14 up into one. Split it up, please.

15 MR LAUCCI: [9:55:54]

16 Q. [9:55:54] So I ask again, the reason to rely on the Fursan for these operation, was
17 it motivated by the fact that there was a lack of capacity or a lack of willingness on
18 the Sudanese Armed Forces side?

19 A. [9:56:26] I am not saying that it was lack of capacity. The Sudanese Armed
20 Forces could face any enemy. However, for this, they needed support from
21 the command. They needed to get extra weapons, vehicles, and personnel.
22 The government did not bother to send brigades and companies. They found that
23 there were these untrained groups that could help crush the rebellion, and they
24 assumed that this was possible because the enemy was from -- belonged to the same
25 group. And the enemy was not ready to attack and to occupy places. And their

1 morale was not very high because they lacked a lot.

2 Q. [9:57:55] Mr Witness, among the operations that you describe during that period,
3 there were operations that were not nice at all. Let's talk -- let's take, for instance,
4 the executions in Deleig.

5 Would the Sudanese Armed Forces have accepted to carry on that operation, that is to
6 execute these persons in Deleig, if they had been ordered so?

7 A. [9:58:45] No, the Sudanese Armed Forces wouldn't have. They wouldn't have
8 accepted to execute people and to burn villages. Burning villages was worse than
9 the executions because it burnt down all properties of the citizens, because those who
10 were targeted by these attacks were citizens. That's why Major Muhammad Khatir *
11 Bakhat was sent to monitor what is happening and he ordered Ali not to burn villages.
12 This is something that was not acceptable.

13 * But I assume that Ali said to them that he could not protect the Fursan because the
14 Fursan were acting with fervor. It was like a drunken person. They were acting in
15 a different way. And that's why they would accept to execute orders to burn and to
16 kill people, things that the Sudanese Armed Forces would not have accepted. And,
17 of course, the executions took place in other places as well, in Mukjar and the two
18 areas that were not under our command in Garsila. The area that was closest to
19 Garsila was Deleig, Soja, Arawala. These were areas that were close to us and they
20 were under the command of the security forces in Garsila.

21 However, the Sudanese Armed Forces, had they received enough will, support, and
22 capacities, had they given them support from the infantry and from the artillery, they
23 would have been able to work. They would have been able to crush the enemy in
24 Wadi Salih. And that is without the -- resorting to using Al Fursan.

25 Q. [10:01:24] Why would the Sudanese Armed Forces have refused to burn

1 the villages or to execute the persons in Deleig? Why would they?

2 A. [10:01:51] It is humane. All governments should refuse to perform executions.
3 They had a mandate, but this was a negative mandate. It was something that was
4 not a good thing. So I can say they were fundamentally tribal reasons. This wasn't
5 a situation where they were faced with an enemy of the state, but it was rather for
6 tribal reasons.

7 Q. [10:02:33] Would Mr * Bakhat order Sudanese Armed Forces have refused to
8 implement such order because it was an illegal order?

9 A. [10:02:58] The Sudanese Armed Forces are regular forces that are disciplined.
10 As a consequence, they can't do anything without having received clear orders from
11 the command. For this reason, these actions did not take place using the armed
12 forces, but using ordinary citizens, the Al Fursan. These people were the enemies of
13 the Fur tribe.

14 Q. [10:03:36] So do I understand correctly that it is your submission that the Fursan
15 would accept to implement an instruction that the Sudanese Armed Forces would
16 have refused to implement?

17 A. [10:04:06] Can you please repeat the question.

18 Q. [10:04:07] My question is: Is the reason why the Fursan were used to
19 implement orders such as the burning of villages or the executions in Deleig, because
20 they -- they accepted -- they would have -- they were expected to accept that
21 instruction, whereas it was foreseeable that the Sudanese Armed Forces, Major *
22 Bakhat, would have refused such order?

23 A. [10:04:58] Yes, because the government had already had an experience with
24 the Al Fursan when the rebel Bolad before -- in the past there was a rebel called Bolad
25 and -- and Abd-Al-Aziz and they entered Darfur. And this enemy, when they

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 entered Wadi Salih, had targeted ordinary citizens. Because of this, the citizens there
2 do not like all the enemies who come and attack Darfur.

3 As for the Fursan, after the attack of Bolad and Abd-Al-Aziz Hilu, they were ready to
4 act in order to combat such attacks. Afterwards, the government understood this
5 and gave them weapons and equipments, believing that the Fursan could help them
6 fight against this enemy.

7 Q. [10:06:21] There is a theory. I know it in French as the theory of bayonet
8 intelligence - *intelligence*. *Intelligente, pardon*. *Baïonnette intelligente*. I tried to find
9 the equivalent in English, but I could not - which means that when someone
10 refuses -- no, I start again. The theory is that someone can refuse to obey an order
11 which he or she considers unlawful. Do you know any -- the -- the -- the -- do you
12 know about the applicability of such theory that there is ground to refuse an unlawful
13 order in Sudan?

14 A. [10:07:28] No. No. When it comes to an illegal order, the commander cannot
15 issue an illegal order. We're talking about a government that is there to defend
16 the law. And because of this, the commander cannot issue unlawful orders to his
17 forces.

18 And so this issue of the Fursan was something illegal, indeed. And so the Fursan
19 had to be commanded by someone.

20 Q. [10:08:27] (Redacted)
21 (Redacted)

22 A. [10:08:50] I don't remember. I don't remember. But --

23 MR LAUCCI: [10:09:00] Stop. I realise that the answer to my question may require
24 a closed session. So if we can shortly move to private session for the answer.

25 PRESIDING JUDGE KORNER: [10:09:08] Yes, private session.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

1 (Private session at 10.09 a.m.)

2 THE COURT OFFICER: [10:09:19] We're 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)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Open session at 10.13 a.m.)

14 THE COURT OFFICER: [10:13:43] We're back into open session, Madam President.

15 MR LAUCCI: [10:13:52] And I would like the -- if it's possible, to have on our screen

16 the page of the document that is in -- under item 13 of the Defence binder.

17 DAR-OTP-0118-0075 at page 0095. I understand that the Arabic version is not yet in

18 the physical binder that the witness has with him, but we have a copy here of

19 the Arabic version, so if that could be given to him, that would help.

20 Q. [10:15:13] Mr Witness, the document that is now given to you is a page from

21 the People's Armed Forces Act 1986.

22 Can we scroll down, please, on the screen. Down, down, down. Yes, perfect.

23 And I would like you to look at Article 48. Can you -- can you find Article 48 on this

24 document.

25 A. [10:16:09] I can't see very well. It's very -- the print is very small. Can you

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 read the text to me so that I can hear it.

2 Q. [10:16:26] Yes. I will read the text for you in English so that you can hear it.

3 That's no problem.

4 So the title of this article is "Misconduct in the face of the enemy". And it reads:

5 "Any persons subject to the provisions of this Act who commit any of the following

6 actions intentionally in the face of the enemy shall be sentenced to death or some

7 other penalty as shown in Article 80:"

8 And I want you to go to (c) of Article 48. I read it. So that's one of the -- the actions

9 that fall under this article: "Any refusal to obey orders or any behaviour deliberately

10 intended to" -- "or any behaviour deliberately intended to imperil any headquarters,

11 unit, position or military property".

12 So do you understand with me, on the basis of this article, that the refusal to obey

13 orders, when it is committed intentionally and in the face of the enemy, is a criminal

14 offence under this act?

15 A. [10:18:28] Yes. Yes, this is a criminal offence, because it is -- a subordinate

16 cannot go against the law when he's faced with a declared enemy. In this case it is

17 not possible to go against orders or to disobey. If a soldier receives an order to face

18 an enemy, if he disobeys, of course this is a criminal offence and he will be

19 condemned to death. If that is the question, if I've understood you correctly.

20 Q. [10:19:17] Yeah, you perfectly understood. And do you know any exception to

21 that provision when the order is perceived as unlawful by the soldier?

22 A. [10:19:42] If the order is unlawful, the soldier must obey. But he can file

23 a complaint, he can complain to a higher entity when it comes to the received order

24 and he can say that this is an unlawful order and I would like to submit a complaint

25 because this order is illegal. I received this order, but it is illegal. I had to do

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 something that was unlawful, but I was obeying orders. I was obeying orders, but I
2 can always go and complain to a person in charge.

3 Q. [10:20:28] Mr Witness, what you just -- oh, sorry, Madam President.

4 PRESIDING JUDGE KORNER: [10:20:31](Microphone not activated)

5 MR LAUCCI: [10:20:31] Yeah.

6 PRESIDING JUDGE KORNER: [10:20:33](Overlapping speakers)

7 MR LAUCCI: [10:20:34]

8 Q. [10:20:34] (Redacted)

9 (Redacted)

10 A. [10:20:53] (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted) That's the question.

14 (Counsel confer)

15 PRESIDING JUDGE KORNER: [10:21:37] The section of this act that was read to you,
16 says "Any refusal to obey orders or any behaviour deliberately intended to imperil
17 any headquarters, unit, position or military property".

18 THE WITNESS: [10:22:04](Interpretation) This is considered as treason.

19 PRESIDING JUDGE KORNER: [10:22:10] Is that a vital part of this section, that it
20 has to be in the circumstances where there would be peril? In other words, if
21 a soldier refused to obey orders, does it have to be in a situation where that refusal
22 would cause, as is said, peril, to the headquarters, unit, position or military property?

23 THE WITNESS: [10:23:01](Interpretation) Yes.

24 PRESIDING JUDGE KORNER: [10:23:11] If there is no -- if there is no peril, does this
25 section of the law apply?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 THE WITNESS: [10:23:31](Interpretation) I would ask the Court for your indulgence,
2 because these questions are quite difficult. (Redacted) and we're
3 talking about very important procedures, so I hope you can excuse me because I am
4 not able to answer such questions.

5 PRESIDING JUDGE KORNER: [10:23:53] That's perfectly fair, sir.

6 But I've just got one further question on this.

7 In your view -- I'll just * wait until Mr Laucci is listening.

8 (Counsel confer)

9 PRESIDING JUDGE KORNER: [10:24:15] In your view, without being a lawyer or of
10 high rank, would that include an order to shoot an -- somebody who had surrendered
11 or someone who was a civilian? That the soldier would have to obey such an order?

12 THE WITNESS: [10:25:00](Interpretation) When it comes to liberating prisoners, this
13 can only be done following orders. And when it comes to shooting someone, this
14 person would have to be a criminal, otherwise it would not be possible to shoot
15 someone. You cannot give orders to kill someone in such a random way.

16 (Trial Chamber Confer)

17 PRESIDING JUDGE KORNER: [10:25:35] I'm sorry, Mr Laucci, you started us all off
18 now. Judge Alexis-Windsor would like to ask something.

19 MR LAUCCI: [10:25:43] I'm happy I did.

20 JUDGE ALEXIS-WINDSOR: [10:25:56] Good day, sir.

21 I have one question for you: The section that Mr Laucci read to you, are sections or
22 parts of the law such as these, a part of the training of those who are in the regular
23 Sudanese army forces?

24 THE WITNESS: [10:26:37](Interpretation) Yes. Yes. (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 (Redacted)

2 (Redacted) There are classes that are organised for soldiers about

3 this.

4 JUDGE ALEXIS-WINDSOR: [10:27:12] And this is before 2000 -- yes, sir? His hand
5 is up.

6 THE WITNESS: [10:27:26](No interpretation)

7 JUDGE ALEXIS-WINDSOR: [10:27:27] Yes, you may.

8 THE WITNESS: [10:27:31](Interpretation) Yes, if you allow.

9 JUDGE ALEXIS-WINDSOR: [10:27:42] Ready? Okay, good.

10 And so your answer, that it was part of the training, do I understand that this was
11 before 2003?

12 THE WITNESS: [10:28:09](Interpretation) Since the command of the armed forces
13 exists in Sudan, the soldiers of the armed forces are trained. There are training
14 centres, they are -- they are numerous. They are taught about the importance of not
15 executing civilians, of not harassing individuals, and so on and so forth.

16 JUDGE ALEXIS-WINDSOR: [10:28:35] And this is before 2003?

17 THE WITNESS: [10:28:43](Interpretation) Yes. Since the creation of the armed
18 forces.

19 JUDGE ALEXIS-WINDSOR: [10:28:49] Thank you.

20 JUDGE ALAPINI-GANSOU: [10:29:01](Interpretation) Thank you,

21 Madam President. This is also an important question for me. I have a little
22 question.

23 Mr Witness, you stated earlier on, with great humility, that you are only -- I don't
24 know how to put this, but you are -- (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 (Redacted), it's often said that you have to execute before -- before
2 complaining. You often -- you often say execute before criticising. Do you agree
3 with me?

4 THE WITNESS: [10:30:00](Interpretation) Yes.

5 JUDGE ALAPINI-GANSOU: [10:30:04](Interpretation) Could you explain to us
6 a little in what context orders should be executed before being criticised.

7 THE WITNESS: [10:30:22](Interpretation) Of course. After an order has been
8 issued, if there hasn't been enough time it is not possible to criticise the order. You
9 have to execute the order and then afterwards you can make a complaint. If you
10 find someone or not, it is possible to make a complaint later on, but the order has to
11 be executed immediately.

12 JUDGE ALAPINI-GANSOU: [10:30:57](Interpretation) At the issue at hand, were
13 there executions? Or there were executions, people were killed. Was it possible for
14 certain soldiers to have executed orders without being able to complain -- to file
15 a complaint later on?

16 THE WITNESS: [10:31:31](Interpretation) If orders are issued, then the orders are
17 issued, and the soldier has to obey, has to execute the orders.

18 JUDGE ALAPINI-GANSOU: [10:31:40](Interpretation) I just want to understand
19 when it comes to Maigari. I think it was Maigari, that was the position. I'm talking
20 about this individual, Mr Maigari, who was at the execution site and left it a little
21 disoriented.

22 MR LAUCCI: [10:32:15] Before the witness answers, I'm -- I'm just suggesting that
23 we may need to go to private session for that answer.

24 PRESIDING JUDGE KORNER: [10:32:32] Yes. All right. Private session.

25 (Private session at 10.32 a.m.)

- 1 THE COURT OFFICER: [10:32:38] We're in private session, Madam President.
- 2 (Redacted)
- 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)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Open session at 10.36 a.m.)

9 THE COURT OFFICER: [10:36:45] We're back in open session, Madam President.

10 MR LAUCCI: [10:36:51]

11 Q. [10:36:51] Mr Witness, before moving on, I would like to -- to ask a follow-up

12 question after the question that was asked to you by her Honour Judge

13 Alexis-Windsor about military training. Did the obligation to obey orders, and

14 the sanction of disobeying orders, form part of the military training in the Sudanese

15 Armed Forces?

16 A. [10:37:31] Yes. (Redacted)

17 (Redacted) Disobeying orders, irrespective of the duty, is considered

18 a crime in the Sudanese military forces.

19 Q. [10:38:09] And does that make that any private, whatever his rank, is

20 taught -- receive the -- the -- in his training, the information that he shall obey

21 orders?

22 A. [10:38:33] Yes. Yes. Obeying orders is necessary because, without it, no one

23 can lead even 20 or 30 people. So without the obeying of orders on the part of

24 a soldier, a commander cannot lead his -- his subordinates.

25 Q. [10:39:02] And are the same private informed that if they disobey orders they

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 may be liable for death penalty?

2 A. [10:39:18] The crimes are categorised and, if necessary, then yes, if disobeying an
3 order would lead to another crime, then the person who refused can be executed.

4 Q. [10:39:34] And once again, this information forms part of the training of any
5 soldier in the Sudanese Armed Forces, right?

6 A. [10:39:47] Yes, that is correct.

7 Q. [10:39:50] Thank you. I'm done with that legalistic aspect, I come back to
8 the more concrete information from your statement.

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)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. [10:43:07] I'm sorry, once again to interrupt you - that's my fault, I take

5 the blame - but I think we need to move to private session for this discussion that we

6 have. I am sorry for not having asked for it before.

7 PRESIDING JUDGE KORNER: [10:43:20] Yes, private session.

8 If you can, try and deal with all matters in private (Overlapping speakers)

9 MR LAUCCI: [10:43:29] I'll do my best.

10 PRESIDING JUDGE KORNER: [10:43:31] All right. Thank you.

11 (Private session at 10.43 a.m.)

12 THE COURT OFFICER: [10:43:39] We're in private session, Madam President.

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)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1 (Redacted)
- 2 (Redacted)
- 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)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Upon resuming in open session at 11.32 a.m.)
- 25 THE COURT USHER: [11:32:20] All rise.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 Please be seated.

2 PRESIDING JUDGE KORNER: [11:32:35] Mr Laucci, can we just ask, are you going
3 to finish today, or not?

4 MR LAUCCI: [11:32:41] I can definitely answer no to that question.

5 PRESIDING JUDGE KORNER: [11:32:44] Sorry?

6 MR LAUCCI: [11:32:45] I can definitely answer no to that question.

7 PRESIDING JUDGE KORNER: [11:32:48] All right. Obviously, you will have to
8 finish tomorrow.

9 Yes.

10 MR LAUCCI: [11:32:58] I will ask, just for some minutes, not to translate what I will
11 say to the witness, please.

12 Madam President, your Honours, I have a small series of question, very limited,
13 which are -- which aim at determining if the witness was ever trained in international
14 humanitarian law during his career, and what is his general level of understanding of
15 the principle of distinction.

16 PRESIDING JUDGE KORNER: [11:33:35] Yeah. I think you need to go -- we're in
17 public session.

18 MR LAUCCI: [11:33:40] Yeah, in public. It's general question about did you ever
19 hear about. And I -- it's not specific to him. It's specific to anyone who has been in
20 the army.

21 PRESIDING JUDGE KORNER: [11:33:52] Yes.

22 MS WHITFORD: [11:33:55] We would submit, out of caution, that it should be done
23 in private session. We would ask for a private session for that.

24 THE WITNESS: [11:34:08](Overlapping speakers)

25 MR LAUCCI: [11:34:08] If you want.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [11:34:09] Yes, do you want to say something, sir?

2 MS WHITFORD: [11:34:15] I think he might be indicating that he's not receiving
3 interpretation.

4 PRESIDING JUDGE KORNER: [11:34:20] Well he wouldn't be, yes.

5 MR LAUCCI: [11:34:22] If you prefer, but the questions are really general.

6 PRESIDING JUDGE KORNER: [11:34:25] If -- sir -- can we just -- could you translate
7 this.

8 Sir, sorry, we're having a legal discussion, which is why you're not getting translation
9 of it.

10 And can we stop the translation again.

11 As Mr Laucci says, this is not going to -- I imagine military service is standard in
12 Sudan, anyhow, so it really goes to anybody who's ever been in the army.

13 If -- Ms Whitford, I think it's up -- up to you. If you actually genuinely think this is
14 going to lead to him identifying himself, well then you can stand up and we'll go into
15 private session. But I do think general questions along the lines that Mr Laucci is
16 saying can you said in open session.

17 However, Mr Laucci, you must be careful.

18 And Ms Whitford, actually, the onus is partly on you to get up. Apparently we had
19 to redact the transcript four times in the last session and that's the ultimate limit.

20 I didn't realise that there were a limit to redactions.

21 MS WHITFORD: [11:35:38] And that's my concern, your Honour. We have been
22 sending through quite a few redaction requests and we would just like to limit
23 the amount of information in the public sphere about the background of this witness.

24 PRESIDING JUDGE KORNER: [11:35:53] How --

25 MR LAUCCI: [11:35:55] It's not long.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1 PRESIDING JUDGE KORNER: [11:35:56] All right. All right. Let's go into private
2 session then.
3 Yes. All right. Private session.
4 (Private session at 11.36 a.m.)
5 THE COURT OFFICER: [11:36:14] We're in private session, Madam President.
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)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 (Redacted)

2 (Open session at 11.41 a.m.)

3 THE COURT OFFICER: [11:41:21] We're back into open session, Madam President.

4 Q. [11:41:24] Mr Witness, I am done with the first part of my cross-examination

5 about the Sudanese Armed Forces. I'm moving now to the Popular Defence Forces,

6 which you describe at paragraph 226 to 242 of your statement.

7 You say you do not remember when the PDF was established, but that it must have

8 been during President al-Bashir's regime. I'm at paragraph 229.

9 Did you ever hear about the Popular Defence Forces Act of 1989, specifically

10 5 November 1989?

11 A. [11:42:29] As regards the Popular Defence Forces, I'm not aware of a law, but I

12 know that those forces were established under the al-Bashir regime. It was

13 the establishment of al-Bashir's army in operation -- in the operational field.

14 As regards a law governing them, I'm not aware of that.

15 Q. [11:42:53] Thank you. I will ask you to open the Defence binder that is next to

16 you. And open it in tab 1.

17 Maybe you can help the -- the witness.

18 And if we can have on our screen the document in English that is on tab 2,

19 DAR-OTP-0103-05 -- sorry, I repeat. DAR-OTP-010 -- 0116-0889. And I would like

20 to go first to page 0891. Thank you.

21 That's the Article 4 that I would like to -- maybe, Mr Witness, look at the document.

22 Is it big enough for you to read, or will I have to translate again?

23 A. [11:44:28] I would prefer that it be translated to me.

24 Q. [11:44:33] Okay. Actually, it is not me who will translate, but I will read and

25 you will interpret.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 I'm reading the Article 4 of the Act of 1989, which is entitled, "The establishment of
2 the People's Defence Forces". And it says that -- actually, I will read it:
3 "A military entity, to be known as 'The People's Defence Forces', is to be set up,
4 subordinate to the Commander-in-Chief and shall consist of Sudanese nationals who
5 meet the requirements laid down in this Act."

6 If we can scroll a little bit up so that we can also see Article 3. Stop. Perfect:
7 The commander-in-chief - that is mentioned in Article 4 - is the most senior officer
8 who has assumed command of the People's Armed Forces.

9 So, in concrete, if I tell you that the Sudanese Armed Forces and
10 the Popular Defence Forces are under the authority of the same commander-in-chief,
11 does that sound correct to you?

12 A. [11:46:17] Yes.

13 Q. [11:46:17] Who is this commander-in-chief?

14 A. [11:46:29] I don't know.

15 Q. [11:46:31] Not a problem.

16 Can we scroll down to Article 7, please.

17 Pursuant to Article 7(1) of this Act, the commander-in-chief shall appoint
18 a commander of the PDF from among the officers of the Sudanese Armed Forces and
19 other regular forces who shall have at least the rank of brigadier general.

20 On Monday, and I quote from real-time transcript 071, page 46, line 15 to 16, talking
21 about the brigadier general who came to Garsila with Minister Harun, you said that
22 he was the commander of the PDF in Sudan.

23 So my question is, this brigadier general who came to Garsila the first time with
24 Harun and then with the two other high level generals, was he the commander of
25 the PDF for Sudan?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 A. [11:48:06] He came as the representative of the People's Defence Forces, but
2 whether he was the commander-in-chief or whether he was simply an officer, that I
3 do not know, but he did come as the representative of the People's Defence Forces.

4 Q. [11:48:24] And you confirm that he was -- he had the rank of brigadier general,
5 right?

6 A. [11:48:35] Yes.

7 Q. [11:48:44] Was the PDF branch in Garsila reporting to Zalingei or was it
8 place -- yes, first question --

9 A. [11:49:01] (Overlapping speakers)

10 Q. [11:49:02] It was reporting, okay.

11 A. [11:49:09] Yes.

12 Q. [11:49:10] (Overlapping speakers) So the branch in Garsila, the PDF branch in
13 Garsila was subordinated to -- to Zalingei in the chain of command, did I understand
14 correctly?

15 A. [11:49:26] Yes.

16 Q. [11:49:27] (Overlapping speakers) You say that the PDF commander in Nyala
17 was Lieutenant Colonel * Al Hereika. I'm at paragraph 235. Can I ask you if you
18 know what was the rank of the PDF commander in Garsila?

19 A. [11:49:56] As regards the Popular Defence Forces in Garsila, there wasn't
20 a military commander, rather, there was a coordinator. A coordinator who was
21 the coordinator of the Popular Defence Forces, and that was an ordinary citizen who
22 had been appointed coordinator.

23 It was a teacher, a teacher who had been appointed coordinator to replace Jenif.

24 Jenif.

25 MS WHITFORD: [11:50:44] Excuse me. I'm sorry to interrupt. And I should have

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 stood up earlier, but we were just checking the transcript. And in relation to
2 the lines 16 to 18 on page 40, where it was put that, based on Articles 3 and 4, that
3 the Sudanese Armed Forces and the Popular Defence Forces are under the authority
4 of the same commander-in-chief, looking at those two articles we don't see that it says
5 that.

6 PRESIDING JUDGE KORNER: [11:51:17] I looked at that and thought where does it
7 say that, but then I assumed that -- that - and I think the witness agreed, didn't
8 he? - that Mr Laucci was relying on -- on knowledge.

9 Because it -- Mr Laucci, what the act actually -- what it says is that:

10 "'The Commander-in-Chief' refers to the senior officer commanding
11 the People's Defence Forces." But isn't that what this is? As opposed to
12 commanding any other forces.

13 MR LAUCCI: [11:52:08] I need to double-check my note because I must have
14 referred to another reference. But I take the point for -- for the moment.

15 PRESIDING JUDGE KORNER: [11:52:16] No. I -- I noticed that, then I just left it.

16 MS WHITFORD: [11:52:22] Yes. Sorry, Mr Nicholls is assisting we with
17 the reference. When Mr Laucci read out Article 4, it was read -- sorry, Article 3 --

18 PRESIDING JUDGE KORNER: [11:52:33] It's Article 3 where there's -- which is
19 the definition section.

20 MS WHITFORD: [11:52:37] Yes.

21 PRESIDING JUDGE KORNER: [11:52:37] And he read it out not exactly as it's wrote.

22 MS WHITFORD: [11:52:41] Exactly. People's Armed Forces instead of People's
23 Defence Forces.

24 MR LAUCCI: Yeah.

25 PRESIDING JUDGE KORNER: [11:52:51] Well, anyhow, I mean the witness -- none

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 of what Mr Laucci says, or any of us say, is evidence. So I think the witness needs to
2 be asked that again. I mean, the commander -- this reads as though there is
3 a commander-in-chief of the PDF who's got no other authority over any other
4 rank -- any other organisation. I mean, let's ask him.

5 Sir, I hope you've been able to follow this discussion. Did the commander -- to your
6 knowledge - and if you don't know the answer say so - did the commander-in-chief of
7 the PDF, was he the same as the commander-in-chief, for example, of the Sudanese
8 Armed Forces? Or was it a completely different person?

9 THE WITNESS: [11:53:57](Interpretation) In fact, I don't know if it was the same
10 person or it was a different person. That I do not know. But the brigadier general
11 (Redacted) was part of the Popular Defence Forces. Now whether
12 he was the commander-in-chief, that I do not know.

13 PRESIDING JUDGE KORNER: [11:54:16] Yeah.

14 MR LAUCCI: [11:54:19]

15 Q. [11:54:20] Okay. Thank you for the correction.

16 Actually, I have a reference which I cannot -- I do not manage to find again at this
17 moment. But I may come back to that later. But thank you for the moment.

18 I take a note for myself.

19 I was about to ask you, Mr Witness, if you knew the rank of the PDF commander in
20 Zalingei?

21 A. [11:55:08] As regards the Popular Defence Forces, those forces were made up of
22 civilians, principally. It was called the Popular Defence, so it was the people who
23 made up those forces. And I do not know who was their commander-in-chief. But
24 I know that there was a coordinator and that coordinator was well known and well
25 known as being the person responsible for the Popular Defence Forces.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 Q. [11:55:51] Finally, same question: Do you know what was the ranks of the PDF
2 commander in Al Fasher?

3 A. [11:56:14] No.

4 Q. [11:56:14] Thank you. I will now refer to Article 6 of the People's Defence
5 Forces Act that is now on our screen. Article 6 describes the functions of the PDF
6 and I will read it:

7 "(a) To support the People's Armed Forces and all other government forces whenever
8 necessary.

9 (b) To participate in the Nation's defence and to assist in dealing with civil disasters
10 and catastrophes.

11 (c) Any other functions entrusted to them by the Commander-in-chief himself or as
12 recommended by the Council."

13 You said - I'm at paragraph 227 of your statement - that the PDF was subordinated to
14 the Sudanese Armed Forces to provide logistics and operational support to the staff.
15 But in Wadi Salih, you add - at paragraph 230 - that the main duty of the PDF was to
16 collect intelligence on subversive activities.

17 How did the collection of that intelligence on subversive activities by the PDF work,
18 concretely?

19 A. [11:58:03] The Popular Defence Forces in Wadi Salih were herdsmen. They
20 were citizens, herdsmen, and they would move from place to place seeking water.
21 So, basically, they were nomads who were moving about and who would see quite
22 a lot. They were in a position to see things concerning the enemy and, if they did so,
23 they could inform their commanders. They could report that they had seen this or
24 that, and that information would then be provided to the intelligence services, to
25 the police, to the security services. And so a committee was set up to supervise

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 the transmission of that intelligence.

2 Q. [11:59:03] Did the PDF also provide intelligence to the National Intelligence
3 Security Services, in your knowledge?

4 A. [11:59:19] Yes. (Redacted). The masader,
5 meaning sources, were citizens who were members of the Popular Defence Forces
6 and they gathered information in further flung regions such as Kargo and others. So
7 they provided intelligence. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. [12:00:25] Thank you. At paragraph 22 of your statement you said that First
12 Lieutenant Hamdi appointed Hassaballah Dawud to replace the former PDF
13 coordinator Jenif.

14 So, first, First Lieutenant Hamdi was chief of the military intelligence branch in
15 Garsila. Was it normal to have a local PDF coordinator appointed by the local
16 military intelligence commander instead of the PDF hierarchy?

17 A. [12:01:16] The commanders of Popular Defence Forces was -- or, were appointed
18 by a *mu'atamid*, and the *mu'atamid* is responsible for the Popular Defence Forces. So
19 it was possible to appoint the coordinator of the Popular Defence by the *mu'atamid*.
20 But these were special times, times of operations, so the commander gave
21 the authority to the intelligence to do that.

22 PRESIDING JUDGE KORNER: [12:02:17] Sorry. So you're saying that
23 Commander * Bakhat gave authority to Lieutenant Hamdi to appoint -- no?

24 MR LAUCCI: [12:02:29](Microphone not activated)

25 PRESIDING JUDGE KORNER: [12:02:30] Well, we may as well get the answer,

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 Mr Laucci.

2 Are you saying Commander * Bakhat gave authority to Lieutenant Hamdi?

3 THE WITNESS: [12:02:50](Interpretation) Lieutenant Hamdi, in his position as an

4 intelligence officer, was given authority. This could have happened during

5 a security meeting. And he was given that authority by the *mu'atamid* and

6 the security authorities and they decided that he was the right person to appoint

7 a successor to Jenif, to appoint Hassaballah, because the Popular Defence Forces, they

8 are pastoralist people. They are herders. So maybe they preferred him to be an

9 Arab and not a Fur.

10 PRESIDING JUDGE KORNER: [12:03:49] You're quite right, Mr Laucci, because it's

11 the *mu'atamid* rather than the -- yeah, the commander.

12 MR LAUCCI: [12:03:55] Exactly. And sorry for -- actually, I did not dare

13 interrupting.

14 Q. [12:04:01] But when you say the *mu'atamid*, Mr Witness, are you talking about

15 Ja'afar Abd-Al-Hakam?

16 A. [12:04:10] Yes. Ja'afar Abd-Al-Hakam, he was the *mu'atamid* at the time.

17 Q. [12:04:19] So if I understand your answer, the normal way of appointing a PDF

18 coordinator in Garsila was to have him appointed by the *mu'atamid* and not through

19 the PDF command?

20 A. [12:04:46] The Popular Defence is represented by the *mu'atamid*. So there

21 wasn't really a command of the Popular Defence Forces. They didn't really have

22 a commander. They just had a coordinator. A coordinator of

23 the Popular Defence Forces was the highest person in the Popular Defence Forces.

24 Q. [12:05:20] Okay. But you told us that the PDF branch in Garsila was reporting

25 to PDF in Zalingei. How did that work? Why -- why wasn't it the PDF commander

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 in Zalingei who appointed the new PDF coordinator in Garsila?

2 A. [12:05:51] It was not any of his concern. Appointing a commander or
3 a coordinator of the Popular Defence Forces was out of his remit, because that was
4 something that fell under the *mu'atamid* in Wadi Salih. That was the administrative
5 division. So Garsila followed a different department than Zalingei. There was
6 coordination between them in terms of giving weapons or needs. Zalingei could
7 offer support only.

8 Q. [12:06:59] Thank you. At paragraph 126 of your statement you say that
9 the -- the three high ranking officers who came to Garsila arrived a couple of days
10 before the release of the two *umdahs* and PDF commander Jenif. So do you confirm
11 that PDF coordinator -- sorry, PDF coordinator Jenif was in jail when the three high
12 ranking officers arrived in Garsila?

13 A. [12:07:44] Yes. Yes. But they arrived and they received reports about Jenif.

14 THE INTERPRETER: [12:08:01] And the interpreter is asking the witness to repeat
15 the last sentence, please.

16 THE WITNESS: [12:08:25](Interpretation) The presence of the high command from
17 Al Fasher, they knew that Jenif was in jail. He was arrested based on information
18 from Al Fursan. That's why when the three commanders came, they did not concern
19 themselves with Jenif. They considered him a criminal, or somebody who was in
20 support of the rebellion.

21 MR LAUCCI: [12:09:14]

22 Q. [12:09:15] So when among these three high ranking officer the PDF brigadier
23 general arrives in Garsila, he does not intervene, one way or the other, in
24 the detention of the local PDF coordinator; is that what you say?

25 A. [12:09:40] Yes.

1 Q. [12:09:47] Thank you. At paragraph 229 of your statement you give your
2 opinion that the members of the PDF in Wadi Salih area were very experienced and
3 well trained because they had gained a lot of experience in South Sudan. When did
4 they go in South Sudan?

5 A. [12:10:31] The PDF people who have been to southern Sudan were few in
6 number, maybe like Jenif and Hassaballah. They are the ones who had experience.
7 So it was a small number of people who were in the south of Sudan, and that was
8 before the separation of the two countries and when there was a rebellion in
9 the south.

10 Q. [12:11:05] So your opinion that the PDF members were very experienced and
11 well trained is limited to Jenif and Hassaballah and nobody else?

12 A. [12:11:21] Yes, because the rest were herders in the desert. They had cattle,
13 cows, sheep, and they were pastoralists. However, those who were in
14 a commanding position, who came to Garsila as a leader or a commander of
15 the Popular Defence Forces were people who received education, who have served in
16 the south and they had experience with war down there.

17 Q. [12:12:00] Do you know what these two had done in South Sudan?

18 A. [12:12:14] No. They were with the Popular Defence Forces in the south. They
19 were sent there to serve. They served for a while and then they returned.

20 Q. [12:12:33] If I suggest to you that the PDF coordinator or commander in Mukjar
21 was Al-Sadiq Ahmad Uthman Zakariya, does that ring a bell to you?

22 A. [12:13:00] No. I knew the person as a person but I did not know the name.

23 Q. [12:13:03] And was the PDF coordinator in Mukjar as well an experienced
24 military leader?

25 A. [12:13:13] Yes.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [12:13:14] I'm sorry, the answer didn't make much
2 sense.

3 Is he -- sir, are you agreeing that you did know that the PDF coordinator in Mukjar
4 was a Mr Zakariya, or that you -- or that although you knew him as a person you did
5 not realise he was the coordinator?

6 THE WITNESS: [12:13:45](Interpretation) Whenever he -- whenever I was in Mukjar
7 or whenever he came from Mukjar, I was told he is the coordinator. But I did not
8 know him personally because it was none of my concern.

9 PRESIDING JUDGE KORNER: [12:14:01] Thank you.

10 MR LAUCCI: [12:14:06] Thank you.

11 Q. [12:14:07] And last question about the PDF.

12 By the end of 2004, you mention a merge between the PDF and the Janjaweed forces,
13 which attended a joint military training in El Obeid, North Kordofan. I'm at
14 paragraph 238 of the statement.

15 Did the PDF disappear after that merging of 2004?

16 A. [12:14:46] No, they did not disappear. The PDF was formed by
17 the government. So that was an institution.

18 As to the Janjaweed, they were outlaws and the government wanted to make use of
19 their experience with the desert, so they were brought and trained well and returned.

20 Then they had a split. Some followed Ali Kushayb, Ali Muhammad Ali

21 Abd-Al-Rahman, and they worked with the police and they called themselves

22 the Popular Police. And the other group was led by Bonjouse and they held camp in

23 Simbi Sey, and that is to the west of Garsila. And Ali Kushayb left Wadi Salih and

24 took his forces with him.

25 Q. [12:16:09] Thank you.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 And you mentioned at paragraph 242 of your statement that the PDF was recently
2 dismantled by the new government. Do you confirm so?

3 A. [12:16:25] Yes. Not the government, but the revolution. The revolution did
4 dismantle the PDF and the Popular Force, the police force.

5 Q. [12:16:38] Thank you, Mr Witness. I now move to the Central Reserve Forces,
6 which you describe at paragraph 243 to 246 of your statement.

7 Do you know who was the commander of the CRF for the whole Sudan in 2003 and
8 2004?

9 A. [12:17:08] No, I don't know him. The Popular Defence Forces were organised
10 forces, they were following their commands. (Redacted)

11 (Redacted), even though they were a main

12 pillar of support to the Sudanese Armed Forces.

13 Q. [12:17:36] Thank you. You mention a CRF HQ in Zalingei and CRF offices in
14 Nyala and Al Fasher. What role, if any, did the CRF play in the counterinsurgency
15 in 2003 and 2004, please?

16 A. [12:18:03] The Popular Defence Forces, or the Central Reserves, they belonged to
17 the police and they got their orders from the police. So I didn't know what was
18 the role of the Defence Forces in that time. They belonged to the police.

19 Q. [12:18:32] To make sure that you understood my question, my question is about
20 the role of the Central Reserve Forces, not the PDF. So what was the role of
21 the Central Reserve Forces in the counterinsurgency in 2003, 2004?

22 A. [12:18:53] The Popular Defence Forces. No, not the Popular Defence, but
23 the Central Reserve Forces, they followed the police. And
24 the Popular Defence Forces, they followed the army. So the Central Reserve
25 received their instructions or their orders from the police. Ali Kushayb got his

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 orders from the command. Only the fuel and salaries of the PDF forces did he have
2 to do anything to do with. As to the instructions, they came directly from
3 the ministry of interior.

4 Q. [12:19:42] I took the point.

5 Yeah, sorry.

6 MS WHITFORD: [12:19:44] I'm sorry to interrupt, but I just wonder if the witness
7 might be getting tired and might need a short break. Maybe not, but if we could
8 perhaps check with him.

9 PRESIDING JUDGE KORNER: [12:19:54] Yes, certainly.

10 Sir, I did tell you that if you needed a break, and I know you've been going a long
11 time today, you should always ask. It's really important that you don't try and
12 continue on if you're feel a little bit weary. So as Ms Whitford has mentioned, would
13 you like a break for, say, 10 minutes?

14 THE WITNESS: [12:20:28](Interpretation) I'm here to perform a duty, so a break is
15 not necessary. I can continue in order for me to perform my duty. And I hope God
16 helps me to do that. Whether now or after a break, I have a duty to perform. So I
17 would like to continue.

18 PRESIDING JUDGE KORNER: [12:20:53] Right. I think what we're going to do,
19 Mr Laucci, is, as you say, that you can't complete today, we will actually -- we'll go
20 on -- we'll rise a little early. We've do another 30 minutes and raise at 10 to 1. And
21 then -- and I think maybe shorten this afternoon. We'll see how we go.

22 Sir, but -- but, please, I know it's against the nature of any -- I was going to say
23 military man, but I'm not sure any man generally to say they don't feel well or they're
24 tired. But it is important, from everybody's point of view, that you don't feel too
25 tired to -- to answer the questions helpfully. So I hope you understand that.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 Nobody, nobody thinks any the less of you for asking for breaks.

2 Yes. All right, we'll -- we'll carry on then now until 10 to 1, and then we'll break and
3 I'll consider what time we -- we start again then. Thank you.

4 MR LAUCCI: [12:22:05] Yes. And I want to thank my colleague for asking you.

5 Q. [12:22:10] The same way, Mr Witness, don't get exhausted in response to the call
6 of duty, please. We can take time, if needed.

7 So, you said the CRF was under the ministry of interior, was under the police. Fine,
8 that's noted. Now, with that hierarchy, can you tell us about anything the CRF did
9 in 2003, 2004 in Wadi Salih in the fight against the rebellion?

10 A. [12:22:50] Not the Popular Defence, but the Central Reserve in Wadi Salih
11 became known after it was formed by Ali. In the past they were Fursan. They all
12 were known by the name of Al Fursan and they used to move together to combat
13 the rebellion.

14 So any movements that took place in Wadi Salih, they were done by the same people,
15 whether they were Popular Defence Forces or Central Reserve Forces. So there
16 wasn't really a distinction or a name known as PDF or Central Reserve in Wadi Salih.
17 This came later on. And later on they were known as the Central Reserve Forces.
18 They did not have any kind of command or role in Wadi Salih. The same people
19 operated under the name of Al Fursan.

20 Q. [12:24:06] Okay. So your answer, sir, is that in 2003, 2004 nobody talked about
21 Central Reserve Forces. This title, this label appeared later; is that your answer?

22 A. [12:24:23] Yes. The Central Reserve was present, but not in Wadi Salih, it was
23 in Nyala. They protected caravans, trains, cars going to Khartoum, but they were
24 not present in Wadi Salih.

25 Q. [12:24:50] Thank you. And you just mentioned it, but at paragraph 246 you say

1 that by the end of 2004 the person you call Ali Kushayb became the commander of
2 the Central Reserve Forces for Wadi Salih. How do you know that?

3 A. [12:25:19] When the training took place and they returned to Wadi Salih,
4 the Central Reserve was known for their uniform. They had a distinctive uniform.
5 They belonged to the police. And the Popular Defence Forces, they belonged to
6 the army, and they wore a distinctive uniform. In Zalingei they started and they
7 moved to Mukjar, Bindisi, et cetera, and they had special vehicles,
8 the Central Reserve Forces. * Ali Kushayb arrived in Garsila as
9 a CRF representative. And he did not have a camp in Garsila. He had a vehicle
10 from the Central Reserve Forces. Then, in the end, he decided to leave.

11 Q. [12:26:29] Thank you. So, according to you, when is it that Ali Kushayb was
12 appointed CRF commander for Wadi Salih?

13 A. [12:26:48] After the training took place and they returned. He did not have
14 a rank. He used to wear civilian clothes. And it was not known that he was
15 a member of the Central Reserve Forces. And the Central Reserve Forces, they
16 belonged to the police. Even those who worked at the police didn't really know who
17 he was or what rank he had within the Central Reserve Forces.

18 Q. [12:27:32] So, according to you, Ali Kushayb was the commander of
19 the Central Reserve Forces, but nobody knew about it?

20 A. [12:27:43] Yes. No, it was known that he was a leader at the
21 Central Reserve Forces, but nobody knew what kind of rank he had. Was he an
22 officer? Was he a non-commissioned officer? He moved around with his vehicle,
23 but his own forces did not know what kind of a rank he had.

24 Q. [12:28:19] But how did they know he was their commander then?

25 A. [12:28:29] How? He trained them. Especially the group that was in

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 Wadi Salih. And in the police camps he was higher than a captain. He came to an
2 event at the camp and all police officers stood when he arrived to salute him. But
3 army officers didn't do that. Even lower ranked army officers didn't do that. So
4 the army commander asked, "Who is this person and why did you stand up to salute
5 him? He is an ordinary citizen without a rank." So the commander of the police in
6 that area said that we had instructions from the higher command that anybody whose
7 rank who is a captain or lower, they need to salute him. Those who are higher than
8 this do not need to salute him. And the army commander was surprised at this.
9 He said, "You have a rank and he is a civilian. We know that he was an army officer
10 and then he retired from the army. How do you stand to salute him?" And
11 the answer was these are the instructions from the higher command. So
12 Ali Kushayb had a higher rank, but this was not known to people.

13 Q. [12:30:32] When was this incident that you describe with the -- the police officers
14 rising up at the entrance of Ali Kushayb?

15 A. [12:30:52] We were told by army forces who were present that this incident took
16 place. Then Ali Kushayb left from Wadi Salih to Rahad Al-Berdi and he set up camp
17 close to the army camp.

18 Q. [12:31:17] But this event took place for sure after 2003, 2004, right?

19 A. [12:31:28] Yes.

20 Q. [12:31:31] And you said that when Ali Kushayb entered into the -- that meeting,
21 the army commanders there did not know who he was and asked who he was; is that
22 what you said?

23 A. [12:31:51] Yes. Because they knew him under the name of Ali Kushayb. But
24 by the way that he was -- that he saluted them, they were confused. The fact that
25 he'd been saluted this way confused them. But Ali Kushayb was a man who was

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 known in the area. He was known everywhere. All the citizens of Rahad Al-Berdi
2 knew him. And even all the people present in the army, the soldiers of the army,
3 they knew that he was Ali Kushayb. He was known in the area, his family was also
4 well known. However, the fact that people stood up and saluted him with a military
5 salute, this was something new.

6 Q. [12:32:46] Thank you, Mr Witness.

7 I would like if the court officer could assist the witness to take document under tab 3
8 in the Defence binder. And if we can have on the screen at the same time document
9 number 4, that is DAR-D31-0002-0010.

10 Wait for it to appear on the screen.

11 Mr Witness, on the first page of that document - you have it in Arabic, I have it in
12 English --

13 A. [12:34:10] (Overlapping speakers)

14 Q. [12:34:12] -- it's written that this document is a "Group Assignment No. 58
15 Garsila". do you see that?

16 A. [12:34:36] Yes.

17 Q. [12:34:37] This document comes from the Central Reserve command.

18 A. [12:34:50] (Overlapping speakers)

19 Q. [12:34:51] And it is dated -- sorry, I did not get the interpretation.

20 A. [12:35:07] Yes, it was the archives division.

21 Q. [12:35:10] And what is the archives division, please?

22 A. [12:35:27] The records division.

23 Q. [12:35:31] Yes, that's -- that's what is written at the top. Thank you. And it is
24 dated 28 July 2005.

25 Are you familiar with that kind of document?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 A. [12:35:58] Yes. This document looks familiar to me, but I have never seen this
2 document beforehand. This "Group Assignment No 58 Garsila", this is not
3 something I'm aware of.

4 Q. [12:36:22] Fair enough. But do you know what a group assignment order is?

5 A. [12:36:45] This is an order issued by the command, but this assignment order is
6 not one I know and I do not know this group. I do not know it.

7 Q. [12:37:05] And do you agree that the Central Reserve command is the highest
8 authority in the Central Reserve Forces?

9 A. [12:37:21] Yes. The command is always the highest authority. So when it
10 comes to the Central Reserve Forces, this is an autonomous command which is under
11 the -- which belongs to the police. But it is a separate entity.

12 Q. [12:37:44] Thank you. Can I ask you to go to the next page of the document.
13 The same for us on the screen, please. Page DAR-D31-0002-0012.

14 This is a chart with a number of entries, with numbers in the left column. Do you
15 see that?

16 A. [12:38:19] Yes.

17 Q. [12:38:21] (Overlapping speakers) And I ask you to go -- I ask you to go, please,
18 to the entry number 189 in the chart. In the third column of that entry there is
19 a name, "Ali Muhammad Ali Abdul Rahman". Do you know that person?

20 A. [12:39:01] In this very -- in this same document? Is it in the same document?

21 Q. [12:39:06] Yes. Entry number 189.

22 A. [12:39:25] 189, yes, "Ali Muhammad Ali Abdul Rahman". I can see this, yes. I
23 recognise him. It's Ali Kushayb.

24 Q. [12:39:38] And according to -- no, in the second column under that entry, you
25 have one word, which is the word "Recruit". What kind of rank is this?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 A. [12:40:08] Recruit, this is lower than an officer. This means that he was -- he
2 enrolled for a specific -- a special mission. So it's lower than an officer, it's a recruit.

3 Q. [12:40:28] If I tell you that recruit is the lowest possible rank of a soldier, do you
4 agree?

5 PRESIDING JUDGE KORNER: [12:40:37] Only if you're going to call some evidence
6 about it. What you say is not evidence, Mr Laucci.

7 MR LAUCCI: [12:40:47] I will then just ask the witness.

8 Q. [12:40:50] Is a recruit the lowest level of -- possible for a soldier?

9 A. [12:41:02] Yes. Yes. This rank is lower than all other military rank.

10 Q. [12:41:18] That is evidence, Madam President.

11 And so according to that document, was Ali Muhammad Ali Abd-Al-Rahman
12 appointed as CRF commander in Wadi Salih on 28 July 2005?

13 A. [12:41:52] In fact, I don't know when he was appointed. But I know that he
14 moved around with the CRF. But I don't know when he was appointed. I don't
15 know if this was after the training, the training of these men. He wasn't trained then
16 because he'd already been trained. But after having trained these men, he -- he led
17 them and he was their leader. But when -- when did he enrol? I'm not sure about
18 this. This is an issue that pertains to the CRF and I'm unaware of this.

19 Q. [12:42:34] My last question on this point and maybe for -- for the session.

20 Mr Witness, can the person you call Ali Kushayb, who you say was appointed CRF
21 commander for Wadi Salih, be the same person as this "Ali Muhammad Ali Abdul
22 Rahman" who was appointed as a recruit, a rookie, in the CRF?

23 A. [12:43:14] In fact, this is the same name. Ali Kushayb is also called Ali
24 Muhammad Ali Abd-Al-Rahman. And the name that I can read here is "Ali
25 Muhammad Ali Abdul Rahman". This is the same name. But is it the same person

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 or is it just the same name? That is not something I know. But it is the same name.

2 Q. [12:43:38] Thank you, Mr Witness.

3 Madam President, I know that you said ten to 1, but I'm at a convenient time for
4 a break.

5 PRESIDING JUDGE KORNER: [12:44:07] What I'm going to do, Mr Laucci, is break
6 now, as you suggest, but we'll sit again at 2.15 and then we'll just see how we go with
7 the witness and whether, if we sit at 2.15, we have a short break, say, at 3 o'clock, or
8 something like that, and carry on. So, yes, we'll break now.

9 Sir, we're going to break now until 2.15 and then you'll restart your evidence at 2.15
10 and we'll see how we go then.

11 Yes, if you'd like -- if you'd like to leave court with the court officer then, and we'll see
12 you later.

13 (The witness exits the courtroom)

14 PRESIDING JUDGE KORNER: [12:45:17] I hadn't noticed that he was being
15 particularly tired, Ms Whitford, but obviously you've seen him and I haven't in, as it
16 were, real life.

17 MS WHITFORD: [12:45:28] It was my impression, your Honour. And I also had
18 that feeling Monday afternoon after we had really many hours with him.

19 PRESIDING JUDGE KORNER: [12:45:38] I think what I'm going to try and do is this,
20 we'll sit, as I say at 2.15, which gives an hour for the technicians to deal with the court
21 matters. And then I think what we might do is sit until 3, have ten minutes so that
22 he can relax and then -- and then go on -- and I mean ten minutes, I mean that's
23 the trouble. I know people tend to disperse. But just to give him a chance to -- to
24 relax. And then we'll sit ten past 3 to 4 o'clock.

25 MR LAUCCI: [12:46:14] That's perfectly fine. And just for you to know that the

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 next part of my cross-examination is divided in very clear chapters, so -- and which
2 are short, so we can find the right place. Maybe when I am done with one
3 subchapter I ask if you want a break now and so on and so on.

4 PRESIDING JUDGE KORNER: [12:46:31] The other thing is, when do you intend to
5 finish tomorrow? You must have some idea, Mr Laucci?

6 MR LAUCCI: [12:46:42] That's a good one.

7 PRESIDING JUDGE KORNER: [12:46:44] I mean, you've still got a huge topic to
8 cover in his dealings with the man he's been calling Ali Kushayb.

9 MR LAUCCI: [12:46:53] Yes. So far I went much slower than expected. I think it
10 was not useless, but it went -- I'm much less advanced that I should be in my
11 cross-examination. At this point in time I cannot exclude to take the full day
12 tomorrow.

13 PRESIDING JUDGE KORNER: [12:47:11] Well, you're going to have to -- yeah, I
14 mean, again, the hours you use are up to you. And it may be -- I mean, Mr Laucci,
15 a lot of what you've covered was really expanding on things he's already said, but
16 whether -- how necessary it was.

17 MR LAUCCI: [12:47:29] The problem is that some questions that I ask prompt him
18 to repeat what -- what he already said in the examination-in-chief when it is not
19 the intent. I tried to -- to stop him, but at the same time that's his answer. I don't
20 feel really authorised to cut him sharp and say, "No, you already said that."

21 PRESIDING JUDGE KORNER: [12:47:49] Well, I mean, yeah, perhaps over the break
22 you might have a look at your topics and see if you can --

23 MR LAUCCI: [12:47:56] Yeah, yeah. I have a permanent look.

24 PRESIDING JUDGE KORNER: [12:47:58] All right. Okay.

25 Again, as you saw, the judges have been interested in his evidence. So it's almost

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 certain there'll be some questions at the end. I don't know whether Ms Whitford has
2 any re-examination as yet, but she may do, I suppose.

3 So I think you're going to have to -- you're going to have to, whatever happens, and
4 this is not a well witness and I really think it would have been, what, one, two, three,
5 the best part of four days of evidence.

6 MR LAUCCI: [12:48:25] Full, full week, yeah.

7 PRESIDING JUDGE KORNER: [12:48:36] That, in -- in all humanity, I suppose, we
8 ought to try and cut this as short as we can.

9 MR LAUCCI: [12:48:42] Assure I do my best.

10 PRESIDING JUDGE KORNER: [12:48:44] Yes. Mr Nicholls, yes.

11 MR NICHOLLS: [12:48:46] Sorry to prolong everything, your Honour. Just to say
12 that we -- we do plan on having the next witness available tomorrow. But as soon as
13 we can know, it would be good to know so that, just for VWS's sake and the witness's
14 sake, not to come here and -- and wait and then --

15 MR LAUCCI: [12:48:57] Can I confirm that for good at the end of this session this
16 afternoon?

17 MR NICHOLLS: Yes. Yes.

18 PRESIDING JUDGE KORNER: [12:49:02] Well, I mean if you can -- yeah, I think
19 certainly by first thing tomorrow morning, if nothing else.

20 You're obviously not going to have him here for the first session --

21 MR NICHOLLS: No. No.

22 PRESIDING JUDGE KORNER: [12:49:07] -- or indeed, by the sound of it, the second.

23 MR LAUCCI: [12:49:14] No, but I will have -- I mean, at this moment in time it's
24 75 per cent that I will take full day tomorrow.

25 MR NICHOLLS: [12:49:19] Thank you.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

- 1 And just, your Honours, we did see the witness kind of literally drooping a bit,
2 putting his head down, and I think that's what Ms Whitford --
- 3 PRESIDING JUDGE KORNER: [12:49:29] Yeah, I'm afraid that's why I normally
4 have the -- his image up on -- on the screen, because it's quite difficult to -- to watch it,
5 but I will keep an eye on him.
- 6 All right. Anyhow, so that will be the plan for this afternoon.
- 7 Yes, thank you. Quarter past 2 then, please.
- 8 THE COURT USHER: [12:49:54] All rise.
- 9 (Recess taken at 12.49 p.m.)
- 10 (Upon resuming in open session at 2.20 p.m.)
- 11 THE COURT USHER: [14:20:36] All rise.
- 12 Please be seated.
- 13 PRESIDING JUDGE KORNER: [14:21:01] Yes. Mr Laucci, we've started a little late,
14 but we'll have, as I say, a 10-minute break at 3 o'clock.
- 15 MR LAUCCI: [14:21:12] Thank you, Madam President.
- 16 Q. [14:21:15] Mr Witness, are you with me? All well.
- 17 A. [14:21:21] (Overlapping speakers)
- 18 Q. [14:21:21] So we carry on. If you can, try to provide as short as possible
19 responses to my questions, because we try to make sure that we'll be able to complete
20 that cross-examination by tomorrow. So in your common -- in our common interest,
21 short responses are better.
- 22 A. [14:21:51] (No interpretation)
- 23 Q. [14:21:52] My next topic is the border guard, which you describe at paragraph
24 247 to 255 of your written statement.
- 25 I'm talking about the border guard for 2003, 2004.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 You say that the border guard was manned exclusively with Arab nomads or herders
2 and was based in every single village of Wadi Salih. I am at paragraph 249-250.

3 When you say every single village of Wadi Salih, do you include Bindisi?

4 A. [14:22:42] Yes. Yes. First thing, the border guards, they are from the herders
5 and from the Arab nomad. So you can call them this. Almost the same people who
6 joined Al Fursan later. At the beginning, they got them so that they can fulfil the
7 duty of border guards, because the old border guards were disassembled. And
8 those, they gave them this name as border guards, and they assigned them a specific
9 duty and task, which included ending the rebellion. Because they are all from the
10 Fursan in the first place. So they wanted them to oppress the rebellion at the time,
11 and then they called them the border guards. They were present in every village.
12 So not only just every village, but every area, in fact.

13 Q. [14:24:11] Thank you. Thank you, Mr Witness. Short responses, please.

14 When you say "every village", does that include Kodoom?

15 A. [14:24:28] Kodoom is one of the * Fur villages. It doesn't include the Arab
16 villages.

17 Q. [14:24:33] Does that include Mukjar?

18 A. [14:24:39] Yes, around Mukjar were Arab areas.

19 Q. [14:24:47] Does that include Deleig?

20 A. [14:24:52] Yes, around Deleig also. Well, Deleig is a village, but also around
21 Deleig there were areas where the Arabs were based.

22 Q. [14:25:01] You describe the border guard as composed of bandits who pillaged
23 villages randomly. What difference, if any, are you making between the border
24 guard and the Janjaweed?

25 A. [14:25:23] First, the Janjaweed included the border guards. They brought them

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 in and they renamed them. So it's almost the same thing; the Janjaweed are the
2 border guards.

3 Q. [14:25:47] Do you make a difference between the border guard and the Fursan?

4 A. [14:25:57] No. Al Fursan border guards and the Janjaweed are all the same
5 people who used to commit these attacks.

6 Q. [14:26:11] Thank you.

7 You say that the border guard could be summoned to Garsila to support operations
8 conducted by the Sudanese Armed Forces. I am at paragraph 250. Do you have
9 any concrete example of such summoning?

10 A. [14:26:38] The border guards are the same Arab nomad citizens who used to live
11 around the villages of the Fur, and they used to travel from one place to the other
12 because they mainly worked as herders. So they were called the border guards at
13 certain time, and then later they called them Al Fursan. Or maybe they were
14 Al Fursan, then they changed the name to border guards, but they're all Janjaweed.
15 They're all the same people. They are all the same people who used to destroy and
16 pillage the belongings of the Fur community.

17 Q. [14:27:28] When you say that the border guard could be summoned to
18 participate in operations conducted by the Sudanese Armed Forces, does that mean
19 that the border guard conducted no military operations by themselves but were just
20 called to support Sudanese Armed Forces operations?

21 A. [14:27:55] Yes. They only supported the Sudanese Armed Forces. They used
22 to take with them -- the armed forces used to take with them the -- the border guards
23 as fixers, because they know * very well the area where the war was happening.

24 Q. [14:28:20] In your statement you mention several border guard leaders and
25 specify their tribe. I have taken note of the following: Al Bonjouse, Rizeigat

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 Al Mahriya; Abdulsabur Adam Mari, Rizeigat-Nawayiba; Al Saddiq Dirwel --

2 THE INTERPRETER: [14:28:50] Counsel, can you please slow down, please.

3 MR LAUCCI: [14:28:55] Sorry.

4 Q. [14:28:56] Al Saddiq Dirwel from tribe Al-Khozam; Hemeti from North Darfur.

5 This is at paragraph 248. The previous ones were at paragraph 252.

6 And during your examination-in-chief, you also mentioned Al-Dayf Samih from the

7 Rizeigat. And I am at transcript 072, page 16, line 21, to page 17, line 4.

8 With all these border guard leaders, did that give room in addition to the presence of
9 a person called Ali Kushayb?

10 A. [14:30:08] Ali Kushayb came later. Those are leaders of tribes in the area, tribes
11 in the area. As for Ali Kushayb, his tribe is far away in Rahad Al-Berdi, and he was
12 just a regular citizen. He left the defence forces and he was working in the market in
13 his pharmacy. He was just a trader in the market. As for those people, they were
14 masters, masters and leaders of the tribe. But all of those leaders agreed to appoint
15 just one person, and they all agreed that that person should be Ali Kushayb.

16 As for the other people that you mentioned earlier, they were already leaders of the
17 regional tribes. Ali Kushayb --

18 PRESIDING JUDGE KORNER: [14:31:18] Sir, you told us that. But can I say, this is
19 not your fault.

20 Mr Laucci, one of the reasons that he repeats evidence he has already given is because
21 you ask these massively wide open questions. And one of the major advantages of
22 cross-examination, which is becoming more and more useful in this case, is that you
23 can ask leading questions and thereby limit the answers. Otherwise, as I say, I am
24 concerned that -- and it's not the witness's fault, and nor should he be expected to
25 know how to answer a question. You should be asking more closed questions.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

1 But, having said that. Sir, at the moment, can you explain to me, if you say the
2 Janjaweed and the Fursan and the border force -- the border guard are one and the
3 same set of people, who gave them the name border guard?

4 THE WITNESS: [14:32:31](Interpretation) Border guards, the government. The
5 government, of course, is the one that gave them this term. When they disassembled
6 the previous border guards' department or group, they gave them this name.

7 Because after the rebellion of Bolad happened, they wanted a group of people to
8 suppress this rebellion. I mean by that the rebellion by Abd-Al-Wahid.

9 PRESIDING JUDGE KORNER: [14:33:08] And how did you, as an -- are we in public
10 session? Right.

11 Can we go into private session for a moment, please.

12 (Private session at 2.33 p.m.)

13 THE COURT OFFICER: [14:33:30] We're in private session, Madam President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1 (Redacted)
- 2 (Redacted)
- 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 (Open session at 2.38 p.m.)
- 17 THE COURT OFFICER: [14:38:41] We're back into open session, Madam President.
- 18 MR LAUCCI: [14:38:48]
- 19 Q. [14:38:49] At paragraph 254 of your statement, you say that the Al Rizeigat tribe
- 20 was the largest group among the border guard in Wadi Salih.
- 21 A. [14:39:05] Yes.
- 22 Q. [14:39:05] And that the chief of that group was -- the commander of that group
- 23 was Al Bonjouse.
- 24 A. [14:39:18] Yes. Al Rizeigat can be divided into many groups. So Al Bonjouse
- 25 was the chief of all those groups together.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 Q. [14:39:32] Did that make Al Bonjouse the commander of all border guard for
2 Wadi Salih?

3 A. [14:39:41] Yes. And he still is.

4 Q. [14:39:44] Yeah, actually, my question -- I missed something in my question.
5 So I -- I correct it.

6 All Rizeigat border guard in Wadi Salih. And I suspect the answer is "yes".

7 A. [14:40:01] Yes.

8 Q. [14:40:01] Does that mean that Al-Dayf Samih, who was Rizeigat leader of the
9 border guard in Mukjar, was under his authority, under Al Bonjouse authority?

10 THE INTERPRETER: [14:40:17] Message from the interpreter: Can you repeat the
11 question, please.

12 MR LAUCCI: [14:40:20] Yes.

13 Q. [14:40:21] Does that mean that Mr Al-Dayf Samih, who was the Rizeigat leader
14 of the border guard in Mukjar, was subordinated to Al Bonjouse?

15 A. [14:40:41] No, no, no. No, they were separate. This is Rizeigat Al Simbi Sey
16 and this is Rizeigat Mukjar.

17 Q. [14:40:52] Okay. How come Mr Al Bonjouse was just Ali Kushayb's deputy,
18 according to you, if he was the leader of the largest group of the border guard?

19 A. [14:41:18] Ali Kushayb was appointed in that position with agreement from
20 everybody. They had all agreed for Ali Kushayb to be their leader.

21 PRESIDING JUDGE KORNER: [14:41:29] I think he said this at least twice before.

22 MR LAUCCI: [14:41:35]

23 Q. [14:41:35] And, Mr Witness, when you mentioned the dispute between Ali
24 Kushayb and Al Bonjouse, and you say that Ali Kushayb demoted Al Bonjouse and
25 took back his weapons, his heavy weapons from him, how could he -- how could he

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 demote him? And how could he take the weapons if he was the leader -- if
2 Al Bonjouse was the leader of the largest group? Didn't Al Bonjouse have the means
3 to resist that demotion and taking the weapons?

4 A. [14:42:25] He could have done, but he recognised that Ali Kushayb was
5 appointed from different parties, and he became at a higher position than him. And,
6 yes, he was given arms, but then later he reported that what Ali Kushayb did to him
7 was not a very nice thing. So, yes, he -- some people resisted. A lot of people
8 resisted why Al Bonjouse was treated in that way.

9 Q. [14:43:13] You describe Ali Kushayb as a protégé of the Ta'aisha tribe. How big
10 was the Ta'aisha tribe in Wadi Salih compared to the other Arab tribes?

11 A. [14:43:54] The Ta'aisha were a very small group. I was in Wadi Salih, and I
12 didn't know anything about Al Ta'aisha. Their bigger base was in Rahad Al-Berdi.
13 So there was a small number of Ta'aisha, and maybe they came there for trading or
14 something else. Some of the Ta'aisha came to Wadi Salih as herders, but also stayed
15 for a very short -- for very short times and went back to their areas.

16 Q. [14:44:31] Was there a Ta'aisha group in the border guard in Wadi Salih?

17 A. [14:44:39] I don't think so, but God only knows.

18 Q. [14:44:48] And should -- should the demotion of the Rizeigat border guard
19 commander Al Bonjouse not have caused a crisis between the Rizeigat and the
20 Ta'aisha?

21 A. [14:45:13] No. No, because the Ta'aisha were not really present in the area, so a
22 crisis was not really triggered. And the Rizeigat did not look at the Ta'aisha as
23 enemies because, at the end of the day, the leader was just the same, Ali Kushayb.

24 Q. [14:45:41] And so do you -- is it your evidence, do you count the border guards
25 as forming part of Ali Kushayb's men, or were they separate?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 A. [14:46:01] The border guard, in essence, are part of Ali Kushayb's force. At the
2 end, the entire force gathered and appointed Ali Kushayb as their master.

3 Q. [14:46:21] And then you say that after 2004, the border guard became the Rapid
4 Support Force under the command of Hemeti, who was a former Janjaweed from
5 North Darfur. That's the way you describe him.

6 You also say that Al Bonjouse, who used to be Ali Kushayb's deputy, is now a
7 brigadier general within the Rapid Support Forces in Wadi Salih.
8 Where is Al Bonjouse based currently?

9 A. [14:47:11] He is now based in Wadi Salih, precisely in an area called Simbi Sey.

10 Q. [14:47:17] Does his area of responsibility include Al Fasher?

11 A. [14:47:28] No, he has nothing to do with Al Fasher whatsoever. It is just Wadi
12 Salih.

13 Q. [14:47:35] And did at any point Ali Kushayb join the Rapid Support Forces?

14 A. [14:47:46] No, he did not join them. Ali Kushayb was just a regular citizen.
15 When he eventually got appointed as a leader of all of these groups, only then did he
16 surface. But prior to that, he was just a regular citizen.

17 Q. [14:48:09] Did you hear about an attack of the Krinding camp in January 2001?

18 A. [14:48:28] The Krinding camp, I don't remember where Krinding exactly is.
19 Was it in Al Geneina? I'm not -- I don't know. I haven't heard of it.

20 Q. [14:48:42] Okay. I move to the Popular Police Forces.

21 I don't know what time it is. I have time to cover Popular Police Forces.

22 Mr Witness, you speak about the Popular Police Forces at paragraph 256 to 260 of
23 your statement. Did you hear about compulsory recruitment of non-Arab
24 youngsters into the Popular Police Forces in 2003, 2004?

25 A. [14:49:34] Not at all. There was no compulsory drafting. The PPF, in essence,

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 are a police force that is -- that are being recruited mostly from the Fur. There were a
2 few Arabs among them, nonetheless.

3 Q. [14:49:58] Did you hear that the Fur young men were offered to join the PPF in
4 order to demonstrate that they were not on the side of the rebellion?

5 A. [14:50:20] The Fur -- let me say that the PPF predates the events. It has existed
6 long beforehand. The recruits and that force were from the Fur before the
7 insurgency.

8 Q. [14:50:42] Thank you.

9 You -- at paragraph 260 of your statement you explain that the Fur PPF members
10 were sometimes arrested and detained by military intelligence, and that following
11 their release they joined the rebellion. How many such cases do you hear about?

12 A. [14:51:13] Speaking of the Fur tribe, in essence, they were targeted under the
13 accusation that they were with the insurgency. That's -- that's why those who left
14 the PPF joined the insurgency, because they were being harassed, harassed by both
15 Arabs and the government. That is why they joined the insurgency.

16 Q. [14:51:47] And there were numerous cases of such movement to -- to the
17 insurgency?

18 A. [14:52:03] There were many, yes. Their number cannot be identified, but they
19 ended up in places like Kalma. They also went up the mountain, the Jebel Marra
20 mountain, to join the insurgency.

21 Q. [14:52:21] Do you remember the name of the police commander in Garsila?

22 A. [14:52:30] I don't know his name because these commanders were being
23 constantly changed, and that matter was not of concern to us. We were not paying
24 attention who the police commander was.

25 Q. [14:52:44] Does the name of Al Jilli ring a bell to you?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 A. [14:52:57] (No interpretation)

2 Q. [14:52:58] Al Jilli.

3 A. [14:53:01] I've never heard of this name before.

4 Q. [14:53:04] Did the authority of the Garsila police commander extend to Mukjar,
5 according to you?

6 A. [14:53:23] Yes. People from Garsila -- officers from Garsila were often
7 redeployed to Mukjar and Bindisi and so forth.

8 Q. [14:53:36] I think I can cover still the NISS. It should be short.

9 Mr Witness, I move to the NISS, which you describe as paragraph 274 to 277 of your
10 statement. You specify that the NISS commander in Garsila reported to Khartoum
11 via the NISS branches in Zalingei and Al Fasher. Does that imply that the NISS
12 branch in Garsila was subordinated to Zalingei and Al Fasher?

13 A. [14:54:29] Yes. First, the NISS, its officers were not from the Garsila region.
14 There, they were brought from the north. The commander and the officers alike
15 were brought from the north.

16 Q. [14:54:45] Which functions did they fulfil in Garsila exactly?

17 A. [14:54:56] They had limited duties, which were to collect information about the
18 enemy. At the end of the day, information about the enemy was common
19 knowledge. It didn't -- they didn't have to go far to collect information. So their
20 function was limited.

21 Q. [14:55:19] Did they -- maybe I need to go to private session for my next question.

22 PRESIDING JUDGE KORNER: [14:55:29] Yes.

23 Private session.

24 (Private session at 2.55 p.m.)

25 THE COURT OFFICER: [14:55:43] We're in private session, Madam President.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Upon resuming in open session at 3.11 p.m.)
14 THE COURT USHER: [15:11:25] All rise.
15 Please be seated.
16 MR LAUCCI: [15:11:54] With your permission, Madam President.
17 PRESIDING JUDGE: [15:11:56] Yes.
18 MR LAUCCI: [15:11:57]
19 Q. [15:11:59] The last part of the military and security structure that I want to
20 discuss with you is the police and the judiciary that you mention at paragraph 261 to
21 269 of your statement. You mention that at some point in time all police and
22 military forces had to withdraw from northwest Garsila, including Tanako, Arawala,
23 Gaba and Sodija following the reporting of a rebel presence. I am at paragraph 63 of
24 your statement.
25 When was it, the withdrawal?

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 A. [15:12:51] This was in 2002. Most likely 2002.

2 Q. [15:13:03] Let me assist you, Mr Witness. At paragraph 44 of your statement
3 you speak about a withdrawal by February 2004. Does that ring a bell to you? Late
4 February 2004.

5 No, sorry. Forget my -- no, no. I withdraw my question. Forget this question. I
6 move on.

7 You describe a certain relationship between Minister Ahmad Harun and Ali Kushayb,
8 but at paragraph 268 of your statement you also say that Ali Kushayb did not trust
9 the police because most of the police officers were from Darfur.
10 How come Ali Kushayb, who was so close -- so close to the minister of interior in
11 person, according to you, could not trust the police forces placed under the authority
12 of that minister?

13 A. [15:14:43] Even if these are my words, I say that each time Ahmad Harun came,
14 Ali Kushayb would meet him. Also, Ali Kushayb would go see him in Khartoum
15 and each -- and other -- on other travels. This as far as I know.

16 So Ali Kushayb was chosen as the commander of the Fursan or the groups that were
17 supporting the other forces. And this was a subject of concern, of interest, for
18 Ahmad Harun, the minister attached to the ministry of the interior. Every now and
19 then, Ahmad Harun would come to Garsila, Mukjar and other places because he was
20 interested in the movements and activities of the Fursan. He was also boosting their
21 morale by giving them money or other forms of support. The bottom line is he was
22 interested in boosting their morale.

23 Q. [15:16:02] And how come Ahmad Harun did not use his authority to put the
24 police at the service of Ali Kushayb?

25 A. [15:16:18] No. First of all, the police is a legal structure within the Sudanese

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 government, and so was the SAF. But Ali Kushayb, as I have previously said, used
2 to be a regular citizen and was given these prerogatives by Ahmad Harun, or by
3 whomever it was. But Ali Kushayb's prerogatives were limited in time.

4 Q. [15:16:55] Talking about the judiciary, at paragraph 264 of your statement you
5 say that at some point in time the prosecutor and the judges left Wadi Salih, Garsila,
6 due to the volatile situation. When was it?

7 A. [15:17:32] Again, who is it exactly you're asking about? I didn't understand.

8 Q. [15:17:37] The prosecutor and the judges in Garsila.

9 A. [15:17:52] They left immediately and went to Al Fasher, right at the same time
10 when a letter from Deleig was received -- or when a delegation from Deleig was
11 received, and they started making interrogations there. This was very upsetting to
12 them, so they went to Al Khartoum to monitor the situation from there. They left
13 actually on the same day.

14 Q. [15:18:27] Can you remind us when was that day, approximately. I'm not
15 asking for a specific date, but the year, the month would help.

16 A. [15:18:46] Approximately in March 2003, roughly speaking. And as to the
17 dates, must have occurred between the 5th and the 7th.

18 Q. [15:19:02] Do you know who decided the departure of the prosecutor and
19 judges?

20 A. [15:19:16] In essence, the judges and the prosecutor went at the beginning to
21 Al Geneina because they were on a mission there. Even us, we went to Geneina too.
22 Then they came to Garsila, and when their mission finished they travelled. They left.
23 This is as far as the prosecutor and the judges are concerned. And in this respect I
24 am not talking about the three commanders of the army.

25 Q. [15:19:53] Yes, of course. But as far as you know, did the prosecutor and

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 judges leave out of their own initiative, or were they instructed to leave?

2 A. [15:20:18] Of their own free will. Whether they received an order or not,
3 actually I'm not -- that's something I don't know-- we don't know. They left anyway.

4 Q. [15:20:32] And you describe that their departure left a vacuum which was filled
5 by Ali Kushayb and his men. What do you mean?

6 A. [15:20:55] I don't remember saying this, but there was no connection between
7 the judges and Ali Kushayb. The judges were on a mission and Ali Kushayb was on
8 another mission.

9 MS WHITFORD: [15:21:15] Your Honour, just a point of clarification, but perhaps it
10 should not be interpreted to the witness. It strikes --

11 THE INTERPRETER: [15:21:25] Mr Whitford, the interpretation is equally provided
12 to the defendant, so that's a very specific request and the judge needs to approve that.
13 Thank you.

14 MS WHITFORD: [15:21:33] I should --

15 PRESIDING JUDGE KORNER: [15:21:34](Overlapping speakers) Sorry.

16 Ms Whitford, without indicating what's in it, tell us what paragraph you want us to
17 look at.

18 I can hear Mr Nicholls saying 254.

19 MS WHITFORD: [15:22:06] 183 to 187. It strikes me that this might be what the
20 witness is actually referring to, and there may be some confusion.

21 PRESIDING JUDGE KORNER: [15:22:26] Just a moment. Let me just get that for a
22 moment.

23 Yeah. Is it -- are you asking -- you're not asking about that, are you, Mr Laucci?

24 MR LAUCCI: [15:22:53] As far as I'm concerned, I'm referring to paragraph 264.

25 PRESIDING JUDGE KORNER: [15:22:57] Yeah. Well, I think he's answering you

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 based on -- I think * Ms Whitford's right. If you look at what he's saying, I think
2 that's what he's got in his head.

3 I think -- again, I think rather than seeking information, Mr Laucci, just put either
4 what your case is, if you have one on this, or what's in the particular paragraph.

5 MR LAUCCI: [15:23:25] I think the question was really straightforward, but I can try
6 again.

7 Q. [15:23:29] Did the prosecutor and judges leave out of their own initiative,
8 according to you?

9 MS WHITFORD: [15:23:38] Your Honour, I think the issue here is that it's not clear
10 to the witness, perhaps, which prosecutor and judges are being referred to.

11 PRESIDING JUDGE KORNER: [15:23:46] Okay. Why don't you just read to him
12 the state -- if you -- if you accept it or you want him to expand on it, just read him the
13 actual paragraph that you're referring to.

14 MR LAUCCI: [15:23:57]

15 Q. [15:23:58] Mr Witness --

16 MR LAUCCI: [15:23:59] Thank you, Madam President.

17 Q. [15:24:01] Mr Witness, I will read one paragraph of your statement: "... in the
18 period [of] 2003-2005, there was no judiciary anymore in Garsila as the Public
19 Prosecutor and the Judge had left due to the volatile situation."

20 So my question is: Did they leave out of their own initiative, according to you, or
21 was it an order they received?

22 PRESIDING JUDGE KORNER: [15:24:39](Microphone not activated)

23 MR LAUCCI: [15:24:40] Precisely. That's the question.

24 Q. [15:24:43] Do you know?

25 A. [15:24:45] I don't know about that. They came, then they left. We did not

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 have any connection to them in order to be able to tell what was going on with them.
2 The judges originally came from -- initially came from Al Fasher. And while in
3 Al Fasher, they actually summoned people from Garsila -- correction: it's actually
4 Al Geneina, not Al Fasher. So they came from there to Garsila, and then they left
5 Garsila. They travelled.

6 Q. [15:25:22] I move on.

7 Mr Witness, are you aware of any state of emergency declared in Sudan or Darfur
8 over the period?

9 A. [15:25:46] I do not remember a state of emergency.

10 Q. [15:25:52] Thank you.

11 You mentioned a little bit earlier that the NISS had its own detention facility. Did
12 you hear about the NISS arresting people, detaining them, questioning them and/or
13 executing them without appearance before a judge?

14 A. [15:26:35] No. First of all, the NISS is an official body and carried out
15 clandestine activities that no one knew about, (Redacted)
16 (Redacted). We were not able to go to their camp and see what they were
17 doing. But what we learnt is that they had their own detention facilities inside their
18 camp and that they had their own guard force. No one was able to tell what their
19 work was because, as a service, it carried out clandestine work.

20 Q. [15:27:18] Over that period in time when the judges were gone, did arbitrary
21 arrest and detention and the execution of prisoners form part of a common practice in
22 Wadi Salih?

23 PRESIDING JUDGE KORNER: [15:27:37] Do you know, honestly, that couldn't be
24 more wide a question if you tried forever, Mr Laucci. You've got to ask specifically
25 or put it to -- just a minute -- or put it to him that specific organisations carried this

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 out, if that's your case.

2 MR LAUCCI: [15:27:56]

3 Q. [15:27:57] Mr Witness, during the period where -- when the judges and
4 prosecutor were no longer in Wadi Salih, did you hear or witness the arrest of persons,
5 detention and execution of people without appearance before a judge?

6 PRESIDING JUDGE KORNER: [15:28:26] By who? Mr Laucci -- sorry.

7 Mr Laucci, it's all general: "Did you hear about people participating" is not a
8 permissible question (Overlapping speakers)

9 THE WITNESS: [15:28:41](Interpretation) No.

10 PRESIDING JUDGE KORNER: [15:28:41] Well, anyhow, that's your answer. So can
11 we move on from these wide open, general questions, please.

12 MR LAUCCI: [15:29:11]

13 Q. [15:29:12] Mr Witness, the Court, this Court, has received evidence -- and I'm
14 referring to the transcript of the appearance of Witness P-547, transcript 052 of 17 June
15 2022, page 64, line 16, to page 65, line 3. The Court has received the evidence that
16 when the Sudanese Armed Forces committed a crime such as executing innocent
17 people, they used to put the blame on some errant officer in order to avoid any
18 criminal liability.

19 Did you witness such practice yourself?

20 PRESIDING JUDGE KORNER: [15:30:42](Microphone not activated)

21 THE WITNESS: [15:30:47](Interpretation) No, I have not witnessed that.

22 MR LAUCCI: [15:30:55]

23 Q. [15:30:55] Mr Witness, what did SAF Major General Fa'iz try to achieve when he
24 confiscated the report on Deleig executions?

25 A. [15:31:19] I do not know, because Major General Fa'iz was shown this report,

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 looked at the report and took it away with him. He didn't check that back with us
2 afterwards. We did not learn anything about the follow-up to that.

3 Q. [15:31:41] In your opinion, what did the PDF commander in Zalingei try to
4 achieve when he --

5 PRESIDING JUDGE KORNER: [15:31:49] No, no. Did the -- you can ask him -- you
6 can ask him whether the PDF commander in Zalingei ever spoke to him or told him
7 what he was trying to achieve. You cannot ask him to guess or speculate.

8 MR LAUCCI: [15:32:17]

9 Q. [15:32:17] You mentioned an order by the PDF commander in Zalingei to
10 exhume and rebury corpses of the executions in Deleig. I'm at paragraph 162.
11 Wasn't there a Sudanese Armed Forces regiment close to the execution site which
12 could -- could have done the job?

13 A. [15:32:59] Yes. First, the PDF were aware of this incident, that is why, having
14 seen the corpses scattered on the ground, they ordered Ali Kushayb's command that
15 these corpses be buried in the same area. Then, when news arrived that some ONGs
16 have come and looked at the area, they wanted to disclaim any responsibility and
17 bury these corpses in another cemetery for them to be unidentifiable.

18 Q. [15:34:01] During your preparation session you specified that there was a full
19 staff regiment in Soja. That's page 8 of the prep log. And Soja is the place where
20 the persons were executed, right?

21 A. [15:34:31] Yes, Soja. The commander that was in Soja withdrew at an earlier
22 date to the executions. And the executions did not happen inside Soja but, rather, in
23 the mountainous areas around Soja.

24 Q. [15:34:57] Okay. So if -- if it was close to Soja nevertheless, when you say that
25 the bodies were exhumated by Ali Kushayb's men, are you trying to cover up the role

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 played by the Sudanese Armed Forces in these exhumations?

2 A. [15:35:35] The Sudanese Armed Forces, especially in this matter regarding the
3 corpses, didn't have any role whatsoever. I don't think that they had anything to do
4 with these corpses. There were specific parties known to the government that were
5 assigned this task, which is the burial and then the moving of the bodies.

6 Q. [15:36:14] Were the persons executed in Soja by the soldiers from the Soja
7 Sudanese Armed Forces regiment?

8 PRESIDING JUDGE KORNER: [15:36:37](Microphone not activated)

9 THE WITNESS: [15:36:39](Interpretation) No, no. Ali Kushayb is the one who
10 executed them. The armed forces did not play any role in the executions. We
11 understand very well that the major general from Al Fasher, when he came he was
12 very distressed by what happened. And he was the highest rank in the area. And
13 they * withdrew and they took -- they took a decision from there, but we don't know
14 what decision they took. What happened exactly in Al Fasher, we don't know.
15 But, obviously, in Wadi Salih, we were closer to the location of the events, but we
16 were not assigned any task whatsoever. We were not told to do anything. For us,
17 the people who did this were not an official party. But as far as I know, the armed
18 forces did not play any role in them.

19 MR LAUCCI: [15:37:50]

20 Q. [15:37:50] How come the close-by regiment in Soja did not intervene to prevent
21 the executions?

22 PRESIDING JUDGE KORNER: [15:37:59] No. He can't answer that one without
23 guessing or speculating.

24 MR LAUCCI: [15:38:04] Thank you, Madam President. I move on.

25 Q. [15:38:09] Mr Witness, I come to the conclusion of that part of my

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 cross-examination.

2 At paragraph 179 of your statement you assess the structure of the Sudanese Army as,
3 I quote, "very solid". In light of everything we have exchanged so far, do you stand
4 by this overall assessment that the structure was solid?

5 A. [15:38:53] Yes. Given that I was dismissed in that way, I have still the same
6 opinion. It's a very solid structure.

7 Q. [15:39:13] Were the areas of responsibility and chained -- chain of command
8 within the Sudanese Armed Forces well defined?

9 THE INTERPRETER: [15:39:25] Message from the interpreter: Can you repeat the
10 question, please.

11 MR LAUCCI: [15:39:29] I will.

12 Q. [15:39:32] Were the areas of responsibility and chain of command within the
13 Sudanese Armed Forces well defined, according to you?

14 A. [15:39:54] Yes. (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. [15:40:10] Were the functions and chain of command within the PDF and the
18 way the PDF assisted the Sudanese Armed Forces well defined?

19 PRESIDING JUDGE KORNER: [15:40:20] Well, again, he's not a member of the PDF,
20 is he?

21 What's he supposed to base his answer on?

22 MR LAUCCI: [15:40:34] Madam President, the witness -- sorry.

23 Madam President, the witness has included in his written statement several
24 paragraphs, a lot of information about the military and security structure in Sudan,
25 and this Chamber has found this so interesting that we have been requested, and we

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 accepted to agree on the content of this information. It is normal that if he has
2 engaged in this topic, I need to cross-examine him.

3 PRESIDING JUDGE KORNER: [15:41:09] Well, no. If you disagree with it -- do
4 you see? If you disagree with anything that he has said, that's what -- the
5 reason -- may I make it absolutely plain, it's not so much the interest, but that, clearly,
6 this was, on the face of it, a fairly anodyne description, if I can put it that way. And,
7 therefore, in order to save time -- I mean, it's absolutely clear, that was the reason that
8 the Trial Chamber suggested it.

9 But at the moment, unless you disagree with something he said there, which you
10 haven't so far, these questions as to whether the chain of command, et cetera, was
11 followed, is something that he may or may not have intimate knowledge of. And as
12 I say, is it your case that the chain of command was not followed? Because if so, just
13 put it to him.

14 MR LAUCCI: [15:42:25] Actually, I'm in agreement with everything on that topic.
15 So I move on.

16 PRESIDING JUDGE KORNER: [15:42:32] Okay, Mr Laucci. In that case, can we
17 move on?

18 MR LAUCCI: [15:42:38]

19 Q. [15:42:39] Mr Witness, this very solid structure that you described was
20 apparently perturbed at some point which -- with an element which sort of blurred
21 the whole military and security apparatus. That element is Ali Kushayb. And the
22 only explanation you have of how Ali Kushayb became so powerful is - I quote from
23 paragraph 178 - the will of Allah; isn't it?

24 MS WHITFORD: [15:43:26] Your Honour, we object to that characterisation of the
25 witness's evidence. I think he has explained on several occasions during his

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 testimony how it is that he believes Ali Kushayb received that power. And it goes
2 beyond what's mentioned in that paragraph.

3 PRESIDING JUDGE KORNER: [15:43:43] Yes, it does. But I'm not quite clear what
4 the objection is. I see. "And the only explanation" -- sorry, yes.

5 Mr Laucci, that is a mischaracterisation of the evidence. But you can certainly put to
6 him --

7 MR LAUCCI: [15:43:59] Yeah, yeah, I will.

8 PRESIDING JUDGE KORNER: [15:44:01] But you can put to him paragraph 178.

9 MR LAUCCI: [15:44:03] Yes. Thank you, Madam President.

10 Q. [15:44:05] At paragraph 178 you -- you explained how Ali Kushayb became so
11 powerful. You say that you had no explanation. That's the first part: "I cannot
12 explain how Ali Kushayb managed to become so powerful." This is what you say.
13 And you add: "Maybe the power was given to him by Allah."
14 Do you remember having said so?

15 A. [15:44:41] Yes. Yes. First, Ali Kushayb was a regular civilian, just like us in
16 the neighbourhood and in the market, and then he became a master. Everybody
17 feared him in the area. So the government was obviously looking after him and
18 giving him everything that he needed. So I think that was a bounty from God given
19 to him. He was given this kind of distinctive position and work. I don't think that
20 he received any directive from the government to execute people, because I
21 personally think that burning entire villages is much worse than actually the
22 executions. But this is what he used to do. He used to go to villages, destroy them
23 completely and burn them down, and displace it's people. So I don't think that he
24 was given any orders from the government. I think that this all happened by the
25 power of Allah.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 Q. [15:46:18] And putting aside the will of Allah, what is your explanation of how
2 Ali Kushayb became so powerful, if any?

3 A. [15:46:43] As I explained earlier, Ali Kushayb was just a regular civilian, and he
4 became a master. He did not attend or was not present in the first rebellion in Bolad,
5 but his actions with the enemies in the south made people talk about him. He used
6 to be very close to the *umdahs* and the *sheikhs* and he was very good in giving
7 speeches. And maybe that's why he was chosen. But no one in Sudan is happy
8 with what Ali Kushayb did. Yes, he reached a position of authority and power, but
9 what he did was atrocious.

10 Q. [15:47:51] Mr Witness, is it possible, with these only explanations that you
11 provide, is it possible that Ali Kushayb simply did not exist and was invented to take
12 the blame for the crimes committed by others?

13 A. [15:48:32] No. There is no one with the name of Ali Kushayb over there. Ali
14 Kushayb was only the one person who carried this name. This is the person who is
15 with us right now.

16 There is someone else with another name, but I don't know even where he is right
17 now. But as for Ali Kushayb, this name was given only to him, Ali. Even Hassan,
18 his brother, was named also Kushayb only because Ali was called that name. But
19 there is no other person.

20 Q. [15:49:20] When you say, "There is someone else with another name, but I don't
21 even know where he is right now", what are you referring to?

22 A. [15:49:35] His brother. His brother is called Hassan Kushayb, but his real name
23 is Hassan Muhammad Ali Abd-Al-Rahman. (Redacted)
24 (Redacted)

25 Q. [15:49:54] Thank you.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 When do we stop, Madam President?

2 PRESIDING JUDGE KORNER: [15:49:59](Microphone not activated)

3 MR LAUCCI: [15:50:00] Okay.

4 Q. [15:50:02] I will start then --

5 THE INTERPRETER: [15:50:04] Mic, please, sir.

6 MR LAUCCI: [15:50:05]

7 Q. [15:50:06] I will start the next chapter, which is, actually, Ali Kushayb.

8 Mr Witness, do you recall you said in your statement -- no, in your -- during your

9 preparation, that the first time you met Ali Kushayb was (Redacted)

10 (Redacted). So how come you had met with Ali Kushayb

11 before (Redacted) in Garsila?

12 A. [15:50:49] Ali Kushayb, (Redacted), I only heard about him

13 and met him occasionally, but I didn't really get to speak to him personally.

14 Q. [15:51:09] When you say that the person you call Ali Kushayb was master

15 sergeant within the first aid medical unit until the early '90s - I am at paragraph

16 165 - do you mean that he held the rank of *musa'id*?

17 A. [15:51:45] Yes. When I met him, he was a *musa'id*, a medical *musa'id*. So the

18 information I had about him at the time, I didn't know much about him at the time.

19 Q. [15:52:00] When you met him, you said it was in 2001, 2002, right?

20 A. [15:52:12] Yes, in Garsila.

21 Q. [15:52:15] And do you mean that he was still in the Sudanese Armed Forces by

22 the time as a *musa'id*?

23 A. [15:52:23] No, no, no. When I met him, he was just a civilian at the time in the

24 area of Wadi Salih. He came to Wadi Salih as a military soldier, but then after

25 he -- his retirement, he settled there. He stayed there and he bought houses and he

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 had a business. But when I saw him there, he was a civilian.

2 Q. [15:52:51] Thank you.

3 During your preparation session you -- you mentioned that, when you met the person
4 you call Ali Kushayb for the first time, he was already famous in the area. I'm
5 talking about paragraph 22 of the prep log. And you added, at paragraph 30, that he
6 had the reputation of being a generous man who enjoyed popularity at the market
7 because he offered tea when customers were visiting his shop.

8 Is that what you mean when you say that he was famous?

9 A. [15:53:41] Well known. Famous means well known. This Ali Kushayb was
10 well known of being a generous person. And he was very friendly. He used to just
11 talk to people and chat to them and hear their stories. His shop was always busy.
12 I used to go past his shop and people always said that this is Ali Kushayb sitting
13 among the other Arab leaders. And he used to tell stories and people liked to listen
14 to his stories.

15 Q. [15:54:24] When you say that Ali Kushayb's real name is Ali Muhammad
16 Ali - I'm at paragraph 206 - where did you get that information from?

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 (Redacted)

2 (Redacted)

3 MS WHITFORD: [15:56:20] Your Honour, I'm sorry to interrupt, but if he's going to
4 name people that he knows, then I think we should do it in private session.

5 PRESIDING JUDGE KORNER: [15:56:26] Yeah, well I think we've got more of a
6 problem. Something seems to be going wrong with LiveNote. It's miles behind.

7 All right. We'll call a halt here. What's more, I can't -- it's got yellow boxes all the
8 way down. It was miles behind.

9 Yes. All right. No, rather than going in another private session, it's two minutes
10 to 4.

11 So, sir, I'm sorry, you'll have to come back tomorrow, but I can assure you tomorrow
12 will be the last day, and you'll be able to go home after that. So if you'd like to leave
13 court now. Thank you very much.

14 THE WITNESS: [15:57:28](Interpretation) Thank you.

15 (The witness exits the courtroom)

16 MS WHITFORD: [15:57:33] Your Honour, this might be an opportune moment for
17 me to make a correction to the transcript that I've been meaning to.

18 PRESIDING JUDGE KORNER: [15:57:47] Yes, just a moment. We'll
19 just -- otherwise he ...

20 MS WHITFORD: [15:57:52] Yes, your Honour, it's from transcript 72 from yesterday.
21 It's an ERN that I was one number off. It's at page 48, lines 23 to 24. The correct
22 ERN is DAR-OTP-0222-0037. I did give the tab 54 correctly, and of course we all saw
23 that the right document was shown, but just to make that correction on the record.

24 PRESIDING JUDGE KORNER: [15:58:24] Yes.

25 Two things. First of all, Mr Laucci, when you asked him -- when you put your case

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 very properly to him -- sorry, I'm just going to do a pause here. I don't know why
2 it's all gone suddenly weird, but it has. And this is at page -- I've got little yellow
3 boxes all the way down.

4 Yes. He -- you said to him: "Mr Witness, is it possible that Ali Kushayb simply
5 didn't exist" - sorry, this is page 97, line 22 - "and was invented to take the blame for
6 the crimes committed by others."

7 And his answer: "No. There is no one with the name of Ali Kushayb over there.
8 Ali Kushayb was the only one -- was only the one person who carried this name.
9 This is the person who is with us right now."

10 At that stage - and I want to make sure that's right - he pointed or indicated towards
11 the defendant. Do you agree with that?

12 MR LAUCCI: [16:00:16] Madam President, actually, the witness has pointed in the
13 direction of my client several times, to his appearance, and regularly when he was
14 mentioning the name Ali Kushayb.

15 PRESIDING JUDGE KORNER: [16:00:30] Right. Well, thank you. I didn't want
16 there to be any misunderstanding about that.

17 All right. Second thing is, you do appear to have -- have speeded up, if I may say so,
18 Mr Laucci. Roughly when -- for the purposes of the next witness, it doesn't seem to
19 me you are going to take all day, are you?

20 MR LAUCCI: [16:00:49] I think I will.

21 PRESIDING JUDGE KORNER: [16:00:50] You really -- even though we're on the
22 main, main man?

23 MR LAUCCI: [16:00:54] Yes. Actually, I have the full chapter on -- not the biggest
24 chapter, but the chapter on Ali Kushayb himself, and then about the operations that
25 are described in the statements.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

- 1 PRESIDING JUDGE KORNER: [16:01:08] Oh, I see. All right.
- 2 All right. Well ...
- 3 MR NICHOLLS: [16:01:13] I think then -- I'm not sure what type of courtroom shifts
4 need to be made, but then our plan will be -- of course, if something changes
5 drastically, but our plan for now will be to bring 916 Monday morning.
- 6 PRESIDING JUDGE KORNER: [16:01:26] Yeah. I think we'll have a better -- and
7 Mr Laucci has obviously carefully prepared this, so I suppose he's got a fairly good
8 idea of how long he's going to be. Unless there is a dramatic change, then he needn't
9 start till Monday morning.
- 10 But, really, Mr Laucci, honestly, it is -- if, for example, as it turns out, you do accept by
11 and large what he says about the structure, then -- then just don't go over it. Extract
12 it. Extract what extra information you want and leave it at that. If it's there in
13 evidence, it's there in evidence.
- 14 Yes. All right. 9.30 tomorrow morning, please.
- 15 THE COURT USHER: [16:02:10] All rise.
- 16 (The hearing ends in open session at 4.02 p.m.)