

Trial Hearing

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Monday, 20 November 2023
10 (The hearing starts in open session at 9.37 am)
11 THE COURT USHER: [9:37:58] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:38:18] Yes, good morning, all. Appearances,
15 please. Defence.
16 MR LAUCCI: [9:38:22] Good morning, Madam President, your Honours, dear
17 colleagues and the public in the gallery. Together with Mr Ali Muhammad Ali
18 Abd-Al-Rahman, present in the courtroom on the Defence, Madam Marcela Velarde,
19 assistant evidence reviewer; Mr Ahmad Issa, case manager; and my friend,
20 Iain Edwards; and myself, Cyril Laucci, counsel.
21 PRESIDING JUDGE KORNER: [9:38:50] Yes. Prosecution.
22 MR NICHOLLS: [9:38:52] Good morning, Madam President. Good morning,
23 your Honours. Julian Nicholls with Alison Whitford, Claire Sabatini,
24 Rachel Mazarella, Laura Morris and Edward Jeremy. Thank you.
25 PRESIDING JUDGE KORNER: [9:39:04] Thank you. And the victims.

1 MR SHAH: [9:39:05] Good morning, Madam President. Good morning,
2 your Honours. Anand Shah, associate counsel for the participating victims today
3 with Saif Kassis and our visiting professional, Charlotte Imhof. Thank you.

4 PRESIDING JUDGE KORNER: [9:39:18] Thank you.

5 I gather there are connection problems with the witness in the place where he is
6 giving evidence from.

7 MR EDWARDS: [9:39:28] Your Honour has the advantage. I don't think we were
8 aware of that.

9 PRESIDING JUDGE KORNER: [9:39:36] Well, at the moment we can't get any
10 connection.

11 MR EDWARDS: [9:39:38] Okay. That's not an enormous problem in the short term
12 because we have legal submissions to make. I've discussed it with my learned friend
13 this morning, so we weren't in a position to have the witness start his testimony
14 straightaway, in any event. There is going to be a little bit of time taken up with
15 legal argument and I think that it's the common view of the Bar that this needs to be
16 in private session.

17 PRESIDING JUDGE KORNER: [9:40:10] Yes, all right, I was going to go into private
18 anyhow, because I was unaware - I don't think I took it in, if I ever saw it - that you
19 have no witnesses next week. Is that right?

20 MR LAUCCI: [9:40:20] Not at all. Well --

21 PRESIDING JUDGE KORNER: [9:40:22] That's what I thought.

22 MR LAUCCI: [9:40:24] No, no. We need some confirmation because I'm informed
23 this morning that there was some issue of travel between various places in the
24 country where they are. But normally -- so far we have on schedule three witnesses
25 for next week, D-0028, D-0029, D-0032. And I must say already that in light of the

1 travel issues, the order may shift but I will keep you informed as soon as I can.

2 PRESIDING JUDGE KORNER: [9:40:58] Well, I mean, that's rather what I thought,
3 Mr Laucci, because I was quite surprised when I was told, no, no, no, you haven't got
4 any.

5 MR LAUCCI: [9:41:06] No, no, no, no, we -- we are working on this basis so far.

6 PRESIDING JUDGE KORNER: [9:41:09] Yes. Okay, that's fine.

7 All right, in that case, you want -- is this to do with the documents?

8 MR EDWARDS: [9:41:17] The document or the documents, your Honour?

9 PRESIDING JUDGE KORNER: [9:41:20] Well, I don't know. Is this to do with what
10 the Prosecution want to use to cross-examine?

11 MR EDWARDS: [9:41:25] Quite, yes.

12 PRESIDING JUDGE KORNER: [09:41:26] I rather thought it would be.

13 MR EDWARDS: [09:41:27] Did your Honour receive the --

14 PRESIDING JUDGE KORNER: [9:41:29] No.

15 MR EDWARDS: [9:41:30] Ah.

16 PRESIDING JUDGE KORNER: [9:41:31] I've received nothing.

17 MR EDWARDS: [9:41:32] Oh, I see.

18 PRESIDING JUDGE KORNER: [9:41:34] Can you send an email?

19 MR EDWARDS: [9:41:42] Oh, I'm talking about from the Prosecution. The
20 Prosecution sent their list of materials that they propose to use --

21 PRESIDING JUDGE KORNER: [9:41:48] Oh, yes, I think we got those.

22 MR EDWARDS: [09:41:50] -- for this witness.

23 PRESIDING JUDGE KORNER: [09:41:52] Though I don't know where they are. I
24 don't believe I've got them here.

25 MR EDWARDS: [9:41:52] You wouldn't have missed it because it's 272 items long.

- 1 PRESIDING JUDGE KORNER: [9:42:06] What, all of which to be copied?
- 2 MR EDWARDS: [9:42:10] Quite a few to be copied but --
- 3 MR NICHOLLS: [9:42:13] Your Honours --
- 4 MR EDWARDS: [9:42:14] -- these are questions for my learned friend, I suspect.
- 5 MR NICHOLLS: [9:42:18] Sorry. Your Honours, what we did was, Friday, made
6 the binders for your Honours ourselves --
- 7 PRESIDING JUDGE KORNER: [9:42:23] Oh, right. That's very helpful.
- 8 MR NICHOLLS: [9:42:26] (Overlapping speakers) and made three of them for you,
9 so you should have those.
- 10 PRESIDING JUDGE KORNER: [9:42:31] Witness -- well, I've got a witness binder
11 headed D-11, D-8.
- 12 MR NICHOLLS: [9:42:42] That's correct. That's --
- 13 PRESIDING JUDGE KORNER: [09:42:35] That's the one, is it?
- 14 MR NICHOLLS: [09:42:37] Yes, and it's --
- 15 PRESIDING JUDGE KORNER: [09:42:37] Yes. Thank you very much.
- 16 MR NICHOLLS: [09:42:38] And while I'm on my feet, can I just react to Mr Laucci.
17 Okay, we were not aware for sure whether there's any witnesses next week or not,
18 and I strongly -- well, I know you were trying, but we hadn't had any confirmation at
19 all and I do object now to the order changing again. Understanding is it's 28, 29, 32.
20 We can let it go and see how it works, but I will object to any change to that order.
- 21 PRESIDING JUDGE KORNER: [9:43:11] Sorry, what was it before? I thought
22 those -- weren't those always the witnesses they were going to call?
- 23 MR NICHOLLS: [9:43:15] He's just saying now he may need to change that order
24 again and we will object to that.
- 25 PRESIDING JUDGE KORNER: [9:43:22] Well, I know -- I mean -- okay, Mr Laucci.

1 But, Mr Nicholls, we all know the situation. I perfectly understand that it's difficult
2 and, if necessary, obviously, if it needs be, the witness will have to come back or -- or I
3 suppose that's difficult too.

4 But unfortunately, this is really somewhat out of the Defence's control I think; so I
5 really -- at the moment.

6 But I appreciate that it's not satisfactory.

7 All right, let's go in then to private session.

8 (Private session at 9.43 a.m.)

9 THE COURT OFFICER: [9:44:03] We are in private session, Madam President.

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20 (Recess taken at 11.13 a.m.)

21 (Upon resuming in open session at 11.47 a.m.)

22 THE COURT USHER: [11:47:06] All rise.

23 Please be seated.

24 PRESIDING JUDGE KORNER: [11:47:24] Yes. We have considered the Defence
25 objections over the break.

1 In respect of the downloads from the telephone, and the names that appear, we take
2 the view that, given this is from the defendant's phone seized by the Prosecution, or
3 seized by the Court when he surrendered and handed over to the Prosecution, and in
4 light of the fact that it's been known from a very early stage that there was a challenge
5 to this accused bearing or having any connection with the nickname Kushayb, we
6 find this is something the Prosecution should have disclosed at an earlier stage. We
7 are surprised to see that it was at no stage relied upon and we therefore do not allow
8 them to use this for the purposes of cross-examination. This we do feel is something
9 that should have been part of their case.

10 As far as the general contention, we will give full reasons, may I say, Mr Edwards, at
11 a later stage. But we haven't got time now, obviously.

12 We reject again the Defence contention that the Prosecution is obliged to use or
13 disclose every bit of evidence at its disposal as part of its case and that some -- we find
14 that some evidence may only become of importance and relevance when the Defence
15 case starts. And we'll give, as I say, full reasons.

16 As far as the Facebook entries are concerned, we are not going to rule that they may
17 not be used, but a foundation for using them is going to have to be laid, Ms Whitford.

18 In other words, you can't just say, "Have a look at this and what do you say about it."

19 So if a proper foundation is raised, then it seems to us that the Prosecution is entitled
20 to use the Facebook entries in cross-examination.

21 MR EDWARDS: [11:50:28] Thank you, your Honour.

22 We are ready, if your Honours are, to have the witness in. But for the benefit of the
23 public, can I say that although there are parts of this evidence, this witness, that can
24 certainly be in public session; there are parts which cannot, because there are
25 questions, the answers to which may reveal his identity and that is undesirable.

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WITNESS: DAR-D31-P-0011

(Open Session)

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1 I have done my best in preparing my examination-in-chief to group the private
2 session questions together and the public session questions together, but I can tell
3 your Honours that because of certain -- there are certain particularities about this
4 witness that makes it desirable that we go in as much a chronological order as
5 possible.

6 The Trial Chamber will not receive the best evidence from this particular witness if I
7 jump around chronologically or jump wildly from one topic to a next -- to another
8 and back.

9 PRESIDING JUDGE KORNER: [11:51:49] Yes, all right. Yes, very well. I see the
10 witness is on the screen.

11 Somebody had better give him some earphones. I am assuming he's an Arabic
12 speaker?

13 (Trial Chamber confers)

14 PRESIDING JUDGE KORNER: [11:52:14] Oh, I see, right.

15 I'm told that he doesn't need earphones, that he gets a translation.

16 Sir, can you hear and understand me?

17 WITNESS: DAR-D31-P-0011

18 (The witness speaks Arabic)

19 (The witness gives evidence via video link)

20 THE WITNESS: [11:52:29](Interpretation) I do.

21 PRESIDING JUDGE KORNER: [11:52:38] Well, thank you very much, sir, for
22 attending court -- not attending court, but for coming to give evidence. In a moment,
23 you will be asked to repeat the solemn declaration.

24 Can I just say two things: First, everything you say is being translated, and,
25 second -- and, sorry, therefore, you need, please, to not speak too fast and leave a

Trial Hearing
WITNESS: DAR-D31-P-0011

(Open Session)

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- 1 pause, if you can, between the end of the question and the answer that you give.
- 2 And Mr Edwards will do the same.
- 3 There will be a break at 1 o'clock here, which is in about an hour -- an hour's time, and
- 4 then you should complete your evidence this afternoon.
- 5 Yes, could you repeat the solemn declaration, please, after the court officer.
- 6 THE COURT OFFICER: [11:53:47] If you can repeat after me:
- 7 I solemnly declare.
- 8 THE WITNESS: [11:53:54](Interpretation) I solemnly declare.
- 9 THE COURT OFFICER: [11:53:57] That I will speak the truth.
- 10 THE WITNESS: [11:54:06](Interpretation) That I will speak the truth.
- 11 THE COURT OFFICER: [11:54:08] The whole truth and nothing but the truth.
- 12 THE WITNESS: [11:54:13](Interpretation) The whole truth and nothing but the
- 13 truth.
- 14 THE COURT OFFICER: [11:54:18] Thank you, Witness. You're now under oath.
- 15 PRESIDING JUDGE KORNER: [11:54:21] Yes, Mr Edwards.
- 16 MR EDWARDS: Thank you, your Honour.
- 17 QUESTIONED BY MR EDWARDS:
- 18 Q. [11:54:33] Good morning, sir. Can you see me all right?
- 19 A. [11:54:42] Yes, I see you.
- 20 Q. [11:54:47] I'm going to start by asking some questions of a personal nature.
- 21 They might identify you, so we are going to go very briefly into private session,
- 22 please.
- 23 (Private session at 11.55 a.m.)
- 24 THE COURT OFFICER: [11:55:15] We are in private session, Madam President.
- 25 (Redacted)

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22 (Open session at 12.01 p.m.)

23 THE COURT OFFICER: [12:01:46] We are back in open session, Madam President.

24 MR EDWARDS: [12:01:53]

25 Q. [12:01:54] Now, Mr Witness, we are in open session. That means that your

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1 answers can be heard by the public, but they cannot see your face and they cannot
2 hear your voice. All right?

3 A. [12:02:13] Okay.

4 Q. [12:02:15] But when giving your answers, please make sure not to reveal
5 anything that could identify you. Is that clear?

6 A. [12:02:25] Pardon?

7 Q. [12:02:32] Don't say anything that could reveal who you are.

8 A. [12:02:41] Okay.

9 Q. [12:02:44] I want to ask about your education. Did you attend school in
10 Darfur?

11 A. [12:02:50] Yes, in Darfur and Rahad al-Berdi.

12 Q. [12:03:01] Between what ages did you attend school, sir?

13 A. [12:03:07] I started school when I was three years old. That was when I was in
14 nursery. But when I was five years old, I left school.

15 Q. [12:03:29] Are you able comfortably to read and write, sir?

16 A. [12:03:36] No.

17 Q. [12:03:42] After you stopped attending school at the age of five, how did
18 you -- how did you spend your days?

19 A. [12:03:52] I used to be with my father -- work with my father.

20 Q. [12:04:02] And what kind of work did your father do?

21 A. [12:04:06] Farming. He used to plant corn.

22 Q. [12:04:15] Did there come a time when you stopped helping your father farming
23 and obtain --

24 A. [12:04:29] Until 2009.

25 Q. [12:04:31] And what happened in 2009? What did you start doing in 2009?

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1 A. [12:04:36] In 2009, I got recruited in the federal reserve forces in Khartoum, so I
2 went to Khartoum. Then I went back to Darfur.

3 Q. [12:04:52] Okay. Let's take this step by step. It's been translated as the
4 "federal reserve forces." Is that the same as the Central Reserve Forces, sir?

5 A. [12:05:14] Yes, in 2009 I went to the Central Reserve Forces.

6 Q. [12:05:31] I'm going to come back to that in a moment. For now I want to ask
7 you about Mr Ali Muhammad Ali Abd-Al-Rahman.

8 A. [12:05:51] Yes.

9 Q. [12:05:52] Now it may be that you can't see on your screen, but he's sitting just
10 behind me in court. Did you ever meet Ali Muhammad Ali Abd-Al-Rahman in
11 Darfur?

12 A. [12:06:13] Yes.

13 Q. [12:06:16] And how old were you when you first met him, sir?

14 A. [12:06:21] Fourteen, 14 years old.

15 Q. [12:06:30] And can you tell the judges what the circumstances were of your first
16 meeting when you were 14 years old?

17 A. [12:06:39] He was in Nyala, and I was unwell, so I went from Rahad al-Berdi to
18 Nyala and I stayed with him in his house.

19 THE INTERPRETER: [12:07:04] Correction from the interpreter: "I went to Nyala
20 for treatment."

21 MR EDWARDS: [12:07:11]

22 Q. [12:07:11] What were you unwell with that required treatment? What was
23 your sickness?

24 A. [12:07:18] I was transferred from Rahad al-Berdi to Nyala because of the malaria.
25 I went and I stayed with him in his house for about a week and then I went back to

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1 Rahad al-Berdi.

2 Q. [12:07:42] Were you -- were you feeling better, were you cured, when you went
3 back to Rahad al-Berdi?

4 A. [12:07:50] Yes.

5 Q. [12:07:57] Now, you've said that you were 14 when this happened. How are
6 you able to remember clearly that you were 14 on this occasion?

7 A. [12:08:13] Because it was the first time that I went to Nyala. It was the first
8 time that I ever went to Nyala and Nyala is a very big city; it's one of the biggest cities
9 in our area and that's why I remember very well.

10 Q. [12:08:36] Now, why is it that you went to see Mr Abd-Al-Rahman specifically?

11 A. [12:08:52] Pardon?

12 Q. [12:08:55] Why did you go and see, or why were you taken to see
13 Mr Abd-Al-Rahman in particular for treatment?

14 A. [12:09:15] No, no. He was in his house and his house was open for everybody.
15 He is one of the old people and he was living there. I stayed with him in his house
16 for the period of my treatment. I took my medicine during that time. Then my
17 father took me back to Rahad al-Berdi.

18 PRESIDING JUDGE KORNER: [12:09:40] You're being asked, sir, why you went to
19 his house for treatment as opposed to any other house in Nyala.

20 THE WITNESS: [12:09:59](Interpretation) We can stay in any house, but it was the
21 first house that we passed by and that's why we went to -- I was young. It was my
22 father who took me there. I didn't know anything in Nyala, but it's the house that
23 my father chose to go to.

24 MR EDWARDS: [12:10:18]

25 Q. [12:10:19] Do you know if your father and Mr Abd-Al-Rahman had any kind of

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1 family connection?

2 A. [12:10:27] I don't know that.

3 Q. [12:10:37] And this incident in 2004, is that the only time you had ever met
4 Mr Abd-Al-Rahman in your life?

5 A. [12:10:51] I heard about him before that, but the first time that I met him was in
6 that year.

7 Q. [12:11:02] Okay. And then did you meet him again in a later year?

8 A. [12:11:11] In 2009.

9 MR EDWARDS: [12:11:21] We are going to have to go into private session, please,
10 your Honour, but not for too long.

11 PRESIDING JUDGE KORNER: [12:11:26] Yes. Private, please.

12 (Private session at 12.11 p.m.)

13 THE COURT OFFICER: [12:11:33] We are in private session, Madam President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

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3 (Open session at 12.19 p.m.)

4 THE COURT OFFICER: [12:19:02] We are back in open session, Madam President.

5 MR EDWARDS: [12:19:16] Thank you.

6 Q. [12:19:17] What name did you call Mr Abd-Al-Rahman by?

7 A. [12:19:22] Uncle Ali. We usually call older people as "uncle." You can't call
8 them with their first name directly, out of respect.

9 Q. [12:19:41] And what name did the others under his command call
10 Mr Abd-Al-Rahman by?

11 A. [12:19:50] Everybody called him Uncle Ali.

12 Q. [12:20:01] Did Mr Abd-Al-Rahman have any kind of nickname?

13 A. [12:20:09] No.

14 Q. [12:20:12] Did you ever hear Mr Abd-Al-Rahman referred to by any name other
15 than Uncle Ali?

16 A. [12:20:28] I didn't hear that. Never.

17 PRESIDING JUDGE KORNER: [12:20:42] You never heard him referred to as
18 anything else but Uncle Ali?

19 THE WITNESS: [12:20:53](Interpretation) No. I didn't hear that at all.

20 MR EDWARDS: [12:20:59]

21 Q. [12:20:59] Did Mr Abd-Al-Rahman have an eldest son?

22 A. [12:21:07] Nasser, and he was called Abu Nasser.

23 Q. [12:21:21] Who was called Abu Nasser?

24 A. [12:21:26] In Darfur, usually you are called by your first born, so you call -- you
25 are called Abu so and so, the father of so and so.

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1 Q. [12:21:40] Okay. But this may seem like a strange question, but it's important
2 for us to understand 100 per cent what you're saying. Who was called Abu Nasser?

3 A. [12:21:58] I grew up hearing this name, Abu Nasser. His friends were calling
4 him Abu Nasser.

5 Q. [12:22:09] Whose friends called him Abu Nasser? I just want the name of the
6 person you're referring to, please.

7 A. [12:22:18] Because Nasser is the first born for him, so that's why he is called Abu
8 Nasser, because his first born is -- his first born's name was Abu -- is Nasser.

9 Q. [12:22:34] Okay. And who's the man you are talking about whose first born
10 was called Nasser?

11 A. [12:22:49] His eldest son was called Nasser.

12 MR EDWARDS: [12:22:59] If -- unless there's some ambiguity, I propose to move on,
13 but --

14 PRESIDING JUDGE KORNER: [12:23:05] (Microphone not activated) I think he had
15 better say it.

16 MR EDWARDS: [12:23:08] Okay.

17 Q. [12:23:09] Right. Mr Witness, just listen really carefully to the question. What
18 is the full name of the man whose nickname was Abu Nasser?

19 A. [12:23:22] I don't know the person exactly. I can't tell you, but I heard this
20 name since childhood. Abu Nasser is called Abu Nasser. I can't tell you a specific
21 person or two or three, but everybody called him Abu Nasser.

22 MR NICHOLLS: [12:23:48] Your Honour, sorry, I do have an objection I'd like
23 Ms Whitford to make it in private session -- well, not -- outside the hearing of the
24 witness.

25 PRESIDING JUDGE KORNER: [12:24:00] (Microphone not activated) Can we turn

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1 offer the translation? We can't. He has to leave the room? No. No, no, no, no.
2 I mean, if you're -- if this is going to be the American "asked and answered" about
3 three times --
4 MR NICHOLLS: [12:24:15] No, it is not.
5 PRESIDING JUDGE KORNER: Oh, right. Okay.
6 MR EDWARDS: [12:24:16] He doesn't understand English, your Honour, so if
7 there's no translation --
8 MR NICHOLLS: [12:24:20] That's not the issue.
9 PRESIDING JUDGE KORNER: [12:24:24] Well, I mean, is it to do with this line of
10 questioning, Ms Whitford?
11 MS WHITFORD: [12:24:30] It's to do with the way in which that final question was
12 put.
13 PRESIDING JUDGE KORNER: [12:24:35] Anyway, okay, can I try, Mr Edwards,
14 before we go any further? I mean, I think -- or is your objection to the whole thing?
15 But I think we ought to establish who he's talking about.
16 MS WHITFORD: [12:24:48] Your Honour, I think it's possible that the witness might
17 be receiving the interpretation in Arabic because the accused is receiving it in Arabic,
18 so even though he doesn't understand English, he can probably follow the
19 submissions.
20 PRESIDING JUDGE KORNER: [12:25:03] Well, I'm just going to cut -- I suppose
21 I can't cut the translation for the accused. All right.
22 Sir, is there somebody there with you? If so, can you just leave -- go with that person
23 for a couple of minutes and leave the room.
24 THE WITNESS: [12:25:37](Interpretation) There is someone here with me in the
25 room.

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1 PRESIDING JUDGE KORNER: [12:25:39] Just ask the person next to you for you to
2 leave the room, just for a couple of minutes while we discuss something that doesn't
3 concern you.

4 (The witness exits the video-link room)

5 PRESIDING JUDGE KORNER: [12:26:11] Thank you, sir.

6 Ms Whitford, he is out of the room.

7 MS WHITFORD: [12:26:15] Thank you, your Honour.

8 It might seem like a fine point but we do think it's important that the witness did not
9 use the term "nickname" in relation to this name Abu Nasser, but the last question
10 from my friend used this expression "nickname", and we do say there is a difference
11 between a nickname and a form of address.

12 So we would object to the word "nickname" being used when the witness hasn't used
13 it himself.

14 PRESIDING JUDGE KORNER: [12:26:41] Yes. So, there's a different term in Arabic,
15 is there?

16 MS WHITFORD: [12:26:56] In our submission "Abu Nasser" is a form of address; a
17 "nickname" may be something else. So, in my submission, we should stick to what
18 the witness called it, and he didn't use the word "nickname"; he says it's how he was
19 called.

20 PRESIDING JUDGE KORNER: [12:27:15] Okay.

21 Well, Mr Edwards, I mean, I don't know the answer one way or another, but if he's
22 not saying "nickname", then you ought not to put it there.

23 MR EDWARDS: [12:27:26] No, fair enough.

24 MS WHITFORD: [12:27:28] Your Honour, it's been pointed out to me that actually
25 when he was asked did he have any kind of nickname, the answer was "no". That's

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- 1 at the transcript at page -- I don't have the page, actually, but at time stamp 12:20,
2 pages 59 to 60.
- 3 PRESIDING JUDGE KORNER: [12:27:53] (Microphone not activated)
- 4 THE INTERPRETER: [12:27:54] Microphone, please.
- 5 PRESIDING JUDGE KORNER: [12:27:56] Sorry. Mr Edwards, you've taken the
6 point. Let's have the witness back.
- 7 MR EDWARDS: [12:28:00] Yes. I'm going to try again to ask him who is the person
8 who was addressed as Abu Nasser. I hope that is not going to cause any problems
9 with my learned friend.
- 10 MS WHITFORD: [12:28:17] I won't object to that, your Honour.
- 11 MR EDWARDS: [12:28:20] All right.
- 12 PRESIDING JUDGE KORNER: [12:29] Yes, bring him back.
13 (The witness enters the video-link room)
- 14 MR EDWARDS: [12:29:07]
- 15 Q. [12:29:09] Can you hear and see me again, sir?
- 16 A. [12:29:15] I can hear you, but you're very quiet.
- 17 Q. [12:29:24] What was the full name of Nasser's father?
- 18 A. [12:29:34] His name is Ali Muhammad Ali Abd-Al-Rahman.
- 19 Q. [12:29:49] Did you ever hear Ali Muhammad Ali Abd-Al-Rahman refer to
20 himself as Ali Kushayb?
- 21 A. [12:30:00] No, I didn't hear him do that at all.
- 22 Q. [12:30:09] Did you ever hear anyone else call him Ali Kushayb?
- 23 A. [12:30:18] No, no, I didn't.
- 24 Q. [12:30:24] Did you ever hear anyone refer to him as Ali Kushayb?
- 25 A. [12:30:34] I have not heard that.

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1 Q. [12:30:44] when did you first hear the name Ali Kushayb?

2 A. [12:31:01] It was in 2019 on TV channels and on other media outlets. So it was
3 in 2019.

4 Q. [12:31:20] As you know, you're giving evidence before the International
5 Criminal Court in the Netherlands. When did you first hear about the International
6 Criminal Court?

7 A. [12:31:40] I don't hear you loud enough. The earphones I have give me a
8 distant sound.

9 Q. [12:31:56] Okay. I'll ask the question again and perhaps the interpreters can
10 speak as loudly as possible. When did you first hear about the International
11 Criminal Court?

12 A. [12:32:15] I heard about it in 2018 and 2019, only in such recent years.

13 Q. [12:32:31] And can you tell us when did you first hear of some connection
14 between the International Criminal Court and Mr Abd-Al-Rahman?

15 A. [12:32:55] That was also only in 2019. I haven't heard of that in any other
16 period.

17 Q. [12:33:13] When you first heard the name Ali Kushayb in 2019, what was the
18 context?

19 A. [12:33:43] Again, please?

20 Q. [12:33:44] What was the context of you hearing the name Ali Kushayb for the
21 first time in 2019?

22 A. [12:33:54] I heard of that on the radio and on TV only.

23 Q. [12:34:08] And what was being said on the radio and TV about Ali Kushayb?

24 A. [12:34:17] I heard that he -- that Ali Kushayb was wanted by the International
25 Criminal Court, but I was not aware as to who Ali Kushayb was.

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1 MR EDWARDS: [12:34:35] I'm coming to the last set of questions, your Honour, but
2 that requires going into private session, I'm afraid, because it refers to -- it's questions
3 relating to where he is now.

4 PRESIDING JUDGE KORNER: [12:35:03] Why does it matter where he is now?
5 I know it's in the statement. So what? I mean, how does that add to anything?

6 MR EDWARDS: [12:35:11] It doesn't add anything to his knowledge or otherwise of
7 Ali Kushayb, but it goes to -- it goes to the conditions under which he --

8 PRESIDING JUDGE KORNER: [12:35:27] Got here, I know.

9 MR EDWARDS: [12:35:29] -- got here.

10 PRESIDING JUDGE KORNER: [12:35:30] I appreciate that. Are you saying -- I
11 mean, I'm not going to stop you if you really think it's necessary, but, I mean, are you
12 saying it adds in some way to his credibility? Is that why you want it?

13 MR EDWARDS: [12:35:41] Yes.

14 PRESIDING JUDGE KORNER: [12:35:42] Okay.

15 Yes, all right. Private session.

16 (Private session at 12.36 p.m.)

17 THE COURT OFFICER: [12:36:01] We are in private session, Madam President.

18 (Redacted)

19 (Redacted)

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19 (Open session at 12.52 p.m.)

20 THE COURT OFFICER: [12:52:34] We are back in open session, Madam President.

21 QUESTIONED BY MS WHITFORD:

22 Q. [12:52:50] Good afternoon, Mr Witness. Can you see and hear me?

23 A. [12:52:53] Yes, I can hear you.

24 Q. [12:53:06] We met briefly last week but, for the record, my name is Alison

25 Whitford and I'll be asking you questions on behalf of the Prosecution.

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1 Now, please keep in mind that many of my questions can be answered with a simple
2 "yes" or "no." Do you understand that?

3 A. [12:53:44] Yes.

4 PRESIDING JUDGE KORNER: [12:53:49] There really is very bad interference going
5 on at the moment.

6 Apparently we increased the volume but I'm not sure that that's necessary. Can we
7 decrease the volume, please, and see what happens.

8 MS WHITFORD: [12:54:13]

9 Q. [12:54:23] Mr Witness, I have a copy of your statement here. According to this,
10 you were interviewed on 16 and 17 August this year; is that correct?

11 A. [12:54:36] Exactly.

12 Q. [12:54:46] And on 16 August, your interview started at 11 a.m. and finished just
13 after 3 p.m., correct?

14 A. [12:54:59]

15 [12:54:59] Yes, exactly.

16 Q. [12:55:08] And then on 17 August, your interview started at 11.20 a.m. and
17 finished at 12.20 p.m., correct?

18 A. [12:55:21] Correct.

19 Q. [12:55:29] And you were interviewed by video-link; correct?

20 A. [12:55:37] Correct.

21 Q. [12:55:43] At paragraph 11 of your statement, it says that you were told that you
22 needed to be as accurate as possible in your account; correct?

23 A. [12:55:59] Correct.

24 Q. [12:56:08] And you were also told that you should state when you do not know
25 the answer or do not understand the question; correct?

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1 A. [12:56:18] Again, please?

2 Q. [12:56:26] In the interview with the Defence, it was explained to you that if you
3 did not know the answer to the question or you did not understand the question, then
4 you should say so; correct?

5 A. [12:56:44] Correct.

6 Q. [12:56:51] And it was also explained to you that you needed to distinguish
7 between what you experienced yourself and what you heard or learned from other
8 people; correct?

9 A. [12:57:08] Correct.

10 Q. [12:57:12] And at the end of your interview, your statement was read back to
11 you in Arabic; correct?

12 A. [12:57:21] Yes.

13 Q. [12:57:27] And you said that you had nothing to add and nothing to clarify, and
14 you agreed that the statement was true to the best of your knowledge and recollection;
15 correct?

16 A. [12:57:45] Yes. As best as I could remember, I did agree.

17 Q. [12:57:58] And then you signed the statement; correct?

18 A. [12:58:02] Yes, I signed it. It was read out to me and then I signed on it.

19 Q. [12:58:16] Last week you had some sessions with the Defence team and they
20 again read the statement back to you; correct?

21 A. [12:58:28] They did.

22 Q. [12:58:38] And you made some minor clarifications and otherwise confirmed
23 that it was true and correct; is that right?

24 A. [12:58:50] Again, please?

25 Q. [12:58:56] Last week when the statement was read back to you, you made some

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1 small clarifications; is that right?

2 A. [12:59:09] Correct.

3 Q. [12:59:13] And you otherwise confirmed that the statement is true and correct;
4 right?

5 A. [12:59:21] Correct.

6 MS WHITFORD: [12:59:28] Madam President, I'm not sure if we were intending to
7 break at 1 or --

8 PRESIDING JUDGE KORNER: [12:59:32] How long do you think you have got to
9 go?

10 MS WHITFORD: [12:59:38] At least the whole of the next session.

11 PRESIDING JUDGE KORNER: [12:59:42] Well, all right, then we'll take the break
12 now until 2.30, I suppose.

13 The whole of the next session?

14 MS WHITFORD: [12:59:52] We'll see how we go, your Honour. Maybe shorter.

15 PRESIDING JUDGE KORNER: [12:59:55] I would have thought considerably shorter
16 than that, Ms Whitford, would be sufficient.

17 MS WHITFORD: [12:59:59] I'll do my best.

18 THE COURT USHER: [13:00:05] All rise.

19 (Recess taken at 1.00 p.m.)

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

21 THE COURT USHER: [14:31:16] All rise.

22 Please be seated.

23 MS WHITFORD: [14:31:46]

24 Q. [14:31:47] Good afternoon, Mr Witness. Can you see and hear me?

25 A. [14:31:56] Good afternoon. Yes, I can hear you and see you.

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1 Q. [14:32:04] This morning you told us that you were recruited to the CRF in 2009
2 and that you were trained in Khartoum.

3 A. [14:32:23] Yes.

4 Q. [14:32:26] And then you went back to Nyala and then Rahad al-Berdi.

5 A. [14:32:37] Yes.

6 Q. [14:32:39] My question is: What year did you leave Nyala for Rahad al-Berdi?

7 A. [14:32:54] I arrived in 2010. I left Nyala and I went to Rahad al-Berdi.

8 Q. [14:33:07] Do I understand well that you went to Rahad al-Berdi in 2010 or was
9 it later than that?

10 A. [14:33:23] Well, the last I was -- I went to Nyala, it was 2019, and I haven't been
11 there since then.

12 Q. [14:33:38] What I'd like to be clear about, Mr Witness, is where you were living.
13 Have you ever lived in Nyala?

14 A. [14:33:50] No, I didn't live in Nyala.

15 Q. [14:33:58] One small question. The CRF are also known as Abu Teira, is that
16 correct?

17 A. [14:34:10] Yes.

18 Q. [14:34:14] I'd like to read you a part of your statement now, and that's at
19 paragraph 23. You say this:

20 "I did not take part in the fighting in Darfur. I was a member of the CRF and I
21 worked in {ICR: (Redacted)}. I used to go there but I did not really have much to do.
22 Ali Muhammad Ali Abd-Al-Rahman did the same. At the camp of the CRF, we had
23 vehicles and weapons, we used to do some work on these as well."

24 Do you recall that in your statement?

25 A. [14:35:05] Yes, indeed. We had the vehicles and I was the driver.

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1 Q. [14:35:17] If I understand well from this paragraph, like you, Ali Muhammad
2 Ali Abd-Al-Rahman used to go to the base, but there was not much for him to do
3 there. Do I have that right?

4 A. [14:35:40] Repeat the question. I couldn't hear it.

5 Q. [14:35:46] In your statement you say that you used to go to {ICR: (Redacted)
6 (Redacted)}, but there was not much for you to do there and it was the same with
7 Mr Abd-Al-Rahman. Is that correct?

8 A. [14:36:12] Work? What kind of work? We worked in the CRF as soldiers.
9 We worked in the camp and at the end of our duty or shift, we go back home.

10 Q. [14:36:25] You told us that you were never -- that you never participated in any
11 combat operations during your time in the CRF. Do you recall that?

12 A. [14:36:37] Yes, yes.

13 Q. [14:36:40] And based on what you say in this paragraph, I understand that
14 Mr Abd-Al-Rahman also did not take part in any combat operations, correct?

15 A. [14:36:55] He was a sergeant, a police sergeant in the CRF like me. We were
16 soldiers.

17 Q. [14:37:08] Is your -- sorry.

18 PRESIDING JUDGE KORNER: [14:37:11] Did he do any fighting whilst you were in
19 the CRF with him?

20 THE WITNESS: [14:37:24](Interpretation) No, no, no, not at all. I never saw that
21 and he never participated.

22 PRESIDING JUDGE KORNER: [14:37:32] (Microphone not activated) some direct
23 questions rather than quoting bits of what he said in his statement.

24 MS WHITFORD: [14:37:39] Thank you, your Honour.

25 Q. [14:37:40] Was the CRF involved in any combat operations or fighting during

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1 the time that you were there?

2 A. [14:37:54] No, no, not at all.

3 MS WHITFORD: [14:38:00] Your Honour, if we could please move into private
4 session for the next set of questions.

5 PRESIDING JUDGE KORNER: [14:38:09] Private session.

6 (Private session at 2.38 p.m.)

7 THE COURT OFFICER: [14:38:22] We're in private session, Madam President.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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24 (Redacted)

25 (Redacted)

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- 13 (Redacted)
- 14 (Open session at 2.48 p.m.)
- 15 THE COURT OFFICER: [14:48:13] We're back in open session, Madam President.
- 16 MS WHITFORD: [14:48:17]
- 17 Q. [14:48:19] Now, Mr Witness, you've explained to us that you worked with
- 18 Mr Abd-Al-Rahman for some 10 years in the CRF. You must know his family?
- 19 A. [14:48:36] Do you mean his brothers or his children or who exactly in his family
- 20 members?
- 21 Q. [14:48:43] Let's take his children, for example, you must know some of his
- 22 children.
- 23 A. [14:48:53] I know some of them.
- 24 Q. [14:48:59] Now, Mr Abd-Al-Rahman has a son called Salah, correct?
- 25 A. [14:49:08] Yes, he has a son by the name of Salah.

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- 1 Q. [14:49:15] And Salah used to live in Rahad al-Berdi, correct?
- 2 A. [14:49:25] Yes, he used to live in Rahad al-Berdi.
- 3 Q. [14:49:29] And Salah had the nickname Bush, correct?
- 4 A. [14:49:39] I never heard that name.
- 5 Q. [14:49:49] If we could please have on the screen the item at tab 68, which is
- 6 DAR-OTP-00005868.
- 7 Do you see that photograph on your screen?
- 8 A. [14:50:33] Yes, I can see it.
- 9 Q. [14:50:36] Now, Mr Witness, there's no dispute that that is a photograph of Salah.
- 10 Do you recognise him?
- 11 A. [14:50:51] Salah, when I saw him -- the time I saw him he was younger, way
- 12 younger than this picture.
- 13 PRESIDING JUDGE KORNER: [14:51:05] Do you actually recognise him? Whether
- 14 he looks younger or whether he was younger when you saw him, do you recognise
- 15 him? Is that a photograph of Salah?
- 16 THE WITNESS: [14:51:20](Interpretation) Yes, yes, I recognise him.
- 17 MS WHITFORD: [14:51:24]
- 18 Q. [14:51:25] I'd like to show you another photograph now. DAR-OTP-00005886,
- 19 it's the item at tab 59.
- 20 That is also a photograph of Salah, correct?
- 21 A. [14:52:01] (No interpretation)
- 22 Q. [14:52:07] Can we show, please, the item -- could we please show the item at
- 23 tab --
- 24 A. [14:52:13] The picture is dark, but it's for him. Yes, it's a little bit dark.
- 25 Q. [14:52:20] If we could please have the item at tab 67, which is

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- 1 DAR-OTP-00005867.
- 2 Again, this is a photograph of Salah, correct?
- 3 A. [14:52:51] Yes.
- 4 Q. [14:52:55] Okay. And one more, the item at tab 70, please 00005870.
- 5 And here again we have Salah, a younger version. Do you recognise him?
- 6 A. [14:53:31] I don't recognise this picture. This picture is different from the
- 7 others.
- 8 Q. [14:53:41] We're finished with that item. We can remove it. Thank you.
- 9 Now, you know that Mr Abd-Al-Rahman also had a son called Yasser, correct?
- 10 A. [14:53:57] Yes, he does have a son called Yasser.
- 11 Q. [14:54:03] And Yasser also lived in Rahad al-Berdi?
- 12 A. [14:54:14] Yasser lived in Rahad al-Berdi, but he was a student who studied in
- 13 Khartoum.
- 14 Q. [14:54:22] If we could please have the item at tab 60, DAR-OTP-00005950.
- 15 That is a photograph of Yasser, correct?
- 16 A. [14:54:52] Yes, this is a picture of Yasser.
- 17 Q. [14:54:56] And if we could have the item at tab 66, DAR-OTP-00006070, please.
- 18 If we could zoom in a little on the photograph, please.
- 19 And this is also a photograph of Yasser, correct?
- 20 A. [14:55:32] Yes, this is Yasser.
- 21 Q. [14:55:51] Mr Abd-Al-Rahman also had a son called Anwar, correct?
- 22 A. [14:56:00] I heard about Anwar, but I never met him because he didn't live in
- 23 Rahad al-Berdi, so if I -- even if I would meet him now, I wouldn't recognise him.
- 24 Q. [14:56:13] Mr Abd-Al-Rahman also had a son called Al-Nazir, correct?
- 25 A. [14:56:27] Al-Nazir, I heard about Al-Nazir, but he didn't live in Rahad al-Berdi.

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1 The ones that you showed me, yes, they lived with us in Rahad al-Berdi, but the
2 others, they come from another mother who lived outside. However, I heard about
3 them, but if I was to meet them now, I wouldn't be able to recognise them.

4 Q. [14:56:53] Mr Witness, you're a member of the Ta'aisha tribe. I'm moving on to
5 a new topic now, just to be clear.

6 In 2013 there were problems between the Ta'aisha and the Salamat, you would
7 remember that in Rahad al-Berdi, correct?

8 A. [14:57:18] Yes, I was taking a course in Khartoum. I was on a mission in
9 Khartoum at that time.

10 Q. [14:57:28] If we could please have on the screen the item at tab 44,
11 DAR-OTP-00006582.

12 Now, Mr Witness, this is a media report from 16 April 2013. I'm going to read you
13 some part of that. It says this:

14 "Local-administration dignitaries and notables have managed to contain the incidents
15 between the Salamat and the Ta'aisha in Rahad al-Berdi, which erupted on Friday and
16 Saturday, and resulted in the killing and injuring of tribal members on both sides and
17 the burning of stores in the town's market, closing the market until yesterday Monday.

18 The incidents were the consequence of a spillover from the clashes in the Um Dukhn
19 district, in neighbouring Central Darfur, where the situation has yet to fully settle.

20 On Sunday evening, in the town of Rahad al-Berdi, both the Salamat and Ta'aisha
21 tribes signed a document to end the hostilities between the two parties."

22 Now, you were a member of the Ta'aisha and a member of the CRF in Rahad al-Berdi
23 during this time. You must remember these events?

24 A. [14:59:18] Yes, I remember these events very well.

25 Q. [14:59:25] And then on the next page, if we could please scroll down, I'm going

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1 to read you some more of what this report says:

2 "[...] Musa al-Bashir Musa, a member of the Legislative Council for South Darfur State
3 and a notable Salamat, revealed that the hostilities perpetrated by the militia leader
4 wanted by the International Criminal Court, Ali Kushayb, had restarted yesterday in
5 the [Fandug] area, in the district of Rahad al-Berdi, and that they constituted a clear
6 breach of the two agreements of Um Dukhn (between the Salamat and Misseriya) and
7 of Rahad al-Berdi (between the Ta'aisha and Salamat) to end the hostilities before the
8 ink had dried on either. On Radio Dabanga, Musa announced that the Ali Kushayb,
9 who commands the Abu-Tirah Forces, attacked the area and the surrounding villages
10 with 15 armoured Land Cruisers, reinforced by Military Intelligence Services' troops
11 under the Sudanese army. He described the mobilisations of Ali Kushayb, along
12 with the Abu-Tirah forces, as constituting a clear breach of the Rahad al-Berdi
13 agreement to end the hostilities."

14 Now, this report identifies the commander of the Abu Teira forces in Rahad al-Berdi
15 as Ali Kushayb. And that is a reference to Ali Muhammad Ali Abd-Al-Rahman,
16 correct?

17 A. [15:01:31] I don't know Ali Kushayb. I never heard about him. I only heard
18 about him in 2019. Never before that.

19 Q. [15:01:42] So you have no idea who is the Ali Kushayb reported to be the
20 commander of the Abu Teira forces in this article?

21 A. [15:01:58] No, I don't know anything about that.

22 Q. [15:02:05] We're finished with that item. If we could please have on the screen,
23 the item at tab 33, DAR-OTP-00006587. Mr Witness, this is another media report
24 dating from 17 April 2013, which is the day after the report we just saw. I'm going to
25 read you part of this report:

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1 "Yesterday afternoon, 250 families, consisting of Salamat notables, leaders and
2 activists arrived in the town of Nyala from the town of Rehed al-Birdi after the local
3 authorities, in coordination with the state government, had ordered their relocation
4 from Rehed al-Birdi for protection from attack and killing. This information was
5 given to Radio Dabanga by notables of the Salamat tribe who arrived in Nyala
6 yesterday. However, the overall *nazir* [paramount sheikh] for the Ta'aisha rejected
7 accounts that their relocation was due to the absence of protection or the harassment
8 against them."

9 Mr Witness, you recall this relocation of 250 Salamat families from Rahad al-Berdi to
10 Nyala?

11 A. [15:04:03] No, I don't remember. Because during the problems that happened
12 in 2013, I was in Khartoum. I can't remember any of that.

13 Q. [15:04:15] I'm going to read to you some more of this report, Mr Witness. It
14 says that:

15 "... Khalid Husayn Isma'il, a Salamat notable [...] revealed that attacks by the
16 al-Ta'aisha against the Salamat had been happening since Friday in the town of
17 Rehed al-Birdi. They included the burning of 45 shops of the Salamat, after the
18 looting of their merchandise, and the pillaging and burning of 70 Salamat homes in
19 Rehed. Further, Khalid confirmed that Ali Kushayb, the individual wanted by the
20 International Criminal Court in the Hague, had participated in the incidents and that
21 an additional 250 Salamat families who had been relocated from Rehed al-Birdi could
22 reach Nyala at any time."

23 And then it goes on:

24 "In a statement on Radio Dabanga, the overall *nazir* for the Ta'aisha, in the town of
25 Rehed al-Birdi, [...] Abd-al-Rahman Basharah, vehemently rejected claims that the

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1 group who went to the town of Nyala did so because of insufficient protection or
2 their suffering any harassment."

3 Now, Mr Witness, you're a member of Ta'aisha tribe. You're a member of the CRF in
4 Rahad al-Berdi, and you're saying that you never heard about these events. Is that
5 correct?

6 MR EDWARDS: [15:06:03] Does my learned friend specifically mean --

7 THE WITNESS: (Overlapping speakers)

8 MR EDWARDS: [15:06:00] Wait a minute, please.

9 A whole chunk of an article has just been read out. Can we have some precision.
10 What exactly is my learned friend asking? If she's asking specifically about the
11 relocation of 250 families or individual -- 250 families, that question has been asked
12 and answered.

13 MS WHITFORD: [15:06:26] Your Honour, I will rephrase the question, that's no
14 problem.

15 PRESIDING JUDGE KORNER: [15:06:29] (Microphone not activated) to him. I
16 mean, if his literacy levels are said to be so low, you need to have simple,
17 straightforward, direct questions.

18 MS WHITFORD: [15:06:42]

19 Q. [15:06:42] Mr Witness, you must have been aware that at this time in 2013, the
20 Salamat were accusing the Ta'aisha of burning their homes and shops in
21 Rahad al-Berdi town, correct?

22 A. [15:07:04] As I said, in 2013 I was not in Rahad al-Berdi. I was in Khartoum and I
23 came back in 2014. But I never heard about this. Nobody spoke to me about this
24 and I didn't hear about this at all.

25 PRESIDING JUDGE KORNER: [15:07:25] Sorry, sir, originally, when Ms Whitford

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1 was asking you about these events you said, "I remember these events very well." So
2 are you now saying that was an error? And that because you were in Khartoum,
3 you didn't hear anything about it?

4 THE WITNESS: [15:07:58](Interpretation) Nobody explained to me what happened.
5 Nobody explained the situation to me and I didn't ask anybody. I heard that these
6 events happened, but nobody spoke to me about the details.

7 MS WHITFORD: [15:08:34] If we could have please on the screen the item at tab 46,
8 DAR-OTP-00006583.

9 Q. [15:08:58] This is an article, Mr Witness, dating from 13 February 2014, in which
10 the *umdah* of the Salamat tribe calls for a person called Ali Kushayb to be banished
11 from Rahad al-Berdi. Do you recall that?

12 A. [15:09:24] No, no. I don't know this name at all. The first time I heard about
13 this name was in 2019.

14 Q. [15:09:45] So, Mr Witness, your evidence is that despite the fact that following
15 clashes between the Salamat and the Ta'aisha in 2013, the *umdah* of the Salamat calling
16 on someone called Ali Kushayb to be banished, you never heard this name
17 Ali Kushayb?

18 A. [15:10:23] I didn't hear about this name ever. I didn't hear about this at all.
19 The first time I heard about this name was in 2019. I never heard this name before
20 that and nobody mentioned this name to me before.

21 Q. [15:10:41] If we could have the item at tab 38, DAR-OTP-00006589.

22 Mr Witness, this is a media report from 15 August 2014 and it says here that:

23 "In a statement on Wednesday, Salamat *Umdah* [...] Jibril Hasan stated that

24 Ali Kushayb and fifty others had perpetrated massacres against defenceless civilians
25 in the conflict between the two tribes by using military machinery belonging to the

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1 Central Reserve Police (the Abu Tirah [Forces]) under Kushayb's command. The
2 *umdah* also accused Ali Kushayb of involvement in the burning of entire villages."

3 MR EDWARDS: [15:11:42] Your Honour, this is all on the face of the documents
4 referring to attacks or assaults in 2014. This falls way outside of the 2003-2004 --

5 PRESIDING JUDGE KORNER: [15:12:06](Overlapping speakers) The purpose is to
6 test him saying he'd never heard of this.

7 MR EDWARDS: [15:12:08] I appreciate that, but if my learned friend -- I understand
8 what my learned friend is seeking to establish and I appreciate what -- what her
9 selection has been in terms of press articles that have been shown to the witness, but
10 to specifically decide to refer to allegations of crimes, essentially, is inappropriate, I
11 submit.

12 PRESIDING JUDGE KORNER: [15:12:39] Well, I mean, you can rest assured that we
13 are not taking this into account at all, as you say rightly, the crimes are way before
14 that. The only reason that, as I understand it, we're being asked to consider this, is
15 because these were notorious events - because the press apparently mentioned
16 him - and it's to test his assertion that he had never heard of him until 2019.
17 And that, Ms Whitford, is entitled to do.

18 However, Ms Whitford, I think we've been through quite enough of those.

19 MS WHITFORD: [15:13:25] Yes, it's the final one, your Honour.

20 Q. [15:13:27] So to put my question in relation to this article, Mr Witness, you must
21 recall the *umdah* of the Salamat calling for the arrest of the head of the CRF and 50
22 others for war crimes and crimes against humanity in Rahad al-Berdi? This is in
23 2014, Mr Witness.

24 A. [15:13:53] Abu Teira forces in Rahad al-Berdi were not even 50 people. I think
25 they were about 33 or 34 people only. It wasn't 50. The Central Reserve Forces

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1 were not 50 or not -- didn't consist of 50 people. It was much less than that.

2 PRESIDING JUDGE KORNER: [15:14:32] Where does the 50 come from?

3 MS WHITFORD: [15:14:36] Sorry, your Honour, I wasn't getting any interpretation.

4 The 50, it's in the large paragraph: "... Jibril Hasan stated that Ali Kushayb and fifty
5 others" --

6 PRESIDING JUDGE KORNER: [15:14:47] Oh, 50 others.

7 Did you hear about these events when you came back from Khartoum?

8 THE WITNESS: [15:15:20](Interpretation) What events?

9 PRESIDING JUDGE KORNER: [15:15:21] The events that have just been described
10 to you, that is, the tribal conflict between your tribe and the Salamat and somebody
11 else, I think. Did you hear about that?

12 THE WITNESS: [15:15:42](Interpretation) This conflict was in 2013, but when I
13 arrived, there was no conflict. They reconciled and they lived together peacefully in
14 Rahad al-Berdi.

15 PRESIDING JUDGE KORNER: [15:15:56] Yes, I -- that may be so, sir. Just listen to
16 the question.

17 You say you were not there in 2013. When you came back, did people tell you what
18 had happened?

19 THE WITNESS: [15:16:15](Interpretation) Yes, they did say that some events
20 happened.

21 MS WHITFORD: [15:16:31]

22 Q. [15:16:32] Now, Mr Witness, to be clear, you returned to Rahad al-Berdi from
23 Khartoum at the end of 2013, correct?

24 A. [15:16:46] No. 2014. I didn't say end of 2013. 2014 is the year I went back.

25 Q. [15:16:57] When in 2014?

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1 A. [15:17:04] I don't remember the month, but I am sure that it was 2014 because I
2 remember that I spent the New Year in Khartoum.

3 Q. [15:17:19] Well, Mr Witness, this report of the Salamat *umdah* making this call is
4 from August 2014. You were certainly back in Rahad al-Berdi by then?

5 A. [15:17:44] Yes, I was back in 2014.

6 Q. [15:18:02] And to be clear, you were in Rahad al-Berdi but you're saying that
7 you never heard the Salamat *umdah* accusing Ali Kushayb of involvement in the
8 burning of entire villages; is that correct?

9 A. [15:18:21] Nobody spoke to me about this. Nobody spoke to me about this at
10 all.

11 Q. [15:18:35] Earlier, Mr Witness, you told us that Ahmad Yusuf al-Balul was a
12 martyr, correct?

13 A. [15:18:50] Yes, deceased.

14 Q. [15:18:55] And the reason that he's a martyr is that he was killed while he was
15 doing his job, correct?

16 A. [15:19:07] Yes, he became a martyr in 2012. And then in 2013, I travelled to
17 Khartoum, I went, I spent my time in Khartoum, and then I came back and I was told
18 that this person has died. So I went to his family, gave my condolences and that was
19 it.

20 Q. [15:19:33] And he was killed in Nyala, correct?

21 A. [15:19:43] Yes, he died in Nyala. Or maybe in Rahad, I don't know. Because
22 I was in Khartoum. I know that he became a martyr. He was in Darfur. I was in
23 Khartoum and he was in Darfur, somewhere in Darfur, not where exactly -- I don't
24 know where exactly.

25 (Counsel confers)

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1 MS WHITFORD: [15:20:33] If we could have on the screen now, please, the item at
2 tab 42 of the Prosecution list, DAR-OTP-00006581. And it is long, your Honour, so
3 I'll try and skip to the most relevant parts.

4 PRESIDING JUDGE KORNER: [15:21:02] (Microphone not activated)

5 THE INTERPRETER: [15:21:05] Microphone, please.

6 MS WHITFORD: [15:21:07] This is a different topic, your Honour.

7 Q. [15:21:11] Mr Witness, I'll read this article to you. It's dated 8 July 2013.

8 It says:

9 "Ali Kushayb, a government militia leader wanted by the International Criminal
10 Court, was seriously injured and his bodyguard killed yesterday afternoon, on
11 Sunday, when an unknown armed individual shot at him in the industrial zone of the
12 town of Nyala."

13 And we can skip forward.

14 "A medical source in the police hospital in Nyala confirmed to Radio Dabanga that
15 Ali Kushayb's bodyguard, Ahmad Yusuf al-Balul, had succumbed to his injuries."

16 In this attack. * Now, this the same incident that we were just speaking about in
17 which al-Balul was killed, correct?

18 A. [15:22:34] Al-Balul was a driver, not a bodyguard.

19 Q. [15:22:48] Nonetheless, this is the incident that we've just been talking about in
20 which al-Balul was killed, correct?

21 A. [15:23:01] Yes, but al-Balul is a driver and he died -- I don't know, he died in
22 Nyala or died in Rahad al-Berdi. I don't know how he was killed, but he was a
23 driver. But you're talking about a bodyguard.

24 PRESIDING JUDGE KORNER: [15:23:18] A driver for whom? Who was al-Balul a
25 driver for? Did you hear the question? Who --

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- 1 THE WITNESS: [15:23:42](Interpretation) I didn't hear.
- 2 PRESIDING JUDGE KORNER: [15:23:44] Okay. Who was -- for whom was
3 al-Balul -- who did he --
- 4 THE WITNESS: [15:23:58](Interpretation) (Overlapping speakers)
- 5 PRESIDING JUDGE KORNER: [15:24:00] Wait. Wait. Wait. Who did he drive
6 for?
- 7 THE WITNESS: [15:24:08](Interpretation) al-Balul was a driver on the vehicles of the
8 CRF. Not to a specific person, but he was a driver on the vehicles of the CRF.
- 9 MS WHITFORD: [15:24:35] If we could please go to item at tab 30, which
10 is 00006771.
- 11 Q. [15:24:55] Mr Witness, this is another news report from 8 July 2013. In this one
12 it says:
- 13 "According to eyewitnesses, Ali Kushayb, a *Musa'id* [...] in the Central Reserve Police
14 who has been accused by the ICC of killing civilians in Darfur in 2004, was at a car
15 repair shop in Nyala when two individuals ..."
- 16 THE INTERPRETER: [15:25:22] Note from the interpreter: Can we slow down a
17 little bit, please, and can you refer us to the exact paragraph?
- 18 MS WHITFORD: [15:25:30] My apologies. It's the third paragraph beginning,
19 "According to eyewitnesses":
- 20 "According to eyewitnesses, Ali Kushayb, a *Musa'id* [...] in the Central Reserve Police
21 who has been accused by the ICC of killing civilians in Darfur in 2004, was at a car
22 repair shop in Nyala when two individuals on a motorbike subjected him to heavy
23 fire. His driver and personal bodyguard were killed, while Kushayb was seriously
24 injured."
- 25 Q. [15:26:05] This is the incident in which al-Balul was killed, correct?

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1 A. [15:26:31] Madam, as I told you, I knew that al-Balul was just a driver in the CRF.
2 And then I travelled to Khartoum. When I came back, I found out that he was killed.
3 I don't know how exactly he was killed. I don't know anything about all the things
4 that you're mentioning right now. I only know that al-Balul was a driver in the CRF,
5 in the vehicle of the CRF. That's it.

6 Q. [15:27:04] Moving on to a new topic now, Mr Witness.

7 If we can remove that item, please.

8 Earlier you told us that you know Mr Abd-Al-Rahman's son Salah. Salah was killed
9 in Rahad al-Berdi last year, correct?

10 A. [15:27:32] I can't remember exactly which year he was -- he died, but yes, he
11 passed away.

12 Q. [15:27:40] If we could please have item tab 55, DAR-OTP-00000811.

13 This is a news report from 7 June 2022. Earlier you recognised that as a photograph
14 of Salah and it says here:

15 "According to local sources in Rahad al-Berdi [...] the son of Ali Kushayb who is
16 accused of war crimes by the International Criminal Court died in an exchange of fire
17 yesterday evening. According to Matarees sources, Salah Ali Kushayb, aka Bush
18 Kushayb, killed two members of the police using a hand grenade that he had.
19 He was then chased by military forces, who killed him on one of the streets of
20 Rahad al-Berdi."

21 Now, Mr Witness, you must have been aware of this incident in Rahad al-Berdi last
22 year?

23 A. [15:29:09] Yes, he -- Salah died, but he didn't die in events. Nothing happened
24 in Rahad al-Berdi. No such events happened where police officers died, or anything
25 like that. Nothing happened in Rahad al-Berdi at all. The person who wrote this

1 on the picture and commented on it in this way, I don't know where they got this
2 from. I was in Rahad al-Berdi and I didn't hear about any of these events.

3 PRESIDING JUDGE KORNER: [15:29:51] So this is -- can we go back to the date,
4 please. Back to the date, please. Thank you.

5 This is June last year. You say whoever this journalist is just made all this up, do
6 you? Or are you simply saying you never heard about anything like that?

7 THE WITNESS: [15:30:29] (Interpretation) I was in Rahad al-Berdi. This -- these
8 clashes are between who and who? Ta'aisha and Salamat, or Ta'aisha and another
9 tribe, or just between the police officers?

10 PRESIDING JUDGE KORNER: [15:30:46] Stop. Go back, please, to the article.

11 This is an article about the man who was called -- the son of your sergeant, whatever
12 he was, Al-Rahman, was in the streets of somewhere called Matarees. Stopping
13 there for a moment, do you know that area.

14 MS WHITFORD: [15:31:24] Your Honour, that's the media source. I apologise.

15 PRESIDING JUDGE KORNER: [15:31:26] Oh, it's the media source, is it? All right.

16 MS WHITFORD: [15:31:29] The incident is in Rahad al-Berdi town.

17 MR EDWARDS: [15:31:30] All of these sources -- I was about to ask, what is
18 Matarees? Where is this from? My learned friend introduced the article just by
19 talking about an article without any kind of provenance. It's --

20 PRESIDING JUDGE KORNER: [15:31:47] Okay, well, according to this, his son Salah
21 killed two members of the police, was chased by military forces who killed him on the
22 streets of Rahad al-Berdi. Are you saying you never ever, ever heard about this?

23 THE WITNESS: [15:32:23](Interpretation) There was never an incident in
24 Rahad al-Berdi wherein staff of the police or personnel from the police were killed.

25 I was in the CRF and nothing like this ever happened. Two people from the police

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1 were killed? No, absolutely not.

2 PRESIDING JUDGE KORNER: [15:32:41] Okay.

3 MS WHITFORD: [15:32:55] If we could have on the screen now the item at tab 57,
4 DAR-OTP-00000838. This is a media report from Darfur 24, dated 7 June 2022.

5 And this report states that:

6 "Two persons were killed, including the son of the man accused of committing war
7 crimes in Darfur Ali Abd-Al-Rahman, better known as 'Kushayb', and four others
8 injured Monday evening as Bush Kushayb detonated a hand grenade at a group of
9 people in the town of Rahad al-Berdi."

10 Q. [15:33:46] And you're saying that such an incident like this with a hand grenade
11 being detonated and the son of your former boss, you don't know anything about
12 that?

13 A. [15:34:13] Ah, now you're being clear. * What I personally know is that Salah
14 did not come and shoot another man, nor did he flee. Saleh came to the market and
15 was walking around. There is another man who threw a grenade at Saleh and it did
16 not explode. He then left. I was on duty as a policeman on that day. After he left, the
17 grenade exploded. After the explosion, it was said that Saleh was behind it. He
18 absolutely was not. Saleh did not shoot or throw this grenade or anything. And no
19 one was killed in Rahad al-Berdi. No police or no one else. Absolutely not.

20 PRESIDING JUDGE KORNER: [15:35:04] Sorry. How do you know that Salah
21 didn't throw the grenade?

22 THE WITNESS: [15:35:18](Interpretation) Because Salah did not have anything on
23 his hand. Nothing.

24 PRESIDING JUDGE KORNER: [15:35:23] How do you know that? Were you
25 actually there?

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1 THE WITNESS: [15:35:35](Interpretation) Do you mean at the same place? No,
2 I was not there. And he did not pass on that day. He passed away on the third day.
3 He was not -- he was not killed in an incident. He never threw a grenade or he
4 never -- and he never died in an incident.

5 PRESIDING JUDGE KORNER: [15:35:54] Okay. How did he die then?

6 THE WITNESS: [15:36:02](Interpretation) What I know was that ...

7 THE INTERPRETER: [15:36:12] Can the witness be asked to repeat, please. We
8 didn't catch what he said.

9 PRESIDING JUDGE KORNER: [15:36:19] Sir, you're being asked to repeat what you
10 just said. The interpreters couldn't hear you. How did he die?

11 THE WITNESS: [15:36:30](Interpretation) He, Salah, he died naturally. When I
12 went to offer my condolences, they said that he passed away naturally. It was his
13 hour. But the incidents that happened in Rahad al-Berdi in -- after 2012, nothing
14 happened in Rahad al-Berdi until yesterday, the events of yesterday of the Rapid
15 Support Forces. But nothing happened in between.

16 MS WHITFORD: [15:37:12]

17 Q. [15:37:12] Mr Witness, you said that Salah died naturally. What do you mean
18 by that? Was he sick?

19 A. [15:37:26] Well, not necessarily. For example, I could die right now while I'm
20 talking to you because it's simply my hour, it's my time to pass away. You don't
21 have to be sick or to have something. It's what God has destined for him. I could
22 possibly die right now right here.

23 Q. [15:37:54] I'd like to show you some other documents now, Mr Witness.

24 If we could please have on the screen the item at tab 86, DAR-OTP-00006014.

25 Now, Mr Witness, this is a Facebook account in the name Salah Bush Kushayb. We

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1 see here a photo posted on 16 January 2020. Earlier you confirmed that that is a
2 photograph of Mr Abd-Al-Rahman's son Salah. We also see on this page one of his
3 friends it Anwar Ali Kushayb?

4 A. [15:38:56] I don't know Anwar Ali Kushayb. I don't know him.

5 Q. [15:39:03] Now, Mr Witness, the reason why Salah calls himself Salah Bush
6 Kushayb on this page is because he is the son of Ali Kushayb, correct?

7 MR EDWARDS: [15:39:15] Your Honour, your Honours' ruling was (Overlapping
8 speakers)

9 THE WITNESS: [15:39:22](Overlapping speakers)

10 MR EDWARDS: [14:17:22] Wait, please, Mr Witness.

11 PRESIDING JUDGE KORNER: [15:39:22] I don't think this is exactly --

12 MR EDWARDS: [15:39:27] No foundation has been laid.

13 PRESIDING JUDGE KORNER: [15:39:30] I mean, you've been laying the foundation
14 all the way through on the basis that he must have known, but I don't know that
15 showing him a photograph that he's never seen -- well, I mean, he recognises him, but
16 he hasn't seen the Facebook entry. You haven't established that. Indeed,
17 Mr Edwards established the opposite. So I mean on what basis are you suggesting
18 this makes it clear he knew that Ali Kushayb was --

19 MS WHITFORD: [15:40:03] Yes, Your Honour, the question wasn't well put, but in
20 terms of foundation, I believe I have --

21 PRESIDING JUDGE KORNER: [15:40:11] All he's done is recognise the photograph.

22 MS WHITFORD: [15:40:14] He's recognised the photograph, he's confirmed that he
23 knows that Mr Abd-Al-Rahman had a son called Salah --

24 PRESIDING JUDGE KORNER: [15:40:21] Well, I think the best you can do -- sorry to
25 cut this short. The best you can do is say: "Can you think of any reason, from what

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1 you know of Salah, and you obviously did know Salah, why he would be calling
2 himself Salah Bush Kushayb?" I think that's the highest you can go.

3 THE WITNESS: [15:40:44](Interpretation) Well, as far as I know, this person had
4 enemies and they could create this profile and publish it. I could do this, for
5 example, I could bring a picture that is not mine -- and this happens all over Facebook.
6 It's not authenticated.

7 PRESIDING JUDGE KORNER: [15:41:05] Okay. So your view is that it could be
8 fake?

9 THE WITNESS: [15:41:16](Interpretation) I don't know. Suddenly -- so, for
10 example, this guy, I never met him on Facebook. I have Facebook account, but I
11 never found that he had an account so that I can know. Because I never saw that.
12 I'm talking about documents.

13 PRESIDING JUDGE KORNER: [15:41:45] Ms Whitford, is there anything else?

14 MS WHITFORD: [15:41:55] I'll show one other account, your Honour. That's at tab
15 147, DAR-OTP-00006099.

16 Q. [15:42:23] Now, Mr Witness, this is an account in the name of Yasir Ali
17 Shabshabuni. Earlier you confirmed that this is a photograph of Yasser, the son of
18 Mr Abd-Al-Rahman.

19 A. [15:42:41] This is his son Yasser, yes.

20 Q. [15:42:44] And before I put my question, I'd like to show (Overlapping speakers)

21 A. [15:42:48] Yet, I wouldn't know if this was his profile, but I know him on -- like
22 in the street, his -- his name was Yasser Ali Mohamed Abd-Al-Rahman. I never
23 knew him by another name.

24 Q. [15:43:12] Okay. I'll take you to another part of this page. It's at tab 157,
25 DAR-OTP-00006100.

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1 Now, this is a photograph that was posted on the page in the name of Yasir Ali
2 Shabshabuni on 19 December 2021. With a comment, "As I speak about pride, I'll
3 start with my father" --

4 MR EDWARDS: [15:43:57] Your Honour, my learned friend hasn't even begun to
5 establish the slightest foundation to start to ask this witness about any pages in this
6 profile and certainly nothing to permit him to answer any questions about comments
7 made by somebody who purports to be Yasir Ali Shabshabuni.

8 PRESIDING JUDGE KORNER: [15:44:26] Well, I suppose you even skipped the first
9 hurdle, Ms Whitford, which is does he recognise the photograph in the middle.
10 Anyhow, I really -- I don't think that this witness -- I think Mr Edwards' objections are
11 justified on this one. You can't just ask him to look and comment on matters that he
12 hasn't seen before.

13 MS WHITFORD: [15:44:49] I'll move on, your Honour.

14 PRESIDING JUDGE KORNER: [15:44:49] All right.

15 Are you going to reexamine, Mr Edwards?

16 MR EDWARDS: [15:44:57] There might be one question.

17 PRESIDING JUDGE KORNER: [15:44:59] You've got 10 minutes, Ms Whitford.

18 MS WHITFORD: [15:45:02] Yes. We can remove that from the screen. Thank you.

19 Q. [15:45:09] I'd like to ask you now about something that you said in your
20 evidence-in-chief today when you were asked why you agreed to become a witness in
21 this case. And you said this, and this is at page 69 at line 24: "Because I was called
22 by people from [...] this Court who told me that I'm a witness. And then I went
23 outside and {ICR: (Redacted)}

24 (Redacted)

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- 18 MR EDWARDS: [15:47:56] Your Honour, not an objection, but could my learned
19 friend give some thought as to whether this should be in private session.
- 20 MS WHITFORD: [15:48:06] Yes, your Honour. I will follow up on that, so if we
21 could please go to private session. I apologise for that.
- 22 PRESIDING JUDGE KORNER: [15:48:15] Yes.
23 (Private session at 3.48 p.m.)
- 24 THE COURT OFFICER: [15:48:29] We're in private session, Madam President.
25 (Redacted)

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5 (Open session at 4.13 p.m.)

6 THE COURT OFFICER: [16:13:32] We're back in open session, Madam President.

7 PRESIDING JUDGE KORNER: [16:13:34] Yes, Mr Laucci.

8 MR LAUCCI: [16:13:35] Thank you, Madam President. Two small things about the
9 last point. I have sent an email to the Chamber.

10 PRESIDING JUDGE KORNER: [16:13:43] I gathered they have been moved into
11 separate accommodation, but that doesn't -- of course doesn't stop them --

12 MR LAUCCI: [16:13:48] Hallelujah. Second point, I don't know the details because
13 that meeting took place when I was in this courtroom, but I received an email from
14 VWU asking me to tell the Chamber that the first witness of next week, that should be
15 D-28, would -- could only start on Tuesday instead of Monday. Apparently there are
16 a lot of things on the schedule for the witnesses, including medical assessment and
17 various little things. I do not have the details. I will provide you with the full
18 picture tomorrow morning. But I wanted to convey already that, which means that
19 for next week we should have still D-28, D29, D-32 in the same order. I've seen -- no,
20 maybe D-32, because of that, would have to be --

21 PRESIDING JUDGE KORNER: [16:14:48] Well, if D-28 can't testify on the Monday,
22 can one of the other witnesses?

23 MR LAUCCI: [16:14:54] No, actually, what VWU says is that the first witness for
24 next witness should start on Monday. Because they are still -- I think one of
25 them -- we are public? Well, they did not arrive where they should testify from yet.

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1 PRESIDING JUDGE KORNER: [16:15:11] I thought you said a moment ago that they
2 should start testifying Tuesday.

3 MR LAUCCI: [16:15:16] Oh, I said Monday? No, Tuesday, sorry, my mistake.
4 The first witness for next week should start on Tuesday. I do not have more details,
5 but this is what I am told by email from VWU.

6 PRESIDING JUDGE KORNER: [16:15:29] And they are all relatively short witnesses
7 like this one, are they?

8 MR LAUCCI: [16:15:34] That's my expectation, yes.

9 PRESIDING JUDGE KORNER: [16:15:37] Okay. All right. Yes, because I have a
10 problem next Friday week. I mean, I can sit for part of it, but not all of it.
11 All right. Very well, 9:30 tomorrow morning then.

12 THE COURT USHER: [16:15:52] All rise.

13 (The hearing ends in open session at 4.15 p.m.)