

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
7 Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 3
9 Tuesday, 11 June 2024
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:55] All rise. The International Criminal
12 Court is now in session. Please be seated.
13 PRESIDING JUDGE KORNER: [9:33:12] Yes, good morning all.
14 Could we have the appearances, please. From the Defence. Sorry.
15 MR LAUCCI: [9:33:25] Good morning, Madam President. Good
16 morning, your Honours. Good morning, colleagues.
17 On the Defence side this morning, together with Mr Ali Muhammad Ali
18 Abd-Al-Rahman, our intern, Madam Claire Chauffard; legal assistants,
19 Nina Guilloux and Ahmad Issa; Counsel, Iain Edwards; and myself Cyril
20 Laucci.
21 MR NICHOLLS: [9:33:51] Good morning, Madam President. Good
22 morning, your Honours. Good morning to everyone. Julian Nicholls
23 with Laura Morris, Rachel Mazarella, Claire Sabatini, Alison Whitford
24 and Edward Jeremy. Thank you.
25 MR SHAH: [9:34:09] Yes. Good morning, Madam President. Good

1 morning, your Honours. Good morning, colleagues. The same
2 appearances as yesterday, including the attendance of the legal
3 representative by video link. Thank you.

4 PRESIDING JUDGE KORNER: [9:34:24] Any reason why we shouldn't
5 go straight on?

6 MR EDWARDS: [9:34:29] No, we can start straightaway.

7 PRESIDING JUDGE KORNER: [9:34:32] Right. Sir, good morning to
8 you, and thank you for attending.

9 THE WITNESS: [9:34:36](Interpretation) Good morning.

10 PRESIDING JUDGE KORNER: [9:34:37] And I gather you can hear and
11 understand me?

12 THE WITNESS: [9:34:41](Interpretation) Yes.

13 PRESIDING JUDGE KORNER: [9:34:44] In a moment, you will be asked
14 to make a solemn declaration to tell the truth. Before you do that, two
15 matters.

16 First of all, we will have a break at 11 o'clock for half an hour, but if you
17 need -- and then, if necessary, one again at lunchtime. But if you need a
18 break at any other time, just raise your hand and ask for one.

19 The second thing is this: As you know, everything you say has to be
20 interpreted, so please don't speak too quickly. If you don't understand a
21 question that's asked, just say so and the question will be repeated.

22 Is that clear?

23 THE WITNESS: [9:35:41](Interpretation) Yes, clear.

24 PRESIDING JUDGE KORNER: [9:35:46] In that case, sir, could you
25 repeat the words of the solemn declaration after the court officer.

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1 THE COURT OFFICER: [9:35:57] I solemnly declare.
2 THE WITNESS: [9:36:03](Interpretation) I solemnly declare.
3 THE COURT OFFICER: [9:36:06] That I will speak the truth.
4 THE WITNESS: [9:36:12](Interpretation) That I will speak the truth.
5 THE COURT OFFICER: [9:36:16] The whole truth and nothing but the
6 truth.
7 THE WITNESS: [9:36:21](Interpretation) The whole truth and nothing
8 but the truth.
9 THE COURT OFFICER: [9:36:28] Thank you, Witness. You are now
10 under oath.
11 WITNESS: DAR-D31-P-0005
12 (The witness speaks Arabic)
13 (The witness gives evidence via video link)
14 PRESIDING JUDGE KORNER: [9:36:32] Yes, Mr Edwards.
15 MR EDWARDS: [9:36:34] Thank you, your Honour.
16 QUESTIONED BY MR EDWARDS:
17 Q. [9:36:35] Good morning, Mr Witness.
18 A. [9:36:41] Good morning.
19 Q. [9:36:45] We've met a couple of times already. But just to remind
20 you, my name is Iain Edwards. I'm one of the lawyers for the Defence of
21 Mr Abd-Al-Rahman, and I'll be asking you questions for a part of this
22 morning. Okay?
23 MR EDWARDS: [9:37:07] Your Honours, there's a short period in
24 private session in which some identifying information would otherwise
25 be made public.

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1 PRESIDING JUDGE KORNER: [9:37:17] Yes, private session, please.

2 (Private session at 9.37 a.m.)

3 THE COURT OFFICER: [9:37:24] We are in private session, Madam

4 President.

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24 (Open session at 9.46 a.m.)

25 THE COURT OFFICER: [9:46:16] We are back in open session, Madam

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1 President.

2 MR EDWARDS: [9:46:28]

3 Q. [9:46:28] Now, Mr Witness, we're in public session -- in open session.

4 That means that members of the public can hear your answers, so try not
5 to say anything that could reveal your identity. Okay?

6 Did you hear about a rebel attack on the airport in Al Fasher in 2003?

7 A. [9:46:57] Yes, I heard about that.

8 Q. [9:47:04] Did you hear about rebel violence in Darfur that occurred
9 after that attack on the airport?

10 A. [9:47:15] Yes, I heard about that.

11 Q. [9:47:29] Were you aware that there was a government
12 counter-insurgency operation against the rebels?

13 A. [9:47:45] Yes, I knew that.

14 Q. [9:47:49] Are you aware that in the course of that counter-insurgency
15 towns and villages in the areas of Wadi Salih and Mukjar were attacked?

16 A. [9:48:09] No, not at all.

17 Q. [9:48:13] Now, again to be very clear, I'm not asking you if you have
18 any information, any detailed information about what happened in Wadi
19 Salih and Mukjar, but were you -- did you ever learn of the fact of those
20 operations by the Government of Sudan?

21 A. [9:48:41] Yes. Yes. I knew about what happened -- what the
22 Government of Sudan did through the radio and television.

23 Q. [9:48:51] Thank you. We'll come on to radio and television a bit
24 later.

25 What's the main town -- what's the capital, if you like, of the Ta'aisha tribe

1 in Darfur?

2 A. [9:49:11] It's the city of Rahad Al-Berdi.

3 Q. [9:49:14] What's the name of the current nazir of the Ta'aisha?

4 A. [9:49:19] Mahmoud Abd-Al-Rahman Bishara.

5 Q. [9:49:29] And the name of his predecessor nazir?

6 A. [9:49:36] Abd Al-Rahman Bishara Ali.

7 Q. [9:49:47] Is the current nazir the son of the former nazir?

8 A. [9:49:57] Yes.

9 Q. [9:50:00] The Court has heard of positions in the Ta'aisha tribe in
10 particular, but in Sudanese society generally, the positions of *agid* and of
11 *agid al-ogada*. I want to ask you about those for a moment.

12 I'm going to start by asking you about the position of *agid*. Not *agid*
13 *al-ogada* but *agid*. Do you follow?

14 A. [9:50:37] The *agid* is a civil administration position in the area of the
15 *dar* of the Ta'aisha.

16 Q. [9:51:03] What qualities does a person need to have to become an
17 *agid*?

18 A. [9:51:11] This person has to be accepted by all the people. He has to
19 have a willingness to work in public service.

20 Q. [9:51:30] And give us a bit of detail, if you would, please, about the
21 sort of public service that an *agid* engages in.

22 A. [9:51:44] The *agid* mobilises people, whether for protection or to put
23 out the fire that erupted or to stop the theft of livestock. So he works
24 also in coordination with *umdahs* and *nazirs*.

25 Q. [9:52:08] Does it ever happen in Rahad Al-Berdi that people enter

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1 into a conflict, that there's a dispute between families or between
2 individuals?

3 A. [9:52:31] The question is not clear. What do you mean by
4 "individuals"?

5 Q. [9:52:39] Well, an individual means a person, right? A person. So
6 do families or individual people ever get into disputes and conflict in
7 Rahad Al-Berdi?

8 A. [9:52:54] Not frequently.

9 Q. [9:53:04] What role, if any, does an *agid* have in terms of dealing with
10 these infrequent conflicts?

11 A. [9:53:22] He calms the situation and he tries to reconcile or to close --
12 or to make the points of view closer between the people who are in the
13 conflict.

14 Q. [9:53:36] And is there any one *agid* in the Ta'aisha tribe in Rahad
15 Al-Berdi or more than one?

16 A. [9:53:51] More than one.

17 Q. [9:53:57] All right. So much for *agids*. I now want to ask you about
18 the role of the *agid al-ogada*. Okay? What's the relationship between an
19 *agid* and an *agid al-ogada*?

20 A. [9:54:12] *Agid al-ogada* is the chair -- is the one in charge of the *agids*,
21 and he mobilises them or calls them for a meeting when there's a need for
22 it.

23 Q. [9:54:30] How is an *agid al-ogada* chosen?

24 A. [9:54:37] The *agids* meet and they choose which person is the most
25 respected and most accepted among them, and then they appoint him as

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1 *agid* through the civil administration.

2 Q. [9:54:59] So you've just mentioned the civil administration. Is there
3 any connection between the work of an *agid al-ogada* and central
4 government?

5 A. [9:55:10] No, there is no work there or there is no link.

6 PRESIDING JUDGE KORNER: [9:55:27] Sorry, can you -- oh, are you
7 going to go on? Ask him if he means --

8 MR EDWARDS: [9:55:32] I was, but I --

9 PRESIDING JUDGE KORNER: [9:55:33] No, you go on. No.

10 MR EDWARDS: [9:55:35] I was just going to ask.

11 Q. [9:55:37] I was just going to ask: Who does an *agid al-ogada* receive
12 instruction from?

13 A. [9:55:45] He receives them from the nazir of the tribe.

14 PRESIDING JUDGE KORNER: [9:55:53] Still not clear. What do you
15 mean by appointment through a civil administration? That's the slightly
16 odd phrase.

17 MR EDWARDS: [9:56:02] Yes.

18 Q. [9:56:03] You have heard her Honour's question, sir. Just -- yeah, if
19 you could answer it.

20 A. [9:56:13] I mean that *agid al-ogada* is appointed through the civil
21 administration. It's only a civil job. It has nothing to do with the
22 government. It's only local administration.

23 PRESIDING JUDGE KORNER: [9:56:32] What do you mean by a "civil
24 administration"?

25 THE WITNESS: [9:56:41](Interpretation) I mean by this the *nazir* and the

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1 *umdahs*. The *nazir* and *umdahs* of the tribe.

2 MR EDWARDS: [9:56:49].

3 Q. [9:56:53] Okay. You've used the word "civil." Does an *agid* or,
4 indeed, an *agid al-ogada* have any military role to play within a tribe?

5 A. [9:57:11] No, they do not have any military role in the tribe.

6 Q. [9:57:18] Now, if you can cast your mind back to 2003-2004, are you
7 able to tell us the name or names of any *agid al-ogada* in Rahad Al-Berdi at
8 that time?

9 A. [9:57:34] It has been a long time. I'm unable to give you such names.

10 Q. [9:57:51] Yes, I appreciate it's a long time ago. Let me see if I can
11 help you. If the rebel attack on the airport occurred in 2003 and the
12 government's counter-insurgency started and was, in some ways, at its
13 height in 2003-2004, if you can think back to that time, does that assist you
14 in jogging your memory as to who the *agid al-ogada* in Rahad Al-Berdi
15 was?

16 A. [9:58:35] My memory is not helping me to remember who the *agid*
17 *al-ogada* was back then.

18 Q. [9:58:47] All right. Fair enough. It was a long time ago. Thank
19 you for being willing to try.

20 Now, earlier in private session you told us that you know Ali
21 Muhammad Ali Abd-Al-Rahman.

22 A. [9:59:11] Yes.

23 Q. [9:59:14] I think I know the answer to this, but just tell us, where were
24 you living in 2003-2004?

25 A. [9:59:23] I lived in Rahad Al-Berdi.

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1 Q. [9:59:31] Have you any idea where Mr Abd-AI-Rahman was living in
2 2003-2004?

3 A. [9:59:48] I don't know.

4 Q. [9:59:57] When Mr Abd-AI-Rahman was last in Rahad AI-Berdi, what
5 was his job? What was his profession?

6 A. [10:00:15] He was in the CRF.

7 Q. [10:00:19] Do you know since when he was in the CRF?

8 A. [10:00:29] I cannot recall the date exactly.

9 Q. [10:00:36] All right. Mr Witness, please understand I'm not asking
10 you to give us the exact date on which Mr Abd-AI-Rahman joined the
11 CRF, but if you can help their Honours in terms of roughly when he
12 started working for the CRF. Do you think you can do that? I don't
13 want an exact date, that would be an unreasonable thing for me to ask
14 you.

15 A. [10:01:09] I met him in 2011 when he was in the CRF. This is when I
16 met him.

17 PRESIDING JUDGE KORNER: [10:01:22] I just wanted to ask about that.

18 {ICR: (Redacted)

19 (Redacted)}, but had you never

20 met him before ever?

21 THE WITNESS: [10:01:43](Interpretation) No, never. I never met him.

22 MR EDWARDS: [10:01:54]

23 Q. [10:01:56] And from 2011 or thereabouts, how close would you say
24 your relationship became?

25 A. [10:02:14] We were joined in sheep herding. We both had some

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1 cattle, so we both used to work on that.

2 Q. [10:02:32] And as you got to know each other, did he ever tell you
3 about other work he had done in the past in his history other than the
4 CRF and other than sheep herding and cattle herding?

5 A. [10:02:57] No, he never did.

6 Q. [10:03:09] And as far as you know, did he have any other form of
7 income, any other source of income other than the CRF and livestock?

8 A. [10:03:34] He has -- he has a pharmacy inside Rahad Al-Berdi.

9 Q. [10:03:40] Do you know how long he had been a pharmacist for?

10 A. [10:03:58] He has one pharmacy inside Rahad Al-Berdi.

11 Q. [10:04:08] Yes. Do you know how long -- I'm asking for a period of
12 time here in your answer. Do you know how long he had been a
13 pharmacist?

14 A. [10:04:25] Repeat the question, please.

15 Q. [10:04:33] Listen carefully: For how long had he been a pharmacist?

16 A. [10:04:46] If you mean inside Rahad Al-Berdi, then since he came to
17 Rahad Al-Berdi, he has had a pharmacy. This is how long he has had a
18 pharmacy.

19 Q. [10:05:03] Do you know if that was his first experience of owning a
20 pharmacy?

21 A. [10:05:14] Inside Rahad Al-Berdi? Yes, it was his first time.

22 Q. [10:05:21] Do you know if it was his first experience of owning a
23 pharmacy anywhere in the world?

24 A. [10:05:32] He has the right to open a pharmacy as a medical therapist
25 or as a medical practitioner. He has the right to open a pharmacy

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1 anywhere he wishes.

2 Q. [10:05:53] So we have established he had a right, but do you know if
3 he ever exercised that right to open a pharmacy other than in Rahad
4 Al-Berdi?

5 A. [10:06:03] I heard but never verified that he had a pharmacy
6 elsewhere.

7 Q. [10:06:20] And can you recall where that other pharmacy had been?

8 A. [10:06:35] In Wadi Salih.

9 Q. [10:06:39] Now, Wadi Salih is quite a big area. Can you be a bit
10 more precise in terms of where you had heard he had a pharmacy before?

11 A. [10:06:54] No, because there are several cities in Wadi Salih which I
12 don't know, but I heard that Abd-Al-Rahman owned a pharmacy in Wadi
13 Salih.

14 Q. [10:07:06] And who did you hear that from?

15 A. [10:07:15] From the tribe inside Rahad Al-Berdi, from our clan.

16 Q. [10:07:21] Did Mr Abd-Al-Rahman ever tell you himself about
17 owning a pharmacy in Wadi Salih?

18 A. [10:07:36] He did not.

19 Q. [10:07:41] All right. Have you ever been to Wadi Salih in your life?

20 A. [10:07:49] No, never.

21 Q. [10:07:52] Have you ever been to Mukjar in your life?

22 A. [10:07:58] No.

23 Q. [10:08:04] Now, you told us a little bit about your common interests
24 in sheep and cattle herding, and you have also told us that he was a
25 medical practitioner. How do you know that he was or had been a

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1 medical practitioner?

2 A. [10:08:42] I came to know this when I was the chairman of the
3 hospital. He would help me by coming to the hospital and by helping
4 out with the patients.

5 Q. [10:09:01] I'm going to come back to that in just a moment.

6 Did Ali Muhammad Ali Abd-Al-Rahman have any formal position of
7 responsibility in the Ta'aisha tribe?

8 A. [10:09:20] No.

9 Q. [10:09:38] So to be very clear, was he ever an *agid* or an *agid al-ogada*
10 in the Ta'aisha tribe?

11 A. [10:09:54] Ali never held the position of *agid al-ogada* since this is a
12 popular position while he was, in fact, a government official.

13 Q. [10:10:09] Just explain to us what you mean by a "popular position" if
14 you would, please.

15 A. [10:10:20] It was a position that the whole community would appoint
16 or form. It was not to be appointed by the government.

17 Q. [10:10:37] And your answer a moment ago related to the position of
18 *agid al-ogada*. I want to now ask you the same question about the
19 position of *agid*. Was he ever an *agid* in the Ta'aisha tribe?

20 A. [10:10:55] He did not.

21 Q. [10:11:03] And again, I want to be very clear. You say he was, in fact,
22 a government official. What position was he holding as a government
23 official? What do you have in mind when you say that?

24 A. [10:11:21] I meant that he was a soldier in the CRF.

25 Q. [10:11:35] Now, if he couldn't be an *agid* or an *agid al-ogada* whilst he

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1 was in the CRF, do you know if he was ever an *agid* or an *agid al-ogada* in
2 the Ta'aisha tribe before he became a soldier in the CRF?

3 Do you understand the question, first?

4 A. [10:12:05] Repeat it, again.

5 Q. [10:12:07] Yeah. Now, you've indicated that one can't be an *agid* or,
6 indeed, an *agid al-ogada* and be in the CRF. Do you know if he was ever
7 an *agid* or an *agid al-ogada* before he became a soldier in the CRF or an
8 officer in the CRF?

9 A. [10:12:32] No, he never held the position of an *agid al-ogada* before
10 that.

11 Q. [10:12:39] Okay.

12 MR EDWARDS: [10:12:41] This doesn't need to be translated. His
13 answer -- well, there was some precision that was required in terms of his
14 answer.

15 PRESIDING JUDGE KORNER: [10:12:52] Do you mean the translation
16 was off?

17 MR EDWARDS: [10:12:54] No, no.

18 PRESIDING JUDGE KORNER: [10:12:55] Well, in that case can we just
19 ask him.

20 You say he's a soldier. What actual position did he hold in the CRF
21 between 2011 and 2019?

22 THE WITNESS: [10:13:10](Interpretation) He was a *musaid*.

23 MR EDWARDS: [10:13:23]

24 Q. [10:13:24] All right. Now, when you're in the CRF, is that an
25 organisation that is closer to a police force, or is it closer to an armed force,

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1 like in the military?

2 A. [10:13:45] Closer to the police forces.

3 Q. [10:13:51] Because a moment ago you said he's a soldier. Well, that's
4 how it was translated anyway, a "soldier." Is that the right word to use?

5 A. [10:14:06] Anyone working in the police or in the army is called a
6 soldier. And then he goes up in the hierarchy, he goes up in the ranks
7 according to his work.

8 Q. [10:14:24] Okay. All right. So have I got this right: In the Arabic
9 language, there isn't any distinction between a soldier who's in the police
10 or a soldier in the army? Have I got that right?

11 A. [10:14:45] Yes, correct.

12 Q. [10:14:48] And until when, as far as you know, was Mr
13 Abd-Al-Rahman working in the CRF?

14 A. [10:15:16] I cannot recall specifically, but since I've known him in
15 2011, he was in the CRF.

16 Q. [10:15:29] Now, you understand that Mr Abd-Al-Rahman is no
17 longer in Rahad Al-Berdi; right?

18 A. [10:15:41] Yes, I do.

19 Q. [10:15:42] You know that there was a time when he was no longer in
20 Darfur and he travelled or was brought to Europe.

21 A. [10:15:56] Yes, I do.

22 Q. [10:15:58] Was he working still for the CRF at the time he left Darfur
23 to come to Europe?

24 A. [10:16:13] I cannot confirm that.

25 Q. [10:16:21] So from having spent time with Mr Abd-Al-Rahman in

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1 Rahad Al-Berdi, getting to know him, can you -- can you tell the Court
2 what kind of a man he was? Can you tell us something about his
3 character?

4 A. [10:16:48] Which court are you referring to?

5 Q. [10:17:01] No, never mind about the court. I'm going to ask you the
6 question again. Just focus -- sorry, no. Fair enough.

7 The court I'm referring to is the Court that I'm in at the moment,
8 specifically, their Honours, who are sitting to my right. Tell us all what
9 kind of man Mr Abd-Al-Rahman was.

10 A. [10:17:30] Very well. Ali Abd-Al-Rahman, since I've known him, he
11 is a brave person, helping the vulnerable and providing aid for those who
12 have suffered. He helps the orphans and feeds them, provides them
13 with clothing as well. He has had his own initiatives in reforming the
14 community and also maintaining cleanliness. He helps people. He is a
15 humanitarian person. He has a lot of traits which I cannot mention all of
16 them. These are just the main points in his personality or the main traits
17 of his personality.

18 Q. [10:18:20] Now, the population of Rahad Al-Berdi, is it exclusively
19 populated by members of the Ta'aisha tribe?

20 A. [10:18:33] Dar Ta'aisha, whose capital is Rahad Al-Berdi, has many
21 tribes, and each tribe has umdah, and they all fall under the umbrella of
22 *dar* Ta'aisha. Many tribes.

23 Q. [10:18:57] Did you ever hear Mr Abd-Al-Rahman say anything or do
24 anything that discriminated between the different tribes in Rahad
25 Al-Berdi?

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1 A. [10:19:10] No, I never heard about that.

2 Q. [10:19:26] In fact, my question was very much directed towards the
3 tribe in Rahad Al-Berdi. Let me put the question in a different way.
4 Did you ever hear him say anything discriminatory? Did you ever see
5 him do anything that discriminated between people of different tribes in
6 any way at all? Not just in Rahad Al-Berdi.

7 A. [10:19:57] No, I never heard that.

8 Q. [10:20:03] And when thinking about Rahad Al-Berdi as a place in
9 which different tribes lived, what can you tell us about the way he was
10 seen by the population of Rahad Al-Berdi, generally?

11 A. [10:20:27] He was seen as the guardian of safety, as the provider of
12 convenience or comfort between people.

13 Q. [10:20:50] Was Mr Abd-Al-Rahman known by any nickname?

14 A. [10:20:57] He was nicknamed after his eldest son.

15 Q. [10:21:11] Could you just tell us what that nickname was, please.

16 A. [10:21:17] His nickname was Abu Nasser.

17 Q. [10:21:22] Did you ever hear him refer to himself as Ali Kushayb?

18 A. [10:21:33] No, never.

19 Q. [10:21:39] Did you ever hear anyone call him Ali Kushayb?

20 A. [10:21:45] No, I never heard of that.

21 Q. [10:21:52] Did you ever hear him being referred to as Ali Kushayb?

22 A. [10:22:01] No, I never heard anyone call him by that name.

23 Q. [10:22:11] Did you ever hear the name Ali Kushayb in any context?

24 A. [10:22:20] I never heard of it anywhere.

25 Q. [10:22:30] Do you know what Kushayb means, what the word

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1 Kushayb actually means?

2 A. [10:22:44] No, I don't.

3 Q. [10:22:49] When did you first hear that Mr Ali Muhammad Ali
4 Abd-Al-Rahman came to Europe to be before this Court?

5 A. [10:23:27] The first time I heard of that was on the radio when I was
6 listening to the news.

7 Q. [10:23:41] And what is it that you heard?

8 A. [10:23:49] I heard that Ali Muhammad Ali Abd-Al-Rahman
9 surrendered himself voluntarily to the Court.

10 Q. [10:24:00] What radio station were you listening to when you heard
11 that?

12 A. [10:24:17] I was listening to Omdurman radio channel.

13 Q. [10:24:25] Had you ever heard on the radio that the Court was
14 interested in anyone else from Sudan, specifically was interested in
15 arresting anyone else from Sudan?

16 A. [10:24:49] Yes, I did.

17 Q. [10:24:54] Who did you hear the Court was interested in arresting
18 from Sudan?

19 A. [10:25:00] The list was long, but I could only remember two: Omar
20 Al-Bashir and Ahmad Harun.

21 Q. [10:25:15] Did you ever take it upon yourself to try and find out what
22 Omar Al-Bashir or Ahmad Harun were accused of having done by this
23 Court?

24 A. [10:25:40] No, I didn't.

25 PRESIDING JUDGE KORNER: [10:25:55] Sorry, I'm not sure we've had

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1 a date.

2 Can you tell us when you heard that Bashir and Harun had actually been
3 wanted by the Court?

4 THE WITNESS: [10:26:11](Interpretation) I heard that on the radio, but I
5 can't tell the date exactly. I just heard the list of the names wanted --
6 wanted.

7 PRESIDING JUDGE KORNER: [10:26:25] Right. Was that around the
8 time of the surrender or before that? A long time before that?

9 THE WITNESS: [10:26:37](Interpretation) Before that.

10 PRESIDING JUDGE KORNER: [10:26:41] All right. Thank you.

11 MR EDWARDS: [10:26:44]

12 Q. [10:26:57] And, again, I want to be very clear, when did you first
13 learn that the Court had an interest in arresting your friend, Mr
14 Abd-Al-Rahman?

15 A. [10:27:12] It's been so long, and my memory is not as sharp as that --
16 as it used to be, so I wouldn't be able to recall.

17 Q. [10:27:46] Well, when you first learned that the Court had an interest
18 in arresting your friend, Mr Abd-Al-Rahman, was that before or after his
19 surrender?

20 A. [10:28:06] After.

21 Q. [10:28:23] Did you ever read any news articles about the surrender of
22 Mr Abd-Al-Rahman to the Court?

23 A. [10:28:46] I didn't read the news, but I heard the news.

24 Q. [10:28:57] On the radio; is that right?

25 A. [10:29:03] Yes.

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1 Q. [10:29:06] My second-from-last topic I want to ask you about relates
2 to the relationship between the Salamat and the Ta'aisha tribes in Rahad
3 Al-Berdi. Okay?

4 About 10 years ago, do you remember that there was a conflict between
5 these two tribes in Rahad Al-Berdi?

6 A. [10:29:51] Repeat the question.

7 Q. [10:29:54] About 10 years ago, was there a conflict between the
8 Salamat tribe and the Ta'aisha tribe in Rahad Al-Berdi?

9 A. [10:30:06] Yes, there was.

10 Q. [10:30:09] Did that result in a number of Salamat families leaving
11 Rahad Al-Berdi for Nyala?

12 A. [10:30:18] Yes.

13 Q. [10:30:26] Can you tell the Judges a little bit about the roots of this
14 conflict, if you know. What was the original cause of this conflict, if you
15 know?

16 A. [10:30:43] The first reason of the conflict goes back to 1979, and it
17 started with a conflict between two persons, and then it extended into a
18 revenge, and that led to the conflict of 2013.

19 Q. [10:31:09] All right. Well, we're going to unpack that a little bit.
20 The two persons that the conflict started with, what tribe or tribes did
21 these two persons belong to?

22 A. [10:31:23] One of them from the Ta'aisha and the other one from the
23 Salamat.

24 Q. [10:31:32] And did that conflict between these two persons become
25 violent?

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1 A. [10:31:40] Yes, it became violent until one of them killed the other.

2 Q. [10:31:50] You said a moment ago it'd extended into revenge or into a
3 revenge. Can you explain a little bit what you mean by that? One man
4 kills another man from different tribes. What happened thereafter?

5 A. [10:32:23] After that, the family of the deceased, of the killed person,
6 attacked the family of the perpetrator, and they killed ten of them. And
7 then, the war of 1979 started. Afterwards, reconciliation took place in
8 1981. Afterwards, another revenge happened from the Salamat against
9 the Ta'aisha, and this is how the problem of 2013 started.

10 Q. [10:33:05] Since 2013, has there been any further violence between the
11 Salamat and the Ta'aisha as a group?

12 A. [10:33:17] Yes, there is a conflict.

13 PRESIDING JUDGE KORNER: [10:33:27] Still going on at the moment?

14 THE WITNESS: [10:33:38](Interpretation) It stopped. Now there is no
15 conflict.

16 MR EDWARDS: [10:33:45]

17 Q. [10:33:45] When did the conflict stop?

18 A. [10:33:56] I cannot remember the exact timing, but it has been a while.
19 It has been a long while.

20 Q. [10:34:11] When you say "a long while," just help us a bit. Are you
21 talking about many months or many years or many days? Can you
22 assist us?

23 A. [10:34:23] No, I'm talking about years.

24 Q. [10:34:28] So thinking back to the conflict in 2013. What steps were
25 taken to try and resolve the conflict at that time?

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1 A. [10:34:55] The neighbouring tribes intervened, and they started
2 working on the solution with the government back then.

3 Q. [10:35:09] Did Mr Abd-Al-Rahman play any role at all in working on
4 a solution in 2013?

5 A. [10:35:21] Yes, he played a role in the solution as one of the members
6 of the security committee of the government.

7 Q. [10:35:38] And the Court has heard evidence that a number of -- well,
8 you'd -- in fact, you accepted it a moment ago. Did a number of Salamat
9 families leave for Nyala?

10 A. [10:36:04] Yes, they left to Nyala.

11 Q. [10:36:13] And were they forced to leave or did they leave
12 voluntarily?

13 A. [10:36:24] The local government suggested that and they agreed.

14 Q. [10:36:33] Have you ever read any media reports of this conflict
15 between the Salamat and the Ta'aisha in 2013?

16 A. [10:36:52] We are in a remote area where there are no newspapers, so
17 I did not read that.

18 Q. [10:37:00] Did you read any news reports on the internet, for example,
19 relating to this conflict between the Salamat and the Ta'aisha?

20 A. [10:37:13] I do not have any device to listen to news or to read news
21 from the internet.

22 Q. [10:37:20] Did you hear any radio reports at the time about the
23 conflict between the Salamat and the Ta'aisha?

24 A. [10:37:29] I cannot confirm that.

25 Q. [10:37:40] What do you mean by "I can't confirm"?

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1 A. [10:37:48] I did not hear that. And since I'm from that area, I know
2 what happened, so I did not need to look for news to know what was
3 happening.

4 MR EDWARDS: [10:38:04] I'm now very much towards the end of my
5 questions, your Honour. But there's one matter I want to go back to, and
6 that requires, I'm afraid, going into private session for a short time.

7 PRESIDING JUDGE KORNER: [10:38:21] Yes, private session.

8 (Private session at 10.38 a.m.)

9 THE COURT OFFICER: [10:38:25] We are in private session, Madam
10 President.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Open session at 10.41 a.m.)

16 THE COURT OFFICER: [10:41:26] We are back in open session, Madam
17 President.

18 PRESIDING JUDGE KORNER: [10:41:40] Mr Shah, questions?

19 MR SHAH: [10:41:43] No questions, Madam President. Thank you.

20 PRESIDING JUDGE KORNER: [10:41:46] Yes, Ms Morris.

21 QUESTIONED BY MS MORRIS:

22 Q. [10:42:15] Good morning, Mr Witness. We met briefly yesterday.

23 My name is Laura Morris, and I will be asking you some questions on
24 behalf of the Prosecution.

25 Can you see and hear me okay?

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1 A. [10:42:29] Yes, I can see you and hear you.

2 Q. [10:42:34] Mr Witness, your first interview with the Defence was in
3 February 2023; correct?

4 A. [10:42:46] Yes, correct.

5 Q. [10:42:50] And this was your first contact with the Defence; yes?

6 A. [10:42:56] Yes.

7 THE INTERPRETER: [10:43:02] Message from the interpreter: There
8 was a cut in the
9 connection. The second word was not heard.

10 MS MORRIS: [10:43:12]

11 Q. [10:43:12] Mr Witness, could you please repeat your answer.

12 A. [10:43:16] I met them through the phone.

13 Q. [10:43:23] Thank you. And you understood the importance of
14 telling the truth; correct?

15 A. [10:43:30] Yes.

16 Q. [10:43:33] And you understood the importance of being accurate?

17 A. [10:43:42] Yes.

18 Q. [10:43:44] And you knew this interview was being taken for
19 proceedings at the International Criminal Court; correct?

20 A. [10:43:56] Yes.

21 Q. [10:44:01] And you met the Defence a week ago for what is called a
22 witness preparation session; correct?

23 A. [10:44:10] Yes.

24 Q. [10:44:16] And in that preparation session, the Defence explained to
25 you the importance of telling the truth; correct?

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1 A. [10:44:26] Yes.

2 Q. [10:44:30] The Defence also explained the importance of being
3 accurate; correct?

4 A. [10:44:37] Yes.

5 Q. [10:44:42] And the Defence read back to you the notes from that first
6 interview, didn't they?

7 A. [10:44:51] Yes.

8 Q. [10:44:58] And you had the opportunity to make corrections or
9 clarifications; correct?

10 A. [10:45:06] Yes.

11 Q. [10:45:11] And you agreed with the contents from that first interview;
12 correct?

13 A. [10:45:19] Yes.

14 Q. [10:45:25] And you stated that you had nothing to correct or clarify;
15 correct?

16 MR EDWARDS: [10:45:33] That's not true, your Honour. There were
17 no corrections, but there were clarifications.

18 THE WITNESS: [10:45:41](No interpretation).

19 MR EDWARDS: [10:45:47] If my learned friend looks at the wording of
20 paragraph 6, it's pretty clear.

21 PRESIDING JUDGE KORNER: [10:46:00] It actually says he agreed with
22 the contents and didn't have any corrections to make.

23 MR EDWARDS: [10:46:05] Correct, no corrections, but there were
24 clarifications to make. The question was said -- the question was put on
25 the basis that there were no corrections and no clarifications to make.

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1 It's only half correct, that question.

2 PRESIDING JUDGE KORNER: [10:46:17] Oh, okay. Yeah, well.

3 All right. Ms Morris, then?

4 MS MORRIS: [10:46:23] Your Honours, I'll need to move into private
5 session briefly for a few questions, please.

6 PRESIDING JUDGE KORNER: [10:46:33] Yes.

7 (Private session at 10.46 a.m.)

8 THE COURT OFFICER: [10:46:36] We are in private session, Madam
9 President.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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21 (Redacted)

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23 (Redacted)

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25 (Redacted)

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1 (Redacted)

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9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Open session at 10.49 a.m.)

13 THE COURT OFFICER: [10:49:09] We are back in open session, Madam
14 President.

15 MS MORRIS: [10:49:21]

16 Q. [10:49:22] Mr Witness, in your first interview, you said the accused
17 was one of the Ta'aisha tribe representatives; correct?

18 A. [10:49:31] Yes.

19 Q. [10:49:37] And today you explained that the accused was also one of
20 the members of the security committee; correct?

21 A. [10:49:46] Yes.

22 Q. [10:49:52] Today you also referred to the accused as being the
23 guardian of safety; correct?

24 A. [10:50:01] Yes.

25 Q. [10:50:06] So it's accurate to say that the accused was a respected

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1 figure in Rahad Al-Berdi; correct?

2 A. [10:50:15] Yes.

3 Q. [10:50:20] And the accused was also considered a notable among the

4 Ta'aisha; correct?

5 A. [10:50:29] Yes.

6 Q. [10:50:35] Mr Witness, the CRF was also known as Abu Taira;

7 correct?

8 A. [10:50:47] Yes.

9 Q. [10:50:50] And today in your -- sorry, in your preparation session,

10 you provided the Defence with some new information about your

11 relationship with the accused. You say that you got to know each other

12 because you shared an interest in raising cattle; correct?

13 A. [10:51:16] Yes.

14 Q. [10:51:20] Are you familiar with a cattle merchant named Ali Osman

15 Obeid from the Salamat tribe?

16 A. [10:51:36] I don't know him.

17 Q. [10:51:39] Mr Obeid used to live in Al-Daleiba village to the east of

18 Rahad Al-Berdi. Does that refresh for you?

19 A. [10:51:55] I know the name of the area, but I don't know the person.

20 Q. [10:52:05] Thank you. How long did the accused assist you where

21 you were volunteering? Since we're in public session, I won't name the

22 location.

23 A. [10:52:17] Several times, {ICR: (Redacted)}

24 (Redacted)}.

25 Q. [10:52:34] Thank you, Mr Witness. And how many months or years

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1 was the accused assisting you in these various roles?

2 A. [10:52:55] For several years when {ICR: (Redacted)}.

3 Q. [10:53:01] Thank you. And you never went to Wadi Salih in
4 2003-2004; correct?

5 A. [10:53:12] Correct.

6 Q. [10:53:18] And today, you told the Court you don't know for sure
7 where the accused was in 2003-2004; correct?

8 A. [10:53:32] Yes.

9 Q. [10:53:39] Today, you told the Defence that you knew about the
10 counter-insurgency in Wadi Salih and Mukjar. In your preparation
11 session, you indicated that you had heard about attacks on Kodoom and
12 Bindisi; correct?

13 A. [10:54:06] Yes.

14 Q. [10:54:08] I'd just correct myself. It's in the summary, not the log
15 note. And you also heard about attacks on Tiro and Arawala; correct?

16 A. [10:54:26] No, that's not correct.

17 Q. [10:54:37] You heard about these attacks on the news; correct?

18 A. [10:54:43] Yes.

19 Q. [10:54:49] You heard about the attacks on Kodoom and Bindisi on the
20 news; correct?

21 A. [10:54:59] Yes.

22 Q. [10:55:02] And in your summary, it indicates you had also heard
23 about attacks on Tiro and Arawala; that is not correct?

24 A. [10:55:15] That was not news that I heard in the context that you
25 mentioned.

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1 Q. [10:55:32] I'll just pull up your summary from February 2023, at
2 paragraph 6. It says:
3 "D-0005 heard about the counter-insurgency and heard about the attacks
4 on Tiro, Arawalla, Bindisi and Kodoom through the media."

5 Does that assist you, Mr Witness?

6 A. [10:56:10] Yes.

7 PRESIDING JUDGE KORNER: [10:56:17] I know that's the standard
8 advocacy phrase, but I'm not sure that he understood what you mean by
9 that.

10 MS MORRIS: [10:56:27]

11 Q. [10:56:29] So you did tell the Defence about hearing about attacks on
12 these various locations - Kodoom, Bindisi, Tiro and Arawala; correct?

13 A. [10:56:43] Sometimes the way you -- you pronounce things is
14 different. I did not say to the Defence all these names of the areas that
15 you mention, and sometimes the way people pronounce words is
16 different.

17 PRESIDING JUDGE KORNER: [10:57:11] So you never -- just so that
18 we're all clear. Whatever has been recorded as you having said
19 something, you never told the Defence that you knew about the attacks
20 on Tiro and Arawala?

21 THE WITNESS: [10:57:34](Interpretation) I'm unable to remember this.

22 PRESIDING JUDGE KORNER: [10:57:40] That's slightly different, sir,
23 but never mind.

24 MS MORRIS: [10:57:46]

25 Q. [10:57:50] Had you heard reports about large numbers of men being

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1 murdered outside of Mukjar?

2 A. [10:58:03] Never. I've never heard that.

3 Q. [10:58:07] How about over 100 men being murdered near the town of
4 Deleig? Have you heard about that?

5 A. [10:58:21] Never. I've never heard that.

6 PRESIDING JUDGE KORNER: [10:58:26] So none of those crimes,
7 which we have been told were notorious, were ever discussed on any
8 radio programme that you listened to?

9 THE WITNESS: [10:58:51](Interpretation) These crimes were not
10 discussed on the radio; therefore, I did not hear about them.

11 PRESIDING JUDGE KORNER: [10:58:57] Okay. Thank you.

12 MS MORRIS: [10:59:06] No, Madam President, I'm actually switching to
13 a different topic, so perhaps it's --

14 PRESIDING JUDGE KORNER: [10:59:01] (Microphone not activated).

15 MS. MORRIS: [10:59:03] Okay. Thank you.

16 PRESIDING JUDGE KORNER: [10:59:10] Sorry.

17 Sir, we're going to take the break now that I told you about for 30 minutes.

18 So if you'd like to be back in your seat ready to start again at 11.30, and

19 I'm pretty confident you will finish by the lunch break.

20 Yes, thank you.

21 (Recess taken at 10.59 a.m.)

22 (Upon resuming in open session at 11.32 a.m.)

23 THE COURT USHER: [11:32:58] All rise.

24 Please be seated.

25 PRESIDING JUDGE KORNER: [11:33:14] Thank you.

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1 MS MORRIS: [11:33:30]

2 Q. [11:33:30] Mr Witness, this morning you told the Judges that you
3 have never heard the name Ali Kushayb in any context. I would like to
4 read to you from the preparation session that you had last week with the
5 Defence at paragraph 11.

6 MR EDWARDS: [11:33:51] Not an objection. He made it clear from
7 when he heard. It's not that he had never. He made it clear from when
8 he did.

9 PRESIDING JUDGE KORNER: [11:33:59] (Microphone not activated).

10 MR EDWARDS: [11:34:01] No, your Honour --

11 PRESIDING JUDGE KORNER: [11:34:03] Mr Edwards, you can deal
12 with that --

13 THE INTERPRETER: [11:34:04] Microphone, please.

14 PRESIDING JUDGE KORNER: [11:34:05] Mr Edwards, at this stage,
15 wait for the question. And then if you want to object, you can object.

16 MR NICHOLLS: [11:34:14] May I? If -- I think -- if he's going where I
17 think he's going, it should be out of the hearing of the witness.

18 PRESIDING JUDGE KORNER: [11:34:19] Yeah, well, at the moment let's
19 hear the question. And then if Mr Edwards wants to make an objection,
20 he can, and we'll cut the translation.

21 MS MORRIS: [11:34:32] Thank you, Madam President.

22 Q. [11:34:35] Mr Witness, last week in your preparation session with the
23 Defence, you said the first time you ever heard the name Ali Kushayb
24 was in the media, well before Mr Abd-Al-Rahman surrendered to the
25 Court.

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1 And the next sentence was:

2 "It was said that Ali Kushayb was accused by the ICC alongside Ahmad
3 Harun and Omar Al-Bashir."

4 Mr Witness, the truth is you'd heard about the warrant for Ali Kushayb
5 well before the accused surrendered; correct? Would you like to speak,
6 Mr Witness? You are free to speak.

7 PRESIDING JUDGE KORNER: [11:35:43] Yes. Do you want to say
8 something?

9 THE WITNESS: [11:35:47](Interpretation) The question -- I couldn't hear
10 the interpretation.

11 PRESIDING JUDGE KORNER: [11:35:56] Okay. Can you just read out
12 the question again.

13 MS MORRIS: [11:36:06]

14 Q. [11:36:07] Mr Witness, you had heard about the warrant for Ali
15 Kushayb long before the accused surrendered; correct?

16 A. [11:36:19] There is some -- some interference in what I said. I said I
17 heard it after.

18 PRESIDING JUDGE KORNER: [11:36:40] All right. I think you'd better
19 -- did you hear the translation, sir, the interpretation of what it is -- what
20 is recorded as your words or what you said to the Defence a couple of
21 days ago, or last week some time? Did you hear that interpretation?

22 THE WITNESS: [11:37:08](Interpretation) I hope that can be repeated,
23 please.

24 PRESIDING JUDGE KORNER: [11:37:10] All right. Can you read out
25 again, please, Ms Morris, paragraph 11.

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1 MS MORRIS: [11:37:20]

2 Q. [11:37:20] Mr Witness, last week when you met the Defence in your

3 witness preparation session, you told the Defence that the first time you

4 ever heard the name Ali Kushayb was in the media, well before Mr

5 Abd-Al-Rahman surrendered to the Court. You also said that Ali

6 Kushayb was accused, alongside the ICC, alongside Ahmad Harun, and

7 Mr Omar Al-Bashir.

8 Mr Witness, do you confirm you heard about the warrant for Ali Kushayb

9 well before the accused surrendered; correct?

10 A. [11:38:13] I heard of it after he surrendered to the ICC.

11 PRESIDING JUDGE KORNER: [11:38:36] I think what you're being

12 asked, sir, is did you tell the Defence last week that you had heard it

13 together with -- that you had heard about the accusation against Ali

14 Kushayb, or Mr Abd-Al-Rahman, at the same time as you heard about

15 Harun and Bashir, which was well before the surrender? Did you tell

16 the Defence that?

17 THE WITNESS: [11:39:15](Interpretation) No, I didn't.

18 PRESIDING JUDGE KORNER: [11:39:30] So if that's what they recorded

19 you saying, that was an error?

20 THE WITNESS: [11:39:41](Interpretation) Yes, that was an error.

21 MS MORRIS: [11:39:53]

22 Q. [11:39:53] Mr Witness, I put to you that around 2012, by the time the

23 accused was assisting you in various capacities, you had heard about the

24 warrant for Ali Kushayb; correct?

25 A. [11:40:10] No, never.

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1 Q. [11:40:17] Mr Witness, I put to you that not only you but most people
2 in Rahad Al-Berdi had heard about the warrant for Ali Kushayb; correct?

3 A. [11:40:36] I cannot confirm if others have heard of that or not.

4 PRESIDING JUDGE KORNER: [11:40:45] Well, did you ever hear any
5 discussion about that in your town or village?

6 THE WITNESS: [11:40:54](Interpretation) No, never.

7 MS MORRIS: [11:41:02]

8 Q. [11:41:02] Mr Witness, I'm going to suggest to you that this was big
9 news in Rahad Al-Berdi by around 2012-2014, because by that time the
10 warrant for Ali Kushayb had been linked to Mr Abd-Al-Rahman?

11 MS MORRIS: [11:41:07] And, your Honours, I refer you to transcript 156,
12 pages 81 to 82.

13 PRESIDING JUDGE KORNER: [11:41:28] That's very helpful, but which
14 witness is it?

15 MS MORRIS: [11:41:34] D-2.

16 PRESIDING JUDGE KORNER: [11:41:35] Thank you very much.

17 MS MORRIS: [11:41:38]

18 Q. [11:41:38] This was big news in Rahad Al-Berdi around 2012-2014,
19 because people had linked the warrant to Mr Abd-Al-Rahman, hadn't
20 they? Mr Witness, shall I repeat the question?

21 A. [11:42:15] Yes, repeat it.

22 Q. [11:42:20] I'm going to suggest to you that it was big news in Rahad
23 Al-Berdi around 2012 and 2014, because around that time the warrant for
24 Ali Kushayb had been linked to Mr Abd-Al-Rahman; correct?

25 A. [11:42:41] Sometimes, when -- I was outside -- outside of radio

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1 coverage. So personally speaking, I would say that -- I wouldn't say that
2 I heard the news. In my capacity as a herder, I was outside most of the
3 time.

4 Q. [11:43:15] Mr Witness, I suggest to you that the news about the
5 warrant for Ali Kushayb was big news in Rahad Al-Berdi. People were
6 talking because the warrant for Ali Kushayb had been linked to Mr
7 Abd-Al-Rahman; correct?

8 A. [11:43:38] I didn't hear any discussion in Rahad Al-Berdi in this
9 regard, because as I mentioned before, I was outside of Rahad Al-Berdi,
10 busy with taking care of my cattle.

11 Q. [11:43:59] And you never went to the market and spoke with people
12 or other notables?

13 A. [11:44:08] I would go to the market, but I would not discuss any
14 topics related to something I have not -- or I had not heard of.

15 Q. [11:44:23] Mr Witness, you recall when the accused was shot in Nyala
16 and seriously wounded in 2014; correct?

17 A. [11:44:37] Yes.

18 Q. [11:44:44] A member of the CRF, Ahmad Youssuf Al-Bilul, he was
19 unfortunately martyred in this incident; correct?

20 A. [11:44:58] Yes.

21 Q. [11:45:00] The son of Ahmad Ibrahim Al-Semeh, he was
22 unfortunately killed in this incident; correct?

23 A. [11:45:12] Yes.

24 Q. [11:45:15] I'd like to show you a news report from Radio Dabanga
25 about this incident.

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1 MS MORRIS: [11:45:20] Your Honours, this is at tab 6,
2 DAR-OTP-00006581.

3 Q. [11:45:24] Mr Witness, this is a media report from Radio Dabanga
4 from July 8, 2013. I'd like to read a portion to you.

5 MR EDWARDS: [11:45:49] Your Honour, since the witness is able to
6 read, I wonder if the Arabic version could be put up on the screen so he
7 can look at it.

8 MS MORRIS: [11:45:59] Yes, that would be tab 5, DAR-OTP-00005660 in
9 Arabic.

10 Q. [11:46:31] This is a news report from Radio Dabanga. The headline
11 is: "Ali Kushayb suffers serious injuries in the town of Nyala and is
12 transported to Khartoum and his bodyguard is killed":
13 "Ali Kushayb, a government militia leader, wanted by the International
14 Criminal Court, was seriously injured and his bodyguard killed yesterday
15 afternoon, on Sunday, when an unknown armed individual shot at him in
16 the industrial zone of the town of Nyala."

17 Further down, it states:

18 "A medical source in the police hospital in Nyala confirmed to Radio
19 Dabanga that Ali Kushayb's bodyguard, Ahmad Yusef al-Balul, had
20 succumbed to his injuries. Meanwhile, his other bodyguard is in a
21 critical condition. The doctor reiterated that Ali Kushayb had been
22 moved to hospital having been struck by two bullets in his shoulders and
23 that he was in a stable condition. Other witnesses said that Ali Kushayb
24 had been moved from the hospital yesterday to Khartoum to receive
25 treatment and that he was in critical condition. Kushayb's shooting and

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1 the ensuing exchange of fire led to all the shops closing, including the
2 main souk and the industrial zone, and to the people fleeing to their
3 homes fearing a resurgence of the fighting."

4 Mr Witness, there are multiple media reports about this incident from
5 Radio Dabanga and other news outlets which refer to the accused as Ali
6 Kushayb, and yet you never heard anyone call him that; is that your
7 evidence?

8 A. [11:48:37] Yes.

9 Q. [11:48:44] In witness preparation last week and this morning, you
10 spoke a little bit about the conflict between the Ta'aisha and the Salamat
11 tribes. You said the Salamat trusted Mr Abd-Al-Rahman to protect them;
12 is that your evidence?

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

14 Q. [11:49:23] So you will recall shortly after the peace agreement was
15 signed in 2013, fighting erupted; correct?

16 A. [11:49:33] After 2013, there was no fighting between Ta'aisha and
17 Salamat.

18 Q. [11:49:53] Mr Witness, Moussa Al-Bashir Moussa, a member of the
19 Legislative Council for South Darfur state and a Salamat notable, he went
20 on Radio Dabanga. He refers to the head of the Abu Taira as Ali
21 Kushayb?

22 MS MORRIS: [11:50:15] I'd like to pull up that news report now.

23 Your Honours, that's tab 4 in English, DAR-OTP-00006582. And if the
24 witness would like the Arabic version, that's at tab 3, DAR-OTP-00005650.

25 THE COURT OFFICER: [11:50:45] Should the item be broadcast

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1 publicly?

2 MS MORRIS: [11:50:48] Yes, that's fine, thank you.

3 Q. [11:51:02] Mr Witness, this is a Radio Dabanga news report dated 16

4 April 2013:

5 "Within hours, Ali Kushayb shatters the agreement to end hostilities

6 signed between the Ta'aisha and the Salamat in Rehed al-Birdi."

7 I'll read three paragraphs from this:

8 "Local-administration dignitaries and notables have managed to contain

9 the incidents between the Salamat and the Ta'aisha in Rehed al-Birdi,

10 which erupted on Friday and Saturday, and resulted in the killing and

11 injuring of tribal members on both sides and the burning of stores in the

12 town's market, closing the market until yesterday Monday."

13 Further down:

14 "On Sunday evening, in the town of Rehed al-Birdi, both the Salamat and

15 Ta'aisha tribes signed a document to end the hostilities between the two

16 parties. The agreement decrees the immediate disbursal of gatherings

17 by both sides and the organisation of a conference for a decisive

18 reconciliation between the Salamat and the Ta'aisha."

19 And at the last paragraph:

20 "[...] Musa al-Bashir Musa, a member of the Legislative Council for South

21 Darfur State and a notable Salamat, revealed that the hostilities

22 perpetrated by the militia leader wanted by the International Criminal

23 Court, Ali Kushayb, had restarted yesterday in the [Fandug] area, in the

24 district of Rehed al-Birdi, and that they constituted a clear breach of the

25 two agreements of Um Dukhun (between the Salamat and Misseriya) and

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1 of Rehed al-Birdi (between the Ta'aisha and Salamat) to end the hostilities
2 before the ink had dried on either. On Radio Dabanga, Musa announced
3 that Ali Kushayb, who commands the Abu-Tirah Forces, attacked the area
4 and the surrounding villages with 15 armoured Land Cruisers, reinforced
5 by Military Intelligence Services' troops under the Sudanese army. He
6 described the mobilisations of Ali Kushayb, along with the Abu-Tirah
7 forces, as constituting a clear breach of the Rehed al-Birdi agreement to
8 end the hostilities."

9 Sir, reference to Ali Kushayb, head of the Abu Taira, this is another
10 reference to the accused; isn't it?

11 A. [11:54:11] These references come from an opponent, from a Salamat
12 tribe against a Ta'aisha tribe. So we need to have an equivalent from the
13 opposite side. And, by the way, I have not heard this report before
14 today.

15 Q. [11:54:33] So notables from the Salamat tribe were calling the accused
16 Ali Kushayb. But you, as a notable of the Ta'aisha tribe, you'd never
17 heard that reference before; is that your evidence?

18 A. [11:54:58] Yes.

19 MR EDWARDS: [11:55:00] That's comment. That question is comment.

20 MR NICHOLLS: [11:55:04] It is not comment. It --

21 PRESIDING JUDGE KORNER: [11:55:05] (Microphone not activated).

22 THE INTERPRETER: [11:55:09] Microphone, please.

23 PRESIDING JUDGE KORNER: [11:55:17] (Microphone not activated).

24 THE INTERPRETER: [11:55:19] Still off.

25 MS MORRIS: [11:55:22]

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1 Q. [11:55:23] Sir, in this article we have a Salamat notable identifying the
2 accused as Ali Kushayb. Is it your evidence that you did not hear,
3 among notables, the accused being referred to as Ali Kushayb?

4 A. [11:55:40] There were no common settings or meetings between the
5 notables of Al-Ta'aisha and the notables of Salamat so that we could have
6 discussed the name.

7 Q. [11:55:58] Sir, I put to you you are here testifying out of loyalty to the
8 accused. You know the accused is Ali Kushayb, and you have not been
9 truthful in your evidence before this Court.

10 A. [11:56:24] This is not true.

11 MR NICHOLLS: [11:56:32] Your Honours, may I make an application
12 outside the presence of the witness?

13 PRESIDING JUDGE KORNER: [11:56:38] (Microphone not activated) I
14 will put the mic on. We can simply turn the interpretation off.

15 MR NICHOLLS: [11:56:49] But then Mr Abd-Al-Rahman won't hear it.

16 PRESIDING JUDGE KORNER: [11:56:53] Oh, I see.

17 MR NICHOLLS: [11:56:57] It will be brief.

18 PRESIDING JUDGE KORNER: [11:56:59] All right.

19 Sir, I'm really sorry. I'm going to have to ask you just to leave the room
20 for a moment. Is there somebody in the room with you? Right, I gather
21 there is a court officer. Could you just leave and we'll notify you when
22 you can come back.

23 THE WITNESS: [11:57:20](Interpretation) There is no one in the room.

24 PRESIDING JUDGE KORNER: [11:57:24] Oh, I thought there's supposed
25 to be a court officer there.

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1 (The witness exits the video-link room)

2 PRESIDING JUDGE KORNER: [11:57:30] Yes.

3 MR NICHOLLS: [11:57:31] Thank you, your Honours.

4 Under Section 5 of the Witness Preparation Protocol, I would apply for
5 access to the video recording of the preparation log of this witness from 4

6 June 2024. Paragraph 13 lays out the requirements for that application.

7 It's the non-calling party must show the reason why access to the video
8 recording is necessary, and that information demonstrating -- well, the
9 reason why we are asking for access and that it's necessary.

10 The witness here, page 41, lines 8 to 14, on multiple occasions, given
11 multiple chances, denied ever having told the Defence in the preparation
12 session, which was video recorded, that he heard the name Ali Kushayb
13 in the media well before Mr Abd-Al-Rahman surrendered to the Court,
14 and that he heard that in the context - and your Honour put questions to
15 him - that Ali Kushayb was accused by the ICC, alongside Harun and
16 Bashir.

17 That is an important point, I feel, to this witness's credibility. He's
18 denied twice having ever said that, and we'd like access to the video in
19 order to affirm that.

20 If, in fact, the video shows -- well, we may have further questions, let me
21 put it that way, of him on that topic if we see the video.

22 PRESIDING JUDGE KORNER: [11:58:55] Yeah.

23 I was wondering, I mean, Mr Edwards, whether a way around this, now
24 that it's been raised, is whether you would be prepared to make an
25 admission to that effect. Because otherwise if I grant the application, it's

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1 going to take time.

2 MR NICHOLLS: [11:59:16] I apologise. I should have said, unless my
3 friends want to stipulate that he said exactly that, and that will be shown
4 on the video, in which case certainly it's a stipulation that he's either
5 mistaken or lying in his testimony.

6 PRESIDING JUDGE KORNER: [11:59:30] Yeah.

7 Mr Edwards?

8 MR EDWARDS: [11:59:31] Well, first things first. My submission is
9 that my learned friend's application is unnecessary. They have a note, a
10 witness preparation log, of what -- of what occurred in the course of the
11 witness preparation session.

12 That ought to be more than enough for the purposes that my learned
13 friend seeks to use it for in terms of impeaching the witness.

14 Not only do they have the witness preparation log, but they also have the
15 summary of the telephone interview from 22 February 2023.

16 So, frankly, this is an enormous sledgehammer to crack a nut, in my
17 submission. It's unnecessary for the purposes that they are trying to --
18 for the purposes for which they seek to use this information.

19 I'm certainly not going to, on my feet now, give -- make any sort of
20 stipulation without consulting with the rest of the team, and specifically
21 lead counsel. And, indeed, it's something that I would have to -- we
22 would have to take instructions on. So I'm not going to do this on the
23 hoof.

24 PRESIDING JUDGE KORNER: [12:00:59] Well, yes. No, I mean -- well,
25 I'm not sure you need to take instructions on this. This is a matter of

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1 procedure and whatever in which your client can't sensibly give you any
2 instructions.

3 But I can certainly see that you'd want to review it. But it seems to me if,
4 having reviewed it and made sure that the interpretation is correct,
5 together with one of your Arabic speakers, if the situation is that in fact --
6 because the preparation log is, of course, a summary, I imagine, of what
7 was said. If the situation is that it's an accurate summary, well, then, I
8 think you probably ought to make that admission in the light of the
9 application by Mr Nicholls, because otherwise we are going to have to
10 break. Well, I suppose we'd have to break for this afternoon, or at least
11 part of this afternoon.

12 MR NICHOLLS: [12:02:04] May I respond very briefly --

13 PRESIDING JUDGE KORNER: [12:02:05] Yes.

14 MR NICHOLLS: [12:02:06] -- to my friend?

15 First of all, nothing in the witness prep protocol says that the tendering
16 party reviews and then decides whether it's important. It's about access
17 for the opposing party. I think we've shown the grounds.

18 I don't believe this is a sledgehammer cracking a nut; this is part of the
19 core of his evidence.

20 He's called here to say it's not Ali Kushayb. He said he never heard that.

21 He's contradicted what apparently he said less than a week ago. My
22 friend is refusing to say whether that is accurate or not or doesn't
23 remember. This would be an important point, I believe, for the Court to
24 hear about.

25 It's potential perjury having been committed here. We would like to

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1 review the video. We would then determine how clear it is on the video
2 what he said, and put it to him, and if he can answer or not.

3 But I can't think of a more classic example of what this provision in the
4 protocol is for, which is an out-and-out contradiction on a pertinent point.

5 PRESIDING JUDGE KORNER: [12:03:15] Well, it's a previous
6 inconsistent statement.

7 MR NICHOLLS: [12:03:18] Yes, but it's not just a previous inconsistent
8 statement. It's testimony under oath that "I never made that statement."

9 PRESIDING JUDGE KORNER: [12:03:24] Yeah. All right.
10 Well, Mr Edwards --

11 MR EDWARDS: [12:03:25] Your Honour --

12 PRESIDING JUDGE KORNER: [12:03:26] -- at the moment, I'm minded
13 to accede to this, because it is obviously something that goes to the core of
14 this case, as to whether it was known by everybody that he was actually --
15 or was said to be Ali Kushayb right from the time that the warrant was
16 issued.

17 MR EDWARDS: [12:03:50] Well, there are two things. This witness has
18 not given -- he was asked was there something that was common
19 knowledge, essentially, and he's given his answer on that. There's
20 nothing in the --

21 PRESIDING JUDGE KORNER: [12:04:05] No, he said -- no, I asked him
22 because I wanted -- because Ms Morris put it to him. You were about to
23 object and then didn't. Put it to him in terms that's what he said. And
24 when I checked, he said, "No, I never told the Defence that." So, I mean,
25 you're faced with an absolutely, it seems to me, Mr Edwards, I'm afraid,

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1 clear-cut situation.

2 MR EDWARDS: [12:04:30] Well, I'm just -- bear with me for a moment.

3 PRESIDING JUDGE KORNER: [12:04:35] Certainly.

4 MR NICHOLLS: [12:04:39] Page 41, 8 to 14.

5 MR EDWARDS: [12:05:03] Your Honour, what is contained in the
6 witness preparation log is exclusively about what this witness understood
7 the situation to be.

8 There is nothing in the witness preparation log, and I don't think there's
9 anything in the summary of expected evidence -- of expected evidence
10 that relates to what was common knowledge, what everybody in Rahad
11 Al-Berdi knew or believed.

12 It was put to him on the basis of something that what witness D-2 said,
13 and he denied it, but there is nothing contradictory to either his summary
14 of expected evidence or the witness preparation log, contradicting what
15 he said.

16 PRESIDING JUDGE KORNER: [12:05:44] I'm sorry, just a moment.

17 Tell me again what page in the LiveNote this is, please, Mr Nicholls?

18 Sorry, what page?

19 MR NICHOLLS: [12:05:52] Sorry, your Honours. Page 41, lines 8 to 14
20 is -- or 14 is where he -- there's the denial.

21 PRESIDING JUDGE KORNER: [12:06:13] Yeah, no, I'm sorry. I mean,
22 that's what I don't quite understand, Mr Edwards. It's put to him in
23 terms:

24 "... do you confirm you heard about" -- nothing to do with what
25 everybody else knew.

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1 "... do you confirm that" -- this is the question from Ms Morris:

2 "... do you confirm you heard about the warrant for Ali Kushayb well

3 before the accused surrendered ... ?"

4 MR EDWARDS: [12:06:35] Yes. No, I accept that, your Honour. I

5 accept that.

6 PRESIDING JUDGE KORNER: [12:06:37] Well, right. Well, then -- and

7 then --

8 MR EDWARDS: [12:06:38] The point about what was common

9 knowledge.

10 PRESIDING JUDGE KORNER: [12:06:41] Yes, well, leave aside common

11 knowledge. Then I intervened and said:

12 "I think what you're being asked ... did you tell the Defence last week that

13 you had heard it ... that [you'd] heard the accusation against Ali Kushayb,

14 or Mr Abd-Al-Rahman, at the same time as you heard about Harun and

15 Bashir, which was well before the surrender? Did you tell the Defence

16 that."

17 Answer:

18 "No, I didn't."

19 I mean, it couldn't be clearer, could it?

20 MR EDWARDS: [12:07:09] No, I accept that on the face of it. I accept

21 that on the face of it there's a contradiction between his evidence and

22 what's contained in the --

23 PRESIDING JUDGE KORNER: [12:07:18] And, therefore, Mr Nicholls or

24 Ms Morris, working on the basis that Mr Nicholls is the lead counsel, is

25 entitled to put to him, in the clearest possible terms, if necessary, playing

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1 the video, that what he has said about that is untrue.

2 MR EDWARDS: [12:07:46] Your Honour, I'm not -- can I make it very
3 clear. My position, having not spoken with lead counsel, my position is
4 not one of refusal, it's not one of concession; it is none of this. If my
5 learned friend's submissions are that we are refusing to hand it over,
6 that's simply not true. I haven't said one way or another.

7 I am mere co-counsel. I need to take instructions from lead counsel. I
8 need to discuss it with lead counsel.

9 So to suggest that we are refusing point blank is simply untrue. And it's
10 not the first time today that a proposition has been put, either to the Court
11 or to the witness, that is a half truth today.

12 PRESIDING JUDGE KORNER: [12:08:29] Okay. Mr Edwards, I fully
13 understand that. I would never describe you as mere co-counsel.
14 However, I fully understand that you need to discuss the matter with Mr
15 Laucci, and I will give you time to discuss it. My view is, at the moment,
16 that it is important, as put by the Prosecution. It is a matter which they
17 are entitled to put to the witness and entitled to -- effectively what he
18 actually said rather than the summary. I think it is better that it is the
19 actual words he used.

20 So I will give you an opportunity to -- Ms Morris, or Mr Nicholls,
21 whichever of the two of you is dealing with this, do you have any more
22 questions? On other topics is what I mean.

23 MR NICHOLLS: [12:09:30] No, your Honour. I had asked Ms Morris
24 to just --

25 PRESIDING JUDGE KORNER: [12:09:33] That you deal with that.

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1 MR NICHOLLS: [12:09:35] -- let you know that I was going to make this
2 application. So we may have more questions, depending on your ruling.

3 PRESIDING JUDGE KORNER: [12:09:41] Yeah. Well, at the moment,
4 as I say, having heard from Mr Edwards, you know, unless there's
5 something else, as a result of a discussion with Mr Laucci, that he wants
6 to raise, the ruling will be that it must be handed over, or at least some
7 kind of admission to the exact words --

8 MR EDWARDS: [12:10:05] Yeah.

9 PRESIDING JUDGE KORNER: [12:10:07] -- used by the witness. Well,
10 I think it needs to be the exact words.

11 MR EDWARDS: [12:10:08] All right. Well, your Honour, I can tell you
12 that we have not only a -- obviously it was audio and video recorded. It
13 was also very expertly -- well, an almost verbatim account was typed out
14 --

15 PRESIDING JUDGE KORNER: [12:10:27] Right.

16 MR EDWARDS: [12:10:28] -- at the time by our intern. What I am very
17 much disinclined to do is simply hand over to the Prosecution wholesale
18 the entire video recording of the entire exchange with the witness, given
19 that the only -- well, given that the point that Mr Nicholls wishes to deal
20 with, the point that his application is directed to, is a rather discrete one.
21 So that can be isolated fairly easily, but I'm -- I see no basis, and no
22 pretence has been made that there is a basis, for the entire thing wholesale
23 to be handed over.

24 PRESIDING JUDGE KORNER: [12:11:08] Well, I mean, there doesn't -- I
25 mean, yeah. That's what -- I think that's what the rule or the protocol

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1 says, but I see some sense in that. And it's going to take I don't know
2 how long. How long did the preparation session last? Is there a timing
3 on it?

4 MR NICHOLLS: [12:11:21] Just under two hours, 45 minutes.

5 PRESIDING JUDGE KORNER: [12:11:24] Yeah, well, I mean, I certainly
6 don't think that's required. I mean, unless you can't isolate it.

7 However, before that, there's also another aspect, which I don't know
8 whether Ms Morris is going to ask about. He says -- he said twice now
9 that he didn't know him before 2010, but apparently in the preparation
10 session he said he knew him to a limited extent in childhood. Now, Ms
11 Morris hasn't put that yet, and I was wondering about that, but --

12 MS MORRIS: [12:11:53] Yes. Madam President, we reviewed the
13 transcript and saw him make that contradiction and decided to leave it as
14 is.

15 PRESIDING JUDGE KORNER: [12:12:03] I see. So you're not
16 interested in that?

17 MS MORRIS: [12:12:05] He was quite unequivocal about the fact that he
18 didn't know the accused prior to that period.

19 PRESIDING JUDGE KORNER: [12:12:09] Right. And so you weren't
20 proposing to say, "Well, that's not what you said earlier"?

21 MS MORRIS: [12:12:14] Well, we felt that it was --

22 PRESIDING JUDGE KORNER: [12:12:16] Not worth it.

23 MS MORRIS: [12:12:18] -- plainly obvious within the context of --

24 PRESIDING JUDGE KORNER: [12:12:19] All right.

25 MS MORRIS: [12:12:20] -- what his materials stated.

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1 PRESIDING JUDGE KORNER: [12:12:22] Yeah.

2 MR NICHOLLS: [12:12:24] Just one quick response. What the protocol
3 is about is getting the video, not a transcript, not a summary; it's about
4 getting access to the video. That's what it's called, access to the video.
5 So I would not respectfully accept a transcript. For the entire video, I
6 understand that. However, we're here, and I'm not asking for that, but
7 here it's proving a negative; right? If he's telling the truth, that's
8 nowhere in there, so to show that he didn't say it, you would need to
9 watch the whole part.

10 If there is a part that they questioned him about the knowledge, about the
11 warrants, about when he first heard, fine, that could be isolated. You
12 know, we'll take it on faith that it's never -- they didn't come back to it or
13 it's in any other part. But here we're trying -- the issue is whether
14 something was said or not at any point during this prep session. So it's
15 not quite, "Let's hear the exact words." It's trying to see whether it exists
16 or not. The proper way to do that would be to review the entire video.

17 PRESIDING JUDGE KORNER: [12:13:31] Right.

18 Mr Edwards, there is, I suppose, some justification in that. What I'm
19 anxious to avoid is the delay of two and a half hours while this -- while
20 you go through the video.

21 MR NICHOLLS: [12:13:47] I think we'd be able to, you know,
22 fast-forward through it and --

23 PRESIDING JUDGE KORNER: [12:13:54] Right.

24 MR NICHOLLS: [12:13:55] And also, we could watch different parts.

25 Or it'd -- it'd probably only have two speakers, but -- well, no, the English

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1 -- we could split it up, so I don't think it would take that long.

2 PRESIDING JUDGE KORNER: [12:14:07] Right. Well, Mr Edwards,
3 unless, I mean, you think a discussion with Mr Laucci will help you, I'm
4 minded to make the ruling so that we don't waste any more time.

5 MR EDWARDS: [12:14:19] Your Honour, it's not the Defence -- time is
6 not being wasted. This is an important issue. Let's not -- I know your
7 Honour's not taking it lightly, but time is not being wasted.

8 I would appreciate the opportunity of discussing this with Mr Laucci and
9 during that time we will -- we'll have a look at the video.

10 And I hear what your Honour says. Can I say that, without going into
11 more detail, and I hope your Honour will take the point, that this is not a
12 situation where the Prosecution are going to have to go through the entire
13 video to prove a negative. But I'll say nothing more at this stage.

14 PRESIDING JUDGE KORNER: [12:15:00] Okay. Well, in that case, I
15 think what we'll do -- how long do you want, Mr Edwards?

16 MR EDWARDS: [12:15:05] Well, given your Honour's --

17 PRESIDING JUDGE KORNER: [12:15:09] Indication.

18 MR EDWARDS: [12:15:10] -- provisional indication, then we'll take the
19 time to review the video as well.

20 PRESIDING JUDGE KORNER: [12:15:14] All right. Then I think what
21 we'll do is we'll take an early break for lunch, and we will sit again at, it's
22 quarter past 12 now, at 1.30, which should give you ample time to discuss
23 the matter and have a look at the video.

24 MR EDWARDS: [12:15:39] Thank you. And perhaps your court officer
25 can get word back to the remote location.

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1 PRESIDING JUDGE KORNER: [12:15:43] Yeah.

2 And, Mr Nicholls, if necessary, unless some agreement can be reached on
3 whatever, and you're not given an admission to that effect, well, then,
4 obviously I'll give you time to look at the video, and the witness may
5 have to come back again tomorrow morning. That's all.

6 MR NICHOLLS: [12:16:05] Thank you, your Honour. I just -- not an
7 objection, but just a last point on that.

8 You know, my friends need to check the video because they don't
9 remember whether this was said or not, so I'm not sure how they can
10 check it faster than us to make sure that there's nothing missing.

11 So, again, not an objection, but, you know, I would hope that it's not just,
12 "Yeah, we skimmed through this and it's not there, trust us."

13 PRESIDING JUDGE KORNER: [12:16:34] Yes, no, I mean -- but, no. I
14 understand that each time there's an application the Defence have before
15 applied for you to give them the video and vice versa, I think that it is
16 better, from the point of view of efficiency, if you like, and also because
17 we all know how these conversations go when there's witness
18 preparation, there will be a lot of things said which aren't particularly
19 relevant.

20 So I'm going to give Mr Edwards and Mr Laucci the opportunity to do it.
21 And if it is as it would appear from the witness preparation log, then I
22 suggest that an admission is made fairly quickly. But, in any event, I'm
23 going to say 1.30.

24 MR NICHOLLS: [12:17:33] Thank you, your Honour.

25 THE COURT USHER: [12:17:35] All rise.

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1 (Recess taken at 12.17 p.m.)

2 (Upon resuming in open session at 1.38 p.m.)

3 THE COURT USHER: [13:38:44] All rise. Please be seated.

4 PRESIDING JUDGE KORNER: [13:39:01] Yes, Mr Edwards, what's the
5 situation?

6 MR EDWARDS: [13:39:07] The situation is that -- well, over lunch, we
7 have identified the main video extract and we were starting to play that
8 outside with the Prosecution so that they could watch what we had
9 identified.

10 PRESIDING JUDGE KORNER: [13:39:25] I'm sorry, why couldn't that --
11 I was told that you had left court, why couldn't that have been done
12 earlier?

13 MR EDWARDS: [13:39:33] Your Honour, there were two -- there are two
14 parts from the recording where this issue is discussed, and, for the
15 purposes of the second part of the recording to be understood, we had to
16 identify an extract from the first part of the recording. It just took time.

17 PRESIDING JUDGE KORNER: [13:39:58] All right, but can I take it, Mr
18 Edwards, that you are not prepared to make an admission?

19 MR EDWARDS: [13:40:03] Well, we could well be, but in the first place,
20 we're showing the Prosecution the parts of the video. We are not
21 resisting, if I can put it that way, but an admission -- it's something that
22 we would need to discuss with our friends.

23 PRESIDING JUDGE KORNER: [13:40:21] That's why I gave an hour and
24 a quarter for lunch so that you could discuss this.

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1 MR EDWARDS: [13:40:27] Your Honour, it took some time to identify

2 the parts of the video, but the Prosecution and ourselves

3 PRESIDING JUDGE KORNER: [13:40:38] All right. Well, why don't

4 you play --

5 MR EDWARDS: [13:40:40] -- we're working now.

6 PRESIDING JUDGE KORNER: [13:40:42] All right. Why don't we all

7 see this. How much -- how long does it take?

8 MR EDWARDS: [13:40:43] It's about three -- about two and a half

9 minutes.

10 PRESIDING JUDGE KORNER: [13:40:51] Right. Well, let's see it all in

11 court.

12 THE COURT OFFICER: [13:41:15] Counsel, just a reference, the voice on

13 the video is presumably not distorted?

14 MR EDWARDS: [13:41:24] No.

15 THE COURT OFFICER: [13:41:26] So is it public or would it have to be

16 played in private session?

17 PRESIDING JUDGE KORNER: [13:41:32] No, I suppose -- no, I suppose

18 we better go into private.

19 Yes, private session.

20 (Private session at 1.41 p.m.)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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6 (Open session at 1.52 p.m.)

7 THE COURT OFFICER: [13:52:08] We are back in open session, Madam
8 President.

9 PRESIDING JUDGE KORNER: [13:52:16] Thank you very much.

10 Sir, I'm sorry that you had to wait for a bit, and I'm afraid that your
11 evidence is not going to be concluded today. So you'll have to come
12 back tomorrow morning at 9.30, not -- I anticipate -- for very long, but
13 there are still some questions that you're going to be asked this afternoon.
14 Ms Morris, other than the issue that we have been discussing, are there
15 any further questions you want to put to him?

16 MS MORRIS: [13:52:48] No, Madam President.

17 PRESIDING JUDGE KORNER: [13:52:50] Yes. Thank you very much.

18 Mr Edwards, then I'll leave re examination until tomorrow morning, and,
19 if you are content with that -- in fact, it will probably help you -- the
20 Judges will deal with the questions they want to ask.

21 MR EDWARDS: [13:53:06] Yes, absolutely. And we will be able to sort
22 this out, I have no doubt. It may simply be -- and I apologise to the
23 Court that we weren't able to deal with it in an hour and a quarter. It
24 may be -- I know that your Honours expressed a preference to an
25 admission or a stipulation of some sort and I'm confident that we have the

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1 material, it's just a question of finding it.

2 MR NICHOLLS: [13:53:32] I'm sorry, should this be in front of the
3 witness?

4 PRESIDING JUDGE KORNER: [13:53:34] Yes, I don't think --

5 MR NICHOLLS: [13:53:35] I don't know where he -- no objection to
6 what he said but as we go on --

7 PRESIDING JUDGE KORNER: [13:53:39] Yes.

8 No, don't worry about that.

9 MR EDWARDS: [13:53:41] Yes.

10 PRESIDING JUDGE KORNER: [13:53:42] Yes, all right. Well, one way
11 or another, but I am -- the order stands, the Prosecution gets the video.
12 Yes, right. Yes, I think Judge Alexis Windsor is going to start with some
13 questions.

14 JUDGE ALEXIS-WINDSOR: [13:54:00] Thank you.

15 Good day, sir. Sir, are you familiar with the position of overseer or
16 *musha'arif* in the tribal hierarchy of the Ta'aisha tribe?

17 THE WITNESS: [13:54:35](Interpretation) I am not specifically aware
18 that there is an overseer/*musha'arif* in the Ta'aisha tribe.

19 JUDGE ALEXIS-WINDSOR: [13:54:44] All right. May I ask you then,
20 did you ever hear that Mr Abd-Al-Rahman was ever appointed a
21 *musha'arif* of the Ta'aisha tribe in Rahad Al-Berdi?

22 THE WITNESS: [13:55:06](Interpretation) I have not heard of this before.

23 JUDGE ALEXIS-WINDSOR: [13:55:16] All right. Do you know, sir --
24 one moment.

25 Right, yes, do you know someone called Ahmed Ibrahim Al-Semeh?

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1 THE WITNESS: [13:55:50](Interpretation) I do. I know Ahmed Ibrahim
2 Al-Semeh.

3 JUDGE ALEXIS-WINDSOR: [13:55:57] And who was this person? Did
4 he hold a post in the community?

5 THE WITNESS: [13:56:07](Interpretation) Yes, he did hold a position.

6 JUDGE ALEXIS-WINDSOR: [13:56:18] And what was that position?

7 THE WITNESS: [13:56:22](Interpretation) The position was an *umdah*.
8 Also, the position of *agid al-ogada*.

9 JUDGE ALEXIS-WINDSOR: [13:56:36] All right. You spoke, sir -- all
10 right, let me ask you some questions about that.

11 Whoever is *agid al-ogada*, in your mind, what are the responsibilities or the
12 duties under that position?

13 THE WITNESS: [13:57:06](Interpretation) *Agid al-ogada* brings together
14 members of the community and citizens to fend off problems that erupt in
15 the community, such as a fire, a theft of livestock. A relief that needs to
16 be provided to people.

17 JUDGE ALEXIS-WINDSOR: [13:57:26] Sir, you have told us some of the
18 things that you said that Mr Abd-Al-Rahman did in the community.

19 Please assist me, were the things that were done that you know about by
20 Mr Abd-Al-Rahman, so all the things you told us, the helping -- the
21 helping orphans, that sort of thing, was there any post in the Ta'aisha
22 tribal hierarchy to which those duties should have gone or can be done?

23 THE WITNESS: [13:58:19](Interpretation) No.

24 JUDGE ALEXIS-WINDSOR: [13:58:25] One last question that is
25 unrelated. To your knowledge, I know you have not been, but just in

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1 terms of your knowledge -- if you know, if you don't know, it's fine

2 how long would it take to travel from Rahad Al-Berdi to somewhere in

3 Wadi Salih like Mukjar?

4 THE WITNESS: [13:58:50](Interpretation) I have never travelled and, as
5 such, I cannot give an estimate as regards the distance in question.

6 JUDGE ALEXIS-WINDSOR: [13:59:07] Fair enough. Thank you, sir.

7 Those are all my questions.

8 JUDGE ALAPINI-GANSOU: [13:59:17](Interpretation) Yes, thank you
9 very much, Presiding Judge.

10 Now, witness, I, too, would like to address you and I would like to deal
11 with two issues. Now the first one concerns a statement which you
12 made this morning, but also one which comes up in the documents which
13 have been presented to us. You said that Mr Abd-Al-Rahman could not
14 be accused of the crimes which he is said to have committed.

15 Now, do you stand by that position?

16 THE WITNESS: [14:00:17](Interpretation) Yes, I am of the same position.

17 JUDGE ALAPINI-GANSOU: [14:00:21](Interpretation) Now, the crimes
18 to which you referred, to your mind during what period of crime -- of
19 time, rather, were those crimes committed?

20 THE WITNESS: [14:00:44](Interpretation) I don't know in which period
21 of time, but I heard about it.

22 JUDGE ALAPINI-GANSOU: [14:00:49](Interpretation) Very well.

23 Are you aware of the events which took place between 2003 and 2004 in
24 Darfur, and, in particular, regarding the region concerned, Wadi Salih, et
25 cetera. Are you aware of those events?

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1 THE WITNESS: [14:01:20] *Non, je n'en sais pas grand chose, mais j'ai*
2 *entendu parler de ça.*

3 JUDGE ALAPINI-GANSOU: [14:01:35](Interpretation) If you don't
4 know much about it, how can you maintain that the crimes that are
5 alleged to have been committed by the accused were not committed by
6 him?

7 THE WITNESS: [14:01:48](Interpretation) Based on my knowledge of
8 him, he adheres very well in society. He's a good person in society.

9 JUDGE ALAPINI-GANSOU: [14:02:01](Interpretation) So he had a good
10 reputation, but when did you come to know him? And since when have
11 you been acquainted with him?

12 THE WITNESS: [14:02:12](Interpretation) I know him starting 2011.

13 JUDGE ALAPINI-GANSOU: [14:02:18](Interpretation) Very well. We
14 shall note that. So that means that if events took place between 2003 and
15 2004, you are not in a position to provide plausible information on those;
16 is that correct?

17 THE WITNESS: [14:02:45](Interpretation) Yes.

18 JUDGE ALAPINI-GANSOU: [14:02:49](Interpretation) Now, my second
19 concern, your Honour, if I might, is with respect to this matter regarding
20 the pharmacy. Now I've understood that you said that Mr
21 Abd-Al-Rahman was purportedly the owner of a pharmacy in Rahad
22 Al-Berdi; is that correct?

23 THE WITNESS: [14:03:23](Interpretation) Yes.

24 JUDGE ALAPINI-GANSOU: [14:03:25](Interpretation) And if it were to
25 be put to you that there was no pharmacy in that region, but that the

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1 pharmacy was located in Garsila, what would you say to that?

2 THE WITNESS: [14:03:41](Interpretation) I would say that it is present
3 in the Rahad Al-Berdi, and it still exists until today.

4 JUDGE ALAPINI-GANSOU: [14:03:50](Interpretation) Now, does that
5 mean that you are very familiar with the pharmacy? That you have
6 often visited it, perhaps?

7 THE WITNESS: [14:04:02](Interpretation) The pharmacy is located in the
8 market and I live close to the market.

9 JUDGE ALAPINI-GANSOU: [14:04:08](Interpretation) In that case, one
10 might understand that Mr Abd-Al-Rahman has a number of pharmacies
11 located across the region.

12 THE WITNESS: [14:04:28](Interpretation) No, he only has one
13 pharmacy.

14 JUDGE ALAPINI-GANSOU: [14:04:31](Interpretation) So it is your
15 testimony therefore that he only has one pharmacy and that is located in
16 Rahad Al-Berdi? Is that correct?

17 THE WITNESS: [14:04:44](Interpretation) Yes.

18 JUDGE ALAPINI-GANSOU: [14:04:45](Interpretation) Thank you very
19 much, I have noted your answers.

20 PRESIDING JUDGE KORNER: [14:04:52] Thank you, Judge
21 Alapini-Gansou.

22 On that note --

23 Sir, don't worry about this.

24 Mr Edwards, my understanding is that he didn't have one in Garsila and
25 then had this one in Rahad Al-Berdi.

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1 MR EDWARDS: [14:05:09] That's our understanding.

2 PRESIDING JUDGE KORNER: [14:05:10] Yes, that's your understanding
3 as well. All right.

4 Sir, I want to ask you about some of the matters that has been raised --
5 have been raised.

6 The first is this: In 2003 and '04, you held positions of -- did you hold
7 positions of responsibility in Rahad Al-Berdi?

8 THE WITNESS: [14:05:44](Interpretation) Yes.

9 PRESIDING JUDGE KORNER: [14:05:46] Do you remember an influx of
10 Fur refugees who were escaping from the conflict in the Wadi Salih area?

11 THE WITNESS: [14:06:05](Interpretation) There's an area called Dambar
12 close to the Rahad Al-Berdi that is approximately 20 kilometres away, and
13 so -- and from there, the Fur came to Rahad Al-Berdi.

14 PRESIDING JUDGE KORNER: [14:06:24] So you're saying, are you, that
15 none of them came from the areas that you have been asked about; in
16 particular, Kodoom, Bindisi, Deleig, those sort of areas? Garsila -- not
17 Garsila so much, Mukjar. None of the refugees came from there? Is
18 that what you're saying?

19 THE WITNESS: [14:06:52](Interpretation) Yes, from these areas, no
20 refugees came to Rahad Al-Berdi.

21 PRESIDING JUDGE KORNER: [14:07:01] And why were the refugees
22 from the place you just mentioned -- Dambar, why were they coming to
23 Rahad Al-Berdi?

24 THE WITNESS: [14:07:19](Interpretation) They were afraid of the
25 conflict that happened in the other areas.

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1 PRESIDING JUDGE KORNER: [14:07:28] But from what I understand,
2 this is some way away from Rahad Al-Berdi. Dambar and Rahad
3 Al-Berdi, the conflict areas, were quite a long way away as I understand
4 it.

5 THE WITNESS: [14:07:46](Interpretation) Yes.

6 PRESIDING JUDGE KORNER: [14:07:51] So you're absolutely sure, are
7 you, that none of the refugees came from the Wadi Salih areas?

8 THE WITNESS: [14:08:05](Interpretation) Personally I'm totally sure. I
9 don't know what others think.

10 PRESIDING JUDGE KORNER: [14:08:11] All right. Did you have
11 anything to do with the housing of the refugees?

12 THE WITNESS: [14:08:21](Interpretation) Not at all.

13 PRESIDING JUDGE KORNER: [14:08:22] All right. Next, I want to
14 pick up on some of the matters that Judge Alexis Windsor asked you
15 about; namely, this question of the overseer or *musha'arif*. You're saying
16 this is not a position you're familiar with?

17 THE WITNESS: [14:08:49](Interpretation) Yes.

18 PRESIDING JUDGE KORNER: [14:08:51] But when there was tribal
19 conflict as there was in 2013 between you -- the Ta'aisha and the Salamat,
20 who was in charge of the organisation of that conflict as far as the
21 Ta'aisha was concerned? In other words, organising logistics, horses,
22 camels, whatever. Who would deal with that?

23 THE WITNESS: [14:09:26](Interpretation) This task is given to the *agid*
24 *al-ogada*.

25 PRESIDING JUDGE KORNER: [14:09:35] Yes, well, you see, that's what

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1 I understood was the case, because you told us that he was responsible
2 only for resolving disputes and the like and going to the police. But if
3 there was fighting of any kind, he was in charge, wasn't he?

4 THE WITNESS: [14:09:56](Interpretation) Not at all.

5 PRESIDING JUDGE KORNER: [14:10:02] Who was in charge then? If
6 there was fighting as there was between you and the Salamat?

7 THE WITNESS: [14:10:15](Interpretation) *Agid al-ogada* is the person
8 who mobilises people.

9 PRESIDING JUDGE KORNER: [14:10:23] Who was in charge of
10 organising the troops, the people with the guns, or the camels or the
11 horses or the donkeys?

12 THE WITNESS: [14:10:41](Interpretation) I would also say that this was
13 the task of the *agid al-ogada*.

14 PRESIDING JUDGE KORNER: [14:10:48] So in other words, in times of
15 conflict, he was the person in command?

16 THE WITNESS: [14:11:02](Interpretation) Can you please repeat the
17 question.

18 PRESIDING JUDGE KORNER: [14:11:05] In a time of conflict, fighting,
19 it was the *agid al-ogada* who was in command?

20 THE WITNESS: [14:11:19](Interpretation) Yes.

21 PRESIDING JUDGE KORNER: [14:11:20] Because, you see, you told us
22 earlier today that he has no military role in the tribe.

23 THE WITNESS: [14:11:35](Interpretation) Yes, *agid al-ogada* is a normal
24 citizen, he does not have a role, but he is given these roles in civil or with
25 popular -- in civil places, and he's not a military person. He does not

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1 have any military role.

2 PRESIDING JUDGE KORNER: [14:11:54] Okay, so what you are doing
3 is drawing a distinction between someone who has some kind of military
4 rank or position in the military -- whether it's the CRF or the Sudanese
5 Armed Forces or the border guards or whatever -- and the person who
6 doesn't have that, if you like, governmental position?

7 THE WITNESS: [14:12:23](Interpretation) Yes.

8 PRESIDING JUDGE KORNER: [14:12:25] Right. Next, I want to ask
9 you about your description of the character and personality of Mr Al
10 Rahman. You say that since you have known him, he has helped the
11 vulnerable and for those who have suffered -- and for those who have
12 suffered. He helps orphans, feeds them, clothes them. He helps people.
13 He's a humanitarian.

14 You remember saying all that?

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

16 PRESIDING JUDGE KORNER: [14:13:16] Can I ask you this: You
17 travelled to the place where you're giving your evidence with a number
18 of the other witnesses, is that right, and your present nazir?

19 THE WITNESS: [14:13:42](Interpretation) Yes.

20 PRESIDING JUDGE KORNER: [14:13:46] At any stage before you got to
21 where you are and before you were given all sorts of warnings, did you
22 and the other witnesses discuss your view of Mr Al Rahman?

23 THE WITNESS: [14:14:10](Interpretation) We did not discuss that. Yes.
24 Yes.

25 PRESIDING JUDGE KORNER: [14:14:25] Have you ever heard him at

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1 any stage utter threats of violence against persons he considered to be his
2 enemies or enemies of the tribe?

3 THE WITNESS: [14:14:49](Interpretation) Not at all. No.

4 PRESIDING JUDGE KORNER: [14:14:52] Has anyone ever reported to
5 you that they've heard him make such threats?

6 THE WITNESS: [14:15:02](Interpretation) Also, no.

7 PRESIDING JUDGE KORNER: [14:15:10] I want you -- I'm sorry, I
8 haven't given notification of this, but I want you to have a look -- a brief
9 look, please, at a couple of videos.

10 Could we start with what I'm calling the school teacher one, which is, if
11 somebody gives me the number. Anybody?

12 (Discussion between the Chamber and the court officer)

13 PRESIDING JUDGE KORNER: [14:15:52] Yes, exactly the same two, yes.
14 Sorry, I meant to give notice and I forgot.

15 MR EDWARDS: [14:15:57] Do you have it? I don't know if --

16 PRESIDING JUDGE KORNER: [14:16:00] Do you know what the
17 number is?

18 MR EDWARDS: [14:16:02] I see your court officer is nodding.

19 PRESIDING JUDGE KORNER: [14:16:03] Oh, right.

20 MR EDWARDS: [14:16:05] Just for the record, I think the first one is
21 DAR OTP 0223 0525.

22 PRESIDING JUDGE KORNER: [14:16:17] Yes, Mr Nicholls.

23 MR NICHOLLS: [14:16:18] Very sorry, your Honour, I feel there is
24 something I should raise if I may, but not in the presence of the witness.

25 Just for a moment

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1 PRESIDING JUDGE KORNER: [14:16:26] Yes. All right.

2 Sir, I'm really sorry, would you mind just leaving the room again for a
3 moment.

4 THE WITNESS: [14:16:40](Interpretation) Okay.

5 (The witness exits the video-link room)

6 MR NICHOLLS: [14:16:52] Very sorry to break things up, your Honour.

7 I just thought I probably have an obligation to alert you that during the
8 day, when we looked at the video, we believe the gentleman may be on
9 the video at a certain point. We didn't plan on using the video because
10 we didn't put it on our list and we didn't come up with it till --

11 PRESIDING JUDGE KORNER: [14:17:15] It occurred to me that he -- not
12 this one, I imagine, the teachers one, but the next one as all the notables
13 were supposed to be there.

14 MR NICHOLLS: [14:17:26] Yes, the -- we have a reference where we
15 think it may well be him in the Um-Sory video.

16 PRESIDING JUDGE KORNER: [14:17:33] Right.

17 MR NICHOLLS: [14:17:34] And that's 09:53 to 09:54. And I apologise
18 for interrupting, I just didn't want to keep that to myself.

19 PRESIDING JUDGE KORNER: [14:17:49] No, well, thank you. Because
20 -- I mean, he does actually look quite similar to the other witness who did
21 say he was there; so I wasn't sure whether or not he's on it.

22 MR NICHOLLS: [14:17:54] Yes, your Honour. We noticed that today
23 during the day.

24 PRESIDING JUDGE KORNER: [14:17:58] All right.

25 Yes, can we have the witness back into the room then.

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1 If we've got -- but I want the teacher's -- what I call the teacher's video,
2 first.

3 (Discussion between the Chamber and the court officer)

4 PRESIDING JUDGE KORNER: [14:18:10] Thank you. Yes, that's the
5 one.

6 (The witness enters the video-link room)

7 PRESIDING JUDGE KORNER: [14:18:40] Sir, can you just watch a few
8 minutes of this video -- not a few minutes, a minute or so; I just want to
9 check something with you first.

10 Can you see the video?

11 THE WITNESS: [14:19:01](Interpretation) Yes.

12 PRESIDING JUDGE KORNER: [14:19:03] Right. Can we just play it for
13 about a minute or so.

14 (Viewing of the video excerpt)

15 PRESIDING JUDGE KORNER: [14:19:43] Just pause there.

16 Sir, first of all, we've been told this is, I think, the main square in Rahad
17 Al-Berdi; is that right?

18 THE WITNESS: [14:19:56](Interpretation) Yes.

19 PRESIDING JUDGE KORNER: [14:19:59] And do you recognise the
20 speaker as Mr Al Rahman?

21 THE WITNESS: [14:20:08](Interpretation) Yes.

22 PRESIDING JUDGE KORNER: [14:20:09] And he appears to be
23 addressing -- we're not sure when the date is, I don't think we've ever
24 been given a date. But he appears to be addressing some teachers.

25 THE WITNESS: [14:20:25](Interpretation) Yes.

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1 PRESIDING JUDGE KORNER: [14:20:26] And you told us that -- I

2 wonder if we ought to go into private session.

3 All right, let's see where we get with this.

4 Were you present at this meeting?

5 THE WITNESS: [14:20:45](Interpretation) No.

6 PRESIDING JUDGE KORNER: [14:20:47] All right. Do you know --

7 because of your position, did you know about this incident where he was

8 apparently addressing teachers?

9 THE WITNESS: [14:21:02](Interpretation) He was talking to the basic

10 education teachers {ICR: (Redacted)}

11 (Redacted)}.

12 PRESIDING JUDGE KORNER: [14:21:19] Can I ask how you know that

13 they are the basic education teachers? Is there something that

14 distinguishes them?

15 THE WITNESS: [14:21:31](Interpretation) I saw the director of the basic

16 education in the video.

17 PRESIDING JUDGE KORNER: [14:21:43] I just want -- can we move

18 then, I want to play one part of it, then.

19 Can we -- how long is it? It's about ... It's just before we get to the end.

20 I don't think there's a time thing on it. All right, well, actually it's quite

21 short. Just play the whole thing through and then we'll stop it when we

22 get to it. Just play it -- carry on playing.

23 (Viewing of the video excerpt)

24 PRESIDING JUDGE KORNER: [14:24:52] Can we stop.

25 All right, so first of all, can I ask you this: what was change and freedom?

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1 Was it some kind of movement?

2 THE WITNESS: [14:25:08](Interpretation) Change and freedom was
3 established after the fall of Al Bashir.

4 PRESIDING JUDGE KORNER: [14:25:18] After the fall of Al-Bashir?

5 THE WITNESS: [14:25:24](Interpretation) Yes.

6 PRESIDING JUDGE KORNER: [14:25:27] Which was 2017 -- 2018. I
7 can't remember. So does that suggest this video was shot after the fall of
8 Al-Bashir?

9 THE WITNESS: [14:25:52](Interpretation) Yes.

10 PRESIDING JUDGE KORNER: [14:25:55] And you say you weren't
11 present at this meeting?

12 THE WITNESS: [14:26:06](Interpretation) Yes.

13 PRESIDING JUDGE KORNER: [14:26:07] But Mr Abd-Al-Rahman was
14 still in a position of power at that stage, was he, in Rahad Al-Berdi?

15 THE WITNESS: [14:26:23](Interpretation) At the beginning of the
16 change, he was in the CRF.

17 PRESIDING JUDGE KORNER: [14:26:33] You heard him say there:
18 I'd have stabbed and killed any individual who mocked Rahad Al-Berdi
19 or denigrated the teacher.

20 Did it -- does it surprise you to hear him say something like that?

21 THE WITNESS: [14:26:52](Interpretation) This is because of the
22 encouragement -- of the enthusiasm.

23 PRESIDING JUDGE KORNER: [14:27:02] The encouragement or
24 enthusiasm of what?

25 THE WITNESS: [14:27:09](Interpretation) The enthusiasm for security

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1 and for the stability of teachers.

2 PRESIDING JUDGE KORNER: [14:27:19] But -- all right. So, here, Mr
3 Abd-Al-Rahman, the person you described uttering a threat like that,
4 doesn't surprise you?

5 THE WITNESS: [14:27:39](Interpretation) I do not call this a threat, but
6 this is more of a discipline to the children so they do not be bad with their
7 children -- with their teachers.

8 PRESIDING JUDGE KORNER: [14:27:59] I see. Thank you.

9 All right, I'd like you to look at a second video, please, which is what I've
10 been calling the Um-Sory video. Thank you.

11 Right, sir, can you have a look at this one just for a few minutes, please.

12 (Viewing of the video excerpt)

13 PRESIDING JUDGE KORNER: [14:28:43] Can you just pause for a
14 moment, sorry.

15 Sir, who's that?

16 THE WITNESS: [14:28:51](Interpretation) This is Ahmed Ibrahim
17 Al-Semeh, but the image was not very clear at the beginning.

18 PRESIDING JUDGE KORNER: [14:29:04] Okay, thank you.

19 And so he was the (overlapping speakers)

20 Sorry, he was the person you said was the *agid al-ogada*?

21 THE WITNESS: [14:29:12](Interpretation) Yes.

22 PRESIDING JUDGE KORNER: [14:29:15] Continue playing, please.

23 (Viewing of the video excerpt)

24 PRESIDING JUDGE KORNER: [14:30:03] Can we pause for a moment,
25 please. Thank you.

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1 Sir, again, that's Mr Abd-Al-Rahman, right? In his CRF uniform?

2 THE WITNESS: [14:30:18](Interpretation) Yes. Although the image is
3 not clear, I can however confirm that it's him.

4 PRESIDING JUDGE KORNER: [14:30:32] We've also been told this is a
5 meeting at Um-Sory. Do you recognise that?

6 THE WITNESS: [14:30:49](Interpretation) I know the area but I was not
7 present there.

8 PRESIDING JUDGE KORNER: [14:30:53] You weren't present at this
9 meeting?

10 THE WITNESS: [14:31:01](Interpretation) I was not.

11 PRESIDING JUDGE KORNER: [14:31:07] Okay, could we just move the
12 video on please, to 9 minutes and 53 seconds.

13 Right, actually, let's go back a bit slightly, yes.

14 Yes, okay, let's start from there.

15 (Viewing of the video excerpt)

16 PRESIDING JUDGE KORNER: [14:31:55] Yes, can we just go back
17 slightly. Is it possible to play it at a slow speed or not?

18 No. All right. Let's -- can we just go back for a moment, then. Okay.

19 Yes, start again, yes. Let's go.

20 MR EDWARDS: [14:32:23] Your Honour?

21 PRESIDING JUDGE KORNER: [14:32:27] Sorry.

22 MR EDWARDS: [14:32:29] Forgive me, we are in public session
23 currently.

24 PRESIDING JUDGE KORNER: [14:32:34] Yes, can we -- before we go on
25 playing, can we go into private session, please.

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1 MR NICHOLLS: [14:32:43] Apologies again, your Honour. Ms Sabatini

2 told me we can play it at a reduced speed, if you would like.

3 PRESIDING JUDGE KORNER: [14:32:51] All right, because it actually

4 goes -- it flashes past fairly quickly there.

5 MR NICHOLLS: [14:32:56] We can do that, right?

6 (Counsel confers)

7 MR NICHOLLS: [14:32:57] Or we can help.

8 (Private session at 2.33 p.m.)

9 THE COURT OFFICER: [14:33:19] We are in private session now,

10 Madam President.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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9 (Open session at 2.47 p.m.)

10 THE COURT OFFICER: [14:47:27] We are back in open session, Madam
11 President.

12 PRESIDING JUDGE KORNER: [14:47:28] Yes, Mr Edwards.

13 MR EDWARDS: [14:47:31] Your Honour, I don't know if your Honours
14 were planning on retiring immediately or whether there was a matter that
15 you wanted to deal with before --

16 PRESIDING JUDGE KORNER: [14:47:39] I was simply going to go back
17 to what we raised yesterday, which was this question on when you were
18 supposed to be filing all these things. Yes, everybody seems to think
19 that we didn't give any extension and that you were supposed to file. In
20 our decision 15 May: the Chamber sets a deadline of 6 June '24 for any
21 remaining applications pursuant to Rule 68(2) and instructs by -- and this
22 is the part that I forgot to mention yesterday, and instructs that by the
23 same deadline, the Defence is to formally withdraw any witness whose
24 evidence it does not seek to introduce.

25 So I think you better do that tomorrow. Not -- don't worry about the

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- 1 68(2), but if there is any withdrawal of any witnesses.
- 2 MR LAUCCI: [14:48:39] No. No, no, there is no withdrawal.
- 3 PRESIDING JUDGE KORNER: [14:48:43] Weren't there other witnesses
4 on your list or have they already all been withdrawn?
- 5 MR LAUCCI: [14:48:49] They were withdrawn already.
- 6 PRESIDING JUDGE KORNER: [14:48:51] You've withdrawn the whole
7 lot?
- 8 MR LAUCCI: [14:48:53] Yes.
- 9 PRESIDING JUDGE KORNER: [14:48:54] All right. Okay, well that --
10 and you say you are going to file a 68(2)?
- 11 MR LAUCCI: [14:48:59] Yes, the last one for D 28.
- 12 PRESIDING JUDGE KORNER: [14:49:02] For D 28. All right. Okay,
13 well, as I said, that can -- I think I gave you till Friday, didn't I?
- 14 MR LAUCCI: [14:49:06] Friday, yes, Madam President.
- 15 PRESIDING JUDGE KORNER: [14:49:08] Yes. Right, any other matters
16 then?
- 17 MR EDWARDS: [14:49:10] Just very briefly, your Honour, and it's going
18 back to your Honour's order to disclose the whole video, and I hear what
19 your Honours say. Can I -- I didn't have an opportunity to make
20 submissions before your Honours gave that order and I appreciate that
- 21 PRESIDING JUDGE KORNER: [14:49:30] Well, I rather thought you did,
22 Mr Edwards.
- 23 MR EDWARDS: [14:49:33] Well
- 24 PRESIDING JUDGE KORNER: [14:49:35] Before the luncheon
25 adjournment.

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1 MR EDWARDS: [14:49:40] You certainly -- I'm not going back on your
2 Honours' order that we disclose what the Prosecution need for the
3 purposes of their cross examination, but -- and fully understanding your
4 Honours' irritation that the Defence didn't manage to isolate precisely
5 what we were expected to isolate over lunch - and, we apologise for that -
6 we were under a certain amount of pressure of time and we did only half
7 a job. But that's not to say that it cannot be done. And it can be done, the
8 isolation can be done.

9 Your Honour, just before lunch there were two comments that your
10 Honour made that with great respect we agree with. At page 58 of the
11 transcript this morning, just before lunch at line 1, sorry, it's page 57, line
12 25, when we're talking about what the -- the extent of the preparation
13 session, the two hours and 45 minutes, and your Honour says, and, with
14 respect we agree:

15 "I mean, I certainly don't think that's required."

16 In other words, the handing over of the whole lot.

17 "I mean, unless you can't isolate it."

18 So, you know, before lunch, you make that point.

19 Your Honour then goes on to say at line -- sorry, 50 -- sorry, page 61,
20 starting from line 21, you say:

21 "...it is better from the point of view of efficiency, if you like [...] we all
22 know how these conversations go when there's witness preparation, there
23 will be a lot of things said that aren't particularly relevant. So I'm going
24 to give Mr Edwards and Mr Laucci the opportunity to do it ..."

25 And then you say, of course, you would suggest an admission is made

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1 fairly quickly.

2 Now, it's right to say that we did our best over lunch and maybe an
3 admission is the right way to go. But in essence, there is nothing
4 significant that has changed between before lunch and the situation now
5 that, we would submit, requires the handing over of the whole thing.

6 The two hours and 45 minutes of discussions within the team and
7 comments off -- and the other irrelevant matters that are discussed, and
8 it's something that we are not --

9 PRESIDING JUDGE KORNER: [14:52:29] The reason, Mr Edwards --
10 and, sorry to interrupt, but the reason, Mr Edwards, I said to hand it over
11 is because it's quite apparent that this appears -- those words appear to be
12 a distillation, not of a -- it's not a straightforward question and answer.

13 And the fact that you haven't -- you obviously hadn't been able to identify
14 how you came to summarise the position as regards his knowledge of the
15 name Ali Kushayb in the way that you did, and it does look as though it
16 seems to be scattered over the video.

17 I'll come back to you, Mr Nicholls.

18 I fully appreciate -- and the reason I'm taking this view with the Defence
19 is because I'm aware from my previous existence of how these sessions go
20 and I'm aware that there are matters on it which are irrelevant quite often.

21 And, therefore, you know, if it can be isolated, then it seems to me a
22 sensible way of doing it. But I don't think it can, by what happened
23 straight after lunch. There's obviously other bits which you hadn't
24 picked up on.

25 MR EDWARDS: [14:53:55] Well, that's -- your Honour may recall that at

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1 the very outset I said that there was a section in the first video which
2 raised more clearly that issue of the when, and then I led that in the
3 second video. So in other words, it's not that it can't be isolated. It
4 absolutely can be. It's just that we need a little bit more time to do so.
5 And it can be done very quickly. It was just that during the lunch break,
6 it was quite frenetic I can tell your Honours, and your Honours can
7 probably understand that that would be the case.
8 But with just an hour or so, we can do what needs to be done and
9 certainly the -- my learned friends will -- they will receive what they need
10 before the end of the day. Certainly before close of business today, and
11 they will have the material that they need for tomorrow morning.
12 So that being the case, your Honours, it's our submission that that meets
13 the goal of this entire exercise.
14 PRESIDING JUDGE KORNER: [14:55:21] Yes, Mr Nicholls.
15 MR NICHOLLS: [14:55:23] First, your Honour, you made a ruling after
16 hearing argument. It was a correct ruling in my submission, but
17 whether or not -- that's my view, you've made your ruling, and I think
18 these rulings need to stand.
19 Second, Mr Edwards read out to you from paragraph -- page 58, excuse
20 me, and then page 60 I believe, and he skipped over 58 to 59, at 58:20 to
21 59:12, and that is a section where I said the different -- one of the aspects
22 here is we're trying to prove a negative; that this does not appear on the
23 tape anywhere.
24 And so they can look -- and that requires, and he's -- my friend has
25 already talked about, Well, you have to read this part in relation to that

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1 part, and we see here, we're raising this, and it comes back, and we need
2 to be sure that a question isn't asked later in the transcript in the
3 beginning, coming back to that point I was raising. Now, we're not --
4 and there is no efficiency gain now that we're at the end of the day, other
5 than having us just go through the video. This is not a -- I'm not using
6 this as a kind of crowbar to try to lever open into other issues in any way.
7 We can go through the video which you've ordered to be -- ordered that it
8 be given to us. Ourselves, it's just as easy -- we'll not rather wait until
9 they've done their analysis of what -- which parts mean, and disclose that
10 to us. They've said they've had a virtually verbatim transcript of the
11 entire thing and they still haven't been able to find it and put it together.
12 So my request is, that we stick to your order: provide us the video, we'll
13 review it. It's either there, or it isn't, what the witness said.

14 MR EDWARDS: [14:57:18] Just very briefly, this is not a question of
15 proving a negative. It's not the sort of case where the entire thing has to
16 be seen in order to establish that X was not asked or X or Y was asked. It
17 is not that sort of exercise.

18 We know where the questions that were asked and the answers that were
19 given that make the Prosecution's point, we know where they are. They
20 can be isolated. This is not about proving a negative, and, to that extent,
21 my learned friend is creating something of a straw man.

22 PRESIDING JUDGE KORNER: [14:57:55] Well, Mr Nicholls, that's right.
23 It's not -- if it isn't proving a negative -- he has said: I never said that to the
24 Defence. And according to the preparation log, he did say that to the
25 Defence and said it, on the face of it, not just that he'd heard the name but

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1 that he heard it long before.

2 And if -- and clearly, it would be more effective I suppose to also put it to
3 him that -- and play that part of the video. So it doesn't seem to me that
4 you need -- Mr Edwards is right in that -- that you need the whole video
5 to prove the negative.

6 I think what you have to do, Mr Edwards, is, you have to provide to --
7 I'm sorry, Mr Nicholls, I know I made the order and I'm effectively being
8 asked to reconsider it and I am reconsidering it. I'm sorry "we" are
9 reconsidering it, even though I've been saying everything, and you must
10 provide all parts of the video that deal with that particular topic -- in
11 particular, obviously, the one where he says he heard it some time ago,
12 which you don't seem to have identified yet.

13 MR EDWARDS: [14:59:17] "Yet" being the operative term. Yes, we'll
14 do so. Thank you, your Honour.

15 PRESIDING JUDGE KORNER: [14:59:21] Yes, all right. So I expect that,
16 but really, this has got to go to the Prosecution no later than 4 o'clock. I
17 mean, you've had a lot of time to look at this.

18 MR LAUCCI: [14:59:34] And to have a final word, Madam President,
19 with your permission, because I've kept quiet so far and I kept quiet
20 because I was useless to be quite honest. You know that we are a small
21 team, and Mr Edwards and Madam Guilloux, who are sitting next to me,
22 were the only persons in The Hague attending that preparation session
23 which means that --

24 PRESIDING JUDGE KORNER: [14:59:59] I see, attending the
25 preparation session, yes.

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1 MR LAUCCI: [15:00:01] Yes, which means that -- I mean, in the hour
2 and 50 -- yes, and our intern as well, but -- which means that in the hour
3 and 50 minutes that we had, they were helpless and we could not assist.
4 Actually, we made them lose time, I'm afraid. So thank you for
5 reconsidering your order, and, yes, that I think Mr Edwards needs the
6 Chamber's indulgence for not having to your satisfaction identified the
7 proper abstracts in the hour that he had.

8 PRESIDING JUDGE KORNER: [15:00:42] Yes. All right, well, that --
9 Yes, Mr Nicholls?

10 MR NICHOLLS: [15:00:47] Yes, so I am not going to ask you to
11 reconsider your reconsideration. I will stick with what you've ordered.
12 I would just make the point that this is slightly complex from the very
13 brief portion that Mr Edwards kindly showed me before we came back in
14 -- and, we didn't finish, because this is tied up to when he heard about the
15 other warrants, warrants of arrest for Bashir. He's saying it's all mixed
16 together. So it's not simply a search for these words. It is proving a
17 negative in the sense that he says, "I never said that." To see whether he
18 said it or not, you need to look at

19 PRESIDING JUDGE KORNER: [15:01:20] Well, I mean that's what I said.
20 The order I make is quite clear that what has got to be given to you or
21 shown to you -- whichever way, I mean, whichever is quicker, quite
22 honestly, is any part that relates to any discussion about when he heard --
23 effectively, when he heard about the arrest warrants being issued for
24 Bashir, Harun and Ali Kushayb.

25 MR NICHOLLS: [15:01:44] Yes. Yes, your Honour. And just not to

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1 try to anger my team by having them have to wait and work later, but if it
2 takes them over an hour, I'd rather have this done right. Not "Well, it's
3 been an hour, this is all we could find."

4 PRESIDING JUDGE KORNER: [15:02:01] No, all right. Well,
5 whichever, okay --

6 MR NICHOLLS: [15:02:04] I would like to know -- I apologise --

7 PRESIDING JUDGE KORNER: [15:02:05] Yes.

8 MR NICHOLLS: [15:02:06] -- that we've got -- you know, this has been
9 done right and we've got everything.

10 PRESIDING JUDGE KORNER: [15:02:12] Yes, all right. Well, then I'll
11 say no time limit, but it's got to be got to the Prosecution by a reasonable
12 time this afternoon.

13 MR EDWARDS: [15:02:25] Yes, it will be. We are going to have to go
14 back and see the client for our usual end of day thing, but Mr Nicholls
15 and I have -- we have one another's telephone numbers and we can liaise.

16 PRESIDING JUDGE KORNER: [15:02:31] All right.

17 MR NICHOLLS: [15:02:31] Very sorry, it's not just a warrant, it's also the
18 name Ali Kushayb. That was part of this.

19 PRESIDING JUDGE KORNER: [15:02:36] Yes, all right.

20 MR NICHOLLS: [15:02:37] Anything about when he heard the name Ali
21 Kushyab. And if I could just put on the record that in asking for the
22 video and for us to review it, I'm not in any way -- that is not in any way
23 meant to be an allegation against the integrity of the Defence team in
24 going through it. That's not what I'm saying. I -- that is not at all. I
25 would just rather and I believe that's what the protocol said would

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1 happen, that we go through it. But I just want to say I'm not casting any
2 slurs.

3 PRESIDING JUDGE KORNER: [15:03:10] I rather believe that the
4 protocol was written by people who had no experience of how these
5 sessions go; so that is why I am taking this view of it, as I say from
6 experience, I think both for myself and Judge Alexis Windsor.

7 Right. So tomorrow will be the last witness as I understand it. I think
8 then, when we have completed that witness, we will have a small status
9 conference just to see where we are going after this.

10 Yes, thank you very much.

11 THE COURT USHER: [15:03:47] All rise.

12 (The hearing ends in open session at 3.03 p.m.)