

Trial Hearing
WITNESS: DAR-OTP-P-0712

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Thursday, 28 April 2022
10 (The hearing starts in open session at 10.05 a.m.)
11 THE COURT USHER: [10:05:54] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [10:06:11] Yes, could we call the case, please.
15 THE COURT OFFICER: [10:06:27] Good morning, Madam President, good morning,
16 your Honours.
17 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
18 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05/-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE KORNER: [10:06:46] Appearances, please, Prosecution.
21 MR NICHOLLS: [10:06:55] (Microphone not activated)
22 THE INTERPRETER: [10:07:03] Microphone, please.
23 MR NICHOLLS: [10:07:04] (Microphone not activated)
24 PRESIDING JUDGE KORNER: [10:07:06] I don't think your mic is working.
25 MR NICHOLLS: [10:07:10] I'm sorry, your Honours, I pressed the wrong button.

1 I'll try again. Julian Nicholls, Hesham Mourad, Claire Sabatini, our case manager,
2 Alison Whitford, Hai Do Duc and Mohanad Elkholy. Thank you.

3 PRESIDING JUDGE KORNER: [10:07:22] Yes, thank you.

4 Defence.

5 MR LAUCCI: [10:07:28] Good morning, Madam President. Good morning,
6 Judges. Good morning, colleagues. In addition to Mr Ali Muhammad Ali
7 Abd-Al-Rahman present in the courtroom this morning, Madam Paola Pallot; and
8 Mr Mohammad El Rahi, assistant evidence reviewer; and myself, Cyril Laucci, lead
9 counsel.

10 PRESIDING JUDGE KORNER: [10:07:45] Yes, thank you.

11 And finally the representatives of the victims, please.

12 MR SHAH: [10:07:51] Yes, good morning, your Honours, good morning, colleagues.
13 The victims are represented today by Mr Nasser Amin Abdalla, appearing by video
14 link; Idriss Anbari, case manager; and myself, Anand Shah. Thank you.

15 PRESIDING JUDGE KORNER: [10:08:06] Yes, just before the witness starts his
16 evidence - and I see he's ready and waiting - I think you have been discussing and
17 we've been discussing the timings today, which will be slightly different. As I
18 understand it, the witness will be completed by about 12 o'clock, in which case, I'm
19 told we can sit through without a break to complete him.

20 Mr Laucci, if you actually do need a break, then say so and we'll give it to you.

21 We'll then break for lunch at 12 noon - or whenever the witness is finished, if it's
22 shorter - resume at 1 o'clock, and sit through until three, which will give the next
23 witness the opportunity to start and, I hope, be completed his evidence in direct or
24 examination-in-chief, whichever.

25 So that, Mr Laucci, you will then have the whole of Friday to cross-examine.

- 1 MR LAUCCI: [10:09:22] Very much appreciated, Madam President. Just
2 a clarification, I don't know what is the estimation by my colleagues in the Office of
3 the Prosecutor and the victims for the witness that is on the screen, but maybe 12 may
4 be short for completing everything, that is including the cross-examination, which
5 may then need to go to a little bit later.
- 6 PRESIDING JUDGE KORNER: Well, no --
- 7 MR LAUCCI: [10:09:50] We'll see how it goes.
- 8 PRESIDING JUDGE KORNER: [10:09:52] We'll adjust --
- 9 MR LAUCCI: Exactly.
- 10 PRESIDING JUDGE KORNER: [10:09:52] Well, We can't sit later than 12, because it
11 will be two hours, so if we have to adjust it, we'll adjust it --
- 12 MR LAUCCI: Yes, exactly.
- 13 PRESIDING JUDGE KORNER: [10:09:59] -- at that stage.
14 I may say, I'm not clear how cross-examination of this witness could go beyond 12,
15 but I'm sure, Mr Laucci, you will enlighten me.
- 16 MR LAUCCI: [10:10:12] I am sure I will be able to answer that question after having
17 heard the examination-in-chief.
- 18 PRESIDING JUDGE KORNER: [10:10:13] All right.
19 Yes, Mr Nicholls.
- 20 MR NICHOLLS: [10:10:19] Sorry, just for planning purposes, the next witness, not
21 the current witness, will be less than two hours.
- 22 PRESIDING JUDGE KORNER: [10:10:25] Oh, in --
- 23 MR NICHOLLS: [10:10:26] In direct.
- 24 PRESIDING JUDGE KORNER: [10:10:27] In direct.
- 25 MR NICHOLLS: [10:10:28] Yeah, I -- I believe an hour or less has been --

Trial Hearing
WITNESS: DAR-OTP-P-0712

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [10:10:31] All right, well, even better then. That
2 will give Mr Laucci the opportunity --

3 MR LAUCCI: [10:10:37] Thank you, colleague.

4 PRESIDING JUDGE KORNER: [10:10:39] Yes, I don't know, sir -- is there an oath
5 card with this witness? Yes.

6 Sir, I wonder if I could ask you, can you read the oath card or is there somebody there
7 who can read it to you?

8 Can you hear me?

9 I don't think he can hear anything. Has this been tested?

10 WITNESS: DAR-OTP-P-0712

11 (The witness speaks Arabic)

12 (The witness gives evidence via video link)

13 THE WITNESS: [10:11:16](Interpretation) Yes, I can hear you.

14 PRESIDING JUDGE KORNER: [10:11:17] Oh, you can.

15 We'd like you to take the affirmation and there's a card there, are you able to read it
16 out? If not, somebody can read it to you, I hope.

17 THE WITNESS: [10:11:34](Interpretation) I will read it.

18 PRESIDING JUDGE KORNER: [10:11:36] Then if you would be kind enough, sir, to
19 read it.

20 THE WITNESS: [10:11:43](Interpretation) Solemn oath. I solemnly declare that I
21 will say the truth, the whole truth and nothing but the truth.

22 PRESIDING JUDGE KORNER: [10:11:56] Yes, thank you very much, sir. As I have
23 no doubt has been explained to you, you are going to be asked some question, first of
24 all by the Prosecution, then potentially by the victims' representatives and finally the
25 Defence.

1 If you at any stage need a break, please don't hesitate to say so, otherwise, we'll go
2 straight through so that your evidence can be completed before lunch. But don't
3 hesitate to ask if you need a break, all right? Yes, thank you,

4 Mr Nicholls, who is calling -- Mr Mourad.

5 MR MOURAD: [10:12:40] Thank you, your Honour.

6 QUESTIONED BY MR MOURAD:

7 Q. [10:12:47] Good morning, Mr Witness. We already met during the witness
8 preparation session last week, but for the record, my name is Hesham Mourad and I
9 will be asking you questions on behalf of the Office of the Prosecutor. If any of my
10 questions are not clear, please let me know and I will repeat or rephrase my question.

11 I remind you and myself to speak slowly and to wait for five seconds before speaking
12 to give enough time for interpretation to conclude without any overlap.

13 As discussed in the preparation session, my questioning to you will be very brief
14 because with your consent, we can introduce into evidence the statement you gave to
15 the investigators of the Office of the Prosecutor; that means you do not have to repeat
16 everything you said in your statement.

17 My questioning to you will be mainly about the corrections you made to your
18 statement. I will also ask you a few supplementary questions after that.

19 Now, let's start by looking at the first document in the court binder, it's document
20 DAR-OTP-0209-1884-R04. It's confidential and should not be broadcast to the
21 public.

22 Mr Witness, do you see this document? Is it displayed on your screen?

23 A. [10:14:43] Yes.

24 Q. [10:14:49] This is the statement you gave to the investigators of the Office of the
25 Prosecutor in the period from 14 to 18 February 2018?

- 1 A. [10:15:02] Yes.
- 2 Q. [10:15:11] Could we put on the screen page 1906 of this statement. It's the
3 second-last page of the document. Could we scroll -- yes, thank you.
- 4 Mr Witness, can you see this page?
- 5 A. [10:15:58] Can you repeat the number, please.
- 6 Q. [10:16:02] The page number is 1906 and it is displayed on the screen.
- 7 A. [10:16:24] I can't find this page.
- 8 Q. [10:16:27] It's page 23, so it's the second to last page of the statement.
- 9 A. [10:16:57] I can only see until number 20. 24, yeah.
- 10 PRESIDING JUDGE KORNER: [10:17:24] Has he got a hard copy there or has he got
11 the screen?
- 12 THE WITNESS: [10:17:30](No interpretation)
- 13 MR MOURAD:
- 14 Q. [10:17:41] Mr Witness, you're checking the hard copy in front of you, I see?
- 15 A. [10:17:52] (No interpretation)
- 16 Q. [10:17:41] You're not following the screen. Okay.
17 Can you look at this page, you've reached page 23? Do you -- do you see the date
18 18/2/2018?
- 19 A. [10:17:54] Yes.
- 20 Q. [10:17:57] Do you recognise your signature above this date?
- 21 A. [10:18:10] Yes.
- 22 Q. [10:18:13] Mr Witness, at paragraph 56 of your statement, that's page 16 in the
23 hard copy, and 1899 in the -- as registered in the system, in this paragraph you clarify
24 that Ja'afar Abd-Al-Hakam was not involved in the purchase of weapons but, rather,
25 in receiving and obtaining the weapons from Khartoum and then distributing them to

1 the Janjaweed in Garsila. Is that correct?

2 A. [10:19:01] Yes.

3 Q. [10:19:04] The following paragraph in the same page, paragraph 57 --

4 PRESIDING JUDGE KORNER: [10:19:09] Sorry, so the difference is, he was
5 not -- not involved as opposed to was involved?

6 MR MOURAD: [10:19:29] Your Honour, was involved, but the English term used
7 was "procurement of weapons". It was translated to him in the Arabic translation as
8 "purchase of weapons". He clarified that to mean he was not involved in the
9 purchase of weapon but rather in receiving the weapon.

10 PRESIDING JUDGE KORNER: [10:19:37] Procurement doesn't mean purchase.

11 MR MOURAD: [10:19:41] It was translated to him in the Arabic translation like that,
12 so he wanted to specify the meaning (Overlapping speakers)

13 PRESIDING JUDGE KORNER: [10:19:46] I see. All right.

14 MR MOURAD: [10:19:58] (Overlapping speakers) only.

15 PRESIDING JUDGE KORNER: [10:19:58] All right. Yes.

16 MR MOURAD: [10:19:59]

17 Q. [10:19:58] Mr Witness, the following paragraph, paragraph 57, you added that
18 Mr Ja'afar Abd-Al-Hakam, in addition to instructing the Janjaweed not to destroy the
19 market in Deleig, he also instructed the Janjaweed not to burn or attack the eastern
20 part of Deleig because the farms in these parts produce fruits that provide supplies to
21 the market from which the Janjaweed benefit.

22 Is that correct, sir?

23 A. [10:20:37] Yes.

24 Q. [10:20:38] Having made this clarification, do you confirm that your statement is
25 true and correct to the best of your knowledge and belief?

1 A. [10:20:50] Yes.

2 Q. [10:20:52] Mr Witness, I would like now to move to the second document in
3 your binder, that's annex A. Can you see it in front of you?

4 It's document -- for the record, it's document DAR-OTP-0209-1908. It's a confidential
5 document.

6 A. [10:21:25] Which page?

7 Q. [10:21:28] It's a two-page document, so it's a colour sheet. It's the second page
8 of it. Did you find it in the binder? It's the second document in the binder.

9 A. [10:21:45] Yeah, just a second, please. Yes.

10 Q. [10:21:59] Can you look at the second page where you find all the colours, at the
11 bottom of this page.

12 A. [10:22:15] Yes.

13 Q. [10:22:17] Is that your -- is that your signature at the bottom left side of this
14 document?

15 A. [10:22:29] Yes. This is my signature.

16 Q. [10:22:33] Mr Witness, do you agree that your statement and its annex A be
17 introduced in evidence in this case?

18 A. [10:22:45] Yes, I agree.

19 Q. [10:22:54] Now I will ask you a few supplementary questions in light of the
20 topics we discussed during our preparation session.

21 In paragraph 16 of your statement - and this is the first document we discussed today
22 in your binder, it's page 16 with ERN number 1888 - you refer to the Janjaweed as
23 Arab nomads on horses or camels who pillaged and burned villages in different areas.

24 PRESIDING JUDGE KORNER: [10:23:30](Microphone not activated)

25 MR MOURAD: [10:23:35] Paragraph 16 --

1 PRESIDING JUDGE KORNER: (Microphone not activated)

2 MR MOURAD: [10:23:34] Yes. Apologies.

3 THE WITNESS: [10:23:43](Interpretation) Yes.

4 MR MOURAD: [10:23:45]

5 Q. [10:23:46] That's page 5.

6 In our preparation session, you described the meaning of the word "Janjaweed". Can
7 you please explain that meaning to the Court?

8 A. [10:24:05] Yes.

9 Q. [10:24:07] Please go ahead.

10 A. [10:24:21] The Janjaweed as known in our country is a group of people from
11 Arab tribes who ride camels and horses and own weapons and they kill different
12 people from different tribes and pillage markets and villages. This is a group of
13 people known as Janjaweed in our country.

14 Q. [10:24:57] Thank you very much.

15 PRESIDING JUDGE KORNER: [10:24:59] The next question is an obvious one, isn't
16 it.

17 How do you know that?

18 THE WITNESS: [10:25:13](Interpretation) Because there are no other tribes who
19 owned weapons and were riding horses and camels and pillaged villages. It's
20 common knowledge. Those are the tribes that killed people, pillaged villages and
21 burnt parts of villages. The Janjaweed are well known in our area and there are no
22 other tribes in our area other than the Arabs, who owned weapons. They are the
23 ones who owned weapons and killed people and pillaged villages.

24 MR MOURAD: [10:26:15]

25 Q. [10:26:15] Mr Witness, in the preparation session you explained the word itself,

1 "Janjaweed", and you broke it down into two words -- "*jinn*" and "jaweed". Can you
2 explain that to the Court, please?

3 A. [10:26:36] Yes. Janjaweed is an abbreviation, which is "*jinn*" means ride and
4 "*jawad*" means horse, in Arabic. So it's -- *jinn* comes from *jinn* -- *jinn*, means
5 something scary that comes on the back of a horse. That is the reason behind this
6 word, it's a scary figure riding a horse. A *jinn* riding a horse.

7 Q. [10:27:25] Now, moving to another section of your statement, it's a whole section
8 where you describe the siege of Deleig, the conduct of searches and the arrest of
9 males suspected to be from villages outside of Deleig.
10 For the record, this is paragraph 28 to 42 in your statement.

11 Do you remember describing that in your statement?

12 A. [10:28:04] Yes.

13 Q. [10:28:05] Could you estimate the overall number of the Janjaweed in Deleig on
14 5 March, the third month in 2004? Can you estimate the overall number of the
15 Janjaweed that day?

16 A. [10:28:37] In the whole of Deleig or just in the place where I was?

17 Q. [10:28:43] The whole of Deleig, if you can.

18 A. [10:28:49] I can't remember the number in the whole of Deleig. I can't tell, but
19 there was a big number, hundreds, hundreds of Janjaweed and they were
20 surrounding the entire town of Deleig. Well, obviously, it's quite a big place and
21 based on the space, I think there were hundreds, hundreds of Janjaweed, but I can't
22 tell exactly.

23 Q. [10:29:24] In describing what you say on 5 March 2004, you say that you saw
24 three Land Cruisers with Dushka guns mounted on them and noticed that one of the
25 vehicles had the Arabic letters "Khaf. Shin. Mim" written on it.

1 For the record, that's paragraph 30 on page 1892.

2 What do those letters stand for, sir?

3 A. [10:30:11] "Khaf." stands for forces. "Shin." stands for people. And "Mim"
4 stands for armed. People's armed forces.

5 Q. [10:30:42] How do you know that, sir?

6 A. [10:30:46] I know that because all the military vehicles owned by the Sudanese
7 army or the Sudanese Armed Forces carried these letters.

8 Q. [10:31:09] Now I'm moving to another topic, still on the same day. Who did
9 you understand to be the leader of the Janjaweed at the time of this incident that you
10 described that took place on 5 March 2004 and the following days? Do you know
11 who the leader of the Janjaweed was at that -- on that day?

12 A. [10:31:34] Ali Kushayb was the leader of the Janjaweed in general.

13 Q. [10:31:48] How did you -- how did you know that?

14 A. [10:31:53] I knew that because Ali Kushayb was the only leader of the militia or
15 the Janjaweed at that time in the Wadi Salih in general and everything went through
16 him, and upon his instructions he was directing the Janjaweed. Whether he was
17 present or not, everything happened upon his instructions.

18 Please go ahead.

19 Q. [10:32:34] What was the understanding based on? How did you come to learn
20 that he was actually the leader of the Janjaweed?

21 PRESIDING JUDGE KORNER: [10:32:42] And when, please? If you look at
22 paragraph 58, which is I assume what you're basing this on.

23 MR MOURAD:

24 Q. [10:32:54] Can we start with her Honour's question: When was he the leader of
25 the Janjaweed?

Trial Hearing
WITNESS: DAR-OTP-P-0712

(Open Session)

ICC-02/05-01/20

1 A. [10:33:07] I cannot recall the exact date, but at that time he was the only known
2 leader known as Ali Kushayb.

3 PRESIDING JUDGE KORNER: [10:33:20] Mr Mourad, not -- I'm not interested in
4 when he -- when he believes Ali Kushayb was the leader. I want to know, and so
5 should you, when he acquired this information.

6 MR MOURAD: [10:33:37]

7 Q. [10:33:37] Mr Witness, when did you learn that he was the leader of the
8 Janjaweed, Ali Kushayb was the leader of the Janjaweed?

9 A. [10:33:50] At the beginning of the rebellion, he showed up as the leader of
10 militia.

11 Q. [10:34:08] Showed up where?

12 A. [10:34:12] In our community in Wadi Salih, in general, it was known he was the
13 leader of the Janjaweed, he was moving from a region to the other and he was leading
14 the Janjaweed in the different regions. He emerged and appeared in different
15 regions, and according to hearsay of the local people, Ali Kushayb was well known as
16 the leader of the Janjaweed.

17 Q. [10:34:53] So you said you learned about that at the beginning of the rebellion.
18 When was that, in years, if you can remember?

19 A. [10:35:08] I cannot remember exactly, but before the Deleig incidents, a year
20 before this, but I cannot recall the exact date, of course.

21 MR MOURAD: [10:35:52] Madam President, could we move to a private session for
22 my last topic with the witness? It involves discussion of confidential information.

23 PRESIDING JUDGE KORNER: [10:36:07] All right, thank you.

24 Private session, please.

25 (Private session at 10.36 a.m.)

- 1 THE COURT OFFICER: [10:36:12] We are in private session, Madam President.
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Open session at 10.40 a.m.)
- 18 (Redacted)
- 19 THE COURT OFFICER: [10:40:51] We are back in open session, Madam President.
- 20 MR MOURAD: [10:41:05]
- 21 Q. [10:41:08] Mr Witness, my last question to you is asking you to tell the Court, if
- 22 you can, what impact did the events in Deleig in 2004 have on you and your life?
- 23 A. [10:41:25] A psychological impact due to what I have seen, also a material
- 24 impact due to what I've lost. In addition to this, I had to stay away from my family
- 25 for 14 years.

1 Q. [10:42:09] Thank you. Thank you, Mr Witness, for answering my question.

2 MR MOURAD: [10:42:15] That concludes my examination.

3 PRESIDING JUDGE KORNER: [10:42:18] Yes, thank you --

4 MR MOURAD: Thank you very much.

5 PRESIDING JUDGE KORNER: [10:42:21] -- Mr Mourad.

6 Yes, Mr Shah.

7 MR SHAH: [10:42:29] Thank you, Madam President. I just have a few questions
8 for the witness, with your -- with the -- with the Chamber's leave.

9 QUESTIONED BY MR SHAH:

10 Q. [10:42:37] Good morning. Good morning, Mr Witness, you may recall that we
11 met two days ago by video link. As I mentioned then, I am one of the lawyers
12 representing victims in these proceedings and, like you, our clients have been
13 impacted by the events that you've testified about and I would like to ask you a few
14 questions on their behalf, if that's okay with you.

15 A. [10:43:05] Yes, sure.

16 Q. [10:43:07] And all of my questions will concern what happened to you and your
17 family in the period after the siege of Deleig in March of 2004.

18 So firstly, Mr Witness, at paragraph 66 of your statement, and that's on page 18, you
19 mentioned that after the siege of Deleig, your family settled in IDP camps,
20 internally -- internally displaced persons' camps, where many of them still are.

21 And you were --

22 A. [10:43:48] Yes.

23 Q. [10:43:49] Yes, thank you. You were interviewed by the Prosecution four years
24 ago. Is it still the case that many of your family members are still living in internally
25 displaced persons' camps?

1 A. [10:44:06] Yes.

2 Q. [10:44:09] Thank you. And at paragraph 69 of your statement, and that's at
3 page 19, you say that you returned to the same IDP camp where your family was
4 living in 2007. And I would like to ask, Mr Witness, if you can tell us who were the
5 leaders of the camp at this time in 2007? Was it traditional leaders such as *umdahs*
6 who were in charge of the camp or were other people in charge?

7 A. [10:44:52] There are sheikhs who represent the camp, there are several sheikhs.
8 This is the denomination we give to the representative of the community there. And
9 there were several people in charge, so the sheikh of the -- yeah, for each region was
10 in charge of our region within the camp and of the individuals who were displaced
11 from Naru (phon) and -- Waro and other regions. One of them was killed almost
12 two years ago within the camp.

13 Q. [10:45:57] Thank you, Mr Witness, I'm sorry to hear that.
14 Mr Witness, I'd -- I'd like to now move to paragraph 22 of your statement where you
15 mention that in 2008, you visited -- you visited the village of your paternal
16 grandfather and you said that the village was controlled by the Janjaweed, including
17 your grandfather's plantation.

18 After the conflict of 2003 and 2004, are you aware of other Fur villages or farmland
19 that were taken over by the Janjaweed or non-Fur communities?

20 A. [10:46:45] All the plantations and the lands in the region were under the control
21 of the Janjaweed.

22 Q. [10:46:56] Is this what you heard from other people, Mr Witness? Or did you
23 see this yourself?

24 A. [10:47:04] I heard this from members of my family who are in (Redacted), which
25 became empty of inhabitants and came under the control of the Janjaweed. There

1 was not -- no one from the region was still there, living in the -- in this region.

2 Q. [10:47:40] Thank you, Mr Witness.

3 Now I'd like to move to paragraph 78 of your statement, where you explain that you
4 left Sudan and arrived in a third country and that you lived in this third country for
5 many years. And Mr Witness, please do not mention the name of this third country
6 or any locations within it, but I would like you to explain to the Judges very briefly
7 what your life was like in this third country that you fled to. Were you able to build
8 a new life in this third country?

9 A. [10:48:32] Yes, I worked as a teacher in a school -- or an organisation attached to
10 the UNHCR, and providing services to the refugees.

11 Q. [10:48:56] And Mr Witness, my last question for you is, would you like to return
12 to live in Darfur one day?

13 A. [10:49:10] Of course, if the situation goes back to normal, but for now, I cannot
14 go back.

15 Q. [10:49:22] Thank you, Mr Witness. On behalf of our clients we appreciate your
16 willingness to come and testify before the Judges.

17 MR SHAH: [10:49:32] Those are all our questions, Madam President.

18 PRESIDING JUDGE KORNER: [10:49:42] (Microphone not activated) Mr Shah.

19 Yes, Mr Laucci.

20 MR LAUCCI: [10:49:46] Thank you, Madam President.

21 QUESTIONED BY MR LAUCCI:

22 Q. [10:49:50] Good morning, Witness, we met the other day already. I remind
23 you my name, I am Cyril Laucci and I am the lead counsel for the Defence of
24 Mr Ali Muhammad Ali Abd-Al-Rahman.

25 Do you hear me, is that correct? All fine?

1 A. [10:50:25] Yes, I do.

2 Q. [10:50:26] Very well. Well, I thank you for appearing today before this Court
3 and I use this opportunity to remind that your appearance shall be your occasion to
4 contribute to the manifestation of the truth and nothing else, and I will ask you some
5 questions in order to clarify some aspects of your testimony.

6 A. [10:51:03] Sure.

7 Q. [10:51:05] My questions are simple questions which do not require you to restate
8 what is already in your statement because it has been admitted into proof already.

9 Thank you.

10 A. [10:51:29] Perfect.

11 Q. [10:51:30] And if one of my questions is not clear enough, just ask me to clarify,
12 please.

13 A. [10:51:45] Perfect.

14 Q. [10:51:47] My first question, are you able to recognise the tribe of someone from
15 Darfur when you see that person usually?

16 THE INTERPRETER: [10:52:09] The interpreter could not hear the answer.

17 MR LAUCCI: [10:52:12]

18 Q. [10:52:13] Could you repeat, please. The interpreter did not get you.

19 A. [10:52:18] Yes, yes, I can recognise some features and -- or some people, not all
20 of them.

21 Q. [10:52:28] Okay, but generally you can have a clue of what tribe that person
22 from Darfur belongs to?

23 A. [10:52:44] Not all people, but through the accent we can do so. Partly.

24 Q. [10:52:56] Thank you. I go back to the questions that my colleague from the
25 OTP asked you about your definition of the Janjaweed.

1 In your -- at paragraph 16 of your statement - which was shown to you already, I
2 don't think it's necessary to bring it again - you define Janjaweed as, I quote, "Arab
3 Nomads riding horses and camels and pillaging and burning villages in different
4 areas." And when asked by my colleague earlier, you specified that these are the
5 people which have weapons. Is that -- is that your definition once again of the -- of
6 the -- what Janjaweed are?

7 A. [10:54:00] They speak Arabic usually, this is well known, they ride horses and
8 they hold weapons and they pillage the streets and the villages and they don't speak
9 any other language but Arabic.

10 Q. [10:54:16] Thank you. Why did you specify in your statement "Arab nomads"?

11 A. [10:54:26] Sorry?

12 PRESIDING JUDGE KORNER: [10:54:36](Microphone not activated)

13 MR LAUCCI:

14 Q. [10:54:41] Yes, it's just I want a clarification on the quote, paragraph 16, when
15 you defined the Janjaweed, you -- I just write it -- I just read it, sorry. "I understand
16 that the Janjaweed were Arab nomads riding horses or camels" et cetera.

17 My question is, why do you specify nomads?

18 PRESIDING JUDGE KORNER: [10:55:04] I think you've got to say as opposed to
19 whatever.

20 MR LAUCCI: [10:55:08] I don't know what will be the answer, but I can -- I can add
21 it, if you like. Okay, I do.

22 Q. [10:55:16] Why do you specify nomads as opposed to people who -- Arabs who
23 are not nomads who live -- what is the word in English? Help me, please.

24 PRESIDING JUDGE KORNER: [10:55:30] (Microphone not activated) Static.

25 MR LAUCCI: [10:55:33] Thank you.

1 THE WITNESS: [10:55:41](Interpretation) We designate by "Arab" anyone who
2 speaks Arabic irrespective of whether they are nomads or not. We describe them as
3 Arabs. Whether it has been translated as Arab nomads or not, usually they are Arab
4 people who speak Arabic, who ride horses, hold weapons and they are the ones who
5 pillage and burn the villages and perpetrate or commit crimes.

6 MR LAUCCI: [10:56:20]

7 Q. [10:56:20] Okay, so your clarification -- I will wait.

8 So your clarification is that Janjaweed are not only nomads?

9 PRESIDING JUDGE KORNER: [10:56:35] Mr Laucci, we could go on --

10 THE WITNESS: [10:56:39](Interpretation) All of them speak Arabic, and we consider
11 that they are Janjaweed.

12 PRESIDING JUDGE KORNER: [10:56:51] Mr Witness, do you make a distinction
13 between Arabs who are nomads, in other words, they have no fixed place to live, and
14 Arabs who actually live in a fixed place? Do you make any kind of distinction that
15 way?

16 THE WITNESS: [10:57:11](Interpretation) No. They are Arabs. Be them nomads
17 or not, there is no distinction whatsoever between them.

18 MR LAUCCI: [10:57:27] Thank you, Madam President.

19 Q. [10:57:33] And earlier you said that -- still defining the Janjawees, that they are
20 the ones having weapons and you said there is no other tribe having weapons. Do
21 you want to confirm that?

22 A. [10:57:50] Yes.

23 Q. [10:57:51] So does that mean that other tribes like the Fur, for instance, did not
24 have weapons?

25 A. [10:58:06] In the past, the Fur used to have weapons; however, they had to lay

1 down their weapons upon instructions of the government and they do not -- so at that
2 time they did not have any weapons, the Fur did not have any weapons. Only the
3 Arabs had weapons with the support of the government which was providing them
4 with the arms and weapons. However, the Fur tribe did not have any weapons, and
5 personally I did not see any such weapons with tribes other than Arabs.

6 Q. [10:58:48] Earlier, in response to the questions of my colleagues, you referred to
7 a rebellion. Was the rebellion composed of Arab tribes?

8 A. [10:59:10] I cannot recall the identity of rebels, whether they are Arabs or others
9 or a mixture of several. I cannot tell. I cannot recognise them.

10 Q. [10:59:27] No clue? You have no clue about the tribal -- yeah, the tribes that
11 were represented in the rebellion? You know nothing about that?

12 A. [10:59:41] No. I have no clue about the rebels or rebellion, but we have heard
13 that they do belong to some tribes, but I did not -- to -- black people, they are black
14 people, but usually they are Arabs. But I cannot say if this is right or wrong. This
15 is what I heard.

16 Q. [11:00:20] Fine. And did the rebellion have weapons?

17 A. [11:00:30] I did not see this by myself. I have no clue about the rebellion or the
18 rebels, but there was -- there were disputes between -- or fights between them and the
19 government in several regions as I -- I think so, but I cannot remember exactly if they
20 do have weapons.

21 Q. [11:00:58] What did they fight with?

22 A. [11:01:07] To restore their rights, as I heard and as they say. They considered
23 that they were marginalised and they are fighting to restore their rights.

24 Q. [11:01:20] No, my question was not what they were fighting for. My question
25 was what they were fighting with. What did they use to fight against the

1 government if they did not have weapons?

2 A. [11:01:35] As I already told you, I never saw them and I don't know about this.

3 Q. [11:01:44] Thank you. I will move on.

4 At -- you mention at paragraph 17 of your statement that Janjaweed came to Waro by
5 mid-2003 and you comment, "I believe they were from Arab tribes." Are you able to
6 be more specific and say which Arab tribes, please?

7 A. [11:02:15] No. The Arab tribes with all its different components, we just call
8 them Arabs, and they all worked together. They all cooperated.

9 Q. [11:02:34] Thank you. Did people in Waro try to organise and prepare to
10 defend themselves in case Janjaweed would attack them?

11 A. [11:02:46] No, they didn't have any weapons and that's why they couldn't
12 defend themselves. How can you defend yourself in the face of people who are
13 carrying weapons? There was no resistance from the citizens.

14 Q. [11:03:12] Did they try to seek support from outside?

15 A. [11:03:22] No.

16 Q. [11:03:28] How far is Sindu from Waro, please?

17 A. [11:03:34] I don't know the location of Sindu exactly, and I can't remember the
18 distance between the two areas. It might be one day or maybe more.

19 Q. [11:03:54] Okay. And you never heard that there was a base of the rebellion in
20 Sindu, right?

21 A. [11:04:13] Yes, I heard that there was a base of the rebellion, but I don't know
22 any details.

23 PRESIDING JUDGE KORNER: [11:04:20] Sorry, at what stage are you putting,
24 Mr Laucci? Are we talking 1989?

25 MR LAUCCI: [11:04:30] No. We are talking about 2003 at the time of the attack on

1 Waro.

2 Q. [11:04:36] Okay. In these events that unfolded in Waro in -- by mid-2003, do
3 you know anyone who was killed?

4 A. [11:04:49] In which area?

5 Q. [11:04:56] I'm talking about the events which are by mid-2003 in Waro.
6 Paragraph 17 of your statement.

7 A. [11:05:15] In Waro, some people got killed during pillaging. That happened
8 a lot in many areas.

9 Q. [11:05:29] Any person you knew personally?

10 A. [11:05:38] I know that about two people got killed about a year ago in Waro. I
11 know a number of people from Waro, people got killed during pillaging, but I know
12 other people in the neighbourhood who -- killed at different dates.

13 Q. [11:06:06] Any person that had a close relationship to you was killed in Waro in
14 mid-2003?

15 A. [11:06:17] I can't remember.

16 Q. Thank you.

17 A. [11:06:24] In Waro, there was a lot of killing in the streets. I can't remember.

18 Q. [11:06:31] Thank you very much.

19 I move to the attack on (Redacted). At paragraph 20 of your statement, you mention
20 the death of your grandfather who you explain was killed and burned within his
21 house and that was you say around the end of 2003. I don't ask you a specific date.
22 First question, was it your grandfather on your maternal or paternal side?

23 A. [11:07:25] Maternal grandfather.

24 Q. [11:07:31] Did you know your other grandfather on the paternal side?

25 PRESIDING JUDGE KORNER: [11:07:37] Well, I wonder whether -- I mean --

- 1 THE WITNESS: [11:07:38] (Overlapping speakers)
- 2 PRESIDING JUDGE KORNER: [11:07:39] -- I'm struggling to see why it's relevant,
3 but I wonder whether we shouldn't go into private session if you're going to ask
4 about his --
- 5 MR LAUCCI: [11:07:50] I'm not asking for names, just asking if he knows.
6 And for the relevance, that will be another surprise for the day.
- 7 PRESIDING JUDGE KORNER: [11:07:57] Well, I think you're going to have to
8 spring the surprise, Mr Laucci, at some stage.
- 9 MR LAUCCI: [11:08:01] Yes.
- 10 Q. [11:08:03] So, yes, I was asking if you knew your other grandfather, the paternal
11 grandfather. Don't say the name, please.
- 12 A. [11:08:13] Yes, I know him.
- 13 Q. [11:08:23] Is he still alive?
- 14 A. [11:08:28] No. He was killed as well in 1989.
- 15 Q. [11:08:36] Can you briefly summarise the circumstances, if that's not too much
16 painful?
- 17 PRESIDING JUDGE KORNER: [11:08:54] I suppose technically that -- that may have
18 the effect of -- if he describes the circumstances, that may have the effect of identifying
19 him to the public. So I think if you -- if you really want to pursue this, Mr Laucci,
20 and you better get to the point fairly quickly, we'll go into private session.
- 21 MR LAUCCI: [11:09:17] I will keep that -- I will ask for a private session later. I
22 will ask this question at this moment. I move on for the moment.
- 23 Q. [11:09:35] I will move to your arrival in Deleig, if you -- if you agree. You
24 explained that when you arrived in Deleig, you saw the arrival of many people.
25 The first question, did the people arriving in Deleig include rebels?

1 A. [11:10:14] No.

2 Q. [11:10:23] How can you be sure?

3 A. [11:10:36] They are people who used to live to the south of Deleig. When their
4 villages were burnt down, they had to flee to Deleig.

5 Q. [11:10:57] Okay, but you did not know these people personally, right?

6 A. [11:11:05] No. But I knew that they were from the Fur tribe, but I didn't know
7 them personally.

8 Q. [11:11:16] Okay, so how can you -- what makes you affirm that these people
9 who you do not know are not rebels? Is there a specific characteristic to identify
10 who a rebel is?

11 A. [11:11:43] I don't know the characteristics of the rebels, but I know that the
12 families that arrived, they were families, men, women and children. So they were
13 carrying their belongings and moving, so I know that those people were not rebels,
14 they were just inhabitants of areas that were attacked and destroyed and burnt down
15 and that's why they fled to protect their families.

16 Q. [11:12:16] Thank you. Did you ever hear about the existence of village defence
17 militias?

18 A. [11:12:25] No. I don't know anything about that.

19 Q. [11:12:36] Okay. I move on.

20 At paragraph 28 of your statement, you explain -- and we are in Deleig -- you explain
21 that you remember the date of 5 March 2004 because you had an examination at
22 secondary school in Deleig. Do you remember that?

23 A. [11:13:13] Yes, I didn't have an exam on the same date but during the same
24 month or around the same time.

25 Q. [11:13:24] Yeah, I wanted -- my next question was to know when exactly was

1 your examination. So you say it's not on the same date. I don't want to have the
2 specific date, but it's not on 5 March, right?

3 A. [11:13:37] Yes, the examination was around that time, but the events happened
4 on 5 March.

5 Q. [11:13:53] But if the examination was not on that date, how is this information
6 helpful for you to remember that the events were on 5 March?

7 A. [11:14:11] Not the examination necessarily but the events.

8 Q. [11:14:26] Okay. Yes, but my question is, the reason why you remember the
9 date, you say, is that you had over that period of time examinations at school. You
10 follow me? If the exams were not on that specific day, how the fact that you had
11 some examination helps you to remember that the events took place on 5 March?

12 A. [11:15:03] That might be a mistake in the translation or interpretation, but I
13 remember that during that time I was revising and studying for my examination.
14 Maybe the interpreter said it as the exam is the main reason why I remember the date,
15 but to be honest it was the sad events that made me remember the date very well.

16 MR LAUCCI: [11:15:36] I will stop there, colleague. I don't know if ...

17 MR MOURAD: [11:15:40] I just want to clarify, this paragraph doesn't say the
18 witness --

19 PRESIDING JUDGE KORNER: [11:15:43] I was about to say the same thing.

20 Sorry, I've forgotten my microphone. It says, "Friday 5th March [...] is an
21 unforgettable date due to what I saw happening in Deleig." It does not say anything
22 about the exams except as an aside.

23 MR LAUCCI: [11:16:10] Thank you, Madam President. Anyway, my intention was
24 to move on.

25 Q. [11:16:15] Moving to 6 March, in your statement you say that you stayed in your

1 uncle's house because it was too dangerous outside. And you said that your uncle
2 went to seek information. Do you confirm that?

3 A. [11:16:46] Yes.

4 Q. [11:16:49] Thank you. Do you remember even at -- well, the date may not be
5 helpful, but a phone conversation with people from the Office of the Prosecutor
6 before you made your written statement? And I can tell you that it was on 16
7 January 2018.

8 A. [11:17:27] Yes.

9 Q. [11:17:29] Well, so I refer to the screening note from that interview -- phone
10 interview. The document is DAR-OTP-0209-0955 and I refer to the page 0957. And
11 I will read what is written. "The day after the attack" and so it should be 6 March,
12 "[you] left the house and met up with other young people. [You] learned that the
13 Janjaweed had help from some local people from Deleig", et cetera, et cetera.
14 The important point for my question is, in your declaration on the phone you said
15 that you left the house and went to collect information. In your written statement it
16 said that you stayed home and that your uncle went to collect information.
17 Can you clarify, please, what is the truth between the two?

18 A. [11:18:53] The truth is it was my uncle who left the house. He went to the city
19 and he wanted to know what happened.

20 Q. [11:19:15] Any explanation for this small discrepancy in your screening notes
21 from January 2018?

22 MR MOURAD: [11:19:35] Madam President?

23 PRESIDING JUDGE KORNER: Yes.

24 MR MOURAD: I don't think on the screening --

25 THE WITNESS: [11:19:38](Interpretation) I can't remember actually saying that I

1 went out. I remember very well that it was my uncle who left the house and went to
2 the city.

3 PRESIDING JUDGE KORNER: [11:19:59] Here, Mr Mourad, I mean, I suppose
4 it's -- it's such a small point that I can't understand, Mr Laucci, why you're even
5 bothering with it.

6 But I suppose, Mr Mourad, your objection is that possibly paragraph 45 doesn't make
7 it inconsistent. It seems he did go out.

8 MR MOURAD: [11:20:27] Just the paragraph referred to in the screening doesn't say
9 he learned from other people. He just went out and met other people and then he
10 learned. It doesn't actually say "I learned from those people."

11 PRESIDING JUDGE KORNER: [11:20:31] Mr Laucci, that's the best you can do.

12 MR LAUCCI: [11:20:47] (Microphone not activated)

13 THE INTERPRETER: [11:20:49] Microphone, please, Counsel.

14 MR LAUCCI: [11:20:52] Thank you. I'll repeat.

15 Q. [11:20:53] At paragraph 53 to 57 of your statement you mention a person named
16 Ja'afar Abd-Al-Hakam. Can you tell us who was Ja'afar Abd-Al-Hakam, please?

17 A. [11:21:13] Ja'afar Abd-Al-Hakam was the governor of Wadi Salih. He was the
18 one responsible for the entire area of Wadi Salih.

19 Q. [11:21:29] Why do you mention him in your statement?

20 A. [11:21:45] I remember that I mentioned him because he is the one who was the
21 official in Wadi Salih and everything was under his charge -- under his control.

22 Q. [11:21:59] Was he the highest, highest authority in the locality?

23 A. [11:22:07] Yes.

24 Q. [11:22:11] At paragraph 53, you mention that Ja'afar Abd-Al-Hakam said
25 to -- that people would be punished if they provided information to humanitarian or

1 international organisations. First question, what was the authority of

2 Ja'afar Abd-Al-Hakam to -- to provide such a -- such a threat?

3 A. [11:22:43] He's the governor of Wadi Salih.

4 Q. [11:22:52] So does that make that legally he can say if people speak to
5 international organisations, they will be punished?

6 A. [11:23:04] In Sudan, the government official is the one who takes decisions, not
7 the people.

8 Q. [11:23:19] Do you have any clue how --

9 A. [11:23:20] (Overlapping speakers)

10 Q. [11:23:21] I'm sorry. Carry on.

11 A. [11:23:25] I mentioned he was the governor of Wadi Salih and he was the one
12 controlling the entire locality and the one taking decisions.

13 Q. [11:23:41] Okay. Do you have any clue how that threatened punishment
14 would work? Would people be arrest? Would they be prosecuted? Would they
15 just be executed summarily? How would that work?

16 A. [11:24:12] Any kind of punishment. But for him, he can kill people. That was
17 a very simple thing and common thing. People would be killed in front of others
18 without any kind of consequences.

19 Q. [11:24:32] Did you hear about concrete cases of that?

20 A. [11:24:41] I can't remember.

21 Q. [11:24:49] Did that threat also apply to supplying information to the
22 International Criminal Court?

23 A. [11:25:03] At the time, we didn't have any information about the
24 International Criminal Court.

25 Q. [11:25:22] And in your understanding, I know that you are no longer in Sudan,

1 but in your understanding, is that threat still in existence nowadays?

2 A. [11:25:41] The threat from who, exactly?

3 PRESIDING JUDGE KORNER: [11:25:49] Really, Mr Laucci, as you pointed out, he
4 isn't there. Any information he has could only be hearsay evidence and isn't going
5 to take this any further.

6 MR LAUCCI: [11:26:04] I will just clarify my question to see what is the response
7 and I will move on.

8 Q. [11:26:10] Threat from Mr Ja'afar Abd-Al-Hakam or any other representative of
9 the authorities in Sudan, is there still a threat bearing on people who provide
10 information to international organisations, information on the crimes?

11 A. [11:26:39] Of course. If they know, the fate of those people will be death.

12 Q. [11:26:55] Thank you. And thank you even more for being here, actually.

13 I move to the next topic. At paragraph 58 to 63, you mention another person named
14 Ali Kushayb. First question, when did you hear about Ali Kushayb for the first
15 time?

16 A. [11:27:35] Can you repeat the question, please.

17 Q. [11:27:37] My question is, when did you hear about a man called Ali Kushayb
18 for the first time?

19 A. [11:27:50] I don't remember the date, but I remember that it was in the same year,
20 I think.

21 Q. [11:27:59] Which same year are you talking about?

22 A. [11:28:05] The same year -- year of the massacre in Deleig.

23 Q. [11:28:15] So it must be 2004?

24 A. [11:28:26] I don't remember exactly. Maybe. Between 2002 and -- yeah, I
25 don't remember exactly. But he became very well known during the events in

1 Deleig.

2 Q. [11:28:45] Okay. And do you remember from whom you heard for the first
3 time talking about Ali Kushayb?

4 A. [11:29:02] The residents of the entire area of Wadi Salih, everyone there knew
5 who Ali Kushayb is or was.

6 Q. [11:29:13] Thank you. At paragraph 60 of your statement, you mention having
7 seen the man called Ali Kushayb the first time on Deleig market in 2008. You
8 explained that it's a friend of yours who pointed at a man and told you that this
9 person was Ali Kushayb.

10 When approximately -- approximately was it in 2008, please? What period in the
11 year?

12 A. [11:30:03] I think it was maybe March.

13 Q. [11:30:12] Okay. And I take it as an approximation. I want to be clear on that.
14 Thank you.

15 A. [11:30:20] Yes.

16 Q. [11:30:21] How did your -- your friend know that that man that was passing was
17 Ali Kushayb?

18 A. [11:30:31] He knew him from before. He knew him really well. And he might
19 have seen him more than once.

20 Q. [11:30:51] How far was the man called Ali Kushayb from you when you saw
21 him on the market?

22 A. [11:31:01] Around 10 metres, approximately.

23 Q. [11:31:08] Was it a busy day on the market? Were there many people?

24 A. [11:31:18] It was a market day.

25 Q. [11:31:21] So you confirm a lot of people? Was it crowded?

1 A. [11:31:40] Normal. In Deleig, on that day, all surrounding regions come to the
2 market, so it was crowded from people coming from all over the regions.

3 PRESIDING JUDGE KORNER: [11:32:02] Mr Laucci, if it helps you, the only
4 evidence that really goes anywhere, and it may be so it doesn't go anywhere at all,
5 was that somebody was pointed out to him some years later as Ali Kushayb. That's
6 it. I mean, there is no other --

7 MR LAUCCI: [11:32:24] Okay.

8 PRESIDING JUDGE KORNER: [11:32:26] -- other issue in this.

9 MR LAUCCI: [11:32:28] Thank you. So I will save time.

10 PRESIDING JUDGE KORNER: [11:32:31] Yeah, that's what I rather thought.

11 MR LAUCCI: [11:32:34]

12 Q. [11:32:35] Same thing -- same question about the second time, you say you saw
13 a man who was pointed at you as being Ali Kushayb, it was in Garsila still in 2008.
14 Any estimation of when in 2008 it was, please?

15 A. [11:32:57] Same period of time, more or less, it was in March or April.

16 Q. [11:33:10] In your statement you mentioned something had happened to you in
17 April 2008. That should be something clear in your memory. I'm talking about
18 being arrested. Do you remember that?

19 A. [11:33:45] Yes, I do.

20 Q. [11:33:49] The second time you saw the man called Ali Kushayb, was it before?
21 Was it after? Was it around these dates?

22 MR LAUCCI: [11:34:06] Oh, we lost the witness?

23 PRESIDING JUDGE KORNER: [11:34:10] We do appear to have lost the witness.

24 Or is it just the picture?

25 MR LAUCCI: [11:34:15] Does he hear us?

1 THE COURT OFFICER: [11:34:19] Your Honours, the issue is being looked into. It
2 appears that the connection is lost.

3 PRESIDING JUDGE KORNER: [11:34:25] Right. Is that something that's likely to
4 be resolved fairly quickly or can't you say?

5 THE COURT OFFICER: [11:34:33] Your Honours, it should take a short while. I
6 will check with my colleagues to confirm how long.

7 (Pause in proceedings)

8 PRESIDING JUDGE KORNER: [11:35:05] All right, we'll adjourn while they try and
9 sort this out. I'm told it could take up to five minutes.

10 MR LAUCCI: [11:35:12] Yes, and my estimation is that I will need 15 more minutes,
11 maximum.

12 PRESIDING JUDGE KORNER: [11:35:18] All right. Let's hope we can conclude
13 that then. Yes, thank you.

14 THE COURT USHER: [11:35:23] All rise.

15 (Recess taken at 11.35 a.m.)

16 (Upon resuming in open session at 11.45 a.m.)

17 THE COURT USHER: [11:45:08] All rise.

18 MR LAUCCI: [11:45:34] Thank you, Madam President.

19 Q. [11:45:37] Sorry, Witness, there was a problem of connection. I will resume
20 where I stopped.

21 Do you hear me?

22 I was trying to --

23 A. [11:45:47] Yes, I do hear you.

24 Q. [11:45:49] I was trying to assist you in clarifying when the second time you saw
25 a person pointed at you as Ali Kushayb did happen. And I was using the event

1 when you were arrested in April 2008 to ask you when this second time you saw the
2 man called Ali Kushayb happened. Was it before, after your arrest?

3 A. [11:46:33] I don't remember if it was before or after, frankly. I cannot
4 remember, but I think it was after.

5 Q. [11:46:46] After your detention?

6 A. [11:47:06] Could you kindly repeat the question.

7 Q. [11:47:09] My question was to try to find if the second time you see the guy
8 called Ali Kushayb happens before or after the time you spent in detention in
9 April 2008?

10 A. [11:47:30] I cannot remember whether it was before or after, frankly.

11 Q. [11:47:36] When did you move to Zalingei?

12 A. [11:47:49] After my detention, after my detention, I went to Zalingei, but I didn't
13 stay there. I only transited from Zalingei.

14 Q. [11:48:06] Okay. My question is I know it's after your detention, but when,
15 what date approximately, month, whatever, did you move to Zalingei?

16 A. [11:48:16] I don't remember the date. It was in 2008, approximately, as I think
17 it was in the fifth month.

18 Q. [11:48:28] May, okay.

19 So maybe between --

20 A. [11:48:37] The fifth month.

21 Q. [11:48:39] -- these two events, can you remember better when you saw the
22 person called Ali Kushayb? Was it between your detention and your departure for
23 Zalingei?

24 A. [11:48:55] I don't think so. It was immediately after the
25 detention -- immediately after the detention, I went to Zalingei and then I moved all

1 the way to Khartoum. I think I saw him before my detention.

2 Q. [11:49:18] Thank you.

3 For the last questions I will need to go to private session, Madam President.

4 PRESIDING JUDGE KORNER: [11:49:27] Yes, private session, please.

5 (Private session at 11.49 a.m.)

6 THE COURT OFFICER: [11:49:35] We're in private session, Madam President.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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

Page redacted – Private session

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

Page redacted – Private session

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

Page redacted – Private session

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

Page redacted – Private session

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Open session at 12.05 p.m.)

20 THE COURT OFFICER: [12:05:15] We are back in open session, Madam President.

21 MR LAUCCI: [12:05:26]

22 Q. [12:05:27] Mr Witness, I come to the conclusion of my cross-examination. What

23 I want to say is that -- actually, I will mention it, but it does not identify the witness

24 whatsoever.

25 What I want to say is that if you had really experienced the events you describe in

1 Deleig, this would have been mentioned in your statement before the asylum
2 authorities. You did not mention them, whereas these were relevant and were
3 traumatic and you cannot explain that you did not remember them. So the only
4 possible and logical conclusion is that the whole events in Deleig you never
5 experienced them and --

6 PRESIDING JUDGE KORNER: [12:06:35] (Microphone not activated)

7 MR LAUCCI: [12:06:36] It's not a question. It's putting the case. I'm trying to
8 practice in that.

9 PRESIDING JUDGE KORNER: [12:06:42] (Microphone not activated)

10 THE INTERPRETER: [12:06:47] Microphone, please.

11 PRESIDING JUDGE KORNER: [12:06:50] (Microphone not activated)

12 Sorry, the simple question is, are you sure you're telling the Court correctly - I mean, I
13 don't know whether you're suggesting he's lying or whatever - that you witnessed
14 these events in Deleig.

15 MR LAUCCI:

16 Q. [12:07:07] Can you answer the question by Madam President, Mr Witness,
17 please?

18 A. [12:07:17] Yes, are you still there?

19 Q. [12:07:38] Yes. Do you hear me?

20 MR NICHOLLS: [12:07:40] I think it was a bit confusing (Overlapping speakers)

21 MR LAUCCI: [12:07:41] Yeah, I will --

22 THE WITNESS: [12:07:42] (Overlapping speakers)

23 MR NICHOLLS: [12:07:42] (Overlapping speakers) this exchange.

24 MR LAUCCI: [12:07:45] Okay. I will rephrase.

25 Q. [12:07:48] So, Mr Witness, I -- I rephrase.

1 Are you sure you experienced the events you mentioned in Deleig in March 2004
2 described in your statement?

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Finally, the last point is that in your statement, Mr Witness, you have identified

18 Ja'afar Abd-Al-Hakam as the highest authority in charge in Deleig in 2004, you

19 confirmed that he played an important role in arming the Janjaweed and threatening

20 the person who wanted to tell what had happened, and this is one aspect on which

21 we -- we thank you for your testimony.

22 I'm done, Madam President.

23 PRESIDING JUDGE KORNER: [12:10:18] Yes, thank you, Mr Laucci.

24 Yes, Mr Mourad, any re-examination?

25 MR MOURAD: [12:10:28] No direct, your Honour.

- 1 PRESIDING JUDGE KORNER: [12:10:29] Thank you.
- 2 MR MOURAD: Thank you.
- 3 PRESIDING JUDGE KORNER: [12:10:32] (Microphone not activated) Judge
4 Alexis-Windsor wants to ask a question.
- 5 JUDGE ALEXIS-WINDSOR: [12:10:38] Good day, Witness. You said that the Fur
6 tribe had to lay down their weapons on the instruction of the government. I would
7 like to know when was this instruction given by the government for the Fur tribe to
8 lay down their weapons?
- 9 THE WITNESS: [12:10:56](Interpretation) I don't remember, but I think it was
10 maybe towards the end of 1989, beginning of 1990, something like that.
- 11 JUDGE ALEXIS-WINDSOR: [12:11:27] Thank you.
- 12 JUDGE ALAPINI-GANSOU: [12:11:36](Interpretation) Thank you, your Honour.
13 Mr Witness, I would like to ask you a question. I'd like us to go back to the issue of
14 nomadic people and non-nomadic people. Now I understood by your remarks
15 that -- that when you were talking about these nomads and non-nomads, you were
16 talking about Arabic people, Arab people? Is that correct?
- 17 THE WITNESS: [12:12:10](Interpretation) Yes.
- 18 JUDGE ALAPINI-GANSOU: [12:12:18](Interpretation) In your opinion, were there
19 Janjaweed -- well, did they all speak Arabic, is that correct?
- 20 THE WITNESS: [12:12:27](Interpretation) Yes.
- 21 JUDGE ALAPINI-GANSOU: [12:12:29](Interpretation) I'm trying to determine one
22 thing about these Arab nomads. Did you mean that these people who went from
23 house to house and in one way or another inflicted suffering upon the people, these
24 people did not remain in one fixed location and that is why they were referred to as
25 nomads?

1 THE WITNESS: [12:13:13](Interpretation) What is known in our area that
2 they -- they were not living in villages or in towns, but they are living in the outskirts
3 and they had their cattle with them and, yes, they moved from one place to the next,
4 depending on the season.

5 JUDGE ALAPINI-GANSOU: [12:13:53](Interpretation) So that would mean that
6 there were Arabs who stayed in one spot and they were not part of this Janjaweed
7 group?

8 THE WITNESS: [12:14:10](Interpretation) No. All the Arabs, whether they lived in
9 one location or -- one specific location, or moved from one place to the next, they all
10 worked together, they all cooperated. They all behaved in the same way. Maybe
11 individual people didn't, but they all behaved in the same way.

12 JUDGE ALAPINI-GANSOU: [12:14:52](Interpretation) Thank you very much.

13 PRESIDING JUDGE KORNER: [12:14:57] Yes, sir, thank you very much for giving
14 your testimony. That concludes the evidence that you give. And as I say, and as
15 Mr Laucci said to you, the Court is grateful to you for giving your account of what
16 happened. And that concludes your testimony. Thank you very much.

17 THE WITNESS: [12:15:21](Interpretation) Thank you very much. Thank you all.
18 (The witness is excused)

19 PRESIDING JUDGE KORNER: [12:15:27] Yes, can we turn the screen off.

20 THE COURT OFFICER: [12:15:51] Your Honours, the connection to the witness has
21 been cut off.

22 PRESIDING JUDGE KORNER: [12:15:58] It's been cut off. Right.

23 Yes, all right, we've sat and I say I'm very sorry to the interpreters and the LiveNote
24 transcribers, or Transcend, that we've had two and a half -- well, we did have a short
25 break, but anyhow, it's longer than we expected.

1 What I'm going to do is adjourn now. I think probably you need a little bit more
2 than the hour. We're going to say if we adjourn till half past one and sit again at half
3 past one and we'll sit until, whatever it is, three o'clock or 3:15, something
4 like -- depending where we get to, Mr Nicholls, with the next witness.

5 Can I say, I really think that the Prosecution should be having another look. Had we
6 had a look at this witness earlier, we might have suggested this was not a witness that
7 required to be 68(3) at all and could have been -- if the Prosecution needed him, there
8 could have been a suggestion that he was a 68(2)(b) because, as I've obviously
9 indicated already to Mr Laucci, it can't be really said that this witness helps either side
10 very much.

11 As it is, I think we're going to be asking for two weeks' notice now of the witnesses so
12 that we can consider, particularly with 68(3) witnesses, whether they are needed at all,
13 or could be 68(2)(b). But it will give the Defence a chance to deal with that if we
14 indicate that we are minded to change our decision.

15 Yes. And secondly, on documents, please, we didn't realise that you were going to
16 be referring, Mr Laucci, to any part of the UNHCR documentation. And the
17 Prosecution highlights what it's going to use, but if you're going to use part of the
18 Prosecution documents, then you must tell us in advance as well.

19 MR LAUCCI: [12:18:35] It's noted for the future, because I thought I was free to rely
20 on every documents of the Office of the Prosecutor.

21 PRESIDING JUDGE KORNER: [12:18:40] Well, you are. But just -- so just tell us.
22 I mean you can rely on anything you like, but you must just tell us so that in advance
23 we are able to have a look at these documents.

24 MR LAUCCI: [12:18:51] Yes. This instruction is noted.

25 PRESIDING JUDGE KORNER: [12:18:54] Right. Thank you very much.

- 1 All right. Yes, as I say, we'll sit again at half past 1, 1.30.
- 2 THE COURT USHER: [12:19:03] All rise.
- 3 (Recess taken at 12.19 p.m.)
- 4 (Upon resuming in open session at 1.32 p.m.)
- 5 THE COURT USHER: [13:32:36] All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE KORNER: [13:32:53] Mr Laucci, just before the witness comes
- 8 in, I've been meaning to ask you this for some time, but to each of the witnesses,
- 9 you've been putting questions about people in the villages, having a village defence
- 10 force, militia, and whether they were armed. So can we take it - because it's not in
- 11 your brief, but as you rightly said, that was just an advance - that part of the defence
- 12 in this case is that these attacks on the villages were taking place because there were
- 13 either rebels there or armed villagers who were likely to cause a problem to the
- 14 government? Is that part of your defence generally?
- 15 MR LAUCCI: [13:33:52] The Defence will not assert that they were rebels or
- 16 whoever may harm the government in each and every village, but certainly, it will
- 17 form part of the defence, that there was a perception that this was the case.
- 18 PRESIDING JUDGE KORNER: [13:34:11] Yes. I see. Well, thank you very much.
- 19 I just wanted to confirm for all of us that our impression was correct.
- 20 Yes. Who's calling the next witness?
- 21 MR NICHOLLS: [13:34:22] That will be Ms Morris, your Honours.
- 22 PRESIDING JUDGE KORNER: [13:34:26] Right. Yes. Very well. Then let's have
- 23 the next witness into court.
- 24 (The witness enters the courtroom)
- 25 PRESIDING JUDGE KORNER: [13:35:30] Sir, thank you very much for attending

Trial Hearing
WITNESS: DAR-OTP-P-0120

(Open Session)

ICC-02/05-01/20

1 court today. The court officer will ask you to deal with the affirmation, please.

2 THE COURT OFFICER: [13:35:46] Good afternoon, Mr Witness. On behalf of the
3 Chamber, I would like to welcome you to the courtroom. You are called to testify to
4 this Chamber in the case of The Prosecutor v. Mr Ali Mohamed Ali Abd-Al-Rahman.
5 Witness, there's a card in front of you with the solemn undertaking. Could you
6 kindly read it out.

7 WITNESS: DAR-OTP-P-0120

8 (The witness speaks Arabic)

9 THE WITNESS: [13:36:23](Interpretation) In the name of God, I solemnly declare
10 that I will speak the truth, the whole truth and nothing but the truth.

11 THE COURT OFFICER: [13:36:33] Thank you, Witness. You are now under oath.

12 PRESIDING JUDGE KORNER: [13:36:37] Yes. Just one further thing, sir, I
13 understand you may have some medical problems about sitting. If, at any stage, you
14 need a break -- I'm afraid you'll have to sit down because of the microphone and the
15 earphones, but if at any stage you need a break, just say so. Otherwise, we are going
16 to go through until 3.30 this afternoon. But, as I say, if you need a break, just put
17 your hand up. Yes, thank you.

18 THE WITNESS: [13:37:16](Interpretation) Okay.

19 MS MORRIS: [13:37:23] Good afternoon, Madam President, your Honours.

20 QUESTIONED BY MS MORRIS:

21 Q. [13:37:27] Good afternoon, Mr Witness.

22 Mr Witness, we've already met, but for the record, my name is Laura Morris, and I
23 will be asking you questions on behalf of the Prosecution today.

24 If you don't understand something, please ask me, and I'll clarify it. And, as your
25 Honour said, if you need a break, please indicate.

1 Mr Witness, you gave a statement to investigators from the Office of the Prosecutor in
2 February and March 2007. Do you recall that?

3 A. [13:37:59] Yes, I remember that date.

4 Q. [13:38:07] For the record, that's item 1 of the list of materials,
5 DAR-OTP-0124-0816.

6 Mr Witness, on Monday this week we met for a witness preparation session. Do you
7 recall that?

8 A. [13:38:26] Yes, of course.

9 Q. [13:38:30] And in that preparation session, you made a few clarifications and
10 corrections to your statement after it was read back to you, correct?

11 A. [13:38:42] Yes.

12 Q. [13:38:48] And you agreed that your statement could be tendered into evidence
13 under a special procedure called Rule 68(3), correct?

14 A. [13:39:05] Correct.

15 Q. [13:39:07] Mr Witness, I'd like to go through those corrections and clarifications
16 with you now so you can confirm them. We are in open session, and that means the
17 public will hear your answers. You have face and voice distortion and
18 a pseudonym.

19 A. [13:39:28] (Speaks English) Okay.

20 Q. [13:39:30] But the questions that I'm asking you in open session are not
21 identifying.

22 A. [13:39:37] Okay.

23 Q. [13:39:40] If you feel that you need to say something identifying, tell me, and we
24 will go into private. Okay?

25 A. [13:39:49] Okay.

1 Q. [13:39:54] Thank you. Now, you corrected that your military training took
2 place between 1978 and 1980, correct?

3 PRESIDING JUDGE KORNER: [13:40:05] Can you identify the paragraphs for us,
4 Ms Morris.

5 MS MORRIS: Apologies. Yes, your Honour.

6 Q. [13:40:12] At paragraph 7, you corrected that your military training took place
7 between 1978 and 1980, is that correct?

8 A. [13:40:24] Yes.

9 Q. [13:40:26] Thank you. At paragraph 22, you clarified that you don't remember
10 saying "self-defence groups were for chasing away nomads," is that correct?

11 A. [13:40:45] Yes, this is what I said. However, after the preparation session, I
12 remembered something. I remembered what exactly I meant by that.

13 Q. [13:41:06] Okay. Would you like to clarify what you exactly meant by that
14 then?

15 A. [13:41:12] I meant by that to expel the farmers from -- the people from their
16 farms or plantations.

17 Q. [13:41:31] Thank you, sir. Moving on to paragraph 25, you mentioned a man
18 who worked for you who you visited in prison, but you corrected, you actually
19 visited him in the public prosecution office, is that correct?

20 A. [13:41:52] Yes. He was brought into the office of the general prosecution
21 for -- to register his confession. This was the moment when I met this person at that
22 office. However, I did not register it as a special visit to the prison or visit him at the
23 prison.

24 Q. [13:42:17] Thank you for that.

25 A. [13:42:19] (Speaks English) Okay.

1 MS MORRIS: [13:42:22] Now, Madam President, I would like to move into private
2 session for the next few corrections as they are identifying.

3 PRESIDING JUDGE KORNER: [13:42:29] Yes.

4 (Private session at 1.42 p.m.)

5 THE COURT OFFICER: [13:42:34] We're in private session, Madam President.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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

Page redacted – Private session

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Open session at 1.47 p.m.)

5 THE COURT OFFICER: [13:47:48] We're back in open session, Madam President.

6 MS MORRIS: [13:47:56]

7 Q. [13:47:56] Now, Mr Witness, having made these corrections and clarifications,
8 do you confirm that your statement is true and correct to the best of your knowledge
9 and belief?

10 A. [13:48:08] Yes.

11 Q. [13:48:14] And do you agree to your statement being introduced into evidence
12 in this case?

13 A. [13:48:23] Yes.

14 PRESIDING JUDGE KORNER: [13:48:29] Ms Morris, there are other matters in his
15 statement which are not entirely clear to me, but if you're going on to ask some
16 clarifying questions, we'll wait until you've furnished.

17 MS MORRIS: [13:48:43] Thank you. I was intending to move on to the
18 supplementary questions based on the witness preparation session we had.

19 PRESIDING JUDGE KORNER: [13:48:51] Yes. All right. Thank you.

20 MS MORRIS: [13:48:54] Thank you.

21 Q. [13:48:56] Mr Witness, I'll ask you some additional questions which we
22 discussed in witness preparation, and I would just like to remind you that we are now
23 in open session. So, again, my questions are general and should not be identifying.
24 If you feel the need to add something which may be identifying, please let us know,
25 and we will move to private session.

1 May I ask the court officer to retrieve item 6 from the list of materials, please. It's
2 item DAR-OTP-0219-3235. This is a map of West Darfur. This is agreed map and
3 can be broadcast publicly.

4 Mr -- oh, I'll wait.

5 Mr Witness, this is a map of West Darfur which you were looking at in witness
6 preparation. I don't have many questions about it. I'm wondering, can you see
7 Al Geneina in the middle, left of this map?

8 A. [13:50:42] Yes. Yes, I see the city of Al Geneina, and it is almost to the extreme
9 west side, close to the borders with Chad.

10 Q. [13:51:01] Thank you. And can you locate Wadi Salih and Mukjar locality in
11 the lower centre of this map.

12 A. [13:51:20] Yes. There's Wadi Salih, Mukjar. Yes.

13 Q. [13:51:31] Mr Witness, can you give an approximate distance between
14 Al Geneina and Wadi Salih?

15 PRESIDING JUDGE KORNER: [13:51:41] I'm assuming you mean the town of
16 Al Geneina as opposed to the general area.

17 MS MORRIS: [13:51:48] That is correct, sorry, yes, your Honour.

18 MR LAUCCI: [13:51:51] And if I may suggest that we scroll down a little bit the map,
19 because I think the south part is missing.

20 MS MORRIS: [13:52:00] Thank you.

21 THE WITNESS: [13:52:11](Interpretation) You mean the distance in kilometres, or
22 by time, like how much time it needs, like per hour?

23 MS MORRIS: [13:52:26]

24 Q. [13:52:27] Either approximate is fine.

25 A. [13:52:34] What I know exactly is that for the West Darfur, Zalingei was the

1 centre of West Darfur. The city of Zalingei is about 170 -- 67 kilometres from
2 Al Geneina, and Garsila, which is the capital of Wadi Salih, is, away from Zalingei,
3 about 40 to 45 kilometres.

4 Q. [13:53:13] Thank you, Mr Witness. And we can take the map down, please.
5 Mr Witness, at paragraph 45, you mentioned that people called Ahmad Abdallah
6 Shakartalla the leader of the Janjaweed. My question is: In what locality was he the
7 leader of the Janjaweed?

8 A. [13:53:45] He was the head of the Janjaweed at the level of the governorate, the
9 western governorate in West Darfur. But let me make a small clarification -- can I
10 make a small clarification? West Darfur encompassed governorates from the east
11 and the west. So the eastern governorates were at Jebel and Zalingei, as well as
12 Wadi Saleh. And the western governorates included Habila, Al Geneina and Kulbus.
13 So what is mentioned -- the mentioned gentleman was the head of the border
14 intelligence in the western governorates.

15 Q. [13:54:42] Thank you. Mr Witness --

16 PRESIDING JUDGE KORNER: [13:54:48] I'm sorry. This is one of the questions I
17 had arising from the statement. Sorry, Ms Morris, but what is border intelligence, as
18 he understands it? What was border intelligence? Unless you were going to come
19 to that in any event.

20 MS MORRIS: [13:55:06] I can -- we can ask him, or ... okay.

21 Q. [13:55:07] Mr Witness, can you please explain the role of border intelligence for
22 the Court.

23 A. [13:55:14] The border intelligence encompasses the Arab militias. The
24 government at that time wanted to control these militias. It gave them the name
25 border intelligence. It was a kind of codifying, let's say, the Arab militias.

1 MS MORRIS: [13:55:48] Sorry, Madam President, I believe the transcript has froze.

2 Is it working?

3 PRESIDING JUDGE KORNER: [13:56:00] Ours is working.

4 Are you able to say, sir, from your own knowledge, how many groups roughly of
5 militias that that term encompassed?

6 THE WITNESS: [13:56:20](Interpretation) At the beginning, it was one militia that
7 was given the name border intelligence. Later on, there were other militias that were
8 referred to the central police or the police reserves, they were given that name, central
9 police reserves. And then that entity or this militia were dismantled and were given
10 a new name under the fast support or quick support.

11 (No interpretation)

12 PRESIDING JUDGE KORNER: [13:57:13] Could we have a translation of that, please.

13 We didn't get one.

14 THE WITNESS: [13:57:19](Interpretation) They are all essentially Janjaweed.

15 MS MORRIS: [13:57:27]

16 Q. [13:57:28] Mr Witness, may I ask, in what time period was Mr Shakartalla the
17 leader of the Janjaweed?

18 A. [13:57:39] There were also two timelines if you want. The first timeline was
19 when the first problems between the Arab and the Masalit started, and the second
20 period was after the rebellion started in Darfur. During the first timeline, this was in
21 the -- in around 1996 until 1999. The second period was between 2004,
22 approximately -- or started in 2004, approximately.

23 Q. [13:58:34] Thank you, Mr Witness.

24 Mr Witness, do you know who was the leader of the Janjaweed in Wadi Salih and
25 Mukjar locality at this time?

1 A. [13:58:44] Personally, I didn't visit these areas. But as (Redacted),
2 we know that in this area, there's this leader; in that area, there's that leader. But I
3 personally, I never met the leader of Wadi Salih, and I don't know who was the leader
4 at Wadi Salih. It's all hearsay. So I don't know if it is allowed for me to give
5 information based on hearsay.

6 Q. [13:59:21] Thank you, Mr Witness. I'll just remind you, we're in open session,
7 so try not to identify details.

8 A. [13:59:32] Yes. Okay.

9 PRESIDING JUDGE KORNER: [13:59:34] Good question, Ms Morris, you were
10 going to answer it, whether or not hearsay was allowed?

11 MS MORRIS:

12 Q. [13:59:43] Mr Witness, this Court welcomes hearsay in abundance.

13 PRESIDING JUDGE KORNER: [13:59:49] It's a very lawyer's question.

14 THE WITNESS: [13:59:54](Interpretation) Yes, we heard that (Redacted) in
15 Wadi Salih and Zalingei, that the head of the militia is the accused standing trial here
16 before this Chamber.

17 MS MORRIS: [14:00:09]

18 Q. [14:00:10] Thank you. Mr Witness, at paragraph 22, you discuss self-defence
19 groups. My question is: If you know, what was the function of self-defence
20 groups?

21 A. [14:00:25] After weapons were spread in Darfur, there was a new phenomenon
22 which means that there was armed groups that were aimed at the vehicles on the
23 road and the owners of cattle. And some villagers would arm themselves in order to
24 protect themselves and protect their properties from being looted or robbed.

25 Q. [14:01:12] Thank you. And what political objectives did village --

1 THE INTERPRETER: [14:01:20] A note from the interpreter to Ms Morris: Please,
2 would you bring the microphone a bit closer to you. Thank you.

3 MS MORRIS: [14:01:27] All right. My apologies. Thank you.

4 Q. [14:01:28] Mr Witness, what political objectives did village self-defence groups
5 have, if any?

6 A. [14:01:36] These groups did not have political objectives.

7 Q. [14:01:53] Thank you.

8 PRESIDING JUDGE KORNER: [14:01:56] What objectives did they have, then?

9 THE WITNESS: [14:02:02](Interpretation) The objective was protection, to protect
10 their properties. And as I said, there were gangs that focused on the owners of cattle,
11 especially those who owned camels, cows and horses.

12 MS MORRIS: [14:02:22]

13 Q. [14:02:24] Thank you. Mr Witness, at paragraph 23, you discussed the
14 provision of arms by tribal leaders in Al Geneina. My question is: Which tribes did
15 the *umdahs* who received weapons in Al Geneina belong to?

16 A. [14:02:46] Arming took place in a selective way to all Arab tribes that lived in
17 Al Geneina. Most belonged to the Rizeigat tribe. And, of course, the Rizeigat tribe
18 has a lot of branches. It has Mahariya, Mahamid, Awlad Janu, Awlad Zeid.

19 Q. [14:03:36] Thank you. And who provided the *umdahs* in Al Geneina with these
20 weapons?

21 A. [14:03:41] The Sudanese government, with supervision from the minister of
22 interior -- the federal minister of interior and the state minister and the ministry of
23 interior. At the time, the minister of interior was Abdel Raheem Muhammad
24 Hussein, and the state minister at the ministry of interior was Ahmad Harun.

25 Q. [14:04:16] Thank you, Mr Witness. These of all of my questions.

1 MS MORRIS: [14:04:20] Madam President, your Honours, this concludes my
2 examination.

3 PRESIDING JUDGE KORNER: [14:04:24] Yes. Just before that, and while we are
4 still on the statement, at paragraph 26, sir -- has he got the statement in front of him?
5 It's on the screen.

6 MS MORRIS: [14:04:46] He has a binder.

7 PRESIDING JUDGE KORNER: [14:04:50] It's coming up on the screen in front of
8 you, sir. You were talking about civilians being armed, and you said, "I would call
9 these new recruits sometimes Janjaweed, sometimes Peshmerga." And you went on,
10 "They would call themselves members of the border intelligence."

11 Peshmerga, I don't think, I'll be corrected if I'm wrong, is a term we've heard before.
12 What are Peshmerga, or where does the term come from?

13 THE WITNESS: [14:05:28](Interpretation) The Peshmerga is a name that the
14 people -- the locals called their armed people. However, the word "Peshmerga"
15 originates from Kurdish-Iraqi militias. So it is not even an Arab word or a word that
16 belongs to the local languages.

17 PRESIDING JUDGE KORNER: [14:05:58] Right. Thank you. Thank you very
18 much, sir. I thought I -- it rings a bell with me somewhere, but I couldn't remember
19 why.

20 Yes. Right. Mr Shah, do you want to ask any questions?

21 MR SHAH: [14:06:11] Your Honour, having reviewed the witness preparation log,
22 which we received this afternoon from the Defence, it's on its list of materials, we
23 have no questions for this witness. We simply, on behalf of our clients, want to
24 thank him for his willingness to appear before the Court and give his testimony.

25 PRESIDING JUDGE KORNER: [14:06:35] Yes, thank you, Mr Shah.

1 Yes, Mr Laucci.

2 MR LAUCCI: [14:06:37] And I will start with thanking my colleagues in the
3 Office of the Prosecutor and the victims for allowing me a maximum of time. For the
4 cross-examination, that's very appreciated.

5 QUESTIONED BY MR LAUCCI:

6 Q. [14:06:59] Good afternoon, Mr Witness. As I announced this afternoon, I will
7 speak to you in English, but we met this morning I was speaking in French. I repeat
8 my name. I am Cyril Laucci, the lead counsel for the Defence of Mr Ali Muhammad
9 Ali Abd-Al-Rahman.

10 I really want to start by thanking you for appearing and bringing a contribution with,
11 I believe, will be extremely useful to the manifestation of the truth.

12 We -- we want -- "we" being the Defence of Mr Ali Muhammad Ali Abd-Al-Rahman.

13 We want to rely on your extensive knowledge of the Sudanese legal system and of
14 how legal things concretely work in Sudan, and that particularly in the times of the
15 insurgency.

16 You have volunteered earlier this week, I believe it was on Tuesday, three documents.

17 Because we are in open session, I will refer to these documents without naming the
18 organisations they come from. One is a recommendation from an organisation, and
19 it is dated 10 May 2009. It's tab 7 in the Defence list, document DAR-D31-0009-0001.

20 Without me naming the organisation, do you see which document I'm talking about?

21 A. [14:09:08] No.

22 Q. [14:09:10] Maybe you have it in the folder.

23 If you witness can be assisted.

24 A. [14:09:17] Yes. Now I can see it in front of me on the screen.

25 Q. [14:09:21] Yes. So you recognise it?

1 A. [14:09:25] Yes.

2 Q. [14:09:27] In these documents it reads that, in the roles that you have performed,
3 you have demonstrated an exceptionally solid knowledge of the issues in law, as well
4 as strong analytical, tactical and strategic abilities. Is that correct?

5 A. [14:09:51] I think that this is paying me a compliment I don't know if I really
6 deserve.

7 Q. [14:10:08] No. Thank you for your humbleness. I'm just asking if this is what
8 the document says. No more than that.

9 A. [14:10:18] Okay. Yes, this document refers to my experience and the projects
10 that we undertook together.

11 Q. [14:10:34] No need to say more. Open session.

12 The second document is tab 8, document DAR-D31-0009-0002. It's another
13 organisation. It's dated 2011, and you have it on the screen. And there it reads that
14 you are acknowledged (Redacted)
15 (Redacted).

16 PRESIDING JUDGE KORNER: [14:11:14] No. I think you need to be a bit careful.

17 MR LAUCCI: [14:11:17] I thought I was. Sorry.

18 PRESIDING JUDGE KORNER: [14:11:20] Are you going on with these?

19 MR LAUCCI: [14:11:22] No.

20 PRESIDING JUDGE KORNER: [14:11:26] We'll make sure it's redacted.

21 MR LAUCCI: [14:11:29] I thought I had been careful enough, but okay.

22 MR NICHOLLS: [14:11:33] He can say whether these documents say what they say
23 and that they are authentic.

24 MR LAUCCI: [14:11:38] Okay, fine. So we move on with this document, and my
25 apologies if I was not careful enough. I thought I was, genuinely.

1 Q. [14:11:49] Mr Witness, are you aware of the Defence's request to meet with you
2 prior to your appearance?

3 A. [14:12:08] Requests from whom? From the Prosecution or the Defence?

4 Q. [14:12:11] From the Defence team.

5 A. [14:12:15] Yes.

6 Q. [14:12:16] Why did you decline this invitation, if I can ask? If you want to
7 move in closed session to answer that, maybe, if you are more comfortable.

8 A. [14:12:32] No. I can answer you straightaway.

9 This is my right, to accept or decline these invitations without any -- being forced by
10 anyone to do that.

11 Q. [14:12:53] I'm not meaning anything else, sir. It's just that you had a full right
12 to decline, and you decide to use it, which is fair. But I -- I'm asking you why you
13 decide to do it.

14 A. [14:13:11] There is no reason. But based on my background and my work
15 during the -- and what happened during (Expurgé), I tried
16 to -- I've never tried to approach the witness of the opponent. And in the Sudanese
17 law, attempting to contact the witness of the opponent can fall under the description
18 of trying to influence the witness. So this is something that is not acceptable to me.
19 Second, it is also my right to either decline or accept the invitation.

20 Q. [14:14:08] I fully agree. I just want to clarify that, before the Court, the system
21 is different, and there is a possibility for the non-calling party, in your case, that's the
22 Defence, to meet with the witness in the presence of the calling party. The
23 Prosecution would have been present. And that's really normal business, so to say.
24 So just to reassure you that there was no willingness to put any pressure or whatever
25 on you, sir. It was just to try to save time for your appearance.

1 Anyway --

2 A. [14:14:49] Okay, that is clear. Next time, hopefully. Inshallah.

3 Q. [14:15:06] Okay. The first topic on which I will try to elicit evidence based on
4 your knowledge is the Sudanese legal system as it was in 2003-2004. 2003-2004, we
5 were under the regime of former president Al-Bashir. And my first question is very
6 generic. Take it as an introduction, so to say.

7 In this time, did the Sudanese authority comply with human rights and, especially,
8 the right to fair trial?

9 A. [14:16:09] No. First of all, with regard to the Sudanese legal system, the Sudan
10 was a British colony, and the legal system that we inherited from the coloniser was
11 the common law and the legal precedents. However, since '83, a decision was taken
12 to include the Islamic Sharia. So the Islamic Sharia was added to the legal system.
13 Also, the legal system follows the civil law. So we cannot really give a name or
14 a specific name to the Sudanese legal system. It is a system that has several sources,
15 as I have mentioned.

16 As to the fair trial, even though Sudan has ratified a number of international
17 instruments that have to do with fair trials, when we look at the reality in the period
18 from 2002 until 2004, there were no fair trials at all because there were special courts.

19 Q. [14:18:04] Yes, you said -- I think you stopped in the middle of your sentence.

20 A. [14:18:12] Because there were a lot of special courts.

21 In addition, there were a lot of impediments, like amnesty for the military personnel.
22 Also, the penal code and its procedures had a lot of problems with it.

23 Q. [14:18:48] Just out of curiosity, you mentioned special courts. Why was that
24 a problem with fair trial rights? Can you elaborate a little bit on that, please.

25 A. [14:19:04] Because if there is a military person who committed a crime, a special

1 military court can be formed for him. There was a special court for the police as
2 well.

3 Q. [14:19:25] Thank you. You -- as you explained, and as appreciated by
4 Madam President, you had the opportunity to work on defence side, prosecution side.
5 On both sides, actually, either prosecution or defence, can you describe how did the
6 case work and whether your clients were offered -- offered fair trial.

7 A. [14:20:06] The question is not really clear to me. So if you could clarify, that
8 will be better.

9 Q. [14:20:22] Was the noncompliance with fair trial rights in Sudan a problem in
10 your own individual practice as a lawyer intervening in cases?

11 A. [14:20:45] Sometimes.

12 Q. [14:20:52] I don't ignore.

13 A. [14:20:56] (Speaks English) Yeah.

14 Q. [14:21:01] Are you aware of any instance of extrajudicial arrest and detention in
15 Sudan over that period?

16 A. [14:21:12] Yes.

17 Q. [14:21:15] Are you aware of any instance of the use of torture to question
18 suspects over that period?

19 A. [14:21:25] Yes.

20 Q. [14:21:26] Are you aware of any instance of extrajudicial execution in Sudan
21 over that period?

22 A. [14:21:38] Yes. There was someone whom I represented as a defence lawyer at
23 the beginning of the problems, and he was executed by the Janjaweed in an
24 extrajudicial manner. And I remember his name, and his name was (Redacted).

25 Q. [14:22:08] Okay. Say "X" and we will redact, because we don't want to identify

1 you.

2 A. [14:22:16] Okay.

3 Q. [14:22:17] No need for us have to the name.

4 And out of this terrible landscape that you are describing, what was the general
5 understanding of the population with respect to human rights? Did they have the
6 impression that this was applicable to them? Did this form part of the culture in
7 Sudan?

8 A. [14:22:57] Of course, the whole issue of human rights and the raising awareness
9 of it, all this started with the Darfur events from 2003 to 2004. So even us as lawyers,
10 we did not really have a background in human rights and the instruments related to it,
11 et cetera. This culture started in 2003 with the events.

12 Q. [14:23:28] Okay. So does that mean that, for instance, we mentioned
13 extrajudicial arrests, detention and execution, was it perceived as something -- I don't
14 want to say normal, but common in Sudan, that normal people should not complain
15 about?

16 A. [14:23:50] No. Before the events started in 2003, no, this was not common.
17 People lived in harmony. And apart from the events of looting, we did not have
18 anything of the sort.

19 Q. [14:24:12] Okay. So there was an expectation -- I'm talking about a normal
20 citizen here, not you, your clients. Am I clear?

21 From -- from normal people, was there an expectation that they should not be
22 arrested unless there are real charges against them and they should be presented to
23 a judge?

24 PRESIDING JUDGE KORNER: [14:24:49] Before you answer, when you say "normal
25 people", do you mean city dwellers, shopkeepers, farmers, everybody?

1 MR LAUCCI: [14:24:58] Standard citizen of Sudan without any legal specific
2 knowledge or education.

3 THE WITNESS: [14:25:16](Interpretation) So what is the question, exactly?

4 MR LAUCCI:

5 Q. [14:25:20] The question is: A normal citizen in Sudan suddenly gets arrested
6 by policemen and without explanation put into jail. Would he find this normal?

7 A. [14:25:36] No, this is not normal at all, because these things started after 2003
8 with the events. And add to this that the arrests do not happen at the hands of the
9 police. So it was the national security apparatus that arrested people.

10 Q. [14:26:06] You're making a distinction between police and national security
11 apparatus. Can you explain, clarify, please.

12 A. [14:26:16] Yes. The national security apparatus is specialised in political crimes
13 and economic crimes, and they monitor the citizens, gather information about them.
14 While the police, like any police in other countries, they work according to their penal
15 code or the criminal procedures code. So arresting people, jailing people during
16 investigations and during trials.

17 Q. [14:27:18] Okay. Do I understand well that for common mundane offences,
18 that would be dealt with by the police according to the criminal procedure; whereas,
19 for political and economic crimes, as you called them, that would fall under the hands
20 of the national security system and will not follow the criminal procedure?

21 A. [14:27:51] This is correct, but I need to clarify something. The national security
22 apparatus, when they collect information and are sure that there is a crime that was
23 committed and they arrest the person or the suspect, they are referred then to the
24 prosecution, then the police, so that the police can do their normal work. However,
25 mostly, the national security apparatus would arrest people without certain charge or

1 evidence.

2 Q. [14:28:41] And when you say "political crimes", did that include the crime
3 related to rebellion?

4 A. [14:28:54] Of course.

5 Q. [14:28:57] Thank you. So for these political crimes and economic crimes, it did
6 form part of the landscape that the procedural rights and to go by the procedural code
7 was not something which formed part of the normal practice?

8 A. [14:29:31] I did not understand the question.

9 Q. [14:29:35] It was not a good one. I stop it.

10 Are you aware of any declaration of a state of emergency enforced in Sudan or Darfur
11 over the period 2003-2004?

12 A. [14:29:59] Yes. But I do not recall the exact date when the state of emergency
13 was declared.

14 Q. [14:30:11] Mm, that's no problem, sir. We have some documents to assist you.
15 So if you go to tab 4, in the Defence binder, that's DAR-D31-0006-0032, and the
16 relevant extract has been provided separately. I'm going at paragraph 167. I will
17 take it myself. It will be easier. Yes.

18 So that's the page, DAR-D31-0006-0069, and I'm referring to paragraph 167. And in
19 that document, it is said that -- so, let me first introduce the documents. This is the
20 third periodic report submitted to the Human Rights Committee by Sudan. So what
21 is written here is a submission by the Sudan authorities to the Human Rights
22 Committee, and it is dated 2006, 29 June 2006.

23 And then, on page 38, paragraph 167, the Sudanese authorities explain that President
24 Al-Bashir issued a first decree declaring a state of emergency throughout Sudan on 11
25 December 1999. This state of emergency was extended several times, and -- actually,

1 it's not on this page that's the relevant information. I'm missing the other paragraph
2 which says when the state of emergency stops, actually.

3 I have -- it's so long, it takes several pages.

4 (Counsel confers)

5 MR LAUCCI: [14:33:19] My assistant will find the exact paragraph, but some
6 paragraphs later, it is said that the state of emergency was lifted in July 2005, and I
7 quote: "Except in three states, in the Darfur region and in eastern Sudan, due to
8 instability and hostilities in those regions."

9 So if I summarise, state of emergency starts in 1999, stops for the rest of Sudan in 2005,
10 but continues for Darfur and eastern Sudan. Does that fit your recollection?

11 A. [14:34:06] I think I didn't answer your question. You said something about
12 between 2002-2004, there was a state of emergency. I said, yes, but I cannot specify
13 the exact date of enactment of the state of emergency. That's what I said.

14 Q. [14:34:29] So I gave you the date, 11 December 1999, based on this document, at
15 least, and the paragraph which says that it stopped in 2005, except for Darfur and
16 Sudan. It's paragraph 176, and it is on page 0070 of the document.

17 What was the impact of the declaration of state of emergency on the applicability and
18 enjoyment of human rights in Sudan?

19 A. [14:35:27] Regarding the application of human rights and implementation of
20 human rights, since the beginning of the events, in 2003 until September 2004, all the
21 summons were related to the events. The specific events were on hold -- or
22 notifications.

23 In addition, there were some individuals who would be under arrest or arrested by
24 the national security forces on the basis that an issue related to the state of emergency.
25 Of course, in these circumstances, the judiciary and the prosecution will not interfere.

1 Q. [14:36:50] Thank you. Sudan -- you mentioned that Sudan was a party to
2 a number of international instruments. One of them is the International Covenant
3 on Civil and Political Rights which Sudan adhered to on 18 March 1986, and the
4 Article 4 of that covenant governs state of emergency.

5 According to that Article 4, the protection against arbitrary arrestation and
6 detention - that is Article 9 - can be derogated in state of emergency.

7 Did you witness that, that these rights, this protection against arbitrary detention and
8 arrestation was derogated over that period?

9 A. [14:38:00] What I understand from these instruments is that when there's a state
10 of emergency, some rights would be put on hold, like the right to freedom, and there
11 could be some cases of arrest or detention. But for the fundamental rights, these will
12 always be enacted, regardless of the state of emergency, including, for example, the
13 right to life.

14 Q. [14:38:34] I fully agree. The right to life cannot be derogated as a result of
15 a state of emergency and was not suggesting so. I was talking specifically about the
16 right against arbitrary arrest and detention, and you responded. Thank you.
17 Same question about the right to a fair trial. According to Article 4 of the
18 international covenant, this, unfortunately, can be derogated. My question is: Was
19 it, in Sudan, as a consequence of the state of emergency?

20 A. [14:39:13] The main problem is not related to the state of emergency alone.
21 Sudan has signed many international instruments. However, the problem is that the
22 laws have not been amended to reflect these instruments. And this is the problem
23 with the Sudanese laws.

24 Q. [14:39:47] It's a bit of a legalistic question, witness, but I'm sure you have the
25 capacity to answer it, and what you just said prompts me to ask it.

1 What was the status of international instruments which had not been implemented in
2 the domestic system in Sudan? Were these applicable?

3 A. [14:40:17] Most of the laws, like I said before, had not been amended in order to
4 reflect these instruments. For example, the convention on the rights of the child,
5 which prohibits the age for an under -- sorry -- marriage for an under-age child.
6 Also, the civil status in Sudan allows the marriage of a 10-year-old girl or daughter.

7 Q. [14:41:01] Thank you. I will have a series of questions regarding to -- starting
8 by the criminal code of Sudan. But before to that, I have two very small questions,
9 very specific, for you.

10 At paragraph 28 of your written statement - I don't think it's necessary to put it on the
11 screen - you mention the procedure of identification parade to identify a suspect.

12 Can you describe that procedure. How does that work in Sudan? How do we
13 identify a suspect according to Sudan procedure, please?

14 A. [14:41:56] You mean by that when we have a number of suspects standing in
15 a line, a line-up? Is that what you meant?

16 Q. [14:42:11] That could be that, yes, if that is the way it's done in Sudan.

17 A. [14:42:18] Under the supervision of the prosecution, the suspect will be put in
18 the line amongst a number of individuals who would have similar features, similar
19 clothes or similar features, and then the witness is asked to identify the suspect
20 amongst this line of individuals. And this is done on a number of occasions.

21 The first time the suspect will be in one place in a certain type of clothes, and the
22 second time, they might change his position and change his clothes within the same
23 line-up. They do it about three or four times in a row.

24 If the witness identifies the suspect in the four times of the line-up, then it will hold.

25 Q. [14:43:29] Thank you. And second tiny question: Do you know about any

1 title of chief superintendent within the police?

2 A. [14:43:48] Superintendent? I don't know. (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [14:44:06] But you never came across such title?

6 A. [14:44:17] We don't have something similar.

7 THE INTERPRETER: [14:44:21] Note from the interpreter: Maybe it's the
8 interpretation that is not quite accurate here.

9 So the witness is saying:

10 THE WITNESS: [14:25:16](Interpretation) We don't have a certain -- this certain type.

11 We have the military rank. We have the second lieutenant, first lieutenant, captain,
12 major, lieutenant colonel, colonel, brigadier, major general, attorney general.

13 As for the warrant officers, we also have different titles. We have the private. We
14 have the corporal. We also have the *shawish*, which is the sergeant, and the *ombasha*,
15 which is the corporal.

16 MR LAUCCI:

17 Q. [14:45:04] Thank you, witness, and thank you, interpreter. That was
18 impressive. We don't need all that.

19 Okay. You never came across that specific title, but would you say, when I say "chief
20 superintendent within the police," what would be your impression, if any? Is that
21 a high grade, a low grade?

22 A. [14:45:31] We have the rank. We have also the director of the state police.

23 This is the highest rank for the governorate. We also have the director of the local
24 police. So this the highest rank at the local level.

25 But it's important to mention the rank, the rank of the officer, but we don't use the one

- 1 you've mentioned, sir, as superintendent. We use the military ranks.
- 2 Q. [14:46:14] Thank you. I'm moving to -- first, I have a question for
3 Madam President.
- 4 When do you want to stop this afternoon?
- 5 PRESIDING JUDGE KORNER: [14:46:29] (Microphone not activated)
- 6 THE INTERPRETER: [14:46:31] Microphone, please.
- 7 PRESIDING JUDGE KORNER: [14:46:32] If the witness finds sitting uncomfortable,
8 we ought to probably stop at about 3:15. That gives you enough time tomorrow.
- 9 MR LAUCCI: [14:46:47] I will do with the time I have, for sure.
- 10 PRESIDING JUDGE KORNER: [14:46:48] I didn't want to cut you short.
- 11 MR LAUCCI: [14:46:49] No, no. I fully appreciate that. No, no, I was just asking
12 for this afternoon. If I have 30 minutes ahead, then I think I can really start with the
13 criminal code and cover it.
- 14 PRESIDING JUDGE KORNER: [14:46:56] All right. Yes.
- 15 MR LAUCCI: [14:47:57] Thank you.
- 16 MR NICHOLLS: [14:47:00] Sorry. No objection. I just wonder for this title, chief
17 superintendent, that has been going on, if counsel knows those words in -- knows the
18 translation in Arabic from his team, then putting the term in Arabic might be better, if
19 he knows the specific term in Arabic that he's asking about.
- 20 MR LAUCCI: [14:47:23] Thank you for the suggestion. I'm turning to the person in
21 charge of Arabic in the team.
- 22 (Counsel confers)
- 23 MR LAUCCI: [14:48:00] If we find something by tomorrow, we'll come back on that.
24 Thank you for the suggestion.
- 25 Q. [14:48:09] Mr Witness, do you confirm that the criminal code defining criminal

1 offences enforced in 2003-2004 was the Criminal Act 1991? And you can find it in
2 tab 1 of the Defence binder. It's the document DAR-OTP-0029-0296.

3 So was it the criminal code enforced in 2003-2004 in Sudan?

4 A. [14:48:53] Yes.

5 Q. [14:48:59] Apparently I made a mistake. I repeat the ERN,
6 DAR-OTP-0021-0296.

7 Is this criminal code still enforced today in Sudan?

8 A. [14:49:15] Yes. The same law is enforced. However, I think that after I left
9 Sudan and I stopped working in the law, there were some amendments that were
10 introduced to the law. However, it is the same law that is being enforced, the
11 criminal law of 1991.

12 Q. [14:49:42] Yes. Amendments are perfectly fine, but I just want to put that as the
13 basis, the starting point of the discussion.

14 A. [14:49:51] Yes.

15 Q. [14:49:54] According to the Criminal Act 1991, was the participation in or the
16 support to a rebel movement a criminal offence in Sudan?

17 A. [14:50:10] Yes. It is considered as one of the crimes against the state.

18 Q. [14:50:28] Perfect. If you go in the binder to tab 1 again, the document I just
19 mentioned, on page 0312 -- I will take it myself.

20 So on your screen here -- down, please. Down, down. Yeah, here.

21 On your screen, you have part V of the code, which is called Offences against the
22 State. And I take from your previous answer that this is where the participation in
23 rebellion would be defined as an offence.

24 A. [14:51:34] (No interpretation)

25 Q. [14:51:46] If we move to page 0316 - yes - you have here the beginning of

1 another part of the code, which is part VII, entitled "Sedition".

2 Is that related to the participation in a rebel movement as well?

3 A. [14:52:17] I don't know. It's the same law, the same code. For example, if you
4 are an accomplice, they will specify the article. Let's say it will be Article 20 or 21-5.
5 If it's sedition, they will put, for example, Article 63-5. So there would be
6 a difference, for example, between sedition and being an accomplice, according to the
7 general definition.

8 Q. [14:53:02] Thank you. If we can go back to page 0312. The bottom of the page.
9 Yes. Here you have a first article, Article 50, which is titled "Undermining the
10 Constitutional System". And I read:

11 "Whoever commits an act with the intention of undermining the constitutional system
12 of the country, or exposing to danger the unity and independence thereof, shall be
13 punished with death, life imprisonment, or for a lesser period. He may be subjected
14 to forfeiture of all his property."

15 Would that offence apply to acts of participation in rebellion?

16 A. [14:54:00] Yes, of course, this article applies.

17 Q. [14:54:09] Would that also apply to acts of support to a rebel movement?

18 A. [14:54:16] It applies. However, in my assessment, sedition would be faced with
19 a lesser sentence.

20 Q. [14:54:34] Thank you for this answer. We will come to sedition, and maybe
21 you will explain what is the difference you make between the two. But I keep that
22 for later. Let's -- let's stop on Article 50 for the moment.

23 If that applies to acts of supporting a rebel movement, to which kind of support does
24 that apply?

25 I will propose you a list of forms of support that can be provided to a rebel movement,

1 and you can just answer "yes" or "no", according to your understanding.

2 Would that apply to --

3 A. [14:55:21] I'm sorry to interrupt. I am being questioned as an expert or as
4 a witness, a regular witness?

5 Q. [14:55:32] You are a witness with a lot of knowledge, and that's that knowledge
6 that I try to elicit from you, witness.

7 A. [14:55:48] I'm waiting for the answer of the Bench.

8 PRESIDING JUDGE KORNER: [14:55:55] Yes. I think you can say that you're in
9 a dual position, sir. You are, in fact, a witness as to fact, as far as the Prosecution is
10 concerned. The Defence, I think, are using you as both an expert.

11 And eventually, Mr Laucci, I imagine you're going to get on to some factual matters.
12 If you don't feel happy answering questions which you're being -- your expertise is
13 being called upon, instead of what actually happened, then say so straightaway.
14 That's your absolute right.

15 THE WITNESS: [14:56:48](Interpretation) Of course, it is well known that the law
16 could be interpreted differently. Maybe you could interpret it in a way that differs
17 from my interpretation. So the answers that I am providing are based on my
18 perspective, on my legal interpretation.

19 PRESIDING JUDGE KORNER: [14:57:14] I think that's perfectly fair, sir, and you
20 can rest assured that everybody understands that you weren't expecting these
21 questions. And, as I say, if you feel that you can't give an answer which is one that
22 you had time to reflect upon, then say so straightaway. But everybody understands
23 that you were not expecting to be asked general questions about Sudanese criminal
24 law.

25 Mr Nicholls.

1 MR NICHOLLS: [14:57:48] Thank you, your Honour.

2 And, no, we're not objecting to this line of questioning. I want to make that clear.

3 But the witness is testifying here, has come here as a fact witness, has not been

4 formally qualified as an expert, submitted as an expert. So, again, as I say, no

5 objection to the witness answering these questions as best he can, but that would be

6 our position.

7 PRESIDING JUDGE KORNER: [14:58:12](Microphone not activated) -- perfectly

8 clear, I mean, he is not in the position of someone who's agreed by both sides to be an

9 expert and he's giving expert opinion evidence. Although, that's what's being

10 extracted at the moment.

11 Mr Laucci, I'm sure you'll bear that in mind as you go through this exercise.

12 MR LAUCCI: [14:58:33] And I can confirm that I agree with everything that has

13 been said, Madam President. Of course, we have a witness in front of us who is

14 answering to the best of his knowledge, and that will be witness evidence, and

15 nothing else.

16 Q. [14:58:50] And about being put on notice that we would follow that line of

17 questioning, if only, witness, you had accepted my invitation to meet with the

18 Defence, you would have been put on notice. But just in passing.

19 So would Article 50, according to you, apply to the recruitment of rebel forces?

20 A. [14:59:30] It depends on the facts.

21 Q. [14:59:34] Would that apply to the funding of a rebel movement?

22 A. [14:59:47] Funding? But you needed to add to that the Article 63, related to

23 sedition. Then it would apply. So it would be 63 over 51.

24 Q. [15:00:01] Thank you. Maybe then it will be more useful if we move directly to

25 Article 63 to which you keep referring. Maybe we'll move back later.

1 So if we can go to page 0316. The title is "Calling for Opposition to Public Authority
2 by Use of Violence or Criminal Force."

3 And I read: "Whoever calls, publishes or propagates any call for the opposition of
4 public authority by way of violence, or the use of criminal force, shall be punished
5 with imprisonment for a term not exceeding three years, or fine, or with both."

6 So, sir, what difference do you make with the previous Article 50 of the Criminal Act?

7 A. [15:01:10] Before we move to answer this question, with regard to the previous
8 answer, I said it was 63 over 51. This is not correct. I remember the article on
9 sedition. I'm not sure exactly what is the number of that article.

10 Q. [15:02:00] So "Sedition" is the title of the part VII. You have that on the screen.
11 63 is "Calling for opposition". I can propose you 65, which is on page 0316. Same
12 page but a little bit lower. Yes. "Criminal and Terrorist Organisations".

13 Is that the one you are thinking about?

14 A. [15:02:36] No. No. That was before. So can we go back to the articles from
15 20 upwards?

16 Q. [15:02:55] You mean Article 20 of the code?

17 A. [15:03:02] Article 20 onwards; 20, 21, 22, et cetera.

18 Q. [15:03:11] Well, we could go, but I think it will take a lot of time. The selection
19 I have made was on the part V, Offences Against the State; part VII, Sedition; because
20 I had the impression that these were the most relevant.

21 But are you saying that the relevance sources are elsewhere?

22 PRESIDING JUDGE KORNER: [15:03:40] Mr Laucci, the difficulty is, I understand
23 that you say witness tried -- declined to meet you, and he said, well, because that's not
24 the system, that we do this. But I think you might have given him some advance
25 notice by simply telling the Prosecution that you wanted to use the witness as an

1 opportunity to go through the criminal code. And I'm just wonderer if -- in fairness
2 to him, if you want to carry on in this line, whether he shouldn't be given a copy of all
3 the documents that you want to ask him about and give him a chance to look at them
4 until -- before tomorrow morning.

5 MR LAUCCI: [15:04:22] I think he has the full documents with him -- or that's
6 already the case? Yes.

7 And regarding notice to the Prosecution, actually, this witness has formed part of an
8 application for 68(2)(b), which the Defence has opposed precisely by explaining that
9 we wanted him to appear in order to have the opportunity to elicit that kind of
10 information from him.

11 PRESIDING JUDGE KORNER: [15:04:50] I know. Well, that's why we gave -- you
12 may say rarely, but we actually found in your favour, Mr Laucci. We took the point
13 you were making, but that doesn't get over the problem, that he's saying what you
14 need is the Articles 20 and 21. And you're saying, "Well, I haven't got them." So I
15 think you had better -- or he had better be provided with all the documents you have
16 listed.

17 The difficulty is, of course, he shouldn't be communicating with the Prosecution, but I
18 don't know if somebody from the witness -- if he thinks there are documents that you
19 haven't had copied which he thinks ought to be copied, that he gives a message to the
20 witness.

21 I don't how this works, Mr Nicholls. Because he can't have any communication with
22 the Prosecution, nor, indeed, really, with the Defence. But ...

23 Sir, can I just ask you - I'm sorry that we've talked over your head like - would it assist
24 you if you were given the opportunity to have all the documents that Mr Laucci
25 wants to ask you about and then --

1 THE WITNESS: [15:06:17](Interpretation) Certainly. Certainly.

2 PRESIDING JUDGE KORNER: [15:06:20] All right. I think what we'll do,
3 Mr Laucci, is we'll adjourn now. There are a couple of things I'm going to raise
4 anyhow. And could the -- could somebody communicate with the witness service,
5 whoever is dealing with him, and say that these documents should be supplied to
6 him. And if he's got any requests for further documents, he should pass that on
7 through the witness service. Yes.

8 MR NICHOLLS: [15:06:54] I just also say, your Honours, I don't know exactly where
9 there is going, to be honest, or --

10 PRESIDING JUDGE KORNER: [15:07:00] I don't either, but I'm going to --
11 That's one of the things I'm going to enquire, Mr Laucci, but I think the witness
12 probably should leave court before I do that.

13 MR NICHOLLS: [15:07:12] Yeah. But just for what I'm going to say I think is fine,
14 is that there may be -- if it's showing different laws and different codes, we may be
15 able to stipulate to some of what these laws are or -- I just don't know, but there may
16 be a way we can do that.

17 PRESIDING JUDGE KORNER: [15:07:25] Sir, thank you very much for attending for
18 today. Can I just say at the moment, you can, of course, communicate with the
19 witness service. You'll be provided with the documents, but you mustn't talk about
20 the evidence you are giving to anybody at the moment, because I'm sure you
21 understand -- I keep forgetting that the British attempted to give the Sudan a legal
22 system. Yes.

23 THE WITNESS: [15:07:50](Speaks English) Okay.

24 PRESIDING JUDGE KORNER: [15:07:52] Thank you very much, sir. So if you'd
25 like to leave court with the court officer, and then we'll have a discussion as to where

1 we are going with this.

2 THE WITNESS: [15:08:07](Interpretation) Okay. Thank you very much.

3 And please make a note regarding my last answer, because after I get the documents,
4 I'm going to check the article that I referred to.

5 PRESIDING JUDGE KORNER: [15:08:26] Yes. Thank you very much, sir. Well,
6 Mr Laucci's heard what you have say, so, no doubt, he'll do his homework.

7 MR LAUCCI: [15:08:35] And everything is noted, anyway.

8 PRESIDING JUDGE KORNER: [15:08:41] Tomorrow morning are we at 9.30? Yes.
9 Yes.

10 We'll be starting again tomorrow at 9.30, sir.

11 (Witness exits the courtroom)

12 PRESIDING JUDGE KORNER: [15:09:03] Well, Mr Laucci, at the moment, I
13 understand what you're adducing. You're adducing the articles relating to
14 insurrection against the state, and all the rest of it. But for what purpose? I mean,
15 are you going to make a point to the witness about something, or is it just part of your
16 case? Although I'm not clear how it's part of your case.

17 MR LAUCCI: [15:09:28] Madam President, it's actually part of the Prosecution case
18 that persons were arrested, detained and sometimes executed in the various crime
19 scenes on the basis of being suspected of participating or supporting the rebellion.
20 And I want to clarify what was the applicable domestic law for that specific
21 accusation.

22 And we have already elicited this afternoon evidence about extrajudicial arrests and
23 detention, torture, execution, that formed part of the -- unfortunately, of the Sudanese
24 landscape. And I think that's extremely important for the full understanding of
25 what happened and what the Office of the Prosecutor is describing. This is the

1 directly relevant.

2 I will not stop here. There is another aspect that is also important, that is, how
3 citizens could be ordered to participate in a counter-insurgency and what would
4 happen to them if they had the intention or desire to resist that order.

5 PRESIDING JUDGE KORNER: [15:11:03] Sorry. You said if citizens could be
6 ordered to participate in a counter-insurgency.

7 MR LAUCCI: [15:11:13] Yes. That is, would be mobilised to conduct operations
8 against suspected --

9 PRESIDING JUDGE KORNER: [15:11:19] The government.

10 MR LAUCCI: [15:11:20] No, no. Ordered by the government to participate and
11 support in operations against people suspected of being rebels. Maybe arrest them,
12 maybe execute them. And what -- what are the -- what is the legal framework in the
13 domestic system applicable to that, and do such persons, which would be mobilised
14 that way, what kind of liberty would they have to resist that order or disregard it?

15 PRESIDING JUDGE KORNER: [15:11:57] Right. So you're effectively raising
16 superior orders, are you?

17 MR LAUCCI: [15:12:06] I'm not yet jumping to the conclusion. That may lead to
18 that -- into that direction, but I'm more trying to elicit evidence of, really, the culture,
19 the legal culture in Sudan as was applicable in that time and what was -- for persons
20 without legal education, what was the regular way of functioning of the authorities
21 and what was not. So what could be or should be resisted and what could not.

22 PRESIDING JUDGE KORNER: [15:12:47] Yes. I mean, one of the things I was
23 going to ask about it then, because I didn't want to stop you again, was you put to
24 him this about extrajudicial torture and all the rest of it, but it wasn't quite clear who
25 was conducting torture. Are you talking about the police at the time?

1 MR LAUCCI: [15:13:10] I did not mention any specific case. I'm talking about the
2 legal environment for that kind of acts.

3 PRESIDING JUDGE KORNER: [15:13:17] Well, yes, I appreciate that, but I think
4 there's going to be some clarity because it was all a bit vague. All right.

5 Yes. All right. Well, Mr Nicholls, it seems to me -- I mean, whatever the rights and
6 wrongs of the legal side of it is, is -- he's entitled, Mr Laucci's entitled to pursue this
7 with the witness.

8 MR NICHOLLS: [15:13:44] As I said, I'm not objecting. I think this is "it's not me".
9 But "if it is me, I was under duress," is basically where we're going.

10 PRESIDING JUDGE KORNER: [15:13:51] Well, yes.

11 MR NICHOLLS: [15:13:52] That is my understanding of where we -- we are headed
12 towards some sort of fallback duress defence.

13 PRESIDING JUDGE KORNER: [15:14:03] Yes. Well, either duress, or as I've just
14 put it, superior orders. I mean, we may have -- not may. We will undoubtedly
15 have a discussion about the legal implication of all of this.

16 But anyhow, for the moment, yes, all right, Mr Laucci, that's fine. You carry on.

17 But, as I say, from what the witness says, you really need to give him all the
18 documents that you want to ask him about, and you better give him sections --

19 MR LAUCCI: [15:14:36] Yes. We will send them -- we'll send the criminal code
20 and the People's Defence Act 1986 through the VW unit.

21 PRESIDING JUDGE KORNER: [15:14:46] Right. Next, can I go back to this
22 question of witnesses.

23 Mr Nicholls, you've got now between now and when we stop in July, at the moment,

24 I think about 16 witnesses in all - I was told the number. Fifteen, I've been told by

25 Judge Alexis-Windsor - of which we've already dealt with five, I think. This is the

1 fifth -- yes. Just a moment. Apart from the expert, we've had seven.

2 Now, can we know if -- I appreciate you do have difficulties, but could we know in
3 advance -- could we be told -- how long are we breaking for? I've forgotten. Till 10
4 May, aren't we?

5 MR NICHOLLS: [15:16:04] I believe it's 9 May, your Honour, for that week, and
6 then 6th of -- 7 June, we start again.

7 PRESIDING JUDGE KORNER: [15:16:13] Yeah, but then we have a mixed -- so, as I
8 understand it, the Registry was saying that they thought they could have some Fur
9 interpreters by July.

10 MR NICHOLLS: [15:16:26] Yes, your Honour. And, again, without rehashing that
11 or losing my temper, this is what has caused us, in many respects, to order our
12 witnesses based on language, travel or video-link availability. So -- and the reason
13 I'm just saying that is to explain that the order, in and of itself, may seem a bit
14 random of the way --

15 PRESIDING JUDGE KORNER: [15:16:56] No, no. I mean, I fully appreciate that. I
16 mean, I think we've all understood the difficulties. All right. I think -- so for the
17 eight witnesses left then, could we have the running order. I mean, not when and if,
18 but just which order they're going to be called in, could we have that before we
19 conclude tomorrow?

20 MR NICHOLLS: [15:17:16] Yes. And I think we've given the order. Sorry, I don't
21 have the email. Oh, I do have the email. We've given the order through 13 May,
22 and then we will give as much as we can beyond that. One witness is having a -- in
23 that period is having a problem with travel, but we think we can resolve it.

24 PRESIDING JUDGE KORNER: [15:17:43] Yes. All right. Yes, well, as I say -- and
25 I am sure, Mr Nicholls, you'll have a rethink, but if there are any other witnesses who

1 you -- even if we have to lose a day, I suppose, that could actually be -- or you think
2 could be turned into 68(2)(c), that are 68(3) at the moment, and in enough advance
3 notice so the Defence can say that they want them here - well, the Defence wants
4 everybody - but taking a sensible view, after the comments made by the Chamber this
5 morning about that witness.

6 MR LAUCCI: [15:18:27] We will learn from this morning's experience.

7 PRESIDING JUDGE KORNER: [15:18:30] Right. The only other matter we can deal
8 with now -- I know there are still some outstanding rulings that we're still trying to
9 make a decision, but we can deal with the transcripts and the submissions that
10 everybody's made about it, and which we have every sympathy with, but as you've
11 all gathered, we can't do very much.

12 So the Chamber notes, on 29 March of this year, the Prosecution, the Defence, the
13 Legal Representatives of the Victims filed joint submissions asking for the Chamber's
14 intervention as regards the current transcript verification procedure adopted by the
15 Registry in accordance with the directions on the conduct of proceedings.

16 On 7 April of this year, the Registry filed its observations, and then the
17 Chamber's -- with the leave of the Chamber's -- the Chamber, rather, the parties and
18 the participants filed a reply to the response to the observation.

19 The Chamber acknowledges that the issue of accurately reflecting witness testimonies
20 in court is a complex task. And during the first weeks of trial proceedings, it has
21 become apparent that an accurate transcript requires a joint effort involving the
22 speakers, counsel, witnesses and everybody and judges so that pauses are made,
23 speaking notes are provided, and the list of terms and names. But it also involves
24 the Registry, which has the primary obligation to produce accurate and timely
25 transcripts.

1 The Chamber notes that the transcripts and interpretation improved significantly in
2 the last week before the spring judicial recess, as was pointed out on the transcript.

3 The Chamber notes the joint submission essentially opposes the procedure adopted
4 by the Registry on the basis that it imposes an undue burden on the parties and
5 participants. The parties and participants thus sought the Chamber's intervention to
6 engage with the Registry in respect of the adopted procedure, so that it was
7 changed as per the proposals in the joint submission.

8 In the joint submissions which were filed before the start of the trial, the parties and
9 participants referred to prior trial proceedings in other cases. Thus, in all likelihood,
10 issues arising in the joint submissions are common to all judicial proceedings before
11 this Court. However, again, the trial has just started.

12 At the moment, I should add in parenthesis, there's a severe delay in getting the
13 corrected version of the transcripts, in any event, which I think is a problem of
14 resources. And changes during the course of the trial, such as the provision of the
15 glossary for everybody, including the transcribers, could have a positive effect on the
16 quality of the transcripts.

17 The Registry is apparently working on a standard operating procedure on this issue
18 which would apply to all judicial proceedings, and Chambers are going to be
19 consulted about what that's going to be.

20 Also, there is a proposal to evaluate the current procedure in three months, and,
21 therefore, in the light of the actual trial proceedings which have started in this case.

22 Accordingly, I'm afraid the Chamber doesn't consider that at this point any
23 intervention by the Chamber would be appropriate or, really, take matters much
24 further. But in the light of the Registry's proposal, the Chamber instructs the
25 Registry, in consultation with parties and participants, to submit a report on the issue

1 by 1 July of this year.

2 And that, I'm afraid, everybody, is the best we can do at present.

3 Right. Are there any other matters that we can usefully deal with this afternoon?

4 MR NICHOLLS: [15:23:57] Three points, very briefly, your Honour, which could be
5 in an email, but if there's time, I'll just bring them up.

6 The first is, according to the protocol on witness preparation, the preparation log is
7 sent to the Defence. But in discussion, there's no objection - thank you - from the
8 Defence. We would also share that with the LRVs. It's not in the protocol, but we
9 think it will be helpful and avoid overlapping questions.

10 PRESIDING JUDGE KORNER: [15:24:37] Sorry. That's a very good point, Mr
11 Nicholls. And I think, in future, it probably ought to be shared with them because,
12 unless it's a specific reason why it shouldn't, they're entitled to know if the witness
13 has said something which may be of interest to their case.

14 MR NICHOLLS: [15:24:49] So we -- we will do so, starting now.

15 PRESIDING JUDGE KORNER: [15:24:52] Yes. Well, that's very helpful.

16 MR NICHOLLS: [15:24:57] The second point, it's, again, in consultation with all
17 parties and participants, is whether -- we'd ask the Chamber to consider whether the
18 party calling a witness who is testifying under 68(3) should read a brief summary of
19 the statement, under five minutes, solely for the public. I don't think that -- it's not in
20 the rules. It's not in the practice. It's in the practice direction at some other courts.
21 But it just occurred to us that the public has very little understanding of what the
22 witness's testimony was.

23 With my witness, they knew nothing except for the clarifications, which probably
24 don't make much sense, and the couple of questions I asked him. So a brief
25 summary --

1 PRESIDING JUDGE KORNER: [15:25:44] It seems a very good idea to me.

2 Mr Laucci.

3 MR LAUCCI: [15:25:47] When my colleague proposed it, I supported it immediately
4 for the sake of a public trial. The only thing, but I think it's not a problem, is that, in
5 order to avoid any discussion about the content of the summary, we all agree that the
6 summary is just for the public and is not evidence. Then there is no difficulty.

7 PRESIDING JUDGE KORNER: [15:26:08] Well, that's quite clear. I think, as Mr
8 Nicholls points out, some of the other tribunals have had that method, and I think it's
9 a very sensible one, as you say. There's no point in the public watching a trial if
10 they've no idea what the witness is going to give evidence about.

11 Yes, we agree, Mr Nicholls. Thank you.

12 MR NICHOLLS: [15:26:28] Thank you. And agree that it is not evidence.

13 PRESIDING JUDGE KORNER: [15:26:32] No.

14 MR NICHOLLS: [15:26:33] And then the last point, which is incredibly minor, is that,
15 in paragraph 130, expert witness De Waal deals with Peshmerga. That you said
16 you'd seen it somewhere and heard it. So he discusses that term in his expert report,
17 at 130.

18 PRESIDING JUDGE KORNER: [15:26:49] Oh, I thought -- that's right. I just
19 had -- I'm afraid, a witness who's called three weeks ago, you tend to forget what they
20 said. But I thought I'd heard it somewhere.

21 MR NICHOLLS: [15:27:02] His answer was actually almost identical, but that's
22 where it is.

23 PRESIDING JUDGE KORNER: [15:27:05] Actually -- sorry, Mr Nicholls, that did
24 bring something else to mind, which has now gone out of my head again.

25 Yes, correct, sorry. It's a matter for you, and I understand the difficulty, but, you

1 know, I know neither side was happy with the hours we adopted, but it does seem to
2 me that it's not a very helpful procedure to go through changes -- to take up your time,
3 going through the changes to the statements, some of which, as I made the point this
4 morning, were completely -- didn't change anything, really.

5 I understand, if there's a major change, then the witness wants it to be recorded before
6 he accepts that his statement can go in. But some of the changes, does it really
7 require as long as we've been taking?

8 MR NICHOLLS: [15:28:02] I don't think so, your Honour. I mean -- and we'll be
9 guided by your Honours. But following the rule, we read the statement carefully, if
10 the witness says, "I want to correct that," then we note that correction and put it down
11 and make that part of it.

12 What we were thinking we could do is, for the ones that really are minor, place,
13 names, dates that are not critical dates, we try to put them on a sheet of paper, that we
14 go through with the witness and just say, "The witness also made these corrections."
15 We would prefer to do that. That is one option.

16 The really tiny ones that make no difference at all, we would leave out when they
17 don't change a meaning. But, you know, Ms Morris -- the ones Ms Morris went
18 through today are a good indication of where we have been drawing the line. But if
19 we can, we will try to do the, you know, noncritical ones on a separate sheet of paper
20 and just tender that, if there's no objection.

21 PRESIDING JUDGE KORNER: [15:29:11] Well, I think, also, it may help not only if
22 you've the summary being read, but there was a witness, I think it was yesterday - no,
23 yesterday, we were off - the day before, and I think that going through the corrections
24 took nearly -- took the best part of the hour that you'd estimated the witness would
25 take. And I don't -- and the public, of course, have no idea what's being corrected

1 anyhow.

2 MR NICHOLLS: [15:29:37] Yes. So we will look at that, try to put something in
3 writing and try to speed it up. And we'll explain what we're doing to our --

4 MR LAUCCI: [15:29:44] May I suggest that, since all these corrections are in the
5 witness log, you just submit that as evidence.

6 MR NICHOLLS: [15:29:52] I think that we could talk about that separately. I think
7 we --

8 PRESIDING JUDGE KORNER: [15:29:57] Can I say that the Chamber is delighted to
9 see that the spirit of cooperation is continuing between the Defence and the
10 Prosecution and the victims representatives. We'll leave it to you to decide how best
11 to do this. As you say, some way or another, the rules need to be complied with.
12 Yes. Well, if there's nothing else, then we'll adjourn, and we'll sit again - I think
13 we're back in this court, are we? Yes - at 9.30 tomorrow morning.

14 THE COURT USHER: [15:30:31] All rise.

15 (The hearing ends in open session at 3.30 p.m.)