

Trial Hearing
WITNESS: DAR-OTP-P-0020

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 1
9 Friday, 13 May 2022
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:38] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:02] Yes.
15 Can we call the case, please.
16 THE COURT OFFICER: [9:33:06] Good morning, Madam President. Good
17 morning, your Honours.
18 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
19 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
20 And for the record, we are in open session.
21 PRESIDING JUDGE KORNER: [9:33:24] Yes, thank you.
22 We'll start with the Defence. But can I take it the appearances are the same as
23 yesterday, Mr Laucci? Anybody not here?
24 MR LAUCCI: [9:33:35] Precisely.
25 PRESIDING JUDGE KORNER: [9:33:36] Right.

1 Mr Shah is also here for the victims.

2 Anybody different, Mr Nicholls, from yesterday?

3 MR NICHOLLS: [9:33:42] The same as yesterday, although Mohanad Elkholy is not
4 here today.

5 PRESIDING JUDGE KORNER: [9:33:46] Right.

6 Yes, Mr Laucci, I gather you want to raise the question of the translation of your
7 medical report.

8 MR LAUCCI: [9:33:56] Yes.

9 PRESIDING JUDGE KORNER: [9:33:56] Obviously, if you want to use it at some
10 stage, there's got to be translation of the Dutch and the French into English, but you
11 can't actually use it with this witness because he's never seen the report. He's not
12 a medical man. All he can -- all he could do is comment on what he can see that
13 everybody else can see. I mean, I understand you want to use it in connection with
14 the nickname; is that right?

15 MR LAUCCI: [9:34:27] That's correct. And to be specific on my intention, it is just
16 after, if I receive the information from the -- from the witness that this nickname is
17 linked to alcohol and that the -- the person named Ali Kushayb had a wide reputation
18 of being a drunk, which is his evidence in his written statement.

19 PRESIDING JUDGE KORNER: [9:34:55] Yeah.

20 MR LAUCCI: [9:34:56] So if that is confirmed, my intention was very simple, just to
21 explain that a medical report was made of Mr Ali Muhammad Ali Abd-Al-Rahman
22 and to read the last two sentences of the conclusion. Nothing more.

23 PRESIDING JUDGE KORNER: [9:35:16] Just a moment.

24 The French conclusion (Overlapping speakers)

25 MR LAUCCI: [9:35:20] Yes, it's on page 6.

1 I can read it now, if you like.

2 PRESIDING JUDGE KORNER: [9:35:27] No, don't worry. We can see it.

3 Yeah, I can see that.

4 MR LAUCCI: [9:35:35] And --

5 PRESIDING JUDGE KORNER: [9:35:37] But (Overlapping speakers)

6 MR LAUCCI: [9:35:38] -- so that if I read it in French, we will get an interpretation in

7 English and in Arabic and to ask him, very simple question, if with that information

8 he -- he is minded to reconsider the statement that the person who was introduced to

9 him as Ali Kushayb was Mr Ali Muhammad Ali Abd-Al-Rahman. Nothing -- no

10 more than that.

11 PRESIDING JUDGE KORNER: [9:36:09] But what -- I don't think he says -- wait

12 a minute, let's just find the part in his statement where he talks about this. Just

13 a moment.

14 MR LAUCCI: [9:36:19] He doesn't speak about Mr Ali Muhammad Ali

15 Abd-Al-Rahman, he only speaks about Ali Kushayb.

16 PRESIDING JUDGE KORNER: [9:36:24] Yeah, but he -- just a minute, what

17 does -- can you just direct me.

18 MR LAUCCI: [9:36:32] Sixty-three.

19 PRESIDING JUDGE KORNER: [9:36:38] Sixty-three, right.

20 Yeah, but all he says is he met a man who was introduced to him as Ali Kushayb.

21 Then he says, this is what his reputation was. He can't say whether that's true or not.

22 You got evidence to show that, on examination, it doesn't look as though he had

23 a drink problem. All he can say is, "I met somebody introduced to me. I don't

24 know one way or the other whether this is Ali Kushayb. This is the way he was

25 introduced. And later I was told that the man to whom I was introduced had

1 a serious drink problem."

2 MR LAUCCI: [9:37:36] Okay, but I thought --

3 PRESIDING JUDGE KORNER: [9:37:38] And in fact, in one sense, Mr Laucci, sorry,
4 couldn't that be said to help you, your report, at a stage -- if you're right and -- then
5 your client, as you say, is unlikely to have been the Mr Ali Kushayb whose reputation
6 was of being a heavy drinker.

7 But what -- this witness can't say anything more than that, can he? I think that's
8 the problem. But -- so I don't think you can ask him that anyhow.

9 But going back to translation.

10 MR LAUCCI: [9:38:09] Yes, please.

11 PRESIDING JUDGE KORNER: [9:38:10] Are you saying that the translation section
12 declined to translate it?

13 MR LAUCCI: [9:38:18] Well, we have requested twice. Once, the first time for
14 the confirmation hearing, the second time for this session today. And the answer we
15 have received - and we forwarded this morning the email to the Chamber's
16 officers - I can read it:

17 "In relation to your request for translation, as has been indicated
18 previously," - the first time - "translating of documents originating from the Defence
19 for Defence into a working language of the Court, including for the purposes
20 indicated in your email, falls outside the scope of LSS services. Therefore your
21 request cannot be facilitated."

22 And so that you have the full information, the purpose of the request was that,
23 it's -- no.

24 "We would like to request from LSS to translate the attached report from French to
25 English as it's a document that may be used during the examination of a witness next

1 week. And since the report contains medical and technical words, LSS would be
2 more equipped to provide a translation. Although the document is already in a
3 working language of the Court, it is important that we provide the document in
4 English, in assistance and for the understanding of all judges, as well as the parties
5 and participants."

6 And this was declined.

7 PRESIDING JUDGE KORNER: [9:39:38] Yeah, I see.

8 Well, if it's of some help to you, obviously Judge Alapini-Gansou's native language is
9 French. I read French better than I speak it, and the -- Judge Alexis-Windsor has
10 enough working knowledge. And we have the assistance of a very fluent -- in fact,
11 two very fluent legal officers.

12 So at this stage I think what you would probably want to do, because not all of it's
13 going to be relevant, is look at the -- pick the paragraphs that are the most relevant
14 and either they can be read into the record, then we'll get the translation anyhow.

15 But if the Dutch documents become relevant, then you really will have to get
16 a translation.

17 MR LAUCCI: [9:40:37] Well, I think the only possibility for the Dutch documents to
18 become relevant would be that there would be a challenge or an objection of what is
19 in that report.

20 So I turn to my colleagues on the other, on the other side. If there is no objection on
21 the substance of the very medical, technical aspects of the report, then I think we will
22 not need it.

23 PRESIDING JUDGE KORNER: [9:41:01] Yeah. All right. Well, let's see how we
24 go. And at the stage when it really does become relevant, something that needs to
25 be admitted, then we can look at it again. But I don't think I've got any powers. As

1 far as I know, the Trial Chamber's got very little power to override the regulations,
2 which say "one of the working languages of the Court".

3 MR LAUCCI: [9:41:22] Actually, the request, even though it was not specified in the
4 request, we strongly believe that this document, which is an evidence that Mr Ali
5 Abd-Al-Rahman does not -- I mean, does not fit the reputation of being a drunk that
6 is attached to this nickname that is alleged -- allegedly given to him, I think that's
7 a document of -- which is very important as evidence in order to establish the truth.
8 And that's a document that is meeting the requirements of Article 67(1)(f) out of
9 memory, that is the right to receive translation of documents which are of importance
10 to meet the requirement of fairness.

11 PRESIDING JUDGE KORNER: [9:42:14] All right. Well, let's -- as I say, I think let's
12 have the witness back in again so that you can complete your cross-examination.
13 And we'll revisit this at a stage where it's clearly, in some form or another, got to be
14 decided.

15 MR LAUCCI: [9:42:29] Okay. But I understand that I do not submit it to
16 the witness for today.

17 PRESIDING JUDGE KORNER: [9:42:33] No, no.

18 MR LAUCCI: [9:42:34] Okay.

19 PRESIDING JUDGE KORNER: [9:42:35] Thanks, Mr Laucci.

20 All right, let's have been the witness in.

21 Sorry, Mr Nicholls.

22 MR NICHOLLS: [9:42:40] Just very quickly, we're also joined by Rachel Mazzarella.
23 Sorry, I should have said that this morning. She was with us yesterday, but name
24 was not put on the record yesterday.

25 PRESIDING JUDGE KORNER: [9:42:51] All right. Thank you very much.

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1 I'm sorry, while we're waiting, I don't think we're going to be able to sit the extra
2 week. It was floated but it doesn't, for various reasons -- and I've seen your email,
3 Mr Laucci, and I understand. So you can forget about an extra sitting.

4 (The witness enters the courtroom)

5 PRESIDING JUDGE KORNER: [9:44:04] Sir, good morning to you. And welcome
6 back to the Court.

7 Mr Laucci's going to continue with his questions.

8 WITNESS: DAR-OTP-P-0020 (On former oath)

9 (The witness speaks Arabic)

10 QUESTIONED BY MR LAUCCI:

11 Q. [9:44:17] Good morning, Mr Witness. Are you well for today?

12 A. [9:44:20] Yes, thank god. Good morning.

13 Q. [9:44:24] So as Madam President has said, I will continue my cross-examination
14 and I will start again where I stopped yesterday evening, to remind you I was asking
15 you questions about the -- the Popular Defence Forces, when they were created,
16 the role they were playing and everything.

17 So I have a last -- no, not -- actually, not a last question, but I have other questions on
18 the Popular Defence Forces, so we will start with that this morning. And --

19 A. [9:44:56] Go ahead.

20 Q. [9:44:56] -- the first question -- the first question is, do
21 the Popular Defence Forces still exist nowadays when we are talking?

22 A. [9:45:10] I have no idea. I don't have any idea what happened after the Omar
23 al-Bashir regime was brought down.

24 Q. [9:45:30] Do I understand that until the end of the rule of Omar al-Bashir,
25 according to you, the PDF still -- still existed?

1 A. [9:45:46] Yes.

2 Q. [9:45:48] Thank you for that.

3 Did you ever hear about another structure, I don't want to say, yeah, let's -- let's talk
4 about the structure, called the border intelligence?

5 A. [9:46:09] Yes.

6 Q. [9:46:11] Can you tell us what it is?

7 A. [9:46:21] It was known as border intelligence, but I don't have any information
8 about its structure. I heard that it existed, but I don't know much about its
9 organisational chart or -- chart or its structure. And I know that there was no law
10 that founded it, so it wasn't founded based on the law.

11 Q. [9:46:46] Okay. And without entering into the details about its structure,
12 what -- what was the purpose of this border intelligence? What -- what do you
13 know that this border intelligence was doing, if anything?

14 A. [9:47:06] I have no information about it.

15 Q. [9:47:13] Coming back to the Popular Defence Forces, in 2003 and 2004, was
16 the PDF involved in the counterinsurgency against the rebellion in Darfur?

17 A. [9:47:38] Yes.

18 Q. [9:47:40] Do you know by that time, 2003, 2004, who were the leaders of the PDF?
19 And I will start with the national level, at the level of Sudan. Do you know any
20 leaders of the PDF in 2003, 2004?

21 A. [9:48:09] I don't remember the exact names. But amongst the leaders of
22 the PDF, I remember Ali Ahmed Karti who later on became minister of foreign affairs.
23 I also remember -- this is what I remember.

24 Q. [9:48:32] Thank you. Do -- can you remember about leaders of the PDF for
25 West Darfur?

1 A. [9:48:48] No.

2 Q. [09:48:49] Okay, I don't think it's necessary to go further down into the details,
3 because -- well, you seem to have no recollection of that.

4 Do you -- did you hear of a person named Ahmad Abdallah Shukurtalla?

5 A. [9:49:14] Can you repeat the question, please, or the name.

6 Q. [9:49:17] I was asking if you had ever heard about a person named Ahmad
7 Abdallah Shukurtalla. And sorry for the pronunciation.

8 A. [9:49:30] Yes, I heard about Ahmad Shukurtalla.

9 Q. [9:49:35] Thank you for correcting me. And what do you know about that
10 person? What did you hear about him?

11 A. [9:49:48] He was in West Darfur in Geneina. He was a leader. I don't know if
12 he was in the armed forces or the PDF or if he was in the army. I know that he was
13 one of the main members of the entire insurgency or counterinsurgency in
14 West Darfur.

15 Q. [9:50:20] And I have the same question regarding another person. Once again,
16 forgive my pronunciation. Mr Al-Sadiq Ahmad Uthman?

17 A. [9:50:38] No, I don't know him.

18 Q. [9:50:43] Thank you. At paragraph 19 of your written statement - no need to
19 put it on the screen, but for the record it's DAR-OTP-0095-0002, and I'm talking about
20 page 0007 - you mention the rebellion of Mr Daud Bolad in 1992, and you describe
21 Mr Daud Bolad as a member of the National Islamic Front.

22 Do you follow me so far?

23 A. [9:51:30] Yes.

24 Q. [9:51:31] Thank you. What do you know, even in general terms, about the links
25 between the rebellion in Darfur and the National Islamic Front?

1 A. [9:51:51] NIC is a political party organisation that took the control through
2 a military coup under Omar al-Bashir. But before that, it was the third party in
3 the parliament. I mean by that by the number of MPs. The rebellion started in
4 Darfur after 2002, and so there is no relationship with the fact that they only coincided
5 in the government when the insurgency started in Darfur.

6 Q. [9:52:38] Do you know anything about the position of Mr Hassan al-Turabi,
7 vis-à-vis the Darfur rebellion, whether he was supportive or in opposition to it?

8 A. [9:52:59] Can you please clarify your question.

9 Q. [9:53:03] Did you hear about a person named Hassan al-Turabi?

10 A. [9:53:11] Hassan, yes, I heard about him. And I know Hassan al-Turabi. He is
11 the leader of the NIF under the democratic regime, and then he became the sponsor of
12 the NIF when there was a coup in July 1989. Before that, he used to be a law
13 professor at the university.

14 Q. [9:53:42] Okay. And when the rebellion started in -- in Darfur, I'm talking
15 about the -- the Justice and Equality Movement or the SLA, do you know if -- what
16 was the position of Mr al-Turabi vis-à-vis these two organisations?

17 PRESIDING JUDGE KORNER: [9:54:06] Sorry, can you just be more specific. Do
18 you mean the rebellion which started in 2002, or are we going back to 1989?

19 MR LAUCCI: [9:54:15] I'm more on the 2002 period, even though we saw yesterday
20 that there was some uncertainty about the exact date. But, yes, we are talking about
21 the period 2002 --

22 PRESIDING JUDGE KORNER: [9:54:27] Thank you.

23 MR LAUCCI: [9:54:27] -- and so on.

24 THE WITNESS: [9:54:35](Interpretation) Yes.

25 MR LAUCCI: [9:54:36]

1 Q. [9:54:36] So I repeat my question.

2 A. [9:54:42] Go ahead.

3 Q. [9:54:45] What do you know about the position of Mr Hassan al-Turabi vis-à-vis
4 the rebellion in Darfur that started around 2002?

5 A. [9:54:59] Of course, al-Turabi was a leader of the NIF, which took control of
6 the region through a military coup, and the rebellion is a part of the SLA under
7 Abd-Al-Wahid Nur and the JEM, who was headed by Mr Khalil Ibrahim.

8 Abd-Al-Wahid Nur is a leftist, and it's possible that Turabi was supporting him.

9 As for JEM, it is said -- I'm not sure, it is said that it's the military arm of the NIF.

10 Q. [9:56:05] You used the word "leftist". Can you explain a little bit that word,
11 please.

12 A. [9:56:16] So closer to communism. And they are essentially against the NIF.

13 The SLA, the Sudan Liberation Army, SLA, this is the abbreviation for it, and the NIF
14 was created later -- sorry, SLA was created later and not on the same date. Its
15 members were part of the NIF, the National Islamic Front.

16 Q. [9:57:16] Thank you. Do I -- are you suggesting that there was a political
17 background or dimension to the -- the rebellion in Darfur? I mean, you said
18 the -- the -- Mr Khalil Ibrahim -- Abd-Al-Wahid Nur was a leftist, so closer to
19 the communist party.

20 Was that an important element in coming to -- to -- to rebellion?

21 A. [9:58:01] In the early days of the rebellion he was an important member, because
22 the government that existed back then, the NIF government, used this matter in order
23 to mobilise people, by saying that they were against the communist and the rogue
24 people. And so this was a weapon that the NIF was using.

25 As for JEM, I don't know much about it, although I know that many -- or I know

1 many of its members.

2 Q. [9:58:38] Okay, so if I understand well, in the -- the Darfur rebellion you had
3 these two components. The JEM component would be closer, you say maybe even a
4 military wing of the National Islamic Front. And this other component, SLA, which
5 would be leftist and -- and close -- and closer to the Communist Party. Which means
6 two really different sides of the -- the political landscape, right?

7 A. [9:59:26] That is a group of elements that create the life in Sudan. JEM, most of
8 its leaders, political and military leaders, were members of the National Islamic Front,
9 NIF. Dr Khalil Ibrahim, as I said, was a minister in the NIF government in Darfur.
10 He was the head of the Mujahidin, *Kataeb Al-Mujahidin in South Sudan.

11 Abd-Al-Wahid Nur, on the other hand, I know that he is more pro-communism, but
12 he wasn't a member of the NIF. So for sure they were fighting the government
13 because they were fighting for causes that are important for Darfur. I mean by that
14 development, political participation and the sharing of wealth and power. This is
15 all.

16 Q. [10:00:29] Thank you. Did you hear of a person named Ali Alhaj?

17 A. [10:00:39] Yes, I do know him.

18 Q. [10:00:42] And what can you tell us about him, please?

19 A. [10:00:52] Ali Alhaj is initially a physician, a doctor. He is a gynecologist from
20 South Darfur, Nyala being the capital of the district. His father was a tradesman in
21 the Nyala market. He is a very important member in the NIF at that time and he
22 was a minister of trade and finance in the same government. He was opposing
23 Ja'afar Al-Nimeiri under the former president's rule. Ja'afar Al-Nimeiri, in the end,
24 he got in conflict with Omar al-Bashir and he joined Hassan al-Turabi. Together,
25 with others, they created what we call now the National Congress Party. That is

1 different from the party that was once presided by Omar al-Bashir.

2 Q. [10:01:58] Thank you. Did you hear about the existence of something called
3 the Islamist project in Darfur?

4 A. [10:02:22] The people of Darfur are all Islamists. The Islamist project is
5 the Islamic Front in Darfur, and they agreed that they want the power not only in
6 Darfur, but in all over of -- all over Sudan.

7 Q. [10:02:50] Thank you. At paragraph 20 of your written statement - and we
8 are still on page DAR-OTP-0095-0007 - you mention the publication of a secret
9 bulletin in 1992 entitled, "Vision on the Fur for the future perspective", and you
10 describe this document as proposing to chase the Fur population out of Darfur. You
11 explain that this document was issued by the National Islamic Front.

12 Do you follow me so far? Did I understand well your statement?

13 A. [10:03:47] Yes, yes, I follow you very well.

14 Q. [10:03:53] Okay. Which leads me to -- to observe that the relationship between
15 the -- the National Islamic Front and the rebellion in Darfur has evolved in time, and
16 if at the time of this document in 1992 the National Islamic Front, yes, seemed to be in
17 opposition to the -- to Darfur and to its population, then, with time, things became
18 more complex the way you described it and it was not so, so black and white.

19 Do I understand correctly?

20 A. [10:04:45] I did not get what you are suggesting. But when the bulletin, when
21 the document was issued by the NIF and Fur, it was the summary of the vision of
22 the NIF of the Fur, because the Fur tribe was not with the NIF, despite the high
23 numbers of the NIF. There are leaders from the Fur who were members of the NIF
24 as you have mentioned, such as Bolad, who later deserted them, and Khalil.

25 The NIF in Darfur sees that the control and the power would be for inhabitants other

1 than the big tribes that existed in Darfur. The Fur were not numerous at that time in
2 that organisation.

3 Q. [10:05:51] Okay, but then when we move in time to 2002, and especially with
4 the involvement of the JEM into the rebellion, of course this relationship between
5 the rebellion in Darfur and the NIF was somehow significantly changed, right, and
6 much closer than it was in 1992?

7 A. [10:06:24] The Justice and Equality Movement at that time did not exist in 1992.
8 What we had then was the National Islamic Front.

9 Q. [10:06:37] Thank you. I think it's clear. I can move on.

10 At paragraph 26 of your written statement - and this time I am at page 0009 - you
11 mention a person named Sultan Hussein Ayoub Ali Dinar, who was apparently
12 the sultan and topmost tribal leader of the Fur tribe.

13 Can you tell us more about this person and his position.

14 A. [10:07:14] Sultan Hussein Ayoub Ali Dinar is the grandson of Sultan Ali Dinar,
15 the last of the sultans of the Sultanate of Darfur that ended in 1916, and consequently
16 Darfur was joined to Sudan. Sultan Ali Dinar was killed by General Houston,
17 the English general -- the British general after being against the British in the
18 First World War. Hussein Ayoub Ali Dinar is a civil engineer, he was chosen to be
19 a sultan for -- of the Fur tribe.

20 He does not represent the executive power. It is, rather, a traditional power.

21 Therefore he does not have real executive powers, but he is only a symbol.

22 Q. [10:08:23] Okay. Does that mean that this sultan, even symbolic, is above
23 the *shartays* in the Fur tribe?

24 A. [10:08:36] Yes, of course. Yes, of course. The sultan is at the highest point of
25 the tribal pyramid. The sultan was the high -- had the highest position in Darfur

1 after the independence. However, the sultan became only a symbol and he
2 represented the top of the pyramid of the power in Darfur. The *sheikh*, the *umdah*,
3 the *shartay* come first, and then comes the sultan.

4 Q. [10:09:13] Okay. I completely get your point that it was a symbolic position,
5 but I believe you will agree with me that in politics symbol are important.

6 And then if the sultan would say that the Fur tribe should take one position or do
7 something, does that mean that this message would have importance and would be
8 relayed by the *shartays* and the other tribal leaders?

9 A. [10:10:06] The sultan could not issue instructions and could not even recruit
10 employees. But he would say, for example, that the Fur tribe could not exist in
11 the central government organisation or structure. Of course, this is not of
12 importance to the *sheikh* or the *umdah*, it is only important -- it is only something that's
13 of relevance between the sultan and between the central government.

14 Q. [10:10:35] And this -- this message, or -- you say it's not an instruction, but this
15 view that you just mentioned, did Sultan Hussein Ayoub Ali Dinar deliver it?

16 A. [10:10:54] Yes, he transmitted it to the central authority in Khartoum and he was
17 very explicit about it.

18 Q. [10:11:12] Do you know if he provided any explanation for that position? What
19 was the rationales?

20 A. [10:11:28] He only transmitted what his inhabitants felt and wanted to
21 the authority. There was marginalisation. There was no development. There was
22 no representation in the authority's pyramid and, therefore, he was able to transmit
23 that message to the authorities in power.

24 Q. [10:11:52] Thank you. And did this sultan, Hussein Ayoub Ali Dinar take any
25 position, issue any view about the Darfur rebellion?

1 A. [10:12:13] He did not mention that. Even if he had a view, he wouldn't say
2 anything about it.

3 Q. [10:12:27] And do -- do you know that -- do you know if his silence about
4 the Darfur rebellion should have been interpreted in a way or another?

5 A. [10:12:52] I do not know.

6 Q. [10:12:53] Thank you. And last question about this person, what happened to
7 him as a result of the armed conflict? Is he still alive now? Did -- was he impacted
8 in a way or another?

9 A. [10:13:14] Yes, of course he was impacted, because the tribe of which he was
10 the leader was regressing, was deteriorating. The members of the tribe have been
11 displaced and now he has passed away. And his son, Sultan Ahmed Hussein Ayoub
12 Ali Dinar, is now in his place.

13 Q. [10:13:45] Did he pass away from natural causes or something happened to
14 him?

15 PRESIDING JUDGE KORNER: [10:13:52] Mr Laucci, I've given you a lot of leeway
16 now. And I understand that you're trying to build a picture of the leaders of the Fur.
17 But whether he died of natural causes, or not, is really not going to help us at all.

18 MR LAUCCI: [10:14:08] Okay. I thought if he had been a victim of the conflict, that
19 may have an importance, but I respect your opinion.

20 PRESIDING JUDGE KORNER: [10:14:15] All right. Well, thank you.

21 Mr Laucci, you must try and at least show why it is that you're asking about all these
22 people at the moment, because at the moment you just asked about a string of people,
23 some of whom have been mentioned in the witness's statement, some of whom
24 haven't, and at the moment it's not clear to us where we're going with this.

25 MR LAUCCI: [10:14:44] Thank you. In any case, I've done with the first chapter of

1 my cross-examination, which was the overall context.

2 Q. [10:14:48] So I now move to the second chapter, which is about asking you
3 questions, Mr Witness, about human rights in Sudan, compliance with human rights,
4 and especially under the rule of President al-Bashir. And you will see in my
5 questions sometimes, even more precisely over the period 2003 and 2004. I will start
6 with a very general introductory question.

7 Under the rule -- the regime of President Al-Bashir, and especially in 2003 and 2004,
8 did the Sudanese authorities comply with human rights and particularly the right to
9 fair trial?

10 A. [10:15:54] No, it did not comply.

11 Q. [10:15:59] Are you aware of any instances of extrajudicial arrest and detention
12 during that period?

13 A. [10:16:15] Where, in Darfur or in Sudan?

14 Q. [10:16:19] My question is for Sudan in general, but you have -- if you have
15 specific elements concerning Darfur, I will be even happier to hear them.

16 A. [10:16:37] In Darfur, at the start, so at the end of 2002 up until 2004, there were
17 arbitrary arrests and extrajudicial detention. There were cases of torture for political
18 detainees. And there are also documented cases about this.

19 Q. [10:17:06] Thank you. Your response is specific to 2002 and 2004. If I ask you
20 to -- to provide the same -- the answer to my question on a larger scale, that is
21 the whole time of President al-Bashir's rule, would you have a different answer?

22 A. [10:17:35] I would have the same answer, the same answer.

23 PRESIDING JUDGE KORNER: [10:17:40] Wait. You're talking about 18 -- sorry,
24 1989 through until the coup which overthrew him?

25 MR LAUCCI: [10:17:48] 1989-2019.

1 PRESIDING JUDGE KORNER: [10:17:53] Right. Well -- all right, you've got
2 the answer anyhow, so. But I think you really ought to limit your questions to
3 the period we're concerned with.

4 MR LAUCCI: [10:18:04] I am trying, Madam President, to establish what was
5 the general -- I already used the word "culture" of human rights in Sudan over that
6 period 2000 -- the two years 2003 and 2004 of course are relevant, but it is relevant
7 also for me to have a wider perspective.

8 PRESIDING JUDGE KORNER: [10:18:27] Well, I can see potentially why before,
9 maybe, but I cannot see why --

10 MR LAUCCI: [10:18:35] Especially --

11 PRESIDING JUDGE KORNER: [10:18:35] -- why --

12 MR LAUCCI: [10:18:36] -- especially before.

13 PRESIDING JUDGE KORNER: [10:18:37] Yeah, not after.

14 MR LAUCCI: [10:18:38] Okay. So I will go --

15 Q. [10:18:40] Mr Witness, the next question I will ask will be related to the period
16 from the coming into power of President al-Bashir until 2004. That period of time.
17 All the questions that I will ask you about human rights now.

18 Is that clear?

19 A. [10:19:05] Yes.

20 Q. [10:19:08] Over that period, are you aware of any instance of the use of torture
21 to question suspects?

22 A. [10:19:20] Yes.

23 Q. [10:19:25] Are you aware of any instance of extrajudicial execution?

24 A. [10:19:40] Yes.

25 Q. [10:19:41] At paragraph 19 of your written statement you mention the execution

1 without trial of rebellion leader Daud Bolad. Was it common practice, according to
2 you?

3 A. [10:19:56] Yes.

4 Q. [10:20:01] Are you aware of other instances of members of Bolad's rebellion
5 which -- who were executed without trial?

6 A. [10:20:13] Yes, many have been killed without any trial.

7 Q. [10:20:22] Could anyone suspected of being a rebel, or supporting the rebellion,
8 be executed without trial in the same way in Sudan over that period?

9 A. [10:20:39] Yes.

10 Q. [10:20:43] Would that apply to persons suspected of recruiting rebels?

11 A. [10:20:57] Those who were suspected were executed without trial. So the mere
12 suspicion is grounds for execution without trial.

13 Q. [10:21:10] Thank you, Mr Witness. I try to be more specific on the substance of
14 the suspicion. So being a rebel and fighting against the government, you are a rebel,
15 you may face this fate. But I'm trying to see if that same fate also applies to other
16 categories of persons, and the first category that I am submitting to you is the person
17 who are suspected of having played a role in mobilising and recruiting rebels.

18 A. [10:21:49] Yes, it applies to them too.

19 Q. [10:21:52] What about persons suspected of having provided money to -- to
20 equip and to finance the rebellion?

21 A. [10:22:10] Suspicion is enough to receive such a fate. For example, torture or
22 being killed without a trial.

23 Q. [10:22:22] Okay. I will take it as a yes.

24 What about persons suspected of providing information, intelligence to a rebel
25 movement, would they face the same fate?

- 1 A. [10:22:39] Of course, yes.
- 2 Q. [10:22:42] Same question for persons suspected of hiding rebels.
- 3 A. [10:22:53] Yes.
- 4 Q. [10:22:58] Same question for persons suspected of having helped in the logistics,
5 in the procurement, such as suppliers of food or those cooking for the rebel
6 movement?
- 7 A. [10:23:19] Yes.
- 8 Q. [10:23:20] We heard about a tradition in Sudan of singing songs to inspire
9 courage for those who go -- who will go and fight. Do you know of this practice or
10 tradition?
- 11 A. [10:23:43] Yes.
- 12 Q. [10:23:44] And would those who sing songs like this to encourage the fighters
13 who -- who are leaving to fight, would they also face the same fate?
- 14 A. [10:23:59] If they are with the government, they would not be afraid of anything,
15 but of course if they are in the ranks that are opposing the government, they will
16 receive -- they would receive the same fate.
- 17 Q. [10:24:11] Yes, my question was those encouraging on the rebellion side. So
18 the answer is yes. Thank you.
- 19 And what about providing health care and -- and -- health care to the wounded and
20 sick rebel fighters. Would they face the same fate?
- 21 A. [10:24:33] Which fighters? You mean the fighters who are in the ranks of
22 the government or in the ranks of the opposition?
- 23 Q. [10:24:40] Opposition. Those providing health care to wounded rebels.
- 24 A. [10:24:51] They would get the same fate, because they would be considered as
25 collaborating with the rebels.

1 Q. [10:24:59] Thank you very much. I'm done with my list.

2 I turn to another related topic.

3 Are you aware of any declaration of state of emergency in force in Sudan over
4 the period 2003 and 2004?

5 A. [10:25:21] Yes.

6 Q. [10:25:30] So this was covering this whole period. By any chance do you
7 remember when the state of emergency was declared for the first time?

8 A. [10:25:45] When Omar al-Bashir came to power on 30 June 1989, it was the first
9 declaration of a state of emergency throughout Sudan. Then afterwards, and after
10 the start of the rebellion, there was a state of emergency that was declared in Darfur
11 for the second time and it allowed the extrajudicial trials.

12 Q. [10:26:22] Thank you, that's confirming the information we -- we have.
13 So you just said this -- it allowed extrajudicial trials. I want to understand better
14 what was the impact of the state of emergency.

15 A. [10:26:47] The state of emergency deprives people of their natural rights when it
16 comes to justice. So people would not be submitted to a fair trial. Trials would be
17 done summarily. And the power of trial would be given to people other than
18 the judge, maybe to a military leader, a field leader. They would be able to form
19 the trial that they want.

20 And these trials are not reviewed, I have to mention this as well.

21 Q. [10:27:26] And would that imply the power to sentence someone to death?

22 A. [10:27:41] Yes.

23 Q. [10:27:45] Would that also imply the possibility of arresting people and
24 detaining them on the basis of the suspicion that they may be members of supporters
25 of the rebellion?

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

2 Q. [10:28:10] I will try to summarise, and see with you if you -- if you share
3 my -- my overall perspective on the situation with that state of emergency and
4 the way human rights were not complied with in Sudan under the rule of
5 President al-Bashir.

6 Does that mean that, basically, any person suspected of being a member of
7 the rebellion or of supporting it could be arrested, detained, and executed - I don't
8 want to say sentenced to death - executed without appearing before a judge over that
9 period?

10 A. In Darfur, yes, that was possible.

11 Q. [10:29:25] And you say -- you said that this was even facilitated, in a way, by
12 the declaration of the state of emergency, right?

13 A. [10:29:38] Yes.

14 Q. [10:29:41] Thank you. Against that terrible background that you are describing,
15 what -- what was the perception and level of understanding of the Sudanese
16 population in general? And I especially, I insist, on persons with no specific legal
17 education about human rights? Would people -- that's a very general question, I will
18 be more -- more specific.

19 Would those people, normal citizens with no legal background in Sudan, would these
20 people understand the mere concept and existence of human rights?

21 A. [10:30:43] Justice and asking for justice is a human request for a person to be
22 treated with dignity and justice and equity. This does not require a person to be
23 educated to call for it. But the natural existence of a human being requires this to be
24 provided for. And so when people see that there's injustice towards a number of
25 people or a certain individual and there's nothing that they can do, there will be chaos,

1 panic, fear and terror.

2 So it's an authoritarian regime that was based on these means and these measures.

3 Q. [10:31:27] I take your answer as related to the aspiration that everyone can have
4 to -- to justice. But, in concrete terms, would people in Sudan consider that these
5 human rights and everything we -- we talked about, was concretely applicable to
6 them as Sudanese citizens?

7 A. [10:32:05] No, they were not enjoying such rights.

8 Q. [10:32:14] Would there be any -- would those people try to -- to challenge and
9 say that, "No, it's not normal. Human rights exist and have to be complied with"?
10 Would they try to -- to object against the way people were treated, according to what
11 you describe?

12 A. [10:32:45] There was no platform to raise the voice and object. The media
13 was -- the hand of the media was tied. There was no freedom of expression. No
14 freedom to object. Even if they weren't happy with what was going on, there was no
15 platform for them to go and object or raise the voice against what was happening.

16 Q. [10:33:09] So in that terrible context, what would be the -- the attitude of people?
17 Would just try to -- to -- not to have the authorities on them and -- and -- and not
18 to -- to get into trouble for anything, and with the hope that they will -- they will be
19 left quiet, without problem?

20 A. [10:33:56] Can you please repeat the question.

21 Q. [10:33:59] In that terrible context, was avoidance a common strategy? Just to
22 avoid to get into contact with the authorities so that they do not get into trouble, they
23 do -- they live their life and they avoid the authorities pointing their eyes on them?

24 A. [10:34:23] There was a state of fear, of panic. Of course, people would try to
25 avoid everybody else. Everybody would avoid being in the eyesight of

1 the government. But despite that, being careful does not mean that there won't be
2 any doubt. And sometimes even persons would settle their differences on
3 a personal level. You might say, for example, that this person is supporting
4 the insurgency, then he would be killed.

5 Q. [10:35:06] Thank you. And when, unfortunately, the -- the authorities were
6 pointing their eyes on people and asking them -- giving them instruction, for instance,
7 the instruction to form militia and fight against the rebellion, would those people
8 receiving that instruction from the authorities consider that they have an option to
9 resist it and not obey it?

10 A. [10:35:51] I'm not sure I understood exactly what you meant. Do you mean by
11 that that those who support the government or do you mean by those who are not
12 supporting the government?

13 Q. [10:36:01] I will go step by step. We said already -- you said 2002 or 2003 - it
14 doesn't matter - but over that period, at some point the Government of Sudan called
15 the militias to join into a counterinsurgency to confront the rebellion.
16 Do you follow me?

17 A. [10:36:27] Yes.

18 Q. [10:36:28] According to the information we have, but you may tell us if that is
19 not correct according to you, this call to the militia was essentially conveyed and
20 channelled through the tribal networks?

21 A. [10:36:53] The call to join the militias, or the counterinsurgency was based on
22 ethnic belonging. Some tribes from a certain ethnicity were not called to join
23 the militia, while others were called to join.
24 So it was a selective process. It wasn't for everyone.

25 Q. [10:37:18] Okay. Thank you.

1 We -- we have received evidence that one of the mechanism of this call was to ask
2 *umdahs*, especially in Arab tribes, *umdahs*, to recruit people from their tribe to -- to join
3 the militia and that these *umdahs* would receive some reward, depending on
4 the number of people they would be able to mobilise.

5 Does that appear correct to you, or ...

6 A. [10:37:58] To be honest, not all the Arab tribes responded to this call. Some
7 Arab tribes did respond, if you want to be accurate.

8 Q. [10:38:08] Thank you. I thank you for making that difference.

9 Do you want to elaborate on it, please. I did not expect to ask you that question, but
10 since you are mentioning this, do you know which Arab tribes did reply to the call
11 and which did not?

12 A. [10:38:34] Maybe we can go into private session.

13 THE INTERPRETER: [10:38:42] I think that's what the witness is asking for.

14 PRESIDING JUDGE KORNER: [10:38:44] Yes, certainly.

15 MR LAUCCI: [10:38:46] Okay, we'll move to private session, for that answer and
16 after.

17 (Private session at 10.38 a.m.)

18 THE COURT OFFICER: [10:38:59] We're in private session, Madam President.

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 10.41 a.m.)

18 THE COURT OFFICER: [10:41:49] We're back in open session, Madam President.

19 MR LAUCCI: [10:41:53]

20 Q. [10:41:53] So, Mr Witness, I was moving step by step towards my earlier
21 question. So we have confirmed together that there was a call to the militia by
22 the Government of Sudan at some point and that some Arabs tribes did respond to
23 that call, other did not, no need to mention which ones. And that the mechanism
24 was essentially done -- actually, you did not confirm that. But I repeat - and you will
25 tell me if you agree with that - essentially, the *umdahs* of the relevant tribe in

1 the relevant localities would mobilise the members of their tribe and --

2 PRESIDING JUDGE KORNER: [10:42:40] Let's get the answer to that.

3 MR LAUCCI: [10:42:44] Okay.

4 Q. [10:42:47] Do you agree with that description?

5 A. [10:42:56] No. What is correct is that there was a response by some members,
6 but the government did not use all the popular communities. They actually created
7 parallel administrations, particularly with the tribes that were not considered to
8 be -- going to be responsive and so they created parallel or alternative
9 administrations.

10 As for those who did not respond, the situation remained the same.

11 Q. [10:43:29] Okay. Fine. Thank you for that clarification.

12 And I'm reaching the last level, I hope, of my question.

13 So you are a member of an Arab tribe. You get your *umdah* or the members of this
14 parallel administration you mention come to you and say, "Now you need to join
15 the counterinsurgency and to help in the fight against the rebellion."

16 So that person who received that solicitation, would they, in the overall context that
17 you describe - human rights and the relationship to the authorities - would they feel
18 like they have the option not to accept and not to mobilise?

19 A. [10:44:25] The call is usually followed by specific measures. It's not just a call.
20 They would be followed, for example, by incentives - financial, providing weapons,
21 et cetera - and so it's up to the person to choose.

22 Q. [10:44:41] Okay. When you say -- when you mention "incentives" and all that
23 sort of things, it means that, ultimately, each and every individual has a choice? Is it
24 what you say?

25 A. [10:44:59] It's both, yes and no.

1 Q. [10:45:03] I'm forced to ask you to elaborate on this yes and no answer?

2 A. [10:45:12] What I mean by that, it's a mixture, is that there are incentives,
3 whether it's financial, weapons, a position, a post, and there are also some promises.
4 Also threats. You could be losing money, losing your position, losing your post.
5 As I said, they created an alternative administration, let's say a symbol within
6 the tribe or something like that. So there were also threats.

7 Q. [10:45:48] Yes. So a mix of incentive and threats, depending on who you are
8 talking to.

9 And once you have joined the militias, you are a member of the militia now, and as
10 a member of the militia, the instruction you receive, the order you receive is, "We go
11 and we attack this village and we wipe out and, yeah, destroy everything and
12 everybody there."

13 Would that member of the militia -- at this point he is mobilised, he is in the militia,
14 he has received the incentive or accepted the threat, he is in the militia, he received
15 the order, does he have the possibility to say, "No, no, no, no. That I don't -- I do not
16 accept. I don't want to do it"?

17 PRESIDING JUDGE KORNER: [10:46:39] No, no, no, Mr Laucci. I really don't
18 think you can ask that.

19 Apart -- aside from anything else, this witness is in no position to give the answer.
20 He's not a member of the military. He's not -- in no way is he an expert in military
21 law. It really is not a matter for the witness.

22 MR LAUCCI: [10:46:59] I am just asking that question in the general perspective of
23 human rights in Sudan, and whether the persons have, at this point that I describe,
24 still the -- the possibility to say, "No, this I don't want."

25 PRESIDING JUDGE KORNER: [10:47:16] Well, I haven't stopped you so far on this

1 general thing. But you can't ask a general question like that. It's a question, is it not,
2 and indeed that's what trials are about, of individual responsibility. So I don't really
3 think, Mr -- I mean, I'm not going to stop you asking the question, see what answer
4 you get, but I'm just pointing out to you that it doesn't carry much weight.

5 MR LAUCCI: [10:47:44] I will rephrase the question in a slightly different way.

6 Q. [10:47:48] A member of the militia, who had joined the militia, be it out of
7 incentive or threat, but now he is in the militia, is given an order, he refuses it, what
8 can be the consequence, according to your general understanding of how things
9 worked in Sudan?

10 A. [10:48:15] It's a very difficult question, (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. [10:48:53] Thank you. And I ask you about various options of supporting
15 the rebellion. Do you remember recruiting people, providing weapons, singing, all
16 that -- all the forms that I -- we went through together. If I add one behaviour, can
17 you say if that would expose you to the same fate as before, and this behaviour would
18 be disobeying orders.

19 A. [10:49:35] Disobeying orders, of course this is -- depends on the case. If it's
20 a battle or a convoy, whatever. So I cannot answer your question specifically.

21 Q. [10:49:50] Thank you. Let me be more specific, disobeying orders in the course
22 of a military operation?

23 MS WHITFORD: [10:50:05] Your Honour, if I may interject.

24 PRESIDING JUDGE KORNER: [10:50:06] Sorry. Yes.

25 MS WHITFORD: [10:50:07] We really must object at this point. This is not

1 something that this witness has a correct basis of knowledge.

2 PRESIDING JUDGE KORNER: [10:50:16] Well, Mr Laucci, really, I have already
3 raised this with you, and there comes a limit to trying to get answers from someone
4 who's not an expert in the actual field.

5 MR LAUCCI: [10:50:28] Can we leave the witness say so if he has no information
6 and knowledge about my question?

7 PRESIDING JUDGE KORNER: [10:50:36] Well, just a moment. Sorry, I was
8 looking at something else. What's the question?

9 MR LAUCCI: [10:50:43] The question is whether someone disobeying an order in
10 military operation could meet the same fate, that is --

11 PRESIDING JUDGE KORNER: [10:50:53] No. No.

12 MR LAUCCI: [10:50:53] -- summary execution.

13 PRESIDING JUDGE KORNER: [10:50:54] No, no. I've no doubt at all, Mr Laucci,
14 you will have other witnesses who are in a better position who are coming, and
15 indeed you can get your own expert on this.

16 So, no, he can't answer this question.

17 MR LAUCCI: [10:51:09] Thank you.

18 Q. [10:51:09] So, Mr Witness, I move to the next topic of my cross-examination,
19 which is the person identified as Ali Kushayb.

20 I can start for 10 minutes, unless you want to have a --

21 PRESIDING JUDGE KORNER: [10:51:29] How much longer do you think you've got,
22 Mr Laucci? Is this your last topic?

23 MR LAUCCI: [10:51:39] I have one tiny after this one, so it would be one hour.

24 PRESIDING JUDGE KORNER: [10:51:43] Yes. All right. Well, then it seems
25 sensible, I suppose. We'll take the break now until 20 past 11 and then conclude

1 your cross-examination.

2 Sir, as you heard, we'll take the break now, but Mr Laucci has helpfully indicated
3 you'll be finished before the lunch break. So thank you.

4 Yes.

5 THE COURT USHER: [10:52:06] All rise.

6 (Recess taken at 10.52 a.m.)

7 (Upon resuming in open session at 11.22 a.m.)

8 THE COURT USHER: [11:22:35] All rise.

9 Please be seated.

10 PRESIDING JUDGE KORNER: [11:23:25] Yes, Mr Laucci.

11 MR LAUCCI: [11:23:26] Thank you, Madam President.

12 Q. [11:23:28] Mr Witness, for the last session of my cross-examination, as I
13 announced before the break, we will talk about this person that you -- you met
14 in -- who was introduced to you as being Ali Kushayb.

15 You clarified -- it was not very clear in your witness statement, but you clarified
16 during your preparation session that this event when you met that person in
17 the street in Garsila, took place in October 2003. You confirm so?

18 A. [11:24:11] Yes. He went by before us and the person next to me pointed out at
19 him and said this person crossing over is Ali Kushayb. But I did not meet him
20 personally.

21 Q. [11:24:31] Yeah, absolutely, you are right. You don't say that you -- you
22 directly met.

23 You said -- you describe in your witness statement that that person passing by was
24 wearing a PDF uniform, but in your preparation session you seem to refer to
25 a military uniform. Can you -- can you clarify what was, if any, the uniform that

1 was worn by that person.

2 A. [11:25:10] The uniform is similar to the armed forces uniform. But I did not
3 specify whether it's PDF or police. I'm not sure.

4 Q. [11:25:20] Are you saying that PDF and -- and army, and maybe police, you
5 mentioned police, are you wearing the same kind of uniforms?

6 A. [11:25:37] Their uniform is similar, is similar, to some extent. The PDF, the PPF,
7 the Central Reserve Forces, all of them, they have somewhat similar uniforms.

8 Q. [11:25:52] Thank you. Did you -- did you see some *galons, or whatever sign
9 that may establish a rank of the person passing by?

10 A. [11:26:08] No. No.

11 Q. [11:26:13] Thank you. Was that person passing by walking alone?

12 A. [11:26:26] Yes, he was alone. There was no one with him.

13 Q. [11:26:31] Thank you. You have mentioned that the man called Ali Kushayb
14 was known as being a drunk. And I want to refer you to your preparation session.

15 That's the document in tab 2 of the Defence list, Defence binder. The reference is
16 DAR-D31-0008-0035. And if we can have on the screen the page 0039, that would be
17 appreciated.

18 When -- I explain, Mr Witness, when I speak about your preparation session, that is
19 the meeting that you had, I believe, last week with my colleagues in the Prosecution
20 to read your witness statement and where they ask you if you had some clarification
21 and all that sort of things. And the document that will be put - or is already, maybe,
22 I don't know - yes, is already on the screen, that's the document that was drafted
23 summarising this -- this session.

24 So, at paragraph 18, you explained that the fact that Ali Kushayb was a drunk was
25 really a fact of common knowledge.

1 And if we scroll down at paragraph 20. Yes, perfect.

2 You even specify that you have heard about that reputation in various places,
3 including Nyala, Garsila and Zalingei.

4 Do you -- do you establish a link between that reputation of being a drunk and
5 receiving this nickname of Kushayb?

6 A. [11:29:16] I don't know. Because a person could be known as courageous while
7 he is not courageous, and he could be -- also have a nickname of being a camel but he
8 is not an animal, so.

9 Q. [11:29:36] Thank you. You mention that Kushayb is the name of a locally
10 produced liquor. What do you know about that liquor? Can you tell us what you
11 know about that.

12 A. [11:29:59] It's a drink that is prepared locally. That's all.

13 Q. [11:30:05] Do you know what it is made of?

14 A. [11:30:11] I know that it is made out of corn and some of yeast.

15 Q. [11:30:24] Do you know if it's rather a strong or soft alcohol?

16 A. [11:30:34] I never tried it in my life, so I don't know it much.

17 Q. [11:30:40] Nobody told you?

18 A. [11:30:48] I wasn't very interested in it.

19 Q. [11:30:52] Is the -- the production or the consumption of this specific liquor,
20 Kushayb, something legal in Sudan?

21 A. [11:31:09] In general in Sudan the consumption of alcohol is forbidden, legally.

22 As well --

23 Q. [11:31:18] Even when it is legally produced like this one, like a tradition?

24 A. [11:31:32] It is not allowed to consume alcohol. And if a person is seen
25 drinking alcohol or consuming alcohol, they would be legally responsible for that.

1 Q. [11:31:48] Okay, but irrespective of the fact that it is illegal, it may happen in
2 Sudan that people are drinking alcohol and become addicted to -- to that. When that
3 is the case, what is the impact on their reputation, is it something that is considered as
4 pejorative or neutral?

5 A. [11:32:27] When it is said that someone is drunk, of course, this impacts their
6 reputation. But these people exist in the Sudanese society. It happens.

7 Q. [11:32:47] Okay. It does exist, it's illegal, and that could have a negative impact
8 on the person's reputation. Is it -- is it what you say?

9 A. [11:33:04] Yes, correct.

10 Q. [11:33:08] Okay. Against that background, what if I suggest that choosing
11 a drunk for a war leader would not be a very logical choice, would you agree with
12 that suggestion?

13 A. [11:33:33] I do not agree, because this happens according to the circumstances
14 under which that person is chosen.

15 PRESIDING JUDGE KORNER: [11:33:41] I mean, you got the answer you deserve
16 as -- to that, really, question you ought not have asked at all. It's not a -- it rather
17 goes along the issues, it's not a matter for this witness to opine on.

18 MR LAUCCI: [11:33:54] Thank you, Madam President.

19 Q. [11:34:01] Is the name Ali a common name in Sudan?

20 A. [11:34:07] Yes.

21 Q. [11:34:12] Is it a very common name?

22 A. [11:34:21] Yes, it is very common.

23 Q. [11:34:27] Would you be able to estimate how common it is, like is it one man
24 out of, I don't know, 20, that would receive that name, or a proportion of -- of Alis?

25 A. [11:34:48] I do not know of a specific percentage, but I know that Ali is

1 a common name in Sudan. And this is attributed, of course, to Ali ibn Abi Talib in
2 the first days of Islam.

3 Q. [11:35:08] Yes, of course. And you mentioned yesterday that Kushayb was also
4 a common nickname.

5 PRESIDING JUDGE KORNER: [11:35:23] I don't think that was the evidence he
6 gave.

7 MR LAUCCI: [11:35:25] I can refer to the specific page.

8 PRESIDING JUDGE KORNER: [11:35:27] Okay.

9 MR LAUCCI: [11:35:28] This was actually clarified at the request of the Prosecution.
10 It was said the first time on page 88, line 11 to 13. And this was confirmed again, at
11 the request of the Prosecution, on page 92, lines 16 to 19 of the real transcript of
12 yesterday.

13 PRESIDING JUDGE KORNER: [11:35:48] Well, we haven't got -- can you just read
14 what the answer was.

15 MR LAUCCI: [11:35:54] We are looking for it.

16 MR NICHOLLS: [11:36:23] Your Honour, could we just -- we're checking. If we
17 could pause before the next question.

18 PRESIDING JUDGE KORNER: [11:36:29] Yes.

19 MR LAUCCI: [11:36:31] I can read it. I have in front of me. So it's page 88.

20 The question was: "To your knowledge, is the nickname Kushayb common in your
21 region in -- of Darfur?"

22 The answer was: "Yes, it is common."

23 And if we can move to page 92, line 16 to 19. So the witness -- there was an issue
24 whether there had been a problem of interpretation, and so the question was asked
25 again to the witness and the answer was: "[It is common --] It is known -- it is

1 a known nickname. There are some people who carry this nickname, but to say it's
2 widespread, that is different. But these are -- there are people who are being -- [well]
3 being nicknamed", yes, "Kushayb."

4 PRESIDING JUDGE KORNER: [11:37:28](Microphone not activated) Sorry. I do
5 remember that. So he clarified what he meant by -- I think the result of something I
6 asked, maybe but what common -- what he meant by common. Yeah.

7 MR NICHOLLS: [11:37:42] But would it -- sorry.

8 MS WHITFORD: [11:37:44] Your Honour, I think it's important to note that there is a
9 difference here between the word "common" and "known" in the context of this
10 answer. He says, "It is a known nickname", which in my submission is different to it
11 being a common nickname. And then he goes (Overlapping speakers)

12 PRESIDING JUDGE KORNER: [11:38:02] All right. Why don't -- yeah, why don't
13 we ask.

14 Sorry, I keep forgetting to turn the mic on. Why don't we ask the witness to clarify
15 that one more time, Mr Laucci.

16 I'll ask the question.

17 Sir, and please could you say straightaway if you don't know the answer, but in your
18 experience how often does the nickname Ali Kushayb -- Kushayb.

19 MR LAUCCI: [11:38:33] Only Kushayb.

20 PRESIDING JUDGE KORNER: [11:38:34] Oh, only Kushayb. Not -- forget the Ali.
21 Okay.

22 Kushayb, how often is that used as a nickname, do you know?

23 THE WITNESS: [11:38:50](Interpretation) I know that the name Kushayb can be
24 used as a nickname for a person, namely, a man or a male. If he is a man, then he
25 would be called Kushayb. But also the nickname can be given to a woman too. It is

1 of no importance. But there are people who are nicknamed by that name, Kushayb.

2 PRESIDING JUDGE KORNER: [11:39:16] And I think what you're really being
3 asked is, if you know, whether it is a nickname that occurs on a -- can I use the word
4 "regular" basis, or whatever word Mr Laucci --

5 MR LAUCCI: [11:39:32] I have the impression that regular would be already a little
6 bit excessive, but, I don't know, yeah, let's see.

7 PRESIDING JUDGE KORNER: [11:39:41] Right.

8 Is it -- is it a nickname that you come across on a number of different -- applied to
9 a number of different people?

10 THE WITNESS: [11:39:59](Interpretation) Not a large number. But there are
11 individuals who can be given that nickname.

12 MR LAUCCI: [11:40:14] I look at my colleagues in the -- anything else? No.

13 Q. [11:40:26] So with the first name as common as Ali, and a nickname that is not
14 so rare as Kushayb, can you (Overlapping speakers)

15 A. [11:40:38] Yes. Yes. The first name Ali is very common. However, Kushayb
16 is not so, because it is not a first name, it is only a nickname.

17 Q. [11:40:55] Yeah, but precisely, because it is -- it is a nickname that is not so rare,
18 does that mean that the combination of the two is likely to have -- to apply to more
19 than one people -- one person?

20 A. [11:41:19] The name Ali, yes, but Kushayb, no.

21 Q. [11:41:27] I'm not sure I understood. You said that Kushayb could apply to
22 different people, including women.

23 A. [11:41:38] Yes, this is correct.

24 Q. [11:41:41] So really there is nothing else in my question other than -- not even
25 statistics, but a combination of the two. You have a very common first name, Ali,

1 a nickname that is much rarer, but which does exist in Sudan, Kushayb, so
2 the probability that this very common name, Ali, is put together with a not so rare
3 nickname, Kushayb, does exist, right?

4 A. [11:42:28] I haven't seen anything like this.

5 Q. [11:42:32] Okay. I stop here.

6 PRESIDING JUDGE KORNER: [11:42:38](Microphone not activated) Anything like
7 what? The translation was "I haven't seen anything like this." What does that
8 mean?

9 Sorry, sir, can you -- can you be a bit more -- can you clarify that answer.

10 THE WITNESS: [11:43:07](Interpretation) I haven't heard that there is more than one
11 person by the name of Ali Kushayb. But I have heard that more than one person can
12 be called Ali, for example.

13 MR LAUCCI: [11:43:20]

14 Q. [11:43:21] Thank you. And once again it was not you -- for you to -- to confirm
15 that you know many Ali Kushaybs. The only question was more a question of
16 mathematics, and I understand that it's not your field of expertise, so I stop here.

17 I come back to the -- to the meaning of Kushayb. You said it's related to an alcohol,
18 and because of that relation this is suggesting that the person with that nickname
19 is -- is a drunk. Which - and you confirmed that already - means that that would be
20 not good for the person's own reputation.

21 Would you -- I mean, can somebody who receives such a pejorative and ridiculous
22 nickname refuse it and say, "I don't want to be called that way."? And can he change
23 his nickname?

24 A. [11:44:41] Yes, of course. It is of his own right to accept the nickname or not.

25 This is one.

1 Second, I did not say that there are people over whom those nicknames are imposed.
2 Yes, of course, the name Kushayb exists. There is Omar Kushayb, a Sudanese runner,
3 he is well known, and his name is Ali Kushayb. So therefore it is only normal for
4 someone to be called that way.

5 And I would like to clarify too that the nickname Kushayb, as I said, sometimes
6 a person can be nicknamed by courageous and he might not be courageous, and he
7 can be called a lion, and he would have nothing to do with lions. So this is it.

8 Q. [11:45:36] I got your point, Mr Witness. But because Kushayb is an alcohol,
9 this may suggest - not be the truth - but this may suggest that the person that received
10 that nickname is an alcoholic. Are you -- do you agree with me?

11 A. [11:45:57] I do not agree, not necessarily. As I said, someone might be called
12 courageous and he might not be courageous. A person can be considered or
13 nickname by lion, and he would not be a lion. Therefore it might not be true.

14 Q. [11:46:14] I'm not saying it's always true, but in -- and I refer you to your
15 preparation session, you explained: "When asked if he knows how Ali Kushayb got
16 that nickname, P-20 said" - I'm at paragraph 20 - "P-20 said he did not know but later
17 heard it was because *he drank 'kushayb' in large quantities."

18 So the explanation that you gave to the Office of the Prosecutor of the nickname
19 Kushayb, of course you are not assertive, it's not something that you are 100 per cent
20 sure, but you yourself, you suggested that the reason why he got that nickname, this
21 stupid nickname, is because he was drinking Kushayb. Isn't it what you said?

22 A. [11:47:17] This is what I heard, but I am not sure that he used to drink Kushayb
23 or not. This is only what I heard. I heard that he was called Kushayb because he
24 used to consume Kushayb and because he liked to drink it.

25 Q. [11:47:34] Thank you. I am not asking for anything else. So thank you for that

1 clarification.

2 Now if, as you confirm, this nickname Kushayb may have a pejorative meaning that
3 would be bad for the reputation of the person designated under that nickname. You
4 also said, you also confirmed that the person may say -- may refuse that nickname
5 and ask to be referred differently.

6 A. [11:48:14] Yes. It is of his own right to accept it or to refuse it. But normally
7 speaking, a nickname or giving a nickname does not mean that that person has
8 the same attribute as the nickname. A person might be called a rat and he is not a rat,
9 he is a person.

10 PRESIDING JUDGE KORNER: [11:48:40] I think you -- you tried, Mr Laucci, and
11 you've done this to death now.

12 MR LAUCCI: [11:48:43] Yes. I'm done with that. I got what I -- what I wanted.

13 Q. [11:48:52] Yeah. But -- and last question. If that person refuses the stupid
14 nickname Kushayb, and that person is a person with power, with authority, a person
15 who can even resort to violence, would people carry on calling him Kushayb against
16 his will?

17 A. [11:49:24] Could you please repeat the question, sir.

18 Q. [11:49:27] No, I don't. Thank you.

19 PRESIDING JUDGE KORNER: [11:49:29] Yes.

20 The Prosecution were about to object, but I thought you might as well get your
21 answer, but you're not going to repeat that.

22 MR LAUCCI: [11:49:41] I move on.

23 Q. [11:49:41] Can we scroll up the page that is on the screen to paragraph 17. It's
24 on the same page.

25 Yes, thank you.

1 In this paragraph you -- you provided the reason why your friend had pointed
2 the man called Ali Kushayb at you, and you say that it was because "Ali Kushayb is
3 known for the massacres he caused in Deleig and Mukjar; he was the one leading
4 the group that was attacking the people."

5 Do you remember that?

6 A. [11:50:37] Yes.

7 Q. [11:50:37] In your memory, when did the attacks on Mukjar and Deleig take
8 place?

9 A. [11:50:51] What's important for me is the massacre, because the attacks were
10 multiple.

11 Q. [11:50:55] No, but I want to know if that reason why the people -- the person
12 that was with you and pointed at Ali Kushayb, is the reason why he pointed
13 Ali Kushayb at you, I want to know if that reason, that is the attack on Deleig and
14 Mukjar, had taken place already at the time when this event happened?

15 A. [11:51:28] Yes.

16 Q. [11:51:31] Okay. And I repeat that we are in October 2003.

17 Still in your written statement, the paragraph 63, you mention that someone, I don't
18 need to mention the name, told you that Ali Kushayb had a bank account in
19 the Agricultural Bank in Zalingei and that this account had suddenly risen in two
20 months to more than 70 million Sudanese pounds, which is a considerable amount.
21 This was in 2004 and the person talking to you had no explanation for that.

22 Do you have any idea - if that story is true, of course - do you have any idea what
23 could be the reason for this sudden wealth on the bank account?

24 PRESIDING JUDGE KORNER: [11:52:44] No, no, it's got to be pure speculation,
25 hasn't it?

- 1 MR LAUCCI: [11:52:52] I would like to have the opinion.
- 2 PRESIDING JUDGE KORNER: [11:52:53] Well, all right.
- 3 THE WITNESS: [11:53:00](Interpretation) I do not have an explanation for this
4 sudden rise in wealth. I do not have the -- I do not know the reason.
- 5 MR LAUCCI: [11:53:20]
- 6 Q. [11:53:20] If Ali Kushayb was the - did the person say Janjaweed
7 leader? - the leader that was mentioned to you, could it be that this money was
8 related to financing the Janjaweed or -- in one way or the other?
- 9 PRESIDING JUDGE KORNER: [11:53:52] Mr Laucci, honestly.
- 10 MR LAUCCI: [11:53:55] Accepted. I stop.
- 11 Q. [11:53:59] So no need to answer -- no need to answer my question, Mr Witness.
12 I move on to the last topic. I'm done with the person called Ali Kushayb.
13 My last topic is related to paragraph 79 of your written statement and is related
14 to - 79? - yes, is related to Abdullah Torshein.
15 It's not 79. Anyway, it does not really matter.
16 In your statement you mention the name of a person called Abdullah Torshein and
17 you identify that person as the commissioner of Mukjar in 2003.
- 18 PRESIDING JUDGE KORNER: [11:55:08] It's paragraph 109, Mr Laucci.
- 19 MR LAUCCI: [11:55:11] Thank you, Madam President, so much for your assistance.
20 Yeah, indeed.
- 21 Q. [11:55:18] So it's paragraph 109, you talk about --
- 22 PRESIDING JUDGE KORNER: [11:55:24] I'm so sorry to interrupt again. It's 106 he
23 starts and then it goes on at 109.
- 24 MR LAUCCI: [11:55:34] Yes, indeed. And the important information I want to ask
25 you about ...

- 1 Very sorry, yeah. The reference is not -- is not good.
- 2 MS WHITFORD: [11:56:37] Your Honour, if I could just note here, I'm not sure what
3 the question will be, but we have some concern about whether it would need to be in
4 private session or not.
- 5 PRESIDING JUDGE KORNER: [11:56:47] Yes.
- 6 MR LAUCCI: [11:56:48] I doubt so, really.
- 7 PRESIDING JUDGE KORNER: [11:56:53] It is 109, Mr Laucci, the --
- 8 MR LAUCCI: [11:56:57] Okay. Once we are looking for the exact reference.
- 9 Q. [11:57:06] So in paragraph 109 -- ah, yes, here it is. It was in front of me. Very
10 sorry.
- 11 So you speak about Mr Abdullah Torshein. You say that he was the commissioner
12 in Mukjar. And I quote from your statement: "... he ordered the transfer of 27
13 detainees in Mukjar from the military to the PDF and Janjaweed under the control of
14 Ali Kushayb."
- 15 Do you remember that?
- 16 A. [11:57:46] Yes.
- 17 Q. [11:57:50] I have only two to three questions on that.
- 18 Beyond these 27 persons, did you hear that Mr Torshein had ordered the execution of
19 other persons?
- 20 A. [11:58:16] Can you please repeat the question.
- 21 Q. [11:58:18] Here in your statement you mention specifically 27 persons executed
22 under the order of Mr Torshein. My question is: Are you aware that Mr Torshein
23 had ordered the execution of additional people in addition to these 27 ones?
- 24 A. [11:58:42] No, no.
- 25 Q. [11:58:46] Thank you. Second question: Was Mr Torshein the commissioner

1 of Mukjar throughout the period 2003, 2004?

2 A. [11:59:01] There were some changes that happened, because he was
3 re-appointed as a commissioner in the same district but in another locality. But
4 throughout the killing events, he was a commissioner, he was the commissioner of
5 Mukjar.

6 Q. [11:59:20] Thank you. And last question about Mr Torshein. What do you
7 know about him nowadays? Do you know if he is still a member of the Government
8 of Sudan?

9 A. [11:59:35] Currently he is not a member of the government, because he was
10 member of the government of Omar al-Bashir that was toppled by the popular
11 revolution. He was no longer a commissioner and he no longer carried out any
12 governmental functions.

13 Q. [12:00:00] Any clue about his current occupation?

14 A. [12:00:07] I do not know.

15 Q. [12:00:11] Thank you. I'm done with Mr Torshein.

16 Mr Witness, I have a last topic, very -- very brief, which I intended to cover in to
17 closed session. Let me tell you what the topic is about and you will tell me if you are
18 comfortable to answer in public, or if you prefer to move to closed session.

19 The topic is the reason why you have requested protective measures to appear before
20 this Court.

21 PRESIDING JUDGE KORNER: [12:00:54](Microphone not activated) I think for
22 safety's sake, Mr Laucci, whatever his answer, you'd better do this in private session.

23 MR LAUCCI: [12:01:05] That was my intention anyway.

24 PRESIDING JUDGE KORNER: Yes.

25 (Private session at 12.01 p.m.)

- 1 THE COURT OFFICER: [12:01:14] We're in private session, Madam President.
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9 (Open session at 12.16 p.m.)

10 THE COURT OFFICER: [12:16:42] We're back in open session, Madam President.

11 PRESIDING JUDGE KORNER: [12:16:45] Yes.

12 JUDGE ALAPINI-GANSOU: [12:16:51](Interpretation) Mr Witness, I have one
13 question for you.

14 This morning while testifying, while one was -- we were talking about politics, you
15 said that the conflict was linked to the fact that there should be a distribution of
16 wealth and power, as one of the reasons.

17 THE WITNESS: [12:17:31](Interpretation) Yes. Is there a question, your Honour?

18 JUDGE ALAPINI-GANSOU: [12:17:38](Interpretation) Did he answer "yes"?

19 Okay. So when it comes to this idea of wealth -- so with regard to this idea of wealth,
20 are we talking here about national wealth or individual wealth?

21 THE WITNESS: [12:18:19](Interpretation) Apologies. So we're talking here about
22 the national wealth, national wealth. We were not talking about individual wealth,
23 we were talking about every district in Sudan getting its share of development, which
24 is the economic development first. And then second, social and educational
25 development. And also what I meant was sharing the political powers.

1 JUDGE ALAPINI-GANSOU: [12:19:07](Interpretation) And another question about
2 sharing of power. Given your position, do you include in this idea of
3 power-showing the idea of alternating power?

4 THE WITNESS: [12:19:39](Interpretation) Yes, I do support the concept of
5 alternating power. I mean, by sharing powers, I mean participating in
6 decision-making at the national level, for example, the decision of war. For example,
7 in Darfur, this decision was made by some army commanders for personal interests
8 and that's why that decision was not a national decision, it was a decision taken by
9 a group of individuals who took the control through military coup and they started
10 controlling the country the way they wanted. This is what I meant.

11 The wide participation of all these people in the powers which will allow the people
12 to make the right decision, a decision that would not hurt any part or section of
13 the country.

14 JUDGE ALAPINI-GANSOU: [12:20:38](Interpretation) Thank you very much.

15 PRESIDING JUDGE KORNER: [12:20:40] Sir, that brings you to the conclusion of
16 your testimony. May I, on behalf of all the judges, and, I believe, on behalf of all
17 counsel - I see Mr Laucci nodding - thank you very much for the great assistance
18 you've been to the Trial Chamber about the background of the conflict and all
19 the other matters about which you've been so helpful. And we wish you a safe
20 return to your own country. So thank you very much indeed.

21 THE WITNESS: [12:21:15](Interpretation) Thank you very much. Thank you.

22 PRESIDING JUDGE KORNER: [12:21:18] If you'd like to go with the court official,
23 they'll escort you out.

24 THE WITNESS: [12:21:29](Interpretation) I wish you all success. Thank you.

25 (The witness is excused)

1 PRESIDING JUDGE KORNER: [12:21:52] Yes. So as I said this morning, it doesn't
2 look as though we can use the extra court time that is, in theory, available. So we'll
3 stick to the same timetable. So we start again on 6 June.

4 And we've got sufficient witnesses to get us through till, allegedly, the Fur
5 interpreters are with us, Mr Nicholls; is that right?

6 MR NICHOLLS: [12:22:19] Yes, your Honour. For June. And that's why I raised
7 this, and also because of the apparent interpretation issues with the previous witness
8 prompted it, in my mind. And I just hope any updates, we get them as well, because,
9 again, I'm not trying to throw stones all over the place, but the information received
10 seemed ambiguous and it does have a huge impact on who we can call. And we
11 will -- we will try our best, again, to re-evaluate the standard Arabic capabilities of
12 the witnesses we're calling in June to make -- to make things smoother.

13 PRESIDING JUDGE KORNER: [12:23:07] Well, I think we must have confirmation
14 by, let's say, the end -- well, certainly by 6 June I would hope we will have
15 confirmation from the Registry that there is the -- there are interpreters available, even
16 if it has to be subsequent interpretation.

17 That, of course, does have a knock-on effect on the length of time witnesses are going
18 to take. And it would be very helpful if you could give some idea of the -- do we
19 have viva voce witnesses in July? I think we do, don't we?

20 MR NICHOLLS: [12:23:57] In July I'm sure, certainly. And June as well.

21 PRESIDING JUDGE KORNER: [12:24:00] And June. All right. Well, June we're
22 still on the standard Arabic, I think, are we? But obviously if you can give some idea
23 of the added time, and the Defence will want to know as well. And I make it clear
24 that if it adds a great -- it becomes apparent it adds a great deal of time, then that will
25 be taken into account if there needs to be application for further time.

- 1 MR NICHOLLS: [12:24:32] Thank you, your Honour. And again, just on
2 the scheduling, not making excuses, but witnesses changes in the order, it can take
3 a very long time. Even with all parties and the witness agreeing to come, it can
4 take -- it's much longer than simply trying to get an airline ticket. It becomes very
5 complicated.
- 6 PRESIDING JUDGE KORNER: [12:24:54] No, I understand that. No, I do -- I do
7 understand that.
- 8 And as I'm aware that we're still, Mr Laucci, we've still got to come to a decision on
9 your final motion relating -- application relating to cooperation, and we will deal with
10 that in the near future.
- 11 MR NICHOLLS: [12:25:20] We will make our filing today.
- 12 PRESIDING JUDGE KORNER: [12:25:23] Yes. Right. Are there any other matters
13 before we adjourn?
- 14 Very well. So the case is adjourned then until 6 June.
- 15 THE COURT USHER: [12:25:32] All rise.
- 16 (The hearing ends in open session at 12.25 p.m.)