

Trial Hearing
WITNESS: DAR-OTP-P-0011

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Monday, 17 October 2022
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:00] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:23] Yes. Good morning, everybody.
15 Could we call the case, please.
16 THE COURT OFFICER: [9:33:28] 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: [9:33:44] Yes, appearances.
22 Prosecution, please.
23 MR NICHOLLS: [9:33:49] Good morning, Madam President. Good morning,
24 your Honours. Good morning, everyone. Julian Nicholls, with Melissa Simms,
25 Rachel Mazzarella and Antonella Giordano. Thank you.

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1 PRESIDING JUDGE KORNER: [9:33:58] Yes. Defence.

2 MR LAUCCI: [9:34:01] Good morning, Madam President. Good morning,

3 your Honours. Good morning, colleagues. Mr Ali Muhammad Ali

4 Abd-Al-Rahman is not present today again. And on the bench of the Defence, we

5 have Ms Marcela Velarde, our intern; Ms Camille Divet, assistant evidence reviewer;

6 and myself, Cyril Laucci, counsel.

7 PRESIDING JUDGE KORNER: [9:34:26] And where is Mr Issa this morning, your

8 Arab speaker?

9 MR LAUCCI: [9:34:31] He may come a little later but we also try to be in a limited

10 number today.

11 PRESIDING JUDGE KORNER: [9:34:36] Right. Can I say straightaway, Mr Laucci,

12 that we commend you for the very proper way that you have decided that

13 cross-examination takes place. That's very helpful.

14 MR LAUCCI: [9:34:51] Thank you, Madam President.

15 PRESIDING JUDGE KORNER: [9:34:54] And finally, the representatives for the

16 victims.

17 MS VON WISTINGHAUSEN: [9:34:58] Yes. Good morning, Madam President,

18 your Honours. Good morning to everyone in and around the courtroom. The

19 victims today are represented by associate counsel, Anand Shah, our intern Nur

20 Mahameed is with us, and myself, Natalie von Wistinghausen.

21 PRESIDING JUDGE KORNER: [9:35:13] Thank you very much.

22 Yes. All right. I regret to say to the audience in the public gallery we are going into

23 private session and we will remain in private session for the rest of the day. So that

24 means I'm afraid you won't hear anything at all. So I think you'd better find -- try

25 and find another case, if there is one.

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1 Right. Yes, can we go into private.

2 (Private session at 9.35 a.m.)

3 THE COURT OFFICER: [9:35:35] We're in private session, Madam President.

4 (Redacted)

5 (Redacted)

6 (Redacted)

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- 1 PRESIDING JUDGE KORNER: [9:39:32] Yes. Let's have the witness in, please.
- 2 THE INTERPRETER: [9:39:36] If OTP counsel could have her mic on from now
- 3 onwards. Ms Simms can be heard with difficulty.
- 4 PRESIDING JUDGE KORNER: [9:39:44] You're being told they can't hear you, Ms
- 5 Simms. So you need to get the mic closer to you.
- 6 MS SIMMS: [9:39:48] Are you able to hear me now?
- 7 PRESIDING JUDGE KORNER: That doesn't mean you've got to shout.
- 8 THE INTERPRETER: [9:39:51] Thanks very much.
- 9 PRESIDING JUDGE KORNER: [9:39:55] That does not mean you've got to shout.
- 10 (Microphone not activated) by the way, sorry.
- 11 MS SIMMS: [9:40:06] It's for your Honour, the witness does understand Arabic and
- 12 basic English.
- 13 (The witness enters the courtroom)
- 14 PRESIDING JUDGE KORNER: [9:40:31] Madam, good morning to you. Can you hear
- 15 and understand me?
- 16 WITNESS: DAR-OTP-P-0011
- 17 (The witness speaks Fur)
- 18 THE WITNESS: [9:40:51](Interpretation) Yes, good morning. I do hear you very
- 19 well.
- 20 PRESIDING JUDGE KORNER: [9:40:58] First let me thank you -- no. No, we can hear
- 21 you on the English Channel.
- 22 I will start that again. First of all, can I thank you for coming to Court to give your
- 23 evidence.
- 24 Second, as you -- as you appreciate, everything you say has to be interpreted, so
- 25 please don't speak too quickly and try to keep your answers as short as possible.

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1 Third, if you don't understand a question, please don't hesitate to say so straightaway
2 and the question will be repeated.

3 And finally this, we will be taking a break at 11 o'clock and then again at lunchtime,
4 but if at any stage you require a break, please do not hesitate to say so.

5 I hope all of that is clear. And could you be very kind now, please, and repeat after
6 the court officer the solemn declaration.

7 THE COURT OFFICER: [9:43:31] Good morning, Madam Witness. Could please
8 repeat the solemn undertaking after me. I solemnly declare --

9 THE WITNESS: [9:43:44](No interpretation)

10 THE COURT OFFICER: [9:43:45] That I will speak the truth -- that I will speak the
11 truth.

12 THE WITNESS: [9:44:09](No interpretation)

13 THE COURT OFFICER: [9:44:13] The whole truth and nothing but the truth.

14 THE WITNESS: [9:44:24](No interpretation)

15 THE COURT OFFICER: [9:44:25] Thank you, Witness. You are now under oath.

16 PRESIDING JUDGE KORNER: [9:44:29] Yes, thank you very much.

17 Ms Simms.

18 MS SIMMS: [9:44:33] Thank you, your Honours.

19 QUESTIONED BY MS SIMMS:

20 Q. [9:44:35] Good morning, Madam Witness. And the last time we spoke, I told you
21 that the next time you see me I would be in my robe, my black robe almost similar to
22 a thoub, so here I am today. And I'm reminding you that my name is Melissa Simms
23 and I'll be asking you some questions today. And I'm going to ask you to listen very
24 carefully to my questions and try and answer the questions that I've
25 asked you.

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1 Now, I know that you may be a little nervous and I'm also nervous, even though I
2 may not look so. I want to remind you that the Court takes your safety very seriously,
3 so for today, even at some point if maybe a close relative is hearing you speak in
4 Court today, they won't be able to know that it is you because your voice is distorted
5 and your image is also distorted.

6 Do you understand, Madam Witness?

7 A. [9:47:19] Yes, I do understand.

8 Q. [9:47:22] And for today, whenever we are speaking about anything that happened
9 to you personally, we are going to move entirely into what we call a closed session. So
10 what that means, it's only those of us in court here who will hear that part of your
11 evidence. Do you understand?

12 A. [9:48:00] Yes, I do understand very well.

13 Q. [9:48:17] All right, Madam Witness, I'm going to take a deep breath to calm myself
14 and perhaps you may want to do the same as we are about to have the conversation
15 where I ask you questions.

16 (Redacted)

17 (Redacted)

18 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Open session at 10.15 a.m.)

4 THE COURT OFFICER: [10:15:48] We are back in open session. Madam President.

5 MS SIMMS: [10:16:04]

6 Q. [10:16:05] Madam Witness, we have moved into open session and I'll explain to
7 you that even though we are in open session, anyone who is listening won't be able to
8 identify who you are as your image is distorted as well as your voice.

9 Madam Witness, to your knowledge, Ali Kushayb had a pharmacy in Garsila?

10 A. [10:17:14] Yes, based on what I know, he had a pharmacy in Garsila.

11 Q. [10:17:21] Now, Madam Witness, I'm going to take you to early July of 2003
12 where in your statement you talk about the distribution of weapons.

13 A. [10:17:57] Yes, weapons were distributed.

14 Q. [10:18:02] Can you tell us who distributed these weapons?

15 A. [10:18:39] The weapons batches were coming to the garrison. Afterwards,
16 people were told to come through their *umdahs* for those weapons to be given to
17 them.

18 Q. [10:19:02] And based on your knowledge, did persons go to collect these
19 weapons?

20 A. [10:19:34] Yes, I know that some people tried to obtain some weapons.
21 However, that was denied to them. Weapons were given only to the Arab tribes.
22 They were told to go back to where they came from before heavy weaponry comes
23 their way, to hit them.

24 Q. [10:20:01] And can you explain to the Court which tribes or group of persons
25 were not given weapons?

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1 A. [10:20:37] The weapons were given to the Arab tribes. The Fur, Zaghawa, and
2 Masalit tribes were prevented from having weapons.

3 Q. [10:20:52] And can you say how you know that the Fur tribe was prevented
4 from getting these weapons?

5 A. [10:21:36] I learned about this through someone who lived near us, and he was
6 one of the ones who went to obtain weapons. However, he was told that the Fur do
7 not qualify to obtain any type of weapon and that weapons were only meant for the
8 Arab tribes.

9 Q. [10:22:12] A final question in relation to weapons, Madam Witness. Can you
10 say who were the persons distributing the weapons or giving the weapons?

11 A. [10:23:06] At the general command, the person who was in charge of
12 distributing weapons was Hamdi Sharaf-Al-Din in addition to Ali Kushayb. They
13 were also distributing other things to households, such as mosquito nets, shoes and
14 other things.

15 Q. [10:23:29] Madam Witness, did you personally see the weapons and the
16 mosquito nets and boots that you speak of that were distributed?

17 A. [10:24:13] Yes, I saw that with my own eyes. I saw them distributing weapons
18 to the *umdahs*. The *umdahs* resided near us. And the weapons looked new. That is
19 how I realised that the weapons must have been distributed very recently.

20 Q. [10:24:33] Thank you, Madam Witness.

21 We are now going to go to Bindisi in August of 2003.

22 MS SIMMS: [10:24:44] Your Honours, with your permission, can we go into private
23 session for about five minutes.

24 PRESIDING JUDGE KORNER: [10:24:52](Microphone not activated)

25 MS SIMMS: [10:25:01] Your Honours, I wish to elicit evidence relating to where she

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1 was in Bindisi and who she was with at the time -- the persons that she was with at
2 the time.

3 PRESIDING JUDGE KORNER: [10:25:13] Yes, okay. Private session.

4 MS SIMMS: [10:25:21] Much obliged, your Honours.

5 (Private session at 10.25 a.m.)

6 THE COURT OFFICER: [10:25:29] We are in private session, Madam President.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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16 (Redacted)

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1 (Redacted)

2 (Open session at 10.29 a.m.)

3 THE COURT OFFICER: [10:29:14] We are back in open session, Madam President.

4 MS SIMMS: [10:29:22]

5 Q. [10:29:23] Madam Witness, you state in your -- in your statement that you were
6 in Bindisi on Friday, 15 August 2003.

7 A. [10:29:55] Yes, this is true.

8 Q. [10:29:58] And on that day, you heard the sound of heavy weapons?

9 A. [10:30:21] Yes, this is true.

10 Q. [10:30:25] When you heard the sounds of heavy weapons, did you yourself do
11 anything?

12 A. [10:31:04] We were inside the house. We were confused. We did not know
13 where to go, because personally I did not know where do I need to go.

14 Q. [10:31:20] Apart from hearing the sounds of heavy weapons, did you see
15 any -- did you see people coming into the village that day?

16 A. [10:31:54] Yes, I saw a *tayarra* or an aircraft flying over our village. Afterwards,
17 this aircraft -- after the aircraft, the horses came to the village. And after that, the
18 *asakir faris* or the soldiers entered the village.

19 Q. [10:32:40] Madam Witness, did you see -- personally see when the Janjaweed
20 and soldiers come into the village?

21 A. [10:33:33] Yes, it was around 5 or 6 p.m. when the *asakir* arrived. They -- the
22 Janjaweed were with them on their horsebacks.

23 Q. [10:33:52] And did you hear the Janjaweed or *asakir* - the soldiers - say anything
24 as they came into the village?

25 A. [10:34:36] Yes, I heard them -- I overheard them talking among each other.

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1 They were ordering each other to distribute within the area. Some people would go
2 to the east and the others would go in the direction of Ali Kushayb's house and to the
3 north.

4 Q. [10:35:09] You state that others would go in the direction of Ali Kushayb's house.
5 Can you explain what you mean by that?

6 A. [10:35:59] Yes. The Janjaweed were distributing themselves. They -- some of
7 them went north and the others went in the direction of Ali Kushayb's house to
8 provide him with protection.

9 Q. [10:36:17] Madam Witness, can you explain to the Court why you say that they
10 went in the direction of Ali Kushayb's house.

11 PRESIDING JUDGE KORNER: [10:36:32] Do you mean Ali Kushayb's house in
12 Garsila?

13 THE WITNESS: [10:37:07](Interpretation) No. That was -- during the attack, they
14 wanted to leave in the direction of Ali Kushayb's location, and not his house.

15 PRESIDING JUDGE KORNER: [10:37:28] I'm really sorry, I don't know if this is
16 a question of interpretation, but it's completely different to say his house and the
17 location where he was.

18 MR NICHOLLS: [10:37:50] I think it is an interpretation issue, your Honours, is my
19 guess, unfortunately.

20 PRESIDING JUDGE KORNER: [10:37:57] Can I simply say it really is important that
21 we try and use the correct word in English, and in French for that matter, because
22 otherwise things can get very confused.

23 MS SIMMS: [10:38:19]

24 Q. [10:38:19] Madam Witness, do you know -- at the time, did you know where Ali
25 Kushayb's location was in Bindisi?

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1 A. [10:39:16] Ali Kushayb, he was in his vehicle. The group were divided into
2 three, group 1, group 2 and group 3, and they were talking among each other. They
3 ordered the group number 3 to go into the direction of Ali Kushayb.

4 Q. [10:39:50] Can you describe the vehicle that you speak of that Ali Kushayb was
5 in?

6 A. [10:40:18] It was a Land Cruiser, camouflaged with a white colour. It has a red
7 stripe on it.

8 THE INTERPRETER: [10:40:26] Correction from the Fur: The witness meant the
9 direction -- the location of Ali Kushayb and not the house of Ali Kushayb.

10 PRESIDING JUDGE KORNER: [10:40:48] Yes, right. Well, I think we -- we've have
11 moved on from that. But today is really not going terribly well because the
12 transcript is full of requests to slow down. I'm not sure who was supposed to slow
13 down as it doesn't seem to me that anybody's talking particularly quickly. However,
14 Ms Simms, there is this request.

15 And perhaps -- I think, Madam Witness, I don't think that you're talking very fast, but
16 if you can keep it slower. There are problems this morning with interpretation.

17 MS SIMMS: [10:41:30] Thank you, Madam President.

18 Q. [10:41:43] Madam Witness, how far away were you when you saw this Land
19 Cruiser? And you can use the parameters of the courtroom.

20 A. [10:42:36] The distance between -- between us, it's like where I am sitting right
21 now and the bench, it was twice that distance.

22 Q. [10:43:10] Madam Witness, you say that Ali Kushayb was inside the Land
23 Cruiser. How -- how did you know that Ali Kushayb was inside the Land Cruiser?
24 How did you know this?

25 A. [10:43:50] Ali Kushayb's vehicle is different from the other vehicles. Therefore,

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1 I know him personally and I know all his features, so I was certain that he is Ali

2 Kushayb.

3 Q. [10:44:17] Madam Witness, do you remember where in the Land Cruiser Ali

4 Kushayb was?

5 A. [10:44:53] At that time, they had stopped. Ali Kushayb got on to the vehicle

6 and he was opposite the Dushka.

7 Q. [10:45:27] Madam Witness, when you say Ali Kushayb had got on the vehicle, at

8 that point, was he still inside the Land Cruiser or outside of the Land Cruiser?

9 A. [10:46:18] He was in the front seat, he went out of the vehicle and then he went

10 to the rear of the vehicle.

11 Q. [10:46:35] Madam Witness, at the time you saw Ali Kushayb, when he got out of

12 the vehicle, about how far were you from Ali Kushayb at that point?

13 A. [10:47:28] The same distance I indicated beforehand. The distance between me

14 and the bench of the judges, it was twice that distance.

15 Q. [10:47:44] Now, at the time you saw Ali Kushayb outside this Land Cruiser, did

16 you see him do anything or say anything at that point?

17 A. [10:48:35] Ali Kushayb did not say anything. However, the group that was

18 close to Ali Kushayb, they had a microphone with them, and they would -- were

19 asking people to move around.

20 Q. [10:49:03] Madam Witness, how did people react to being told to move around?

21 A. [10:49:53] It was -- there was an attack at that time. That day, they did not take

22 anything, they did not do any looting. They only shot, they instilled fear among the

23 people, and then they disappeared in the back gardens of the houses or the farms.

24 Q. [10:50:15] Madam Witness, when you say they instilled fear in people, can you

25 explain to the Court what you mean by that, what did they do or say, why you say

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1 they instilled fear in people?

2 A. [10:51:12] The citizens were in a difficult situation. They were confused. They
3 did not know what to do. Every person was trying to flee or run for their lives.

4 Q. [10:51:33] Can you tell us what you did that evening after seeing Ali Kushayb
5 and after being told to move around?

6 A. [10:52:42] I saw people in fear, they were entering their houses and they were
7 taking their belongings, their children, their sons. We were moving slowly so that
8 the enemy would not see us.

9 Q. [10:53:00] And where did you go that evening or night?

10 A. [10:54:00] (Redacted) we went to the *wadi* -- in the *wadi* direction. We
11 tried to cross the *wadi*. (Redacted)

12 (Redacted)

13 (Redacted) Other people joined us, they were
14 taking the same route. (Redacted)

15 Q. [10:55:07] Madam Witness, where -- at the point when you were moving, going
16 across the *wadi*, (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 A. [10:57:17] They were Arabs on their horsebacks. They were behind us. (Redacted)

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1 (Redacted)

2 Q. [10:57:29] (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 MS SIMMS: [10:58:44] Your Honours, is this a convenient time for the break?

7 PRESIDING JUDGE KORNER: [10:58:50] Yes.

8 If you would like to leave court, Madam Witness. You are going to have a break
9 now.

10 (The witness exits the courtroom)

11 PRESIDING JUDGE KORNER: [10:59:39] Ms Simms, it's entirely a matter for you,
12 but do we really need this wealth of detail on some of these things? For example,
13 there's no dispute about arms distribution at all. (Redacted)

14 (Redacted) Because in

15 fact, she says the direct opposite of what's in her statement. I think the detail that
16 you need to ask for is -- is probably not on matters like this.

17 MS SIMMS: [11:00:17] Very well noted, your Honours.

18 PRESIDING JUDGE KORNER: [11:00:20] All right. Yeah, all right. Thank you.
19 Half past 11, please.

20 THE COURT USHER: [11:00:24] All rise.

21 (Recess taken at 11.00 a.m.)

22 (Upon resuming in open session at 11.33 a.m.)

23 THE COURT USHER: [11:33:50] All rise.

24 Please be seated.

25 MS SIMMS: [11:34:40] Thank you, your Honours.

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1 Q. [11:34:45] Madam Witness, when we took the break, we were talking (Redacted)

2 (Redacted) during the attack. Now, in your statement you

3 talk about two days in terms of the attack. (Redacted) do you

4 remember if it was the first day or the second day that he was killed?

5 MR LAUCCI: [11:35:57] I think the witness's mic is not on.

6 MS SIMMS: [11:36:21]

7 Q. [11:36:21] Can you repeat your answer, please. Thanks.

8 A. [11:36:34] (Redacted) on day 1.

9 Q. [11:36:45] Madam Witness, after you crossed the *wadi*, can you tell us what
10 happened after you crossed the *wadi*?

11 A. [11:37:27] After we crossed the *wadi*, another group of Arabs came. There was
12 a woman in the northern direction, she was running and she was carrying certain
13 things in her hands, certain objects. A Janjaweed member hit her with a sword on
14 her hand. Another group of Janjaweed came by and brought us in -- and put us in
15 one location and they separated the children from the rest. They tied up the children,
16 the young individuals, and started hitting them using butt strokes. And they were
17 hitting them willy-nilly so that they die. And they opened fire on them. After
18 torturing them and killing some of them, well, they all got killed, and after
19 ascertaining that they all were dead, they afterwards turned to the women. *They
20 were asking the women, "Where are your *tora bora* men? Where did they go?" The
21 women replied by saying, "We don't know where the *tora bora* *are." (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted) They put an arm on her neck as they were dragging her and they were beating

6 her and she fell down. And they sat on her, one of them sat on her and raped her.

7 Another person also sat on her and raped her. After (Redacted) was raped in the

8 manner that I just described, they came and took me as well. One of them was

9 hitting me. (Redacted)

10 (Redacted) He was using butt strokes to hit me on the shoulder

11 and so I fell down. He tried to hold me from my neck or capture me from my neck

12 (Redacted)

13 (Redacted)

14 (Redacted) So I resisted.

15 After he threw me to the ground, (Redacted)

16 (Redacted) He tied his horse and held his

17 arm on his shoulder and told me not to argue and to take off my clothes. One of

18 them tried to take my clothes off. I resisted.

19 PRESIDING JUDGE KORNER: [11:45:20] Madam, if you would like a break, we will

20 give you one, but I think it is probably better if you try and finish your account.

21 THE WITNESS: [11:45:55](Interpretation) I am able to continue, because I'm the

22 person -- the very person concerned with this account, and should I fail to relate my

23 story, it wouldn't be good. I'm better off relating my story.

24 (Redacted)

25 (Redacted)

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1 (Redacted) After he raped me, another person came by (Redacted)

2 (Redacted)

3 (Redacted) That person stood up and stepped aside and another person came to rape

4 me. But the later person who came to rape me was very harsh. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 MS SIMMS: [11:48:33]

9 Q. [11:48:33] Thank you, Madam Witness. When you are ready to continue, just
10 let us know.

11 A. [11:48:56] We may proceed.

12 Q. [11:48:58] Thank you.

13 Court officer, can you please put on the screen for me document at tab 9, and this is

14 DAR-OTP-00000357. The redacted version of this item.

15 PRESIDING JUDGE KORNER: [11:50:01] We are in public session.

16 MS SIMMS: [11:50:04] Yes, your Honours, that's why I'm asking the court reporter
17 to put on the display screen the item that had been redacted, instead of the document
18 with her signature.

19 THE COURT OFFICER: [11:50:52] Your Honours, the document is on the evidence 2
20 channel.

21 MS SIMMS: [11:51:02]

22 Q. [11:51:03] Madam Witness, you had pointed out some areas on -- on this
23 document and I'm going to point you to the area marked 4 on this document. And
24 it's where you marked along the right leg. Now, you say here that --

25 PRESIDING JUDGE KORNER: [11:51:45] I'm sorry, Ms Simms, I'm going to stop

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1 you for a moment. I understood there is no dispute about the rape.

2 MS SIMMS: [11:51:56] There is no dispute, your Honours, but I'm asking one
3 question just to clarify the issue of the tying of the leg, whether this was throughout
4 the ordeal or not.

5 PRESIDING JUDGE KORNER: [11:52:14] All right.

6 Yes, Mr Laucci, yes.

7 MR LAUCCI: [11:52:22] If you have one question of that kind, please do it straight.
8 No need to take it much longer.

9 MS SIMMS: [11:52:33]

10 Q. [11:52:33] Madam Witness, were you tied -- was your leg tied throughout the
11 process as you were raped?

12 A. [11:53:04] He tied my right leg.

13 MS SIMMS: [11:53:25] Your Honours, just to indicate that the witness had given
14 some specific responses to Dr Maaïke Moller and Defence has agreed to the item
15 being introduced into evidence. I will put it on the record that document contains
16 greater particulars in terms of the rape of this witness.

17 PRESIDING JUDGE KORNER: [11:53:48] Well, Ms Simms, as I say, if, as I say, very
18 properly, if I may say so - and I have already said to Mr Laucci - there is no dispute
19 about the rape, then -- I mean, if you want to put it in, fine, but I don't see at the
20 moment the necessity.

21 MS SIMMS: [11:54:14] Your Honours -- very well, your Honours. We will submit
22 the document at the end of the process.

23 PRESIDING JUDGE KORNER: [11:54:19] Yes.

24 MS SIMMS: [11:54:21] Could you pull up for me, please, the redacted version of
25 item at tab 14. And this is DAR-OTP-00000363.

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1 THE COURT OFFICER: [11:55:45] The document is on the evidence 1 channel.

2 MS SIMMS: [11:55:47]

3 Q. [11:55:49] Madam Witness, earlier you said ...

4 (Counsel confer)

5 MS SIMMS:

6 Q. [11:56:15] You had said that some men were tortured and they were then killed?

7 A. [11:56:33] Yes, that is true.

8 Q. [11:56:36] You have provided the names of these three men as Rashid Issa,

9 Adam Bosch and Abd-Al-Nasir Ibrahim?

10 A. [11:57:30] Yes, that is true.

11 Q. [11:57:38] Court officer, could you please go to page 2, which is 00002. Thanks.

12 Madam Witness, how far were you from these men when you saw them being

13 tortured and killed?

14 A. [11:58:20] I was as far from them as I am far from the group of people in front of

15 me here.

16 Q. [11:58:31] And that would be the judges?

17 A. [11:58:51] I mean the distance separating me from the court officers.

18 PRESIDING JUDGE KORNER: [11:59:00] Before you go on, Ms Simms, are we now

19 going back to page 28, lines 12 following?

20 MS SIMMS: [11:59:16](Microphone not activated)

21 PRESIDING JUDGE KORNER: [11:59:19] Well, I was going to go back over that

22 because what she actually talks about there is they separated the children from the

23 rest. They tied up the children, the young individuals.

24 So does she actually mean children or are we talking about young people in the sense

25 of teenagers or older?

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1 MS SIMMS: [11:59:49] I will clarify that with her, your Honours.

2 PRESIDING JUDGE KORNER: [11:59:53] Thank you.

3 MS SIMMS: [11:59:54]

4 Q. [11:59:54] Madam Witness, can you explain who were the persons who were
5 tied up that day?

6 A. [12:00:28] It was the men. Their hands were tied up behind their backs.

7 Q. [12:00:46] Do you remember about how many men were there whose hands
8 were tied behind their backs?

9 A. [12:01:14] There were -- the men whose hands were tied behind their backs were
10 around 20 men.

11 Q. [12:01:29] And of those 20 men, you would know the identity of three of them:
12 Rashid Issa, Adam Bosch, and Abd-Al-Nasir Ibrahim?

13 A. [12:02:03] Yes, this is true.

14 PRESIDING JUDGE KORNER: [12:02:11] I'm sorry.

15 Madam, are these the people who you say -- sorry. Are these the men who you say
16 were separated from the women?

17 THE WITNESS: [12:02:51](Interpretation) Yes, they are the same men, those men
18 were separated from women. They were lined up in one line and the women were
19 lined up in another line.

20 PRESIDING JUDGE KORNER: [12:03:04] What -- roughly what sort of ages were
21 the people that you saw being lined up?

22 THE WITNESS: [12:03:53](Interpretation) They were between 18 and 65 years old.

23 PRESIDING JUDGE KORNER: [12:03:59] At any stage, did you see children, that is,
24 let us say, people under the age of 12 years old, being tortured or killed?

25 THE WITNESS: [12:04:50](Interpretation) Some of them -- some of these men who

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1 were between 18 and 65 years old, there were also children in the age of 10 or 14 and
2 15, they were taken to an unknown place. We used to hear their voices at the outset.
3 After that, the voices disappeared and we did not know what happened to them.
4 We did not even see them the second day.

5 PRESIDING JUDGE KORNER: [12:05:19] Yes. Thank you.

6 MS SIMMS: [12:05:22] Thank you, your Honours.

7 Q. [12:05:24] Madam Witness, the three -- the men who were tied up, you indicate
8 that you had -- do you see the document on your screen? And it's your evidence
9 that after their hands were tied, they were put in a kneeling position as shown on
10 your screen, item ending 00002?

11 A. [12:06:17] Yes, the same position.

12 Q. [12:06:25] Officer, could you please go to the first image which is at 00001.

13 Thank you.

14 Madam Witness, is it also your evidence that the men were then placed to lay face
15 down on the ground with their hands tied behind their backs?

16 A. [12:06:57] Yes, this is what happened.

17 Q. [12:07:02] And it's your evidence that the men were then fired at?

18 A. [12:07:18] Yes, these are the same men who were shot.

19 Q. [12:07:38] And for Abd-Al-Nasir Ibrahim, after he was shot, did you see what
20 else happened to him in particular?

21 A. [12:08:26] Abd-Al-Nasir, he was shot many times, however, he did not die.
22 They -- afterwards, they hit him with the back of their rifles and afterwards they
23 killed him.

24 Q. [12:08:53] One of the other men that was shot was a relative of yours?

25 A. [12:09:13] Yes.

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1 Q. [12:09:23] He was killed that day.

2 A. [12:09:25] Yes, he was killed on that same day.

3 Q. [12:09:34] Now, Madam Witness, earlier in your evidence you said that there
4 were about 20 men whose hands had been tied behind their backs. The other men
5 who you do not know, were they also shot and killed that day?

6 A. [12:10:23] Yes, they were all killed on that same day at the same time and no one
7 survived.

8 MS SIMMS: [12:10:44] Madam President, I will just introduce on the record
9 a document at tab 8, where the witness had given further information about the
10 victims of the sexual violence as well as the men who were killed whose identity that
11 she knows. And that is DAR-OTP-00000356.

12 PRESIDING JUDGE KORNER: [12:11:16](Microphone not activated)

13 MS SIMMS: [12:11:19] Yes, your Honours. And further description to the right
14 columns.

15 PRESIDING JUDGE KORNER: [12:11:22] Thank you.

16 MS SIMMS: [12:11:32] Madam President, I have no further questions of the witness.
17 (Microphone not activated)

18 THE INTERPRETER: [12:11:46] Mrs Simms, your mic, please.

19 MS SIMMS: [12:11:52]

20 Q. [12:11:53] Madam Witness, my thanks to you. I have no further questions for
21 you today.

22 PRESIDING JUDGE KORNER: [12:12:00] Yes, all right.

23 Yes, Ms von Wistinghausen.

24 QUESTIONED BY MS VON WISTINGHAUSEN:

25 Q. [12:12:23] So good morning again, Madam Witness, we briefly met and I

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1 introduced myself by explaining that, together with my colleagues, I'm representing

2 the participating victims in this case. And I have a few questions for you.

3 For the first two or three questions, Madam President, I prefer to go into private

4 session but the rest can be in public, please.

5 PRESIDING JUDGE KORNER: [12:12:52] Yes, private session, please.

6 (Private session at 12.12 p.m.)

7 THE COURT OFFICER: [12:12:57] We are in private session, Madam President.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Open session at 12.18 p.m.)

13 THE COURT OFFICER: [12:17:56] We are back in open session, Madam President.

14 MS VON WISTINGHAUSEN: [12:18:09]

15 Q. [12:18:11] Yes, Madam Witness, we are back in public session, so please be
16 careful not to say anything that reveals your identity, but I will also be very cautious
17 with my questions, of course.

18 I would like to -- you to share with us what you can say about important or unique
19 traditions within your community and if any of those have been affected through the
20 conflict.

21 A. [12:19:32] Yes. When we were in our village, in the past, we lived a beautiful
22 life. No one would interfere in others' issues, and no one would be aggressive
23 towards the other. After the war, however, we would be afraid of each other and
24 many people could not complete their education after the war. This is one of the
25 war's repercussions.

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1 Q. [12:20:23] Are there any celebrations, for instance, that played an important role
2 in your community but that could not be celebrated once the conflict started?

3 A. [12:21:23] Yes. After the conflict, we could not anymore practice or have the
4 social activities in a clear way. If a person, for instance, died, we could not pay our
5 tributes and present our condolences, and we could not communicate properly with
6 his parents.

7 Q. [12:21:57] I read in your witness statement that jewellery has also been looted
8 from women. Can you tell us what role jewellery or gold plays within the Fur
9 community. Does it have a specific importance?

10 A. [12:23:05] The gold is one of the precious metals, it's a valuable in the Fur
11 community. When you would have gold inside your house, it would be considered
12 for -- as a reserve for the worst days. So in this case, when you have any problems or
13 difficulties, you would sell this gold to meet ends. This is why gold was important
14 in the Fur community.

15 Q. [12:23:46] Thank you. I would like to ask you about Bindisi where you arrived
16 before the attack. Can you describe to us what the village looked like? More or less
17 how many people lived there?

18 A. [12:25:08] They were living happily when Mukjar -- Mukjar inhabitants, they
19 had a happy life. They would visit each other, the neighbours. They would be
20 farming and they would socialise among each other.

21 Q. [12:25:39] (Microphone not activated)

22 THE INTERPRETER: [12:25:46] Mrs von Wistinghausen, your mic, please.

23 MS VON WISTINGHAUSEN: [12:25:55] Thank you.

24 Q. [12:25:55] You said in your witness statement that approximately 15,000 people
25 lived in Bindisi, most of them of the Fur community. Is that around about correct?

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1 A. [12:26:35] Yes, most of the Mukjar inhabitants were of the Fur ethnicity.

2 Bindisi's inhabitants, most of them were from the Fur ethnicity.

3 Q. [12:26:52] Thank you. And tell me, the houses where the people lived, what
4 were they made of? What kind of material?

5 A. [12:27:26] Buildings in Bindisi -- or some of the houses in Bindisi were built
6 from -- *some of them were made of bricks and some of them made of grass. So we
7 had different types of houses in Bindisi.

8 THE INTERPRETER: [12:27:54] Correction from the booth: Made of glass -- of grass,
9 not glass.

10 MS VON WISTINGHAUSEN: [12:28:02] Thank you, because I understood glass, but
11 it is grass. Right, okay.

12 Q. [12:28:11] I want to move on a little bit and ask you about the consequences on
13 your life of what has happened to you. But first, more in general terms and I'm -- I
14 can reassure you we are not going to go back into any details to what happened to
15 you. But you yourself have been a victim of sexual violence and you spoke about
16 other women who you know who had the same fate. And I would like to ask you in
17 general, what is the consequence for a victim of sexual violence in your community?
18 If this is something that you want to share with us.

19 A. [12:29:57] Women who were raped, they are living now -- they are now
20 disillusioned. I know some of them who committed suicide, they killed themselves.
21 Some of them lost their minds due to this rape. They were living in isolation, they
22 could not socialise with the others.

23 Q. [12:30:37] Were, to your knowledge, children born out of the rapes? And can
24 you tell us how they were received within the families and the community? Is this
25 something that is discussed?

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1 A. [12:31:47] People, when they pass by the road, they would finger point to the
2 child who was born out of rape and would consider him the son of the Arab man or
3 would say that he is the son of the Arab man. Also, the women feel disappointment,
4 because they are with the child of their enemy, the child that resulted from rape.
5 Society looks disdainfully at such children and on the road, they would point at that
6 child by considering him the child of rape. So this is a source of irritation.

7 Q. [12:32:55] Can you tell us if there are women's associations in your town, places
8 where women can go to and discuss what has happened to them, and maybe also
9 children who were born out of a rape can go? Are there such associations to help?

10 A. [12:34:15] There are no such organisations in our region. Nor is there a place
11 where your voice can be heard. And there is no one to convey such standpoint.

12 Q. [12:34:43] Did women's associations exist before the conflict in your village? I
13 mean, associations where women could go and discuss topics that concern more
14 women than men. Did this exist before the conflict?

15 A. [12:35:47] Yes, there used to be women's organisations, however, they were not
16 numerous. In a town, you could form an association to discuss subjects of interest.
17 But it was just that.

18 Q. [12:36:14] Okay. And just one more question related to that. How was the
19 leadership of such a women's association elected?

20 A. [12:37:02] There was no election in the commonly known sense. It was merely
21 a gathering of female villagers to discuss the matters that were of interest to the
22 women in the village. It was not things that can be reported to the *sheikh* or the
23 *umdah*. It was just subjects that interested women in the town or the neighbourhood.
24 However, there were no formal elections held.

25 Q. [12:37:41] Thank you. I will move on to your life after the conflict - and beware

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1 that we are in public session, so let's not speak about specific locations - but can you
2 share with us what the life in the refugee camps was when you first arrived at the
3 time? Without specifying which refugee camp you went to.

4 A. [12:38:48] In the first days, the situation was very tough because people did not
5 know where to go to. People were in a dilemma. Afterwards, international
6 organisations came and assisted people, assisted them significantly. They set up
7 camps and provided food supplies. They set up schools inside the camps. Later on,
8 the situation relatively improved. While at the camp you -- you would have a busy
9 schedule, which was comforting. The activities provided some reassurance. So I
10 felt things improved over time.

11 Q. [12:39:55] Can you say if there were possibilities to work in the refugee camps,
12 for yourself, for instance?

13 A. [12:40:26] Yes, there were work opportunities and some people had some jobs.

14 Q. [12:40:41] Can you tell us what your life is like today for you and your family.
15 And if you feel more comfortable to speak about this in closed session, please let me
16 know and I will ask the judges to move into private session.

17 A. [12:41:33] I don't have much to say. Right now, I live with my children and I
18 worry about my children, which is why I don't want to leave them behind. When
19 the celebration of the new year comes, my husband told me, "Where are you going?"
20 I replied by saying, "War is coming." My husband replied by saying, "There is no
21 war. It's just a celebration for the new year." So I said, "I don't believe it. I don't
22 believe that all of these people are here just to celebrate the new year." So I thought
23 it was a new war that about to afflict us. It is the consequence of trauma.
24 Afterwards, I took my child and sat on a chair for a long time. However, I now feel
25 more reassured than before.

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1 Q. [12:43:26] That is good to hear. I have one last question. You were
2 interviewed by the Office of the Prosecutor almost 17 years ago, so that is a very long
3 time ago. Is there anything that you would like to tell the judges about what this
4 trial means to you and to your family and to your community? I suppose that when
5 you gave the witness statement, you were not necessarily expecting to sit here as
6 a witness one day. Anything that you would like to say.

7 A. [12:45:02] I did not think in the past that I would one day come here to testify
8 and that I would be asked regarding what happened with me. After meeting the
9 ICC officials who told me that they would assist me, we liked what they said. When
10 you are alienated and defenceless and someone comes to you offering to help, it had
11 such a soothing impact on our psyche. We were kicked out of our land, which was
12 not easy.

13 Today, as I testify here, I am thinking in my head positively about this Court and that
14 it would help and support us. I am very positive about this Court standing by our
15 side.

16 Q. [12:46:38] Thank you, Madam Witness. Thank you for answering my
17 questions.

18 PRESIDING JUDGE KORNER: [12:46:44] Yes, thank you, Ms von Wistinghausen.
19 Yes, Mr Laucci, you might as well make a start.

20 MR LAUCCI: [12:46:58] Well, actually, Madam President, it will be no more than an
21 introduction, but I will do it. Thank you.

22 QUESTIONED BY MR LAUCCI:

23 Q. [12:47:06] Good morning, Madam Witness. We met briefly last week. My
24 name is Cyril Laucci. Thank you for being here.

25 A. [12:47:20] Yes, good day to you, sir.

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1 Q. [12:47:25] And I want to be extremely clear from the beginning of my
2 cross-examination. The Defence has no reason to challenge what happened to you
3 personally during the attack on Bindisi and on the days following it. I do not intend
4 to question the terrible assaults that you experienced. This should never have
5 happened to you, nor to any of the persons you mention in your statement. And I'm
6 sure I'm not the only one, but I want to salute your extreme courage and dignity for
7 having come before this Court to testify about these events.
8 I will -- my questions during my cross-examination, which will be as short as possible,
9 only aim at clarifying certain aspects of your evidence for the benefit of this Court.
10 And I will try my best to keep it short so that you can go back and return to your
11 children as soon as possible, because I'm sure you miss them.
12 I can announce the structure of my cross-examination. The first part, which I think I
13 can do before the break, is about asking you some definitions and very piecemeal
14 miscellaneous information that arise from your statement. I will then ask you about
15 the defence forces in Garsila that you describe in your statement. We will then talk
16 about the person you call Ali Kushayb. And the last part will be about the attacks
17 that you describe. All right? So without taking more time, I move to the first part,
18 the definitions.
19 In your statement, there are some words that have been kept -- I don't know if it is in
20 Arabic or in Fur, but I want to make sure that this Court understands them perfectly.
21 When you say *asakir*, is that the plural of *askari*, meaning military, and does that refer
22 to the Sudanese Armed Forces?

23 A. [12:52:06] By that word, I'm referring to all forces. The regular governmental
24 forces and the Ali Kushayb forces. They are both accomplices in the crime.

25 Q. [12:52:19] Thank you. At paragraph 34 of your statement - and I use that

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1 reference to help the interpreter in light of my poor pronunciation of the word - you
2 use the expression "*ihitiyati markazi*". What is it, please?

3 A. [12:53:07] The *ihitiyati markazi* was the battalion led by Ali Kushayb before he
4 went into retirement. However, I do not know much detail about the *ihitiyati markazi*.

5 Q. [12:53:30] Thank you. What kind of cloth is a *bergait*, please?

6 A. [12:53:56] The government forces -- the regular government forces dressed
7 differently. However, the Ali Kushayb forces also had a different uniform. The Ali
8 Kushayb forces had a white camouflage uniform.

9 Q. [12:54:19] Well, thank you for that information. But can you define
10 what *bergait* means, please?

11 A. [12:54:52] The *bergait* is a military uniform worn by the regular forces.
12 However, I don't know the original meaning of the word.

13 Q. [12:55:01] Thank you. What is a *thatcher*?

14 A. [12:55:15] By *thatchers*, I'm referring to vehicles.

15 Q. [12:55:25] Is that a generic term for all kinds of vehicles or is it more specific?

16 A. [12:55:51] By *thatchers*, I'm referring to vehicles carrying soldiers of the
17 government forces or government representatives.

18 Q. [12:56:06] Thank you. What do you mean by the word "*solonga*"?

19 PRESIDING JUDGE KORNER: [12:56:17] Where is that, Mr Laucci?

20 MR LAUCCI: [12:56:20] It appears two times, according to my notes, paragraph 44
21 and 87 of the statement. Actually I did not mention the paragraph for the previous
22 words, but I can do that, if that helps.

23 PRESIDING JUDGE KORNER: [12:56:37](Microphone not activated)

24 MR LAUCCI: [12:56:49]

25 Q. [12:56:49] So I repeat the question, what do you mean by "*solonga*"?

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1 A. [12:57:09] In the Fur dialect, the word *solonga* means the Arab tribes.

2 Q. [12:57:20] Thank you.

3 And last definition, what is *kargab*, plural, *kargabas*?

4 And it's at paragraph 83, 85 and 86 of the statement.

5 A. [12:57:54] The *kargab* is a type of houses made of straw.

6 Q. [12:58:21] Thank you.

7 One clarification that does not come from your statement but I have to ask it. Are

8 Bindisi and Bundis two names for the same locality?

9 A. [12:59:11] Bindisi and Bundis refer to the same place. However, people
10 pronounce these words as they please.

11 Q. [12:59:26] Thank you. As far as you know, was the *zakat* office in Bindisi the
12 only one in the region?

13 A. [13:00:00] There was a *zakat* office, a police office and a pharmacy of Ali
14 Kushayb, so a pharmacy. There were restaurants. And I am not able to recall if
15 other facilities existed there.

16 Q. [13:00:26] Yes, sorry. Actually I did not put the code at the beginning.
17 When I raise my hand, I want to interrupt you for clarification. My question is about
18 the *zakat* office in Bindisi. I have the impression that your answer is related to
19 Garsila.

20 So I repeat: Was there any other *zakat* office other than Bindisi in the region, the
21 Wadi Salih?

22 A. [13:01:37] Yes, there was a *zakat* office in Bindisi. There was also a *zakat* office
23 in Mukjar. The *zakat* office, if not a major one, then it would be a branch office in
24 town -- across towns.

25 Q. [13:01:59] Thank you. And my last question before the break is the following:

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1 During the month of August in Sudan, can you tell us approximately at what time the
2 sun rises and at what time it sets?

3 A. [13:03:03] We, in Darfur, we had different times from Khartoum. At 5 a.m. the
4 sun rises and at 6 p.m. the sun goes down.

5 Q. [13:03:18] Thank you, Madam Witness. I'm done with my very bizarre
6 questions. That was the introduction. And we can have the break now.

7 PRESIDING JUDGE KORNER: [13:03:44] Mr Laucci, do you think you will finish
8 this afternoon?

9 MR LAUCCI: [13:03:49] My intention is to do my best to finish, but I have no
10 certainty.

11 PRESIDING JUDGE KORNER: [13:03:54] No, I'm not putting pressure on you at all,
12 I just wanted to know.

13 MR LAUCCI: [13:04:00] Yeah, yeah. No, that's my intention.

14 PRESIDING JUDGE KORNER: [13:04:03] Yes, very well. Half past 2, please.

15 THE COURT USHER: [13:04:05] All rise.

16 (Recess taken at 1.04 p.m.)

17 (The hearing resumed in open session at 2.33 p.m.)

18 THE COURT USHER: [14:33:04] All rise.

19 Please be seated.

20 PRESIDING JUDGE KORNER: [14:33:45] Yes, Mr Laucci.

21 MR LAUCCI: [14:33:47] Thank you, Madam President.

22 Q. [14:33:51] Good afternoon, Madam Witness. I hope you are refreshed from this
23 session of this morning.

24 Actually, I used the opportunity of the lunch break to reassess a little bit your
25 evidence and I will start this afternoon with the asking of some short questions, which

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1 may assist us in saving time for your cross-examination.

2 I go straight to my question. First of all, do you agree with me that during your

3 screening interview in 2005, that is the first interaction that you had with the Office of

4 the Prosecutor, you did not mention -- you did not mention at all the person you call

5 Ali Kushayb. You mention him only in your full statement that you made in 2005.

6 Do you remember that?

7 A. [14:35:43] Can you please repeat the question again.

8 PRESIDING JUDGE KORNER: [14:35:47] Before you do, I'm not sure that the

9 microphone is working properly for the witness, because I couldn't hear what she was

10 saying. But Mr Laucci, don't forget we have got this dual-translation stuff today.

11 Try and avoid the lead-up to the question and just ask the question. But if you can

12 just repeat the question, which is very simple.

13 MR LAUCCI: [14:36:16] Yes, I repeat.

14 Q. [14:36:16] In 2005, you had the full statement with the Office of the Prosecutor.

15 Before that, you had another interaction when you --

16 MR LAUCCI: [14:36:35] I don't know how to do it otherwise.

17 PRESIDING JUDGE KORNER: [14:36:38] Okay, Mr Laucci. How about I do it for

18 you?

19 It's right, isn't it, Madam, that you didn't mention Ali Kushayb when you were first

20 contacted by the Office of the Prosecutor? You only mentioned him in your

21 statement.

22 THE WITNESS: [14:37:23](Interpretation) I was only answering the questions asked

23 to me, so when they asked who was responsible for this incident, for example, I said

24 so-and-so. But then later I mentioned Ali Kushayb.

25 MR LAUCCI: [14:37:52]

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1 Q. [14:37:52] Thank you.

2 And for the record, Madam President, the screening interview I was referring to is
3 DAR-OTP-0194-0081.

4 Madam Witness, I moved -- I move now to the distribution of weapons in Garsila.

5 Today - and I am at page 18, lines 4 to 10 of the transcript - you mentioned for the first
6 time the presence of the man you call Ali Kushayb when the weapons were
7 distributed. At paragraph 15 of your statement to the OTP of 2005, you did not
8 mention him at all.

9 Question: Is the information about the presence of the man you call Ali Kushayb
10 when the weapons were distributed, is it a new information that you received after
11 your 2005 statement?

12 A. [14:40:18] My knowledge of Ali Kushayb is not new. I knew him long time ago.
13 I knew him since he was gathering the Arab tribes. And also, I knew him as the
14 pharmacist, he used to work in the market. So I -- the fact that he was not mentioned
15 in my statement is not right. There must be a mistake here, because I mentioned him
16 in my statement. And all the information are old, not new.

17 Q. [14:40:56] I just say that in relation to the distribution of weapons, that is
18 paragraph 15, Ali Kushayb is not mentioned. Indeed, you mention him somewhere
19 else, but focus on distribution of weapons only. That is the topic of my question.

20 A. [14:41:52] What I'm saying now is exactly what I mentioned before. I
21 mentioned the name of Ali Kushayb in all my previous statements, unless I wasn't
22 asked about him. But when I was asked about Ali Kushayb, I answered
23 straightaway. So there must have been a mistake from your side, not my side.

24 Q. [14:42:16] Thank you.

25 Earlier this morning -- and I'm now talking about the attack on Bindisi. Earlier this

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1 morning - I am at page 24, lines 2 to 4 of the transcript - you said, I quote:

2 "Ali Kushayb's vehicle is different from the other vehicles. Therefore, I know him
3 personally and I know all his features, so I was certain that he is Ali Kushayb."

4 And you explained that this is how you came to the conclusion that the person that
5 you saw in that vehicle was Ali Kushayb. Do you remember mentioning that this
6 morning?

7 A. (No interpretation)

8 Q. [14:44:19] Interpretation, please.

9 A. [14:44:26] Ali Kushayb was not far from me. I knew him very well. He was
10 a very tall man. And I would never make up the description of the man. I knew
11 him really well.

12 Q. [14:44:40] Very well. But in 2005, in your statement, the person that you say
13 you know very well as Ali Kushayb was not riding a car. He was riding a horse.
14 I'm reading from paragraph 54 of your statement:

15 "... I could also see Ali Kushayb on his horse riding towards him" - "him" being
16 Hamdi - "from the east."

17 Do you remember having said in 2005 that Ali Kushayb was riding a horse instead of
18 driving a car?

19 A. [14:46:20] Well, the attacking forces in the beginning were riding horses and
20 they were getting support from the air forces, the government air forces. And
21 sometimes they changed their plans. Later, they attacked again, but in cars this time.
22 So at the beginning they were using horses, but then they came back in vehicles.
23 And they started looting all the properties of the citizens and put them in the back of
24 their big cars.

25 Q. [14:47:19] Okay. But in 2005, that is two years after the events and not 20 years

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1 like now, you say that the man you know as Ali Kushayb, when you saw him, was
2 riding a horse. So if he was riding a horse, do you agree with me that you could not
3 recognise his car?

4 A. [14:48:31] No, it was Ali Kushayb. Bindisi was attacked twice and in both
5 times, Ali Kushayb was leading the attacks. Not any other person.

6 Q. [14:48:45] Madam Witness, I suggest that you must be mistaken when you say
7 that you saw the person you call Ali Kushayb in Bindisi. Do you agree with me or
8 not?

9 A. [14:49:19] Everything that I said is true. I'm telling you the facts. I'm not
10 lying.

11 Q. [14:49:26] No suggestion that you are lying. Mistaken is different. I move to
12 the next topic.

13 The next topic is the person named Nada who is -- was, according to what you said
14 today, transcript page 14, line 13 to 14, (Redacted) And you say that this
15 Nada was the daughter of the man you call Ali Kushayb and was aged (Redacted)
16 (Redacted)

17 Are you sure about Nada's age?

18 A. [14:50:54] I am not sure, but I said that she was (Redacted) at that
19 time.

20 Q. [14:51:05] In 2003, yourself, (Redacted) Was Nada (Redacted)
21 than you?

22 A. [14:51:36] (Redacted) and Nada was something (Redacted) this
23 means of course that she was (Redacted) than me.

24 Q. [14:51:53] Yes, but my question was to ask you if you were sure that she was
25 (Redacted) than you.

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1 A. [14:52:11] Yes, I am sure.

2 Q. [14:52:15] And, Witness, if I tell you that my client, Mr Ali Muhammad Ali
3 Abd-Al-Rahman's eldest daughter was no more than 16 years old in 2003, do you
4 agree that he cannot be the same person as the Ali Kushayb you describe?

5 PRESIDING JUDGE KORNER: [14:52:42] Well, I mean, that depends on so many
6 different ifs. If he did have a daughter, about which there is some evidence but no
7 evidence as to the age, could the witness be wrong. I mean, all the witness can say is
8 she met with a daughter of Ali Kushayb who was older than her.

9 MR LAUCCI: [14:53:08] Okay. I move on.

10 Q. [14:53:10] And, Madam Witness, you know that the identity and the age of
11 Mr Abd-Al-Rahman's children is something that the Defence will have no difficulty to
12 establish and prove --

13 PRESIDING JUDGE KORNER: [14:53:25] No, no, no, well, that's -- you can't do that,
14 Mr Laucci. That's effectively a threat.

15 But as a matter of interest, Mr Laucci, I was going to ask some questions about the
16 whole family at the end. But then I thought it was probably better if I do it now so
17 that if you -- you can then challenge any answer she gives. Are you happy with
18 that --

19 MR LAUCCI: [14:53:55] I'm very happy with that way of doing.

20 PRESIDING JUDGE KORNER: [14:53:57] All right.

21 Madam, how many children, as far as you were aware, did Mr -- or did

22 Mr Al-Rahman or Ali Kushayb have living in his house?

23 THE WITNESS: (No interpretation)

24 PRESIDING JUDGE KORNER: Okay, stop. Stop, because it needs interpreting.

25 THE WITNESS: [14:55:07](Interpretation) Children of Ali Kushayb from his first

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1 wife, that was Muhammad, who was working as a personal guard for his father and
2 he didn't stay for long in this place. But he's got another son from his younger wife.

3 PRESIDING JUDGE KORNER: [14:55:43] And at the time that you are talking about,
4 when you say that (Redacted), how many other children were living at the house that
5 Ali Kushayb was?

6 THE INTERPRETER: [14:56:06] Correction from the Arabic interpreter: The
7 witness mentioned Nada as well -- as well as the two sons.

8 PRESIDING JUDGE KORNER: [14:56:15] Okay, so there were two -- so there were
9 two sons and Nada living there?

10 THE WITNESS: [14:56:58](Interpretation) Nada had two brothers. One of them left.
11 He has another -- she has another brother whose name is Muhammad and she's got
12 also another brother from her father's younger wife.

13 PRESIDING JUDGE KORNER: [14:57:21] Okay. Can you tell us was there
14 anything special about the clothing that Nada wore?

15 THE WITNESS: [14:57:56](Interpretation) (Redacted), she was dressed in some kind
16 of inner layer of clothes and then she had the *thoub*, which is a Sudanese dress, on top
17 of it.

18 PRESIDING JUDGE KORNER: [14:58:22] Yes. So she wore -- but before that day
19 (Redacted), as a general rule, did she wear clothing that was different from clothing
20 worn by Sudanese women in normal circumstances?

21 THE WITNESS: [14:59:11](Interpretation) No. She was usually dressed in regular
22 clothing. She was not dressed in any kind of special clothing, no.

23 PRESIDING JUDGE KORNER: [14:59:18] And finally this, you say that Muhammad
24 left having acted as his father's bodyguard. Do you know what happened to him
25 after he left? And if you don't know, say so.

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1 THE WITNESS: [15:00:13] I said that Muhammad had an older brother who left, but
2 Muhammad remained as a guard to his father.

3 PRESIDING JUDGE KORNER: [15:00:27] Thank you. Yes, thank you very much.
4 Sorry, Mr Laucci, but I thought, and particularly in the light of the answers I've got,
5 that I better do it now so you get a chance to cross-examine.

6 MR LAUCCI: [15:00:38] It was indeed a perfect timing and -- because that gives me
7 the opportunity to follow up on the responses that you received to your questions,
8 Madam President.

9 Q. [15:00:50] Madam Witness, if I tell you that my client, Mr Ali Muhammad
10 Abd-Al-Rahman, never had a son by the name of Muhammad, and that his eldest
11 daughter was aged no more than 16 in 2003, do you have any comment?

12 A. [15:01:59] I know them. I knew them when they lived with their father in his
13 house. However, I didn't know how old Muhammad was. (Redacted)
14 (Redacted) that her age was the age that I told you
15 about.

16 Q. [15:02:28] Thank you. Madam Witness, I suggest that you actually never saw
17 the person you call Ali Kushayb and never had any knowledge of his presence or
18 involvement in the attack on Bindisi nor in any other events you describe. Do you
19 agree?

20 A. [15:03:14] I know Ali Kushayb very well and I know all the areas that he
21 went -- or that he visited.

22 Q. [15:03:32] Thank you, Madam Witness.
23 I'm done with my cross-examination, Madam President.

24 PRESIDING JUDGE KORNER: [15:03:42] Thank you very much, Mr Laucci.
25 Any questions?

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1 MS SIMMS: [15:03:46] No questions, your Honour.

2 PRESIDING JUDGE KORNER: [15:03:50] Yes, Judge Alexis-Windsor has a few
3 questions.

4 JUDGE ALEXIS-WINDSOR: [15:03:55] Good afternoon, Madam.

5 To your knowledge, does Ali Kushayb have another house other than the one (Redacted)
6 (Redacted)

7 THE WITNESS: [15:04:47] At the time when I was in that place, he only had one
8 house and I knew that house. He did not have another house.

9 JUDGE ALEXIS-WINDSOR: [15:04:56] Thank you.

10 You mentioned, Madam, that Ali Kushayb had two wives. Was Nada the daughter
11 of the first or the second wife?

12 THE WITNESS: [15:05:32](Interpretation) Nada is the daughter of the older wife.

13 JUDGE ALEXIS-WINDSOR: [15:05:40] (Redacted) did you ever
14 meet the mother of Nada?

15 THE WITNESS: [15:06:09](Interpretation) Their mother was not present with them
16 in that house. Ali Kushayb used to live alone, and his sons and daughters use to
17 come visit him continuously.

18 JUDGE ALEXIS-WINDSOR: [15:06:33] Moving -- thank you. Moving on to another
19 topic. You said that one of the Janjaweed asked you what you had in your bag or
20 your suitcase.

21 Mr Laucci.

22 MR LAUCCI: [15:07:01] Yes, please. Your Honours are of course at full liberty and
23 authority to ask any question, but I want to make clear for the record that my
24 cross-examination was strictly limited to what had been put into evidence during the
25 examination-in-chief and no more. And this is -- unless I'm mistaken, this is not the

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1 case for that information.

2 JUDGE ALEXIS-WINDSOR: [15:07:37] Mr Laucci, I'm looking for it. I, too, was
3 trying to find my questions from the -- from the examination-in-chief, and that was
4 my memory. But I will look for it.

5 MR LAUCCI: [15:07:48] Then it means I am mistaken but once a day --

6 JUDGE ALEXIS-WINDSOR: [15:07:53] Or I am. One of us is. It's no problem.

7 All right, so let's move on. I'll look for it in the meantime, and if -- if I don't find it,
8 then that's the end of my questioning. And if I do, I'll come back to it.

9 Thank you, Ma'am.

10 MS SIMMS: [15:08:16] If I might assist the Court, your Honours, it's at page 29,
11 lines 1 to 2.

12 JUDGE ALEXIS-WINDSOR: [15:08:36] Thank you, Ms Simms.

13 Yes, Ma'am, did you in fact have something in your bag?

14 *THE WITNESS: [15:09:09] The bag that I carried, I had some of my documents
15 inside. And (Redacted)

16 (Redacted) and I put this money in my
17 bag.

18 JUDGE ALEXIS-WINDSOR: [15:09:26] Thank you.

19 Those are all my questions, Madam President.

20 JUDGE ALAPINI-GANSOU: [15:09:46](Interpretation) Thank you,
21 Madam President.

22 I have just one question of clarification relating to (Redacted) Nada. Could the
23 witness please tell us ...

24 Is there interpretation? Is there interpretation going on?

25 So with regard to Nada, could you tell us what happened to Nada? We don't have

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1 this information.

2 What happened to her after that?

3 THE WITNESS: [15:10:50](Interpretation) I don't know what happened to her.

4 And even when I -- when she left, I didn't know if she reached her destination or not.

5 I don't have any information about this.

6 JUDGE ALAPINI-GANSOU: [15:11:07](Interpretation) Thank you.

7 PRESIDING JUDGE KORNER: [15:11:12] Madam, that concludes your evidence. I

8 think on behalf of all of us, we wish to express the same sentiments that Mr Laucci

9 expressed to you, namely, that what happened to you and to your friends should

10 never happen to any woman. We express our sympathy, and we wish you a safe

11 return to your own -- wherever you now live. And we thank you again for coming

12 to court. We know how difficult it must have been, but it's obviously important that

13 women to whom these things happen come and tell the Court because otherwise

14 these matters will never come to light. So thank you again.

15 THE WITNESS: [15:12:48](Interpretation) I would like to express to you my deepest

16 gratitude. I would like to thank the ICC, and without you I wouldn't have reached

17 this place. I hope that the International Criminal Court will continue working for the

18 justice of the victims. And once again, I would like to express to you my deepest

19 gratitude.

20 PRESIDING JUDGE KORNER: [15:13:19] Thank you very much. And again,

21 thank you for coming. And that concludes your appearance here. And if you

22 would like to go with the court officer, she will escort you back.

23 (The witness is excused)

24 PRESIDING JUDGE KORNER: [15:14:02] Yes.

25 Now, Mr Nicholls, I appreciate that not everything can be worked out as planned

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1 with witnesses, but two witnesses in two weeks is really a little bit under doing it, if I
2 can put it that way. I don't think -- and I think this witness was set down for about
3 two days. But effectively there is nothing else we can do this week, even though we
4 weren't supposed to break until Thursday, I think.

5 MR NICHOLLS: [15:14:42] That is correct, your Honour. And again, I'm sorry, we
6 lost four witnesses in this block, three for the reasons we've had --

7 PRESIDING JUDGE KORNER: [15:14:52] Yeah.

8 MR NICHOLLS: [15:14:53] -- and one that we chose not to call, ultimately, which I
9 think was the right decision.

10 But we'll send out the new block list and trying to keep -- there's no wood for me to
11 knock on, but keep it full and -- and hope that we don't have those problems. And
12 also based on this experience, we are trying to line up potential back-up witnesses in
13 case we have a similar problem of losing contact with witnesses as we've had before.

14 PRESIDING JUDGE KORNER: [15:15:31] Well, in fact, it's perhaps less disastrous
15 than it might have been because, of course, it costs an awful lot of money to run these
16 courts and the schedules are organised to try and fit in the different cases. But we
17 had actually proceeded at a pace I think which is quite efficient -- really efficient
18 actually - not quite, really efficient - for which I thank both sides.

19 All right. Well, in that case, we don't sit again until is it 7 November?

20 Yeah. Very well. So this case is adjourned now until 7 November. By which time,

21 Mr Laucci, I hope that Mr Al-Rahman -- has he actually seen a specialist yet?

22 MR LAUCCI: [15:16:25] I have no detail about where he is in -- in the checkup. I
23 know that he is doing some new tests very regularly, but I have no detail.

24 PRESIDING JUDGE KORNER: [15:16:37] All right. Anyhow --

25 MR LAUCCI: [15:16:39] And I hope too that he will be back.

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- 1 MR NICHOLLS: [15:16:42] I probably missed it, and it's my fault, did we get
- 2 another waiver?
- 3 PRESIDING JUDGE KORNER: [15:16:49] Yes.
- 4 MR NICHOLLS: We did.
- 5 PRESIDING JUDGE KORNER: [15:16:46] It was sent on Friday, I think.
- 6 MR NICHOLLS: [15:16:52] Okay. Thank you.
- 7 PRESIDING JUDGE KORNER: [15:16:53] Yes, all right. Thank you all very much.
- 8 And the case is adjourned until 7 November.
- 9 THE COURT USHER: [15:17:01] All rise.
- 10 (The hearing ends in open session at 3.17 p.m.)