

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(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 Tuesday, 10 May 2022  
10 (The hearing starts in open session at 9.32 a.m.)  
11 THE COURT USHER: [9:32:26] All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE KORNER: [9:32:54] Yes. Good morning to all.  
15 Appearances, please. Prosecution first.  
16 MR NICHOLLS: [9:33:00] Good morning, your Honours. Good morning,  
17 everyone.  
18 Julian Nicholls, with Melissa Simms, Ghazaleh Meskoob, Pubudu Sachithanandan,  
19 Claire Sabatini, and Mohanad Elkholy. Thank you.  
20 PRESIDING JUDGE KORNER: [9:33:14] Yes. Thank you, Mr Nicholls.  
21 Defence.  
22 MR LAUCCI: [9:33:18](Interpretation) Good morning, Madam President,  
23 your Honours. We're here for the -- Mr Abd-Al-Rahman here in the room. Nina  
24 Guilloux, Mohammad El Rahi.  
25 PRESIDING JUDGE KORNER: [9:33:38] No. You said that all so fast, Mr Laucci,

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 although we know who everybody is, but the interpreter couldn't keep up.

2 MR LAUCCI: [9:33:45](Interpretation) Thank you.

3 In the Defence, for Mr Ali Muhammad Ali Abd-Al-Rahman, who is here with us  
4 today; my colleague, Nina Guilloux, in charge of evidence; Mohammad El Rahi, also  
5 in charge of evidence; Iain Edwards, associate counsel; and myself, Cyril Laucci, lead  
6 counsel.

7 Good morning, everybody.

8 PRESIDING JUDGE KORNER: [9:34:16] Yes. And the representatives for the  
9 victims.

10 MS VON WISTINGHAUSEN: [9:34:22] Yes. Good morning, Madam President,  
11 your Honours. Good morning to everyone.

12 The victims are represented this morning by myself, Natalie von Wistinghausen.

13 And I note for the record that Mr Shah will join us during the next session or this  
14 afternoon. Thank you.

15 PRESIDING JUDGE KORNER: [9:34:34] Yes. Thank you very much, Ms von  
16 Wistinghausen.

17 Just before the witness comes in, last night the Registry filed its response to the latest  
18 motion. As a result of that, Mr Nicholls, I would like to hear from the Prosecution  
19 on this matter. I want to know what their experiences are in respect of the matter  
20 that's discussed, which I'm not going to go into in open session. Could we have a  
21 response, please, by 4 p.m. Friday.

22 MR NICHOLLS: [9:35:11] Yes, your Honour.

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

24 Yes. Well, then, the witness may come in.

25 MS SIMMS: [9:35:14] Your Honours, before the witness is called into court, are you

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 minded for me to read the summary of the witness statement?
- 2 PRESIDING JUDGE KORNER: [9:35:22] Yes, thank you very much, Ms Simms.
- 3 Yes, why don't you do that.
- 4 MS SIMMS: [9:35:25] Very well, your Honours.
- 5 And, additionally, I would ask permission for the addition of a few items. These are
- 6 English translations of documents which are already on the list and are subject to
- 7 Rule 68. I have canvassed with my learned friend, and he does not object. The
- 8 annexes concerned are at -- are at tab 7.
- 9 PRESIDING JUDGE KORNER: [9:35:58] Yeah, we don't -- we don't have the tabs,
- 10 but on -- are these documents that you supplied the list of?
- 11 MS SIMMS: [9:36:14] Yes, your Honours. They're in your --
- 12 PRESIDING JUDGE KORNER: [9:36:19] And we did -- I see. Wasn't there -- it says
- 13 "Translation English".
- 14 MS SIMMS: [9:36:20] Yes, your Honours.
- 15 PRESIDING JUDGE KORNER: [9:36:21] So it's already being copied.
- 16 MS SIMMS: [9:36:23] It is, your Honours.
- 17 PRESIDING JUDGE KORNER: [9:36:25] Well, then what do you need our leave for?
- 18 MS SIMMS: [9:36:27] Your Honours, they were not originally a part of the Rule 68
- 19 application.
- 20 PRESIDING JUDGE KORNER: [9:36:30] Oh, I see. Right.
- 21 MS SIMMS: [9:36:32] And so we went ahead and added.
- 22 PRESIDING JUDGE KORNER: [9:36:34] Well, if there's no objection, yes, certainly.
- 23 MS SIMMS: [9:36:38] Much obliged, your Honours.
- 24 In terms of the witness summary, P-0922, your Honours, he provided two statements
- 25 with accompanying annexes to the Prosecution. The Prosecution will expect to lead

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 evidence in relation to P-0922, in that he lived in the surrounding areas of -- he lived  
2 in the surrounding areas --

3 PRESIDING JUDGE KORNER: [9:37:03] I'm sorry, did you say -- I'm so sorry,  
4 Ms Simms, to interrupt you. Did you say two statements?

5 MS SIMMS: [9:37:09] Yes, your Honours. These -- if you do have the index,  
6 your Honours, the two statements, they can we found at tab 1 and tab 28 on the list of  
7 materials.

8 PRESIDING JUDGE KORNER: [9:37:30] Yes. Sorry. I missed it because of the  
9 way it was set up.

10 Okay. Yes, thank you.

11 MS SIMMS: [9:37:32] Yes, your Honours.

12 P-922 lived in the surrounding areas of Bindisi up to the date of the attack in 2003.

13 This witness is expected to provide background evidence on the start of the attack in  
14 Bindisi on 15 August 2003, where he narrates fleeing from Bindisi, where he had gone  
15 to attend the mosque, to Drangal, where he lives. And this village is located next to  
16 Bindisi. He identifies that the attack was led by the Militia/Janjaweed.

17 P-0922 further provides evidence that parts of Bindisi was destroyed during the  
18 attack. And P-922's evidence is that, shortly after he flees the Bindisi and Drangal  
19 area, he went to Mukjar, where he was detained into 2003, and he was tortured  
20 because they accused him of being a *tora bora*.

21 P-922 will explain that he was tortured by members of the Sudanese army, and  
22 provides evidence on the presence of Al-Dayf Al Samih, who he states was called an  
23 *agid*, meaning someone who is a leader; and Abdullah Torshein, who he identifies as a  
24 representative of the government of Sudan. He also speaks of Abdullah Himeidan,  
25 who he identifies as a leader of the Sudanese Armed Forces.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 P-922 will also give further evidence on the attack in Mukjar in 2004. In particular,  
2 he provides evidence on the arrest, detention and torture of Fur males, which took  
3 place in Mukjar sometime in February -- late February and early March 2003.

4 This witness, your Honours, also will provide evidence that he saw the accused in  
5 Mukjar in 2004 during the relevant period.

6 Finally, 922 provides evidence relating (Redacted)

7 (Redacted)

8 (Redacted)

9 subject to your directions, your Honours, at a later date in the private session I could  
10 put the witness codes on the case record, or the Prosecution can send the list of those  
11 witness codes, the relevant paragraphs in the statement, to the Chamber via email.

12 PRESIDING JUDGE KORNER: [9:41:23] Yes. Ms Simms, yes, by email, we think.

13 MS SIMMS: [9:41:25] Very well, your Honours.

14 PRESIDING JUDGE KORNER: [9:41:29] Rather than having to go into private  
15 session on this.

16 Can I just ask something. I note from the second statement that there are videos. Is  
17 it proposed to play any? Are they subtitled?

18 MS SIMMS: [9:41:36] There's one video, your Honour. It's in Fur, unfortunately.

19 The Court will have to rely on the English translation. And that document,  
20 your Honours, the English translation is at tab 35. And the Prosecution would only  
21 speak to a specific part of the translation today for purpose of correcting the date  
22 which was mentioned by the accused. However, we would later request for the  
23 entire video and the accompanying translation to be admitted into evidence in its  
24 entirety.

25 Further, the second statement significantly speaks about the video which is on our list

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 of material.

2 PRESIDING JUDGE KORNER: [9:42:28] Yes. I mean, obviously -- I mean, it would  
3 be helpful -- I mean, I suppose we can look at it outside court, but it would be helpful  
4 to at least see some clips from it. However, I'm conscious that it's likely to cause the  
5 witness some distress to see it, from what he says. So, I mean, whether it's a good  
6 idea to play it while he's in the witness box, I don't know. I think probably not.

7 MS SIMMS: [9:43:02] Well, your Honours, I know that the witness does get a bit  
8 emotional when he's speaking about that period. However, he's able to compose  
9 himself. So if the Court is minded to have the video played, then the Prosecution  
10 can ask the court officer if we're able to facilitate the playing of the video.

11 PRESIDING JUDGE KORNER: [9:43:21] Well, I mean, I'll just confer with my  
12 colleagues, but I think -- I'm not suggesting you need to play the whole thing, but at  
13 least so we can see part of something that was closer to the events.

14 MS SIMMS: [9:43:34] Very well, your Honours.

15 PRESIDING JUDGE KORNER: [9:43:36] Yes. I think we all agree, we would like to  
16 see some of the video. If it's too distressing for the witness, we can stop playing and  
17 look at it when he's actually finished, Ms Simms.

18 MS SIMMS: [9:43:48] Very well, your Honours.

19 PRESIDING JUDGE KORNER: [9:43:50] Yeah. All right.

20 Yes, the witness can come -- can he read?

21 MS SIMMS: [9:43:53] Your Honours, he -- he says that he can read. However, he  
22 may need assistance.

23 PRESIDING JUDGE KORNER: [9:44:04] I thought he was a medical man.

24 MS SIMMS: [9:44:07] Well, your Honour, he's not a trained doctor, but he works in  
25 the medical field. But I think for Sudanese Arabic properly written, it poses a

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 challenge for some persons in terms of reading.

2 PRESIDING JUDGE KORNER: [9:44:20] So he's speaking Sudanese Arabic, is he?

3 MS SIMMS: [9:44:24] Well, we've been able to communicate with him in standard  
4 Arabic, but he wasn't able to read the document in Arabic without assistance from the  
5 interpreter who was present during the witness session.

6 PRESIDING JUDGE KORNER: [9:44:37] All right. Well, then the way of doing it, I  
7 suppose, is for him to read the solemn -- not to read the solemn -- to repeat after the  
8 interpreter the solemn declaration, which will have to be read in English first,  
9 interpreted, and then he can repeat, I suppose.

10 MS SIMMS: [9:44:59] Yes, your Honours. Much obliged.

11 PRESIDING JUDGE KORNER: [9:45:02] Yeah. All right. Thank you very much.  
12 The witness can come in.

13 MR EDWARDS: [9:45:05] Your Honour, while -- while the witness is --

14 PRESIDING JUDGE KORNER: [9:45:06] Oh, sorry, Mr Edwards, yes.

15 MR EDWARDS: [9:45:07] The witness can come in. It's just, while he's coming in, I  
16 think it's worthwhile putting on the record, before it gets lost in the transcript and  
17 emails in due course. Our position is that, of the transcript, the translation of the  
18 video, pages 1 to 9 relate to an entirely different witness, Witness P-0884. Our firm  
19 preference would be that - and, in fact, I've spoken with my learned friend about it  
20 this morning - that only those pages, from page 9 onwards, that represent the  
21 translation and the transcript of this witness's videotape, be admitted as associated  
22 with this witness.

23 PRESIDING JUDGE KORNER: [9:45:54] Yes. Well, that -- that seems proper.  
24 Certainly, Mr Edwards. Yeah.

25 (Pause in proceedings)

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [9:49:12] I could have guessed when I saw the usher  
2 coming back without the witness, the witness is temporary unavailable. I'm told it  
3 shouldn't be more than a couple of minutes. I think we'll just wait rather than rising.

4 (The witness enters the courtroom)

5 PRESIDING JUDGE KORNER: [9:51:02] Yes. Sir, thank you very much for coming  
6 to court. I hope you can hear and understand me. In a moment, you will be asked  
7 to make the solemn declaration, which you will repeat after the interpreter, who you  
8 should be able to hear through your headphones.

9 All I need to say to you at this stage is that, if at any stage you need a break, please  
10 don't hesitate to ask for one. We understand that giving evidence in a court is not  
11 easy. There would, in any event, be a break of half an hour at 11 o'clock, and then a  
12 longer break for lunch.

13 WITNESS: DAR-OTP-P-0922

14 (The witness speaks Arabic)

15 THE WITNESS: [9:52:07](Interpretation) God willing. Thank you.

16 PRESIDING JUDGE KORNER: [9:52:09] Yes. And in a moment you'll hear the  
17 solemn declaration, which we'd ask you to repeat.

18 THE COURT OFFICER: [9:52:18] Good morning, Mr Witness. On -- on behalf of  
19 the Chamber, I would like to welcome you to the courtroom.

20 You are called to testify in the case of Mr Ali Muhammad Ali Abd-Al-Rahman.

21 Witness, you have first to take the solemn undertaking to tell the truth. I will read it  
22 out to you, so please follow me and repeat what I am saying: I solemnly declare that  
23 I will speak the truth, the whole truth and nothing but the truth.

24 THE WITNESS: [9:52:57](No interpretation)

25 THE COURT OFFICER: [9:53:15] Thank you, Witness. You are now under oath.



Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [9:53:17] Yes. Thank you very much.

2 Yes, Ms Simms.

3 QUESTIONED BY MS SIMMS:

4 Q. [9:53:27] Good morning, sir.

5 A. [9:53:38] Good morning.

6 MS SIMMS: [9:53:39] Your Honours, I will go to tab 1, which is the first statement.

7 And I'm going to ask the assistance of the court Officer to put the document to this

8 witness.

9 PRESIDING JUDGE KORNER: [9:54:14] When you say "put the document", do you  
10 mean the Arabic translation?

11 MS SIMMS: [9:54:18] No, your Honours, the English translation. And what I'm  
12 interested in is to show to the witness page 0037, which is the second to last page in  
13 that entire document, for the purpose of him recognising the document.

14 Thank you.

15 Q. [9:55:06] Mr Witness, can you -- looking at page 0037, do you see your  
16 signature?

17 A. [9:55:20] Yes.

18 Q. [9:55:20] And this is the statement, the first statement that you gave to the OTP  
19 Prosecutors.

20 A. [9:55:33] Yes.

21 MS SIMMS: [9:55:37] Your Honours, I'm going to ask for the witness --

22 Q. [9:55:40] Before moving on, Mr Witness, during the witness preparation session  
23 last week that we had on 4 May to 5 May, you were given -- you were given a list of  
24 documents titled "Annexes" to identify your signature.

25 A. [9:56:15] Yes.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Q. [9:56:17] And these documents were titled annexes 1 to annex 11.

2 A. [9:56:29] Yes.

3 Q. [9:56:31] And you spoke about these annexes, annex 1 to annex 11, in your first  
4 statement.

5 A. [9:56:49] Yes.

6 MS SIMMS: [9:56:51] Your Honours, because of the overlap between statements, the  
7 first statement and the second statement, I will move immediately to deal with the  
8 second statement and then proceed to deal with the clarifications which somewhat  
9 overlap between the first and second statement.

10 PRESIDING JUDGE KORNER: [9:57:08] I'm just wondering if there isn't a faster  
11 way of doing this each time. If they are serious clarifications or corrections, fine.  
12 But, I mean, having to go through this exercise each time when -- unless there's a  
13 Defence objection which is new, as opposed to this witness should be called fully live,  
14 then why can't this simply be agreed between the parties that the statement and the  
15 annexes are admitted, rather than going through what is a really, really unnecessary  
16 exercise and wasting your time, which I'm sure the Prosecution doesn't want?

17 MS SIMMS: [9:57:48] On this end, your Honour, there are certainly no objections to  
18 that approach.

19 PRESIDING JUDGE KORNER: [9:57:53] Mr Laucci, any objections to that approach?  
20 I appreciate you objected to most of these witnesses coming in this fashion, but  
21 having -- we having decided this is the proper way of admitting this evidence, can we  
22 just take it as agreed?

23 MR EDWARDS: [9:58:11] Yes, absolutely.

24 And in terms of the corrections that are contained in the preparation log, it won't be  
25 necessary for my learned friend, in our view, to go through the 14 or 15 corrections of

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 spelling, and things like that. That's fine.

2 PRESIDING JUDGE KORNER: [9:58:27] Thank you very much, Mr Edwards.

3 As I expect from you and Mr Laucci, as always, you assist in saving court time.

4 Thank you.

5 Right. Having said that, Ms Simms, do you want to just -- I know the rules say you

6 have to say do you agree to your statements being admitted, but can we just could

7 that and then -- and then move on and deal with those corrections which are major

8 ones?

9 MS SIMMS: [9:58:53] Very well, your Honours.

10 Q. [9:59:00] Mr Witness, the statements that you have provided to the OTP

11 Prosecutors, you agreed that these statements are true and correct to the best of your

12 knowledge and belief?

13 A. [9:59:25] Yes, true.

14 MS SIMMS: [9:59:25] Going forward, your Honours, in terms of logistics, I'll speak

15 about the statements as statement one and statement two. We'll go to page 031 of

16 the first statement.

17 PRESIDING JUDGE KORNER: [9:59:51] Give the paragraphs, Ms Simms. It's

18 easier for us than the page numbers.

19 MS SIMMS: [9:59:56] Your Honours, in relation to this document, it's really the first

20 page of the first statement.

21 Q. [10:00:11] And where we see "ethnicity", it's currently listed as "Arabic" on

22 statement one, but you have corrected it to state that it should be Fur.

23 A. [10:00:33] Yes.

24 MS SIMMS: [10:00:33] We will now go to annex 1, your Honour, which is the

25 translation. And this is found at tab 3.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Q. [10:01:11] Could you go to 1226, please.

2 And this is item, for the record, is 1225.

3 You're able to see this document, Mr Witness?

4 A. [10:01:29] Yes, yes.

5 Q. [10:01:30] Now, you have corrected the name of the village at item 16, which is  
6 currently marked as "Seder", as "Gausir"?

7 A. [10:01:49] Gausir.

8 MS SIMMS: [10:01:50] Noted for the record, your Honour, that the witness has  
9 corrected it to Gausir.

10 PRESIDING JUDGE KORNER: [10:01:59] Well, there is something called Gausir at  
11 the bottom.

12 MS SIMMS: [10:02:05] At -- yes, your Honour. That is the -- that is the Gausir  
13 village, your Honours. But item 16, your Honours, the witness corrected it in  
14 relation to his -- his evidence at paragraph 22, page 0318, in terms of his listing of  
15 material related to the Gausir village. So he indicates that at item 16, it should not be  
16 marked as "Seder", it should be marked as "Gausir".

17 PRESIDING JUDGE KORNER: [10:02:49] Oh, I see. All right.

18 MR EDWARDS: [10:02:55] As I -- as I indicated earlier, that there's no objection to  
19 any of this, so, yeah.

20 PRESIDING JUDGE KORNER: [10:02:58] I really think, provided there's nothing  
21 dramatically wrong with this map, or whatever, it doesn't make any difference, does  
22 it?

23 MS SIMMS: [10:03:09] Very well, your Honours.

24 PRESIDING JUDGE KORNER: [10:03:13] Right.

25 MS SIMMS: [10:03:14] Your Honours, I'm -- I'm only focusing here, going forward,

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 on what we would consider material issues.

2 Now I'll go to paragraph 78 of his first statement, and we're going to page 0331. And  
3 this may require a bit of mobility on the part of the court officer, your Honours,  
4 because immediately I'll ask for the second statement to be made immediately  
5 available, and this is at tab 28, page 2872. But we'll go to the first statement first, and  
6 it's paragraph 78.

7 Q. [10:04:25] Mr Witness, you were able to read paragraph 78, or paragraph 78 of  
8 your statement was read to you, which is in the first statement, and you spoke about a  
9 man by the name of Ahmed Harun?

10 A. [10:04:42] Yes.

11 MS SIMMS: [10:04:44] And we'll now go to the second statement, your Honours,  
12 and this is at tab 28. And we're going to paragraph -- page 2872, paragraph 48.

13 Q. [10:05:51] Mr Witness, you're able to see paragraph 48? You were  
14 read -- paragraph 48 of your second statement was read to you, and there you speak  
15 about a man, a minister of interior, by the name of Abd-Al-Rahim at page 48 of the  
16 second statement.

17 A. [10:06:16] Yes.

18 Q. [10:06:16] You have explained that the man you referred to in paragraph 78 of  
19 your first statement as Ahmed Harun, minister of interior, and the man in your  
20 second statement which you identify as minister of interior as Abd-Al-Rahim, that  
21 these two persons are the same persons that you're making -- you're talking about.

22 A. [10:06:53] Yes.

23 PRESIDING JUDGE KORNER: [10:06:54] And which of the two names is correct?  
24 Does the witness say?

25 MS SIMMS: [10:07:03]

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Q. [10:07:04] Are you able to answer to the Court as to which of the names is  
2 correct?

3 A. [10:07:08] Yes, Ahmed Harun.

4 Q. [10:07:21] Thank you.

5 A. [10:07:22] Thank you.

6 MS SIMMS: [10:07:22] your Honours, this is where we will now engage with the  
7 video, and here -- I don't know if the court officer is able to play the video. The  
8 reference to the video is at tab 33, and the English translation of the video is at tab 35.

9 THE COURT OFFICER: [10:08:09] Your Honours, the Registry will be displaying it  
10 from the evidence 1 channel.

11 MS SIMMS: [10:08:19] And the first timestamp, your Honours, is 27 -- minute 27:30  
12 to 29 -- to minute 29:11. And the related translation in the English transcript,  
13 your Honours, is page 0055, lines 363 to 377.

14 THE COURT OFFICER: [10:09:00] For the sake of publicity, the document -- or the  
15 video is marked as confidential.

16 MS SIMMS: [10:09:06] Yes.

17 THE COURT OFFICER: [10:09:07] Shall we play it publicly?

18 MS SIMMS: [10:09:08] It cannot be played in the -- in the public session.

19 THE COURT OFFICER: [10:09:10] Shall we move to private?

20 MS SIMMS: [10:09:13] The video identifies the witness, your Honours.

21 PRESIDING JUDGE KORNER: [10:09:17] All right. Yes. I've just seen people  
22 come into the public gallery.

23 Private session.

24 MS SIMMS: [10:09:23] Very well. Much obliged.

25 (Private session at 10.09 a.m.)

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Private Session)

ICC-02/05-01/20

- 1 THE COURT OFFICER: [10:09:33] We're in private session, Madam President.
- 2 MS SIMMS: [10:09:38] Thank you, your Honour.
- 3 And we need minute 27:30.
- 4 (Viewing of the video excerpt)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 MS SIMMS: [10:11:51] Thank you.
- 9 Q. [10:11:52] Now, Mr Witness --
- 10 Your Honours, given -- I'm sure Defence will agree that I forego the formalities
- 11 associated with the introduction of the evidence and go directly to the question.
- 12 PRESIDING JUDGE KORNER: [10:12:11] I'm not sure what the formalities you're
- 13 talking about are.
- 14 MR EDWARDS: [10:12:15] Neither am I, but it's fine. We don't dispute that this is the
- 15 witness.
- 16 PRESIDING JUDGE KORNER: [10:12:17] Right. Thank you.
- 17 MS SIMMS: [10:12:18] Very well, your Honours.
- 18 Q. [10:12:25] Now, Mr Witness, you -- last week you were able to watch this video,
- 19 and you --
- 20 A. [10:12:39] Yes.
- 21 Q. [10:12:39] -- you corrected the date given for the attack in Bindisi.
- 22 A. [10:12:46] Yes.
- 23 Q. [10:12:48] And, your Honours -- yes.
- 24 And you corrected the date from 14, day 14 to --
- 25 A. [10:13:03] -- to 15.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Private Session)

ICC-02/05-01/20

- 1 Q. [ 10:13:05] Noted.
- 2 Your Honours, I'll also ask for timestamp 32:22 to 33:53 to be played to the witness,
- 3 and the related translation is at page 3574, lines 409 to 426.
- 4 And, Mr Witness, if you need a moment to yourself, you can indicate to the Judges.
- 5 THE COURT OFFICER: [10:14:28] Your Honours, we are looking for the timestamp,
- 6 and we will proceed to play it shortly.
- 7 PRESIDING JUDGE KORNER: [10:14:35] While we're waiting, Ms Simms, I've been
- 8 reminded that rather than giving tab numbers, for the purposes of recordkeeping,
- 9 could you give the ERN numbers, as well as the tabs.
- 10 MS SIMMS: [10:14:48] Will do so, your Honour.
- 11 PRESIDING JUDGE KORNER: [10:14:52] Thank you.
- 12 MS SIMMS: [10:14:52] We have been playing item 0126-0065, audiovisual material,
- 13 and its related English translation is 0220-3562.
- 14 MR EDWARDS: [10:15:18] Your Honour, I wonder if it's possible for the interpreters
- 15 to read from the transcript so that the relevant bit of the video is actually on the
- 16 record.
- 17 THE INTERPRETER: [10:15:32] Message from the interpreters: Yes, your Honour, it
- 18 will be done.
- 19 PRESIDING JUDGE KORNER: [10:15:39] Well, you heard that, Mr Edwards.
- 20 THE COURT OFFICER: [10:16:41] Your Honours, with apologies, we seem to have a
- 21 technical issue. Nuix, the eCourt system, is down.
- 22 PRESIDING JUDGE KORNER: [10:16:54] In which case, can we -- are there other
- 23 corrections, Ms Simms, that you feel you ought -- can we move on, leave the video,
- 24 and come back to it?
- 25 MS SIMMS: [10:17:00] We can, your Honours. We can.



Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 PRESIDING JUDGE KORNER: [10: 17:02] All right.
- 2 Can we come back out of private session, then?
- 3 MS SIMMS: [10:17:10] Very well, yes, your Honours.
- 4 PRESIDING JUDGE KORNER: [10:17:12] I mean go back into public, rather.
- 5 MS SIMMS: [10:17:18] And for the record, your Honours, there are no further
- 6 clarifications to the video. His other clarifications relating to the video were made in
- 7 his second statement.
- 8 (Open session at 10.17 a.m.)
- 9 THE COURT OFFICER: [10:17:39] We're back from open session, Madam President.
- 10 PRESIDING JUDGE KORNER: [10:17:41] Yes, Ms Simms.
- 11 MS SIMMS: [10:17:51]
- 12 Q. [10:17:51] Mr Witness, during the witness preparation session -- and I'm going
- 13 to ask for paragraph 28, which is page 0319 of the first statement.
- 14 PRESIDING JUDGE KORNER: [10:18:11] Are you sure you're going to be able to
- 15 have that in front of the screen -- sorry, in front of -- on the screen? I think that's the
- 16 problem. So I think you'll just have to ask him about the correct -- lead on the
- 17 corrections, unless the Defence object.
- 18 MS SIMMS: [10:18:30] Yes, your Honours. I do have physical copies of two related
- 19 documents for that paragraph that I can show to the witness, given that it will not be
- 20 available to him online. They're in the witness binder. So this is for the benefit of ...
- 21 PRESIDING JUDGE KORNER: [10:18:58] I'm sorry, Ms Simms. Judge
- 22 Alapini-Gansou was asking me something. Can you -- if you think -- yeah, if you
- 23 can just make it clear each time when you're referring to a paragraph from the first
- 24 statement and when to a paragraph from the second.
- 25 MS SIMMS: [10:19:15] Yes, your Honours.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [10:19:17] Thank you.

2 Where are we now?

3 MS SIMMS: [10:19:25] We're at the first statement, page 0319.

4 Q. [10:19:47] Now, Mr Witness, when -- paragraph 28, last week you handed

5 over -- I see that we're now back online, your Honours.

6 First statement, paragraph 28. When that paragraph was read to you, Mr Witness,

7 you immediately handed over two documents.

8 A. [10:20:13] Yes.

9 Q. [10:20:16] I'm going to take you through those two documents one at a time.

10 A. [10:20:25] Yes.

11 Q. [10:20:26] The first document is at tab 36, and it is 0220-3921.

12 I'm waiting on the court officer to indicate if they're able to pull up document

13 0220-3921. It's at tab 3, 6, 36. 3921, at 36, tab 36. Thank you. The document is

14 now on the screen. Mr Witness, I'm going to ask you not to mention the name of the

15 person, okay, that you received the item from, because we're in public session here.

16 Now, you received these -- this document from an individual, and this document, this

17 person states that it was given to him by Ali Kushayb.

18 A. [10:23:24] Yes.

19 Q. [10:23:25] And this individual also stated that Ali Kushayb signed this

20 document.

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

22 Q. [10:23:38] And looking at the document, you marked the signatures as "A".

23 A. [10:23:52] Yes, I put a circle around it.

24 Q. [10:23:54] Okay. A circle, and you also marked a second wording, which in

25 English is Ali, as "B".

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 A. [10:24:11] Yes, also circled.
- 2 Q. [10:24:17] We'll now go to the second --
- 3 PRESIDING JUDGE KORNER: [10:24:19] Just before the leave the document.
- 4 MS SIMMS: [10:24:21] Yes, your Honours.
- 5 PRESIDING JUDGE KORNER: [10:24:22] I don't suppose by any chance the
- 6 original's in court, is it?
- 7 MS SIMMS: [10:24:28] Your Honours, we do not have the original.
- 8 PRESIDING JUDGE KORNER: [10:24:31] What was handed over was a photocopy
- 9 of it.
- 10 MS SIMMS: [10:24:33] Was a photocopy of -- of an original document. The
- 11 Prosecution will send an email later today, your Honour, to correlate the potential
- 12 relevance of these documents in relation to another witness to come.
- 13 PRESIDING JUDGE KORNER: [10:24:53] Yeah. I mean, it's just that it's -- it's not a
- 14 terribly good copy, and it's very, very difficult to see what it is exactly.
- 15 MS SIMMS: [10:25:01] Agreed, your Honours.
- 16 PRESIDING JUDGE KORNER: [10:25:02] Right. Okay.
- 17 MR EDWARDS: [10:25:05] Your Honour, just two things. Unfortunately, I think
- 18 this is the first time we are given to understand that it was a copy. I think our
- 19 understanding was it was original.
- 20 And secondly, just to put it on the record, we don't accept that the circled name spells
- 21 out the word "Ali". We'll explore that a bit later, but lest there be any concern that
- 22 this is agreed, it's not.
- 23 PRESIDING JUDGE KORNER: [10:25:37] All right. Thank you.
- 24 MS SIMMS: [10:25:38] Noted.
- 25 Q. [10:25:41] Now we go to the second document, and this is at tab 38. And it's

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 0224-05 -- sorry, 0220-3922, and it's at tab 37.

2 Mr Witness, the document in front of you is the second document that you handed  
3 over to us.

4 A. [10:27:51] (No interpretation)

5 Q. [10:27:52] And you state that you received it from the same person who handed  
6 over to you the document said to be signed by Ali Kushayb. And this document is a  
7 list of names and items that were taken from them.

8 A. [10:28:31] Yes.

9 MS SIMMS: [10:28:31] Your Honours, I'll canvass with Defence because  
10 they're -- these documents relate to paragraph 28 of the first statement, and to remain  
11 in public session I won't go further, because that paragraph sets out the name of the  
12 individual and what it relates to in relation to the two documents. There are a  
13 number of individuals that this witness speaks to, and it's at -- on pages 8 to 9 of the  
14 witness log. If Defence agrees, I'll forego going into private session to deal with  
15 these four -- these individuals and instead rely on the information in the log.

16 MR EDWARDS: [10:29:21] Yes, we're content.

17 PRESIDING JUDGE KORNER: [10:29:23] Thank you very much, Mr Edwards.

18 Yes, well, there's your answer, Ms Simms.

19 Sorry, is there a translation of whatever this list is?

20 MS SIMMS: [10:29:33] Your Honours, we are in the process of getting a translation.

21 Currently what we have is unofficial in-house translation.

22 PRESIDING JUDGE KORNER: [10:29:43] Give us a rough idea, would you, or see if  
23 the witness will confirm what this is. Is it -- it's a list items taken, is it?

24 MS SIMMS: [10:29:53] Yes, your Honours. However, the person who had  
25 the -- who reviewed it for purposes of translation wasn't able to extract a lot of

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 information from the item. But, your Honours, we mark it, the Prosecution is taking  
2 further efforts in relation to these documents.

3 PRESIDING JUDGE KORNER: [10:30:15] Well, hang on. The poor witness has  
4 been sitting here not being able to say very much. Does he -- can he give us a rough  
5 idea at all of what these items are?

6 MS SIMMS: [10:30:25] Very well, your Honours. I'll ask.

7 Q. [10:30:29] Mr Witness, in relation to the document in front of you, can you --

8 A. [10:30:31](No interpretation)

9 Q. [10:30:34] Can you explain the items that were taken from these individuals by  
10 Ali Kushayb.

11 A. [10:30:43](No interpretation)

12 Q. [10:30:51] Go ahead, please.

13 A. [10:30:54] Can I have it enlarged a bit so that I can see it.

14 PRESIDING JUDGE KORNER: [10:31:05] Sir, you can, I think. We don't require  
15 you to go through every item. Just give us a rough idea of what is reflected. Is it  
16 furniture? Is it cattle? Whatever it is.

17 THE WITNESS: [10:31:32](Interpretation) The items on the paper, on the list, we  
18 were talking here about 2003, and they went through Garsila to bring food items. So  
19 these are food items that are brought to the IDPs. After coming back, there there is a  
20 *khör* called *khör* Munga, the valley of Munga. So there -- there -- there they saw the  
21 Janjaweed, and the Janjaweed took all the food items. So we have -- so it was  
22 told -- there was said that all the food items were stolen, and then the food items are  
23 listed and then Ali Kushayb had put his signature on the list where the food items are.  
24 And then he would ask the people to just continue walking, and it was like a paper  
25 that would allow the people to continue walking.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 So this is a document that is proof of what the people had in terms of food items.

2 And we have an original copy. This is not the original copy.

3 And then we continued walking and then I asked a colleague of mine to keep the  
4 paper or to keep the list.

5 PRESIDING JUDGE KORNER: [10:33:20] Sir, I'm really sorry, and can -- and that's  
6 very helpful and thank you very much, but you're going to have to slow down. In  
7 order for us to understand what you're saying, the interpreter has to be able to keep  
8 up. So if you could try just to slow down. Okay? But thank you very much.  
9 That's very helpful.

10 THE WITNESS: [10:33:46](Interpretation) Yes, thank you. I will do that.

11 MS SIMMS: [10:33:51] Your Honour, in the spirit of cooperation with the Defence,  
12 there are four documents, satellite images, which were marked by the witness during  
13 the preparation session. If Defence agrees, we can agree to their introduction.

14 These are at items 38 to 41, which were marked. Tab 38 to 41.

15 MR EDWARDS: [10:34:23] Yes, of course. No objection.

16 MS SIMMS: [10:34:34] Thank you.

17 I'll now ask for the first statement, paragraph 75, page 0330, to be put on screen.  
18 0330, paragraph 75.

19 Q. [10:35:36] Mr Witness, at paragraph 75 and 76, you state there that you saw men  
20 in a Land Cruiser.

21 A. [10:35:51] Yes.

22 Q. [10:35:51] And the man who was in the front passenger seat was identified to  
23 you as Ali Kushayb.

24 A. [10:36:08] Yes.

25 Q. [10:36:09] When you first saw this vehicle, how far were you? How far away

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 were you from this vehicle when you first saw it?

2 A. [10:36:32] Approximately 10 or 12 metres in the street.

3 MS SIMMS: [10:36:36] And, your Honours, using the -- the document provided in  
4 terms of the distances in the court, 12 -- about 12 metres is exactly where the witness  
5 is to the back of the wall behind you, your Honours. About 12 metres.

6 PRESIDING JUDGE KORNER: [10:36:57] I'm looking at the court. Sir, do you  
7 agree that's about the right distance?

8 THE WITNESS: [10:37:12](Interpretation) Yes, because there's a street, there's a  
9 street in the middle.

10 MR EDWARDS: [10:37:18] Your Honour, out of curiosity, is -- are the dimensions of  
11 this court -- this is court 1. We've got a document relating to court 3, courtroom 3.  
12 Is it the same? I don't --

13 PRESIDING JUDGE KORNER: [10:37:29] Good point, Mr Edwards. We've moved  
14 courts.

15 Does anybody know if it's the same? I don't think it is, actually. I think court 3 is a  
16 lot smaller.

17 Anyhow, but the witness thinks -- that's why I think you were doing it the wrong way  
18 around, if I may say so, Ms Simms.

19 MS SIMMS: [10:37:48] Yes, your Honours.

20 PRESIDING JUDGE KORNER: [10:37:50] If you'd ask the witness to -- but he agrees.  
21 It seems to be between where he's sitting and the back of the court here.

22 MS SIMMS: [10:37:56] Yes, your Honour.

23 PRESIDING JUDGE KORNER: [10:37:57] Whatever that may be. And I think it's  
24 probably more than 12 metres.

25 MS SIMMS: [10:38:04] I don't know if I could rely on counsel, the better measurer, to

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 indicate distance.

2 PRESIDING JUDGE KORNER: [10:38:14] No. It will be noted on the transcript that  
3 he says the distance was between where he's sitting, the back of the court, in  
4 courtroom number 1. And if required, we can get measurements.

5 MS SIMMS: [10:38:27] Very well, your Honours.

6 Q. [10:38:29] Now, the person who was seated in the front passenger seat, which  
7 part of his body did you see?

8 A. [10:38:52] He was wearing pants. He was wearing pants the colour of tea with  
9 milk.

10 THE INTERPRETER: [10:39:08] I'm sorry, I didn't hear the last part of the witness  
11 statement. Can he repeat, please, the last part of his answer.

12 MS SIMMS:

13 Q. [10:39:18] Can you repeat the last part of your answer.

14 A. [10:39:29] He was wearing pants. He was wearing pants. The colour is tea  
15 with milk. The colour was tea with milk. He had a shawl around his neck. And,  
16 of course, he was coming from the north and he was going east - excuse me - south.

17 THE INTERPRETER: [10:40:00] The witness corrects.

18 THE WITNESS: [10:40:11](Interpretation) I was coming from the west and going  
19 east in the street.

20 MS SIMMS: [10:40:15]

21 Q. [10:40:16] Thank you, Mr Witness.

22 Now, you say that he had a shawl around his neck. Were you able to see his face?

23 A. [10:40:26] Yes, I was.

24 Q. [10:40:35] Now, during the time that you saw this person in the front passenger  
25 seat, did he come closer to you than the distance that you earlier indicated from



Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 where you're sitting to the back of the room?

2 A. [10:41:02] Yes. After I saw him, he was in the car. There was a military man  
3 and there was a Janjaweed -- person from the Janjaweed who had a backpack towards  
4 the east of the street. He removed the bag from the car. And there was a soldier  
5 who was there, as I said, and he had a rifle. Of course, he had a weapon. And then  
6 he was told to shoot the Janjaweed so that he would throw the bag. He rode in the  
7 car, and he went away. And he was asking the soldier to bring the weapon. And  
8 he showed the weapon and pointed it at the man, and then he got out of the car.  
9 And then the man was put in the car, and then the soldier rode in the same car and  
10 they went. And after crossing a distance I was seeing all that, and I saw that the  
11 soldier took the rifle while he was in the car.

12 PRESIDING JUDGE KORNER: [10:42:34] You must slow down, sir. I know it's  
13 difficult, but if you want us to understand what you're telling us, we need to hear the  
14 interpretation accurately.

15 MS SIMMS: [10:43:01]

16 Q. [10:43:01] Mr Witness, you said that he came, the man in the front passenger  
17 seat came closer to you that day. Using where you are seated now, what was the  
18 closest point that he came to you that day? And you can use where you're sitting to  
19 point to the closest point that he was.

20 A. [10:43:33] Yes, yes, I understood that. The distance, it's the distance between  
21 the Judge and the end of the court and the back of the court. That was the distance.

22 Q. [10:43:49] Okay. So you're saying the starting point of the distance, you would  
23 be standing where the Judge is, and to the back behind the Judge is where you saw  
24 the person at the closest point?

25 PRESIDING JUDGE KORNER: [10:44:05] No. No, I think it's the other -- I think it's

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 the other way around.

2 THE WITNESS: [10:44:09](Interpretation) Yes, yes, approximately that.

3 PRESIDING JUDGE KORNER: [10:44:16] Apart from anything else, Ms Simms.

4 I'm not sure you can -- I don't think his explanation of what happened in the car is

5 very clear to anybody. But leaving that aside, I think, as he originally indicated, the

6 first time he saw the person he says is Ali Kushayb, it was the distance from where he

7 sits to the back of the court. And then it's from where he sits to where we're sitting.

8 So it's closer, but not much. But that's my understanding. But I think maybe the

9 witness --

10 MS SIMMS: [10:44:55] Perhaps I should clarify. Yes, your Honour.

11 Q. [10:44:58] Mr Witness, if you're able to use where you're sitting now as the

12 starting point, that's where you were -- we're going back in your memory. That's

13 where you were when you saw Ali Kushayb. You said that he came closer to you

14 that day. And if you're able, position the closest point that Ali Kushayb came to you

15 that day, if where you're seated now is where you were standing on the day.

16 If you need assistance -- your Honours, perhaps I could ask him to position a court

17 officer or a member of the court, if that would help.

18 PRESIDING JUDGE KORNER: [10:45:47] Let's see what he says.

19 MS SIMMS: [10:45:48] Very well, your Honours.

20 THE WITNESS: [10:46:02](Interpretation) I was not talking in metres, but roughly

21 between 10 to 12 metres. Roughly.

22 MS SIMMS: [10:46:15]

23 Q. [10:46:15] Now, Mr Witness, I'm going to follow up on that. Was he closer to

24 you than the distance that you have pointed out of about the 12 metres? Did he

25 come closer to you?

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 So if you're sitting there and, say, on the day I'm Ali Kushayb, where -- where was Ali  
2 Kushayb when he came to you at the closest point that day? Is it about this distance  
3 from where you are to me, or is it where you are seated to the back of this courtroom?

4 A. [10:47:08] It's between where I am now and the back of the court. This is the  
5 distance. It's between me and the back of the court. This is how he was close to me.

6 MS SIMMS: [10:47:21] Your Honours, I will move on.

7 Q. [10:47:27] Mr Witness, you said that Ali Kushayb spoke to a soldier.

8 A. [10:47:38] Yes.

9 Q. [10:47:39] And when he was talking to this soldier, which part of his body were  
10 you able to see? Were you looking at the back of him or the front of him? Were  
11 you able to see his face when he was speaking to the soldier?

12 A. [10:48:03] I saw him from the front.

13 Q. [10:48:07] And when you say "the front", his head to his feet?

14 A. [10:48:17] I wasn't sure. I didn't see him from head to feet. He was wearing  
15 pants, as I have said. And as I have said, he had a shawl. So this is all I was able to  
16 see.

17 I was walking in the southern part of the street and he was coming from the north  
18 going towards the south of the street. This is why I was able to see him.

19 But I was very afraid at that time. This is why I saw him. And I passed -- I looked  
20 away and I continue walking.

21 PRESIDING JUDGE KORNER: [10:49:11] Ms Simms, after 15 minutes or so, we're  
22 back to square one. I think we could move to another topic.

23 MS SIMMS: [10:49:20] Yes, your Honours. A final question I have, your Honours,  
24 in relation to this.

25 Q. [10:49:26] Are you able to say how long you saw Ali Kushayb for on that day, in

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 terms of time?

2 A. [10:49:44] It was not a long time. It was a short time. Maybe three minutes,  
3 four minutes. Not more.

4 Q. [10:49:53] Thank you. And this man, if you were to see him again, you'd be  
5 able to identify him?

6 A. [10:50:06] Yes.

7 PRESIDING JUDGE KORNER: [10:50:10] You're not seeking a dock identification,  
8 are you, Ms Simms?

9 MS SIMMS: [10:50:12] Your Honours, I just ventured in the realms of possibility, if  
10 the Court is so minded.

11 PRESIDING JUDGE KORNER: [10:50:18] No, the Court is not.

12 MS SIMMS: [10:50:26] Very well, your Honours. I'll move on to another topic,  
13 your Honours.

14 Q. [10:50:33] Mr Witness, you have stated in your first statement that you saw them  
15 detaining men who were about 18 to 16 years in Mukjar.

16 A. [10:50:59] Yes.

17 Q. [10:50:59] Are you able to explain to the Court why these men were being  
18 detained, were being arrested?

19 A. [10:51:23] Regarding the detention and the arrest, of course, it was in 2004, the  
20 start of 2004, after Ali Kushayb came and walked to the east of Mukjar, to the -- to the  
21 east of Mukjar. So after walking there, they -- in the morning they started walking  
22 and they went to the first village on the east of Mukjar, which is a village called Arada.  
23 They walked there. And after a certain period of time, there was a person, a leader,  
24 called \*Al-Dayf Al Samih Gebriel. He was on a horse, on a red horse. And after a  
25 while, they came and they were there. I know that man because he was living with

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 me in Kabuk, in a region called Kabuk.

2 I was a friend of his family, and we were sitting there eating together and drinking

3 together. So I know him personally. And he was talking with some people from

4 the Janjaweed. He was saying that they were from the resistance and they were

5 going back. I was standing there in the street from Mukjar to Nyala, in the place

6 called Arada and Indiri and Dembo. I was seeing him there. There were two

7 vehicles, one in the front, a Land Cruiser, and another vehicle for someone called

8 Torshein. And there were two vehicles in the back, and they were going eastward.

9 And after going eastward, they went toward Indiri and Arada, and they went into

10 other regions in Sindu. And after burning all the places there, there were IDPs, there

11 were children and women trying to get out of the region. There were gates at

12 the -- on the surroundings. So whenever they saw anyone who was 16 year old or 18

13 year old, they could take them and they would detain them or arrest them. And

14 they would collect all these people, all these young men, in a certain point. They put

15 them there. They take them to the east of the current police station of Mukjar.

16 There there were three trees, dried up trees, they put them there. And there were

17 soldiers then who brought them food on big plates. I was there. I was

18 approximately 200 metres far from that place in the market, and I saw all the IDPs

19 there in that specific point.

20 They brought them food. And I was seeing a soldier with a soldier uniform, a green

21 soldier uniform, and he had a stick. He was looking at people. He was threatening

22 people. And he was dividing people into two parts, into two groups.

23 They took the first group, which was made of the youngest people, and they took

24 them towards the west. There was a place there for the detention and the group was

25 taken inside. I saw that person there and I knew he was Dr Hussein Mukhtar Ali. I

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 was able to know that because of the short distance.

2 Q. [10:56:28] Thank you, Mr Witness.

3 PRESIDING JUDGE KORNER: [10:56:32] Ms Simms, I'm really sorry, but you didn't  
4 indicate what paragraph. But am I taking it this is paragraphs 86 through to 88?

5 MS SIMMS: [10:56:40] Eighty-five through to 88, your Honours.

6 PRESIDING JUDGE KORNER: [10:56:43] Yes. All right. And what -- what did  
7 you want to him to add to what's already in there?

8 MS SIMMS: [10:56:48] Your Honours, I wanted information -- information in  
9 relation to if he's able to explain why they were taken into custody.

10 PRESIDING JUDGE KORNER: [10:56:59] Yeah. Well, What you got was a  
11 complete redescription of the event.

12 MS SIMMS: [10:57:03] Yes, your Honours. I'll try again, your Honours.

13 PRESIDING JUDGE KORNER: [10:57:08] I mean, do you want to?

14 MS SIMMS: [10:57:10] Your Honours, I'll follow the Chamber and I'll not,  
15 your Honours.

16 PRESIDING JUDGE KORNER: [10:57:17] I mean, as I'm sure you appreciate,  
17 Ms Simms, it's -- these are traumatic events for any witness and trying to keep them  
18 to a single straightforward answer is difficult. But all you've done is, in my view,  
19 I'm afraid, spent a lot of time getting him to repeat what's already in the statement.

20 MS SIMMS: [10:57:38] Very well, your Honours.

21 Your Honours, at this point I will conclude the examination-in-chief.

22 And, Mr Witness, you will field some questions from the Defence.

23 PRESIDING JUDGE KORNER: [10:57:51] Well, no, before we do that, firstly, we're  
24 going to have a break, as I'm sure the witness would like a break. Secondly, we have  
25 the victim -- yes, I haven't forgotten you, Ms von Wistinghausen. And then we get

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 to the Defence. All right.

2 Sir, there's going to be a break now of half an hour. It will give you a chance to relax  
3 and possibly even get a cup of coffee or something.

4 Yes, Mr Nicholls.

5 MR NICHOLLS: [10:58:17] Thank you, your Honour. Witness can -- nothing to do  
6 with the witness, so he --

7 PRESIDING JUDGE KORNER: [10:58:23] Yes. If you'd like to go with the court  
8 official, they'll show you where to go.

9 (The witness exits the courtroom)

10 MR NICHOLLS: [10:58:30] Just, your Honour, I'm not sure if the next witness may  
11 start or be able to start today. He's scheduled for tomorrow morning.

12 However, if the remaining questioning goes quickly, it's possible, I think that he could  
13 start today. I see my friend nodding. The witness has not yet had his courtroom  
14 familiarisation that we normally attend, so if he starts this afternoon, that would  
15 probably have to be during the lunch break. And I would ask permission to attend  
16 that, even though it's within the 24 hours. We would not discuss any substance, but  
17 I promised him in the prep session that I would be here and show him where I sit and  
18 where your Honours sit. And so, just asking to be present for that, if -- even though  
19 it's within the 24-hour cutoff in your -- in the witness preparation protocol.

20 MR LAUCCI: [10:59:33] Yes, Madam President, and we would support and make  
21 the same request, to attend the familiarisation session at lunchtime, if possible.

22 MR NICHOLLS: [10:59:43] And, of course, no substance is discussed.

23 PRESIDING JUDGE KORNER: [10:59:47] No. Well, I'm -- have you met the  
24 witness, Mr Laucci?

25 MR LAUCCI: [10:59:50] Not at all.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [10:59:53] All right. All right. Yes, fine. There's  
2 no problem.

3 I'm afraid this morning's exercise has made it absolutely clear there must be a better  
4 way of doing this. I don't think it's helpful to a witness, or to anybody else, to have  
5 such a lengthy attempt to make a few corrections to a statement.

6 Ms Simms, I'm not blaming you either. I mean, the witness gave you a very long  
7 answer, but it doesn't seem to me that this is the best use of court -- of valuable court  
8 time.

9 And so I invite the parties, really, to see if we can't cut this sort of correction of the  
10 statement aspect a lot shorter than it's proving to be at the moment.

11 MR NICHOLLS: [11:00:45] Your Honours, you have raised that before. We take  
12 that on board. We will, with the Defence, see what is not in dispute at all and does  
13 not need to be led, and put any of those corrections in -- in writing so that your  
14 Honours are able to see what corrections were made by the witness. And we will  
15 focus on only leading the most important substantive follow-up questions that may  
16 need to be live.

17 PRESIDING JUDGE KORNER: [11:01:17] There's one other thing I note. I think  
18 Ms Simms made reference to the log, which I'm not sure we were supplied with. I  
19 mean, you said something was listed in a log.

20 MR NICHOLLS: [11:01:37] Your Honours, normally the practice has been that the  
21 actual preparation log itself has not been supplied to the Court.

22 PRESIDING JUDGE KORNER: [11:01:43] But I think Ms Simms was asking for  
23 redaction of something that was in the -- simply in the witness log, preparation log.

24 MS SIMMS: [11:01:55] Your Honours, I think based on the exchanges between the  
25 Defence and myself and the Court, we'd earlier agreed that we would submit the



Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 witness log and the -- portions of the witness log in relation to the clarifications, that  
2 we would submit those on the record.

3 PRESIDING JUDGE KORNER: [11:02:15] I see.

4 MS SIMMS: [11:02:16] So what I'll proceed to do is to have the parts of -- the  
5 clarification parts of the document registered, disclosed to the Defence, and also  
6 submitted among the items for introduction into evidence.

7 PRESIDING JUDGE KORNER: [11:02:31] Yes. All right. Well --

8 MR EDWARDS: [11:02:34] No, just briefly. In other jurisdictions, in other  
9 international jurisdictions, sometimes these uncontroversial corrections to previous  
10 statements and interviews are reduced into writing, signed by the witness as a new  
11 witness statement, and -- and that deals with matters very neatly and very, very  
12 quickly.

13 PRESIDING JUDGE KORNER: [11:02:59] I was going to say, I mean, my experience  
14 only has been one of the ad hoc tribunals, but I don't remember this going on like this  
15 at all. So there must have been some method by which corrections were made.

16 All right. Anyhow, I know I've raised it for the second time, but I really do think  
17 that a whole session devoted to this is overdoing it.

18 All right. We'll sit again at - it's five past 11 now - 25 to 12. Yes, thank you.

19 THE COURT USHER: [11:03:29] All rise.

20 (Recess taken at 11.03 a.m.)

21 (Upon resuming in open session at 11.40 a.m.)

22 THE COURT USHER: [11:40:44] All rise.

23 Please be seated.

24 PRESIDING JUDGE KORNER: [11:41:09] Yes, before we carry on, it's been brought  
25 to my attention - and I'm pretty certain that I'm one of the worst offenders - that it is

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 really important before asking the next question that the translation of the answer  
2 finishes. There's a lot of -- been a lot of overlap this morning. So we need to be  
3 quite careful about that.

4 And I think there was one other thing, wasn't there, Wilfred? Thank you.

5 And you must remember - and, again, I'm a sinner as well - to turn off the  
6 microphone when you finish speaking, because otherwise the voice distortion doesn't  
7 work.

8 Yes. Right. Sir, I hope you've had a good break. And you're now going to be  
9 asked questions by Ms von Wistinghausen.

10 QUESTIONED BY MS VON WISTINGHAUSEN:

11 Q. [11:42:18] Yes. Good morning, Mr Witness. I hope you remember that we  
12 met very briefly yesterday afternoon and I introduced myself.

13 A. [11:42:33] God willing.

14 Q. [11:42:35] And me and my colleague next to me, we're representing the victims  
15 who are participating in these proceedings.

16 A. [11:42:48] Okay.

17 Q. [11:42:50] Mr Witness, just like the Judges and the Prosecutors, and also Defence  
18 counsel, we have all read the witness statements that you gave to the Prosecution in  
19 2020 and 2021, so we're very well aware of everything you have seen and everything  
20 you've lived through.

21 A. [11:43:19] Okay.

22 Q. [11:43:19] And I have a few questions to you that relate to the consequences of  
23 what you have seen and what you have suffered.

24 A. [11:43:33] Okay.

25 Q. [11:43:34] Firstly, I want to ask you about your village. And don't mention the

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 name of your village, but can you tell the Judges how life was in your village before  
2 the attack in August 2003. And maybe also describe to them what the village looked  
3 like -- looked like after the attack.

4 A. [11:44:10] Before the attack, people were living calmly, were at ease. But after  
5 the attacks, what I can remember, even myself, I remember that this event that  
6 happened in 2003 was unseen in our history, in our recent history, because what  
7 happened was followed with destruction. In my entire life, I'm 63 years old, I have  
8 never seen a whole village being burnt down to the ground by these attacks. This  
9 was very painful. Even today this is still painful, and I'm still suffering today. My  
10 father is 103 years old. He is still alive, thank God. When I went back and saw him,  
11 he told me that we had never seen anything similar to these events. In the past 80 or  
12 90 years, we had never seen anything similar, although we had seen wars before. So  
13 this was a very important lesson for me and for the whole community.

14 Also, what really makes me suffer is that I lost five of my daughters. And also, what  
15 makes me suffer even more is that I was tortured, while I had nothing to do with any  
16 of the crimes and charges. I was innocent. I was just there. And because of a  
17 mixture with my name or something, I was detained and then tortured.

18 Even today, even now, at this moment, I cannot read this page. If I read anything  
19 my eyes get teary, and that is a result of the suffering I had sustained. Every day I  
20 remember what had happened. I start crying and I remember all the torture and the  
21 suffering, and this makes me suffer even more.

22 Also, all the signs of the torture, all the scars in my body. One day I might feel better,  
23 but then my body gets really tired and I suffer, I'm in pain. And I always ask myself  
24 why was I tortured. I had no information. I had committed no crime. And this  
25 makes me suffer even more.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 I had 18 child -- 18 children, and I thank God for that, but all my livelihood was  
2 destroyed, all the source of my living had been destroyed and I was not able to gain  
3 anything as a result of that. There was big responsibility on my shoulders. And of  
4 course I rely on God, but after what had happened I apologised to my children,  
5 because even those who are adults now, who are much older, they can work, but they  
6 have to rely on themselves because I cannot support them. And I thank God that  
7 they were able to sustain themselves and follow a better education. But this makes  
8 me suffer a lot. And whenever I remember what happened, I suffer even more.

9 Q. [11:48:55] I'm not going to ask you any details because we don't want to cause  
10 you more stress, but I thank you for sharing this with us and with the Judges.

11 I have just a few more questions. In your statement you have talked about people  
12 who were displaced after the attacks. And I'm referring to paragraph 15 of the  
13 statement, of the first statement. And there you said that Bindisi town had  
14 approximately 10,000 people in 2003 and 2004, but today - and today was when you  
15 gave the statement in 2021 - there is way more due to the IDP, the internally displaced  
16 people that are there.

17 Can you tell us where these people come from and how many are there,  
18 approximately.

19 A. [11:50:03] Bindisi, yes, approximately before the events, or before the attacks in  
20 2003, had about 10,000 inhabitants, but now the number is way bigger because there  
21 are many villages, more than -- about six, seven, or eight villages that were destroyed  
22 and the villagers had to move from the north and from the south. Bindisi -- south  
23 Bindisi was totally burned down and so we all had to be displaced and to go to  
24 Mukjar. Two months later people returned.

25 Can -- I can name some of the villages where the inhabitants joined Bindisi. We have

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Suni, Rasaule, Kofina, Jartaga, Kalambasina, Qwimana, Kudo, Tetene, Western  
2 Juguma and Samukidik. These are the villages where the villagers joined Bindisi.  
3 All the inhabitants of these villages are IDPs. They are living currently in the  
4 northern part of Bindisi and most of them in the southern part of Bindisi.  
5 Q. [11:51:45] Thank you. Have you been to the camps yourself and can you tell us  
6 something about the living conditions in the camps?  
7 A. [11:52:02] Yes, I visited the camps, and I also visited the villages that were  
8 burned down, totally burned down. About 57 villages that were completely burned  
9 down. The camp -- right now, living in the camp is very difficult. Economically,  
10 education is not available in the camps. Also living. And the living conditions are  
11 very hard because men could not leave the camp, not even travel for one kilometre  
12 outside the camp for work, because men used to leave to go to work and to provide  
13 some sort of living, maybe a simple income. But people could not leave the camp  
14 and go outside the camp for a long distance, not more than one kilometre away  
15 outside the village.  
16 There were some aid, and really particularly with food staples, but these were not  
17 sufficient. If you are the husband, the father of the family, you cannot sustain your  
18 family with four kilogramme of food per month or a few litres of oil. What does that  
19 mean? It means that men were not able to provide for their families. Some would  
20 try to find a simple job or work the land to get some simple crops in return and to  
21 provide some food for the family, but this was not sufficient. So the situation is very  
22 difficult. The IDPs are still there and living is still very difficult.  
23 I can talk about myself. Until now, I'm still living in the -- in straw, a house of straw.  
24 Because of the economic situation, there is no way to have an income. Otherwise, I  
25 wouldn't be living in these circumstances where I am now. And this is all due to the

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 deteriorating economic situation. I don't want to take too much of your time, but in  
2 general the situation for the IDPs is terrible. It's really bad.

3 Q. [11:54:54] Thank you, Mr Witness. There's one other area of your witness  
4 statement that I would like to touch upon. You described -- and this is at paragraph  
5 96 of the first statement. You described interacting with a number of rape victims  
6 and treating some of them, as well as participating in trainings. From this  
7 experience, can you say anything about the long-term consequences for these victims,  
8 both physically and psychologically.

9 MR EDWARDS: [11:55:33] Your Honour, forgive me. I'm going to renew a similar  
10 objection to the one I made a couple of weeks ago when my learned friend for victims  
11 started to examine a Prosecution witness on -- in respect of rape. This wasn't led by  
12 the Prosecution. The information is in the witness statement and my -- my concern  
13 is similar to the concern I had a couple of weeks ago, that it's not appropriate, in my  
14 submission, for the LRV to -- to adduce addition evidence relating to specifically the  
15 issue of rape.

16 MS VON WISTINGHAUSEN: [11:56:21] If I may just quickly respond.  
17 We're not touching upon any specific events. We have a witness here who, by his  
18 background, had a lot of interaction with rape victims at the time, participated in  
19 trainings and may be able to say something about long-term impact. And this is  
20 what my question is aiming at.

21 PRESIDING JUDGE KORNER: [11:56:48] In fact, Ms von Wistinghausen, I was  
22 about to say the same thing. It's slightly different. It's not actually asking the  
23 witness about rapes he's witnessed. But because of his special position that the  
24 effects, it seems to me that is something he can deal with and doesn't certainly impact  
25 on a specific incident.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 So I think, Ms von Wistinghausen, yes, you can go ahead and ask the question, or the  
2 witness can answer it.

3 MS VON WISTINGHAUSEN: [11:57:27]

4 Q. [11:57:27] Mr Witness, would you like me to repeat the questions, or can you  
5 answer right away?

6 A. [11:57:37] I can answer directly regarding rapes, because (Redacted)  
7 (Redacted)

8 I was working (Redacted), so I was collaborating with (Redacted)  
9 (Redacted) and I was in charge of nutrition and cases related to rape. It is true  
10 that I treated about seven cases of rape and I received training.  
11 In any case of rape, if it is within 72 hours of the rape, we need to give them  
12 antibiotics and provide them with certain treatment. After 72 hours, if the victim  
13 comes to see me after 72 hours, I will give only antibiotics. I was -- I received,  
14 actually, this type of training and -- and I will also conduct a clinical test for the victim  
15 to check to -- to check the health situation directly. We check the clothes, the clothes  
16 would be ripped. And we see the signs. Usually we see with many women that  
17 there was still some straw in their hair, because usually they would go out to get  
18 some straw and they would try to sell the straw in order to get some money for the  
19 food. We could also see some lacerations or some signs of attacks because, of course,  
20 these attacks or rape is a violent act.

21 What I can say is that if there was any kind of non-consensual sexual intercourse, it  
22 would be considered as rape. If it was consensual, of course, we will say that this  
23 would be *zina*, or a sin. And then we would look at the signs in the back or the  
24 wounds in the back, and we check these signs and there are some steps to follow.  
25 The victim would enter a certain place in order to be examined to check that it is a

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 case of rape, and then the certain type of treatment would be provided.

2 Also, in these cases we -- we insist on confidentiality, because we have members of

3 the Janjaweed, or others that are inside the camps, so we are also surveilled and

4 monitored by these forces. So because at that time it was very critical to be very

5 careful and to be -- to respect confidentiality. And there were cases of rape. If the

6 evidence that I had collected were a criminal evidence or forensic evidence, we would

7 see where we could actually preserve the evidence, because we didn't have the right

8 place to preserve such evidence, forensic evidence. And the soldiers or the

9 Janjaweed, if they know that you've collected such evidence, they could arrest you or

10 kill you.

11 So in these cases when we would receive such victims, we would provide them with

12 the treatment and send them back home to their villages. And back then we didn't

13 know yet, or I didn't know, where these victims were coming from, like they're from

14 this village or that village. But I know that some of them are from Kalma or other

15 villages, or in South Darfur, Nyala, or in Khartoum. So those could come again and

16 they could bring their children with them, and they might even resort to the judiciary

17 in some cases when it comes to the problems with the children.

18 So this is what I wanted to explain to you about the rape cases. And currently we

19 specified a person who would be in charge, it's a woman who would be in charge of

20 rape cases and this person is a victim of rape. And in the events that took place in

21 Sindu, this woman was there and she was a victim of rape there with a wide number

22 of women who were raped in Sindu. So it's one of those victims could come to our

23 section and would even come before the court to raise her case.

24 And we have -- or I have the numbers of victims. I can even give you the name of

25 this victim, for example. So the person I'm referring to might know more than I do



Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 and she can have more information.

2 Q. [12:03:40] Thank you, Mr Witness. Thank you very much for answering my  
3 questions. Thank you.

4 A. [12:03:44] Yes, thank you. Thank you.

5 PRESIDING JUDGE KORNER: [12:03:48] Yes, thank you very much, Ms Von  
6 Wistinghausen.

7 Mr Edwards.

8 QUESTIONED BY MR EDWARDS:

9 Q. [12:03:58] Good afternoon, Mr Witness. We met briefly yesterday. I'll just  
10 reintroduce myself. My name is Iain Edwards.

11 A. [12:04:10] Yes, hello.

12 Q. [12:04:12] I am -- I'm one of the lawyers representing Mr Abd-Al-Rahman. I'm  
13 going to ask you a few questions for much of the rest of the day. I'll certainly finish  
14 today.

15 A. [12:04:35] God willing.

16 Q. [12:04:35] If at any point I ask you a question that you don't understand or  
17 would like me to repeat, please don't hesitate to let me know.

18 One thing that I think is probably important to say at the beginning is this: It's not  
19 the purpose of my questions to have you repeat all the aspects of your evidence. I'm  
20 going to be asking you some very specific questions about some very specific aspects  
21 of your evidence. All right?

22 A. [12:05:25] Yes.

23 Q. [12:05:26] So if you could try and -- try and remember that and focus when I ask  
24 the questions on what I'm asking about, rather than give very broad answers to  
25 specific questions. Is that all right?

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 A. [12:05:48] Yes, this is great. Thank you.
- 2 Q. [12:05:50] And I'll just say that quite a lot of my questions can simply be  
3 answered with a yes or no, so that might speed things up a little bit as well. Okay?  
4 And before I ask my first question, let me reassure you I'm not planning on asking  
5 you any questions at all about the mistreatment that you suffered at the school  
6 buildings in 2003. I hope that will reassure you for the rest of the day.  
7 Okay. Let me start by asking you about the village close to Bindisi where you and  
8 your family lived in 2003. I'm deliberating not saying the name of your village.  
9 Please don't say the name of that village. But in that village, did you own a firearm?
- 10 A. [12:07:15] No, I didn't.
- 11 Q. [12:07:16] Was there an *umdah* of your village? Don't tell me the name, just say  
12 yes or no.
- 13 A. [12:07:31] No.
- 14 Q. [12:07:32] Was there an *umdah* for a larger number of villages around your  
15 village?
- 16 A. [12:07:46] Yes.
- 17 Q. [12:07:52] The Trial Chamber has heard evidence that *umdahs* had the right from  
18 the government to possess firearms. Did the *umdah* for your collection of villages  
19 own a firearm, as far as you know?
- 20 A. [12:08:16] No, no.
- 21 Q. [12:08:19] Is it that you know that he didn't have a firearm, or is it that  
22 you -- you don't know whether he had one or not?
- 23 A. [12:08:40] I don't know whether he had or not.
- 24 Q. [12:08:46] Do you know if other villagers in your village had firearms?
- 25 A. [12:09:03] No, no.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Q. [12:09:04] Is it possible that some did and you just don't know about it?

2 A. [12:09:17] No, I didn't know about that. I don't know.

3 Q. [12:09:22] I want to move on and now ask you about someone called

4 Muhammad Abd-Al-Jabbar, okay?

5 Paragraph 17 of the witness's first statement, your Honours. And you describe

6 Muhammad Abd-Al-Jabbar as the director of the commission of Zakat in Bindisi; is

7 that right?

8 A. [12:09:53] Yes.

9 Q. [12:09:55] And in your statement, this is before the attack at Bindisi on the 15th

10 of the eighth month of 2003, you say that you saw Abd-Al-Jabbar in a Land Cruiser

11 vehicle; is that right?

12 A. [12:10:24] Yes.

13 Q. [12:10:25] Was he alone in that vehicle?

14 A. [12:10:35] No.

15 Q. [12:10:35] Do you know a person called Abd-Al-Rahman Dawud Hammudah,

16 who is sometimes known by the nickname Hassaballah?

17 A. [12:10:54] I didn't know him before. I didn't know him before.

18 Q. [12:11:07] Do you know the name now?

19 A. [12:11:09] The name is Hammudah Hammudah, but I don't really know him

20 personally. I only know of his name.

21 Q. [12:11:18] Okay. Well, do you know whether he was with Abd-Al-Jabbar on

22 15th of the eighth month in 2003, in Bindisi?

23 A. [12:11:46] Can you repeat the question, please, sir.

24 Q. [12:11:54] Hammudah, do you happen to know whether he was with

25 Muhammad Abd-Al-Jabbar on the 15th of the eighth month 2003, in Bindisi?

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 A. [12:12:13] I didn't know him as Hammudah in the past, but I know

2 Abd-Al-Jabbar.

3 Q. [12:12:20] You say that Abd-Al-Jabbar was not alone in the vehicle. How many

4 other people were with him in the vehicle?

5 A. [12:12:37] In the front was Muhammad Abd-Al-Jabbar. He was in the front.

6 In the front there was two people. And there was one of the soldiers and some

7 people who were wearing the military uniform.

8 Q. And was --

9 A. Muhammad Abd-Al-Jabbar was wearing a *jallabiya*.

10 Q. [12:13:16] Thank you. And was the vehicle that Abd-Al-Jabbar was in, was that

11 part of a convoy of vehicles, or was the vehicle alone?

12 A. [12:13:34] It was only one car. He came from the south and he was heading

13 north towards the market.

14 Q. [12:13:54] You say that Abd-Al-Jabbar passed on a message to you and the -- the

15 crowd, the group of villagers that you were with relating to products at the Zakat

16 office. That's what I want to ask you about now for a moment now, okay?

17 A. [12:14:27] Yes.

18 Q. [12:14:30] When he passed on this message, was he -- was he in the vehicle or

19 did he alight, did he get out of the vehicle?

20 A. [12:14:44] He did not leave the car, but he put his hand outside the car.

21 Q. [12:15:00] And where in Bindisi did this take place, this encounter with

22 Abd-Al-Jabbar?

23 A. [12:15:15] It happened in Bindisi, in the north of Bindisi.

24 Q. [12:15:23] Yes, but just help us with this. Was it -- was it -- you were on your

25 way to the mosque. Was it near the mosque? Was it near an office? Can you give

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 us some indication?

2 A. [12:15:40] It was next to the mosque.

3 Q. [12:15:45] You say in your statement that you were there with a group of about  
4 40 others. Were you all heading towards the mosque, or was this a random group of  
5 people who just happened to be there?

6 A. [12:16:04] We were all going to the mosque.

7 Q. [12:16:11] Now, of course, as you say in your statement, you and the others in  
8 the group had nothing to do with the Zakat office. Did Abd-Al-Jabbar explain to  
9 you why he was giving you this information about the Zakat office?

10 A. [12:16:35] No.

11 Q. [12:16:37] Did he explain to you and the others why Ja'afar Abd-Al-Hakam had  
12 a message for Ali Kushayb?

13 A. [12:16:58] No.

14 Q. [12:17:00] Did it strike you as odd that he was telling you that he had a message  
15 for Ali Kushayb?

16 A. [12:17:15] Who are you talking about, Abd-Al-Jabbar or Ja'afar?

17 THE INTERPRETER: [12:17:26] The witness is asking.

18 MR EDWARDS:

19 Q. [12:17:27] No. Did you find it odd that Abd-Al-Jabbar, in the vehicle, was  
20 telling you that he had a message for Ali Kushayb?

21 A. [12:17:47] From Abd-Al-Jabbar, no.

22 Q. [12:17:50] Why did you not find it odd? Why did you think this was normal?

23 A. [12:18:11] Because it was considered normal because the attacks started to  
24 happen.

25 Q. [12:18:19] You didn't see Ali Kushayb while Abd-Al-Jabbar was passing you this

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 message, did you?

2 A. [12:18:31] No, no, I didn't see him, because I didn't know him personally at that  
3 time or before that.

4 Q. [12:18:45] Okay. Moving on to paragraph 27 - thank you, Mr Witness - you  
5 mention an argument between Amin Yousef Hussein and Ali Kushayb. That's what  
6 I want to ask you about now, all right? Are you with me?

7 A. [12:19:08] Yes.

8 Q. [12:19:11] When did Amin Yousef Hussein tell you about this argument?

9 A. [12:19:24] After we were in detention. He told me that because he was with me  
10 at the place we were detained in.

11 Q. [12:19:37] I see. So he told you whilst you were in detention. Have I got that  
12 right?

13 A. [12:19:46] Yes, true.

14 Q. [12:19:54] What is your understanding of what Amin Yousef Hussein said to the  
15 person he described as Ali Kushayb about the corn?

16 THE INTERPRETER: [12:20:21] The witness is asking to repeat the question, please.

17 MR EDWARDS: [12:20:29]

18 Q. [12:20:30] While -- during the account that Amin Yousef Hussein gave you  
19 about this argument with Ali Kushayb, did he tell you what the argument was about?

20 A. [12:20:53] No.

21 Q. [12:20:59] Okay. I want to ask you now about the incident that you described a  
22 little bit earlier this morning about the -- the one encounter you've had with Ali  
23 Kushayb, okay?

24 A. [12:21:25] Yes.

25 Q. [12:21:27] So, your Honours, we're now -- we're going back to paragraphs 75 to

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 76 of the statement.

2 And this encounter involved a police officer, Jamaal Abd-Al-Rahim, correct?

3 A. [12:21:51] Yes.

4 Q. [12:21:52] Now, you were travelling from your place of work back home, as I  
5 understand it?

6 A. [12:22:01] Yes, yes.

7 Q. [12:22:03] And in your statement you say that this was in the evening?

8 A. [12:22:13] Yes.

9 Q. [12:22:14] Can you assist us with some -- some information about when in the  
10 evening you were going back home from your place of work?

11 A. [12:22:32] I will not be able to tell you the exact time because I didn't have a  
12 watch at that time.

13 Q. [12:22:44] Okay. Had the sun set as you were walking back home from your  
14 place of work?

15 A. [12:22:59] No.

16 Q. [12:23:03] But it was -- it was in the evening, as I understand. Are you able to  
17 tell us by reference to prayer times, for example, when you were walking back home?

18 A. [12:23:26] Around the prayer of noon.

19 Q. [12:23:32] Well, the prayer of noon is at noon, isn't it? It's not in the evening?  
20 I understood that you were going home in the evening, having finished your work for  
21 the day. Is that not right?

22 A. [12:23:56] So after noon we can talk about the evening time. It's just around the  
23 evening time.

24 Q. [12:24:08] All right. And now you have produced a sketch of Mukjar that I'd  
25 like to have a look at with you, please. It's not going to require too much reading.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Your Honour, this is the -- and, your Honour, this is a sketch that can be broadcast to  
2 the public, because anything identifying has been redacted. It is at the Defence list of  
3 materials, item 3. The ERN is DAR-D31-0012-0004. If that could be put up onto the  
4 screen, please.

5 And while that's being brought up on the screen, it may be easier for the witness to  
6 have a hard copy. And I wonder if perhaps a -- the court officer can pass or  
7 can -- can ensure he has a hard copy.

8 PRESIDING JUDGE KORNER: [12:25:48] Has he been given one?

9 MR EDWARDS: [12:25:50] If the -- perhaps the court officer could assist him, please.

10 PRESIDING JUDGE KORNER: [12:25:58] Is it not working again?

11 MR EDWARDS: [12:26:02] No, that was -- I think that was the document on the  
12 screen that we wanted.

13 PRESIDING JUDGE KORNER: [12:26:06] In that case, we see how we go and, if  
14 necessary, we'll give him a hard copy. Because it's come off my screen now. It was  
15 on.

16 MR EDWARDS: [12:26:19] Yeah. Yeah, we were -- we were on track earlier.  
17 Now if we can just zoom in on that -- well, that's right. Make it as large as possible.  
18 And if we can focus on the area around the market. And I want -- yeah, that's fine.  
19 Maybe zoom in a little bit more. Yeah, that's fine. Okay.

20 Q. [12:26:50] Do you see the document on the screen, sir? And do you see the  
21 square in the middle that indicates the Mukjar market?

22 A. [12:27:02] I do.

23 Q. [12:27:05] Now, in your statement, you also say that you -- you were passing to  
24 the east of the big mosque when you saw the Janjaweed go into a shop and pick up a  
25 suitcase?



Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 A. [12:27:30] Yes.

2 Q. [12:27:31] Is that big mosque the same as the historical mosque that we see in the  
3 top right-hand corner of the image on the screen?

4 A. [12:27:48] Yes.

5 Q. [12:28:04] So where you -- when you saw this, were you -- had you already  
6 passed Mukjar market and you were closer to the mosque when you observed what  
7 you did?

8 A. [12:28:30] Yes.

9 Q. [12:28:30] The shop that the Janjaweed picked a suitcase up from, was that a  
10 shop in Mukjar market?

11 A. [12:28:51] It is not a shop. It is a --

12 THE INTERPRETER: What the witness is calling in Arabic *rakuba*.

13 THE WITNESS: [12:29:01](Interpretation) It is a place outside the market where the  
14 IDPs are usually in.

15 MR EDWARDS:

16 Q. [12:29:14] I see. Okay.

17 Now, you saw the Janjaweed picking up a suitcase. Was that immediately in front of  
18 you? Was that in front of you to the side, to the left or to the right? Can you give  
19 us an indication, please.

20 A. [12:29:51] To my right hand. I was going to -- from the south, so it was next to  
21 my right hand.

22 Q. [12:30:10] Okay. So the Janjaweed is to your right and a bit ahead of you; is  
23 that right?

24 A. [12:30:17] Yes.

25 Q. [12:30:17] And the vehicle that you say Ali Kushayb was in was travelling from

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 north to south?

2 A. [12:30:30] Yes. From the north, and then he went to the west. He went to the  
3 west, the vehicle went to the west.

4 Q. [12:30:50] You yourself, the direction that you were walking was west to east.  
5 Have I got that right?

6 A. [12:31:01] Yes.

7 Q. [12:31:03] So Ali Kushayb's vehicle was coming from your left side and crossing  
8 in front of you heading to your right; is that right?

9 A. [12:31:17] Yes, to the mosque.

10 Q. [12:31:29] And so what you -- so if you saw the vehicle stopping to deal  
11 with -- let me take it step by step.

12 There's a local police officer, Jamaal Abd-Al-Rahim, who sees what the Janjaweed is  
13 doing and apparently wants do something about it to stop the Janjaweed. Is that a  
14 fair summary?

15 A. [12:31:59] Yes.

16 Q. [12:31:59] So the Janjaweed is a little bit -- is to your right, a bit head of you, and  
17 the vehicle that Ali Kushayb is in stops sort of where the Janjaweed guy is and where  
18 the police officer is?

19 A. [12:32:24] Yes.

20 Q. [12:32:32] Did the person that you've identified as Ali Kushayb, did he get out of  
21 the vehicle or did he remain in the vehicle?

22 A. [12:32:50] He stepped out of the car and then he went to the north -- or he went  
23 out to the north and headed south ways. And he was talking to Jamaal and they  
24 were discussing together and also with a number of other officers.

25 Q. [12:33:08] Okay. So that that's exactly what I want to pin down. The vehicle

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 is off to your right, about 15 metres away. He gets out of that vehicle, continues  
2 heading south. So he's walking away from where you are, correct?

3 A. [12:33:35] Yes. And after that, he left.

4 Q. [12:33:37] Okay. And then from where he is walking towards, does he work  
5 around the car to where the Janjaweed guy and the police officer are having this  
6 discussion?

7 A. [12:33:59] He left the Janjaweed. He took the weapon from the police and then  
8 headed west.

9 Q. [12:34:10] Coming back to the car?

10 A. [12:34:17] Yes.

11 Q. [12:34:26] Now, this -- observing this encounter, I just want to remind myself of  
12 your words from this morning: "I was very afraid at that time. This is why I saw  
13 him. And I passed -- I looked away and I continued walking."

14 A. [12:34:52] Yes.

15 Q. [12:34:53] You didn't want to see the people in the Land Cruiser or the  
16 Janjaweed to notice that you were watching them. Is that fair?

17 A. [12:35:10] Yes.

18 Q. [12:35:11] Did you stop walking to stare at what was going on at any point, or  
19 were you walking the entire time?

20 A. [12:35:23] No, I stopped for -- for a second. I stopped. And when they left, I  
21 left.

22 Q. [12:35:38] But because you didn't want them to see that you were staring or to  
23 think that you were staring, you looked away, correct?

24 A. [12:35:51] I looked at them, but I didn't look for too long at them. It's just like  
25 for a few seconds. I looked down until they left and then I left.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 Q. [12:36:07] Maybe three or four seconds, something like that?
- 2 A. [12:36:14] Approximately.
- 3 Q. [12:36:14] Yeah, okay. Because your evidence this morning was three or four
- 4 minutes. Did you mean to say three or four seconds this morning?
- 5 A. [12:36:27] Minutes.
- 6 Q. [12:36:30] You know the difference -- well, you were watching this for three to
- 7 four minutes, were you?
- 8 A. [12:36:49] Yes, minutes.
- 9 Q. [12:36:50] Even though you were very afraid at the time?
- 10 A. [12:36:58] Yes.
- 11 Q. [12:36:58] And you wanted to look away so that they wouldn't see you looking
- 12 at them?
- 13 A. [12:37:09] Yes.
- 14 Q. [12:37:09] Okay. Thank you.
- 15 Now let me just ask you about this Land Cruiser. What colour was it?
- 16 A. [12:37:28] The colour is similar to tea with milk, like the uniform of the Central
- 17 Reserve Force.
- 18 Q. [12:37:39] Did you notice anything particular, anything that was noteworthy
- 19 about the Land Cruiser itself?
- 20 A. [12:37:53] No.
- 21 Q. [12:37:54] Did the Land Cruiser have a roof over where the driver and the front
- 22 passenger would be?
- 23 A. [12:38:09] Yes, but the back was \*empty.
- 24 Q. [12:38:15] Did you see anything in particular on the bonnet of the vehicle?
- 25 A. [12:38:31] No, in the back. I saw that there were two or three persons there.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Q. [12:38:37] Okay. Thank you.

2 Now, you say in your statement that - paragraph 76 - it was Jamaal that told you that  
3 the man in the passenger seat was Ali Kushayb? I just want to ask you about that for  
4 a second.

5 A. [12:39:20] Yes.

6 Q. [12:39:21] How long after that event did Jamaal, the police officer, tell you this?

7 A. [12:39:38] Two days later I saw Jamaal and I asked him about the person who  
8 was talking to you and he took the weapons. That was about two days later he told  
9 me that was Ali Kushayb.

10 Q. [12:39:49] And did he explain how he knew that that person was Ali Kushayb?

11 A. [12:39:59] He knows him for sure. I know he knows him for sure. He's a  
12 policeman. There was a police post there. And he is still there now.

13 Q. [12:40:23] I want to ask you now about Al Dhayf Al Samah Jibril, paragraph 35  
14 of your statement. Did Al Dhayf Al Samah Jibril live in Kabuk?

15 A. [12:41:04] Yes.

16 Q. [12:41:04] Where was he living when you first got to know him?

17 A. [12:41:16] Before that I didn't know him, but he was (Redacted)

18 Q. [12:41:21] What was his occupation before 2003, if you know?

19 PRESIDING JUDGE KORNER: [12:41:24] Sorry, Mr Edwards. Aren't we getting  
20 close to identifying who this witness is? Particularly that last question.

21 MR EDWARDS:

22 Q. [12:41:40] I'm certainly not going any further into -- I've dealt with what I  
23 wanted to deal with that could cause that?

24 PRESIDING JUDGE KORNER: [12:41:47] All right. But just -- can you just be  
25 aware if you're going to ask about the people.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 MR EDWARDS: [12:41:52] Yes. Yeah.

2 PRESIDING JUDGE KORNER: Thank you.

3 MR EDWARDS:

4 Q. [12:42:01] What was Al Dhayf Al Samah Jibril's occupation before 2003?

5 A. [12:42:12] Before 2003, he was a farmer, an agriculturer, and he was working in  
6 the Kabuk souk. Later on he had a coffee shop where he would provide tea.

7 Q. [12:42:29] How did he come to become an *agid*?

8 A. [12:42:40] I don't know exactly where he was trained, and he was with us for a  
9 long time, since 1991. And since I know him in 1991, he was (Redacted)  
10 (Redacted). But from '91 till 2003 we stayed together, but I don't know where he was  
11 trained and how he became *agid*.

12 Q. [12:43:14] You -- you say that at the time when you and others were held in the  
13 locality building in Mukjar, you were able -- you saw Al Dhayf Al Samah Jibril.  
14 Could you explain how it is, if you were in the locality building, you were able to see  
15 what was happening outside?

16 A. [12:43:50] The locality building had a small or low fence. Even now the fence is  
17 still not high. If you are inside the locality or the building, you can see who is  
18 outside, what's happening outside. And the officer was standing outside. You  
19 could see him because the fence surrounding the building is very low. That is how I  
20 saw him and I know him and I recognised him. But there was many people there,  
21 but I didn't know them.

22 Q. [12:44:25] I want to ask you about Abdullah Himeidan, all right? Paragraph 53  
23 of your statement. How did you know Abdullah Himeidan?

24 A. [12:44:56] I know Abdullah Himeidan, I knew him after we were detained and  
25 transferred from the girls' school to the boys' school, which is to the west of the girls'

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 school and there's a street that separated two schools. Inside the detention I  
2 recognised him.  
3 The building where we were detained was the office of the teachers and the doors  
4 and the windows were closed. So any person detained, whether an infidel or not,  
5 would be in the same situation. So we all started praying and repeating verses from  
6 the Koran, so we started repeating verses from the Koran. Himeidan was there. He  
7 stood there and he told us who is -- where is the officer or the soldier who is in charge  
8 of the key. He got it and he told us -- he told them to open the windows for us.  
9 This is when I knew Abdullah Himeidan.

10 Q. [12:46:26] I see. Okay.

11 A. [12:46:27] And also, when I was released, on the day of my release, he was  
12 wearing his uniform and he stood there. And they opened the door to the detention  
13 room and he himself, he followed us and took us to the field where we were released.

14 Q. [12:46:44] Okay. So I just want to be very clear. Prior to your detention you  
15 had never met, never seen Himeidan before; is that right? Just say yes or no for  
16 now?

17 A. [12:46:56] No.

18 Q. [12:46:56] Okay. Thank you.

19 I'm moving onto -- yeah, a couple of more topics.

20 At paragraph 78, Mr Witness, you talk about a visit by Ahmed Harun, paragraph 78  
21 of your statement.

22 So let's just take this step by step.

23 A. [12:47:47] Okay.

24 Q. [12:47:47] You see that a helicopter had landed, correct?

25 A. [12:47:54] Yes.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 Q. [12:47:56] You didn't see anyone getting out of the helicopter?
- 2 A. [12:48:03] That is correct.
- 3 Q. [12:48:05] You were never close enough to see what was going on?
- 4 A. [12:48:13] No.
- 5 Q. [12:48:14] It was others who told you that Ahmed Harun was there speaking?
- 6 A. [12:48:24] Yes.
- 7 Q. [12:48:25] But you didn't see him yourself?
- 8 A. [12:48:32] Yes.
- 9 Q. [12:48:34] Is it right that there were a number of other people between where  
10 you were standing and where you understood you were told -- I'm going to say it  
11 again.
- 12 Is it right that there were a number of other people between where you were standing  
13 and where the person that you were told was Ahmed Harun?
- 14 A. [12:49:10] Yes.
- 15 Q. [12:49:12] These were Janjaweed and also civilians, correct?
- 16 A. [12:49:19] Yes. And also horses.
- 17 Q. [12:49:21] And horses as well.
- 18 THE INTERPRETER: [12:49:23] And camels, note from the interpreter.
- 19 MR EDWARDS:
- 20 Q. [12:49:27] So we're not talking about a situation where the person that you were  
21 told was Ahmed Harun was, for example, standing on a platform or a chair or a  
22 table?
- 23 A. [12:49:55] What is the question?
- 24 Q. [12:49:56] No, I just want to be clear that whoever the speaker was, if the  
25 speaker was Ahmed Harun, the speaker was not standing on a platform or anything



Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 like that, was he? He was on the ground?

2 A. [12:50:19] Yes.

3 Q. [12:50:23] And in your second statement, I think you -- you approximate, you  
4 think that the distance between where you were and where the speaker was, was  
5 about 60 metres, right?

6 A. [12:50:48] Yes, 60 metres.

7 Q. [12:50:50] Was the speaker using a microphone or a loudspeaker, or just  
8 speaking with his voice?

9 A. [12:51:03] With his own voice.

10 Q. [12:51:14] Were -- was the crowd between you and him, were they speaking as  
11 well?

12 A. [12:51:28] Yes.

13 Q. [12:51:30] This was at the Mukjar locality building, I understand, correct?

14 A. [12:51:54] Yes.

15 Q. [12:51:57] Inside the building, or was it outside the building where the speech  
16 took place?

17 A. [12:52:09] Outside the building. It wasn't inside the room. It was inside the  
18 fenced area. There is a fence around the building, but not inside a room. Not  
19 indoors. It was outdoor, somewhere out.

20 Q. [12:52:26] And is the locality building in a busy part of Mukjar?

21 A. [12:52:38] Yes.

22 Q. [12:52:39] So there was the sound of the people between you and the speaker  
23 talking, and also the general ambient noise of a busy part of Mukjar; is that right?

24 A. [12:53:02] Yes.

25 Q. [12:53:04] Just bear with me for a moment, sir.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Paragraph 79, you talk about a person called, or whose nickname was Al Sadeq  
2 Solonga or Solonga.

3 A. [12:54:07] Solonga.

4 Q. [12:54:08] Thank you very much. And thank you for your -- helping with my  
5 pronunciation.

6 Now, you say that he was responsible for -- or you saw him distributing money in  
7 uniforms to the police and the Janjaweed. I want to explore that with you for a  
8 moment.

9 A. [12:54:34] Yes.

10 Q. [12:54:36] And from where you were, Solonga was standing less than a  
11 two-minute walk away from you. Have I got that right?

12 A. [12:55:04] Yes.

13 Q. [12:55:05] Now, to walk from where you are to where the Judges are, that would  
14 take a couple of seconds, would you agree?

15 A. [12:55:21] Yes, a few seconds.

16 Q. [12:55:23] And to walk for not two minutes but, say, even one minute, you  
17 could -- you would be able to walk much further from here to the wall -- to the end  
18 wall of the court, agree?

19 A. [12:55:44] Yes, it is longer, but (Redacted) and I knew him from  
20 before. And he was living in Mukjar and he was the coordinator of the People's  
21 Defence Forces before, before he came. That was in 2003, 2004.

22 Q. [12:56:06] I follow, but what I'm focusing on is what you say in your statement  
23 about what you saw him doing, all right?

24 A. [12:56:19] Yes.

25 Q. [12:56:43] Yeah, I'm just -- I'm just seeing if I can cut the questions so that we can

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 finish by lunch.

2 Paragraph 80, Mr Witness, you talk about when the -- the Janjaweed were going  
3 towards, going towards the Sindu area, they encountered some resistance from the  
4 rebels and came back to Mukjar. Let me ask you about that for a second.

5 A. [12:57:23] I did not see this event, but he was on a brown horse and he was at  
6 this distance from me. Before the Janjaweed arrived, he said that -- they said that we  
7 went, we faced opposition. So the soldiers in their three or four vehicles, they were  
8 to the north of Mukjar camp, to the side or in the direction of the mountain. This is  
9 where they headed with their weapons to the east. And then --

10 Q. [12:58:00] No, no, thank you very much. I've got some specific questions I need  
11 to ask you about it. I'm not just asking you to repeat what's in your statement, okay?  
12 Do you know --

13 A. [12:58:15] Thank you.

14 Q. [12:58:15] Thank you. Do you know where the Janjaweed encountered this  
15 resistance? Were you told that?

16 A. [12:58:36] In the village of Arada.

17 Q. [12:58:48] And who told you that resistance was encountered in the village of  
18 Arada or around the village of Arada?

19 A. [12:59:02] I heard someone --

20 THE INTERPRETER: [12:59:04] The interpreter didn't hear the name.

21 THE WITNESS: [12:59:09](Interpretation) He was talking to -- next to me. He was  
22 next to me and he was talking, so I heard him say this information.

23 MR EDWARDS: [12:59:15]

24 Q. [12:59:16] Was that a Janjaweed fighter talking about this?

25 A. [12:59:34] Al Dhayf Samah.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Q. [12:59:40] Thank you.

2 Your Honour, I'm moving onto another -- I thought I could -- I thought I could finish  
3 before.

4 PRESIDING JUDGE KORNER: [13:00:03] We all heard you say that, Mr Edwards.

5 MR EDWARDS: [13:00:04] Yeah. Would your Honour be minded to give me just  
6 10 minutes, and then I could finish before -- I don't know if there's any re-examination,  
7 actually, but I could finish in 10 minutes, which could free up the afternoon.

8 PRESIDING JUDGE KORNER: [13:00:18] Well, I'm not sure about freeing up the  
9 afternoon. I think the next witness is going to be brought up, provided that he can  
10 have his familiarisation.

11 MR EDWARDS: [13:00:34] Yes. Sorry, that's what I mean, free up as in free up  
12 from, you know, allow this witness to leave.

13 PRESIDING JUDGE KORNER: [13:00:40] Yes, all right. Yes, if you can finish in  
14 10 minutes, yes, we'll sit a further 10 minutes.

15 MR EDWARDS: [13:00:46] Thank you. I'm very grateful.

16 Q. [13:00:52] At paragraph 85, sir, you talk about villagers who were displaced  
17 between Sindu and Mukjar who came into Mukjar. Are you with me?

18 A. [13:01:08] Yes, I can hear you very well. I follow you.

19 Q. [13:01:14] And what's in your statement is that these villagers told us that  
20 Kushayb burnt their villages while going towards Sindu?

21 A. [13:01:30] Yes.

22 Q. [13:01:31] How is it that these villagers told you about this? Why were they  
23 telling you this?

24 A. [13:01:50] They told me because I was there. And when they were going  
25 towards that place, I have to tell you that we had been displaced in 2003 and they

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 were displaced in 2004. And when they came to us, we were welcoming them. So  
2 we welcomed them and we gave them assistance. We provided them with food,  
3 essentials, and we helped the children, we helped the elderly.

4 Q. [13:02:29] Okay. Did any of the villagers explain to you why they identified  
5 the attackers as being Ali Kushayb or Ali Kushayb's men?

6 A. [13:02:57] Yes, yes.

7 Q. [13:02:59] Did they explain to you -- did anyone explain to you how they knew  
8 that these were Ali Kushayb's men, or was it just a matter of common knowledge?

9 A. [13:03:17] I did not ask them, but they told me that they were the men of Ali  
10 Kushayb who were there and who burned down their villages.

11 Q. [13:03:27] okay. Thank you very much.

12 The last thing I wanted to ask you about are the documents that you were shown  
13 during the Prosecution's questions of you, the copies of this document that you were  
14 given and that you showed the Prosecution last week, okay?

15 Can we please bring up first the list? This is probably not for public broadcast, but  
16 the list at position -- behind tab 37 of the Prosecution list, which is  
17 DAR-OTP-0220-3922.

18 PRESIDING JUDGE KORNER: [13:04:31] Mr Edwards, are you sure you're going to  
19 finish? I'm told that we can't sit beyond 1.10.

20 MR EDWARDS: [13:04:38] I'll be finished in five minutes, yes.

21 PRESIDING JUDGE KORNER: [13:04:41] All right.

22 MR EDWARDS: [13:04:48]

23 Q. [13:04:48] Now, Mr Witness, I just want to clarify something, because on the  
24 transcript it's indicated that this document bears a signature of Ali Kushayb.

25 Can you confirm that this list does not contain a signature of Ali Kushayb?

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 MS SIMMS: [13:05:10] Your Honours, I'm just perhaps indicating that counsel may  
2 be referring to the incorrect document. What is on here is a list. I think the relevant  
3 document is the first item above.

4 PRESIDING JUDGE KORNER: [13:05:27] I think the witness said something about a  
5 signature, I seem to recall.

6 MR EDWARDS: [13:05:32] That's what I want to clear up.

7 If the Prosecution is content to stipulate that there is no signature that they suggest is  
8 a signature of Ali Kushayb on the list, then that shortens matters as well. For what  
9 it's worth, my understanding was always that the only signature was that on the  
10 laissez-passer.

11 Okay. Well, while they're discussing it, just I'll move to the very last document that I  
12 want to show the witness. And it's item 1, please, on the Defence list of exhibits.

13 PRESIDING JUDGE KORNER: [13:06:16] Well, is that the comparison document?

14 MR EDWARDS: [13:06:19] Yes, that's right.

15 PRESIDING JUDGE KORNER: [13:06:21] What exactly are you going to be inviting  
16 the Court to draw from that? Are you trying to do comparisons between  
17 handwriting? Because if you are, then you know, Mr Edwards, you need a proper  
18 expert.

19 MR EDWARDS: [13:06:36] Well, I was -- I was going to invite the witness - as  
20 reading Arabic far better than your Honours, I anticipate, and better than us on the  
21 Defence bench - if he has any comment to make about any similarities at all between  
22 the signature on the laissez-passer and the signature on a document that the  
23 Prosecution suggest is the signature of our client.

24 PRESIDING JUDGE KORNER: [13:07:17] Mr Nicholls, any objection?

25 MR NICHOLLS: [13:07:19] Well, your Honour, it's as you say, the weight is -- is zero

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 and he's an Arabic speaker. We can ask him about what's on the list he was showing  
2 him. But if he's comparing signatures with this witness, there's really no point.  
3 PRESIDING JUDGE KORNER: [13:07:40] Mr Edwards, I'm not at all clear what  
4 the -- sorry, because I was looking at it in some surprise, I have to say.  
5 MR EDWARDS: [13:07:47] I'm very sorry to hear that.  
6 PRESIDING JUDGE KORNER: [13:07:54] All right. I actually think this is not  
7 going work. Much it would be nice for the witness to be able to finish, I think we'll  
8 have to break. And I think we'd better discuss this before -- before he comes back in  
9 again.  
10 Sir, I'm very sorry, we hoped you'd finish before lunch, but I don't think it is going to  
11 be possible. So we're going to break now for lunch until 20 to 3, unless it is still  
12 hoped that the witness, the next witness can be -- do his familiarisation.  
13 MR NICHOLLS: [13:08:37] I think the familiarisation is scheduled for during the  
14 break, so we can --  
15 PRESIDING JUDGE KORNER: [13:08:41] All right. Well, then we'll break till 20 to  
16 3. I think we'll come back, though, without the witness. And, Mr Nicholls, if you  
17 and Mr Edwards can discuss this a little bit more, it may be quite helpful.  
18 At the moment, Mr Edwards, I'm not minded to let you do this, but I'm open to  
19 persuasion.  
20 MR EDWARDS: [13:09:05] Yeah. Well, I'll seek to persuade you, your Honour.  
21 But if -- if I do succeed, it really is a matter of one or two further questions and then  
22 I'm done.  
23 PRESIDING JUDGE KORNER: [13:09:10] Yeah. All right.  
24 Yes, very well. We'll break now and sit again at 20 to 3, 2.40.  
25 I'm told it's 3 o'clock, because the witness familiarisation can be -- can't be concluded

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 till 2.30, and then you've got to do things. What, I don't know. So 3 o'clock.

2 MR LAUCCI: [13:09:50] But, Madam President, just a question. Does that mean  
3 that we carry on after 4, and then we can start with the next witness, or the next  
4 witness will start tomorrow? What is the --

5 PRESIDING JUDGE KORNER: [13:10:02] Well, no. I mean, the next witness  
6 will -- oh, I see. Wait a minute. The two witnesses can't -- well, I don't know.  
7 How do the two witnesses --

8 MR NICHOLLS: [13:10:09] Your Honour, I'm not -- I'm not sure exactly how it  
9 works. I can say I don't think there's much point in starting the next witness for half  
10 an hour, if that's what it --

11 PRESIDING JUDGE KORNER: [13:10:22] If we're going to get -- be able to get  
12 through all the corrections to the statement.

13 MR NICHOLLS: [13:10:28] He's viva voce. There are no corrections.

14 PRESIDING JUDGE KORNER: [13:10:37] Oh, he's a viva voce witness, is he?

15 MR NICHOLLS: So we --

16 PRESIDING JUDGE KORNER: [13:10:33] And how long is -- is  
17 examination-in-chief?

18 MR NICHOLLS: [13:10:40] He's down for, actually, I think up to two days total, but  
19 it's not going to take that long.

20 PRESIDING JUDGE KORNER: [13:10:47] Mr Laucci, are you cross-examining that  
21 witness?

22 MR LAUCCI: [13:10:50] Yes, I will. Even though the conditions for the preparation  
23 of the cross-examination were not optimal, I intend to cross-examine.

24 PRESIDING JUDGE KORNER: [13:10:59] Okay. But are you -- if we -- if the  
25 witness doesn't start until tomorrow morning, are you going -- will examination and



Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 cross-examination, and any questions that the victims representatives want to ask, be  
2 concluded by Friday?

3 MR LAUCCI: [13:11:16] oh, my anticipation is that I will not need more than one  
4 session to cross-examine the next witness.

5 PRESIDING JUDGE KORNER: [13:11:24] All right. Well, then we'll say -- this is so  
6 confused now that we'll say the witness -- the witness starts tomorrow morning and  
7 we'll complete -- so you -- so the witness familiarisation probably still should take  
8 place, shouldn't it?

9 MR NICHOLLS: [13:11:40] We'll see.

10 PRESIDING JUDGE KORNER: [13:11:43] All right. Well, I'll let you sort that out.  
11 All right.

12 MR NICHOLLS: [13:11:45] Thank you, your Honours.

13 MR EDWARDS: [13:11:47] Well, if -- does that mean we can come back at a normal  
14 time after an hour and a half? If the witness isn't going to start until tomorrow, we  
15 don't have to wait until 3 o'clock to finish this witness, I suppose, do we?

16 PRESIDING JUDGE KORNER: [13:12:00] No, because you can do the familiarisation  
17 afterwards, can't you?

18 MR EDWARDS: [13:12:02] Yeah. As was always scheduled.

19 PRESIDING JUDGE KORNER: [13:12:04] That should -- yeah. All right.

20 MR NICHOLLS: [13:12:05] Yeah, I -- okay. I'm happy to start at the regular time  
21 and we will sort out the familiarisation.

22 PRESIDING JUDGE KORNER: [13:12:15] Yeah. Well, okay. We've now sat till 10  
23 past. We will sit again at 20 to 3, 2.40, complete this witness's evidence and then you  
24 can do the familiarisation after that.

25 MR NICHOLLS: [13:12:26] Thank you.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 PRESIDING JUDGE KORNER: [13:12:27] All right.
- 2 THE COURT USHER: [13:12:27] All rise.
- 3 (Recess taken at 1.12 p.m.)
- 4 (Upon resuming in open session at 2.43 p.m.)
- 5 THE COURT USHER: [14:43:59] All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE KORNER: [14:44:23] Yes. Mr Edwards, have you reached any
- 8 kind of agreement over this with the Prosecution, the document you wanted to show?
- 9 MR EDWARDS: [14:44:37] Well, Mr Nicholls has generously indicated that he
- 10 doesn't object.
- 11 PRESIDING JUDGE KORNER: [14:44:42] Sorry, I didn't hear because I haven't
- 12 got -- sorry, can you say that again.
- 13 MR EDWARDS: [14:44:47] Mr Nicholls has generously indicated that they take no
- 14 objection if I -- if I want to try my hand.
- 15 PRESIDING JUDGE KORNER: [14:44:56] All right. Off you go then.
- 16 MR EDWARDS: [14:44:57] Thank you. Yes, so if we could just have up on the
- 17 screen again then please DAR-D31-0010-0001.
- 18 Q. [14:45:17] What's being brought up onto the screen, sir, is a document, part of
- 19 that document shows the signature, it zooms in on the signature of the laissez-passer
- 20 that your friend gave you.
- 21 No, wrong one. Let me start again, DAR-D31-0010-0001. It's item 1 on the Defence
- 22 list. My apologies, I ought to have teed this up.
- 23 PRESIDING JUDGE KORNER: [14:46:29] Don't worry.
- 24 No, I didn't say "all right". I said "don't worry". A number of times I come out on
- 25 the transcript as saying "okay" -- not okay, "yeah", and I'm absolutely certain I don't

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 say "yeah".

2 MR EDWARDS: [14:47:02] Yes, thank you very much.

3 Q. [14:47:07] Now, Mr Witness, is -- is that up on your screen, the document? You  
4 see that on the screen, Mr Witness?

5 A. [14:47:28] Yes.

6 Q. [14:47:29] Thank you. Now, the image on the right-hand side of the page is a  
7 zoomed-in version of the signature that has been suggested is the signature of  
8 Ali Kushayb, and it was circled in your meeting with the Prosecution last week. Do  
9 you follow?

10 A. [14:48:08] Yes.

11 Q. [14:48:09] And because you read Arabic, are you able to read that signature?

12 A. [14:48:29] The signature usually does not reflect the name. It's just like  
13 scribbling. But the name would usually be with letters, unlike the signature.

14 Q. [14:48:43] Yes, I understand. And you see the image on the left-hand side of  
15 the screen. Let me make it clear, I don't suggest you've ever seen that signature  
16 before, but is that just a scribble or are you able to read any part of that signature?

17 A. [14:49:15] It's still scribbling. I don't see letters.

18 Q. [14:49:21] And because you read Arabic, do the two signatures to you appear  
19 similar or different?

20 A. [14:49:36] Different.

21 Q. [14:49:40] Thank you. In the -- in your evidence this morning -- I'm just going  
22 to put it on the record, your Honour, page 24, line 28, we have on the transcript the  
23 witness saying "Ali Kushayb ... put his signature on the list where the food items  
24 were." I just want to -- I just want to nail this down.

25 Could we please have up on the screen finally the list at position 37 of the Prosecution

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 list, this is DAR-OTP-0220-3922.

2 There's a document being up -- being brought up on the screen, Mr Witness, but we  
3 might be able to deal with this before the document is brought up on the screen.

4 You remember there's the document which is a list of items that was compiled  
5 by -- that was compiled by someone back in Darfur? Yeah.

6 A. [14:50:59] A list of items that were taken from people.

7 Q. [14:51:06] And you've had an opportunity to look at both pages of this  
8 document, correct?

9 A. [14:51:17] Yes.

10 Q. [14:51:19] And can I just confirm with you that there is no signature of  
11 Ali Kushayb on this document, on this particular document?

12 A. [14:51:34] In this -- on this document I don't see a signature, but it is annexed  
13 to -- or attached to the paper with the list that includes the signature.

14 Q. [14:51:47] Can we just, Mr Court Officer, turn the page, as it were, to the  
15 next -- to the next page, the second page of this list. Just zoom in. This is the  
16 second page of this list. Again, Mr Witness, do you agree, no signature?

17 A. [14:52:15] Yes. There is no signature.

18 Q. [14:52:20] Yes. Thank you.

19 Your Honour, those are my questions.

20 Thank you, Mr Witness.

21 PRESIDING JUDGE KORNER: [14:52:24] Yes, thank you, Mr Edwards.

22 Yes, any re-examination?

23 MS SIMMS: [14:52:29] No re-examination, your Honours. Thank you.

24 PRESIDING JUDGE KORNER: [14:52:33] I don't think the judges -- I don't think the  
25 judges have any questions.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 Sir, your evidence has been most helpful to the Court. I think I speak for all of us  
2 when we express our sympathy for what you underwent during the course of 2003  
3 and 2004. And we thank you very much indeed for coming to court and I hope not  
4 having to relive too strongly the memories of those events. But we thank you very  
5 much and you're now free to go.

6 MR EDWARDS: [14:53:30] The witness seems to be raising his hand, your Honour.

7 PRESIDING JUDGE KORNER: [14:53:38] Yes, just a moment. Would you like to  
8 say something, sir?

9 THE WITNESS: [14:53:43](Interpretation) No, I don't want to add anything. I just  
10 would like to thank the Prosecution and the Bench and I would like to salute you,  
11 particularly because our world is in your hands. And I personally like that because  
12 Sudan and Darfur, particularly West Darfur, is still even now facing these turmoils.  
13 People are being killed even now, even in Mukjar, even in the place where I was, even  
14 now the militias are ruling. So it is important to have the evidence before you. I  
15 hope that this Court or the parties in charge of this case will expedite the case.  
16 Maybe the situation will not deteriorate even further.

17 And I'm very happy personally because I -- to be here before this Court and to give  
18 my evidence and to talk about what I saw and what I heard and what I heard from  
19 others.

20 So I would like to salute you all, all of you, and I hope that this whole case -- of course  
21 it is the balance, the scale of justice, and we hope that justice will prevail.

22 In Sudan, justice is not prevailing. I am a human being. (Redacted)

23 (Redacted) We accept everyone, we treat everyone, we deal with everyone because  
24 (Redacted), and this is why I cannot be targeted, it's not acceptable that  
25 I am targeted. And now in this case I was still checking the information that's

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Private Session)

ICC-02/05-01/20

1 available. Why? Because I was a researcher, I followed a course in learning and  
2 education, in community affair management and even now I am still going around,  
3 I'm still working with both Janjaweed and the (Redacted), the nomads, and I work with  
4 all of them and I try to minimise the sufferings that they are undergoing and try to  
5 create some social peace in our community. Because I go around and I talk about  
6 social safety.

7 And again I would like to salute you all. And what I have said may not be related to  
8 the case, but because of all your efforts, because of the way you have dealt with me,  
9 I was able to come here, while others were not able to come. It's by chance that  
10 maybe I was able to come and to give my evidence but to come and to say what I  
11 have to say about my case and the case of others. So again I salute you all.

12 PRESIDING JUDGE KORNER: [14:57:12] Thank you very much, sir. And we wish  
13 you a safe return. Thank you for coming. If you would like to go with the court  
14 officer.

15 THE WITNESS: [14:57:20](Interpretation) God willing, thank you very much.  
16 (The witness is excused)

17 PRESIDING JUDGE KORNER: [14:57:38] Yes, could we go into private session,  
18 please.

19 (Private session at 2.57 p.m.)

20 THE COURT OFFICER: [14:57:47] We're in private session, Madam President.  
21 (Redacted)  
22 (Redacted)  
23 (Redacted)  
24 (Redacted)  
25 (Redacted)

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Private Session)

ICC-02/05-01/20

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Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Private Session)

ICC-02/05-01/20

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Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Private Session)

ICC-02/05-01/20

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18 (Open session at 3.05 p.m.)

19 THE COURT OFFICER: [15:05:06] We are back in open session, Madam President.

20 PRESIDING JUDGE KORNER: [15:05:15] Yes. So the witness is going to be able to  
21 have their familiarisation now; is that right?

22 MR NICHOLLS: [15:05:22] Yes, your Honour. After court this afternoon.

23 PRESIDING JUDGE KORNER: [15:05:26] Right. And roughly, just so that we can  
24 get some idea, the witness is set down for two days; is that right? Is he likely to take  
25 the full two days?

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 MR NICHOLLS: [15:05:39] I think he will take less than the full two days, especially  
2 as Mr Laucci has said he will probably use a session. So we will be prepared for  
3 the -- I don't have the number in front of me, but the next witness to begin on  
4 Thursday.

5 MR LAUCCI: [15:05:54] P-20.

6 MR NICHOLLS: [15:05:55] Thank you, 20, exactly.

7 PRESIDING JUDGE KORNER: [15:05:53] Exactly. So that witness will need to  
8 have their familiarisation before as well.

9 MR NICHOLLS: [15:06:02] Yes. That -- that has started and we've internally  
10 communicated and we'll talk to VWS that that familiarisation must be tomorrow.

11 PRESIDING JUDGE KORNER: [15:06:13] Right. Yes. All right. Thank you all  
12 very much.

13 And if I can finally leave with the third plea, Mr Nicholls, can we try and find some  
14 way of reducing corrections to statements.

15 MR NICHOLLS: [15:06:25] I think you will see that with the next -- with the next  
16 68(3) witness, P-20. We've -- we've got written corrections that the witness has noted  
17 are his corrections, and Defence have kindly already agreed we will submit those in  
18 writing.

19 PRESIDING JUDGE KORNER: [15:06:43] That's very helpful.

20 Well, thank you both very much. As I say --

21 Sorry, Mr Edwards, yes.

22 MR EDWARDS: [15:06:51] (Overlapping speakers) Can I -- Can I just seek  
23 clarification about the Trial Chamber's expectations inasmuch as provision of lists of  
24 materials that the -- that the Defence propose to use. We received an email, very  
25 helpful email from your office indicating that when sending a list of material, all

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 documents which are likely to be used during the questioning of the witness must be  
2 highlighted in yellow.

3 I think, well, the reality is, certainly from the Defence perspective, all documents on a  
4 list of material are intended to be used with a witness. There are some documents  
5 that are placed on the list of material that are there because the Defence envisages a  
6 possibility or even a likelihood that an issue is going to arise which means that we're  
7 going to have to use that document. But if a document is on the list of materials, it is  
8 necessarily intended to be used.

9 So does the Trial Chamber wish for an indication or -- an indication that all  
10 documents that are on the Defence list of materials should be -- that we advise that  
11 they all be printed out?

12 PRESIDING JUDGE KORNER: [15:08:13] I think, Mr Edwards, it's exactly what you  
13 said, there are some documents which you know definitely that you're going to use  
14 with a witness. For example, the handwriting comparison one. And it's where you  
15 definitely know that effectively there is almost nothing that means that you won't use  
16 the document, those are the ones we want highlighted.

17 The rest, which we quite understand you put in just in case, if you have to use them  
18 and we haven't -- because it's easier for us to see in advance when we're reading the  
19 statements the documents that you want to use -- or sorry, are definitely going to use.  
20 If -- and it's those that we want to be able to print out and copy. Anything that is  
21 "might use but not sure", then don't highlight. So that's -- that's the rationale behind  
22 it. Rather than cutting down more trees, is to try and keep the trees to a minimum.

23 So I hope that's clear.

24 MR EDWARDS: [15:09:24] It's -- it is clearer, yes. Thank you very much.

25 PRESIDING JUDGE KORNER: [15:09:26] I mean, what it means is that we can't

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

1 ourselves whinge at you if you use a document which is on your list but hasn't been  
2 highlighted in yellow, we will understand.

3 MR EDWARDS: [15:09:37] Yes, of course. And I presume it's the case that the Trial  
4 Chamber prefers, rather counter-intuitively perhaps, that if a document is a number  
5 of pages long, it's easier for your Honours to have a hard copy of that rather than to  
6 be relying on it being flicked through on the screen.

7 PRESIDING JUDGE KORNER: [15:10:00] Yes.

8 MR EDWARDS: [15:10:02] Whereas a one-pager, as it were, that can be dealt with  
9 on the screen.

10 PRESIDING JUDGE KORNER: [15:10:04] Exactly. A one-pager can be dealt with  
11 on the screen. It's where you get more than one page that it becomes much more  
12 difficult because you have no idea what the context of the documents is.

13 MR EDWARDS: [15:10:14] Indeed, yes. That's very helpful. Thank you.

14 PRESIDING JUDGE KORNER: [15:10:17] And one other thing that I was -- that was  
15 raised this morning about putting in part of -- I think you raised it, Mr Edwards, the  
16 only part of the transcript of the video which related to this witness, not to the other  
17 witness. But it was pointed out to me that rather than having multiple submissions  
18 of the same document, is to put the one document in, but the only part that is  
19 admitted -- this submission/admission business gets me very confused, but the only  
20 part that will go in is that that the first witness referred to.

21 MR EDWARDS: [15:11:03] Yes.

22 PRESIDING JUDGE KORNER: [15:11:05] Do you see what I mean? Otherwise you  
23 get --

24 MR EDWARDS: Absolutely.

25 PRESIDING JUDGE KORNER: [15:11:06] -- multiple copies of the same document.

Trial Hearing  
WITNESS: DAR-OTP-P-0922

(Open Session)

ICC-02/05-01/20

- 1 MR EDWARDS: [15:11:06] Well, my learned friend and I actually discussed it over  
2 the break, and either the transcript can be, as it were, cut in two and re-ERNEd to  
3 make it neat, but the video also can be spliced so that only that part of the video  
4 material is actually introduced, submitted, admitted for the particular witness. But  
5 between us we'll figure out a way that makes sense.
- 6 PRESIDING JUDGE KORNER: [15:11:43] Yes, well, as I say, that was the way -- the  
7 way that it was suggested to me was it just goes in as one document, but the only part  
8 which is submitted, as it were, is that which related to this witness as opposed to the  
9 other one. Anyhow, I don't -- it's just that we've got to be able, as everybody else has,  
10 to know what we're referring to.
- 11 MS SIMMS: [15:12:07] Your Honours, we have -- had agreed with Defence, but  
12 whatever -- if the Chamber is minded to take a particular approach, then the  
13 Prosecution will comply.
- 14 PRESIDING JUDGE KORNER: [15:12:21](Microphone not activated) I suggest you  
15 discuss it with those who are in a better position to know exactly what they want.
- 16 MS SIMMS: [15:12:32] Very well, your Honours.
- 17 PRESIDING JUDGE KORNER: [15:12:34] Yes. All right. Thank you very much.  
18 So it's 9.30 tomorrow morning, then, please.
- 19 THE COURT USHER: [15:12:40] All rise.
- 20 (The hearing ends in open session at 3.12 p.m.)