

Trial Hearing  
WITNESS: DAR-OTP-P-0907

(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 Thursday, 10 November 2022  
10 (The hearing starts in open session at 9.30 a.m.)  
11 THE COURT USHER: [9:30:16] All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE KORNER: [9:30:36] Yes, good morning, all.  
15 Could we call the case, please.  
16 THE COURT OFFICER: [9:30:41] Good morning, Madam President. Good  
17 morning, your Honours.  
18 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus  
19 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.  
20 And for the record, we are in open session.  
21 PRESIDING JUDGE KORNER: [9:30:57] Yes, thank you.  
22 Yes, we'll start with the Defence, appearances for the Defence this morning.  
23 MR LAUCCI: [9:31:04] Good morning, Madam President, your Honours, colleagues,  
24 Mr Witness. This morning Mr Ali Muhammad Ali Abd-Al-Rahman is in  
25 the courtroom, and the Defence team has the same composition as yesterday.

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1 PRESIDING JUDGE KORNER: [9:31:15] Thank you.

2 Yes, victims. Same as yesterday.

3 MS VON WISTINGHAUSEN: [9:31:20] Yes. Good morning, Madam President,  
4 your Honours. Good morning to everyone in and around the courtroom.

5 The victims today are represented by associate counsel Anand Shah, our case  
6 manager Idriss Anbari, and myself, Natalie von Wistinghausen. Thank you.

7 PRESIDING JUDGE KORNER: [9:31:35] Yes, thank you.

8 And finally, the Prosecution. Same as yesterday.

9 MR NICHOLLS: [9:31:38] Good morning, Madam President, your Honours. Same  
10 as yesterday.

11 PRESIDING JUDGE KORNER: [9:31:41] Yes.

12 Before we carry on with the witness's evidence, my attention was drawn to what I  
13 said at the end of yesterday afternoon about the difficulties of interpretation, in  
14 particular -- no, I don't know what the page number is because it doesn't come out on  
15 this. I think it's probably 77, where I was talking about the problems caused by  
16 interpretation into Fur as opposed to Arabic, which is, as everybody in this court has  
17 seen, is not causing quite as many problems. But what I -- I need to make clear  
18 entirely is that, although, obviously, from everyone's point of view, if witnesses can  
19 speak and express themselves in Arabic, it makes life easier. Under no  
20 circumstances did I intend to suggest that if witnesses are speaking Fur, their  
21 evidence is any the less valuable. It struck me that the word I used, I think probably  
22 at the end of a long day, could have been taken in that way. I want to make it  
23 absolutely clear, of course witnesses, if that is the language in which they are able to  
24 express themselves better, can speak in Fur, and of course the Chamber accepts that  
25 evidence as much as evidence given by anybody else.

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1 All I was trying to express was that, for obvious reasons, it's better if the witness isn't  
2 continually having to repeat his evidence and be interrupted because there are  
3 interpretation problems.

4 Having said that, good morning to you, sir. Can you hear and understand me?

5 WITNESS: DAR-OTP-P-0907 (On former oath)

6 (The witness speaks Fur)

7 THE WITNESS: [9:34:04](Interpretation) Yes, I hear you very well. But I did not  
8 understand what you were saying at the beginning.

9 PRESIDING JUDGE KORNER: [9:34:10] Don't you worry, I was going to -- to say,  
10 before I forgot, that this wasn't something that needed to be interpreted because it  
11 was an explanation of something I said yesterday when you left court. So don't  
12 worry.

13 This morning you'll be questioned first by Ms von Wistinghausen, who I think you've  
14 met.

15 Yes.

16 QUESTIONED BY MS VON WISTINGHAUSEN:

17 Q. [9:34:52] Good morning, Mr Witness.

18 A. [9:34:55] (No interpretation)

19 Q. [9:34:57] We briefly met on a screen, but I hope you remember our conversation.  
20 And as I had explained to you, I'm leading the team of those who are representing  
21 the participating victims in this case, just like you.

22 A. [9:35:33] Okay, yes.

23 Q. [9:35:36] I will start by explaining to you how I intend to converse with you,  
24 because you may have realised that interpretation is very important and that  
25 the judges really want to hear and understand every word that you say.

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1 A. [9:36:15] Okay.

2 Q. [9:36:17] Therefore, we completely depend on the Fur interpreters, who sit up  
3 there in the interpretation booth, but also the English, French and Arabic interpreters.  
4 So it's going through several languages. And as this is a very difficult task, we have  
5 to take it very slowly. Okay?

6 A. [9:36:55] Yes, okay.

7 Q. [9:36:56] So what I intend to do is to limit myself to two sentences and let  
8 the interpreters interpret those, and I will ask you to do the same. When you speak,  
9 let's just look at each other and let's try to stop after two sentences. Okay? Then we  
10 get the interpretation and then we move on. Do you understand this?

11 A. [9:37:46] Yes.

12 Q. [9:37:47] And to make it easier, we will keep eye contact, and if I think that your  
13 account is getting too long, I'll just raise my hand and stop you. And I want to make  
14 it very clear that I mean no disrespect by this at all. It's just to ensure that the judges  
15 get an interpretation of every word you say. Okay?

16 A. [9:38:16] Yes. Yes, very good.

17 Q. [9:38:22] I would like to start by asking you about your life in your village  
18 before the conflict and before the attacks. Can you tell us what the relationship was  
19 between the inhabitants of your home village.

20 A. [9:39:24] In our area, life was normal, life was very normal. And that was  
21 before the war. The situation was stable. We -- our profession was farming. We  
22 were all -- we all lived like one family and we did not have any problems.

23 Q. [9:39:48] In your statement you also mentioned other neighbouring villages,  
24 such as Arawala, Kusu, Zarey, Kaskildo and others, and you say it was all the same  
25 big, single family. What did you mean by that?

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1 A. [9:41:15] The relationship between us and them was because we used to study in  
2 one school, and that was in Arawala. My school was in Arawala and the people of  
3 Kaskildo was -- and Zarey and Um Jameina, as well as Kusu and Sugo, so all these  
4 people used to go to study in that same school.

5 Q. [9:41:47] Did you and your family own your own livestock?

6 A. [9:42:10] Yes, we owned our own livestock, cattle and goats, as well as horses  
7 and donkeys. We used to -- we used these animals in our daily activities. We also  
8 owned one or two camels.

9 Q. [9:42:58] I'm sorry, I'm not getting any interpretation.

10 THE INTERPRETER: [9:43:11] Repetition of the interpretation: Yes, we owned our  
11 own livestock, cattle, goats and horses and donkeys. We used them in our daily  
12 activities. We also owned one or two camels.

13 PRESIDING JUDGE KORNER: [9:43:26] You must be on -- because I heard that.  
14 Yeah.

15 MS VON WISTINGHAUSEN: [9:43:34] I now got an interpretation from  
16 the interpreters just for me.

17 Q. [9:43:38] Yes, sir, I'm sorry, I couldn't hear.

18 Was livestock in general important for the Fur people and the people in your village?

19 A. [9:44:38] Livestock was very important for us, because we mainly relied on  
20 livestock and farming for our livelihood. We used donkeys for farming activities.  
21 We relied on the daily products of our cattle, also to feed our children. And when  
22 we needed money, we sold one of our animals in order to get money in return.

23 Q. [9:45:09] And was any of your livestock taken by the Janjaweed during  
24 the attack on Forgo?

25 A. [9:45:31] Yes, our livestock -- all our livestock was stolen or looted.

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1 Q. [9:45:44] You told us yesterday that you were married with three wives in 2003.

2 Can you tell us how many children you had at this time.

3 A. [9:46:39] (Redacted)

4 (Redacted)

5 Q. [9:46:55] And of these children, did any of them attend school at the time, in  
6 2003 and 2004?

7 A. [9:47:38] Three of my children went to school during that time. One of them  
8 was in the first grade, the second one was in second grade, and the third one was in  
9 the third grade in the school of \* Gaba.

10 Q. [9:47:58] And can you tell us what impact the attack had on the education of  
11 your children? Could they continue to go to school?

12 A. [9:48:53] The war had great impact on education. People were displaced and  
13 people were running away or -- from their villages. So there was no way for them to  
14 get any education. Even my children missed one year of their education. They  
15 spent one year without education and then they could continue.

16 Q. [9:49:20] Something - *pardon* - something else that you mentioned yesterday was  
17 a burial site of a sultan in Forgo. Can you tell us which sultan you refer to.

18 A. [9:50:21] The sultan I was talking about is Sultan Ali Dinar. He was the last  
19 sultan of Darfur. So -- and these details are included on his tombstone in Forgo,  
20 which is located in Zarey valley or *wadi* Zarey which is in the northeast of the village.

21 Q. [9:50:55] Within your community, is it important for the older generation to  
22 teach the younger people about the history and traditions of the Fur? Even these  
23 days where you can't live in your home villages anymore?

24 A. [9:52:08] Our tradition -- in our traditions and customs, in the Fur tribe, if there's  
25 an elderly person, we cannot look them in the eye directly. And for an older woman,

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1 we cannot call her by her name, we only call her *khala* or aunt.

2 Q. [9:52:37] And is the transmission of the history of your community  
3 something -- something that is important, from the older to the younger generation?

4 A. [9:53:56] When I was young and used to go to the valley, to -- to take our cattle  
5 there, we used to meet the elderly people who used to tell us the stories of our history.  
6 They used to tell us that Ali Dinar was killed here. He was killed here by what they  
7 call the \* *turuk*, and what they mean by \* *turuk* was a white man.

8 Q. [9:54:32] Thank you. I would like to move on to your arrival in Deleig six days  
9 after the attack on Forgo.

10 Can you tell us how many displaced persons arrived in Deleig during the months you  
11 were there from late 2003 to early 2004, more or less.

12 A. [9:56:16] The situation was very tragic. The number of displaced people was  
13 very high. It was difficult to count them, because all the surrounding villages  
14 also -- the residents of all the surrounding villages also were displaced. There were  
15 several towns, from Um Jameina and Forgo and other towns, all the people of these  
16 towns or villages were displaced. So it was impossible to count them. What we  
17 could do was count the number of the -- our family members, not all the people.

18 Q. [9:56:56] I understand. And the displaced persons, were they all from the Fur  
19 tribe?

20 A. [9:57:45] Most of the people who were residents in our area were from the Fur  
21 tribe. So the people who are from the Fur tribe who come from a different area, so  
22 when they come to us asking for marriage, for example, if we did not know them,  
23 know his family and his -- who -- who -- whose descendant he is, we would not  
24 accept to give him or to marry him to one of our people.

25 Q. [9:58:20] And the displaced people, like you, your family, your neighbours and

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1 many others, did you have enough access to food and water, fresh water?

2 A. [9:59:39] When we arrived in Deleig, the people of Deleig supported us greatly.

3 Some of them gave us clothes. Some of them gave us food or corn. Some people

4 brought us some home furniture. Some other people brought clothing for children

5 because our children were naked, without any clothes.

6 So honestly, we received great support from them. They cooperated with us and we

7 will never forget this.

8 Q. [10:00:16] And did the displaced persons suffer from any sicknesses or diseases

9 and did they get assistance for that as well?

10 A. [10:01:16] It was tragic. Many children got affected and got diseases out of

11 the -- they got diarrhoea, they were starving. So many of the elderly died and so

12 many children died as well. Many died on the way to Deleig as a result of

13 malnutrition.

14 Q. [10:02:00] Could the persons who were sick or who suffered from diseases get

15 some help after the arrival in Deleig?

16 A. [10:03:06] The situation was extremely difficult when we arrived in Deleig. At

17 the beginning, we did not receive any form of assistance or treatment, unless

18 the Red Crescent organisation arrived, only then they started to distribute some

19 medications and some food, like biscuits and other foodstuff.

20 They also -- they gave children drops, drop medication.

21 Q. [10:03:45] Thank you, Mr Witness.

22 I would like to move on to the arrests and detentions in Deleig on 5 March 2004.

23 You -- you told us yesterday that there were children amongst the detained in front of

24 Deleig police station. And in your statement you said there were children from

25 Kaskildo, some of whom you recognised.



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1 Can you tell us more about these children and how you recognised them.

2 A. [10:05:33] I was able to recognise these children by the looks. However, \* I did  
3 not know their names back then. There was another child called Djibril, whose  
4 father was called Issa Harun, (Redacted).

5 Q. [10:05:57] Can you say how old this child was, more or less?

6 A. [10:06:26] The ages of these children varied between 13 and 14. They were not  
7 adolescents yet -- they were not adults yet.

8 Q. [10:06:41] And could you see any of those children being loaded on the trucks  
9 that you have talked about?

10 A. [10:07:39] Yes, I was able to recognise a child called Djibril, who was the son of  
11 Issa Harun, and he was loaded on the first vehicle. His father protested and told  
12 the Janjaweed, "Where would -- where are you taking my son?" The Janjaweed  
13 said -- he told the Janjaweed, "You need to get him off the truck." They refused.  
14 Upon his insistence, the child -- the child's father was also taken and he was taken to  
15 the execution site where he was executed as well, at the same time.

16 Q. [10:08:30] You yourself were arrested at your house, and in your statement you  
17 said that you were hit by a stick on your back. And later on, you were also hit with  
18 a stick by a Janjaweed when you were in front of Deleig police station.

19 Can you tell us how these events still impact your life today.

20 A. [10:10:07] I still suffer the impact of that hit. Now, when I sleep for extended  
21 period, I feel the pain exactly where I was hit. That wakes me up and then I sit up,  
22 take a break, and then go back to sleep. This is the impact of that hit until this very  
23 day.

24 Q. [10:10:45] You told us yesterday about many terrible events that you  
25 experienced, and also witnessed, now 18 years ago at police station in Deleig, and also

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1 at another place later on which I would ask you not to mention, because we are in  
2 public session. Do you understand that?

3 A. [10:11:54] Yes, I understand you very well.

4 Q. [10:11:59] However, I would like you to share with us, and I know it's very  
5 difficult what I'm asking you, is to describe to us how what you have lived and seen  
6 impacts you today, and if you have been able to get any psychological support or  
7 treatment to help you.

8 A. [10:13:56] We suffered very much. And we saw the Janjaweed taking the girls  
9 away from their mothers. The girls were screaming and we were unable to say  
10 anything. We also saw the Janjaweed taking away our wives and -- and our family  
11 members and we were unable to speak. There was nowhere we could go to report.  
12 We have a lot that we are keeping in our -- inside our chests, because we did not find  
13 a place to voice these concerns.

14 Q. [10:14:49] I apologise for stopping you by raising my hand, but this is really to  
15 allow good interpretation of what you say. So if there is anything to add, please feel  
16 free to do so now.

17 A. [10:15:49] The psychological and mental impact that I still suffer from (Redacted)  
18 (Redacted), whenever

19 I remember the name of any of them, I can't sleep. All of them had memorised  
20 the whole Koran by heart, they were *faqih*s, they were teachers to the children. And  
21 as a result of their execution, their religious education came to a halt in that region.

22 Q. [10:16:37] You told us yesterday about the killing of *Umdah* Adam Adam Kindiri,  
23 the *umdah* from Forgo. Can you tell us what was the impact of the killing of *umdah*s  
24 and *sheikhs* for the Fur community, if any?

25 A. [10:17:50] The impact was intense, because he was -- they were the community

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1 leaders, our community leaders. They would manage our affairs and take care of us  
2 in a very well manner. So their loss impacted the community, because it's like  
3 a domino effect. Once it starts, everything is affected.

4 Q. [10:18:23] Can you describe a bit further this domino effect, as you call it.  
5 Where does it start and where does it end?

6 A. [10:19:38] What I meant is that if -- when this domino effect starts, if things get  
7 scattered and chaotic, if you have a leader, for example, a communal leader, one of  
8 the notables, they would be able to address the authorities, government authorities to  
9 fund schools, hospitals. So say when this notable person dies, the whole society  
10 suffers because the -- we don't have someone to take care of us. This is what I meant.

11 Q. [10:20:18] Yes, thank you very much for the explanation.

12 I would like to move on to the time after the attacks and your life as a displaced  
13 person. We understand that later in 2004 you and your family arrived at an IDP  
14 camp in Darfur; is this correct?

15 A. [10:21:05] Yes, indeed.

16 Q. [10:21:08] Can you tell us something about the living conditions in the camp  
17 when you first arrived.

18 A. [10:21:58] When we arrived to the IDP camp, we were able to finally breathe  
19 a breath of relief, because humanitarian organisations had arrived and started to  
20 provide humanitarian aid. Also, African Union, through the Security Council, were  
21 able to form peacekeeping forces to protect us and they would do this role so we were  
22 secure and safe.

23 Q. [10:22:29] Can you tell us if your family still remains in an IDP camp and how  
24 this situation has evolved over the years until today?

25 A. [10:23:23] Currently, my village or my area, all of them are in the IDP camps,

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1 whether in Deleig or Kalma. In the camps, we would receive aid, humanitarian aid,  
2 and the government eventually kicked these organisations out. So currently living  
3 conditions are very difficult because organisations stopped providing this aid.

4 Q. [10:24:02] You mentioned earlier today, after I had asked you how many  
5 children you had in 2003. How many children do you have today?

6 A. [10:24:53] All my children since 2003 and 2004, the number is 15. Four of  
7 them -- or five of them died. And I still have 10 children alive until today.

8 Q. [10:25:17] Were any of your children impacted by sickness or ill health in  
9 the IDP camps?

10 A. [10:26:45] Yes. My daughter died as a result of the displacement and fatigue  
11 before we arrived Deleig. And my son \* (Redacted), who was two years old,  
12 suffered from diarrhoea, but the organisations were able to provide aid and milk and  
13 biscuits. Children would tell the staff of those organisations, "*Khawaja*", means  
14 foreigner, and they would call my son (Redacted).

15 Q. [10:27:37] Can you tell us the impact of the life in the camp on your children's  
16 education, and please do not mention the names of your children. Does any of them  
17 attend school?

18 A. [10:28:56] As a result of the suffering and the conditions that we experience in  
19 the IDP camp, our children could not pursue their education. We had to stop  
20 the education of some children and we allowed the elder ones to continue because  
21 our circumstance or conditions were -- wouldn't help us to allow them all to do  
22 schooling. So some of them quit school for these reasons.

23 Q. [10:29:31] Are there any costs for school, like uniforms -- for uniforms, for books,  
24 for other materials?

25 A. [10:30:16] No, no agencies give us any educational assistance to -- to my children.

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1 So all the costs of buying a school uniform, buying books and buying notebooks, so  
2 we have to shoulder all this burden. Nobody is helping us in this regard.

3 Q. [10:30:40] So what work do you do to support your children and your wives and  
4 other dependents? And please don't mention where you do that work.

5 A. [10:31:34] Formally I don't have any job. I rely on God to give me my  
6 livelihood. I rely on my brothers. So sometimes I can get something from a relative  
7 and then I can go to sell this thing to another person. This is how I can get some  
8 money to feed my children and to provide for my family and my household.

9 Q. [10:32:06] Does that mean that you are separated a lot from your family? And  
10 again, please don't mention where you do this work when you have some.

11 A. [10:32:39] Yes, this is correct.

12 Q. [10:32:45] Finally, I would like to ask you why you decided to participate as  
13 a victim in these proceedings, and why you accepted to be a witness. Can you tell us  
14 what this trial means to you.

15 A. [10:34:41] First of all, I came to this court in order to give my testimony because  
16 things were really unfair for us in our region. We did not do any aggression against  
17 anybody in our area. Now there are new settlers who were brought from Mali and  
18 Niger to our area, as well as other people that we don't know. Only God knows who  
19 these people are, these settlers. So this is -- this is really unfair. For this reason I  
20 came to this court to give my testimony.

21 Q. [10:35:25] Again, I asked you to pause for the sake of interpretation. Is there  
22 anything else that you would like to add?

23 A. [10:36:14] We would like that the ICC would give us justice, first.  
24 Second, we wish that the ICC would expel the new settlers from our lands so that  
25 the refugees would go back to their original towns, their mother town, to their

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1 original towns, and to live their lives as they did before.

2 Q. [10:36:51] If there is nothing else you would like to add, I would like to thank  
3 you, Mr Witness, for answering my question and for accepting the pace that I  
4 imposed on you. Thank you very much.

5 PRESIDING JUDGE KORNER: [10:37:07] Yes, thank you, Ms von Wistinghausen.

6 THE WITNESS: [10:37:14](Interpretation) My message to the ICC is to hold the new  
7 settlers accountable. These new settlers expelled us from our lands. We wish that  
8 the Court would hold the perpetrators accountable, also.

9 MS VON WISTINGHAUSEN: [10:37:51]

10 Q. [10:37:52] Thank you, Mr Witness.

11 PRESIDING JUDGE KORNER: [10:37:54] Yes, Mr Laucci. Can I suggest you try  
12 and follow Ms von Wistinghausen's example. Very, very short questions.

13 MR LAUCCI: [10:38:08] I have to say, I always try to follow Ms von Wistinghausen's  
14 example.

15 PRESIDING JUDGE KORNER: [10:38:13] All right.

16 MR LAUCCI: [10:38:17] Thank you, Madam President.

17 QUESTIONED BY MR LAUCCI:

18 Q. [10:38:20] Good morning, Mr Witness.

19 Now I will start your --

20 A. [10:38:28] Good morning, thank God.

21 Q. [10:38:31] I will start your cross-examination. I explained to you last week  
22 when we met what it is exactly. My name is Cyril Laucci.

23 For the same reasons as my colleague --

24 A. [10:38:59] Hello, sir.

25 Q. [10:39:01] For the same reasons as my colleague, I will propose you to establish

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1 a code between you and I which will require, if you can, to look at me.

2 If you enter into a long answer, and this is a problem for the interpreters, at some  
3 point I will hold my hand to ask you just to make a pause. And when I wave again  
4 my hand like this, this means that you can carry on from where you stopped. Do  
5 you agree with that?

6 A. [10:40:13] Yes. Yes, I hear you well and I get -- I understand you.

7 Q. [10:40:19] I will keep my questions short. If you do not understand them, I can  
8 repeat. Just say so.

9 And if you don't --

10 A. [10:40:48] Okay.

11 Q. [10:40:48] And if you don't know the answer, just say so as well. It's not at all  
12 a problem and there will be no judgment for that.

13 A. [10:41:18] Okay.

14 Q. [10:41:19] Very well.

15 The first part of my cross-examination is about your various interviews and  
16 interaction with the court or other actors. Then we will speak about the person you  
17 call Ali Kushayb. And, finally, we would talk about the events in Deleig.

18 A. [10:41:55] Okay.

19 Q. [10:41:57] Very well. Your written statement before this court is the result of an  
20 interview you had with the Office of the Prosecutor in May 2021. Do you remember  
21 that?

22 A. [10:42:35] Yes, I remember this very well.

23 PRESIDING JUDGE KORNER: [10:42:38] Is that the screening note you're talking  
24 about?

25 MR LAUCCI: [10:42:40] No, May is the interview, the written statement.

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1 PRESIDING JUDGE KORNER: [10:42:42] Oh, the statement, you mean. Okay, all  
2 right.

3 MR LAUCCI: [10:42:50]

4 Q. [10:42:50] Before that interview of May, you had a phone call with  
5 the Office of the Prosecutor in November 2020, and a note was \* done on the basis of  
6 that phone call; do you remember that as well?

7 A. [10:43:31] Yes, I remember it very well.

8 Q. [10:43:36] When you received that phone call from the Office of the Prosecutor  
9 in November 2020, were you surprised or did you expect it?

10 A. [10:44:18] I did not expect it. And when I received this phone call I was  
11 confused.

12 PRESIDING JUDGE KORNER: [10:44:27] Can I ask, where's the -- the date on  
13 the document?

14 MR LAUCCI: [10:44:34] The date is on the first page. I -- I give the ERN,  
15 DAR-OTP-0216-0751, at the top of the page, 13 November 2020.

16 PRESIDING JUDGE KORNER: [10:44:49] Got it, yeah, thank you very much.

17 MR LAUCCI: [10:44:52] You're welcome.

18 Q. [10:44:59] Do you know how the Office of the Prosecutor of the Court had your  
19 number, your phone number to call you?

20 A. [10:45:52] The OTP got my phone number from members of my family, because  
21 one of the humanitarian organisations came to the area and asked about me. And  
22 they knew that I was one of the victims, so they asked about me and this is how they  
23 got my phone number.

24 PRESIDING JUDGE KORNER: [10:46:15] I'll -- well, I'm looking at Mr Nicholls, I  
25 mean, should we be in private session for this?



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1 MR NICHOLLS: [10:46:24] I don't really know where it's going, to be honest, or  
2 what the relevance is. But if -- if we're going to get into names and it continues,  
3 perhaps, because I really don't know what's going to come out.

4 PRESIDING JUDGE KORNER: [10:46:39] If we're going to go into any of the details  
5 of why he was being contacted, would it not be better to have it in private session?

6 MR LAUCCI: [10:46:47] We can do that, Madam President.

7 PRESIDING JUDGE KORNER: [10:46:49] For obvious reasons, what happened to  
8 him makes him identifiable.

9 Yeah, all right.

10 I think we'd better go into private session at least for -- until Mr Laucci is finished  
11 asking about this.

12 MR LAUCCI: [10:47:05] Should not be long.

13 (Private session at 10.47 a.m.)

14 THE COURT OFFICER: [10:47:19] We're in private session, Madam President.

15 MR LAUCCI:

16 Q. [10:47:24] (Redacted)

17 (Redacted)

18 (Redacted)

19 A. [10:48:32] (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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20 Q. [10:57:23] And when you were eventually interviewed in May 2021, was it

21 mentioned to you by the investigator that the person you call Ali Kushayb was

22 appearing before this court at the same time?

23 A. [10:58:11] Yes, they told me that. They also told me that the defendant was in

24 court.

25 Q. [10:58:20] How did they call the defendant at this point in time?

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1 A. [10:58:43] They told me that the defendant's name is Ali Kushayb.

2 Q. [10:58:50] And so did that imply that the subject they were interested in, when they  
3 interviewed you, was Ali Kushayb?

4 A. [10:59:29] Yes, they told me that the person who attacked the villages and  
5 conducted the war in Darfur was the one who was arrested and brought before the  
6 International Criminal Court.

7 Q. [10:59:50] Did they tell you anything else about what this person had done?

8 A. [11:00:36] They asked me about the crimes that Ali Kushayb had perpetrated. I said  
9 that Ali Kushayb launched the war in the area and he was leading the operations in  
10 our region. They were also killing people, looting their properties and violating  
11 women, or raping women.

12 Q. [11:00:59] Okay. You start mentioning what you said. But my question was did the  
13 OTP investigator tell you anything else that Ali Kushayb had done?

14 A. [11:01:54] No, the OTP did not tell me anything about the crimes perpetrated by  
15 Ali Kushayb. I was the one who gave them a list of crimes that he had perpetrated in  
16 our region. I did not receive any information from them.

17 Q. [11:02:15] Okay, thank you.

18 And I imagine that with that start, with the way the interview started, mentioning  
19 that the one who attacked the villages and conducted the war in Darfur, Ali Kushayb,  
20 was arrested and before the Court, you felt that the subject that you should speak  
21 about during your interview and focus on was Ali Kushayb, isn't it?

22 PRESIDING JUDGE KORNER: [11:03:04] Yes, Mr Nicholls.

23 MR NICHOLLS: [11:03:07] Well, as you were --

24 PRESIDING JUDGE KORNER: [11:03:09] We're still in private session, I think, which  
25 -- which we shouldn't be. I mean I'm sure -- it's 11 o'clock.

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1 MR NICHOLLS: [11:03:16] Just, I don't know -- what -- what I need to say, we can

2 either do it right after the break or -- but it should be out of the hearing of the witness.

3 PRESIDING JUDGE KORNER: [11:03:25] Well, all right. I tell you what, we'll give the

4 witness a break now.

5 MR LAUCCI: [11:03:30] Can I --

6 PRESIDING JUDGE KORNER: [11:03:27] Yes.

7 MR LAUCCI: [11:03:28] Maybe just the response to my last question and I have no

8 further question on that.

9 MR NICHOLLS: [11:03:35] I'm objecting to the question.

10 PRESIDING JUDGE KORNER: [11:03:38] You're objecting to the question. All

11 right.

12 MR NICHOLLS: [11:03:39] Or the form of the question, rather.

13 PRESIDING JUDGE KORNER: [11:03:40] Yes, okay.

14 Sir, we're going to have a break now, so if you'd like to go with the officer and come

15 back at 20 to 12, 11.40.

16 THE WITNESS: [11:04:06](Interpretation) Yes.

17 (The witness exits the courtroom)

18 PRESIDING JUDGE KORNER: [11:04:36] And I think we'd better go back into public

19 session, for what it's worth.

20 (Open session at 11.04 a.m.)

21 THE COURT OFFICER: [11:04:53] We're back in open session, Madam President.

22 PRESIDING JUDGE KORNER: [11:04:57] What's the objection, Mr Nicholls? It

23 seems to me it's a perfectly proper question.

24 MR NICHOLLS: [11:05:01] Well, it's just this, and maybe I'm going too far, but

25 the hook for this question is page 25, line 8, where the witness says, "Yes, they told me

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1 that the person who attacked the villages and conducted" blah, blah, blah --

2 PRESIDING JUDGE KORNER: [11:05:15] Well, that's going to have to be clarified  
3 because there's two contradictory answers there.

4 MR NICHOLLS: [11:05:21] And then he said, "They didn't tell me anything." So --

5 PRESIDING JUDGE KORNER: [11:05:23] But he's still entitled -- but isn't he -- sorry,  
6 Mr Nicholls, but isn't he entitled -- isn't Mr Laucci entitled to put to the witness that,  
7 even if he was the one telling about the crimes, he felt that what -- the person he  
8 should be talking about is Ali Kushayb?

9 MR NICHOLLS: [11:05:43] Yes. That is fine. Because they mentioned  
10 Ali Kushayb being in court.

11 But here in this answer, which I think the witness -- and the answer I've just stated at  
12 25, line 8, the witness is saying the person who committed all crimes and did all these  
13 terrible things in is in court, the witness then goes on to say they didn't give him any  
14 information, the investigators, about the crimes committed. I think he is describing  
15 the investigators say, "We're here to talk to you about Ali Kushayb," and now  
16 the witness is saying, "Yes, they told me the person who committed all these crimes  
17 was the one in court." That's him describing Kushayb, the person he knows.

18 PRESIDING JUDGE KORNER: [11:06:25] Yes, but -- but the point is, well, firstly, as I  
19 say, we have now got two wholly contradictory answers, and if you don't go back  
20 over it, Mr Laucci, I will, because we'd better clarify what he is actually saying.

21 Second, however, Mr Laucci is entitled, in my view, to put that the reason that he  
22 concentrated, as he has in his evidence, on Ali Kushayb is because the investigator  
23 made it clear that that was who he was interested in. Isn't he entitled to put that?

24 MR NICHOLLS: [11:07:08] Absolutely. And my -- my narrow objection was to  
25 putting it to the witness that the witness has already said that the investigators gave

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1 him this information --

2 PRESIDING JUDGE KORNER: [11:07:17] Oh, I see, all right.

3 MR NICHOLLS: [11:07:18] -- when he clarified that it was not.

4 PRESIDING JUDGE KORNER: [11:07:20] Well, yeah, okay. Well, I think  
5 before -- before you carry on with that line, Mr Laucci, we'd better go back - and I  
6 would invite you to do it - to clarify the two utterly contradictory answers, which I  
7 hope have got interpreted properly.

8 MR NICHOLLS: [11:07:38] So my objection was he's picking the answer he likes out  
9 of those two and saying, "Well, that's what you said actually."

10 PRESIDING JUDGE KORNER: [11:07:46] Okay. Right. Well, he's perfectly  
11 entitled to say, "You said originally this."

12 Anyhow, one way or another, Mr Laucci, let's try and clear up what he is actually  
13 saying, whether he was told by the investigators that Ali Kushayb had committed  
14 the crimes or whether it was, as he later said, he volunteered it.

15 Right. Yes, 20 to 12, please. Thank you.

16 THE COURT USHER: [11:08:08] All rise.

17 (Recess taken at 11.08 a.m.)

18 (Upon resuming in open session at 11.42 a.m.)

19 THE COURT USHER: [11:42:54] All rise.

20 Please be seated.

21 PRESIDING JUDGE KORNER: [11:43:35] Yes.

22 MR LAUCCI: [11:43:42]

23 Q. [11:43:42] I hope you had some time to refresh, Mr Witness.

24 A. [11:43:52] All is good, thanks.

25 Q. [11:43:55] Very well. I want to go back to something that we were discussing

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1 just before the break. You told us, that's your words, that the investigators told you  
2 that the person who attacked the villages and conducted the war in Darfur was before  
3 the ICC.

4 I'm reading from page 25, line 9 to 10.

5 When they told you so, you understood that they were talking about Ali Kushayb,  
6 right?

7 A. [11:45:01] The Prosecution did not mention the name of this person. I knew  
8 him prior to that and I know him personally.

9 Q. [11:45:11] Okay. But then did you understand that the Prosecutor was talking  
10 about Ali Kushayb -- about the person that you knew as Ali Kushayb?

11 Colleague, I think you can re-examine, really.

12 MR NICHOLLS: [11:45:26] I can re-examine, but, your Honour, I'm just saying this  
13 isn't actually clarifying, it's -- he's suggesting.

14 PRESIDING JUDGE KORNER: [11:45:37] Mr Nicholls, I think let Mr Laucci pursue  
15 his own course and then if I take the view that we're still in a state of uncertainty, then,  
16 Mr Laucci, I'm going to ask the question. So just so that you know. Okay.

17 MR LAUCCI: [11:45:56] I'm not sure which question you have in mind, but I will ask  
18 mine, and if you need to -- to go forward, for sure.

19 PRESIDING JUDGE KORNER: [11:46:02] That's what I just said, yeah.

20 MR LAUCCI: [11:46:06]

21 Q. [11:46:06] So I repeat my question, Mr Witness. Did you understand that  
22 the Office of the Prosecutor was talking about the man you call Ali Kushayb?

23 A. [11:46:36] I knew Ali Kushayb before that.

24 Q. [11:46:42] Thank you. But my question is, at the beginning of your interview,  
25 when the Office of the Prosecutor told you that the person who attacked the villages



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1 and conduct the war in Darfur was before the ICC, did you understand that they  
2 were talking about the man you call Ali Kushayb?

3 A. [11:48:00] We knew Ali Kushayb before that and we know the crimes that he  
4 perpetrated. We also heard in the media of the arrest of the -- this person and that  
5 he was taken to the ICC.

6 Finally, every accused is innocent until proven otherwise, so if he is innocent, he will  
7 be released. If he is guilty, he will be punished. He needs to prove his -- his actions  
8 will prove that.

9 Q. [11:48:37] Thank you, Mr Witness.

10 I will read from paragraph 6 of your written statement --

11 PRESIDING JUDGE KORNER: [11:48:42] Well, if you -- if you are going to  
12 a different topic, Mr Laucci --

13 MR LAUCCI: [11:48:47] No.

14 PRESIDING JUDGE KORNER: [11:48:47] You're not. You're still on -- all right.

15 MR LAUCCI: [11:48:51]

16 Q. [11:48:53] It's written there the investigator "also informed me that, as we speak,  
17 Mr Ali Kushayb appears in Court in the Hague for his confirmation of charges," and  
18 that is at the very beginning of your interview.

19 Did that happen?

20 A. [11:50:05] Yes, that's correct. We all knew Ali Kushayb as the name  
21 Ali Kushayb only, until he was taken to the ICC. Then we know the details of his  
22 actual name, his full name. We knew the other names after that.

23 PRESIDING JUDGE KORNER: [11:50:27] Yes. Your question wasn't clear,  
24 Mr Laucci.

25 Did the investigator say those words to you, that "as we speak, Ali -- Ali Kushayb

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1 is" -- sorry --

2 MR LAUCCI: [11:50:50] Appearing before the Court.

3 PRESIDING JUDGE KORNER: [11:50:51] -- "appearing before the Court"?

4 Did he say that to you before the interview -- before the statement was begun?

5 THE WITNESS: [11:51:17](Interpretation) No, I didn't get this information from him,

6 because I know Ali Kushayb personally. And I know him with the name

7 Ali Kushayb. I know his profession as well, when he would roam in markets to sell

8 medicine.

9 PRESIDING JUDGE KORNER: [11:51:40] Okay, just -- sir, just concentrate on one

10 thing, not whether the investigator knew him or you knew Ali Kushayb, but what

11 the investigator said. Did the investigator say to you, "Ali Kushayb is appearing

12 before the Court as we speak"?

13 THE WITNESS: [11:52:32](Interpretation) Nobody told me.

14 PRESIDING JUDGE KORNER: [11:52:51] Yes, thank you.

15 MR LAUCCI: [11:52:55] You're welcome, Madam President.

16 Q. [11:52:58] And then I'm at lines 14 to 15 of today's transcript. Did

17 the investigators ask you about the crimes that Ali Kushayb had perpetrated?

18 A. [11:53:40] No, the Prosecution did not tell me about the crimes that he had

19 committed. We are the ones who know the crimes he -- he committed, because we

20 were the victims. We suffered from -- from these crimes. They just told us

21 about -- they would catch the perpetrator and then the legal procedures would

22 continue, but they did not tell me about the crimes.

23 Q. [11:54:06] Mr Witness, you misunderstood me --

24 PRESIDING JUDGE KORNER: [11:54:09] Mr Laucci, I'm going to try and deal with

25 this, because we could be here a very long time otherwise.

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1 Sir, earlier this morning, just before the break, you told Mr Laucci that the investigator  
2 had said to you that the person who had carried out the attacks on the villages and  
3 conducted the war in Darfur was the person who was arrested and was in court in  
4 The Hague. That's what you were recorded as saying.

5 Now, is that right? Did the investigator tell you that Ali Kushayb had conducted  
6 the war in Darfur and attacked your villages?

7 THE WITNESS: [11:56:12](Interpretation) I did not receive this information from  
8 the Prosecution. I received this information from the media, that Ali Kushayb had  
9 been arrested in Central African Republic and was taken to the ICC.

10 PRESIDING JUDGE KORNER: [11:56:42] So the investigator never said anything  
11 like that to you before the statement was taken from you?

12 THE WITNESS: [11:57:41](Interpretation) I did not get this information from  
13 the Prosecution. I just heard that Ali Kushayb had been taken to the ICC, and he  
14 would also tell the media that he had surrendered and that he was not arrested.  
15 That's why we came to the Court, so that this Chamber knows the validity of what  
16 had happened, whether he is or not the perpetrator of these crimes.

17 PRESIDING JUDGE KORNER: [11:58:17] Yeah, all right.

18 Well, that, I think, is as far, Mr Laucci, as you can take it.

19 MR LAUCCI: [11:58:22] Actually, there was a question that I asked which was  
20 misunderstood, so I will just ask it again.

21 Q. [11:58:31] Mr Witness, the last question I asked you was not whether the OTP  
22 had told you about the crime that Ali Kushayb had perpetrated. This is apparently  
23 what you understood.

24 My question, I ask it again, is the following: Did the Office of the Prosecutor ask you  
25 about the crimes that Ali Kushayb had perpetrated?

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1 And I am at line 14, 15 of the transcript.

2 A. [11:59:39] The -- the Prosecution did not tell us about the crimes. We provided  
3 these crimes to the Prosecution. We gave  
4 the Prosecution -- the Office of the Prosecution the information about these crimes.

5 Q. [11:59:54] But did they ask you?

6 PRESIDING JUDGE KORNER: [12:00:02](Microphone not activated)

7 THE WITNESS: [12:00:44](Interpretation) The Prosecution did not ask me about this  
8 information. We were being interviewed by the different organisations that came to  
9 us. They tried to gather information about the events that we had been through,  
10 which we gave them. This information reached the Court by the heads of these  
11 organisations and staff of these international organisations.

12 MR LAUCCI: [12:01:16] Madam President, in order to save time, can I get  
13 the confirmation that the point is on record.

14 PRESIDING JUDGE KORNER: [12:01:21](Microphone not activated)

15 I think what -- you needn't translate this to the witness. I think the point you're  
16 trying to make still hasn't quite sunk in, which is namely did they mention his name  
17 to -- to the witness. That's what you're trying to get at, isn't it?

18 MR LAUCCI: [12:01:41] The point that I would like to have on record is  
19 the contradiction between paragraph 6 of the written interview and -- sorry, on  
20 the one hand, what is on paragraph 6 of the written interview and what the witness  
21 said before the break and now what he says after the break.

22 PRESIDING JUDGE KORNER: [12:02:01] Yes, but -- but I think -- clearly,  
23 the investigators were there to ask him about the crimes. Your point is - and none of  
24 this should be translated to the witness - your point is did they put into his mind  
25 Ali Kushayb by saying, "We want to ask you about that". And I think it's quite

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1 a difficult concept to get across without the witness's taking it that they effectively fed  
2 him information. But that's not what you're asking. You're simply asking, did they  
3 mention his name. I mean, you may be going on to suggest that they fed him  
4 the information, but at this stage, as I understand it, all you're doing is asking did  
5 they mention his name.

6 MR LAUCCI: [12:02:56] Yes, this is only what I'm alleging, no more.

7 PRESIDING JUDGE KORNER: [12:03:05] Okay. Well, let's go back to translation.

8 Sir, obviously we understand that various international organisations, including  
9 the Prosecutor's office, were asking you about crimes. And all that counsel wants to  
10 know is whether, when they were asking you to tell them about the crimes, they said  
11 something like, "The person that we are interested in is Ali Kushayb".

12 THE WITNESS: [12:04:44](Interpretation) No, the organisations did not say that  
13 the information is related to Ali Kushayb. They were only asking us about our  
14 situation and the conditions that we were subject to during our displacement and  
15 how we reached the place where we were. They asked us what we were suffering  
16 from. These were the questions that were raised by the organisations to  
17 the displaced persons.

18 PRESIDING JUDGE KORNER: [12:05:12] But when it came to  
19 the Office of the Prosecutor, who's different from the other organisations, did they say  
20 to you, at any stage, "We want to ask you about the crimes that Ali Kushayb is alleged  
21 to have committed"?

22 THE WITNESS: [12:06:46](Interpretation) No, the employees of the OTP or  
23 the investigators did not ask me about Ali Kushayb. They were only asking me  
24 about the conditions that led to our displacement and the reasons behind our  
25 displacement. Moreover, they were asking us about our struggle, our current living

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1 conditions as well.

2 I provided them the information that I had seen and I had witnessed. I told them  
3 also about what I heard from other people. I told them about what I heard with my  
4 own ears.

5 PRESIDING JUDGE KORNER: [12:07:25] Yeah, all right.

6 MR LAUCCI: [12:07:26] Madam President, in order to save time -- maybe not to be  
7 translated to the -- the witness, with your permission. Just one quick question  
8 and -- in light of what is written in the written statement, quick question. Was this  
9 interview, in one way or the other, audio or video recorded?

10 PRESIDING JUDGE KORNER: [12:07:48] And that's a fair question. Yes. Was it,  
11 Mr Nicholls?

12 MR NICHOLLS: [12:07:51] We're not translating, correct?

13 PRESIDING JUDGE KORNER: [12:07:54] No, we're not.

14 MR NICHOLLS: [12:07:55] No, it was not. But if I could just say something in  
15 the context of trying to be helpful.

16 The witness was approached by the victims representative early, preceding  
17 Ms von Wistinghausen, and also by Ms von Wistinghausen, so often when people are  
18 talking about the Court, some of these questions about conditions and things may --

19 MR LAUCCI: [12:08:25] Yeah, I had the same impression.

20 MR NICHOLLS: [12:08:27] -- there may be some confusion there (Overlapping  
21 speakers)

22 PRESIDING JUDGE KORNER: [12:08:30] Yeah, I really -- I really don't think we can  
23 take this much further. I think it would be right to say that those of us familiar with  
24 statement-taking would be somewhat surprised if an investigator hadn't said, "We are  
25 investigating Ali Kushayb", which, in my view, and you know, you've got to direct

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1 the witness's mind, is not improper.

2 MR NICHOLLS: [12:08:56] I'll just say, your Honour, the witness had mentioned  
3 and talked about Ali Kushayb seven times previous to this interview starting.

4 PRESIDING JUDGE KORNER: [12:09:06] All right.

5 MR NICHOLLS: [12:09:07] With the screening and the 2006 statement.

6 PRESIDING JUDGE KORNER: [12:09:11] Yes, well, anyhow, that's -- I agree,  
7 Mr Laucci, we've got his recorded answers and obviously they are matters we  
8 consider. All right.

9 MR LAUCCI: I move on.

10 Now we can resume the interpretation.

11 Q. [12:09:29] Mr Witness, I do not ask anymore about your interview with  
12 the Office of the Prosecutor.

13 You also filed an application -- not filed. You also filled an application for  
14 participation and reparation as victim in this case before the Court. The first one  
15 was submitted in December 2020; is that correct?

16 A. [12:10:08] (No interpretation)

17 Q. [12:10:09] And there is a second one dated April 2021. Sorry, no interpretation.

18 A. [12:10:16] Yes.

19 THE INTERPRETER: [12:10:17] Just, Mr Laucci, he did not answer the first question  
20 yet about December 2020.

21 PRESIDING JUDGE KORNER: [12:10:24](Microphone not activated)

22 THE INTERPRETER: [12:10:27] The answer is yes.

23 MR LAUCCI: [12:10:32] Sorry, I become so familiar with the language, that when I  
24 hear "*na'am*", I proceed. I'm a good learner.

25 Q. [12:10:45] Did you apply for participation only, or also for reparation?

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1 A. [12:11:36] Yes, the first application that I had submitted was as a victim. So  
2 the first application was as a victim, and the second application was as a victim and  
3 that I wanted to stand before the Court and tell them what I had seen so they can -- so  
4 we can achieve justice.

5 Q. [12:12:05] Okay. I noticed another difference between the two. In the first one,  
6 and I will say the ERN, DAR-OTP-0222-5086. And I will refer right now to  
7 page 5102.

8 So in the first one, you requested to be represented by Madam Amal Clooney.

9 In the second one, I refer to page 5093 --

10 PRESIDING JUDGE KORNER: [12:13:04] I'm sorry, I don't think the second one has  
11 been ...

12 MR LAUCCI: [12:13:07] Actually, the two are in the same document, in reverse  
13 order. So the first one in the document is the second application, and vice versa.

14 PRESIDING JUDGE KORNER: [12:13:18] Yes, I see, okay.

15 MR LAUCCI: [12:13:22]

16 Q. [12:13:22] So in the -- in the -- I'm lost. In the second one of April, I'm referring  
17 to page 5093, you requested to be represented by your lawyer from  
18 the Office of Public Counsel for Victims. Do you confirm so?

19 A. [12:14:30] No, I am not sure. But the lawyer was conveying the information  
20 that I was saying and submitting them to the Court.

21 MR LAUCCI: [12:14:47] Maybe that's a question that I should ask in private session.  
22 I will ask -- my next question is about the identity of the person who assisted  
23 the -- the witness in filling his application.

24 Can we do that in open session or do we move to private? I believe private.

25 PRESIDING JUDGE KORNER: [12:15:11] I may say, at the moment, I'm not sure



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1 why it matters whether he had Ms Clooney or -- or --

2 MR LAUCCI: [12:15:23] I have questions to ask about the substance of the narrative  
3 of the applications.

4 MR NICHOLLS: [12:15:31] It's redacted to us. I don't know, I have no idea  
5 (Overlapping speakers)

6 MR LAUCCI: [12:15:33] No, it's not redacted, it's not mentioned at all. It's not filled.  
7 The boxes are empty, which is, I believe, not normal, and is something that  
8 the Defence would have spotted if they could have made the normal comments on  
9 the application for victims under Rule 89.

10 PRESIDING JUDGE KORNER: [12:15:57] No, no, no, no, Mr Laucci. Let's not go  
11 there.

12 All right, just for -- for safety's sake, just ask the one question in private session.

13 MR NICHOLLS: [12:16:07] And apologies, I was wrong, it's the interpreter's name  
14 who's redacted. But this is really, I mean, not for me, I think.

15 PRESIDING JUDGE KORNER: [12:16:16] No. All right. Let's go into private  
16 session briefly then.

17 (Private session at 12.16 p.m.)

18 THE COURT OFFICER: [12:16:30] We're in private session, Madam President.

19 MR LAUCCI: [12:16:38]

20 Q. [12:16:38] Mr Witness, do you remember who assisted you when you filled your  
21 first application in December 2020?

22 A. [12:17:14] I'm unable to remember that person. I don't remember their name.

23 PRESIDING JUDGE KORNER: [12:17:20] Okay. Well, let's go back into public session.  
24 Let's go back into public session, please, then.

25 (Open session at 12.17 p.m.)

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1 THE COURT OFFICER: [12:17:43] We're back in open session, Madam President.

2 MR LAUCCI: [12:17:53]

3 Q. [12:17:53] Mr Witness, I take you to your written statement, paragraph 72,

4 which I will read because it's very brief. Talking about the person you call

5 Ali Kushayb, you say: "I know him only under the name Ali Kushayb."

6 Was that correct?

7 PRESIDING JUDGE KORNER: [12:18:25](Microphone not activated) he's actually

8 said that already. He said that earlier, that nobody knew his real name.

9 MR LAUCCI:

10 Q. [12:18:35] Okay. So do you want to answer or I can proceed to the next

11 question? I can proceed.

12 Did you mention the full name of Ali Kushayb when you make your first victim

13 application, the one of December 2020?

14 A. [12:19:25] I did not know his full name back then. I only knew him as -- with

15 his nickname, which is Ali Kushayb.

16 Q. [12:19:38] Okay. I will refer to -- to the victim application, the first one, and

17 the page 5098.

18 In this -- on this page, under item 5, there is a question: "Who does the victim believe

19 is responsible for the events?"

20 And the response that is written is: "Ali Muhammad Ali Abd-Al-Rahman (Kushayb)".

21 So do you confirm it is not you who provided that information?

22 A. [12:21:23] I did not know his full name. I only knew him as Ali Kushayb.

23 However, after his name spread in the media and on the internet, the information was

24 spread that his name was Ali Muhammad Ali Abd-Al-Rahman. Therefore, I became

25 sure that his actual name was Ali Muhammad Ali Abd-Al-Rahman.

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1 Previously, we only knew him as Kushayb.

2 Q. [12:21:48] And I ask you to focus, Mr Witness, when you did your first  
3 application in December 2020, did you mention the full name Ali Muhammad Ali  
4 Abd-Al-Rahman?

5 A. [12:22:57] I only knew that his real name is Ali Muhammad Ali Abd-Al-Rahman  
6 through the media. So in our area, we knew him as Kushayb.

7 Q. [12:23:09] I try last time. Mr Witness, did you mention that name, Ali  
8 Muhammad Ali Abd-Al-Rahman, when you filled your application as victim?

9 A. [12:23:49] No, I did not give them his full name. I only told them that this  
10 person is called Ali Kushayb.

11 Q. [12:24:00] Thank you. And did you ever see the person you call Ali Kushayb  
12 shooting at prisoners?

13 A. [12:24:49] No, I haven't seen Ali Kushayb shooting the prisoners. But I saw  
14 him when he was beating people with his staff or with his stick. Ali Kushayb was  
15 the one who ordered his men to kill the prisoners.

16 Q. [12:25:07] And so, still in December 2020, when you filled your application as  
17 victim, it means that you never said that Ali Kushayb was shooting the prisoners, did  
18 you?

19 A. [12:25:51] I did not mention that. I said that he was only ordering his men.  
20 He was the one issuing the orders to the men.

21 Q. [12:26:05] Did you ever speak to Madam Amal Clooney, either on the phone or  
22 by video conference or in person?

23 A. [12:27:04] I received phone calls from several entities. And I received a call  
24 from 00317, from this country code, and another one from 00316, another one from  
25 00256 or 7. So I'm not sure of the names of the detainees.

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1 THE INTERPRETER: [12:27:28] Sorry, the second -- the last number, the last country  
2 code was 257.

3 MR LAUCCI:

4 Q. [12:27:41] Is the name Amal Clooney familiar to you?

5 A. [12:27:56] I haven't heard of her. The only people I know -- the only people I  
6 know are those people I met (Redacted).

7 Q. [12:28:22] So which means that the information that you wanted to be  
8 represented by Madam Amal Clooney does not come from you either, does it?

9 A. [12:29:02] I have provided this information through phone. I did not meet  
10 the person to whom I've given this information face to face.

11 Q. [12:29:16] Which information did you provide? Can you clarify.

12 A. [12:29:52] The information that I provided was related to the first question:  
13 Where are you from? Where did you come from? What happened to you? This is  
14 the information that I was asked about.

15 Q. [12:30:08] But do you remember saying that you wanted, as Legal  
16 Representative for Victims, Madam Amal Clooney?

17 PRESIDING JUDGE KORNER: [12:30:19] He says he doesn't know who she is, and I  
18 really don't think, Mr Laucci, this is getting us very far.

19 MR LAUCCI: [12:30:26] Then I've made my point and I move on.

20 Q. [12:30:30] Thank you, Mr Witness. I move to another topic.  
21 Which will require private session.

22 PRESIDING JUDGE KORNER: [12:30:42](Microphone not activated) how long?

23 MR LAUCCI: [12:30:46] Until the lunch break.

24 PRESIDING JUDGE KORNER: [12:30:49](Microphone not activated) private session.

25 (Private session at 12.31 p.m.)

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- 1 THE COURT OFFICER: [12:31:04] We're in private session, Madam President.
- 2 MR LAUCCI: [12:31:10]
- 3 Q. [12:31:10] (Redacted)
- 4 (Redacted)
- 5 A. [12:31:56] (Redacted)
- 6 (Redacted)
- 7 Q. [12:32:04] (Redacted)
- 8 (Redacted)
- 9 A. [12:33:03] (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 Q. [12:33:30] (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 A. [12:34:36] (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 Q. [12:34:58] (Redacted)
- 20 (Redacted)
- 21 A. [12:35:33] (Redacted)
- 22 Q. [12:36:00] (Redacted)
- 23 (Redacted)
- 24 A. [12:36:53] (Redacted)
- 25 (Redacted)

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20 PRESIDING JUDGE KORNER: [12:56:46](Microphone not activated)

21 THE INTERPRETER: [12:56:48] Microphone, please.

22 PRESIDING JUDGE KORNER: [12:56:51] Sorry. We're going to have a break for lunch,  
23 sir. In fact, I'll -- I'll let you go now. So if you'd like to go with the court officer and be  
24 back for 2.30, please.

25 (The witness exits the courtroom)

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1 PRESIDING JUDGE KORNER: [12:57:44] Mr Laucci, we -- we've spent half an hour  
2 on a series of questions designed, as far as I can see it, to prove one small point, which  
3 is that the OTP should have interviewed him earlier. Really, that is just too long.

4 Now, are you going to be able to complete your cross-examination this afternoon?

5 MR LAUCCI: [12:58:05] I already announced to my colleagues that it was highly  
6 unlikely.

7 PRESIDING JUDGE KORNER: [12:58:09] Yeah, well, I rather thought that was the  
8 case the way we were going. But, really, half an hour on a point like that is too long,  
9 Mr Laucci. It's just not fair on the witness. And also you're trying to make the points  
10 the wrong way. That's the sort of question you ought to be putting, possibly with a  
11 great deal of justification, but certainly to an investigator from the OTP, not the  
12 witness.

13 So, all right, what this afternoon are we going to go through, what happened to Forgo  
14 and then -- and then the --

15 MR LAUCCI: [12:58:45] I have no -- almost no question on Forgo.

16 The next topic is the person he knows as Ali Kushayb and the basis for knowledge.  
17 And then the last chapter is Deleig.

18 PRESIDING JUDGE KORNER: [12:59:01] All right. As I say, it's obviously an  
19 important witness, but, as I say, to spend half an hour on that point, Mr Laucci, is -- is  
20 really a bit much. (Redacted)

21 (Redacted)

22 (Redacted)

23 PRESIDING JUDGE KORNER: [12:59:27] (Redacted)

24 (Redacted)

25 So you can see that I think this is becoming a strain, and I would rather, if possible - if

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1 you can't, you can't - let him complete his evidence this afternoon.

2 MR LAUCCI: [12:59:47] Very, very -- almost impossible.

3 PRESIDING JUDGE KORNER: [12:59:50] All right.

4 Yes, all right -- yes, Ms von Wistinghausen, yeah.

5 MS VON WISTINGHAUSEN: [12:59:55] Can I just quickly shed some light on the --

6 on the non-existing secrets behind the filling of victims' applications. This victim was

7 commonly represented by Ms Clooney's team and OPCV. (Redacted)

8 (Redacted)

9 (Redacted).

10 But he was first interviewed by intermediaries who cooperated with Amal Clooney's

11 team and filled the first victim application, and probably OPCV contacted him as well

12 not knowing that he had been contacted by Amal Clooney's team before, and this is

13 why we have two victims' applications.

14 Secondly, the reason why he may not remember Amal Clooney's name is that, unlike

15 us, to him this name just doesn't mean anything. So it's just another person, another

16 name that was mentioned to him.

17 MR LAUCCI: [13:01:01] With the initial --

18 MS VON WISTINGHAUSEN: [13:01:03] I just wanted to clarify this.

19 And thirdly, the reason why I think the accused's full name appears in the first

20 application that he filled is that, just like all of us, at that time, \* it was not known to

21 anyone that this would be challenged during the trial. Right. The question of your

22 client being Ali Kushayb was -- yeah, was nothing that was officially challenged at the

23 time, and this is why I can even imagine that the person who filled the victims'

24 application on Ms Clooney's behalf suggested this name to him, because --

25 MR LAUCCI: [13:01:49] Wrote something that he did not say, yeah, it's the truth.

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1 PRESIDING JUDGE KORNER: [13:01:52] But I mean, it seems to me that exactly -- no.  
2 But presumably, in order to apply to be a victim to be represented in the proceedings,  
3 you have to give the name of the accused, and the name of the accused had been  
4 changed, had it not, from Ali Kushayb, which is how he was originally indicted, to his  
5 -- to what is said to be his proper name, that is your client.

6 So I really didn't think there was anything sinister about any of this.

7 MR LAUCCI: [13:02:21] The change of name had no consequence or impact on the  
8 filling of an application by a victim who was totally free to use whatever name they  
9 wanted to, irrespective of the order number 8 in these case proceedings. So this was  
10 not binding on them. If he wanted to say Ali Muhammad Ali Abd-Al-Rahman, he  
11 would have said so, but he confirmed that he did not.

12 PRESIDING JUDGE KORNER: [13:02:49] No, no, but that's what I mean. I imagine  
13 that when it comes -- I don't think this chap can read or write, can he? I mean, I really  
14 don't know but --

15 MR NICHOLLS: [13:02:59] It's to a degree, but not -- not --

16 PRESIDING JUDGE KORNER: [13:03:03] A form filling in English.

17 MR NICHOLLS: [13:03:05] I mean he can -- he can -- I'm not -- and I can't say exactly.  
18 He can read a little bit, it appears, but not -- not well.

19 PRESIDING JUDGE KORNER: [13:03:12] Yeah. Anyhow, the point is, Mr Laucci, and  
20 I appreciate your previous experience may give you more insight into this, but is that  
21 if you fill in a form and you're not particularly literate, somebody fills it in for you,  
22 what's called an intermediary - I don't know that's quite the right word - and, well,  
23 presumably, in order to be listed as a victim for the purposes of participation, you  
24 have to give the name of the case. But, anyhow, we -- all I --

25 MR LAUCCI: [13:03:47] You may receive submissions on that, Madam President.

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1 PRESIDING JUDGE KORNER: [13:03:51] All right. One way or another, Mr Laucci,  
2 we've spent an awful long time on some -- what are really in -- in my judgment, I  
3 won't say "our", because I haven't discussed it with my colleagues, but really are  
4 minor points compared with the rest of this.

5 All right, we'd better -- it's an hour half, 2.30, please.

6 THE COURT USHER: [13:04:13] All rise.

7 (Recess taken at 1.04 p.m.)

8 (Upon resuming in open session at 2.31 p.m.)

9 THE COURT USHER: [14:31:42] All rise.

10 Please be seated.

11 PRESIDING JUDGE KORNER: [14:31:59] Yeah, Mr Laucci, I gather you want to  
12 raise some matters, but you want to do it in private session. Are they legal issues?

13 MR LAUCCI: [14:32:09] No, it's a mini clarification that I want to make on  
14 the transcript at the point where we were rightly so in private session.

15 PRESIDING JUDGE KORNER: [14:32:17] Oh, I see, all right. Okay.

16 Well, let's go into private session.

17 MR LAUCCI: [14:32:24] One minute.

18 (Private session at 2.32 p.m.)

19 THE COURT OFFICER: [14:32:32] We're in private session, Madam President.

20 PRESIDING JUDGE KORNER: [14:32:34] (Redacted)

21 MR LAUCCI: [14:32:35] (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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12 PRESIDING JUDGE KORNER: [14:33:49] No, that's it.

13 Okay. Just so to be clear, I've had a meeting about what has been happening over the  
14 last few days, and I hope that matters will now proceed more smoothly over  
15 interpretation. There's no doubt about it that we are doing better with consecutive  
16 translation, so we're going to stick with that for the time being.

17 But, Mr Laucci, and we are all afflicted, anybody who has any kind of legal training,  
18 with a desire to ask complex questions, and you -- we simply can't do it.

19 So can I again urge you this afternoon to try to stick to one -- questions which contain  
20 a -- one fact and just put them to him.

21 I know it's irritating. Cross-examination is an extremely interesting art, and it is an art,  
22 and it's one that we're all trained to do subtly, if possible, but not with this sort of  
23 interpretation, so if I can just remind you and anybody else from now on when we've  
24 got Fur interpretation in particular.

25 Can we have the witness in then.

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1 Yes, Mr Nicholls.

2 MR NICHOLLS: [14:35:38] He can come in. This is completely unrelated, two  
3 sentences. We've passed out to your Honours and the parties and our \* colleagues in  
4 the LRV charts to be used with P-769, the next witness. You may not have it --

5 PRESIDING JUDGE KORNER: [14:35:51] Oh, I see.

6 MR NICHOLLS: [14:35:51] -- right in front of you, but just to let you know, it's a big  
7 chart we printed, and Wilfred has them in hard copy, because it would be difficult to  
8 read or print otherwise. And we have sent the list of --

9 PRESIDING JUDGE KORNER: [14:36:05] I see, yes.

10 MR NICHOLLS: [14:36:07] And we have sent the list of topics as well for  
11 the witness.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 PRESIDING JUDGE KORNER: [14:36:26] Yeah, well, I'm sure that's going to be very  
17 helpful, but what I mean is are we going to put it up on a board, on a whiteboard of  
18 some kind?

19 MR NICHOLLS: [14:36:37] It's not my witness, but that's a good question. It will also  
20 be available on the screen, I don't know if can be zoomed in and moved around, but I  
21 will raise that with --

22 PRESIDING JUDGE KORNER: [14:36:48] Who's calling the witness?

23 MR NICHOLLS: [14:36:50] It's Mr Jeremy and Ms Mazzarella.

24 PRESIDING JUDGE KORNER: [14:36:54] Right.

25 MR NICHOLLS: [14:36:55] So I will convey that to them to think about.



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1 PRESIDING JUDGE KORNER: [14: 36:57] Yeah, okay.

2 MR NICHOLLS: [14:36:58] And they're probably watching and will pick that up.

3 Thank you.

4 PRESIDING JUDGE KORNER: [14:37:04] Yes, all right.

5 MR LAUCCI: [14:37:12] And, Madam President, maybe you want to go back to public  
6 session, open session.

7 PRESIDING JUDGE KORNER: [14:37:16] Oh, of course, we're still in private session.

8 Yes. Let's go into public session, please.

9 And, sir, I'm sorry we've kept you waiting. I'm afraid your evidence won't finish  
10 today but will finish sometime tomorrow morning.

11 (Open session at 2.37 p.m.)

12 THE COURT OFFICER: [14:37:45] We're back in open session, Madam President.

13 PRESIDING JUDGE KORNER: [14:37:51] Right, Mr Laucci, yeah.

14 MR LAUCCI: [14:37:55]

15 Q. [14:37:55] Good afternoon, Mr Witness, I hope you are refreshed. I want to talk  
16 about your --

17 A. [14:38:06] Yes. Yes, I am well rested, thank you.

18 Q. [14:38:12] I want to talk about your phone interview of November 2020 with  
19 the Office of the Prosecutor.

20 And that's the document DAR-OTP-0216-0751.

21 It's a four-pages document, and I will read to you what is on page 4, under the title

22 "Kushayb":

23 "DAR-OTP-P-0907" - that's you - "said that he saw a man known as Ali Kushayb with  
24 the Janjaweed when he was being held as prisoner. He knows Ali Kushayb as he has  
25 seen him previously when he travelled to Garsila. He also knows he has

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1 a pharmacy."

2 Do you remember -- do you remember saying that on the phone to

3 the Office of the Prosecutor?

4 A. [14:40:39] Yes, that's correct.

5 Q. [14:40:41] In that same document, on page 3, there is the narrative of what you

6 said during -- on the phone about what happened to you in Deleig. And the word

7 Kushayb, or Ali Kushayb, is nowhere mentioned. So do you confirm that when you

8 did that brief interview, you mentioned what happened to you in Deleig without

9 mentioning the role played by Ali Kushayb?

10 A. [14:42:03] I mentioned the name of Ali Kushayb in many occasions, not just one

11 occasion. And many other people did the same as well.

12 PRESIDING JUDGE KORNER: [14:42:17] Mr Laucci, honestly, firstly, it was much

13 too long a question.

14 Secondly, you've got it there in writing. You don't have to put it to him like that.

15 MR LAUCCI: [14:42:31] Yes, Madam President. I'm just coming to the next

16 question.

17 Q. [14:42:39] In your written statement, the one of May 2021, you speak a lot about

18 the role played by the man you call Ali Kushayb in Deleig. What -- what -- how

19 come there is this difference between the two interviews?

20 PRESIDING JUDGE KORNER: [14:43:11] Again, it is a very difficult question to

21 answer, when phrased like that, how come there is this difference.

22 You're -- you're asking him to effectively go back to a train of thought, if you like.

23 MR LAUCCI: [14:43:38] I move to the next question, Madam President.

24 Q. [14:43:42] Forget -- forget my question, Mr Witness.

25 Mr Witness, did you understand, in May 2021, that if you wanted to become a witness

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1 before this Court, you should incriminate Ali Kushayb?

2 A. [14:45:07] (Redacted)

3 (Redacted)

4 (Redacted). They conducted

5 the interviews with me and I gave them all the information that they asked me about.

6 And, of course, that included the events that occurred in our area and the crimes

7 committed by Ali Kushayb.

8 Q. [14:45:44] Did you complete your answer, or you want to add something?

9 A. [14:45:57] I didn't finish, no.

10 When I met the representatives of the OTP in (Redacted), and they interviewed me,

11 they did not give me a date for coming to testify here before the Court. They just

12 told me that I will be one of the witnesses, given the fact that I was in the crime scene

13 myself. But they did not give me a specific date for appearing before the Court.

14 PRESIDING JUDGE KORNER: [14:46:55] Mr Laucci, you can see yourself that

15 you're not getting the answer to the question that you want because the question isn't

16 direct enough.

17 You really need -- if you want to suggest -- don't translate, please. If you want to

18 suggest that the only reason that he's incriminating Ali Kushayb is to make sure he

19 was a witness, and I take it the follow-up isn't so become a victim and so claim

20 reparations, then you're going to have to put that to him directly. Like this, you're

21 not going to achieve anything.

22 MR LAUCCI: [14:47:35]

23 Q. [14:47:35] Mr Witness, did someone explain to you that you would never receive

24 information -- reparations from this Court unless Ali Kushayb was convicted?

25 A. [14:48:21] No, nobody told me that. I'm not doing this for money. I'm doing

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1 this for justice. Because our land, our home, was occupied.

2 Q. [14:48:43] Mr Witness, during your preparation session last week, and again  
3 yesterday, you mention for the first time the presence of Ali Kushayb at the burial of  
4 Mulonqwe. Is that the first time you mentioned his presence?

5 A. [14:49:55] No, that was not the first time that I saw Ali Kushayb. It's not the  
6 first time that I saw Ali Kushayb. I saw Ali Kushayb before when I was in detention  
7 and he was walking over people with his shoes on. That was the same day as  
8 the execution day. And when we were burying Mulonqwe, Ali Kushayb and his  
9 men came. He came with 12 of his men in the car.

10 Q. [14:50:29] Mr Witness, at paragraph 65 of your statement, written statement  
11 before the Court, you are very specific, you mention two Janjaweed and the driver  
12 that you had seen the day before. No Ali Kushayb, no 12 Janjaweed.

13 So ...

14 PRESIDING JUDGE KORNER: [14:50:57](Microphone not activated) does say 12.

15 MR NICHOLLS: [14:51:00] Yeah, the first sentence.

16 PRESIDING JUDGE KORNER: [14:51:01](Microphone not activated)

17 MR LAUCCI: [14:51:02] Oh, yeah, yeah, sorry.

18 Q. [14:51:05] No Ali Kushayb.

19 And forgive me for the 12. So was your written statement about what happened at  
20 the burial of Mulonqwe accurate?

21 A. [14:52:16] No, all what I said was correct. The people who came to the burial  
22 site were the 12 members and Ali Kushayb was the thirteenth person.

23 Q. [14:52:31] The contradiction is not -- is on the record. I move on.

24 Mr Witness, you say -- I got the Arabic, sorry.

25 Mr Witness, you say that you knew the person you call Ali Kushayb personally.

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1 How well did you know him?

2 A. [14:53:21] I knew him because he used to sell medicines.

3 Q. [14:53:36] In your written statement of May 2021, you mention a pharmacy. In  
4 your application for victim participation of December 2020, you mention a shop for  
5 animal products. What was it exactly?

6 A. [14:54:35] It wasn't animal products, it wasn't like dairy products or anything  
7 like that, but, rather, medicines. Medicines for fever or tummy aches, and similar.

8 PRESIDING JUDGE KORNER: [14:54:53] I really think -- I'm sorry, Mr Laucci, but I  
9 think taking him back again to this victims' participation form is -- is just not -- I was  
10 going to say fair, but, I mean, it's clearly not filled in by him.

11 MR LAUCCI: [14:55:16] I take the point, Madam President. The thing is that --

12 PRESIDING JUDGE KORNER: [14:55:20] I think the question would be, did you  
13 ever tell anybody that he sold animal products.

14 MR LAUCCI: [14:55:26] I did not \* intend to ask further question on that.

15 PRESIDING JUDGE KORNER: [14:55:29] Oh, well, okay, but then that's the way to  
16 put it rather than referring to what's in the victims' form. I'm sorry about this, but --

17 MR LAUCCI: [14:55:39] Okay. I --

18 PRESIDING JUDGE KORNER: [14:55:39] -- if you want to move on, I think  
19 it's -- the more direct you put it, the better.

20 MR LAUCCI: [14:55:44] Yeah, yeah, I will think about that for the next questions.

21 But I need -- when there is a contradiction, of course, in fairness, I need to put it on  
22 record.

23 Q. [14:55:57] Mr Witness, did that man have a pharmacy, or was he a mere hawker  
24 on various markets?

25 A. [14:56:58] Ali Kushayb owned a pharmacy, but in addition to that, he used to go

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1 from one market to the next in different villages and towns. He used to go to  
2 Arawala and Gaba and Garsila to sell his medicines for fever and the likes.

3 Q. [14:57:33] I'm afraid my Transcend just stopped, so I have to refresh it. Okay.  
4 Okay, so the answer to my question is both, actually. Both he had a pharmacy and  
5 he went on a market, right?

6 A. [14:58:27] Yes, I -- he owned a specific pharmacy. And sometimes he stayed in  
7 his pharmacy, and on some other days he used to go to the markets, the main markets  
8 in different towns and villages and then goes back to his place at the end of the day.

9 Q. [14:58:56] Yesterday you said that you did not only meet the man you call  
10 Ali Kushayb once, twice or three times. Were you a regular customer?

11 A. [15:00:10] Yes, I know him because I went to his pharmacy one day and I  
12 complained to him or told him about my complaints with diarrhoea and vomiting  
13 and he prescribed the medicine for me. And then later he saw me again and he  
14 asked me if the medicine worked for me or not and I told him, "Yes, I'm much better."  
15 I know him -- I know him from the markets like the markets of Arawala and -- and  
16 other villages. I knew him in these markets outside Garsila.

17 PRESIDING JUDGE KORNER: [15:00:57] Again, Mr Laucci, the simple question  
18 would have been were you a regular customer, without the lead-up.

19 MR LAUCCI: [15:01:08]

20 Q. [15:01:08] And apart from this instance with the stomach, did you visit him  
21 other times, or was it the only once -- the only one?

22 A. [15:01:59] Yes, I've seen him several times in addition to the time when I went to  
23 his pharmacy and the time -- the other time when I met him and he asked me about  
24 the efficiency of the medication. I met him in other markets several times because he  
25 used to come to sell the medication there and (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. [15:02:38] Did you want to say anything else, or I move to the next question?

4 A. [15:02:52] I am done with my answer.

5 Q. [15:02:53] And when you -- you came across him, would he greet you? Did he  
6 recognise you?

7 A. [15:03:34] We were in two different -- on two different sides of the market.

8 I was -- he was in the medication part of the market, (Redacted)

9 (Redacted). So we wouldn't really meet, unless he comes to my

10 area and salutes the people in general. Personally, I knew him well because he used  
11 to sell medication.

12 Q. [15:04:05] And when he came to your area, was he saluting you?

13 PRESIDING JUDGE KORNER: [15:04:11] Is that the French saluting, saying hello,  
14 greeting?

15 MR LAUCCI: [15:04:18] I used the same word as the interpreter, actually.

16 THE WITNESS: [15:05:00](Interpretation) I used to move around and go to  
17 the location of Ali Kushayb. He did not come to our area. So on the way to  
18 a restaurant for lunch -- there was a woman who had a restaurant and on the way to  
19 this restaurant, we used to pass by or pass in front of the place where Ali Kushayb  
20 used to sell his medication and we used to greet him.

21 Q. [15:05:26] And did he greet him -- greet you in return? I want to establish  
22 whether he could recognise you.

23 A. [15:06:28] Yes, he used to greet me back when I used to go to the restaurant. So  
24 in his real area there were three doctors, one of them was from Gorolla, the second  
25 was from Arawala and the third was Ali Kushayb. These two other doctors used to

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1 sell veterinary medicines. I used to know Ali Kushayb as Doctor Ali.

2 Q. [15:06:59] Thank you. And yourself, did you introduce yourself to him? Did  
3 you tell -- tell him your name or nickname?

4 A. [15:07:50] I did not have a close relationship with Ali Kushayb. But most  
5 people in the market used to call him Doctor Ali. When we were in the market,  
6 the villagers used to come to us and ask us where would we find the  
7 medication -- where they find medication for a fever, for example, so we used to  
8 recommend Doctor Ali. We used to tell them that, "There's Doctor Ali, you can go to  
9 him and he can prescribe you the adequate medication."

10 Q. [15:08:26] So far we are only talking about the market. Did you go to his  
11 pharmacy as well?

12 A. [15:08:45] Yes, I've been to his pharmacy to buy medicine -- to buy medication.

13 Q. [15:08:52] Where was it?

14 A. [15:09:08] His pharmacy was in Garsila, in an area called Sagargar.

15 Q. [15:09:22] Can you be more specific where Sagargar area is in Garsila?

16 A. [15:09:50] Sagargar neighbourhood is located to the north of the council.

17 Q. [15:10:01] Where is it compared to the market?

18 A. [15:10:18] The Sagargar neighbourhood is located to the north of the market.

19 Q. [15:10:30] Last question, you mean to the north of the market beyond the market,  
20 or inside?

21 A. [15:10:59] The Sagargar neighbourhood was inside the market, but the distance  
22 from the market was not very far.

23 Q. [15:11:16] Thank you. And you say you used to call him "Doctor Ali". How  
24 did you know this other name, Ali Kushayb, then?

25 A. [15:12:06] At the beginning, all the people used to call him Doctor Ali,



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1 Doctor Ali. Later on, I knew that some people used to call him Ali Kushayb and  
2 they added Ali Kushayb to Doctor Ali and then he was known as Ali Kushayb.

3 Q. [15:12:28] When you say "later on", can you specify what period you are talking  
4 about?

5 A. [15:13:19] I know Ali Kushayb from 2001 and 2002 and during that period we  
6 used to call him Doctor Ali. Afterwards, I heard that people added Ali Kushayb to  
7 Doctor Ali, so they thought that his name was Ali Kushayb. So we thought that  
8 Kushayb was his actual father's name.

9 Q. [15:13:44] And then I understand from your answer that this new name,  
10 Kushayb, you heard it for the first time in 2003, roughly?

11 A. [15:14:22] No, I know him as Ali Kushayb since 2001. Afterwards, I heard that  
12 Ali Kushayb was appointed as *agid al-ogada*, or the *agid* of the *agids*.

13 Q. [15:14:40] When was that?

14 A. [15:14:55] That was in 2002.

15 Q. [15:15:10] Do you remember coming across the person you call Ali Kushayb, or  
16 Doctor Ali, between January and August 2003, in his commercial function, I mean?

17 A. [15:16:06] The last time I met him was between 2002 and 2003 when (Redacted)  
18 (Redacted). That was the period when I used to meet or  
19 see Ali Kushayb.

20 Q. [15:16:45] Just a minute.

21 You -- you just referred to the expression *agid al-ogada*. That expression appears in  
22 your statement for the first time. I read paragraph 19:

23 "The only *agid al-ogada* we ever had in Forgo was Ali Kushayb, this title did not exist  
24 before him. This specific title did not exist before Ali Kushayb."

25 Do you confirm that?

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1 A. [15:18:49] When we were in our community, we only had a *sheikh* and an *umdah*,  
2 as well as the popular committees. We had *agid* function. However, the *agid*  
3 *al-ogada* was new. It was started with Ali Kushayb.

4 Q. [15:19:16] Okay. And when you mention that information in your statement,  
5 was it the OTP investigator who had -- who had asked you about the function of *agid*  
6 *al-ogada*?

7 A. [15:20:23] We did not have this function before, *agid al-ogada*. We only had one  
8 *agid*. Because our area was surrounded by mountains and there were lots of grass  
9 around, so the *agid* would inform people about things using a whistle to announce  
10 the beginning of something, of something specific.

11 Q. [15:20:53] I know I interrupted you. Carry on, please.

12 THE INTERPRETER: [15:21:30] Message from the Fur interpreter: Please ask  
13 the witness to repeat his answer.

14 MR LAUCCI: [15:21:37]

15 Q. [15:21:37] Yes, can you repeat. The interpreters did not get you, sir. Sorry.

16 A. [15:22:09] The function of the *agid* was that, in case there is a fire in the  
17 mountains, he would inform the people about this so they would try to put this fire  
18 off. He used the horn, he used to blow the horn, which made a specific sound. This  
19 is how the villagers knew that there was important news. So he was the one leading  
20 them towards the fire location, so they put off -- put this fire off.

21 Q. [15:22:42] (Microphone not activated)

22 THE INTERPRETER: [15:22:43] Microphone, please.

23 MR LAUCCI:

24 Q. [15:22:46](Microphone not activated) if you want to carry on, please.

25 A. [15:23:23] In Arabic the term -- the term *agid* is in Arabic. In our language, it's

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1 called \* *Warneg*. So this name was present. And we heard it in our childhood.

2 This person used to inform people about important news and to direct them towards  
3 a specific task.

4 Q. [15:23:53] Can I move to the next question, or you want to add something?

5 A. [15:24:08] We can continue.

6 Q. [15:24:10] Just a verification, in your first answer, the one that the interpreter did  
7 not take and which I asked you to repeat, I think I heard you pronounce the name  
8 Abdul Aziz Al Hera, did you?

9 A. [15:24:50] No, I did not. I only know Abdul Aziz Al Hera.

10 Q. [15:25:03] What do you know about this person?

11 A. [15:25:28] Abdul Aziz was the deputy *umdah* in the area of Sagai.

12 Q. [15:25:43] Did you know his tribe?

13 A. [15:25:56] He belonged to the Fur tribe.

14 Q. [15:26:13] Was he known as - I'm talking about Abdul Aziz Al Hera - was he  
15 known as a notorious Janjaweed leader?

16 A. [15:27:06] No, Abdul Aziz Al Hera was not a Janjaweed leader. When  
17 Ali Kushayb was appointed *agid al-ogada*, Abdul Aziz Al Hera rejected this  
18 appointment and he said that, "We will not submit to your orders and we will not  
19 accept this position."

20 Then he was arrested and put in prison.

21 Q. [15:27:50] Mr Witness, do you agree if I tell you -- if I tell you that Abdul Aziz  
22 Al Hera was the *agid al-ogada* for the Wadi Salih until at least 2003?

23 A. [15:28:48] No, Abdul Aziz Al Hera was never appointed *agid al-ogada*.

24 Ali Kushayb was the person who was appointed as *agid al-ogada*.

25 Q. [15:29:09] Did you want to add something?

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1 A. [15:29:18] I completed my answer.

2 Q. [15:29:22] Thank you.

3 So when you say that Ali Kushayb was "the only *agid al-ogada* we ever had in Forgo",  
4 do you mean that he was the *agid al-ogada* -- *al-ogada* for Forgo?

5 A. [15:30:18] Ali Kushayb was not only the *agid al-ogada* for the area of Forgo only,  
6 he was the *agid al-ogada* for the entire Wadi Salih area.

7 Q. [15:30:37] How did he become *agid al-ogada*, please?

8 A. [15:31:02] We don't know how he was appointed as the *agid al-ogada*, but all we  
9 know is that he was appointed by Ja'afar.

10 Q. [15:31:19] Yesterday -- just a minute.

11 Yes, yesterday you said at page 22 -- just a minute. Yes, page 22, line 12 and 13, you  
12 explained that the position of *agid al-ogada* is an occupation that is affiliated with  
13 the local authorities. What do you mean by "local authorities"?

14 A. [15:33:19] Well, this position was affiliated by the local authority. I mean by  
15 that that it was civil authority, it's chosen by civilians. If a *sheikh* is chosen to be  
16 appointed or a secretary, this all happens via the civilians themselves or by  
17 the civilians themselves.

18 Q. [15:33:50] Do you mean it's -- it's a tribal function, tribal position?

19 A. [15:34:37] Yes, it is a tribal position. Because in our community, the civilians  
20 choose the *sheikh*, and then the *sheikhs* chose the *umdah*, and the *umdahs* choose the  
21 \* *nazir*.

22 Q. [15:35:10] Okay. I do not see the -- any *agid* or *agid al-ogada* in what you  
23 describe. Can you explain more?

24 A. [15:36:15] The position of *agid* is different from the other positions that I  
25 mentioned, the tribal ones. But the *agid* used to be in charge of organisation,

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1 organisation of any matters in the village or town. And they are always chosen by  
2 the people of this village or town. And it is not an official position, they didn't have  
3 salary or an office where they were based.

4 Q. [15:36:51] I totally follow you. But was the position of *agid* also a tribal  
5 position?

6 A. [15:37:46] The link between this position and the tribe comes from the fact that  
7 the *agid* is chosen by the people of the community. So, for example, the Fur have an  
8 *agid* and Arab have an *agid*. They are not usually chosen by other community  
9 leaders, it's just the people choose that person between themselves. They agree on  
10 a specific person to hold this position.

11 Q. [15:38:21] And to become an *agid al-ogada*, do you agree that one need to be an  
12 *agid* in the first place, right?

13 A. [15:39:04] The position of *agid al-ogada* was not known to us before. We only  
14 knew the position of *agid*. But this *agid al-ogada* position was forced upon us.

15 Q. [15:39:34] You say -- you said that the function of *agid al-ogada* was transferred to  
16 the person you call Ali Kushayb in, did I get you correctly, was it 2002?

17 A. [15:40:14] Yes, he was appointed towards 2002 or early 2003.

18 Q. [15:40:30] So you had the opportunity to come across him or to go his pharmacy  
19 after his appointment as *agid al-ogada*, did you congratulate him for his appointment?

20 A. [15:41:03] No, I met him in his pharmacy before he was appointed as *agid*  
21 *al-ogada*.

22 Q. [15:41:30] Can you be sure, because you said that you carried on visiting him or  
23 meeting him at the pharmacy or in the market until 2002 and 2003, that is the same  
24 period?

25 A. [15:42:23] I met him when I went to his pharmacy in 2002, but towards the end

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1 of 2002 I saw him from a distance. I didn't meet him personally.

2 Q. [15:42:48] Yesterday - I'm at page 22, line 16 to 18 - you use a very specific word,

3 I read it: "The position of *agid al-ogada*" -- no, sorry. Yes.

4 "The position of *agid al-ogada* and Ali Kushayb being transferred to this position, we  
5 heard about this news in that time."

6 "Transferred", what do you mean by "transferred"? Transferred from where? From  
7 whom?

8 A. [15:44:21] I don't know exactly how he was appointed as *agid al-ogada*, or how he  
9 got to hold this position. All I know is that there are some *sheikhs* from Arawala  
10 went to a meeting and then when they came back they said that Ali Kushayb was  
11 appointed as *agid al-ogada*. That's all that I know.

12 PRESIDING JUDGE KORNER: [15:44:45] I think we've done this one.

13 MR LAUCCI: [15:44:47] Yes.

14 Q. [15:44:48] Was that a surprise for you? I mean, you knew a pharmacist with  
15 that name. Was that a surprise that this pharmacist suddenly was promoted to  
16 the position of *agid al-ogada*, whatever that was?

17 A. [15:46:03] Yes, I was surprised and confused, really, when he was appointed as  
18 *agid al-ogada*, because there were so many other community leaders, like the *sheikhs* or  
19 the -- the *mu'atamid* and the *wali*, for this position. The fact that the *mu'atamid* or  
20 the governor chose Ali Kushayb for this position was very weird, and until this day  
21 we don't know the reason for that.

22 Q. [15:46:34] Thank you.

23 I will conclude on that, Madam President, by putting to you, Mr Witness, that  
24 the function of *agid al-ogada* is a purely honorific title for a person in charge of  
25 organising social events and leading horsemen during parades in public celebrations.

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1 Do you agree with me?

2 A. [15:48:33] Yes, this title of *agid*, the *agid*, was considered a position inferior to

3 *sheikh*. And the *sheikh* was under the *umdah* and the *umdah* was under the *shartay*.

4 That was the hierarchy. And the *agid* was just a person who leads horsemen, true.

5 Q. [15:49:03] Actually, my question was related to *agid al-ogada* in events where you

6 need to lead horsemen from different tribes.

7 PRESIDING JUDGE KORNER: [15:49:17] Well, I'm now lost. Do you mean -- while

8 this is being translated -- do you mean, as you put it, "parades", so where lots of

9 different tribes come together?

10 MR LAUCCI: [15:49:40] Yes. I mean, when a society is going better than what has

11 been described to us, you can have public celebration involving the various tribes in

12 the locality.

13 PRESIDING JUDGE KORNER: [15:49:49] Okay. So what you're effectively putting

14 is it has nothing to do with leading horsemen into battle.

15 MR LAUCCI: [15:49:55] Not at all a military position.

16 PRESIDING JUDGE KORNER: [15:49:57] Okay. Well, then I think that's what you

17 need to put to him.

18 MR LAUCCI: [15:50:03]

19 Q. [15:50:03] Mr Witness, my suggestion was that the position of *agid al-ogada* was

20 related to public celebration and had nothing to do with warfare. Do you agree?

21 A. [15:50:58] Yes, I agree.

22 Q. [15:51:03] Thank you. Which leads me to the conclusion that the information,

23 true or false -- oh, I have Arabic.

24 Which leads me to the conclusion that the information, true or false, that Ali Kushayb

25 was *agid al-ogada* has no relevance for his alleged authority as a Janjaweed leader; am I

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1 right?

2 A. [15:52:37] No, I don't agree with that. The position of *agid* was usually  
3 appointed by the peoples of the area, but now somebody came from outside the area  
4 and appointed this *agid al-ogada*. They meant to appoint him as the leader of  
5 the Janjaweed, but they were just covering this and saying that he is *agid al-ogada*.  
6 But the truth of the matter is that he was the leader of the Janjaweed and not an *agid* at  
7 all.

8 Q. [15:53:18] Thank you.

9 Madam President, I'm in your hands. If I cover the next topic, which would take 15  
10 to 20 minutes, I will be done with the chapter -- the chapter on Ali Kushayb and I will  
11 move to Deleig immediately tomorrow morning. What should I do?

12 PRESIDING JUDGE KORNER: [15:53:38] Again, I think the witness has had a very  
13 long day and if you've got another 20 minutes, I think we'd better leave it to  
14 tomorrow morning.

15 But I just want to make sure that we all understand what you're saying, sir.

16 Before the appointment of Ali Kushayb, the position of *agid al-ogada* was not known to  
17 you and the other members of your community?

18 THE WITNESS: [15:54:44](Interpretation) Yes, the *agid al-ogada* position was not  
19 known in our community, and we heard about it for the first time when Ali Kushayb  
20 was appointed as *agid al-ogada*.

21 PRESIDING JUDGE KORNER: [15:54:56] So there had never been an appointment  
22 of somebody with that title before?

23 THE WITNESS: [15:55:23](Interpretation) No. We only had an *agid*, but we never  
24 heard about the position of *agid al-ogada* before.

25 PRESIDING JUDGE KORNER: [15:55:34] When you were told that Ali Kushayb had



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1 been appointed with this title, what were you told that it meant by your -- your  
2 leaders?

3 THE WITNESS: [15:56:42](Interpretation) No, no one came to explain to us  
4 the functions of the *agid al-ogada*. Somebody called Al Hera went to enquire about  
5 this position and who appointed Ali Kushayb in that position and what exactly are  
6 the functions of that position, but he was imprisoned for that.

7 PRESIDING JUDGE KORNER: [15:57:06] And who did he go and ask? Who did  
8 Al Hera go and ask what the functions were?

9 THE WITNESS: [15:57:50](Interpretation) Al Hera went to Ja'afar to enquire about  
10 the tasks of this new position of *agid al-ogada*. He was arrested and imprisoned  
11 because of just doing that.

12 PRESIDING JUDGE KORNER: [15:58:06] And Ja'afar, just so that we're clear as well,  
13 was the -- I think what you call the *mu'atamid*; is that right? *Mu'atamid*. The  
14 governor.

15 THE WITNESS: [15:58:31](Interpretation) Yes, yes, Ja'afar was the *mu'atamid* and  
16 then he was promoted later to governor. But the arrests started when Ja'afar was  
17 the *mu'atamid*.

18 PRESIDING JUDGE KORNER: [15:58:50] All right. Is there anything you want to  
19 ask any more on that topic? I just wanted to make sure we all understood what the  
20 witness was saying --

21 MR LAUCCI: [15:58:56] Actually, I would have asked the follow-up questions that  
22 you asked, so it's done.

23 PRESIDING JUDGE KORNER: [15:59:01] All right. Sir, I'm sorry, you'll have to  
24 come back tomorrow, but I promise you that will be the last day.

25 So -- well, I think, unless there's anything that either side wants to raise before we

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- 1 break.
- 2 MR NICHOLLS: [15:59:18] Only - and nothing to do with you, sir - is whether we
- 3 should have the first witness ready to appear before the first break or whether we
- 4 should plan on him coming at 11.30.
- 5 MR LAUCCI: [15:59:32] Let him until the afternoon.
- 6 PRESIDING JUDGE KORNER: [15:59:30] Well, no, I --
- 7 MR NICHOLLS: [15:59:35] The afternoon? Okay.
- 8 PRESIDING JUDGE KORNER: [15:59:37] Yes, I mean, it does seem --
- 9 MR LAUCCI: [15:59:38] Make him come at 2.30. Sorry, I wasn't clear.
- 10 MR NICHOLLS: [15:59:43] Okay.
- 11 PRESIDING JUDGE KORNER: [15:59:45] So you -- so you think --
- 12 MR NICHOLLS: [15:59:46] I was thinking -- sorry.
- 13 PRESIDING JUDGE KORNER: [15:59:47] Sorry, Mr Nicholls. And by the way, I
- 14 forgot to say, the one thing I really got the impression, we must not interrupt each
- 15 other, particularly with the witness, because that really does create a problem, but it's
- 16 sometimes quite difficult.
- 17 You think you're going to take more than one session.
- 18 MR LAUCCI: [16:00:05] Not sure, but likely.
- 19 PRESIDING JUDGE KORNER: [16:00:08] All right, yes, we'll say 2.30.
- 20 Yes. Yes, very well. 9.30 tomorrow morning, please.
- 21 THE COURT USHER: [16:00:15] All rise.
- 22 (The hearing ends in open session at 4.00 p.m.)