

Trial Hearing
WITNESS: DAR-OTP-P-0012

(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 ("Ali Kushayb")
5 ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Wednesday, 8 June 2022
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:33] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:31:54] Yes, good morning, all.
15 Case called, please.
16 THE COURT OFFICER: [9:31:59] 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: [9:32:18] Yes, thank you.
22 Defence first. I gather, Mr Laucci, your client would prefer not to come today again,
23 and again has agreed that we can continue without him.
24 MR LAUCCI: [9:32:30] And I confirm that he waives his right to be present in the
25 courtroom.

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1 PRESIDING JUDGE KORNER: [9:32:33] Thank you very much.

2 MR LAUCCI: [9:32:34] So the Defence is represented today by, Madam Drusilla

3 Bret-Robertson, our intern; Madam Paola Pallot, assistant evidence reviewer;

4 Mr Mohammad El Rahi, assistant evidence reviewer; my colleague, Iain Edwards;

5 and myself, Cyril Laucci.

6 PRESIDING JUDGE KORNER: [9:32:54] Thank you very much, Mr Laucci.

7 Yes, then we'll hear victims' representatives, please.

8 MS VON WISTINGHAUSEN: [9:33:00] Yes. Good morning, Madam President,

9 your Honours. The victims today are represented by our case manager, Idriss

10 Anbari; associate counsel, Anand Shah; and myself, Natalie von Wistinghausen.

11 PRESIDING JUDGE KORNER: [9:33:09] Yes, thank you very much,

12 Ms von Wistinghausen.

13 And finally the Prosecution.

14 MR NICHOLLS: [9:33:15] Good morning, Madam President, your Honours. It's

15 myself Julian Nicholls with Edward Jeremy, Claire Sabatini, Mohanad Elkholy and

16 Diana Saba. Thank you.

17 PRESIDING JUDGE KORNER: [9:33:24] Yes, thank you.

18 Yes, well, I suppose the proceedings should start with reading the -- Mr Jeremy, I

19 gather you're dealing with this witness, reading the summary of his evidence as he's

20 a -- as he's a Rule 68(3) witness.

21 MR JEREMY: [9:33:42] Yes, Madam President. Good morning to you. Good

22 morning, good morning, all.

23 Witness *P-12 provides evidence on the structure of the militia Janjaweed, including

24 Ali Kushayb's role as the *agid al ogada* or colonel of colonels of the militia/Janjaweed.

25 The witness also provides evidence in relation to the identity of Ali Kushayb, who he

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1 also knew as Ali Muhammad Ali, who owned a pharmacy in Garsila.

2 P-12 further provides information about the distribution of money, weapons and
3 other equipment to the militia/Janjaweed in the Wadi Salih and Mukjar localities by
4 the Government of Sudan.

5 Shortly after a rebel attack on Mukjar in August 2003, the witness *saw a meeting of
6 high-ranking Government of Sudan officials in Mukjar, including Abd-Al-Rahman,
7 Ahmad Harun and Abdallah Torshein.

8 P-12 further provides a direct account of the attack on Bindisi by GoS Forces and the
9 militia/Janjaweed, led by Ali Kushayb on the 15 and 16 August 2003. And during
10 that attack, he observed that civilians were killed, property was looted and homes
11 destroyed.

12 The witness also provides evidence regarding events in Mukjar towards the end of
13 2003 and the beginning of 2004, in particular the organisation of the operation to
14 attack Sindu in February 2004, in which the Janjaweed were led by Ali Kushayb.

15 In addition, P-12 states that after the Sindu operation, men, including *Umdah* Yahya
16 Ahmad Zarruq, were arrested and detained in Mukjar.

17 Lastly, the witness provides direct evidence on Abd-Al-Rahman's presence and role
18 while detainees were removed from Mukjar police station, loaded into vehicles and
19 transported away to be executed.

20 That concludes the summary. Thank you.

21 PRESIDING JUDGE KORNER: [9:36:45] Yes, thank you very much, Mr Jeremy.

22 Let's have the witness then, please.

23 I'm assuming, Mr Jeremy, given his position, that he can read the oath.

24 MR JEREMY: [9:37:02] Yes, Madam President.

25 (The witness enters the courtroom)

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1 PRESIDING JUDGE KORNER: [9:38:27] Yes, sir, good morning. Thank you very
2 much for coming to give evidence in this case. I hope you can hear and understand
3 me.

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5 (The witness speaks Arabic)

6 THE WITNESS: [9:38:42](Interpretation) Thank you so much. Indeed, I can hear
7 you pretty well.

8 PRESIDING JUDGE KORNER: [9:38:47] Good. In a moment, I'm going to ask you
9 to read the solemn declaration which is on a card in front of you. But can I just say a
10 couple of things.

11 First of all, as has been explained to you, you're going to be questioned first of all by
12 the Prosecution, then the -- possibly the representatives of the victims in this case, and
13 finally the Defence.

14 It's likely that you're going to be here all of today and probably all of tomorrow. So
15 there will be breaks, but if at any stage you'd like a break, please don't hesitate to say
16 so. And other than that, we'll just see how we go.

17 Yes, would you like to read the solemn declaration, please.

18 THE WITNESS: [9:39:54](Interpretation) Yes. I will start by reading the official
19 oath. I solemnly declare that I will speak the truth, the whole truth and nothing but
20 the truth.

21 PRESIDING JUDGE KORNER: [9:40:11] Yes, thank you very much indeed, sir.

22 And Mr Jeremy, it's you to go.

23 MR JEREMY: [9:40:20] Thank you, Madam President.

24 QUESTIONED BY MR JEREMY:

25 Q. [9:40:24] Good morning, sir. We -- we of course met during the witness

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1 preparation session in recent days, but for the record, my name is Edward Jeremy and
2 I'll be asking you questions on behalf of the Prosecution.

3 Now, sir, if in the course of my questions, if anything is not clear, then please don't
4 hesitate to ask me to clarify my questions.

5 A. [9:40:58] Yes.

6 Q. [9:40:59] And a reminder to yourself and to myself that we -- we must speak
7 slowly and leave a pause between my question and your answer.

8 A. [9:41:17] Yes.

9 Q. [9:41:17] And also, a further reminder that we are in open session, so
10 your -- your words can be heard by the public and, therefore, I will remind you to be
11 careful not to say anything that could identify you, in particular, in relation to, for
12 example, your profession or your employer. And if you need to say anything
13 to -- that would identify you, then we can go into private session as we previously
14 discussed.

15 Is that clear?

16 A. [09:42:08] Yes.

17 Q. [9:42:08] Okay. Now, sir, you'll recall that during the preparation session, you
18 had the opportunity to review this statement that you previously provided to the
19 Prosecution as well as a file note in which you made two amendments to two
20 paragraphs in your statement.

21 Do you recall that, sir?

22 A. [9:42:39] Yes, I recall this very well.

23 Q. [9:42:42] Okay. And we don't need to see it, but for the record, that file note I
24 referred to with the two amendments is DAR-OTP-0136-0009.

25 Now, sir, you made a series of corrections and clarifications to your statement while

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1 you -- while it was read back to you while you -- while you read it and those
2 corrections and clarifications were recorded in a three-page note.

3 Do you recall that?

4 A. [9:43:25] Yes, I do recall that and I acknowledge that.

5 Q. [9:43:30] Okay. And again, we don't need to see that note, but for the record,
6 the -- the ERN of that note is DAR-OTP-0220-4710.

7 Now, sir, during the preparation session you confirmed that with the -- the
8 corrections and clarifications that you made to your statement, it was true and
9 accurate to the best of your knowledge and belief.

10 Do you recall making that confirmation, sir?

11 A. [9:44:11] Yes, I do that confirmation.

12 Q. [9:44:16] And you -- you also agreed that your evidence could be submitted into
13 the record in this case.

14 Do you -- do you recall that?

15 A. [9:44:30] Yes, I do recall this and I approved of this.

16 Q. [9:44:35] Okay. Thank you.

17 Now, hopefully we'll conclude this -- the formality stage shortly, but I'll also ask you
18 if you recall during the witness preparation session that you marked four aerials or
19 maps. Do you recall that?

20 A. [9:45:05] Yes, I do recall pretty well.

21 Q. [9:45:07] In particular, it was a map of Bindisi, an aerial image of north Bindisi, a
22 map of south Bindisi and an aerial image of Mukjar. Do you recall that?

23 A. [9:45:26] Yes, very well.

24 Q. [9:45:28] Okay. And again, we won't look at those right now, but for the record,
25 the ERNs of those items are as follows: DAR-OTP-0220-4713, 4714, 4715 and 4716.

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1 Now, sir, in -- in the remainder of the time for my questions, we'll -- broadly we'll -- I
2 intend to focus on three main areas with you. I'll briefly focus on your evidence in
3 relationship -- in relation to Ali Kushayb, in particular, his pharmacy and your
4 knowledge of his name. Then we'll focus on the events that you witnessed in Bindisi
5 on the 15 and 16 August 2003. And then I'll ask you some questions in relation to
6 events in Mukjar with a focus on events in around Mukjar in February 2004.

7 A. [9:46:55] Yes.

8 Q. [9:46:56] Now, sir, in going through my questions I'll be referring to parts of
9 your witness statement.

10 I'll ask the court officer to please bring that statement to the screen. It's evidence
11 reference number DAR-OTP-0119-0503.

12 And sir, in front of you there is a binder. And in the first tab of that binder -- to
13 your -- to your left side, sir. Yeah, if you take the binder there and if you turn to
14 tab 1. And you'll find a yellow tag in tab 1 and beneath that yellow tag is the Arabic
15 version of your witness statement just in case you want to refer to that in the course of
16 my questions.

17 Do you see that there, sir?

18 A. [09:48:21] Yes, I do. I can see this in yellow with a number of items and a
19 content. However, they are in English.

20 Q. [9:48:28] Sir, if you go to the first tab in the binder, the first divider. And there
21 should be a yellow tab there and underneath the yellow tab, your witness statement
22 in Arabic.

23 A. [9:48:57] Yes, I found it.

24 Q. [9:48:59] Okay, perfect. Thank you.

25 Okay. So first of all, sir, we'll focus on your knowledge of Ali Kushayb, his

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1 pharmacy and his name.

2 So sir, in paragraph 38 of your statement, which is page 0512, you say halfway down
3 that paragraph, quote --

4 A. [9:49:38] Is it page 35?

5 Q. [9:49:42] Sorry, paragraph, paragraph 38. And, sir, I'll read you the relevant
6 parts of that paragraph as well, so it won't always be necessary for you to -- to refer to
7 your statement unless you feel you need to.

8 A. [9:50:04] Yes.

9 Q. [9:50:06] So, sir, in that paragraph you say the following, quote:

10 "I met Kushayb many times in his pharmacy in 2001 and 2 when I used to go there to
11 get medicine for animals in Bindisi whenever I visited Garsila." End quote.

12 Now, sir, my -- my question to you is during this period, 2001 and 2, can you estimate
13 how many times you -- you were in Garsila and seeing Ali Kushayb in his pharmacy?

14 A. [9:51:02] Maybe *more than 50 times.

15 Q. [9:51:08] So more than -- more than 50 times during 2001 and 2, correct?

16 A. [9:51:14] Yes, this is correct.

17 Q. [9:51:18] And without revealing your -- the details of your business there, can
18 you tell us why you were in Garsila so frequently during that period?

19 A. [9:51:44] Because of my business, my work, and because I had relationships,
20 social relations in Garsila, I could visit Garsila whenever I wanted to or whenever I
21 needed to. And over the year, I could visit it more than 30 or 40 or 50 times.

22 Q. [9:52:13] And are you able to describe in general terms the appearance of Ali
23 Kushayb's pharmacy?

24 A. [9:52:29] In brief, it is a store or a shop of 4 by 4 square metres so a total of 16
25 square metres. This is usually the area of shops or stores in the market. It is

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1 opened towards the north, there is a street between Ali Kushayb's pharmacy and the
2 bank. And on the western side, there is *the fruit and vegetable market in Garsila.
3 This is in brief.

4 Q. [9:53:17] Okay. And you said that there was a street between Ali Kushayb's
5 pharmacy and the bank. Did that bank have a name, sir?

6 A. [9:53:34] There are two banks, Faisal Al Islami to the western -- to the west, and
7 the Agricultural Bank to the eastern part.

8 Q. [9:53:47] And were there any other landmarks that you recall in -- in or around
9 Ali Kushayb's pharmacy?

10 A. [9:54:06] There is the electricity building to the east and a number of stores,
11 boutiques to the south. In addition, there is a small area for a stadium for basketball.

12 Q. [9:54:39] And during these 50-plus occasions that you went to Ali Kushayb's
13 pharmacy, did you actually go inside each time or did you see him outside? Can
14 you give some more detail?

15 A. [9:54:58] I wouldn't enter the pharmacy every time, except when I need
16 something. So this is a store in the market and one can enter it and purchase its
17 needs. So in general this is an open store in the market, and even -- so if we do not
18 need to purchase anything, there is no need to enter it.

19 Q. [9:55:32] Okay. In paragraph 33 of your statement, at page 0511 in the
20 electronic version, you -- you state in the first sentence that Ali Kushayb's real name
21 was Ali Muhammad Ali. Now, sir, how did you know that this was his real name?

22 A. [9:56:12] I did not have access to his birth certificate, but this is -- this name is
23 known throughout Garsila. Everyone knows that his name is Ali Muhammad Ali,
24 and as I knew him, this is the truth.

25 Q. [9:56:31] And so why do you say the name was known throughout Garsila?

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1 A. [9:56:48] He's a public figure with a -- who owned a shop in the market, so he is
2 well known by people who talk about him, so it is normal for them to know that that
3 person is the owner of the store and he has this business.

4 Q. [9:57:18] And when -- when you would go to the store, to the pharmacy and
5 interact with Ali Kushayb, how would you refer to him? How would you address
6 him?

7 A. [9:57:39] I would address him with two names, as Ali Muhammad or Uncle Ali
8 since we usually use "uncle" to address an older person in our region, this is common
9 use in our region. We would call him Muhammad Ali Muhammad, and younger
10 people would call him Uncle Muhammad.

11 Q. [9:58:10] And you say that older people would be addressed by the term "uncle".
12 In this period when you were going to his pharmacy in 2001 and 2, can you estimate
13 old Ali Kushayb was?

14 A. [9:58:40] Maybe in his fifties.

15 Q. [9:58:48] And, sir, within Garsila, did you know of any other persons who were
16 called Ali Muhammad Ali who also owned a pharmacy?

17 A. [9:59:11] I can't recall and I do not know.

18 Q. [9:59:14] And do you know of any other people who were also called Ali
19 Kushayb who also owned a pharmacy, a different pharmacy?

20 A. [9:59:30] No, absolutely not.

21 Q. [9:59:40] Okay, thank you. I want to move on now to the attack on Bindisi,
22 which you addressed in your statement from paragraph 76 onwards. And that's
23 electronic page 0520.

24 Now, sir, I'll just give you a moment to turn to paragraph 76.

25 Now, sir, if you're there I'll ask you a question about that paragraph.

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1 A. [10:00:49] I'm there.

2 Q. [10:00:53] Okay. Now, you say that shortly before the attack on Bindisi began,
3 so this is on 15 August 2003, four vehicles from the central reservists came to Bindisi
4 from Mukjar.

5 Now, first of all, can you -- can you just tell us what the central reservist organisation
6 was? Were they police? Were they military? Can you just explain that briefly?

7 A. [10:01:35] They are the central reserve force stationed in Mukjar. They came
8 from Mukjar to Bindisi. The Central Reserve Police. I reiterate.

9 Q. [10:01:56] Now, you say that these men from the central reserve force or police
10 told you that they -- that they had come -- that the *Fursan* were coming to Bindisi to
11 collect Islamic tax and that Kushayb had obtained authorisation from Ja'afar
12 Abd-Al-Hakam to pick up 100 sacks of millet from Bindisi. Do you recall that, sir?

13 A. [10:02:47] I do. I remember it very well.

14 Q. [10:02:50] Now, in paragraph 78, you describe this as, quote, a "false warning."
15 And my question is what did you mean by that? In what way was this a false
16 warning?

17 PRESIDING JUDGE KORNER: [10:03:28] Mr Jeremy, did you say -- I'm sorry, I'm
18 interrupting. Did you say paragraph 78?

19 MR JEREMY: [10:03:39] Yes, Madam President.

20 PRESIDING JUDGE KORNER: [10:03:40] I can't see the words "false warning"
21 anywhere.

22 MR JEREMY: [10:03:47] Yeah, it's -- it's the final -- the final sentence on the --

23 PRESIDING JUDGE KORNER: [10:03:53] Oh, yes, I see it. I do, yes. Sorry.
24 Thank you very much.

25 I'm sorry, I *interrupted the witness who was about to explain what he meant.

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1 THE WITNESS: [10:04:18](Interpretation) False alert because they said four vehicles
2 loaded with CRF officers, they told us that Ali Kushayb and the troops under his
3 command were heading to Bindisi, coming to Bindisi because they were authorised to
4 take a hundred bags of millet corn. That was the alert.

5 After the alert, they left the location. And after their departure from the location, 10
6 minutes or 15 minutes afterwards, approximately, we saw smoke coming up towards
7 the east of Bindisi, so we learned certainly this is not a collection of millet corn, but
8 this is something else, this is for another purpose. Because there was that burning.
9 So before they arrived at us, I figured already that this was a false alert or that it was
10 from another purpose, a different purpose.

11 MR JEREMY:

12 Q. [10:05:35] And what did you understand the purpose of this false warning to be?
13 Why give this false warning?

14 A. [10:05:50] The false alert was given so that people, the inhabitants in that town
15 and in those villages, for them not to worry, not to worry about something about to
16 happen, for them just to wait there for their destiny to happen.

17 Q. [10:06:26] And had that -- had that false alert not been given, do you think that
18 the villages in Bindisi or in the other villages that were attacked, would they have
19 reacted differently?

20 MR EDWARDS: [10:06:42] Your Honour, the last question and the last answer were
21 speculative enough. I fear that my learned friend is -- is pushing the envelope too
22 far. It's a highly speculative -- it calls for speculation.

23 PRESIDING JUDGE KORNER: [10:07:03] (Microphone not activated)

24 THE INTERPRETER: [10:07:05] Microphone, please.

25 PRESIDING JUDGE KORNER: [10:07:09] Ah, thank you. I forgot. I'm sorry.

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1 I think that the objection to the second question is well -- is well founded,

2 Mr Edwards.

3 Mr Jeremy, you need to be a bit careful about asking him questions like what do you
4 think would have happened if you --

5 MR JEREMY: [10:07:26] That's -- yeah, that's -- that's fine, your Honour. I'm happy
6 to move on and I think we have -- it's clear in the statement.

7 MR EDWARDS: [10:07:32] And -- and can I -- can I also just say that, I mean, I didn't
8 object at the time, but I think my -- and the witness has answered, but the reason I say
9 that is that he's being -- he's -- he's essentially being asked to place himself in the mind
10 of the person or persons who gave the false alert. So being asked what was the
11 purpose of that false alert requires the witness to give evidence about what others
12 intended.

13 PRESIDING JUDGE KORNER: [10:08:02] I think the question is, had you not been
14 given that alert, what would have happened or what -- I suppose it's actually
15 quite -- one way or another it's a speculation. I think -- I think, Mr Jeremy, the
16 point's made anyhow, so I don't think you need to take it any further.

17 MR JEREMY: [10:08:22] Thank you, Madam President.

18 Q. [10:08:30] Sir, a terminology point in paragraph 76. You -- you refer to the
19 *Fursan* coming to Bindisi and I want to clarify with you that elsewhere in your
20 statement, for example, paragraphs 28 and 39, you say that *Fursan* is another word for
21 Janjaweed; is that correct?

22 A. [10:09:03] I agree with that, yes.

23 PRESIDING JUDGE KORNER: [10:09:16] Where does that -- why are they known as
24 *Fursan* and what does it mean? Sorry.

25 THE WITNESS: [10:09:37](Interpretation) The *Fursan* is a group of fighters who call

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1 themselves the *Fursan*. I, however, refer to them as the Janjaweed, because they
2 carry arms and they ride horses, they kill and loot. So here you have two
3 appellations, but they refer to the same meaning.

4 PRESIDING JUDGE KORNER: [10:10:03] Okay, perhaps -- out of sheer
5 interest - sorry, Mr Jeremy - why do some people call them -- like you say you call
6 them the Janjaweed, and other people call them the *Fursan*.

7 THE WITNESS: [10:10:27] (Interpretation) It's an organisation. The *Fursan* is plural
8 for *Faris*, so *Fursan* linguistically refers to a group, they are commanded by an *agid*, a
9 colonel. And on top of all of these people there is an *agid al-ogada*, colonel of colonels.
10 I, however, call them the Janjaweed. A Janjaweed person is someone who carries
11 arms, rides a horse, and kills, loots, and burns as he pleases.

12 PRESIDING JUDGE KORNER: [10:11:04] Yes, I see, I think. Anyhow, thank you
13 very much.

14 Sorry, Mr Jeremy.

15 MR JEREMY: [10:11:09] Thank you, Madam President.

16 Q. [10:11:11] Now, sir, in your -- in your statement in relation to this episode,
17 you -- you refer to a man called Muhammad Abd-al-Jabbar Adam as being present
18 with Ali Kushayb and Hassaballah during this attack. For example, in paragraphs
19 78 and 82.

20 Now, just to -- just to be clear, you say in paragraph 21 that he was the director of the
21 tax office in Bindisi; is that right?

22 A. [10:11:52] I confirm so, that is correct.

23 Q. [10:11:54] Now, can you tell us why the director of the tax office in Bindisi was
24 accompanying Ali Kushayb and Hassaballah in the course of this attack.

25 A. [10:12:16] The alert provided by the CRF that Ali Kushayb and his men were

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1 coming to Bindisi to collect millet, I did not then expect Muhammad Ali
2 Abd-al-Jabbar to be among them, but when they arrived in Bindisi, I saw Muhammad
3 Abd-al-Jabbar getting out of the car and also Hassaballah and Ali Kushayb, the three
4 of them were there in that location in Bindisi when *Al Fursan* entered Bindisi. But
5 why were they accompanying Abd-al-Jabbar, that reason I don't know about.
6 However, they were in that vehicle until they arrived in Bindisi.

7 Q. [10:13:20] Now, I want to focus on what you could observe in relation to the
8 attack on 15 August 2003.

9 You say in your statement, paragraph 78 that you saw 3,000 *Fursan* arriving in Bindisi
10 and you say that they went to the market in New Bindisi.
11 Do you recall that, sir?

12 A. [10:13:49] I remember that very well. That's indeed what happened.

13 Q. [10:13:53] And then you say that you see -- you saw Kushayb, Muhammad
14 Abd-al-Jabbar Adam and Hassaballah with this group of *Fursans*, specifically you say
15 you saw them get out of a vehicle; is that correct?

16 A. [10:14:17] Yes.

17 Q. [10:14:18] Now, how were you able to identify -- how were you able to see these
18 men when they -- when they got out of the vehicle?

19 A. [10:14:36] First of all, my home was near the market. Where I lived was near
20 the market. And when the attack on Bindisi happened, I was not far from the
21 market. I was 300 or 400 metres from the event. From where Ali Kushayb,
22 Muhammad Abd-al-Jabbar and Hassaballah could be seen, from where I could see
23 them.

24 Q. [10:15:11] Now, you've mentioned Hassaballah and you say in this paragraph 78
25 that he was the coordinator of the PDF in Garsila. Was he someone personally

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1 known to you?

2 A. [10:15:30] I knew him personally. (Redacted). I was one
3 year his senior -- correction, two years his senior and he was two years my junior, so I
4 knew him very well.

5 Q. [10:15:50] So, sir, if you were 300 to 400 metres away, if we agree a football pitch
6 is about 100 metres, would you agree with that?

7 A. [10:16:20] It's an approximate estimate. If you ask me, for example, in
8 comparison to how -- if you ask me how far you are standing from me here, I can only
9 give an approximate estimate. That's all I can say. I cannot give you a specific
10 distance, but I can give you a rough estimate. A football pitch, well, I'm not sure, but
11 it could be 100 metres long or something around that. I'm not sure. I said 300 or
12 400 metres, approximately.

13 Q. [10:16:55] Okay. I understand it's difficult to estimate the distances, but
14 how -- how were you able to recognise these three men when they -- they got out of
15 the car from where you were located?

16 A. [10:17:19] I recognised the vehicle where they were. Two of them had passed
17 by me, not far from me before they stopped and got out of the car. And when they
18 stopped and got out of the car, they were in a visible place, I was able to recognise
19 them one by one, the three of them.

20 Q. [10:17:48] And what is it that you were -- you were doing when -- when you saw
21 them when this attack began?

22 A. [10:18:07] I was hiding because the entrance of these groups, I mean, these
23 groups were killing, wreaking havoc. I was not in a position to stay standing as the
24 war was being waged and gunfire was willy-nilly, so I was in hiding, but I was
25 nearby.

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1 Q. [10:18:34] Okay, I want to move to the attack on the second day that you
2 referred to in your statement on 16 August 2003. Now, in paragraph 83, electronic
3 page 0522, you describe how on the following day the attack resumed and the *agids*
4 and the *Fursan* went through New Bindisi and they crossed the Wadi into Old Bindisi.
5 Can you -- can you tell us just remind us what a Wadi is?

6 A. [10:19:26] The Wadi is a seasonal river and it's called the Wadi Salih from
7 southern Bindisi to northern Bindisi. That's what it means.

8 Q. [10:19:43] And at this -- at this time, did the river have water in it? Did the
9 Wadi have water in it?

10 A. [10:19:52] Certainly. It was fall time. It was August. It was a rainy season,
11 so certainly the river would be filled with water. It would be a proper river.

12 Q. [10:20:06] Now, you say in paragraph 84, final sentence, that during this attack
13 on Old Bindisi you saw Kushayb on horseback in front of the people. Now, so what
14 was he doing when -- when you saw him?

15 A. [10:20:36] He was giving orders to the *ogada* or colonels, who in turn gave orders
16 to their *Fursan* to kill, loot, and burn.

17 Q. [10:20:54] And how were you able to tell that he was giving orders? On what
18 basis do you say that?

19 A. [10:21:06] I saw him with my own eyes, but I did not hear his words myself.
20 But given the signs he was making, it seemed he was giving instructions. And the
21 people around him were considered the leaders of the groups, so I realised he was
22 giving them instructions because they were there at the front and fire was burning
23 behind. So he was there making these signs, so I was able to be sure that he was
24 giving them instructions or orders.

25 Q. [10:21:49] Can you describe the signs that you saw Ali Kushayb making?

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1 A. [10:22:05] They were hand gestures. I did not hear his words, but he was
2 making certain gestures or signs with his hands to his men.

3 Q. [10:22:20] What -- what sort of gestures, if you can -- if you can give us some
4 kind of indication? If you can't, then I'll move on.

5 A. [10:22:37] I did not understand what he said with regards to his hand gestures,
6 but I saw him using his right hand and left hand, putting his hands up. These were
7 just signs, but I did not hear what he said. I just saw him making signs.

8 Q. [10:22:57] Now, so during this period, if I understand correctly from paragraph
9 86, you were -- you say that you were less than 50 metres away from Kushayb when
10 you -- when you could see him. This was in the course of the attack, so was Kushayb
11 able to see you, if you were only 50 metres away?

12 A. [10:23:33] He could not see me. Neither could his men, because I was hiding in
13 the bush and there were these soil barriers that could protect me from bullets. That
14 was the best location for me to survive gunfire and hitting. So he could not see me.

15 Q. [10:24:04] Now, sir, based on what you could see and what you could hear
16 during this attack on 15 and 16 August, are you able to convey what it was like to be
17 in Bindisi at -- at this time?

18 A. [10:24:30] Well, there was a lot of fire. Ninety per cent of the homes in Bindisi
19 are constructed using local materials. They are wooden materials inflammable, so
20 the entire town was on fire. It was a terrifying situation. Smoke was coming up
21 everywhere. It's -- to describe this, it's beyond words to describe this.

22 Q. [10:25:08] And are you able to say what Bindisi looked like after the attack?
23 You say in your statement that you were -- you were there in the days following the
24 attack on the 15th and the 16th. What did Bindisi look like then?

25 A. [10:25:30] After the attack it was a rabble of ashes. Corpses scattered

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1 everywhere. It's the destruction that results from war. All that was left in Bindisi
2 were smithereens and ashes.

3 During the attack there were senior people and children, and it's difficult for such
4 people to leave. Someone who's 90 years old during the attack is not in a position to
5 flee. So when war -- when war happens, you can imagine what that person's fate is.
6 This is what I saw with my own eyes in Bindisi.

7 Q. [10:26:28] now, sir, in paragraph 83 you -- you say that during this attack on old
8 Bindisi you heard the Fursan chanting "Holy War against Slaves".

9 Now what did you understand this to mean? Who were the slaves that were being
10 referred to?

11 A. [10:27:05] I believe the "slaves" was in reference to the population of Bindisi, the
12 native population of Bindisi. This expression is -- was used by the government to
13 sow discord in society. In a way, this was another tool of war they used. If they kill
14 me because I'm a slave, although I didn't commit a crime and for no reason, then that
15 is a tool to kill society or to sow discord in society. If we end up dividing society
16 between slaves and masters, then it becomes no longer possible for people to co-exist.
17 That's what I believe was meant by that.

18 Q. [10:28:04] Sir, I want to move now to the -- to the third and final part of my
19 questions. And that that relates to the -- that that relates to the attack on Mukjar in
20 February 2004.

21 And if I can turn your attention, sir, to paragraph 93 of your statement, electronic
22 page 0524.

23 A. [10:28:48] Yes.

24 Q. [10:28:50] Now -- so this is in 2004, as -- as is clear from your statement, and you
25 say that on around 20 February approximately 6,000 Fursan gathered around Mukjar

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1 and some -- some came in to Mukjar, causing people in Mukjar to -- to flee, to seek
2 shelter; is that correct?

3 A. [10:29:37] Yes, that is correct.

4 Q. [10:29:38] Now, in this same paragraph, in the third sentence, you -- you say
5 that Kushayb followed the people in a vehicle and address the people, saying, even if
6 they ran, they could not save themselves unless their children came out of the
7 mountains. Now I've a few questions in relation to that, sir.

8 Firstly, what do you mean Kushayb followed the people in a vehicle?

9 A. [10:30:29] If I may be allowed to elaborate further on the sentence you just read
10 out. I'm asking you could I explain some more.

11 Q. Please.

12 PRESIDING JUDGE KORNER: [10:30:39] I think he ought to, and in particular
13 where he was, because it's not clear.

14 MR JEREMY: [10:30:45] Yes. We're coming there, but yes.

15 Q. [10:30:44] Yes, please do elaborate, sir, and if you can give an indication of
16 where you were while you observed these events.

17 A. [10:31:04] I was inside Mukjar when those Fursan came by. They are estimated
18 at 6,000. Riding horses and camels. They came into Mukjar. All the inhabitants of
19 Mukjar, i.e. those who were displaced from Bindisi and other areas around Mukjar,
20 they were all inside Mukjar. They were in fear, they were terrified. The Fursan
21 came inside Mukjar, started looting and started taking away all that they found on
22 their way.

23 All the inhabitants of Mukjar, or most of them, went to the Mukjar police station,
24 myself included. The police station vicinity was crowded with thousands of
25 inhabitants. Ali Kushayb came by, assisted by the police and his men. They let him

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1 come in, he was given space, and he went on top of a car and started giving remarks
2 to people, and I was among those people. He told them the following: He gave
3 them an ultimatum. He told them, if your children do not come down from the
4 mountains, you will not rest, you will not be in peace.

5 This was what he said to the crowd and I was among that crowd.

6 Q. [10:32:53] How far away would you estimate you were from -- from

7 Ali Kushayb when you heard him say these words, sir?

8 A. [10:33:03] Ten metres, approximately. From where I stand to the end of this
9 room.

10 Q. [10:33:13] And what did you understand this reference to if your children do not
11 come down from -- from the mountains you will not rest? What did you understand
12 that to mean?

13 A. [10:33:33] That was a threatening message. It was nothing but a message of
14 threat to -- to us, addressed to us.

15 Q. [10:33:46] And by mountains, were those any mountains in -- in particular,
16 mountains in general? Are you able to give any more detail?

17 A. [10:34:02] In my opinion, I believe he referred to the Sindu mountains where it
18 was said that the rebels were there. So as I understand things, he meant the Sindu
19 mountains.

20 Q. [10:34:22] Okay. Let's -- let's focus on the Sindu mountains. And in
21 paragraph 94 of your statement, you -- you refer to different forces heading east out of
22 Mukjar towards Sindu. And you refer to the army, to the central reservists and to
23 the Janjaweed.

24 Now, you say in that paragraph 94, last sentence, quote: "The Janjaweed were led by
25 Kushayb."

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1 And so my question is: How did you know that?

2 A. [10:35:24] There are three forces, as I know. The Government of Sudan forces,
3 who were on board seven, eight or nine vehicles, and this is for the army. There are
4 also the police troops, the Central Reserve Forces. They were not headed by
5 Ali Kushayb because they were in Mukjar, they were based in Mukjar. However,
6 there were forces riding horses and camels and led by Kushayb who was giving them
7 orders. I did not mean that the Central Reserve Forces were headed by Kushayb,
8 because they have their own leadership, but this is a different kind of forces.

9 Q. [10:36:18] Sir, perhaps my question wasn't clear. I was focussed only on the
10 Janjaweed forces, and I simply wanted to know why it was that you said in your
11 statement in paragraph 94 that it was Ali Kushayb who led those forces. Was that
12 something that you heard, or was that something that you saw, or what was the
13 reason for saying that Ali Kushayb led those forces?

14 A. [10:36:54] I know very well that the Janjaweed are headed by an *agid* who
15 has -- who heads his troops in Wadi Salih. We have an *agid* in Bindisi, another one
16 representing Mukjar and other localities, and all of these four localities are under the
17 leadership of Ali Kushayb. Whoever rides a horse or a camel and comes to Mukjar is
18 under the leadership of Ali Kushayb.

19 PRESIDING JUDGE KORNER: [10:37:33] Does that mean you didn't actually see
20 him setting off? You're just presuming that that's what happened.

21 THE WITNESS: [10:37:47](Interpretation) He does lead them and he was in front of
22 them in all the occasions. He was also giving them instructions and orders. He was
23 instructing the forces who came to loot and he was inside the vehicle or a car with a
24 person called Hassaballah. And we knew that the Central Reserve Forces leader was
25 based in Mukjar. We also know that the leader -- the leader of the Government of

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1 Sudan forces, or armies, this is what I meant.

2 PRESIDING JUDGE KORNER: [10:38:27] Sorry, the paragraph 94 of your statement
3 could suggest that you actually saw everybody leaving for Sindu. Did you actually
4 see everybody leaving for Sindu or is that just something that you heard about?

5 THE WITNESS: [10:38:51](Interpretation) I was there and *I witnessed with my own
6 eyes. What I'm saying, I've already seen it or heard it or known it. I saw them
7 leaving there and I was -- I could hear the sound of the ammunitions of the guns.
8 And I saw the flames coming up as they were heading to the eastern part.

9 PRESIDING JUDGE KORNER: [10:39:18] Yes, thank you.

10 Yes, sorry, Mr Jeremy.

11 MR JEREMY: [10:39:28]

12 Q. [10:39:28] Now, Sir, I want to move to paragraph 97 of your statement in the
13 section titled "Arrests and extrajudicial killings in Mukjar".

14 Now, sir, in that statement, in that paragraph you refer to arrests of men outside of
15 Mukjar and you say that it began a few days after the fighters left for Sindu.

16 Do you recall that, sir?

17 A. [10:40:13] I do recall that. I recall that they came from east Mukjar. And I've
18 seen people, and the police station -- and other persons with members of the popular
19 police taking people to the police station.

20 This is what I've seen.

21 Q. [10:40:43] And so am I correct in thinking that you were able to directly observe
22 these arrests taking place?

23 A. [10:40:56] I was almost 50 metre away from the police station. (Redacted), and
24 I could see what was happening.

25 Q. [10:41:25] Now, sir, you say in paragraph 97 that you -- you know the names,

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1 you know the names of the police who were taking the men to -- to the police station.

2 A. [10:41:45] Yes, I do.

3 Q. [10:41:48] Are you able to give us those names if you remember any of them,
4 please?

5 A. [10:42:01] They are numerous, but the ones that I've seen taking people are
6 Hassan Muhammad Joma.

7 Q. [10:42:29] I heard you say "Hassan Muhammad Joma", is that correct, sir?

8 A. [10:42:32] Yes, Hassan Muhammad Joma is his real name, and he has a
9 nickname, which is Hassan Carter.

10 Q. [10:42:34] Sorry, could you repeat that nickname.

11 A. [10:42:54] Hassan Carter. Hassan Carter is the nickname.

12 Q. [10:43:04] And who was this -- this person, Hassan Muhammad Joma, with the
13 nickname Carter? Who was he?

14 A. [10:43:13] He collaborated with the police and, specifically, with the popular
15 police. He's a local person from Mukjar and he could identify many people, the
16 face -- by the face.

17 Q. [10:43:41] Could you briefly tell us what the purpose of the popular police was
18 in Mukjar.

19 A. [10:43:53] Its role was to serve as whistleblowers for the government because, as
20 they were in the region, they could support the government by providing it with the
21 reports, as they were well aware of the daily details of people and so on.

22 Q. [10:44:19] So you've mentioned Hassan Muhammad Joma.
23 Do you recall any other names?

24 A. [10:44:31] I recall someone named called Ibrahim Korin.

25 Q. [10:44:35] And who was that person?

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1 A. [10:44:47] This person also works at the popular police and I've seen him take
2 people to the Mukjar police station.

3 Q. [10:45:05] And so was it only the popular police involved in these arrests or
4 were any other entities involved in arresting persons?

5 A. [10:45:21] The popular police were in charge of arresting people inside and
6 outside Mukjar, until they reached the police station, and then the policemen in the
7 police station would be in charge of these people.

8 Q. [10:45:44] Now, sir, in relation to these arrests, in the next paragraph, 98, you
9 say that anyone "who had any kind of social rank was arrested in MUKJAR, whether
10 they were from MUKJAR or from the surrounding areas."

11 Based on what you could observe, why were persons with this social rank arrested in
12 Mukjar at this time?

13 MR EDWARDS: [10:46:30] Forgive me, I'm getting to my feet a little late, but again,
14 that question requires the witness to give evidence, place himself in the mind of the
15 persons doing the arresting.

16 All he can do is give evidence of what he saw. Anything else is speculation.

17 MR JEREMY: [10:46:55] Madam President, the -- I mean, we know the role of the
18 witness. He'd been living in Mukjar for a number of months at this time, since he
19 had moved there in August after fleeing the attack on Bindisi. He was interacting
20 with a series of officials within Mukjar, and I think he has a proper basis to give his
21 view on why these people were being targeted in Mukjar.

22 I'm not asking him to get into the mind of the targeters, but to provide his
23 observations on why those persons were being arrested.

24 MR EDWARDS: [10:47:37] Your Honour, if he's able to say: I spoke to the people
25 doing the arresting, and they explained to me why they were targeting these people

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1 with a certain social status, fine. But at the moment, we're not there.

2 PRESIDING JUDGE KORNER: [10:47:53] (Overlapping microphones) he can say -- I
3 think you're right in that, Mr Edwards, he can't say why. But I suppose he can deal
4 with - as you say, he was in Mukjar, the effects of the arrest of -- how was it put,
5 high-ranking persons, social rank. That he can do from his observation.
6 I don't -- but I think there is a justification in the objection, Mr Jeremy. He
7 can't -- unless he was privy to the discussions which led to the arrest of the -- those
8 with social standing. All he can say is what effect it would have or what effect it did
9 have.

10 MR JEREMY: [10:48:43]

11 Q. [10:48:43] Sir, are you able to comment -- to say from your own vantage point,
12 what effect on the community -- on you that the arrest of these persons of social rank
13 within Mukjar during this period had?

14 A. [10:49:16] I think that the policemen did not do so because they knew the
15 identity or the ranking of the people, but the people who did so are well-known.
16 The people who were taken to the Mukjar police station were high, socially ranking,
17 I -- as I knew them.

18 PRESIDING JUDGE KORNER: [10:49:46] But you're saying you don't think the
19 police officers knew that?

20 THE WITNESS: [10:50:01](Interpretation) Popular police who were arresting these
21 people knew about this. They were from the region and they knew that that person
22 was a sheikh, the other was an imam, that was an *umdah*, and that person was
23 wealthy and they could classify people and arrest them accordingly.

24 This is my guess.

25 PRESIDING JUDGE KORNER: [10:50:22] Well, it may be trans- -- it may be that it's

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1 a question of translation or interpretation because you started, sir, according to the
2 interpretation by saying that, I think the policemen did not do so because they knew
3 the identity or the ranking of the people.

4 But you're now saying that they knew exactly who they were; so it's slightly
5 contradictory, it could be said.

6 In any event, Mr Jeremy, I mean, it's up to you --

7 MR JEREMY: [10:50:52] Yes.

8 PRESIDING JUDGE KORNER: [10:50:52] -- if you want to try and clarify it.

9 MR JEREMY: [10:50:59]

10 Q. [10:51:02] Sir, did --

11 PRESIDING JUDGE KORNER: [10:51:06] If you want to clarify that.

12 MR JEREMY: [10:51:09]

13 Q. [10:51:10] Please sir, you go ahead and I'll follow, if necessary.

14 A. [10:51:14] Yes, maybe there was some confusion. Let me clarify it. There are
15 two types of police, the Central Reserve Police, which came from Khartoum to Mukjar.
16 As for the popular police, they are from the locality and they have been appointed in
17 that category of the police, *so there is some confusion. The popular police is made up
18 of the local community. They are part of the local community. As to the police that
19 was inside Mukjar, they had come from Khartoum to Mukjar, and hence they had
20 trouble staying abreast of what was happening. For instance, if they needed to target
21 a specific category of people, they would resort to the popular forces or the popular
22 police to get help.

23 Q. [10:52:14] And so you said that the popular police are drawn from the local
24 community. Those popular police involved in arresting persons in Mukjar,
25 including these persons of social rank, did they or did they not know who these

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1 persons were when they arrested them?

2 A. [10:52:41] Yes, when they arrested them, they knew their rank. For example,
3 someone with a high-social rank in the society is eminent, is well known in the region.
4 This is what I meant.

5 Q. [10:52:58] Thank you. Sir, I want to move forward in your statement to
6 paragraph 100. It's on the same page and there, you say in the first sentence that:
7 "On the sixth day after the men left for SINDU and had arrived back in MUKJAR, I
8 witnessed 52 people being transported away in a vehicle from the police station."

9 A. [10:53:40] Yes.

10 Q. [10:53:40] Now, sir, my -- my -- my question is, from where did you witness this
11 event?

12 A. [10:54:00] From the (Redacted), located north, the Mukjar police station.
13 And I saw the arrested people - in the wilderness, in a visible open space - were being
14 transported away in a big vehicle.

15 Q. [10:54:30] Now, without repeating the location or the name of the person who
16 owned the house, why were you -- why were you at this location at this time?

17 A. [10:54:50] I was hiding because on that day, Mukjar was on flame. It was on
18 fire.

19 Q. [10:55:04] And why -- why did you feel the need to hide at this time?

20 A. [10:55:14] We were staying inside the house, but the wall outside -- the fence
21 outside the house could allow us to see what was happening in the police station.
22 We saw those people being transported, and the person who was giving instructions
23 to have people transported in the vehicle.

24 Q. [10:55:40] And who was the person giving instructions to have the people
25 transported in the vehicle?

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1 A. [10:55:56] Ali Muhammad Ali Kushayb was pointing to these people. I saw
2 him pointing out to specific people so that they are being lifted and transported in the
3 vehicle.

4 Q. [10:56:20] Were you able to -- were you able to hear? Was Kushayb speaking at
5 this point or were you able to hear anything he said?

6 A. [10:56:31] I heard him address the policemen and his own people, his own folks.
7 I heard him talk and point out to people. He used to point out with his finger to
8 people who were loaded into the vehicle, but I did not -- I cannot tell that I heard
9 specifically what he said.

10 Q. [10:57:06] And why did you believe that he was giving -- he was giving
11 instructions about who should be loaded into these vehicles? For what reason do
12 you say that?

13 A. [10:57:21] I do not know the reasons, but I saw him point out at a number of
14 people who were loaded in the vehicle, but I cannot tell about the reasons specifically.

15 Q. [10:57:43] Now, sir, in paragraph 101 of your statement, you name four people
16 amongst the group that you saw being loaded into vehicles, specifically, *umdah* Issa
17 Harun Nour, *Umdah* Adam Doori, *Umdah* Yahya Ahmad Zarruq and herdsman,
18 Abd-Al-Jabbar 'Abd-Al-Mawla.

19 Do you recall that, sir?

20 A. [10:58:21] Yes, I do recall that because I knew them very well. And I've seen
21 Ali Kushayb point out to them and they were lifted or loaded into the vehicle.

22 Q. [10:58:39] Now, in relation to one of those men, *Umdah* Issa Harun Nour, you
23 say that later that day, you heard that he was found dead by the Sinnang brook.
24 Do you know what happened to the other men who you name?

25 A. [10:59:07] I did not see what happened to them, but after they were loaded in

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1 the vehicles, *They headed north straightaway. They went north, by way of Garsila to
2 Mukjar. And I heard gunshots, the sound of the ammunitions, of gunshots. And
3 when women went there, they saw dead bodies, including the dead body of *umdah*
4 Issa and other people. Some of them could be easily identified, and some of them
5 other not. I did not see them, but this is what I heard.

6 Q. [10:59:50] Did you see any of those men in Mukjar after this -- after this event?
7 Did you see them again after you saw them being loaded into the vehicles?

8 A. [11:00:08] I never saw them in Mukjar. And their families went to find them, to
9 recognise them and find their clothes and to do funerals for them. But I never saw
10 them again.

11 MR JEREMY: [11:00:31] Thank you, sir.

12 Madam President, your Honours, I see we're at the break, but I can also conclude my
13 questions -- I've no further questions.

14 PRESIDING JUDGE KORNER: [11:00:40] (Microphone not activated)

15 MR JEREMY: [11:00:41] Yeah. Thank you.

16 PRESIDING JUDGE KORNER: [11:00:45] Yes. Well, thank you very much,
17 Mr Jeremy.

18 Sir, we're going to take the first break now for you to relax and have a cup of coffee or
19 whatever. But it's very important - because you're giving evidence - that you don't
20 discuss the evidence with anybody who is with you. I'm sure you understand why.
21 Yes, so we'll sit again at 11:30, please.

22 THE COURT USHER: [11:01:13] All rise.

23 (Recess taken at 11.01 a.m.)

24 (Upon resuming in open session at 11.34 a.m.)

25 THE COURT USHER: [11:34:33] All rise.

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1 Please be seated.

2 PRESIDING JUDGE KORNER: [11:35:24] Yes. Ms Von Wistinghausen or Mr Shah,
3 or neither.

4 MS VON WISTINGHAUSEN: [11:35:31] It's me today, Madam President.

5 QUESTIONED BY MS VON WISTINGHAUSEN:

6 Q. [11:35:40] Mr Witness, we briefly met *yesterday, and I introduced myself,
7 together with my colleague. We're representing the victims who are participating in
8 the proceedings. And I have a few questions for you as well.

9 First, I would like to ask you about a question you were asked by Mr Jeremy this
10 morning, and he asked you what you understood by the sentence that you mention in
11 your statement, that is at paragraph 83, where you say that you heard the *Fursan* were
12 chanting "holy war against slaves".

13 Remember that?

14 A. [11:36:27] I do. I remember that very well.

15 Q. [11:36:29] And your answer to Mr Jeremy was that you understand that the
16 word "slave" was referring to the native population of Bindisi, right?

17 A. [11:36:53] Yes.

18 Q. [11:36:53] And just to clarify, by the native population of Bindisi, you mean the
19 Fur population, right?

20 A. [11:37:08] Yes, I mean that very much so.

21 Q. [11:37:10] Okay. Thank you. I just wanted to clarify that.

22 And then, Mr Witness, you were asked by the Presiding Judge if the killing or arrest
23 of numerous persons of a certain rank that you have spoken about in your witness
24 statement, like *umdahs*, for example, if that had an impact or consequences on the
25 community. And I don't think that this question was really answered.

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1 Can you explain to the Judges if and what consequences it had.

2 A. [11:38:03] Well, the impact, if you kill the elite, those who are learned, those who
3 are of high social status, or those who are of means, financial means, then by that you
4 are destroying the community. That's what I meant.

5 The elite, the learned, the wealthy, those who have high positions in the
6 administration, when you -- when you target these people, you are destroying half of
7 society. And to me, that is an inexplicable thing.

8 Q. [11:38:48] Thank you. I would also like to talk to you about the looting that
9 you have mentioned in your statement. You talk about looting after Mr Harun's
10 visit to Mukjar on 7 August 2003. That is paragraph 69. You have also talked about
11 looting after the attack on Bindisi on 15 August 2003. That is paragraph 79 of the
12 statement. And you have also talked about looting in Mukjar on 20 February. That
13 is paragraph 93 of the statement.

14 Can I ask you to explain to us more in detail what was looted and if anyone has ever
15 been punished for this looting.

16 A. [11:39:54] What was looted was anything that could be of benefit, and this could
17 include livestock, crops, goods that belonged to merchants and shop owners and on
18 market. And anything that could be of value. They took away everything. They
19 didn't leave anything to the villagers or to any other members of the community.
20 They took away everything.

21 And when I say livestock, that means cattle, sheep, horses, camels and goats. And
22 by -- and I also mean assets in terms of money and goods, in addition to household
23 belongings. It could be appliances, clothes, other machines. Anything of value
24 they would loot.

25 Also, farming crops. Most people in that area work in farming, so they store the

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1 harvest. When the Janjaweed would come, they loot all that people owned. That's
2 what I meant.

3 Q. [11:41:24] Do you know if people were able to return to their houses at all?

4 A. [11:41:37] No, not at all. People headed to camps where they gathered, but
5 those who left villages, they never went back there.

6 Q. [11:41:53] Do you know of other people taking over their land?

7 A. [11:42:10] Well, they left their lands, but I didn't see anyone taken over the lands.
8 However, I heard from family and friends that the deserted areas were inhabited by
9 people who were enjoying farmland, gardens, and they were working those
10 farmlands and were availing themselves of all assets that were left in those villages.
11 So yes.

12 Q. [11:42:55] You have spoken about visiting many villages between Mukjar and
13 Bindisi - and just to mention a few, Arada, Sigigir, Indri, Dimbo, Tendy and
14 others - before the attacks in 2003, but you have also visited them, if understand your
15 statement correctly, after the attacks.

16 Can you tell the Judges how life was in these villages before the attacks and after the
17 attacks.

18 A. [11:43:43] Prior to the attacks, these villages were safe and were productive.
19 They were providing all nearby towns with crops and livestock. They were stable,
20 they were filled with people, and they were prosperous. Life was prosperous. This
21 is before the events. After the events, it became nothing but rubble. All that was
22 left was trees, and so forth, but there was no life left there. Everything got
23 destroyed.

24 Q. [11:44:28] You spoke about a lot of people who were killed and wounded in the
25 villages in and outside of Bindisi, and I'm referring to paragraph 81 of your statement

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1 where you speak about 150 people who died. And I think this was also clarified in
2 the preparation session with Mr Jeremy. And you speak about some of them who
3 have bullet wounds and sword wounds.

4 I would like to ask you if you also saw people who got wounded and who didn't die.
5 And can you describe if they had a possibility to get some treatment, to see a doctor,
6 to be taken to the hospital.

7 A. [11:45:34] I saw corpses scattered. That's what I saw.

8 As to the injured, there was no doctor, and there was no hospital, and there was no
9 medication available at all. So people fled to the forests. No treatment was
10 available. That's what happened. They never got treated.

11 Q. [11:46:04] Can you speak about people who you know who had long-term
12 physical consequences of their injuries?

13 A. [11:46:25] I know many people like that. Also, some people were maimed.
14 For example, a sick person who fled to the forest to hide would have no access to care,
15 in addition to the heavy rain in August in Bindisi during the attack. So, naturally,
16 there are mosquitoes, flies and many other things. So a person in need of care,
17 whether a child, an adult or an elderly person, a lot of them died amid the lack of care
18 and the lack of food. So when we left Bindisi to Mukjar, a lot of people became
19 victims as a result of the lack of care. In my view, those too are considered victims.

20 Q. [11:47:27] Thank you.

21 Madam President, I have just two more questions. And, really, just out of caution, I
22 would prefer to ask them in closed session, if that's alright.

23 PRESIDING JUDGE KORNER: [11:47:36] Yes. We'll go into closed session.

24 Thank you.

25 (Private session at 11.47 a.m.)

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1 THE COURT OFFICER: [11:47:52] We're in private session, Madam President.

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14 (Redacted)

15 A. [11:49:05] When we left Bindisi to Mukjar, the circumstances were far from

16 ordinary. There were about seven or 8,000 people living in Mukjar, approximately,

17 then. And for about -- and in about two weeks, that number rose to over 150,000,

18 those living in Mukjar. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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24 (Redacted)

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- 1 A. [11:50:33] (Redacted) During that time, it was difficult to leave Mukjar, and
- 2 this was true for all people.
- 3 (Redacted)
- 4 (Redacted)
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13 (Open session at 11.54 a.m.)

14 THE COURT OFFICER: [11:54:17] We're back in public session, Madam President.

15 PRESIDING JUDGE KORNER: [11:54:21] Mr Edwards.

16 MR EDWARDS: [11:54:22] Thank you, your Honour.

17 QUESTIONED BY MR EDWARDS:

18 Q. [11:54:28] Good morning, Mr Witness. We met very briefly yesterday, but I'll
19 just repeat my name again. My name is Iain Edwards, and I'm one of the lawyers
20 representing Mr Ali Muhammad Ali Abd-Al-Rahman.

21 I'm going to be asking you questions for the rest of the day, and probably for a good
22 part of tomorrow as well. If at any point I ask you anything that you want repeated,
23 anything that you'd like me to rephrase, please don't hesitate to ask me to do so.

24 So far, is that okay?

25 A. [11:55:10] Yes.

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1 Q. [11:55:11] Many of my -- many of my questions are going to be quite focused. I
2 should say, I hope all of my questions are going to be quite focused, so please listen
3 careful and try to respond to those questions precisely.

4 We have all read your witness statement, we've all digested your witness statement,
5 and it's not necessary to repeat its contents.

6 Is that okay?

7 A. [11:55:49] Yes.

8 Q. [11:55:52] You gave your witness statement in 2007. I won't say where or when,
9 more precisely. And your statement contains a great deal of detail; dates, times,
10 figures, and that sort of thing.

11 And I see from page 7 of your statement that you say that: "Most of the dates I
12 referenced in this statement were noted down by me in a notebook which I consult
13 regularly."

14 PRESIDING JUDGE KORNER: [11:56:55] We're on page 7?

15 MR EDWARDS: [11:56:55] Paragraph 7, page 3. Oh, if I said page 7, my apologies.
16 I meant paragraph 7. Paragraph 7, page 3.

17 Q. [11:57:15] Have you got paragraph 7, sir?

18 A. [11:57:16] I have it, yes.

19 Q. [11:57:17] You didn't bring that notebook with you to your interview with the
20 Prosecution investigators in 2007, if I understand correctly; is that right?

21 A. [11:57:50] Could you please repeat the question.

22 Q. [11:57:52] When you were giving your statement to the Prosecution in 2007, you
23 didn't have your notebook with you.

24 A. [11:58:08] Yes, I did not have it with me, correct.

25 Q. [11:58:11] Now, the details that you had in that notebook - dates, names,

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1 perhaps, numbers, that sort of thing - was this information that you put in the
2 notebook at the time or very shortly after the time that those event happened?

3 A. [11:58:51] I put that information in the notebook when (Redacted)
4 (Redacted). It is then that came
5 the idea of identifying the trajectory of people that came from Bindisi, when and
6 where they arrived in Mukjar, and so forth. So these were details, typical details.
7 And then there were other figures, statistics, because every village has its own
8 number of inhabitants, men and women, so on which dates did they arrive and so
9 forth. So that's what triggered the start of my notebook activity.

10 When I was invited to testify, when they came to my camp, I did not use my car. I
11 had to use a taxi. So I came there, and I left my notebook behind, but I knew these
12 things by heart. Even if I don't look at documents now, I can answer your questions
13 because I know things by heart. These events happened in reality.

14 Q. [12:00:24] Yes. In your -- in this paragraph 7, you say that you wrote these
15 things down in a notebook "which I consult regularly". By that, did you mean that in
16 2007 you were still consulting that notebook regularly to remind yourself of dates,
17 numbers, and that sort of thing?

18 A. [12:01:03] Certainly not. I used it only when an organisation would visit or
19 someone like -- someone who is maimed or injured needs assistance, because I did
20 not have the statistical information in my head. I needed to check the notebook to
21 verify if this person injured on this date and came to Chad on this date, and so forth.
22 So it was helpful for me to do my job while at -- while in the camp.

23 Q. [12:01:36] And does that notebook still exist?

24 A. [12:01:49] No. I left it. I didn't know about it. I didn't take it with me.

25 Q. [12:01:53] How long ago did you and the notebook part company?

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1 A. [12:02:14] Since I left that place, I didn't see the notebook afterwards.

2 Q. [12:02:17] Why -- well, in your statement, you say: "I decided to write things
3 down for historical purposes for my children."

4 Now, that might lead one -- that might lead a person to think that you were keeping it
5 for posterity for your children, something that was important to you.

6 So my question is: Why did you leave it behind? Why didn't you keep it with you?
7 Why do you not have it now?

8 A. [12:02:57] It wasn't safe to take these notebooks with me. They were several
9 notebooks or a compilation. Everything was written down for historical purposes.

10 It wasn't secure or safe to take these notebooks with me. It wasn't only one notebook,
11 but several ones, including the censuses of the population in Mukjar, of the ones who
12 moved from Bindisi to Chad.

13 There were several details in those notebooks, so I decided not to bring them with me
14 or to take them with me. But I have a lot in my memory.

15 MR EDWARDS: [12:03:46] The nature of this witness's evidence is such that there's
16 quite a lot that is going to have to be dealt with in private session.

17 PRESIDING JUDGE KORNER: [12:03:54] Well, I was leaving it for the moment
18 because it didn't seem to me that this was going to identify him. But if you're going
19 to carry on about this, I think we better go into private session.

20 MR EDWARDS: [12:04:06] And just so that everyone in the court and, indeed, in the
21 public gallery know, I'm then going to be moving on to discuss this witness's
22 occupation and/or activity at the time in question, which my learned friend has
23 indicated must also --

24 PRESIDING JUDGE KORNER: [12:04:23] Well, yeah. Is that going to take the rest
25 of -- until the luncheon adjournment?

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1 MR EDWARDS: [12:04:30] I mean, probably not that long, but I'm going to be in
2 private session for quite some time.

3 PRESIDING JUDGE KORNER: [12:04:37] All right. Well, I can see that there are
4 times when it's necessarily.

5 Yes. All right. We'll go into private session.

6 (Private session at 12.04 p.m.)

7 THE COURT OFFICER: [12:04:56] We're in private session, Madam President.

8 (Redacted)

9 Q. [12:05:07] When you say that -- when you said a moment ago that it was
10 essentially too risky for you to bring your notebooks with you, can you explain what
11 you mean. To bring them from where to where?

12 A. [12:05:48] To take them or bring them from the camp where I was to the town
13 where I settled and where I delivered my statement.

14 Q. [12:06:11] Oh, I see. So at the time when you deliver your statement in
15 January 2007, you no longer had the notebook?

16 A. [12:06:25] They were not with me any longer, yes.

17 Q. [12:06:28] Because you had left them at the camp; is that right?

18 A. [12:06:35] Yes.

19 Q. [12:06:35] Had you destroyed the notebooks?

20 A. [12:06:46] I did not destroy them. I kept them.

21 (Redacted)

22 (Redacted)

23 (Redacted)

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3 Q. [12:13:44] In that notebook, did you mention the name Ali Kushayb, if you can
4 remember?

5 A. [12:13:52] Yes, I did.

6 Q. [12:13:55] In the notebook, did you mention the names of other authority
7 figures?

8 A. [12:14:10] What you do you mean by "authority figures". Please clarify this, if
9 possible.

10 Q. [12:14:14] Mr Witness, you understand the difference between an authority
11 figure and a normal member of the public, don't you?

12 A. [12:14:28] Yes, I do, very well.

13 Q. [12:14:29] Okay. So you understand when I mean by authority figures.

14 Did your notebook contain the names of other authority figures?

15 A. [12:14:47] Yes, it does.

16 Q. [12:14:48] Okay. And what you say -- and the names of persons that you may
17 have considered perpetrators.

18 A. [12:15:05] Yes.

19 Q. [12:15:05] And did that notebook contain details of what these perpetrators had
20 actually done?

21 A. [12:15:23] Yes, there are some details.

22 For instance, on that day, for instance, Ali Kushayb came with his forces to Bindisi, to
23 that place, that location, and in Mukjar happened so and so. These are details that
24 I'm writing for historical purposes, for documentation purposes. This is what I
25 meant, yes.

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1 Q. [12:15:46] Yeah, for historical purposes, for documentation purposes, but we
2 don't have them.

3 A. [12:16:00] I do not have the notebooks, but I still have its content in my memory.

4 (Redacted)

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19 Q. [12:30:12] Okay. Was there an Islamic tax office in Mukjar?

20 A. [12:30:22] A branch, but the head office was in Bindisi at that time.

21 Q. [12:30:26] Okay. There was a branch.

22 Was there a branch of an Islamic tax office in Garsila?

23 A. [12:30:40] It wasn't a branch as the one in Bindisi. Garsila is a Muhafiz. As

24 such, therefore, there was a head office in Garsila, and there was also a head office in

25 Bindisi.

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7 Q. [12:41:33] Bindisi was a large town. It was the capital of the region.

8 A. [12:41:46] It was the capital of the locality.

9 Q. [12:41:49] Yeah. Yes. Well, I'm using your words from your preparation log
10 last week. But, okay, capital of the locality.

11 Were there any bank branches in Bindisi?

12 A. [12:42:19] None. There is no bank branch in Bindisi.

13 Q. [12:42:24] So where was the nearest bank branch from Bindisi?

14 A. [12:42:36] Garsila.

15 Q. [12:42:37] Now, I'm talking about the size and importance of Bindisi.

16 How did it compare in size to Garsila? Bigger or smaller or about the same?

17 A. [12:43:06] Perhaps the same size, but Garsila -- in Garsila, there were more
18 governmental offices, more than Bindisi. But maybe in geographic size, Bindisi was
19 larger, but in terms of institutional presence, Garsila was bigger.

20 Q. [12:43:27] Okay. Nevertheless, we know from paragraph 12 that it had a court,
21 a police station, a zakat office, an office for agriculture. Yeah?

22 A. [12:43:47] Also schools, police stations, agricultural office, veterinary office, the
23 presidency of the locality. So, yes, and a health centre.

24 Q. [12:44:06] Thank you. The veterinary -- you described it just now as a
25 veterinary office. Was that like a veterinary clinic? Was it where someone could

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1 take their sick animals to be looked after or cured or treated by a vet?

2 A. [12:44:47] Not by a vet. It could be a veterinary nurse providing treatment for
3 animals for their small injuries, but it was not a hospital, and there was no specialised
4 physician therein.

5 Q. [12:45:01] Okay. And if a person with a sick cow or a sick goat or needed
6 medicine, was veterinary medicine available from that veterinary centre?

7 A. [12:45:27] Medicine was not available because the government did not provide
8 enough medicine for animals. Actually, not even enough medicine for humans.
9 There were -- there was medication available in the market. So the doctor would
10 prescribe the medication for you, and you would go and buy it from the market.
11 Also, the veterinary nurse is able to prescribe many things for people in his small
12 practice, which you can buy elsewhere. There was -- medication was not fully
13 provided there. If medication is not present in the centre, you could buy it from the
14 market.

15 Q. [12:46:08] Okay. So you could buy it -- you could buy veterinary medicine
16 from the market. And in Bindisi, was there also a pharmacy in the market that
17 provided medicine for humans?

18 A. [12:46:35] There was a pharmacy, yes, selling medicine for humans.

19 Q. [12:46:42] Was there just one in Bindisi?

20 A. [12:46:46] The official pharmacy authorised by the government, I believe, was
21 only one, as far as I know.

22 Q. [12:47:00] Okay. And in terms of places where you could buy veterinary
23 medicine, you say one could buy it in the market. Was there one particular
24 veterinary pharmacist or one particular shopkeeper in Bindisi that sold veterinary
25 medicine?

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1 A. [12:47:35] I knew someone who had a small pharmacy, veterinary pharmacy,
2 and he used to move around. Of course, you know, there's the structure of markets.

3 A market in Bindisi, the next day a market elsewhere, so a moving market. So I
4 knew a pharmacy owner who was moving in these markets, and he was selling
5 veterinary medicine.

6 Q. [12:48:01] Okay. And was this a person that would move from town to town,
7 depending on the market day?

8 A. [12:48:11] Yes, he moved from town to town, depending on the market day.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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1 Was he the only person in Bindisi that sold veterinary medicine?

2 A. [12:50:20] He was the only person who had an actual veterinary pharmacy in
3 Bindisi, but he was not the only person trading such medicine. There were
4 merchants who could present veterinary products, but they were not organised
5 pharmacies.

6 Q. [12:50:45] Okay. Do you happen to know whether as a travelling veterinary -- I
7 won't say pharmacist. As a seller of veterinary medicine, do you know if he also
8 travelled to Gaba?

9 A. [12:51:10] I was not sure of that.

10 Q. [12:51:11] What about Arawala?

11 A. [12:51:22] I wasn't sure also if he went to Arawala.

12 Q. [12:51:26] What about Zarey?

13 A. [12:51:35] I wasn't sure of that either.

14 Q. [12:51:36] And, finally, do you know if he ever set up his travelling veterinary
15 medicine practice in Garsila?

16 A. [12:51:53] I believe he did not do so. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [12:52:52] Was it your responsibility within the family to supply veterinary

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1 medicine if any of the animals that your family kept were ill?

2 A. [12:53:19] It is possible for me to extend help whenever needed.

3 THE INTERPRETER: [12:53:31] Correction: It was possible, instead of it is possible.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

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24 PRESIDING JUDGE KORNER: [13:01:56] (Microphone not activated) Or want him
25 to do something else? Do you want him to mark something else while he's got the

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1 ELMO?

2 MR EDWARDS: [13:02:00] No. That was the only -- that was the only thing I
3 wanted him to mark.

4 PRESIDING JUDGE KORNER: [13:02:05] (Microphone not activated)

5 MR EDWARDS: [13:02:05] Oh, yeah. I'm sorry, yeah.

6 PRESIDING JUDGE KORNER: [13:02:10] Yes. Sir, we're going to take the lunch
7 break now, which is longer than the last break. It lasts till half past 2. Give you a
8 chance to relax. And same warning, please, about not speaking about your evidence
9 that you're giving.

10 Yes, thank you very much. 2.30, please.

11 THE COURT OFFICER: [13:02:31] All rise.

12 (Recess taken at 1.02 p.m.)

13 (Upon resuming in open session at 2.32 p.m.)

14 THE COURT USHER: [14:32:48] All rise.

15 Please be seated.

16 PRESIDING JUDGE KORNER: [14:33:22] Yes, Mr Edwards.

17 MR EDWARDS: [14:33:24] Your Honour, we were looking at a document marked by
18 the witness just before the break.

19 I actually think -- I was going to go directly to it, but perhaps we can do it this way.

20 I've got -- there are matters that I can examine on that won't require going into private
21 session, so perhaps we can get as far as we can in public session and then I'll come
22 back to this map -- this marked document and try and marshal all the private session
23 stuff together.

24 PRESIDING JUDGE KORNER: [14:33:58] (Microphone not activated) as we do seem
25 to have some people taking interest, if we can go into public, I think that will be

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1 helpful.

2 Yes, into public session, please, then.

3 MR EDWARDS: [14:34:12] I think we already are.

4 PRESIDING JUDGE KORNER: [14:34:24] Sir, you can take the document off -- yeah.

5 Sir, just so that you know, we're back in public session again, so the public can hear
6 what you're saying.

7 MR EDWARDS: [14:34:45]

8 Q. [14:34:46] Yes. So, Mr Witness, please make sure not to say anything that could
9 identify you, all right? Witness statement, paragraph 14, please.

10 Mr Witness, if you'd like to grab your witness statement in Arabic, which is in the
11 folder next to you - you were looking at it in morning - and then turn to paragraph 14
12 of your witness statement. I'm going to ask you about your first experience of the
13 Janjaweed, all right?

14 Yeah. Now, you say that you first witnessed -- or you began to witness government
15 soldiers and the Janjaweed fighting together against Bolad's group in 1991.

16 1991, is that the first time then that you became aware of either the term Janjaweed or
17 the phenomenon of the Janjaweed?

18 A. [14:36:29] No, of courses not.

19 Q. [14:36:32] Well, when did you first hear the term Janjaweed in the context that
20 you use it?

21 A. [14:36:47] 1986. I think that was the first time that I heard the term Janjaweed.

22 Q. [14:36:57] Okay. Now, would you agree that in Darfur there was a long history
23 of common banditry where criminals would prey on civilians, attack villages, steal
24 livestock?

25 A. [14:37:31] Yes, I remember that there were criminals riding horses and used to

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1 live in the mountains and they used to come to our villages and steal our livestock.

2 That was, I think, in the 80s, as far as I remember.

3 Q. [14:37:51] Okay. Armed on horseback, on camel back, and also armed, right?

4 A. [14:38:05] Yes, armed. Riding horses and camels and come to grazing lands of
5 the locals and steal the cows.

6 Q. [14:38:17] And this -- but this didn't suddenly stop -- this didn't suddenly stop in
7 the 80s, did it? This common banditry continued into the 90s and into the 2000s.
8 Everyone knows that, right?

9 A. [14:38:52] No, that's not correct. The 80s and the 90s, it was individual theft
10 cases. But in 2000, around 2002, 2003, it was an organised operation with the help of
11 the government, but in the past it was just a few banditry operations or gangs who
12 used to come, steal and go.

13 Q. [14:39:22] Okay. Listen, I understand -- I understand what you are saying
14 about the organisation of the Janjaweed in 2003 and 2004.
15 My question is a bit different, though. From the 80s, up to 2003, 2004, there was still
16 the phenomenon of armed bandits going around and targeting civilians and stealing
17 their cattle, right? That happened?

18 A. [14:40:13] Still, there was no cattle for the villagers. As soon as the cows are no
19 there anymore, the phenomena ended.

20 Q. [14:40:34] Okay. Well, when in Darfur were there suddenly no cattle to steal,
21 according to you?

22 A. [14:40:48] In 2003 and 2004. I'm not talking, of courses, about the entire area of
23 Darfur. I only talk about the area where I was born and brought up. *I am informed
24 about such area. But Darfur is a huge area. I can't answer a question about the
25 entire area of Darfur. I can only answer questions about my own area.

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1 Q. [14:41:16] Okay. Focusing on your area, focusing on the period up to 2003,
2 okay?

3 Are you with me?

4 A. [14:41:32] Yes.

5 Q. [14:41:33] There were, in your area, plenty of people, people of African
6 tribe -- people of African ethnicity, if you'll like, non-Arabs, who had livestock; camels,
7 cows, goats and that sort of thing, right?

8 A. [14:42:01] Yes, that's correct.

9 Q. [14:42:02] All right. So up until 2003, you're not saying, are you, that
10 suddenly there was no livestock left to steal, are you?

11 A. [14:42:20] No. In 2003 we had a lot of cattle, but after 2003 there was nothing
12 left for the group of people that I am talking about. All of their cattle were finished.

13 PRESIDING JUDGE KORNER: [14:42:31] Mr Edwards, I think probably the two of
14 you are crossing paths, but this is going on for a long time.

15 Is the point that you're trying to make that leaving aside the attacks by
16 military -- paramilitary forces or whatever, cattle raiding was still going on?

17 MR EDWARDS: [14:42:51] Yes, exactly. Yeah, yeah.

18 PRESIDING JUDGE KORNER: [14:42:52] So do you understand that? Although
19 you've been talking about attacks where the police and the Janjaweed and everybody
20 were involved, aside from that, were there still cattle raids going on by people who
21 were not part of a concerted attack?

22 THE WITNESS: [14:43:28] (Interpretation) Yes, of courses. Armed pillaging, I think
23 this is still happening until now. They target goods -- vehicles carrying goods and
24 tradesmen. I think this is still happening until now. For as long as there are people,
25 crime will stay. But according to the question that was asked, you are just asking me

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1 about the cattle. As for banditry and stealing or theft in general, of courses that is
2 still happening.

3 MR EDWARDS: [14:44:09] Thank you, Mr Witness. Paragraph 28, please.

4 Q. [14:44:28] In your statement, you talk about different groups of Mujahidin who
5 received money. And you talk in paragraph 28 about the second of these groups
6 that you refer to as the Fursan. I want to ask you about that for a moment.
7 Now, you've explained to us already this morning that the terms Fursan and
8 Janjaweed can be used interchangeably.

9 Have I got that right?

10 A. [14:45:11] Yes, that's correct.

11 Q. [14:45:12] As you understand it, were the Fursan always drawn from Arab
12 tribes?

13 A. [14:45:32] No, not all of them are from Arab tribes. Some of the African tribes
14 were recruited also by the government for the same purpose.

15 Q. [14:45:41] Okay. And obviously -- obviously, you were never a member of the
16 Fursan, but in paragraph 28 you give some detail about the organisation of the Fursan.
17 I want to ask you about the basis of your knowledge of this, okay?

18 Now, first of all, where you say that the Fursan are organised under the *agid* and
19 under the *agid ogada*, tell the Trial Chamber how you know this?

20 A. [14:46:38] For example, in Bindisi, the leader of the Fursan is an *agid*. And the
21 *agid al-ogada*, his name is Hamdan --

22 THE INTERPRETER: [14:46:56] Inaudible.

23 THE WITNESS: [14:46:59](Interpretation) He is a friend and I used to meet him in
24 the market and I have contact with him, so I know that. And he made it clear that he
25 was working as an *agid*, so it's something known by everybody.

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1 PRESIDING JUDGE KORNER: [14:47:19] I don't think the interpreter caught the
2 name.

3 MR EDWARDS: [14:47:42]

4 Q. [14:47:43] Mr Witness, there was a name that -- that you mentioned that the
5 interpreter didn't hear?

6 A. [14:47:56] I'm sorry. Well, if it's not a private session, then I shouldn't really be
7 mentioning any names. I apologise for my mistake.

8 PRESIDING JUDGE KORNER: [14:48:08] It may or may not be, so we can just very
9 briefly go into private session so that he can give us the name.

10 (Private session at 2.48 p.m.)

11 THE COURT OFFICER: [14:48:28] we are from private session, Madam President.

12 (Redacted)

13 (Redacted)

14 THE WITNESS: [14:48:38] (Interpretation) Hamuda Hamdan is the name that I
15 mentioned and he is an *agid*. The *agid al-ogada* of the area of Bindisi (Redacted)

16 (Redacted)

17 (Redacted). So it's

18 common knowledge that this person was the *agid* of Al-Fursan in the locality of
19 Bindisi.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. [14:49:21] When are you talking about? What period do you have in mind

24 when you explain that Hamdan was an *agid* (Redacted)

25 (Redacted)

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1 A. [14:49:43] I know that since 2003, I knew that he was the *agid* 1 *al-ogada* for the
2 locality of Bindisi.

3 (Redacted)

4 (Redacted)

5 (Open session at 2.50 p.m.)

6 THE COURT OFFICER: [14:50:09] We are back in open session, Madam President.

7 MR EDWARDS: [14:50:17]

8 Q. [14:50:18] So you would -- you would meet. The Janjaweed, broadly speaking,
9 considered the Fur as being closely associated with the rebel movement, correct?

10 A. [14:50:47] This is what they say?

11 Q. [14:50:50] Yeah. And the Janjaweed, do you agree, existed specifically to -- to
12 deal with what was considered to be the problem of the rebellion in Darfur, correct?

13 A. [14:51:17] I really don't understand the question.

14 Can you repeat, please?

15 Q. [14:51:22] The Janjaweed in 2003, 2004, existed to address the problem to fight
16 against the rebels, right?

17 A. [14:51:43] They were organised in order to deal with rebellion.

18 Q. [14:51:46] All Right. Okay.

19 And the man whose name you've just told us -- don't repeat it, but the *agid* whose
20 name you mentioned a moment ago, was involved in dealing with the rebellion, the
21 fighting against the rebels. Is that your evidence?

22 A. [14:52:18] Yes.

23 Q. [14:52:18] And he wasn't just any old member of the Janjaweed? He was a
24 leader of the Janjaweed according to you, right?

25 A. [14:52:29] Yes, that's correct.

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1 Q. [14:52:32] And yet you tell us that he would meet with you, and not just meet
2 with you, but tell you about the organisation of the Janjaweed? Have I understood
3 your evidence?

4 A. [14:52:52] No, he doesn't tell me about the exact organisation of the Janjaweed,
5 but he told me that he was an *agid* and he used to come and collect the *zakat* and he
6 used to come to the locality and deal with the governmental organisation such as the
7 police and other organisations. So he was acting as a leader of the group, but he
8 didn't tell me with details of how he works or how many fighters are under his
9 command or anything like that.

10 Q. [14:53:30] Okay. Well, that's very interesting. That then takes me back to the
11 question I asked you original. Paragraph 28, you give detail of the organisation of
12 the Janjaweed. One of the things you said is, an *agid* has from 20 up to 100 men in
13 his group.

14 Now, if that -- let me ask you this: How did you know that? Who told you that
15 information?

16 A. [14:54:14] Nobody informed me, but I saw them in Mukjar. In every group, the
17 leader of the group used to have his group with him in the same area and he used to
18 give orders from -- or for the fighters under his command, and that's how I
19 understood that a leader might have many fighters under his command or a small
20 number of fighters under his command depending on the size of the group.

21 Q. [14:54:59] And when you say the strong -- it goes on: "The strongest *agids* may
22 have up to 150 men."

23 Was that something that someone told you, or is that just on the basis of your
24 observations?

25 A. [14:55:18] These are things I witnessed.

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1 Q. [14:55:24] Okay. You also talk about the *agid ogada* - paragraph 28 still - usually
2 has 20, 30 or 40 *agids* under him.

3 Did anyone tell you that or is that something you just observed yourself?

4 A. [14:55:51] No, that's not true. The *agid* of the *ogada* is the one who -- who was
5 the leader of all the *ogada*, but the *agid* is the person who is the head of a group of
6 fighters.

7 Q. [14:56:11] Okay. There may have been a problem with the interpretation, so
8 I'm going to try again.

9 You say this in paragraph 28: "The *agid ogada* usually has 20, 30 or 40 *agids* under
10 him." Okay.

11 A. [14:56:44] Yes, but you need to read the rest of the -- the sentence because I'm
12 talking also about the *agid* and who usually has about 20 to a hundred men under the
13 command. This is what I meant here.

14 Q. [14:57:01] Mr Witness, instead of you tell me the question I should ask you, can
15 you just answer my question, please. We've already dealt with how many men are
16 under the *agids* according to you. We've dealt with that. My question relates to the
17 number of *agids* under an *agid ogada*. You stay in your statement: "The *agid ogada*,
18 usually has 20, 30, or 40 *agids* under him." I'm going to stop there and I'm going to
19 ask you a very simple question.

20 How do you know that?

21 A. [14:57:55] I don't understand the question really well because it's a bit
22 duplicated. I said that under the command of each *agid*, there is a group of men and
23 under the command of *agid ogada*, a group of *agids*.

24 PRESIDING JUDGE KORNER: [14:58:23] Yeah, so I think it's because there's a
25 lead-in to the question.

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1 How do you know how many men an *agid* had under him? Where did you get that
2 information from. No?

3 MR EDWARDS: [14:58:43] No. Sorry, witness. He's already indicated that
4 he -- his -- it's based on his observations, number of men under an *agid*. I'm now
5 moving up a level. How does he know how many *agid* are under the *agid ogada*, and
6 I've (Overlapping speakers)

7 PRESIDING JUDGE KORNER: [14:58:57] Yeah, okay.

8 Well, sir, if you followed the exchange between Mr Edwards and myself you're now
9 being asked about the *agid ogada*.

10 How do you know that information? Was it observation? Did somebody tell you?

11 THE WITNESS: [14:59:26](Interpretation) This piece of information is not correct as
12 far as I understand. The *agid al-ogada* has as many local leaders under his command
13 as needed. So I never said, really, that there is a specific number of *agids* under their
14 command.

15 Yes, the *agid al-ogada* commands a group of *ogada* and the *agid* commands a group of
16 fighters. That's what I want to clarify here.

17 PRESIDING JUDGE KORNER: [15:00:02] So what you're being asked - and it is
18 actually, I have to say quite, simple -- from where do you -- how do you know that,
19 that an *agid ogada* has a group of *agids* under him?

20 Is that because you saw it or it's in a document somewhere or it's generally accepted
21 or what?

22 THE WITNESS: [15:00:40](Interpretation) I saw that myself in the scene of all the
23 operations and it's also common knowledge. A lot of people know that everyone
24 who understands what was happening know that.

25 MR EDWARDS: [15:01:03]

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1 Q. [15:01:04] Okay. Yes, I'm going to move on to paragraph 30, please.

2 You say that when you did your -- when you -- well, first of all, look at number 30

3 and read that to yourself, okay, because I want to try and stay in public session.

4 Read paragraph 30 to yourself?

5 A. [15:01:54] (No interpretation).

6 Q. [15:01:55] Okay. Now, you were talking -- you were talking about the arming

7 of the *Fursan*, and earlier in your statement you say that the *Fursan* were armed by the

8 government.

9 In paragraph 30 you say that you were aware in the 90s of camel herders from Arab

10 tribes who carried weapons and a document that said that the individual had

11 permission to carry a weapon to protect their animals. Okay? Are you with me?

12 A. [15:02:42] Yes.

13 Q. [15:02:44] Okay. Is it your inference, is it your conclusion that because some

14 armed camel herders had a permit to carry weapons that the weapons had been

15 supplied by the government?

16 A. [15:03:17] In order to answer this question, we have -- of courses, we're in a

17 closed session because the information I would not like to say in open session. So

18 we can go in closed session so that I can give the explanation.

19 PRESIDING JUDGE KORNER: [15:03:35] Yes. All right.

20 (Private session at 3.03 p.m.)

21 THE COURT OFFICER: [15:03:51] We are in private session, Madam President.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Open session at 3.06 p.m.)

3 THE COURT OFFICER: [15:06:51] We are back in open session, Madam President.

4 MR EDWARDS: [15:06:57]

5 Q. [15:06:58] Mr Witness, if you just look to your left, do you see there's a black
6 binder on the table.

7 Yeah. Take it, that's it, right.

8 Now, if you open it and -- there's a -- a document in Arabic right at the front of that
9 bundle.

10 MR EDWARDS: [15:07:20] Your Honours, this is --

11 PRESIDING JUDGE KORNER: [15:07:25] (Microphone not activated)

12 MR EDWARDS: [15:07:26] Yes. For the record, DAR-OTP-0153-0686 entitled, "Acts
13 of Rebel Aggression Against the Towns, Villages and Camps of Darfur."

14 Q. [15:07:46] Now, Mr Witness -- yeah, do you see a document written in Arabic
15 and the title is to the effect of, "Acts of Rebel Aggression Against the Towns, Villages
16 and Camps of Darfur"?

17 A. [15:08:06] Yes.

18 Q. [15:08:15] Now, just to sort of put this document into some sort of context,
19 in -- at paragraph 46, you talk about rebels attacking Bindisi on 15 July 2003 and what
20 occurred during that rebel attack.

21 I'm going to ask you about other rebel attacks in a part of Darfur that you're familiar
22 with. And if you could please turn -- bear with me.

23 If we could have the English up on the screen, please, DAR-OTP-0153-0686.

24 And in the Arabic version, sir, could I please ask you to turn to page 2. It's the
25 document that has the number two at the bottom of the page in the centre.

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1 All right. And do you see the entry at number 21 relating to an incident of 14
2 December 2002?

3 A. [15:10:59] Yes. 21, yes. And 14 December, these rebels attacked Sandu
4 village.

5 Q. [15:11:08] And that is in the area of -- or in the locality of Garsila, correct?

6 A. [15:11:18] I have not seen this document and I don't know what is being said in
7 this document. I cannot retrieve -- I cannot answer any question about this
8 document because I haven't this document before and I was not part of the people
9 who prepared it.

10 Q. [15:11:41] Mr Witness --

11 A. [15:11:43] (Overlapping speakers) (No Interpretation)

12 Q. [15:11:43] I understand that. I'm not suggesting you were involved in
13 preparing it. I'm just going to ask you a few questions about your own independent
14 knowledge of some of these incidents, all right?

15 Now, were you aware of a rebel attack on Sandu village on or around
16 14 December 2002? Is that something you know about?

17 A. [15:12:16] No, I don't know that.

18 Q. [15:12:18] Okay. Turn over then, please, to page 3 in the Arabic. This is at
19 PDF page 4 in the English, your Honour, your Honours, ERN ending 0690. And it's
20 the entry 34 for 23 April 2003. Thirty-four.

21 First of all, have you found that in the Arabic, sir?

22 A. [15:12:52] Yes.

23 Q. [15:12:53] This refers to a group of rebels firing on Arab tribesmen and taking
24 3,000 herd of cattle. And this was in Narali in the Mukjar district.

25 Had you heard of this incident?

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1 A. [15:13:31] No, I have not heard about that. I have no knowledge of that at all.

2 Q. [15:13:37] All right. Going down two entries to entry 36, still on page 3 in the

3 Arabic, this is an incident of 9 May 2003. A rebel unit attacking seven citizens in

4 West Darfur on their way from Bindisi to Khor Baranda.

5 Is that something that you were aware of?

6 A. [15:14:09] No, I have -- no, I have heard nothing about this.

7 Q. [15:14:12] Okay. Let me ask you this: Do you know where the Keila police

8 post was located?

9 A. [15:14:33] There are two Keilas in Darfur as far as I know. Which one are you

10 referring to? What do you mean? There is a Keila in Manwaba (phon) and there is

11 a Keila in another part of Darfur. Well, as far as I know, there are two Keila in

12 Darfur, so which one are you referring to?

13 Q. [15:14:50] The one closest to Garsila.

14 A. [15:15:01] No, I have no details about what happened in that Keila.

15 Q. [15:15:09] Entry 40 at page 4 in the Arabic.

16 Actually, I'm going to move on. I'm going to move on.

17 Turn to page 6 in the Arabic. This is page 5 in the English, your Honour, entry 53 for

18 2 July 2003.

19 Now, this references an attack in Mukjar district where weapons of the district police

20 and the central reserve were taken and the district stores and armoury were set fire to.

21 This is in Mukjar.

22 Is that -- is that an attack that you were aware of in July 2003?

23 A. [15:16:20] Paragraph 43? Is that what you mean.

24 Q. [15:16:26] Fifty-three.

25 A. [15:16:48] Fifty-three.

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1 Q. [15:16:49] An attack in Mukjar, Mukjar district targeting the district police when
2 weapons were taken and the district stores and army were set fire to.

3 Did you know about that attack?

4 A. [15:17:14] I heard about that in Mukjar. It was -- this happened, but I don't
5 have all the details. I heard about that. And this really happened, but I do not have
6 any details about it.

7 Q. [15:17:26] No, that's -- that's fine.

8 Now, I don't suggest that, extensive as it is, that this list of acts of rebel aggression
9 is -- is even comprehensive because the attack in Bindisi on 15 July 2003 doesn't even
10 figure on this list.

11 But on 8 August 2003, this is entry 64, page 7 in the English, page 7 in the Arabic as
12 well, there was another attack by the rebels, Mukjar town, 8 August, in which nine
13 policemen were killed and 22 other persons were wounded.

14 A. [15:18:28] This is correct, but I don't know the number of the police who were
15 killed. I -- but I heard that some of these police were killed and the rebels, but I do
16 not know the exact number or the details.

17 Q. [15:18:44] No, that's fine.

18 And then five days later on the 13 of August, if we look down to entry 67, 13 August,
19 another attack on Mukjar police post.

20 Can you confirm that that happened?

21 A. [15:19:15] I'm not sure of that.

22 Q. [15:19:20] Okay. Page 10 in the English, page 11 in the Arabic, and it's towards
23 the bottom of page 11 in the Arabic. This is entry 108. So we're moving forward in
24 time to the end of 2003 now, 29 November. Eastern Mukjar district, the Kaskaldu
25 camps, and there was an attack by rebels led by someone called Khater Marjan in

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1 which some Arab tribesmen were killed and 150 camels were -- were taken.

2 Is that something you know anything about? Had you heard of it?

3 A. [15:20:16] What I heard is that Khater Marjan, I don't know him personally, but I
4 heard about him, but I do not have the details or what happened on
5 29 November 2003. I don't have any details about that.

6 Q. [15:20:29] Okay. All right. But at least you've heard of the rebel leader.
7 Okay.

8 And then finally, entry 110, 5 December 2003, this now is in Garsila. A group of
9 rebels led by Adam Abd-Al-Rahman, who went by the pseudonym or nickname
10 Geneva, captured another citizen, a resident of Saheib and essentially tortured him,
11 cut off all his limbs, including his genitals, and stole his entire herd of 15 cattle.
12 Did you hear of that incident?

13 A. [15:21:31] I know that Adam Abd-Al-Rahman Jenief from Garsila, but I do not
14 know and have not heard about these details. But I say that Adam Abd-Al-Rahman
15 Jenief, I know him, and he was in Garsila.

16 Q. [15:21:51] Okay.

17 A. [15:21:51] But I have not heard anything about this event.

18 Q. [15:21:55] Did you know that he was -- he was a former People's Defence
19 coordinator?

20 A. [15:22:07] Even before that, he was working at the ministry of agriculture and
21 later on he joined the popular forces. I can't remember the exact date when he was
22 in the (indiscernible) so I cannot give you the information about that. But I knew
23 that he was in the people's forces.

24 Q. [15:22:32] Okay. All right. Thank you.

25 Well, just to sort of tie things together then, you talk in your statement of the rebel

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1 attack of 15 July 2003. You also speak of at least one other rebel attack, which I don't
2 need to take you -- well, at paragraph 62, Mukjar, 7 August 2003. But these two
3 attacks that you mention in your statement, they're simply examples of a much more
4 widespread, a much more regular number of attacks by rebels. Would you agree?

5 A. [15:23:28] Of course, I saw these rebels when they attacked Bindisi and they
6 were not far from me, so I saw them with my own eyes and how they stole the
7 property and how they fled and the problems they caused. So I saw this with my
8 own eyes. But for the other attacks, I only heard about them, but I haven't seen any
9 of them.

10 Q. [15:24:03] Thank you, sir.

11 Now, also in your folder, if you -- if you turn to the next tab, there should be a
12 satellite image on a big piece of paper that looks like this?

13 A. [16:13:24] (No Interpretation)(Overlapping speakers)

14 Q. [16:13:24] Yeah, that's it.

15 MR EDWARDS: [15:24:37] Your Honours, this is at tab 2 of our bundle. This is a
16 document which is a -- well, it's a satellite image of Garsila. This is the -- it's a rather
17 zoomed in version. We've got a more zoomed in version behind the next tab, but
18 we'll start with this one for now. It's DAR-OTP-0220-3739.

19 Q. [15:25:14] So, Mr Witness, this is a -- yes, a satellite image of the centre of
20 Garsila.

21 Looking at -- well, first of all, have you ever seen this document before?

22 A. [15:25:33] No, I haven't seen it before.

23 Q. [15:25:38] Okay. Looking at the document and particularly considering
24 the -- looking particularly at the block of buildings right in the centre of the image,
25 which we think is Mukjar market, are you able to orientate yourself?

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1 MR JEREMY: [15:26:07] Sorry, I think you may have misspoke Mukjar (Overlapping
2 speakers)

3 THE WITNESS: [15:26:12] (Interpretation) I don't agree. This is of course Garsila.
4 Are you talking about Mukjar?

5 MR EDWARDS: [15:26:17]

6 Q. [15:26:18] You're absolutely right and thank you for correcting me. It's Garsila,
7 it's not -- it's not Mukjar. Garsila market. Okay. So looking at -- looking at this
8 document, are you able to orientate yourself?

9 You see in the -- towards the right-hand side of the map, it looks like a wadi going
10 from north to south, meandering a little bit.

11 Does that assist you to orientate yourself?

12 A. [15:27:12] Yes, on the right-hand side, there is a seasonal river. It's called
13 Wadi Sarubayda (phon).

14 Q. [15:27:21] Okay. Thank you.

15 Now, in your -- in your statement, and indeed in your evidence, you've spoken a little
16 bit about a number of landmarks in Garsila. If you look at this map and if you were
17 to be given a pen, would you be able to mark where, for example, the vegetable or the
18 crop market is or was?

19 A. [15:28:06] Yes, I can -- I can, of course, refer to the place of the market.

20 Q. [15:28:19] Okay. So could I ask you, please, then to pick up a pen, the same
21 pen that you used before, and can you draw on the document in front of you and
22 mark with an A where the vegetable market was.

23 Now -- thank you. Now, mark with a B where the basketball court was.

24 MR EDWARDS: [15:30:11] Your Honour, just for the record, this morning the
25 witness talked about a basketball court. It's found its way into the transcript as a

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1 baseball court, but I think it's ...

2 PRESIDING JUDGE KORNER: [15:30:44] There will be a correction later.

3 THE WITNESS: [15:30:48](Interpretation) Which number do you mean?

4 (Overlapping speakers) which -- do I put B or --

5 MR EDWARDS: [15:30:57] Yes, a B.

6 Q. [15:31:09] Now, with a C, could you please mark where the -- the power plant
7 was.

8 Okay. Thank you.

9 With a D, please mark where the Faisal Islamic Bank was.

10 And then once you've done that, with an E, please mark where the agricultural bank
11 was.

12 Okay. Before we get into the last one, can we just do the necessary so that we see
13 what -- where D and E are on the screen. I don't know if that needs to be saved or --

14 PRESIDING JUDGE KORNER: [15:33:06] It's actually very difficult to -- because
15 everything's been -- are all these buildings, sir, in roughly the same area?

16 THE WITNESS: [15:33:26](Interpretation) Yes, they are the in heart of the market, so
17 I can't really tell you the exact location because the map is not very clear. I'm just
18 putting an approximate location here.

19 *PRESIDING JUDGE KORNER: [15:33:38] Yes, I think -- I think you would need to
20 blow up the centre to make it clear because I think, in fairness to him, it is all so tiny.

21 MR EDWARDS: [15:33:50] Okay. Your Honour, could we try it a different way?

22 PRESIDING JUDGE KORNER: [15:33:54] Yeah.

23 MR EDWARDS: [15:33:54] What I was actually hoping to be done is that the witness
24 actually uses the hard copy to make the marks. It's my fault for not having made
25 that clear, and then it could be put up on the ELMO.

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1 In fact, we can do one better than that.

2 Madam Court Officer, behind the final tab in the Defence bundle is an even more

3 zoomed in version of this document, DAR-OTP-0135-0002 -- no, sorry, sorry, sorry.

4 DAR-OTP-0220-3740. And this is at tab 3 of the Defence bundle, our list of materials.

5 I hope that will assist. Yes, I think so, yes.

6 Now, forget about the screen. With an old fashion Biro mark again with an A where

7 the vegetable market was.

8 So I'm going to try and find where, so that we have the same numbers -- the same

9 letter.

10 A, vegetable market; B, was the basketball court, please.

11 A. [15:36:01] I have a question for you, actually. Can I ask you a question, if you

12 don't mind answering me?

13 Q. [15:36:08] Yes, of course.

14 A. [15:36:18] Is this the road to the east of the market? Is this the road between the

15 market and the police station? I'm not quite good at reading maps, so in order to be

16 really accurate, I know exactly the place, but I can't read the map really well. I'm just

17 giving you an approximate location, but if you can help me with this, I know the

18 roads, so I can tell you the name of the roads and if it's correct I might be able to put

19 marks more accurately.

20 Q. [15:36:58] Well, if it assists, as you look at the -- as you look at the image, north

21 is up, south is down, west is to the left, east is to the right.

22 Does that help you?

23 And if you remember, the wadi is to the east of the market.

24 Does that help?

25 PRESIDING JUDGE KORNER: [15:37:36] Well, he did ask whether it was the road

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1 between the market and the police station.

2 MR EDWARDS: [15:37:40] Well, I'm --

3 PRESIDING JUDGE KORNER: [15:37:43] (Overlapping speakers)

4 MR EDWARDS: [15:37:47] I don't think that information has ever been made clear
5 one way or another, yeah.

6 So the short answer to your question is, no, I don't know where -- I can't tell you
7 where the police station is, but looking at the market, looking at the market, north is
8 up, west is to the left, east is to the right, and south is down.

9 Does that help?

10 PRESIDING JUDGE KORNER: [15:38:26] If -- I think, Mr Edwards, if the witness
11 really feels that he -- he can't read, it's not only a map as such. It's an overhead
12 photograph. And it's not going to be much help. I'd say it was a rough and ready
13 guide.

14 MR EDWARDS: [15:38:44] If he's not comfortable doing it, then I'm uncomfortable
15 pressing it.

16 PRESIDING JUDGE KORNER: [15:38:50] Sir, do you -- are you happy to -- given
17 your reservations, are you happy to mark the buildings that Mr Edwards asked you
18 to?

19 THE WITNESS: [15:39:14](Interpretation) Well, based on my recollection, I know the
20 whole area, I know all the roads and all the squares, but I have never been good at
21 reading maps, so I don't want to mark a location and then it becomes apparent that
22 this is not the right location. I am under oath and I have to say only the truth. I can
23 try to take some time before answering the questions because I'm still reading the
24 map. I'm trying to help, but I will need some time. If you are willing to give me
25 some time, then I might be able to answer the questions.

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1 PRESIDING JUDGE KORNER: [15:39:58] No, sir. I think Mr Edwards is -- agrees
2 that it's understandable if you -- if you have difficulties with this so ...

3 And I think it's something the Prosecution ought to produce, I have to say, as a
4 proper layout of this market because it is important.

5 Yes, all right. Thank you very much, sir. You needn't bother anymore.

6 Mr Edwards is going to move on.

7 MR EDWARDS: [15:40:29]

8 Q. [15:40:29] Yes. Thank you for trying, Mr Witness. I don't -- it wouldn't be fair
9 for me to press the point.

10 Okay. Well, in the last 20 minutes or so I'm going to ask you about Ali Kushayb.

11 And I want to explore some of your evidence about your knowledge of Ali Kushayb.

12 So we start at paragraph 33 of your statement.

13 And your -- and paragraph 33 of your statement starts as follows: "Ali Kushayb,

14 whose real name is Ali Muhammad Ali, was the *agid ogada* for the whole of Wadi

15 Salih until the time I left Darfur in 2004." This is my question.

16 How was the name Ali Kushayb first brought up in your interview in 2005? Do you
17 remember?

18 A. [15:42:02] 2005? I was not in Wadi Salih in 2005? What do you mean by 2005?

19 Q. [15:42:11] Sorry. I've misspoken. In 2007. In your witness statement in 2007,
20 paragraph 33, the name Ali Kushayb appears. And what I want to know is how did
21 that name first appear?

22 In other words, were you asked about Ali Kushayb by the Prosecutor, or did you
23 volunteer the name Ali Kushayb to the -- to the Prosecutor, to the investigator?

24 A. [15:42:47] Well, the Prosecution, of course, asked me about the attacks and about
25 dates and about what I knew, about the leaders and all the other details. But I

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1 voluntarily told them that I know this person really well and I knew his role and I
2 knew his name really well and that's why I said that I volunteered the name.

3 Q. [15:43:10] You volunteered. Okay. That's something that you remember from
4 a statement taken back in 2005 -- 7?

5 A. [15:43:30] (No Interpretation)

6 Q. [15:43:36] And so we have Ali Kushayb whose real name is Ali Muhammad Ali.
7 Did you volunteer Ali Kushayb's real name as you understood it to be, or were you
8 asked about this by the investigator?

9 A. [15:44:01] Well, during the interview, I am the one who mentioned the name Ali
10 Muhammad Ali. Nobody mentioned this name to me first. The investigators
11 didn't know the name, but they might have reached this -- or got this information by
12 me telling them. I volunteered the name.

13 Q. [15:44:30] When was your first ever -- when was the first time you had any
14 contact at all with Ali Kushayb? What year?

15 A. [15:44:47] I don't remember the date -- the day or the month, but I remember
16 that was around the beginning of 2000. This is when I met Ali Muhammad
17 Ali Kushayb.

18 Q. [15:45:00] And the first time you met him, was that at the pharmacy or
19 elsewhere?

20 A. [15:45:09] Yes, that was in the pharmacy.

21 Q. [15:45:11] Do you know when the pharmacy was established?

22 A. [15:45:21] No, I can't remember when it was established because I didn't live in
23 Garsila and I didn't know if it was rented or it was built by him. I don't know. I
24 don't know that piece of information, but I saw him inside his pharmacy.

25 Q. [15:45:42] Did the -- the layout of the pharmacy in any way change between

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1 early 2000 and the last time you saw him in 2003?

2 A. [15:46:14] You mean the shelving and the goods there? I have to say that I
3 didn't really pay much attention to that. I don't know if there was a big change in
4 the layout, maybe closed one door and opened another, but I didn't pay much
5 attention to this.

6 Q. [15:46:37] So you've -- no, okay. Well, you've explained that -- you've given us
7 some indication of the dimensions of the pharmacy, four metres by four metres.
8 Was it in the nature of a shop or more in the nature of a store?

9 When I say "shop", I mean, you know, it's walled in, a door that can be closed, a roof.

10 A. [15:47:23] Yes, it was a shop with a door that can be closed and a roof and
11 shelves, shelves where the goods are stacked.

12 Q. [15:47:32] And were there shelves on all of the walls or only on some of the
13 walls?

14 A. [15:47:48] I don't remember really if the shelves were on all the walls from top to
15 bottom or not, but there was some kind of a table in front of the owner of the
16 pharmacy and behind him there were shelves. Obviously, as a customer, you don't
17 go all the way into the shop to the shelves. You just stand outside or before that
18 table. Of course, he didn't allow us to go inside the whole pharmacy and examine
19 everything in it.

20 Q. [15:48:29] Okay. Did the table prevent a person from -- a customer from
21 walking into the shop, or was the table a little bit inside the shop?

22 A. [15:48:56] The way shops are laid out in this area is that customers --

23 Q. [15:49:03] Let me just stop you for a second. Forgive me. I'm not interested in
24 what shops are like in general. What I want to know is this particular shop. So
25 please focus on this particular shop and tell their Honours if the table was a bit inside

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1 the shop that customers would walk up to, or whether the table was right at the door,
2 meaning customers could not walk into the shop?

3 PRESIDING JUDGE KORNER: [15:49:34] Mr Edwards, you know, I'm sorry, but
4 basically speaking we're talking, as he's made clear, about events -- about a shop that
5 he saw last 15 years ago at the least.

6 MR EDWARDS: [15:49:50] I'm very happy and, in fact, I'm anxious to explain the
7 rationale, but not with the witness hearing what I have to say. He understands
8 English.

9 PRESIDING JUDGE KORNER: [15:50:10] Yes, I appreciate that. All right.

10 MR EDWARDS: [15:50:12] Perhaps I could continue and then if we were to break
11 two or three minutes earlier then I can explain the rationale. Thank you. Thank
12 you.

13 Q. [15:50:24] Yes. Answer the question, please, Mr Witness.

14 A. [15:50:41] I'm sorry, I got a little bit distracted by what you said.

15 Can you repeat the question, please.

16 Q. [15:50:48] Where was the table inside the shop?

17 A. [15:50:58] Outside the shop, outside the door.

18 Q. [15:51:01] Outside the door.

19 So could a customer actually walk into the shop, walk into the interior of the shop?

20 A. [15:51:17] In order to buy something, of course not. You just stand outside the
21 shop behind the table and ask for the goods that you are buying and that's it. That's
22 how we buy and sell.

23 Q. [15:51:35] Okay. And was that -- was that the situation? Was that how you
24 would buy medication from Ali Kushayb for the entire time that you had business
25 dealings with him, 2001/2002?

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1 A. [15:52:00] Yes, I was just a customer, so I used to go, stand there, buy my
2 medicine and go away.

3 Q. [15:52:09] Thank you. Let me ask you this.

4 The name Kushayb, does that have any particular significance? What does it mean
5 to you?

6 A. [15:52:28] I don't know the exact meaning of Kushayb. There is a local word
7 used for the remainder of food or meals and we call it Kushayb, but I don't know if
8 this name is what is meant or not. I don't know. I don't really know.

9 Q. [15:53:09] Okay. Could it refer to the remainder of millet, for example, that's
10 being fermented and strained in order to make a local alcohol? Have you ever heard
11 of that or does that make sense even?

12 A. [15:53:39] This is exactly what I meant, actually. The local alcohol products are
13 made of grains and millets. After straining the wine, what is left is called "kushayb"
14 in the local language.

15 Q. [15:54:00] All right. Would it be right to say that it's a word that is mildly
16 derogatory? It does -- it's a nickname that doesn't signify something enormously
17 positive? It means the remains, the stuff you would throw away?

18 A. [15:54:38] I did not call him this name. This is what people called him, or I
19 don't know really where this name came from and I don't know if the word Kushayb
20 is related to the word "kushayb" which means the remainder of food. I don't know.
21 This is a name of a person and this is a word, so I don't know, really. I don't know
22 the details of that.

23 Q. [15:55:17] Okay. Last few questions then.

24 Did he ever introduce himself to you using the name Kushayb or Ali Kushayb?

25 A. [15:55:36] I didn't hear him identifying himself as Ali Kushayb, so as for me

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1 personally, I don't call him Ali Kushayb. I always called him Uncle Ali because he
2 was older. And out of respect that's how I called him, but it is a well-known
3 nickname for him.

4 Q. [15:56:04] And you called him Uncle Ali because that's how you heard other
5 people referring to him?

6 A. [15:56:14] Young people of my age and under called old people who are older
7 than them with uncle out of respect.

8 MR EDWARDS: [15:56:35] Okay. Okay. Your Honour, I've come to a natural ...

9 PRESIDING JUDGE KORNER: [15:56:39] Yes, all right.

10 Sir, thank you very much. That concludes your evidence for today. If you'd be
11 kind enough to be back here tomorrow for a 9.30 start. Again, don't discuss your
12 evidence with anybody overnight and try and put the case out of your mind and have
13 a good night's rest.

14 So, yeah, if you'd like to go with the court officer then.

15 (The witness exits the courtroom)

16 PRESIDING JUDGE KORNER: [15:57:46] Mr Edwards, I'm not -- is your case going
17 to be that this witness is not telling the truth?

18 MR EDWARDS: [15:57:55] Broadly speaking, yes.

19 PRESIDING JUDGE KORNER: [15:57:58] But -- but -- it -- if you're trying to
20 definitely undermine him through getting a description of this pharmacy, it would be
21 difficult to persuade us that -- that if he is being truthful he would remember the
22 details of a pharmacy from 15 years ago. More than that, actually.

23 MR EDWARDS: [15:58:20] Yeah, I -- it's not necessarily an exercise that I would
24 indulge in. However, this is a witness who has on any view a pretty remarkable
25 memory. He has -- and it's not just because his statement is rather more

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1 contemporaneous than others, some more recently interviewed witnesses. But, you
2 know, even bearing in mind that -- when this witness statement was taken, it was a
3 good couple -- good few years after the -- after the events. And yet, his statement is
4 remarkably, I would say, replete with detail. This is a witness who on the face of it
5 has a good memory and it's that which I'm seeking to test. This is one of a number
6 of witnesses that no doubt the Prosecution hopes to be able to call who had dealings
7 with the person that they refer to as Ali Kushayb at the pharmacy. And
8 already -- I'm not making submissions, I promise, but already we've got some
9 contradictions that in due course I can tell you we're going to be relying on.

10 PRESIDING JUDGE KORNER: [16:00:01] I appreciate that.

11 MR EDWARDS: [16:00:03] So that's why what may seem to be a pretty painful
12 exercise nevertheless has to be undertaken. Necessarily, we're talking about things
13 that happened a long time ago. (Overlapping speakers)

14 PRESIDING JUDGE KORNER: [16:00:19] Yeah, I'm simply -- Mr Edwards, you can
15 take your own course on this. I'm simply saying that if at the end of the day you
16 were going to be seeking to address us on the basis that the fact that he can't
17 remember whether there was a table inside or outside shows that he's not telling the
18 truth, I think we would find quite difficult to accept. I haven't spoken to my fellow
19 Judges about this, but we're all aware of what the passage of time does. However,
20 you can take your own course on this.

21 But it does bring me onto a second matter, which I fully appreciate the reasons why
22 your client isn't here, but this evidence directly affects him. And I have discussed
23 this with my colleagues and we think it would better he were here tomorrow. If he
24 really feels he's unable to *be, then of course we will excuse him for -- certainly for
25 one more day. But it does seem to me that maybe -- and as you say, the witness is

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1 coming out with things that he hasn't said before, occasionally, and it may be that
2 your client wants to give you instructions.

3 MR EDWARDS: [16:01:44] We're in regular contact with him.

4 PRESIDING JUDGE KORNER: [16:01:45] Yeah.

5 MR EDWARDS: [16:01:45] I can assure you of that.

6 PRESIDING JUDGE KORNER: [16:01:48] Well, I think Mr Laucci wants to --

7 MR EDWARDS: [16:01:53] We're in regular contact with him. He has given us his
8 instructions. We're going to -- as soon as we rise, we're going to contact him again,
9 take further instructions. There are, of course, indications that we can communicate
10 to him. We can advise him as to his options, but in the circumstances - I'm not going
11 to go into the circumstances - but in the circumstances our position is that a degree of
12 latitude is required here. Quite apart from the fact that whilst he has the right to be
13 present, he has the right to waive that right.

14 PRESIDING JUDGE KORNER: [16:02:46] (Overlapping speakers) right is dependent
15 on us saying, okay, you can waive your right. It's all a bit circular, but ...

16 MR EDWARDS: [16:02:52] Yes, yes. Well, but if we can reassure your Honours
17 that decisions that he makes are made with a clear head, I hope that will go somehow
18 to assuage any concerns that the Bench --

19 PRESIDING JUDGE KORNER: [16:03:13] Yes, well, as I say, because of the
20 circumstances, which I needn't trouble -- I mean, go through in open session, I
21 understand that, but I'm simply saying that it -- looking at the future, it may be a little
22 unhappy if he's -- when this evidence has been here he's not been in contact.

23 Yes, Mr Laucci, you wanted to add something?

24 MR LAUCCI: [16:03:39] I just want to add that depending on -- I will -- we will
25 speak to him this evening. If his first position is that he would rather not come, you

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1 can make sure that I will convey what your Honours just said.

2 In the end and after, I will go back to you and to the Chamber and to say what his
3 preference, but in case he's -- he's inclined not to come, I will convey that remark that
4 I have just done.

5 PRESIDING JUDGE KORNER: [16:04:10] All right. Thank you, Mr Laucci.

6 Right. Finally, I don't know, Mr Jeremy or Mr Nicholls, is there no way of getting
7 some witness or somebody to produce a proper -- I know we've had -- one witness
8 drew us a plan or some kind or another, but is there no way of establishing what
9 it -- are there any photographs that are better than these overheads or from Google
10 Earth or whatever?

11 MR NICHOLLS: [16:04:42] We're -- your Honours, we -- I wanted to have them
12 ready before we started this week, but we are advanced on our MapBooks, which will
13 be bound and shared and also available electronically. We are trying to get the best
14 imagery we can. It is not as easy as one might think to get something reasonably
15 contemporaneous from that time with that coverage. It's not easy, which we have
16 tried to do, to get sort of official maps. We've tried to do that. But we will continue
17 on that and I hope to get the MapBooks soon. They're in a very advance stage. We
18 need to get them printed, but we're finalising them now and I do understand that.

19 PRESIDING JUDGE KORNER: [16:05:30] Well, it's just that every witness is the
20 same problem, which is not surprising. They're asked to describe what a place
21 looked like nearly 20 years ago.

22 MR NICHOLLS: [16:05:40] Yes. Well, one thing I didn't -- we didn't want to stop it,
23 but we talked with our friends and we may be able to stipulate on certain landmarks
24 like the mosque in Garsila and then we might, with their agreement, be able to point
25 the witness to that. It's up to them if they want to do that on their cross or not and to

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1 help orient where we are, but we can discuss that separately.

2 But just on your -- on the first point you raised, your Honour, I would just say I'm not
3 formally objecting to the accused not being present tomorrow, but fully endorse your
4 views that he should be here if he can be here. *Despite the events, there has been a
5 day in between, but I won't repeat what you said, but I think it is a very good point.

6 PRESIDING JUDGE KORNER: [16:06:33] As I say, I'm just -- one knows that in
7 hindsight you may regret that they weren't able to give instructions immediately, but
8 anyhow, Mr Laucci and Mr Edwards have got this in hand.

9 MR LAUCCI: [16:06:53] Just to concur, of course, it's our preference to have our
10 client in the room, obviously.

11 PRESIDING JUDGE KORNER: [16:06:57] All right. Yes, very well. What do you
12 want?

13 Oh, right. Yes, sorry. We've got to put on the record whatever the number is for
14 the map that the witness -- or do we -- well, you mean the one this afternoon? What
15 did he do this morning?

16 MR EDWARDS: [16:07:25] This morning or this afternoon?

17 PRESIDING JUDGE KORNER: [16:07:31] What did he do before lunch?

18 MR JEREMY: [16:07:37] It was before the break, wasn't it, and you got him to mark
19 his house.

20 MR NICHOLLS: [16:07:40] The hard copy.

21 MR EDWARDS: [16:07:42] Yeah, I'm -- I'm -- yeah, thank you.

22 PRESIDING JUDGE KORNER: [16:07:44] Yes, well, everybody's got same problem.
23 All right. Yes, can we -- yes, can we put that on the record, then. Thanks very
24 much.

25 THE COURT OFFICER: [16:07:49] Yes, your Honour. The annotated map will bear

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1 number DAR-REG-0001-0009.

2 PRESIDING JUDGE KORNER: [16:08:01] Yes. Well, that's showing just how awful
3 it is we can't even remember what happened before lunch and you're asking your
4 witness about nearly 20 years ago. All right. We'll adjourn till tomorrow morning
5 till 9.30, please.

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

7 (The hearing ends in open session at 4.08 p.m.)