

Trial Hearing
WITNESS: DAR-OTP-P-0984

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Thursday, 21 July 2022
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:31] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:51] Yes. Could we call the case, please.
15 THE COURT OFFICER: [9:33:55] Good morning, Madam President, your Honours.
16 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
17 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
18 And for the record, we are in open session.
19 PRESIDING JUDGE KORNER: [9:34:13] Yes, thank you very much.
20 Good morning, all.
21 Good morning to you, sir.
22 Appearances for the Prosecution, please. Are they the same as yesterday?
23 MR JEREMY: [9:34:24] They're actually different from yesterday. Good morning,
24 Madam President. Good morning, your Honours. We have Rachel Mazzarella,
25 Matas Stankevicius, Claire Sabatini, Mohanad Elkholy and myself, Edward Jeremy.

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1 PRESIDING JUDGE KORNER: [9:34:44] Thank you very much, Mr Jeremy.

2 Yes.

3 MS VON WISTINGHAUSEN: [9:34:45] Good morning, Madam President, your
4 Honours. The victims are represented today by my case manager, Idriss Anbari, and
5 myself, Natalie von Wistinghausen.

6 PRESIDING JUDGE KORNER: [9:34:54] Thank you very much,
7 Ms Von Wistinghausen.

8 And the Defence.

9 MR LAUCCI: [9:35:01](Interpretation) Good morning, your Honours, dear
10 colleagues, and Mr Witness. Alongside the accused in the attendance this morning
11 in the courtroom, I have Paola Pallot, who is an evidentiary assistant. We also have
12 Ahmad Issa, who is case manager; Iain Edwards, co-counsel, and myself, lead counsel.
13 Thank you.

14 PRESIDING JUDGE KORNER: [9:35:17] Yes, thank you very much, Mr Laucci.

15 Yes. Sir, you're still, as you know, giving evidence, and Mr Jeremy has some more
16 questions for you.

17 WITNESS: DAR-OTP-P-0984 (On former oath)
18 (The witness speaks Arabic)

19 MR JEREMY: [9:35:27] Thank you, Madam President, your Honours.

20 QUESTIONED BY MR JEREMY: (Continuing)

21 Q. [9:35:34] Good morning, sir.

22 We're going to need to move back into private session, Madam President, to resume
23 the questioning from yesterday afternoon.

24 PRESIDING JUDGE KORNER: [9:35:43] Yes.

25 Private session, please.

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1 MR JEREMY: [9:35:54] And in the meantime --

2 (Private session at 9.35 a.m.)

3 THE COURT OFFICER: [9:35:57] We're in private session, Madam President.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

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21 (Redacted)

22 (Open session at 10.18 a.m.)

23 THE COURT OFFICER: [10:18:47] We're back into open session, Madam President.

24 MR JEREMY: [10:19:05] Thank you.

25 And we're around paragraphs 93 to 99 of the statement now.

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1 Q. [10:19:13] Sir, so you've described your returning to Mukjar and you were on
2 the road from Garsila to Mukjar. What did you observe while you were returning to
3 Mukjar on the road?

4 A. [10:19:35] Yes. (Redacted)
5 (Redacted) we arrived at the
6 location where the prisoners were shot, and we found the bodies, about 20 bodies.
7 They were at the same location. But on the higher land, there were another two
8 bodies. It seems like these two bodies were not dead, because when I saw them,
9 they were moving a bit. (Redacted) and check on them and find if they
10 are still alive or not because it was too risky (Redacted), and I was extremely
11 scared.

12 And then we arrived in Mukjar. (Redacted), and I went to the house. I saw the
13 women talking about the corpses. They said that those two bodies, one of them is
14 Mohamed Omar and the other one is *Umdah* Issa.

15 And then I went to the brother of *Umdah* Issa, Ustaz Bakhit (phon). I found -- I went
16 to his door, and I knocked on the door, and I said, "Is your father here?" And they
17 said, "Yes." And then Ustaz Bakhit came, and I asked him about what happened. But
18 then he made me feel even more scared because he said, "Don't open this issue at all.
19 Don't talk to anyone. Say that you didn't see anybody." Because if he had helped
20 me, we maybe could have helped those people, but he made me feel even more
21 scared. And he said, "Let's not talk about it at all." And we realised later then those
22 two people died.

23 Q. [10:22:05] Sir, you mentioned the name of one of the men who you saw moving
24 beside the road at the execution site, and you mentioned his name was Mohamed
25 Omar. Do you recall his full name?

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1 A. [10:22:33] Mohamed Omar Ahmad Zarouq.

2 Q. [10:22:37] Now, you also mentioned the names of a number of persons who you
3 saw on a vehicle at Mukjar police station. Did you ever see any of those people
4 again after seeing them that day?

5 A. [10:23:03] No, I didn't see any of them ever again. Didn't see any of them. But
6 after a long period of time, I think that was in 2005, I heard that Jiddo was still alive.
7 And I heard that he is living in one of the camps, but I have not seen him since.

8 Q. [10:23:34] And do you know what happened to the bodies of the men you saw
9 beside the road to Mukjar?

10 A. [10:23:52] After a period of time, (Redacted)
11 (Redacted) we couldn't see any of the
12 corpses. Where they are taken, I have no idea.

13 Q. [10:24:23] Thank you, sir.

14 Thank you, Madam President, your Honours. Those are my questions.

15 PRESIDING JUDGE KORNER: [10:24:28] Yes, thank you, Mr Jeremy.

16 Yes, Ms Von Wistinghausen.

17 MS VON WISTINGHAUSEN: [10:24:40] Yes, Madam President. Just for you to

18 know, I considerably reduced the questions I had after the questions of the

19 Prosecution. So I only have one question for this witness, which gives ample of time
20 to Mr Laucci to hopefully conclude today.

21 QUESTIONED BY MS VON WISTINGHAUSEN:

22 Q. [10:24:57] Mr Witness, we briefly met. My name is Natalie von Wistinghausen,
23 and I represent the participating victims in this case. And there's only one question I
24 would like to discuss with you, which is the following:

25 During the period of the conflict that you have talked about in 2003 and 2004, was it

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1 ever possible for victims of armed attacks or other crimes to complain to the police?

2 And I refer to paragraph 42 of the statement.

3 A. [10:25:44] During that time in 2003 and 2004, no. There were certain things that
4 were not allowed at all. So reporting to the police? No, that did not exist at all.

5 The second thing is, you can't go to the hospital. That's something that we didn't
6 have at all. In our area, if anything happened to you, you go to the Sheikh. But to
7 go to the police? No. We didn't have any reports to the police. And hospital?
8 No, you don't go. You just use traditional treatments.

9 Q. [10:26:32] In your statement, you also said some of the police were Fur, but they
10 were helpless to do anything. Can you comment on that.

11 A. [10:26:43] Yes. Some of the soldiers were from the Fur tribe, but you were
12 helpless. You couldn't do anything at all. Even as a Fur police soldier or
13 a policeman, you are still labelled as a *tora bora*. You can't even protect your own
14 self.

15 Q. [10:27:14] And, finally, in your statement, you use the words "there was no rule
16 of law". What did you mean by that?

17 A. [10:27:26] Because the citizens were not allowed to report any incident to the
18 police, because it only meant that you are getting yourself in trouble. If anything
19 happens to you, and you decide to go and complain, you will get yourself in trouble.
20 Even myself, (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted) I couldn't say anything because I was so scared. I

5 ended up apologising to him. I couldn't do anything.

6 Q. [10:29:03] Thank you, Mr Witness. These were all my questions for you.

7 PRESIDING JUDGE KORNER: [10:29:07] I understand why you say you couldn't go
8 to the police, sir, but why couldn't you go to hospital?

9 THE WITNESS: [10:29:20](Interpretation) There was no hospital. No hospital. No
10 medicine. No medicine in the whole locality of Mukjar. We were only allowed to
11 use the traditional treatment. People just used leaves of the trees. And we didn't
12 even have any medicines in the markets.

13 PRESIDING JUDGE KORNER: [10:29:47] Before 2003, was there an operating
14 hospital? Are you talking about Mukjar, then?

15 THE WITNESS: [10:30:00](Interpretation) Yes. Before 2003, there was a hospital
16 and it was operating.

17 PRESIDING JUDGE KORNER: [10:30:06] And when was it closed, if you can
18 remember? Or who closed it?

19 THE WITNESS: [10:30:20] Well, no medicine arrived to the hospital. And because
20 of the problems, the hospital stopped operating. The doctors didn't have any
21 medicine to use, and they couldn't help people.

22 PRESIDING JUDGE KORNER: [10:30:35] So they just left?

23 THE WITNESS: [10:30:54](Interpretation) There were only some paramedics, not
24 really doctors. But there was a lot of problems, and most of the doctors went to
25 Nyala in 2003. After that, we only had paramedics, and medication was not

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1 available.

2 JUDGE ALEXIS-WINDSOR: [10:31:21] Sir, good-day.

3 If a citizen went to the hospital and saw one of the paramedics, would that citizen get
4 in trouble? What would be the consequence to that citizen?

5 THE WITNESS: [10:31:39](Interpretation) Because the hospital didn't -- didn't
6 provide any medication, the doctors didn't have any medication available for them.
7 Medication was not available at all at the hospital.

8 PRESIDING JUDGE KORNER: [10:32:12] So what you're saying, sir, so we
9 understand it, is that it isn't that a citizen would get into trouble if they went to
10 hospital. They simply didn't go because there was no point.

11 THE WITNESS: [10:32:38] It's because there were no doctors at the hospital. There
12 was Dr * Abakar in 2003. When the problems started, he left for Nyala. Other than
13 that, there were no doctors at the hospital.

14 PRESIDING JUDGE KORNER: [10:32:53] Yes, thank you.

15 Yes, Mr Laucci, sorry, but I thought we'd better clarify what he meant.

16 MR LAUCCI: [10:33:06] Most welcome, Madam President.

17 QUESTIONED BY MR LAUCCI:

18 Q. [10:33:09] Good morning, Mr Witness. We met some days ago briefly, but I
19 will introduce myself. I am Cyril Laucci, the counsel for Mr Ali Muhammad Ali
20 Abd-Al-Rahman.

21 Yeah, I forgot that we were no longer in consecutive interpretation, so I can carry on.
22 Thank you for appearing before this Court. I will start my cross-examination with
23 some short questions which may -- which require to go in private session, but that
24 will be brief. I say that for the public.

25 PRESIDING JUDGE KORNER: [10:33:56] Yes, private session, please.

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1 (Private session at 10.34 a.m.)

2 THE COURT OFFICER: [10:34:01] We're in private session, Madam President.

3 (Redacted)

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5 (Open session at 10.37 a.m.)

6 THE COURT OFFICER: [10:37:19] We're back into open session, Madam President.

7 MR LAUCCI: [10:37:38]

8 Q. [10:37:39] Mr Witness, my first question is referring to paragraph 34 of your
9 statement. It's about the Janjaweed. And you mentioned that, "The Janjaweed were
10 doing training which was called popular defence." And yesterday, during your
11 examination-in-chief - I'm referring to real-time transcript 66, page 53, lines 22 to
12 23 - you specified that the Popular Defence Forces were all Janjaweed.

13 My question is: Were all the Janjaweed members of the Popular Defence Forces as
14 well?

15 A. [10:38:38] Yes. Many of the Janjaweed had been trained within the PDF,
16 between Madras and *wadi*, to the south, under the trees.

17 Q. [10:38:57] So can we conclude that, in your understanding, Janjaweed and PDF
18 were the same thing?

19 A. [10:39:11] (No interpretation)

20 THE INTERPRETER: [10:39:11] A note from the interpreter: Can we please ask the
21 witness to repeat the answer. The intonation wasn't clear, whether it's a question or
22 an answer for me.

23 MR LAUCCI: [10:39:25]

24 Q. [10:39:27] Can you repeat your answer, please, Mr Witness.

25 A. [10:39:28] I didn't understand the question. Can you please repeat.

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1 MR JEREMY: [10:39:33] Sorry. And just a -- just one intervention, which I hope
2 will assist. So at that transcript, page 53, the witness was asked: "Sir, you
3 mentioned the PDF. Were any members of the PDF present?" And this is referring
4 to the meeting with Harun. And he said that they were all Janjaweed, but the PDF
5 had an office inside the locality. My understanding is that he's talking about the
6 persons who were present were Janjaweed, rather than all PDF being Janjaweed, but
7 perhaps --

8 MR LAUCCI: [10:40:08] Thank you, colleague. But that's the reason why that I
9 asked the following question, which was, and I repeat it.

10 Q. [10:40:13] Mr Witness, in your understanding, were the Janjaweed and the PDF
11 the same thing?

12 A. [10:40:30] The Janjaweed that were between *wadi* and Madras were being
13 trained and registered with the PDF. At the same headquarters, you had -- you had
14 the joint forces, and they were training the Janjaweed following the same military
15 training.

16 Q. [10:41:03] I had this question for later, but since you mentioned them, I ask it
17 now.

18 What are these joint forces you keep referring to? Can you explain.

19 A. [10:41:15] The joint forces were forces that were brought from Khartoum to
20 Mukjar. The joint forces include all the military regime or system. You had the
21 army, you had police forces, you had the popular defence, the guards, and also the
22 central reserve. So you had five or six different uniforms within those joint forces.

23 Q. [10:41:55] And do I understand correctly from your answer that the common
24 denominator of these joint forces was that they were brought from Khartoum to
25 Mukjar for operations at that time; is that correct?

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1 A. [10:42:18] Could you please repeat the question.

2 Q. [10:42:20] You say joint forces were made of army, police, CRF, et cetera. What
3 defined these joint forces that you are referring to is that they came from Khartoum
4 for operations in Mukjar in 2003-2004. Did I understand correctly?

5 A. [10:42:46] I don't know why they brought them. I don't know why they were
6 brought in.

7 Q. [10:42:59] But they were brought from Khartoum?

8 A. [10:43:14] They were brought from Khartoum and in Mukjar. You had
9 a dispute between the cattle herders and the farmers for a long time in Darfur.

10 Q. [10:43:31] Okay. Thank you. I have my answer.

11 In your statement of September 2021, you refer several times to mobile forces. Are
12 the mobile forces and the joint forces the same thing?

13 A. [10:43:49] I did not understand your question.

14 Q. [10:44:03] You mentioned in your statement mobile forces. Is it the same thing
15 as the joint forces? Is it just a different name for the same thing?

16 A. [10:44:21] Yes. The joint forces means units from the army, from the police,
17 from the central reserve, the intelligence. All of those were within the joint forces.

18 PRESIDING JUDGE KORNER: [10:44:40](Microphone not activated) Where's there
19 an example of the mobile forces in the statement? It may be the translation.

20 MR LAUCCI: [10:44:48] Yes, indeed. (Microphone not activated) There are many.
21 (Microphone not activated)

22 THE INTERPRETER: [10:45:05] Microphone, please.

23 MR LAUCCI: [10:45:06] Paragraph 45. Actually, it's more for Madam President
24 than -- but also for the witness, but I'm just answering the question of the President,
25 so no need to answer. Paragraph 45: "There was a mobile force deployed from

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1 Khartoum. It was composed of different units, army and police."

2 PRESIDING JUDGE KORNER: [10:45:30] Sir, every time you described the forces of
3 the different units - the army, the police and all the rest of it - it's the same forces
4 you're describing, the people who came from Khartoum?

5 THE WITNESS: [10:45:53](Interpretation) Yes, the same forces.

6 MR LAUCCI: [10:46:04]

7 Q. [10:46:04] And do you know who was the chief of these joint forces or mobile
8 forces?

9 A. [10:46:17] The commander was Abdullah Himeidan.

10 Q. [10:46:25] Thank you.

11 And do you know to which component Himeidan did belong? Was he from army,
12 police, intelligence? I don't know.

13 A. [10:46:54] Could you please repeat the question.

14 Q. [10:46:55] I will put it more straightforward. Was Himeidan from the police?

15 A. [10:47:03] I don't know whether he was from the army or the police, but he was
16 the higher commander of the joint forces. He was Abdullah Himeidan.

17 Q. [10:47:19] Thank you.

18 In your statement, paragraph 38, you mention "Al-Sadiq Osman" as the PDF
19 coordinator in Mukjar. Do you know if Al-Dayf Samih also played any role in the
20 PDF in Mukjar?

21 A. [10:47:47] Al-Dayf Samih was the higher commander of the Janjaweed in Mukjar,
22 in addition to Musa Jalombo. And I believe he said Karambat (phon).

23 THE INTERPRETER: [10:48:05] I am not sure about the third person: Note from
24 the interpreter.

25 Correction: Garang. Garang.

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1 MR LAUCCI: [10:48:15] Okay.

2 Q. [10:48:15] And was Al-Dayf Samih from the PDF?

3 A. [10:48:24] Following the instructions of Harun, they were all within the PDF and
4 the Janjaweed, and they had a camp where they were being trained, an open area.

5 Q. [10:48:40] Very clear. Thank you.

6 You mention Al-Sadiq Uthman's car, which was a Land Cruiser. Do you remember
7 any distinctive features on that vehicle?

8 A. [10:48:58] You mean from the colour, or the way it was operated?

9 Q. [10:49:06] Whatever may distinguish that car from another one.

10 A. [10:49:13] Al-Sadiq's car was carrying weapons from the police headquarters to
11 the PDF training camp. So he was the one that was coordinating the PDF, and he
12 was in charge of any armament. So any weapons would be delivered to him, even
13 the munition, so he would be in charge of all of those, and would be distributed or
14 disbursed those to the soldiers or to the men.

15 Q. [10:49:56] Okay. But you have nothing to mention that would be specific in the
16 appearance of that car. Nothing -- nothing special to report, right?

17 A. [10:50:08] I don't quite understand the question.

18 THE INTERPRETER: [10:50:15] Says the witness.

19 MR LAUCCI: [10:50:16]

20 Q. [10:50:16] I don't insist. I move on. Thank you.

21 I want to talk about the first visit of Mr Ahmad Harun to Mukjar in August 2003.

22 You mentioned a speech. You mentioned the presence of several Janjaweed leaders;
23 Al-Dayf Samih, Al-Sadiq Uthman, Musa Jalombo, Garang.

24 Do you confirm that Al-Dayf Samih was the one standing next to Ahmad Harun and
25 the one who addressed Ahmad Harun after his speech?

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1 I'm referring, for the record, to real-time transcript of yesterday, 66, page 53, lines 13
2 to 19.

3 So is it correct Al-Dayf Samih was standing next to Ahmad Harun during his speech
4 and addressed him after?

5 A. [10:51:27] Yes, Al-Dayf Samih was standing next to Ahmad Harun. And
6 Al-Dayf Samih was talking directly to Ahmad Harun.

7 Q. [10:51:47] He requested many things to Mr Ahmad Harun. What did Ahmad
8 Harun offer in response?

9 A. [10:52:06] Ahmad Harun promised him that he will provide them with munition
10 and weapons, as well as the military equipment necessary. He promised also to
11 register the PDF under the authority of Uthman. The following day, following
12 Ahmad Harun's visit, there was a helicopter that * arrived and landed at the
13 girls'school, but I don't know what the helicopter brought in. I did not see that. I
14 saw the helicopter, but not what it brought in.

15 Q. [10:52:40] Did Ahmad Harun offer food?

16 A. [10:52:52] No, I don't know that.

17 Q. [10:52:57] Did Ahmad Harun offer Al-Dayf Samih and the Janjaweed to go to
18 Bindisi to take food from the *zakat* office?

19 A. [10:53:13] Ahmad Harun's visit was before the visit to Bindisi. Two or three
20 days after Harun's visit, they entered Bindisi. So it is after Harun came and left that
21 they went to Bindisi.

22 Q. [10:53:37] Precisely. But is it Harun who instructed or suggested that they may
23 go to Bindisi to take some food?

24 A. [10:53:51] I don't know that. I did not see that with my own eyes or hear about
25 that.

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1 Q. [10:54:05] Thank you.

2 After the visit of Ahmad Harun, you mention arrests and detention at the boys' and
3 girls' school in Mukjar. You specify that you did not see the person you call Ali
4 Kushayb in that place. I'm at paragraph 47 of the statement. Is that correct? I
5 repeat: Did you -- do you confirm what you said in your statement, that you never
6 saw Ali Kushayb at the girls' and boys' school?

7 A. [10:55:01] The detentions happened two weeks after Harun's visit. It was
8 exactly after two weeks, so Ali Kushayb was not there. It was during the first visit.
9 Maybe four or five days later, they entered Bindisi. And the arrests happened after
10 the burning of the villages and when the displaced came in. And this is when they
11 arrested them, the people who were displaced from the villages.

12 Q. [10:55:39] Who were the leaders overseeing the arrest and the detention of
13 people in Mukjar in that period?

14 A. [10:55:50] There were officers from the intelligence within the joint forces.

15 Q. [10:56:07] Thank you.

16 You mentioned the visit -- I'm at paragraph 50 of the statement. (Redacted)
17 (Redacted)

18 So does that mean Himeidan was the officer in charge (Redacted)?

19 A. [10:56:48] Yes, Abdullah Himeidan was the higher commander of the mobile
20 forces, and Abdullah Torshein would accompany him. (Redacted)
21 (Redacted)
22 (Redacted)

23 Q. [10:57:13] Okay. So I imagine I know the answer, but I will ask. Do you know
24 what Commissioner Torshein was doing when he visited Himeidan, and do you
25 know if he was giving instructions?

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1 PRESIDING JUDGE KORNER: [10:57:31] Sorry. He was giving instructions to
2 whom?

3 MR LAUCCI: [10:57:36]

4 Q. [10:57:36] Do you know if Commissioner Torshein was giving instructions to
5 Himeidan (Redacted)?

6 Thank you, Madam President.

7 A. [10:57:50] I don't know what instructions he gave. (Redacted)

8 (Redacted) people who are at the locality had to be

9 brought in to the Popular Police, but I don't know whose instructions were there. I

10 don't know. I did not hear that.

11 Q. [10:58:17] Okay. (Redacted), but you don't know who was

12 instructing who. That's your answer?

13 A. [10:58:28] Yes.

14 Q. [10:58:33] Thank you.

15 You mentioned that some of the detainees in that time were forced to join the Popular

16 Police Forces. I'm at paragraph 51 to 53.

17 But do you confirm that all the detainees, all these detainees were Fur young males?

18 A. [10:59:04] Yes, the detainees at the school were all young Fur and some elderly

19 as well. Different ages. It wasn't just one age category. And they were all from

20 the Fur. Not from any other tribe.

21 Q. [10:59:22] So does that mean that these Fur males who accepted to join the

22 Popular Police Forces were trained, equipped, provided with weapons and

23 a uniform?

24 A. [10:59:44] Yes. You didn't have a choice. You either become a policeman, or

25 you remain a prisoner. You didn't have a choice. So they had to be part of the

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1 police.

2 THE INTERPRETER: [11:00:07] Soldiers. Correction from the interpreter.

3 MR LAUCCI: [11:00:11]

4 Q. [11:00:11] Just the last question on this topic, and we reach the right point for the
5 break. Do you know what happened to those who refused to join the Popular Police
6 Forces?

7 A. [11:00:29] I did not see one person who refused, because you were forced. You
8 didn't have a choice. And you would go and get training, and some people went
9 through that training.

10 Q. [11:00:54] Thank you, Mr Witness.

11 Madam President, we can take the break.

12 PRESIDING JUDGE KORNER: [11:00:57] Yes, we're going to take a break now again,
13 sir. If you'd like to leave court with the court officer and be back at 11:35.

14 THE WITNESS: [11:01:18](Interpretation) Okay.

15 (The witness exits the courtroom)

16 PRESIDING JUDGE KORNER: [11:01:48] Right. Mr Laucci, are you going to
17 conclude, do you think, by lunchtime?

18 MR LAUCCI: [11:01:56] The significant variations in the witness testimony this
19 morning made that all my hope to finish by lunchtime have disappeared.

20 PRESIDING JUDGE KORNER: [11:02:08] Right. Does that mean that you're going
21 to take the rest of the day?

22 MR LAUCCI: [11:02:16] No, I cannot say that, but I will need time after lunch break,
23 definitely.

24 PRESIDING JUDGE KORNER: [11:02:22] All right. Because we're going to slightly
25 vary the lunch break hour, the hours this afternoon. Instead of sitting at 2.30, we're

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- 1 going to sit at 3 until 4.30. Sorry about that about. There has to be that slight
- 2 variation for today.
- 3 The only question is, we're still pondering whether Witness 932 has got any chance of
- 4 finishing?
- 5 You said yesterday, Mr Jeremy, that you thought you'd be concluding in about half an
- 6 hour.
- 7 MR JEREMY: [11:03:06] That's my understanding, Madam President.
- 8 PRESIDING JUDGE KORNER: [11:03:10] Oh, it's not you calling him?
- 9 MR JEREMY: [11:03:13] No.
- 10 PRESIDING JUDGE KORNER: [11:03:14] Who is it?
- 11 MR JEREMY: [11:03:16] It's Ms Simms.
- 12 PRESIDING JUDGE KORNER: [11:03:18] Ms Simms, right.
- 13 In which case, if you get all of tomorrow, are you going to conclude your
- 14 cross-examination of him?
- 15 Mr Edwards, yeah.
- 16 MR EDWARDS: [11:03:25] Yes. Very helpfully, your Honour, Ms Simms and I
- 17 have been in contact by email this morning, and she indicates that her
- 18 examination-in-chief, any supplementary questions, are going to be very, very few, if
- 19 any, at all. So provided I have all of tomorrow, or at least a great chunk of tomorrow,
- 20 we should be okay.
- 21 PRESIDING JUDGE KORNER: [11:03:51] Yes, all right. Well, then, in that case,
- 22 we'll hear from the witness, unless something goes terribly wrong this afternoon.
- 23 Yes, very well.
- 24 Yes. Break until 11.35. Thank you.
- 25 THE COURT USHER: [11:04:12] All rise.

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1 (Recess taken at 11.04 a.m.)

2 (Upon resuming in open session at 11.36 a.m.)

3 THE COURT USHER: [11:36:03] All rise.

4 Please be seated.

5 PRESIDING JUDGE KORNER: [11:36:29] Yes, Mr Laucci.

6 MR LAUCCI: [11:36:31] Thank you, Madam President.

7 Q. [11:36:35] Mr Witness, I carry on by moving to the departure of what you

8 described the Janjaweed forces to Bindisi. I am at paragraph 59 to 62 of the

9 statement.

10 You describe this convoy comprising the PDF coordinator, Al-Sadiq Uthman; Al-Dayf

11 Samih; Janjaweed forces; and the director of the *zakat* office, Mr Mohamed

12 Abd-Al-Jabbar. You also mention the presence of Ali Kushayb, and I would like you

13 to clarify a bit his role in that operation.

14 At paragraph 61 of your statement, you say that -- and you refer specifically to

15 "common knowledge". So, according to common knowledge, the person you call Ali

16 Kushayb was the main commander of the Janjaweed forces. Is that your evidence?

17 A. [11:38:38] Yes, Ali Kushayb was the general commander of the Janjaweed forces.

18 Q. [11:38:45] Thank you.

19 And yesterday - I'm referring to the transcript, page 80, line 7 to 9 - you also said that

20 it was common knowledge that the man you call Ali Kushayb held the title of *agid*

21 *al-ogada*, is what you said.

22 A. [11:39:20] Yes.

23 Q. [11:39:23] And yesterday still, at page 78, lines 11 to 20 of the transcript, you

24 went further by saying that, whenever Ali Kushayb was giving an order, an

25 instruction, the people had to obey it wherever they were. Is that your evidence?

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1 PRESIDING JUDGE KORNER: [11:39:57] "No" is the answer to that. You
2 summarised it, but it wasn't his evidence.

3 MR LAUCCI: [11:40:02](Overlapping speakers)

4 PRESIDING JUDGE KORNER: [11:40:06] I appreciate, Mr Laucci, but it's not
5 actually what he said.

6 MR LAUCCI: [11:40:13] Let me read to be more accurate.

7 Q. [11:40:17] All the Janjaweed were following his orders. He would issue the
8 instructions, and they would implement them. Whether the orders were from Musa
9 Jalombo, from Al-Dayf Samih, all of those who received an order from him or
10 instructions from him.

11 So do you confirm that the orders of Ali Kushayb had to be obeyed?

12 A. [11:41:15] I didn't understand the question. Can you repeat.

13 Q. [11:41:18] Do you confirm what you say yesterday, that when the person you
14 call Ali Kushayb gave orders, these had to be obeyed by the Janjaweed?

15 A. [11:41:36] Ali Kushayb was the commander of the Janjaweed. He had his own
16 vehicle, a Land Cruiser, and everybody else were -- were on horsebacks and
17 camelbacks.

18 Q. [11:42:00] So is it an assumption that you make on the basis that Ali Kushayb
19 had a car that he was the commander?

20 A. [11:42:13] Well, he came in and he asked for bread for the horses. He is the one
21 who presented this request (Redacted).

22 Q. [11:42:38] Asking food for the horses, is that a proof, an evidence of authority,
23 according to you?

24 A. [11:43:00] He -- yes, because he is the commander. He came to the office and
25 he requested food for the horses. And then he is the one who received everything,

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1 and he is the one who led the forces to Bindisi.

2 Q. [11:43:21] How do you know he was the one leading the forces to Bindisi?

3 A. [11:43:40] Because when they left, they said, "We are going to Bindisi to get the
4 food for the horses."

5 Q. [11:43:49] Okay. But how do you know Ali Kushayb was commanding that
6 operation?

7 A. [11:43:59] Because this is known by everybody. Everybody knew that he was
8 the commander.

9 Q. [11:44:09] Okay. So that is again the famous "common knowledge", right?

10 A. [11:44:19] Yes.

11 Q. [11:44:21] But apart from this common knowledge, when you say that -- when
12 Ali Kushayb was giving an order, he was obeyed, you never witnessed that; is that
13 correct?

14 A. [11:44:41] I didn't witness that with my own eyes, but I heard them talking.

15 Q. [11:44:52] Who did you hear talking?

16 A. [11:44:56] Al Dayf-Samih and Musa Jalombo, when they used to come, come to
17 the locality, (Redacted).

18 Q. [11:45:14] Okay. But do you confirm what you said at paragraph 61 of your
19 statement, that you did not see Kushayb give instructions yourself?

20 A. [11:45:31] I didn't see him myself.

21 Q. [11:45:39] Thank you.

22 You described the car of the man you call Ali Kushayb as a camouflaged Land
23 Cruiser which was much newer than PDF vehicles. And I'm at paragraph 62 of your
24 statement.

25 So do you confirm that the car that the person you call Ali Kushayb was using was

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1 not a PDF car?

2 A. [11:46:34] I don't know if his car was a PDF car or not, but I know that his was
3 brought from Garsila.

4 Q. [11:46:44] Could you recognise PDF cars?

5 A. [11:46:54] Yeah. The PDF car in Mukjar was an old car. It wasn't a new car.

6 Q. [11:47:01] Apart from being old, did they have any distinctive characteristic?
7 Colour? Flag? Plate? I don't know.

8 A. [11:47:16] I don't know the number plate. It wasn't camouflaged. It was just
9 one colour.

10 Q. [11:47:32] Okay. And the car of the man you call Ali Kushayb was
11 camouflaged. You confirm so?

12 A. [11:47:43] Yes. And it had a Dushka mounted on it, on the back of the car.

13 Q. [11:47:55] Thank you.

14 I move to -- I move in time to 2004 and after the second visit of Ahmad Harun, two
15 months after. This is when you say that Ali Kushayb and his forces came back to
16 Mukjar. Are you with me?

17 A. [11:48:29] Yes.

18 Q. [11:48:35] You mention at paragraph 71 of your statement that at the same
19 period, there was a Janjaweed camp in Mukjar, which you call Al Samih Janjaweed
20 camp. Do you confirm so?

21 A. [11:49:05] Yes. They had a camp between the *wadi* and the school.

22 Q. [11:49:13] Okay. If we can have on the screen, please, OTP tab number 8,
23 which is the map of Mukjar, DAR-OTP-0220-4760. Actually, it's not a map. It's an
24 aerial picture of Mukjar.

25 Mr Witness, do you see that picture on your screen?

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- 1 A. [11:50:13] Yes, I can see it.
- 2 Q. [11:50:15] Do you recognise Mukjar?
- 3 A. [11:50:24] It's very difficult for me to identify Mukjar on this photo.
- 4 Q. [11:50:32] Maybe I can help you a little bit.
- 5 Madam Court Officer, can you please -- yes, zoom in and maybe -- okay, stop.
- 6 Mr Witness, if I tell you that what you see close to the top of the picture was the
- 7 Mukjar police station, would you agree?
- 8 A. [11:51:15] I can't read this kind of map.
- 9 Q. [11:51:19] Can we zoom in more, please, on the police station. So a little bit up.
- 10 Yeah. Zoom in again.
- 11 So now can you recognise the police station? I think that's -- we are close to the same
- 12 picture that you completed.
- 13 Is that clearer to you now?
- 14 A. [11:51:59] No, no. I don't understand these kinds of photos. I really can't tell
- 15 you exactly anything here in this big photo.
- 16 Q. [11:52:12] Can you -- can we zoom more -- zoom in more on the police station
- 17 and have it in the centre. Can you put it in the centre of the picture, please, the
- 18 police station.
- 19 Mr Witness, earlier this morning you commented with my colleague from the Office
- 20 of the Prosecutor a picture of the police station which was very similar to this one.
- 21 Do you recognise it now?
- 22 A. [11:52:58] Yes.
- 23 Q. [11:53:03] Thank you.
- 24 So we will zoom out now from where we were. Keep an eye on the police station,
- 25 please. Yes. Thank you.

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1 Do you still see the police station?

2 A. [11:53:28] Yes.

3 Q. [11:53:29] So does that help you to orient yourself and recognise Mukjar?

4 A. [11:53:44] Yes, but I don't understand which is north and which is south, east,
5 and west in that kind of map, really. I can't understand this map.

6 Q. [11:53:57] No problem. I can -- I will help you. The north is at the top. Top
7 is north, bottom is south, west is left, east is right.

8 With that indication, are you able to locate at least the direction where Al Samih
9 Janjaweed camp was located, please?

10 A. [11:54:31] Al Samih camp was not anywhere close to the police station.

11 Q. [11:54:36] Okay. Was it north, south, east, west?

12 A. [11:54:47] The -- it was not in this neighbourhood at all. It was outside the
13 neighbourhood. In 2004, this camp was outside the neighbourhood. It wasn't
14 anywhere close to the police station.

15 Q. [11:55:01] Thank you.

16 Outside the neighbourhood, but in which direction? Should we go from this
17 neighbourhood, should we move to the north, the south, east or west to reach to the
18 camp?

19 A. [11:55:19] In 2004, they set up this camp between the *wadi* and the school. It
20 was to the south-west of the school.

21 Q. [11:55:45] Thank you. We can remove the picture now.

22 Can you tell us how big was the camp. Do you have any estimation, even rough, of
23 how many men could stay there?

24 A. [11:56:10] I can't estimate it, but it was a really big number. Well, this area was
25 full of trees, and under those trees, there were many Janjaweed men with their camels

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1 and their horses.

2 Q. [11:56:38] And did they sleep under tents or barracks?

3 A. [11:56:52] No. They were under trees, in big numbers, big numbers under the
4 trees.

5 Q. [11:57:01] Thank you.

6 Did you see a field hospital in that camp?

7 A. [11:57:13] No, I didn't see a hospital there.

8 Q. [11:57:17] The reason why it was called Al Samih Janjaweed camp, is it because
9 it was under the authority of Al Samih?

10 A. [11:57:35] Yes, it was under the commandment of Al-Dayf Samih.

11 Q. [11:57:47] And at paragraph 71 of your statement, you say that you did not see
12 the person you call Ali Kushayb at that camp; is that correct?

13 A. [11:58:06] Yes. When we were at the camp, I didn't see Ali Kushayb.

14 Q. [11:58:12] You speak about the attacks of the villages at the east of Mukjar,
15 progressing towards Sindu. Was it the Janjaweed from the Al Samih Janjaweed
16 camp attacking the villages?

17 A. [11:58:55] They were all the forces of Ali Kushayb and the forces of Al Samih.
18 Both parties.

19 Q. [11:59:08] So did you see the forces of Al Samih leaving the camp to go on that
20 operation?

21 A. [11:59:23] Yes. When they went toward the centre, they left in groups, and
22 they were all going towards the east.

23 Q. [11:59:41] Okay, that's for Al Samih forces. And how do you know that Ali
24 Kushayb forces were also on that operation?

25 A. [11:59:58] Ali Kushayb in 2004 had vehicles, and he had very big vehicles that

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1 used to be call Renault, and they came from Garsila, and they entered together.

2 Q. [12:00:19] They entered Mukjar, right?

3 A. [12:00:24] Yes. From Garsila to Mukjar, you need to go through Sindu -- or
4 towards Sindu.

5 Q. [12:00:33] And the fact that these were the forces of Ali Kushayb, is that again
6 common knowledge?

7 A. [12:00:44] Yes, it was well evident and well known. Everybody knew that Ali
8 Kushayb's forces or men came with vehicles. The vehicles -- a lot of vehicles.

9 Q. [12:01:05] Thank you, Mr Witness.

10 Do you know anything about the military operation that was taking place at that
11 moment? What was the target?

12 A. [12:01:18] I did not understand your question.

13 Q. [12:01:23] Do you know if that military operation was heading towards Sindu?

14 A. [12:01:36] The soldiers who were in Mukjar or Kushayb's vehicles? I didn't
15 quite understand your question.

16 Q. [12:01:48] Yes. The operations when the villages at the east of Mukjar were
17 attacked, did it stop there, or did it reach to Sindu at some point?

18 A. [12:02:07] They started from Arada, and they didn't stop. They started from
19 Arada in 2004, and they didn't stop. They went through Arada, Indiri, Dembow,
20 and kept going, until they reached Sindu.

21 Q. [12:02:27] And was it usual to hear or see aeroplanes coming in support of
22 Janjaweed operations?

23 A. [12:02:42] We couldn't see the aircrafts, but we could hear them in the direction
24 of Sindu. But there were people who came and said that there were aircrafts that
25 attacked them. We did not see them, but I heard them.

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1 Q. [12:03:05] And was it surprising, or was it something usual to have aeroplanes
2 going like this on operation together with the Janjaweed?

3 A. [12:03:22] It was a bit surprising. But before that, there was an aircraft that
4 came before and hit a mountain near Mukjar. But after that, we could hear the
5 aircrafts, but we could not see the aircrafts.

6 Q. [12:03:38] Thank you.

7 At paragraph 69, you mentioned the arrival of displaced persons in Mukjar. Are you
8 able to estimate how many displaced persons gathered in Mukjar over that period?

9 A. [12:03:56] There were too many. All of the villagers were displaced. Some
10 came to Mukjar, some came -- went to other villages, but all of the villagers were
11 displaced. Some came to Mukjar, some went to the mountains, but all the villages
12 were attacked and the villagers had to move and be displaced. They didn't -- they
13 didn't all come to Mukjar at the same time.

14 Q. [12:04:30] Understood. Can you give us an estimation of how many came to
15 Mukjar.

16 A. [12:04:39] No, I cannot, but in the thousands. There were so many of them,
17 because all the villages were attacked. And those who were able to get to Mukjar,
18 they were there. But there were many who went to other places. But they were in
19 big numbers.

20 Q. [12:04:58] I'm happy with that answer. Thank you, Mr Witness.

21 Those who reached Mukjar, where did they go? Where did they sleep? Where did
22 they settle?

23 A. [12:05:12] Those who came to Mukjar, they all were settled in the streets. They
24 were dispersed throughout the street in the neighbourhood, in the area.

25 Q. [12:05:31] And you mentioned checkpoints manned by soldiers of the mobile

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1 forces. I'm at paragraph 72 of your statement.

2 Just a clarification. We are still talking about the same forces which had come from
3 Khartoum; is that correct?

4 A. [12:06:00] Yes. Yes, some of them came from Khartoum, and some were
5 dispersed throughout the eastern and northern side of the village.

6 Q. [12:06:23] You mentioned that, at this point in time, they conscripted about 300
7 young men from Mukjar to man the checkpoints where the persons were arrested.
8 Who conscripted these young men?

9 A. [12:06:52] That was in 2003 that they were conscripted by Abdullah Himeidan.

10 Q. [12:07:07] Thank you.

11 Was it the same Popular Police Forces in which other Fur detainees had been
12 conscripted earlier that you mentioned?

13 A. [12:07:29] Yes.

14 Q. [12:07:36] Your answer is yes. Okay.

15 And who was the head of these Popular Police Forces?

16 A. [12:07:51] I don't know who was their commander.

17 MR LAUCCI: [12:07:58] I reach a point, Madam President, where I need a close -- a
18 short private session. My estimation is five to a maximum 10 minutes. Sorry to
19 make --

20 PRESIDING JUDGE KORNER: [12:08:17] Yes. All right.

21 Private session, please.

22 (Private session at 12.08 p.m.)

23 THE COURT OFFICER: [12:08:23] We're in private session, Madam President.

24 (Redacted)

25 (Redacted)

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18 (Upon resuming in open session at 3.03 p.m.)

19 THE COURT USHER: [15:03:06] All rise.

20 Please be seated.

21 PRESIDING JUDGE KORNER: [15:03:24] Before we start, I'm really sorry,

22 everybody. What I had completely forgotten - and I will say that Mr Jeremy didn't

23 remind me - was that you need a 45-minute gap before you can have a witness up on

24 video link. So by the time Mr Laucci had finished and any other questions though it

25 may be, it wouldn't have been worth it for this afternoon, not to mention bringing the

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1 witness, I'm assuming, to the place where the video link is.

2 So I'm really sorry, everybody, but for the second time in about three weeks, I'm

3 going to knock half an hour off everybody's getting up time, and we're going to start

4 tomorrow morning at 9 o'clock, on the basis that that will provide enough time for

5 cross-examination.

6 Yes. Right.

7 Yes, Mr Laucci.

8 MR LAUCCI: [15:04:26] I will start by extending my apologies to the public because

9 we'll have to move in closed session, and I believe for 30 minutes.

10 PRESIDING JUDGE KORNER: [15:04:39] Yeah, I see we've a packed public gallery.

11 Right. Well, that means, and those of you who've just come to visit, is that you won't

12 be able to hear anything for the next half an hour.

13 Right. Go into private session, please.

14 (Private session at 3.04 p.m.)

15 THE COURT OFFICER: [15:04:58] We're in private session, Madam President.

16 (Redacted)

17 (Redacted)

18 (Redacted)

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13 PRESIDING JUDGE KORNER: [15:17:14] Don't answer for a moment, sir.

14 MR JEREMY: [15:17:23] Yes, Madam President. I think, out of fairness, it's also
15 reasonable to put paragraphs 39 and 40 of the preparation log, where the witness
16 clarified this part of his statement. That's in tab 9.

17 PRESIDING JUDGE KORNER: [15:17:39] I was a bit surprised to hear --

18 THE INTERPRETER: [15:17:42] The interpreters are not able to hear the Presiding
19 Judge.

20 PRESIDING JUDGE KORNER: [15:17:48] I was a bit surprised to hear Mr Laucci
21 putting that there were no corrections to his statement in the preparation session,
22 because it seemed to me he made quite a lot of corrections.

23 MR JEREMY: [15:18:03] There were a number of corrections and clarifications.

24 PRESIDING JUDGE KORNER: [15:18:08] Anyhow, Mr Laucci, paragraphs 39 and
25 whatever -- did you say, Mr Jeremy.

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1 MR JEREMY: [15:18:19] Thirty-nine and 40, Madam President.

2 PRESIDING JUDGE KORNER: [15:18:27] Sorry, 39, 40.

3 MR JEREMY: [15:18:30] Of the witness --

4 PRESIDING JUDGE KORNER: [15:18:34] Oh, corrections by the witness, yeah.

5 Sorry.

6 MR JEREMY: [15:18:42]: It's DAR-OTP-0220-5783, tab 9.

7 PRESIDING JUDGE KORNER: [15:18:54] Yeah. Well, Mr Laucci, it does seem to

8 have corrected it. So -- I mean, if you really want to put the whole lot, I suppose you

9 could ask -- I suppose you could ask him why originally he had said there were the 40

10 vehicles.

11 MR LAUCCI: [15:19:10] Yes, I will not --

12 PRESIDING JUDGE KORNER: [15:19:13] Sorry, 60 to 70.

13 MR LAUCCI: [15:19:16] I'm reluctant to answer before the witness here.

14 PRESIDING JUDGE KORNER: [15:19:21] All right. Let's hear what the witness's

15 answer was to your question, if he can remember it after all of this.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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8 (Open session at 3.51 p.m.)

9 THE COURT OFFICER: [15:51:34] We're back into open session, Madam President.

10 MR LAUCCI: [15:51:50] And I see happy faces in the public, so happy.

11 Q. [15:51:55] At paragraph 99 of your statement of 2021, you say that you were
12 informed where the bodies had been buried. I imagine you are talking about the
13 bodies of the executions in Mukjar; is that correct?

14 A. [15:52:24] Could you repeat the question, sir, please.

15 Q. [15:52:28] At paragraph 99 of your statement you say: "In 2006, I was informed
16 where the bodies had been buried."

17 Are you talking about the bodies of the executions in Mukjar?

18 PRESIDING JUDGE KORNER: [15:53:04] Is there a problem again, sir?

19 THE WITNESS: [15:53:12] Yes. This is supposed to be a private session, please.

20 PRESIDING JUDGE KORNER: [15:53:18] Yeah. I don't know why you want to
21 ask -- why do you want to ask him about this? It doesn't add anything to ...

22 MR LAUCCI: [15:53:25] Madam President, we have heard since the beginning of
23 this trial about executions, big number of executions, but this is the first time we hear
24 something about where the corpses may be buried. I think that's an important
25 aspect of the case.

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1 PRESIDING JUDGE KORNER: [15:53:43] I'm sorry, I thought we had endless videos
2 showing where the burials were and the exhumations and the like -- or excavations.

3 MR LAUCCI: [15:53:56] I don't think it was submitted in evidence yet.

4 PRESIDING JUDGE KORNER: [15:53:59] No, it may not be, but you're going to
5 get -- you're going to get all the evidence about what's been found and what hasn't.
6 So why ask this witness -- this is all hearsay evidence, and he doesn't know whether it
7 was a grave or not. And, obviously, he feels uneasy about dealing with this in public
8 session.

9 MR LAUCCI: [15:54:21] I'm happy to move on.

10 PRESIDING JUDGE KORNER: [15:54:23] Yeah.

11 MR LAUCCI: [15:54:24]

12 Q. [15:54:24] Mr Witness, yesterday you said that the person you call Ali Kushayb
13 was introduced to you in Garsila in December 2021. Do you remember that?

14 MR JEREMY: [15:54:47] I think you misspoke, perhaps, Mr Laucci.

15 PRESIDING JUDGE KORNER: [15:54:50] Yeah, not 2021.

16 MR LAUCCI: [15:54:54] 2001. Sorry. Did I say '21? Sorry.

17 THE WITNESS: [15:55:14](Interpretation) Yes, yes. I was -- he was introduced to
18 me in December 2021.

19 MR JEREMY: [15:55:26] Sorry, Mr Laucci, just -- yeah. We discussed this in private
20 session during my direct examination. I'm not sure if you feel it's necessary to go
21 into private session.

22 MR LAUCCI: [15:55:39] Can we agree that if we don't tell the name of the person,
23 we can carry on in public?

24 MR JEREMY: [15:55:45] I think so, provided the witness is comfortable, of course.

25 MR LAUCCI: [15:55:52]

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1 Q. [15:55:52] Mr Witness, if I tell you the person who introduced Ali Kushayb to
2 you without telling the name, is that clear enough? Do you understand who I'm
3 speaking about?

4 A. [15:56:05] Yes. The person who introduced him to me in Garsila, his name ...

5 Q. [15:56:16] Don't say the name. Stop here. Otherwise we go back to closed
6 session, and there will be a lot of disappointed persons in the gallery.

7 So we have an agreement, the person who introduced Ali Kushayb to you. How old
8 was that person who introduced Ali Kushayb to you in 2001?

9 A. [15:56:45] Here, we're talking about the fifties or the sixties.

10 Q. [15:56:58] So 50 to 60 years old?

11 A. [15:57:07] Yes. Maybe in the fifties.

12 Q. [15:57:12] Thank you.

13 And you say that person called the person passing by Kushayb; is that correct?

14 A. [15:57:29] Yes. Yes, he called him by his name.

15 Q. [15:57:36] Calling a person like this, by using the word "*kushayb*", was that usual?
16 Wasn't that disrespectful?

17 A. [15:58:02] He was his friend. He wasn't -- Ali Kushayb wasn't -- was a famous
18 person. He was known back then.

19 Q. [15:58:22] How was he known in December 2021?

20 PRESIDING JUDGE KORNER: [15:58:30] You've done again. It's 2001.

21 MR LAUCCI: [15:58:38] The holidays are coming soon.

22 Q. [15:58:43] So how was the person you called Kushayb famous in 2001? I'm
23 sorry for the repeated mistake.

24 A. [15:58:57] In 2001, he was not known by many. It was my colleague, my friend
25 who called him like. He was like any other ordinary person living Garsila.

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1 PRESIDING JUDGE KORNER: [15:59:19] Just so that we are clear, sir, you're saying
2 that in 2001 he wasn't as well known as he became? Or he wasn't known at all, in
3 fact, in the area.

4 THE WITNESS: [15:59:40](Interpretation) No. In 2001, he was an ordinary regular
5 guy. He wasn't famous and not everyone knew him in Garsila.

6 MR LAUCCI: [16:00:05]

7 Q. [16:00:06] But you just said one or two minutes ago that Ali Kushayb was
8 a famous person. He was known back then. I'm quoting you. How can you say
9 the exact opposite now?

10 PRESIDING JUDGE KORNER: [16:00:22] The difficulty is, you're not quoting him.
11 You're quoting the interpretation. I know we're all dependent on it.

12 MR LAUCCI:

13 Q. [16:00:38] So was he famous in 2001 or not?

14 A. [16:00:46] I only got to know him in 2001. He passed by - it was me and
15 a colleague of his - and his colleague called on him. But people were not well
16 acquainted with him back then.

17 Q. [16:01:00] But the fact that he was famous was your explanation for calling him
18 Kushayb. What did I get wrong?

19 PRESIDING JUDGE KORNER: [16:01:14] I don't follow that question.

20 MR LAUCCI: [16:01:18] I asked why the person who introduced the witness to --

21 PRESIDING JUDGE KORNER: [16:01:23] You asked whether it wasn't disrespectful
22 to call him Kushayb. And the answer was, he was his friend. He wasn't -- I think
23 things started to go wrong there. He wasn't Ali Kushayb. Wasn't then was
24 a famous person. He was known back then. I don't think that's anything to do with
25 whether it was disrespectful or not.

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1 I think we better going back, Mr Laucci.

2 Sir, was it unusual to address someone by part of a nickname, calling him Kushayb
3 and not Ali Kushayb?

4 THE WITNESS: [16:02:27](Interpretation) I did not understand your question.

5 MR LAUCCI: [16:02:31] I will move on, Madam President.

6 Q. [16:02:34] Mr Witness, do you know what "*kushayb*" means?

7 A. [16:02:44] I don't know the meaning of the word "*kushayb*". It could be a name,
8 a nickname. I don't know.

9 Q. [16:02:50] And are you aware that, as a nickname, "*Kushayb*" may mean or
10 imply that the person bearing it is a drunk?

11 A. [16:03:16] I am not aware of the meaning.

12 Q. [16:03:19] Did you speak to the man you call Ali Kushayb?

13 A. [16:03:28] Never. I've never spoken to him.

14 Q. [16:03:32] To be clear, I'm talking about that interaction of December * 2001.
15 So on that day, did you speak to him?

16 MR JEREMY: [16:03:49] I think he's answered the question.

17 MR LAUCCI: [16:03:51]

18 Q. [16:03:51] On that day, did the man you call Ali Kushayb speak to you?

19 A. [16:04:02] No.

20 Q. [16:04:06] But yesterday -- but yesterday, at page 67 of yesterday's transcript,
21 line 17 to 20, you said that the man you call Ali Kushayb was introduced to you as
22 (Redacted) who had become a trader. Isn't it?

23 A. [16:04:47] Yes. (Redacted), yes. But not just a merchant. Someone
24 selling medicine. He had a pharmacy.

25 Q. [16:04:59] Yes, precisely, but then it means that you had like a gentle discussion,

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1 the three of you, on that day in Garsila. This guy was from the army, opened a shop,
2 pharmacy, that kind of mundane discussion.

3 PRESIDING JUDGE KORNER: [16:05:21] Mr Laucci, don't worry about doing the
4 act. Just stick to the simple questions. We've only got 25 minutes left.

5 MR LAUCCI: [16:05:31]

6 Q. [16:05:32] So was there like a very - it can be short - but a very mundane
7 discussion, the three of you together, on the market?

8 A. [16:05:48] He did not stop there. He passed by. He did not greet us. I was
9 standing there with the friend. The friend called on Ali Kushayb. He turned to us,
10 greeted us. Then they -- he got inside. The two had a discussion among them,
11 (Redacted). So I did not have an exchange with him.

12 Q. [16:06:12] Can this whole interaction have lasted more than a few seconds?

13 A. [16:06:28] It was very trenchant. He passed by, there was an exchange of a few
14 words, nothing more, and then he went.

15 Q. [16:06:45] And how could you remember that totally insignificant interaction
16 that you had just a few seconds in December 2021?

17 2001. Sorry, Madam President. Sorry, colleagues. Sorry, witness.

18 A. [16:07:21] It was a memorable name. When people were saying Ali Kushayb,
19 eventually I remembered who that person was.

20 Q. [16:07:37] But why was that memorable in December 2001? You said he was
21 not famous at all. It was a simple person by the time.

22 A. [16:07:56] When people kept repeating "Ali Kushayb, Ali Kushayb", I eventually
23 remembered him. In 2003 and 2004, he became famous. The name became famous.

24 Q. [16:08:12] I agree. But that is 2003-2004. How could you in 2003, even,
25 remember that interaction of a few seconds of December 2001? That's my question.

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1 A. [16:08:34] When his friend called on him, it stuck in my head. (Redacted)

2 (Redacted), who told me about him -- who told me all about him,

3 about his military history and so forth. His friend also explained that and explained

4 further by saying he has a pharmacy. So the reference to the short exchange, the few

5 seconds long exchange is -- regarding the interaction, the greeting between him and

6 his friend, but the explanation provided by the friend lasted longer.

7 Q. [16:09:25] So that is your evidence, Mr Witness, that you can remember every

8 person that you passed by for a few seconds for the rest of your life.

9 MR JEREMY: [16:09:45] Madam President, is that a question or --

10 PRESIDING JUDGE KORNER: [16:09:47] Honestly, Mr Jeremy, let's get on with it.

11 I don't --

12 It's a comment, rather than a question, Mr Laucci, but I don't think we're going to

13 achieve anything by interrupting.

14 MR LAUCCI: [16:10:03] The witness has the possibility to answer "yes" to my

15 question.

16 PRESIDING JUDGE KORNER: [16:10:25](Microphone not activated)

17 THE WITNESS: [16:10:36](Interpretation) That friend with whom he interacted later

18 on explained to me that he was Ali and other the other details. I only remembered

19 him by 2003, when the events in Mukjar happened and people were talking about Ali

20 Kushayb. I later on saw him, and I recognised that it was indeed Ali Kushayb.

21 MR LAUCCI: [16:11:04]

22 Q. [16:11:05] Thank you.

23 And in September 2021 - this is where the mistake comes from - in your statement,

24 paragraph 56, you say that in December 2001, Ali Kushayb was a well-known figure.

25 So was he a well-known figure, or was he just a simple person?

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1 A. [16:11:40] Ali Kushayb became known to us in Mukjar by 2003-2004 and until
2 now. But before the problems, he was not well known to people. You would know
3 him unless you worked with him in the military, in business, or if you shared an
4 accommodation with him. So before the events, he was not knowing to people.

5 Q. [16:12:06] Okay. So that's a correction of your statement of 2021.
6 And you carried on saying, "I did not have any direct interaction with him," talking
7 about December 2001. But now we have clarified that there was -- he greeted you
8 and there was -- though short, there was an interaction on that day in Garsila, wasn't
9 there?

10 A. [16:12:34] Again, please.

11 Q. [16:12:44] In September 2021, you say, I quote, "I did not have any direct
12 interactions with him," talking about December 2001. So you just explained to us
13 that on that day he greeted you, you had a short but still a brief exchange, the three of
14 you, in Garsila, with Ali Kushayb. So can you clarify, please.

15 MR JEREMY: [16:13:22] Madam --

16 PRESIDING JUDGE KORNER: [16:13:24] It's a misrepresentation, Mr Laucci, of
17 what he actually said. He said it was his friend who had this chat with him. Not
18 him. The fact that he -- and he says he was introduced, but that's as far as he said.
19 So it's a mischaracterisation to put it. And you've dealt with all of that now. He's
20 given the evidence. You've had the versions, and you can comment on them later.
21 So can we move away from the meeting of 2001 to whatever else you have left.

22 MR LAUCCI: [16:13:57] I have nothing left, Madam President. My
23 cross-examination is over.

24 PRESIDING JUDGE KORNER: [16:14:06] Thank you very much, Mr Laucci.

25 Yes, Mr Jeremy, any re-examination?

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1 MR JEREMY: [16:14:15] No re-examination, Madam President, your Honours.

2 PRESIDING JUDGE KORNER: [16:14:22] Judge Alapini-Gansou will ask a couple of
3 questions.

4 JUDGE ALAPINI-GANSOU: [16:14:38](Interpretation) Thank you,
5 Madam President.

6 Let me just use some of this open session time to revisit two concerns I have.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 MR JEREMY: [16:17:25] I think, perhaps, if there are more questions along this line
20 of inquiry, it's safer to go into private, but we can make some redactions.

21 JUDGE ALAPINI-GANSOU: [16:17:49](Interpretation) In fact, this was the only
22 question I wanted to put, going to that particular point. I was just seeking
23 clarification about the time at which that particular -- the time at which that took
24 place.

25 I had no interpretation, Madam President. I didn't receive any interpretation in my

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1 headset. I don't know whether the witness offered any answer or not.

2 PRESIDING JUDGE KORNER: [16:18:41] It's on the transcript.

3 JUDGE ALAPINI-GANSOU: [16:19:25](Interpretation) I'm grateful.

4 But this leads me to another question. At what particular time did that occur? Did
5 you do this during the events in the material time or not?

6 THE WITNESS: [16:20:01](Interpretation) This was before the problems. The
7 beginning of -- at the beginning of 2004, we had this habit. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 JUDGE ALAPINI-GANSOU: [16:21:03](Interpretation) Very well. I have another
12 area of concern, going to the matter of the convoy that you'd made mention of earlier
13 on. (Redacted)

14 (Redacted)

15 PRESIDING JUDGE KORNER: [16:21:21] I think we need to go into private session
16 now.

17 MR JEREMY: [16:21:29] Yeah, I think it's safer. I think the witness will feel for
18 comfortable.

19 PRESIDING JUDGE KORNER: [16:21:35] Can we go into private session, please.
20 (Private session at 4.21 p.m.)

21 THE COURT OFFICER: [16:21:40] We're in private session, Madam President.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 PRESIDING JUDGE KORNER: [16:26:04] Yeah. Okay. Sir, just concentrate on
6 one simple question, if you wouldn't mind. Everybody may have known who he is,
7 but did anybody, did any of his subordinates or the people that he mixed with, did
8 you hear them calling him Ali or Ali Kushayb?

9 THE WITNESS: [16:26:38](Interpretation) Never.

10 PRESIDING JUDGE KORNER: [16:26:40] Right.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 THE WITNESS: [16:27:20](Interpretation) By losing conscious, I meant feeling very
15 afraid and terrified, losing control. That is what I meant by losing conscious.

16 PRESIDING JUDGE KORNER: [16:27:40] Just to be clear, because the words in
17 English have a specific meaning, you do not mean that you've passed out? That
18 you -- so that you were no longer aware of your surroundings.

19 THE WITNESS: [16:28:06](Interpretation) Yes, I wasn't aware of anything. Indeed,
20 to lose conscious is to lose awareness of your environment. And I was shaking out
21 of fear. I was afraid. That is what I meant.

22 PRESIDING JUDGE KORNER: [16:28:36] And the final matter, please, is this:

23 You've told us earlier about no medical supplies at the hospital or in the area. Why
24 were there no medical supplies there?

25 THE WITNESS: [16:29:06](Interpretation) Because there were no medical supplies

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1 available because the place was shut down. There was no doctor. There was no
2 medication. If somebody gets injured, they would give him either salt or tea as
3 treatment.

4 PRESIDING JUDGE KORNER: [16:29:25] Sorry. Where did the medical supplies
5 normally come from?

6 THE WITNESS: [16:29:37](Interpretation) We did not have anything because the
7 hospital got burnt. There was no medication. There was no supplies. The
8 hospital got burnt.

9 PRESIDING JUDGE KORNER: [16:29:56] Right. And when was it burnt?

10 THE WITNESS: [16:30:00](Interpretation) It actually collapsed and not burnt. It
11 collapsed. There were no supplies. There was no equipment. And even the
12 doctor who was in charge left it and went to Nyala.

13 THE INTERPRETER: [16:30:17] The interpreter's observation: The words
14 "collapsed" and "burnt" in Arabic can be mispronounced, hence what we said.

15 PRESIDING JUDGE KORNER: [16:30:28] Right. Okay, I'll just try one more time.
16 Before the outbreak of violence in 2003, from where did the medical supplies to
17 Mukjar come?

18 THE WITNESS: [16:30:57](Interpretation) They used to come from Garsila. The
19 government used to provide that. Back then there was a hospital.

20 PRESIDING JUDGE KORNER: [16:31:05] Yes, all right.

21 Thank you very much, sir, for coming to court to give evidence. That completes
22 your evidence now, and we wish you a safe return to your own country. So thank
23 you very much, again.

24 THE WITNESS: [16:31:28](Interpretation) Thank you.

25 (Redacted)

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- 1 PRESIDING JUDGE KORNER: [16:31:30] Yes, very well.
- 2 If there are no other matters, then, as I say, tomorrow morning we will sit at 9 o'clock.
- 3 Yes, thank you.
- 4 THE COURT OFFICER: [16:31:46] Madam President, excuse me, just to put on the
- 5 record --
- 6 PRESIDING JUDGE KORNER: [16:31:49] Oh, yes, sorry, the ERN. Yeah, go ahead.
- 7 THE COURT OFFICER: [16:31:50] Thank you.
- 8 The document annotated by the Witness P-0984, originally located at tab 11 in the
- 9 OTP binder, original ERN DAR-OTP-0255-0057, was assigned the new ERN as
- 10 DAR-REG-0001-0014 and marked as confidential.
- 11 THE COURT USHER: [16:32:21] All rise.
- 12 (The hearing ends in private session at 4.32 p.m.)