

Trial Hearing
Procedural Matters

(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 3
9 Wednesday, 12 June 2024
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:57] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:34:11] Yes. Good morning, all.
15 Appearances from the Defence, please.
16 MR LAUCCI: [9:34:21] Good morning, Madam President. Good morning, colleagues.
17 Good morning, your Honours. Good morning, colleagues. Good morning to the
18 public.
19 Same composition as yesterday.
20 PRESIDING JUDGE KORNER: [9:34:30] Thank you very much, Mr Laucci.
21 Prosecution?
22 MR NICHOLLS: [9:34:33] Good morning, Madam President. Good morning, your
23 Honours. Good morning to everyone. Same as yesterday, plus Diana Saba. Thank
24 you.
25 PRESIDING JUDGE KORNER: [9:34:41] Thank you very much.

1 And the representatives of the victims.

2 MR SHAH: [9:34:44] Good morning, Madam President. Good morning, your

3 Honours, and good morning to everyone in and around the courtroom.

4 Same composition as Monday and Tuesday, with the remote attendance of the legal
5 representative. Thank you.

6 PRESIDING JUDGE KORNER: [9:34:54] Thank you very much.

7 Yes, I just thought before the witness comes in, is everybody in agreement now about
8 what's happening?

9 MR NICHOLLS: [9:35:05] I'll turn it over to Ms Morris. More or less, your Honour.

10 There's one portion that -- well, I think we actually are in agreement. Some of what
11 was at issue is contained in the interview, but not all of it. I'll turn it over to Ms Morris.

12 PRESIDING JUDGE KORNER: [9:35:24] Ms Morris, yes.

13 MS MORRIS: [9:35:27] I'm not sure if my microphone is working. Can you hear me?

14 PRESIDING JUDGE KORNER: [9:35:32] Yes.

15 MS MORRIS: [9:35:33] Okay. I think I have a headphone issue, sorry.

16 Madam President, as Mr Nicholls was saying, so yesterday the Prosecution did review
17 the three videos excerpts from the Defence, and, indeed, it is correct that he heard
18 about the warrant for Ali Kushayb before the surrender. We are in agreement with the
19 Defence on this aspect of what the witness said.

20 Now, what is not correct is that the witness said he heard it -- he heard about it well
21 before. So this is the issue: When? And, as your Honour rightfully pointed out
22 yesterday, there's no reference to when he heard it.

23 PRESIDING JUDGE KORNER: [9:36:19] No.

24 MS MORRIS: [9:36:20] So we can, in good faith, put to the witness that he heard well
25 before.

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- 1 PRESIDING JUDGE KORNER: [9:36:26] Right.
- 2 MS MORRIS: [9:36:27] Now, I intend to put to the witness that, contrary to his sworn
3 testimony, that he heard about the warrant before the accused's surrender and some
4 additional questions, if your Honour is willing.
- 5 PRESIDING JUDGE KORNER: [9:36:41] Yeah. I mean, I checked his answer from
6 yesterday. But I think I, again, intervened and asked when he'd heard about the
7 warrant for Bashir and Harun, and -- yes, because I said on -- this is at, sorry, the
8 transcript at page 23, line 21, where he was asked by Mr Edwards whether he'd ever
9 tried to find out what Bashir and Harun were accused of, and he said:
- 10 "No ..."
- 11 Then I said:
- 12 "... I'm not sure we've had a date. Can you tell us when you heard that Bashir and
13 Harun had actually been wanted by the Court?"
- 14 And he said:
- 15 "I heard that on the radio, but I can't tell the date exactly."
- 16 And then the next question -- sorry, he said:
- 17 "I just heard the list of the names wanted."
- 18 And then I said:
- 19 "Was that around the time of the surrender or before that? A long time before that?"
- 20 And he said:
- 21 "Before that."
- 22 And I said I think he linked hearing about Ali Kushayb at the same time as those two.
23 So all we've got is that it's before the surrender.
- 24 MS MORRIS: [9:38:08] Indeed.
- 25 PRESIDING JUDGE KORNER: [9:38:09] Yeah. All right.

1 Well, it actually goes to show, actually, Mr Edwards, and I suppose the Prosecution as
2 well, the importance of making sure the summary does actually reflect what is on the
3 tape.

4 MR EDWARDS: [9:38:22] Well, that's right, your Honour. Can I say, we discussed the
5 matter with my learned friends this morning. We put in the summary, which of course
6 is -- or the preparation log, which is always going to be a precis of what has been
7 discussed over the course of a long time.

8 There may have been a -- and as I said in an inter partes email last night, that to get to
9 where we got in terms of our summary, it required putting pieces of a jigsaw puzzle
10 together in order to arrive at a clear understanding of what was being told to us.
11 I'm not going to go into any of the details, but we arrived at a good-faith interpretation
12 of what we were being told, and that's what went into the -- into the prep log which, I
13 repeat, is always going to be something of a summary. But we, of course, hear what
14 your Honour says, yes.

15 PRESIDING JUDGE KORNER: [9:39:33] Well, I think it's to your benefit, because it -- I
16 think the suggestion was from you at one stage that they could just go on what was in
17 the summary of the prep log, and I think that's dangerous for future proceedings. I
18 think you need to go back to the original because in the best -- I'm not suggesting that
19 this was in any way an attempt to mislead anybody, and, indeed, it was to your
20 disadvantage, but the best way is always to go back to the originals.

21 MR EDWARDS: [9:40:10] Yes. If there's any confusion, it's -- or if any confusion has
22 been injected into the process, it's our use -- my use of the word "well" in the phrase --

23 PRESIDING JUDGE KORNER: [9:40:26] Oh, you drafted the summary, did you?

24 MR EDWARDS: [9:40:28] Yeah.

25 PRESIDING JUDGE KORNER: [9:40:28] Okay, Mr Edwards. It bounced back at you.

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- 1 MR EDWARDS: [9:40:31] So to that extent, mea culpa.
- 2 PRESIDING JUDGE KORNER: [9:40:39] Yeah. All right. The situation is this: He will
- 3 be back for you to ask these questions. Are there any other matters on which you're
- 4 going to ask questions?
- 5 MS MORRIS: [9:40:47] No, Madam President.
- 6 PRESIDING JUDGE KORNER: [9:40:49] All right. And then, Mr Edwards, you'll have
- 7 a chance to re-examine if you want.
- 8 MR EDWARDS: [9:40:52] There's only going to be one point.
- 9 PRESIDING JUDGE KORNER: [9:40:54] All right.
- 10 MR EDWARDS: [9:40:55] It's not the video.
- 11 PRESIDING JUDGE KORNER: Right.
- 12 MR EDWARDS: [9:40:56] It's one very discrete issue.
- 13 PRESIDING JUDGE KORNER: [9:40:58] Yeah. All right. Thank you very much. Well,
- 14 let's have the witness in.
- 15 There then has to be a break for an hour. Last time when I said 30 minutes was
- 16 sufficient, I gather they broke all the speed records in the place where he is coming
- 17 from, so we'll have to have a break for an hour to get the next witness in. Yes, can we
- 18 get this witness back.
- 19 WITNESS: DAR-D31-P-0005 (On former oath)
- 20 (The witness speaks Arabic)
- 21 (The witness gives evidence via video link)
- 22 PRESIDING JUDGE KORNER: [9:41:53] Yes, good morning, sir.
- 23 Can you hear and understand me?
- 24 THE WITNESS: [9:42:00](Interpretation) Yes, I can hear you. I am fine, praise be to
- 25 god.

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1 PRESIDING JUDGE KORNER: [9:42:05] Thank you very much for coming back this
2 morning. I don't anticipate that you'll be there for a great deal longer, but the
3 Prosecution has some further questions to put to you.

4 Yes, Ms Morris.

5 QUESTIONED BY MS MORRIS:

6 Q. [9:42:21] Good morning, Mr Witness. Can you see me and hear me okay?

7 A. [09:42:34] Yes, I can hear you and see you clearly.

8 Q. [9:42:36] Mr Witness, yesterday I asked you about when you heard about the ICC
9 warrant for Ali Kushayb. You testified that you heard about the ICC warrant for Ali
10 Kushayb after the accused surrendered.

11 MS MORRIS: [9:42:55] And, your Honours, that's at transcript pages 40 and 41, lines 8
12 to 12 and 4 to 7.

13 Q. [9:43:06] Mr Witness, in witness preparation you told the Defence that you heard
14 there was a warrant for Ali Kushayb before the accused surrendered. And that's the
15 truth, isn't it?

16 A. [9:43:23] It is not.

17 PRESIDING JUDGE KORNER: [9:43:43] (Microphone not activated). I mean, that's
18 effectively what he said yesterday, but I think you're going to have to put to him
19 exactly what the video recording shows, if you made a note of it.

20 MS MORRIS: [9:44:04]

21 Q. [9:44:04] Mr Witness, overnight the Prosecution watched the video recording of
22 your witness preparation session. And in that recording, you say you heard about the
23 warrant for Ali Kushayb before the accused surrendered.

24 And that is the truth, isn't it?

25 A. [9:44:24] That is not the truth. It might have been an error caused by the

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1 interpretation, unclear interpretation.

2 MS MORRIS: [09:44:40] Thank you, Madam President.

3 No further questions.

4 PRESIDING JUDGE KORNER: [9:44:45] Well, I'm not sure you can leave it like that
5 either, Ms Morris.

6 I have a feeling you may have to play this back to him. If he says -- at the moment all
7 we've got is him saying there may be an error in the interpretation, and theoretically it's
8 possible, I suppose.

9 MS MORRIS: [9:45:12] If you just give us one moment, we're going to sync up the
10 video from our table. Thank you.

11 PRESIDING JUDGE KORNER: [9:45:23] Yes.

12 MR EDWARDS: [9:45:24] And I'm afraid we're going to have to go into private session
13 for this.

14 PRESIDING JUDGE KORNER: [9:45:28] Ah, yes. All right. Sorry. Private session,
15 please.

16 What Judge Alexis-Windsor just said is, it's because of the protective measures, but if
17 we don't play it for the public, then they wouldn't hear it.

18 (Private session at 9.46 a.m.)

19 THE COURT OFFICER: [9:46:16] We are in private session, Madam President.

20 (Redacted)

21 (Redacted)

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- 20 (Open session at 9.59 a.m.)
- 21 THE COURT OFFICER: [9:59:21] We are back in open session, Madam President.
- 22 PRESIDING JUDGE KORNER: [9:59:25] Yes, re-examination.
- 23 MR EDWARDS: [9:59:28] Thank you, your Honour.
- 24 QUESTIONED BY MR EDWARDS:
- 25 Q. [9:59:32] Good morning, Mr Witness. You've just been asked -- or it's just been

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1 suggested to you that you have come to Court to protect Mr Ali Muhammad Ali Abd-
2 Al-Rahman out of loyalty. Have you come to testify out of loyalty to him?

3 A. [9:59:54] My motive for coming is to tell the truth, not some sentiment.

4 Q. [10:00:09] And then the only other thing I wanted to ask you about is the use of
5 the word that's, in English, "notable", "a notable". And here we may need the assistance
6 of the Arabic interpreters to assist us with the word that's been translated to the
7 witness as "notable".

8 MR EDWARDS: [10:00:33] And here I'm referring to yesterday's transcript, page 33,
9 your Honour, of the real-time transcript.

10 Q. [10:00:46] Mr Witness, is the term "notable" in the Arabic language, is it a
11 descriptive term or is it the name of a role, a position, in the tribe, like *nazir*, like *agid*,
12 like *musha'arif*?

13 A. [10:01:27] It could be both. It could be both a description for personalities in the
14 tribe.

15 MR EDWARDS: [10:01:38] And here, as I say, we'll need the assistance of the court
16 interpreter for the word that has been translated into the Arabic from the English word
17 "notable".

18 THE INTERPRETER: [10:02:03] Message from the Arabic booth: The same term has
19 been used before and now.

20 MR EDWARDS: [10:02:09] Could the interpreter please tell us, for the record.

21 THE INTERPRETER: [10:02:18] "A 'yan".

22 MR EDWARDS: [10:02:22] I've got it as "a'ayan".

23 PRESIDING JUDGE KORNER: [10:02:31] Interpreter, sorry to treat you as a witness,
24 but ...

25 THE INTERPRETER: [10:02:36] That's correct, your Honour.

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1 MR EDWARDS: [10:02:37] That's all I have in re-examination. Thank you very much,
2 Mr Witness.

3 PRESIDING JUDGE KORNER: [10:02:40] (Microphone not activated).

4 Sir, thank you. That concludes your evidence, and you are now free to leave.

5 THE WITNESS: [10:02:58](Interpretation) Thank you. Thank you very much.

6 (The witness is excused)

7 PRESIDING JUDGE KORNER: [10:03:03] I'm told that, as I say, it's going to take one
8 hour to get the next witness to the location, so I thought, whilst -- I mean, we'll have to
9 rise anyhow, but it may as well -- I may as well deal, given the time, with the future of
10 this, where we go from here.

11 I think you confirmed yesterday, Mr Laucci, that this was the last witness to be called
12 live, as it were.

13 MR LAUCCI: [10:03:44] I can confirm we have no - in light of the circumstances - no
14 real expectation to be able to bring new witnesses, Madam President.

15 PRESIDING JUDGE KORNER: [10:03:52] Right.

16 And the deadline for filing your Rule 68(2) application for D-28 is this Friday?

17 MR LAUCCI: [10:04:13] Yes, and I expect it to be filed tomorrow.

18 PRESIDING JUDGE KORNER: [10:04:15] You expect it to be filed tomorrow, yes.

19 All right. So the directions that we gave in the December Conduct of Proceedings
20 decision, which was the third, so that the deadline for the Prosecution to apply to call
21 rebuttal evidence was five days, and that would be Monday, 18 June.

22 Mr Nicholls, are you able -- I'm not asking for you to give a definitive answer now, but
23 if you are able to, are you -- can you do that?

24 MR NICHOLLS: [10:05:05] Yes, I think so, your Honour.

25 PRESIDING JUDGE KORNER: [10:05:08] Right.

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- 1 MR NICHOLLS: [10:05:09] That's fine.
- 2 PRESIDING JUDGE KORNER: [10:05:10] Yes.
- 3 MR NICHOLLS: [10:05:12] We'll stick to that.
- 4 Can I just go off topic for one point, because --
- 5 PRESIDING JUDGE KORNER: [10:05:17] Yes.
- 6 MR NICHOLLS: [10:05:17] I would request -- again, it may not be something you
- 7 would order, but the witnesses should not have their telephones with them during
- 8 their testimony.
- 9 PRESIDING JUDGE KORNER: [10:05:26] Actually, I was quite surprised to see that
- 10 he'd been allowed to keep his telephone.
- 11 MR NICHOLLS: [10:05:34] Yes, it was a smartphone. I won't go into that, but I think
- 12 we heard some talk about devices. But that really should not be happening, because
- 13 we --
- 14 PRESIDING JUDGE KORNER: [10:05:43] Yes, we'll make that clear.
- 15 MR NICHOLLS: [10:05:44] -- when there was no -- for all the reasons that everybody
- 16 knows. So I'm sorry to deviate, but I was very surprised to see that.
- 17 PRESIDING JUDGE KORNER: [10:05:51] Yes, can we make it clear to whoever's in the
- 18 room that they should hand -- that they should have done this for every witness. I'm
- 19 not clear whether every witness was allowed to keep their phone. It does make a
- 20 mockery of the protective measures as well. So, that's it.
- 21 Right, okay. Well, we'll leave it until Monday, 18 June.
- 22 However, Mr Shah, I think I need to ask you the same question, or Ms Von
- 23 Wistinghausen, really.
- 24 You effectively cross-examined one of the witnesses about the events around refugees,
- 25 about which there is now completely contradictory evidence all round, I would say, but

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1 is it -- would you be making any application to call rebuttal evidence? I'm not going to
2 ask you to say yes or no now, but I am going to say if you do, then the deadline will be
3 the same; that is, Monday 18 June.

4 MR SHAH: [10:07:09] That's well noted, your Honour.

5 PRESIDING JUDGE KORNER: [10:07:11] Right.

6 MR SHAH: [10:07:12] Yes, thank you.

7 PRESIDING JUDGE KORNER: [10:07:13] Okay. I don't know whether Ms Von
8 Wistinghausen has had a chance to do it.

9 Right, so that's rebuttal evidence.

10 The deadline for the filing of the last bar table motion. We are going to rule on your
11 present one hopefully tomorrow, but, if not, on Friday. So we'll deal with that one.

12 So that was two weeks after the testimony of the last Defence witness. We think you
13 can do that quicker, and so we thought Friday, 21 June. If that's going to prove
14 impossible -- but it doesn't seem to me on the face of it -- is there much more to come
15 that you're able to say at the moment?

16 MR LAUCCI: [10:08:12] We don't anticipate a difficulty, Madam President. Just to
17 make sure that, even though it's not a deadline for us but more for the other side of the
18 room, Monday is the 17th, not the 18th. So is it your deadline --

19 PRESIDING JUDGE KORNER: [10:08:28] Yes, you're quite right. And that's a holiday,
20 in fact, I've just remembered.

21 MR LAUCCI: So it'll be Tuesday --

22 PRESIDING JUDGE KORNER: Tuesday, the 18th.

23 MR LAUCCI: [10:08:33] Yes, okay. Thank you.

24 PRESIDING JUDGE KORNER: [10:08:34] Yes. Thank you, Mr Laucci.

25 Okay. 21 June, then, please, for any further Bar table motions.

1 Responses, again, if there are not many documents, we'd like that to be by Wednesday,
2 26 June.

3 MR LAUCCI: [10:08:59] Excuse me, Madam President, we just -- I said we do not
4 anticipate a difficulty, but there is one, because before we send you the Bar table
5 motion, we need to consult, and that takes time.

6 PRESIDING JUDGE KORNER: [10:09:11] Oh, I see. I didn't realise -- what, you consult
7 between the two of you?

8 MR LAUCCI: [10:09:18] Yes.

9 PRESIDING JUDGE KORNER: [10:09:18] I mean, between the two sides.

10 MR LAUCCI: [10:09:19] Yes, there is a whole process before it reaches you.

11 MR NICHOLLS: [10:09:20] And it's true, your Honour, and it's productive, because I
12 think in the last Bar table motion we agreed to most of the items.

13 PRESIDING JUDGE KORNER: [10:09:27] You objected to four items, though.

14 MR NICHOLLS: [10:09:29] We objected to only four.

15 PRESIDING JUDGE KORNER: [10:09:30] Yes.

16 MR NICHOLLS: [10:09:31] But -- so it does help.

17 MR LAUCCI: [10:09:40] If we can keep it to the current deadline, that is the week after,
18 I think that will give us -- I mean, we will, of course, start the consultation as soon as
19 possible, but that way we'll be sure that it can be completed effectively.

20 PRESIDING JUDGE KORNER: [10:09:50] Yes. While we're on your present one, can I
21 just make the inquiry about one of the -- you want to put in the PowerPoint
22 presentation you gave when you were applying for an adjournment of the Defence
23 case. I've forgotten which part, but it's your PowerPoint presentation. It shows all the
24 newspaper articles about what was happening in Sudan.

25 MR EDWARDS: [10:10:18] Yes. I think there are two, actually.

1 PRESIDING JUDGE KORNER: [10:10:20] I think two. Yes, you are right, there are two.
2 And you say the reason for putting it in is that the difficulty that you had in getting
3 your Defence case together.

4 Fine. And that's what you applied for. You said you wanted an adjournment because
5 of what was going on, and we gave you, in fact, more than one adjournment. So what
6 is the relevance to any other issue? I may as well ask this now.

7 MR EDWARDS: [10:10:46] Well, two things: There's one matter which is a procedural
8 matter in the sense that it is the practice of the Court to admit or have formally
9 recognised as submitted evidence that is referred to in court in order for submissions to
10 be understood, and your Honours may remember that --

11 PRESIDING JUDGE KORNER: [10:11:13] Yes, you didn't go through it --

12 MR EDWARDS: [10:11:14] -- on those two occasions --

13 PRESIDING JUDGE KORNER: [10:11:15] -- because we looked at it.

14 MR EDWARDS: [10:11:18] On the two occasions when we were all fired up and ready
15 to go through the PowerPoints, but recognising that that might take some time, I think
16 the common position was -- well, in fact, I think it was as a result of your Honours'
17 encouragement, that we would just file it, and you would read it rather than take up
18 court time by going through the evidence, you know, slide by slide, as it were. So it's
19 for that reason that we think it's important that it's on the record, because it does --

20 PRESIDING JUDGE KORNER: [10:11:52] But that's what I mean. Your purpose was to
21 show that you needed more time because of what was going on in Sudan, and we
22 accepted that, and we gave you more time.

23 MR EDWARDS: [10:12:03] Yes.

24 PRESIDING JUDGE KORNER: [10:12:04] Outside that, does it have any other
25 relevance?

1 MR EDWARDS: [10:12:10] I think it will have relevance -- and I haven't consulted with
2 Mr Laucci about this, but if he'll forgive me. I think it does have relevance for this
3 reason, and notwithstanding the fact that the Court did give us more time: But the
4 conditions under which the Defence were operating from April 2023 were, frankly,
5 quite unique. They are not analogous to the situation in, for example, Mali or any of
6 the other situations where the Defence has been attempting to get witnesses, carry out
7 investigations, where the best potential witnesses are thought to be located.

8 This isn't a case where we had witnesses scattered throughout the world or in the -- in
9 countries bordering Sudan. All our witnesses were in Sudan itself, and specifically in
10 Darfur. And, in the context of -- I think the phrase that I've used in the past is -- a hot
11 war going on, then these are matters that we're going to want to refer to, I think, in our
12 final trial brief to put into context the difficulties that the Defence were operating
13 under. And the contents of the two PowerPoint presentations evidences that.

14 PRESIDING JUDGE KORNER: [10:14:10] Yes, that I follow. But I'm still not following
15 the relevance to an issue. You say the difficulty -- it evidences the difficulties you were
16 operating under, and we accepted that, so where does that leave -- what is your
17 argument on this? Is this -- I appreciate, Mr Edwards, I've taken you by surprise
18 slightly, but it has just been occurring to me, and I appreciate also the Prosecution
19 didn't object to it.

20 MR EDWARDS: [10:14:39] We haven't finalised our final brief, of course, and our
21 arguments will evolve. And I know Mr Laucci wants to say a word or two about this.

22 PRESIDING JUDGE KORNER: [10:14:43] Well, I'm just going to be asking --

23 MR EDWARDS: [10:14:44] It's entirely envisageable that we will want to make
24 arguments about the nature of the Defence case that has been put forward as against
25 the nature of the Defence case that could have been put forward had situations -- had

1 the situation on the ground been different.

2 PRESIDING JUDGE KORNER: [10:15:16] All right. Yes, well, thank you. Fine.

3 Mr Laucci, I just wanted to know. I needn't trouble you on this, unless you want to add
4 something?

5 MR LAUCCI: [10:15:27] No, it covers the point. I was about to say that, well, we
6 cannot be enough thankful to the Chamber for giving us more time on this basis. But
7 as we submitted already, the additional time was not the solution for everything, and
8 that's not everything that we need to address.

9 PRESIDING JUDGE KORNER: [10:15:48] All right. Fine.

10 Well, just going back to the timetable, then. So as far as the Bar table motion is
11 concerned, you would like us to stick to the two weeks so that the two of you can have
12 discussions or the teams? All right.

13 Okay. So the deadline for that will be Friday, 28 June, and then any responses would
14 have to be by Wednesday, the something of July. I suppose that will be -- 26 June. I
15 think it will be 3 July. Yes, Wednesday, 3 July.

16 Responses to the Rule 68(2) motion that's going to be filed today, possibly, to be
17 provided by Monday, 24 June. And we hope to deal with all these outstanding matters
18 of evidentiary requests by the end of June. After which, Mr Laucci, we expect the
19 formal notice of the end of your case.

20 MR LAUCCI: [10:17:30] Shall we proceed the same way as was done by the Office of
21 the Prosecutor?

22 PRESIDING JUDGE KORNER: [10:17:33] Yes, exactly. Yes. Thank you.

23 Right. We are going to stick to the eight weeks after the official closure for final briefs,
24 but we can't see any reason why you need another month because, effectively, the final
25 brief is the basis of the closing statements as well. So we think three weeks after the

1 final briefs have been filed for closing statements. So that hopefully, effectively,
2 everything will be done by early autumn, October or thereabouts.

3 Yes. Any other matters?

4 MR NICHOLLS: [10:18:25] Your Honour, just -- I'm looking up at my friends. We may
5 want to come back to you, if possible, with a gentle proposal on the final briefs
6 deadline. I see my friends nodding.

7 PRESIDING JUDGE KORNER: [10:18:45] What, the actual -- you mean the written
8 final briefs? You've got two months.

9 MR NICHOLLS: [10:18:50] Yes, but we're conscious of the Court break, which is --

10 PRESIDING JUDGE KORNER: [10:18:57] Oh, I see.

11 MR NICHOLLS: [10:18:58] -- July 27, I believe it starts, for three weeks.

12 PRESIDING JUDGE KORNER: [10:19:02] For three weeks.

13 MR NICHOLLS: [10:19:03] So I haven't done the math, and can't do that standing up,
14 but we were eager, I think all of us, for the briefs not to be due right in the middle of or
15 right at the end of that break.

16 PRESIDING JUDGE KORNER: [10:19:15] Okay. Well, if you can't -- I mean --

17 MR NICHOLLS: [10:19:18] One --

18 PRESIDING JUDGE KORNER: [10:19:19] Let's say everything finishes at the end of
19 June/early July, and notice of closure is filed, and there's no rebuttal evidence, of
20 course. So you would have three weeks in July, give or take. And then there's three
21 weeks off in August. Yes, I see. All right. Well, you come back to us with a suggested
22 date.

23 MR NICHOLLS: [10:19:49] If we may. And I hesitate to rise, but we were just talking
24 about this --

25 PRESIDING JUDGE KORNER: [10:19:50] Yes. All right.

1 MR NICHOLLS: [10:19:51] -- right before court this morning.

2 I mean, one thing that your Honours have done in the past is tolled the filing deadlines
3 during the break. If that break didn't account, that would be one option. But, as I say,
4 if it's possible, we may come back to you with just an idea and see what the Court
5 rules.

6 PRESIDING JUDGE KORNER: [10:20:19] All right. We'll listen to your idea after the
7 break.

8 MR NICHOLLS: [10:20:22] Thank you.

9 PRESIDING JUDGE KORNER: [10:20:23] All right. What time did we rise -- what time
10 did the witness finish? About ten to 10.00?

11 MR NICHOLLS: [10:20:32] I think five or ten after, something like that.

12 PRESIDING JUDGE KORNER: [10:20:35] After 10.00, was it, did we finish? All right.
13 We'll sit again at 11.00.

14 MR LAUCCI: [10:20:46] If we sit again at 11.00, can I take that we will carry on until
15 1.00?

16 PRESIDING JUDGE KORNER: [10:20:53] Exactly -- or just before 1 o'clock, because the
17 vice president has one of her many official duties at 1.00. So it will be five to 1.00, and
18 then we'll sit again, depending -- how long do you think with this witness?
19 Are you calling him, Mr Laucci?

20 MR LAUCCI: [10:21:11] Yes. With that extended session, I hope to complete the
21 examination-in-chief during that period.

22 PRESIDING JUDGE KORNER: [10:21:14] Okay. All right. Well, then, I think what
23 we'll do is we'll sit again at -- if we rise at just before 1.00, we'll sit again at a quarter
24 past 2.00.

25 MR NICHOLLS: [10:21:23] And I will be -- it depends on how the witness goes, but I

1 will be less than a session. I will be doing everything I can to make sure we finish
2 today, no matter what.

3 PRESIDING JUDGE KORNER: [10:21:33] Unless something goes wrong, we'll sit to
4 complete the evidence.

5 Yes. All right. So 11 o'clock, then.

6 THE COURT USHER: [10:21:41] All rise.

7 (Recess taken at 10.21 a.m.)

8 (Upon resuming in open session at 11.04 a.m.)

9 THE COURT USHER: [11:04:51] All rise.

10 Please be seated.

11 PRESIDING JUDGE KORNER: [11:05:07] Yes. Good morning, sir. Can you hear and
12 understand me?

13 THE WITNESS: [11:05:29](Interpretation) Yes.

14 PRESIDING JUDGE KORNER: [11:05:39] Thank you for coming to Court. Before we
15 ask you to make the solemn declaration to tell the truth, just two things. First is this:
16 We will now sit to hear your evidence until 1 o'clock, then there will be a break for
17 lunch until 2.15, so one hour, 15 minutes, and then you will return to continue giving
18 your evidence. It is anticipated, barring accidents, that you will finish your evidence
19 this afternoon.

20 The second thing is this: Everything you say needs to be interpreted, so please don't
21 speak too quickly. If you don't understand a question, say so and it will be repeated.

22 As regards breaks, if you do need one outside the lunch break, then just raise your
23 hand and ask for it.

24 Yes. Thank you very much.

25 Is that all clear?

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1 THE WITNESS: [11:06:57](Interpretation) Yes.

2 PRESIDING JUDGE KORNER: [11:07:01] Thank you.

3 Before Mr Laucci, could you repeat, please, the solemn declaration after the court
4 officer.

5 THE COURT OFFICER: [11:07:20] I solemnly declare.

6 THE WITNESS: [11:07:28](Interpretation) I solemnly declare.

7 THE COURT OFFICER: [11:07:37] That I will speak the truth.

8 THE WITNESS: [11:07:39](Interpretation) That I will speak the truth.

9 THE COURT OFFICER: [11:07:42] The whole truth and nothing but the truth.

10 THE WITNESS: [11:07:47](Interpretation) The whole truth and nothing but the truth.

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12 (The witness speaks Arabic)

13 (The witness gives evidence via video link)

14 MR LAUCCI: [11:08:00] Thank you.

15 QUESTIONED BY MR LAUCCI:

16 Q. [11:08:00] Good morning, Mr Witness.

17 A. [11:08:07] Greetings.

18 Q. [11:08:13] I hope you are well. We will start with some questions about your
19 identification.

20 And before we do that, I will ask the president to go in private session so that nobody
21 can hear information about your identity.

22 PRESIDING JUDGE KORNER: [11:08:28] Yes. We'll go into private session, thank you.

23 (Private session at 11.08 a.m.)

24 THE COURT OFFICER: [11:08:37] We are in private session, Madam President.

25 (Redacted)

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- 8 (Redacted)
- 9 (Redacted)
- 10 (Open session at 11.21 a.m.)
- 11 THE COURT OFFICER: [11:21:47] We are back in open session, Madam President.
- 12 MR LAUCCI: [11:22:03] Thank you, Madam President.
- 13 Q. [11:22:08] I will revisit that later.
- 14 Sir, when was it that you first met Mr Ali Muhammad Ali Abd-Al-Rahman? I was
- 15 asking the year where you first met with Mr Ali Muhammad Ali Abd-Al-Rahman?
- 16 A. [11:22:42] Are you asking me about the first time I met him? I met him the first
- 17 time in 1964.
- 18 Q. [11:22:57] On what occasion was that?
- 19 A. [11:23:02] We were both military service members in the army.
- 20 Q. [11:23:15] So was it in the army that you met him for the first time? Is it what I
- 21 understand?
- 22 A. [11:23:20] The first time I met him was in the army, and we worked with him in
- 23 the army. And a little while afterwards my father came and took me out of the army,
- 24 so I left the army about 40 days after I started, over a month, and I left him in the army.
- 25 Q. [11:23:53] And where were you -- in which locality were you in the army?

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1 A. [11:24:03] I was briefly in Al Fasher for a brief time in the army. It's about a
2 month, or a little over a month. Then I quit at the behest of my father.

3 Q. [11:24:19] Okay. So then you leave the army. Did you stay in touch with Mr Ali
4 Muhammad Ali Abd-Al-Rahman after this month or so that you passed in the army?

5 A. [11:24:33] Yes, we worked together in Al Fasher. Six months afterwards, {ICR:
6 (Redacted)}, while he was in the army.

7 Q. [11:24:49] Okay. So you stay in touch. And now over your lifetime, since 1964,
8 has there been times when you did not see Mr Ali Muhammad Ali Abd-Al-Rahman
9 regularly?

10 A. [11:25:12] Sir, sometimes as military service members, they would be deployed to
11 South Sudan while we would stay in Al Fasher, and every two or three years they
12 would return.

13 Q. [11:25:32] Okay. So that's for the period {ICR: (Redacted)}
14 (Redacted)
15 (Redacted)}?

16 A. [11:25:49] During that period, I was not in direct contact with him. However, we
17 would hear of news afterwards. There were telephones. He was present. He would
18 go to Al Fasher, El Geneina, and Al Khartoum.

19 Q. [11:26:16] Okay. Thank you. Is Mr Ali Muhammad Ali Abd-Al-Rahman a
20 member -- sorry, what is the tribe of Mr Ali Muhammad Ali Abd-Al-Rahman?

21 A. [11:26:32] The Ta'aisha is his tribe.

22 Q. [11:26:34] To your knowledge, is it the tribe -- what was the tribe of Mr Ali
23 Muhammad Ali Abd-Al-Rahman's parents?

24 A. [11:26:43] Their tribe is also the Ta'aisha.

25 Q. [11:26:57] You said that you first met Mr Ali Muhammad Ali Abd-Al-Rahman a

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1 long time ago, in the 1960s. In your young years, by what name did you call him?

2 A. [11:27:20] He did not have any name besides that of Ali Muhammad Ali Abd-Al-
3 Rahman. A very long time afterwards - and I don't remember when exactly - a
4 newborn son called Nasser was -- he got, and hence he was nicknamed Abu Nasser, as
5 per tribal custom.

6 Q. [11:27:52] Okay. I want you to focus on the period before the birth of Nasser.
7 When you interacted with him, how did you call him?

8 A. [11:28:05] After his son was born, as per the custom of the tribes in our area,
9 whether a son or a daughter, he would be called a son of Adam, son of Zeinab --

10 THE INTERPRETER: [11:28:25] Correction: Abu Zeinab.

11 A. [11:28:30] Abu Harun, Abu Hawa, and so forth. That's how I know of how he was
12 called.

13 MR LAUCCI: [11:28:35]

14 Q. [11:28:40] Thank you, sir. I will try once again my question. Forget the birth of
15 Nasser. I'm talking about the period before. You are two young men and you are
16 interacting with each other. How is it that you called him in this time, before the birth
17 of Nasser?

18 A. [11:29:03] I only know -- knew him by the name of Ali Muhammad Ali Abd-Al-
19 Rahman. That is the only name I know of him.

20 Q. [11:29:16] Okay.

21 PRESIDING JUDGE KORNER: [11:29:17] Sorry.

22 Sir, we've heard quite a lot of evidence that most Sudanese had a nickname, but you're
23 saying he had none until his son was born?

24 THE WITNESS: [11:29:35](Interpretation) He might have had a nickname, but a
25 nickname that I probably did not know. I only knew him of his actual name, as every

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1 person had a name that he was called with.

2 PRESIDING JUDGE KORNER: [11:30:02] Did you have -- when you were young, and
3 the two of you were in the military, did you have a nickname?

4 THE WITNESS: [11:30:15](Interpretation) Me?

5 PRESIDING JUDGE KORNER: [11:30:16] Yes, you.

6 THE WITNESS: [11:30:17] Or him?

7 PRESIDING JUDGE KORNER: [11:30:19] No, you.

8 THE WITNESS: [11:30:22](Interpretation) I didn't. Only after I became older.

9 PRESIDING JUDGE KORNER: [11:30:30] All right. Thank you.

10 Now, well, as a matter of interest, what was your nickname when you became older?

11 Oh, sorry, yes. All right. Yes, okay.

12 Don't worry, sir. Forget that question.

13 MR LAUCCI: [11:30:51]

14 Q. [11:30:53] Sir, did you ever hear at any time in your life Mr Ali Muhammad Ali
15 Abd-Al-Rahman refer to himself as being called Ali Kushayb?

16 A. [11:31:12] No, I didn't hear that.

17 Q. [11:31:19] Did you hear anyone else calling him Ali Kushayb?

18 A. [11:31:27] No, no, I didn't.

19 Q. [11:31:32] Do you know what the word "kushayb" means, sir?

20 A. [11:31:40] No, I don't. Kushayb -- there is a drink called *marissa*, which is local
21 wine or alcohol, so it's called *marissa*. It's called *dabuba* (phon) or *tabat* or *dakkai*. It has
22 several names that are all given to these local wines.

23 Q. [11:32:14] And why do you mention that? What is the link with the word
24 "*kushayb*"?

25 A. [11:32:21] Excuse me?

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1 Q. [11:32:27] I asked you the meaning of -- I ask you what is the meaning of Kushayb,
2 and you give me names of alcohol. What is the link between my question and your
3 response?

4 A. [11:32:43] I don't know his relation with this. I don't know the relation between
5 this and this.

6 Q. [11:32:55] Okay. Why did you mention alcohol, sir?

7 A. [11:33:00] You asked me a question.

8 Q. [11:33:11] Yes, my question was the meaning of "*kushayb*". So what is the link with
9 the alcohol?

10 A. [11:33:24] There is no relation whatsoever. There is no relation whatsoever. I
11 don't know of any. I don't know the name of any of the local wines, and I don't know
12 anything except the name Ali Muhammad Ali Abd-Al-Rahman.

13 Q. [11:33:43] Okay. Still in your young years, sir, you are two young men. Maybe
14 you went on parties from time to time. Did you happen to drink alcohol -- did he
15 happen to drink alcohol in front of you?

16 A. [11:34:00] We went both our paces, our ways, and it was for a long time that we
17 didn't meet each other. I used to go to South Sudan, but I live in Al Fasher, and we
18 didn't meet for a long time.

19 PRESIDING JUDGE KORNER: [11:34:25] The question was did you ever know
20 Mr Abd-Al-Rahman to drink wine or any alcohol?

21 THE WITNESS: [11:34:36](Interpretation) I have no idea.

22 PRESIDING JUDGE KORNER: [11:34:39] Right.

23 MR LAUCCI: [11:34:41]

24 Q. [11:34:43] Sir, you mentioned that Mr Ali Muhammad Ali Abd-Al-Rahman was, at
25 some point in his life, in the army. What is the highest rank that you know he ever

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1 achieved?

2 A. [11:34:59] What I witnessed, he was sergeant, first sergeant.

3 Q. [11:35:10] And in which unit did he serve?

4 A. [11:35:16] He was in the medical department of the army.

5 Q. [11:35:20] Was he from the beginning at the time where you went together? Did
6 he start in the medical unit?

7 A. [11:35:30] He worked six/seven years. And after that, he moved to the medical
8 field.

9 Q. [11:35:41] What did he do during these six/seven years? Do you mean that he was
10 not yet in the medical field? Can you clarify?

11 A. [11:36:03] I don't know. After I left, we -- I left for a long time. I went to Al
12 Geneina and he remained there, and he went to South Sudan.

13 Q. [11:36:11] Okay. Sir, that's the third time you mentioned South Sudan. Can you
14 tell us what you know about Mr Ali Muhammad Ali Abd-Al-Rahman being deployed,
15 if I understand correctly, in South Sudan?

16 A. [11:36:28] After some point in the army you get deployed to South Sudan. After
17 some time, they sent a force to South Sudan. They spent a period of time, two/three
18 years there, before they are sent back.

19 Q. [11:36:52] Okay. And was it -- was Mr Ali Muhammad Ali Abd-Al-Rahman
20 already in the medical unit when he was deployed to South Sudan, or was it before?

21 A. [11:37:05] I am under oath, and I really don't remember. I know that he was in the
22 medical field, but whether it was before or after he was deployed to South Sudan, I
23 cannot tell.

24 Q. [11:37:27] Sir, you mentioned that you are under oath, and that is true, but I want
25 to reassure you when you don't know the answer to my question, it's not at all a

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1 problem. Nobody is judging you. Simply say so and we move on to the next question.

2 Is that okay?

3 A. [11:37:43] Yes, I know it's not a problem, but I am just speaking the truth. He
4 joined the medical field, but I don't know exactly when, whether he was in South or
5 North Sudan, but I am sure that he joined the medical field in the army.

6 Q. [11:38:03] Thank you. Do you know when Mr Ali Muhammad Ali Abd-Al-
7 Rahman left the army?

8 A. [11:38:12] I think he left the army -- I think in the 1990s, but I wouldn't be exactly
9 sure of the date -- of the year or the date.

10 Q. [11:38:30] Okay. And do you know what he did after leaving the army? What
11 was his occupation after that time?

12 A. [11:38:41] The distance between us was very far, but what I came to know was
13 that after he left he went to South Darfur to work in his pharmacy. I just heard about
14 this, but I never saw it. But I heard that he had a pharmacy in which he used to work.

15 Q. [11:39:13] Do you know the locality where this pharmacy was? You mentioned
16 South Darfur, but --

17 A. [11:39:21] South Darfur.

18 Q. [11:39:30] Forget --

19 A. [11:39:34] He had a pharmacy here in Rahad Al-Berdi.

20 Q. [11:39:41] Is there any other locality that you know where he also had a
21 pharmacy?

22 A. [11:39:48] In Rahad Al-Berdi.

23 Q. [11:39:56] And so we are in the 1990s. You said that his first child was born some
24 time earlier. So Mr Ali Muhammad Ali Abd-Al-Rahman had a family. Do you know
25 where his family was living?

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1 A. [11:40:17] His family was with him where he lived, but I wouldn't be able to tell
2 exactly where.

3 Q. [11:40:30] Oh, so you're not able to say -- you told us that --

4 A. [11:40:44] I know he has a family, but I don't know their whereabouts, because I
5 never went to Wadi Salih since I was born.

6 Q. [11:41:02] Why do you mention Wadi Salih, sir?

7 A. [11:41:06] Because this is where he lived. I don't know.

8 Q. [11:41:21] But you don't know where?

9 A. [11:41:25] No, I don't, because I never saw him.

10 Q. [11:41:32] Did Mr Ali Muhammad Ali Abd-Al-Rahman come back and settle in
11 Rahad Al-Berdi at any time?

12 A. [11:41:42] After 2008 or 2009, he came and settled down in Rahad Al-Berdi.

13 Q. [11:41:56] And what was his occupation then when he came back? When he
14 arrived in Rahad Al-Berdi, what did he do?

15 A. [11:42:05] He used to work in the CRF with the government.

16 Q. [11:42:15] Do you know what was his rank in the CRF?

17 A. [11:42:22] He was a *musa'id* in Rahad Al-Berdi.

18 Q. [11:42:31] Okay. And did that make him the -- well, did he have any superior in
19 Rahad Al-Berdi above him?

20 A. [11:42:44] Yes, he did.

21 Q. [11:42:50] Can you tell us more? What were the higher-ranking officers in Rahad
22 Al-Berdi?

23 A. [11:43:03] I know that it was a captain or sergeant who was higher in rank than
24 him.

25 PRESIDING JUDGE KORNER: [11:43:27] Were these officers based in Rahad Al-Berdi?

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1 THE WITNESS: [11:43:38](Interpretation) Yes, they were present in Rahad Al-Berdi,
2 and sometimes they were away for some time, two or three months, but they were
3 settled or based in Rahad Al-Berdi.

4 MR LAUCCI: [11:43:59]

5 Q. [11:43:59] Can you tell the Court, in your recollection, how many people roughly
6 were in the CRF in Rahad Al-Berdi by the time? We are talking about 2009, I think?

7 A. [11:44:15] You mean officers? Officers -- there were officers who were rotated --
8 on a rotating basis moved to Rahad Al-Berdi. Once one goes away, another one
9 replaces him.

10 Q. [11:44:35] No, my question was not about the officers, sir, but the whole troop.
11 How many men were in the Central Reserve Forces by this time, if you can remember?

12 A. [11:44:50] There was a force, but I wouldn't be able to tell you the exact number. I
13 can't tell, because I didn't have any relationship with them. They had their own camp,
14 and I can't tell for sure.

15 MR NICHOLLS: [11:45:07] Excuse me, sorry.

16 PRESIDING JUDGE KORNER: [11:45:08] Yes.

17 MR NICHOLLS: [11:45:09] I haven't made this objection before, but, I mean, there has
18 been this term of asking these witnesses these types of questions about units like the
19 CRF or other -- without any foundation at all being laid that they would have this
20 information or how they know it. So I just make that point.

21 I mean, this witness is a good example. He's retired at this time, et cetera, going back
22 and forth to the Central African Republic, and the questions are how many people are
23 in the CRF. I mean, I do think there should be some step to show that he would have
24 some knowledge of that.

25 PRESIDING JUDGE KORNER: [11:45:45] Well, I suppose technically that's right. I

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1 mean, I suppose you'd better establish whether he visited the camp or something like
2 that, how he would have -- I mean, actually he's telling you that he doesn't know, and I
3 think you're a bit stuck with that.

4 MR LAUCCI: [11:46:01] Yes. I will explore that. Thank you.

5 Q. [11:46:04] Sir, on which -- how do you know about the composition of the Central
6 Reserve Forces by the time? Did you -- how do you know?

7 A. [11:46:16] I can't -- I don't know the composition, but I know that it was present in
8 Rahad Al-Berdi, with officers, soldiers, and *musa'id*, but I wouldn't -- I can't tell for sure
9 how many or the total number of the force.

10 Q. [11:46:41] Okay. Did you see them present in Rahad Al-Berdi by yourself, or is it
11 something that you heard from third persons?

12 A. [11:46:49] I saw them personally, and everybody knew that this was a government
13 force that was present there.

14 PRESIDING JUDGE KORNER: [11:47:07] I don't think you can take this any further,
15 Mr Laucci.

16 MR LAUCCI: [11:47:12] Do you mean the CRF?

17 PRESIDING JUDGE KORNER: [11:47:14] Yes. He doesn't know. All he's doing is
18 saying what he saw in the area, which doesn't really, as Mr Nicholls points out,
19 establish any basis for assessing the numbers of the CRF.

20 MR LAUCCI: [11:47:29] Okay. I will stop with the numbers.

21 PRESIDING JUDGE KORNER: [11:47:31] Yes.

22 MR LAUCCI: [11:47:35]

23 Q. [11:47:37] Were you present, sir, in Rahad Al-Berdi when Mr Ali Muhammad Ali
24 Abd-Al-Rahman returned there and settled sometime in 2009?

25 A. [11:48:02] Yes, I was present.

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1 Q. [11:48:09] Okay. And was he -- since you were present, were people happy that
2 he was coming back or was it -- was he welcomed in any way?

3 A. [11:48:25] Yes.

4 Q. [11:48:26] What did people say?

5 A. [11:48:27] All the locals welcomed his presence, because he protected the
6 homeland.

7 Q. [11:48:43] Is that your opinion, sir, that you are telling us about, or is that things
8 that you discussed with other people?

9 A. [11:48:58] Excuse me?

10 Q. [11:49:10] When you say "all the locals welcomed his presence because he
11 protected the homeland", I want to ask if it is only your opinion or if this is something
12 that you discussed with other people in Rahad Al-Berdi?

13 A. [11:49:38] All the people would talk when a force from the police, the army, the
14 CRF came to protect the homeland. All people were happy and they would discuss
15 this amongst themselves.

16 Q. [11:49:51] Okay. And did you ever hear people saying the opposite, that Mr Ali
17 Muhammad Ali Abd-Al-Rahman should not come back to Rahad Al-Berdi?

18 A. [11:50:02] No, I didn't.

19 PRESIDING JUDGE KORNER: [11:50:11] Well, there's a difference, Mr Laucci. Were
20 the people pleased to have the CRF as a force to protect them, or was it that they were
21 pleased to see Mr Abd-Al-Rahman come back to Rahad Al-Berdi?

22 THE WITNESS: [11:50:45](Interpretation) First of all, people were happy with the
23 presence of the force, the purpose of which was to protect the farmers and the citizens
24 from the thuggery.

25 PRESIDING JUDGE KORNER: [11:51:10] So it was the force to protect them against

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1 crime. But from your own discussions at the time, was it -- would they have cared
2 whether it was Mr Al-Rahman or somebody else who was in charge of the force? I
3 hope that's clear, the question. I'm not sure it is.

4 THE WITNESS: [11:51:44](Interpretation) The question is clear. When the force
5 arrived with the officers and Mr Ali, there were some outlaws that would take --
6 especially the herders, the camel herders and the cow herders, would take the property
7 of the farmers. So people were happy with the force.

8 PRESIDING JUDGE KORNER: [11:52:14] And we're talking about, are we, when they
9 first arrived in 2008 or 2009?

10 THE WITNESS: [11:52:40](Interpretation) Approximately.

11 PRESIDING JUDGE KORNER: [11:52:41] Okay. Yes, thank you.

12 MR LAUCCI: [11:52:42]

13 Q. [11:52:42] So you say Mr Ali Muhammad Ali Abd-Al-Rahman returned within the
14 CRF in Rahad Al-Berdi in 2009. Did he leave Rahad Al-Berdi after that at any point in
15 time?

16 A. [11:52:55] No, no, I don't remember.

17 Q. [11:53:06] Okay. So you know that Mr Ali Muhammad Ali Abd-Al-Rahman is in
18 The Hague currently today, right?

19 A. [11:53:22] Yes, yes, I know about that.

20 Q. [11:53:30] Do you know when he left Rahad Al-Berdi to reach us here?

21 A. [11:53:35] I was away from Rahad Al-Berdi. My son was sick and they took him
22 to Khartoum to receive treatment. So when I came back, when I returned, I learned
23 that he had come to the Court. But how, I can't tell for sure.

24 Q. [11:53:58] Forget how. But when was it, roughly? Which year was it when he
25 surrendered to the Court?

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1 A. [11:54:05] Well, I don't recall. Probably 2019, 2020, I don't remember.

2 Q. [11:54:21] Okay. And between 2008 and 2009, when he arrived, and 2019/2020,
3 when he went to the Court, during that period did he stay in the CRF in Rahad Al-
4 Berdi for the whole period or was he moved at some point?

5 A. [11:54:47] During the whole period he was there, and when he -- only moment --
6 briefly he was deployed on a mission or sent on a mission to Khartoum and he would
7 come back.

8 Q. [11:55:03] Okay. And did you hear about his surrender before he left Rahad Al-
9 Berdi? Was it -- did you hear that he would leave to go to the Court?

10 A. [11:55:30] I didn't know.

11 Q. [11:55:39] Okay. And during, once again, this whole period - 2008/2009 until
12 '19/'20 - did you hear discussions about the possible departure of Mr Ali Muhammad
13 Ali Abd-Al-Rahman from Rahad Al-Berdi?

14 A. [11:55:57] I really didn't, because this is precise or specific information for us, the
15 general public, we wouldn't be aware of.

16 Q. [11:56:14] Okay. Sir, do you know if Mr Ali Muhammad Ali Abd-Al-Rahman has
17 ever played any specific role or held any specific position in the Ta'aisha tribe?

18 A. [11:56:25] He didn't have any position.

19 Q. [11:56:31] Has he ever been an *agid* of the Ta'aisha tribe?

20 A. [11:56:38] No, he was never an *agid*. He worked with the government at the CRF
21 and had nothing to do with the *agids*.

22 Q. [11:56:53] Has he ever been an *agid al-ogada* of the Ta'aisha tribe?

23 A. [11:56:59] No.

24 Q. [11:57:05] Your response, sir, is about the period when he was in the Central
25 Reserve Forces, but do you know -- do you know if at any point in his life Mr Ali

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1 Muhammad Ali Abd-Al-Rahman has been an *agid* or an *agid al-ogada* of the Ta'aisha
2 tribe?

3 A. [11:57:24] I am confident that Ali never held the position of *agid* or *agid al-ogada*
4 because I was in Rahad Al-Berdi all the time. He never held the position of *agid* or *agid*
5 *al-ogada*.

6 Q. [11:57:44] Do you mean that you would have known if that had happened?

7 A. [11:57:49] Yes, I would have known if he had been appointed because I am in the
8 local administration and I am in the tribe.

9 Q. [11:58:04] Did Mr Ali Muhammad Ali Abd-Al-Rahman ever sit on any tribal
10 committee?

11 A. [11:58:12] No. Usually speaking, government officials, whether they are in the
12 army -- personnel in the army or in the police or in the CRF, they wouldn't work in the
13 civil administration work.

14 Q. [11:58:35] Okay. Sir, are you familiar with the position of *musha'arif*? And, if you
15 are, can you explain to the Court what it is, please.

16 A. [11:58:56] What *musha'arif* exactly? He was not a *musha'arif*.

17 Q. [11:59:04] Can you first explain what it is. What is a *musha'arif*?

18 A. [11:59:10] Supervision, or the work of a *musha'arif*, there is a *nazir* and a *shura*
19 council that oversees all these issues. There is not a single person, there is no one
20 person who was a *musha'arif*.

21 Q. [11:59:36] So your answer, sir, is that the word *musha'arif* refers to a committee or
22 of a *shura* council and not a person? Is that what you say?

23 A. [11:59:46] We didn't have any *musha'arif*. In our tribe and the other tribes, there is
24 a *nazir* and the *shura* council, not a single person to be the *musha'arif*.

25 Q. [12:00:09] Okay. You tell us there is no *musha'arif*. We got that point. But what is

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1 it? What is a *musha'arif*? Can you explain.

2 A. [12:00:19] We don't have the *musha'arif* position in our tribe. The person who is in
3 charge of the tribe was the nazir, and there is a *shura* council, but it's not just one single
4 person who is a *musha'arif* or in charge of the tribe.

5 Q. [12:00:47] Okay. So for you, sir, I try to understand, the word "*musha'arif*" refers
6 more to a function than any specific position; did I understand correctly?

7 A. [12:01:10] A person who is a *musha'arif* would have been one person holding a
8 title. We don't have such title in the tribe or in any other tribe. There isn't a single
9 person holding such position. The overseer, the *musha'arif*, is the *nazir*, in addition to
10 the *shura* council, which is in charge of the whole tribe, but we do not have a single
11 position of *musha'arif*/overseer.

12 PRESIDING JUDGE KORNER: [12:01:47] Do I understand from that, sir, that it's not a
13 possibility that somebody in the Ta'aisha tribe could believe that such a position
14 existed? Do you understand? I mean, you say no such position ever existed.

15 THE WITNESS: [12:02:20](Interpretation) There isn't.

16 PRESIDING JUDGE KORNER: [12:02:22] Okay. And, therefore, it's not possible that
17 anybody in your tribe who was in Rahad Al-Berdi at this time could have thought that
18 there was such a position? There was nothing that was said or done that could lead
19 anybody to believe that such a position existed?

20 THE WITNESS: [12:02:54](Interpretation) There isn't at all. There has never been a
21 single position called *musha'arif*.

22 MR LAUCCI: [12:03:06]

23 Q. [12:03:07] And to close this topic, sir, did you ever hear that Mr Ali Muhammad
24 Ali Abd-Al-Rahman served as a *musha'arif*?

25 A. [12:03:19] No. This is the first time I hear of this, here at this Court.

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1 Q. [12:03:33] Okay. To your knowledge, sir - and based on your familiarity with Mr
2 Ali Muhammad Ali Abd-Al-Rahman - do you know if he was ever involved in politics?

3 PRESIDING JUDGE KORNER: [12:03:53] Well, what do you mean by "politics"? Tribal
4 politics or other politics, or state politics?

5 MR LAUCCI: [12:04:00] State politics.

6 PRESIDING JUDGE KORNER: [12:04:04] All right.

7 MR. LAUCCI: [12:04:05] Better.

8 THE WITNESS: [12:04:10](Interpretation) I'm not aware of any activity that Ali was
9 involved in. He's just a military service member. As per state law, no military service
10 member can get involved in politics or in any other activity that we would learn of. He
11 was just a military service member in the army. Then he left the army, joined the CRF.
12 I'm not aware of him holding any other titles or doing any other kind of work or
13 holding any positions within the tribe.

14 MR LAUCCI: [12:04:45]

15 Q. [12:04:45] Sir, did you ever hear that at any point in his life Mr Ali Muhammad Ali
16 Abd-Al-Rahman had disobeyed an order or instruction from the tribe or the *nazir*?

17 A. [12:05:03] I have not heard of that and such thing has not happened.

18 PRESIDING JUDGE KORNER: [12:05:17] It's such a broad question that Mr Laucci
19 asked you. But in the years when Mr Al-Rahman was away from Rahad Al-Berdi, how
20 do you know that, if the tribe had issued an order, he obeyed it?

21 THE WITNESS: [12:05:46](Interpretation) When he was far from Rahad Al-Berdi?
22 Well, I don't know. But in Rahad Al-Berdi, he did not have any tribal position or
23 political position. Aside from that, I am not aware, because in such event he would be
24 far, anyway.

25 MR LAUCCI: [12:06:20]

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1 Q. [12:06:21] Sir, you say you don't know. Does that mean that you never heard
2 about that, such event?

3 A. [12:06:27] I have not heard of that.

4 Q. [12:06:33] In your interaction with Mr Ali Muhammad Ali Abd-Al-Rahman, did
5 you ever hear him making any discriminatory speeches against members of the Fur
6 tribe?

7 A. [12:06:50] I have not heard him doing that.

8 Q. [12:07:07] And did you ever hear members of the Fur tribe say bad things about
9 Mr Ali Muhammad Ali Abd-Al-Rahman, about -- yes, bad things, about what he
10 would have done, or ...

11 PRESIDING JUDGE KORNER: [12:07:34] The Fur tribe where?

12 MR LAUCCI: [12:07:36] In Rahad Al-Berdi.

13 THE WITNESS: [12:07:42](Interpretation) I have not heard from the Fur anything of
14 such nature, in particular. The Fur were with us -- are with us in Rahad Al-Berdi, and
15 they are among those who love Mr Ali Muhammad Ali Abd-Al-Rahman.

16 MR LAUCCI: [12:07:57]

17 Q. [12:07:58] Thank you. How would you describe the level of wealth of Mr Abd-Al-
18 Rahman? Is he a wealthy person?

19 A. [12:08:09] No, he was not wealthy.

20 Q. [12:08:22] How did he earn money for his family?

21 A. [12:08:28] He worked for the government, alongside others. He worked for the
22 CRF, and he also had a pharmacy in the market. These are the things I know about. I
23 don't know about any other thing.

24 PRESIDING JUDGE KORNER: [12:08:45] You don't know about him trading in cattle
25 or sheep?

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1 THE WITNESS: [12:08:55](Interpretation) No.

2 MR LAUCCI: [12:09:12]

3 Q. [12:09:13] And do you know if he owned cattle or sheep? Was he keeping cattle or
4 sheep for himself or his family?

5 A. [12:09:22] Well, sheep, 10 or 15 head of sheep, or of cattle, such thing would be a
6 small thing to own. Any person in Rahad Al-Berdi, any average person would own 10
7 or 15 head of sheep or cattle because we depend on livestock, but I'm not aware of him
8 engaging in any trade related to that.

9 Q. [12:09:53] Clear, no trade. But as anybody else, you say -- did he himself own
10 sheep, for instance?

11 A. [12:10:13] Only small ownership. Any average person owns that. Myself, for
12 example. But he did not have significant trade in that regard.

13 Q. [12:10:28] Sir, did you hear at any point that Mr Ali Muhammad Ali Abd-Al-
14 Rahman was under arrest or under investigation by the Sudanese authorities?

15 A. [12:10:43] I did not hear of that. I'm aware of a lot of people wanted for arrest, but
16 I have not heard of that because we live afar, in the villages.

17 Q. [12:11:15] Sir, your answer is not quite clear, at least to me.

18 You said, "I'm aware of a lot of people wanted for arrest". What do you mean?

19 A. [12:11:39] I'm aware that a lot of people are wanted, sir. That was my answer.

20 Q. [12:11:43] Forget my question.

21 A. [12:11:44] (No interpretation).

22 Q. [12:11:45] I move to the next question, sir. Are you aware --

23 A. [12:11:45] (No interpretation).

24 Q. [12:11:46] Do you remember an incident where Mr Ali Muhammad Ali Abd-Al-
25 Rahman was shot --

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1 MR LAUCCI: [12:12:07] Sorry.

2 MR NICHOLLS: [12:12:08] Sorry, I do apologise. The witness said something in
3 Arabic, a couple words. I'd like to know what it was, if possible.

4 THE INTERPRETER: [12:12:13] The witness said, "What is the next question?"

5 MR NICHOLLS: Thank you, sir. Terrific.

6 PRESIDING JUDGE KORNER: [12:12:17] I suppose you ought to interpret that, sir, the
7 interpreter, if he does say that.

8 MR LAUCCI: [12:12:33]

9 Q. [12:12:33] So, are you aware of an incident where Mr Ali Muhammad Ali Abd-Al-
10 Rahman was shot in Nyala?

11 A. [12:12:40] Yes, I am fully aware of that.

12 Q. [12:12:48] How did you hear about that incident?

13 A. [12:12:54] I was in Nyala.

14 Q. [12:13:03] Were you present when he was shot?

15 A. [12:13:08] I was not present, but I was in the state of -- the province of South
16 Darfur in Nyala, and I learned that Ali was shot. But I was not present.

17 Q. [12:13:23] And did you hear that on the same day it happened?

18 A. [12:13:28] I heard of it on the same day. He was taken to Khartoum to receive
19 emergency care.

20 Q. [12:13:43] What did you do when you heard that your friend, Mr Ali Muhammad
21 Ali Abd-Al-Rahman, had been shot?

22 A. [12:13:55] I went to the hospital.

23 THE INTERPRETER: [12:14:06] The interpreter's message: Part of the answer was not
24 heard.

25 MR LAUCCI: [12:14:11]

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1 Q. [12:14:12] Sir, maybe you can repeat your answer. We did not hear it here.

2 A. [12:14:24] I was in Nyala. I learned that Ali was shot. When I heard of that, he
3 had been taken to the hospital, and I went to see him there, but I realised that he was
4 taken out of the hospital to the airport to be transported to Khartoum.

5 Q. [12:14:40] Did you have a chance to see him in the hospital in Nyala?

6 A. [12:14:45] No.

7 Q. [12:14:50] Okay. And do you remember hearing about that incident in the media -
8 radio, TV, any other?

9 A. [12:15:04] I was in Nyala and I heard that he was shot and I -- when I wanted to
10 see him in the hospital, I realised that he had been taken from the hospital to the
11 airport. But I had not heard of that from any other source of news, except that
12 everyone was talking about it in the street, that he got shot.

13 Q. [12:15:32] Okay. And I will try again with my question. In the days after, was it
14 something that you heard in the news?

15 A. [12:15:40] I did not hear about it in the news, but I heard it in the street and
16 everyone was talking about it.

17 PRESIDING JUDGE KORNER: [12:15:57] Yes, that's fine. Did you listen to the news
18 on a regular basis on the radio?

19 THE WITNESS: [12:16:12](Interpretation) No, I did not follow the news on the radio. I
20 only followed the news on TV. I would follow the news for 20 minutes on TV. On TV
21 only.

22 PRESIDING JUDGE KORNER: [12:16:25] How long have you had TV in Rahad Al-
23 Berdi?

24 THE WITNESS: [12:16:31](Interpretation) I've had it for a very long time.

25 PRESIDING JUDGE KORNER: [12:16:41] How long?

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1 THE WITNESS: [12:16:45](Interpretation) Not less than seven or 10 years.

2 PRESIDING JUDGE KORNER: [12:16:56] So you had no radio, is that what you're
3 saying, and you only watched the news on television?

4 THE WITNESS: [12:17:11](Interpretation) Yes, I follow on TV. And when I was a
5 young man, I had a radio, but when I got older I no longer followed the radio; I only
6 followed the news on TV.

7 PRESIDING JUDGE KORNER: [12:17:26] Well, when did you get rid of the radio?
8 When you got the television?

9 THE WITNESS: [12:17:39](Interpretation) It happened a long time ago. I don't
10 remember when exactly. I have not been listening to the radio for a long time. I only
11 follow the news on TV.

12 PRESIDING JUDGE KORNER: [12:17:48] All right.

13 MR LAUCCI: [12:17:54]

14 Q. [12:17:55] Thank you. Next topic, sir. Do you remember a conflict between the
15 Ta'aisha tribe and the Salamat tribe in the years 2012/2013?

16 A. [12:18:17] Yes. I remember that in 2013 there was a conflict between the Ta'aisha
17 and the Salamat. I was in Bangui and I travelled and found that those events were
18 unfolding.

19 Q. [12:18:45] Do you remember how long these events lasted?

20 A. [12:18:55] It lasted long, but I don't remember when -- how long exactly. It did
21 last for long. I don't remember when it started. Well, it started in 2013, but I don't
22 remember when it ended.

23 Q. [12:19:13] Okay. To your knowledge, did Mr Ali Muhammad Ali Abd-Al-
24 Rahman play any role in that conflict?

25 A. [12:19:21] I don't remember any such role in that conflict, because I was not

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1 present in the -- at the very same time. I came afterwards, and he did not have such
2 role. This was something to be looked after by the tribe with the state. However, Ali
3 worked for the government.

4 Q. [12:19:50] Okay. So he worked for the government in the Central Reserve Forces.
5 Do you know if the Central Reserve Forces at any point played a role in that conflict?

6 A. [12:20:03] No. It did not have a role in that conflict. However, the role of the CRF,
7 the army, and the police, they all played the same role because they were all part of the
8 security committee.

9 PRESIDING JUDGE KORNER: [12:20:22] Yes, what was that role supposed to be?

10 What were the army and the police -- I mean, what were they actually supposed to do?

11 THE WITNESS: [12:20:31](Interpretation) So the role was to resolve the conflict. The
12 security committee made up of the security apparatus, in addition to the police, the
13 army and the CRF. The role was to ensure security.

14 PRESIDING JUDGE KORNER: [12:20:51] For whom?

15 THE WITNESS: [12:20:55](Interpretation) Security for the country. In Sudan it's called
16 the security that is in charge of all conflicts that may happen.

17 PRESIDING JUDGE KORNER: [12:21:14] Yes, I know. But whose security, whose
18 safety? That's what security means. Whose safety is the security committee --

19 THE WITNESS: [12:21:27](Interpretation) The safety of citizens.

20 PRESIDING JUDGE KORNER: [12:21:31] Which citizens. Any in particular?

21 THE WITNESS: [12:21:35](Interpretation) All Sudanese citizens. Their security is to be
22 looked after by the security committee.

23 PRESIDING JUDGE KORNER: [12:21:48] Okay. Thank you.

24 MR LAUCCI: [12:21:56]

25 Q. [12:21:57] And was it a conflict that was resolved at the tribal level, or did the

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1 government forces have to intervene in that conflict?

2 A. [12:22:08] The government forces intervened, the regime forces intervened and
3 resolved the conflict between the Ta'aisha and the Salamat.

4 Q. [12:22:29] And do you know which government forces intervened? Was it the
5 army, was it the CRF, was it the police, another? All together, maybe?

6 A. [12:22:41] All together - the army, the police forces, the security forces and the
7 CRF - they all represent the state and ensure the security of all citizens. Not particular
8 citizens; all citizens.

9 Q. [12:23:10] Do you remember hearing about this conflict between the Ta'aisha and
10 the Salamat in the news?

11 A. [12:23:22] Everyone heard of it. I heard of it on the news. Everyone heard of it.
12 Anyway, all Sudanese people heard of it.

13 Q. [12:23:35] Where did you hear it on the news, sir? Was it on TV or was it on
14 radio? A. [12:23:41] It was on TV, then on the radio -- I mean, those who had a radio
15 would have heard of this on the radio. Those who had a TV would have listened to
16 this on the TV.

17 Q. [12:23:57] And yourself, where did you hear it?

18 A. [12:24:00] In my case, it was the TV.

19 Q. [12:24:06] Okay. Sir, in which context did you hear the name "Ali Kushayb" for
20 the first time?

21 A. [12:24:20] The first time I heard the name Ali Kushayb happened after he
22 surrendered himself. There were people on the radio, there were people on TV, and
23 hence I realised that Ali was called Ali Kushayb. But before that, I didn't hear of it. I
24 heard of it only after he surrendered himself to the Court.

25 Q. [12:24:54] Okay. So you heard about the link between the name Ali Kushayb and

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1 Mr Ali --

2 MR NICHOLLS: [12:25:01] I'm really sorry. The witness answered. I request no
3 leading here whatsoever.

4 PRESIDING JUDGE KORNER: [12:25:09] Yes. (Microphone not activated). What were
5 you going to ask --

6 THE WITNESS: [12:25:22](Interpretation) Yes.

7 PRESIDING JUDGE KORNER: [12:25:22] Right. What were you going to ask him?

8 MR LAUCCI: [12:25:24] Yes. Can my response not be translated to the witness, please.
9 I asked in which context he had heard the name Ali Kushayb for the first time.

10 PRESIDING JUDGE KORNER: [12:25:35] And he told you.

11 MR LAUCCI: [12:25:37] And the answer was with respect to the link between Ali
12 Kushayb and Mr Ali Muhammad Ali Abd-Al-Rahman. So I want to make sure that he
13 understood my question, which was not about the link, but about the names only.

14 PRESIDING JUDGE KORNER: [12:25:49] He says -- the answer was:

15 "The first time I heard the name ..."

16 That's his answer at line 11 of page 59.

17 MR LAUCCI: [12:26:02] Yes. But then he carries on, and this is where I am in trouble:

18 "... I realised that Ali was called Ali Kushayb."

19 So I want to make sure that we are not once again mixing the two issues. One issue is
20 the link, the other issue is just the name. So --

21 MR NICHOLLS: [12:26:20] And, your Honour --

22 PRESIDING JUDGE KORNER: [12:26:22] Yes, go on. Yes, Mr Nicholls.

23 MR NICHOLLS: [12:26:25] Your Honour, perhaps I -- your Honour, as you said, he's
24 answered that question unambiguously. He can ask further questions, of course. I'm
25 asking that they not be leading in any way --

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1 PRESIDING JUDGE KORNER: [12:26:35] Yes, not leading.

2 MR NICHOLLS: [12:26:38] -- because I -- you know, the fact that my friend sees some
3 confusion, there's two parts here. But it -- there is no ambiguity to his answer. He may
4 -- they can ask about links. He's answered that question.

5 MR LAUCCI: [12:26:54] Are you happy that I ask if he had heard the name Ali
6 Kushayb before making the link with Mr Ali Muhammad Ali Abd-Al-Rahman?

7 MR NICHOLLS: [12:27:01] Well, I don't think it's whether I'm happy.

8 PRESIDING JUDGE KORNER: [12:27:04] All right. Actually, I think we've spent -- I
9 really think the question is -- he says, "I've never heard it", and then he says, "I made
10 the link". I don't see what the problem is, and what else -- what further you want to
11 ask.

12 MR LAUCCI: [12:27:24] The witness manifestly had in mind the link, and I want to
13 make sure that the answer is the same with hearing the name for the first time. As
14 simple as this.

15 MR NICHOLLS: [12:27:36] He's answered that. He said, "I heard it after he
16 surrendered, and I made the link". There's not any huge confusion there. Again, I'm
17 not going to --

18 PRESIDING JUDGE KORNER: [12:27:46] I think the simple answer is -- the simple
19 question is: Before the surrender, had you heard the name Ali Kushayb?

20 MR LAUCCI: [12:27:54] Okay.

21 Q. [12:27:57] Sir, yes. Sir, before the surrender, had you ever heard anywhere the
22 name Ali Kushayb?

23 A. [12:28:13] No, I have not heard of that. I have not heard of it before his surrender.

24 Q. [12:28:37] Were you in Rahad Al-Berdi when Mr Ali Muhammad Ali Abd-Al-
25 Rahman surrendered?

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1 A. [12:28:42] I was in Khartoum. I took my son there for treatment.

2 Q. [12:29:06] What can you tell us that you know about the ICC, sir, the International
3 Criminal Court?

4 PRESIDING JUDGE KORNER: [12:29:12] Well, that really is too wide a question.

5 MR LAUCCI: [12:29:16] I tried not to lead, Madam President.

6 PRESIDING JUDGE KORNER: [12:29:18] I know. But what -- I mean, asking him what
7 he knows about the ICC court, it doesn't seem to have any relevance to anything. What
8 is it you actually want to ask him?

9 THE WITNESS: [12:29:38](Interpretation) I do not have a question.

10 MR LAUCCI: [12:29:42] Wait, Mr Witness. Not to translate.

11 Madam President, I want to assess what is the level of knowledge of the witness on the
12 activities of the Court in relation to Sudan, whether he knows about other warrants of
13 arrest, since when, that kind of question. I want to know -- yes, what does he know
14 about the activities of the Court, because I think if he -- if his answers are that he
15 doesn't know anything, that's a relevant information. We cannot take for granted that
16 everybody in Sudan --

17 PRESIDING JUDGE KORNER: [12:30:36] (Microphone not activated). Sorry.

18 I appreciate that. But I would have thought most people, as we've been discovering,
19 even those without any level of education, have heard about the warrants of arrest,
20 from the radio, largely.

21 I don't see why you can't ask him whether he knew -- whether he'd heard anything
22 about any of these warrants of arrest.

23 MR LAUCCI: [12:30:58] I will do that.

24 Q. [12:31:00] Sir, did you hear about other people wanted by the Court in Sudan?

25 A. [12:31:13] Yes, I heard many people are wanted in Sudan --

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1 Q. [12:31:14] Who do you --

2 A. [12:31:15] -- on top of which President Al-Bashir.

3 Q. [12:31:23] Okay. And in addition to President Al-Bashir, who do you know is
4 wanted by the Court?

5 A. [12:31:32] They are numerous. I don't remember the names, but I heard Ahmad
6 Harun as well as Omar Al-Bashir, Abdel Raheem, Al-Burhan, and many others, the
7 number of which I don't know, but I just heard on the radio.

8 Q. [12:31:58] Did you say you heard it -- okay, no.

9 And is the International Criminal Court a common topic of discussion in Rahad Al-
10 Berdi in the population?

11 A. [12:32:17] All. It is being discussed in all of Sudan because it's an international
12 court and everybody discusses or talks about it.

13 Q. [12:32:37] Okay. Sir, are you aware of the war launched by the Government of
14 Sudan against the Fur population in the years 2003 and 2004?

15 A. [12:32:54] I have no idea.

16 Q. [12:33:04] You never heard about a war between the Government of Sudan and a
17 rebellion in Darfur around these years?

18 A. [12:33:18] Yes, I heard, but there is a big distance between Al Fasher. We are in
19 the -- in the far south of Darfur.

20 Q. [12:33:34] Do you know when that war started, sir?

21 A. [12:33:40] As far as I know, it started in 2003. This is what everybody knows.

22 Q. [12:33:56] And do you know when this war stopped, when it was resolved in any
23 way?

24 A. [12:34:04] No, I can't recall the date.

25 Q. [12:34:13] Did he -- was it a matter of -- did it start in 2003 and end in 2003? Was it

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1 a matter of months, of years? Ten? Is it still on?

2 PRESIDING JUDGE KORNER: [12:34:26] I don't think you can lead on this one. What
3 is his knowledge of what happened, not what dates it went on.

4 THE WITNESS: [12:34:45](Interpretation) I didn't know. I just heard about the war in
5 2003, but I don't know when it stopped because, again, the distance between us is very
6 far. I just would hear it in the radio, but I wouldn't -- I didn't see it personally.

7 MR LAUCCI: [12:35:02]

8 Q. [12:35:02] Do you know if the Ta'aisha tribe got involved at any point in this war?

9 A. [12:35:08] The Ta'aisha did not get involved in the war with Fur or any other tribe
10 except the Salamat.

11 Q. [12:35:28] Do you know if the Government of Sudan ever requested the Ta'aisha
12 tribe to join in this counter-insurgency that started in 2003?

13 A. [12:35:48] No, we did not participate, and we had nothing to do with this incident.

14 Q. [12:36:04] Okay. But my question was more specific: Do you know if the Ta'aisha
15 tribe was requested, invited to participate?

16 A. [12:36:15] I don't know. I don't know.

17 Q. [12:36:18] And do you have -- do you know why the Ta'aisha tribe did not
18 participate in the counter-insurgency?

19 A. [12:36:31] Because of the distance. It was very far, far in Jebel Marra, in the north
20 of Darfur, in the far north of Darfur.

21 Q. [12:36:54] Sir, do you remember at any point in time, since 2003, members of the
22 Fur tribe arriving in Rahad Al-Berdi to seek protection there?

23 A. [12:37:10] Yes. They came after this -- these issues. They came from Tambour and
24 Damba and Markundi. These are close-by areas. There were some issues between
25 them and the Arabs, so they were displaced to our areas.

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1 Q. [12:37:41] When was that?

2 A. [12:37:44] In the 1990s. I don't remember the date. They came and the
3 government and the tribe gave them places to live in.

4 PRESIDING JUDGE KORNER: [12:38:08] You're being asked, sir, not about what
5 happened in the 1990s. But in 2003, as a result of the government deciding to deal with
6 the rebels, did Fur families arrive as refugees in Rahad Al-Berdi?

7 A. [12:38:29] No, they didn't come. No.

8 PRESIDING JUDGE KORNER: [12:38:35] No refugees at all in 2003?

9 THE WITNESS: [12:38:41](Interpretation) No, no, they didn't come because the far --
10 the distance is very far between them and us.

11 MR LAUCCI: [12:38:48]

12 Q. [12:38:48] And since 2003, at any point in time between 2003 and now, did that
13 happen?

14 A. [12:38:59] They came to close-by areas, not far where incidents were coming --
15 were happening. In the areas that I told you about before, like Markundi and other
16 areas I mentioned before. They came to these places, and they were offered protection.

17 Q. [12:39:23] I know, sir. But your answer was related to the 1990s. My question is
18 about between 2003 and now. Did people come to Rahad Al-Berdi -- did Fur people,
19 Fur families come and seek refuge in Rahad Al-Berdi between 2003 and now? Forget
20 the 1990s?

21 A. [12:39:51] They already came. They lived with us and they are -- they were there.
22 We offered them protection and land to live in.

23 Q. [12:39:58] When was that, please?

24 A. [12:40:02] I don't remember the date, but some Fur families came and now they
25 are in Rahad Al-Berdi. They came from the northern areas to live with us.

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1 Q. [12:40:15] Are you at least talking about the period are time between 2003 and
2 now?

3 PRESIDING JUDGE KORNER: [12:40:20] Forget -- I don't know why you want to say
4 "now", because that's just confusing matters.

5 2003 to 2004, before the conflict ended, did they get refugees from the areas of Wadi
6 Salih? Did you get -- I've had enough of this. Did you get refugees in Rahad Al-Berdi
7 from the Wadi Salih area?

8 THE WITNESS: [12:40:48](Interpretation) No, no, they didn't come from Wadi Salih.
9 They came from Babel and Damba and Tabah Jarai (phon) , which are close-by areas,
10 adjacent areas. But those of Wadi Salih, they didn't come, because they lived very far
11 from us.

12 PRESIDING JUDGE KORNER: [12:41:11] Leaving aside whether they live very far,
13 you're being asked a simple question: Did those people, the Fur, from the general area
14 of Wadi Salih, arrive as refugees in Rahad Al-Berdi or anywhere around Rahad Al-
15 Berdi?

16 THE WITNESS: [12:41:36](Interpretation) No, they didn't. They don't come from Wadi
17 Salih, no.

18 PRESIDING JUDGE KORNER: [12:41:43] Yes, well --

19 MR LAUCCI: [12:41:44]

20 Q. [12:41:44] And whatever the time, you mentioned, sir, earlier that these people
21 were fleeing Arab people, and I think -- wait a minute. Yes, you mentioned that these
22 people came because they were fleeing problems between -- there were issues, some
23 issues between them and the Arabs. Who are you talking about? Who are these Arabs
24 with whom they had problems?

25 A. [12:42:44] Arab -- Arabs in North Darfur, not in South Darfur.

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1 Q. [12:42:50] Okay. But who are they? Why were they making problems to the --

2 A. [12:42:58] There are many tribes in the -- Arab tribes. Many, so many in the north,
3 but we are in the south.

4 Q. [12:43:08] Okay. Thank you, Mr Witness.

5 That concludes my questions, Madam President.

6 PRESIDING JUDGE KORNER: [12:43:20] Yes.

7 Mr Shah.

8 MR SHAH: [12:43:29] Just one discrete topic, Madam President.

9 QUESTIONED BY MR SHAH:

10 Q. [12:43:38] Good morning, Mr Witness. Can you hear and see me?

11 A. [12:43:39] (No interpretation).

12 Q. [12:43:40] You may remember that we met briefly yesterday by video-link. But for
13 the record, my name is Anand Shah, and I am one of the lawyers representing the
14 victims in these proceedings.

15 I would like to ask you about a subject you addressed with the Defence during your
16 preparation meeting last Friday, on 7 June. Okay?

17 A. [12:44:22] Yes.

18 Q. [12:44:35] You discussed the term *zurga* with the Defence during this meeting. Do
19 you remember that?

20 A. [12:44:44] Yes.

21 Q. [12:44:53] And you explained to the Defence that the term *zurga* is the common
22 word used to describe the group of non-Arab tribes like the Fur and Daju and it is not
23 derogatory. Do you remember saying that?

24 A. [12:45:13] Yes.

25 Q. [12:45:20] And you stand by that view, Mr Witness; is that correct?

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1 A. [12:45:31] Yes.

2 Q. [12:45:34] And when you say the term is commonly used, it's a term that's
3 commonly used by you, your friends, your colleagues; is that correct?

4 A. [12:45:47] All the people use it.

5 Q. [12:45:56] Do the Fur use this term when referring to one another or to other
6 African tribes?

7 A. [12:46:06] What is the question? The question.

8 Q. [12:46:22] Yes. To your knowledge, does the Fur community use this term, *zurga*,
9 when referring to each other or to other African tribes in Darfur?

10 A. [12:46:35] Well, the term "*zurga*" is like the word "Arab". So there are so many
11 different Arabs - Salamat, Hoytiya, Beni Halba, Habbaniya, what I'm calling -- it's
12 Rizeigat as well, Misseriya. So all these are encompassed in the word "Arabs". When
13 Arabs talk and use *zurga*, so, when the -- the Fur use the word *zurga*, they say "we", the
14 *zurga*, and "you", the Arabs. So it's a very -- it's an acceptable term.

15 Q. [12:47:30] Okay. So you're saying that the Fur themselves also use this term; is
16 that correct?

17 A. [12:47:38] All the tribes, not the Fur exclusively.

18 MR SHAH: [12:47:49] Yes, that's all, Madam President.

19 PRESIDING JUDGE KORNER: [12:47:51] Mr Shah, I have to say, this is all rather odd.
20 None of this evidence was adduced, you adduce it, and then you start effectively to try
21 cross-examine on it. Why?

22 MR SHAH: [12:48:05] We have instructions from our clients, Madam President, on the
23 meaning of this term and its usage.

24 PRESIDING JUDGE KORNER: [12:48:09] I know you do. But the witness had never
25 been asked about this, so why would you adduce something that you don't agree with?

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1 MR SHAH: [12:48:16] It's arising from his preparation session and also the evidence of
2 other witnesses, so we did think it was relevant to get this on the record.

3 PRESIDING JUDGE KORNER: [12:48:27] Yes. All right.

4 Can I put it this way, Mr Shah: If evidence hasn't been given, then you don't normally
5 try -- you don't adduce it yourselves and then try and shoot it down. It doesn't really
6 make much sense.

7 All right. Yes, thank you.

8 MR SHAH: [12:49:00] Yes.

9 PRESIDING JUDGE KORNER: [12:49:01] I tell you what, as I know Judge Alapini-
10 Gansou has got a meeting, we'll adjourn now. If we start at quarter past 2.00, do you
11 think you'll finish by -- who is cross-examining? You, Mr Nicholls?

12 MR NICHOLLS: [12:49:03] That's me, your Honour. And I'm still trying to decide how
13 to approach this. If we start at a quarter past 2.00, how long would the session be?

14 PRESIDING JUDGE KORNER: [12:49:12] Well, I mean, we could sit until quarter past
15 4.00, but I mean --

16 MR NICHOLLS: [12:49:17] I won't take that long.

17 PRESIDING JUDGE KORNER: [12:49:19] Do you want to -- all right. Let's --

18 MR NICHOLLS: [12:49:21] I mean, I can't finish in ten minutes, but --

19 PRESIDING JUDGE KORNER: [12:49:24] No, I know that.

20 MR NICHOLLS: [12:49:25] Yes.

21 PRESIDING JUDGE KORNER: [12:49:48] I'm just checking.

22 Just make a start, Mr Nicholls.

23 MR NICHOLLS: [12:49:50] All right.

24 PRESIDING JUDGE KORNER: [12:49:51] And then we'll sit again at quarter past 2.00.

25 QUESTIONED BY MR NICHOLLS:

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1 Q. [12:49:55] Good afternoon, Mr Witness. Sir, can you see and hear me okay?

2 A. [12:50:00] I can hear you, but I don't see you.

3 Q. [12:50:07] Could we adjust that, please, so that the witness can see me? I don't
4 know what's going on at his end, but I would like him to be able to see me while I ask
5 questions.

6 PRESIDING JUDGE KORNER: [12:50:53] It appears -- sir, you can't see the picture at
7 the bottom of your screen?

8 MR NICHOLLS: [12:50:59] I think it may have just come up.

9 THE WITNESS: [12:51:05](Interpretation) Yes.

10 MR NICHOLLS: [12:51:06]

11 Q. [12:51:07] You can see me now, sir? I'm holding my hand up. Okay, great.

12 A. [12:51:10] Yes, I do.

13 Q. [12:51:12] Thank you. Just a few questions before the break.

14 Now, you first spoke with the Defence, I believe, on 12 March of this year, so a few
15 months ago, by telephone; is that right?

16 A. [12:51:37] Yes.

17 Q. [12:51:38] And they asked you some questions over the phone, and they wrote
18 down and took notes of what you told them; is that right?

19 A. [12:51:49] Yes.

20 Q. [12:51:54] And, of course, at the beginning of that conversation, they told you that
21 the most important thing was to tell the truth; correct?

22 A. [12:52:07] Correct.

23 Q. [12:52:09] And they also told you if you didn't know the answer to a question, that
24 was okay, to just say that you didn't know; correct?

25 A. [12:52:19] Yes.

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1 Q. [12:52:21] And generally they asked you to be as accurate as possible in what you
2 told them and you agreed.

3 A. [12:52:32] Yes.

4 Q. [12:52:35] And, sir, I think I can see, but you're testifying in this Court. You
5 respect this Court, don't you?

6 A. [12:52:44] Yes.

7 Q. [12:52:48] And you respect the Judges of this Court?

8 A. [12:52:52] Yes.

9 PRESIDING JUDGE KORNER: [12:52:56] I am going to stop that one before Mr
10 Nicholls. I mean, really, it's pure comment. I mean, honestly.

11 MR NICHOLLS: [12:52:59] Well, it's -- I would like the answer, but I will move on from
12 that.

13 PRESIDING JUDGE KORNER: [12:53:01] No.

14 MR NICHOLLS: [12:53:02] Thank you, your Honour.

15 Q. [12:53:05] And my point is, sir, as you said, everybody in Sudan talks about this
16 Court, knows about this Court, and this Court, you know, is doing important work; is
17 that right? Is that your opinion?

18 A. [12:53:20] Yes.

19 Q. [12:53:24] Okay, thank you. Then more recently, last Friday in fact, you spoke to
20 the Defence again; correct?

21 A. [12:53:39] Correct.

22 Q. [12:53:42] And that was over a video-link, the way we're speaking now; correct?

23 A. [12:53:49] Yes.

24 Q. [12:53:52] And, once again, the Defence told you that the most important thing -
25 it's written in their note - was to tell the truth, the whole truth, and nothing but the

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1 truth; correct?

2 A. [12:54:05] Yes.

3 Q. [12:54:08] And you did that because you knew it was important, because that was
4 evidence for this Court.

5 A. [12:54:18] Yes.

6 Q. [12:54:21] And during that meeting over video, you were able to see and speak
7 clearly with the Defence.

8 A. [12:54:33] Yes.

9 Q. [12:54:38] Good.

10 And one of the things that happened was that their notes from the meeting back in
11 March were read back to you carefully so that you could make any corrections or
12 clarifications, fix any mistakes; right?

13 A. [12:54:58] Yes.

14 Q. [12:55:01] And, in fact - and this is very proper - you listened carefully and you
15 did make some corrections and clarifications.

16 Let me ask that --

17 A. [12:55:17] Excuse me?

18 Q. [12:55:27] At your second meeting with the Defence last Friday, one of the things
19 they did was read the notes from your first meeting with them to make sure that they
20 were accurate; correct?

21 A. [12:55:46] Yes.

22 Q. [12:55:47] And to make sure they were accurate, you did make a few corrections
23 and clarifications to what their notes had been from the first meeting; correct?

24 A. [12:55:58] I don't remember. What notes?

25 I don't -- I'm not familiar with it.

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1 Q. [12:56:09] Okay. I'll just give you one example. At the second meeting they read
2 back the notes from the first meeting and you clarified that you met Mr Abd-Al-
3 Rahman in 1964. That's what I'm talking about; you made sure that those first notes
4 were accurate.

5 A. [12:56:35] Yes.

6 MR NICHOLLS: [12:56:42] Different topic now, your Honour.

7 PRESIDING JUDGE KORNER: [12:56:47] Okay. We'll adjourn at this point and sit
8 again at 2.15.

9 THE COURT USHER: [12:56:51] All rise.

10 (Recess taken at 12.56 p.m.)

11 (Upon resuming in open session at 2.18 p.m.)

12 THE COURT USHER: [14:18:57] All rise. Please be seated.

13 PRESIDING JUDGE KORNER: [14:19:20] Mr Nicholls.

14 MR NICHOLLS: [14:19:22] Thank you, your Honours. Actually, for this part, I'll need
15 to briefly go into private session, please.

16 PRESIDING JUDGE KORNER: [14:19:30] Yes, private session.

17 MR NICHOLLS: [14:19:41]

18 Q. [14:19:42] Good afternoon, Mr Witness.

19 THE COURT OFFICER: [14:19:44] Counsel, just a moment.

20 MR NICHOLLS: [14:19:46] Oh, sorry.

21 (Private session at 2.19 p.m.)

22 THE COURT OFFICER: [14:19:52] We are in private session, Madam President.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 16 (Open session at 2.29 p.m.)
- 17 THE COURT OFFICER: [14:29:21] We are in open session, Madam President.
- 18 MR NICHOLLS: [14:29:27]
- 19 Q. [14:29:29] Thank you, sir. Now, we're are back in open session. I want to try to
- 20 clear up a couple of points from this morning. All right?
- 21 Now, today, in court, you stated - and I'm at page 36, your Honours, lines 20 to 25 -
- 22 that there is no link whatsoever between the name Kushayb and alcohol; correct? You
- 23 remember saying that this morning?
- 24 A. [14:30:27] Yes.
- 25 Q. [14:30:28] Okay. Now, I want to --

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1 A. [14:30:29] I talked about -- I talk about local alcohols called *dakkai*, *buku*, *araqi*, and
2 *kushayb*.

3 Q. [14:30:57] Okay. You said this morning there was no link whatsoever between the
4 word "*kushayb*" and alcohol. Do you remember that? I can read it out to you.

5 A. [14:31:09] Yes, I -- I admit that. I know that. I said -- I talked about local alcohol.

6 Q. [14:31:27] Okay. Let me ask this again. I'll read out the question. This is from the
7 Defence, from my friend Mr Laucci, page 36, line 20:

8 "... my question was [about] the meaning of '*kushayb*.' So what is the link with ...
9 alcohol?

10 And your answer was:

11 "There is no relation whatsoever. There is no relation whatsoever. I don't know of
12 any."

13 Now, was that answer you gave true or not?

14 A. [14:32:10] My answer is correct because I meant the -- I was asked about local
15 alcohols, and I mentioned that among local alcohols you have *zaki*, *buku* and *kushayb*,
16 and another *marissa* called *safra* and *kushayb*. All these are names of alcohols.

17 Q. [14:32:38] Okay, sir. Well, it's not what you said earlier today, but I will move on.
18 Let me ask you this: What is the local alcohol *kushayb* made out of?

19 A. [14:32:56] There are local alcohols that have many different names.

20 Q. [14:33:10] Okay. Once again, listen to my question carefully. I will do it in a
21 leading way. You have said before that *kushayb*, the local alcohol, is made out of dates;
22 correct?

23 A. [14:33:30] Yes, correct.

24 Q. [14:33:32] Okay. Again, last time and then I will move on. You were asked what
25 was the link with alcohol with the name *Kushayb*, what does the name *Kushayb* -- the

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1 word *kushayb* have to do with alcohol, and you said:

2 "There is no relation whatsoever."

3 You said that twice, so why are you giving a different answer now?

4 A. [14:33:55] It's not a different answer. I am clear. The name of the alcohol has
5 nothing to do with Kushayb. This is an alcohol. Alcohol can be called *kushayb*, *zaki*,
6 *safra*, et cetera. All of these are names. They are available in -- locally.

7 PRESIDING JUDGE KORNER: [14:34:25] Before you move on -- and, this is just pure
8 interest -- you and all the tribes, whether Arab or non-Arab, are Muslims, are you not?

9 THE WITNESS: [14:34:40](Interpretation) This is correct.

10 PRESIDING JUDGE KORNER: [14:34:42] As a matter of interest, why are there so
11 many local wines, then?

12 THE WITNESS: [14:34:50](Interpretation) Some of -- some of the Muslims drink
13 alcohol, many different kinds of alcohols, even though they are Muslims. All those
14 names are called by Muslim people, and some other Muslims do not drink alcohol and
15 do not even hear of alcohol. We don't drink alcohol, but we hear about other people
16 talking about alcohol.

17 PRESIDING JUDGE KORNER: [14:35:34] Yes, thank you.

18 THE INTERPRETER: [14:35:38] Madam President, message from the interpreter:
19 Permission to make a comment, please?

20 PRESIDING JUDGE KORNER: [14:35:40] Yes.

21 THE INTERPRETER: [14:35:41] Yes. This the interpreter from the French booth. Just
22 a comment on the confusion regarding the witness's answer.

23 To be completely fair to him, it may have been a confusion in translation. When he was
24 responding to the fact that there was no relationship between Kushayb and the
25 alcoholic drink, he meant the person, not the drink. Thank you.

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1 PRESIDING JUDGE KORNER: [14:36:04] I see, or at least I think I do, but thank you
2 very much, Mr Interpreter.

3 MR NICHOLLS: [14:36:11] There will be no more questions about alcohol in this
4 examination.

5 Q. [14:36:17] Sir, what crimes --

6 A. [14:36:18] (No interpretation).

7 Q. [14:36:30] Yes. What crimes is Mr Abd-Al-Rahman charged with in this Court?
8 Do you know?

9 A. [14:36:34] I have no idea about them.

10 Q. [14:36:39] None whatsoever? You don't know if he's charged with murder?
11 Torture? Nothing?

12 A. [14:36:48] This -- the whole world is talking about that. Even in the Sudanese
13 streets, we heard about that, but we do not know if this happened. We heard that the
14 accused was arrested by the ICC, whether Ali or someone else. We all hear about that.

15 Q. [14:37:13] Do you know, broadly, what crimes he is charged with, why he is in
16 court today?

17 A. [14:37:26] I know that he is wanted in a criminal case, but I do not know exactly
18 what. I know he is wanted by the ICC; however, I do not know which crime he has
19 committed.

20 Q. [14:37:42] Do you know where the crimes he is charged with are committed? Do
21 you know where in Darfur we have said that he committed crimes in 2003 and 2004?

22 A. [14:37:58] I cannot identify that because all the crimes now in Darfur are
23 numerous. And until now, the war is still raging, and we do not know anything about
24 that. We cannot know any details. We do not know what happens exactly and of
25 which crimes the accused is wanted -- for which crimes.

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1 Q. [14:38:35] Okay. Well, just to be clear, none of my questions are going to do with
2 the current war.

3 Now, you were in Rahad Al-Berdi in 2003-2004, and I won't say where, but you did a
4 lot of travelling to sell goods and to trade; right?

5 A. [14:39:00] Which -- what kind of trade?

6 Q. [14:39:07] Well, you told us earlier that you were selling things like -- well, it says
7 in the article selling things like sugar, for example.

8 A. [14:39:22] Yes. Sugar and other products.

9 Q. [14:39:30] And you've never been to Wadi Salih in your life, if I understood you
10 correctly today.

11 A. [14:39:38] No, I have never been to Wadi Salih. I've never seen Wadi Salih in my
12 whole life.

13 Q. [14:39:52] And you've never been to -- well -- and you didn't go to Mukjar either;
14 right?

15 A. [14:40:01] No, I've never seen Mukjar.

16 Q. [14:40:02] But --

17 A. [14:40:03] It's far away from us. It's ...

18 Q. [14:40:15] But you've heard about crimes that occurred in 2003 and 2004 in both
19 Mukjar and Wadi Salih; correct? You know about those crimes. You've heard about
20 those crimes; correct?

21 A. [14:40:40] Yes, I heard about those crimes. The whole world has heard about that,
22 not only in Sudan. The whole world has heard about the crimes committed in Sudan --
23 in Darfur, in the northern part and not in the southern part.

24 Q. [14:41:02] You have never heard who is accused of those crimes, one of the
25 persons accused of those crimes in Mukjar and Wadi Salih? You don't have any idea

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1 who is responsible or alleged to be responsible for those crimes; right?

2 A. [14:41:28] I do not have any idea.

3 Q. [14:41:34] So you, as a local historian of the Ta'aisha tribe, have never heard that a
4 Ta'aisha tribe member, nicknamed Ali Kushayb, who was notoriously alleged to have
5 committed these crimes in 2003 and 2004, you've never heard that name in connection
6 with those crimes?

7 A. [14:42:03] I did not hear that, but I know that many events were -- unfolded,
8 whether with Ali or with other people. There were many -- many wars were raging
9 between all the tribes. We do not know -- many people get accused, but we do not
10 know any details about that.

11 Q. [14:42:25] Okay. I'm not asking about the details. I'm just saying that you as the
12 Ta'aisha -- as somebody who is kind of a historian of the Ta'aisha tribe would know
13 that a Ta'aisha tribe member has been accused of being involved in these crimes,
14 especially, as you just said, the whole world was talking about those crimes in Darfur,
15 and I'll suggest to you that much of the world knew that person named Ali Kushayb
16 was accused of those crimes?

17 A. [14:43:03] Yes, I heard about that. I heard that one person was wanted for these
18 crimes -- one of the 52 persons, but I do not know who is this Kushayb or someone else,
19 but I've heard that the whole world is talking about that. I do not know him. I only
20 knew him after he surrendered himself. Afterwards, I learnt that this name -- this
21 nickname was Ali's nickname.

22 PRESIDING JUDGE KORNER: [14:43:47] Just so we all get this right, sir. When you
23 heard either on the television news or the radio, whichever it was, that the
24 International Criminal Court wanted Bashir, Harun, and all these others, did you also
25 hear that they wanted somebody with the name Ali Kushayb?

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1 THE WITNESS: [14:44:18](Interpretation) Yes, I heard about that, but I did not know
2 who is Ali Kushayb. I did not know him. I did not know this name. I know the names
3 of those people who were wanted, but I don't know them personally. I just heard that
4 on the radio.

5 MR NICHOLLS: [14:44:38]

6 Q. [14:44:38] On the radio; right?

7 A. [14:44:45] Yes.

8 Q. [14:44:49] Okay. Let me just jump around a bit, sir.

9 Now, earlier today, at page 61, lines 19 to 25, this is a question put to you this morning
10 by Her Honour, the Presiding Judge -- excuse me, by Mr Laucci at the Presiding
11 Judge's suggestion. This is a question to you earlier today:

12 "Sir, yes. Sir, before the surrender, had you ever heard anywhere the name 'Ali
13 Kushayb'?"

14 And your answer was:

15 "No, I have not heard that. I have not heard of it before his surrender."

16 Is that true or not true?

17 A. [14:45:54] I heard that about -- I heard things on the radio, but I do not know
18 where is the truth.

19 Q. [14:46:07] Okay. I'm not asking you to tell us whether you think the truth of what
20 you heard on the radio or not true. So I think we can agree that around 2003-2004,
21 sometime shortly after that, you heard the name Ali Kushayb on the radio accused of
22 crimes; correct? However, you did not link it, you were saying, to your friend Mr Abd-
23 Al-Rahman; is that right?

24 A. [14:46:46] No, I didn't link that because I hadn't heard about this name before.
25 Before that, I hadn't heard of the name.

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1 Q. [14:47:02] Before what you had not heard of the name?

2 A. [14:47:07] Before the radio. Only on the radio.

3 Q. [14:47:19] On the radio, you heard that somebody named Ali Kushayb was
4 wanted by this Court for crimes; correct?

5 A. [14:47:29] Yes, but I didn't know who that person was. I just heard about the
6 name like the same way I heard Ahmad Harun, Bashir, and the others. But who
7 exactly that referred to, I didn't know.

8 Q. [14:47:47] Okay. And that was -- when you heard that Ali Kushayb was wanted
9 along with Harun, former President Bashir, that was before he surrendered to this
10 Court; correct?

11 A. [14:48:04] I heard, but I didn't verify. I didn't verify or confirm.

12 Q. [14:48:13] Okay. You don't need to say that every time. You've made that clear.
13 So, in fact, by around 2017 or 2018 at the latest, you had heard that Ali Kushayb, a
14 person named Ali Kushayb was wanted by this Court; correct?

15 A. [14:48:36] No. I hadn't heard about it unless -- only after he surrendered himself.
16 But people were talking, but I didn't know who that person was.

17 PRESIDING JUDGE KORNER: [14:48:53] Okay. I'm going to try and do this because I
18 think we've spent quite a long time on this now.

19 Sir, when the radio announced that Bashir and Harun were wanted by this Court, as
20 you put it, they also mentioned Ali Kushayb.

21 THE WITNESS: [14:49:22](Interpretation) The names were numerous.

22 PRESIDING JUDGE KORNER: [14:49:23] Yes.

23 THE WITNESS: [14:49:24](Interpretation) So many.

24 PRESIDING JUDGE KORNER: [14:49:25] Forget about that.

25 THE WITNESS: [14:49:26](Interpretation) And not every citizen would know the

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1 names, many names --

2 PRESIDING JUDGE KORNER: [14:49:28] No --

3 THE WITNESS: [14:49:29] -- and they were mentioned over, but we wouldn't know the
4 names, but we would know only the famous -- the prominent figures such as Al-Bashir
5 and Ahmad Harun. But they were not known -- we didn't know the others.

6 PRESIDING JUDGE KORNER: [14:49:43] No, fine. But just you've said about twice
7 now, but unfortunately we seem to be going around in circles, that at the same time,
8 whether or not you knew who -- and you didn't know who it was, you heard that a
9 man called Ali Kushayb was wanted for committing crimes in the Wadi Salih area.

10 THE WITNESS: [14:50:11](Interpretation) I didn't hear about Wadi Salih, but I heard
11 that he was wanted, but not exactly for what.

12 PRESIDING JUDGE KORNER: [14:50:17] Right. And you told us earlier that you only
13 linked that name that you heard years ago with your friend, Mr Abd-Al-Rahman, after
14 he surrendered. You had no idea before his surrender that he was the man the Court
15 was saying was Ali Kushayb.

16 THE WITNESS: [14:50:45](Interpretation) I didn't know that. I didn't know him at all.

17 PRESIDING JUDGE KORNER: [14:50:50] Right. Okay.

18 And I think we're just stuck with that.

19 MR NICHOLLS: [14:51:00]

20 Q. [14:51:01] All right, sir.

21 Now, I'll move on to a different topic. I'm just trying to sort out your testimony.

22 Let me read back another part of your testimony from today. This is at page 50, lines 2
23 to 6.

24 The question to you was about Mr Ali Muhammad Ali Abd-Al-Rahman.

25 Question: "... did you ever hear that Mr Ali Muhammad Ali Abd-Al-Rahman served as

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1 a *musha'arif*?"

2 Answer: "No. This is the first time I have hear of this, here at this Court."

3 Do you remember saying that today?

4 A. [14:52:01] I didn't -- no, I don't deny this, he was not a *musha'arif*. He had nothing
5 to do with overseeing or being a *musha'arif*. He was a government personnel. He was
6 a personnel in the CRF -- had nothing to do with being a *musha'arif* in the Ta'aisha
7 group.

8 Q. [14:52:22] He was never a *musha'arif* in the Ta'aisha group; correct? That's what
9 you just said, just so we understand each other?

10 A. [14:52:32] Yes, he was not appointed a *musha'arif*, and we actually didn't have a
11 *musha'arif* at all, aside from Ali. Not Ali, not anyone else.

12 Q. [14:52:42] All right. Let me read to you from paragraph 12 of what you said to the
13 Defence last Friday. Do you understand? I'm going to read to you from what you said
14 to the Defence last Friday, okay? Do you understand that?

15 A. [14:53:06] Yes.

16 Q. [14:53:09] This is you. I won't say your name, obviously.

17 PRESIDING JUDGE KORNER: [14:53:18] Which paragraph?

18 MR NICHOLLS: [14:53:20] 12, your Honours, which is on page 3.

19 Q. [14:53:26] The "... witness confirmed that Mr Abd-Al-Rahman was never an 'Agi'
20 or an 'Agid al Ogada' and corrected that Mr Abd-Al-Rahman was not in the committee
21 of the conciliation of the tribes for the government. Mr Abd-Al-Rahman was only in
22 the CRF, he was in charge of protecting farmers and people because he was working
23 for the government. However, ..."

24 A. [14:53:59] Yes.

25 Q. [14:54:01] That's correct; right?

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1 A. [14:54:04] Yes, this is correct.

2 Q. [14:54:07] Next sentence:

3 "However, D-0039 explained that if the issue of conciliation between the tribes became
4 complicated, they would call a '*mushaarif*' (meaning 'overseer'), who could be someone
5 from the Army, the Police, the CRF or Security Services, to assist. As a member of the
6 CRF, Mr Abd-Al-Rahman served as '*mushaarif*' in Rahad al Berdi for some time and
7 could appear in that function before the committees when necessary."

8 So you told the Defence just last Friday, less than a week ago, that Mr Abd-Al-Rahman
9 served as a *musha'arif* in the Ta'aisha.

10 A. [14:55:08] No, I didn't say that. Ali Muhammad Ali Abd-Al-Rahman was not a
11 *musha'arif*. He was not a *musha'arif* in the tribe.

12 Q. [14:55:14] Never, never, never?

13 A. [14:55:17] Never, never.

14 Q. [14:55:18] Right. So --

15 A. [14:55:19] Never happened.

16 Q. [14:55:32] Right. So this is a --

17 A. [14:55:33] To be a *musha'arif* in the tribe.

18 Q. [14:55:35] So this is about a 25-word interpretation. How do you -- you said this
19 to the Defence last week. They have written it down and given it to us. This morning,
20 you told me that you understood it was important to be truthful and accurate when
21 you were talking to the Defence. So I put it to you that for some reason between last
22 Friday and today, you have changed your story.

23 A. [14:56:09] No, I didn't -- I didn't change the story. I never -- I don't remember Ali
24 ever being a *musha'arif* or anyone else being a *musha'arif*. Ali worked in the -- for the
25 government at the CRF. He had -- he was in the army. He had -- he worked alongside

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1 the army, the military, and the security services that formed -- together they formed the
2 security committee. Ali was not a *musha'arif* in the tribe.

3 Q. [14:56:41] Okay. Since last Friday, have you had any contact with any of the
4 gentlemen from Rahad Al-Berdi who travelled with you to where you are now?

5 A. [14:56:56] No, I didn't. If we spoke, we spoke only on other matters, but not on
6 this matter, and I am very confident of this. Ali was never a *musha'arif* and had
7 nothing to do with the work of a *musha'arif*.

8 PRESIDING JUDGE KORNER: [14:57:14] The question, sir, was not anything about
9 that. It's simply this: Did you talk to any of the people who have given evidence in
10 this case, who travelled with you to the place where you went? Did you talk to them
11 after you had spoken to Mr Edwards and Mr Laucci?

12 THE WITNESS: [14:57:41](Interpretation) No, no, I didn't talk with anyone.

13 PRESIDING JUDGE KORNER: [14:57:47] You didn't see anybody at all, because a
14 moment ago you said you might have had some conversation.

15 THE WITNESS: [14:57:59](Interpretation) I -- I have -- I live by myself, and I didn't talk
16 with anyone. And this is my story, and I stick to it. And Ali was never a *musha'arif*
17 and had nothing to do with overseeing or the work of a *musha'arif*.

18 MR NICHOLLS: [14:58:21]

19 Q. [14:58:22] Okay. I'm going to just try to clarify this one bit. I asked you if you had
20 any contact with the gentlemen who travelled with you from Rahad Al-Berdi to where
21 you are where you're testifying from. First you said:

22 "No, I didn't."

23 And then you said:

24 "If we spoke, we spoke only on other matters ..."

25 So --

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1 A. [14:58:52] I didn't speak with them. Since I came to give my testimony, I've lived
2 by myself, and I didn't talk with anyone. Nobody gave me any information. All what I
3 said is what I know.

4 Q. [14:59:08] Okay. Well, then, in that case, I'm going to give you an opportunity to
5 explain. Then why did you say "if we spoke," as though we might find out that you
6 did speak, and you're saying but we didn't talk about anything about the case? Why
7 did you say "if we spoke" after saying "I didn't have any contact"?

8 A. [14:59:34] Because I didn't know -- you said: Did you talk -- did you discuss
9 anything related to their case. I said: No, I didn't discuss anything related to this case
10 with anyone.

11 And the information I -- I have given, I am aware that I'm under oath.

12 PRESIDING JUDGE KORNER: [14:59:53] Sir, look, the point is this - and, if necessary,
13 although I'm very reluctant to do it, we can play you the whole thing - is that you said
14 something completely different when you spoke to Mr Laucci the other day. Now, can
15 you explain why you did that?

16 THE WITNESS: [15:00:15](Interpretation) No, I don't know otherwise. What I have
17 said today is my testimony, and I don't know anything different.

18 PRESIDING JUDGE KORNER: [15:00:25] Yes. All right.

19 MR NICHOLLS: [15:00:31]

20 Q. [15:00:35] Okay. One thing I think we can agree on is that Mr Abd-Al-Rahman
21 was a *musa'id* in the CRF in Rahad Al-Berdi after he arrived in 2009 or whenever you
22 remember him arriving?

23 A. [15:01:10] Yes, yes.

24 Q. [15:01:23] Okay. Now, you talked a little bit today about the unfortunate time that
25 Mr Abd-Al-Rahman was shot and wounded in Nyala. Do you remember that? You

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1 talked about that today.

2 A. [15:01:45] Yes.

3 Q. [15:01:48] And you know that in addition to Mr Abd-Al-Rahman being shot, two
4 other CRF members with him were unfortunately killed. One of them is the son of
5 Ahmed Ibrahim Al-Semeh; correct? You know that two CRF members were martyred.

6 A. [15:02:17] Yes.

7 Q. [15:02:19] And you were in Nyala. You said everybody was talking about this, it
8 was really big news, Mr Abd-Al-Rahman's been shot. And you even went to the
9 hospital to try to see him; right?

10 A. [15:02:40] Yes, by the time -- by that time, he had been moved to Khartoum.

11 Q. [15:02:44] Right. Now, just very quickly -- and, I don't want to spend time on this
12 -- when you met with the Defence, you stated that you did actually meet with Mr Abd-
13 Al-Rahman after he was shot.

14 MR NICHOLLS: [15:03:15] That's at paragraph 19, your Honours, at page 5.

15 Q. [15:03:27] What you said --

16 A. [15:03:28] I am just surprised how -- by these things which I haven't said. I was in
17 Nyala, Ali was shot, I went to the hospital, I found that Ali had been taken by car to the
18 airport, and from the airport he was moved to Khartoum. This is what I said.

19 Q. [15:03:49] Okay, so that's fine. I'm not going to spend time on it or argue with you
20 about it. Don't worry. I'm just pointing out and asking you: So you didn't say, as it
21 says in your interview with the Defence, that you were able to say hello to Mr Abd-Al-
22 Rahman when he was in the car on his way to the airport. Mr Abd-Al-Rahman was
23 conscious. You never said that to the Defence either?

24 A. [15:04:16] I saw him in the car, so I waved to him. I waved to him like this, I
25 raised my hand. And I didn't say anything. And he was moved immediately to the

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1 airport, and from there to Khartoum. This is what I'm going to say now, in the future,
2 and forever.

3 Q. [15:04:34] Okay. Now, I'd like to show you an article.

4 MR NICHOLLS: [15:04:40] I can't remember. Maybe my friends can advise me. Is it
5 better to read to the witness or have the witness --

6 MR LAUCCI: [15:04:58] I think this morning we heard that his command of reading is
7 limited, so maybe ...

8 MR NICHOLLS: [15:05:04] Okay. Then can we please have up, this is at tab 4, your
9 Honours, DAR-OTP-00006771.

10 Q. [15:05:38] Okay, sir. This is an article dated July 8th, 2013, from the Sudan

11 Tribune, and it's about -- well, it's about a shooting incident in Nyala. And what the
12 first -- the headline is:

13 "Kushayb seriously injured in assassination attempt, his driver and bodyguard killed."

14 And it states in paragraph 2:

15 "According to eyewitnesses, Ali Kushayb a *Musa'id* [...] in the Central Reserve Police
16 who has been accused by the ICC of killing civilians in Darfur in 2004, was at a car
17 repair shop in Nyala when two individuals on a motorbike subjected him to heavy fire.

18 His driver and personal bodyguard were killed while Kushayb was seriously injured."

19 That is the incident we were talking about when you were in Nyala and waved to the
20 accused in the car; right?

21 A. [15:07:00] Yes. It's the same incident, but I didn't know any details related to it,
22 and everybody knows of this incident. Everybody knows of it in Nyala, or even in
23 Sudan in general.

24 Q. [15:07:18] Right. Everybody in general in Sudan knows about this incident, and
25 one of the reasons they know about it is because the Sudan Tribune and other media

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1 sources published articles about it; right?

2 A. [15:07:34] I don't know. I don't know about that.

3 Q. [15:07:39] Well, you said everybody was talking about it on the street; right? And
4 you just said everybody in Sudan knows about it. So what I'm putting to you is --

5 A. [15:07:50] This is the news broadcasted maybe on the radio and people discuss it
6 in the street, because this was a painful -- or tragic incident and people learned about it,
7 but I didn't know the details.

8 Q. [15:08:05] I'm not asking you about the details. You've actually provided quite a
9 lot of detail - that he was taken by car to the airport, and then he went to Khartoum. So
10 you do know some details, sir. But my point is that what everybody else in Sudan who
11 heard about this could know is that Ali Muhammad Ali Abd-Al-Rahman was known
12 as Ali Kushayb. That's the first sentence of this article.

13 Now, how is it that you as the Ta'aisha historian --

14 A. [15:08:41] I didn't know.

15 Q. [15:08:42] You say you didn't know. You are a historian of the Ta'aisha. This is a
16 prominent Ta'aisha member shot. You said it was a tragedy. And you didn't know
17 about that nickname? Is that -- could you explain that, please?

18 A. [15:08:58] I didn't know his nickname. I only know Abu Nasser. I don't know of
19 any other nickname.

20 PRESIDING JUDGE KORNER: [15:09:10] When you say everybody was discussing it
21 in the street, presumably, this was both in Nyala and Rahad Al-Berdi; is that right?

22 THE WITNESS: [15:09:18](Interpretation) Yes, they spoke about the shooting incident,
23 but not the details. I don't know the details.

24 PRESIDING JUDGE KORNER: [15:09:26] Well, okay. But you knew here that the
25 details were that he'd been shot and his bodyguards killed. But did nobody in these

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1 street discussions, either in Nyala or Rahad Al-Berdi, ever say the words "Muhammad
2 Ali Abd-Al-Rahman known as Ali Kushayb"? Nobody said the words "Ali Kushayb" in
3 any of the discussions you had?

4 THE WITNESS: [15:10:01](Interpretation) I didn't hear of this at all.

5 PRESIDING JUDGE KORNER: [15:10:20] So --

6 THE WITNESS: [15:10:21](Interpretation) I only knew Ali Muhammad Ali Abd-Al-
7 Rahman, he was shot, his bodyguard and driver were killed, and everybody knew this.
8 People -- many people went to the hospital.

9 PRESIDING JUDGE KORNER: [15:10:20] Yes, well, that's -- I'm sorry.

10 THE WITNESS: [15:10:24] I went to the hospital and seen him leaving the hospital in
11 the car.

12 PRESIDING JUDGE KORNER: [15:10:29] Yes, you needn't repeat everything you
13 already said. All that I am asking is this: Nobody who discussed this in the street or in
14 the marketplace -- or, wherever with you -- ever called the man who had been shot Ali
15 Kushayb? Nobody ever used that name?

16 THE WITNESS: [15:10:56](Interpretation) Personally speaking, I never heard of this,
17 and I'm not responsible for checking what the street -- what's said in the street. What I
18 said was that this guy was shot and was moved to Khartoum, and I don't know
19 anything else.

20 PRESIDING JUDGE KORNER: [15:11:11] Okay, I'll try one last time, sir.

21 Did you ever have discussions about the shooting incident with people in the
22 marketplace or wherever you did your trading or whatever you did, did you ever
23 discuss this major event?

24 THE WITNESS: [15:11:36](Interpretation) I don't remember, but everybody was talking
25 about this. It was a big incident. Anyone discussed this. Everybody discussed this.

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1 We're not talking about one or two individuals. It was all over the market. All the
2 people were discussing him, but what I -- exactly I said or what other people exactly
3 said, I don't remember.

4 PRESIDING JUDGE KORNER: [15:11:58] No. Did you ever discuss it with other
5 people?

6 THE WITNESS: [15:12:09](Interpretation) I don't remember.

7 MR NICHOLLS: [15:12:11]

8 Q. [15:12:12] Right, sir. Well, I'm going to jump a little bit. But I take it you agree
9 with me that what you are saying is the people who wrote these articles that were in
10 the Sudan Tribune, they were on television, they were on different radio stations, at
11 this time, all said that Abd-Al-Rahman, Mr Abd-Al-Rahman, who's also known as Ali
12 Kushayb, is wanted by the ICC. They knew the link between the name Ali Kushayb
13 and Mr Abd-Al-Rahman, but you, from his tribe, living in his hometown, did not?
14 That's what -- we agree on that; right?

15 A. [15:13:05] I don't know otherwise. I don't know anything different from what I
16 have already said.

17 (Counsel confers)

18 MR NICHOLLS: [15:13:45]

19 Q. [15:14:05] Okay. We're going to talk about -- are you all right?

20 A. [15:14:14] Yes, I am all right.

21 Q. [15:14:18] Good. I'm going to talk about the Salamat conflict now.

22 You testified earlier words to the effect that this war between the Ta'aisha and the
23 Salamat in 2013, everybody knew about it and was talking about. You say in your
24 preparation log - I won't read it to you unless I have to - that lots of people were killed
25 in that conflict. That's what we're going to talk about now. Do you understand?

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1 A. [15:14:46] Many people killed? I don't know about that, but I know that it was a
2 conflict between the Ta'aisha and the Salamat. But people were killed? No, I don't
3 know about that.

4 Q. [15:15:01] Okay, sir. I'm going to read to you paragraph 22 of what you told the
5 Defence less than a week ago.

6 "Upon question" – you, the witness – "witness confirmed that there was a conflict
7 between the Salamat and the Taaisha and the Salamat tribes in Rahad al Berdi in
8 2012-2013, when many people died."

9 That is what you said to the Defence; correct?

10 A. [15:15:48] I didn't know -- many people were killed. I said there was a conflict
11 between Salamat and Ta'aisha. How many people died? I don't know. I was aware.
12 And when I came back, I found that was the situation. But how many people died, I
13 don't know.

14 Q. [15:16:07] Okay. So just a moment ago, when I asked you about -- that we were
15 going to talk about this, you said:

16 "Many people killed? I don't know about that, I know [there] was a conflict between
17 the Ta'aisha and the Salamat but people were killed, no, I don't know about that."

18 And I've just read to you that you said last week to the Defence that many people died.
19 So, sir, what I'm putting to is, you're changing your story as you go along here because
20 you're trying to help Mr Abd-Al-Rahman. You're trying to give the right answers,
21 which is why you can't keep your story straight.

22 A. [15:16:56] I am helping my friend, Ali Abd-Al-Rahman in -- in a truthful way. I
23 know that in conflicts between tribes people die, but how many people, I don't know.
24 How many people from Ta'aisha or Salamat died, I don't know, but I know that there
25 was a conflict.

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- 1 Q. [15:17:24] Earlier today, this is at page 58 -- excuse me, page 56, excuse me,
2 starting at line 25, at the bottom of the page, this is a question from my friends on the
3 Defence:
4 "Okay. To your knowledge, did Mr Ali Muhammad Ali Abd-Al-Rahman play any role
5 in that conflict?"
6 Your answer was:
7 "I don't remember any such role in that conflict, because I was not present in the -- at
8 the ... time. I came back afterwards and he did not have such [a] role."
9 So I'll ask it again: Was that statement that you made under oath this morning correct,
10 that Mr Ali Abd-Al-Rahman had no role in the Salamat conflict; yes or no?
11 A. [15:18:39] Yes, he did not play any role with the tribe. He was only a state
12 personnel. He was working with the CRF, with the army, the police, and security
13 services.
14 Q. [15:19:03] And while he was *musa'id* in the CRF, responsible for the security of the
15 Ta'aisha people, he played a role in that conflict, didn't he, by commanding the CRF in
16 the fight with the Salamat; correct?
17 A. [15:19:23] No, he did not play any role with the tribe. Not with the Ta'aisha tribe.
18 He is -- he is working with the government, he's working with the army, and the police
19 and the security.
20 Q. [15:19:52] Did he -- whatever -- whether you say it's with the tribe, the security,
21 did he, with his men under his command, engage in combat with the Salamat?
22 A. [15:20:09] He did not engage in such activities, not at all. He works for the
23 government, for the state.
24 Q. [15:20:39] All right. Well, I will put it to you -- I'm not going to go through them
25 all, but I will put it to you that there are many, many news reports from the time, from

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1 Radio Dabanga, from other sources stating that Ali Kushayb, as the commander of the
2 CRF forces, was fighting with the Salamat; that's the truth, isn't it?

3 A. [15:21:20] No, this is not correct.

4 Q. [15:21:26] So --

5 A. [15:21:31] The Ta'aisha is a big tribe. They have self-sufficiency, and we do not
6 know ...

7 THE INTERPRETER: Sorry, the interpreter did not get the last part.

8 PRESIDING JUDGE KORNER: [15:21:52] (Overlapping microphones)... you need to
9 repeat what you said. The interpreter didn't catch it. (Microphone not activated).

10 MR NICHOLLS: [15:21:53] All right. I'll ask another question.

11 THE WITNESS: [15:21:54](Overlapping microphones)

12 MR NICHOLLS: [15:21:56] I'll ask another question.

13 THE WITNESS: [15:22:01](Interpretation) Ali did not have any role with the tribe. He's
14 working with the security services, with the army, the CRF, and the police. He is
15 working with them. He doesn't have anything to do with the tribe.

16 PRESIDING JUDGE KORNER: [15:22:17] All right. But that's not what you're being
17 asked. Did he play a part, as head of the CRF in Rahad Al-Berdi, in the tribal conflict
18 between the Ta'aisha and the Salamat? Did he play a part in that conflict?

19 THE WITNESS: [15:22:46](Interpretation) Ali did not play any role in this conflict
20 because he's working for the CRF, and the CRF works for the government. He has
21 nothing to do with the tribe. He did not play any role in that.

22 PRESIDING JUDGE KORNER: [15:23:01] Okay. As head -- and then I think we can
23 move on, because we all know what's in these reports. As head of the CRF - in other
24 words, in a government role - did he actually take part in the hostilities? Not as a
25 member of the Ta'aisha tribe but as head of the CRF.

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1 Do you understand the question, sir?

2 THE WITNESS: [15:23:50](Interpretation) I understood. What I understood is that he
3 did not play any role before that. The only role he plays is with the army, the security,
4 the police, and the CRF. This is their role. As for the tribe's role, he had nothing to do
5 with that. Ali had nothing to do with the tribe's activities.

6 PRESIDING JUDGE KORNER: [15:24:21] As head of the CRF, did he engage in killing
7 people?

8 THE WITNESS: [15:24:26](Interpretation) No.

9 PRESIDING JUDGE KORNER: [15:24:28] Okay.

10 MR NICHOLLS: [15:24:36]

11 Q. [15:24:37] Okay. I'm moving on, witness. Just to make sure I understand you: So
12 at no point in 2013 did you hear from anywhere - radio, TV or people on the street -
13 that somebody named Ali Kushayb had taken part in this fighting?

14 A. [15:25:07] I did not hear that.

15 MR NICHOLLS: [15:25:57] Sorry, your Honour, one moment. I'm moving things
16 around.

17 (Counsel confers)

18 MR NICHOLLS: [15:26:30]

19 Q. [15:26:32] Okay. Sir, now, talking about Mr Abd-Al-Rahman -- nothing to do with
20 the name Ali Kushayb, I'm not asking you about that name, Mr Abd-Al-Rahman, as
21 long as you've known him, he never threatened violence against other tribes, did he, or
22 did he?

23 A. [15:27:00] He did not do that.

24 Q. [15:27:05] Did he ever threaten to stab people?

25 A. [15:27:10] As far as I believe, I do not know that.

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1 Q. [15:27:19] You don't know. Okay. Would you be surprised if you heard him
2 saying he was going to stab people?

3 A. [15:27:36] I did not hear that.

4 Q. [15:27:40] Well, my question is, would you be surprised if you heard him saying
5 that? If you heard him boasting about how he had killed people, would that surprise
6 you?

7 A. [15:27:54] I did not hear him saying that. If I knew that, I would have said the
8 truth. I would have said that.

9 Q. [15:28:16] Okay. I'm going to play you a video, sir.

10 MR NICHOLLS: [15:28:18] This can be broadcast, DAR-OTP-00006452. The transcript
11 is tab 15 -- we'll play it, actually. So that will be on evidence 2.

12 Q. [15:28:43] Sir, can you see the image on the screen in front of you? I haven't
13 started playing the video yet.

14 A. [15:29:11] I can see a photo, but I'm not sure about it.

15 Q. [15:29:16] Yeah. I'm not asking you any questions about it, but just -- my only
16 question is, can you see that okay? Do you need the screen adjusted? Do you need it to
17 be brighter or anything like that, or can you see the photo okay?

18 A. [15:29:31] It's not clear. No, it's not clear. The screen is not okay.

19 Q. [15:29:42] Let's play a little bit, and then you tell me if you can follow the video.
20 All right?

21 MR NICHOLLS: [15:29:52] If you could start playing, please, Ms Whitford.

22 (Viewing of the video excerpt)

23 MR NICHOLLS: [15:30:07] If we go just back to 12 -- or that's good.

24 Q. [15:30:08] Now, this man was just speaking about unity and saying that, "Unity of
25 ours will endure forever." You know who that is. That's Ahmed Ibrahim Al-Semeh;

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1 correct?

2 A. [15:30:36] Yes.

3 MR NICHOLLS: [15:30:47] Now if we could keep playing, Ms Whitford. Maybe go
4 back.

5 THE WITNESS: [15:30:55](No interpretation).

6 THE INTERPRETER: [15:31:01] The witness is saying he can see that.

7 MR NICHOLLS: [15:31:10] Okay.

8 (Viewing of the video excerpt)

9 MR NICHOLLS: [15:31:15] Okay. Thank you. And I should have said we just played
10 from 1:21 to 1:29.

11 Q. [15:31:15] Sir, the person speaking there, saying very well that there should be no
12 tribalism, regionalism, or racism, that's Mr Abd-Al-Rahman speaking there, right,
13 saying there should be no racism?

14 A. [15:31:47] Yes.

15 MR NICHOLLS: [15:31:53] Okay. Sorry, your Honours. This won't be much longer. If
16 we could go into private session for this part, please.

17 PRESIDING JUDGE KORNER: [15:32:23] Yes. All right. Private session.

18 MR NICHOLLS: [15:32:32] Now, Ms Whitford, if you could please play from 3:42 to
19 4:01.

20 PRESIDING JUDGE KORNER: [15:32:36] Actually, we needn't have done that. We can
21 just turn the video off for the public gallery.

22 MR NICHOLLS: [15:32:42] Well, it's also the sound, actually.

23 If you could turn that off.

24 PRESIDING JUDGE KORNER: [15:32:45] All right. We'll go into private.

25 MR NICHOLLS: [15:32:50] Can we play it, please.

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- 1 (Private session at 3.33 p.m.)
- 2 THE COURT OFFICER: [15:33:03] We are in private session, Madam President.
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 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 (Open session at 3.35 p.m.)
- 20 THE COURT OFFICER: [15:35:13] We are back in open session, Madam President.
- 21 PRESIDING JUDGE KORNER: [15:35:35] Mr Nicholls, do you want to play it or not?
- 22 MR NICHOLLS: [15:35:43] Yes, I'm sorry.
- 23 PRESIDING JUDGE KORNER: Right.
- 24 MR NICHOLLS: [15:35:46] I was finding the right spot because I skipped some. I
- 25 apologise.

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1 PRESIDING JUDGE KORNER: [15:35:48] Right.

2 MR NICHOLLS: [15:35:50] If we could play it from 3:44, please, Ms Whitford.

3 (Viewing of the video excerpt)

4 MR NICHOLLS: [15:36:17] If we can go back a bit so we see the words -- stop here at
5 13:08.

6 Q. [15:36:25] All right. Sir, you heard this, Mr Abd-Al-Rahman saying:

7 "Masalit, Tama or Borgo, everyone, I mean, if they so much as spray water on a
8 member of any of the marginal tribes, then we'll spray them with blood ..."

9 Do you agree that is a terrible thing to say?

10 A. [15:37:01] Yes, he meant that the Tama and Borgo and Masalit are all Ta'aishas,
11 and no one can threaten them.

12 Q. [15:37:15] Yeah, and if they do, he'll kill them. That's what he's saying; right?
13 "We'll spray them with blood."

14 A. [15:37:26] Yes. He said: All those who are in *dar* Ta'aisha, Masalit, Fur, Borgo, they
15 are all Ta'aishas. They are under his protection. No one can threaten them.

16 Q. [15:37:44] All right.

17 MR NICHOLLS: [15:37:50] We'll keep playing, please, up to 6:22, Ms Whitford.

18 (Viewing of the video excerpt)

19 MR NICHOLLS: [15:39:39] I'm stopping at 5:43. We went a little further, but I'm
20 bringing it back.

21 Q. [15:39:46] Sir, this is your friend Mr Abd-Al-Rahman saying what Radio Dabanga
22 -- saying in public, what Radio Dabanga said about -- saying, it's true --

23 "... what Radio Dabanga says is true because I've killed a great many people and I'm
24 still going to kill people."

25 He's boasting about killing people and that he's going to go on and kill people.

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1 Now, how did you feel when you heard him say that, sir?

2 A. [15:40:23] I heard that, but I -- I was not sure if he had done that or not. I've heard
3 that now on the video.

4 PRESIDING JUDGE KORNER: [15:40:39] Well, I thought you were at the meeting, sir.
5 You spoke before him.

6 THE WITNESS: [15:40:52](Interpretation) Yes, I heard him. I heard that. Everybody
7 heard that. At the time, I heard that.

8 MR NICHOLLS: [15:41:02]

9 Q. [15:41:02] Okay. Thank you, sir. I'm going to wrap this up. You first said you
10 didn't -- you said today you did listen to the radio. You know that Radio Dabanga said
11 that Ali Kushayb killed people, that he killed people in Darfur. When Mr Kushayb
12 says it's true what they say -- when Mr Abd-Al-Rahman says, "It's true what they say
13 about me," he's saying it's true what they say about Ali Kushayb, isn't he?

14 A. [15:41:40] I heard him talking in the video, but I do not know if this is correct or
15 not. I did not see that with my own eyes.

16 Q. [15:41:56] Okay. Well, to your knowledge, Radio Dabanga has never -- well,
17 Radio Dabanga has never said that -- anyway, you know what? Enough.
18 Sir, you came here --

19 A. [15:42:05] (Overlapping speakers)

20 Q. [15:42:10] Go ahead.

21 A. [15:42:12] I do not listen to Dabanga radio.

22 Q. [15:42:16] Sir, you came here to protect your friend, Mr Abd-Al-Rahman. You
23 know very well, and you've known for a long time, that he's known by the name Ali
24 Kushayb. You have not been truthful in your testimony before this Court. That is
25 what I'm putting to you. Do you agree; yes or no?

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1 A. [15:42:40] What I said -- I stick to what I said. I have never heard about any other
2 name than Ali.

3 PRESIDING JUDGE KORNER: [15:42:58] Before you finish, can we have a final go at
4 clearing up the question of whether you heard this.

5 You attended this meeting, which was in Um-Sory; correct?

6 THE WITNESS: [15:43:30](Interpretation) Yes, I attended this meeting, but I do not
7 know anything about the details. I only know what was in front of me and what I
8 heard. But all the names that were mentioned, I have never heard of before.

9 PRESIDING JUDGE KORNER: [15:43:44] Did you stay until the end of the meeting?

10 THE WITNESS: [15:43:56](Interpretation) What did you say, your Honour?

11 PRESIDING JUDGE KORNER: [15:43:58](Interpretation) Did you stay until this public
12 meeting ended?

13 THE WITNESS: [15:44:06](Interpretation) I attended the meeting and some of the
14 people have -- haven't attended yet. But before the end, I left.

15 PRESIDING JUDGE KORNER: [15:44:26] Did you leave before Mr Abd-Al-Rahman
16 made his speech?

17 THE WITNESS: [15:44:38](Interpretation) Me? I do not recall that. But after he held
18 this meeting in our area in Rahad Al-Berdi, where the meeting took place, afterwards, I
19 left, and they had -- they were still there.

20 PRESIDING JUDGE KORNER: [15:44:56] This meeting, we are told, took place in Um-
21 Sory, which is not Rahad Al-Berdi, is it? Or is it a district?

22 THE WITNESS: [15:45:09](Interpretation) Yes, Um-Sory, which is part of Rahad Al-
23 Berdi.

24 PRESIDING JUDGE KORNER: [15:45:14] I see. Well, of the province or the town?

25 THE WITNESS: [15:45:19](Interpretation) It's part -- it's very adjacent to Rahad Al-

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1 Berdi. It's called Um-Sory.

2 PRESIDING JUDGE KORNER: [15:45:35] Right. I just want you to answer "yes" or
3 "no" to this very simple question: Did you leave this meeting before Mr Abd-Al-
4 Rahman made his speech?

5 THE WITNESS: [15:45:52](Interpretation) I left before. As soon as he had -- he arrived
6 to this area, and we had arrived from the other area -- what is it called? It's called
7 Taham. We came, attended this meeting, and we left. But what happened exactly after
8 -- but I attended all the meeting until he said his speech or he made his statement. And
9 then after that, I left, and I left them there.

10 PRESIDING JUDGE KORNER: [15:46:27] Yes. Okay. Sorry. Right. So you left after
11 his speech, and you heard the speech he made?

12 THE WITNESS: [15:46:30] Yes, I heard that.

13 PRESIDING JUDGE KORNER: [15:46:50] Right.

14 THE WITNESS: [15:46:51](Interpretation) I attended part of the first part and then I left.

15 PRESIDING JUDGE KORNER: [15:46:53] When you heard him saying, "I have killed a
16 great many people, and I am still going to kill people."

17 THE WITNESS: [15:47:10](Interpretation) I did not attend this. I didn't hear that. That,
18 I didn't hear.

19 PRESIDING JUDGE KORNER: [15:47:13] All right. Yes. Okay. Thank you. Yes.
20 Yes, Mr Laucci, re-examination?

21 MR LAUCCI: [15:47:22] No re-examination, Madam President.

22 PRESIDING JUDGE KORNER: [15:47:25] Right. Sir, that concludes your evidence in
23 this case, and you are free to leave and go back to where you are staying. Thank you
24 very much.

25 THE WITNESS: [15:47:38](Interpretation) God willing.

1 (Witness exits the video-link room)

2 (The witness is excused)

3 PRESIDING JUDGE KORNER: [15:47:57] Right. So barring anything unforeseen, Mr
4 Laucci, apart from your application in respect 68(2)(c), that's it.

5 MR LAUCCI: [15:48:14] That's it, Madam President. And I want to use the
6 opportunity to put on the record that we are on 12 June 2024, which means that exactly
7 800 days ago, this trial started, which implies -- and I will let you -- I will admit that it
8 is maybe not thanks to the Defence, but which means that, as far as we know, and we
9 may have been mistaken, but to our knowledge, this trial, despite all the difficulties
10 that the situation in Sudan caused, is, so far, the quickest in the history of the Court.

11 PRESIDING JUDGE KORNER: [15:49:10] Yes, well, I --

12 MR LAUCCI: [15:49:14] I would like to put that on the record.

13 PRESIDING JUDGE KORNER: [15:49:16] All right. What, as a subject for
14 congratulations or commiserations, Mr Laucci?

15 MR LAUCCI: [15:49:24] I think congratulations.

16 PRESIDING JUDGE KORNER: [15:49:27] I think when I added up the days, as you
17 say, it was 800 days, but if you added up the days of actual sitting, I doubt very much
18 that we'd be much over 100.

19 MR LAUCCI: [15:49:42] Yeah.

20 PRESIDING JUDGE KORNER: [15:49:43] So that's it.

21 Right. Yes, Mr Nicholls.

22 MR NICHOLLS: [15:49:48] Thank you, your Honours. I meant to do this earlier, but
23 the video that was played this morning with the previous witness.

24 PRESIDING JUDGE KORNER: [15:49:56] Yes.

25 MR NICHOLLS: [15:49:58] The ERN for that video -- that wasn't ERN'd at the time. I

1 think it hadn't quite been registered enough since we got that clip last night, but it is
2 DAR-OTP-00011975, the video from the prep session.

3 PRESIDING JUDGE KORNER: [15:50:17] Yes.

4 MR NICHOLLS: [15:50:18] And since I'm standing up, I just congratulate my friends
5 on completing their case.

6 PRESIDING JUDGE KORNER: [15:50:25] I'm glad you haven't asked for the video
7 from this preparation session.

8 MR NICHOLLS: [15:50:31] I thought about it, but not seriously.

9 PRESIDING JUDGE KORNER: [15:50:33] Yes. I think we can take it as read.

10 Yes, well, I mean we are going to meet again for final speeches. And with this case,
11 you never know what's going to happen, so I'm not discounting that we won't be
12 meeting at some other stage.

13 But otherwise, as it is the last day of evidence, I think -- I really do genuinely want to
14 thank both sides for what has been, with a few blips, real cooperation and which has, I
15 think, contributed very greatly to the efficiency with which this case, leaving aside all
16 the aspects to do with Sudan, with which this case has proceeded.

17 And I think that it's worth saying this in public, because I know that the subject of legal
18 aid is one that is constantly being argued. But that -- for efficiency, it should be
19 applauded by the Registry, and all those who have to deal with it, including the
20 Judges, and shouldn't be a reason to mark people down. I think that is a really
21 important factor.

22 MR LAUCCI: [15:52:17] If you invite me on this ground, Madam President, let me add
23 to what I said about the speed of the trial. That -- well, sorry, it's self-congratulation,
24 but I think this team is one of the rare, if not the only one, which has never made any
25 request beyond the limits of the legal aid scheme, which was applicable at all stage of

1 the proceedings. We have stayed into the envelope without ever going further, and
2 that's a matter of pride.

3 PRESIDING JUDGE KORNER: [15:52:50] Yes. Well, I think there's that. But as I say, I
4 know from my experience in domestic jurisdictions, there are sometimes arguments
5 what about -- well, you completed this case in X number of days; therefore, it can't have
6 been as serious. Length does not equate to seriousness, and efficiency is really
7 important.

8 I also want to thank all the court staff who have put up with my various requests, if
9 that's the right word, about what is to happen.

10 And the Registry, and particularly, obviously VWS, who really, from your point of
11 view, I think, have facilitated the Defence case in a way that we couldn't possibly have
12 imagined.

13 MR LAUCCI: [15:53:40] I second that, especially for the last two weeks.

14 PRESIDING JUDGE KORNER: [15:53:43] Yes. And last but not least, and I'll say all
15 this again when we really do get to the end of the case, the interpreters, and the poor
16 old LiveNote transcribers, when -- and, indeed, the interpreters, when there's
17 interruptions and people talking at once, which I'm afraid I am probably one of the
18 worst sinners about.

19 Right. Well, that concludes matters. I hope I haven't left anybody out. And we will
20 meet again then -- unless, as I say, something happens.

21 The one thing I forgot to do was ask my colleagues whether they had any questions for
22 this witness, but I didn't see anybody asking me to.

23 And we'll meet again, if not for any reason, then, when we get to the final addresses.

24 Yes. Thank you all very much.

25 THE COURT USHER: [15:54:41] All rise.

Trial Hearing
Procedural Matters

(Open Session)

ICC-02/05-01/20

- 1 (The hearing ends in open session at 3.54 p.m.)