

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
5 Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Status Conference - Courtroom 1
9 Tuesday, 8 March 2022
10 (The hearing starts in open session at 4.50 p.m.)
11 THE COURT USHER: [16:50:29] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [16:51:02] Could we call the case, please.
15 THE COURT OFFICER: [16:51:05] Good afternoon, Madam President, good
16 afternoon, your Honours.
17 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus Ali
18 Muhammad Ali Abd-Al-Rahman, "Ali Kushayb", case reference ICC-02/05/-01/20.
19 And for the record, we're in open session.
20 PRESIDING JUDGE KORNER: [16:51:29] Yes.
21 Appearances for the Prosecution, please.
22 MR NICHOLLS: [16:51:32] Good afternoon, your Honours. I'm Julian Nicholls and
23 I'm joined today with Claire Sabatini, Laura Morris, Edward Jeremy and Hesham
24 Mourad. Thank you.
25 PRESIDING JUDGE KORNER: [16:51:43] And the Defence.

1 MR LAUCCI: [16:51:52](Interpretation) Good afternoon, Madam President, your
2 Honours. And may I take the most of this opportunity to wish you a very happy
3 Women's Day to all those present into the courtroom and in the gallery.
4 The Defence is represented today by those who are celebrating today, that is Madam
5 Vanessa Grée, who is legal adviser; Madam Camille Divet, who is in charge of
6 evidence; and Mr Mohamed -- Mr Ahmad Issa. And my learned friend Iain
7 Edwards who is following us from afar.
8 Mr Abd-Al-Rahman is also present at the detention centre following us from a
9 distance. And I'm Cyril Laucci, lead counsel. Thank you.

10 PRESIDING JUDGE KORNER: [16:52:47] Yes, thank you, Mr Laucci. And from the
11 victims' representatives.

12 MR SHAH: [16:52:53] Good afternoon. Good afternoon, your Honours. The
13 victims are represented today by Nasser Amin, legal representative appearing by
14 video link, and in the courtroom -- yes, I believe I've been told by -- by the court
15 officer that his camera may not be active, but he is present at that link, as far as I
16 understand.

17 PRESIDING JUDGE KORNER: [16:53:15] All right, yes.

18 MR SHAH: [16:53:17] In the courtroom today also, Idriss Anbari, case manager, and
19 myself, Anand Shah, associate legal representative. Thank you.

20 PRESIDING JUDGE KORNER: [16:53:26] Thank you, Mr Shah.
21 And finally from the Registry.

22 MR DUBUISSON: [16:53:31](Interpretation) Thank you very much, Madam
23 President, your Honours.
24 For the Registry today there is Madam Josiane do Rego, who is the chief of the
25 interpretation unit, as well as Mr Diederick Zanen who is the coordinator of field

1 interpretation. And I am the Director of Judicial Services, Mr Marc Dubuisson,
2 representing Mr Peter Lewis of the Registry.

3 PRESIDING JUDGE KORNER: [16:54:00] Yes, thank you very much, Mr Dubuisson.
4 May I thank all parties for cooperating with effectively what was a last minute calling
5 of the status conference, really, to deal with the problem that has been identified by
6 the Registry about interpretation, which has been an ongoing problem, but also as a
7 result of the Defence's compliance, for which the Chamber is grateful, with the order
8 to serve a, as it were, a short outline of the issues in the case as opposed to a proper
9 trial brief. We understand that. It has raised a number of questions in the minds of
10 the Chamber, and possibly the Prosecution as well, which we're going to take the
11 opportunity to deal with today.

12 As regards the matter of interpretation, we've seen the Registry's filing and we've
13 seen the joint filing, the helpful filing from all parties to this case, as well as the
14 Prosecution's list or submission of the updated list of viva voce and Rule 68(3)
15 witnesses.

16 I think it would be right to say that the Chamber has some questions for the Registry
17 persons on this, and then we'll throw open any matters that the Defence or the
18 Prosecution want to ask about this.

19 And for this I'll turn the matter over to Judge Alexis-Windsor.

20 JUDGE ALEXIS-WINDSOR: [16:56:14] Good day, all. I have a few questions for
21 the Registry.

22 Firstly -- we're in open session, yes? There are -- with respect to the English -- the
23 witnesses who are respected to speak in English, a particular number has been
24 highlighted by the Registry, but the -- it was indicated that it would be some English.
25 Are you able to ascertain whether these witnesses are able to actively speak and

1 understand English such that they are able to testify in that language?

2 MR DUBUISSON: [16:57:05](Interpretation) I thank you very much, your Honour.

3 Now, the manner in which we generally work is that the calling party, that is to say

4 the party that is calling a witness to testify, has already gleaned from that witness a

5 statement in a specific language, and that is why -- or on the basis of which we have

6 the information that that is the language that shall be chosen by the witness to testify

7 in. The witness can change their mind when they reach the Court or courtroom,

8 which often -- quite often happens, and the Prosecution can then go back to see the

9 witnesses whom they are calling to see whether they do or do not want to speak

10 English.

11 Now what is important in this kind of courtroom is that the manner in which a

12 witness is going to testify is as comfortable as possible for him or her. It is an

13 environment which is not their usual environment. It is quite a solemn environment.

14 There are a number of languages that will be spoken. So generally speaking, we try

15 to keep the language that they feel the most comfortable in. But if the Prosecution on

16 their side would like to ascertain which language that witness would like to testify in,

17 that might change.

18 Now we need to be clear that we will be able to -- we will be able to provide the

19 services as expected of us to the extent that this service is not expected of us on

20 5 April. If it is as expected of us in September or October, it won't be problematic to

21 us, even for the Fur language.

22 JUDGE ALEXIS-WINDSOR: [16:58:58] Thank you.

23 From the Prosecution side can any assistance be given?

24 MR NICHOLLS: [16:59:04] Yes, your Honour. Thank you.

25 Just briefly, in our joint filing last week we preliminarily talked about ten witnesses

1 speaking English. Since that time we have been contacting witnesses as much as
2 possible and trying to confirm what language they can testify in, that they're
3 comfortable testifying in. And, actually, now the number of witnesses we anticipate
4 calling speaking English, with two exceptions that I can discuss separately, is actually
5 three. So we have three who are fluent in English and able to speak in English. The
6 others were listed in that filing because the statements in the records indicated that
7 they spoke some English. But -- but following up with them, it's -- it's not suitable.
8 JUDGE ALEXIS-WINDSOR: [17:00:04] So that the other seven of the ten, they would
9 be added to the list of Fur or Sudanese Arabic?

10 MR NICHOLLS: [17:00:17] Yes, your Honour. And there are -- there are two
11 witnesses on the list who are both investigators that we would not call any time soon.
12 They -- they are ones who we may not call at all. But they participate in the
13 investigation, questions may come up that your Honours had, so we listed them. So
14 it really would have been eight at the time of that filing, and the others -- we're down
15 to three, and the others would have to testify in Arabic or Fur.
16 I can tell you very briefly that we've been working on this the last couple of days.
17 Our breakdown now is three who are fully comfortable in English and can definitely
18 testify in English, 12 who can testify in standard Arabic. So we have 15 witnesses
19 sort of where the language is not an issue for sure at this time. They total 62 hours of
20 testimony on direct, we anticipate.

21 JUDGE ALEXIS-WINDSOR: [17:01:23] Okay.

22 MR NICHOLLS: [17:01:24] I should say - and I don't want to go on longer than your
23 Honour wants - not all of those witnesses we've been able to confirm can travel
24 immediately or at this time.

25 JUDGE ALEXIS-WINDSOR: [17:01:37] Yes, okay. Thank you.

1 MR NICHOLLS: [17:01:39] Thank you.

2 JUDGE ALEXIS-WINDSOR: [17:01:41] I have another question. I think it's for the
3 Prosecution and now the Registry as well, and that question has to do with Sudanese
4 Arabic.

5 I was considering the issue and considering that in every language there would be - to
6 use the old computer language, a DOS - a version of the language that is considered
7 standard by most people. And so I understand that from the report that standard
8 Arabic is what we would have referred to generally as Arabic, and that Sudanese
9 Arabic has syntax and words that are particular and specific to Sudan.

10 My question then is: How far removed is it? I understand that it's a bit difficult
11 with regard to Fur, but with respect to the differences between standard Arabic and
12 Sudanese Arabic, is it possible? And if so, how long will it take to train the
13 interpreters that we already have who translate from standard Arabic to English and
14 from standard Arabic to French? How long will it take them to appreciate the
15 differences between standard Arabic and Sudanese Arabic so that they can be of
16 assistance?

17 MR NICHOLLS: [17:03:18] Well, your Honour has anticipated one of my list of
18 suggestions, which was to ask the Registry to engage in exactly that exercise as
19 expeditiously as possible.

20 I don't know the exact answer to that question because I'm not an expert. What we
21 have found in our work is that there are differences. And in our field -- in taking
22 statements and working, we haven't always had a perfect Sudanese Arabic interpreter.
23 And then it's being able to work through the process of getting a statement, but it
24 takes time and it's not the way one would like to run a courtroom testimony where
25 there needs to be a back and forth about the description, what exactly is this object,

1 and then you get to the understanding.

2 And our interpreters who we use over and over again have picked up exactly as
3 you've suggested, the Sudanese Arabic, and gotten better and better over the time of
4 the investigation. So I think that is a possibility. It is something worth considering.
5 The exact amount of time I would not know, but we would be willing to work with
6 that system and try to forge ahead.

7 We've contacted various witnesses, not all of them, and who have -- who have
8 said -- and I wouldn't be able to give you the exact number, but have said, no, I really
9 don't understand Arabic other than the Arabic that we speak here and that -- and that
10 I'm familiar with. Some of them are -- are -- have a better understanding of the
11 standard Arabic, the DOS, as you were saying.

12 So it is a mixture. I mean ideally, as -- as Mr Dubuisson said, you want the witness
13 to be comfortable and to be able to express themselves accurately and cleanly without
14 a lot of back and forth. I think the Registry's estimate for sequential translation,
15 when we were here last talking about using field interpreters that were trained up,
16 was that that adds 30 per cent of time is what I believe was written in the filing. So if
17 you -- you know, I don't know how much time it adds and how -- how difficult it
18 becomes for the witness working in standard Arabic, but that that was exactly
19 something we were going to suggest, which would be to try to take the existing
20 interpreters and give them a crash course in Sudanese Arabic and see where we can
21 get to.

22 JUDGE ALEXIS-WINDSOR: [17:05:53] Mr Dubuisson, can you assist us?

23 MR DUBUISSON: [17:05:56] Yes. Already if we have three witnesses who's fluent
24 English and if we have 12 - and correct me if I'm wrong - standard Arabic, it means
25 that we have 15 witness. At the court per witness, the average is two days. Of

1 course it depends on the case --

2 JUDGE ALEXIS-WINDSOR: Of course.

3 MR DUBUISSON: -- it depends on the management of this -- of this Court. But

4 normally, on a budget point of view, we counted and it's an average at the Court

5 today, two days. It means that with 15 witnesses we could reach 30 days, we could

6 reach six to seven weeks.

7 The Court has -- if the Court -- this Court is working like all the Chamber by block, it

8 brings us already, with six, seven weeks close to the vacation. It means that we will

9 restart in August where we have more capacity. If this could be of something

10 positive for you, that's something maybe that we could -- of course, I'm working on

11 the assumption that we start with these 15 witnesses.

12 JUDGE ALEXIS-WINDSOR: [17:07:07] Very well. But specifically, Mr Dubuisson,

13 on the issue of whether it is possible for the language section to train the interpreters

14 that we already have who are competent in standard Arabic in the issue -- on the

15 issue of Sudanese Arabic.

16 MR DUBUISSON: [17:07:33] *Alors*, that's two different language. The interpreter

17 that we will bring here for the language Fur will do the Arabic, the Sudanese Arabic.

18 They will be able to do both. That's what we target. The standard Arabic, it's

19 something totally different.

20 (Trial Chamber confer)

21 PRESIDING JUDGE KORNER: [17:08:10] Sorry, Mr Dubuisson, are you saying

22 there's absolutely no connection between standard Arabic and Sudanese Arabic?

23 That they're wholly different languages?

24 MR DUBUISSON: [17:08:18] It could be the case, if I have -- if I'm not wrong. It

25 could be the case because the Sudanese Arabic could be far away. The -- the level of

1 Sudanese Arabic which will be used by the witness could be close to, sometimes, the
2 standard Arabic, but most of the time it will be a specific language.

3 We need to keep in mind that the -- the Fur language, it's a language of lesser
4 division -- diffusion, which is even called commonly a tribal language. It's extremely
5 rare language. It's in the region of Biltine in Chad and in small region of the Darfur.

6 That's why normally, for a certain type of language, we use consecutive language.

7 It is not recommended, as it was explained, to use consecutive language of course for
8 when we are talking about 60 or 70 witness, because then it's -- it's much longer, really
9 much longer. And that's why, for us, it's better to start with these 15 witnesses that
10 we know we could provide without any problem interpretation.

11 It means also that the transcript which will be produced for this type of witness will
12 also be a good transcript and there will be no discussion after about wrong
13 interpretation and correction of transcript, which is also sometimes, or could be
14 sometimes, a nightmare in terms of management of the case. That's why we have in
15 front of us, that's what I say, normally we have in front of us 30 to 35 days that we
16 could go with the current situation.

17 JUDGE ALEXIS-WINDSOR: [17:10:08] All right. Thank you.

18 But perhaps it is my misunderstanding, but to be pellucidly clear then, it is -- do I
19 understand you to be saying that it is impossible, the interpreters whom we presently
20 have who speak standard Arabic, cannot be trained to speak Sudanese Arabic?

21 MR DUBUISSON: [17:10:49] We could do everything here. Look, we can start
22 working on this, but it's a training. It will take time also to train the people.

23 JUDGE ALEXIS-WINDSOR: [17:10:56] Yes.

24 MR DUBUISSON: [17:10:56] And it could be similar almost to another training.

25 And that's why. What we could expect is that the Sudanese Arabic that -- of some

1 people will be very close to the standard Arabic. And in this case, of course, we
2 could proceed. There will be just difficulties sometimes with the correction of the
3 transcript.

4 JUDGE ALEXIS-WINDSOR: [17:11:17] All right.

5 So which -- which, unfortunately, leads me to another question before we have
6 further interventions by another judge.

7 Will it be a shorter time to train an interpreter that we have already in standard
8 Arabic into Sudanese Arabic than it is for us to train persons who speak -- well, to
9 find and train persons who speak Fur to interpret in English and French? Because I
10 see in your report it said six months from when you have a particular number - I
11 believe four - which you don't have yet.

12 MR DUBUISSON: [17:12:04] It's two different type of training. The training that
13 we are referring to, it's to move the field interpreter, which is commonly a level that I
14 will call a G-5 level at the Court. That's normally a field interpreter. And we need
15 to do with this G-5 interpreter, we need to put the level of a P-2 or P-3. It means for
16 the person to be in the booth here and to follow the speed and the stress, and to be
17 able also to understand some question which could be used.

18 I don't know why I speak English, by the way. I will go back in French. Sorry.

19 (Interpretation) So this is really the difficulty that we are up against, the training
20 people to be booth ready. How is it that we -- a field interpreter can then work in a
21 booth? It might be six months, it might be five months, it might be four and a half
22 months, but it depends on the ease at which the person will get used to the stress of
23 such a situation of working in a hearing, for example.

24 What you're talking about now is having a standard Arabic interpreter learn the
25 terms of another language. This is something quite difficult. It's quite different.

1 It's a completely different type of training. It's learning how to use another language
2 in the booth here in the Court. So I prefer, to be honest, option number one, which is
3 to train people who are well familiar with the language and who have to then get
4 used to the speed and the terminology specific to a courtroom rather than having
5 people who are already used to the job and having to learn a different language. I
6 think there is a risk associated with that.

7 And the aim of our submissions to the Chamber was just to tell you that there is a risk
8 associated with this. We didn't say that we couldn't do it, we're saying that there is a
9 risk and we wanted to share this risk or these risks with everyone. And I'd like to
10 thank the Defence and the Prosecution, and the participants in general, for having
11 made their various proposals and coming up with the suggestion of having those
12 witnesses appear first according to the selection of language, because this will enable
13 us to get to -- nearly get to the judicial recess and practically get to the month of
14 September in the process.

15 JUDGE ALEXIS-WINDSOR: [17:14:52] Thank you.

16 JUDGE ALAPINI-GANSOU: [17:15:14](Interpretation) I just have one question. It's
17 a matter of curiosity. And I'm wondering whether it is possible for us to consider
18 standard Arabic as the language of intellectuals in Sudan. Is it standard Arabic that
19 is taught in schools, or how does it happen? That's my first question.

20 Secondly, I would like to ask a question about Sudanese Arabic. Could it be
21 considered as a vernacular language or a dialect?

22 MR DUBUISSON: [17:16:00](Interpretation) Yes, your Honour. I can confirm that
23 it is indeed a dialect or a vernacular.

24 But when it comes to standard Arabic, yes, that is what is taught in schools.

25 JUDGE ALAPINI-GANSOU: [17:16:18](Interpretation) Thank you. Thank you

1 very much.

2 PRESIDING JUDGE KORNER: [17:16:20] Right.

3 Mr Nicholls, are you saying that the witnesses who at the moment you have said only
4 speak Fur have been seen or contacted in some way to check whether they do actually
5 speak Arabic of some form or another?

6 MR NICHOLLS: [17:16:42] We are doing that. We are -- we are still in progress.

7 We have -- I don't have the exact number - maybe Mr Mourad does - of how many
8 we've contacted. For various reasons I won't go into, it's not always easy to contact
9 somebody straightaway. But we are in the process of that and the -- the numbers I
10 have discussed today are based on our contact so far and we're fairly confident in
11 them.

12 PRESIDING JUDGE KORNER: [17:17:06] Yes. All right. Well, can I just have a
13 rough -- Mr Mourad, can I have a rough idea of how many witnesses are left to
14 contact?

15 MR MOURAD: [17:17:15] Your Honours, we -- we have 17 left to be contacted, and
16 it's estimated that we can contact them within the next two weeks.

17 PRESIDING JUDGE KORNER: [17:17:22] All right. But of those -- so you've
18 contacted the majority, who are either viva voce or 68(3) at the moment, and there's
19 no change in your list other than the -- we're down to three speaking English and 12
20 standard Arabic, that's it.

21 MR MOURAD: [17:17:40] Indeed, that's the conclusion, which has an improvement
22 in the standard Arabic as compared to the list filed. But, yes, there are still 17 to
23 contact.

24 PRESIDING JUDGE KORNER: [17:17:51] Yeah. All right.

25 Right, Mr Dubuisson, I'm really sorry about all this, but this case has been ongoing

1 now for I think at least the best part of 18 months, and unless the Pre-Trial Chamber
2 had decided not to confirm the charges, it must have been obvious that there was
3 going to be being a trial. You may not have known the exact number of witnesses
4 who were going to speak Fur or Sudanese Arabic, and I appreciate there are a lot
5 more than one might have anticipated in that sense, but the accused is in custody, the
6 victims have been waiting for this trial to start, and it is absolutely impossible that
7 that should be frustrated by what the Registry is saying is the inability to find people
8 who can interpret.

9 I appreciate what you say and I'm well aware from my own experience about
10 arguments over interpretation, but I think that is preferable than having no evidence
11 at all. And if we have to have subsequent translation, because that's the only thing
12 that's available, that's what we will have to have. The -- this Chamber, this trial is
13 sitting for a total of nine weeks between April and July on the present schedule,
14 which is not by any stretch of the imagination a long time. Part of the -- the
15 first -- well, certainly probably the first four days or so, I don't know how long, will be
16 taken up potentially with administrative matters and the Prosecution's opening.
17 I don't suppose you can let me know, Mr Nicholls, now how long the opening is
18 likely to be?

19 MR NICHOLLS: [17:20:02] Your Honour, what we'd requested, and your Honour
20 granted, was six hours. We're trying to make it a bit shorter. I don't think my
21 friend minds me saying that we discussed and they do not intend to make anything
22 but possibly a very brief submission. So it will really be just our opening. I
23 think -- I don't know how long the -- our colleagues for the victims' representation
24 will take, but I imagine it's not a huge time. So we were anticipating --

25 PRESIDING JUDGE KORNER: [17:20:31] About a day and a half.

1 MR NICHOLLS: [17:20:33] Yeah. And so barring administrative matters and other
2 issues, that we would get to the first witness on 6 April.

3 PRESIDING JUDGE KORNER: [17:20:41] Yes, and the first witness, I think, as I
4 understand it is agreed, is going to be the expert?

5 MR NICHOLLS: [17:20:45] Correct.

6 PRESIDING JUDGE KORNER: [17:20:49] In English.

7 MR NICHOLLS: [17:20:49] In English. No travel problems. That that one is okay.

8 PRESIDING JUDGE KORNER: [17:20:54] All right. So that's going to take how
9 long do we think?

10 Anyway, one way or another it seems to me that leaving aside the investigators,
11 Mr Nicholls, in order to give the Registry as much leeway as possible you'll have to
12 call the English speaking standard Arabic witnesses first. However, I appreciate it
13 may not be the order which is most helpful in terms of chronology or area, but there
14 doesn't seem to be anything else we can do. That will take us up to -- or a guess
15 estimate, I suppose, we're sitting, was it three weeks in April, one week in May, and
16 then not much in June. I think July is the longest period.

17 And hopefully, Mr Dubuisson, I have to say, by July you will have something in place.
18 I'm afraid, as I say, it really isn't possible for the trial to be frustrated by this.

19 MR DUBUISSON: [17:22:06](Interpretation) I have taken good note of what you
20 have just said, and I really want to apologise on behalf of the Registry for this
21 unfortunate situation that does not entirely depend on us. We had missions in
22 September, but we had to call back a few people. The victims unit had to extricate
23 people who were there following the events in October, and missions resumed to
24 Darfur only in December. So it is only as at now, today, that we are able to go full
25 throttle, and so sometimes these things are not entirely in our hands. So I have taken

1 good note of what you have said.

2 When I mentioned that there might be some difficulties in July, yes, well, there might
3 already be some people who have been trained, and so in July what we need to be
4 mindful of then simply would be to make sure that in court people speak slowly in
5 order to be able to make it possible for us to provide you with a service which you
6 deserve to have. You see, today I was expecting that there might be 15 English
7 speaking witnesses, now we end up with three. So things keep changing and the
8 challenges keep changing, so we will do our level best to handle all of these things in
9 order to produce the best possible services. Thank you.

10 PRESIDING JUDGE KORNER: (Microphone not activated)

11 THE INTERPRETER: [17:23:47] Microphone, your Honour. Microphone.

12 PRESIDING JUDGE KORNER: [17:23:47] There's no more that can be said on this
13 other than -- and I do repeat that we have enough difficulty having hearing dates in
14 this trial with the competing interests of other trials that are going on at the moment.
15 And as I say, for the limited period we are able to sit until the summer recess, we
16 should be sitting.

17 Right. Briefly then, can I just mention the report from the Registry relating to the
18 situation of cooperation with Sudan. My understanding, Mr Laucci, was that,
19 subject to visas being granted, you were going to be going on mission. And it
20 appears there is no problem, or that visas can be granted. So can I ask, have you
21 been on mission or are you intending to go on mission in the near future?

22 MR LAUCCI: [17:24:56](Interpretation) No, Madam President, we haven't been on
23 mission. There is a pending request which is open in terms of date. The report
24 filed by the Registry and the conclusion that missions are now possible to Khartoum, I
25 take this with the same reservations as already indicated by the Registry in their

1 report in relation to missions in Darfur becoming possible again, if I may say so,
2 from -- from -- let me cross-check that what I am about to say has not been amended.

3 PRESIDING JUDGE KORNER: [17:25:53] (Overlapping speakers) to go into private
4 session for this discussion.

5 MR LAUCCI: [17:25:54](Interpretation) Maybe not necessarily, your Honour.

6 There is a date that has been mentioned at which it might be possible to resume
7 missions to the Darfur. And again, I take this with all possible reservations. We
8 have now been made aware of these dates and so we are actively preparing possible
9 missions not before 5 April, because that would be presumptuous on our part to try to
10 do that before the trial, but this would be in May or June when the Ramadan will be
11 behind us because you know there's a problem with April and the Ramadan.

12 So I think that the appropriate time for us would be in May or in June, and we are
13 happy with that in terms of our preparation because we are, in any event, quite active
14 remotely to try and make as much process as possible before we even travel on
15 mission.

16 PRESIDING JUDGE KORNER: [17:27:10] All right. Well, as I say, I mean there
17 have been opportunities and it appears there are opportunities now. It's of course
18 entirely a matter for the Defence when and if they choose to go on a mission. All
19 that I wish to -- to say on this topic - really, all of wish to say on this topic - is that we
20 won't be entertaining requests for any delay because you haven't been able to go on
21 mission.

22 MR LAUCCI: [17:27:37](Interpretation) I can certify that you will not receive any
23 requests for any delays in that regard. I hope you can trust me.

24 PRESIDING JUDGE KORNER: [17:27:50] Yes. All right.

25 Now can I turn finally then to the question of the -- I'm not sure what to call the

1 document, exactly. I think you called it -- well, you have called it a Pre-Trial Brief,
2 actually, so which leaving aside the fact that it does give us some indication,
3 Mr Laucci, of what your position is also raises a number of quite serious questions.
4 The first is this, and you put this in publicly. As you say, there's no need to go into
5 private session.

6 My understanding throughout, and indeed I think I checked it with you, and indeed
7 the understanding from what you said at the confirmation hearings was that the main
8 plank of the accused's Defence was that he was not the person who the witnesses
9 refer to as "Ali Kushayb". We were, to say the least, somewhat taken by surprise by
10 your paragraph 5, which in English - and obviously it was written in French - seems
11 to suggest that no such person exists or may have existed. And I just want to make
12 sure quite clear that we three have understood this. You are saying it is not that
13 there is a man called Ali Kushayb but he's wrongly identified as your client, but that
14 no such man ever existed at this period of the conflict.

15 We've got that right, have we?

16 MR LAUCCI: [17:30:10](Interpretation) You like short answers, your Honour. The
17 answer essentially is yes, your understanding is perfectly correct.

18 The truth is that we too were quite surprised when we read the Decision on the
19 Confirmation of Charges which indicated that the Defence had submitted that Ali
20 Kushayb was someone else, another person. We do not have any recollection of
21 making such a submission. What we said was that Mr Abd-Al-Rahman is not and
22 has never been Ali Kushayb.

23 Now as to the question of whether Ali Kushayb existed or not, this is an issue that the
24 Prosecutor has to establish.

25 PRESIDING JUDGE KORNER: [17:31:07] Mr Laucci, we checked what you said,

1 what you actually said during the course of the Pre-Trial at the confirmation hearings,
2 and not once did you suggest that there was no such person at all, in other words that
3 all the witnesses that talk about Ali Kushayb are talking about a non-existent person.

4 And if you want the references, you can go back and check, because you say the
5 Pre-Trial Chamber got it wrong. You mention this at pages 48, 49, 50, 53, 55 and 56.

6 And what you are saying on each and every occasion is that effectively

7 Mr Al-Rahman is not Mr Ali Kushayb, not that Mr Ali Kushayb doesn't exist at all.

8 MR LAUCCI: [17:32:25](Interpretation) I cannot take a position on that second

9 aspect. It's not for me to determine. The -- my onus or my duty is to assist Mr

10 Abd-Al-Rahman to prove his innocence. This means, in this case, to prove or

11 establish that he is not and has never been Ali Kushayb.

12 Now whether Ali Kushayb exists or not is really not relevant, apart from the direct

13 impact it may have on the Defence in relation to Mr Abd-Al-Rahman.

14 PRESIDING JUDGE KORNER: [17:33:01] I'm really sorry, Mr Laucci, but at the

15 moment I'm a touch confused, and it may be that my colleagues are the same.

16 The Prosecution in its -- as you point out, in its Trial Brief, and all the witness

17 statements that we have been reading over the last few weeks in order to decide who

18 will be Rule 68(3), or 68(2), or viva voce, all talk about a man who they say is known

19 as Ali Kushayb. So I'm not quite clear on what it is you are saying.

20 Are you saying that they've got -- each of you -- your suggestion is going to be to each

21 of these witnesses, whether they're called for cross-examination or they're called viva

22 voce, that there's no such person? Is that what you're going to be suggesting to the

23 witnesses?

24 MR LAUCCI: [17:34:08](Interpretation) Madam President, you will easily

25 understand that it is too early at this stage for the Defence to elaborate in concrete -- in

1 a concrete way what it intends to make as its arguments during its case, if it will take
2 place.

3 Now without going too far in this matter, we have evidence from our analysis of the
4 evidence that indicates that the name Ali Kushayb is a name that was developed over
5 time to a level of maturity in relation to the charges of 22 and 24. So that name
6 Ali Kushayb only significantly appears much later on.

7 I know you have read quite carefully the Defence brief, and you would have noted
8 that in this case our argument is that there are various what you can say is patterns
9 which point to disinformation and fabrication of false evidence. There is also the
10 impact of the issuance of the arrest warrant which was made public in 2007 and what
11 it may have had as an impact on the narrative of the events included in the charges.

12 I will not go further than that. But against this backdrop, we continue to doubt
13 whether Ali Kushayb actually existed. But let me reassure you right away that it is
14 not the Defence's ambition to demonstrate to you that Ali Kushayb did not exist. It
15 is a possibility. All we are asking to be verified is that this is established beyond a
16 reasonable doubt and then to determine whether Mr Abd-Al-Rahman, who is
17 listening to us, is or is not the individual who at some point may or may not have
18 been Ali Kushayb.

19 Now that's all we say. Now as to his existence, his non-existence or not, the onus to
20 establish that is not on us.

21 PRESIDING JUDGE KORNER: [17:37:10] All right. I think I follow what you're
22 saying, Mr Laucci. But may I say, it's been unfortunate that this wasn't made clear
23 before, that there was a real dispute about whether there ever was at the time a man
24 going by the name Ali Kushayb. Which leads me on to the next matter which comes
25 out of your paragraph 10.

1 You effectively say that it's in dispute that the government of Sudan cooperated,
2 recruited, trained, armed, equipped or funded armed groups referred to as Janjaweed
3 and that the -- there was specific targeting by the government of Sudan, or that it was
4 a policy. And I'm now paraphrasing, but that's -- that's roughly what paragraphs 10
5 and 11 say.

6 So again, can we just make quite clear that we understand the issue here. It is
7 not -- because you go on to say, actually, that you're aware that the civilian
8 population has suffered from the armed conflict. It is not that you are disputing that
9 villages were attacked and people were murdered or killed or -- and looted -- looting
10 took place. What you're saying is the Prosecution have to prove that this was part of
11 a government policy, and then specifically that, in general terms, militia or
12 paramilitary forces were being used as part of that policy. Is that -- is that correct?

13 MR LAUCCI: [17:39:13](Interpretation) What is stated in those two paragraphs you
14 have referred to is that -- and it is mentioned in the last sentence of each of the two
15 paragraphs, paragraph 10 and 11.

16 Now the specific position of Mr Abd-Al-Rahman is that on the matter of the
17 organisation of the counterinsurgency, the Janjaweed activities, and help to the militia
18 and what have you, he has no information on that, or when it comes to arming the
19 militia. He has no information as to determine whether it is true or not. He was
20 selling medication at the Garsila market at that time. And so when it comes to
21 government policy and whatever happened or did not happen, well, he knew that
22 things were going on, people were suffering and people were dying. And like any
23 other Sudanese citizen, he was not unaware that those things were happening.
24 But now as to how these things were happening, how government had organised
25 itself to fight the counterinsurgency and what have you, he is not aware of it. He

1 knows that villages were attacked and torched, and so on and so forth. But did
2 Kodoom, Bindisi, Mukjar and Deleig, and -- and did -- were those places attacked on
3 the dates that have been put forth by the Prosecutor under the circumstances that are
4 contained in the charges? He has no knowledge of that.

5 So on these points the position is that there is no position. And so we are waiting
6 and we are interested in hearing what evidence the Prosecutor will adduce before
7 engaging in legal arguments, so we are just waiting and we hope to participate in
8 those arguments.

9 PRESIDING JUDGE KORNER: [17:41:36] Yes, but it -- it does affect the way that the
10 Prosecutor calls the witnesses. Because if, as you say, and that's part of your defence,
11 Mr Al-Rahman was sitting in his pharmacy in Garsila, not leading troops or doing
12 anything like that, then the Prosecution can effectively, if you understand the term,
13 lead the witnesses through what happened to them until it comes to the point where
14 obviously an issue is was it government policy, and all the rest of it, which will
15 shorten matters quite considerably, Mr Laucci. So that's why I'm asking you. You
16 don't - you can't because you weren't -- your client says he wasn't there - dispute the
17 actual killings or -- or the raids on the villages, putting it, perhaps, more neutrally.
18 What you're -- what you are putting the Prosecution to strict proof on is that this was
19 part of a government policy and that the Janjaweed were acting as government forces.

20 MR LAUCCI: [17:42:55](Interpretation) Yes, Madam President. And also that the
21 four previous events included in the charges actually took place as indicated by the
22 Prosecutor.

23 PRESIDING JUDGE KORNER: [17:43:05] Well, so you're saying, although you have
24 no instructions to the contrary, for obvious reasons, the Prosecutor must still take the
25 witnesses through each and every part of the activity that they describe.

1 MR LAUCCI: [17:43:32](Interpretation) Yes, indeed. I think so. Because no one is
2 able to admit it and that is why the legal process must go through it all.

3 PRESIDING JUDGE KORNER: [17:43:44] Well, that may be something else, but all
4 right. I mean thank you very much for that. I've got that.

5 Now, next, this comes to what you object to. And really this is paragraphs -- well, 20
6 you assert it's been impossible to undertake missions to Sudan to conduct
7 investigations, which is why I raised the question of missions.

8 Matters of fact on which Mr Abd-Al-Rahman intends to rely on his Defence, which is
9 paragraphs 21 onwards. And you repeat all the submissions you have been
10 repeating over the last few months which, as you point out in paragraph 23, the
11 Chamber has rejected but has not granted the Defence leave to appeal its rulings.

12 The issues, therefore, have also not been put to the Appeals Chamber for its
13 consideration and so will be put to it unless resolved earlier, if and when the Defence
14 appeals a decision.

15 You go on to say: "The Chamber has opted to evade scrutiny by its colleagues in the
16 Appeals Chamber on such crucial issues going to the admissibility of the entirety of
17 the evidence on which the trial will proceed."

18 It could be said, Mr Laucci, by many people that that was an exceedingly rude way to
19 talk about the Trial Chamber refusing leave to appeal.

20 The following part says: "In so doing, it has run the risk of subsequent invalidation
21 of its judgment on these issues at the expense of judicial economy and respect for Mr
22 Abd-Al-Rahman's rights."

23 Those sort of *in terrorem* arguments do not work either, Mr Laucci. And for the
24 future -- and I am disappointed in you, and I think we all are, because up till now
25 your language has been nothing but respectful. That is not.

1 However, it brings me on to the point which we keep making in the written decisions,
2 which I don't think - with the greatest of respect - you understand. And I regret to
3 say it is the fault of the Americans. If this Chamber makes a ruling and says when
4 you apply for leave to appeal, no, we will not grant you leave to appeal because we
5 do not feel it -- you have the grounds that come within the Statute, that ruling stands.
6 Repeating these submissions is completely and utterly unnecessary. We do not have
7 the American system in an international court whereby in order, as I understand it, to
8 preserve the rights to appeal you have to go on objecting or repeating those objections.
9 You do not have to do so here. You are bound by our rulings, even if you disagree
10 with them. And if unfortunately, despite your best efforts, your client is convicted
11 and you do have to go to the Appeals Chamber, then you can point everything out
12 that we've done wrong, and no doubt if the Trial -- the Appeals Chamber agrees with
13 you, you will be justified.

14 But until then, our rulings stand unless we change them, for whatever reason, or the
15 Appeals Chamber. Now is that clear?

16 MR LAUCCI: [17:48:15](Interpretation) Madam President, I shall immediately thank
17 you for having this afternoon said precisely what will allow me to economise in the
18 number of pages of my submission to come.

19 I am sorry that you have taken as offensive the paragraphs that you have just cited
20 from, 22, 23, and 24. They are the consequence of an unfortunate experience that this
21 Defence team has had before the Pre-Trial Chamber because a decision had not been
22 fought against with the energy that we have used in the instant situation. It was
23 written that the Defence had renounced any objections on that point or had failed to
24 provide any objections on that point. I can't remember the specific matter. But this
25 was experienced by the Defence team as traumatic.

1 So, as you said, let us move on. We need not revisit these prior decisions. And
2 according to what you have just said, nobody will be able to say when we bring our
3 arguments before the Appeals Chamber that we are not allowed to do so. That's
4 perfect.

5 PRESIDING JUDGE KORNER: [17:50:09] That's it, Mr Laucci. So you can stop
6 repeating in the submissions. However --

7 MR LAUCCI: [17:50:17](Interpretation) And that will make those 12 pages of mine
8 easier.

9 PRESIDING JUDGE KORNER: [17:50:22] Right. But, however, Mr Laucci, it still
10 leaves this:
11 You say that you're going to challenge -- well, firstly, you allege tampering and
12 fabrication of evidence, which hasn't been raised before, as yet. You say you
13 challenge the admissibility of any evidence in violation of the Court Statute, and we're
14 back to the video again. And then the admission of evidence which the OTP
15 gathered after the confirmation hearing concerning matters that were clearly disputed
16 by the Defence.

17 Now, right at the beginning when we were seized of this matter in September, we
18 said that you had to put in any submissions on the admissibility of evidence by
19 3 December. And I think I checked on the last occasion whether there were any and
20 you all said no, there weren't. But we now, apparently, are going to get a plethora of
21 submissions on admissibility of evidence. So, I mean, at the moment, leaving aside
22 documents and whether they -- whether they are admitted or not, as the witnesses
23 produce the documents -- and I remind both sides that the Chamber has adopted, as
24 have all Chambers now, the submission method. In other words, they go in and we
25 decide at the end whether accepted it.

1 I want to know what it is you're going to be objecting to.

2 MR LAUCCI: [17:52:08](Interpretation) Very well, Madam President.

3 On this specific point, the counterpoint of the month of December was set during our
4 first status conference and we had understood -- we, the Defence, had understood,
5 you might recall, that in referring to the long list of questions that had not been ruled
6 on, that was the lengthy list that figured in our submissions preparing for that first
7 status conference.

8 We did precisely what the Chamber asked of us, that is to say that we reconsidered or
9 looked once again at that list and only brought in those that we thought were timely
10 to us at the time, namely the request as to the exclusion of documents that were not
11 marked as confidential in the OTP's dossier or file. There were others, those
12 associated with field activities.

13 And there are others that we have not pursued. There was the matter associated
14 with reparations in favour of victims. We consulted the Legal Representatives for
15 Victims, who did not deem that it was timely to reopen that discussion at that
16 moment in time, so we decided to let that go.

17 The other subject I can't recall, but we provided the material by the deadline set by
18 the Chamber.

19 Now with regard to challenging the admissibility of evidence, well, we're coming
20 back to the usual rule that challenging the admissibility of evidence should be done at
21 the time at which the opposing party requests for this evidence to be admitted as
22 evidence. That is the time at which that discussion should occur. We cannot, from
23 21 September, cover the entirety of the issues that might arise with regard to the
24 admissibility of evidence. And what is more, you mentioned the matter of patterns
25 of false -- or fabrication of evidence that we have noted. We have become aware of

1 this as the evidence was disclosed, and this is on an ongoing basis up till today.

2 And in the context of this disclosure we became aware of new items of evidence that
3 enabled us to ascertain and to see these patterns develop before our very eyes. In
4 September, at the time of the confirmation of charges, I would say quite simply to you
5 that we had not detected them.

6 PRESIDING JUDGE KORNER: [17:55:47] Mr Laucci, I'm sorry.

7 Firstly, I do recall we had a discussion about other matters. If those matter -- and
8 you can't remember what they are any more than I can, I'm happy to see. I think you
9 need to refile any matters that you say are still outstanding on which we have not
10 ruled and any further submissions that you want to make on those. And I think
11 you'd better do that within the next seven days, which takes us to what?

12 The -- what's today, the 8th. 15th. I think you'd better refile any matters you say
13 we've not ruled upon by 15 March.

14 MR LAUCCI: [17:56:38](Interpretation) But you have not ruled on myriad of issues,
15 and that is quite normal, because these matters have not been put before you, have
16 not been seized of the admissibility of each individual item of evidence. And it is at
17 that moment in time that the admissibility of each item of evidence will be cause for
18 discussion.

19 PRESIDING JUDGE KORNER: [17:57:04] Yes, I understand that. But you're saying
20 that there are other matters which were in your original filings.

21 MR LAUCCI: [17:57:13] *Non.*

22 PRESIDING JUDGE KORNER: [17:57:13] Well that's what I thought you said.

23 MR LAUCCI: [17:57:15](Interpretation) No, no. Those matters that were
24 outstanding, that were not ruled upon, we listed them in our submissions before the
25 first status conference. You gave us a deadline in the month of December to file the

1 request associated with that list that we wanted to file, which we did. We put some
2 to one side, we abandoned some of them. That phase for the Defence was closed,
3 done.

4 Now, of course, you have not ruled on the guilt of Mr Abd-Al-Rahman. We're not
5 going to ask you to do so over the seven days. The trial will run its course. There
6 are questions that will arise, including that of the admissibility of evidence when they
7 ask for such evidence to be admitted, and then we will answer those questions at that
8 moment this time.

9 PRESIDING JUDGE KORNER: [17:58:20] Yes. All right.

10 So you are not saying, are you, that you are going to raise objections to the
11 Prosecution calling, whether 68(3) or viva voce, the witnesses? You will be raising
12 objections as to the admission of any documents. That's it. I want to be absolutely
13 clear on that, Mr Laucci.

14 MR LAUCCI: [17:58:49](Interpretation) Yes, that is what is -- is my understanding of
15 what I have just said, so I believe that that must be pretty -- pretty accurate.

16 PRESIDING JUDGE KORNER: [17:58:58] Yes. And what I don't want to happen is
17 for the witness -- for the Court and the Defence saying Witness X is coming - let's call
18 it P-27 - is coming next Friday on the Prosecution's order of witnesses, and then the
19 Defence say, no, we object to this witness being called altogether because we say there
20 is evidence that he has been in some way influenced or there's been fabrication of
21 evidence, or it was gathered after the -- the confirmation hearing.

22 Do you see what I mean? What I am very, very anxious to avoid, given, Mr Laucci,
23 the limited days that we have, is that we have to waste time then -- and when I say
24 waste time, waste time that can be used for witnesses as opposed to dealing with legal
25 argument - do you see what I mean? - on general matters as opposed to whether or

1 not a particular document should be admitted.

2 MR LAUCCI: [18:00:16](Interpretation) No, no, the objections that will be raised
3 when the OTP request the admissibility of documents of items of evidence will have a
4 bearing on what the OTP is requesting to have admitted.

5 It was never the Defence's intention to stop a witness appearing to testify. The
6 matter as to the admissibility of the evidence shall be ruled upon by you when the
7 time comes. We shall move forward and we are not obstructive and don't intend to
8 be.

9 PRESIDING JUDGE KORNER: [18:01:00] Well, I mean, as I say, what gave me pause
10 for thought was the admission of evidence which the OTP gathered after the -- and if
11 there are witnesses who were interviewed afterwards.

12 Are you saying that you object to any evidence that they may give which is
13 obtained -- I don't know how many statements were taken subsequent to it.

14 MR LAUCCI: [18:01:26](Interpretation) If you would like, Madam President, in the
15 time of seven days that you have indicated, that the Defence provide submissions
16 indicating precisely what they intend to do, well, the question is as follows: It is the
17 case law of the Appeals Chamber that the Prosecution is allowed to continue
18 investigating after the confirmation of charges hearing. That is not challenged.

19 Nevertheless, the jurisprudence of the appeals is that the door is not open to anything
20 and everything. That means that those investigations are quite limited. So if you

21 have a subject matter that from the very beginning of the confirmation of charges

22 Mr Abd-Al-Rahman gets to his feet to deny that he is Mr Ali Kushayb, and the

23 Prosecution knows from 15 June, which is the date of the confirmation of charges

24 hearing; he knows that this is a matter for discussion and the Pre-Trial Chamber asks

25 that the OTP, over the summer period, provides all the information that they have on

1 the alias before the month of December; the OTP obliges, the Defence responds, the
2 Pre-Trial Chamber does not take any measures and waits for the confirmation of
3 charges hearing to actually happen. And during that confirmation of charges
4 this -- the Defence spends the first half of its presentation contesting that
5 Mr Abd-Al-Rahman ever could have been Mr Ali Kushayb. The Office of the
6 Prosecutor when responding, then produces a video that he had decided not to use as
7 evidence because he knew or was only too aware that this video was problematic in
8 terms of admissibility, then submit it to the Pre-Trial Chamber saying that this video
9 had been voluntarily produced at the behest and initiative of Mr Abd-Al-Rahman.
10 We then subsequently found out that this was wrong, that the video had been
11 requested by the OTP itself.
12 Now, with all this, we are in May 2021. The Prosecution had from June 2020 the
13 time to pull together all the details on the alias. I think that this goes far beyond the
14 jurisprudence of the Appeals Chamber.
15 PRESIDING JUDGE KORNER: [18:04:18] All right. Okay, Mr Laucci, I've got the
16 general -- and you've seen the point that we're making, that we really don't want to
17 lose time on -- on legal matters.
18 So if there are any other substantive matters, then those must be dealt with separately,
19 but not pure questions of admissibility of exhibits.
20 MR LAUCCI: [18:04:45](Interpretation) Of course. Would you like me to provide a
21 submission on that specific point within seven days?
22 PRESIDING JUDGE KORNER: [18:04:54] That would be very helpful. Yeah, if you
23 could.
24 MR LAUCCI: [18:04:58](Interpretation) You will receive it.
25 PRESIDING JUDGE KORNER: [18:05:00] Right.

1 Mr Nicholls, I'm assuming the Prosecution don't want to add anything, or say
2 anything at this stage?

3 MR NICHOLLS: [18:05:10] No, your Honour.

4 PRESIDING JUDGE KORNER: [18:05:12] No.

5 I'll just check whether my colleagues have any matters they want to raise.

6 (Trial Chamber confer)

7 PRESIDING JUDGE KORNER: [18:05:27] Yeah, Mr Nicholls, Judge Alexis-Windsor
8 wants to know, in the light of our questions, is there going to be a revised list then
9 of -- of the witnesses and languages and the like?

10 MR NICHOLLS: [18:05:38] Yes. We are working very hard on this. It is a work in
11 progress. We haven't been able to complete everything and we will keep working
12 on it and revise it.

13 And if I may, your Honour, there's two points that -- I stood earlier, but you didn't see
14 me, and I didn't want to interrupt, so if I could -- if I could come back --

15 PRESIDING JUDGE KORNER: [18:06:00] You mean I was in full flow. That's what
16 you're trying to say.

17 MR NICHOLLS: [18:06:02] If I could just come back on two points.

18 One, in terms of our 15 witnesses which I talked about in the beginning for which
19 language should not be an issue, I think I said this, but just to make clear, we -- we
20 have not yet confirmed that all of them can come imminently. There are six of them
21 where we are not sure they have adequate travel documents at this time, because they
22 were further down in our -- in our previous order. So we need to check. But -- so
23 we have the 15, but I can't say that any of those couldn't suddenly come in -- in April,
24 so we will need to work on the order within those 15 and let the parties now as soon
25 as we can.

1 And one other point, if we could go into private session.

2 PRESIDING JUDGE KORNER: [18:06:52] Yes, we'll go to private session.

3 (Private session at 6.07 p.m.)

4 THE COURT OFFICER: [18:07:04] We're in private session, Madam President.

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 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 case-by-case basis.

2 So it is no longer automatic, which means that each person to be approached by the
3 Registry will undergo a specific study. We have slowed the process down
4 somewhat and the requirements have slowed the process down. We decided with
5 the Registrar to take some risks by -- to reduce the risks by conducting some vetting
6 activities. We have already changed our attitude when selecting individuals. We
7 are up against such issues in this to the extent that the Fur community is extremely
8 small. That is all to do with the tribe.

9 PRESIDING JUDGE KORNER: [18:10:23] So the answer is at the moment, no, you're
10 not approaching -- I found that quite difficult to follow. Is the answer yes or no, that
11 you're -- Mr Dubuisson, that you're approaching people in the -- in the Sudan?

12 MR DUBUISSON: [18:10:46](Interpretation) The answer is that initially we had a
13 policy that was very strict that we do not take people. Now we have decided to take
14 more risks and to accept individuals who might have a conflict of interest or might
15 have a relation with a certain individual from the former government, on the basis of
16 which we shall make recommendations to the Chamber and it will be up to the
17 parties and the participants, and up to you, the Judges, to decide whether those
18 individuals can or cannot work on certain cases.

19 We can even increase flexibility by saying that, for given witnesses, those specific
20 interpreters cannot be in the courtroom. It's extremely rare, but you -- this has
21 already occurred in some courts that you are aware of as well.

22 So as I said, they will be taking an oath, all those witnesses who appear before the
23 Chamber.

24 PRESIDING JUDGE KORNER: [18:11:58] Yes. Well, thank you, Mr Dubuisson. I
25 mean, that's very helpful. Obviously, it's quite clear that some kind of security

1 checks will have to be carried out at some stage, whatever.

2 Yes, any other matters anybody wants to raise?

3 Mr Laucci.

4 MR LAUCCI: [18:12:15](Interpretation) Yes, Madam President.

5 I would like to ask you whether the deadline that you have set for the 15th of this

6 month, the month of March, be extended to the end of that same week, which would,

7 I think, amount to the 18th or the 19th. The 18th, the 18th.

8 PRESIDING JUDGE KORNER: [18:12:37] Yes, that's fine, Mr Laucci. We'll both do
9 that.

10 What I would like to do is, because there's -- there's another status conference to be

11 held on 23 March, which I'm going to -- in the light of everything that's been going on,

12 I'm going to keep. And so we'd like it before the 23rd so we can discuss any issues

13 arising from that.

14 MR LAUCCI: [18:12:56](Interpretation) If we are able to do so before the 18th we

15 shall, as always, but there are other things to be done in parallel.

16 PRESIDING JUDGE KORNER: [18:13:07] Yes, all right. Yes, thank you very much.

17 Oh, and I do -- yes.

18 JUDGE ALEXIS-WINDSOR: [18:13:16] So sorry, Mr Dubuisson, but I have another
19 question.

20 In relation to the report, there is a question I had from paragraph 14. And there you

21 said that you would be sourcing persons from a pool of potential candidates residing

22 in Sudan and Darfur because it was difficult to do so outside.

23 I appreciate that Fur is a distinct and -- it's a distinct language that is not of grand

24 diffusion, so it is in specific pockets of part of Sudan where people speak Fur.

25 Conceivably, though, would it be possible to access candidates who speak Fur who

1 are from those particular regions but who are not residing in Sudan? Would that
2 approach assist?

3 MR DUBUISSON: [18:14:33](Interpretation) Yes, of course, that's the first thing we
4 do. We look at the communities in the diaspora outside of the country itself to
5 ascertain whether we can do that or not. But there are very few people speaking Fur
6 to be found outside of the country, so that's why it is important for us to really focus
7 on that region.

8 And I'm glad that we're still in private session, because the fact of talking about the
9 fact that we might be looking for field interpreters increases the -- the risk of -- of
10 threats in terms of our future research.

11 JUDGE ALEXIS-WINDSOR: [18:15:16] Thank you.

12 PRESIDING JUDGE KORNER: [18:15:17] Yes, well, I mean, we're still in private
13 session, but it's really -- just one last question, Mr Nicholls.

14 At the last status conference I think I raised the question of -- of an expert who could
15 deal with the culture and the like. Has there been any progress in identifying
16 anybody?

17 MR NICHOLLS: [18:15:36] There has - excuse me - there has been.

18 We've been discussing that quite a bit. Unfortunately, I was out last week and
19 those -- those discussions progressed between Mr Laucci and Mr Mourad. We've
20 identified one potential. We -- we picked while I was still here a handful, and we've
21 narrowed it down to one person - correct me if I'm wrong, Mr Laucci - who is
22 possibly available and willing and believes that -- that he or she has the correct
23 expertise, but ...

24 MR LAUCCI: [18:16:08](Interpretation) Indeed, we do not have definitive response
25 from those people we have contacted after identifying them, but one of those persons

Status Conference

(Private Session)

ICC-02/05-01/20

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (The hearing ends in private session at 6.17 p.m.)