

Trial Hearing
WITNESS: DAR-OTP-P-0012

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Thursday, 9 June 2022
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:35] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:31:53] Yes, good morning to all.
15 Appearances, we'll start with the Defence again.
16 MR LAUCCI: [9:32:04](Interpretation) Good morning, Madam President. Good
17 morning, your Honours.
18 Mr Al-Rahman has once again asked not to take part today and tomorrow, so he has
19 waived his rights to be present in the hearing and we thank the Chamber -- Chamber
20 for granting him that possibility.
21 We have Madam Drusilla Bret-Robertson, Paola Pallot, Vanessa Grée, Issa. My -- my
22 colleague Iain Edwards and myself, Cyril Laucci. Thank you.
23 PRESIDING JUDGE KORNER: [9:33:00] Yes. All right, Mr Laucci, we got
24 the message and we agreed that your client need not attend again this morning.
25 Are we likely to go into tomorrow, Mr Edwards? No, I thought probably not.

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- 1 All right, but can I say he must be here on Monday.
- 2 MR LAUCCI: [9:33:24] It appears that it was his intention, definitely.
- 3 PRESIDING JUDGE KORNER: [9:33:26] All right.
- 4 Yes, thank you.
- 5 Yes, Prosecution, please.
- 6 MR NICHOLLS: [9:33:32] Good morning, Madam President, good morning,
7 your Honours. Same as yesterday. Mohanad Elkholy is not here today, but
8 otherwise the same.
- 9 PRESIDING JUDGE KORNER: [9:33:41] Thank you.
- 10 And representatives for the victims.
- 11 MS VON WISTINGHAUSEN: [9:33:44](Interpretation) Good morning,
12 Madam President, your Honours. The victims are represented by Anand Shah,
13 Idriss Anbari and myself, Natalie von Wistinghausen.
- 14 PRESIDING JUDGE KORNER: [9:34:02] Yes, thank you very much.
- 15 Sir, good morning to you again. And Mr Edwards is going to continue asking you
16 questions this morning. Thank you.
- 17 WITNESS: DAR-OTP-P-0012 (On former oath)
- 18 (The witness speaks Arabic)
- 19 QUESTIONED BY MR EDWARDS: (Continuing)
- 20 Q. [9:34:18] Good morning, Mr Witness. Can you hear me okay?
- 21 A. [9:34:21] Yes, I do hear you.
- 22 Q. [9:34:28] Just to give you an idea of what we're going to be doing for the rest of
23 today. I'm going to finish off asking you some questions about the identity of
24 Ali Kushayb. I'm going to then move on to the topic of the distribution of money
25 and arms to the Janjaweed by the Government of Sudan. I'm going to briefly ask

1 about meetings in Mukjar in August 2003. I'm going to ask you some questions
2 of -- regarding the attack on Bindisi in August of 2003. And then finish off with
3 the events in Mukjar in the beginning of 2004, ending with what you say you saw of
4 the arrest and detention of men in Mukjar. Okay.
5 So quite a lot to get through, but I'm sure that if we work together we'll get through it
6 fairly swiftly and fairly painlessly, I hope.
7 Let me start by asking you this: Without mentioning the country, do you have
8 access to the internet in the country where you now live?
9 A. [9:36:10] No, not at all.
10 Q. [9:36:16] Have you been able to follow the -- these first few weeks of the trial of
11 Mr Abd-Al-Rahman in any way at all?
12 A. [9:36:44] Of course, through the media, of course. Through the media, of
13 course, I -- I queried about that, but without any details.
14 Q. [9:36:55] And in the media did you read accounts of the opening of this trial
15 back in early April of this year, the beginning of this trial?
16 A. [9:37:18] Yes. That was just news without any details anyway that ...
17 Q. [9:37:25] And did you also know that Mr Abd-Al-Rahman himself spoke very,
18 very briefly at the very beginning of the trial?
19 A. [9:37:37] No, I haven't heard him.
20 Q. [9:37:46] Have you spoken with anyone at all who may have followed what
21 Mr Abd-Al-Rahman said at the very beginning of this trial?
22 A. [9:38:00] No.
23 Q. [9:38:04] Okay. Now, what I'd like you to do, please, is help us with as detailed
24 a description as possible of the man that you say was Ali Kushayb from the period
25 2003, 2004.

1 Let's start with his height or his approximate height, please.

2 A. [9:38:48] I cannot say that. Well, he's -- he is tall, but I cannot say exactly how
3 tall he is. It could be 180, 190 centimetres. That is what I think, but I am not sure of
4 that.

5 Q. [9:39:09] Is that taller or shorter than you, sir?

6 A. [9:39:19] Well, he is taller than myself, definitely.

7 Q. [9:39:28] In your statement you describe him as black. Of course, almost
8 everyone in Sudan is black, right, so that doesn't particularly distinguish him from
9 any other man in Darfur.

10 PRESIDING JUDGE KORNER: [9:39:44] Paragraph, please.

11 MR EDWARDS: [9:39:46] Thirty-eight, your Honour.

12 PRESIDING JUDGE KORNER: [9:39:50] Thank you.

13 MR EDWARDS: [9:39:54]

14 Q. [9:39:55] Is that a fair comment?

15 A. [9:40:06] I did not say that he was very dark. Well, he is like -- like me. He's
16 just as dark as myself.

17 Q. [9:40:18] Okay. A similar skin tone to you. And this may be important, based
18 on what you've just said, can we understand that you don't consider that you have
19 particularly or unusually dark tone of skin?

20 A. [9:40:47] Yes.

21 Q. [9:40:50] Thank you.

22 PRESIDING JUDGE KORNER: [9:40:54] You mean you're agreeing with counsel's
23 suggestion that you don't consider that you're particularly dark? "Yes" could mean
24 either one.

25 MR EDWARDS: [9:41:12] I'll ask the question again and rephrase it.

1 Q. [9:41:17] Do you consider that you have a particularly dark tone of skin?

2 A. [9:41:29] Yes, yes, my skin is dark. Yes, my skin is dark.

3 Q. [9:41:38] And -- and the man that you describe as Ali Kushayb, did he have
4 a tone that was lighter or darker than yours?

5 A. [9:42:01] I did not say that his colour is darker than mine, but the same colour.
6 He had the same colour as myself.

7 Q. [9:42:11] Did you notice anything distinctive about his ears?

8 A. [9:42:26] What do you mean exactly by this?

9 Q. [9:42:31] I'm deliberately asking you the question in as broad a way as possible.
10 Did you or did you not notice anything distinctive, at all, about his ears?

11 A. [9:42:53] He speaks Arabic. He is tall. And he has dark skin.

12 Q. [9:43:04] Let me just (Overlapping speakers)

13 I'll just stop you for a moment because I think there may have been a problem of
14 interpretation. I'll ask the question again.

15 Did you notice anything distinctive about his ears? Just focus on his ears for now.

16 A. [9:43:29] Well, in Sudan most of the people wear turbans, so it is extremely
17 difficult to focus on the ears of a person. If he is wearing a turban, it is difficult
18 to -- to notice that there is something might be in his ears that could give attention.

19 And this is of course the way we dress in Sudan. Well, most of the people in Sudan,
20 we dress like that, with turbans.

21 Q. [9:44:07] Okay. Thank you. Now let's move away from what most people
22 wear. Let's focus on what the person you identify as Ali Kushayb wore.
23 Did you ever see him without a turban?

24 A. [9:44:30] Yes.

25 Q. [9:44:32] So let's focus on those times when you saw him without a turban when

1 you were able to see his ears.

2 When he wasn't wearing a turban, when you were able to see his ears, did you notice
3 anything distinctive about his ears?

4 A. [9:44:55] I saw him without the turban in -- in the operations field and I was
5 standing 10 metres away from him, or more than that. If there is something in his
6 ears, I was not able to see that because I was about 10 metres, more than 10 metres
7 away from him.

8 Q. [9:45:23] And the times when you saw him at the pharmacy in Garsila, did you
9 ever see him without a turban?

10 A. [9:45:36] Of course, he was wearing a turban. Well, this is the main dress in
11 Sudan, people wear turbans.

12 Q. [9:45:46] Okay. Even though he wore a turban when you saw him at the
13 pharmacy in Garsila, according to you, were you able to see if he had facial hair,
14 either a moustache or a beard and moustache, or just a beard?

15 A. [9:46:13] No, he always shaved. I didn't see any beard -- beard on him, no.
16 He ...

17 Q. [9:46:22] And did you ever have an opportunity to notice anything in particular
18 about his hands?

19 A. [9:46:36] No. His hands, no.

20 Q. [9:46:41] Did you ever -- did you ever meet with Ali Kushayb outside of
21 the context of you being a customer of his -- of his pharmacy in Garsila? In other
22 words, did you ever eat with him, did you ever drink tea together, anything like that?

23 A. [9:47:08] No, no, not at all.

24 Q. [9:47:12] Now yesterday you stated that the person that you call Ali Kushayb,
25 you saw him 50 times or more in -- in Garsila. I just want us to be very, very clear

1 about this. Do you mean by that up to 50 times or around 50 times? Fifty times --

2 A. [9:47:36] Yes, this is what I said.

3 Q. [9:47:39] Did you purchase medicine -- medication from his pharmacy around
4 50 times, or does that 50 times figure include times when you just passed him and
5 saw him outside his pharmacy?

6 A. [9:47:59] Well, the pharmacy is just in the local area. And when I come to that
7 area, of course I see him, because he is standing in his pharmacy, and say "Hello.
8 Good morning." And sometimes when he is very busy he will not answer even.
9 So I see him when I walk by the pharmacy.

10 Q. [9:48:22] Okay. So now what I want to do is focus on the number of times you
11 actually purchased medication from him, from his pharmacy in Garsila. Can you
12 give us an approximation of how many times you purchased medication?

13 A. [9:48:44] I don't remember the number, but many times. I cannot say a figure,
14 but I -- so many times, but I cannot remember well how many times. Well, I'm
15 a customer, I always buy from -- from -- medication from his pharmacy, but I cannot
16 say that maybe 10, 20 or 30 times. I cannot give a figure on that.

17 Q. [9:49:12] Okay. I understand its difficult, but let's -- let's try a little harder.
18 More times or fewer times than, say, 10 purchases?

19 A. [9:49:28] It could be more than 10 times.

20 Q. [9:49:34] More or fewer times, would you say, than 25 purchases?

21 A. [9:49:47] Well, I cannot say exactly how many times. I cannot give a figure. I
22 will try, maybe, to give you -- or to say something closer to that. But I cannot say
23 exactly how many times. Well, I'm a customer, I'll always come to his pharmacy, but
24 I cannot say how many times. As I said, it could be more than 10 times, as I said
25 earlier.

1 Q. [9:50:22] Now, it was possible to buy veterinary medicine from the market,
2 especially when the travelling salesman was there for -- on market days from Bindisi.
3 We established that yesterday, right?

4 A. [9:50:45] People -- some people of course sell these here, but they -- they are not
5 authorised. And of course they do that while in the open market, so they could be
6 out of date, or -- so sometimes people go to pharmacy because they are sure that you
7 get medication, but if they don't take that into account they can go and buy from these
8 people. And they're just, like these people, there's an open market and, of course,
9 I cannot buy from those people who are just -- who don't have pharmacies. Those
10 traders, I don't buy from them.

11 Q. [9:51:27] Well, you've spoken about the risk of buying out-of-date products.
12 When you buy medication, it normally comes in a bottle or a box and it has the expiry
13 date on it. If you buy medication from the market, you can just check the expiry date,
14 can't you?

15 A. [9:51:53] *In markets, it is possible for someone to lay their products which
16 would subject them to high temperature. The existence of any expiry date does not
17 mean that I would certainly use that medication. But when I take it from a
18 government-accredited store instead, where it is safe in the shade, then it would be
19 safer to buy. So that's why one should just go to where it safe to buy that.

20 Q. [9:52:30] In your -- thank you. In your statement, this is at page -- this is -- this
21 is still at paragraph 38, your Honour, you stated that Ali Kushayb was from Al Deain
22 in eastern Darfur.

23 Your Honour, I know why my learned friend is on his feet. I'm not going to take
24 a bad point, I just want to explore the change of account. Yeah. I'm aware that
25 that's been corrected.

1 PRESIDING JUDGE KORNER: [9:53:17](Microphone not activated) The two of you I
2 think have the advantage of all of us.

3 MR EDWARDS: [9:53:23] Your Honour, there is --

4 PRESIDING JUDGE KORNER: [9:53:28] Oh, right.

5 MR EDWARDS: [9:53:29] There's a -- there's a three-page, 29-paragraph document
6 called "Corrections and Clarifications".

7 PRESIDING JUDGE KORNER: [9:53:38] All right.

8 MR EDWARDS: [9:53:39] Perhaps I could direct your Honour's attention
9 to -- it's -- it's the fifth point in that document.

10 PRESIDING JUDGE KORNER: [9:53:46] All right.

11 MR EDWARDS: [9:53:47]

12 Q. [9:53:48] Mr Witness, in your original witness statement from 2007, you
13 originally said that Ali Kushayb was from Al Deain. Now I know that you later
14 corrected that, but let's focus on what's contained in your statement at first. Okay.
15 Do you remember saying that in your original statement, that Ali Kushayb was from
16 Al Deain?

17 A. [9:54:18] Yes, in my first statement I said maybe was from Al Deain, from
18 Al Deain in the south of Darfur.

19 Q. [9:54:31] Well, Al Deain is in eastern Darfur, isn't it?

20 A. [9:54:38] No, there was no eastern part of Darfur at the province. There were
21 only three areas, the south of Darfur and north of Darfur and Western Darfur.
22 Recently, new divisions of Darfur were made and we -- the middle of Darfur, and at
23 that time there was no province called eastern Darfur.

24 Q. [9:55:04] Okay. I appreciate that there was no province called eastern Darfur at
25 the time. But in broad geographical terms, you could say this is -- this bit of Darfur

1 is in eastern Darfur, right? Not -- not the name of a province, but just geographically
2 speaking, the eastern part of Darfur. And that is where Al Deain is, correct, in
3 the eastern part of Darfur?

4 A. [9:55:33] In the southern part of Darfur, it was called South Darfur. The eastern
5 part of Darfur, it was the north of Darfur.

6 Q. [9:55:46] Okay. All right. Well, let's -- let's put that to one side then.
7 Even though you later corrected it, what I'm interested in knowing is, where did you
8 get the information from that permitted you to say to the investigators in 2007 that
9 Ali Kushayb was not originally from Wadi Salih but from eastern Darfur, from
10 Al Deain?

11 A. [9:56:20] Once in my following what is happening in internet, I found a video.
12 He was speaking in Rahad al-Berdi area. In that video he said he was born in that
13 area and he grew up there. At that time I said, okay, maybe this is true, Ali Kushayb
14 was born, as he said, in his video.
15 And the video is still there on YouTube.

16 I also heard him talking about -- with a number of teachers in Rahad al-Berdi and
17 I -- said that he was from that area, Rahad al-Berdi, so that is why I changed my
18 statement from -- that he is from -- from Deain to Rahad al-Berdi.

19 I didn't know him before that and I have no idea about his background. That's what
20 I saw on the video.

21 Q. [9:57:16] Okay. And did you see that video on the internet --

22 A. [9:57:24] (No interpretation)

23 Q. [9:57:26] I haven't -- just let me ask my question.

24 When did you conduct this internet research?

25 A. [9:57:45] Maybe two years ago, and he's on YouTube. I saw this video on

1 YouTube two years ago, maybe.

2 Q. [9:57:53] Was that in the country where you're now living? Don't say the name
3 of the country, but two years ago, were you in the country where you're now living?

4 A. [9:58:01] Yes, the same country where I live now.

5 Q. [9:58:04] The same country that, about 10 minutes ago, you said you had no
6 internet access to?

7 A. [9:58:15] No, I was talking about Chad and Sudan. At that time in Chad and
8 Sudan, when I was in Sudan, there was no internet. I thought that you were asking
9 me about 2007. I answered the question because of that. But internet, was no
10 internet in Sudan in 2007.

11 Q. [9:58:41] Well, if there was -- if there was some confusion, if it was
12 misunderstood, then I apologise.

13 I'm going to go back to my question that I asked you about 10 minutes ago. In
14 the country where you are living now, in 2022, do you have access to the internet?

15 A. [9:59:09] Yes. Yes, of course.

16 Q. [9:59:11] The -- did you follow on the internet the opening of this trial a couple
17 of months ago?

18 A. [9:59:35] I work from 4 in the morning to 3 or 4 p.m., so I was not able to follow
19 the opening of this trial on -- directly, of course. I work, and when I come back, of
20 course I make some rest and there is any information I can of course learn that
21 about -- social media or any information.

22 Q. [10:00:05] When you say you can't follow it directly, do you mean you can't
23 follow it live?

24 A. [10:00:19] Yes, live. No, I was not able to follow it live. I -- I just learned that
25 through YouTube and you can of course find that information by going to YouTube.

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1 Q. [10:00:30] Yeah. This Court has a YouTube channel. Do you know that?

2 Have you watched it?

3 A. [10:00:42] No, I never saw the -- the Court's YouTube channel. Maybe on
4 Facebook or YouTube or I can follow of course. But I was not following the -- well,
5 the direct broadcasting.

6 Q. [10:01:07] I understand that for various reasons you're not able to follow direct
7 broadcasting, live broadcasting. Can you explain to the judges, is there any
8 particular reason why you've not been -- why you didn't watch, for example,
9 recordings on YouTube of, for example, the opening of this trial, given that you are
10 a witness in this trial?

11 Is there any particular reason?

12 A. [10:01:53] I didn't have time to do so. I have a family, I have children, I have
13 work, and without my work I can't live. So I really need to go to work and I have
14 family commitments as well. So I didn't have time to watch the sessions, but
15 sometimes when I have some spare time, I followed what's happening on social
16 media. But I really didn't dedicate specific time for this.

17 Q. [10:02:28] No, I understand that you might not have dedicated a specific time for
18 it. But notwithstanding the fact that you work, notwithstanding the fact you have
19 family commitments, you're able to conduct some internet research a couple of years
20 ago, you say?

21 PRESIDING JUDGE KORNER: [10:02:57](Microphone not activated)

22 MR JEREMY: [10:02:58] Sorry, Madam President, just to be -- just to be fair to
23 the -- to the witness and let's -- let's characterise correctly what he has said.

24 He said that he saw a video of Ali Kushayb on the internet in which he identified
25 himself as coming from Rahad al-Berdi. It has now been characterised as "internet

1 research", which I would submit is not -- not fair to the witness.

2 PRESIDING JUDGE KORNER: [10:03:21] Well, yes. I mean, leaving that aside,
3 Mr Edwards, I mean there are two things.

4 First, you've asked the same question now three times. You may not appreciate
5 the answer, but I don't think it's going to change.

6 The second thing is, I really do strongly advise you to keep your questions shorter,
7 because I think part of the problem that is arising is that the questions are quite long
8 and it's quite difficult to interpret.

9 MR EDWARDS: [10:03:49] Thank you, your Honour, I take that --

10 PRESIDING JUDGE KORNER: [10:03:51] The third thing, however, is I'm still not
11 clear about how -- what he -- I'm sorry, what he heard -- sorry, I'll start this one again,
12 what he saw on the internet when Ali Kushayb was speaking.

13 Are you saying it was -- you saw on the internet Ali Kushayb saying that he came
14 from the area that you then corrected it to "Rahad al-Berdi"? Is that what you heard
15 him say?

16 THE WITNESS: [10:04:37](Interpretation) Yes, that's correct.

17 PRESIDING JUDGE KORNER: [10:04:39] And the original question was how did
18 you come to tell the investigators that he came from east Darfur, from Al Deain? Is
19 that what you thought at the time when you made the statement?

20 THE WITNESS: [10:05:04](Interpretation) Well, this is a piece of information that I
21 had at the time. I thought that he was from the Rizeigat tribe. And the main base
22 of the Rizeigat tribe is Al Deain and that's why I reached that conclusion. But then
23 when I heard the correct area or location he is from, I corrected it with
24 the investigators.

25 PRESIDING JUDGE KORNER: [10:05:45] And why did you think that he came from

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1 the Rizeigat tribe? Was that from your own observation or because somebody told
2 you that?

3 THE WITNESS: [10:06:03](Interpretation) No, just my own observations, nobody
4 informed me.

5 PRESIDING JUDGE KORNER: [10:06:07](Microphone not activated)

6 MR EDWARDS: [10:06:16] Still on paragraph 38. Perhaps we ought to bring it up.

7 Q. [10:06:23] Do you still, sir, have your witness statement in Arabic in front of
8 you?

9 A. [10:06:39] I only have the English version here on the screen. I don't know
10 where the Arabic one is.

11 Q. [10:06:45] The Arabic version is in the same folder it was in yesterday. Can you
12 please try and dig it up.

13 A. [10:06:55] Which one? There are two folders here, which one of them and
14 where exactly?

15 PRESIDING JUDGE KORNER: [10:07:01] Maybe the court officer could give him
16 a hand.

17 MR EDWARDS: [10:07:03] Madam court officer, it's the -- it's the first of the two
18 binders he was looking at yesterday. It's behind the first, I think, yellow tab.

19 MR JEREMY: [10:07:18] Madam Court Officer, I think it should be the slim binder.
20 Maybe you can't hear me.

21 THE WITNESS: [10:07:48](Interpretation) No, there must -- must be a mistake.
22 This is not the same folder. It's not my folder.

23 MR JEREMY: [10:08:01] It should be the first tab of the Prosecution --

24 THE WITNESS: [10:08:03](Interpretation) This is not my folder.

25 MR JEREMY: [10:08:04] It should be the first tab of the Prosecution binder. Yes,

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1 that's it.

2 MR EDWARDS: [10:08:53] Paragraph 38, please, Mr Witness.

3 Q. About halfway through paragraph 38, it's says:

4 "The Arabs used to refer to him as the slave of the Rizeigat tribe, possibly because he
5 has a black complexion, but I believe he is at least partly Rizeigat."

6 Do you see that?

7 A. [10:09:46] Yes, I can see it really well.

8 Q. [10:09:48] So it's -- it's ...

9 Your understanding that Ali Kushayb was of the Rizeigat tribe wasn't based on your
10 own observations, it was based on what others told you or said in earshot; is that
11 the case?

12 A. [10:10:20] No, that's not correct. I -- I was just saying that the Arab say that, but
13 I didn't say that my information was based. When I said that he was from Al Deain,
14 I was not using information that I was told by others.

15 Q. [10:10:48] And what caused you to correct your statement and to say that, in fact,
16 the person you call Ali Kushayb was of the Ta'aisha tribe?

17 PRESIDING JUDGE KORNER: [10:11:10] He's answered that question already.

18 MR EDWARDS: [10:11:13] No, that was the Rizeigat point. Sorry, that was
19 the Rahad al-Berdi point, not the tribe point, your Honour.

20 Q. [10:11:26] Was that based on something that you saw in a video online?

21 THE INTERPRETER: [10:11:39] Message from the interpreter: Can we repeat
22 the question, please, because there was overlapping speakers.

23 THE WITNESS: [10:11:52](Interpretation) What I meant was the last correction that
24 I -- that I made.

25 MR EDWARDS: [10:11:56]

1 Q. [10:11:58] Right. I'm going to start again, please.

2 Did you correct your statement to say that Ali Kushayb was from the Ta'aisha tribe
3 because of something that you saw on the internet?

4 A. [10:12:25] Yes, I watched him talking, and he said that he was born in this area
5 and was brought up in the same area, and that's why I corrected that piece of
6 information based on the information that I heard him say.

7 Q. [10:12:39] Yesterday you told us that his real name, not his nickname, his real
8 name was known throughout Garsila. Isn't it in fact the case that how he was known
9 throughout Garsila was by the name Ali Kushayb, not his real name?

10 A. [10:13:25] Okay, I know that his real name is Ali Muhammad Ali, but
11 the nickname was Ali Kushayb, and that is something that -- known, that's known by
12 everybody.

13 Q. [10:13:37] Because in Darfur people tend to be known more by their nickname
14 than by their real name, correct?

15 A. [10:13:52] No, that's not correct. Every people had official names written in
16 their documents and sometimes they have nicknames. But their names are known.

17 MR EDWARDS: [10:14:25] For a short time, your Honour, we're going to have to go
18 into private session.

19 PRESIDING JUDGE KORNER: [10:14:31] Yes. Private session.

20 (Private session at 10.14 a.m.)

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

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 12 (Redacted)
- 13 (Open session at 10.33 a.m.)
- 14 THE COURT OFFICER: [10:33:54] We're back in public session, Madam President.
- 15 MR EDWARDS: [10:34:01]
- 16 Q. [10:34:02] Did you and Al-Dayf Samih ever discuss the rebellion in Darfur?
- 17 A. [10:34:14] No.
- 18 Q. [10:34:26] He never -- did you ever offer your opinion of the rebellion in Darfur?
- 19 A. [10:34:41] Our meetings, well, direct meetings were when I was working
- 20 (Redacted). But at the beginning of the rebellion we did not discuss these things.
- 21 Q. [10:35:02] No. Okay. But you also say in paragraph 35, for example, that
- 22 Al Samih gave you quite a lot of information about how it is that Ali Kushayb became
- 23 *agid al-ogada*.
- 24 Do you see that in paragraph 35?
- 25 A. [10:35:30] Yes, I can see that.

1 Q. [10:35:34] And Samih discussed with you or told you when Ali Kushayb's
2 appointment took place, for example.

3 A. [10:35:52] No, he did not give me the information about the time. No.

4 Q. [10:35:58] All right. He explained how it was that there was some sort of
5 a -- that there was a conflict with Ali Kushayb over his appointment?

6 A. [10:36:17] Yes.

7 Q. [10:36:21] He explained what the nature of that conflict was?

8 A. [10:36:34] When I was there in that region he was assuming that he was the one
9 who should be the *agid al-ogada*. But there was some difference between him and his
10 friend and his friend was chosen to be *agid al-ogada*.

11 Q. [10:36:54] So these -- this is a conversation that has nothing whatsoever to do
12 with your work (Redacted)? Would you agree?

13 A. [10:37:08] This was -- this is personal information, yes, yeah.

14 Q. [10:37:10] Okay.

15 Did you ever -- whilst discussing this sort of personal information, did you ever say
16 that you supported the government's policies relating to Darfur?

17 A. [10:37:37] Can you please repeat the question.

18 Q. [10:37:41] During your discussions with Samih about the Janjaweed, about the
19 leadership of the Janjaweed, did you ever tell him that you supported
20 the government's policies in Darfur?

21 A. [10:38:09] No, I did not say that.

22 Q. [10:38:14] Is it correct to say then that he had no idea whether you might have
23 been a supporter of the rebellion?

24 A. [10:38:37] Who said that I support the rebellion?

25 Q. [10:38:42] No, the point is he didn't know whether you did or didn't support

1 the rebellion, right?

2 A. [10:38:58] Well, (Redacted), I do not support the militias or
3 the government. I was not supporting any party. I was just neutral, I was just
4 doing my job.

5 Q. [10:39:12] But Samih didn't know that, did he?

6 A. [10:39:18] I don't know.

7 Q. [10:39:28] And knowing that you -- knowing your ethnicity, your evidence is
8 that Samih was happy to speak to you about the organisation of the Janjaweed?

9 A. [10:39:51] He -- well, he -- he speaks directly about -- with the people he knows
10 and I know him very well. He speaks very frankly with me.

11 Q. [10:40:09] Paragraph 40, you say how -- so this is -- this is page 10 in the English,
12 it goes over to page 11: The Janjaweed receives orders from politicians.

13 The Janjaweed refuses to obey the orders given by the military in the field.

14 "Instead they say that any orders should be conveyed to them by either Taha or
15 Husayn. Samih told me this in January 2004 ..."

16 A. [10:41:12] Yes, that is correct.

17 Q. [10:41:14] just to get the chronology correct. This is obviously after of
18 the attack on Bindisi?

19 A. [10:41:27] Yes.

20 Q. [10:41:28] After you have fled with your family to Mukjar?

21 A. [10:41:33] Yes.

22 Q. [10:41:38] In January 2004, what were you doing at the police station in Mukjar?

23 A. [10:41:54] January 2004, you said?

24 Q. [10:41:58] Yes. That, sir, is what is written in your statement.

25 A. [10:42:23] Yes, that is correct.

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- 1 Q. [10:42:25] What were you doing at the police station in Mukjar in January 2004?
- 2 A. [10:42:40] I went to see some people I know.
- 3 Q. [10:42:49] Why?
- 4 A. [10:42:53] Are we in a private session or a closed one?
- 5 PRESIDING JUDGE KORNER: [10:42:59] All right. You want to pursue this, do
- 6 you?
- 7 MR EDWARDS: [10:43:02] Perhaps I can come back to it, to stay in public session.
- 8 I'll just make a note.
- 9 Q. [10:43:28] I'm going to come back to that. I want to ask you about the contents
- 10 of paragraph 49 of your witness statement and what you say about weapons
- 11 distribution in July 2003.
- 12 We're going to stay in public session, but we have to be careful not to discuss
- 13 the work that you were doing.
- 14 Nyango is to the south of Garsila, right?
- 15 A. [10:44:06] *No
- 16 Q. [10:44:09] Is Nyango a -- is it a town, is it a village, is it just
- 17 a geographical -- a feature? What is it?
- 18 A. [10:44:27] Nyango is a village to the south of Garsila. There was Wadi Manga,
- 19 a seasonal river.
- 20 Q. [10:44:38] Now you, you explain how you were travelling in a vehicle in
- 21 July 2003 to Garsila?
- 22 A. [10:44:54] Yes.
- 23 Q. [10:44:55] On -- on your (Redacted) business?
- 24 A. [10:45:04] Yes.
- 25 Q. [10:45:05] Also in the vehicle was the director of your business?

1 A. [10:45:14] Yes.

2 Q. [10:45:15] And then if you look at paragraph -- if you look at paragraph 49,
3 please, of your statement, there's a third person in the vehicle. Do you see the name
4 of that third person in the vehicle?

5 A. [10:45:57] Yes.

6 Q. [10:45:58] If you continue reading that paragraph and focus on the very last
7 sentence of that paragraph, you said: "We were told by Muhammad, an 'aqid' that
8 the Government was having a meeting there."

9 A. [10:46:20] Yes.

10 Q. [10:46:20] Was that Muhammad the third person in your vehicle?

11 A. [10:46:25] No, no. No, he was not the third person in the vehicle.

12 Q. [10:46:29] Okay. Thank you. Was there some sort of a roadblock at Nyango?

13 A. [10:46:42] No, there were no block. You are meaning that a building or a wall?
14 What do you mean by -- by ...

15 Q. [10:46:56] It could be -- it could be -- was there some sort of a barrier at Nyango
16 where people's vehicles had to stop and vehicles had to be checked?

17 A. [10:47:12] No, there was no barrier, no.

18 Q. [10:47:16] On your way to Garsila, did you actually stop at Nyango or just drive
19 through?

20 A. [10:47:24] Of course we stopped at Nyango.

21 Q. [10:47:29] "Of course we stopped at Nyango."

22 You didn't have any business at Nyango, did you?

23 A. [10:47:41] There was a group of people on the *wadi* and we stopped.

24 Q. [10:47:51] Okay. Why did you stop?

25 A. [10:47:55] Well, to say hello and to know what is going on.

1 Q. [10:48:01] Why did you care what was going on? It's got nothing to do with
2 you, it's got nothing to do with your business.

3 A. [10:48:17] When I find people, I'll just stop and talk to them just to know what is
4 going on. At that time there were troubles in the area, so I just wanted to know what
5 is happening.

6 PRESIDING JUDGE KORNER: [10:48:28] Mr Edwards, you're getting a warning,
7 I don't know whether you saw it, about leaving a gap.

8 MR EDWARDS: [10:48:33] Yes.

9 PRESIDING JUDGE KORNER: [10:48:34] I think you really must -- I know it's
10 difficult. Asking three questions instead of the one you asked originally, you added
11 a couple of comments after that. Just stick to the short simple question and I think
12 we'll get on better that way.

13 MR EDWARDS: [10:48:52]

14 Q. [10:48:53] So you stopped out of essentially curiosity; is that right?

15 A. [10:49:03] No, not curiosity -- out of curiosity. Just being careful, just wanting
16 to know what is happening.

17 Q. [10:49:11] And then after finishing with your business in Garsila you come back
18 same day. Do you stop again at Nyango?

19 A. [10:49:21] Yes.

20 Q. [10:49:29] Do you stop also because you just want to know what's going on?

21 A. [10:49:37] We stopped to know that if there is any information about the way we
22 are going back, it is safe, are there any danger and everything is okay. So just
23 wanted to make sure for our safety, we were asking people.

24 Q. [10:49:58] Well, you checked to see whether it would be safe at the
25 Central Reserve Forces' office. Sorry, to the office of the coordinator of the PDF in

1 Garsila, didn't you?

2 A. [10:50:24] Yes.

3 Q. [10:50:31] And you also checked whether it was safe when you arrived at
4 Nyango?

5 A. [10:50:40] Yes, yes, we arrived Nyango very safely.

6 Q. [10:50:46] You say that there are three people that you spoke with on the way
7 back. Paragraph 52. A Janjaweed fighter, a police officer, and a driver.

8 A. [10:51:07] Yes.

9 Q. [10:51:07] Did -- well, just say "yes" or "no" for now. Do you know the names
10 of any of those three people?

11 A. [10:51:19] Yes.

12 Q. [10:51:21] Did any of those three people know you?

13 A. [10:51:29] Yes, yes, they know me very well.

14 Q. [10:51:35] When we go into private session, I'll -- I'll come back to this.

15 A. [10:51:45] (Speaks English) Okay.

16 Q. [10:51:47] Did these three people, did any of these three people know what your
17 ethnicity was?

18 A. [10:52:06] Yes.

19 Q. [10:52:08] What language did you speak to these three people in?

20 A. [10:52:15] Arabic.

21 Q. [10:52:22] Did these -- had you ever discussed with these three people
22 the rebellion going on in Darfur, ever?

23 A. [10:52:38] No.

24 Q. [10:52:47] And you say that the Janjaweed fighter told you that the government
25 planned to start fighting and that they had received weapons from Ja'afar

1 Abd-Al-Hakam?

2 A. [10:53:12] This is what he said, but I did not discuss the matter. That is what he
3 said.

4 Q. [10:53:17] No, I understand that. Again, he had no idea at all, did he, whether
5 you were a supporter of the rebellion or not?

6 A. [10:53:34] Well, he knows me, that (Redacted), I am doing my duty.
7 But I did not discuss this matter with him. And I don't know what he thinks anyway.
8 We never discussed this matter.

9 Q. [10:53:48] Exactly. He had no idea what you thought about the rebellion, did
10 he?

11 A. [10:53:59] I don't know. I don't know. We have not discussed this matter, so
12 I don't know what he thinks.

13 Q. [10:54:09] Paragraph 54, there's a person -- have a look at paragraph 54, and you
14 talk about discussions that you had with a person who was a trader from an African
15 tribe called the Mararit.

16 A. [10:54:33] Yes.

17 Q. [10:54:42] When you had this discussion on 14 August 2003, where did this
18 discussion take place?

19 A. [10:55:02] I will answer this question in a closed session. I will answer this
20 question in a closed session.

21 Q. [10:55:07] Well, can you -- can you just tell us what town it was in. That
22 doesn't have to be in closed session.

23 A. [10:55:14] (Speaks English) Bindisi.

24 Q. [10:55:17] Bindisi. All right.

25 Now just to put this into a chronology, this was after your -- your extended trip to

1 Mukjar. This was after you had heard the speech of Harun, correct, on

2 14 August 2003?

3 A. [10:55:52] Yes.

4 Q. [10:55:57] Was this conversation that you had with the African -- with the trader
5 in Bindisi, is this a discussion that features in your notebook?

6 A. [10:56:20] You are not asking me about my notebook, you are talking about
7 what is being said in this paragraph and the statement I made?

8 Q. [10:56:33] Well, sir, I am asking you about the notebook. The question is this:
9 Is this encounter, this discussion with the African trader, something that you wrote
10 about in your notebook? It's a simple question.

11 A. [10:56:54] I do not have it -- my notebook now, but I think I'm referring what is
12 before me here. I did not say that I received this information from that notebook.

13 Q. [10:57:10] I know. I'm going to ask the question one more time.

14 This discussion with the African trader in Bindisi, did you make a note of it in your
15 notebook, "yes" or "no"?

16 A. [10:57:31] I don't know.

17 Q. [10:57:35] How -- how well did you know this African trader? How long had
18 you known him for?

19 A. [10:57:48] He lives in my -- and he -- we are neighbours. We are neighbours, he
20 lives in -- within 200 or 300 metres, and he works in the market. And I also have
21 a place in the market. We meet very often and we talk to each other and we talk
22 about what happened -- what is happening in the country.

23 Q. [10:58:25] In 2003, how long had you known him for?

24 A. [10:58:45] I knew him when he was a child.

25 Q. [10:58:50] I see. And did he ever explain to you why he chose to fight on

1 the side of the government?

2 A. [10:59:21] (No interpretation)

3 Q. [10:59:22] I'm sorry, we didn't get a translation.

4 A. [10:59:24] I said no.

5 Q. [10:59:26] Did you ever ask him?

6 A. [10:59:33] No, I never asked him. But he told me.

7 Q. [10:59:37] Okay. So what did he say?

8 A. [10:59:46] He said there is a plan to destroy this area. That is what he said.

9 Q. [10:59:56] Okay. Did he ex -- well ...

10 PRESIDING JUDGE KORNER: [11:00:02](Overlapping speakers) All right. I'm
11 going to stop and we'll take the break.

12 Sir, there will be the half hour break now, if you'd like to go with the court officer.

13 And again, don't discuss your evidence with anybody, please.

14 (The witness exits the courtroom)

15 PRESIDING JUDGE KORNER: [11:00:58] Mr Edwards, I know that this morning has
16 been particularly difficult. I'm not sure what's happening about interpretation, but
17 it's obviously gone wrong slightly. But what he's now answered is not the question
18 you're asking him at all. But I -- and I think you have just got to stick to one sentence
19 direct questions, however irritating it may be and not the way you want to conduct
20 your cross-examination.

21 What you want to know was, as I understand it, was if he ever explained why he was
22 fighting with the government as -- as he wasn't the government. And what you got
23 was the answer about what he told him.

24 MR EDWARDS: [11:01:46] I'll try -- I'll try and make my questions simpler. I'm
25 surprised that that question might be considered anything other than entirely

1 straightforward --

2 PRESIDING JUDGE KORNER: [11:01:48] Well, if --

3 MR EDWARDS: [11:01:48] -- but I'll think of a different way of asking it.

4 PRESIDING JUDGE KORNER: [11:01:59] No, but it didn't -- sorry, if we go back to

5 it:

6 "... did he ever explain to you why he chose to fight on the side of the government?

7 (No interpretation)

8 ... we didn't get a translation.

9 I said no.

10 Did you ever ask him?

11 No, I never asked him. But he told me.

12 Okay. ... what did he say?"

13 I mean, it's all getting really confused.

14 So what he thought you were asking him was, when he said "he told me", I think it

15 may have been something was missed off as well, that he was going to tell us again

16 what he said in his statement.

17 MR EDWARDS: [11:02:36] Yes.

18 PRESIDING JUDGE KORNER: [11:02:36] And I appreciate that -- that, you know,

19 you like to do a more sophisticated cross-examination, but I think this is an occasion

20 where you will just have to ask direct questions and straightforward one-sentence

21 ones.

22 Yes. All right, 11.30, please.

23 MR EDWARDS: [11:02:57] Your Honour, for the purposes of the public

24 gallery - we're taking a break anyway, I'm in your Honour's hands - I can continue in

25 public session, but there are things that need mopping up before it gets lost.

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1 So my proposition, if it meets with your Honour's favour, would be that when we
2 come back, we have a short period in private session just to clear up what needs to be
3 cleared up.

4 PRESIDING JUDGE KORNER: [11:03:21] Yes, well, I think that makes more sense,
5 yes. All right. The gallery will have heard what you said. So when you say
6 "short", 15 minutes?

7 MR EDWARDS: [11:03:30] Something like that.

8 PRESIDING JUDGE KORNER: [11:03:31] Yes. All right, yes.

9 Thank you.

10 THE COURT USHER: [11:03:34] All rise.

11 (Recess taken at 11.03 a.m.)

12 (Upon resuming in open session at 11.35 a.m.)

13 THE COURT USHER: [11:35:51] All rise.

14 Please be seated.

15 PRESIDING JUDGE KORNER: [11:36:11] Are we in private session? If not, we
16 ought to go into it.

17 THE COURT OFFICER: [11:36:16] We're in open session. I will move to private.

18 (Private session at 11.36 a.m.)

19 THE COURT OFFICER: [11:36:33] We're in private session, Madam President.

20 (Redacted)

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- 13 (Open session at 11.48 a.m.)
- 14 THE COURT OFFICER: [11:48:30] We're back in open session, Madam President.
- 15 MR EDWARDS: [11:48:37]
- 16 Q. [11:48:40] I'm about to ask you about the visit of Ahmad Harun in Mukjar on
- 17 7 August 2003. But before, I just want to draw a few threads together to see if I
- 18 understand your evidence.
- 19 So, by 14 August 2003, you had seen and you had been told about weapons
- 20 distribution, correct?
- 21 A. [11:49:46] In -- in 2004, I didn't say that.
- 22 Q. [11:49:54] No. No, neither did I.
- 23 By 14 August 2003, you had seen or been told about weapons --
- 24 A. [11:50:14] (Microphone not activated) 2004.
- 25 Q. [11:50:18] Okay. Just listen carefully. By 14 August 2003, according to you,

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1 you had seen or been told about weapons distribution, correct?

2 A. [11:50:47] Yes, August 2003, yes.

3 Q. [11:50:52] Okay. You were also aware that local political leaders were arming
4 the Fursan, correct?

5 A. [11:51:05] Yes.

6 Q. [11:51:07] You were aware that *agids* and *agid ogada* had been appointed to lead
7 Fursan, yes?

8 A. [11:51:23] Yes.

9 Q. [11:51:27] You also were aware that rebels had attacked Bindisi on 15 July?

10 A. [11:51:43] Yes.

11 Q. [11:51:43] And after the rebels had attacked Bindisi, you knew that
12 a confrontation was about to take place?

13 A. [11:52:01] Yes.

14 Q. [11:52:02] You had been told that the government was planning to start
15 fighting?

16 A. [11:52:12] Yes.

17 Q. [11:52:14] And you had been told that the government were planning to destroy
18 all the villages in Wadi Salih?

19 A. [11:52:23] Yes.

20 Q. [11:52:29] You had also been present during the visit of Ahmad Harun in
21 Mukjar on 7 August?

22 A. [11:52:41] Yes.

23 Q. [11:52:44] Let's talk about that visit.

24 Paragraph 62 and 63, your Honours.

25 You went to Mukjar for the purposes of your job, correct?

1 A. [11:53:16] Yes.

2 Q. [11:53:32] Then page 65, you're -- you're present and you hear Harun saying this,
3 that because the children of the Fur had become rebels, all the Fur and what they had
4 had been booty, *ghanema*, for the Mujahidin.

5 A. [11:54:17] Yes, this is what he said.

6 Q. [11:54:21] Did this terrify you?

7 A. [11:54:30] Very much.

8 Q. [11:54:35] You must have had no doubt that this was essentially a declaration of
9 war against the Fur.

10 A. [11:54:49] Yes, of course. Ahmad Harun was not just a regular person.

11 Q. [11:54:58] Yeah. And on your evidence, or -- and -- and, you say, that
12 immediately the Fursan started to loot Mukjar.

13 A. [11:55:20] Yes.

14 Q. [11:55:25] Was it your conclusion that the words of Harun caused that
15 immediate looting?

16 A. [11:55:54] (No interpretation)

17 Q. [11:55:55] I think it's a yes, but --

18 A. [11:56:02] Yes.

19 Q. [11:56:02] All right. You say that a *shartay* and someone called Ibrahim
20 Muhammad Ebo expressed their concerns.

21 A. [11:56:20] No, no, there is a mistake here. I would like to correct this name.
22 The *shartay*'s name is Umar Ahmad Zarruq and the other person's name is Ibrahim
23 Muhammad Abo, not Ebo.

24 Q. [11:56:43] Thank you, sir.

25 Yes, that's paragraph 68, your Honour.

1 Essentially, Harun ignored their protests?

2 A. [11:57:03] Yes.

3 Q. [11:57:09] After the meeting, what did you do to return to your family in
4 Bindisi?

5 A. [11:57:28] I decided to go back to Bindisi because it was completely unsafe to
6 stay in Mukjar.

7 Q. [11:57:48] Isn't it right that you weren't able, you say, to go back to Bindisi for
8 another -- almost another week?

9 Paragraph 75, your Honour.

10 A. [11:58:32] Yes, I decided to go to Bindisi, but the road was closed and
11 the situation was very unstable and that's why I couldn't.

12 Q. [11:58:40] You were in possession of -- or, sorry, start again. (Redacted)
13 (Redacted) right?

14 A. [11:58:53] Yes.

15 Q. [11:58:56] Being on official business in Mukjar, you had guards, didn't you?

16 A. [11:59:10] No, I didn't have guards when I went to Mukjar. (Redacted)
17 (Redacted)

18 (Redacted)

19 Q. [11:59:36] You knew a number of *agids* in -- that were present in Mukjar, didn't
20 you?

21 A. [11:59:48] Yes, yes.

22 Q. [11:59:49] You could have asked them to arrange for safe passage out of Mukjar,
23 couldn't you?

24 A. [11:59:59] After Ahmad Harun's statement the whole situation was completely
25 different. It wasn't the normal situation that we were used to.

1 Q. [12:00:08] I understand that. But even though it wasn't a normal situation, you
2 could have asked for safe passage from one of your contacts, couldn't you?

3 A. [12:00:34] In normal circumstances, yes. But when the situation is extremely
4 abnormal, I couldn't ask for assistance.

5 Q. [12:00:49] Just so that we're very clear, you didn't even ask?

6 A. [12:00:59] Yes.

7 Q. [12:01:05] You must have wanted to get back to your family as quickly as
8 possible.

9 A. [12:01:12] Yes.

10 Q. [12:01:16] You must have wanted to warn the community back in Bindisi as
11 quickly as possible.

12 A. [12:01:34] I wanted of course to make sure that my family is okay, my property
13 is okay.

14 Q. [12:01:44] And to warn your community, sir, no?

15 A. [12:01:55] Yes, those who met me, I tried to tell them what is happening in
16 Mukjar. Well, this did not happen.

17 Q. [12:02:07] No. So do tell us what concrete steps, then, did you take to leave
18 Mukjar and to get back to Bindisi as quickly as possible?

19 A. [12:02:28] That the Janjaweed should leave Mukjar and that the fighting should
20 stop, and everything should stop. And there was a period of calm, and then after
21 that I will be sure that I can go back to my family.

22 Q. [12:02:57] But what positive concrete steps did you take to go back to Bindisi,
23 apart from just waiting for things to calm down?

24 A. [12:03:20] I decided to wait and to meet someone who came with a car, or a bike,
25 and ask him about the way to Bindisi: Are there any problems or have you suffered

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1 anything? Is it safe to go back?

2 And after that of course I decide, in light of this information, to go back.

3 Q. [12:03:48] Isn't it the case that you did not go back immediately to Bindisi
4 because you did not have knowledge of any imminent danger?

5 A. [12:04:14] Well tensions were quite high in Mukjar and outside Mukjar. I
6 thought that this will be an unstable situation.

7 Q. [12:04:34] Is it the case that in fact you did not know anything about weapons
8 distributions, and that's why you weren't in a hurry to go back to Bindisi?

9 A. [12:04:49] Can you please repeat the question.

10 Q. [12:04:52] I want to be very clear. The reason you didn't go back to Bindisi in
11 a hurry is because, in reality, you had no knowledge of weapons distribution, you
12 had no knowledge of the government plan.

13 A. [12:05:18] *I did not go back to Bindisi, because it was visible to me that there
14 were weapons and that there was looting and people were being hit. In this case I
15 will just think about I will stay alive.

16 Q. [12:05:36] Paragraph 76. We're now moving on to the attack on Bindisi on 15
17 and 16 August 2003. That's what I want to focus on now, okay?

18 A. [12:05:50] Yes.

19 Q. [12:05:52] You were at your home that day in north Bindisi, correct?

20 A. [12:06:02] Yes.

21 MR EDWARDS: [12:06:07] Your Honours, I'm going to want to make reference to
22 the satellite image that the witness marked with an "A" yesterday. It can go up on
23 the Elmo but should not be publicly broadcast.

24 It is -- according to the transcript, it's DAR-OTP-REG-0001-0009, but that might not be
25 entirely accurate. Yeah.

- 1 Can I just enquire of the court officer, is this now in Nuix or Ringtail? Can it be
2 brought up electronically or does it have to go on the Elmo? It can. Great. All
3 right. Let's do that then, please. But again, not for public broadcast.
- 4 Q. [12:07:11] While -- there's a document that's coming on the screen and it's
5 the document that you marked with an "A" yesterday, sir. All right?
6 While that's -- right, there we are. Okay. And can we zoom in, please, to the top
7 left-hand corner where we have the markings. Yeah.
8 It's a while since -- it's a few days since you've marked up this -- this document. But
9 so that - oh, that's excellent - so that you can be reminded: "1" is the town hall,
10 the locality; "2" is the *zakat* building; "3" is the market; "A" is your house and "4" is
11 something else which I can't remember.
12 Now, from "A", which direction did you have to go to go to the mosque for
13 the midday prayers, sir?
- 14 A. [12:08:50] To the east. I go east.
- 15 Q. [12:08:55] Directly east?
- 16 A. [12:08:59] Yes, directly east.
- 17 Q. [12:09:03] Whereas the -- whereas the market is north -- north-east, right,
18 according to the map?
- 19 A. [12:09:17] Yes.
- 20 Q. [12:09:17] And on -- on that day did you actually make it to the mosque before
21 you were aware of the -- the arrival of the -- the Fursan?
- 22 A. [12:09:43] Can you please repeat the question.
- 23 Q. [12:09:46] You -- at midday you started making your way to the mosque and, as
24 I understand from your statement, you saw smoke rising from Tiro?
- 25 A. [12:10:03] Yes. On my way to take the Friday pray at the mosque, yes.

1 Q. [12:10:10] So did you actually make it to the mosque that day or did you
2 abandon your midday prayers on that day?

3 A. [12:10:20] No, I did not go to the mosque. But I was close to my home, between
4 my home and the mosque, and I saw those vehicles.

5 Q. [12:10:33] And from home to the mosque, due east, how long would it take to
6 walk?

7 A. [12:10:47] Less than 10 minutes. Maybe five or seven minutes, not more.

8 Q. [12:10:55] And as you were walking to the mosque, that is when you received
9 what was described yesterday as the false warning. Have I got that right?

10 A. [12:11:17] Yes, I received that information, but I was not expecting it. It was
11 only information I received.

12 Q. [12:11:26] When you received that false warning, you were miles -- you were
13 quite some distance from (Redacted), correct?

14 A. [12:11:37] Yes, and that is Friday. On Friday, of course, we don't go to work.

15 PRESIDING JUDGE KORNER: (Microphone not activated)

16 MR EDWARDS: [12:11:51] Yes, yes.

17 Q. [12:11:51] You -- you first notice smoke rising from the direction of Tiro, right?

18 A. [12:12:09] Yes, to the east of Bindisi.

19 Q. [12:12:20] But this was about half an hour after you received the false warning,
20 right?

21 A. [12:12:32] Yes.

22 Q. [12:12:35] If you didn't make your way to the mosque, which was only seven,
23 maybe 10 minutes' walk away, what were you doing? What were you doing
24 between receiving the false warning and seeing the smoke rising from Tiro?

25 A. [12:13:07] I went back home because my father was an old man, he was not able,

1 of course, to move. And my children were very young and were staying at home.

2 So I went back home to tell them and to find the way out.

3 Q. [12:13:27] So you were at home when you saw the smoke rising from Tiro?

4 A. [12:13:35] Yes, I was at home. When I saw, I was between my home and
5 the mosque. When I saw the smoke I went back to my home and I told the members
6 of my family to -- to leave. But I did not leave.

7 Q. [12:13:59] And 10 minutes after seeing the smoke rising from Tiro, you see
8 smoke rising from Kodoom or from the direction of Kodoom, right?

9 A. [12:14:11] Yes.

10 Q. [12:14:13] Now this is right, isn't it, Kodoom is about halfway between Bindisi
11 and Tiro, approximately?

12 A. [12:14:26] Yes, almost. It is closer to Tiro from Bindisi, yes.

13 Q. [12:14:31] So as the -- as you see the smoke rising from villages, from Tiro, then
14 Kodoom, that gives you good reason to believe that the problems are going to arrive
15 in Bindisi soon, right?

16 A. [12:14:50] Immediately I heard from the forces that people are coming to collect
17 *zakat* in Bindisi. And after they left, I saw the smoke from a village and it's moving
18 to another village. So it is normal that I know that it will happen. It will arrive in
19 Bindisi sooner or later.

20 Q. [12:15:17] So what did you tell your family to do?

21 A. [12:15:25] I told my wife and my mother and father they -- they should leave
22 and go south to the old Bindisi. They have to leave home and go there.

23 Q. [12:15:40] And is that what they did?

24 A. [12:15:44] Yes, immediately.

25 Q. [12:15:47] And you didn't go with them?

1 A. [12:15:52] No, I did not go with them.

2 Q. [12:15:56] Why ever not? Why not?

3 A. [12:16:08] I have everything at home in my house and they have properties in
4 the market. I just warn members -- members of my family. I did not go with them.
5 I said I have to wait just to know the facts and what is happening exactly.

6 Q. [12:16:27] Well, sir, you knew the facts. You knew that Bindisi was about to be
7 attacked, didn't you?

8 A. [12:16:38] Yes. After -- after seeing the smoke, I said, yes, it will come to
9 Bindisi, definitely.

10 Q. [12:16:44] Right. So what did you think you could do by staying at home?
11 How would that help?

12 A. [12:16:55] I did not leave with the family, so that I wanted to know the truth and
13 what is happening exactly.

14 Q. [12:17:02] Did you stay in your house?

15 A. [12:17:07] No. I was outside my home with the neighbours and the -- the ladies
16 and the old people and the young people left, but men stayed because they wanted to
17 know what is happening exactly.

18 Q. [12:17:36] Weren't you putting your life in danger by not fleeing?

19 A. [12:17:48] Well, this is one of the -- men should -- in these cases, men should be
20 there. I did not have any weapons, but I waited to know exactly what is happening.
21 This is usually what men do.

22 Q. [12:18:04] Don't men have a responsibility to protect their wives and children
23 and parents?

24 A. [12:18:14] Yes. You have to tell them to leave this area because of the danger.
25 I cannot protect them if they stay there. So I will just ask them to leave. And I will

1 try, well, as much as I can, to protect myself. So I tell the members of my family to
2 leave.

3 Q. [12:18:39] You didn't know where you were sending your family off to, did you?

4 A. [12:18:50] I told them to go to the forest, nearby forest. There are *wadis* in that
5 area, and maybe Fursans will not be able to enter that area because they are killing
6 people and they're just looting the -- so I told them to go to those forests and so they
7 can hide there, because it's a good place to hide.

8 Q. [12:19:18] Did the Fursan come to your home?

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

10 Q. [12:19:28] What happened when they came to your home?

11 A. [12:19:38] They burnt it down. They looted everything. And *I never went
12 back to my home.

13 Q. [12:19:49] Were you present when they looted everything and burned down
14 your home?

15 A. [12:19:57] No, I was not at the house at that time. I was not there.

16 Q. [12:20:06] Okay. Before they looted and burned down your home then, did
17 you flee into the -- into the woods?

18 A. [12:20:17] Well, I disappeared. I tried to hide myself in a place. I tried to hide
19 myself in a place.

20 Q. [12:20:25] Was that -- what that in the forests?

21 A. [12:20:30] No, inside the town.

22 Q. [12:20:45] From your home -- no, let me start again.

23 Were you inside your home when you first saw the Fursan arrive in Bindisi, or were
24 you outside your home?

25 A. [12:21:09] I was outside my home.

1 Q. [12:21:12] What distance from your home?

2 A. [12:21:24] 300 or 400 metres away from home.

3 Q. [12:21:29] In which direction?

4 A. [12:21:33] To the north of my home. North-east of my home.

5 Q. [12:21:48] Towards the market?

6 A. [12:21:52] Yes, towards the market.

7 Q. [12:21:56] Okay. I want to just confirm something that you said yesterday in
8 your evidence.

9 A. [12:22:13] (No interpretation)

10 Q. [12:22:23] Just one moment, please.

11 Okay. So your evidence is that after going back home, sending your family away,
12 you then walk away from your home and head directly to where the Fursan are; is
13 that right?

14 A. [12:23:07] At that time they were not in Bindisi. The Fursan were not in Bindisi.
15 When I told my family to leave, Fursan were not in Bindisi at that time.

16 Q. [12:23:25] When you had gone to a place three or four -- 300 metres, or whatever,
17 from your home, heading north-east, where did you stop? Were you just -- where
18 did you stop?

19 A. [12:23:46] I stopped in buildings under construction. There was a building
20 under construction, so I stopped there.

21 Q. [12:24:00] And what did you -- what was your intention in stopping at that
22 building that was under construction?

23 A. [12:24:10] It was a safe area, because the Janjaweed would not think about it,
24 because this is a building under construction. So there is no money there and there
25 is no property, so they do not care about attacking this area. This is what I thought,

1 so I hid myself there.

2 Q. [12:24:52] And you were about 400 metres from the market?

3 A. [12:24:58] Yes.

4 Q. [12:25:04] In the top right-hand corner -- well, no, hang on. No.

5 By looking at the map that's on the screen - just tell me "yes" or "no" - would you be
6 able to mark where it is that you stopped in a building under construction?

7 No. Mr Witness, just pause for a second. Don't do it yet. Just tell me if you would
8 be able to.

9 A. [12:26:00] Yes.

10 Q. [12:26:03] Okay. Could you please mark on the map, then, where this building
11 under construction was.

12 I don't know if that can be done directly on the screen.

13 A. [12:26:49] With an "A" or "B", or something like that, shall I put as a mark?

14 Q. [12:26:54] A "B", please.

15 A. [12:26:58] Yes, "B", yes.

16 Q. [12:27:10] And just tell us, how many Fursan did you -- can you estimate how
17 many Fursan you saw at the market.

18 A. [12:27:30] You mean inside the market? Well, all the Fursans who -- who
19 entered to the north of Bindisi, do you mean the market or the whole Bindisi?

20 Q. [12:27:45] Yes. And are you able to estimate how many Fursan there were
21 inside the market?

22 A. [12:27:58] 2,000 maybe. An estimation, 2,000, maybe.

23 Q. [12:28:06] And many of them were on horseback?

24 A. [12:28:13] Most of them were on horseback.

25 Q. [12:28:16] And some of them were on camelback?

1 A. [12:28:21] Yes, some of them were on camelback.

2 Q. [12:28:28] So that the market must have been absolutely rammed full of
3 mounted Fursan.

4 A. [12:28:40] Yes.

5 Q. [12:28:42] And was the market an open space, or was it -- were there sort of
6 lanes, little lanes and individual stalls and shops? Or was it a completely open
7 space?

8 A. [12:29:00] It is an open area. It is open. There is no wall or -- it is an open area.
9 And, of course, it is divided in different parts, which is an open area.

10 Q. [12:29:15] When you say it's divided into open parts, what do you mean?
11 Divided by buildings? Divided by structures?

12 A. [12:29:24] Yes, there are -- there are buildings and temporary buildings, and
13 areas for the cattle, maybe. And it is an open area, in general, with some, of course,
14 buildings.

15 Q. [12:29:40] And between the building under construction and the market, are
16 there other buildings?

17 A. [12:29:55] Only the mosque. And there were some separated or
18 random houses. But from where I was hiding, I was able to see there was nothing
19 obstructing my view.

20 Q. [12:30:18] And apart from the 2,000, or however many, armed Fursan at the
21 market, were there other members of the public in the area?

22 A. [12:30:47] No. The market was closed.

23 Q. [12:30:51] Okay. I understand that the market was closed. But were there
24 other villagers in the area watching what was going on in the same way that you
25 were?

1 A. [12:31:11] The situation was terrifying. I can't tell. But there were people who
2 came with the attackers. So there was smoke rising from Kodoom, and there were
3 also other villages that were destroyed, and the villagers escaped to Bindisi. It was
4 a situation of confusion. And I can't tell, really, if there were other people hiding like
5 me or not, but there was a lot of movement.

6 Q. [12:31:55] What did -- why were you hiding? What did you think would
7 happen if you had been found?

8 A. [12:32:11] I don't know.

9 Q. [12:32:15] Well, what did you fear would happen if you had been found?

10 A. [12:32:27] I was scared that I will die, just like other people died.

11 Q. [12:32:33] So you were -- so you were doing your very best to be hidden and to
12 remain out of sight, right?

13 A. [12:32:48] Yes.

14 Q. [12:32:53] How long did you stay in that building under construction?

15 A. [12:33:07] Approximately an hour or an hour and 20 minutes.

16 Q. [12:33:11] And then where did you go to?

17 A. [12:33:17] Then I went towards the south, to old Bindisi.

18 Q. [12:33:22] Did you cross the *wadi* into old Bindisi?

19 A. [12:33:29] Yes. During the attack, rain -- or, it started to rain. And because of
20 the rain it was easy to start moving because operation had stopped.

21 Q. [12:33:50] Okay. And how did you go about trying to -- to find your family
22 that you had sent off to hide?

23 A. [12:34:12] I didn't see my family for about a week or over a week. I met only
24 some of them, not all of them. Some in Mukjar and some in other areas between
25 Mukjar and Bindisi.

1 Q. [12:34:37] On 15 August, after the Fursan had left, you didn't then go to
2 the market to see what had happened.

3 A. [12:34:54] We went back. And the next morning I went back to the market.
4 On 16 August I went back to the market.

5 Q. [12:35:06] But not on the 15th?

6 A. [12:35:10] No, not on the 15th.

7 Q. [12:35:15] But on the 15th you had seen that the Fursan had left once it started
8 raining, right?

9 A. [12:35:26] Yes. When it started raining, I didn't see anyone. They might have
10 been still in the market, but the northern area was -- there was no nobody there.

11 Q. [12:35:43] Okay. Now, you've told us that the whole purpose for you to remain
12 in new Bindisi, in north Bindisi, was to -- was to see what happened, right? That's
13 why you didn't flee with your family. Have I got that right?

14 A. [12:36:23] I got -- or I -- I went later because I thought maybe I can take
15 somebody else with me. My family didn't have clothes, didn't have anything else, so
16 maybe I thought I can take a few things for them after a little while. And that that's
17 the -- that's my thinking at the time, to take stuff that might assist my family.

18 Q. [12:36:55] Okay. Mr Witness, that wasn't my question, okay. And maybe my
19 question was too complicated, so I'll try again.

20 The reason you didn't flee with your family is because you wanted to see what was
21 going on, you wanted to see what was going to happen, right?

22 A. [12:37:18] Yes, it's true.

23 Q. [12:37:20] And you wanted to know what happened to your shop, to your
24 possessions at the market, right?

25 A. [12:37:39] Yes, I wanted to know.

1 Q. [12:37:44] So after the rain comes down, after the Fursan have left, you had that
2 opportunity to go to the market and look, and you didn't.

3 A. [12:37:57] The market was completely pillaged and it was still too risky to go
4 back to the market. Because I wasn't still sure if all the Fursans have left or not.

5 Q. [12:38:08] Well, the next day, 16 August, you still didn't know if all the Fursan
6 had left or not, did you?

7 A. [12:38:21] Yes, I wasn't sure. But when I went to the market everything was
8 pillaged, including my shop. It was open.

9 Q. [12:38:35] No, I understand that. But on 16 August, the next day, the situation
10 was exactly the same. You didn't know if the Fursan were still there or not.

11 A. [12:38:53] No, the situation was different. On the 16th in the morning, 7 o'clock
12 until maybe 8 and 9, no Fursans were in the market. And all the shop owners went
13 back to find out what happened to their shops and their belongings. *But we were
14 surprised with a new attack on the market from the north, and so we left the market.

15 Q. [12:39:30] When you realised on the morning of 16 August that the Fursan were
16 still there, you turned and ran; is that right?

17 A. [12:39:49] Yes.

18 Q. [12:39:55] Did you run south?

19 A. [12:40:02] South, yes.

20 Q. [12:40:04] You ran south towards the forest or the gardens between old and new
21 Bindisi, right?

22 A. [12:40:15] Yes, yes.

23 Q. [12:40:18] And before you started running, when you saw that the Fursan were
24 still there, did you stop and have a good look around and spend five or 10 minutes
25 seeing what was going on, or did you see the Fursan and immediately turn around

1 and run?

2 A. [12:40:44] The situation was terrifying, so it was difficult for one to stand and
3 wait for gunshots to come towards you. No, I didn't wait.

4 Q. [12:41:00] No. Exactly. Okay. And then how long did it take for you
5 to -- how long does it take to run to the gardens between old and new Bindisi?
6 Can we please scroll down to the very bottom of the image, please. Thank you.
7 Thank you. Thank you.

8 A. [12:41:31] Running, if I was running the whole distance, it shouldn't take more
9 than 20 minutes.

10 Q. [12:41:43] Okay. And the gardens or the -- the forest part is
11 the -- the dark -- the darker coloured part of the town in the bottom left-hand corner
12 of the image on your screen, right, north of Wadi Salih?

13 A. [12:42:13] No, that's not correct.

14 Q. [12:42:14] Okay. We're going to need to bring up, then, the map of south
15 Bindisi, which is at Prosecution bundle tab -- bear with me a moment, please.
16 Behind tab 6, DAR-OTP-0220-4715.

17 Yeah. Okay. Can we please zoom into that same darker area north of Wadi Salih
18 that's marked with a -- with a "2", please.

19 You see on the -- do you see on the screen, sir --

20 A. [12:43:50] My objection is not the fact of -- about zone "2", but I'm talking about
21 the gardens. The gardens are everywhere, to the north and the south, and all around
22 Wadi Salih. The gardens are not specifically in that place only. They are
23 everywhere.

24 Q. [12:44:16] Okay. Please keep this on the screen. I'm just going to read out
25 your -- what you say in paragraph 86 of your statement, okay. We're going to keep

1 the screen on the -- we're going to keep the image on the screen.

2 Have a look at paragraph 86 of your statement: "I was in the gardens between
3 the two villages during the attack, like most of the other villagers. From our hiding
4 place we could see everything that was going on. Kushayb, for example, was less
5 than 50 metres away."

6 Although you -- you corrected that with the Prosecution to say 50 to 100 metres away.
7 Now, there's the mark -- there's the "2" which marks that dark area north of
8 Wadi Salih, and in the legend it says: "Gardens where I was. Refer to
9 paragraph 86".

10 So, Mr Witness, where you've marked "2", please confirm that that is where you ran to
11 and where you hid during the attack on 16 August.

12 A. [12:45:56] I --

13 THE INTERPRETER: [12:46:03] Message from the interpreter: I think because of
14 a technical issue, the witness didn't hear what I said. So I will just repeat.

15 MR EDWARDS: [12:46:12] Okay.

16 THE WITNESS: [12:46:32](Interpretation) Yes.

17 MR EDWARDS: [12:46:34]

18 Q. [12:46:34] How -- how many others villagers were hiding with you in those
19 gardens north of the *wadi*?

20 A. [12:46:54] I can't specify the number. But there was a huge number of people
21 who hid in the gardens on both sides of the *wadi*, but I can't really tell how many.

22 Q. [12:47:07] Yeah. And were there women and children amongst the people
23 hiding?

24 A. [12:47:18] Yes.

25 Q. [12:47:20] And everyone was trying to keep as quiet as possible in those

1 gardens?

2 A. [12:47:42] I can't tell for certain. Obviously, there was fire raging, there was
3 gunshot sounds, and there also was the sound of camels and horses. So it was quite
4 difficult to say if people stayed quiet or not. But also in these gardens, there were
5 a lot of long grass, so it was quite difficult to tell if there were people near me hiding.
6 You can see at a distance, but it's quite difficult to see when people are hiding close
7 by.

8 Q. [12:48:29] Okay. Just -- just explain that a bit. Because of the long grass, you
9 say it's difficult to see who is hiding nearby you?

10 A. [12:48:49] Yes. And only if you go up a tree, for example. If you go up a tree,
11 you might be able to see those who are underneath you. But the children and old
12 people were trying to stay still, because everybody was terrified.

13 Q. [12:49:15] And the -- the long grass, how high was it compared to you, if you're
14 standing up? Was it taller than your head?

15 A. [12:49:36] Yes. At certain locations it can be taller than me, and in other
16 locations it can be shorter than me. In the shade it doesn't grow as much, but in
17 the sun it's usually really high.

18 Q. [12:49:53] Okay. And you were obviously doing your best to avoid being seen,
19 so you were -- were you crouching down in the grass? Were you lying down in
20 the grass?

21 A. [12:50:19] I knew how to hide. There was a -- like a sand -- sandy area and
22 grass, so I tried to hide behind this area. I knew how to hide so I don't get hit by any
23 gunshots. But I -- if I wanted to see anything, I was able to go up somewhere and
24 see things.

25 Q. [12:50:54] When you say "I was able to go up", what do you mean? Do you

1 mean stand up or climb a tree? What do you mean?

2 A. [12:51:10] Go above the sandy hill, and that allows me to see at a distance. And
3 also, it was possible for me to climb up a tree, because that made my vision obviously
4 clearer.

5 Q. [12:51:32] Now, we see from the -- from the image -- can we please zoom in a bit
6 further into that bottom left-hand part. Zoom in -- sorry, forgive me. Into
7 the -- a bit -- bit more. That's it. Stop. Thank you. Stop. And can we just please
8 zoom in further. That's it. Down a bit. Because I want to see the foliage
9 on -- that's it. That's fine. Okay.

10 Now, not only was there this dense foliage, these bushes, this grass on the north side
11 of the *wadi*, there was some forest or grass, or what have you, on the south side of
12 the *wadi* as well, yes?

13 A. [12:52:43] I don't understand the question.

14 Q. [12:52:47] Right. You were -- you were hiding in the bushes in the grass on
15 the north side of the *wadi*, but there was also grass and bushes, foliage, on the south
16 side of the *wadi*. We see that from the image, don't we?

17 A. [12:53:10] Yes. I explained to you that ...

18 Q. [12:53:16] Yeah. That's fine. That's fine. I just need that confirmation, that
19 that's how the situation was in August 2003.

20 And the police station, as you've marked it on the map, was further south beyond
21 that -- those gardens or that grass. It was further south into old Bindisi, correct?

22 A. [12:53:51] Yes, that's correct.

23 Q. [12:53:55] And that's where -- it was at the site of the police station where there
24 was the -- where the Janjaweed activity was taking place, correct?

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

1 Q. [12:54:14] There was a firefight with the police officers at the police station there,
2 right?

3 A. [12:54:32] Yes.

4 Q. [12:54:36] And is that where you saw Kushayb on horseback, you say?

5 A. [12:54:46] I didn't see him at the police station, but to the west of the police
6 station. From where I was hiding, one couldn't see anything in the police station
7 itself.

8 Q. [12:55:03] Mm-hmm. You said in the -- okay, west of the police station, but still
9 in old Bindisi, south of the *wadi*, right?

10 A. [12:55:33] Yes, that's correct.

11 Q. [12:55:35] Now -- whereas, you say -- you say in your statement, he was about
12 50 metres away. I'm just trying to find where it is.

13 Paragraph 86: "Kushayb, ... was less than 50 metres away." You've corrected that to
14 be 50 to a hundred metres away. You corrected that when you were speaking --

15 A. [12:56:06] Yes.

16 Q. [12:56:06] Okay. If we look at the scale in the top right-hand corner of
17 the image -- in the top right-hand. Yeah. And then further -- further to the right,
18 please, Mr Court Officer. Yeah. If we can scroll to the right, please, so that we see
19 the top right-hand corner of the image. There.

20 Mr Witness, I'm going to suggest that, even if you were in the bushes closest -- at the
21 closest point to the *wadi*, you would have been at least 350 metres from anything that
22 you could have seen south of the *wadi*. Not 50 metres, not a hundred metres, at least
23 350 metres. Do you accept that?

24 A. [12:57:58] This is according to your estimation, but my estimation is different.

25 And also you went to the right of the image, and I don't -- really don't care about this

1 area at all. I am talking about the area to the left of the image where the police
2 station is where I was hiding. But to the right side of the image is a completely
3 different location. I wasn't talking about that.

4 Q. [12:58:31] No. Okay. No, I just moved to the right so that you could see
5 the scale.

6 Can we now please go back to where we have the -- the two bits -- the two halves of
7 the garden either side of the *wadi* and zoom in as much as we can, please. Thank
8 you. That's it. Thank you. A bit further down, please. Yeah, that's enough of
9 a zoom. I just want to go down a bit, please. Thank you.

10 In paragraph 84 of your statement, you say that you saw Ali Kushayb during
11 the attack on old Bindisi on horseback in front of the people.

12 It may be obvious, but what do you mean by "the people", sir?

13 A. [12:59:40] Other people that I spoke about actually here, and I mentioned their
14 names. They are *agid*. I know them very well. That's what I meant.

15 Q. [12:59:54] But also what -- was he also in front of a large number of Fursan?

16 A. [13:00:08] The numbers were very large, but I was only speaking the name of
17 the person that I knew. This is the only point that I was clarifying here. I didn't
18 talk about other people that I didn't know.

19 Q. [13:00:24] Okay. Thank you. But just in terms of numbers, when you saw
20 Ali Kushayb on horseback, he was there, and there was also a large number of Fursan,
21 right, to the west of the police station?

22 A. [13:00:43] Yes.

23 Q. [13:00:44] And these were Fursan also on horseback and camelback, right?

24 A. [13:00:52] Yes, on horseback and camelback.

25 Q. [13:00:57] And some of the Fursan were wearing regular *jallabiya*?

1 A. [13:01:08] Different clothes, really. Some of them were dressed in *jallabiya* and
2 some had normal trousers and shirts, and some in military uniform.

3 Q. [13:01:26] Okay. And what was Ali Kushayb wearing, according to you?

4 A. [13:01:32] When I saw him, he was wearing trousers and a shirt of the same
5 colour.

6 Q. [13:01:42] Sorry, the trousers and shirts that he were wearing -- sorry, I'll start
7 again.

8 The shirt he was wearing was of the same colour as the trousers he was wearing, do
9 you mean?

10 A. [13:01:58] Yes. It's a military uniform as well.

11 Q. [13:02:02] And what colour was that?

12 A. [13:02:09] Different colours. It's not really green, but it's not also khaki.

13 Q. [13:02:24] Bergait. Would that -- would that define it?

14 A. [13:02:31] Yes, similar to the military uniform.

15 Q. [13:02:37] Okay. And among the Fursan that were also on horseback, were
16 there others wearing the same colour uniform as Ali Kushayb?

17 A. [13:02:50] Yes.

18 Q. [13:02:51] Thank you.

19 Your Honour, I see -- I see the time. I'm making much better progress this
20 after -- well, since the last break. There's only one remaining topic, which is Mukjar,
21 but it's not a topic I can deal with in 10 minutes.

22 PRESIDING JUDGE KORNER: [13:03:10](Microphone not activated)

23 THE INTERPRETER: [13:03:17] Microphone.

24 PRESIDING JUDGE KORNER: [13:03:19] Yeah. No. All right.

25 Yes, sir, we're going to take the lunch break now. As you may have heard, your

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1 evidence will be concluded today. So if you'd like to come back, please, at 2.30.

2 Thank you very much. And if you'd like to go now with the court officer.

3 THE WITNESS: [13:03:46](Interpretation) Thank you.

4 (The witness exits the courtroom)

5 PRESIDING JUDGE KORNER: [13:04:08] Can I just be clear, Mr Edwards, you're not
6 disputing that he was there, but you're disputing that he could have seen Ali Kushayb
7 from where he was; is that the situation? I just want to make sure that I've
8 understood that.

9 MR EDWARDS: [13:04:27] Yes. Of course, in the absence of a positive instruction,
10 but yes, that's -- that's (Overlapping speakers)

11 PRESIDING JUDGE KORNER: [13:04:32] That's effectively it.

12 Okay.

13 There's one other thing that I keep meaning to say, and while I remember,
14 the additions and corrections which are being referred to, helpfully, now on paper,
15 they really -- are they being given an ERN number?

16 MR JEREMY: [13:04:50] Yes, yes, Madam President.

17 PRESIDING JUDGE KORNER: [13:04:53] So the same for all the witnesses, so
18 they're being produced.

19 MR JEREMY: [13:05:02] And submitted into the record of the case with the witness
20 statement.

21 PRESIDING JUDGE KORNER: [13:05:08] All right. Yes. Thank you very much.

22 Yes, 2.30, then, please.

23 THE COURT USHER: [13:05:12] All rise.

24 (Recess taken at 1.05 p.m.)

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

1 THE COURT USHER: [14:32:44] All rise.

2 Please be seated.

3 PRESIDING JUDGE KORNER: [14:32:56] Yes, Mr Edwards, I gather you wanted to
4 raise something before the witness comes in.

5 MR EDWARDS: [14:33:01] Thank you. Your Honour will recall asking what, as it
6 were, our case was just before the -- the lunch adjournment, and I -- on rereading
7 the transcript, I perhaps wasn't as precise as I ought to have been. Certainly, as far
8 as Bindisi is concerned, there are two days. There's the -- there's the 15th and then
9 the 16th. We had most recently been dealing with 16 August, the hiding in the grass.

10 PRESIDING JUDGE KORNER: [14:33:32] Yeah.

11 MR EDWARDS: [14:33:34] Okay. And so my answer to your Honour just before
12 the break was an answer in relation to 16 August.

13 As far as 15 August, I mean, I haven't put the case yet, but the circumstances
14 will -- are such that I'm certainly not going to be conceding that he saw what he
15 claims to have seen from the half-constructed buildings. In other words,
16 Ali Kushayb at the marketplace.

17 PRESIDING JUDGE KORNER: [14:34:13] When the looting was taking place and all
18 that?

19 MR EDWARDS: [14:34:16] Yes. Yes.

20 PRESIDING JUDGE KORNER: [14:34:19] All right. Well, in fact, now I see, it
21 says -- he says, paragraph 78: "Fursan arrived", blah, blah, blah. "I could see
22 Kushayb ...", and so on and so forth.

23 MR EDWARDS: [14:34:36] Yes, yes, yes. I'm not conceding that that was a good ID.
24 But even that he was where he says he was in order to make the ID. I'm -- I'm not
25 prepared to accept that his going home, telling his family to flee, and then him

1 running towards the gunfire, as it were, is -- I'm not accepting that that is plausible.

2 PRESIDING JUDGE KORNER: [14:35:14] No. Well, that's -- that's really -- yeah, I
3 mean, you obviously can't put a positive case, I understand that. I'm just trying to
4 think. I suppose all you --

5 MR EDWARDS: [14:35:28] That's going to be the -- (Overlapping speakers)

6 PRESIDING JUDGE KORNER: [14:35:29] Yeah. All you can do is say that if you
7 look at that, can we be satisfied --

8 MR EDWARDS: [14:35:33] Yes.

9 PRESIDING JUDGE KORNER: [14:35:33] -- that he really was there and really did
10 see what he was going to see. Okay.

11 MR EDWARDS: [14:35:39] Yes. So whereas I'm not going to concede that --

12 PRESIDING JUDGE KORNER: [14:35:45] Sorry, can you pause, Mr Edwards. I'm
13 told there's no translation in French.

14 MR EDWARDS: [14:35:54] *Excusez-moi.*

15 PRESIDING JUDGE KORNER: [14:36:01] I can see the French coming up on
16 the transcript.

17 MR EDWARDS: [14:36:08] I wonder if her Honour might just click on the volume
18 button. That may be where the difficulty lies.

19 PRESIDING JUDGE KORNER: [14:36:22] Could the French interpreter say
20 something? Okay.

21 Yes.

22 MR EDWARDS: [14:36:36] Yes. Whereas -- whereas, as far as the 16th, I don't think
23 I'm going to take issue with his, at the very least, being in the -- in the long grass, as it
24 were.

25 PRESIDING JUDGE KORNER: [14:36:49] You're not taking issue with him being

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1 there?

2 MR EDWARDS: [14:36:52] No.

3 PRESIDING JUDGE KORNER: [14:36:52] Right. Okay.

4 And while he's still out -- out of the room, as I understand it, your case on the visits to
5 the pharmacy, he's simply not telling the truth.

6 MR EDWARDS: [14:37:14] Yes.

7 PRESIDING JUDGE KORNER: [14:37:15] Right. Okay.

8 Yes. Before he comes -- well, actually, while he's being -- can I just mention
9 something else, which is really for the Prosecution. When I was reading around this
10 witness, I looked at a witness called P-878. I'm sorry, I'm taking you all by surprise
11 slightly, but -- well, maybe not. Mr Jeffery's maybe looked at it. It is a most terrible,
12 terrible statement. It isn't really a statement at all. Somebody appears to have,
13 I don't know, translated some -- some notes he made or -- or whatever, and then
14 asked follow-up questions. But it's almost impossible to follow.

15 I don't think he's on the list to come in the near future, is he, that I can recall?

16 MR NICHOLLS: [14:38:06] Not -- definitely not this month. We would be trying to
17 bring him --

18 PRESIDING JUDGE KORNER: [14:38:13] For July?

19 MR NICHOLLS: [14:38:15] Yeah, if we can.

20 PRESIDING JUDGE KORNER: [14:38:16] All right. Well, then my suggestion is --

21 MR NICHOLLS: [14:38:19] Or perhaps not July, but we will be calling him. He's
22 not at the very last of the list, your Honour.

23 PRESIDING JUDGE KORNER: [14:38:24] Oh, I see what you mean.

24 Whatever, it seems to me that somebody should spend some time retaking, putting

25 together, however it's done, a statement that follows some sort of logical order. And

1 so I've said it so that the Defence can hear it as well, because it really is impossible to
2 follow.

3 Right. Let's have -- yes, there's no use saying anything, Mr Jeremy. I'm just -- I'm
4 making this comment for the -- the OTP do not have to follow what I want them to do,
5 but I would suggest that it would help them, as well as everybody else.

6 MR NICHOLLS: [14:39:11] I won't go into it, your Honour, but there were some
7 special circumstances with that witness and the timing and how we took it and
8 the proximity to a deadline and just the amount of time we had with him due to -- to
9 the circumstances outside our control. But I do take your point.

10 PRESIDING JUDGE KORNER: [14:39:28] Yeah.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE KORNER: [14:39:34] Yes. Yes. Thank you, sir.

13 Mr Edwards.

14 MR EDWARDS: [14:39:39] Thank you, your Honour.

15 Q. [14:39:42] Hello, again. And this will be the last session we spend together.

16 We'll be done by the end of today, sir, I promise.

17 I'd like to ask you, please, about your paragraph 91.

18 And, in fact, the same incident is described, your Honours, at paragraph 44. But let's
19 have 91 up for now.

20 So, Mr Witness, you describe being detained in December 2003 for a week, but

21 this -- this isn't really explained in your statement and it wasn't covered in

22 supplementary questions yesterday.

23 Can you tell us the circumstances of your detention in December 2003.

24 If you think this might reveal your identity, then please let me know. I don't think it
25 will, but if you have concerns let me know.

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1 A. [14:41:25] I believe this would be identifying.

2 PRESIDING JUDGE KORNER: [14:41:33](Microphone not activated) All right.

3 Then we'll go into private session.

4 (Private session at 2.41 p.m.)

5 THE COURT OFFICER: [14:41:51] We're in private session, Madam President.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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- 25 (Open session at 3.02 p.m.)

- 1 THE COURT OFFICER: [15:02:50] We're in public session, Madam President.
- 2 MR EDWARDS: [15:03:02]
- 3 Q. [15:03:03] Mr Witness, there comes a point when you are staying at a particular
- 4 house that is not far from the police station in Mukjar.
- 5 Can we please have on the screen the -- the image that we had up a moment ago.
- 6 But for the purposes of this questioning, your Honour, this can't be broadcast, I'm
- 7 afraid, even in its public redacted version.
- 8 Can we zoom in, please, towards the top left-hand corner, the police station, which is
- 9 marked with the number "1". More -- even further, please. Even further, please.
- 10 Thank you. Okay. And if that can be centred.
- 11 Mr Witness, can you make out the police station there?
- 12 A. [15:04:30] Yes, I do.
- 13 Q. [15:04:32] Now, around the -- well, the police -- those two buildings are situated
- 14 within a sort of a compound, aren't they?
- 15 A. [15:04:47] Yes.
- 16 Q. [15:04:49] And do you see, because it's in a slightly darker colour, the outline of
- 17 that compound that forms a sort of a square around those two buildings?
- 18 A. [15:05:10] I did not understand the question.
- 19 Q. [15:05:14] There's a dark line around the periphery of where those two buildings
- 20 are, right?
- 21 A. [15:05:25] Yes.
- 22 Q. [15:05:27] And that dark line represents walls around the police station
- 23 compound, right?
- 24 A. [15:05:42] This is not a wall, but, rather, tents, or the defence of the military that
- 25 are dugged into the soil and covered with tents, or some sort of fabric. These are not

1 buildings.

2 Q. [15:06:08] And where -- and if we can scroll up a little bit more, please.

3 Where you have marked a "4" --

4 A. [15:06:24] Yes.

5 Q. [15:06:25] According to the mark on this map, we have the house of your
6 friend --

7 A. [15:06:35] Yes.

8 Q. [15:06:37] -- very close to the periphery of the compound.

9 A. [15:06:49] True, correct.

10 Q. [15:06:53] What kind -- what kind of a house was it? Was it just a tent, or was it
11 a -- a solid -- solid walled building?

12 A. [15:07:13] It was a solid walled building.

13 Q. [15:07:17] Now, if -- if we look at the screen, if we look in towards the north-east
14 of where the police station compound is, surrounded by sort of a yellow line, there's
15 a sort of a -- there's a -- a large square divided into four smaller squares. Do you see
16 that?

17 A. [15:08:01] Under number "4" or above it?

18 Q. [15:08:05] If you -- if you go east of number "4", you come to a yellow line that
19 goes -- that runs from -- the first yellow line that you come to, do you see that?
20 And then if you cross that --

21 A. [15:08:24] Yes.

22 Q. [15:08:26] And then if you cross over that yellow line, you see that there's
23 a compound, and it looks on the screen like a large square divided into four smaller
24 squares. Do you see that?

25 A. [15:08:41] I do.

1 Q. [15:08:42] And if we take, for example, the two smaller squares that are on
2 the left, you see two even smaller white square inside, yeah?

3 A. [15:09:13] In the square within the yellow lines, there are four squares, and
4 within these four squares, there are two yellow marks. I think so. This is what you
5 mean?

6 Q. [15:09:30] Yes. And then we see two smaller white squares inside, yes? And
7 those two white squares represent the roofs of buildings, do you agree?

8 A. [15:09:51] I did not hear the translation.

9 Q. [15:09:52] Could that be translated again, please.

10 A. [15:10:13] I can't recall this at all.

11 Q. [15:10:17] Let me short -- let me take it shortly, then.

12 Where you have drawn a circle indicating the home of your friend, there's -- there's
13 absolutely no trace there at all of an actual building, I would suggest.

14 A. [15:10:51] If this is the police station, this is the police station, (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 As for the other building, I don't know about it. This may be houses, but this is
19 the house of my friend. I'm sure of it.

20 Q. [15:11:25] Can you -- can you please indicate to us where the street between
21 the police station and your friend's house is on the image. Do you see the street?

22 A. [15:11:43] I can see the street marked with an arrow with number "2". This is
23 what you mean?

24 Q. [15:11:55] Is that the street that was between your friend's house and the police
25 station?

1 A. [15:12:03] No, not at all. This street marked in yellow is the main road or main
2 street. (Redacted)

3 (Redacted)

4 Q. [15:12:29] Wide.

5 A. [15:12:31] Wide; 15 metres wide.

6 Q. [15:12:34] Can you see that 15-metre wide internal street on this image on
7 the screen?

8 A. [15:12:51] I see that there is some sort of separation between the berms and
9 the house. There is a separation. I think this is the street.

10 Q. [15:13:15] Mr Witness, are you talking about the darkish line that runs from east
11 to west north of the police station?

12 A. [15:13:25] Yes, indeed.

13 Q. [15:13:31] I thought you said a moment ago that that dark line forms part of
14 a ditch that runs around the police station.

15 A. [15:13:54] (Redacted)

16 (Redacted)

17 Q. [15:14:06] Can we slowly, Mr Courtroom Officer, please scroll -- scroll down so
18 that we see more to the North. No, the other direction, please, sorry.

19 Okay, stop. Can we scroll up then, please, as much as possible. Okay, all right.

20 You see, Mr Witness, isn't it the case that if you -- if you let your eyes scan from
21 the police station in a north-easterly direction, you see a set of buildings?

22 A. [15:15:11] North-east? Yes, north-east there are marks. This might be a *khor*
23 or a creek at the east of the police station. I cannot remember when that picture was
24 taken.

25 Q. [15:15:40] I'm not looking at -- I'm not looking at the *khor*. I'm looking

1 north-east of where the police station is. There's a cluster of buildings, and you
2 know that they're buildings because they're -- they're little white squares north-east of
3 the police station, right at the top of the image. Do you see those?

4 A. [15:16:04] Yes, I see them. These are dwelling units, as it seems. There were
5 no government centres there in that region. It seems they -- they were houses.

6 Q. [15:16:16] Yes. And isn't it more -- isn't it the case that it's in that cluster of
7 houses that your friend was living?

8 A. [15:16:33] No. This cluster of houses was far away from the police station, and
9 there was only one street, (Redacted)
10 (Redacted) These houses are old, as I think.

11 Q. [15:16:48] Well, I'm going to suggest that where you're marked a "4", there's
12 simply no houses there at all in this image.

13 PRESIDING JUDGE KORNER: [15:16:57] The image was actually taken, as I
14 understand it, in 2006. That's what the date seems to suggest at the bottom, isn't it?

15 MR EDWARDS: [15:17:07] That's right, yes, yes.

16 PRESIDING JUDGE KORNER: [15:17:09] Which is -- isn't that three years after
17 the event, or however -- two and a bit?

18 MR EDWARDS: [15:17:15] Yeah.

19 PRESIDING JUDGE KORNER: [15:17:16] So how does that help anybody?

20 MR EDWARDS: [15:17:19]

21 Q. [15:17:23] After you left Mukjar, did you remain in contact with this friend?

22 A. [15:17:32] No, no. I had no contact with any people.

23 Q. [15:17:55] Okay. Now, the distance between your friend's house and the area
24 between the two buildings of Mukjar police station was what, do you say?

25 A. [15:18:27] The area between the house and the police station, this is what you

1 meant?

2 Q. [15:18:34] Yeah. What is the distance?

3 A. [15:18:39] There are no buildings except a house, and there are these two
4 buildings marked by "1" on the picture. There was only the house and the police
5 station, nothing else.

6 Q. [15:18:54] And what was the distance between the house and the police station?

7 A. [15:19:04] (Redacted). I think so. (Redacted). It
8 wasn't a lengthy or a short distance.

9 Q. [15:19:20] And how many -- how many rooms did this -- did the home of your
10 friend have?

11 A. [15:19:35] It was -- it was built on solid foundations. These were three houses
12 built by wood and local products or material on grass, on a grassy soil. So one room
13 was -- had base -- has solid foundations and the other rooms were built with local
14 products.

15 Q. [15:20:18] You've -- I just want to be very clear about this. Did the home consist
16 of three buildings, or was it one building consisting of three rooms?

17 A. [15:20:34] The shape of the buildings was different. Some of them were made
18 of clad and some others from local products. Therefore, he had three rooms made of
19 local material and one with solid foundations. This is what I saw.

20 Q. [15:20:51] I see. Okay.

21 And what was the -- were these -- were these three -- how were these three rooms
22 configured? How -- how did these three rooms -- how did these three rooms -- how
23 were they situated by reference to the 15-metre wide road? Were they along
24 the road? Were they aligned east to west? Were they aligned north to south?
25 Were they aligned in some other way? Can you help us.

1 A. [15:22:02] There was a room that served as a kitchen. Another one on the
2 northern side, another one on the eastern side for children, and a room to the western
3 direction. These were the three ones. So there was a room at the north and that one
4 was the one made of solid material.

5 Q. [15:22:24] And was it in that northern room where you were when you observed
6 what you say you observed outside the police station in Mukjar?

7 A. [15:22:40] I wasn't inside the room, but rather outside. I could see in all
8 directions.

9 Q. [15:22:56] Did you have any concerns about being seen yourself by the police at
10 the police station?

11 A. [15:23:15] As a matter of fact, we were in the house with the house owner and
12 his children. The overall situation was very worrisome; there were ammunitions,
13 looting, killings and that was a tense situation. I was also tensed and stressed, like
14 all other people, because that was not a normal situation.

15 Q. [15:23:38] Exactly. And is it not -- isn't it right that you told the Prosecution
16 during your preparation session last week the following, that ...

17 Your Honour, in order for me to make this point, I'm really sorry, I have to go into
18 private session, just for one second.

19 PRESIDING JUDGE KORNER: [15:24:15] Right. Private session, please.

20 What paragraph of the corrections is it?

21 MR EDWARDS: [15:24:18] It's the -- it's the proofing note, it's the preparation log.

22 PRESIDING JUDGE KORNER: [15:24:21] Yes. No. But which paragraph?

23 MR EDWARDS: [15:24:23] Paragraph 22, but I don't know if your Honour has it.

24 Yeah, paragraph 22.

25 PRESIDING JUDGE KORNER: [15:24:28] Yes, thank you.

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(Private Session)

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- 1 (Private session at 3.24 p.m.)
- 2 THE COURT OFFICER: [15:24:38] We're in private session, Madam President.
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
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- 9 (Redacted)
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- 25 (Redacted)

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(Private Session)

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Page redacted – private session

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(Private Session)

ICC-02/05-01/20

- 1 (Redacted)
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- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Open session at 3.31 p.m.)
- 14 THE COURT OFFICER: [15:31:09] We're back in public session, Madam President.
- 15 MR EDWARDS: [15:31:17]
- 16 Q. [15:31:17] The question was how high was the fence around the house?
- 17 A. [15:31:33] Approximately 150. When I stand inside I could see -- I could look
- 18 out and see outside the fence.
- 19 Q. [15:31:52] And if you stood up and if you could see outside the fence, that
- 20 means that people in the police station could see you?
- 21 A. [15:32:08] Yes, that's possible.
- 22 Q. [15:32:11] Weren't you taking an enormous risk by being visible to people inside
- 23 the police station?
- 24 A. [15:32:27] I was not afraid of the police. I was afraid only of the Janjaweed.
- 25 There was no hostility between me and the police.

1 Q. [15:32:39] My question wasn't whether you were taking a risk by being visible to
2 the police inside the police station, I said weren't you taking a risk of being seen by
3 anyone in the police station, including people who might want to arrest you?

4 A. [15:33:14] It was possible for a police officer to see me from the police station.
5 I was not afraid of the police station. There was a large number of people.
6 The house where I hid, I wasn't alone. Many people were with me and many people
7 hid in many houses. So I hid there.

8 Q. [15:33:37] Exactly, you hid. And to suggest that, whilst hiding, you placed
9 yourself at risk of being seen by persons at the police station is not credible.

10 A. [15:34:07] You don't believe it. I, however, believe it. I hid in that house and
11 in that house there were rooms where women and children hid. I was with other
12 people outside the rooms, yet within the house.

13 Q. [15:34:28] I suggest, sir, you haven't told the truth to the Court about seeing
14 Ali Kushayb in Garsila.

15 PRESIDING JUDGE KORNER: [15:34:41](Overlapping speakers)

16 THE WITNESS: [15:34:45](Interpretation) I don't see the mention of Garsila. Aren't
17 we talking about Mukjar now?

18 PRESIDING JUDGE KORNER: [15:34:49](Overlapping speakers) I think,
19 Mr Edwards, I think you need to make it clear that you're going back to Garsila.

20 MR EDWARDS: [15:34:56]

21 Q. [15:34:57] Mr Witness, I'm -- I'm nearly finished with my questions. I'm going
22 back to Garsila for a second. I'm going to suggest to you that you didn't tell -- you
23 haven't told the Court the truth about seeing Ali Kushayb in Garsila. What do you
24 say about that?

25 A. [15:35:21] I am honest, there's no need for me to lie to this Court or to lie to

1 myself. I have undertaken to say the truth and nothing but the truth. I am not
2 making anything up. I am not inventing things that did not happen. I am telling
3 only what I saw and heard and what I know. That is my testimony.

4 Q. [15:35:47] I suggest you haven't told the truth to the Court about seeing
5 Ali Kushayb in Bindisi.

6 A. [15:36:01] That's your viewpoint. However, in my view, I am very certain of
7 what I am saying. It is what I saw and it is what I testified about.

8 Q. [15:36:12] I suggest you haven't told the truth to the Court about seeing
9 Ali Kushayb in Mukjar.

10 A. [15:36:25] That is what you think. However, these are details that I provided
11 with dates and notes. And I knew that it was him who came to Mukjar, Bindisi, and
12 I also saw him in Garsila.

13 Q. [15:36:45] And you mention "notes". The one thing that might have provided
14 some support to your account as a contemporaneous account is your notebook, but
15 you've never shown it to the Prosecution, have you?

16 A. [15:37:10] I did not provide that notebook, neither to the Prosecution nor to
17 the Court. That notebook was for myself and my family. What business has
18 the OTP or the Court *with my notebook? In that notebook I recorded the events and
19 the details, but I did not commit to provide such notebook to the Court. That
20 notebook is a private possession of mine, that is none of your business.

21 Q. [15:37:48] And it's very convenient, isn't it, that you don't have access to it now?

22 PRESIDING JUDGE KORNER: [15:37:54] Mr Edwards, that's -- you know, you can
23 hear it yourself, you're about to make a speech.

24 MR EDWARDS: [15:37:58] Those are my questions.

25 PRESIDING JUDGE KORNER: [15:37:59] Yes.

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1 Mr Jeremy.

2 MR JEREMY: [15:38:00] Thank you, Madam President. I -- yeah, I probably have
3 10 minutes, 15 minutes or so of redirect.

4 QUESTIONED BY MR JEREMY:

5 Q. [15:38:20] Sir, now on the basis of some of the answers you provided today in
6 response to counsel's questions, I want to show you an exhibit, and this is in response
7 to questions on transcript pages 16 -- 12, 16 and 19.

8 PRESIDING JUDGE KORNER: [15:38:34] Today or yesterday?

9 MR JEREMY: [15:38:36] It was today, your Honour.
10 Could we please see the video that is DAR-OTP-0215-2697.

11 THE COURT OFFICER: [15:38:56] Question for counsel, can it be played publicly?

12 MR JEREMY: [15:39:01] Yes.

13 Q. [15:39:03] And so while this is coming to our screens, it's a video, it's about three
14 minutes long. I'm going to play the video to you first and then I'll ask you some
15 questions.

16 Madam President, your Honours, the video is in Arabic, and what I would propose is
17 that it's -- it's played in Arabic and if it's possible to have simultaneous interpretation
18 in the English and the French channels then.

19 PRESIDING JUDGE KORNER: [15:39:33](Microphone not activated) I would have
20 thought by now, Mr Jeremy, that it would have been subtitled, because we've seen
21 this video during the course of the earlier hearings.

22 MR JEREMY: [15:39:46] It should have been subtitled, and for that I apologise,
23 Madam President. We do have the transcripts in hard copy as well, which we
24 can -- which we can provide to you.

25 MR EDWARDS: [15:39:57] No, your Honour, we object to the use of this video.

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1 And I'll explain why, provided the --

2 PRESIDING JUDGE KORNER: [15:40:04] Yeah. Well, the witness had better leave
3 court, hadn't he?

4 MR EDWARDS: [15:40:07] Yes.

5 PRESIDING JUDGE KORNER: [15:40:08] Sir, would you mind for a moment just
6 going with the court officer.

7 THE WITNESS: [15:40:32](Interpretation) If it takes -- if what it takes is for me to
8 leave, certainly, I'm happy to leave now, certainly.

9 PRESIDING JUDGE KORNER: [15:40:40] No, you're going to come back, sir. We're
10 just going to discuss things in your absence. He's taken his earphones off.

11 (The witness exits the courtroom)

12 PRESIDING JUDGE KORNER: [15:40:56] If I remember correctly, Mr Jeremy, this is
13 the video that I asked about when there was discussions during one of the status
14 conferences and it was then produced. Does anybody -- do we know when it was
15 actually shot?

16 MR JEREMY: [15:41:17] Well, Madam President --

17 PRESIDING JUDGE KORNER: [15:41:20] It's the one where he says it's not him, as I
18 recall.

19 MR JEREMY: [15:41:25] I under -- well, the video was -- was taken -- was obtained
20 by the OTP in June 2020. It was also referenced in -- it was the subject of a human
21 rights report that dated from February 2020 and that has been the subject of litigation.
22 It's annex 3 to filing number 95.

23 Now, the video, we heard from the witness today in response to Mr Edwards'
24 questions about, well, how did you know that Ali Kushayb was from Rahad El Berdi.
25 And the witness responded by saying I knew that because, around two years ago, I

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1 watched a video on YouTube. I saw Ali Kushayb referring to Rahad El Berdi and I
2 saw him referring to teachers in a video. And I watched that video.

3 And there was a follow-up question from your Honour in relation to that, a follow-up
4 question from Mr Edwards in relation to what he characterises as the witness's
5 research on the internet. So the video *goes to the credibility of -- of this witness and
6 his basis of knowledge in relation to where Ali Kushayb came from and why he
7 changed that part of his statement.

8 PRESIDING JUDGE KORNER: [15:42:56] Yeah, all right.

9 Yes, Mr Edwards, what's the objection?

10 MR EDWARDS: [15:43:00] The objection -- well, it's twofold.

11 Firstly, in terms of the basis, if this video is being used because my learned friend
12 wants to rebut a credibility challenge, I certainly didn't impugn the witness's
13 credibility in terms of his internet research or his -- the -- the change of his account as
14 to his understanding of the place of residence or the birthplace of Ali Kushayb.

15 I was simply exploring how it is that he has -- how he has -- how he now has different
16 information about the provenance of Ali Kushayb, what town he's from. Okay.

17 But quite apart from that, quite apart from that, this is tantamount to a dock ID.

18 The Prosecution will suggest that the person in this video is Ali Muhammad Ali

19 Abd-Al-Rahman. And, no doubt, the witness is going to be asked is this

20 Ali Kushayb.

21 PRESIDING JUDGE KORNER: [15:44:32](Microphone not activated)

22 MR EDWARDS: [15:44:33] And it's --

23 PRESIDING JUDGE KORNER: [15:44:34] The first question, Mr Edwards, is going
24 to be is this the video you saw, because if it isn't, that's the end of the whole matter.

25 MR EDWARDS: [15:44:43] Well. Okay. Well, all right. On -- on --

1 PRESIDING JUDGE KORNER: [15:44:45](Overlapping speakers) But let's say --

2 MR EDWARDS: -- on the basis --

3 PRESIDING JUDGE KORNER: [15:44:42] Sorry, we'll be a bit careful. We're talking
4 over each other.

5 But let's say for the sake of argument he says: Yes, this is the video I watched and,
6 yes, that is the man I know to be Al-Rahman and I recognised him. It's not a dock ID,
7 is it? Mr Laucci, you can't both stand up. Mr Laucci, sit down, please, you can't
8 both be on your feet.

9 It's not the same as a dock identification, is it?

10 MR EDWARDS: [15:45:22] Your Honour, I didn't say it's exactly the same, I said it's
11 tantamount to a dock ID.

12 We -- we have been, as it were -- this -- this is something that requires some mature
13 reflection on our part in terms of legal argument, that there is case law on the point.

14 I'm not criticising my learned friend, I'm not -- I'm not going to use the word

15 "ambush" at all. But had we known that this was going to be used in -- in

16 re-examination, we would have prepared legal argument, much fuller legal argument
17 than I'm in a position to -- to advance now. But the essence of my submission is that
18 it is tantamount to a dock ID and -- and therefore that it is inadmissible, or, in any
19 event, that its probative value is outweighed by its prejudicial effect.

20 PRESIDING JUDGE KORNER: [15:46:37] Mr Edwards, you did open the door to

21 this, because the only purpose of your question about the -- the -- where he said

22 the man -- where he said the man he knows as Ali Kushayb came from in his

23 statement, and then his correction, can be, in other words, to show that he's a person
24 who's not reliable.

25 You started -- I'm just looking for the passage this morning -- did you say page 16,

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1 Mr Jeffery -- Jeremy.

2 MR JEREMY: [15:47:13] It was a few -- it was at least three different transcript pages,
3 Madam President, where it was discussed, 12, 16 and 19, I think. Yeah.

4 MR EDWARDS: [15:47:31] I'm going to need time --

5 PRESIDING JUDGE KORNER: Yes, and you persisted --

6 MR EDWARDS: [15:47:29] I'm going to need time to read that.

7 PRESIDING JUDGE KORNER: [15:47:33] Sorry, you persisted in it in fact.

8 "Where did you get the information from that permitted you to say ...
9 the investigators in 2007 that Ali Kushayb was not originally from Wadi Salih but
10 from [somewhere in] eastern Darfur ... Al Deain?"

11 And then he told you all about the video. And then he -- you asked him a number of
12 questions about the video. And what was the purpose of that if not to cast doubt on
13 his credibility as a witness?

14 MR EDWARDS: [15:48:30] I'm just trying to find the transcript.

15 While I'm just checking the transcript, my learned friend would -- has some
16 submissions to make.

17 MR LAUCCI: [15:49:00] Thank you, Madam President.

18 Yes, during the time my -- my -- Counsel Edwards is looking for the transcript, we are
19 back with the annex 3. Let me just recall rapidly that this video was the only piece of
20 evidence that was presented by the Prosecution in the full debate on maintaining
21 Mr Abd-Al-Rahman in detention as, allegedly, proof that Mr Abd-Al-Rahman had
22 been threatening witnesses in -- in Sudan.

23 There are a lot, very comprehensive submissions in writing, both before your
24 Chamber and the Pre-Trial Chamber on -- on this video and the reason why it's not
25 reliable and not admissible. As my learned friend Mr Jeremy said, this video was

1 allegedly shot sometime in February 2020. At least that's the way it is presented.

2 And in the first seconds of the video you will see that the person who is alleged to be
3 Ali Kushayb or Mr Abd-Al-Rahman is standing just in front of two persons in
4 uniform, one wearing a police uniform and -- I don't know -- another one, I don't
5 remember which uniform, knowing that, in February 2020, as submitted by
6 the Prosecution, Mr Abd-Al-Rahman, or Mr Ali Kushayb, I don't know to which one
7 they are referring this time, was under a warrant of arrest from the Sudanese
8 authorities and was allegedly wanted.

9 So this makes -- cast huge doubt if that is a video of 20 -- February 2020, that this
10 person talking about -- in front of police authorities can be the one that was, as
11 submitted by the Prosecution, the one who was searched at the moment.

12 This is just one example that comes to my mind. We are taken a little bit by surprise
13 here. But there are huge submissions that has been the -- widespread throughout
14 the debate on maintaining Mr Abd-Al-Rahman's detention or releasing him. Yeah,
15 that's not something that be -- can be admitted at this stage.

16 PRESIDING JUDGE KORNER: [15:51:44] No. But that's -- absolutely, Mr Laucci.

17 Sorry, Mr Laucci, but it is a completely different issue now. I understand, as you say,
18 the issue was argued out both in writing and orally in respect of his detention, but
19 this is a completely*different issue. The issue is, this having been brought up by
20 Mr Edwards through his cross-examination, it is clear that -- that the witness firstly is
21 entitled to, in my view, to see this and to find out whether this is the video that he
22 saw. And the second question, because he says clearly the video I watched is the one
23 that showed the man that I knew to be Ali Kushayb saying that he was born in,
24 wherever it was he was born.

25 Now I don't know whether -- I can't remember what this video says. Does this video

1 say that?

2 MR JEREMY: [15:52:49] The video has Ali Kushayb referring to Rahad El Berdi
3 five -- on five occasions. And the witness also said that the video referred to teachers,
4 and there are nine references to teachers in this video.

5 PRESIDING JUDGE KORNER: [15:53:06] Right.

6 Well, then it -- I'm afraid that -- I mean, I will, if you want, although I'm reluctant,
7 because it means the witness will have to come back tomorrow morning, but is
8 that -- is that going to cause a problem?

9 MR JEREMY: [15:53:30] Yeah, Madam President, the arguments we've heard from
10 Mr Laucci will ultimately go to the weight that this Chamber --

11 PRESIDING JUDGE KORNER: [15:53:40](Overlapping speakers) Mr Laucci's
12 arguments. What Mr Edwards -- I mean, in the sense that I know what Mr Laucci is
13 referring to, but it's a separate issue and I've already made that clear. But what
14 Mr Edwards wants to argue is that by showing this video it is the equivalent of a dock
15 identification, which in any event is admissible in this tribunal, but --

16 MR JEREMY: [15:54:06] Madam President, clearly it is not the same as a dock ID, it's
17 clearly pure recognition based on the witness said in direct response to put multiple
18 questions from counsel.

19 PRESIDING JUDGE KORNER: [15:54:17] Yeah, well that's my view. I mean, this is
20 not a dock ID, it's recognition. If it's the same video. If it's not, that's the end of
21 the matter.

22 MR JEREMY: [15:54:27] And, Madam President, and the answers were referring to
23 a video in which the -- the witness says that he heard Ali Kushayb refer to Rahad
24 El Berdi and refer to teachers multiple occasions, as is the case in the video that I'm
25 proposing to show to the witness to see if he recognises.

1 PRESIDING JUDGE KORNER: [15:54:48] Yeah.

2 MR EDWARDS: [15:54:54] Yes. The -- the point I want to come back to is, and it's
3 addressing a point that your Honour made, you said I persisted in asking him about
4 this, which -- and by using that term, of course, you're -- my supposition is that you're
5 suggesting that, you know, like a dog with a bone I was pressing it too far. That
6 the persistence, if it can even be called that, related to independent -- well, two things,
7 independent internet research that this witness may have done into the defendant or
8 indeed of -- of Mr -- or indeed of Ali Kushayb, which I would have wanted then to
9 explore, but the answers he gave I then sort of abandoned.

10 But, secondly, you'll recall that the reason -- you'll recall at the very outset of his
11 evidence this morning he gave answers about his access to the internet in the country
12 where he now was. Now I know that there was -- that was cleared up because
13 the country that he thought I was asking about wasn't in fact the country I was asking
14 about. But the persistence of my questions were largely focused on that issue. So it
15 was -- it was -- it was seeking to establish whether in fact there was a contradiction in
16 his evidence about internet research and his access to internet services, but then
17 exploring the extent to which he has been doing independent internet research
18 into -- into this case and into this defendant.

19 That was the thrust of my cross-examination, and abandoned once it was clear that it
20 was -- his answers were fairly benign. It was not to undermine his credibility
21 relating to his change of account as to either tribe or town of origin.

22 PRESIDING JUDGE KORNER: [15:57:16] Yes, but --

23 MR EDWARDS: [15:57:18] So to that extent there is nothing to rebut.

24 PRESIDING JUDGE KORNER: [15:57:21] Well, except that, as I say -- and when I
25 said "persist", I don't mean that you were pursuing the point unnecessarily, but you

1 asked about it more -- you asked a series of follow-up questions. And I understand
2 that you say part of that was how much he'd been following the trial and, obviously,
3 what he'd heard. You asked him I think at least twice whether he'd heard -- if not
4 more than twice, about the opening. And I'm assuming, therefore, that the only
5 purpose can have been to lay the groundwork for a suggestion that his evidence is
6 tainted by what he has read or seen about the trial.

7 MR EDWARDS: [15:58:06] Not in a way that was seeking to attack his credibility.

8 It was seeking to assess whether his change of account was due to what he heard

9 Mr Abd-Al-Rahman say in his, as it were, opening, in his unsworn statement of 90

10 seconds or whatever it was, at the beginning of the trial. Because he says,

11 your Honour will recall, specifically that he was, you know, a proud member of

12 the Ta'aisha tribe.

13 Now, I was trying to explore whether he had access to that footage, whether he had

14 heard this defendant saying himself that he was of the Ta'aisha tribe, because that

15 would explain why he is now able to say to the Prosecution, "Well, I was wrong about

16 that, he's actually from the Ta'aisha tribe." Hooking on to the defendant's own

17 unsworn statement.

18 PRESIDING JUDGE KORNER: I know, but --

19 MR EDWARDS: [15:59:18] That was the purpose of the cross-examination. Forgive

20 me.

21 PRESIDING JUDGE KORNER: [15:59:23] Yes, Mr Edwards, but you take that to its

22 conclusion. It is to show that his evidence is, as I say, tainted is probably ... but it is

23 not as credible as it might be because he's heard what has been said and so he's

24 changed his evidence accordingly.

25 And it does seem to me, in those circumstances, and I will consult with my colleagues

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1 before we make a final decision, that the witness is entitled to see this video and to
2 say that is the one that I saw and whichever -- and the person speaking is the man I
3 knew to be Ali Kushayb. If that is the case. And I don't think dock identification
4 even comes into this one.

5 MR EDWARDS: [16:00:27] But, your Honour, we all know that that is exactly
6 the use that the Prosecution is going to put this video to ultimately.

7 PRESIDING JUDGE KORNER: [16:00:39] Well, that, I'm afraid, it may well be that's
8 what they're going to do, they're going to say you have got evidence from someone
9 who has -- in fact, what he's identifying is the person on the video. It's then
10 a question for us because, as I understand it, you dispute he's the person on the video.
11 So, but at the moment all he's going to say is this is -- if that is the video he saw, that is
12 the man or that is not the man I knew. But I'm assuming if it is the video he will be
13 saying that.

14 So I don't really think that even if I gave you time we'd get any further than that.

15 MR EDWARDS: [16:01:23] No. Well, I mean I've made the submissions.

16 PRESIDING JUDGE KORNER: [16:01:28] Yeah. Yes.

17 (Trial Chamber confer)

18 THE INTERPRETER: [16:01:35] Microphone is on. Microphone.

19 PRESIDING JUDGE KORNER: [16:02:22] All right.

20 Yes, Mr Jeremy, you can show him the video.

21 MR JEREMY: [16:02:28] Thank you, Madam President, your Honours.

22 (The witness enters the courtroom)

23 PRESIDING JUDGE KORNER: [16:03:33] Yes, Mr Jeremy, I think you just show him
24 the video.

25 Now I'm hearing French translation for some reason.

1 Oh, I see, I'm on -- it's on channel. Arabic, no, no, no.

2 Sorry, for some reason I had moved -- I had changed my channel to the French one.

3 Mr Jeremy, I think you need to let him watch it through without asking any questions
4 and then we'll see where we are.

5 MR JEREMY:

6 Q. [16:04:29] So before we -- before we play the video, sir, I just want to be clear
7 that you can see the video on the screen in front of you. Can you see that?

8 A. [16:04:43] Yes.

9 Q. [16:04:45] Okay. So we're going to play the video through to the end and then I
10 will have some questions.

11 If we can play now, please.

12 A. [16:04:54] Yes.

13 (Viewing of the video excerpt)

14 THE INTERPRETER: [16:04:57](Interpretation of the video excerpt)

15 "US: Listen to me, people, this is ... in the name of Allah, the Lord of mercy, the Giver
16 of mercy ... Praise be to Allah, Lord of the worlds. May prayers and peace be upon
17 the noble Messenger of Allah. May the Prayers of Allah be upon our master
18 Muhammad, the opener of what was closed, and the seal of what had preceded, the
19 helper of the truth by the Truth, and the guide to Your straight path. May Allah
20 send prayers upon his kinsfolk according to his greatness and magnificent rank.

21 Sisters ...

22 US: Ah.

23 US: ... and girls ... and female teachers ... our sisters, our women ... may the peace, and
24 the mercy and blessings of Allah, be upon you. Firstly, those people ... you'd said
25 things, and they're adding things. But, not to worry. I'll respond to what they've

1 said ... Now, people, a teacher is the key to security ... and now you're appreciated
2 and recognised. It's as the poet said, there can be no payback through words. If
3 someone comes back to say anything about Rehed al-Birdi, that's fine ...

4 Crowd: Allahu Akbar... Allahu Akbar.

5 US: Right, now we're ... our only priority ... is the teacher... and the law doesn't care
6 about the foolish. The law is the guardian over people. The mistake that happened
7 was our doing, we as the Security Committee. I mean, let me explain it to you
8 plainly: Because we gave people the space ... anybody could speak out in the market,
9 anybody could speak out in the town, and anybody could speak about ... If we'd
10 pursued this type, there wouldn't have been anybody [today] blabbering on like a
11 goat. In fact, it's us who're too many here.

12 Crowd: Allahu Akbar ... Allahu Akbar...

13 US: Listen to me ... But now the [Forces of] Freedom and Change have said ... Listen
14 to me... the so-called Freedom and Change. Freedom and change don't happen
15 through the teacher. Such change happens through the teacher ... The teacher is the
16 one who provides the foundations ...

17 Crowd: Allahu Akbar.

18 US: ... And being a teacher isn't an easy job, people ... we're talking about an executive
19 director, Ali Mahmood, and others, and others ... All of these people ... were formed
20 by the teacher. And now, our brothers, we ... by Allah Almighty, the mistake that
21 took place is all because of us, we the Security Committee. It's our fault, specifically
22 because we don't allow people to speak out as they please. And I'm telling you,
23 people, the concern, I mean, is Rehed al-Birdi.

24 Crowd: Allahu Akbar... We're all present here ...

25 US: And all of this is Rehed al-Birdi.

- 1 Crowd: Allahu Akbar.
- 2 US: I'm not going to change Rehed al-Birdi. I'm going to stay here until my grave is
- 3 here.
- 4 Crowd: Allahu Akbar ... Allahu Akbar.
- 5 US: I don't agree for the teacher, the citizen or a shepherd.
- 6 Crowd: Allahu Akbar.
- 7 US: Now, what I'm telling you is to see if things will work out or not.
- 8 Crowd: Allahu Akbar.
- 9 US: ... And from now on, dear brothers, the watchful eye isn't asleep, in truth, and the
- 10 lad who came and said these things ... he's one of your students and one of your
- 11 children, and so on. And he himself responded to him ... but his response should've
- 12 been severe: so, I'm with you in that Change and Freedom, I'd have stabbed and
- 13 killed any individual who mocked Rehed al-Birdi or denigrated the teacher.
- 14 Crowd: Allahu Akbar... Allahu Akbar.
- 15 US: And now, you ... that story ... it's over, totally and entirely ... If the people who're
- 16 speaking out now - and before - don't stop, I'll grab him like that, tie him up and then,
- 17 by Allah, I'll take him over there to Hamdok himself. That's if I don't take him
- 18 [unintelligible 00:03:08] don't talk in the first place: It's very simple ...
- 19 Crowd: Allahu Akbar ... Allahu Akbar.
- 20 US: Long live, Ali Kushayb!
- 21 US: It's normal that he speaks out. It's a very, very simple matter ... We, our brothers,
- 22 it's important to us ... it's important to us ... education is important to us. Education
- 23 is important to us. Education is important to us and the money that they're talking
- 24 about is being paid by us and not by anyone else. Don't let that issue trouble you,
- 25 my brothers [unintelligible 00:03:24]. That individual speaking out, who is he

1 anyway? Let him take a look at himself ... let him take a look at himself, listen to
2 me ... Who are you anyway? Aren't you, ladies, teachers? To the individual who's
3 denigrating teachers we say, take a good look at yourself. What are his origins?
4 Who are they anyway? I don't have anything further to say."

5 MR JEREMY: [16:08:54]

6 Q. [16:08:55] Sir, have you seen this video before?

7 A. [16:09:05] I've seen that video. It is available on YouTube.

8 Q. [16:09:15] And is this the video that you were referring to earlier in response to
9 counsel's questions about where you learned Ali Kushayb was from, Rahad El Berdi?

10 A. [16:09:33] That was not that specific video. There was another video where he
11 is in a military uniform and he is surrounded by military people. And that video
12 that we've just watched, he was in Rahad El Berdi. As for the other video I have
13 referred to, well, he was outside Rahad El Berdi. He was amid his military or
14 the Fursan, in the area of operations.

15 PRESIDING JUDGE KORNER: [16:10:07] Well, I don't think there's much further
16 you can take that, Mr Jeremy. The only purpose of -- of doing it was that that was
17 the video he watched.

18 MR JEREMY: [16:10:17] If I could have the Court's indulgence for a moment,
19 Madam President.

20 PRESIDING JUDGE KORNER: [16:10:21] Yes.

21 (Counsel confer)

22 MR JEREMY: [16:10:47] Madam President, maybe if the witness takes his ...

23 PRESIDING JUDGE KORNER: [16:10:51] I'm told he speaks English, so he'll have to
24 leave court again, if -- if ...

25 MR JEREMY: [16:11:02] There is a second video which we think would be relevant,

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1 based on the answers that the -- the witness has just provided. So in exactly
2 the same way we considered this video relevant, on the basis of the answer that we've
3 just received, there is a second video that we would consider relevant. I don't want
4 to say too much.

5 PRESIDING JUDGE KORNER: [16:11:23](Microphone not activated)

6 THE INTERPRETER: [16:11:24] Microphone. Microphone, please.

7 PRESIDING JUDGE KORNER: [16:11:26] Sorry.

8 That, Mr Jeremy, you can't do. This is going -- this is a video -- this is another video
9 that Mr Edwards, nobody's seen.

10 Has Mr Edwards seen it?

11 MR JEREMY: [16:11:41] Yes, Madam President, it's disclosed.

12 MR EDWARDS: [16:11:44] Your Honour, this is now turning into a scattergun
13 approach with every video that the Prosecution has in its -- in its possession
14 to -- to -- to try and make a point. I mean, when is it going to end?

15 This video was put on the basis of answers that the witness gave pursuant to my
16 cross-examination. This now turning into re-examination that doesn't arise out of
17 cross-examination.

18 PRESIDING JUDGE KORNER: [16:12:16] It's not -- it's not quite that. But it is -- I'm
19 afraid -- all right, Mr Edwards, I got the point.

20 I think, Mr Jeremy, if you are going to -- sorry, Mr Jeremy, I have got the right -- then
21 you've got to show Mr Edwards what you want to show him. And -- and --

22 MR JEREMY: [16:12:43] Madam President, if I may, we can do that. I won't
23 address the scattergun comment, I don't think it's -- it's necessary, but the point
24 remains that in the course of cross-examination Mr Edwards asked the witness about
25 his knowledge of Ali Kushayb's origin. The witness referred to a video.

1 Mr Edwards followed up on three separate occasions in relation to that video. We
2 have showed the witness a video and the witness has said, no, it's not that video, it's
3 another one. And we believe that we have the other one that we would like to show
4 to the witness, and we think it's relevant and probative and there is no prejudice to
5 the -- to the Defence, to the accused. The document is disclosed -- the video is
6 disclosed and we think it will assist the judges get to the truth in this matter.

7 PRESIDING JUDGE KORNER: [16:13:44] Yes, Mr Laucci.

8 MR LAUCCI: [16:13:46] Madam President, Madam President, there is prejudice to
9 the Defence. In the first place because we are all taken by surprise. We have no
10 possibility to make complete and full submissions as to why these videos may or may
11 not, depending on which one the Office of the Prosecutor intends to show us now is
12 admissible, is reliable, and so far and so on.

13 Will the Prosecutor empty its bar table motion with all videos, taking the opportunity
14 that we are looking for the right video that this witness has seen? This is not -- this is
15 not possible, and prejudice to the -- the Defence is immense.

16 We will have to explain now, because the Prosecution will present as evidence
17 the video that has just been shown, we will have to make full submissions and object
18 to its admission as evidence as a consequence of this. We cannot do them all like
19 this.

20 It's, I mean ...

21 PRESIDING JUDGE KORNER: [16:14:58](Microphone not activated)

22 THE INTERPRETER: [16:15:00] Microphone, please.

23 PRESIDING JUDGE KORNER: [16:15:02] First of all, this video that you want to
24 show him, was it simply on a list of videos disclosed to the Defence?

25 MR JEREMY: [16:15:10] That's correct, Madam President. It's on the list

1 of -- the Prosecution's list of evidence that we provided on 5 January 2022.

2 PRESIDING JUDGE KORNER: [16:15:19] Because there's been no reference to it so

3 far in this trial, no reference to it in the opening.

4 So I think if you're going to want to pursue this, then we will have to adjourn.

5 Mr Edwards and Mr Laucci need to see what the video is that you want to play.

6 MR NICHOLLS: [16:15:37] I'm sorry, your Honour. There is no surprise here.

7 When -- and when redirect examination happens and you open doors, you have to

8 deal with what comes up that you've opened the door to. Which I won't go over that

9 again, but has clearly happened here.

10 There are two YouTube videos. All right? We played the first one and the witness

11 has said it's not that YouTube video, it's a different one. And he made some

12 descriptions which I won't go into. Goes to the second YouTube video that we are

13 aware of. There's only two YouTube videos, I believe, at issue here. There's not

14 a scattergun, a basketful of YouTube videos.

15 Secondly, both of these videos - and I won't go into detail with the witness here - both

16 of those videos were subject of an expert report which was disclosed to the Defence.

17 Both of these videos were examined by NFI in accordance with a biometric procedure

18 that was agreed with the Defence, so there is no surprise or secret about this video.

19 It's not hidden in the middle of disclosure. It's been the subject of an expert report.

20 And it's simply the order reversed, if there's two videos that are on YouTube that fit

21 with what the witness has said that he saw and the videos are both potentially

22 the video that he saw. So the fact that we may have played the order in one way or

23 another should not preclude us. All the arguments are exactly the same as

24 what -- and all of the facts are the same in relation to your decision already that we

25 could play this first video. The only difference is the order of playing them.

1 The fact that the other video was the subject and connected to the article, because of
2 its content which was relevant to provisional release litigation, has nothing to do with
3 the -- the reason the witness brought it up and how it's come up in this trial. So it
4 really is -- is not a difference, it's not moving further.

5 And, again, it's all a matter of weight. The Defence's position all along with that first
6 video has been it's not him. So it's only the witness identifying the video that he was
7 talking about in his testimony. And they're still free to argue, and will argue, and
8 have argued that that's not him. So the prejudice is zero. It's not a dock ID.

9 PRESIDING JUDGE KORNER: [16:18:22] I accept it's not a dock identification. I've
10 already ruled on that -- or, sorry, we have already ruled on that. We accept this is
11 recognition.

12 The question is, however, everybody has seen that first video because it was played as
13 part of the -- of the application for provisional release. But Mr Edwards and
14 Mr Laucci at the moment don't know what the other video is, and nor do we. And
15 indeed I think, I'm afraid, I need to consult with my colleagues on this.

16 And so I'm really sorry, sir, I think you will have to come back tomorrow morning.
17 We've gone over time.

18 I hope that's not going to inconvenience him too much.

19 MR NICHOLLS: [16:19:15] No, your Honour, I think that -- I think that is fine.

20 And just for my friends to know exactly what the video is before we can close, it's
21 the one in the expert report that they've had for a long time.

22 PRESIDING JUDGE KORNER: [16:19:29] Yes. All right.

23 Mr Edwards, I -- we have ruled on -- on your arguments as to whether or not it's
24 a dock identification or -- and we say it's recognition. But if you want to add
25 anything tomorrow morning when you've seen the video that they're going to play,

1 well then I'll give you leave.

2 MR EDWARDS: [16:19:50] Just so that my learned friends know, one of
3 the arguments I anticipate I'm going to be making is -- is relating to provenance.
4 The first video there was some weight, in terms of provenance of the video, being
5 attached to a Human Rights Watch -- a human rights NGO web page, or something
6 like that. If the video -- and again, we do know what the video that my learned
7 friend is talking about, I just want to be clear about that, because there are only two,
8 and we would not suggest that this has been hidden or anything like that. We're
9 pretty confident we know what the video that my learned friend is referring to. But
10 it is just a random video off of YouTube. The provenance is --

11 PRESIDING JUDGE KORNER: [16:20:43] But -- but that's not -- no, no now you're
12 going -- Mr Edwards, if you know what video is being talked about, then I am going
13 to allow this, because I -- I was under the impression that you didn't know what video
14 they were talking about.

15 Provenance don't matter. The only relevance for him -- for this witness and for
16 this -- this whole argument at present is whether or not this is the video he saw.
17 How it's made, where it comes from, what it's supposed to show is something
18 completely different.

19 It's purely is this the video that he saw - and as I see the witness is still sitting there
20 listening to it - and then any other follow-up questions.

21 So, Mr Edwards, if you're saying you know exactly what this video is, well then we
22 needn't take time.

23 MR EDWARDS: [16:21:35] Well, would your Honour just allow me to ...

24 PRESIDING JUDGE KORNER: [16:21:41] Yeah.

25 (Counsel confer)

1 MR EDWARDS: [16:22:33] Thank you. I'm very grateful to -- to our assistant.

2 Can we go to page 12, please, of the transcript, because this -- this was the excerpt that
3 my learned friend referred to in his argument, because --

4 MR JEREMY: [16:22:54] Twelve, 16 and 19 were the pages I referred to.

5 MR EDWARDS: [16:23:04] Yeah. Your Honour, it's page 12, from line 11:

6 "... following what is happening on the internet, I found a video. He was speaking in
7 Rahad El Berdi. In that video he said he was born in that area ... he grew up that.
8 At that time I said, okay, maybe this is true," et cetera. Okay.

9 "I also heard him talking about -- with a number of teachers in Rahad El Berdi."

10 That is the video that has just been shown to him. The other video makes no
11 reference, if my memory is correct, to teachers at all. It's the video where he's talking
12 to and about teachers that he said he saw in answer to my cross-examination.

13 The only video in the Prosecution's holdings that refer to teachers is the one that has
14 been played and it is not the one that this witness was in fact referring to. That is
15 the end of the matter. The -- if another video, YouTube video is played to him now,
16 we know that that's not the video, because it's got nothing to do with teachers.

17 And your Honour will recall it was -- it was -- it was precisely this excerpt that my
18 learned friend was relying on in -- in making his argument in the first place.

19 MR JEREMY: [16:24:43] Well, if I may, Madam President. The -- the core of what
20 the witness said, and the core issue, that began counsel's questions in relation to this
21 issue, was where Ali Kushayb came from. So Rahad El Berdi was the -- was the core
22 of the point. The teacher -- the witness also mentioned teachers. And then when I
23 showed him the video that I just showed to him, he said, no, this wasn't the video that
24 I had in mind when I responded to Mr Edwards' questions, it was a different video
25 and it was a video of Ali Kushayb wearing a military uniform.

1 So he has -- so he has further -- simply further clarified his answer. But
2 this -- this -- this video as well, Madam President, if you forgive me, also makes
3 reference to Rahad El Berdi.

4 PRESIDING JUDGE KORNER: [16:25:42] But not teachers.

5 MR JEREMY: [16:25:46] Not teachers.

6 PRESIDING JUDGE KORNER: [16:25:49] I mean, the difficulty is that the witness
7 said - and I know he's sitting here listening to all of this - but the witness said that, yes,
8 he's seen the video that you just played him, but that's not the one he was thinking of.
9 I think you've gone as far as you can on that.

10 MR JEREMY: [16:26:14](Microphone not activated)

11 THE INTERPRETER: [16:26:16] Microphone, please.

12 MR JEREMY: [16:26:18] Forgive me.

13 If I may, Madam President, there's a last point. What the witness also said in
14 response to my questions in relation to that video was that he -- the video that he had
15 in mind in response to counsel's questions was a video where Ali Kushayb was
16 wearing a military uniform as well, with people around him in a military uniform
17 that. And that is the -- that is the video, the second video the Prosecution say that
18 we are now seeking to show the witness.

19 MR EDWARDS: [16:26:48] But that didn't arise out of cross-examination.

20 PRESIDING JUDGE KORNER: [16:26:50] All right.

21 I'm going to -- I'm going to say that we will sit tomorrow morning at 9.30.

22 Sir, I'm very sorry, you've heard all the discussion. I'm afraid it's a legal point, but
23 it's an important legal point, so I am going to have to ask you to come back, I hope not
24 for very much longer, tomorrow morning.

25 So if you'd like to go with the court officer and we'll see you at 9.30.

1 (The witness exits the courtroom)

2 PRESIDING JUDGE KORNER: [16:27:41] Right.

3 Just so that we get -- I'm going to discuss this with my colleagues and we'll give
4 a ruling first thing tomorrow morning. In any event, I know that we have some
5 questions for the witness, which is why we couldn't complete this afternoon.

6 You say, Mr Edwards, that this does not arise out of cross-examination because
7 the video that he described does not fit the video that the Prosecution now want to
8 see here.

9 You, Mr Jeremy, say it doesn't matter because he's described one with a military
10 uniform as being the one that he was referring to.

11 MR JEREMY: [16:28:31] Well, Madam President, the witness has said that the video
12 that he had in mind when he responded to counsel's questions about his knowledge
13 about where Ali Kushayb came from was in fact a video where Ali Kushayb was
14 wearing a military uniform. And that's what we've heard and that's why we would
15 now seek to show him that video for exactly the same reason we asked to show the
16 first video, because it arises from cross-examination.

17 PRESIDING JUDGE KORNER: [16:28:56] All right. Is that video teed up? Can we
18 have a look at it, please? How long is it?

19 MR JEREMY: [16:29:00] It's quite a long one. It's 9 minutes, but it's teed up.

20 PRESIDING JUDGE KORNER: [16:29:06] Well let's -- is there a transcript of it?

21 MR JEREMY: [16:29:08] Yes.

22 PRESIDING JUDGE KORNER: All right. Can we have that one too, please.

23 MR JEREMY: Yes.

24 PRESIDING JUDGE KORNER: Just let's have a look at it then.

25 MR EDWARDS: [16:29:10] While that's been teed up, can I just make the point that

1 in -- in the teacher video that we've just seen, the person that the Prosecution say is
2 Ali Kushayb is wearing this sort of milky tea sort of -- he is wearing a shirt that is
3 consistent with a type of military uniform that is worn in Sudan. So the military
4 uniform point is not inconsistent with the video that we've already seen, the teacher
5 video. He didn't say he's in camouflage.

6 PRESIDING JUDGE KORNER: [16:29:47] All right. Let's -- let's -- we're not going
7 to watch the whole nine minutes, but let's just get some idea what this looks like.
8 (Viewing of the video excerpt)

9 THE INTERPRETER: [16:30:16] Message from the interpreters: Your Honour, we
10 have not been provided with a transcript of this.

11 PRESIDING JUDGE KORNER: [16:30:29] Don't worry, interpreters. We've got
12 the transcript. I just want to see what he looks like.

13 (Viewing of the video excerpt)

14 PRESIDING JUDGE KORNER: [16:31:44] Thank you very much, Mr Jeremy. That
15 will do.

16 (Microphone not activated).

17 THE INTERPRETER: [16:31:59] Microphone, please, your Honour.

18 PRESIDING JUDGE KORNER: [16:32:01] Oh, sorry.

19 Do you have other questions apart from that?

20 MR JEREMY: [16:32:05] Perhaps one, Madam President.

21 PRESIDING JUDGE KORNER: [16:32:08] Right. Yes, all right.

22 Mr Edwards, yeah.

23 MR EDWARDS: [16:32:11] Just -- just I'm looking for any reference in the transcript
24 to Rahad El Berdi.

25 MR JEREMY: [16:32:18] Yeah.

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- 1 MR EDWARDS: [16:32:20] I don't think there is any.
- 2 MR JEREMY: [16:32:22] I can assist counsel. It's line 137, page 3238.
- 3 MR EDWARDS: [16:32:33] Thank you.
- 4 PRESIDING JUDGE KORNER: [16:32:47](Microphone not activated)
- 5 THE COURT USHER: [16:32:52] All rise.
- 6 (The hearing ends in open session at 4.32 p.m.)