

Trial Hearing
WITNESS: DAR-OTP-P-0883

(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 Friday, 2 September 2022
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:49] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:31:10] Yes. Good morning to everyone.
15 Appearances, please. We'll start with Defence again.
16 Mr Laucci, same as yesterday?
17 MR LAUCCI: [9:31:20] Same as yesterday, Madam President. Good morning.
18 PRESIDING JUDGE KORNER: [9:31:22] Victims, same as yesterday?
19 MR SHAH: [9:31:26] Same as yesterday. Thank you, Madam President.
20 PRESIDING JUDGE KORNER: [9:31:29] Prosecution. Same as yesterday,
21 Mr Nicholls?
22 MR NICHOLLS: [9:31:31] Good morning, your Honour and your Honours.
23 Yes, same as yesterday.
24 PRESIDING JUDGE KORNER: [9:31:34] Right. Yes, thank you very much.
25 Good morning to you, sir. You'll be happy to hear that today will be your last day

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1 answering (Overlapping speakers)
2 WITNESS: DAR-OTP-P-0883 (On former oath)
3 (The witness speaks Arabic)
4 THE WITNESS: [9:31:43](Interpretation) Good morning. Hello.
5 PRESIDING JUDGE KORNER: [9:31:45] Yes, Mr Laucci.
6 MR LAUCCI: [9:31:47] Thank you, Madam President. And be convinced that I
7 make sure that this is the last day, even though it's a challenge.
8 QUESTIONED BY MR LAUCCI: (Continuing)
9 Q. [9:31:55] Good morning, Mr Witness.
10 A. [9:32:02] Greetings.
11 Q. [9:32:04] We stopped yesterday at the point where you mentioned a person you
12 call Hassan Kushayb, who you say was the brother of Ali Kushayb (Redacted)
13 (Redacted). When you say Hassan Kushayb was the brother of
14 Ali Kushayb, do you mean an actual brother, I mean with the same parents, or just on
15 acquaintance?
16 A. [9:32:44] Well, he was his brother. I don't know if they had the absolutely same
17 father and mother. He certainly looked like him. He had the same name and, in
18 principle, he was his brother.
19 Q. [9:33:05] Okay.
20 MR NICHOLLS: [9:33:11](Microphone not activated)
21 PRESIDING JUDGE KORNER: [9:33:16] I may have made a terrible error in saying
22 this would be your last day, sir.
23 THE WITNESS: (No interpretation)
24 PRESIDING JUDGE KORNER: [9:34:05] I think we'll have to adjourn until this is
25 sorted.

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1 Ah, wait a minute. Something's happening. Yeah. Right. On we go, yes.

2 MR LAUCCI: [9:34:18] I'm relieved.

3 Q. [9:34:24] You say that Hassan and Ali were brothers. Both had the nickname
4 Kushayb. Does that imply that the nickname applied to the whole family?

5 A. [9:34:46] I do not know. It did apply, however, to Hassan and Ali.

6 Q. [9:35:03] Do you know where Hassan Kushayb was in 2003, 2004?

7 A. [9:35:11] I really don't know.

8 Q. [9:35:19] If I submit to you that Mr Ali Muhammad Ali Abd-Al-Rahman never
9 had any brother, what would you -- what would be your response?

10 A. [9:35:40] Likewise, I really don't know. I know about Hassan and I don't know
11 about any other brothers of his. I only know of other friends of his.

12 Q. [9:35:52] Let me insist, Mr Ali Muhammad Ali Abd-Al-Rahman had no brother,
13 including no brother named Hassan.

14 PRESIDING JUDGE KORNER: [9:36:03] I think you need to insist. We've got it.
15 That's your position, or that's your client's position, rather. And he says, "Well, I
16 didn't know because I understood he had this brother."

17 MR LAUCCI: [9:36:19]

18 Q. [9:36:19] Do you know what Kushayb means?

19 A. [9:36:31] I really don't know.

20 Q. [9:36:33] Did you ever hear about a local alcohol brewed in Sudan called
21 Kushayb?

22 A. [9:36:49] Yes, yes. Kushayb is an alcoholic beverage recognised by drunkards.
23 They recognise Kushayb as an alcoholic beverage. It's intoxicating.

24 Q. [9:37:12] So if that is an alcohol, do you agree with me that the nickname
25 Kushayb may reasonably imply that the person with that nickname is a drunk?

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1 A. [9:37:34] Yes. But Ali Kushayb was not a drunkard, nor was Hassan.

2 Q. [9:37:45] Thank you.

3 At paragraph 175 of your statement you say that the person you call Ali Kushayb was
4 not -- and/or Mr Ali Muhammad Ali Abd-Al-Rahman was not an Arab because his
5 tribal ancestors came from Central African Republic. Where did you get that
6 information that?

7 A. [9:38:17] I don't know about the source of that information. I met his mother in
8 Garsila and she was African, from the Central African Republic. I did not however
9 meet his father.

10 Q. [9:38:34] When did you meet Mr Abd-Al-Rahman's mother?

11 A. [9:38:46] Before Ali left Garsila he was visiting his son and his mother, and she
12 was introduced as Ali Kushayb's mother.

13 Q. [9:39:02] When you say before he left Garsila, do you mean before 2007?

14 A. [9:39:11] Yes.

15 Q. [9:39:11] But after the events of 2003, 2004, right?

16 A. [9:39:19] Yes, after the events of 2003 and 2004.

17 Q. [9:39:25] Thank you.

18 You say that Mr Abd-Al-Rahman, or Ali Kushayb, was a protégé of the Ta'aisha tribe.
19 Where did you get that information from?

20 A. [9:39:45] He was prominent in the Ta'aisha tribe because the Ta'aisha tribe had
21 problems with the Salamat tribe. So he was the prominent person in fighting the
22 Salamat tribe.

23 Q. [9:40:06] When was that tension, or even warfare, that you describe, between the
24 Ta'aisha and the Salamat? When did that take place?

25 A. [9:40:24] It happened at earlier times. Before my arrival in Wadi Salih there

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1 used to be -- there was a war between the Ta'aisha and Salamat. It was in the '80s or
2 in the early '80s.

3 Q. [9:40:48] Do you have any clue what that conflict was about?

4 A. [9:41:02] The Ta'aisha tribe thought that the Salamat were not natives of the
5 region. And they were -- and the Salamat had senior positions as *nazirs* and so forth,
6 so they opposed them. There was this problem between them and they expelled
7 them from the Rahad Al-Berdi region.

8 Q. [9:41:35] You say this was in the -- sometime in the '80s, and you also said that
9 Mr Ali Muhammad Ali Abd-Al-Rahman had been a master sergeant, a *musa'id*,
10 within the first aid medical unit of the SAF. I would like to show you a document.
11 Which one is it? Oh, yes, the last one.

12 I would like to show you the document that is in tab 10 of your binder next to you.
13 And if we can have the English version, that is tab 11, DAR-D31-0001-0007, on the
14 screen, please.

15 Do you see that document, Mr Witness?

16 And if we can go to page 0008.

17 A. [9:43:13] I do.

18 Q. [9:43:16] Can you describe it. What is it, according to you?

19 A. [9:43:30] This document is a medical certificate. He got credentialled to work
20 as a doctor, and in that regard he was granted this certificate.

21 Q. [9:43:43] Does that correspond to the -- the function you say Mr Ali Muhammad
22 Ali Abd-Al-Rahman had in the Sudanese Armed Forces?

23 A. [9:44:03] Yes. This certificate was given to him by an -- a body that is able to
24 give such credentials. So he got credentialled. He got this certificate.

25 Q. [9:44:25] Is the position of assistant within the medical unit, or *musa'id* within

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1 the medical unit, is that a position of command?

2 A. [9:44:52] It is a command position within the medical unit of which he was part.

3 Q. [9:44:59] Okay. And * what are the functions of the medical unit, please?

4 A. [9:45:13] They provided medical assistance to soldiers. If a soldier is sick or
5 injured, they would provide care to that person.

6 Q. [9:45:27] So does that rank and function made Mr Ali Muhammad Ali
7 Abd-Al-Rahman an experienced military officer and a fearless warrior, according to
8 you?

9 PRESIDING JUDGE KORNER: [9:45:48] I'm not sure how he is supposed to answer
10 that, quite honestly.

11 THE WITNESS: [9:46:01](Interpretation) Before he got his medical credentials, he
12 was a military service member. He was a warrior. After he got his credentials, he
13 received a certificate and started doing health care work, but originally he is a
14 military service member.

15 MR LAUCCI: [9:46:22]

16 Q. [9:46:23] Do you know what is the highest rank that he got as a military service
17 member?

18 A. [9:46:37] Master sergeant. And that's the highest rank for non-commissioned
19 officers.

20 Q. [9:46:48] I thank you.

21 I need to go to private session for the next questions, Madam President.

22 PRESIDING JUDGE KORNER: [9:46:54] Yes.

23 (Private session at 9.47 a.m.)

24 THE COURT OFFICER: [9:47:06] We're in private session, Madam President.

25 (Redacted)

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23 (Open session at 10.00 a.m.)

24 THE COURT OFFICER: [10:00:49] We're back in open session, Madam President.

25 MR LAUCCI: [10:01:11]

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1 Q. [10:01:11] In your statement, paragraph 57, you mentioned a Fur, *Umdah* Eid,
2 and you say that *Umdah* Eid hated Ali Kushayb. How did you know about that
3 hatred?

4 A. [10:01:35] We'd meet *Umdah* Eid at the mosque. We'd see him in the street.
5 And sometimes we spoke. We spoke about what Mr Ali Muhammad Ali
6 Abd-Al-Rahman was doing. And the *umdah* was a judge at a court, at a people's
7 court. And he asked himself the question why do the government allow this man to
8 do what he wanted? And that's why he didn't like him.

9 Q. [10:02:20] So do I understand from your answer that this hatred actually started
10 after the events of 2003, 2004?

11 A. [10:02:36] Yes, but he couldn't do anything. Because since he was the head of
12 the people's court, he couldn't do anything. Even the police authorities could do
13 nothing, because he had prerogatives that he had received from even higher up
14 authorities.

15 Q. [10:03:04] So which means that, until the event started in 2003, there was no
16 such hatred between *Umdah* Eid and Mr Abd-Al-Rahman, right?

17 A. [10:03:21] Yes, there was no hatred.

18 Q. [10:03:27] Do you know if Mr Abd-Al-Rahman was aware of -- was aware that
19 *Umdah* Eid hated him?

20 A. [10:03:44] It wasn't just the *Umdah* Eid. He was aware that all the Fur people of
21 authority hated him.

22 Q. [10:03:56] Was *Umdah* Eid the Fur *umdah* for Garsila?

23 A. [10:04:07] Yes, he was the *umdah* of the town of Garsila. The *umdah* was
24 *Umdah* Eid.

25 Q. [10:04:21] Is that the same *umdah* who you mentioned during your preparation

1 session, paragraph 35, who made Mr Ali Muhammad Ali Abd-Al-Rahman or Ali
2 Kushayb swear that he would stop his affair with the wife of Hassan Adam Musa?

3 A. [10:04:51] Hassan Adam Musa, yes, yes, because he had received a complaint.

4 But the -- but he didn't receive this complaint so that he could examine this issue.

5 The complaint was sent to * Sheikh Dikobi, who then informed the *umdah* of the town.

6 That is what happened.

7 Q. [10:05:25] Did the complaint or the rumour about that affair include the
8 possibility of sexual intercourse between Mr Ali Muhammad Ali Abd-Al-Rahman
9 and Hassan Adam Musa's wife?

10 A. [10:05:49] This was a rumour. We heard this talked about. It was a rumour
11 that was going through the town. All the men and women perhaps spoke about this.

12 Q. [10:06:05] *Umdah* Eid was a Fur *umdah*. How come he had jurisdiction on a
13 non-Fur person like Mr Abd-Al-Rahman?

14 A. [10:06:22] Because he was the *umdah* of the town. *Umdah* Eid was the *umdah* of
15 the town for all the people living within the city; Furs, Arabs, Nubas, and so on and
16 so forth.

17 Q. [10:06:41] When you say that Mr Abd-Al-Rahman had to swear that he would
18 stop his affair with the wife of Hassan Adam Musa, was this swearing made in
19 public?

20 A. [10:06:59] No. Even the conversation between the civilians, the people, was
21 just a conversation. Nothing more. These were rumours. They were rumours.

22 Q. [10:07:18] Mr Witness, I would like you to take tab 9 in your binder next to you.
23 And on the screen, for the English version, that would be the document in tab 8,
24 DAR-OTP-0021-0296. And we would have to go to page 0336.
25 And for the witness that will be the page 0206.

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1 Thank you. Can you scroll down please to 146. Yes.

2 So, Mr Witness, the document that you have in front of you is the Sudanese

3 Penal Code of 1991, and specifically -- actually, can we move up to 145 on the screen.

4 Yes.

5 And specifically Article 145, which is defining the offence of adultery or *zina*. The
6 definition is --

7 PRESIDING JUDGE KORNER: [10:08:56](Microphone not activated)

8 I don't think we need to read it out, do we? I think it's a pretty standard definition.

9 MR LAUCCI: [10:09:05] Yes. Okay. I go straight to my questions. Thank you,
10 Madam President.

11 Q. [10:09:10] Mr Witness, are you aware of any lawful bond between Mr Ali
12 Muhammad Ali Abd-Al-Rahman and the wife of Hassan Adam Musa?

13 A. [10:09:35] First of all, such liaisons need proof, and it's difficult to get such proof.
14 To be able to say that this man committed adultery with a woman, it is difficult to
15 prove this. It is a crime, and to prove this crime is something that is difficult. So it's
16 not possible to go and say, "I saw Ali do this or that", unless you really saw this.
17 And not just see it, but you needed to see it very clearly, very precisely.

18 Q. [10:10:13] But there was a complaint.

19 A. [10:10:22] Yes. However, it couldn't be proven because this crime is a crime
20 that requires proof. If he'd been taken and if they'd asked him to prove this, he
21 would not have been able to prove these accusations to prove this crime.

22 Q. [10:10:47] So if there was no proof, how come he was requested to swear that he
23 would stop his affair?

24 A. [10:11:05] Actually, this liaison that he wanted stopped, he meant going to
25 Hassan's house. He wanted him to stop going to Hassan's house. Not because he'd

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1 done this or that, but he was just asked not to go to Hassan's house anymore because
2 Hassan hated him.

3 Q. [10:11:27] Okay. I'm finished with that line of question. We can move on.

4 Mr Witness, still about *Umdah* Eid. You said that he passed away the year prior to
5 your interview. That must be 2020.

6 Did anything happen to *Umdah* Eid during the 2003, 2004 events?

7 A. [10:12:03] Actually, he fell ill. He had a serious illness and he passed away.

8 He was an elderly man. He fell ill and he couldn't fight this illness, and so he died.

9 Q. [10:12:23] Okay. But during the 2003, 2004 events, was he ever suspected of
10 being on the side of the rebellion?

11 A. [10:12:36] No. First of all, *Umdah* Eid was the *umdah* of the town. He was the
12 head of a court. He had a reputation. He was an elderly man, an elderly man.

13 And even the Court that he presided over was -- had -- was recognised, had a good
14 reputation, and so he had an important role.

15 Q. [10:13:13] Was there any -- what was the difference between *Umdah* Eid and the
16 other Fur *umdahs* who were executed in Mukjar and Deleig, for instance?

17 A. [10:13:37] *Umdah* Eid had his reputation. He had a prestigious position
18 because he was the *umdah* of Garsila, whereas the others were *umdahs* of small
19 villages. They were village *umdahs*, ordinary people who were not educated,
20 whereas *Umdah* Eid had a position that was the equivalent of that of a judge. If there
21 were no resident judges in Garsila, he would deal with cases there. So he had this
22 position.

23 Q. [10:14:21] So is it that he was preserved because there was no valid ground to
24 suspect him of supporting the rebellion?

25 A. [10:14:46] He was an elderly man and he could do nothing. He didn't have

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1 enough money to distribute money among the rebels. His children were teachers in
2 primary schools. That's how he lived. He was an *umdah* who lived a simple life in
3 the town.

4 Q. [10:15:24] And what is the difference then with *Sheikh* Dikobi, who was also
5 *sheikh* in Garsila?

6 A. [10:15:48] Dikobi was a *sheikh*, a *sheikh* whose authority was under *Umdah* Eid,
7 because there were other *sheikhs*. He was the *sheikh* of the western district under
8 *Umdah* Eid. In each district there was a *sheikh* within the Fur tribe. And each of
9 them was under the authority of *Umdah* Eid in the city.

10 Q. [10:16:11] Thank you.

11 I will refer to what you said, it must have been I think on Monday, transcript 071. I
12 think it's Monday. I don't remember. Page 62, line 14 to 18. This is when you said
13 that *Umdah* Mohamed Suleiman Abdulshafa --

14 A. [10:16:37] (Overlapping speakers)

15 Q. [10:16:46] Thank you for correcting my pronunciation, but I see that you know
16 who I'm talking about.

17 So this *umdah*, you say --

18 A. [10:16:53] That's a correction, Abdulshafa.

19 Q. [10:16:57] -- there were suspicions that he was involved in training the rebellion.
20 And so making -- making a comparison with *Umdah* Eid, is it your inference that the
21 other *umdahs* and other persons executed actually were executed because there were
22 grounds to suspect them of being involved in the rebellion, unlike *Umdah* Eid?

23 A. [10:17:36] Yes. First of all, *Umdah* Eid was in the city, whereas *Umdah*
24 Abdulshafa, this was a former soldier and he was located in the region of Tanako,
25 which is very far from Garsila. Tanako was surrounded by rebel forces. Most of

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1 the inhabitants of Tanako were members of the rebellion. As a consequence of this,
2 it was said that Mohamed Abdulshafa had been taken to the camp in order to train
3 the rebel forces. Based on these suspicions, he was arrested and killed.

4 Q. [10:18:30] Thank you.

5 But you confirm with us that Mr Ali Muhammad Ali Abd-Al-Rahman at no point in
6 time tried to use his power to have *Umdah* Eid eliminated, right?

7 A. [10:18:56] No. *Umdah* Eid was protected by all the members of the -- members
8 of government who are located in Garsila. *Umdah* Eid was someone who is known
9 for being a moderate Muslim, and there were no suspicions against him. And
10 because of this no one wanted to kill him. He was a moderate.

11 Q. [10:19:30] So it is your evidence that Mr Abd-Al-Rahman eliminated Hassan
12 Adam Musa?

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

14 Q. [10:19:48] And *Sheikh* Dikobi?

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

16 Q. [10:19:53] But that he did not try to eliminate the *umdah* who had forced him to
17 swear that he would stop his affair with the wife of Mr Adam Musa?

18 A. [10:20:07] First of all, the *umdah* was not the person who had proposed that Ali
19 swear this. That was * *Sheikh* Dikobi. Because the it was direct chief of for
20 Hassan. But the *umdah* didn't accept this complaint. He'd said, "Where is your
21 proof? Stop saying this." *Umdah* Eid did not accept these accusations because there
22 was no proof.

23 PRESIDING JUDGE KORNER: [10:20:46] Mr Laucci, I think you need to be little bit
24 careful about how you phrase these questions. You've said twice now that
25 Mr Abd-Al-Rahman, did he try to have the *umdah* removed.

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1 MR LAUCCI: [10:21:02] I know.

2 PRESIDING JUDGE KORNER: [10:21:03] Are you accepting that your client is the
3 man described by this witness?

4 MR LAUCCI: [10:21:12] I am accepting that the witness did know -- did know
5 Mr Ali Muhammad Ali Abd-Al-Rahman as the pharmacist in Garsila, yes.

6 PRESIDING JUDGE KORNER: [10:21:21] All right. I see. That hasn't been clear.
7 But you are accepting that he did -- he knew him as the pharmacist in Garsila.

8 MR LAUCCI: [10:21:33] Absolutely. The only thing I am challenging is that this
9 pharmacist in Garsila ever became Ali Kushayb.

10 PRESIDING JUDGE KORNER: [10:21:39] Yes, I see. All right. Thank you.

11 MS WHITFORD: [10:21:43] Apologies. Just one note in relation to the transcript.
12 On page 20, at lines -- I think it would have been at line 8, but because of the
13 overlapping speakers, it didn't make it on to the transcript, but Mr Laucci also put to
14 the witness whether Mr Abd-Al-Rahman had eliminated *Sheikh* Dikobi, and the
15 witness did answer that question, but none of that made it on to the transcript.
16 The witness answered "yes", by the way.

17 PRESIDING JUDGE KORNER: [10:22:24](Microphone not activated)

18 Well, I mean, if it's agreed on both sides. I may say I don't remember the question
19 and answer, but -- but --

20 MR LAUCCI: [10:22:33] We both --

21 PRESIDING JUDGE KORNER: [10:22:36] -- Judge Alexis-Windsor remembers it as
22 well. Well, presumably, when the corrected transcript comes out, it will be corrected
23 anyhow, in the very, very, very distant future.

24 MS WHITFORD: [10:22:48] The reason I stood up, your Honour, is that I think,
25 because of the overlapping speakers, the question and answer was quite fast. And

1 for that reason, it didn't make it. But I thank my friend for his acknowledgment.

2 MR LAUCCI: [10:23:01]

3 Q. [10:23:02] Mr Witness, you mention the pharmacy of Mr Ali Muhammad Ali
4 Abd-Al-Rahman in Garsila. Do you confirm that the pharmacy was selling human
5 medicine and providing first aid?

6 A. [10:23:27] Yes. At that time he was a man with a limited income. He didn't
7 have large quantities of medicine. He had simple medicine that he put on the
8 shelves and sold and that he would provide to sick people.

9 Q. [10:23:48] So this had nothing to do with a veterinary pharmacy, right?

10 A. [10:24:03] It was basically for human beings. But sometimes he would provide
11 veterinary medicine because there were herders everywhere and so there was
12 veterinary medicine that herders needed, and he had a small quantity of this that he
13 would sell.

14 Q. [10:24:26] Was there any veterinary pharmacy in Garsila?

15 A. [10:24:37] Yes, there were many pharmacies. Some of them were veterinary
16 pharmacies, but most of them were pharmacies for -- that belong to Fur people.
17 When -- as for Arabs, they sometimes had some medicine in their pockets that they
18 would sell on the street. But a pharmacy in a building, they were mostly owned by
19 Fur people.

20 Q. [10:25:09] And you mention a veterinary clinic in Garsila at paragraph 79 of
21 your statement; is that correct?

22 A. [10:25:28] Yes, there were veterinary clinics. There was a large veterinary
23 hospital as well. There was a veterinary hospital where there were doctors,
24 veterinarians, who came from Zalingei and Nyala.

25 Q. [10:25:47] Okay. I would like to put on the screen, please, the document that is

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1 in tab 7 of the Defence binder, DAR-OTP-0220-4778. That is a satellite image from
2 Garsila.

3 And if we can assist the witness with the hard copy of that image, which will have to
4 be put on the Elmo.

5 Actually, I think it's better to have on the screen the Elmo image.

6 Mr Witness, do you -- this is a satellite image from Garsila. Do you roughly
7 recognise the place?

8 A. [10:27:43] No. The photo is not clear to me and I can't really see a reference
9 point that I could recognise. Wadi Salih? But is it Garsila?

10 Q. [10:28:04] Yes, you see the --

11 A. [10:28:05] This I can't -- no, I can't recognise it from the photo.

12 Q. [10:28:09] Okay.

13 PRESIDING JUDGE KORNER: [10:28:10] Sorry, there are bigger ones, aren't there,
14 that we were given in the map bundle? I don't whether that ...

15 MR LAUCCI: [10:28:18] Yeah, I wanted to use the one that was the widest that we
16 had, because I don't know where the locations that I will ask for are. That's the
17 reason.

18 PRESIDING JUDGE KORNER: [10:28:26] Right.

19 MR LAUCCI:

20 Q. [10:28:34] I will try to assist you, Mr Witness, and let's see where it goes. You
21 see this stream that runs from north to south, the blue line, which is *Wadi* Taro Bidha?

22 A. [10:28:57] Yes, I can -- I recognise *Wadi* Taro Bidha. So that's the *wadi*.

23 Q. [10:29:05] And you also see at the top of the image, that is in the north, the place
24 of the Sudanese Armed Forces camp.

25 A. [10:29:25] Yes.

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1 Q. [10:29:26] Okay. And you also have a mark more in the -- in the centre and
2 more in the south of the mosque.

3 A. [10:29:42] (No interpretation)

4 Q. [10:29:43] With these landmarks, did -- do these landmarks assist you in locating
5 yourself?

6 A. [10:30:04] No. This image, I can't explain it. I can't explain these images on
7 paper. I'm very sorry.

8 Q. [10:30:18] No problem, Mr Witness. We will do without.

9 Forget the -- forget the image, Mr Witness. I will just ask general question and we
10 will see where this goes.

11 You said that there was a veterinary clinic. Was it in the market?

12 A. [10:30:52] No. We can say it was northwest of the marketplace. At the edge,
13 there was a veterinary clinic there.

14 Q. [10:31:09] The other pharmacies that you mentioned, were they as well in the
15 market or outside?

16 A. [10:31:22] The pharmacies were inside the market. They were shops.

17 Q. [10:31:27] Do you remember how many pharmacies there were in the market?

18 A. [10:31:34] I do not remember. However, the well-known pharmacies were two.
19 As to those exercising the function of buying and selling veterinary drugs in the
20 marketplace, they were many, especially on the day the market was organised, was
21 held.

22 Q. [10:31:59] Okay. I try to recap. You said all the pharmacies were in the
23 market, two were well known. Well known as pharmacy for human beings, right?

24 A. [10:32:19] There were numerous ones for humans. However, those two in
25 particular were veterinary pharmacies for cattle, livestock and the like.

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1 Q. [10:32:35] Okay. Yeah, thank you for clarifying because I had misunderstood.

2 So you said there were two well-known veterinary pharmacies in the market.

3 A. [10:32:50] Yes.

4 Q. [10:32:50] And these did not include the pharmacy of Mr Abd-Al-Rahman,
5 right?

6 A. [10:33:01] Correct. Mr Abd-Al-Rahman's pharmacy was for human drugs.

7 Those two were veterinary pharmacies.

8 Q. [10:33:10] Okay. I'm done with veterinary pharmacy. Now I focus on
9 pharmacy for human beings. You said there were many. I repeat my question.

10 Were they all in the market?

11 A. [10:33:30] Yes, all of these pharmacies were in the market. The market was big.

12 They could be situated north of the market, east of the market, and so forth.

13 Q. [10:33:41] You don't remember how many there were, but how many
14 pharmacies do you remember having seen yourself? I mean, if you count in your
15 memory, how many different pharmacies for human beings are you able to
16 remember?

17 A. [10:34:03] There were numerous. I only remember the ones that were open to
18 the SAF service members in the marketplace. I remember there were four
19 pharmacies that were affiliated with the army. They were manned by nurses who
20 were active in the medication business.

21 Q. [10:34:35] Does that include the pharmacy of Mr Ali Muhammad Ali
22 Abd-Al-Rahman?

23 A. [10:34:46] No. Ali Muhammad Ali Abd-Al-Rahman back then was a lay citizen.
24 He was not considered an adherent of the SAF.

25 Q. [10:35:02] Thank you. And finally, this is something that I had delayed since

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1 yesterday, hoping that you could use the map. Can you tell us where the NISS area
2 was, including the NISS prison in Garsila. Where were they located?

3 A. [10:35:36] The NISS facility was in the far east of the town. We can say it was
4 south of the locality. And it was on the southern side of the * Wadi Taro Bidha. It
5 was by the bank of the valley. That's where their officers were. North of this
6 facility was the civilian hospital of Garsila. Further to the south was a police office.
7 Further to the south of that facility was the police office.

8 Q. [10:36:44] Thank you, Mr Witness.

9 PRESIDING JUDGE KORNER: [10:36:48] Are you leaving the market now?

10 MR LAUCCI: [10:36:51] I'm leaving the picture, yes.

11 PRESIDING JUDGE KORNER: [10:36:54] Just one question.

12 You said at page 25, line 11, that -- about the pharmacies - just a moment - that there
13 were two well-known pharmacies "... exercising the function of buying and selling
14 veterinary drugs at the marketplace, there were many, especially on the day the
15 market was organised, was held."

16 Is what you're describing, just so that we understand, a market that was partly
17 composed of permanent units and partly temporary stalls, if you like?

18 THE WITNESS: [10:38:10](Interpretation) Yes. When we say a market, we are
19 talking about all citizens from villages coming to buy and sell merchandise. They
20 bring their own goods from their locations. They would position themselves at
21 different spots in the market and wait for customers to come.

22 In addition to permanent shops, there was a day when people from all villages would
23 come to buy and sell. They would themselves buy what they need from the market
24 and would rid themselves of goods that they sell.

25 PRESIDING JUDGE KORNER: [10:38:56] And was that -- did that only happen on

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1 one day a week or more than one day?

2 THE WITNESS: [10:39:07](Interpretation) It was on two days. Two days a week.

3 PRESIDING JUDGE KORNER: [10:39:12] And do you happen to remember which
4 days they were? If you don't, say so.

5 THE WITNESS: [10:39:21](Interpretation) Monday and Thursday.

6 PRESIDING JUDGE KORNER: [10:39:23] Yes. Thank you very much.

7 Sorry, I just wanted to make sure I'd understood.

8 MR LAUCCI: [10:39:30] Welcome, Madam President.

9 Q. [10:39:36] At paragraph 166 of your statement you say that the Arab tribes
10 feared Ali Kushayb. This fear of the Arab tribes, did it exist prior to the events of
11 2003, 2004?

12 A. [10:40:08] No. Before the -- this period, Ali Kushayb was a friend, or, we can
13 say, a brother of all Arabs. They would come to the marketplace and sit at his place
14 and then leave. We're not talking about fear in the typical sense of fear. It is more
15 of respecting someone esteemed, someone perceived as thoughtful, capable, having
16 leverage with the government and with the *umdahs*. All *umdahs* would come and
17 stick around with him, listen to what he says and engage with him in a discussion.
18 So the average Arab citizen would perceive him with such fear-like perception.

19 Q. [10:41:07] Thank you. And at paragraph 178 you say that Ali Kushayb "has
20 always been known as a very sneaky, unreliable and dangerous person." Same
21 question. Does that -- did that reputation exist prior to 2003?

22 A. [10:41:37] No. He was a well-known person. He was modest. He was just a
23 regular citizen.

24 Q. [10:41:50] So prior to 2003, the Arab tribes had no reason to fear him, right?

25 A. [10:42:05] Yes.

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1 Q. [10:42:15] So once again, I come back to the same question. If he was a simple
2 citizen with a good reputation, how come he was chosen to become the leader
3 Ali Kushayb?

4 PRESIDING JUDGE KORNER: [10:42:36] Really -- I'm sorry, he really can't answer
5 that. It's a guess, at best.

6 MR LAUCCI: [10:42:41] I move on.

7 Q. [10:42:53] Mr Witness, I want to ask you some questions about what you have
8 been describing in your statement as Ali Kushayb's militia. First question, to which
9 Arab tribes did Ali Kushayb's militiamen belong to?

10 A. [10:43:27] All Arab tribes located in the area were militia because they were not
11 militarised. So Ali Kushayb contained these militiamen and started commanding
12 them.

13 Q. [10:43:53] At the highest, how many militiamen are we talking about here?

14 A. [10:44:07] Their number was not known. It could not be known because each
15 tribe had its respective force that reported to Ali. I think even Ali is not able to come
16 up with a specific figure as to their number.

17 Q. [10:44:32] How big was Ali Kushayb's militia compared to the border guard?

18 A. [10:44:48] That is not known. He himself is not able -- he is able to tell the
19 number of Fursan or *umdahs*, but not the full number of all militiamen.

20 Q. [10:45:09] At paragraph 62 of your statement, you say the following: "Following
21 the above weapon and money distribution processes and Harun's visit ..." Do you
22 agree with me that we are talking here about late February 2004?

23 A. [10:45:44] Yes.

24 Q. [10:45:45] I carry on: "... it became obvious to everybody in Garsila that Ali
25 Kushayb had become the most powerful person of the Wadi Salih area and" --

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1 A. [10:46:01] Yes.

2 Q. [10:46:01] -- "as such the de facto leader of the Janjaweed militia and PDF."

3 A. [10:46:16] Yes.

4 Q. [10:46:16] What you mention here, was it a perception or a reality?

5 A. [10:46:41] We can say that was the reality. That reflects what was happening.

6 Q. [10:46:52] And you also refer to an instance where the PDF commander in
7 Zalingei allegedly ordered Ali Kushayb to exhume -- exhumate - sorry - and rebury
8 the corpses of those executed in Deleig. Paragraph 162.

9 If Ali Kushayb by then - we are after February 2004 - was the leader of the Janjaweed
10 militia and PDF for the Wadi Salih, how could the PDF commander in Zalingei issue
11 order to him?

12 A. [10:47:52] The PDF did not have a commander. They had a coordinator. And
13 we can say Ali Kushayb was a commander. The orders did not come from a PDF
14 commander of some kind. They had come from Zalingei, from someone higher up
15 in the ranks within the PDF.

16 Q. [10:48:25] But do you agree with me that Zalingei is in Wadi Salih?

17 A. [10:48:33] It is the HQ of Wadi Salih in Wadi Salih. We can say it is the
18 command of the locality or the province.

19 Q. [10:48:52] So if Ali Kushayb by then was the top leader for the PDF, whatever
20 the rank of that officer in Wadi Salih he should not have been in a position to issue
21 order to him, right?

22 A. [10:49:24] He was not from the PDF. Ali Kushayb was the top leader of the
23 Fursan, the horsemen. At the outset he was named commander of the Fursan, and
24 the Fursan were not part of the military. They were regular citizens. He was their
25 commander. He was not the commander of the PDF. The PDF was a military unit

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1 and it had its command in -- by way of officers. And everywhere they had a
2 coordinator. The coordinator was on top of the lower commander.

3 Q. [10:50:17] So do I understand correctly that the alleged authority of Ali Kushayb
4 did not extend to the PDF?

5 A. [10:50:32] It did not extend to the PDF. It did not.

6 Q. [10:50:38] Thank you.

7 Talking again about this exhumation episode, you say during your preparation
8 session -- I am at paragraph 43 of the prep log. You said that it took place three to
9 four months after Deleig incidents. That would make by May or June 2004, right?
10 Sorry. Actually -- actually, I made a mistake. It's not -- three to four months after
11 Deleig would not be May to June, but at least June to July.

12 A. [10:51:46] Yes. First of all, the exhumation was carried out by two members of
13 the Fursan.

14 THE INTERPRETER: [10:52:06] Last part of the gentleman's answer was not
15 understandable.

16 MR LAUCCI: [10:52:10]

17 Q. [10:52:10] Mr Witness, you have already told the history about the exhumation.
18 I would like to move on, please. We can refer to what you have said already during
19 the examination-in-chief on this episode. My question was just about the time when
20 it occurred.

21 And if I tell you, Mr Witness, that in that time, June to July 2004, this Court has
22 received evidence -- I'm referring to the testimony of Witness P-0643, transcript 059 of
23 8 July 2022.

24 PRESIDING JUDGE KORNER: [10:53:02] We've been through this a number of
25 times, Mr Laucci. It may or may not be helpful, but it's not a proper way saying,

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1 "The Court's heard evidence from a witness." Just put the proposition.

2 MR LAUCCI: [10:53:14] Okay.

3 PRESIDING JUDGE KORNER: [10:53:15] Okay.

4 MR LAUCCI: [10:53:16]

5 Q. [10:53:16] If I tell you, Mr Witness, that in June or July 2004, Mr -- well, the
6 person you call Ali Kushayb was no longer in Garsila but was held under house
7 arrest in Khartoum at this time, what will you say?

8 A. [10:53:52] A topic like him being under house arrest and so forth are things I am
9 not aware of, nor am I able to learn about such information.

10 How it happened? Well, it is possible, because reliable sources, people who
11 exhumed these corpses or these remnants themselves, it is through them that I
12 received this information.

13 Q. [10:54:32] But do you agree with me that if that is true that he was under house
14 arrest in Khartoum at the time, he could not be exhumating corpses in Sodija at the
15 same time?

16 PRESIDING JUDGE KORNER: [10:54:47] I think that speaks for itself.

17 MR LAUCCI: [10:54:52] Thank you, Madam President. I move on.

18 Q. [10:55:01] Mr Witness, if the Janjaweed were composed of border guards, Ali
19 Kushayb's men, and sometimes you added PDF, but I understand that they are now
20 out of the picture, does that mean that an Arab man who wanted to enrol and to
21 become a Janjaweed had to choose between various options?

22 A. [10:55:51] No. First of all, these were not regular forces, official forces, in a
23 manner that allows someone to go enlist. Any person who had a rifle and a horse
24 can go and just become Janjaweed.

25 Well, what is Janjaweed? In essence, Janjaweed -- a Janjaweed is a robber who loots

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1 cattle and belongings in villages. So any person with the ability and capability
2 would undertake such effort. But there was no official structure to which someone
3 can seek to become a Janjaweed.

4 Q. [10:56:36] And if the border guard was composed of tribal groups, wouldn't that
5 be natural to enrol, whether in your own tribal group within the border guard, rather
6 than within any other Ali Kushayb militia?

7 A. [10:57:05] Yes. In principle, being part of a tribal structure makes it possible for
8 you to join Ali Kushayb or any other force. The tribal structure, however, was
9 compulsory. It was compulsory for a person to join the ranks of his own tribe.
10 Should the tribe be targeted, attacked, you should stand the fight along with the other
11 tribesmen.

12 Q. [10:57:44] Thank you. At paragraph 30 of your statement you say that at some
13 point in time Ali Kushayb was mobilising his pharmacy. How do you know that?

14 A. [10:58:08] He was not mobilising a force. He was mobilising the Fursan. They
15 were not the Fursan, the horsemen themselves. They were their leaders; *umdahs* and
16 Fursan leaders. They would go take orders, take promises from Ali Kushayb. Ali
17 Kushayb would tell them, "Here's what is going to happen going forward, and here's
18 what you're going to reap from this." So these were the directions they were getting
19 to entice them to join. So the orders were in the form of incentives or promises.

20 PRESIDING JUDGE KORNER: [10:58:58] You've got to repeat exactly the same
21 answer because you didn't read -- if you'd read the paragraph properly, he wouldn't
22 have had to have the answer.

23 The single question, sir, was: How did you know about this? Did you see it or did
24 somebody tell you about it?

25 THE WITNESS: [10:59:32](Interpretation) The way we learned was these people

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1 seated there. A little while afterwards, mobilisation happened. Ali Kushayb was
2 flanked by citizens, Fursan members, and any bunch of Fursan would have their
3 commander. And there is a name for such a commander, which I have forgotten
4 now. But these orders were not given in public. You cannot hear or see orders
5 being given.

6 PRESIDING JUDGE KORNER: [11:00:18] Sir, no, I understand that. But what you
7 were asked was how did you know. You've described a mobilisation process. And
8 when I repeated the question how did you know about it, you said because you saw
9 these people standing with him at a later stage. Is that how you -- are you assuming,
10 therefore, that he mobilised these people into the Fursan through the shop, through
11 his activities in the shop?

12 THE WITNESS: [11:00:59](Interpretation) The mobilisation occurred in the two
13 camps I mentioned, Korto and Mangaya. People relayed the day when people
14 gathered in Korto or Mangaya. Maybe they learned about it in his pharmacy
15 because they would gather there first and they would be mobilised in the camp, either
16 Mangaya or Korto.

17 PRESIDING JUDGE KORNER: [11:01:40] Well, we've been going on for an hour and
18 a half now. So we'll take a break.

19 All right. Thank you.

20 Yes. Sir, if you'd like to go with the court officer for a moment until -- we'll take the
21 break till half past 11, as usual.

22 MR EDWARDS: [11:02:04] This doesn't involve this witness at all.

23 PRESIDING JUDGE KORNER: [11:02:07](Microphone not activated)

24 (The witness exits the courtroom)

25 PRESIDING JUDGE KORNER: [11:02:31] It is my impression, Mr Laucci, that the

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1 witness is getting really tired. The answers have been much more meandering.

2 And what is really a simple question, you know, "how did you know about it", is not
3 even -- is not getting an answer at all. And I really do wonder how much longer you
4 intend to keep him here.

5 MR LAUCCI: [11:02:59] Well, actually, my perception was that it was better than
6 yesterday afternoon, with the result that I made some good progress this morning.
7 And still unlikely that I can complete the cross-examination prior to lunch break,
8 but --

9 PRESIDING JUDGE KORNER: [11:03:20] No. Well, if you say -- no. I mean, if
10 you say lunch, that's fine. I mean, I -- I got --

11 MR LAUCCI: [11:03:26] Sorry.

12 PRESIDING JUDGE KORNER: [11:03:27] I got the impression that this is all a bit, if I
13 may say so, your -- your -- on little bits and pieces, which are neither here nor there.
14 And if the essence of your case is, which you now say it is, this witness knows your
15 client but is not telling the truth when he says he was the -- the leader Ali Kushayb.
16 Either as you put it, he -- I think you already asked him, this is somebody who has
17 been invented to cover up other people's crimes, or he's just attributing the actions of
18 a man who was known to Ali Kushayb to your client. But isn't that fairly simple and
19 straightforward, which can be done in -- in a few minutes?

20 MR LAUCCI: [11:04:15] If I did -- if I did that that way, Madam President, that
21 would have no value at all. I need to -- to get the elements from the witness that
22 leads me to that conclusion.

23 PRESIDING JUDGE KORNER: [11:04:28] Well, I mean, I --

24 MR LAUCCI: [11:04:30] I have some already, but I'm still missing some others.

25 PRESIDING JUDGE KORNER: [11:04:39] All right. Well, I would urge you, if

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1 possible, please, to conclude by -- by the lunch break, even if it means we sit a little
2 longer.

3 MR LAUCCI: [11:04:48] Yeah. I cannot promise. Doing my best.

4 PRESIDING JUDGE KORNER: [11:04:50] All right.

5 Yes, Mr Edwards, you wanted to raise something. Sorry.

6 MR EDWARDS: [11:04:52] Thank you, your Honour.

7 It relates to one of next week's witnesses, 0878. Your Honours may recall that
8 Tuesday past there was a direction that if there are any objections to material on the
9 list --

10 PRESIDING JUDGE KORNER: [11:05:06] Oh, yes.

11 MR EDWARDS: [11:05:07] -- that those objections be briefly put into writing within
12 12 hours -- within 24 hours of -- of receipt.

13 I've been in communication with the Prosecution over the course of the last session.

14 I understand that the relevant documentation will be with us by -- by the end of today.

15 Would your Honours be prepared to allow any written objections to be made by, say,
16 10 a.m. Monday morning?

17 PRESIDING JUDGE KORNER: [11:05:39] Well, yes, as -- as the witness is clearly
18 going back in time. Are we even going -- when's he due? Wednesday? I see.
19 That's the revised order, is it?

20 MR EDWARDS: [11:05:52] Yeah. I think he's the -- I think he's the
21 penultimate -- well, as things stand, he's the penultimate witness next week, due to
22 testify 7 and 8 September, which I think is next Wednesday and Thursday.

23 PRESIDING JUDGE KORNER: [11:06:09] Yes, it is.

24 MR NICHOLLS: [11:06:12] That is -- that is the plan, your Honour. It's always a bit
25 of an estimate, but yes that is indeed the plan. And, of course, no objection from our

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1 side.

2 PRESIDING JUDGE KORNER: [11:06:22] No. All right.

3 Yes, Monday is fine. Yes, thank you.

4 All right. Well, because we need the full 30 minutes to --

5 MR NICHOLLS: [11:06:31] Sorry, your Honour, I didn't --

6 PRESIDING JUDGE KORNER: [11:06:32] No. Go on. I was simply going to

7 extend the timing.

8 MR NICHOLLS: [11:06:35] No. If we're going to finish by lunch, then should we

9 try to get 916 in today? I'm not sure --

10 MR LAUCCI: [11:06:42] Please, don't rely on this.

11 MR NICHOLLS: [11:06:43] All right. Well, okay.

12 PRESIDING JUDGE KORNER: [11:06:44] No. Well, I think -- I don't know

13 whether there's going to be re-examination of any sort. I am pretty certain that the

14 judges will have some questions for him.

15 MR NICHOLLS: [11:06:57] All right. Then, in essence --

16 PRESIDING JUDGE KORNER: [11:07:00] Yeah, I think -- I think you can forget 916.

17 MR NICHOLLS: [11:07:02] Okay. Thank you.

18 PRESIDING JUDGE KORNER: [11:07:04] Yeah. Yes. All right.

19 Well, we'll have to sit, as the full 30 minutes are required, we'll sit again at 20 to 12,

20 just to make sure.

21 THE COURT USHER: [11:07:18] All rise.

22 (Recess taken at 11.07 a.m.)

23 (Upon resuming in open session at 11.40 a.m.)

24 THE COURT USHER: [11:40:26] All rise.

25 Please be seated.

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1 MR LAUCCI: [11:41:05] Thank you, Madam President.

2 Q. [11:41:16] Mr Witness, I will do my best to conclude your cross-examination
3 during that session, but that will require from you your cooperation, giving short
4 answers as often as you can.

5 I want to come back quickly on one information that you provided earlier today,

6 (Redacted)

7 (Redacted)

8 A. [11:42:07] (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. [11:42:28] And if I tell you that Mr Ali Muhammad Ali Abd-Al-Rahman's
12 mother passed in 1961, what are you to say?

13 A. [11:42:52] I'm not aware of any death, but I know (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. [11:43:10] Thank you.

17 I come to the conclusion of the chapter on the so-called militia of Ali Kushayb. I
18 want to sum up with you. Just give "yes" or "no" answer to the following question:
19 Do you agree with me that at no time the PDF in Wadi Salih was placed under the
20 command of a man called Ali Kushayb?

21 A. [11:43:50] No. Ali Kushayb started with the Fursan and not with the Popular
22 Defence Forces.

23 Q. [11:44:01] Thank you.

24 Do you agree with me that at no time the border guard in Wadi Salih were placed
25 under the command of a man called Ali Kushayb and that they remain at all times

1 under the authority of their respective tribes' border guard leaders?

2 A. [11:44:31] As regards the border guard, no. Each tribe was under the authority
3 of one of the Fursan.

4 Q. [11:44:45] Thank you.

5 Do you agree with me that it could be -- sorry, I repeat.

6 Do you agree with me that there could not be and has never been such thing as
7 Ali Kushayb's militia, in addition to the border guard and the PDF?

8 A. [11:45:17] After mobilising the forces referred to as the Al Fursan, Ali Kushayb
9 became their leader, but the PDF had a different authority, which was quite separate,
10 and the border guard had another authority, which was also separate, in turn.

11 Q. [11:45:40] Thank you.

12 Do you agree with me that the so-called Janjaweed were actually a group of
13 militiamen composed of a variable mixture of border guard and PDF members?

14 A. [11:46:02] As regards the Janjaweed, they were called robbers because they
15 robbed cattle, et cetera. When it comes to the Janjaweed, they weren't visible. They
16 were people who were working covertly in far-removed regions, regions which were
17 beyond the control of the government.

18 Q. [11:46:30] And finally, do you agree with me that there was no unified hierarchy
19 within the Janjaweed group? Not a single commander, but a juxtaposition of
20 parallel hierarchies and commanders fluctuating in time depending on who was
21 joining in each operation?

22 A. [11:46:59] No. The Janjaweed were not organised. So every three or four
23 individuals would agree to carry out a robbery. The government would search for
24 them, might manage to find them, to stop them and return the cattle. Or on the
25 contrary, the Janjaweed might get away with it.

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1 Q. [11:47:39] Thank you.

2 I move now to --

3 PRESIDING JUDGE KORNER: [11:47:43] I'm really sorry, I am going to have to
4 stop you, Mr Laucci. The difficulty is the way you phrased these questions, which
5 are all quite long, and I'm not sure what he's answering in each of these answers. I
6 mean, you looked as though you were quoting from something in your very last
7 question. But it's quite a complicated series of questions. I'm sorry, I think it's
8 better that we deal with it now, because I'm not at all clear what his answers to your
9 propositions are.

10 Right. Because, for example, if one looks at page 41, line 11: "Do you agree with me
11 that at no time the PDF in Wadi Salih was placed under the command of a man called
12 Ali Kushayb?"

13 He said: "No. Ali Kushayb started with the Fursan and not with the Popular
14 Defence Force." Which isn't really an answer to the proposition you're putting.

15 Sir, I think we -- I'm sorry, but I think we need to go back on this. It is suggested to
16 you that Ali Kushayb did not at any stage command the PDF in Wadi Salih. Do you
17 agree with that suggestion? Is it right or is it wrong?

18 THE WITNESS: [11:49:49](Interpretation) Yes, Ali Kushayb was not the commander
19 of the PDF. He was the commander of the Fursan. And when there was a
20 mobilisation, the PDF and the Fursan began to operate together.

21 PRESIDING JUDGE KORNER: [11:50:09] Right. When they were operating
22 together, was anybody in charge of them? Was anybody the commander?

23 THE WITNESS: [11:50:27](Interpretation) No. I'm not aware. I don't know if
24 there was a direct commander.

25 PRESIDING JUDGE KORNER: [11:50:35] Thank you.

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1 Then next, the border guard, were they at any stage placed under the authority of
2 Ali Kushayb?

3 THE WITNESS: [11:51:02](Interpretation) As regards the border guard, those were
4 official forces which were -- received their munitions and attire from the government.
5 But when the operations began and combat began, Ali Kushayb and the PDF, and not
6 the Central Reserve but the border guard, they were all citizens. They would all
7 operate together to attack the rebellion or move to the zones of the rebellion. They
8 would work together and one would not really distinguish further between the
9 Fursan and the PDF, no.

10 PRESIDING JUDGE KORNER: [11:52:05] Right.

11 Third proposition: It is suggested to you that, in effect, what is called Ali Kushayb's
12 militia didn't exist.

13 I think that's what you're putting; is that right?

14 MR LAUCCI: [11:52:27] Did not exist, and -- yeah, did not exist and was which only
15 leaves room for the border guard and the PDF.

16 PRESIDING JUDGE KORNER: [11:52:38] In other words, yes. Okay.

17 So that there was no such thing as -- is that what you're saying, there's no such thing
18 as the Fursan, or the Janjaweed, or whatever you call it, who were under the
19 command of Ali Kushayb?

20 MR LAUCCI: [11:52:54] I'm not saying that there was no Fursan of -- no Janjaweed.
21 I'm saying that this group of Fursan and Janjaweed was a mixture of border guard
22 and PDF, and that Ali Kushayb had no men of his own in that group.

23 PRESIDING JUDGE KORNER: [11:53:09] Okay. So that he wasn't the leader
24 of -- of such a group. Is that what you're saying?

25 MR LAUCCI: [11:53:15] Not only was not the leader, but this group had no

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1 component that would be made of his own men. It was only border guard and PDF
2 fighting together, but no in addition a third category within that big group that would
3 be Ali Kushayb's men.

4 PRESIDING JUDGE KORNER: [11:53:35] Right.

5 Okay, sir, that's what the suggestion is. What do you say to that?

6 THE WITNESS: [11:53:51](Interpretation) In fact, Ali Kushayb was in the field, and
7 the same men of the PDF and the border guard followed him. So he had his own
8 bodyguards. One of his bodyguards was called Abikir and he was not a member of
9 the border guard or of the PDF. So, basically, he belonged to the PDF and the PDF
10 men were his bodyguards. He did not have his own bodyguards or his own forces
11 which belonged to him. Those members of the PDF and members of the border
12 guard fought at his side.

13 PRESIDING JUDGE KORNER: [11:54:47] Right.

14 And finally - I have no idea what you were quoting, Mr Laucci - but was there any
15 kind of command structure within the Janjaweed, or was it simply groups of people
16 with different commanders at different times?

17 Is that -- have I got that right?

18 MR LAUCCI: [11:55:26] This is the essence, yes.

19 PRESIDING JUDGE KORNER: [11:55:25] Right.

20 MS WHITFORD: [11:55:29] Your Honour, could we restrict that question to 2003,
21 2004, perhaps?

22 PRESIDING JUDGE KORNER: [11:55:37] Yes, in 2003 and 2004.

23 MR LAUCCI: [11:55:52] I can try to make it even simpler.

24 Q. [11:55:57] Mr Witness, at any time in 2003, 2004, has there ever been a unique
25 commander supervising the operation of the border guard, the PDF and whatever

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1 else, Janjaweed?

2 A. [11:56:24] Yes. First of all, all of those names, if you like, those denominations,
3 were assembled under Ali Kushayb and their objective was to counter the rebellion.
4 The -- the Fursan chiefs, et cetera, joined forces because it was clear that there was war,
5 and a rebellion, and you had the members of the Fur and the Arabs. Now the Arabs
6 had previous experience because Bolad had come with those forces and had
7 mobilised the Arabs. And that's why they feared that the rebellion would not follow
8 them and that they would find themselves surrounded, as was the case with Bolad.
9 And so all of the Arabs -- Arabs, rather, joined forces to push back the rebellion.

10 PRESIDING JUDGE KORNER: [11:57:36] Yes, all right. I think that's now clear.
11 Thank you very much. And I'm sorry to interrupt, but it really wasn't -- it was the
12 way you were phrasing this that made it rather difficult.

13 MR LAUCCI: [11:57:46] Thank you.

14 Q. [11:57:50] Mr Witness, talking about the mobilisation that you mention in
15 your -- in your statement, you say that Ali Kushayb started mobilisation in reaction to
16 the rebel attacks in Bindisi, Mukjar and Arawala. That's paragraph 171 of your
17 statement. So does that mean that this mobilisation started, at the earliest, in the
18 course of August 2003?

19 A. [11:58:40] Yes.

20 Q. [11:58:41] How long did that mobilisation take?

21 A. [11:58:50] That mobilisation began and they began gathering information
22 regarding the rebellion at various locations until things became clear.

23 Q. [11:59:09] But in terms of time, weeks, month? How long did it take?

24 A. [11:59:27] I don't recall how long the mobilisation took. But after mobilisation
25 the forces had been established, they had been chosen, *and they were brought to

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1 Al-Obeid to be trained. They underwent training and then they were divided into
2 two groups. One group was called the Central Reserve and the other group was
3 called the Popular Defence Forces.

4 Q. [12:00:06] Yes. Mr -- Mr Witness, you are talking about something that
5 happens normally significantly later, that is after the 2003 and 2004 events. I'm
6 talking about the mobilisation effort by Ali Kushayb in August 2003.

7 My question is: Do you have any clue how much time it took Ali Kushayb to
8 mobilise his men prior to starting operations?

9 A. [12:00:51] Ali Kushayb, or his mobilisation, ended with the massacre that
10 occurred to Deleig, which caused a lot of talk and uproar. Then things calmed down
11 and that's how it ended.

12 Q. [12:01:07] Are you saying that Deleig is the first operation that Ali Kushayb's
13 men were able to undertake after the mobilisation, or were there other operations
14 before?

15 A. [12:01:26] There were other operations in Bindisi, Mukjar and Sindu. And
16 before that they had gone to Drissa, Tanako. All of his operations occurred, but they
17 ended, lastly, in Deleig, with the operation in Deleig.

18 Q. [12:02:14] Okay. Thank you.

19 I try to find again the exact reference.

20 Yes. At paragraph 169 of your statement -- ah, that requires going into private
21 session, I'm afraid.

22 PRESIDING JUDGE KORNER: [12:02:58] Yes, private session.

23 (Private session at 12.03 p.m.)

24 THE COURT OFFICER: [12:03:03] We're in private session, Madam President.

25 (Redacted)

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1 (Redacted)

2 (Open session at 12.06 p.m.)

3 THE COURT OFFICER: [12:06:08] We're back into open session, Madam President.

4 MR LAUCCI: [12:06:11]

5 Q. [12:06:11] I move to the distribution of weapons. I'm at paragraph 44 of your
6 statement and you mentioned a distribution of weapons in Garsila in February 2004.

7 First question: Did you hear about any other distribution of weapons in Garsila
8 prior to that date?

9 A. [12:06:49] I did not.

10 Q. [12:06:53] Thank you.

11 These weapons were received from the PDF logistical HQ in Nyala. And do you
12 confirm that First Lieutenant Hamdi was the officer in charge of these weapons?

13 A. [12:07:32] Yes. Correction: The arrival of the weapons was at the HQ of the
14 Garsila force, not at the PDF. PDF was about half kilometres from the army
15 command. So when the vehicle arrived, it came inside the army HQ, the army
16 command. And those who were bringing the weapons were from the army. They
17 were not from the PDF.

18 Q. [12:08:00] And the officer in charge of receiving the weapons and dealing with
19 them was First Lieutenant Hamdi, right?

20 A. [12:08:16] Yes. Afterwards, it became the commander of the garrison, who is
21 notified of the arrival of weapons. And he came, had a look at it, and ordered that
22 the weapons be unloaded in certain depots.

23 Q. [12:08:35] Thank you.

24 At paragraph 48 of your statement you said that when these weapons were
25 distributed you saw Ali Kushayb giving instructions. To whom did he give

1 instructions and what kind of instructions?

2 A. [12:09:00] To the Fursan who came to take weapons. They were outside the
3 military zone. They were seated in small groups under the shade of trees. First
4 came the *umdahs*. The Fursan, they would say this *umdah* would take this number of
5 weapons. So the selected *umdahs* would come, accompanied by Ali Kushayb, take
6 the weapons from the depot, or from the area where the weapons were made ready
7 for distribution, before going back to where they were. This happened also to other
8 military gear such as military outfits and other things. So that's how it happened.
9 And Ali Kushayb was choosing or was giving orders to *umdahs*. Each tribe had its
10 own *umdah* and each tribe received a certain number of weapons. A particular tribe
11 would have a certain number of people from it come and take weapons before
12 heading back.

13 Q. [12:10:19] The weapons were under the custody of First Lieutenant Hamdi.
14 Was he -- was it First Lieutenant Hamdi delivering the weapons, or was it Ali
15 Kushayb?

16 A. [12:10:43] Certain individuals assigned to this task were handing the weapons.
17 They were from the intelligence service. With them was Abdulkhalik, who was a
18 weapons officer. As to the commanders, they were far from this weapons
19 distribution operation. The weapons distribution was just between citizens and
20 army service members.

21 Q. [12:11:10] So which authority had Ali Kushayb to tell the military intelligence
22 officers and First Lieutenant Hamdi how many weapon to give to each and each
23 *umdah*?

24 A. [12:11:36] Ali Kushayb did not have an authority. However, those who had
25 brought the weapons decided that the weapons will be distributed in a certain fashion.

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1 Ali Kushayb, because he owned the will of the *umdahs*, was able to direct them to
2 bring certain numbers in. Actually, the weapons were less than the numbers of
3 those who wanted to take the weapons. There were huge numbers of Arabs who
4 had come to take weapons. Some of them might have come even from Chad because
5 Garsila is near the border.

6 Q. [12:12:21] So, Mr Witness, when you say that Ali Kushayb was giving
7 instructions during the distribution of weapons, is it just that he was telling people
8 when to enter and collect the weapons, like a groom, or is it rather that there was no
9 Ali Kushayb present when the weapons were distributed?

10 A. [12:12:59] The weapons were distributed over the course of two days, and
11 in -- during that time frame Ali Kushayb was present and was overseeing citizens.

12 Q. [12:13:13] Thank you.

13 I move to the next topic, which is the distribution of money. Paragraph 58-59 of
14 your statement.

15 Do you agree with me that this distribution of -- no, actually, at paragraph 44 of your
16 statement you say that the distribution of money happened two days after the
17 distribution of weapons. So are we still in late February 2004?

18 A. [12:13:49] I do not remember the date. However, after the weapons were
19 distributed, Ahmad Harun arrived and delivered small boxes. We couldn't tell if
20 this was cash, but I looked at the boxes that (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. [12:14:31](Microphone not activated) One question. I think it was on Monday
24 or Tuesday -- not Tuesday, impossible. But real-time transcript 071, the second
25 transcript, so it must be Monday. Page 20, line 8 to 9, you said that the three

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1 high-ranking officers arrived in Garsila when the weapons were distributed. Can
2 you be more -- can you be more --

3 A. [12:15:12] Yes.

4 Q. [12:15:13] -- specific. Did they arrive before or after the distribution of
5 weapons?

6 A. [12:15:31] During the distribution of weapons, in the last days of that.

7 Q. [12:15:35] Yes, that is true that it last more than one day. Thank you for that
8 clarification.

9 So it means that these three officers were also present when the money was
10 distributed, right?

11 A. [12:16:02] I'm not sure if they were present. But the person who made this
12 distribution was Ahmad Harun, in front of the office of the commander of the
13 battalion.

14 Q. [12:16:34] Do you have any clue as to what was the purpose of this distribution
15 of money?

16 A. [12:16:51] To boost the morale. And also as a reward for those who have
17 helped repelling the rebellion.

18 Q. [12:17:06] Did that include the Janjaweed, or Ali Kushayb's men?

19 A. [12:17:18] Yes. They actually got the lion's share. I remember they gave him
20 about one or two small boxes. To Ali, they gave these to Ali.

21 Q. [12:17:31] How do you explain that this money was given to Ali Kushayb, who
22 was, as you said, just a civilian, instead of the *umdahs*?

23 A. [12:17:51] No. The counterinsurgency in Sindu and elsewhere was carried out
24 by Ali Kushayb and his men. Therefore, regular civilians had -- were not on a
25 payroll. That is why this was a reward for what they have accomplished, and also to

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1 boost their morale.

2 Q. [12:18:24] Mr Witness, you explain that the weapons were distributed under the
3 supervision of military intelligence. And now you say that money, apparently a big
4 amount, was given to that person called Ali Kushayb without any real title or
5 function.

6 PRESIDING JUDGE KORNER: (Microphone not activated)

7 MS WHITFORD: [12:18:53] Well, it's a very long question to begin with,
8 your Honour.

9 PRESIDING JUDGE KORNER: [12:18:56](Microphone not activated)

10 MR LAUCCI: [12:18:58] I move on.

11 PRESIDING JUDGE KORNER: [12:19:06](Microphone not activated)

12 THE INTERPRETER: [12:19:22] Microphone, please.

13 PRESIDING JUDGE KORNER: [12:19:24](Microphone not activated)

14 It's a comment rather -- it's a comment rather than a question.

15 MR LAUCCI: [12:19:32] Actually, I will rephrase and remove the last part of the
16 question.

17 PRESIDING JUDGE KORNER: [12:19:37] Well, he's already said. But -- but even so,
18 and you say that money, apparently large amounts. What is the question? Well,
19 he's already -- he has already said. That's what he says, yes. So what is your
20 question?

21 MR LAUCCI: [12:19:49] I would like to understand why the distribution of weapons
22 is supervised by military intelligence and the distribution of money to apparently the
23 Janjaweed is not.

24 PRESIDING JUDGE KORNER: [12:20:04] That's a straightforward question.

25 Yes, you carry -- can you answer that, sir?

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1 THE WITNESS: [12:20:18](Interpretation) The man arrived in a special manner. It
2 was delivered by a minister. It was not a regular form of payroll. It was like a gift.
3 So certainly the intelligence had no role to play, nor did have the other commanders
4 a role to play. The money was not even counted for entrusted regular bodies to
5 oversee the operation.

6 MR LAUCCI: [12:20:58]

7 Q. [12:20:58] And what if Ali Kushayb had taken the money and left the country?

8 PRESIDING JUDGE KORNER: [12:21:04] No, well that's -- no, no, no, no. What's
9 he supposed to say to that?

10 MR LAUCCI: [12:21:10] I move on.

11 Q. [12:21:11] At paragraph 163 of your statement you mention the instance where
12 two men of Ali Kushayb complained that they were requested to exhumate and
13 rebury the bodies of the -- those person executed in Deleig, and that they were, for
14 that very difficult task, they were only offered some sugar, bread, tea and 100
15 Sudanese pounds.

16 We clarified that this event took place three to four months after that distribution of
17 money, and the Deleig event, which are close. What was the purpose of exhumating
18 the bodies and reburying them, please, if you know? If you can guess.

19 PRESIDING JUDGE KORNER: [12:22:17] No, no, he can't guess.

20 MR LAUCCI: [12:22:20] Okay. Fine. I move on. I move on.

21 Q. [12:22:23] Do you know what was the purpose of the exhumation?

22 A. [12:22:40] The information is that execution happened at a certain location, and
23 the burial happened at that same location. Because some NGOs had seen that
24 location, they wanted to take those remnants elsewhere so that, should the NGOs
25 come back, they would find traces no more.

1 Q. [12:23:19] So was it -- were these exhumation aiming at concealing evidence of
2 the execution?

3 A. [12:23:40] Yes.

4 Q. [12:23:40] Well, then that made it a very sensitive operation, not one you entrust
5 to men without paying them enough so that they can't complain about it, right?

6 A. [12:24:07] I would say they are accomplices in the crime themselves. They
7 shouldn't do this anyway. Of course, it's a very dirty job to exhume remnants or
8 corpses. Once involved in such thing, they shouldn't later on nag about getting
9 money and so forth. As I have previously said, it was a sensitive operation.

10 Q. [12:24:38] And if Ali Kushayb had received so much money in late February
11 2004, three to four months before, how do you explain that he did not pay properly
12 his men for this sensitive work?

13 PRESIDING JUDGE KORNER: [12:24:54] No, no, no, no. Can't answer that one
14 either. That is a pure comment.

15 MR LAUCCI: [12:25:00] Thank you, Madam President. I move to the next topic.

16 Q. [12:25:05] The next topic is the various military operations that you mention in
17 your statement. You mentioned four. One on Tanako, Drissa and Silik. The
18 second in Bindisi, Mukjar and Sindu. The third on Mara, Segai, Segei Maro, Arawala,
19 Forgo and Gaba. And the last in Deleig.

20 A. [12:25:38] Yes.

21 Q. [12:25:39] Do you confirm that all these localities were under the area of
22 operations of the Garsila brigade?

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

24 Q. [12:25:52] Was Major * Bakhat present throughout the first operation, the one on
25 Tanako?

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1 A. [12:26:03] Yes.

2 Q. [12:26:03] Did Major * Bakhat appoint Staff Sergeant Muqaddam Idriss Barram
3 for the second operation, the one on Bindisi, Mukjar and Sindu?

4 A. [12:26:18] Yes.

5 Q. [12:26:19] Who was the SAF officer in charge of the third operation?

6 A. [12:26:29] Also non-commissioned officers were in charge at this instance - the
7 third operation, that is - whose names I do not remember. Probably they were not
8 officers, because this third operation was launched from Mangaya, so I don't know
9 who was in charge.

10 Q. [12:26:57] Mr Witness, do you confirm that -- fair enough, did I say.
11 Do you confirm that First Lieutenant Hamdi was in charge of the fourth operation on
12 Deleig? You say so at paragraph 141 of your statement.

13 A. [12:27:19] The fourth operation was in Deleig. However, Hamdi was not
14 assigned to the fourth operation in Deleig. He went there. The enemy was
15 surrounded and some arrests happened. However, he was actually, in principle, on
16 a mission to Kaylik.

17 Q. [12:27:42] Mr Witness, I will refresh your memory by reading paragraph 141.
18 You are talking about the operation in Deleig, and you say, Hamdi: "In my opinion,
19 Hamdi, being the commander of the military operation and leading the convoy",
20 et cetera, et cetera.

21 So was Hamdi the commander of the military operation in Deleig?

22 A. [12:28:17] The military operation in Deleig was, in fact -- consisted, in fact, in
23 rounding up the suspects. It was about searching for and arresting the suspects who
24 were locked up at the police office. This is the operation that took place in Deleig.

25 Q. [12:28:42] And was Hamdi in charge of that?

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1 A. [12:28:50] Yes, he was in charge. He went there and, along with the forces of
2 Deleig and the police, they surrounded the area and arrested the suspects. The
3 suspects were known to the intelligence officer who -- officers who had operated in
4 that area. When they arrested them, they did not lock them up at the army facility,
5 but at the police facility, in order to be investigated.

6 Afterwards, Hamdi left. He went to Kaylik and events unfolded eventually.

7 Q. [12:29:40] Thank you.

8 Do you know who had entrusted Hamdi with that mission? I have two options to
9 propose to you. Tell me if one of these two is correct.

10 First option, was it Major * Bakhat, the commander of the Garsila battalion? Or was
11 it, second option, Brigadier General Khamis from the SAF military intelligence HQ
12 who was present in Garsila at this time?

13 A. [12:30:20] I did not learn specifically about who assigned Hamdi, but Hamdi left
14 on a mission on the basis of intel regarding the presence of Abd-Al-Wahid and his
15 group in the area of Kaylik. Whether he was assigned by Khamis, or some other
16 person, to go search for suspects in Deleig and arrested them, that is something I
17 don't know about. I do not know who assigned him, who tasked him.

18 PRESIDING JUDGE KORNER: [12:31:03] I'm sorry to interrupt again, Mr Laucci,
19 but it was -- you weren't asking about Kaylik. You were asking about the Deleig
20 operation?

21 Right. Thank you.

22 MR LAUCCI: [12:31:19]

23 Q. [12:31:19] Mr Witness, I will read from paragraph 65 of your statement. You
24 say: "... Ali Kushayb, supported by the SAF and PDF, carried out the first operation
25 against the rebels by attacking the villages of Tanako, Drissa and Silik."

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1 I forget to read, it was at the beginning, "In late 2003, or early 2004 ..."

2 Do you confirm that this first operation on Tanako, Drissa and Silik was the first
3 operation carried out by Ali Kushayb against the rebels?

4 A. [12:32:18] Yes.

5 Q. [12:32:19] You did not hear about any military operation against the rebellion
6 involving Ali Kushayb before late 2003, early 2004?

7 A. [12:32:36] No, no. I did not hear about this.

8 Q. [12:32:51] I come back to the arrival of these three high-ranking officers in
9 Garsila for the purpose of monitoring military operations. Did the
10 operation -- actually, out of the four operation you mention, which one took place
11 after the arrival of these three high-ranking officers?

12 A. [12:33:46] This search and arrest operation in Deleig, and the executions in the
13 Soja region.

14 Q. [12:33:56] Thank you.

15 And I need to go to private session for the end of my cross-examination, except the
16 conclusion.

17 And I have the impression that we will finish before lunch.

18 PRESIDING JUDGE KORNER: [12:34:34](Microphone not activated)

19 Sorry. I was helping myself to water. Sorry, what did you say, Mr Laucci?

20 MR LAUCCI: [12:34:43] That I needed to go to private session for the end of my
21 cross-examination. And I was announcing the good news that I have the impression
22 that I will be done before the lunch break.

23 PRESIDING JUDGE KORNER: [12:34:54] Right.

24 Having stood down the witness, Mr Nicholls - you were distracted as well - will you
25 be able to resuscitate him this afternoon, because I think we'll just sit through to finish

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- 1 this witness? Or is he -- has he been taken away again?
- 2 MR NICHOLLS: [12:35:20] I'll have to check, your Honour, because --
- 3 PRESIDING JUDGE KORNER: Yeah. I'm sorry, yeah.
- 4 MR NICHOLLS: -- we did confirm that it -- that it wouldn't be today.
- 5 MR LAUCCI: [12:35:25] If there is re-examination or question by your Honours, that
- 6 will have to be, I'm afraid, after the lunch.
- 7 PRESIDING JUDGE KORNER: [12:35:31] Yes. All right. All right. All right.
- 8 We'll stick to -- we'll stick to the witness not coming.
- 9 Yes, sorry. Private session, yes.
- 10 (Private session at 12.35 p.m.)
- 11 THE COURT OFFICER: [12:35:50] We're in private session, Madam President.
- 12 (Redacted)
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4 (Open session at 1.04 p.m.)

5 THE COURT OFFICER: [13:04:25] We're back into open session, Madam President.

6 PRESIDING JUDGE KORNER: [13:04:29] I think, Mr Laucci, I need to understand.

7 Is it your suggestion that -- that he's attributing to the man he calls Ali Kushayb -- he

8 also says your client, but leaving that aside - that he's attributing actions committed

9 by Al Bonjouse to Ali Kushayb? It wasn't all -- that's why I say it really wasn't clear

10 what you were putting.

11 MR LAUCCI: [13:05:01] Not necessarily Al Bonjouse only.

12 PRESIDING JUDGE KORNER: [13:05:05] No.

13 MR LAUCCI: [13:05:05] But including Al Bonjouse, considering the -- the role that

14 the witness describes in his statement for that person.

15 PRESIDING JUDGE KORNER: [13:05:13] All right. So -- okay.

16 And second thing is, the video, is it accepted that that -- when he said that's your

17 client, that is your client, in that video?

18 He said, when it was played to him -- I looked up just to make sure. It was on 31

19 August, so day before yesterday, he was played the video, the one of the speech in

20 Rahad Al-Berdi. And he was asked at page 53, line 14:

21 "Did you recognise the person who was speaking in the video, the main person

22 speaking?

23 "Yes. This is Ali Muhammad Ali Abd-Al-Rahman."

24 MR LAUCCI: [13:06:20] On this one, Madam President, I propose to answer after

25 the break, after receiving instruction from my client.

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- 1 PRESIDING JUDGE KORNER: [13:06:27] Yeah. That's fair enough.
- 2 Yes. Thank you. All right. We'll sit again at 2.30.
- 3 THE COURT USHER: [13:06:34] All rise.
- 4 (Recess taken at 1.06 p.m.)
- 5 (Upon resuming in open session at 2.30 p.m.)
- 6 THE COURT USHER: [14:30:40] All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE KORNER: [14:31:15] Yes, Mr Laucci.
- 9 MR LAUCCI: [14:31:21] Madam President, shall I start with the conclusion of
- 10 the cross-examination, or the answer to the question that you asked before the break?
- 11 PRESIDING JUDGE KORNER: [14:31:30](Microphone not activated) Sorry. No,
- 12 I'm not asking you a question. If you -- if you dispute it, then you must put it to
- 13 the witness. If you don't dispute it, you don't have to do anything about it.
- 14 MR LAUCCI: [14:31:46]
- 15 Q. [14:31:46] Mr Witness -- I will nevertheless answer the question specific -- that
- 16 you have asked separately.
- 17 Mr Witness, we have reached the conclusion of my cross-examination, which means
- 18 that you will soon be released from this Chamber after an eventual re-examination
- 19 and questions by their Honours.
- 20 I have some last questions to ask you. I think these questions can all be -- almost all
- 21 can be answered by a "yes" or "no". No need to repeat what you have already said
- 22 over that week, which was long. And let's see how -- if that can be answered in one
- 23 word or shortly.
- 24 Mr Witness, do you agree with me that all the military operations you mention in
- 25 your written statement, particularly the operation in Deleig in March 2004, was at all

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1 time placed under the direct command and supervision of the Sudanese Armed
2 Forces?

3 PRESIDING JUDGE KORNER: [14:33:08] I'm afraid he mentioned an awful lot of
4 military operations --

5 THE WITNESS: [14:33:13](Interpretation) Yes.

6 PRESIDING JUDGE KORNER: [14:33:15] He said yes.

7 But I think you -- I think you need to specify which ones you're referring to.

8 The ones that are relevant to this indictment at least.

9 MR LAUCCI: [14:33:32] Actually, I was referring to all military operations
10 mentioned in the written statement, including Deleig.

11 PRESIDING JUDGE KORNER: [14:33:40] Yes, but he did mention an awful lot of
12 military operations.

13 MR LAUCCI: [14:33:45](Microphone not activated)

14 PRESIDING JUDGE KORNER: [14:33:47] I think you really need to specify.
15 Sorry. Yes, Ms Whitford.

16 MS WHITFORD: [14:33:53] We would agree that the question should be more
17 specific, given that the statement's not in evidence.

18 PRESIDING JUDGE KORNER: [14:33:58] Exactly. I mean it would be different if it
19 was a 68(3), Mr Laucci.

20 MR LAUCCI: [14:34:03] I understand. I had gone through this during
21 the cross-examination, but I'm happy to respecify which one I'm talking about. Yes.

22 Q. [14:34:26] Mr Witness, I rephrase my -- my question.

23 Do you agree that the first operation you mention on Tanako, Drissa and Silik was
24 placed under the direct command and supervision of the Sudanese Armed Forces?

25 A. [14:34:55] Yes.

1 Q. [14:34:58] Do you agree that the second operation you mention on Bindisi,
2 Mukjar and Sindu was also placed under the direct command and supervision of
3 the Sudanese Armed Forces?

4 A. [14:35:20] Yes.

5 Q. [14:35:23] Do you agree that the third operation you mention, on Mara, Segai,
6 Segei Maro, Arawala, Forgo and Gaba was under the command and supervision of
7 the Sudanese Armed Forces?

8 A. [14:35:45] Yes.

9 Q. [14:35:47] And finally, do you agree that the last operation you mention in
10 Deleig was also under the direct command and supervision of the Sudanese Armed
11 Forces?

12 A. [14:36:05] No.

13 Q. [14:36:13] We will refer to your more elaborate answer during the
14 cross-examination for the detail. Thank you.

15 (Redacted)

16 (Redacted)

17 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 MS WHITFORD: [14:39:58] Your Honour, I should have stood up earlier. I

15 apologise. I think these last questions should have been in private session. We can

16 send a redaction. But if there would be more questions on this topic, we would ask

17 to move into private session.

18 PRESIDING JUDGE KORNER: [14:40:11] Yes.

19 Mr Laucci, I should have picked that up as well. Are you going to ask more

20 questions that may disclose his identity?

21 MR LAUCCI: [14:40:21](Microphone not activated) At least one.

22 PRESIDING JUDGE KORNER: [14:40:23] Yes. All right. Well, let's go back into

23 private session.

24 (Private session at 2.40 p.m.)

25 THE COURT OFFICER: [14:40:38] We're in private session, Madam President.

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5 (Open session at 2.52 p.m.)

6 THE COURT OFFICER: [14:52:12] We're back into open session, Madam President.

7 PRESIDING JUDGE KORNER: [14:52:15] Mr Laucci, the witness has said, in

8 the clearest possible terms, that that's your client, the pharmacist. And you accept

9 the two of them know each other. Therefore he, when you took instructions, must

10 be able to say that is me making the speech, or it's not. If you agree, then there's no

11 need to ask any questions. If you don't -- if your client says -- if your instructions are

12 that is not him, you must put it to the witness that he's made a mistake. It's as

13 simple and straightforward as that.

14 MR LAUCCI: [14:52:54] There is no need to ask further question, Madam President.

15 PRESIDING JUDGE KORNER: [14:52:56] Thank you.

16 Right. Yes. Headphones on again, please.

17 Yes, Ms Whitford.

18 MS WHITFORD: [14:53:07] I have -- I have no re-examination, your Honour.

19 Thank you.

20 PRESIDING JUDGE KORNER: [14:53:10] Right.

21 Yes, we'll start with Judge Alexis-Windsor.

22 JUDGE ALEXIS-WINDSOR: [14:53:15] Good day, sir. I have a few questions for
23 you.

24 Before 2003 were there historical hostilities between the Nuba tribe and the Fur tribe?

25 THE WITNESS: [14:53:44](Interpretation) No. Fur lived in Darfur. But the Nuba

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1 tribe lived in the extreme south of new Sudan. So there is no connection between
2 the Nuba and the Fur, because the Fur live in Darfur and the Nuba tribe lives in
3 the Nuba mountains, the Nubia mountains.

4 JUDGE ALEXIS-WINDSOR: [14:54:16] Thank you.

5 Similarly, before 2003, were there historical hostilities between the Nuba tribe and
6 the Al Ta'aisha tribe? I don't know if I have pronounced that well.

7 Yes? Mr Laucci is nodding at me. Yes.

8 THE WITNESS: [14:54:42](Interpretation) There is no connection between
9 the Ta'aisha and the Nuba. The Ta'aisha live in Darfur and the Nuba live in
10 the Nuba mountains in the extreme south of new Sudan or north Sudan.

11 JUDGE ALEXIS-WINDSOR: [14:54:59] Thank you. One more question, sir.

12 You've mentioned the word "Janjaweed" and you've mentioned the word "Fursan".

13 Can you tell us whether it is a different set of persons you're describing by these two
14 different words?

15 THE WITNESS: [14:55:25](Interpretation) There is no difference between them.

16 The Janjaweed are the Fursan. The Fursan are pastoral Arab citizens, and
17 the Janjaweed, maybe we could call them thieves, maybe we can call them outlaws.

18 They are people who committed the crimes in villages and on the roads, but they are
19 the same people.

20 JUDGE ALEXIS-WINDSOR: [14:55:56](Interpretation) Thank you.

21 That's all from me.

22 JUDGE ALAPINI-GANSOU: [14:56:12](Interpretation) Thank you, your Honour.

23 I'm now going to follow on from Judge Alexis-Windsor. I have a few questions for
24 the witness. I think I have two or -- or three or four.

25 Now, Witness, we talked a great deal about the distribution of weapons and about

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1 rebel attacks. But we also talked about the government and the agents of
2 the government and actions by them. What I would like to know is, what would
3 happen to the rebels if and when they were arrested?

4 THE WITNESS: [14:57:13](Interpretation) They would have been tried. They were
5 against the law. They committed crimes against the law or against the state. So
6 they would have been tried.

7 JUDGE ALAPINI-GANSOU: [14:57:30](Interpretation) Yes. But, in fact, after arrest,
8 were they tried?

9 THE WITNESS: [14:57:48](Interpretation) Of course none of them was arrested.
10 However, had they been arrested, they would have been tried. They would have
11 been brought before the governor.

12 JUDGE ALAPINI-GANSOU: [14:58:07](Interpretation) Yes. But we understand
13 that citizens were arrested?

14 THE WITNESS: [14:58:28](Interpretation) Yes. If somebody committed a crime,
15 then that person would have been arrested and investigated.

16 JUDGE ALAPINI-GANSOU: [14:58:45](Interpretation) No. But more specifically
17 as regards the events of 2003, 2004?

18 THE WITNESS: [14:59:07](Interpretation) They were arrested, and some were
19 released but others were not.

20 JUDGE ALAPINI-GANSOU: [14:59:26](Interpretation) Okay. I shall move now to
21 another matter.

22 Yesterday we spoke about Maigari, and I suggested that we return to the matter of
23 Maigari. Now, I understand that you mentioned him as being one of the soldiers or
24 agents who were killed. And in front of his name it was said "in action" in your
25 statement. Now, could you explain why that was, please.

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1 THE WITNESS: [15:00:14](Interpretation) Abdo Maigari was moved from
2 Wadi Salih to an area called Al-Da'in. And he was transferred from Wadi Salih there,
3 and there he was taken to forces that would work in Jebel Marra and he was killed
4 when they were trying to catch some of the rebels.

5 JUDGE ALAPINI-GANSOU: [15:00:54](Interpretation) So if I've understood
6 correctly, after the events, after the execution that had shaken him, he continued
7 working; is that correct?

8 THE WITNESS: [15:01:12](Interpretation) Yes, he continued to work. And then he
9 was transferred from Wadi Salih to Al-Da'in, the forces in Al-Da'in. And that's in
10 the east of Darfur.

11 JUDGE ALAPINI-GANSOU: [15:01:31](Interpretation) A last question, Mr Witness.
12 You said, answering one of the questions that was put to you by the Defence counsel,
13 you explained in what conditions Ali Kushayb was feared, feared in the -- by
14 the Arabs. But I'm missing something here. How was he feared by the people?

15 THE WITNESS: [15:02:21](Interpretation) The Fur feared him. As for the Arab, he
16 was appointed in this position by the Arab themselves. But the Fur, they were
17 targeted. And that's why they feared him.

18 JUDGE ALAPINI-GANSOU: [15:02:50](Interpretation) And so what I take away
19 from this is that the population, the Fur, feared him?

20 THE WITNESS: [15:03:07](Interpretation) Yes.

21 JUDGE ALAPINI-GANSOU: [15:03:12](Interpretation) Thank you very much.

22 PRESIDING JUDGE KORNER: [15:03:15] Sir, I just want to see if you can explain
23 a little bit more about what you said a few minutes ago to Mr Laucci, when you
24 agreed with him that the various military operations, with the exception of Deleig,
25 were under the direct command and supervision of the Sudanese Armed Forces.

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1 What do you mean by "direct command and supervision"?

2 THE WITNESS: [15:04:04](Interpretation) This was from the command from Garsila,
3 and Deleig was part of it. Well, what happened, that reports were sent to the armed
4 forces about what is going to happen, or what has happened already. But every area
5 had their own commander who gave orders and supervised what happens in it.

6 PRESIDING JUDGE KORNER: [15:04:37] You have described to the Court that
7 the actual attacks were carried out, largely, I think you said, by the forces under
8 Ali Kushayb.

9 THE WITNESS: [15:05:00](Interpretation) Yes. The attacks were carried out by
10 Ali Kushayb. Especially the operations where villages were burnt down and people
11 were killed. These operations were carried out by Ali Kushayb.

12 PRESIDING JUDGE KORNER: [15:05:23] So going back to your answer a moment
13 ago, that reports were sent to the armed forces about what was going to happen or
14 had happened, and all areas had their own commanders, you mean that it was on
15 the direction of and there was reporting later to the military command?

16 THE WITNESS: [15:06:10](Interpretation) Yes. First, each commander is
17 responsible for their own area. And then they work under
18 the commandments -- commandment of the -- his superiors. So Zalingei goes under
19 Al Khartoum or Al Fasher. So, yes, reports about operations happening under
20 the command of a certain commander used to go to his superiors.

21 PRESIDING JUDGE KORNER: [15:06:53] I think -- I think we need to be -- it may or
22 may not be important, but I think it's absolutely clear that you make us understand
23 how Ali Kushayb and the military command interacted.

24 THE WITNESS: [15:07:14](Interpretation) With Ali Kushayb? No, the military
25 commanders only -- so those who were in Wadi Salih, he used to have private

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1 meetings or public meetings with Wadi Salih. But the commanders in Zalingei, no,
2 they had nothing to do with Ali Kushayb.

3 PRESIDING JUDGE KORNER: [15:07:39] Yeah, I saw you were about to get up,
4 Ms Whitford, and I think you're probably right. It should be in private session, if
5 that's what you were about to say.

6 MS WHITFORD: [15:07:49] In fact, what I was going to suggest is perhaps if
7 the question might be specified "during operations", because I think the witness
8 understood it more generally.

9 PRESIDING JUDGE KORNER: [15:07:58] Oh, I see. Right. Thank you. That's
10 very helpful.

11 Sir, it's not -- yes, and I think we probably ought to go into private session out
12 of -- out of caution. Sorry.

13 (Private session at 3.08 p.m.)

14 THE COURT OFFICER: [15:08:28] We're in private session, Madam President.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

ICC-02/05-01/20

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Trial Hearing
WITNESS: DAR-OTP-P-0883

(Private Session)

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Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

ICC-02/05-01/20

1 (Open session at 3.15 p.m.)

2 THE COURT OFFICER: [15:15:52] We're back into open session, Madam President.

3 PRESIDING JUDGE KORNER: [15:15:54] Yes. Well, I'm not going to say
4 everything I said in private. But as you appreciate, sir, we thank you very much for
5 spending really the best part of a week giving evidence.

6 So thank you, and you're now free to go.

7 THE WITNESS: [15:16:13](Interpretation) Thanks be to God.

8 (The witness is excused)

9 PRESIDING JUDGE KORNER: [15:16:36] Yes. So tomorrow's witness I think is
10 another Rule 68(3); is that right?

11 MR NICHOLLS: [15:16:43] Monday, yes, 68(3).

12 PRESIDING JUDGE KORNER: [15:16:45] Monday's witness, 68(3), yes. Definitely
13 not tomorrow.

14 And -- and is he going to last the whole day, do we think?

15 MR NICHOLLS: [15:16:58] I'm -- I'm actually hearing French.

16 MR LAUCCI: *Non.*

17 MR NICHOLLS: [15:17:01] That's because I'm on French. My apologies, I must
18 have hit the wrong button. My fault. Long day.

19 Do not expect 916 to necessarily take the entire day. It may be -- I think the cross
20 estimate is three hours, which could be less. We will be about half an hour, so we
21 will have the second witness ready to go.

22 PRESIDING JUDGE KORNER: [15:17:28] Yeah, well thank you very much, that's
23 very helpful.

24 Well, then I wish everybody a good weekend, I gather the weather, apart from maybe
25 tomorrow, is still going to be good. So enjoy it while we may.

Trial Hearing
WITNESS: DAR-OTP-P-0883

(Open Session)

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- 1 Thank you very much. See you on Monday.
- 2 THE COURT USHER: [15:17:45] All rise.
- 3 (The hearing ends in open session at 3.17 p.m.)