

Trial Hearing
WITNESS: DAR-OTP-P-0919

(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 Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Wednesday, 13 July 2022
10 (The hearing starts in open session at 9.35 a.m.)
11 THE COURT USHER: [9:35:57] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:36:13] Yes. Good morning, all.
15 Appearance -- could we have the case called.
16 THE COURT OFFICER: [9:36:22] Good morning, Madam President, your Honours.
17 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
18 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
19 And for the record, we're in open session.
20 PRESIDING JUDGE KORNER: [9:36:39] All right.
21 Appearances for the Defence, same as yesterday, Mr Laucci?
22 MR LAUCCI: [9:36:45] Yes, Madam President, except for our intern,
23 Ms Drusilla Bret-Robertson.
24 PRESIDING JUDGE KORNER: [9:36:50] Thank you.
25 And, yes, other way around.

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1 Victims representatives, same as yesterday, Mr Shah?

2 MR SHAH: [9:36:58] Yes, Madam President. Good morning. Same as yesterday.

3 PRESIDING JUDGE KORNER: [9:37:01] Right.

4 And Prosecution, same as yesterday, Mr Nicholls?

5 MR NICHOLLS: [9:37:05] Good morning, your Honour. Same as yesterday, but
6 we're joined by Antonella Giordano. Thank you.

7 PRESIDING JUDGE KORNER: [9:37:13] All right.

8 Just before the witness comes in, I did have some inquiries made about the
9 interpretation. That was -- yesterday, of course, was the first day, and there were
10 some hiccups in the afternoon, but not sufficient so that the witness didn't understand.
11 The interpretation, we're quite clear on that, was there. So the witness should have
12 understood the question. But there were some hiccups, which hopefully they're
13 going to resolve.

14 I think the main problem is, sometimes the Fur translation has started before the
15 Arabic is finished, and I think that's causing a slight problem, but I gather they're
16 looking to make sure that doesn't happen again. All right. So I hope that's helpful.
17 So, Mr Edwards, you think you're going to go until lunch?

18 MR EDWARDS: [9:38:24] Yes, I think so. Yes.

19 PRESIDING JUDGE KORNER: [9:38:26] All right.

20 MR EDWARDS: [9:38:27] And provided it goes smoothly, possibly even before, but
21 if we say ballpark lunch, then, yes.

22 PRESIDING JUDGE KORNER: [9:38:35] Yeah, all right.

23 MR EDWARDS: [9:38:36] And can I -- can I thank your Honour for carrying out
24 those inquiries. That assists. I think there may have been a difficulty in my
25 pronunciation of Jiddo as against Jiddo, but here we are.

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1 PRESIDING JUDGE KORNER: [9:38:51] Well, I'm admiring everybody's
2 pronunciation of some of the names and some of the speed with which you're saying
3 some of the names as well.

4 Yes, all right. Let's have -- yeah, Mr Nicholls?

5 MR NICHOLLS: [9:39:01] Sorry, your Honours. Just so then we'll bring the next
6 witness after the lunch break. That will be our plan, so he doesn't ...

7 PRESIDING JUDGE KORNER: [9:39:07] Well, even if Mr Edwards finishes before
8 lunch, then we'll -- I'll say 2 o'clock -- 2:30.

9 MR NICHOLLS: [9:39:12] Thank you.

10 PRESIDING JUDGE KORNER: [9:39:18] Can we have the witness brought in.
11 Thank you.

12 (The witness enters the courtroom)

13 PRESIDING JUDGE KORNER: [9:40:34] Yes. Good morning, sir. Can you hear
14 and understand me?

15 WITNESS: DAR-OTP-P-0919 (On former oath)

16 (The witness speaks Fur)

17 THE WITNESS: [9:40:58](Interpretation) Good morning.

18 PRESIDING JUDGE KORNER: [9:40:59] That's all? All right, sir. Mr Edwards is
19 going to go on asking you questions this morning.

20 QUESTIONED BY MR EDWARDS: (Continuing)

21 Q. [9:41:14] Good morning, sir. I hope you feel refreshed after the -- after your
22 break overnight. I'm going to continue with my questions for the rest of the morning.
23 Okay?

24 A. [9:41:43] I am well. No problem on my end.

25 Q. [9:41:45] And I'm going to remind you, as much as to remind myself, that we

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1 should go fairly slowly and pause regularly at the end of each sentence or two.

2 Okay?

3 A. [9:42:38] Yes.

4 Q. [9:42:38] And, finally, can I also remind you to keep an eye on me when you're
5 speaking so that you'll see if I raise my hand in order to ask you to pause. All right?

6 A. [9:43:12] Yes.

7 Q. [9:43:15] Thank you very much.

8 I want to start by asking you about your arrest at the checkpoint when you arrived in
9 Mukjar. What time of day did you arrive at that checkpoint?

10 A. [9:44:01] We arrived in the morning. It was sunny. We arrived around
11 10 a.m.

12 Q. [9:44:11] The checkpoint was manned by police officers; is that correct?

13 A. [9:44:29] Yes, we found around ten police officers.

14 Q. [9:44:37] And they were wearing the same dark blue and white uniforms that
15 police wear now in Sudan; is that correct?

16 A. [9:45:08] Yes.

17 Q. [9:45:22] And remind us, what was the name of the officer in charge at this
18 checkpoint?

19 A. [9:45:44] His name was Haroun Bashir. We found him at the checkpoint.

20 Q. [9:45:53] And you knew that he was the one giving -- you knew that he was the
21 one in charge because he was the one giving orders; is that correct?

22 A. [9:46:33] Yes. He mentioned that he was in charge, and he told me that my
23 mother and grand-mothers would go somewhere different from where myself and
24 others would go.

25 Q. [9:46:54] As you walked from the checkpoint to the police station, did you go

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1 past the locality building of Mukjar?

2 A. [9:47:39] We found soldiers on the way, and it took us half an hour to reach the
3 large camp.

4 Q. [9:47:51] When you say "the large camp", do you mean the police station, or do
5 you mean something else?

6 A. [9:48:38] Yes. We found at the checkpoint around ten people. Haroun Bashir
7 told us that he was in charge. He ordered that my mother and grand-mothers be
8 taken somewhere different from where we would go. And by "where we would go",
9 I am referring to the Mukjar police station.

10 Q. [9:49:04] If I refer to the Mukjar locality building, do you know what I'm talking
11 about?

12 A. [9:49:44] I know the locality of Mukjar, but I don't understand the word
13 "building", in Arabic *mubna*, but I recognise the locality of Mukjar.

14 Q. [9:49:59] All right. Is there a place in Mukjar not too far from the police station
15 where the local administrative offices are?

16 A. [9:50:49] Yes. To the southern direction, there is the locality building there, and
17 there, there are governmental offices and governmental officials, also.

18 Q. [9:51:04] Okay. So let's just think about that building. On your way from the
19 checkpoint to the police station, did you go past that building?

20 A. [9:51:44] No, we did not pass by the locality building because the locality
21 building is situated south of the camp. We did not pass by it.

22 Q. [9:52:04] Thinking about the situation in 2003-2004, was there a generator at the
23 locality building that provided electricity to the administrative offices?

24 A. [9:52:45] Yes, there were generators, and there -- they still are -- there still are, up
25 to this day.

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1 Q. [9:52:58] Is that because there -- there is no connection from a national electricity
2 grid to Mukjar?

3 A. [9:53:41] I don't know. We just found generators there. That's all.

4 Q. [9:53:52] Was there a generator at the mosque of Mukjar?

5 A. [9:54:06] Yes, there is. There still is.

6 Q. [9:54:30] Are there generators servicing any of the shops at the market of
7 Mukjar?

8 A. [9:54:53] They take electricity from the locality to power the marketplace.

9 Q. [9:55:19] But there's no generator at the police station, is there?

10 A. [9:55:48] There are generators.

11 Q. [9:56:01] Was there one or were there more than one generators servicing the
12 police station in 2004?

13 A. [9:56:33] No, I did not see generators before, but when I got out, I found the
14 generators.

15 Q. [9:56:50] Can you just explain your last answer to us. What do you mean when
16 you got out, you found generators?

17 A. [9:57:26] I was in prison. I did not see generators beforehand. However,
18 when I left it, I saw the generators.

19 Q. [9:57:47] And where are the generators located at the -- sorry. Where were the
20 generators located in 2004 at Mukjar police station?

21 A. [9:58:31] I did not see generators beforehand. I only saw them when I left
22 prison. I found them between the locality building.

23 THE INTERPRETER: [9:58:48] Interpreted sentence.

24 THE WITNESS: [9:58:51](Interpretation) I found a lustre generator.

25 MR EDWARDS:

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1 Q. [9:59:06] And did you find this -- well, what's a lustre generator? Is it a
2 generator that is powered by diesel or fuel or something else?

3 A. [9:59:47] I don't know. I saw a lustre generator for lightening, but I was not
4 aware of what it was operated for.

5 Q. [10:00:00] And did you see this between the locality building and the police
6 station?

7 A. [10:00:36] Yes, it's between the locality building and the Mukjar police station.
8 However, it is outside the camp.

9 Q. [10:00:53] Is there some kind of a -- in 2004, was there some kind of a wall
10 around the police station compound?

11 A. [10:01:35] Could you please --

12 THE INTERPRETER: [10:01:55] Sorry. The Fur interpreter is asking for the
13 questions to be repeated.

14 MR EDWARDS: [10:02:01] Certainly.

15 Q. [10:02:05] We know that the police station was composed of two buildings
16 facing each other, and around those two buildings, was there some kind of a wall?

17 A. [10:02:49] There were no such wall.

18 Q. [10:02:54] Was there some kind of a ditch or a trench around the police station
19 buildings?

20 A. [10:03:27] There were several ditches surrounding the building from the each to
21 the west.

22 Q. [10:03:41] And immediately to the north of the police station, on the other side
23 of the ditch, were there any buildings?

24 A. [10:04:19] To the north, you mean to the left side hand? I did not see a building.
25 I did not see such a building.

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1 Q. [10:04:34] Okay. Let me -- let me put it a slight different way. Were there any
2 buildings at all, whether north, south, east or west, any buildings at all, that were
3 right up against the ditch that surrounds the police station?

4 A. [10:05:19] There's only the market to the east.

5 Q. [10:05:29] Okay. The person who took your name on arrival at Mukjar police
6 station, you refer to him as Carter. Is Carter a nickname or the person's nickname?

7 A. [10:06:08] His name was Hassan Carter. I knew him by Hassan Carter.

8 Q. [10:06:23] Now, I want to be very clear in my mind about how long you spent at
9 Mukjar police station the first time.

10 A. [10:07:01] Okay.

11 Q. [10:07:02] If we say that the day that you arrived at the police station and were
12 registered by Carter is day one -- I think it's right, you spent two nights and three
13 days in total in detention; is that right?

14 A. [10:08:02] Yes, I spent two nights there.

15 Q. [10:08:08] Thank you. When you first arrived at the police -- at the police
16 station, there were approximately a hundred detainees in the outer cell and another
17 hundred detainees in the inner cell. Does that accurately summarise your evidence?

18 A. [10:09:03] Yes, this is correct.

19 Q. [10:09:05] On the first day, the same day that you arrive, were other groups of
20 detainees brought to the police station and made to enter the -- the cell that you're in?

21 A. [10:09:49] Yes, people were being brought in.

22 Q. [10:09:57] So focusing on the first day, are you able to tell the judges roughly
23 how many new detainees were forced into the cell after your arrival?

24 A. [10:10:51] I don't know the exact number. There were so many, and -- but I
25 could see that with my own eyes.

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1 PRESIDING JUDGE KORNER: [10:11:18] (Microphone not activated) can't say how
2 often I tick counsel off for this one.

3 MR EDWARDS: [10:11:27]

4 Q. [10:11:28] So, over the course of the first day, the overcrowded conditions in the
5 cell simply became more and more overcrowded, correct?

6 A. [10:12:04] Yes. When you were brought in, you were immediately put in the
7 cell.

8 THE INTERPRETER: [10:12:12] Sorry. Correction from the interpreter: You were
9 put in the cell immediately.

10 MR EDWARDS: [10:12:24]

11 Q. [10:12:25] And the people who were already in the cell were pushed deeper and
12 deeper into the cell as new arrivals came, correct?

13 A. [10:13:11] The prison is divided into two sections, and they didn't care whether
14 we were on top of each other or not. We were just being pushed to the inside part of
15 it.

16 Q. [10:13:22] Yes. Now, you told us yesterday that there were no windows in the
17 cells. I just want to be clear.

18 There was no window in the outer cell and there was no window in the inner cell; is
19 that -- is that right?

20 A. [10:14:34] The prison is divided into two sections. The internal part had iron
21 bars and the southern part, or the outer part, had one small window. It wasn't, like,
22 really a window. It was more of a door.

23 Q. [10:14:56] Okay. Thank you. And was that small window that was more like
24 a door, was that the only source of light into the two cells?

25 A. [10:15:25] There was no other area other than that.

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1 Q. [10:15:37] Okay. I don't know if it was -- if it correctly reached you in
2 interpretation.

3 Apart from the one small window, was there any other source of light?

4 A. [10:16:20] Only that small door, and nothing else.

5 Q. [10:16:32] Let me ask you now about the actual door into the cell. Was it a door
6 that opened inwards or opened outwards?

7 A. [10:17:03] Inwards. So you push it inside, towards the inside of the cell to open
8 it.

9 Q. [10:17:13] And when the door was closed, did you see how it was locked, or did
10 you see how it was kept closed?

11 A. [10:18:07] I don't know how it was being locked, but I know that it would open
12 inwards.

13 Q. [10:18:16] Did you see if there were any holes in that door?

14 A. [10:18:38] There were no holes in the door.

15 Q. [10:18:51] And how -- how high was the ceiling in the cell?

16 A. [10:19:17] It was very high, as high as the room, and it was known as zinc.

17 Q. [10:19:30] Okay. If you raised -- if you stood up and raised your hand, would
18 you be able to touch the ceiling in the cell?

19 A. [10:19:55] No, I couldn't reach it. It was much higher.

20 Q. [10:19:58] Okay. Thank you.

21 Do you know the name John Koj?

22 A. [10:20:26] No, I don't know him.

23 Q. [10:20:28] Have you ever heard the name John Koj?

24 A. [10:20:48] No, I don't know it.

25 Q. [10:20:56] Okay. So you spend the first day in the cell. You spend the night in

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1 the cell. You don't sleep that first night, do you?

2 A. [10:21:33] I was in prison. How could I sleep?

3 Q. [10:21:52] Ali Kushayb and his men come into the cell at some point on that
4 second day. Was that at about 4 p.m.?

5 A. [10:22:26] Yes, all around that time.

6 Q. [10:22:36] But before he arrived at about 4 p.m., were more and more detainees
7 brought and shoved into the cell in the same way that happened the first day?

8 A. [10:23:28] People were being brought in on daily basis.

9 Q. [10:23:39] And were detainees also being taken out of the cell to make room for
10 the new arrivals, or was the cell just getting more and more overcrowded?

11 A. [10:24:33] They were being pushed in, so we were on top of each other. And
12 we could identify that we were from the Fur. And we would say, "Stand up. You
13 are on top of me," and something of the sort.

14 Q. [10:24:55] When you first arrived on day one, if I understand your evidence, the
15 detainees were alternating between squatting and standing. There was enough
16 room for that; is that correct?

17 A. [10:25:42] We would stand up. There weren't even enough room to squat, so
18 we were just leaning over the wall -- against the wall.

19 Q. [10:25:54] Okay. Right. Is that where you were by 4 p.m. on the second day
20 when Ali Kushayb and his men arrived? Were you leaning against one of the walls?

21 A. [10:26:39] I was squatting. I was squatting. There wasn't enough room.

22 Q. [10:26:43] Okay. So you were squatting, but against one of the walls or in the
23 middle of the cell itself?

24 A. [10:27:20] I was in the middle, to the eastern side of the cell door. There were
25 two persons next to the wall in front of me.

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1 Q. [10:27:42] And were these persons standing or squatting?

2 A. [10:28:04] They were squatting.

3 Q. [10:28:11] You say Ali Kushayb came into the cell, and that was the first time
4 you'd ever seen him, correct?

5 A. [10:28:40] Yes.

6 Q. [10:28:46] Did that change the atmosphere in the cell? In other words -- let me
7 put it a different way.

8 When Ali Kushayb and his men arrived in the cell, did that create fear amongst the
9 detainees?

10 A. [10:29:30] We didn't know him. When he entered, he introduced himself. He
11 said that he is Ali Kushayb, *hakemdar* the Janjaweed.

12 Q. [10:29:45] Okay. Let's take it step by step. According to you, he arrives with a
13 whip in one hand and an axe in the other. He's accompanied by up to ten Janjaweed,
14 and they're armed with AK-47s and sticks. So far, do we agree?

15 A. [10:30:44] I did not see any AKs. I only saw them carrying the Kalashnikov,
16 and they were wearing the shawl, and they had amulets around their hands and
17 waists.

18 Q. [10:31:02] You said, "I did not see them with AKs. I only saw them carrying
19 Kalashnikovs." Let's just be very clear about what you say.

20 The Janjaweed were carrying AK-47s when they arrived in -- when they came into the
21 cell, correct?

22 A. [10:31:56] They were carrying Kalashnikovs. Ali Kushayb was carrying an axe
23 and a whip. The Janjaweed also were carrying whips.

24 Q. [10:32:10] Right. So even if you had never seen Ali Kushayb before, the arrival
25 of all of these people in the cell, armed as they were, must have created fear among

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1 the detainees; is that right?

2 A. [10:33:26] Yes, he was armed. And when he reached Mukjar, he introduced
3 himself as the leader of the Janjaweed. He also said to *Umdah* Yahya, "I had
4 previously arrested you. This time around I will kill you." I then was afraid.

5 Q. [10:33:46] Okay. Mr Witness, this is -- this is important, all right? So, please,
6 just focus on my question.

7 Before the person you say is Ali Kushayb said anything, before he said anything at all,
8 simply the arrival of these men, did that not create fear among the detainees? You
9 can answer with a "yes" or a "no".

10 A. [10:35:06] You would feel afraid. I don't know what the others felt in their
11 hearts. I can't speak for that.

12 Q. [10:35:14] Okay. Did -- did the detainees start to talk amongst themselves and
13 start shouting and begging to be released?

14 A. [10:36:19] No. When they entered, there was no shouting. Only when he said
15 to *Umdah* Yahya that, "I had previously arrested you and that I would -- and this time
16 I would kill you," to which *Umdah* Yahya responded by saying, "I would die as a
17 martyr, while you will suffer," then, when they started shaving people's heads, the
18 beating started and the shouting started as well.

19 Q. [10:36:51] So the first thing that happened, the first act of violence, was the
20 cutting, the shaving of the hair. Is that your evidence?

21 A. [10:37:50] When Ali Kushayb entered, he introduced himself as the commander
22 of the Janjaweed, and he started addressing *Umdah* Yahya. He told him that, "I had
23 previously arrested you, and this time around, I'm going to kill you." *Umdah* Yahya
24 replied by saying, "I would die as a martyr, while you will suffer." Afterwards, the
25 beating started, after that, the beating of the detainees and their shaving. Also, three

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1 detainees had their ears chopped off.

2 Q. [10:38:22] Okay. Mr Witness, once again, keep short sentences, pause, and if
3 you want to continue talking, continue talking after that pause. All right?

4 And I'm just going to say one other thing. We know what your account is. It's not
5 necessary for you to repeat your account three, four, five, six times. Most of my
6 questions can be answered with a "yes" or a "no" answer. All right?

7 A. [10:39:32] All right.

8 Q. [10:39:42] You've now described to us the dark conditions inside the cell, and
9 your eyes had been accustomed to the dark conditions into the cell, right?

10 A. [10:40:22] Yes.

11 Q. [10:40:22] And then suddenly at 4 o'clock in the afternoon -- well, sorry.
12 Over the course of that second day, the door is opened from time to time, other
13 detainees are pushed into the cell. You've told us that. But then at 4 o'clock in the
14 afternoon, the door opens again, and there's bright sunshine, bright daylight outside
15 the cell, correct?

16 A. [10:41:22] Yes.

17 Are you referring to the second day when Ali Kushayb came?

18 Q. [10:41:29] Yes.

19 Yes. Can I continue? Yes.

20 Now, I imagine you've had the experience, when you've been in a dark place and
21 suddenly there's a source of bright light. It can be quite uncomfortable, can't it, to
22 look at that source of bright light? The bright light can be quite blinding, can't it?

23 A. [10:42:52] Indeed, we were not able to distinguish day from night until the door
24 was opened.

25 Q. [10:43:07] And from inside that dark cell, there's a rectangle of very bright light

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1 when the door is opened, and you can only see a silhouette of the people who are in
2 the doorway, can't you?

3 A. [10:45:14] The door was large enough for me to distinguish between individuals.
4 I was able to distinguish persons.

5 Q. [10:45:42] You gave a description in your witness statement of Ali Kushayb as
6 being ... just bear with me for a moment.

7 A. [10:45:42] (Overlapping speakers)

8 Q. [10:46:04] Wait, wait, wait, wait. I haven't asked my question yet. Just hang
9 on a second, please. Just hang on a second.

10 You give a description of Ali Kushayb as being black, tall, and thin, I think. Is that
11 what you told the Prosecution? Sorry, black and slim.

12 Your Honour, if it assists, I'm referring to paragraph 41 of the witness statement.
13 Now, Mr Witness, black and slim would describe 90 per cent of men in Darfur,
14 wouldn't it?

15 A. [10:47:50] Yes.

16 Q. [10:47:50] And you also said to the Prosecutor in your witness statement, "I did
17 not concentrate on his looks. Therefore, I do not remember much about his looks."
18 That's what you told the Prosecutor, isn't it?

19 A. [10:48:34] Yes. I saw him only twice.

20 Q. [10:48:45] You -- in the cell, you didn't want to make eye contact with Ali
21 Kushayb or any of the other Janjaweed, did you?

22 A. [10:49:31] His men were dressed in shawls. Their features were not clear.
23 They were beating folks. How could I look them in the eye?

24 Q. [10:49:45] And you didn't want to make contact with any of these men because
25 that risked you being noticed? That risked you becoming a target, didn't it?

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1 A. [10:50:35] They were beating people. You cannot look them in the eye.

2 Q. [10:50:49] In fact, in your preparation session with the Prosecution, over two
3 days last week or a couple of weeks ago, you said, "When they started beating people,
4 we were all looking down."

5 Do you remember saying that to the Prosecution a couple weeks ago?

6 PRESIDING JUDGE KORNER: [10:51:18] Paragraph, please.

7 MR EDWARDS: [10:51:20] Your Honour, this is the preparation log, which
8 isn't -- yeah. Paragraph 12.

9 MR SACHITHANANDAN: [10:51:39] My apologies. Could the entire sentence be
10 put to the witness of paragraph 12, from the beginning, because, if not, it's a slightly
11 misleading excerpt.

12 MR EDWARDS: [10:51:58] I'm happy to --

13 PRESIDING JUDGE KORNER: [10:52:01] I think it's -- yeah. No. I see the point.
14 I mean, he -- he said -- well, he says, first -- I think you ought to, in fairness.

15 Mr Sachithanandan is correct.

16 MR EDWARDS: [10:52:14] Yeah. Okay.

17 Q. [10:52:16] You told the Prosecution that as Kushayb entered, you saw his face.
18 "When they started beating people, we were all looking down."

19 Is that what the Prosecution -- is that what you told the Prosecution last week or the
20 week before?

21 A. [10:53:13] Yes, that is correct.

22 Q. [10:53:19] And the -- you told us that from the moment Ali Kushayb and the
23 men came into the cell, he exchanged some words with one or more *umdah*, and then
24 the beating started straightaway, right?

25 A. [10:53:57] Correct. The beating started, indeed.

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1 Q. [10:54:01] Yeah. But what I'm focusing on is, it's a matter of seconds, isn't it,
2 before the beating starts?

3 A. [10:54:36] Yes.

4 Q. [10:54:36] Okay. Now, let's just explore this business of Ali Kushayb
5 introducing himself.

6 Did he introduce himself to everyone in the cell or just to the *umdahs*?

7 A. [10:55:23] He was standing, and he introduces himself as the commander of the
8 Janjaweed.

9 THE INTERPRETER: [10:55:29] The word used by the Fur interpreter was
10 "*hakemdar*", roughly meaning commander or leader.

11 MR EDWARDS: [10:55:37] Okay.

12 Q. [10:55:38] Did he ask any of the detainees what their names were?

13 A. [10:56:07] What names?

14 Q. [10:56:09] Mr Witness, did Ali Kushayb ask any of the detainees what their
15 names were; yes or no?

16 A. [10:56:40] He did not ask anyone. The only thing he said was that he was the
17 commander of the Janjaweed.

18 Q. [10:56:49] You're not able to tell us why on earth Ali Kushayb would tell the
19 detainees his name and what his job was?

20 PRESIDING JUDGE KORNER: [10:57:12] I think that's a wasted question. I don't
21 see how he can answer that.

22 MR EDWARDS: [10:57:19] All right.

23 Q. [10:57:29] Well, I'm just trying to understand, Mr Witness. Maybe you can help
24 us, maybe you can't. I'm just trying to understand why Ali Kushayb would enter the
25 cell and tell everyone what his name was, of all things.

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1 PRESIDING JUDGE KORNER: [10:57:44] That's of no concern, Mr Edwards. Sorry,
2 that's pure comment.

3 MR EDWARDS: [10:58:04]

4 Q. [10:58:05] What was done to the door once Ali Kushayb and the ...
5 Your Honour, I've -- I'm on the same sort of topic, but I'm moving on to something
6 slightly different. This may be a good time.

7 PRESIDING JUDGE KORNER: [10:58:18] All right. We'll take the break now.
8 Sir, there's going to be the break for half an hour, and then you'll continue your
9 evidence, but we hope it will be concluded by lunchtime today.

10 THE COURT USHER: [10:58:36] All rise.

11 (Recess taken at 10.58 a.m.)

12 (Upon resuming in open session at 11.33 a.m.)

13 THE COURT USHER: [11:33:56] All rise.

14 Please be seated.

15 PRESIDING JUDGE KORNER: [11:34:21] Yes, Mr Edwards.

16 MR EDWARDS: [11:34:32]

17 Q. [11:34:32] When Ali Kushayb and his men came into the cell, what happened to
18 the door? Was the door closed behind them?

19 A. [11:35:02] The door was not closed.

20 Q. [11:35:08] Did any of the detainees exit the cells during this period of beating on
21 the second day?

22 A. [11:35:43] Nobody left. I did not see anybody leave the cell.

23 Q. [11:35:54] And yet there was room in the cell, overcrowded as it was, standing
24 room or squatting room only, for Ali Kushayb and 10 Janjaweed to come inside the
25 cell and beat the detainees in that small cell; is that your evidence?

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1 A. [11:36:49] They were stepping over people, all over people. They were
2 stepping on people with their feet.

3 Q. [11:37:02] So the detainees in the cell remained squatting? They didn't stand
4 up when the Janjaweed came into the cell?

5 A. [11:37:41] Yes. People were squatting, and when they entered, they were
6 stepping over people's bodies and beating them.

7 Q. [11:37:57] Did the detainees try to step back to retreat into the cell?

8 A. [11:38:26] They remained in their places. There wasn't a place for them to
9 retreat to. You would otherwise be stepping over the other detainees.

10 Q. [11:38:38] You see, that's exactly my point. If it's so overcrowded, how are
11 the -- I'm trying to understand how the Janjaweed are able to move into the cell, if it's
12 that crowded, if there isn't even space to retreat.

13 A. [11:39:33] They were stepping all over people and beating them. So they were
14 walking all over people and beating them.

15 Q. [11:39:47] And that includes you, you were beaten yourself?

16 A. [11:40:04] Yes, they hit me on the head on the same day.

17 Q. [11:40:10] And nothing like that had ever happened to you before.

18 A. [11:40:36] No, nothing of the sort happened to me. Only on that day when
19 Ali Kushayb entered the cell.

20 Q. [11:40:47] And, again, to be clear, do you say that it was one of Ali Kushayb's
21 men who hit you or Ali Kushayb himself who hit you?

22 A. [11:41:22] One of his men hit me. He was standing next to me, and he had a
23 small stick in his hand, and he hit me with it.

24 Q. [11:41:38] Did you explain that to the Prosecutor or the investigator with the
25 Prosecution during that first telephone call in 2020?

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1 A. [11:42:28] Maybe I told them, but right now I cannot remember. I forgot.

2 Maybe I had told them about that, but I don't remember.

3 MR EDWARDS: [11:42:46] Could we please have up on the screen - it's only in
4 English, I'm afraid - the document at position three, tab 3 in the Prosecutor's bundle of
5 materials, the screening note dated 12 October 2020, DAR-OTP-0215-8491. And
6 what I'd like to do is to go directly to page 3 in that document, ERN 8493. Obviously,
7 not for public broadcast.

8 Q. [11:43:32] Mr Witness, I'm just going to read through a summary of the
9 information that you gave the investigator during that very first telephone call, when
10 you told the investigator what it is that you could provide the Prosecution, okay?
11 Actually, your Honour, on looking through the bullet points, I think we ought to do
12 this in private session. It won't take too long.

13 PRESIDING JUDGE KORNER: [11:44:16] Yes. You can't shorten it by simply
14 pointing out that he didn't say rather than ...

15 MR EDWARDS: [11:44:21] Yes, I suppose I could.

16 PRESIDING JUDGE KORNER: [11:44:23] I think that might save a lot of translation.

17 MR EDWARDS: [11:44:28] Yes. All right.

18 Q. [11:44:37] Yeah, her Honour's absolutely right. I'm not going to go through
19 what you did tell the Prosecution. We in the courtroom can all see for ourselves that
20 you did not say anything in this first contact with the investigator about being beaten
21 yourself in prison, and certainly there is nothing about you being beaten by
22 Ali Kushayb himself.

23 A. [11:45:40] I did not say Ali Kushayb hit me. I said one of his men, the
24 Janjaweed, hit me and he was standing next to me.

25 Q. [11:45:53] Yes. But are you sure that you told the investigator about you being

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1 beaten in Mukjar police station?

2 A. [11:46:23] Yes, I told them that. And I told them that I had a wound in my
3 head when Ali Kushayb entered the cell. So I was hit in my head when Ali Kushayb
4 entered the cell.

5 Q. [11:46:42] Okay. Well, we'll be able to analyse that ourselves in due course.
6 I want to ask you about the use of the word "*abid*". You told us yesterday that you
7 don't know what *abid* means. Have I got that right?

8 A. [11:47:30] Yes, I don't know what *abid* means. And when they entered the cell,
9 they were beating us, stepping all over us and calling us "*abid tora bora*".

10 Q. [11:47:45] You had never heard the word "*abid*" before that day; is that right?

11 A. [11:48:11] I only heard it in the cell.

12 Q. [11:48:13] And have you heard the word since this period of detention from
13 2004?

14 A. [11:48:51] I only heard it in prison. I did not hear it after that, after my release.
15 They used to call us "*abid tora bora*".

16 Q. [11:49:01] Okay. And -- so similar questions for *tora bora*. Do you know what
17 that means?

18 A. [11:49:26] I heard the word "*tora bora*", but I didn't know what it meant.

19 Q. [11:49:30] When did you first hear the word "*tora bora*"?

20 A. [11:49:55] I heard it for the first time when I was in the village and the helicopter,
21 the Antonov, was all over town, hovering all over town, and one of our fans,
22 (Redacted), said that this helicopter was searching for the *tora bora*.

23 Q. [11:50:21] But if you'd not heard either the word "*abid*" or "*tora bora*" before
24 2003-2004, and you don't know what it means and you've not heard it since, can you
25 explain how you're able to remember those words -- how you're able to remember

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1 those words in -- in 2021, when you gave your statement to the Prosecution.

2 A. [11:51:29] I remember those words because, while we were being beaten, they
3 were repeating those words, but I didn't know what it meant.

4 Q. [11:51:42] No, I understand. I understand that you say that they were being
5 repeated. But if you don't know what it means, if you can't attach any particular
6 importance to those words, how do you remember those words 17 years later?

7 A. [11:52:43] I remember the words because I was being beaten while I was in
8 detention. I was wounded in the head, I was bleeding, and they were calling me an
9 **abid* of the *tora bora*. That's why I remember the words.

10 Q. [11:53:00] You told us yesterday, sir - this is at the real-time transcript, page 36,
11 your Honours - that you'd overheard the guards talking about Ali Kushayb going to
12 the market to steal and pillage. I want to ask you about that for a moment.

13 A. [11:54:06] I heard that from the guards who were standing by the door, who
14 were standing guard. They said that Ali Kushayb and his men went to the market to
15 pillage.

16 Q. [11:54:19] Okay. Let's set the scene. This is after the time when the Abu Teira
17 had come into the cell and had tortured you and the other detainees, right?

18 A. [11:55:08] Yes, that is correct.

19 Q. [11:55:14] After which the detainees were shouting and crying and moaning
20 with pain, correct?

21 A. [11:55:46] That is correct.

22 Q. [11:55:46] There were detainees in -- there were detainees in pain because of the
23 torture they had suffered. There were other detainees who were angry about what
24 had happened, right?

25 A. [11:56:30] Yes, that is correct, because people were starving, were being ironed,

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1 were being starved, and they were starting -- and, yes, that is correct. They were
2 parched and starving.

3 Q. [11:56:45] And they were shouting to be released.

4 A. [11:57:01] No, that is not correct.

5 Q. [11:57:10] Some were -- well, you said yesterday, reading, but is this the case:
6 There were some who were quoting versus from the Koran?

7 A. [11:57:56] Yes, they were citing verses from the Koran and saying the *hamdullah*
8 prayer. So they were pleading God's help so that they would be released.

9 Q. [11:58:11] And you were in the middle of the cell or towards the wall of the cell.

10 A. [11:58:39] I was close to the wall. However, there were two people between me
11 and the wall. And *Umdah* Yahya, *Umdah* Doren and *Umdah* Issa were with me. We
12 were all together.

13 Q. [11:59:02] And this is the wall towards the back of the cell; is that right?

14 A. [11:59:25] The wall was close to the door, east side.

15 THE INTERPRETER: [11:59:29] And there's a correction to the former answer: The
16 name of *Sheikh* Jobbor was mentioned by the witness.

17 MR EDWARDS:

18 Q. [11:59:47] Okay. I want to be clear about this. The door is in the wall that
19 gives on to the veranda of the police station, correct?

20 A. [12:00:30] The door would open south, to the south, facing one of the rooms.
21 There is a building to the southern part, and the door would open towards that
22 southern part or side.

23 Q. [12:00:48] Okay. So let's call the wall that has the door in it the front wall.

24 Which wall were you up against, that wall, or one of the walls to the left or the right
25 of that wall?

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1 A. [12:01:52] I was close to the wall that was adjacent to the door.

2 Q. [12:02:01] And inside the cell, it's a concrete floor and it's brick walls. All hard
3 surfaces, right?

4 A. [12:03:00] It was all concrete, all solid material.

5 Q. [12:03:07] Yesterday you were talking about the irons, and you said that they
6 were plugged -- the irons or the iron was plugged to the electricity.

7 Real-time transcript, page 36, your Honours.

8 Was there an electricity point in the wall of the cell?

9 A. [12:04:15] I did not see that, and I don't know where they plugged the iron
10 exactly, but there was an iron and it had a long black cable.

11 Q. [12:04:46] You didn't see any women or children among the detainees, did you?

12 A. [12:05:00] Yes, that is correct.

13 Q. [12:05:02] During the time when you were detained, did you ever become aware
14 of the presence of a TV camera outside? Or a TV cameraman, I should perhaps say.

15 A. [12:05:45] I did not see him.

16 Q. [12:05:49] Did you ever hear of the presence of a TV cameraman?

17 A. [12:06:13] I did not hear about that either.

18 Q. [12:06:15] Did you ever hear about the arrival of a helicopter at some point
19 during the time when you were in detention?

20 A. [12:06:41] I did not hear about that.

21 Q. [12:06:45] Did you ever hear about the presence of the minister Ahmed Harun at
22 Mukjar during the time of your detention?

23 A. [12:07:14] I neither heard of him nor saw him.

24 Q. [12:07:22] After the Abu Teira did what they did in the prison, did other -- were
25 other detainees brought to Mukjar police station and forced into the cell? This is on

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1 the second day.

2 A. [12:08:31] I don't know if that happened on the second day. I did not see that.

3 Q. [12:08:38] What about on the third day, before you were taken to the -- one
4 second, please. One second.

5 Your Honour, I'm actually getting to a point in -- in my questions where, in order to
6 be consistent with my learned friend's examination-in-chief, I'm going to go have to
7 go into private session, and probably for the rest of the session.

8 PRESIDING JUDGE KORNER: [12:09:13] Yes, all right. Can I take it, you will
9 conclude, Mr Edwards, by 1? You still have quite a lot to cover.

10 MR EDWARDS: [12:09:23] No, actually. I'm pretty -- making good progress, and
11 I'm going finish well before 1.

12 PRESIDING JUDGE KORNER: [12:09:28] Right. All right. Thank you very much.
13 Yes, we'll go into private session.

14 (Private session at 12.09 p.m.)

15 THE COURT OFFICER: [12:09:49] We're in private session, Madam President.

16 (Redacted)

17 (Redacted)

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- 16 (Open session at 12.41 p.m.)
- 17 THE COURT OFFICER: [12:41:43] We're back into the open session,
- 18 Madam President.
- 19 MR EDWARDS: [12:41:51]
- 20 Q. [12:41:51] (Redacted)
- 21 (Redacted)
- 22 A. [12:42:34] (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 Q. [12:42:46] And everything that you've told this Court since yesterday about the

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1 presence of Ali Kushayb at Mukjar police station are details that have been provided
2 to you by others.

3 A. [12:43:16] That is not correct, because yesterday I took the solemn declaration
4 before I gave my statement, and Ali Kushayb visited us in prison. I saw him close by.
5 There was only two people between us. And the information I gave were my own.
6 I did not hear them from somebody else.

7 Q. [12:44:02] Yes, thank you.

8 Thank you, your Honour.

9 PRESIDING JUDGE KORNER: [12:44:04] I take, therefore, that you don't dispute he
10 was locked up there? It's the Ali Kushayb part of it.

11 MR EDWARDS: [12:44:13] I don't have a positive case as to whether he was locked
12 up or not. Your Honours heard how the cross-examination developed. In essence,
13 it's the connection with Ali Kushayb.

14 PRESIDING JUDGE KORNER: [12:44:24] Yeah, all right. Thank you.

15 Re-examination?

16 MR SACHITHANANDAN: [12:44:31] None, your Honour.

17 PRESIDING JUDGE KORNER: [12:44:33] Any questions?

18 No, the Bench have no questions for you, sir. So it just remains for me to thank you
19 very much for coming to court. There being no dispute about the injuries that you
20 received and what happened to you, we express our regret of what you lived through,
21 and we wish you say safe return to your own country.

22 THE WITNESS: [12:45:46](Interpretation) Okay.

23 PRESIDING JUDGE KORNER: [12:45:47] Right. Could the court officer just escort
24 him out then. Thank you.

25 (The witness is excused)

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1 PRESIDING JUDGE KORNER: [12:46:32] Yes. I simply wanted to say, I was
2 thinking about whether we could start a little earlier, but as, certainly for this week,
3 the interpreters can't do more than an hour and a half, I don't think it's going to assist
4 any. However, I've forgotten this was in another transcript, witness.

5 Could somebody be very kind and do what the Defence did, which is under the
6 transcript reference, tell us what tab it is for the list of topics.

7 MR NICHOLLS: [12:47:10] Yes, I can try to provide that during the break.

8 PRESIDING JUDGE KORNER: [12:47:14] Are you calling the next witness?

9 MR NICHOLLS: [12:47:15] Yes, your Honour.

10 I will tell you that what I intend to do is just to, simply as possible, lead the witness
11 through the main aspects of the story chronologically, which with this witness I think
12 is the best approach. So I -- I can see the transcript is not very helpful, so I'm going
13 to try to do this without referencing the transcript at all and see how it goes.

14 PRESIDING JUDGE KORNER: [12:47:50] Yes, all right. He, again, is a Fur speaker;
15 is that right?

16 MR NICHOLLS: [12:47:55] Yes, yes, your Honour.

17 PRESIDING JUDGE KORNER: [12:47:58] And we'll need to repeat the oath as
18 opposed reading it. I mean, I supposed it hasn't been translated into Fur.

19 MR NICHOLLS: [12:48:07] No. He will need assistance with any reading, marking,
20 writing. Anything like this at all, he will need a lot of help.

21 PRESIDING JUDGE KORNER: [12:48:16] All right. So preferably avoid marking
22 anything.

23 MR NICHOLLS: [12:48:21] Yes.

24 PRESIDING JUDGE KORNER: [12:48:22] All right. Yes, thank you very much.

25 Yes, very well. Then we'll say 2:30, please.

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1 THE COURT USHER: [12:48:33] All rise.

2 (Recess taken at 12.48 p.m.)

3 (Upon resuming in open session at 2.36 p.m.)

4 THE COURT USHER: [14:36:41] All rise.

5 Please be seated.

6 PRESIDING JUDGE KORNER: [14:37:04] Yes. I imagine the parties have heard.

7 Regrettably, Mr Nicholls, who is taking the next witness, is feeling very unwell this
8 afternoon. Hopefully he's off taking a test as we speak, but it does mean obviously
9 that --

10 I think, Mr Sachithanandan, you're going to be taking the witness instead of him
11 tomorrow; is that right?

12 MR SACHITHANANDAN: [14:37:38] That's correct, your Honour.

13 PRESIDING JUDGE KORNER: [14:37:40] And it requires this afternoon for you to
14 get up to speed.

15 MR SACHITHANANDAN: [14:37:45] I will be very grateful if I could have this
16 afternoon off.

17 PRESIDING JUDGE KORNER: [14:37:47] Well, I imagine -- we are indeed ahead of
18 schedule, so -- and I imagine the Defence aren't going to object to having further time.

19 MR LAUCCI: [14:37:55] You know, next time it will be on our side. So, of course,
20 no objection.

21 PRESIDING JUDGE KORNER: [14:37:59] All right. Okay.

22 Well, in which case, we'll simply adjourn the case to tomorrow morning at 9.30. We
23 obviously hope that Mr Nicholls feels better tomorrow.

24 Yes. Any other matters that need discussion whilst we're sitting?

25 No? Very well.

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- 1 Yes, thank you.
- 2 THE COURT USHER: [14:38:24] All rise.
- 3 (The hearing ends in open session at 2.38 p.m.)