

Trial Hearing
WITNESS: DAR-OTP-P-0720

(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 Monday, 6 June 2022
10 (The hearing starts in open session at 9.49 a.m.)
11 THE COURT USHER: [9:49:24] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:49:51] Could we call the case, please.
15 THE COURT OFFICER: [9:49:54] Good morning, your Honours.
16 This is The situation in Darfur, Sudan, in the case of The Prosecutor versus
17 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
18 And for the record, we are in open session.
19 PRESIDING JUDGE KORNER: [9:50:20] I'll start that again.
20 Good morning, all. Here we are again.
21 Appearances for the Prosecution, please.
22 MR NICHOLLS: [9:50:28] Good morning, Madam President. Good morning,
23 your Honours. Julian Nicholls, with Laura Morris, Pubudu Sachithanandan,
24 Claire Sabatini, Mohanad Elkholy and Mohamed Eltawila. Thank you very much.
25 PRESIDING JUDGE KORNER: [9:50:45] Yes, thank you, Mr Nicholls.

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1 Defence.

2 MR LAUCCI: [9:50:53](Interpretation) Good morning, Madam President. Good
3 morning, your Honours. On Mr Ali Muhammad Ali Abd-Al-Rahman, this morning
4 we have Madam Lisa Guilloux -- Mohamed Manaa and Nina Guilloux, and myself,
5 Laucci.

6 PRESIDING JUDGE KORNER: [9:51:19] Thank you, Mr Laucci.

7 The Representatives of the Victims, please.

8 MR SHAH: [9:51:19] Yes. Good morning, Madam President. Good morning,
9 your Honours. Good morning, colleagues.

10 The victims are represented today by Mr Idriss Anbari, case manager, and myself,
11 Anand Shah, associate counsel. Thank you.

12 PRESIDING JUDGE KORNER: [9:51:30] Yes, thank you, Mr Shah.

13 Yes, so the witness this morning is Rule 68(3), so there'll be a summary first.

14 Who's calling him, Mr Nicholls? Ms Morris?

15 MR NICHOLLS: [9:51:42] That's me, your Honour.

16 PRESIDING JUDGE KORNER: [9:51:44] Right.

17 MR NICHOLLS: [9:51:44] And just one other point, we -- just briefly, we got a sort
18 of multiple check box objection to this witness's testimony. I don't know when you
19 would like to deal with that or how.

20 PRESIDING JUDGE KORNER: [9:52:00] What objections? I don't think I've seen
21 them, have we?

22 Mr Laucci, what objections?

23 MR LAUCCI: [9:52:07] No, no. Nothing new, Madam President. It's just a
24 summary. You remember, early May we made that submission, that for each
25 witness we will now recap on the basis of our previous submissions regarding

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1 confidentiality, collecting statements on the territory of non-state party, all that thing,
2 just to recap, which applied to the witness. It's for the record. There is no nothing
3 to Rule on because everything has been ruled upon already, but it's just to say, "Well,
4 we have made general submissions. Now we tell you on which particular witness
5 that does apply."

6 PRESIDING JUDGE KORNER: [9:52:51] But, Mr Laucci, that appears, in any event,
7 from the record of the ruling on whether or not these witnesses could be called under
8 68(3) or 2(c), or whatever it is. So, when it comes to appeal, your objections will
9 already have been recorded through those written motions, so I don't think you need
10 repeat them.

11 MR LAUCCI: [9:53:19] Yes, it's totally true. There is one -- one thing is, if that
12 argument is raised at some point before the Appeals Chamber, and also we wanted to
13 make sure that the Defence was compliant with Rule 64, which says that objection
14 against the admissibility of evidence shall be brought at the time the evidence is
15 presented. That's why we thought it was more compliant to make this recap, which
16 does not call for any reaction because the Chamber has already ruled on this.

17 PRESIDING JUDGE KORNER: [9:53:54] Yeah, well, that's what I was going to say.
18 It's back to what I originally said. Once we've ruled, even if you don't like it, until
19 there is an appeal, you're stuck with this.

20 All right. I think the simplest way, rather than you having do this, Mr Laucci, giving
21 the Prosecution a series of objections, is simply to say that, for the purposes of the
22 record, if you like, you'll repeat your objections that you made at the time.

23 MR LAUCCI: [9:54:23] Do you prefer this to be said orally or by the way of the very
24 simple -- for us, it's not burdensome to have this sheet filled -- filed for
25 every -- submitted for each witness.

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1 PRESIDING JUDGE KORNER: [9:54:32] Yes. All right. Provided it doesn't waste
2 any time.

3 MR LAUCCI: [9:54:36] Yeah, we don't want to waste time. That's -- I think it's the
4 more straightforward way of doing this.

5 PRESIDING JUDGE KORNER: [9:54:42] All right. Yes. Thank you.

6 Yes. All right, Mr Nicholls, now you know what it all means.

7 MR NICHOLLS: [9:54:48] Yes. Thank you. Sorry. I thought it was a renewed
8 objection, not just preserving the record.

9 Your Honours, I'll just quickly read the summary. P-720, the next witness, is a Fur
10 civilian, and he will speak about Mukjar and events there, including the
11 administrative structure, the tribal administration, the security situation in early 2003,
12 a campaign of looting committed or perpetrated by the Janjaweed, and the rebel
13 attack on Mukjar police station in July of August 2003, and the aftermath of this attack,
14 which included the arrests and beating of Fur males.

15 He provides information about the 2004 Sindu operation in which Ali Kushayb
16 participated and which resulted in the influx of displaced persons to Mukjar. He
17 describes the establishment of checkpoints in Mukjar and the arrest of males at these
18 checkpoints and the detention of Fur males in February and March 2004, some of
19 whom were later executed.

20 P-720 also describes Ali Kushayb entering -- excuse me -- arresting an acquaintance of
21 his and taking him to Mukjar police station. P-720 later learned that this
22 acquaintance was one of the detainees executed outside of Mukjar.

23 Finally, P-720 describes that Ali Kushayb took a group of prisoners from the police
24 station to locations outside of Mukjar where they were executed.

25 P-720 was in the market in Mukjar and could hear gunshots shortly after the detainees

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1 were taken away.

2 That concludes the summary. Thank you.

3 PRESIDING JUDGE KORNER: [9:56:59] Yes, thank you, Mr Nicholls.

4 The witness can come into court then, please.

5 Do we know, does he need him to repeat the oath, or can he read it?

6 MR NICHOLLS: [9:57:10] I'm not sure which he would prefer, your Honour.

7 PRESIDING JUDGE KORNER: [9:57:13] We'll ask him, then.

8 (Pause in proceedings)

9 PRESIDING JUDGE KORNER: [9:57:49] Mr Nicholls, it seemed to us that this

10 witness wasn't going to take very long either in-chief or cross-examination. Is there

11 another witness available for this afternoon?

12 MR NICHOLLS: [9:57:58] There is, your Honour. I anticipate having three

13 questions. The cross I believe is not very long. So the other witness, we expect, 980

14 will start after lunch.

15 PRESIDING JUDGE KORNER: [9:58:10] Right. Thank you.

16 Mr Laucci, does that seem to you --

17 MR LAUCCI: [9:58:13] Yeah, yeah, that fits our expectations as well.

18 (Pause in proceedings)

19 PRESIDING JUDGE KORNER: [9:59:18] I've been asked to reassure the witness that

20 the protective measures, which are face, voice distortion and, obviously, his name not

21 to be used, are in place.

22 I think somebody just called him to confirm it, and I'll reassure him when he comes

23 into court.

24 (The witness enters the courtroom)

25 PRESIDING JUDGE KORNER: [10:00:56] Sir, can you hear me?

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1 WITNESS: DAR-OTP-P-0720

2 (The witness speaks Arabic)

3 THE WITNESS: [10:01:01](Interpretation) Yes, I hear you very well.

4 PRESIDING JUDGE KORNER: [10:01:04] Good morning, and thank you very much
5 for coming to court to give evidence. Can I reassure you that you have full
6 protective measures for this hearing. That is to say, you cannot be seen except with a
7 distorted visual image, and your voice will also be distorted.

8 Finally, can I -- before the -- your evidence begins, you need to take an affirmation.

9 Would you prefer to repeat it after the court officer, or are you able to read it
10 yourself?

11 THE WITNESS: [10:02:02](Interpretation) Either, really. No problem. I can read it
12 or repeat it. No problem.

13 PRESIDING JUDGE KORNER: [10:02:10] Is it in front of him? Yes.

14 You'll find it's in front of you, sir, on a piece of card, I imagine, and if you'd just like to
15 read that.

16 THE WITNESS: [10:02:23](Interpretation) I solemnly decree that I will say the truth,
17 the whole truth and nothing but the truth.

18 PRESIDING JUDGE KORNER: [10:02:33] Thank you very much, sir.

19 As you know, because it's been explained to you, the Prosecution, Mr Nicholls, will
20 start the questioning and then you'll be questioned by the representatives of the
21 victims, possibly, and then by the Defence.

22 Very important that if you don't understand a question, you say so straightaway.

23 All right. Yes, thank you.

24 Mr Nicholls.

25 MR NICHOLLS: [10:03:04] Thank you, your Honour.

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1 QUESTIONED BY MR NICHOLLS:

2 Q. [10:03:07] Good morning, sir.

3 A. [10:03:12] Good morning.

4 Q. [10:03:13] I hope you're well today.

5 A. [10:03:18] I'm very well. Thank you.

6 Q. [10:03:19] Okay.

7 Your Honours, if we could please go into private session just for a moment to put the
8 background information on the record.

9 And so now, sir, we're going to go into private session - just wait a minute - and then
10 nobody will hear anything you say outside the courtroom.

11 PRESIDING JUDGE KORNER: [10:03:37] Yes, private session, please.

12 (Private session at 10.03 a.m.)

13 THE COURT OFFICER: [10:03:46] We're in private session, Madam President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

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4 (Open session at 10.04 a.m.)

5 THE COURT OFFICER: [10:04:51] We're back in public session, Madam President.

6 MR NICHOLLS: [10:04:54] Thank you.

7 Q. [10:04:56] All right. Sir, now, as I explained when we met, I'll really just have a

8 few questions for you today because your witness statement and some corrections

9 you made will be put into evidence and your story will be put into evidence that way.

10 Now, last week on Wednesday, 1 June, you met with me and Mrs Morris -- Ms Morris

11 and an interpreter.

12 Do you remember that?

13 A. [10:05:34] Yes, I remember that very well.

14 Q. [10:05:39] Thank you. And what we did was, your statement that you gave to

15 the investigators from 14 to 18 April 2018 and all of the annexes to it were read back

16 to you in Arabic.

17 Do you remember that?

18 A. [10:06:03] Yes, I remember really well.

19 Q. [10:06:04] And I'll just say for the record, it's not a question, that that statement

20 in English is DAR-OTP-0210-0291. And the Arabic version, 0219-8014.

21 And after we went through your statement with you again in Arabic, you made some

22 corrections and clarifications which we wrote down on a piece of paper. Do you

23 remember that?

24 A. [10:06:41] Yes, very well.

25 Q. [10:06:44] Thank you. And in the end you signed that piece of paper with

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1 those corrections and clarifications; is that right?

2 A. [10:06:51] Correct.

3 Q. [10:06:52] And you agreed that your statement and the document with the
4 corrections and clarifications could be put into evidence; isn't that right?

5 A. [10:07:14] Correct.

6 Q. [10:07:15] Okay. Thank you.

7 Now I've just a few questions, just a few, that I want to ask you following up on this
8 statement. And I'll go through those.

9 The first is, which is at paragraphs 50 and 51 of the statement, I'll just read them out:

10 "Villagers around Mukjar started to organise themselves to defend their villages from
11 the frequent Janjaweed attacks. I learned from villagers from the areas around Sindu
12 that the villagers set up ... self-defence force[s] because they lost faith in the GoS."

13 And in the next paragraph, paragraph 51, you stated:

14 "Around that time I learned about the creation of a rebel movement based in *Jebel
15 Marra which was responsible for the attack on Al Fasher airport."

16 So my question to you today is, were the village defence forces that you describe
17 being set up, were they part of the rebel movement? So in other words, were they
18 formed, these village defence forces, not just to defend the villages but to fight the
19 Government of Sudan?

20 A. [10:09:12] These forces were set up for self-defence from the repetitive attacks of
21 the Janjaweed and the Sudanese government that work with them.

22 Q. [10:09:30] Thank you.

23 Now, second question I have for you today. I won't say the person's name, but you
24 describe in your statement how at one point in Mukjar you were walking with an
25 acquaintance near the eastern checkpoint in the market and this acquaintance pointed

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1 somebody out to you and said, "That man is Ali Kushayb." And then you looked

2 and you saw this person identified to you as Ali Kushayb in the market.

3 Do you remember that part of your statement?

4 A. [10:10:18] Yes, very well.

5 PRESIDING JUDGE KORNER: [10:10:20] Paragraph please, Mr Nicholls.

6 MR NICHOLLS: [10:10:21] Apologies, your Honour. It's paragraph 103, which is at

7 page 17 of the English. Which is the ERN ending 0307.

8 Q. [10:10:42] Now, sir, my question is, simply, without saying his name, do you

9 know how that acquaintance who pointed out Ali Kushayb to you knew who Ali

10 Kushayb was? How did you know who Ali Kushayb was that day?

11 A. [10:11:07] First of all, he is somebody who used to work in the market. He has

12 so many contacts there and he told me this is Ali Kushayb. I looked at him after that.

13 And this piece of information was confirmed later by many people in the area where

14 the IDPs used to live. I saw him many times after that. I saw him moving from the

15 locality to the police station, and everything else, and he looked like someone who's

16 in -- in charge, because he had people walking behind him to protect him, and things

17 like that.

18 Q. [10:12:00] Okay. Thank you. And just to be clear, when you're saying "I saw

19 him many times after that. I saw him moving from the locality to the police station ...

20 he had people walking behind him to protect him," there you're talking about Ali

21 Kushayb; is that right?

22 A. [10:12:26] Correct.

23 Q. [10:12:27] Thank you very much. Now I'm -- I'm almost done.

24 I'd like to ask you now just about three persons who, when we met, you told us you

25 had learned that they had been killed in the mass executions outside Mukjar when the

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1 prisoners were taken away from the police station. So I'm going to ask you just three
2 names of these three different people that you talked to us about. And for each
3 person I'll ask you, as best you can remember, their age, how old they were; their
4 occupation, what they did for a living at the time in 2004, early 2004; and where they
5 were from, which village.

6 A. [10:13:35] Well, those people included the *umdah* in Mukjar. He was the *umdah*
7 of eastern Mukjar. He's *Umdah* Yahya. He used to live in Mukjar, but he was a
8 *umdah* of eastern Mukjar.

9 Second, a student Bahreddine. That's his name, Bahreddine. He used to study in
10 Mukjar secondary school.

11 And the third one was a farmer.

12 MR NICHOLLS: [10:14:25] Your Honours, just out of an abundance of caution,
13 could we go into private for my next question, please.

14 PRESIDING JUDGE KORNER: [10:14:33] Yes.

15 (Private session at 10.14 a.m.)

16 THE COURT OFFICER: [10:14:43] We're in private session, Madam President.

17 (Redacted)

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2 (Open session at 10.18 a.m.)

3 THE COURT OFFICER: [10:18:34] We are back in public session, Madam President.

4 MR NICHOLLS: [10:18:39] Thank you very much, sir. That's all the questions I
5 have at this time.

6 PRESIDING JUDGE KORNER: [10:18:42] Yes, thank you very much, Mr Nicholls.
7 Mr Shah.

8 MR SHAH: [10:18:46] Thank you, Madam President.

9 QUESTIONED BY MR SHAH:

10 Q. [10:18:51] Good morning, Mr Witness. You may recall that we met briefly last
11 week in this courtroom, but I'll mention my name again for the record. My name is
12 Anand Shah and I am one of the lawyers who are representing victims in these
13 proceedings. And on behalf of our clients, I would like to ask you a few questions
14 today, if that's okay with you?

15 A. [10:19:28] Very good. Go ahead, please.

16 Q. [10:19:29] Firstly, Mr Witness, I'd like to ask you about the *umdah* that you
17 mentioned, *Umdah* Yahya Ahmad Zarruq. Could you tell us a little bit about him.
18 What was his reputation in the Fur community in the Mukjar area?

19 A. [10:19:53] Well, as for his reputation, it was very good. He is someone who
20 was very knowledgeable about the neighbourhoods and the villages that he was
21 responsible for and he was very close to the people. He used to solve their problems
22 and the likes.

23 Q. [10:20:21] Thank you, Mr Witness. And of course in your statement you
24 mentioned *Umdah* Yahya's detention in Mukjar in early 2004 and that he disappeared
25 after that.

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1 Did his disappearance and apparent killing, did it have any impact on the Fur
2 community?

3 A. [10:20:55] Yes.

4 Q. [10:20:57] Could you expand on that a little bit, if you're able to. What sort of
5 impact did the disappearance and apparent killing of the *umdah* have?

6 A. [10:21:16] Because at that time he represented the administrative structure in
7 eastern Mukjar and all the areas surrounding it. The area of eastern Mukjar and
8 north-east Mukjar were all under his responsibility. He was a reference to
9 everybody. He was -- people used to go back to him for advice and for solving
10 problems, and he was always very prompt when -- with his responses. He used to
11 travel between villages to solve problems. He was sparing no time or effort in
12 serving his people and the villages that he was responsible for. And that's why his
13 disappearance and his killing had a huge impact, not only on the villages that he was
14 responsible for but on the entire area.

15 Q. [10:22:25] Thanks so much for your explanation, Mr Witness.

16 Now, I'd like to turn to paragraph 109 of your statement. And there you say that the
17 people in Mukjar were certain that the prisoners taken away from the police station in
18 early 2004 were executed and that these individuals were nowhere to be found.

19 Now, how did the disappearance of all of these individuals -- how did that impact the
20 Fur community?

21 A. [10:23:13] The impact was huge. The people lost confidence in everything, and
22 they thought that even those who are still alive will meet the same fate. People lost
23 their sense of security and their sense of confidence and trust. The people who are in
24 charge and references for the people have been imprisoned and killed, so what do
25 you think will be the fate of normal people. So people felt extremely sad.

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1 Q. [10:24:10] That's very helpful. Thank you, Mr Witness.

2 Now, I'd like to -- to ask you about, in general terms, your -- your family members
3 who you say were displaced to Mukjar.

4 Yes, Mr Witness, I'd like to ask you about your family members who you say were
5 displaced to Mukjar from surrounding areas in early 2004. And at paragraph 24 of
6 your statement, you say that some of these family members cannot return to their
7 land up to this day.

8 Now, you gave your statement to the Prosecution four years ago.

9 Is it still the case that your family members cannot return to their land?

10 A. [10:25:15] Yes.

11 Q. [10:25:18] And why cannot -- why can they not return to their land?

12 A. [10:25:28] Because there's no security still.

13 Q. [10:25:35] And is their land open, or are there other people who are living on
14 their land now, if you know the answer?

15 A. [10:25:54] Some of the land are occupied by the new settlers and controlled by
16 them now.

17 Q. [10:26:09] And who are these new settlers? What communities do they come
18 from? Who are they?

19 A. [10:26:15] The new settlers, it's people who come to these burnt down villages
20 and they see that they are agricultural lands and they decide to control it.

21 Sometimes you can go there, you go back, and share the profit and the crops of these
22 lands with them, or refuse that. Because they basically say to you, "If you want to
23 stay here, you have to accept our presence as well. If you want to stay, we will split
24 the crops between us," like the mango crops and other crops. They say, "Okay, you
25 can come back, and we will share it together."

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1 Q. [10:27:13] And, Mr Witness, these new settlers, are they from the Fur
2 community, or are they from -- from other communities, if you know that answer?

3 A. [10:27:26] No, from the Arab tribes.

4 Q. [10:27:33] Thank you, Mr Witness.

5 I'd like to turn to a different topic, and that is your knowledge of the (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 PRESIDING JUDGE KORNER: [10:28:09] Mr Shah, is this something we ought to
11 say in private session?

12 MR SHAH: [10:28:24] If your Honour is minded to do so, yes, we can go into private
13 session. It'll be -- these are general questions, your Honour.

14 MR NICHOLLS: [10:28:34] Your Honour, sorry, I don't mean to *interrupt. I would
15 ask private session.

16 PRESIDING JUDGE KORNER: [10:28:40] Yeah, let's go into private session then,
17 please.

18 (Private session at 10.28 a.m.)

19 THE COURT OFFICER: [10:28:56] We're in private session, Madam President.

20 (Redacted)

21 (Redacted)

22 (Redacted)

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Open session at 10.32 a.m.)

24 THE COURT OFFICER: [10:32:05] We're back in public session, Madam President.

25 MR SHAH:

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1 Q. [10:32:11] Mr Witness, this is my last question for you, and ...

2 Could you tell -- could you tell their Honours, how has what you witnessed and
3 experienced in Mukjar in early 2004, how has that impacted you? Is it something
4 that you still think about today?

5 A. [10:32:42] The time I spent in Mukjar was very tough on me. The danger, the
6 displacement and the consequences affecting children, it was a very difficult time.

7 Q. [10:33:09] Thank you, Mr Witness. We know your testimony has been very
8 difficult, and on behalf of our clients, we appreciate your willingness to come and
9 testify before the Court.

10 No further questions, your Honour.

11 PRESIDING JUDGE KORNER: [10:33:22] Thank you, Mr Shah.

12 Sir, if you'd like a break, then we'll have one, but it's probably in your best interest if
13 you conclude your evidence. And we will be, in any event, having a break in about
14 25 minutes.

15 THE WITNESS: [10:33:49](Interpretation) Well, let's carry on.

16 PRESIDING JUDGE KORNER: [10:33:51] Yes, Mr Laucci.

17 MR LAUCCI: [10:33:52] Thank you, Madam President.

18 QUESTIONED BY MR LAUCCI:

19 Q. [10:33:55] Good morning, Mr Witness. And -- well, thank you for accepting to
20 carry on without a break, but I want to insist, if you think you need one, just let us
21 know, and I'm sure Madam President will authorise it.

22 You remember, we met last week briefly for the familiarisation session. My name is
23 Cyril Laucci. I'm the lead counsel for Mr Ali Muhammad Ali Abd-Al-Rahman, and I
24 will ask you some question in relation to your statement. But, in the first
25 place -- well, I really thank you for appearing here, and that should be your

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1 opportunity to contribute to the establishment of the truth. So thank you for doing
2 that.

3 I have some questions that will require a closed session, but I propose, Madam
4 President, to keep them for the end of the cross examination, so that we can move on
5 in public as long as possible, and I think until the break.

6 Mr Witness, my first question is -- is very -- on a small aspect of your statement that
7 appears at paragraph 43 of your statement where you mention something that you
8 call *fazaa* search party.

9 Can you explain, please, what it is, a *fazaa* search party.

10 A. [10:35:59] *Fazaa* is extending help. I mean throughout the Wadi Salih villages.
11 These villages are near each other. *Fazaa* occurs when burning or combat happens
12 somewhere. For example, in one village you would find that the cattle have been
13 looted and -- or taken away, taken away, not by peaceful means, but by force. So
14 when we say "by force", that includes gunfire. That gunfire is heard in the other
15 village, the nearby -- the neighbouring village where they hear that there is gunfire.
16 They hear the gunfire and they identify, for example, that this is coming from the east.
17 So they rush to see what is going on in that other village.

18 Q. [10:37:04] Thank you for that. So I understand this as a reaction of solidarity
19 between villagers that if one village is in trouble, then the neighbourhood will come
20 and support, right?

21 A. [10:37:31] That is correct.

22 Q. [10:37:45] And sorry, maybe my pronunciation of my English was not that good,
23 but I was talking about solidarity between villagers and not only village, villagers, the
24 inhabitants of the villages. Sorry.

25 So you say that in a *fazaa*, well, people hear gunfires and then will come and rush to

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1 see what is happening. But if there is gunfire, it means that there is an attack and
2 there are weapons. Isn't it a dangerous operation?

3 A. [10:38:49] It is dangerous, yes. But it's important to defend the area when they
4 sense that there is no security. There is no government present. Even the
5 government that there -- that is present, they try to target these villages by looting
6 their cattle and their sheep. So there is danger. You -- it is expected that in and
7 around these villages, there will be some attack. They attacked this village yesterday,
8 might attack you today. So these attacks happen. The danger across these villages
9 is present. They are by nature dangerous areas. You might go to the other area as
10 part of the *fazaa* search party and that attack reaches your own village at the same
11 time. But this is happening all the time. People have gotten accustomed to this
12 happening, and consequences affecting your own children and your own elderly.
13 When you go to the other village to provide support, it is not through your means of
14 defence, but your capacity to -- to do solidarity. Sometimes you go to the other
15 village and you find corpses or injured people, so you help them, you save them. So
16 that's an act of solidarity. It's a humanitarian act of solidarity with a neighbouring
17 village. You find injured people, elderly, some people who died, children, and so
18 forth. So it's in the sense of saving whatever can be saved. You save those who
19 have been injured and so forth. So *fazaa* is a generic term, a broad term that
20 encompasses a range of meanings.

21 Q. [10:41:03] Thank you, Mr Witness. I again see that you -- you speak very
22 eloquently about these *fazaas* and the importance of solidarity between villages.
23 Do I understand that you yourself have been involved directly in some *fazaa* parties
24 when it was necessary?

25 A. [10:41:32] Yes.

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1 Q. [10:41:33] Do you remember how many times?

2 A. [10:41:46] Probably twice, if I remember right.

3 Q. [10:41:48] And do you remember on which villages you had to intervene in a
4 *fazaa*?

5 A. [10:42:07] For example, there is a village, there is an area between Mukjar and
6 Bindisi. We heard that there was gunfire, so then -- so everyone from the area went
7 there, including myself. I went among the youth and the women. Everybody went
8 there. So I accompanied everybody who headed there. This is what happened.

9 Q. [10:42:35] You mentioned that the youth and the women also were involved in
10 that. So it's -- it was really not only those adult males in a position to, well, respond
11 to a threat, but really everybody coming in, right?

12 A. [10:42:59] In principle, all those who can should take part in the *fazaa*. You
13 could be an adult male and yet unable. You could be an elderly person but able.
14 And also it depends on how far the area is. If it's really far, maybe you can't. But at
15 other times it's a nearby area, so maybe you can. So there are a number of factors
16 that play into that.

17 Q. [10:43:27] And this first *fazaa* you were involved in, that you mentioned, do you
18 remember approximately when this was?

19 A. [10:43:43] Around 2002, 2003. Early 2003.

20 Q. [10:43:57] And can we know what -- what had happened there?

21 A. [10:44:13] We heard gunfire, so we went there. We probably went there a little
22 late. By the time we arrived, we found some people who were already hit so we
23 tried to save them by taking them to the Mukjar hospital. Afterwards we came back
24 from Mukjar and we found that the -- that the group that was already advancing in
25 the -- in those villages, already five people among them had been killed.

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1 THE INTERPRETER: [10:44:48] Interpreters' observation: We're not sure if the five
2 refers to the group that attacked or for the folks who were attacked.

3 MR LAUCCI:

4 Q. [10:44:57] Can you clarify, please.

5 A. [10:45:08] Among the local community.

6 Q. [10:45:16] Yes, and in your statement, you mention around this period from
7 early to mid-2003, you mention rebel attacks on the region of Mukjar. This attack
8 that you intervened in, was it -- do you know if those who were attacked were rebels
9 or other people?

10 A. [10:45:57] There were attacks, for example, an attack on the police station that
11 might have been from the rebels. I believe that attack was perpetrated by the rebels.
12 But I -- but I don't remember seeing anyone carrying out such action because I was
13 hiding in my own home to protect myself. Afterwards, there was attacks repeatedly
14 by the Janjaweed. Afterwards, repeat attacks happened by the Janjaweed.

15 Q. [10:46:40] Okay. And when you were going on *fazaa* parties, I call them like
16 this, the group that was intervening, did some people carry on weapons with them in
17 order to respond to a potential threat?

18 A. [10:47:09] They had no weapons.

19 Q. [10:47:15] Why that?

20 A. [10:47:25] Can you please repeat the question.

21 PRESIDING JUDGE KORNER: [10:47:28] I was about to say, what does that mean?
22 Why what?

23 MR LAUCCI:

24 Q. [10:47:33] No, I was asking why did the people going on an operation that is as
25 dangerous as *fazaa* not bring weapons with them in order to -- to respond if they were

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1 attacked, or I don't know.

2 A. [10:47:58] Logically that's how it should be. However, we were in an area
3 where there was police presence. So if you bear arms, the police would perceive you
4 as a criminal. So you can't carry weapons in town unless you belong to the police or
5 the military. The area is controlled by security forces. It is strictly forbidden that
6 you carry arms, otherwise they would point their own arms at you.

7 Q. [10:48:34] But isn't something like the *fazaa* a custom or practice that is admitted
8 in Sudan and especially in the region?

9 A. [10:48:51] Yes, nice. Mm-hmm.

10 Q. [10:48:53] But then if it is customary when people -- when someone is attacked
11 that other people will go on *fazaa*, isn't it admitted that those going on *fazaa*, because
12 they are exposing their life and security, may carry weapons with them in order
13 to -- just to protect them?

14 A. [10:49:32] Whether it's legitimate and it makes sense, that's another story. I am
15 testifying on what happened and what I saw with my own eyes. I understand the
16 logic of your question. It makes sense. However, in reality it is known that if you
17 carry arms, you have to belong to the police. This is what I saw where I lived.
18 Sometimes the *fazaa* can be in cooperation with the police, you can have one or two
19 police vehicles with you, ahead of you, or -- and the citizens behind, but I did not see
20 any weapons, carrying arms because this is an area where the government is present.
21 There was a police station, there was military intelligence, all of these units are
22 present which does not allow you to carry arms. If you are considered to be
23 someone who carries arms, then you subject yourself to danger. This is how things
24 were where I used to live.

25 Q. [10:50:40] Thank you. When you refer to the presence of the police and the

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1 military intelligence and everything, I -- I tend to understand what you say as being
2 more related to urban environment in cities. Would that prohibition, strict
3 prohibition to carry weapons apply in the same way in the countryside?

4 A. [10:51:20] The countryside belongs to the town that has been mentioned. It is
5 administratively part of it. Also logistically and militarily. It belongs to that town.
6 Well, I don't know much about the military domain, but there were military patrols
7 that would come out of town, go into the villages. I don't know what they were
8 doing exactly, maybe some investigative or intelligence work, but all the villages in
9 that area, it is known that they are under the jurisdiction of the local security
10 committee or unit. I don't know what those patrols used to do, whether they were
11 doing investigative intelligence work, or whether they were probing if people had
12 weapons. I don't know much about that domain. But what I know is that all the
13 areas I know are under the local police force. I can't speak as to whether there were
14 weapons in these areas or not. That is something I don't know about.

15 Q. [10:52:34] Okay. Thank you. I understand that the countryside is under the
16 authority of the police, but you speak about patrols. What I mean is that in the
17 countryside it is logical that the presence of the police, or the presence of the army, is
18 less intensive than around -- around cities, so that's why I was asking. But I don't
19 need to go further on that specific aspect.

20 You mention village defence forces. When a village had a village defence force, am I
21 right to assume that these village defence force would be the one going on *fazaa*
22 parties?

23 A. [10:53:42] No.

24 Q. [10:53:44] Then can you explain, please, how come there is a defence force
25 constituted in the village with a capacity to answer to attack from Janjaweed or

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1 representatives of the government, as you mentioned, and they are not the one
2 reacting to an attack. Can you explain, please.

3 A. [10:54:11] All the villages in and around Wadi Salih were stable. I don't
4 remember the number of villages, but there was a very large number of villages, those
5 who were close to town, not very far from town. Many violations happened, and
6 these constant violations across villages consisted in the simultaneous burning and
7 looting of livestock across villages. Also, eastern villages were attacked. During
8 the same time, people had cattle then. Kodoom, Bindisi, all of these villages were
9 burned and people got displaced. Some villagers had cattle. I'm not going to say
10 villages had cattle, I'm going to say villagers had cattle. Which are looted all the
11 time, looted even inside town. So they headed east and they said, "Well, since things
12 are like this and there's no governmental protection, let's take our cattle and head east
13 where we can have some form of a protected area where we can have our cattle
14 intact."

15 Those who were in the protected area did not follow the *fazaa* search party principle.
16 The *fazaa* applies to inter-village solidarity. This occurred before the burning of the
17 villages. But *fazaa* no longer applied when the villages got burned. How could you
18 carry out *fazaa*, unless you carried out inside town? So that's the difference between
19 *fazaa*, as we explained it before, and how things turned out to be.

20 Fazaa applied when villages were not burned. *Fazaa* is a traditional principle that
21 people are accustomed to in the area. However, when all the burning happened and
22 people got displaced, it was no longer the case. People had cattle and, therefore,
23 decided to go east. They went to the villages east of Mukjar. All the villagers -- or
24 the villages east of Mukjar hosted these people. And even there they would come
25 from the market. They would go -- come and go to the market to sell livestock or to

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1 buy other merchandise. So movement was possible then. There were no issues.

2 Q. [10:57:11] Thank you. Several questions, when you say they went to the east,
3 to other villages at the east of Mukjar, can you be more specific in which are
4 the -- those localities where the people decided to move with their cattle?

5 A. [10:57:37] Tendy, Dimbo, Sindu. This is where people headed with their cattle.

6 Q. [10:58:00] Okay. Was the presence of the rebellion in Sindu a factor that was
7 considered into -- as -- as a possibility to seek their protection? I mean the protection
8 from the rebellion against the Janjaweed and -- and government.

9 A. [10:58:30] After all the burning of villages happened, I did not go to those
10 eastern villages to verify what the situation was like. During that time, I was in
11 town instead. I did not go anywhere else, so I wasn't really sure what was going on
12 elsewhere, but I saw that people were coming and going. They would come to the
13 market, they could get their livestock with them, and they might come back at
14 another point in time with no issues. But I did not go to those areas at that time.

15 Q. [10:59:09] Fine. You didn't go yourself, I fully understand that. But did you
16 hear people making the reasoning that, if they would go east with their cattle, then
17 they had the hope that the rebellion would protect them?

18 A. [10:59:39] No.

19 Q. [10:59:40] Okay. Fine. And I come back because you -- you move slightly in
20 your responses to the specific time when -- when the villages were burned and
21 destroyed. But I want to come -- I want to come back to before that and what the
22 *fazaa* parties were before that really -- those destructions of villages started.

23 PRESIDING JUDGE KORNER: [11:00:11] I think he's told us that already at length.

24 MR LAUCCI: [11:00:13] I still have one or two questions.

25 PRESIDING JUDGE KORNER: [11:00:18] Well, why don't you put the areas that you

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1 want to cover, otherwise we're going to get the same repeated answers.

2 MR LAUCCI: [11:00:25] Okay. I try this way.

3 And I have my eye on the clock, so don't worry, it's two to three minutes maximum.

4 Q. [11:00:35] Yes, before the -- the burning of -- of villages and everything
5 started -- I'm talking about normal *fazaas*, the way you describe in your statement. In
6 this period before the heavy attack started, when there was a *fazaa*, would the local
7 village defence force participate in the *fazaa*?

8 A. [11:01:13] What do you mean by the village defence forces?

9 Q. [11:01:17] The one you -- you mention in your statement that some villages -- I
10 can -- which paragraph is it?

11 Yes, at paragraph 50 you mention -- you mention, and that was read by my colleague
12 in the OTP: "I learned from villagers from the areas around Sindu that the villagers
13 set up a self-defence force because they lost faith in the Government of Sudan."

14 So --

15 PRESIDING JUDGE KORNER: [11:01:47] Mr Nicholls.

16 MR NICHOLLS: [11:01:47] Yeah. Sorry to interrupt, but it's sort of being put to the
17 witness that he said these defence forces existed at this time. What the witness has
18 said in paragraphs 50 and 51 are that once these attacks started --

19 PRESIDING JUDGE KORNER: [11:02:13] Yeah.

20 MR NICHOLLS: [11:02:13] -- they set up. But what Mr Laucci has said is, before all
21 these attacks started I want to ask you about the village defence. So I think it's not
22 quite putting to the witness what is in this statement.

23 PRESIDING JUDGE KORNER: [11:02:25] I think, Mr Laucci, what you're going to
24 have to clarify with the witness is whether the village defence forces existed at the
25 same time as these parties were in operation.

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1 MR LAUCCI: [11:02:40] Yes, that was the chronology that I tried to -- to establish.

2 Q. [11:02:46] So, Mr Witness, I will reformulate the question in order to be as
3 simple as possible. But before Janjaweed and government forces started attacking
4 and destroying villages, were there village defence forces, as far as you know?

5 A. [11:03:19] No.

6 Q. [11:03:20] No need to go further.

7 And last question about *fazaa* parties. When the *fazaa* party arrived at the place that
8 was under attack, or to the place where the cattle, the stolen cattle had been taken,
9 what would they do? Would they take the cattle back and what would happen
10 then?

11 A. [11:03:51] In the eastern region -- are you asking about the programs of the
12 defence forces exactly? Is that what you mean?

13 Q. [11:04:02] No, I'm talking about the *fazaa* party. A *fazaa* party is taking place
14 and they reach the place where the cattle, the stolen cattle has been taken. What
15 happens?

16 A. [11:04:21] The *fazaa* party used to go -- well, their biggest mission that I
17 witnessed myself is that they will -- so when -- when the cattle are stolen and the
18 people try to resist that, the *fazaa* groups go after that and try to support people in
19 different ways. Some people get beaten up and so we try to give them medical
20 assistance, take them to hospitals. Things like that, really.

21 PRESIDING JUDGE KORNER: [11:05:03] I think you're being asked, sir, what
22 happens if you find the cattle by some luck, what would happen then?

23 THE WITNESS: [11:05:23] (Interpretation) I never heard that the cattle were ever
24 returned. The people who come to steal cattle, they are always very organised and
25 they manage to take the cattle and go away. Some people, the owners of the cows,

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1 they usually are asleep or not in the area, and if they resist, they get killed. So they
2 end up taking the cattle from them anyway. There is no question about that. And
3 those people who used to resist, they are all disarmed. They don't have any arms.
4 And they have nothing, really, in their hands to do anything about it.
5 So they are just simple people. And attacks usually happened really early in the
6 morning while the people are asleep, and these groups are very organised. They just
7 take the cattle and go away. As soon as they start leading the cattle, that's it. It's
8 finished. Anyone who resists that gets beaten up or killed.
9 So the *fazaa* groups go there just to help those who get wounded or injured or help
10 them -- help take them to hospital. Things like that.

11 MR LAUCCI: [11:06:59]

12 Q. [11:06:59] And so you never heard that a stolen cattle was retrieved? This is
13 what you said?

14 A. [11:07:14] As for getting back the cattle, no, I have never heard that. During the
15 time that I was in the area, the stealing and pillaging was happening in a very
16 organised way. It wasn't a random thing. So retrieving the cattle, no, no, no.

17 Q. [11:07:38] Thank you.

18 Madam President, we can have the break, if you like.

19 PRESIDING JUDGE KORNER: [11:07:41] Yeah, I was just wondering, if you only
20 got about another ten minutes --

21 MR LAUCCI: [11:07:46] No.

22 PRESIDING JUDGE KORNER: [11:07:47] You've got longer than that. All right.

23 MR LAUCCI: [11:07:49] I will take the next session, but that will be enough. I will
24 not carry on this afternoon.

25 PRESIDING JUDGE KORNER: [11:07:55] Yes, all right. Thank you.

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1 Yes, well, sir, we'll be taking a break now until 20 to 12, half an hour, 30 minutes'
2 break. During the course of the break, please don't discuss the evidence you're
3 giving with any of the support people who may or not be where you because it's
4 really important that you don't talk about your evidence. But we'll have a break
5 now for you to relax, and we'll be back at 20 to 12, please.

6 THE WITNESS: [11:08:34](Interpretation) Thank you.

7 THE COURT USHER: [11:08:34] All rise.

8 (Recess taken at 11.08 a.m.)

9 (Upon resuming in open session at 11.43 a.m.)

10 THE COURT USHER: [11:43:23] All rise.

11 Please be seated.

12 PRESIDING JUDGE KORNER: [11:43:52] Mr Laucci.

13 MR LAUCCI: [11:43:59] Thank you, Madam President.

14 Q. [11:44:01] Mr Witness, are you refreshed? Can we carry on?

15 A. [11:44:12] Yes.

16 Q. [11:44:12] I will try my best to complete your cross-examination within the next
17 one hour and a half that we have. If you can try to have brief and concise responses,
18 that will help.

19 My first -- my next topic is about what you mention in your written statement at
20 paragraph 66, exactly, regarding the coercive mobilisation of people within the Police
21 Popular Forces.

22 If I summarise, you describe that the recruitment in the PPF was sometimes done in a
23 coercive manner, and you mention national security members who ask you,
24 personally, why you did not join and insisted that you should join the PPF.

25 PRESIDING JUDGE KORNER: [11:45:24] The actual words are "tried to convince

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1 me".

2 MR LAUCCI: [11:45:28] Yes, precisely. Tried to convince you to join.

3 Q. [11:45:32] And you also mention a friend of yours who told you that he had to
4 join to protect himself from harassment from security forces in Mukjar.

5 My first question on this is this one: Those who insisted that you should join
6 yourself the Popular Police Forces, did they know you were Fur?

7 A. [11:46:08] Yes, because 99 per cent of the population are from the Fur in the area.

8 Q. [11:46:14] And your friend that you mention that was compelled to join in the
9 PPF, what was his tribe?

10 A. [11:46:27] Fur.

11 Q. [11:46:28] Are you aware of many people refusing to join the popular -- the
12 Police Popular Forces?

13 A. [11:46:47] I don't know, but those who didn't join had their own reasons for that,
14 but I don't know exactly what these reasons are. It's different from one person to the
15 other.

16 Q. [11:47:01] Do you know what happened to them? Did they -- did they have to
17 pay some consequences for refusing to join?

18 A. [11:47:25] I think that what happens is that the movements inside the village are
19 affected. So if you join the forces, you will be -- you will not be as restricted, but
20 those who don't join are very restricted. They are usually very careful when they
21 move throughout the town.

22 Q. [11:48:02] Can you explain a little bit more how that restriction works. What is
23 it exactly? I do not understand.

24 A. [11:48:17] So if somebody is forced to join the forces, they are considered part of
25 the government. They are part of the police. So they have the capacity of moving

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1 from one place to the other with no problem whatsoever. While if somebody who's
2 not part of the forces moves around the city, they are usually very careful, and they
3 stay at home most of the time, try to avoid any trouble, and so on.

4 Q. [11:48:59] Do I understand that they -- those people refusing to join then become
5 under some sort of scrutiny or ...

6 A. [11:49:17] Well, everybody is under some sort of scrutiny. The entire region.
7 So this kind of scrutiny is present in the whole area, including children and women.

8 Q. [11:49:38] But the fact that someone refused to join in the Popular Police Forces
9 did not mean that they were, after that refusal, necessarily considered as rebel, were
10 they?

11 A. [11:50:04] So people who are targeted by the police to join their forces and then
12 they refused that, I'm sure that they have certain reason, they have their own reason
13 for doing that. For example, I was a student, so I couldn't join the forces because of
14 that reason. Everybody had their own reasons for refusing, so I can't really talk on
15 their behalf.

16 Q. [11:50:36] I'm not talking about the reason why they refused. I'm talking about
17 the consequences of the refusal. I'll repeat the question very -- very straightforward
18 way.

19 If you refused to join in the PPF, would the authorities consider that you are a rebel,
20 yes or no?

21 A. [11:51:12] For the authorities, I'm not sure really if they consider those people as
22 rebels or not, but they considered the whole tribe as disobedient. That's how the
23 government looked at our tribe in -- in its totality, whether you join the police forces
24 or you don't. But that was the situation.

25 Q. [11:51:43] And were there many Furs within the Popular Police Forces?

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1 A. [11:51:58] Yes, many Fur, yes. There wasn't a very high percentage. It was a
2 small percentage, but they did work with the Police Popular Forces, they did.

3 Q. [11:52:20] Did you ever hear someone, when they insisted that you are or other
4 people should join in the PPF, did you ever hear someone saying that refusing to join
5 could be considered as desertion?

6 A. [11:52:54] I didn't hear that, but that was the reality of the situation. I didn't
7 hear that. But yes, if people are targeted for recruitment to join a certain group,
8 that's how they are looked at later. Of course, they are looked at and considered
9 differently.

10 I will just give you an example. If somebody -- okay, if you ask something from
11 somebody and someone complies to your request and does what you asked him to do,
12 while the other person refused, of course you will be looking at them in a different
13 way. Of course, you have to look at their reasons for refusing your request, but the
14 treatment will be different of course.

15 Q. [11:54:09] Yes. Maybe when, in all fairness, when you say that that was the
16 reality, well, if that was the reality, it was a very harsh reality indeed, because under
17 the Sudanese law, desertion -- desertion is a criminal offence and with -- which means
18 that the deserters may be exposed to death penalties, so it's a very, very serious
19 offence.

20 Is it what you say, that this was the real -- is it the reality that you are describing?

21 A. [11:55:02] I have not -- I haven't got a lot of knowledge about the Sudanese law.
22 But my understanding is that this is the reality of the way people will treat each other,
23 but I don't know anything about the law.

24 Q. [11:55:17] Yes. And actually in the binder that you have I brought the legal text.
25 But I fully understand that you have no expertise in that, so I do not insist more. I

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1 will stop my questions on that topic for the moment. Thank you.

2 In your statement - I'm talking about paragraph 50 to 55 - you speak about rebel
3 attacks on Mukjar and the region by mid-2003. Over the period 2003, 2004, how
4 many rebel attacks on Mukjar are you aware of, please?

5 A. [11:56:19] I think there were two attacks.

6 Q. [11:56:24] Okay. Would you have any indication about the dates,
7 approximately, of these attacks?

8 A. [11:56:35] No, I don't remember.

9 Q. [11:56:37] Okay. If you can take the binder, the Defence binder that is next to
10 you, and go under the tab number 2.

11 Maybe someone can assist the witness.

12 I want to -- to show you a list of rebel attacks in Darfur which runs over the period
13 2002 and 2004. And in that list I would like you to look at the item 53 that has been
14 highlighted for you. You have it in Arabic. And if you want to play it on the screen
15 in English maybe, that would be document DAR-OTP-0153-0686. And I would like
16 the page 0691. Yes. And the page in Arabic is 0063.

17 Mr Witness, do you see that entry number 53, which is dated 2 July 2003?

18 A. [11:58:36] Yes. According to what's written here, there was an attack by the
19 rebel where the rebels managed to seize -- seize arms from the police station. And
20 that a battalion of the police forces were moved to Nyala, or deployed to Nyala.

21 Q. [11:59:08] I do not see the information about Nyala in the English version. Is it
22 in front of you on the -- entry 53, the one highlighted?

23 A. [11:59:26] This is item number 53, yes. This is the one that I've just read.

24 Q. [11:59:31] Okay. Maybe I will read it in English and you can check if what you
25 have in front of you in Arabic is the same. So the entry reads in English:

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1 "Mukjar district was attacked. The criminals managed to take the weapons of the
2 District police and the Central Reserve as well as setting fire to the District stores and
3 the armoury. They also took communications equipment belonging to the Police
4 and State agencies."

5 PRESIDING JUDGE KORNER: [12:00:16] Sir, just is that what your -- what the entry
6 you can read in Arabic says?

7 THE WITNESS: [12:00:31](Interpretation) Yes.

8 PRESIDING JUDGE KORNER: [12:00:35] Does it -- does it say anything else?

9 THE WITNESS: [12:00:47](Interpretation) This part regarding the attack and the fact
10 that the criminals managed to take the weapons and set fire to the stores, no, that
11 didn't happen.

12 The municipality of Mukjar was a general republic place and I never heard about the
13 fire or setting fire in the building. I might have not managed to get all the
14 information from the people about the details of the attack, but I knew at the time that
15 they set fire to some of the police vehicles, but I don't have a lot of information about
16 the damage that happened in the police station itself.

17 PRESIDING JUDGE KORNER: [12:01:49] But does -- does the entry also contain
18 information that a battalion of the police forces were moved to Nyala?

19 THE WITNESS: [12:02:13](Interpretation) Well, in the translation -- well, there is a
20 little bit of a contradiction here, because Geneina is closer to Mukjar than Nyala, so I
21 can't see why a battalion was deployed to Nyala while Geneina is closer. So how did
22 they send a battalion to Nyala, then go back to Geneina? I really don't understand.
23 I'm not sure that the translation here is correct.

24 The police is closer to Garsila or Zalingei, but Nyala is a completely different area.

25 PRESIDING JUDGE KORNER: [12:02:58] Yes, all right.

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1 I think, Mr Nicholls, can you assist.

2 MR NICHOLLS: [12:03:00] Just going to say that I see that the next entry, which is
3 on the next page in the English, number 54, talks about a police battalion, al-Geneina
4 and Nyala. So it ...

5 MR LAUCCI: [12:03:18] Yes, that could be explanation. Otherwise, Madam
6 President, I was about to suggest that the -- the witness may read the entry 53 that he
7 has in front of him in Arabic and we would get the interpretation.

8 PRESIDING JUDGE KORNER: [12:03:31] Yes. I'm sorry, I see why I didn't see it,
9 because it wasn't one of the pages that you said you were going to refer to, but it's in
10 the full text. Yeah. All right. Thank you.

11 MR LAUCCI: [12:03:49] Do you want the witness to read aloud the entry 53, or are
12 you happy with explanation?

13 PRESIDING JUDGE KORNER: [12:03:53] No, no, unless you want to pursue it. No.
14 All right.

15 MR LAUCCI: [12:03:56] Okay.

16 Q. [12:03:56] So you say you do not remember about the police station in Mukjar
17 being damaged, right?

18 A. [12:04:16] There is a difference between the municipality building and the police
19 station. The municipality building is where all the administrative work is done, but
20 the police obviously do different type of work. I just want to point out this
21 difference.

22 Q. [12:04:43] But do you remember the Mukjar police station being damaged as a
23 result of an attack by the rebellion?

24 A. [12:05:08] I heard some information, but I'd rather speak about the things that I
25 witnessed myself rather than what I heard from other people. At the time, no one

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1 was able, really, to go any -- well, to go to -- close to the military or government
2 buildings. So it's very difficult, really, to get reliable information from the citizens.
3 You have to get this information from someone who works in these places in order to
4 consider such information reliable. But the laypeople didn't know much.

5 Q. [12:05:52] Okay. I don't know in which category you -- you place yourself, but
6 at paragraph 56 of your written statement to the Office of the Prosecutor, you say
7 "Mukjar police station was at that time", and we are talking about July 2003, so
8 "Mukjar police station was at that time not in use due [to] the damage it sustained
9 following the rebel attack."

10 Does that refresh your memory?

11 A. [12:06:39] I remember that after the attack, the Central Reserve Forces came and
12 some of them took the school as their base because I believe that the other building
13 was really small and that's why they used the school.

14 Q. [12:07:07] Is it because it was too small or it is because it was damaged?

15 A. [12:07:17] They didn't like destroy the whole building. Yes, they might have
16 caused some damage, depending on the attack, but I believe that the forces were very
17 big and that's why they needed a bigger place and that's why they took the school as a
18 base for them.

19 Q. [12:07:46] Thank you. In the same document in the -- in the binder, I will just
20 draw your attention to two other entries. No need to go into the details, but it's the
21 entry 64, which is on page 0693 in English, 0064 in Arabic, which mentions another
22 rebel attack on Mukjar on 8 August 2003. And I want to mention as well the
23 item -- the entry number 108, page 0696 in English, 0068 in Arabic, which mentions a
24 third attack on Mukjar on 29 November 2003.

25 My question is very general. Does that ring a bell? Do you -- you said you

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1 remember two attacks on Mukjar. Here we have three. Does that correspond to
2 your recollection?

3 A. [12:09:18] I remember two attacks.

4 Q. [12:09:25] Okay. So was the first one, the one of 2 July 2003, one of these two
5 attacks?

6 A. [12:09:38] Yes.

7 Q. [12:09:40] And this is during this attack that the building of the police station
8 was somehow damaged, right?

9 A. [12:10:00] There was an attack on the police, but I don't think that it was
10 completely destroyed. No, I don't think that it was completely destroyed. You can
11 see the building from a distance. I didn't go into the building or close to it, but you
12 can see it from a distance.

13 Q. [12:10:16] I take it that it was not fully destroyed, but in your written statement
14 you said that it had received some damages. Can you be more specific on the nature
15 of the damages? What was damaged in the police station?

16 A. [12:10:40] Until I left the area, I'd never gone any closer than one kilometre from
17 the police station, so I never really approached the building at a close distance.

18 Q. [12:11:03] So do I understand that the information that the police station was
19 damaged is something that you heard instead of something that you saw?

20 A. [12:11:20] As I said, you can see the building from a distance, but I'd never gone
21 close to the building, so -- and yes, I heard some information about damage of the
22 building, but I never examined that myself.

23 Q. [12:11:37] Okay. And the damages were significant enough for the Central
24 Reserve Forces to move to the -- the school?

25 A. [12:11:58] I think moving to the school was because of the big number of the

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1 Central Reserve Forces. I think that the police building was big enough maybe for 50
2 policemen, but the number of the Central Reserve Forces that came were much higher
3 than this, and that's why they needed a bigger place.

4 Q. [12:12:31] Yeah, I want to move on, so I will just observe that the reason you
5 specified in your written statement, the reason why the Central Reserve Forces moved
6 to the elementary school was that the building was damaged, but I understand that
7 you have no further information about the nature and importance of that damages.

8 At paragraph 72 to 76 of your written statement, you mention the presence of what
9 you identify as Janjaweed forces in Mukjar in early 2003. And you say that these
10 Janjaweed were under the command of a person named *Al-Dayf Samih.

11 At paragraph 76 of your statement, you also mention another person named Al-Sadiq
12 and you describe that person, Al-Sadiq, as the PDF coordinator. Can you clarify
13 what are -- what were, according to you, the functions and responsibilities of the PDF
14 coordinator?

15 A. [12:14:11] According to PDF's own information, it is an office that plays an
16 organisational function. This is what we know in theory. It's part of law
17 enforcement. PDF is the reference point for recruiting people from the tribes in the
18 area. They recruit people as part of the force, so they act like liaison officers with
19 a -- with a provincial administration or with a higher level of government. So they
20 provide support, people come to their offices seeking services and so forth. I did not
21 know these closely, but I notice that they wore a whitish uniform, they carried arms
22 and they had features with which they could be distinguished.

23 Q. [12:15:25] Thank you, but could you clarify, according to you, between this
24 *Al-Dayf Samih and this Al-Sadiq, who -- who had authority on the other? Who was
25 the higher in the hierarchy?

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1 A. [12:15:44] In terms of rank, Al-Sadiq was higher because he perhaps had a
2 higher level of education. But with regards to *nefous* (phon), Sadiq was higher.

3 THE INTERPRETER: [12:16:07] Interpreter does not recognise the word
4 "*nefous*" (phon) used by the gentleman.

5 MR LAUCCI: [12:16:13] Maybe you can ask him to clarify that word.

6 THE WITNESS: [12:16:25](Interpretation) In terms of how many people reported to
7 him. The PDF officer had an organisational function, a coordination function, which
8 is different from the function of a commander. *Al-Dayf Samih was a commander of
9 the Janjaweed. However, Al-Sadiq was, in principle, a PDF coordinator. He
10 arranged things for them. He identifies needs and decides programs. For example,
11 maybe we need to recruit more people or less people, depending on military
12 requirements. That's as far as the word "coordinator" is concerned.

13 MR LAUCCI:

14 Q. [12:17:26] And -- and you are talking about two groups. You say
15 *Al-Dayf Samih was the commander of the Janjaweed on one side. You say Al-Sadiq
16 was the coordinator of the PDF. What is the relation between the two?

17 A. [12:17:53] I don't understand the point of your question, but the relation
18 between the two is the commander of the Janjaweed was also a PDF coordinator.
19 And in his daily function, he was coordinating things. So there you see the overlap
20 between the two. That's what defines their relation.

21 Q. [12:18:20] Okay, I move on for that.

22 You also mentioned the Central Reserve Forces in Mukjar and you say that they were
23 led by an officer. You mentioned a lieutenant colonel or a colonel, but you do not
24 remember the name. If I -- well, maybe let me first ask you, in your written
25 statement, you do not remember the name. Do you remember it today, the name of

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1 the leader of the CRF in Mukjar?

2 A. [12:18:58] I do not remember the name.

3 Q. [12:19:00] If I suggest the name *Abdullah Himeidan, does that ring a
4 bell?

5 A. [12:19:14] No.

6 Q. [12:19:14] Okay. You also mention the presence of officers of military
7 intelligence and national security. Do you know what was the reason of their
8 presence in Mukjar? What were they doing?

9 A. [12:19:36] They were accompanying CRF. It was known that national security
10 or military intelligence would be there to collect information and other functions
11 along those lines.

12 Q. [12:19:58] Among these other functions, because you say the main function was
13 to collect information, would other functions include providing instructions?

14 A. [12:20:20] I wasn't close to military leadership to determine who gave
15 instructions or not, so I am not aware of that.

16 Q. [12:20:35] Okay. At paragraph 79 of your statement, you say that after the
17 attack on Sindu in early 2004, the Central Reserve Forces were relocated from the
18 secondary school to the police station building.

19 Does that mean that in early 2004, February or March 2004, the Mukjar police station
20 was manned by the Central Reserve Forces?

21 A. [12:21:17] Yes.

22 Q. [12:21:25] Thank you very much. Okay.

23 In your statement, you also talk about arrests, detention and the execution of people
24 in Mukjar, and you talked about it again this morning. You mentioned the specific
25 case of *Umdah* Yahya Ahmad Zarruq.

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1 I would like to ask you some question about his case. You mentioned that
2 *Umdah* Yahya Ahmad Zarruq was the *umdah* for the east of Mukjar, and did that
3 include Tendy, Dimbo and Sindu?

4 A. [12:22:31] Yes.

5 Q. [12:22:32] Thank you.

6 When you responded to the questions of my learned colleague this morning, you
7 spoke about the reputation of *Umdah* Yahya, and you said that this was someone who
8 was extremely involved in resolving problems.

9 Did the problems that he had the reputation to resolve include the attacks on the
10 villages by the Janjaweed and the government of Sudan forces?

11 A. [12:23:28] No.

12 Q. [12:23:30] *Umdah* Yahya was not taking any measure or was not advising the
13 villages to protect themselves? There was nothing he was doing in relation to those
14 attacks?

15 A. [12:23:57] I didn't hear that he had such role.

16 Q. [12:24:02] But this must have been the problem number one for the population,
17 no, by the time?

18 A. [12:24:19] Which problem?

19 Q. [12:24:21] The attacks by Janjaweed and government of Sudan forces on villages.

20 A. [12:24:35] Of course, that was the biggest problem in the area. However,
21 *Umdah* Yahya Ahmad Zarruq was not in a position to end the disputes with the
22 Janjaweed who were burning villages and looting livestock. They acted with an
23 authorisation. They were able to take away everything there was in the village,
24 sweep everything in their way. He did not have any power to resolve this dispute
25 with the Janjaweed.

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1 Q. [12:25:23] I fully take the point that he was not in a position to act on the
2 Janjaweed side, but did he, I don't know, advise the villages on what to do, when you
3 said that, for instance, at some point the villages take -- took the cattle towards the
4 east, towards Sindu, to find a safer place? Is that an advice that, for instance,
5 *Umdah* Yahya would have given?

6 A. [12:26:06] I did not go to that area where people took their cattle and settled.
7 Most villages had been burnt. And afterwards, I was very limited in my movement.
8 I was not aware of what was happening there, nor of what sort of advice or counsel
9 was giving to folks in that area.

10 Q. [12:26:33] And since *Umdah* Yahya was the *umdah* of Sindu, do you know if he
11 tried to convince the people there not to enter into rebellion in order to avoid all these
12 troubles?

13 A. [12:27:00] I did not hear about that.

14 Q. [12:27:08] Well, I would say -- but that based on what you say, and that's *Umdah*
15 Yahya was not at all active in the reaction of the major events occurring in the region,
16 his reputation of being someone solving problems was a little bit overestimated,
17 wasn't it?

18 A. [12:27:42] That is not correct. In the Darfurian custom, it is known that an
19 *umdah* is the person in charge of sheikhs. For example, if a dispute occurs between
20 community members, families, small disputes, then he would intervene. It's things
21 that the sheikhs refer to the *umdah*. That's when he takes action. And this applies
22 when things were stable, when there were villages, when there was stability all over,
23 in that context.

24 In the event of any problem, if the things are taken to a higher level than the sheikh,
25 the *umdah* plays a role, resolves the issues. This is the custom in the area. However,

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1 when problems happened, and by that I mean the burning of the villages, things
2 became very different. Things were no longer stable in the area.
3 His reputation as someone who resolves disputes applies to when it was stable and
4 when there was communities, and he -- he would then resolve the disputes. If the
5 matter is beyond the purview of the sheikh, it is the *umdah* who would play a role. It
6 is known what the role of the *umdah* is, what his civil service rank is, and that his role
7 consisted in resolving disputes.

8 Again, this applied when things were stable. That's what I know with regards to his
9 role. However, there was turmoil, there was burning and displacement. So that's a
10 whole other ballgame.

11 I don't know what his new role -- what became of his other -- of his role. I saw
12 people coming from the east to the market. I saw some movement, but I wouldn't
13 ask people, "Well, what is the *umdah* doing now? Did he give you any advice? Is
14 he telling you anything?" I didn't bother to ask such questions at all.

15 Q. [12:29:58] *Umdah* Yahya was someone respected, right?

16 A. [12:30:09] In my view, yes, he was a very respected man.

17 Q. [12:30:12] This was -- he was an *umdah*, and as such, he was someone
18 with -- whose words had weight and would be -- someone who would be listened to
19 by his community, right?

20 A. [12:30:37] Yes. In stable times, the *umdah* has sway. However, when
21 problems erupted, I can no longer tell if they would still listen to the *umdah* or
22 whether they would disobey him. I could no longer be certain of that. No one any
23 longer bothered what the *umdah* is saying because what I focused on was to see what
24 was happening, who was carrying out aggression and who was being aggressed.

25 In the face of death, in the face of reality, I wouldn't bother what the *shartay* or the

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1 *umdah* is saying. In such times, I only think about my survival and the survival of
2 my family; how to reach a safe place. What applied in stable times became no longer
3 relevant to me. Therefore, I cannot give details on whether he was -- he had any
4 sway any longer. But in principle, originally, yes, his word was heard, and he was
5 widely known for resolving disputes and problems.

6 Q. [12:31:55] And as the *umdah* of Sindu, if he had said to the population, "Do not
7 engage in rebellion," would he have been listened to?

8 A. [12:32:18] After the events, I don't know for sure. As I said, there was turmoil.
9 We did not have the news -- received the news quickly. I might overhear that there
10 were problems here and then being disputed by this *umdah* or the other *umdah*, and so
11 forth. I mean, I used to hear about this before the problems. But after the problems,
12 I could no longer be certain if he asks his people not to take part in the rebellion,
13 whether they would listen to him.

14 For the second time, I repeat that these were different times. We no longer bothered
15 what was said. What mattered was what we were seeing with our own eyes.

16 Q. [12:33:04] Was there a family link between *Umdah* Yahya Ahmad Zarruq and
17 *Shartay* Omar Ahmed Zarruq?

18 A. [12:33:17] Yes, there was a kinship. They were brothers.

19 Q. [12:33:28] Thank you. And you mentioned that *Shartay* Omar Ahmed Zarruq
20 was not arrested unlike his brother.

21 A. [12:33:46] Yes.

22 Q. [12:33:46] You also mentioned that *Umdah* Yahya Ahmad Zarruq was arrested
23 together with his son, right?

24 A. [12:34:00] Yes.

25 Q. [12:34:01] What was the name of the son? Was it Nadir or Nazir, because we

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1 have the two versions in the -- in the documents?

2 A. [12:34:17] It's -- the name that is recognised is Nadir, but it's also pronounced

3 Nazir. It's the same name. One has an article and one is without an article. It

4 depends on the dialect, actually. If you're speaking standard Arabic, you will say

5 Nazir.

6 Q. [12:34:38] Okay. So I will go by Nazir, in that case.

7 And you mentioned that Nazir was released afterwards.

8 A. [12:34:53] Yes.

9 Q. [12:34:53] So if I summarise, *Umdah* Yahya was arrested, detained, and

10 afterwards executed, but his brother, who was a *shartay*, was not arrested and his son,

11 the son of *Umdah* Yahya, was released and, therefore, was not executed; is that

12 correct?

13 A. [12:35:23] Yes, correct.

14 Q. [12:35:25] Do you have any idea why *Umdah* Yahya got that terrible fate when

15 his brother and his son did not face the same fatality?

16 A. [12:35:47] His brother was a *shartay* resident of the town of Mukjar. He was not

17 moving around, maybe because of the atmosphere around him, and also because of

18 his elderly age perhaps. Very rarely he would be in his home.

19 THE INTERPRETER: [12:36:11] Inaudible name of place.

20 THE WITNESS: [12:36:15](Interpretation) The *shartay* is, because of his function,

21 supposed to be in Mukjar. That's where their main administration is. Which is

22 different from the *umdah*. *Umdah* needs to go to areas under his jurisdiction, his area

23 of responsibility. The *umdah* needs to go visit those places.

24 Here, *Umdah* Yahya during this time was in those areas. When war erupted and

25 people got displaced, he was among them, among the displaced who came to the

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1 town of Mukjar.

2 MR LAUCCI:

3 Q. [12:36:49] At paragraph 94 of your statement you -- you describe the scene
4 where someone tries to intervene in favour of *Umdah* Yahya and that that person was
5 stopped by a man called *Hassan Muhammad Joma. And you made the comment,
6 and that's the -- it's not this scene that I'm interested in, it's more about the comment
7 that you made, that the Fur PPF members were sometimes used by the Government
8 of Sudan to identify the wanted persons.

9 Does that mean -- I'm interested in that word, "wanted persons". Does that mean
10 that those who were arrested were really individually targeted, for whatever reasons,
11 good or bad reasons, but were individually targeted and were arrested?

12 A. [12:38:06] Those who would be pointed at, for example, the *umdah*, the *umdah* is
13 no one, but it could be people among the displaced. So that is true, he could be
14 among those targeted or those wanted. However, others were also taken to the
15 police station. They could be already identified by the government, but it is also
16 possible that they have not already been identified. In either case, they -- people
17 were taken to the police station.

18 Q. [12:38:43] Did you ever -- ever hear that there was a list of wanted persons?

19 A. [12:38:56] No.

20 Q. [12:39:01] Thank you. I move to the last topic that I can address in public
21 session, and this topic is about the -- every time you mention in your written
22 statement the name Ali Kushayb.

23 This morning, earlier this morning, my -- my learned colleague from the Office of the
24 Prosecutor asked you if you knew how your acquaintance that mentioned that the
25 man he was pointing at was Ali Kushayb, my colleague asked you if you knew how

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1 your acquaintance knew that this guy was Ali Kushayb. And you say that he knew
2 that because he was working on the market and that was a sort of common shared
3 knowledge or information. Do you confirm so?

4 A. [12:40:22] Yes. Possibly he was older than me back then and he was active in
5 the market, so he moved around more often than me and he knows more people than
6 me. We ran into this gentleman and he pointed to him and told me that that person
7 was Ali Kushayb.

8 Q. [12:40:41] So based on this response that you are making, am I right to say that
9 you have no information as to what was the exact source of the information that that
10 man was Ali Kushayb, right?

11 A. [12:41:09] True at that time when he pointed the person to me, yes. But later on
12 I realised who that was because he moved from one locality to another. He had a
13 security detail with him. He had an aura of charisma around him and so forth.
14 So, for example, you know, people tell you that this person is who -- so and so, and
15 then you see that person again and again. And the more information you get about
16 that person, you know that this person is Ali Kushayb. So I was sure that this person
17 was Ali Kushayb. He never walked around by himself. He always had his security
18 guards with him and it was common knowledge.

19 Q. [12:42:24] I do not change that you were yourself sure that this was Ali Kushayb.
20 I try to -- to understand how -- where this information came from that made you
21 reach that conclusion.

22 Talking about your acquaintance, and once again we are for the moment in public
23 session, so we avoid saying his name.

24 So this acquaintance that you -- that pointed Ali Kushayb at you, is it the same person
25 who was later on arrested and then executed that you mention in your statement?

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1 A. [12:43:26] Yes.

2 Q. [12:43:27] We have also - we, the Defence - we have also received a document
3 that is your screening notes. That is the notes that have been taken by the Office of
4 the Prosecution after what I believe was a phone conversation before your actual
5 statement. And in that screening note you -- which was taken like two months
6 before your statement, you do not mention at all the arrest and execution of your
7 friend.

8 How come that you did not mention it, whereas it's an important information, and
9 then you add it in your written statement?

10 A. [12:44:33] I didn't really understand your question. You mean that I didn't
11 mention what I said in my statement before, or -- well, they called me over the phone
12 and they got some of the information from me. So I gave them some information,
13 but I only spoke to them about the things that I remembered at the time. I received
14 quite a few calls, maybe two or three calls, and it's completely different when you
15 speak over the phone from speaking in person to people. So sometimes when they
16 call me and I am not really allowed to speak for a long time, or I can't speak about
17 everything, and also it's very difficult over the phone to remember all the details.
18 Remember that we're talking here about something that happened over 15 years ago.

19 Q. [12:45:38] Thank you, Mr Witness.

20 And for the record, the reference of the screening note, for the record, is the tab
21 number 16 in the binder. And it's DAR-OTP-0209-2035 and I was referring to
22 page 2039.

23 I move -- so that was the first time your friend told you that this person was
24 Ali Kushayb. And at paragraph 106 of your statement you mention that you saw
25 this person called Ali Kushayb a second time, or the next day, and that this person,

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1 you saw him when he was entering the police station. Do you confirm that?

2 A. [12:47:06] Yes.

3 Q. [12:47:07] So you -- you were in a position to see him walking and enter into the
4 police station on that day?

5 A. [12:47:15] Yes.

6 Q. [12:47:26] How far away are you from that scene?

7 A. [12:47:35] The police station -- from the police station to the municipality
8 building, it is something around 200, 300 metres. It was quite close.

9 Q. [12:47:48] Okay. Very close then. But so how do -- how should I, or should
10 the Court, understand your statement a little bit earlier: It is in the transcript of
11 today, page 46, line 18 to 19, that you had never gone any closer than 1 kilometres -- 1
12 kilometre from the police station by that time?

13 A. [12:48:29] The police station is about 1 kilometre or less away from the market.
14 I can't tell you, obviously, the exact distance, I'm just giving you approximate
15 distances. But I know that I saw this person when I was at the municipality building
16 and he was entering the police station. I don't -- might be 1 kilometre between the
17 two buildings. I don't know. But I'm just giving you approximate distances here.

18 Q. (Microphone not activated)

19 THE INTERPRETER: [12:49:09] Mic, please. Thank you.

20 MR LAUCCI: [12:49:20] Sorry.

21 Madam President, I now come to the point where the last question I have -- sorry.

22 The last questions I have, have to be asked in closed session. We are 12 to noon, I
23 may go over by five to, maximum, 10 minutes. I don't know. I'm in your hands.

24 PRESIDING JUDGE KORNER: [12:49:39] It depends. Is there going to be
25 re-examination?

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1 MR NICHOLLS: [12:49:42] Yeah. It will probably be pretty brief. I'm working on
2 it as we speak.

3 PRESIDING JUDGE KORNER: [12:49:44] All right.

4 MR NICHOLLS: [12:49:44] But there will be some, I think.

5 PRESIDING JUDGE KORNER: [12:49:46] And it may be that the Judges have some
6 questions.

7 All right. Why don't you go to the break. We'll take the break at the normal time.

8 And then the witness -- oh, well, actually, because we then have to have a gap
9 between him and the next witness, don't we? No?

10 MR NICHOLLS: [12:50:04] I can try to be -- sorry.

11 PRESIDING JUDGE KORNER: [12:50:06] Sorry. I'm just going to take ...

12 Okay. Well, for the moment, why don't you carry on. You want to go into private
13 session.

14 Right. Private session, please.

15 (Private session at 12.50 p.m.)

16 THE COURT OFFICER: [12:50:25] We're in private session, Madam President.

17 (Redacted)

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12 PRESIDING JUDGE KORNER: [13:05:21] Yes. All right. I think we'll adjourn

13 here. Sir, I'm sorry, we hoped you'd be finished by lunchtime. I'm afraid you'll

14 have to come back after lunch, which will be at 2:30 this afternoon, but you

15 will -- your evidence will be completed shortly after that, I anticipate. So have a

16 good lunch and try and relax.

17 Yes. All right. Half past 2, please.

18 THE COURT USHER: [13:05:48] All rise.

19 (Recess taken at private session at 1.05 p.m.)

20 (Upon resuming in open session at 2.33 p.m.)

21 THE COURT USHER: [14:33:37] All rise.

22 Please be seated.

23 PRESIDING JUDGE KORNER: [14:34:02] Mr Laucci, whenever you're ready.

24 MR LAUCCI: [14:34:05] Thank you, Madam President.

25 And for the record, the composition of the Defence team this afternoon is the same

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1 with the addition of Madam Camille Divet, assistant in charge of evidence review.

2 Q. [14:34:22] Mr Witness, I have last questions --

3 PRESIDING JUDGE KORNER: [14:34:26] Sorry, I'm asked to remind you, Mr Laucci,
4 you know we're in open session?

5 MR LAUCCI: [14:34:29] Yes. And I was about to ask you to move back to the
6 closed session because the last questions I have are for closed session. It should be 5,
7 maximum 10 minutes.

8 PRESIDING JUDGE KORNER: [14:34:39] Yes, all right. Closed session then.
9 (Private session at 2.34 p.m.)

10 THE COURT OFFICER: [14:34:53] We're in private session, Madam President.

11 (Redacted)

12 (Redacted)

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7 PRESIDING JUDGE KORNER: [14:53:51] Right. For future reference, Mr Laucci,

8 you need to be a bit careful about saying it won't be disclosed because the rules are

9 that your client is entitled to see anything that you see. So you need to be a little

10 careful about giving assurances like that.

11 MR LAUCCI: [14:54:11] Well, the same applies to the statements, but I take the

12 point.

13 PRESIDING JUDGE KORNER: [14:54:16] All right. Anything else?

14 MR LAUCCI: [14:54:19] This is completing my cross-examination, Madam

15 President.

16 PRESIDING JUDGE KORNER: [14:54:23] Thank you very much.

17 Yes, we can go back into open session then.

18 MR LAUCCI: [14:54:26] Thank you, Witness.

19 PRESIDING JUDGE KORNER: [14:54:30] We'll have re-examination.

20 (Open session at 2.54 p.m.)

21 THE COURT OFFICER: [14:54:38] We are back in public session, Madam President.

22 PRESIDING JUDGE KORNER: [14:54:42] Yes, Mr Nicholls.

23 QUESTIONED BY MR NICHOLLS:

24 Q. [14:54:51] Good afternoon, Mr Witness. Just very quickly. I don't see now

25 exactly if this was in open or closed session so I won't read verbatim, but at page 59,

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1 lines 11 to 17 my learned friend put it to you as a point that something you had stated
2 in your witness statement was not in your screening note. Do you remember that?

3 A. [14:55:28] Yes, I remember that.

4 Q. [14:55:29] Thank you.

5 Could we please have up the witness statement in English at 0210-0291, just the front
6 page. It should not be broadcast.

7 Now, that's in English, sir, but if we could scroll down a bit to the bottom of the page.

8 What this shows, your statement, is that it was taken over five days and over 30 hours.

9 Is that right?

10 A. [14:56:31] Yes, that's right.

11 Q. [14:56:33] All right.

12 Could I now please have up the first page DAR-0 -- DAR-OTP-0209-2035.

13 And this is the -- I don't think you've seen this. This is the screening note of your
14 first conversation with the Office of the Prosecutor investigators.

15 Well, it's not coming up so -- ah, there we are.

16 Just very simply, what this screening note shows is that the screening lasted from 10:

17 45 a.m. to noon, an hour and 15 minutes. Is that what you remember? This

18 is the length of time of your first phone call, was it about an hour, a little over an

19 hour?

20 A. [14:57:52] Yes, that's correct.

21 Q. [14:57:53] Thank you. That's all.

22 PRESIDING JUDGE KORNER: [14:57:58] Thank you, Mr Nicholls.

23 Yes, I think the judges may have some questions.

24 JUDGE ALAPINI-GANSOU: [14:58:15] (Interpretation) Yes, thank you very much,

25 Presiding Judge. Now, Presiding Judge, I don't know if we should go into private

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1 session because there is a name I would like to cite.

2 PRESIDING JUDGE KORNER: [14:58:27] It probably -- it probably is more sensible
3 to go into closed.

4 (Private session at 2.58 p.m.)

5 THE COURT OFFICER: [14:58:40] We are in private session, Madam President.

6 (Redacted)

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25 (Open session at 3.01 p.m.)

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1 THE COURT OFFICER: [15:01:24] We are back in public session, Madam President.

2 JUDGE ALAPINI-GANSOU: [15:01:36] (Interpretation) Thank you.

3 We have talked a great deal about the Fur people in your region and you have told us
4 how the Fur population was perceived and treated by those in power. How can you
5 explain the fact that some Fur people were people that -- who were requisitioned by
6 the GoS, by the GoS in order to identify other Furs in the course of that conflict?

7 THE WITNESS: [15:02:44](No interpretation)

8 Some members, some of them were members of the popular police.

9 PRESIDING JUDGE KORNER: [15:02:53] I'm sorry, Mr Witness, we didn't get a
10 translation, so could you give your answer again.

11 THE WITNESS: [15:03:04](No Interpretation)

12 PRESIDING JUDGE KORNER: [15:03:18] I'm sorry, we're still not getting any
13 translation of what the witness is saying.

14 THE WITNESS: [15:03:42](Interpretation) During the conflict and after some of them
15 were displaced, they tried to cooperate and they would know the people living in
16 these regions in these areas and some of them were in fact in charge in that region in
17 the Boabad (phon).

18 JUDGE ALAPINI-GANSOU: [15:04:20] (Interpretation) And because of that, they
19 could identify certain people who could be considered as rebels or people in
20 opposition to the government; is that it?

21 THE WITNESS: [15:04:41](Interpretation) No. The same people who were living in
22 the area of Boabad (phon) did not know whether they were policemen or not. They
23 would be sent to Al Kassem (phon), where they would be interrogated and so on.
24 We saw that they have resorted to those people without -- they wanted to interrogate
25 them and to investigate them, and it turned out that that was the reality in Garsila

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1 and other regions. And ultimately we understood that these people were executed.

2 JUDGE ALAPINI-GANSOU: [15:05:41] (Interpretation) I'm going to reformulate my
3 question because I really did not have an answer.

4 In his witness statement, paragraph 94, (Overlapping speakers) (Speaks English) "I
5 believe that some Fur PPF members were used by the GoS to identify wanted
6 persons."

7 (Interpretation) So my question was to know what you understand by that. Because
8 these are Fur people themselves who were used to identify other Fur people. So
9 according to you, how can you explain that?

10 THE WITNESS: [15:06:43](Interpretation) They are affiliated to the popular police
11 and some displaced people were in the Boabad (phon) area, so we could not know
12 how they would deal with people. However, we thought that they were being sent
13 to the police station like other people, but I don't have the details. I did not know
14 how they could identify other people and if they would give them specific names.
15 So I do not -- I'm not -- I do not know about such details. We knew that some
16 displaced people would get to that region and we thought they were part of them.

17 JUDGE ALAPINI-GANSOU: [15:07:45] (Interpretation) Thank you very much,
18 Madam President. I am not yet satisfied, but I have nothing further to ask.

19 PRESIDING JUDGE KORNER: [15:07:56] All right.
20 Any questions?

21 Sir, I want to ask you about two things, please. The first is the CRF, or the Central
22 Reserve Forces that you spoke about in your statement and also today.
23 What was your understanding of what the Central Reserve Forces were?

24 THE WITNESS: [15:08:38](Interpretation) My understanding differs a little bit from
25 the reality. Of course these forces do exist, but they do not protect citizens in an

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1 absolute manner. Some people living inside some regions are being protected.

2 However, there was still some displacement, immigration, deportation and so on.

3 Therefore, I do not trust that they are able to protect and defend the region as such.

4 PRESIDING JUDGE KORNER: [15:09:23] What I'm trying to get at is, first of all,

5 what was their role supposed to be? Whatever it did, what was it supposed to be in

6 the -- in the region during the period 2003 to 4?

7 THE WITNESS: [15:09:50](Interpretation) The Central Reserve Forces are an integral

8 part of the police forces, so when there are conflicts in some regions, they do act as the

9 police. They are massively present in the region. However, some protection could

10 be secured to the internal regions. And whenever they were there, there was some

11 form of security or stability within the -- the village. However, as an external role, I

12 did not see them protect or defend the village or its inhabitants.

13 PRESIDING JUDGE KORNER: [15:10:55] Were they in what some countries is called

14 a reserve police force? In other words, they were called up to serve when needed?

15 THE WITNESS: [15:11:16](Interpretation) Generally speaking, police forces and the

16 Central Reserve Forces are supposed to protect citizens and their security. But as I

17 so think in the region, their role was different.

18 PRESIDING JUDGE KORNER: [15:11:36] All right. Let me try it this way: Were

19 the members of the Central Reserve Forces full-time or part-time?

20 THE WITNESS: [15:11:55](Interpretation) They had -- they were full-time in their

21 barracks.

22 PRESIDING JUDGE KORNER: [15:12:04] Yes, thank you.

23 The second matter I want to try and understand is your knowledge of the man called

24 Ali Kushayb. In your statement at paragraph 61 you said you had heard about him

25 from other people. Is that how you first knew of him?

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1 THE WITNESS: [15:12:42](Interpretation) Yes. The name of Ali Kushayb is well
2 known. I might have heard of him, and even though I was living in that region, I
3 might not be -- know about the chief of the police, however, Ali Kushayb was well
4 known so I heard of him until I knew him personally one day.

5 PRESIDING JUDGE KORNER: [15:13:14] When he was identified to you by your
6 friend, was that the first time that you had seen him?

7 THE WITNESS: [15:13:32](Interpretation) Yes.

8 PRESIDING JUDGE KORNER: [15:13:34] You then told us that you saw him again
9 the following day.

10 THE WITNESS: [15:13:48](Interpretation) Yes.

11 PRESIDING JUDGE KORNER: [15:13:49] And you told Mr Laucci earlier today that
12 he -- "I realised who that was because he moved from one locality to another." Sorry,
13 this page 58 of the transcript. "He had a security detail with him. He had an aura
14 of charisma [...] and so forth." And then you went on. "So, for example, you know,
15 people tell you that this person is who [...] and then you see the person again and
16 again, and the more information you get, you know this person is Ali Kushayb."
17 Were you saying there that you had seen him on more --

18 THE WITNESS: [15:14:43](Interpretation) Yes.

19 PRESIDING JUDGE KORNER: [15:14:46] -- than those two occasions or just on those
20 two occasions that you mentioned?

21 THE WITNESS: [15:14:54](Interpretation) At the first sight he struck me so my
22 friend told me about him and he pointed him to me and I looked at him. And the
23 same happened on the second time. And that was it.

24 PRESIDING JUDGE KORNER: [15:15:17] Those were the only two times you saw
25 him?

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1 Sorry, was that -- did you get that?

2 THE WITNESS: [15:15:35](Interpretation) Yes. The first time I saw him pretty well,
3 and then the second time I looked at him thoroughly to make sure that was him.

4 PRESIDING JUDGE KORNER: [15:15:50] Yes, thank you very much, sir.

5 Yes, well, sir, thank you. That concludes your evidence. On behalf of all of the
6 judges, and I anticipate everybody in this courtroom, we thank you very much for
7 coming to give the evidence that you have and to assure you that all witnesses who
8 give evidence contribute to the case. So thank you very much indeed.

9 Yes, do we need to adjourn before the next witness at all?

10 Right. Thank you.

11 Yes, well, thank you very much, sir. That's it.

12 THE WITNESS: [15:16:34](Interpretation) Thank you.

13 PRESIDING JUDGE KORNER: [15:16:36] And if would like to go with the court
14 officer, she will tell you where you go next.

15 (The witness is excused)

16 PRESIDING JUDGE KORNER: [15:17:14] Mr Nicholls and Mr Laucci, while we're
17 waiting for the next witness to come down, I asked some questions about the Central
18 Reserve Forces because at the moment I am still not clear how the various
19 organisations interacted, interlinked, and what they're made up of. I was
20 wondering -- I think the last set of agreed facts we got were in March, and
21 I was -- you said you were both still working on them. Firstly, I was wondering if
22 there are any more agreed facts; and second, whether some agreed facts could be put
23 in place about these various organisations. We have a very few, but they're not
24 particularly helpful.

25 MR NICHOLLS: [15:18:05] We can certainly talk again. However, especially on

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1 military structures, it began feeling like we'd reached the end of where we were going
2 to be able to agree. As -- maybe I'm wrong, but we had tried before on some of these,
3 and the agreed facts we were able to come close to were -- we thought were -- were so
4 kind of light that they weren't necessarily particularly helpful. But we can certainly
5 talk -- what we were able to agree on I don't think would have moved the

6 (Overlapping speakers)

7 PRESIDING JUDGE KORNER: [15:18:45] I don't -- I don't anticipate you will agree.

8 As the witness just said, this is what they're supposed to do, but this is what they
9 actually did. It's not so much what they were doing but what their structure was,
10 how they were recruited, whether they were part or full time, anything like that that
11 you could arrive at on the military and police structures would be very useful. So
12 I'm merely throwing -- if it can't be agreed, then I'm assuming, Mr Nicholls, you're
13 calling a witness who can --

14 MR NICHOLLS: Yeah.

15 PRESIDING JUDGE KORNER: [15:19:19] -- outside insiders.

16 MR NICHOLLS: [15:19:20] Well, we'll certainly talk about it again, I think, and see if
17 we (Overlapping speakers)

18 PRESIDING JUDGE KORNER: [15:19:25] If you could, I think that would be very
19 helpful.

20 MR NICHOLLS: [15:19:28] Thank you.

21 PRESIDING JUDGE KORNER: [15:19:29] Yes, thank you.

22 Well, is this the next -- is the next witness a Rule 68(3)?

23 MR NICHOLLS: [15:19:33] Yes, your Honour.

24 PRESIDING JUDGE KORNER: [15:19:35] Well, then while we're waiting for him to
25 come down, you may as well read the summary, I supposed.

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1 Are we in open session? Yeah.

2 MR NICHOLLS: [15:19:42] Are we -- so we're not having a -- there's no need for a
3 break?

4 PRESIDING JUDGE KORNER: [15:19:45] No, apparently we can go straight on.
5 And it's 20 past three already.

6 MR NICHOLLS: [15:19:48] we'll just need to reorganise because (Overlapping
7 speakers)

8 PRESIDING JUDGE KORNER: [15:19:50] Yes, certainly. All right.

9 MR NICHOLLS: [15:19:54] Mr Sachithanandan is taking the next witness.

10 (Pause in proceedings)

11 PRESIDING JUDGE KORNER: [15:21:47] Mr Sachithanandan, if you could do this, if
12 you're dealing with the next witness, you can deal with the summary while we're
13 waiting for the witness.

14 MR SACHITHANANDAN: [15:21:59] Very well, your Honour.

15 The next witness is P-980. Mr P-980 provides evidence about a number of attacks on
16 Gaba and on events in Deleig.

17 After Gaba was attacked, P-980 fled to Deleig on 5 March 2004. On that day he and
18 other male members of his family were arrested in their home by Government of
19 Sudan Forces and the militia. The witness and his male family members were
20 brought in front of Deleig police station. He states, I quote, "They pushed and beat
21 us all the way from the house to the police station." End quote. At the point that he
22 was arrested, he was getting ready to go to school and was wearing his school
23 uniform.

24 Upon arrival at Deleig police station, P-980 saw 130 to 140 civilians gathered there.

25 They were ordered to lie face down on the ground and stayed on the ground all day

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1 in the heat. They were not allowed to eat, drink or go to the toilet. The witness saw
2 Government of Sudan and militia beat people. Two people were killed on the spot
3 while another died later as a result of his injuries. The witness states, I quote, "I
4 reached a point where I thought that dying would be a relief because it was very hot
5 and listening to all the other people beaten, it was humiliating and difficult to live."
6 End quote.

7 P-980 also saw Ali Kushayb hitting the *sheikh* of Kiskildo as well as another individual
8 with the butt of a gun. Thereafter the witness saw Government of Sudan Forces and
9 militia loading people onto vehicles, and those people included his brother and his
10 nephew. The vehicles then headed south-west of Deleig.

11 When the witness was released, he returned home and found his parents crying
12 because they believed he had died. His brother and his nephew were taken away in
13 the vehicles and he never saw them again.

14 PRESIDING JUDGE KORNER: [15:24:27] One thing reminded me when I was
15 reading the statement, his date of birth is given as 1 January 1984. I don't know
16 whether that's a guess date, but if so, when this incident took place, he says at
17 paragraph 20 he was 18, that's why he was still at school because it had all been
18 delayed. But I make him 20.

19 MR SACHITHANANDAN: [15:25:02] I can -- I can certainly clarify that with a
20 question.

21 PRESIDING JUDGE KORNER: [15:25:05] I don't think it matters that -- it may not
22 matter that much, but it's just slightly odd, that's all.

23 MR SACHITHANANDAN: [15:25:10] He does say his education was delayed. I
24 suspect that it's a guess about his year of birth. I mean, he does confirm that he was
25 in school though.

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1 PRESIDING JUDGE KORNER: [15:25:19] Yeah. Well, I agree. I mean that's why I
2 was just wondering. I mean, I know that in some cases there are no real records of
3 when they were born.

4 Yes.

5 MR SACHITHANANDAN: [15:25:30] Usually the indicator of the 1 January is a -- is
6 an indicator.

7 PRESIDING JUDGE KORNER: Yeah.

8 (The witness enters the courtroom)

9 PRESIDING JUDGE KORNER: [15:26:57] Sir, can you hear and understand me?

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11 (The witness speaks Arabic)

12 THE WITNESS: [15:27:08](Interpretation) Yes, indeed. I understand.

13 PRESIDING JUDGE KORNER: [15:27:10] Then first of all, can I thank you for
14 coming to court to give evidence. As you have no doubt been told, you will be
15 asked a few questions first by the Prosecution, then by the lawyer for the victims and
16 finally by the Defence. It's very important if you don't understand a question that
17 you say so straightaway.

18 Before you start giving your evidence, you will be asked to take the solemn
19 declaration which you should have on a card in front of you. Are you happy to read
20 out that declaration, or would you prefer to repeat it after the court officer?

21 THE WITNESS: [15:28:06](Interpretation) Fine. Oath: I solemnly declare that I
22 will speak the truth, the whole truth and nothing but the truth.

23 PRESIDING JUDGE KORNER: [15:28:23] Yes, thank you very much.

24 Yes, Mr Sachithanandan.

25 MR SACHITHANANDAN: [15:28:30] Getting better every day, your Honour.

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1 PRESIDING JUDGE KORNER: [15:28:33] (Microphone not activated)

2 QUESTIONED BY MR SACHITHANANDAN:

3 Q. [15:28:37] Good afternoon, Mr Witness. You remember we met last Friday
4 together with Ester who is sitting behind me?

5 A. [15:28:48] Yes.

6 Q. [15:28:50] I'm going to ask you some questions on behalf of the Prosecution, and
7 as the judge said, if you don't understand anything, please tell me and I'll try to ask it
8 in a clearer way.

9 Now, just so you know, we are in public session so the testimony is being broadcast
10 to the public so please don't mention your name or the names of any family members.

11 A. [15:29:21] Fine.

12 Q. [15:29:23] Now, as we discussed on Friday, it's correct, isn't it, that you provided
13 the Office of the Prosecutor with a witness statement in 2021?

14 A. [15:29:41] Correct.

15 Q. [15:29:42] And for the record, this is DAR-OTP-0221-0553.

16 Now, last Friday you had the opportunity to read through your statement and some
17 images attached to that statement; that's correct, isn't it?

18 A. [15:30:10] Correct.

19 Q. [15:30:12] And you made one correction to your statement which is that when
20 you were lying on the ground in front of the Deleig police station, you said you were
21 in fact beaten. That's correct, isn't it?

22 A. [15:30:30] Yes, that's correct.

23 Q. [15:30:34] You were beaten by militia members who were using canes?

24 A. [15:30:41] Yes, that's correct.

25 Q. [15:30:45] Having made that correction, do you agree that your statement is true

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1 and correct to the best of your knowledge and belief?

2 A. [15:31:04] Yes, that is correct.

3 Q. [15:31:05] And do you agree to have your statement introduced into evidence in
4 this case?

5 A. [15:31:12] Yes, I do.

6 Q. [15:31:15] Now, you will also remember on Friday that you prepared a list of
7 victims who were detained at or near Deleig police station. You remember that?

8 A. [15:31:33] Yes, I remember.

9 Q. [15:31:34] Now, for the record, the ERN is DAR-OTP-0224-0628.

10 Now, you were given the opportunity to read through that list to make sure it's
11 accurate; that's correct, isn't it?

12 A. [15:31:55] Yes, that is correct. Zakaria Abakar Adam is the *sheikh* of the village
13 of Gaba.

14 Q. [15:32:11] Sir, I'm sorry to stop you. I don't want you to tell me the list of
15 victims right now. I just want you to confirm that you produced a list of victims on
16 Friday and that you had a chance to go through it and confirm that it is correct.
17 That's correct, isn't it?

18 A. [15:32:31] Yes, that's correct.

19 Q. [15:32:39] And you agree that the list is correct to the best of your knowledge
20 and belief; is that correct?

21 A. [15:32:45] Yes.

22 Q. [15:32:46] Do you agree to have that list of victims introduced into evidence in
23 this case?

24 A. [15:33:02] Yes, I do.

25 Q. [15:33:03] Thank you, Mr Witness.

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1 So I'm going to move on now to ask you a few more questions about the topics that
2 are covered in your statement which were also discussed last Friday.

3 It's correct, isn't it, that the population of Gaba belongs to the Fur tribe?

4 A. [15:33:25] Yes, that's correct.

5 Q. [15:33:28] Okay. I know you understand English, but please do wait a little bit
6 for the English translation just so that everything goes smoothly.

7 It's true, isn't it, that Gaba was attacked one week before you reached Deleig on
8 5 March 2004?

9 A. [15:33:53] Yes.

10 Q. [15:33:54] Also when you refer to "militia" in your statement, it's correct, isn't it,
11 that some people call them the Janjaweed?

12 A. [15:34:05] Yes.

13 Q. [15:34:09] And you confirm that the Janjaweed support the government?

14 A. [15:34:15] Yes.

15 Q. [15:34:19] At paragraph 21 of your witness statement you say that a lot of
16 civilians were taken in front of the Deleig police station; that's correct, isn't it?

17 A. [15:34:33] Yes, yes.

18 Q. [15:34:36] These 130 to 140 civilians, they were from the Fur tribe; that's correct,
19 no?

20 A. [15:34:44] Yes.

21 Q. [15:34:47] All right. I want to show you now an image that you annotated
22 during your preparation session on Friday.

23 If the court officer could please pull up the redacted version that was just sent to the
24 court officer of DAR-OTP-0224-0633.

25 Mr Witness, just wait a few seconds and we'll have an image in front of you on your

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1 screen.

2 Mr Witness, do you see -- do you see an image in front of you on your screen?

3 A. [15:36:15] Yes.

4 Q. [15:36:18] This is a photo of Deleig town, that's correct?

5 A. [15:36:25] Yes, yes.

6 Q. [15:36:27] You remember marking these various locations in Arabic last Friday?

7 A. [15:36:36] Yes.

8 Q. [15:36:39] And you remember the interpreter wrote out the English version of
9 each of your markings on the same image?

10 A. [15:36:48] Yes.

11 Q. [15:36:51] And you checked this image to make sure that it was accurate and
12 true, that's correct?

13 A. [15:37:01] Yes, it's correct.

14 MR SACHITHANANDAN: [15:37:05] Can I ask the court officer to please zoom in
15 on the bottom left-hand side of the image. And please scroll upwards so that we can
16 see the entirety of the bottom left-hand of the image.

17 And just to be clear, this image can be broadcast because the signature is redacted.

18 PRESIDING JUDGE KORNER: [15:38:02] What's the English version of, it looks like
19 something premises. Is that supposed to be "teachers"?

20 MR SACHITHANANDAN: [15:38:13] That's correct, your Honour.

21 PRESIDING JUDGE KORNER: All right.

22 MR SACHITHANANDAN:

23 Q. [15:38:23] Mr Witness, this is the Deleig police station in front of which you and
24 other victims were kept on the ground, that's correct?

25 A. [15:38:32] Yes, that's correct.

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1 Q. [15:38:36] And you've marked, haven't you, with number 8 the location of
2 Ali Kushayb and Abdel Monem?

3 A. [15:38:47] Yes.

4 Q. [15:38:52] Can you tell us, please, who was Abdel Monem?

5 A. [15:39:00] Abdel Monem is the leader of the intelligence service. He was -- or
6 used to be in Gaba in an earlier period. And he's the head of -- of the intelligence
7 service.

8 Q. [15:39:16] And how do you know that?

9 A. [15:39:28] I knew this because he was in Gaba and the military people were next
10 to the school and he was well known in that area.

11 Q. [15:39:42] Now, we can see the distance between you and Ali Kushayb on the
12 map. Could you tell us, please, using this courtroom as a guide, how far was
13 Ali Kushayb from you?

14 A. [15:40:05] The distance is about 1 metre, maybe. He was just opposite me, just
15 1 metre between us two.

16 Q. [15:40:23] And could you please describe to the Court what Ali Kushayb looked
17 like.

18 A. [15:40:37] Ali Kushayb was the leader of the militias. When he come to Deleig
19 police station he was standing before us, * he was wearing Khaki and held a Thuraya
20 device and he is carrying a gun and he was wearing a uniform and he was also
21 holding a stick.

22 Q. [15:41:09] Can you tell us, please, about his height?

23 A. [15:41:21] Maybe he's -- he's -- well, he's long.

24 Q. [15:41:29] I'm afraid I heard Arabic in my interpretation.

25 I'm going to repeat the question.

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1 A. [15:41:43] I can say he is taller than you, maybe, he's a bit taller than you. He's
2 a bit taller than you.

3 Q. [15:41:55] And can you describe anything else about him, his face, for example?

4 A. [15:42:08] His face is darker skin, with dark skin. And he's, as I say, tall and
5 with dark skin.

6 Q. [15:42:20] You mentioned in your statement that the militia told everyone to
7 hand over their money. Who, if anyone, told the militia to do that?

8 A. [15:42:45] Ali Kushayb ordered or made an order that anybody who is found in
9 that area, anything that person has in his hand or pocket should give that. And that
10 happened of course I said in the -- the police -- Ali Kushayb gave this order that
11 everybody who is standing in that area should give what they have, money or
12 anything. Everybody who is in that area should give their money. They collected
13 this money and they gave this money to the police in Deleig.

14 Q. [15:43:30] And how do you know that it was Ali Kushayb who gave that order?

15 A. [15:43:39] Because he was standing in front of me and he made that order in
16 person. As I said, he was standing in front of me.

17 MR SACHITHANANDAN: [15:43:54] Your Honour, I'm told that the witness
18 described Mr Kushayb as wearing khaki and holding a Thuraya, but it's not on the
19 transcript. Perhaps that can be looked into by -- by the transcribers later.

20 PRESIDING JUDGE KORNER: [15:44:12] Yeah, well, I mean I'm presuming when
21 it's corrected, they'll fill in the missing gaps, as it were.

22 MR SACHITHANANDAN: [15:44:19] I'd like the court officer to pull up a different
23 image now.

24 PRESIDING JUDGE KORNER: [15:44:31] (Microphone not activated) to the bottom
25 where we were, yes.

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1 Sir, did you say that Ali Kushayb was behind -- was in front of you when you heard
2 him give the order?

3 THE WITNESS: [15:44:48](Interpretation) Yes, he was in front of me.

4 PRESIDING JUDGE KORNER: [15:44:56] And where then on that map is it said that
5 you were lying down? On that -- I'm sorry, on the photograph.

6 THE WITNESS: [15:45:05](Interpretation) On that photo there was a mark which I
7 put on that photo.

8 PRESIDING JUDGE KORNER: [15:45:12] Yes, which one is it? That's what I'm
9 asking you.

10 MR SACHITHANANDAN: [15:45:15] It's -- it's the X, your Honour, and there's a
11 little insignia say "me" next to it.

12 THE WITNESS: [15:45:20] XXXXX.

13 PRESIDING JUDGE KORNER: [15:45:25] Oh, I see. So you were facing -- so your
14 head was in the direction of Ali Kushayb then?

15 THE WITNESS: [15:45:39](Interpretation) No. My head is in -- to the south. Not
16 with Ali Kushayb.

17 PRESIDING JUDGE KORNER: [15:45:45] Well, then I don't understand how he's in
18 front of you.

19 THE WITNESS: [15:45:53](No Interpretation)

20 MR SACHITHANANDAN: [15:45:57] Can I ask a few questions to clarify?

21 PRESIDING JUDGE KORNER: [15:46:01] (Microphone not activated) I'd like you to
22 clarify that. Thank you.

23 MR SACHITHANANDAN: [15:46:04]

24 Q. [15:46:04] Mr Witness, if your head was facing south, how -- how is it that you
25 could see Ali Kushayb?

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1 A. [15:46:12] The people who are found in that area, all of them are looking south
2 and he was standing until north when I was lying, and I see him, I can see him.
3 When I put my head down, I can see him. We are -- our heads are to the south and I
4 can see him in front of me.

5 Well, have you understood what I said? Is it clear?

6 PRESIDING JUDGE KORNER: [15:46:53] I think possibly we will -- well, at some
7 stage -- could you just draw a figure so that we can see exactly where your head was.
8 Is there a copy of it?

9 MR SACHITHANANDAN: [15:47:09] We have a hard copy that we could hand
10 over to the witness and the witness could draw it on the ELMO, I think.

11 PRESIDING JUDGE KORNER: [15:47:18] Yes, that would help.

12 If it helps, you can draw one of those matchstick men, sir.

13 MR EDWARDS: [15:47:47] And While that's being done, your Honour, and alive to
14 the fact that traditionally one doesn't give evidence from the bar, but in order for the
15 witness's answer about the height of Ali Kushayb to make any sense on the transcript,
16 we're going to have to know my learned friend's height. Awkward, I know. But
17 I think -- I think that's necessary.

18 MR SACHITHANANDAN: [15:48:12] Sure. The last time I checked, five, seven
19 and a half, 5 foot 7 and a half inches. We'll do the math later, your Honour, in the
20 closing brief.

21 Q. [15:49:08] Mr Witness, if you can please draw where you were and indicate
22 which direction your head was and which direction your feet were.

23 A. [15:49:25] My head in the picture the south and my feet to the north. Not only
24 me, all the people who are just lying, on the south and their feet were to the north.
25 And he was standing there, the north.

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1 PRESIDING JUDGE KORNER: [15:49:46] Is south towards the bottom of the picture
2 then? Because there's no north, south, east, west on this photograph. Do you mean
3 that your head was facing towards where the bottom end of the -- of the photograph
4 is?

5 THE WITNESS: [15:50:19](Interpretation) The south, as I said, the south. And my
6 feet are to the north.

7 PRESIDING JUDGE KORNER: [15:50:29] Yes, all right. I'm assuming that was yes,
8 that south is towards the bottom of the photograph.

9 (Microphone not activated) about that. I'm afraid I just -- but I just wanted to make
10 sure that I understood how he was facing.

11 MR SACHITHANANDAN: [15:50:45] Your Honour, do you want the witness to
12 annotate the picture or --

13 PRESIDING JUDGE KORNER: [15:50:53] (Microphone not activated)
14 Thank you.

15 I thought that was what he was doing, then I realised he wasn't, and let's give that
16 one up. I think I've got the general idea on that. Probably everybody else in court
17 got it before I did.

18 MR EDWARDS: [15:51:11] Your Honour, we're happy to stipulate that this
19 photograph is taken due south. So the north is, as it were, where the -- where the
20 viewer is and we're seeing -- we're facing south as the viewer with east to the
21 left-hand side and the west to the right-hand side.

22 MR SACHITHANANDAN: [15:51:39]

23 Q. [15:51:40] Thank you, Mr Witness. We'll move on to a different image now.
24 This image can be taken off the ELMO.

25 PRESIDING JUDGE KORNER: [15:51:48] I don't understand that. The witness did

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1 draw. I thought he was drawing something. So why wasn't it showing up on the
2 ELMO?

3 THE COURT OFFICER: [15:51:56] It's on the evidence 2 channel.

4 PRESIDING JUDGE KORNER: [15:51:59] Oh, it's on the evidence 2, is it? All right.
5 Yes, well, thank you very much, sir.

6 THE WITNESS: [15:52:18](Interpretation) If the photo is not quite clear, I can of
7 course refer to the directions so that it could be clear for everybody.

8 PRESIDING JUDGE KORNER: [15:52:28] No, thank you, sir. You've been very
9 helpful and I think I've got it now.

10 MR SACHITHANANDAN: [15:52:33] Your Honour, I'm just going to ask one
11 question and then I'm going to move on. I'm sorry.

12 Q. [15:52:38] Mr Witness, you know the teachers' premises. Was your head
13 towards the teachers' premises or your feet towards the teachers' premises?

14 A. [15:52:55] Here to the camp for the refugees to the north here. The camp where
15 people are getting help. My feet, of course, my feet in that direction.

16 Q. [15:53:17] Your feet were towards the camp of the refugees. And your
17 head -- was then your head towards the premises of the teachers or not?

18 A. [15:53:31] Yes, that is correct.

19 Q. [15:53:35] Thank you. We can move on now.

20 Can we please pull up 0224-0632, the redacted version.

21 Mr Witness, do you see an image in front of you?

22 A. [15:54:49] Yes.

23 Q. [15:54:50] This is also a photograph of Deleig town, correct?

24 A. [15:54:57] Yes.

25 Q. [15:55:00] You remember looking at this image on Friday and marking various

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1 locations on it?

2 A. [15:55:13] Yes.

3 Q. [15:55:15] And do you recall that the interpreter wrote the English version of the
4 same information on the image?

5 A. [15:55:23] Yes.

6 Q. [15:55:25] And then you checked to see that all the markings were correct, that's
7 right?

8 A. [15:55:32] Yes.

9 MR SACHITHANANDAN: [15:55:36] Your Honour, I'm going to move on, unless
10 you have particular questions.

11 Very good.

12 Can the court officer please --

13 PRESIDING JUDGE KORNER: [15:55:45] (Microphone not activated) not again, no.

14 MR SACHITHANANDAN: [15:55:49] Could the court officer please pull up
15 0224-0631 redacted.

16 And again, all redacted images of course can be broadcast publicly.

17 Q. [15:56:15] You see this image in front of you, Mr Witness?

18 A. [15:56:22] Yes, I do.

19 Q. [15:56:25] Now this is an image of Deleig, Gaba and a number of other towns
20 and villages, correct?

21 A. [15:56:38] Yes.

22 Q. [15:56:39] Could the court officer please scroll upwards so that the bottom of the
23 image is visible to the witness. A little more actually. Yes. And to zoom in on the
24 handwritten text at the bottom of the image.

25 Mr Witness, you see at the bottom where you marked where you were hiding after

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1 Gaba was attacked?

2 A. [15:57:16] I was hiding in hills to the south of Gaba.

3 Q. [15:57:24] And that's what you have marked on the bottom of this map, correct?

4 A. [15:57:30] Yes, that's correct.

5 Q. [15:57:33] Now, you agree that this image is accurate?

6 A. [15:57:38] Yes.

7 Q. [15:57:40] We can now take this image off the screen. Thank you.

8 Mr Witness, I'm going to move on to a different topic now. You remember on Friday
9 we talked about some differences between your signed witness statement and some
10 notes that the Prosecution had of conversations with you we had before taking your
11 witness statements. You remember that?

12 A. [15:58:22] Can you please repeat the question?

13 Q. [15:58:27] You recall that before the Prosecution took a signed statement from
14 you, we also had a brief telephone conversation with you and a brief face-to-face
15 conversation with you?

16 A. [15:58:45] Yes.

17 Q. [15:58:48] Okay. So I want to ask you about some differences between the
18 notes we took about our initial conversation and the statement you gave at the end.
19 Okay?

20 And the -- of course the statement you read through and you signed, but these notes
21 we made beforehand you did not read through and you did not sign, they were just
22 short notes made by -- by the Office of the Prosecutor.

23 For the record, I'm going to refer to screening DAR-OTP-0219-4793.

24 Mr Witness, in your statement at paragraph 24, you say that Ali Kushayb hit the
25 *sheikh* of Kiskildo with the butt of a rifle. And in a brief record we have of a

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1 conversation before with you you mentioned that Ali Kushayb was beating people
2 with a stick or axe. Can you help us understand. So what was Ali Kushayb using
3 to beat people with?

4 A. [16:00:26] He used of course a stick, a stick when he hit people and the *sheikh* of
5 Kiskildo, he used a very big stick, and of course he fell on the ground after being hit
6 by this stick. And after that, Ali Kushayb tried to beat the people while in this area.
7 I saw this because it was in front of me directly and I saw this happening before my
8 eyes.

9 Q. [16:00:58] So just so I understand, it was not with the bottom of a gun that
10 Ali Kushayb beat the *sheikh*, it was with a stick; am I understanding you correctly?

11 A. [16:01:15] Yes, that is correct.

12 Q. [16:01:18] Moving on, you mentioned that you were beaten by members of the
13 militia. Can you please describe to the Court how you were beaten?

14 A. [16:01:37] I was beaten during and after that, when they were taking me from
15 home to the police station and then after this. We had to lie down -- lay down on the
16 floor and everyone there was beaten by members of that militia and by Ali Kushayb
17 himself.

18 Q. [16:02:22] Mr Witness, I'm going to ask you about another brief record of a
19 conversation we had with you before you gave your statement.

20 For the record, this is screening DAR-OTP-0219-4716.

21 Mr Witness, in a brief conversation -- in a record of a brief conversation we had with
22 you before we took your statement, we had written down that your hands were tied.
23 Is that correct or is that not correct?

24 A. [16:03:05] No, the hands were not tied up. But I was beaten.

25 MR SACHITHANANDAN: [16:03:22] Your Honour, can we go into private session

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1 for one question.

2 PRESIDING JUDGE KORNER: [16:03:28] (Microphone not activated)

3 MR SACHITHANANDAN: [16:03:29] A minute.

4 PRESIDING JUDGE KORNER: [16:03:32] (Microphone not activated)

5 MR SACHITHANANDAN: [16:03:33] Oh, this is my last question, so maybe we can
6 go into private, I ask the question, and we can come out to conclude.

7 PRESIDING JUDGE KORNER: [16:03:42] Yes, private session.

8 (Private session at 4.03 p.m.)

9 THE COURT OFFICER: [16:03:51] We're in private session, Madam President.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Open session at 4.05 p.m.)

24 THE COURT OFFICER: [16:05:13] We're back in public session, Madam President.

25 MR SACHITHANANDAN: [16:05:27] Your Honour, I have no further questions.

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1 PRESIDING JUDGE KORNER: [16:05:30] (Microphone not activated)

2 MR SHAH: [16:05:35] Yes, your Honour, we do have a few questions.

3 PRESIDING JUDGE KORNER: [16:05:38] All right. Well, why don't you ask them
4 and then we'll adjourn. Because we sat -- we had the gap in between.

5 MR SHAH: [16:05:43] Yes, thank you, your Honour.

6 QUESTIONED BY MR SHAH:

7 Q. [16:05:48] Mr Witness, you may recall that we met in this courtroom last week,
8 but I'll introduce myself again for the record. My name is Anand Shah and I am one
9 of the lawyers who is representing victims in these proceedings. And on behalf of
10 our clients I would like to ask you a few questions.

11 Yes, Mr Witness, firstly, I'd like to ask you about the long-term impact of what took
12 place in 2003 and 2004. And at paragraph 36 of your statement you say the
13 following: "[...] we cannot reclaim our lands where settlers have been established
14 while our families are in IDP camps."

15 And could you please explain to us, who are you referring to when you say the
16 "settlers"?

17 A. [16:07:24] Settlers are people who are brought from outside our regions, so they
18 were brought into our regions to settle there. And they are still there until now.

19 Q. [16:07:46] And these settlers, are they from the Fur community or are they from
20 different communities?

21 A. [16:07:55] From other communities.

22 Q. [16:08:01] Thank you, Mr Witness.

23 I'd now like to talk about what you personally experienced at Deleig police station on
24 5 March 2004, and you've already explained to their Honours today some of what you
25 experienced. You mentioned today that you were beaten by the militia while you

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1 were being taken to Deleig police station and also while you were lying on the
2 ground at Deleig police station. What were you beaten with?

3 A. [16:08:44] Well, in fact, I had no issue whatsoever, that was not a personal issue
4 with me, all the people there had been beaten, they are innocent, and some of them
5 were executed.

6 Q. [16:09:10] Were you -- were you beaten yourself with a stick or some --

7 MR EDWARDS: [16:09:18] Please don't lead.

8 MR SHAH:

9 Q. [16:09:18] -- other kind of weapon?

10 PRESIDING JUDGE KORNER: [16:09:21] Why can't he lead?

11 THE WITNESS: [16:09:28](No interpretation)

12 THE INTERPRETER: [16:09:30] I could not hear the witness, unfortunately.

13 MR EDWARDS: [16:09:35] Well, the --

14 PRESIDING JUDGE KORNER: [16:09:38] Why can't he lead?

15 MR EDWARDS: [16:09:38] No, I -- yes, I take your Honour's point, yeah.

16 PRESIDING JUDGE KORNER: [16:09:46] Indeed I wondering why he didn't lead
17 (Microphone not activated)

18 MR EDWARDS: [16:09:48] Yeah, I take your Honour's point.

19 MR SHAH: [16:09:51]

20 Q. [16:09:52] Yes, Mr Witness, what were you beaten with? What type of object?

21 A. [16:10:03] A big stick.

22 Q. [16:10:08] And Mr Witness, you've described in your statement in quite striking
23 terms what you experienced on that day, how hot it was and the physical assault you
24 suffered. Is that something that you still think about to this day? Is it something
25 that's impacted you?

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1 A. [16:10:42] Yes, of course. It had a very serious impact because it's so difficult to
2 forget this.

3 Q. [16:10:54] Thank you, Mr Witness.

4 I'd like to discuss with you a little bit about the list of victims that you provided to the
5 Office of the Prosecutor. And that is -- the reference number is DAR-OTP-0224-0628.

6 And one of the -- your Honours, perhaps it's better if we -- if we go into closed session
7 to discuss these particular names.

8 PRESIDING JUDGE KORNER: [16:11:37] Yes, closed session, please.

9 (Private session at 4.11 p.m.)

10 THE COURT OFFICER: [16:11:48] We're in private session, Madam President.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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17 (Redacted)

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1 PRESIDING JUDGE KORNER: [16:16:54] (Microphone not activated) I think we'll
2 let the witness go. Clearly Mr Shah is not going to -- if you're going to go through
3 this, you're not going to complete this.

4 Sir, thank you for coming along, as I said, to court. I'm afraid your evidence, as must
5 have been explained to you, will not finish today, but if you could be back here,
6 please, tomorrow morning ready to start at half past 9. And please don't discuss the
7 evidence that you're giving with anybody overnight. But otherwise have a good
8 night rest and don't think about court. So if you would like to go with the court
9 officer now. Thank you.

10 (The witness exits the courtroom)

11 PRESIDING JUDGE KORNER: [16:18:11] Oh, we're still in -- we better go in

12 (Redacted)

13 (Open session at 4.18 p.m.)

14 THE COURT OFFICER: [16:18:26] We are back in public session, Madam President.

15 PRESIDING JUDGE KORNER: [16:18:29] Mr Edwards, you were objecting to the
16 line of questioning about whether the people on the list of people who were killed
17 were of good character effectively or missed. I suppose that the purpose of the
18 representation of the victims is to bring before the Court the -- what the victims
19 suffered. I mean, in other words, what the killings meant to the community. I fully
20 appreciate that in terms of an adversarial system it's somewhat odd, but it's a
21 separation, if you like, of the roles of the Prosecution, Defence and victims'
22 representation.

23 MR EDWARDS: [16:19:21] Yes, well, I -- I've made the point I wanted to make about
24 relevance and your Honour no doubt has put your finger on -- on the point that my
25 learned friend would have made. But I thought it important to -- to put our position

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1 on the record.

2 PRESIDING JUDGE KORNER: [16:19:42] Yeah, I think there's a real difference
3 between asking questions which could go to the actual culpability of an accused and
4 those which are designed to bring out evidence that explains what the victims have
5 suffered. I think that's the real way of putting it.

6 MR EDWARDS: [16:20:09] Yes, well, I mean, I suppose the point I was -- I was really
7 aiming for is in terms of relevance is whether it's going to be suggested that, you
8 know, if it were ever to come to a question of sentence, is the accused's actions, if ever
9 proved, aggravated by virtue of the fact that a particular *sheikh* is a nice guy or not. I
10 don't want to sound flippant, but is of good character or is well respected or not. I
11 mean --

12 PRESIDING JUDGE KORNER: [16:20:48] I think it's the impact on the -- I think
13 what would be taken into account is the impact of the killings on a community, if you
14 like. And I think that's what Mr Shah is -- is getting to.

15 MR EDWARDS: [16:21:02] Yes, well, I mean, the fact that a community leader may
16 have been killed, I would submit makes that point. But there is (Overlapping
17 speakers)

18 PRESIDING JUDGE KORNER: [16:21:13] Yeah, well, I mean -- well, you've made
19 the point, Mr Edwards, and we'll see where Mr Shah goes with this.
20 What I'm being asked, and obviously the Prosecution need to know, is how long,
21 Mr Shah, how much longer you're going to be tomorrow morning.

22 MR SHAH: [16:21:29] I imagine no more than two or three minutes.

23 PRESIDING JUDGE KORNER: [16:21:36] All right.

24 Mr Edwards, I take this is your witness you're cross-examining. How long do you
25 think you're going to be?

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- 1 MR EDWARDS: [16:21:39] To lunch I'd have thought.
- 2 PRESIDING JUDGE KORNER: [16:21:42] So P-850, who is the next witness, would
- 3 start after lunch?
- 4 MR EDWARDS: [16:21:46] That -- that seems reasonable, yeah.
- 5 PRESIDING JUDGE KORNER: [16:21:49] Yes, thank you very much. Well, I was
- 6 going to ask exactly the same thing.
- 7 Yes, thank you all very much.
- 8 Oh, anything you want to say, Mr Nicholls?
- 9 MR NICHOLLS: [16:21:58] Very small housekeeping matter, if that's all right. Just
- 10 been alerted that P-0718, 718, has received his travel document. That is one I thank
- 11 my friends for agreeing to our request that he be converted to AVL because it seemed
- 12 impossible. It has come through, which was not expected, so he will be here.
- 13 Thank you, your Honours.
- 14 PRESIDING JUDGE KORNER: [16:22:23] This week?
- 15 MR NICHOLLS: [16:22:24] Whenever he's scheduled, yes.
- 16 MR EDWARDS: [16:22:27] 14, 15 June.
- 17 MR NICHOLLS: [16:22:30] 14th and 15th, correct.
- 18 PRESIDING JUDGE KORNER: [16:22:32] That's next week, yes, all right.
- 19 Yes, all right. Thank you very much. Yes, otherwise, if nothing else, 9.30 tomorrow
- 20 morning, please.
- 21 THE COURT USHER: [16:22:42] All rise.
- 22 (The hearing ends in open session at 4.22 p.m.)