

Trial Hearing
WITNESS: DAR-OTP-P-0877

(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, 4 July 2022
10 (The hearing starts in open session at 10.07 a.m.)
11 THE COURT USHER: [10:07:35] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [10:07:54] Yes. Good morning, all. And I
15 apologise for the delay, but an administrative matter came up at the last moment
16 which needed resolving.
17 So could we call the case and then the appearances, please.
18 THE COURT OFFICER: [10:08:15] Good morning, Madam President. Good
19 morning, your Honours.
20 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus Ali
21 Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
22 And for the record, we are in open session.
23 PRESIDING JUDGE KORNER: [10:08:29] Yes, thank you.
24 Appearances for the Prosecution.
25 MR NICHOLLS: [10:08:33] Good morning, your Honours. Good morning,

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1 everyone.

2 At the moment, just me, but I expect that soon the same persons who were here on
3 Friday will join us.

4 PRESIDING JUDGE KORNER: [10:08:43] They're going to trickle in, are they?

5 MR NICHOLLS: [10:08:46] Yes. They may have gotten the notice before they could
6 just run back in. My apologies.

7 PRESIDING JUDGE KORNER: [10:08:54] That's all right. Yes, thank you.
8 Yes, Defence.

9 MR EDWARDS: [10:08:55] Good morning, your Honours.

10 Iain Edwards for Mr Abd-Al-Rahman; to my right, Camille Divet; behind me,
11 Mr Ahmad Issa; and Mr Laucci will be joining us, with luck, later on in the day.

12 PRESIDING JUDGE KORNER: [10:09:14] Right.

13 Yes. And, finally, the victims representatives.

14 MR SHAH: [10:09:19] Yes. Good morning, your Honours. Anand Shah, associate
15 counsel, for the participating victims today. Thank you.

16 PRESIDING JUDGE KORNER: [10:09:26] Thank you.

17 Yes. Just before we go on, Mr Edwards, because we've had this short -- rather longer
18 delay, what we're going to do is slightly revamp the timetable this morning. So we'll
19 sit -- we'll take the break as normal at 11 till 11.30, sit till 1 o'clock, but then we're
20 going to reduce the lunch hour from -- so that we come back at 2 o'clock and sit
21 through until 4, to just make up the time that we've lost this morning.

22 Have you any idea how much longer you need to be with the witness?

23 MR EDWARDS: [10:10:02] I'll need the first two sessions. Well, that was on basis
24 that we would start at 9.30. We might dribble into the afternoon, but I don't think
25 for very long. I think there's a reasonably good chance that the next witness will

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1 start this afternoon.

2 PRESIDING JUDGE KORNER: [10:10:18] Well, obviously, if you can finish -- even if
3 we sit a little bit later than 1 o'clock, if you can finish.

4 MR EDWARDS: [10:10:26] Yes.

5 PRESIDING JUDGE KORNER: [10:10:27] Because otherwise we're going to have
6 a break between the two witness, I think. Let's see how we go.

7 MR EDWARDS: [10:10:35] While we are waiting, perhaps, my learned friend and
8 I -- well, perhaps this is a point that my learned friend would want to take. We were
9 discussing over the weekend -- in fact, it was a discussion that started late last week,
10 because of difficulties with getting a report from the second expert. So we've been
11 discussing the matter between the parties, and we were in fact going to have
12 a meeting after court this afternoon to see where we go from here.

13 The bar's position is that if your Honours feel, now that we're 20-odd witnesses in,
14 that you would not derive the same sort of assistance from hearing from this sort of
15 expert as you may originally have thought you would. Then it may make the efforts
16 of identifying and getting a report and calling a second expert witness rather otiose.
17 So we just raise that as a matter that you may want to consider.

18 PRESIDING JUDGE KORNER: [10:11:51] Yes. What we'll do, we'll discuss the
19 matter and get back to you on that. I see the point that you're making.

20 Fine, Mr Nicholls. Did you get my message about the nature of the schedule of the
21 evidence?

22 MR NICHOLLS: [10:12:08] Yes, your Honour. And I'm sorry that it wasn't what
23 was expected. So, just to make sure we're clear, we'll have a column on the left with
24 the issue, the column on the right that will the page numbers that are relevant to that
25 issue.

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1 PRESIDING JUDGE KORNER: [10:12:23] Footnotes are just extremely difficult to
2 read.

3 MR NICHOLLS: [10:12:27] I understand. I have conveyed it to the team during the
4 unexpected break. And I agree, my friend put it very well. I have nothing to add.

5 PRESIDING JUDGE KORNER: [10:12:36] Right. Yeah. Well, we'll get back to you
6 about that before the end of day. Yes. Thank you very much.

7 Yes. Can we have the witness in.

8 (The witness enters the courtroom)

9 PRESIDING JUDGE KORNER: [10:13:34] I should have said, Happy 4th of July,
10 even though you are a Brit.

11 Sir, good morning. Can you hear he?

12 WITNESS: DAR-OTP-P-0877 (On former oath)

13 (The witness speaks Arabic)

14 THE WITNESS: [10:13:55] I hear you very clearly. Good morning.

15 PRESIDING JUDGE KORNER: [10:13:58] And I'm sorry that we kept you waiting,
16 but something came up which we had to resolve before we sat. But Mr Edwards is
17 going to carry on asking you question.

18 MR EDWARDS: [10:14:13] Thank you, your Honour.

19 QUESTIONED BY MR EDWARDS: (Continuing)

20 Q. [10:14:16] And good morning, Mr Witness. Are you able to hear me all right?

21 A. [10:14:22] I do.

22 Q. [10:14:26] Mr Witness, we'll -- we'll be finishing your evidence today for certain.
23 And can I tell you that, in terms of those areas of your evidence that I'm not going to
24 be asking you questions about, I'm not going to be asking you anything about your
25 discovery of bodies at any of the burial locations. I'm not going to ask you anything

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1 about GPS, or anything like that. Okay? My questions will be more focused than
2 that.

3 Last Thursday, sir - this is the uncorrected transcript, your Honours, of 30 June,
4 page 80 - you told us that your home village was attacked, and you said it was
5 reported to you that the attack was conducted by the forces of Ali Kushayb and
6 Al-Dayf Samih. The person who reported this to you was a student of Mukjar, but I
7 won't ask you his name.

8 Is it right that you did not ask him what he meant when he mentioned the name Ali
9 Kushayb?

10 A. [10:16:00] The witness -- the student is called Ishaq Abbaker Mohamed. As to
11 me, it was the first time I heard the name Ali Kushayb. We had come from the
12 mountains fleeing the attack. We did not probe how he came to know that name.

13 Q. [10:16:56] So you don't know if it was because he had seen these forces himself?

14 A. [10:17:20] He told us that those forces attacked our village before going back to
15 Mukjar. He saw forces believed to be the forces of Ali Kushayb coming from the
16 north, from Mukjar, where the high school is located. He also said that it is believed
17 that Ali Kushayb went back to Garsila. I did not ask him about the source of his
18 information, how he learned that or why he had that information.

19 Q. [10:18:12] Thank you.

20 And, again, last Thursday, you mentioned a meeting you had with a *shartay*. Yeah.

21 Is it correct that the day before the attack --

22 Sorry, sir, I haven't asked the question yet. I'm just leading up to it, okay? Bear
23 with me for a second, and I'll get to my question in a second.

24 Is it correct that the day before the attack on your home village, a warning had been
25 received from the *shartay* that such an attack was coming?

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1 A. [10:19:07] The answer is yes to that. Indeed, someone called Yahia Adam Ishaq
2 came to us, bringing us that warning. However, it wasn't me just involved in that
3 exchange. We were a group of people seated. He came to us and told us so.

4 Q. [10:19:38] Please tell us what time of day was this warning received.

5 A. [10:19:56] That warning was given to us in the morning before breakfast.

6 PRESIDING JUDGE KORNER: [10:20:14] Mr Edwards, which page of the transcript
7 was this dealt with? Is this still Thursday's transcript?

8 MR EDWARDS: [10:20:19] Your Honour, yes. The -- it's page 81 of Thursday's
9 uncorrected transcript, but I'm knitting it together with a paragraph in his witness
10 statement, which is paragraph 35.

11 PRESIDING JUDGE KORNER: [10:20:41] Thank you very much.

12 MR EDWARDS: [10:20:42]

13 Q. [10:20:44] Now, this all happened, of course, 19 years ago, sir. Is it possible
14 that this warning was received two days before the attack?

15 A. [10:21:15] That is true, actually. Even though 19 years have passed, that
16 information is noted in my diaries.

17 Q. [10:21:38] Are these diaries you ever shared with the Prosecution, sir?

18 A. [10:21:53] I gave the Prosecution information. All the information I had noted
19 was not shared with specific time references and dates. I gave the information partly
20 with specific time references, and for another part, not with specific date and time
21 references.

22 Q. [10:22:26] Mr Witness, I'm looking at your statement of December 2020 and
23 January 2021. It's a very full statement. We had a little look at it last week.
24 Were the details in that statement provided to the Prosecution because you had
25 a diary setting out these details?

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1 A. [10:23:16] I do not understand your question. Could you please repeat.

2 Q. [10:23:21] Well, were you referring to a diary during the time that you were
3 providing this statement to the Prosecution?

4 A. [10:23:53] I did not refer all the time to my diaries when I gave this information.
5 Every time I wanted to remember, I would open my diaries and check. However, I
6 did not refer everything to my diaries.

7 Q. [10:24:13] So would you refer to the diary at the end of every day of
8 interviewing? Would you go home or wherever you were staying that night, look at
9 your diary, refresh your memory and then provide details the next day during the
10 interview?

11 A. [10:24:37] No. Part of my diaries were left in Mukjar and I was travelling.
12 The other part was just in my memory. And I would remember each time I had the
13 ability to rest.

14 Q. [10:25:07] A moment ago you said every time I wanted to remember, I would
15 open my diaries and check.

16 How would you open your diaries and check, sir?

17 A. [10:25:23] Some of what I remember is in my head and some is in my notes, but
18 not everything is in the notes as I have previously mentioned. I had left some of my
19 diaries in Mukjar, and I took with me some diaries. When I give them information
20 and then go back to my accommodation, I would check the things that I don't
21 remember. And I if forget something, I might confirm it the next day or correct it.

22 Q. [10:26:08] Did you tell the Prosecutor or the Prosecution when you were
23 providing your statement that you were refreshing your memory occasionally from
24 a contemporaneous note from a diary?

25 A. [10:26:29] I did. And there was nothing strange about that. Since I had

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1 diaries, it's natural that I would avail myself of them occasionally.

2 Q. [10:26:51] Absolutely. And I don't, in any way, want you to think that I'm
3 criticising you for having refreshed your memory from a diary.

4 Let me ask you this: Did the investigator ask you to see the diary that you had with
5 you and that you were referring to overnight?

6 A. [10:27:15] The investigators did not ask me to review my -- all of my diaries, but
7 they asked me not to give them any information I was not certain of. And each time
8 that I gave them information, they had the ability to check again that information in
9 subsequent days, whether there was something to correct or to confirm. That was
10 our arrangement.

11 Q. [10:27:58] But at no point did the investigators have the opportunity to see your
12 diary themselves?

13 A. [10:28:16] They did not see all the diaries. However, I gave them some of the
14 diaries and they included that with their documents, but not all diaries. Most diaries
15 remained with me.

16 Q. [10:28:34] Now, thinking about some of the diaries that the Prosecution did see,
17 do you remember if reference was made to them during your preparation sessions
18 with the Prosecution last week?

19 A. [10:29:10] I do not remember. However, one of the diaries was pertaining to
20 Associated Press. I gave that myself, but I don't remember when it comes to the
21 other diaries.

22 Q. [10:29:35] Yes, we -- we -- we've seen that material. Where are all of the diaries
23 now? Are they back at home?

24 Your Honour, perhaps we should go into private session for a moment.

25 PRESIDING JUDGE KORNER: [10:29:56] I was just thinking that.

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1 (Private session at 10.29 a.m.)

2 THE COURT OFFICER: [10:30:14] We are in private session, Madam President.

3 (Redacted)

4 (Redacted)

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4 (Open session at 10.47 a.m.)

5 THE COURT OFFICER: [10:47:37] We are back to open session, Madam President.

6 MR EDWARDS: [10:47:47]

7 Q. [10:47:50] Thank you, sir. My apologies for that interruption.

8 So you receive a warning early in the morning, the day before your home village was

9 attacked. And the villagers were warned to leave and to take shelter in Mukjar, isn't

10 that right?

11 A. [10:48:20] Yes, this is correct.

12 Q. [10:48:24] And what did you and others in your home village do to, in fact, warn

13 the villagers of the pending attack?

14 A. [10:48:45] The same person who came from Mukjar with a message from *shartay*

15 Omer Ahmad is Yahia Adam Ishaq. The villagers sent him with a message saying

16 that he should go to *shartay* and tell them that the village of Kindiri is a large village.

17 There are many old -- there are thousands of people who live there, and they cannot

18 leave immediately. So the government says that this village is helping the rebels, so

19 he has to come with his forces to this village and inspect it and make sure that that

20 claim is correct. This is what Yahia Adam Ishaq said, and he went back to *shartay* to

21 tell him this.

22 Q. [10:50:03] Wasn't that an enormous risk to take with the lives of the villagers of

23 this village?

24 A. [10:50:12] Yes, it is a risk. That's why we asked the man who came with the

25 message to go back, because there are thousands of inhabitants in this village, so they

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1 cannot flee within two days. However, there was nothing more that they could do
2 about what happened.

3 Q. [10:50:54] Well, there was something that you and the other -- and others in
4 your village could have done. You could have warned the villagers themselves and
5 allowed the villagers to make up their own mind about what they would do. Did
6 you do that?

7 A. [10:51:21] What we did was we listened to the message from *shartay*, and the
8 ones who listened to the message were not one or two. There were community
9 leaders, Sheikhs and imams and other leaders who sat together to discuss this. And
10 in this meeting, they decided to return Yahia to *shartay* and tell them that the
11 government can send forces to inspect the village to confirm the claims. And this
12 was the decision of the people who live in the village, the inhabitants. It was not the
13 decision of one or two people.

14 Q. [10:52:17] Tell us, sir, was there any guarantee that the government authorities
15 would accede to that request, would agree to that request and can and check whether
16 your home village was harbouring rebels?

17 A. [10:52:42] There were no guarantees that our request would be accepted, but we
18 expected that the government forces and the Ali Kushayb forces -- this is not
19 something that -- that we could have expected. We hoped that the government
20 would listen to our message and that it would send the forces to inspect the village or
21 to send forces to stay in the village.

22 Q. [10:53:23] Well, let's look at what the government was in fact actually saying,
23 what the message actually was. The message was, the area they were to wipe out
24 was villages between Sindu and your home village, which are located near
25 a particular mountain. Correct?

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1 A. [10:53:50] The government said that the villages to the east of Mukjar, Tendy,
2 and Sindu and that there are rebels in the mountains. However, we as citizens
3 thought that the rebellion was in the mountains far away from us and it was not close
4 to our villages and it was not related to our villages in any way.
5 However, when the attacks took place, they did not attack the villages in Sindu or my
6 village or the mountains where the rebel -- rebellion could have been. They targeted
7 the villages of Bindisi and Mukjar and so many villages that were not connected with
8 Sindu in any way. They attacked the Fur villages.

9 MR EDWARDS: [10:55:14] Okay.

10 PRESIDING JUDGE KORNER: [10:55:16] Sorry. Mr Edwards, I'm not clear. You
11 say let's look at what the government message was -- let's look at what the
12 government was in fact actually saying. You mean what he says they were saying,
13 or are you actually saying that is what the government --

14 MR EDWARDS: [10:55:32] It's paragraph 24 --

15 PRESIDING JUDGE KORNER: [10:55:35] Well, I know that -- yeah, but, I mean, but
16 it's got to be clear because at the moment it wasn't a clear question.

17 MR EDWARDS: [10:55:42] Can I follow up on that then?

18 PRESIDING JUDGE KORNER: [10:55:45] Yeah.

19 MR EDWARDS: [10:55:46]

20 Q. [10:55:47] Mr Witness, I want to be very clear about this. Your understanding
21 was that the government was going to come and wipe out areas where the
22 government believed the rebels had been visiting, correct? Just say yes or no for
23 now.

24 A. [10:56:11] At the outset, we thought that when they sent the message, they were
25 thinking of coming to the areas around Sindu and my village. However, when the

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1 attack started, it was in villages that were not related to our villages or to the areas
2 around the Sindu mountains. As I said, they targeted Fur villages in their entirety.

3 Q. [10:56:52] Okay. Well, but that doesn't change the fact, sir, that the day after
4 you received this message of a big attack on the way, your home village was in fact
5 attacked, right?

6 A. [10:57:10] The next day, yes.

7 Q. [10:57:19] Okay. All right.

8 So we come back to my question. You've been given this warning. It's an
9 unambiguous warning of a calamitous event that is imminent and the authorities of
10 the village didn't warn the villagers to leave.

11 Does that accurately summarise the situation, sir?

12 A. [10:57:53] No one can summarise the intention of somebody else. If the
13 government had an intention to burn and destroy the Fur villages, no one can really
14 summarise that accurately. However, as I said before, the villagers, when they
15 received the message, they met and they decided to send Yahia back in the hope that
16 the government would come inspect the village and leave or let forces stay there.
17 However, the real intention of the government was not really something that we
18 could have anticipated.

19 Q. [10:58:52] Okay. Just one last point before I move on.

20 The villagers as a whole were not given the opportunity to leave. All that happened
21 was that a committee made up its own mind and sent Ishaq back to the *shartay*,
22 correct?

23 A. [10:59:22] How can the villagers decide within a day or two to flee a village that
24 they have inhabited for a very long time.

25 Q. [10:59:42] Was it your understanding that the government wanted to deprive

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1 the rebels from any support they might have been receiving from the surrounding
2 villages?

3 A. [11:00:01] If this was the intention, why didn't the government send forces to
4 these villages that they suspected? They destroyed tens of villages and this had
5 nothing to do with depriving the rebels from support because the rebels did not
6 receive any support from these villagers at all.

7 Q. [11:00:34] How far was your home village from Sindu, sir?

8 A. [11:00:41] My village was about 25 or 30 kilometres away of Sindu. I'm not 100
9 per cent sure of that, but it shouldn't be less than 25 or 30 kilometres.

10 Q. [11:01:05] And you knew that Sindu was a rebel stronghold?

11 A. [11:01:17] No. Sindu is a group of villages that have long pre-dated the
12 rebellion, but I was aware that at mountains 10 kilometres away of Sindu there was
13 probably a rebellion. However, it had nothing to do with the villages in Sindu or
14 even villages beyond that. Those rebels were in the mountains where water was
15 available and we were not aware of their movements.

16 Q. [11:01:54] After receiving the warning from Yahia Ishaq, did anyone go to the
17 mountains to try and speak to the rebels about what had been heard?

18 A. [11:02:21] No. The rebels were in faraway mountains, far from the villages.
19 We only sent Yahia to talk to the *shartay* because the *shartay* was the community
20 leader who could liaise with the government and who can be heard by the
21 government more than anyone else and we expected his -- we expected his request to
22 be accepted by the government. But no one went to the rebels.

23 Q. [11:03:02] You say that the mountains are far away.
24 How far away are the Kamoulka mountains?

25 A. [11:03:19] Could you please specify far away of what? Of Tendy or Sindu?

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1 Q. [11:03:28] Let me try again. How far away are the Kamoulka mountains from
2 your home village? Don't tell us the name of your home village because we're in
3 public session, but tell us how far are the mountains from your home village?

4 A. [11:03:48] More than 10 kilometres.

5 Q. [11:03:56] But less than 20?

6 A. [11:04:05] Not -- I would say more than 10 kilometres, something between 10 or
7 15 kilometres.

8 THE INTERPRETER: [11:04:19] Interpreter's observation. There was an utterance
9 at the beginning of the answer that we did not quite hear, so.

10 MR EDWARDS: [11:04:26] That's okay, between 10 and 15 kilometres.

11 Q. [11:04:30] So it could take a healthy young man to cover that distance in a few
12 hours. Agree?

13 A. [11:04:39] Yes, it would take a few hours to cross that distance.

14 Q. [11:04:53] So your explanation that no one from your village went to warn the
15 rebels about this impending attack because the rebels -- because the mountains were
16 so far away, that -- that's not an explanation, is it?

17 A. [11:05:27] It was clear that nobody would ask anybody else this question. The
18 attack was from the government and that's what the *shartay* told us through the
19 delegation he sent. We had to respond via the *shartay* who would communicate to
20 the government. This had nothing to do with the rebels. The rebels never came to
21 us, never told us anything, never asked us to guide them on how to come should
22 there be an attack, nor did they ever send anyone to us. It was the government
23 through the *shartay* that communicated to us and that's why we had to respond via
24 that same channel.

25 PRESIDING JUDGE KORNER: [11:06:19] Mr Edwards?

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1 MR EDWARDS: [11:06:21] I see the time.

2 PRESIDING JUDGE KORNER: [11:06:20] Yes, have you dealt with this topic?

3 MR EDWARDS: [11:06:23] There's a little more to cover, but I see the time, so it's
4 a convenient moment.

5 PRESIDING JUDGE KORNER: [11:06:29] Yes, all right.

6 Sir, we're going to take the usual break now for half an hour and we will resume the
7 hearing at 25 to 12.

8 THE COURT USHER: [11:06:43] All rise.

9 (Recess taken at 11.06 a.m.)

10 (Upon resuming in open session at 11.48 a.m.)

11 THE COURT USHER: [11:48:16] All rise.

12 Please be seated.

13 PRESIDING JUDGE KORNER: [11:48:34] Yes. Before the witness comes back into
14 court, we propose to give our ruling in respect of the request made by Mr Edwards.

15 During the course of Mr Edwards' cross-examination of the witness this morning, it
16 transpired very clearly that the witness had a number of notebooks from which he
17 had refreshed his memory, it would appear not during the taking of the first

18 statement but at some stage before the statement was taken, from entries in these

19 notebooks. Whilst there's no specific reference in the statement to the notebooks, he
20 does, as has been pointed out at paragraph 141 of the statement, taken in

21 January of -- in December of 2020 and January 2021, at paragraph 141 of the statement,
22 he refers to drafting "notes documenting what had occurred, in addition to what I
23 witnessed myself."

24 We should say straightaway that it is unfortunate that the investigator who was

25 taking the statement did not inquire in any detail as to whether the witness had notes

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1 and whether he would be prepared to disclose them.

2 However, having heard what the witness had to say, Mr Edwards then asked him
3 whether if the Trial Chamber ordered the notebooks to be disclosed, he would
4 comply. And he said that he would.

5 I pause there for a moment to say that, in our view, it is not the way to deal with this
6 matter, to ask that question of the witness in that way, because it could be said that it
7 brings some pressure upon the witness, which may or may not be justified.

8 The proper way of going about this matter is, we suggest that an application should
9 be made to the Prosecution for those notebooks to be produced by the witness at
10 a stage when he has completed his evidence and a statement to be taken, if he agrees
11 or does not agree.

12 In answer to questions from me, the witness said that the notebooks were in the place
13 in which he resided, both with himself and with his daughter, and that, in his view, it
14 would cause him potential danger were he to obtain those notebooks. And he
15 confirmed on oath that the information in those notebooks relevant to these events
16 was all contained in the statements that he made to the Office of the Prosecutor.

17 We are mindful of the fact that the Rules make it very clear, when information is in
18 the possession of the Prosecution or documents are in the possession of the
19 Prosecution, which these are not, that the Chamber must be mindful of any potential
20 danger to witnesses were they to order disclosure if, as I say, the Prosecution had
21 those documents, and even more so in circumstances such as this.

22 We have come to the conclusion that, at present - and I underline the words "at
23 present" - there is not sufficient information before this Chamber which leads the
24 judges to believe that it should make the order that the Defence have requested.

25 This does not, however, preclude a later formal request should any further

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1 information or evidence come to light which leads the Defence to believe that it needs
2 to reapply for those notebooks to be disclosed.

3 We propose to tell the witness that we are not making such an order.

4 Yes. Can we have the witness back into court, please.

5 (The witness enters the courtroom)

6 PRESIDING JUDGE KORNER: [11:54:33] I'm taking it, Mr Edwards, you're not
7 going to conclude before the lunch break?

8 MR EDWARDS: [11:54:39] I'm sorry?

9 PRESIDING JUDGE KORNER: [11:54:40] I'm taking it you're not going to conclude
10 before the luck break?

11 MR EDWARDS: [11:54:49] (Microphone not activated)

12 PRESIDING JUDGE KORNER: [11:54:52] No. Well, I'm just wondering whether or
13 not it wouldn't, in the circumstances, be more sensible, because I think the judges may
14 have some questions, to say that the next witness should start tomorrow morning.
15 In any event, it's a different form of interpretation.

16 MR NICHOLLS: [11:55:05] I think -- I think that's wise, your honour. Thank you.

17 PRESIDING JUDGE KORNER: [11:55:07] Yeah, all right. Thank you.

18 MR EDWARDS: [11:55:08] Thank you, your Honour.

19 PRESIDING JUDGE KORNER: [11:55:09] Sir, again, I'm sorry you've been kept
20 waiting. It was a longer break than we anticipated. We have considered the
21 request that Mr Edwards made of you, namely, that if we so ordered would you
22 produce the diaries or the notebooks that you kept. We have decided we are not
23 going to order you to do that.

24 THE WITNESS: [11:55:41](Interpretation) Thank you.

25 PRESIDING JUDGE KORNER: [11:55:42] Yes, Mr Edwards.

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1 MR EDWARDS: [11:55:44]

2 Q. [11:55:45] Mr Witness, coming back to what we were discussing before the short
3 break, is it right that the inhabitants of your village only started to react to leave the
4 village once the government's attack had started?

5 A. [11:56:20] They started leaving the village as -- when they heard gunfire in
6 locations between Arada, Sigirgir and another village, located between their village
7 and Mukjar. They saw smoke coming out of those villages. It is then that they
8 decided to flee to the mountains, yes.

9 Q. [11:56:49] And I'm looking at paragraph 30 of your statement. In terms of
10 fatalities in your home village, two women and one man were killed in the attack,
11 correct?

12 A. [11:57:12] More than those people died. We identified an elderly man called
13 Tulley.

14 THE INTERPRETER: Correction. An elderly woman, Tulley.

15 THE WITNESS: [11:57:27](Interpretation) And also another one Kalthouma * Kaltuma
16 and a man called Adam * Abbaker. Those are the ones we identified. However,
17 when we came back later on we realised that other people elsewhere also got killed.
18 I, however, did not see that. The only individuals I saw were the two ladies and the
19 men whom we buried.

20 MR EDWARDS:

21 Q. [11:57:49] With the benefit of hindsight, sir, would you have warned the
22 villagers and advised them to leave your home village before the attack had started?

23 A. [11:58:06] With the benefit of hindsight and after the events had happened,
24 where could they have fled? The government to which they could have fled was the
25 very party targeting them and killing them. And, indeed, that's what happened.

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1 When they went to Mukjar, their money was taken, they were killed, their women
2 raped and so forth. So where could they have fled? They were completely
3 powerless.

4 Q. [11:58:51] How about to the mountain in the first instance?

5 A. [11:58:57] The mountains around the village, that's where they went during the
6 first attack and that's how many of them survived, because the mountains were very
7 high and the attackers targeted the village by looting and burning and did not
8 escalate the mountains. They just fired at the mountains.

9 Q. [11:59:29] In terms of what you yourself did, before the attack arrived at your
10 home village, you and others decided to get on some horses and ride in the direction
11 of the gunfire, correct?

12 A. [11:59:50] Yes. Myself along with others rode horses when we heard gunfire
13 and we saw smoke coming out of a location. We went in that direction to check
14 what was going on.

15 Q. [12:00:13] This is paragraph 27 of the first statement, your Honours.
16 How many of you from your home village rode off in the direction of where the
17 gunfire was coming from?

18 A. [12:00:27] Two people -- three people, me and my colleagues. Yes.

19 Q. [12:00:49] Okay. So when you say I and other "members", plural, of the
20 committee, you're talking about you and two others, are you?

21 A. [12:01:05] Yes.

22 Q. [12:01:08] And the purpose was what?

23 A. [12:01:18] To verify what we were hearing and what we were seeing. We
24 wanted to know what was happening. We could hear shell -- gun shells and we
25 went in that direction to see what was going on.

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1 Q. [12:01:41] All right. Let's unpick that a bit.

2 A day before, you were told that the government were going to come and attack your
3 area. That day you hear gunfire, you see smoke. Mr Witness, you knew exactly
4 what was going on. There was nothing to verify. You knew exactly what was
5 happening, didn't you?

6 A. [12:02:09] The villages that were attacked were very close to Mukjar and we
7 wanted to see were these villages targeted and are we going to be next? That's why
8 we went to verify what is happening and which villages were attacked.

9 Q. [12:02:45] But you could -- you knew that these villages were being targeted.
10 There was no ambiguity, was there?

11 A. [12:03:00] There was ambiguity because the villagers did not commit any crimes.
12 So I am saying, again, we did not know what was the intention of the government.
13 We didn't know that the government intended to exterminate the Fur from all villages
14 because the attack was targeting all Fur villages, as I said before, from Mukjar and the
15 north and the south of it. Areas of Sindu, Bindisi and so on. So we did not expect
16 the government to do that, but they did.

17 Q. [12:03:49] Mr Witness, let's just think about that for a second. You had been
18 warned the day before that this attack was coming. You can't now say we had no
19 idea what the government's intention was, can you?

20 A. [12:04:08] When we were told that the attack will happen, we thought that it
21 was going to be targeting villages where there were suspicions of support to the
22 rebels. We thought that there will be inspections, but we did not expect that there
23 will be attacks or people were going to be killed and stripped of their belongings and
24 robbed.

25 Q. [12:04:47] Is it in fact the case that you and a large number of other men rode

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1 towards the gunfire to see what you could do to defend your home village?

2 A. [12:05:18] I mentioned to you that two other people and myself went in the
3 direction of gunfire in order to verify what is happening and then we can warn
4 people accordingly. Should they go to the east mountains, the west mountains, the
5 north mountains? However, when we heard there were gun shells and there were
6 weapons used there, what kind of weapons did we have to defend ourselves? We
7 did not have any weapons to use in our defence.

8 Q. [12:06:03] Is it in fact the case that you or other villagers did in fact contact the
9 rebels in the mountains to come to your aid to defend your home village against the
10 imminent attack?

11 A. [12:06:29] No. I have just said to you in answer to your question that this did
12 not happen, so I don't know why you are repeating this. We received warning from
13 the government. And the rebels are not part of the government, they're not part of
14 the village inhabitants either. So there was no point in asking the rebels to help us
15 with anything. If the government is doing this, how can the rebels help us? I
16 already answered that.

17 Q. [12:07:20] All right. Now, you say that roundabout 11 August 2003 you went
18 to Mukjar yourself, correct?

19 PRESIDING JUDGE KORNER: [12:07:44] Mr Edwards, if you're leaving the -- this
20 attack, can I just -- can we just understand this. You accept that an attack took place,
21 but your case is that the village had rebels before, or called the rebels in to help them
22 defend?

23 MR EDWARDS: [12:08:11] Can I -- I'm happy for the witness to keep his
24 headphones on but I -- yes.

25 PRESIDING JUDGE KORNER: [12:08:22] Well, I mean, I think the witness needs to

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1 deal with what the actual case is on that.

2 MR EDWARDS: [12:08:27] All right. Well, so that I can enlighten your Honours,
3 the witness's answers as to why they didn't seek the assistance of the rebels is -- and it
4 will be our submission -- so lacking in credibility that coupled with the fact that the
5 witness's evidence is that he and other villagers did ride towards the gunfire and so
6 on, and his explanation as to what he was seeking to do in running -- riding towards
7 the gunfire, also being -- lacking credibility, we say, allows for a reasonable inference
8 that in fact the rebels were involved in some way in -- warned and then involved in
9 the defence of the village.

10 PRESIDING JUDGE KORNER: [12:09:19] All right. But I think -- I understand. I
11 think that's fairly clear and the witness has dealt with all of that. But I just want to
12 know, are you also saying the evidence allows for a conclusion that the village before
13 it was attacked contained armed rebels? Is that your case? Because I don't think
14 you've put that to him. Or are you saying it is a possibility?

15 MR EDWARDS: [12:09:52] It's going to be our -- we don't have a positive
16 (Overlapping speakers) and we can't put a positive case either way. We suggest that
17 it's a possibility and there is evidence that at the very least the government had
18 a reasonable belief that this -- this village would have had rebels in it.

19 PRESIDING JUDGE KORNER: [12:10:12] I see. All right. I think that perhaps --
20 Sir, you've heard all of this. Before the attack, did you in the village have persons
21 who were armed -- well, first of all, persons who were armed?

22 THE WITNESS: [12:10:36](Interpretation) No. No, not at all. I answered this
23 question twice. Why aren't you taking into consideration what I am saying? The
24 village had no armed people, had no rebels. We never invited them. We never
25 sought their support. And now I am surprised why I give you an answer and you

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1 are not accepting this answer. In our village, there were no armed people, there
2 were no rebels and we did not seek their assistance.

3 PRESIDING JUDGE KORNER: [12:11:18] Sir, we don't -- our job is simply to listen
4 to what you say and afterwards we -- we come to a conclusion. We are not saying
5 we either believe or disbelieve you. We just have to know what it is you are saying.
6 But thank you very much, you've told us now, as you say, a number of times that you
7 did not have armed people in your village. Yes. Thank you.
8 Yes, Mr Edwards.

9 MR EDWARDS: [12:11:50] Yes, I'm moving on to another topic, your Honour, and
10 I'm afraid it requires us going into private session for a brief moment.

11 PRESIDING JUDGE KORNER: [12:12:05] Yes, private session, please.

12 (Private session at 12.12 p.m.)

13 THE COURT OFFICER: [12:12:12] We are in private session, Madam President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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23 Q. [12:29:09] Well, that's not right, is it, Mr Witness? You knew that the

24 rebels -- that they were fighting to improve the condition of the people of Darfur who

25 had been neglected for so long. You knew that.

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1 A. [12:29:26] That's what I heard on the radio.

2 Q. [12:29:32] Right. Okay. So don't --

3 And the focus of the rebels' actions was directed particularly to improve the lot of the
4 non-Arab population in Darfur, right?

5 A. [12:29:54] No. They said that they were fighting for the rights of the Darfur
6 people. However, they were only interested in improving the conditions of their
7 own people, their own tribes. I've never heard them say anything about improving
8 the lives of the Arab tribes in Darfur.

9 Q. [12:30:27] No. I'm sorry. There may have been a mistranslation.

10 What I said was that they were particularly interested in improving the condition of
11 the non-Arab population of Darfur. Right?

12 A. [12:30:53] Was there a place in Darfur where they assisted non-Arabs? Well, if
13 they wanted to help Darfur, Arabs had shops, streets, schools, which everybody
14 needed. How could you differentiate between Arabs and non-Arabs? These
15 services are needed by everybody. How could you have separate services? What
16 I'm saying applies to this day.

17 Q. [12:31:22] Okay. But, generally speaking, you were very much sympathetic to
18 what the rebels were trying to achieve in Darfur, right?

19 A. [12:31:37] That's not true about me only. It's true about -- for everyone, Arabs
20 and non-Arabs alike. But who -- whomever could provide services, be it rebels or
21 the government, we all needed services. Healthy, education, roads, electricity, us
22 and the Arabs alike. I did not have a sympathy with a particular party. These were
23 needed services. And, naturally, we would expect the government to provide these
24 things, not the rebels. It is our right to expect that from the government.

25 (Redacted)

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11 Q. [12:33:51] Did you or did you not want the government to put down the
12 rebellion?

13 A. [12:34:21] What I wanted is different from the reality. What I wanted was
14 to -- for blood not to be spilled. I wanted justice to rule society -- want justice to rule
15 society, and I wanted the government to exercise its function, vis-à-vis, its citizens.
16 On equal footing, all citizens. Those in Khartoum or in Darfur or elsewhere,
17 regardless of tribal belonging. That is what I wish even today. Any action that
18 leads to bloodletting is something I refuse and I disagree with.

19 MR EDWARDS: [12:35:07] Forgive me, your Honour. We could have gone into
20 public session a while ago.

21 PRESIDING JUDGE KORNER: [12:35:13] Well, I was actually just asking -- thinking
22 that. Sorry.

23 Yes, let's go back into public.

24 (Open session at 12.35 p.m.)

25 THE COURT OFFICER: [12:35:25] We're back to public session, Madam President.

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1 MR EDWARDS: [12:35:37]

2 Q. [12:35:39] Mr Witness, putting to one side what you may have wanted in an
3 ideal world with no bloodletting, you didn't want to do anything, did you, that would
4 jeopardise the rebels' military efforts, and that's why you refused to do what Torshein
5 asked you to do?

6 A. [12:36:13] If -- if I understood you right, regarding my action, vis-à-vis, the
7 government and not disagreeing with the government, I did not do anything against
8 the government. But that, however, does not undermine anything I have already
9 said on this subject.

10 Q. [12:36:47] You associated the actions of, firstly, Al-Dayf Samih with government
11 efforts to defeat the rebellion, correct?

12 A. [12:37:09] I did not know what his motives were. However, his efforts, as well
13 as the efforts of Ali Kushayb, consisted in the looting and destruction of the Fur
14 villages. That's what their efforts were. That's what they actually carried out.
15 Whether they were assisting the government in fighting the rebels and *why they
16 went to villages far from those areas, these are things I cannot be certain about.
17 What I know for sure is that they targeted the villages of the Fur *tribe, destroying,
18 burning, and killing. That's what they did.

19 Q. [12:38:12] And they are very much the enemy in your mind.

20 A. [12:38:20] Yes, they are.

21 Q. [12:38:28] Now, we heard that you spent two days in detention, initially, the
22 first period of your detention in Mukjar. I want to ask about that for one second.
23 Okay?

24 Did your family know where you were?

25 A. [12:38:57] My family did know because I was taken from the locality, from the

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1 municipal office. People witnessed this. I was taken to the police station on orders
2 of the *mu'atamid* of the locality, Abdullah Al-Tayyib Torshein. My family was aware
3 that I was at the police station. The answer is "yes" to that.

4 Q. [12:39:29] Mr Witness, we've only got today to finish your questions, okay?

5 A lot of my questions can be answered with a "yes" or "no" answer. Do you think
6 you can try to answer my questions with a "yes" or "no", where that's possible?

7 A. [12:39:46] Yes.

8 Q. [12:39:51] Excellent. Thank you.

9 During those two days you were in detention, you must have been very concerned
10 about the fact that your family would have been worried for your safety. Do you
11 agree?

12 A. [12:40:15] Yes. And that would be true about anyone. If you're arrested
13 anywhere, of course, your family would worry about you.

14 Q. [12:40:39] You must have wanted to get word to your family as soon as possible
15 that you weren't in fact being ill-treated. Correct?

16 A. [12:40:53] Yes, but I was not able to. I had no way of communicating to them.

17 Q. [12:41:11] After two days, you're released. What time of day was this, when
18 you're released?

19 A. [12:41:25] In the morning, before breakfast.

20 Q. [12:41:30] And then immediately on your release, you head towards what? In
21 the direction in the market, correct?

22 A. [12:41:48] Yes.

23 Q. [12:41:50] Why were you heading in that direction, sir?

24 A. [12:41:55] Because I wanted to eat and to get some tea.

25 MR EDWARDS: [12:42:02] Okay. Your Honour, paragraph 43.

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1 Q. [12:42:07] You also wanted to notify your family as quickly as possible that you
2 were free and safe and healthy and that you hadn't been molested, right?

3 A. [12:42:24] No, because my family was further from me than that. They were
4 not in the market. They were not there for me to inform them.

5 Q. [12:42:35] Well, okay, all right. They may not have been in the market. You
6 told us a moment ago that they knew -- word had got to them that you had been
7 detained. You must have been anxious to get word to them that you were safe, that
8 you were free. Correct?

9 A. [12:43:00] Naturally, yes.

10 Q. [12:43:03] Okay. All right. Whether they happened to be at the market or not,
11 but that's what you were interested in doing, of course.

12 But you didn't make it to the market, did you?

13 A. [12:43:17] Yes.

14 Q. [12:43:19] Well, on your account, you saw the militia arriving from the north
15 and from the south, and you decided to go back to the municipality building. Have I
16 got that right, or have I got that wrong, sir?

17 A. [12:43:41] Yes, correct.

18 Q. [12:43:44] So did you get to the market or not before you turned around?

19 A. [12:43:49] I did not make it to the market.

20 Q. [12:43:58] And did you do what you could -- did you do anything to notify your
21 family that you were safe?

22 A. [12:44:06] I did not do anything in that regard.

23 Q. [12:44:14] It was more important for you to go back to the municipality building,
24 was it?

25 A. [12:44:22] Yes.

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1 Q. [12:44:28] Did other members of the public have the same idea? Were there
2 other members of the public moving towards the municipality building like you?

3 A. [12:44:41] Yes. The people headed to the municipality in droves.

4 Q. [12:44:54] Why?

5 A. [12:44:57] I don't know about people. I can't speak for them. As to me, I
6 wanted to know what was going on because there were large militias coming from
7 the direction of the municipality. So I wanted to go there to see what they were
8 doing.

9 Q. [12:45:21] Well, sorry, were they coming from the direction of the municipality,
10 or were they going towards the municipality? Let's clarify that first.

11 A. [12:45:33] They were going to the municipality. Some of them were coming
12 from the north, others from the south, heading to town to the municipality.

13 Q. [12:45:49] Okay. Now, the municipality building is in a sort of a walled
14 compound, right?

15 A. [12:45:55] Yes.

16 Q. [12:46:04] And there's one entrance -- entrance/exit which is on the western wall,
17 right?

18 A. [12:46:17] Yes.

19 Q. [12:46:19] Were you the first of the members of the public to arrive at the
20 municipality building compound?

21 A. [12:46:31] There were many people who preceded me. There were hundreds of
22 them. Also the municipal officers or employees were there already. There were so
23 many people from the locality who arrived before me -- entered before me and others
24 who entered after me, yes.

25 Q. [12:46:56] Okay. Let's deal with this in concrete way.

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1 Can we please have up, your Honours, the document at tab 13 of the Prosecution list
2 of witnesses -- list of material. This is DAR-OTP-0217-0479, but the sketch itself is at
3 0481. And if we could have the public redacted version so that this can be broadcast
4 and seen by members of the public.

5 THE COURT OFFICER: [12:48:03] Could counsel please complete the ERN for the
6 PDF version, the redacted version.

7 MR EDWARDS: [12:48:12] The only ERN that I'm aware of is DAR-OTP-0217-0479.
8 But if there's a redacted version that my learned friend could direct me to, I'd be
9 extremely grateful.

10 MR SACHITHANANDAN: [12:48:29] The redacted version should be the same
11 ERN.

12 MR EDWARDS: [12:48:33] Yes, there we are. Excellent. I'm obliged. All right.

13 Q. [12:48:36] Now --

14 And the court officer, if we could just scroll down a little bit so that we have the figure
15 6, 7, 8, 9, 10, 11 towards the top of the screen. Yes, that's fine. That's fine. Okay,
16 thank you very much.

17 Mr Witness, do you see in the centre of the screen there --

18 A. [12:49:00] I can see clearly.

19 Q. [12:49:03] Okay. So the squares that are indicated - 6, 7, 8, 9, 10, 11 - that's the
20 northern limit of the Mukjar municipality building compound, correct?

21 A. [12:49:22] Yes, correct.

22 Q. [12:49:22] And then the -- if we head south, we see a rectangle labelled with a
23 "16". Is that the -- the courtroom, sir?

24 A. [12:49:40] No. Back then it was a conference room or a meeting room, but there
25 was a part, in addition to that, that made up the court.

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1 Q. [12:49:57] Okay. But the document -- sorry, the building labelled "16" and the
2 building labelled "19", that represents the southern extent of the municipality building
3 compound, right?

4 A. [12:50:14] Yes, correct.

5 Q. [12:50:16] And then we see a little two lines that indicate the entrance/exit to the
6 compound, just close to where we see "12", right?

7 A. [12:50:30] Correct.

8 Q. [12:50:33] So, on arrival in the municipality building compound, there are many
9 other locals already there. Are there also militia/Janjaweed inside the compound,
10 sir?

11 A. [12:50:56] No. At that point, they were not in the compound. They were
12 coming from the north and the south to the vicinity, but they did not -- they had not
13 entered the building yet.

14 Q. [12:51:14] Did there come a point when they entered -- well, yes.
15 Your last answer suggests that there did come a point when they did enter the
16 compound, is that right?

17 A. [12:51:28] They did not. Only their leaders entered - Ali Kushayb, Al-Dayf
18 Samih, in addition to Asadiq - but they were on horseback and camels stationed in the
19 vicinity west of that door. Only after they dismounted their horses and camels did
20 they enter to get the money that was being distributed.

21 Q. [12:52:02] I see. Where we have this entrance on the western wall of the
22 compound, was there any security there? Or could people just walk in and out
23 without any difficulties at all?

24 A. [12:52:19] People were able to come in and out without any difficulty. There
25 were no guards there. There are still no guards even today there.

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1 Q. [12:52:33] And then are you able to give us an idea where within the compound
2 you first went and then stopped?

3 A. [12:52:56] When I entered the municipality building from the west, I headed to
4 number 12 where you have that facility. We went and sat facing the veranda under
5 the numbers 11, 10, 9, 8 and 7. That's where the veranda was. There was a vicinity
6 facing that veranda. That's where we stopped.

7 Q. [12:53:29] Okay. Thank you. So there was a bit of shade where it was a bit
8 more comfortable for you to sit and wait, is that right?

9 A. [12:53:38] Yes.

10 Q. [12:53:44] And so this is -- this could only have been a matter of a few -- a few
11 minutes, really, or -- I don't know -- 10, 15 minutes, maximum, after your having been
12 released from that short detention, right?

13 A. [12:54:09] More than half an hour.

14 Q. [12:54:15] Okay. And then -- well, from your testimony from last week,
15 page 85 of the uncorrected transcript, have I got this right, you waited there for two to
16 three hours?

17 A. [12:54:43] Yes. I waited there for a long time, until the militias entered to get
18 the money that was being distributed. I did stay long there.

19 Q. [12:54:59] You waited there until five people came out of the meeting room?

20 A. [12:55:22] Yes.

21 Q. [12:55:24] This is the meeting room at 16?

22 A. [12:55:30] Yes.

23 Q. [12:55:32] And there's an enormous crowd of other villagers congregating in that
24 open area, right?

25 A. [12:55:46] Yes. In the open area located between the buildings.

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1 Q. [12:55:57] Did you -- let me ask you this, was it just members of the local
2 community that were there hanging around or were there also IDPs -- sorry, were
3 there also displaced persons who were there by force?

4 A. [12:56:26] At that point in time there were no displaced people there. There
5 were only citizens from Mukjar, in addition to shoppers who came from the
6 surrounding villages. Those were the only people there. At that point, there was
7 no displaced people.

8 Q. [12:57:06] Would it be fair to say that you estimate that the number of people
9 congregating in this open space was about a thousand men -- well, a thousand
10 people?

11 A. [12:57:35] It could be a thousand more -- or, 2,000, they were in the vicinity
12 outside the building of the locality. As to citizens inside the building of the locality,
13 they were less, only a few hundreds.

14 Q. [12:58:00] But there comes a point when a man comes out of that meeting room
15 at position 16, who is identified to you as Ali Kushayb, right?

16 A. [12:58:17] Yes. That person came out of that location and a friend of ours told
17 us that person was Ali Kushayb.

18 Q. [12:58:34] Now I'm glad you refer to this person as a friend of yours. We are
19 not going to mention his name. Let's just refer to him as your friend. Do you
20 understand?

21 A. [12:58:50] Yes.

22 Q. [12:58:52] Now this was somebody that you knew from before this day? Was
23 he a friend in the sense that you'd known him for some time?

24 A. [12:59:05] Yes, I've known him for more than 10 years because (Redacted)
25 (Redacted)

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1 Q. [12:59:25] That -- okay. And your understanding was that this friend was from
2 the same area -- the same village as Ali Kushayb, correct?

3 A. [12:59:41] Yes, he lived in the same village as Ali Kushayb and that is Garsila.

4 Q. [12:59:49] Exactly. And he told -- well, okay.

5 Tell me exactly - as best as you can - how this friend identified Ali Kushayb to you
6 and we'll take it from there.

7 A. [13:00:14] When Ali Kushayb left the room number 16, he and others went to the
8 municipality building where the *mu'atmid* office is. They sat outside at number 14.

9 Then after that, he came to us, and when he approached us, Omar said to me, "This
10 person who is asking the question is Ali Kushayb."

11 MR EDWARDS: [13:01:01] Your Honour, this is obviously something we're going to
12 need to dig into a little bit.

13 PRESIDING JUDGE KORNER: [13:01:05] Yes, well, as I said, we are going to take
14 a slightly reduced lunch hour to try and make up for the time this morning.

15 Sir, we are going to have a break now between one and two o'clock; so if you would
16 like to be back at two o'clock, but your evidence will be concluded today. Thank
17 you.

18 MR EDWARDS: [13:01:30] And just for scheduling, can I tell your Honours, that
19 even if it doesn't appear so, I'm making fairly good progress, so I'm confident we'll
20 finish.

21 THE COURT USHER: [13:01:44] All rise.

22 (Recess taken at 1.01 p.m.)

23 (Upon resuming in open session at 2.06 p.m.)

24 THE COURT USHER: [14:06:30] All rise.

25 Please be seated.

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1 MR EDWARDS: [14:07:20] Thank you, your Honour.

2 Q. [14:07:23] Welcome back, Mr Witness.

3 So this friend of yours identifies Ali Kushayb simply by saying, "This person who is
4 asking the question is Ali Kushayb." That's all, right?

5 A. [14:07:44] Yes.

6 Q. [14:07:47] And because you knew that your friend lived in Garsila, and because
7 you understood that Ali Kushayb lived in Garsila, you assumed that he was a good
8 source of knowledge, right?

9 A. [14:08:10] Yes.

10 Q. [14:08:15] Did he say to you that they had met in different social occasions?

11 A. [14:08:31] I did not ask him because he -- they both live in the same village, so
12 they must meet in social events. However, I did not ask him about that topic.

13 Q. [14:08:53] Okay. And then coming back to -- oh, it's come off the screen.
14 Coming back to the sketch that we were looking at earlier of the municipality
15 building, tab 13 of the Prosecution -- there we are, thank you.

16 Sir, let me just get this right. You're sitting -- yes, can we scroll down a little bit,
17 please. Okay, thank you.

18 Right, so you're sitting at or near position 12 under the -- in the shade, right? And
19 have I got this right, you see the person identified as Ali Kushayb coming out of the
20 building at the meeting room at 16?

21 A. [14:09:57] That is correct, yes.

22 Q. [14:10:01] And he then walks over to the position -- to the building at position
23 14?

24 A. [14:10:15] That is correct.

25 Q. [14:10:16] And he's walking through a crowd of people all congregating in this

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1 area?

2 A. [14:10:26] This is the road that the three of them were taking. Some of the
3 public were there. They were going towards the west between the two buildings,
4 but between these two buildings here, there weren't many people from the public.

5 Q. [14:10:51] Well, I thought you told us earlier that there were hundreds of
6 members of the public congregating in this area.

7 A. [14:11:06] Yes.

8 Q. [14:11:09] And is it right that the hundreds of members of the public who were
9 congregating in this area, did they follow? Did they walk behind the men as they
10 made their way from position 16 to position 14?

11 A. [14:11:28] The men were inside the municipality building and in the square.
12 There were some people sitting, some were standing, but they were not walking.

13 Q. [14:11:47] Okay. And did you then make your way over to the building at
14 position 14?

15 A. [14:12:01] No. I did not move forward towards that building, but Ali Kushayb,
16 Assadiq and Al-Dayf Samih, they are the ones who came closer towards us, they were
17 walking towards us.

18 Q. [14:12:17] Okay. Now you're sheltering from the sun. Again, just so that we
19 get the timing right, your -- you spend about two-to-three hours, do you, in the
20 municipality building compound, correct?

21 A. [14:12:47] Yes, more than two hours, yes.

22 Q. [14:12:51] So we're getting close, we're getting to mid-to-late morning, the sun is
23 high in the sky, it's getting increasingly hot, isn't it?

24 A. [14:13:12] But the square is between buildings and there were many, many neem
25 trees there - and you can still find the trees there today - and these trees were there.

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1 Q. [14:13:23] Okay. That doesn't answer my question, sir. It's getting
2 increasingly hot because the sun is getting higher in the sky? Just focus on that
3 question, please. Do you agree?

4 A. [14:13:40] Yes.

5 Q. [14:13:42] Okay. And even if there are trees in the -- in that open space, I
6 anticipate that the area under the -- where there's the shade in the area by position 6, 7,
7 8, 9, 10, 11, that's quite crowded, isn't it, with others seeking shade from the sun?

8 A. [14:14:17] Yes, they were staying in the shade, but there were also many who
9 were in the square heading towards the trees. We were in that place, but they were
10 heading towards us, they got close to us.

11 Q. [14:14:33] Okay. I want now to move on to when these men pass out of the
12 municipality building compound, they exit, do you then follow or do you stay where
13 you are?

14 A. [14:15:30] We stayed in the same place where we were until we heard that there
15 was a sermon or a speech being given, so this is when we head to point 12, and there
16 was a door nearby.

17 Q. [14:15:51] Well, the door that you're talking about is the entrance into and the
18 exit from the compound, correct? Out towards the west.

19 A. [14:16:06] Yes.

20 Q. [14:16:07] Okay. And then do you go out of the compound or do you stay
21 within the compound and just observe what's going on through the door?

22 A. [14:16:25] We remained inside the perimeter and we were watching what was
23 happening in the square.

24 Q. [14:16:39] I want to be very clear about this. When you're talking about the
25 square, do you mean the space outside of the compound to the west of the

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1 compound?

2 A. [14:16:56] I'm talking about the compound itself and -- the same compound, we
3 call it the square.

4 Q. [14:17:06] And during this time, there is still -- there are still hundreds of
5 members of the community within the -- within the square, correct?

6 A. [14:17:28] Yes. Some remained sitting in their positions in the shade and some
7 also followed us and got closer to the door or to the entrance, yes.

8 Q. [14:17:40] And was the crowd silent or were the people speaking amongst
9 themselves?

10 A. [14:17:51] They were talking amongst each other about their own matters.
11 I don't know what they were talking about. However, when they heard a loud voice,
12 they all were silent in order to pay attention to what was being said.

13 Q. [14:18:14] At this point, are there any militia who come into the compound?

14 A. [14:18:26] No. They were on camel and horseback and they were standing in
15 the square.

16 Q. [14:18:39] Well, yes, exactly. At this point the militia have come into the square,
17 they are standing, they're on camelback, they're on horseback, we are agreed?
18 Listening to the sermon?

19 A. [14:19:10] Yes.

20 Q. [14:19:13] And they also are talking amongst themselves, correct?

21 A. [14:19:23] No. They were not speaking amongst each other. They were
22 paying attention to what was being said to them.

23 Q. [14:19:33] And you're still at position 12, thereabouts, right?

24 A. [14:19:44] We were close to position 12, we were standing there, yes.

25 Q. [14:19:52] I see. Okay. Thank you very much. I just wanted to get a flavor

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1 of the conditions in which you say you heard what you heard.

2 Let me now move on to the events of February 2004 and specifically the events of 28
3 to 29 February.

4 I want to talk about clothing for a moment. But I'm not going to mention the nature
5 of the clothing and I'd ask you to not to mention the nature of the clothing that you
6 were wearing. Do you follow?

7 A. [14:20:50] Yes, I follow.

8 Q. [14:20:52] Well, we know that you're wearing a *Jallabiya* and Darfur in February
9 is very hot, isn't it?

10 A. [14:21:08] Yes, sometimes it's very hot. And sometimes it would rain and, even
11 in March sometimes, or actually in March, it would be more hot than in February.

12 Q. [14:21:21] But on 28, 29 February it wasn't raining, was it?

13 A. [14:21:32] No, it was not raining, but it wasn't yet the end of winter.

14 Sometimes you could have a hot weather at night and cold during the day or
15 vice versa until March, when the weather would be more hot.

16 Q. [14:21:51] The item of clothing that we're talking about, you don't still have it,
17 do you?

18 A. [14:22:10] I still have some, and some I don't have them anymore. Some were
19 worn, because after a while you're wearing the clothes, you're washing them, you're
20 ironing them, so some I still don't have today, no.

21 MR EDWARDS: [14:22:29] Your Honour, just to -- we're going to have to go into
22 private session, just for two or three minutes.

23 PRESIDING JUDGE KORNER: [14:22:35] Yes, private session.

24 (Private session at 2.22 p.m.)

25 THE COURT OFFICER: [14:22:40] We're in private session, Madam President.

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25 A. [14:28:30] No, I did not see another person with a pen or pencil, until the

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1 following day when the person I had talked about yesterday was brought in. And
2 he said, "I -- I saw a person moving his head as if he had something to write with, but
3 I didn't get close to him in order to check 100 per cent whether he had a pen or a
4 pencil or not."

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 A. [14:29:37] There was some distance between us, but I only saw him lifting his
10 head as if he was asking people things and then moving his head as if he was writing
11 something down. But I didn't get close to him in order to check and verify, as I've
12 already said.

13 Q. [14:30:00] What was the name of the person who was registering the names of
14 the detainees as they arrived?

15 A. [14:30:22] There were many people who were writing down the names in
16 different ways, but the person who wrote down my name and the name who came
17 with me was Hassan Mohamed Jooma.

18 Q. [14:30:39] Is this person related to Abdel Elmagid Jooma?

19 A. [14:30:49] No, he is not related to Abdel Elmagid Jooma.

20 Q. [14:30:58] What organisation did Hassan Mohamed Jooma belong to?

21 A. [14:31:09] Hassan Mohamed Jooma had many positions, but at that time he was
22 working in the popular police.

23 (Redacted)

24 (Redacted)

25 MR EDWARDS: [14:31:28] Yes, absolutely. Yes, we can.

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1 PRESIDING JUDGE KORNER: [14:31:30] Yes. Public session, please.

2 MR EDWARDS: [14:31:33] Thank you.

3 (Open session at 2.31 p.m.)

4 THE COURT OFFICER: [14:31:39] We are back to public session, Madam President.

5 MR EDWARDS: [14:31:49]

6 Q. [14:31:50] Any particular unit of the popular police, as far as you know?

7 A. [14:31:59] In the coordination unit of the popular police. He was a coordinator.

8 Q. [14:32:06] How do you know that?

9 A. [14:32:12] Because he was from the same area and he was working as a

10 coordinator since then, and he remained a coordinator for many years. This is how I

11 know this.

12 Q. [14:32:24] What do you mean "he was from the same area"? The same area as

13 your home village or something different?

14 A. [14:32:37] He is from Mukjar.

15 Q. [14:32:44] Okay. But when I ask you how do you know this, your answer that

16 he's from Mukjar and was working as a coordinator since then, that doesn't answer

17 the question.

18 How do you know what his position was in the popular police?

19 A. [14:33:10] The popular police has a leadership and has a separate location than

20 the Central Reserve. They work many, many -- excuse me, many of the people from

21 the area work in the popular police, and this is how we know who their leader is in

22 the popular police.

23 Q. [14:33:34] But, sir, you weren't in the popular police at the time, were you?

24 A. [14:33:44] True, I did not work at -- in the popular police, and this -- this still

25 holds true.

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1 Q. [14:33:51] All right. Okay. But how is it that you in your position knew what
2 his position was in the popular police? Had somebody told you?

3 A. [14:34:12] Someone told me that. And as I know from someone from the
4 Central Reserve, I know that also from several people, as I mentioned to you,
5 someone from the inhabitants of the area know him -- knows him and knows that he
6 held that position.

7 Q. [14:34:37] All right. Well, common knowledge, would that sum it up?

8 A. [14:34:49] Yes.

9 Q. [14:34:51] Did he have a nickname?

10 A. [14:34:55] No, I do not know his nickname.

11 He has a nickname, yes, excuse me. Hassan Carter.

12 MR EDWARDS: [14:35:17] Your Honour, paragraph 81.

13 Q. [14:35:22] So 28 February, on your arrival there are at least 50 persons inside the
14 cell, correct?

15 A. [14:35:40] Yes, this is correct.

16 Q. [14:35:43] Well, let's -- let's have that sketch up, because we're going to be
17 referring to it -- we're going to be referring to it a little bit over the next few minutes.

18 It's at 15 in the Prosecution list of exhibits, 0219-0490. And if we could have the
19 public redacted version up, please, that would be -- that would be great.

20 Were you the last -- can we scroll down so that the "W" -- no, other way, please.

21 Other way. No, that's too much. That's fine, yeah. Thank you. Thank you.

22 All right. Now, on 28 February when you arrive, were you the last one to be placed
23 in the cell, or did others follow behind you over the course of the day?

24 A. [14:37:56] I was followed by many others during the day.

25 Q. [14:38:03] And by the end of the day on the 28th, are you in a position to

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1 estimate how many of you there were in cell number 4?

2 A. [14:38:25] I cannot give you an estimation, because I had estimated around 50
3 during the first day, but then many entered to cell number 4. They entered all, but I
4 wasn't able to count the numbers in cell number 1 and in other cells.

5 Q. [14:38:52] Okay. Well, at the moment I'm only focusing on cell number 4 and
6 cell number 1, okay? I'm not interested in the other cells, because you weren't there.
7 By the end of 28 February, is it right to say that the cell was rammed full of detainees?

8 A. [14:39:18] It was full, it was full during the first day, but then the numbers
9 increased to 60 and 70 during the same day.

10 Q. [14:39:38] Okay. Was there room for anyone to lie down? Just say yes or no.

11 A. [14:39:48] Yes.

12 Q. [14:39:53] Okay. Was there room for everyone to lie down at the same time?

13 A. [14:40:05] They were able to lie down at the same time, yes.

14 Q. [14:40:11] Okay. And did -- and were the men able to lie down for the entirety
15 of that day, even as more and more prisoners were brought in?

16 A. [14:40:29] No. When new prisoners entered, the room was full, the cell was full,
17 nobody was able to move at that time. You could only move if you pushed the
18 others away.

19 Q. [14:40:54] Okay. Now, you're released on the 29th and then rearrested, we
20 know. Did you ever find out why you were rearrested so soon after being released?

21 A. [14:41:15] I do not know. I do not know.

22 Q. [14:41:18] Did you ask?

23 A. [14:41:21] No, I did not ask, because I was taken. I did not ask what was I
24 guilty of. I did not ask.

25 Q. [14:41:38] No, I'm not asking -- I'm not asking that. I'm asking whether you

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1 made inquiries as to why you had been rearrested so soon after being released?

2 A. [14:41:56] I did not ask about that.

3 Q. [14:42:00] Did you ask to speak with Torshein?

4 A. [14:42:08] No.

5 Q. [14:42:10] Did you ask to speak to Samih, Al-Dayf Samih?

6 A. [14:42:21] No.

7 Q. [14:42:23] Why not?

8 A. [14:42:28] Those who took me there told me that they were ordered to take me,

9 but I did not think about asking Torshein or Dayf Samih about this. It didn't even

10 occur to me.

11 Q. [14:42:56] It didn't occur to you, okay. All right. And then you explained last

12 week that you were asked some questions by a lieutenant with a peculiar eye. And

13 this happened immediately after your rearrest, correct?

14 A. [14:43:23] Yes. But when they took me there, I didn't ask for him to come, he

15 just came to me.

16 Q. [14:43:37] Yeah. Okay. Now I'm not going to ask for your date of birth, or

17 anything like that, but in 2004 you were in your (Redacted)?

18 A. [14:44:01] Yes, I was -- I am (Redacted)

19 Q. [14:44:07] (Redacted)

20 (Redacted)

21 A. [14:44:18] Yes.

22 Q. [14:44:20] Were you amongst the oldest detainees at the police station?

23 A. [14:44:35] No. There were people who were between 70 and 80 years old.

24 Q. [14:44:45] Would you say that the majority of the detainees were, however,

25 younger than you?

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1 A. [14:44:56] There were younger people, yes. There were older people too.

2 There were people much older than I was.

3 Q. [14:45:11] On the day when detainees started to be called out of the cells to be
4 loaded onto vehicles, is it right that some of the older detainees were moved to cell 1?

5 A. [14:45:36] No. Some of them were taken and they were killed, such as the
6 *umdahs*. The *umdahs* were between 55 and 70 years old. They were older. Others
7 like Hamed Hassan (phon) who were older than 60, they were also taken.

8 Q. [14:46:04] Okay. Now let's -- let's put the *umdahs* to one side. And it's my
9 fault, I should have been more precise in my question. Apart from the *umdahs*, when
10 they started to be called out of the cells, did the remaining older detainees start to be
11 moved into cell 1?

12 A. [14:46:41] They did not do that. They did not move the prisoners from one cell
13 to another. They took them from cell number 1 and from cell number 4, but they
14 never transferred people to cell number 1. This never happened.

15 Q. [14:47:00] From cell number 1, if you could tell us, were there windows that
16 looked out on to the outside?

17 A. [14:47:15] The door that you see and that I drew opens in cell number 4.
18 However, cell number 1 does not have such an exit.

19 Q. [14:47:29] Okay. I don't know how it was translated. I wasn't asking you
20 about doors, sir. I was asking you about windows. Were there windows in cell
21 number 1 that looked out to the -- to the outside of the building?

22 A. [14:47:53] No. No windows there. There is only one window at the top of the
23 building and this was a very small window.

24 Q. [14:48:02] Okay. Which -- which -- which cell was that small window in? Tell
25 us the number.

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1 A. [14:48:21] The cells don't have windows. All the windows were closed.

2 Q. [14:48:32] Mr Witness, just listen to the question. You said that there was
3 a -- there was only one window at the top of the building. In which cell was that
4 window at the top of the building, the very small window?

5 A. [14:48:53] In cell number 1. In cell number 4 there was a window, but that
6 window was closed. In cell number 1 there was a window and it was very small.

7 Q. [14:49:11] So now focusing on your rearrest on the 29th, you're placed back into
8 cell number 4.

9 A. [14:49:35] Yes.

10 Q. [14:49:36] Roughly what time of the day did this happen when you were placed
11 back into cell number 4?

12 A. [14:49:50] It all happened in the morning before breakfast.

13 Q. [14:49:57] And after your rearrest, after you were placed back into cell number 4,
14 I anticipate that there were just as many detainees there then as there were when you
15 left, right?

16 A. [14:50:21] No. The number increased. After I was put in, the number
17 increased.

18 Q. [14:50:31] Okay. Let's take it step by step. When you are first placed back
19 into the cell on the 29th, the number of detainees was the same as when you had been
20 released earlier that morning, right?

21 A. [14:50:53] Yes. However, when I was detained again, I found that there were
22 many people being brought in. I was brought in and several others were brought in
23 along with me.

24 Q. [14:51:15] Okay. Well, that's what I -- that's what I want to explore. On the
25 29th when you're brought back into the cell, it's full and it only gets fuller, correct?

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1 A. [14:51:33] Yes.

2 Q. [14:51:34] There is absolutely no way for the detainees to lie down because it's so
3 full, correct?

4 A. [14:51:47] Yes. The cell was full and people weren't able to lie down. But
5 before that, before being full, I told you earlier they were able to lie down. However,
6 after that, they weren't able to lie down any more.

7 Q. [14:52:04] And obviously the fuller it gets, the [more] room there is for the
8 detainees to ... to be able to move, agree?

9 A. [14:52:27] The fuller it gets, the less they were able to move.

10 Q. [14:52:33] And the fuller it gets, the more the detainees get pushed deeper into
11 the cell, correct?

12 A. [14:52:48] Yes.

13 Q. [14:52:50] The more detain- -- the more detainees that are pushed into the cell,
14 the further away the detainees get from the door, correct?

15 A. [14:53:09] Yes. Part of them were sitting next to the door and other people
16 were in the building. Other people refused to go downstairs. But when more
17 people were brought in, they were -- they went to the middle of the room or to the
18 back of the room, yes.

19 Q. [14:53:44] Again, I don't know quite how it was in the original Arabic. A
20 moment ago you said some of the men refused to go downstairs. Can you just -- is
21 that what you said?

22 A. [14:54:00] Yes. When I say that, I mean the eastern or the western part of the
23 cell itself. There is no way to go upstairs or downstairs. The room is only one level.
24 When I say that, I mean to the west or to the end side of the room.

25 Q. [14:54:27] All right. Okay. I understand.

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1 Let me ask you this: Does there come a time in the day when the police or the militia
2 stop cramming more and more detainees into the cell? Or does it continue
3 throughout the whole day?

4 A. [14:55:05] They used to stop bringing the villagers whose villages were attacked.
5 There were more people brought to the cells. There were more people brought to
6 the other cells.

7 Q. [14:55:26] Okay. But -- but focussing on cell 4 and cell 1, does this cramming of
8 detainees in, does that continue throughout the day?

9 A. [14:55:42] Not continuously. It used to happen periodically, periodically.

10 Q. [14:55:56] And then what did the detainees do in order to make room for the
11 new detainees coming in? Did they just have to squish up ever more?

12 A. [14:56:23] They all wanted to go out, of course. They didn't want to stay in the
13 cells, but they had to stay there. So they were making more room when other
14 detainees used to come in, if there were any empty places, they used to occupy them.
15 But they were waiting for their release.

16 Q. [14:56:49] But the sad fact of the matter is that there just wasn't really any empty
17 places, was there -- were there?

18 A. [14:57:02] Before the cells were full, yes, there were empty places. But when
19 the cells were fuller, there were no more empty places as I described in my statement.

20 Q. [14:57:17] Tell us, the door to cell number 4, did it open inwards or outwards?
21 Did it open into the cell or did it open outward onto the veranda at space 5?

22 A. [14:57:39] It opened outwards to the outside.

23 Q. [14:57:46] Thank you. In answer to questions last Friday, by counsel for the
24 victims, you describe men with dried blood from their wounds, men who had been
25 beaten. Just tell us, did you witness yourself these beatings or any ill-treatment of

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1 the detainees inside cell 4?

2 A. [14:58:21] What case do you mean? I only saw one person the day before
3 March 2, they brought him from Bindisi or Kodoom because I knew him personally
4 from that region. He had blood on his body, however, I did not see where he was
5 beaten.

6 Q. [14:58:46] Okay. So he was already bloodied by the time he was brought into
7 the cell, have I got that right?

8 A. [14:58:56] Yes. However, he was not brought into our cell. I had seen him
9 and he had blood all over him, yes.

10 Q. [14:59:08] Was there a feeling amongst the detainees in the cell, as far as you
11 know, that those who were closest to the door were at greatest risk of being beaten?

12 A. [14:59:32] They did not expect that people would be beaten in the cell. They
13 didn't expect that. They only thought that they are going to be in the cell and they
14 are going to be released afterwards.

15 Q. [14:59:51] The holes in the door that we heard about last week, these obviously
16 were one of the only sources of light into the room, right?

17 A. [15:00:09] Yes.

18 Q. [15:00:14] And just talking about the windows now, they didn't open or they
19 weren't open, which made the cell extremely hot and airless, I imagine?

20 A. [15:00:35] Yes, I mentioned before that people were sweating and I already said
21 in my statement, yes, that prisoners were trying to get closer to the door.

22 Q. [15:00:51] Sorry, why were prisoners trying to get closer to the door?

23 A. [15:01:04] The prisoners were trying to get close to the door because there are
24 some holes so you could see if there's any movement outside the cell.

25 Q. [15:01:18] And also I anticipate it gave some people an opportunity to, you

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1 know, put their mouth or their nose by the hole and breathe in some fresh air, is that
2 fair?

3 A. [15:01:36] I did not see anyone get his mouth or nose closer or putting them
4 inside those holes. But when they would see from the outside what's happening or
5 if there's clean air coming out -- inside the room through the door, I don't know, but I
6 personally did not see anyone getting -- putting his nose or his mouth through that
7 hole in order to get fresh air.

8 Q. [15:02:05] Okay. Now, you're released on 3 March, so you were in detention
9 for four nights. Have I got that right?

10 A. [15:02:24] When I was released and -- I was visited by the person who took me
11 and told me not to go where the displaced were located --

12 Q. [15:02:38] Mr Witness, Mr Witness, let me just stop you for a moment, please.
13 I'm asking about the length of time you were in detention. I'm going to ask the
14 question again. You were in detention for a total of four nights, do I have that right?

15 A. [15:02:55] Yes.

16 Q. [15:02:58] You also said on Friday that your father, just changing the subject for
17 a moment, your father survived the attack on your home village and died about a
18 year after the attack on your home village, correct?

19 A. [15:03:24] Yes.

20 Q. [15:03:28] Paragraph 121 of the witness statement, madam -- your Honour.
21 After your -- after your release, you found your mother, your wives and children, but
22 couldn't find your brothers. Have I got that right?

23 A. [15:04:00] Yes.

24 Q. [15:04:03] Although happily they were later found alive, correct?

25 A. [15:04:13] Yes.

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1 Q. [15:04:15] Did you lose -- did you lose -- did you lose any siblings, sir?

2 A. [15:04:28] Yes. During the attack on my village, I lost my older sister.

3 Q. [15:04:36] Any other sibling?

4 A. [15:04:45] Yes. I lost my sister, also the wife -- when he came to Mukjar, he was
5 put in prison. I lost him and her and also my nephew, my brother's son was also
6 among those that I have lost.

7 Q. [15:05:18] Mr Witness, in your -- well, I might deal with that later. We'll have
8 to go into private session.

9 Okay. Actually, your Honour, I'm sorry, I'm coming right to the end, but I have to
10 refer to an article that was dealt with in private session last -- well, yesterday. And
11 that will take us to the end, I'm afraid.

12 PRESIDING JUDGE KORNER: [15:05:53] (Microphone not activated)

13 THE INTERPRETER: [15:05:59] Microphone, please.

14 PRESIDING JUDGE KORNER: [15:06:03] You're not going to deal with the visit.

15 MR EDWARDS: [15:06:06] Yes, I'm sorry, the third and the fourth sightings. Yes --

16 PRESIDING JUDGE KORNER: [15:06:10] Yes.

17 MR EDWARDS: [15:06:10] -- I'll deal with that in open session.

18 PRESIDING JUDGE KORNER: [15:06:12] All right. So -- all right, well, let's deal
19 with that now, we'll go into private and then you can conclude in open.

20 MR EDWARDS: [15:06:19] Great.

21 PRESIDING JUDGE KORNER: [15:06:22] Yes, thank you. Yes, all right. Private
22 session.

23 (Private session at 3.06 p.m.)

24 THE COURT OFFICER: [15:06:41] We're in private session, Madam President.

25 (Redacted)

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22 (Open session at 3.25 p.m.)

23 THE COURT OFFICER: [15:25:29] We're back to open session, Madam President.

24 MR EDWARDS: [15:26:01]

25 Q. [15:26:02] Right, description of Ali Kushayb, please. How old was he when

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1 you first saw him, Mr Witness, approximately?

2 A. [15:26:13] At that time he was between 50 and 60 years of age, almost.

3 Q. [15:26:23] Now, you describe him as having a straight posture; is that right?

4 Do you confirm that?

5 A. [15:26:34] Yes.

6 Q. [15:26:36] Did you notice anything peculiar about his ears?

7 A. [15:26:46] No, I did not notice his ear, but there are some who would say that he
8 had some part -- or, some holes in his ear, but I did not include that in my statement
9 because I was not sure whether it was a hole or anything else.

10 Q. [15:27:04] But you've certainly heard people say that he had a hole in his ear, a
11 pierced ear, right?

12 A. [15:27:14] This is not my saying. This is what I heard from the community, that
13 he had a hole in one of his ears. But I did not mention that in my statement because I
14 personally did not notice that. Even at that time I did not notice it and I did not
15 mention it.

16 Q. [15:27:33] Did you notice anything else peculiar or particular about his cheeks,
17 for example?

18 A. [15:27:45] No, I did not notice anything particular about his cheeks.

19 Q. [15:27:51] When you saw him in Mukjar, what can you tell us about any facial
20 hair he had, a beard or a moustache? Was he clean shaven?

21 A. [15:28:09] What I noticed was that he had *galahid* (phon). A *galahid* is what we
22 use in order to describe a person who has a little bit of facial hair. This is what I saw.
23 And I saw that he was not leaning forward, but he was straight, he was standing
24 straight. And he had a strong voice, a loud voice. If he wanted to talk to anyone,
25 the other person could hear him clearly from afar. This is what I had noticed.

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1 Q. [15:28:43] Mr Witness, we were talking about facial hair a minute ago. I wasn't
2 asking you about his voice. Okay. Let's concentrate on the questions I ask you,
3 please.

4 A. [15:28:55] Yes. He did not have any moustache. And even if he had a
5 moustache, maybe before that he had shaved it, because what I saw is that he did not
6 have any moustache.

7 Q. [15:29:14] Are you able to give us the name or names of anyone in the
8 community who say that he had pierced ears? Pierced ears or a pierced ear.

9 A. [15:29:38] What is the point of a person from society or community talking
10 about it?

11 Q. [15:29:43] Mr Witness, just answer the question, please. We don't have much
12 time. Can you give me the name or names of anyone from your community who has
13 mentioned Ali Kushayb having a pierced ear, yes or no?

14 A. [15:30:00] Yes.

15 Q. [15:30:04] Please, we're listening.

16 PRESIDING JUDGE KORNER: You mean you're asking him. He said he can --

17 MR EDWARDS: Forgive me. Yeah.

18 THE WITNESS: [15:30:23](Interpretation) He is a person known as Abdul Aziz Ali
19 Abdulkarim. When -- it was him who said that Ali Kushayb had a pierced ear.

20 MR EDWARDS:

21 Q. [15:30:40] Okay. And was this a common topic of conversation within the
22 community, these kind of details about Ali Kushayb's appearance?

23 A. [15:30:59] In society some people used to say that, but the first person I heard it
24 from him was Abdul Aziz Ali, yes.

25 Q. [15:31:14] Okay. First person, but not the last, if I understand.

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1 Okay. Paragraph 144, please.

2 You told us yesterday that after your release from Mukjar police station you next saw

3 Ali Kushayb about 50 days later.

4 A. [15:31:53] After around 50 days, because it was in April, at the end of April.

5 But I do not recall that exactly. Around 50 days, yes.

6 Q. [15:32:08] So certainly it wasn't as long after your detention as seven months.

7 That would be absolutely wrong, would it?

8 A. [15:32:31] There were not seven months, because it was a short period. I saw

9 him in March, and after that I saw him in April, and that makes around 50 days.

10 Q. [15:32:44] Now, according to you, Ali Kushayb sold you medicine for animals,

11 veterinary medicine?

12 A. [15:32:59] Yes, true.

13 Q. [15:33:03] At his shop, do you know if he sold medicine for humans?

14 A. [15:33:16] What I know is that he had veterinary medicine. I do not know if he

15 had any medication for humans. I was certain that he sold veterinary medicine.

16 Q. [15:33:38] The person who directed you to Ali Kushayb's shop, did he know

17 why you wanted to see Ali Kushayb?

18 A. [15:34:01] He did not ask me that. He did not ask me that.

19 Q. [15:34:06] Did you tell him?

20 A. [15:34:10] No. I only asked him about the location of Ali Kushayb's shop and

21 he guided me to where he was. I did not explain to him why I wanted to know that.

22 Q. [15:34:27] Was this person a friend or a - well, let's start with that - a friend of

23 Ali Kushayb?

24 A. [15:34:41] He wasn't a friend of Ali Kushayb. I don't know what was the

25 relationship between the two. But I only knew him from before.

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1 Q. [15:35:04] I'm just going to put it on the record, you say your statement to the
2 Prosecution that the next -- well, after your detention in Mukjar, the next occasion you
3 saw Ali Kushayb was in November 2004.

4 A. [15:35:29] In November 2004?

5 Q. [15:35:32] Yes. So which is it, is it November 2004 or April 2004?

6 A. [15:35:41] In April, April 2004. Less than two months after that. I do not
7 know about April and other months. I -- what I do know is that it happened two
8 months after the first incident.

9 Q. [15:36:03] And then the fourth, and I guess final time you saw Ali Kushayb, was
10 in 2007; is that right?

11 A. [15:36:15] That is correct. That is correct.

12 Q. [15:36:21] I want to ask you about someone called (Redacted).

13 Is this person still alive?

14 A. [15:36:34] He is still alive, yes.

15 Q. [15:36:38] What kind of a shop -- what kind of a shop does he have?

16 A. [15:36:47] At that time he had a shop for foodstuffs, food products.

17 MR SACHITHANANDAN: [15:36:58] I was just going to suggest, if we're going to
18 go into detail about the location and person, perhaps private session is appropriate.

19 PRESIDING JUDGE KORNER: [15:37:10] (Microphone not activated)

20 MR EDWARDS: [15:37:11] A little bit. Not very much. Just for a couple of
21 minutes, your Honour. And then I can put my case.

22 PRESIDING JUDGE KORNER: [15:37:20] (Microphone not activated)

23 Sorry, we'll go into private session.

24 (Private session at 3.37 p.m.)

25 THE COURT OFFICER: [15:37:35] We're in private session, Madam President.

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- 12 (Open session at 3.43 p.m.)
- 13 THE COURT OFFICER: [15:44:01] We're back in open session, Madam President.
- 14 MR EDWARDS: [15:44:22] Thank you.
- 15 Actually, a couple of more brief matters before I put my case.
- 16 Q. [15:44:26] Mr Witness, do you know -- do you know someone by the name of
- 17 (Redacted)?
- 18 A. [15:44:38] Yes. Yes, I know him. Yes.
- 19 Q. [15:44:42] Do you know someone by the name of (Redacted)?
- 20 A. [15:44:58] (Redacted) yes, I know him. I know him very well.
- 21 Q. [15:45:03] And do you know someone by the name of (Redacted)
- 22 (Redacted)?
- 23 A. [15:45:15] (Redacted) I do not remember
- 24 knowing such a person.
- 25 Q. [15:45:28] Okay. Apart from the person who you -- who you don't recognise,

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1 the two first -- the two people who I first mentioned, are you still in contact with
2 them?

3 A. [15:45:48] No. (Redacted)
4 (Redacted)

5 It's been a long time since I've heard anything about him.

6 Q. [15:46:06] Can you give us some idea of what a long time means. Are we
7 talking many months or many years?

8 A. [15:46:16] Years. Whenever there are more than five years, I consider it a long
9 time. So it's, yes, more than five years.

10 Q. [15:46:30] Okay. And then (Redacted), when did you last have
11 contact with him?

12 A. [15:46:39] I did not get in contact with him, but (Redacted)
13 (Redacted) When one of his relatives
14 passed away, he came to offer his condolences. I saw him, I greeted him, and he
15 went back the second day. However, I did not talk to him. I was not in contact
16 with him. Three years have passed since I last got in contact with him.

17 Q. [15:47:15] Okay. Mr Witness, it now -- it's now the time for me to ask a couple
18 of final questions.

19 You've told us that you consider Ali Kushayb to be your enemy, right?

20 A. [15:47:40] Yes, yes.

21 Q. [15:47:45] You consider Ali Kushayb to be guilty of terrible crimes in Darfur.

22 A. [15:48:00] Yes.

23 Q. [15:48:01] You want the person you believe to be Ali Kushayb to be punished,
24 don't you?

25 A. [15:48:08] Yes. If he was found guilty, legally, that is yes.

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1 Q. [15:48:18] And is it right that you're prepared to say whatever is necessary to
2 ensure that he is in fact convicted?

3 A. [15:48:36] I knew him, and I saw him with my own eyes, and I explained
4 everything that I saw in my own eyes to you.

5 Q. [15:48:46] Isn't -- is it the case that you did not see Ali Kushayb at the Mukjar
6 municipality building?

7 A. [15:49:06] This is weird. I explained to you that I saw him in the Mukjar
8 municipality building, and I explained that to you earlier on. Why are you repeating
9 that question?

10 Q. [15:49:18] Is it the case that you did not see Ali Kushayb at the Mukjar police
11 station?

12 A. [15:49:33] No. I saw him at the Mukjar police station, and I explained to you in
13 my statement and in my conversation with you earlier on. I explained that.

14 MR EDWARDS: [15:49:48] I'm sorry, your Honour, I didn't -- I didn't catch what you
15 were saying.

16 PRESIDING JUDGE KORNER: [15:49:51] I think you need -- it's the double negative
17 about how that's being translated is another question. But I think you need to put it
18 more clearly and simply inquire whether it's the case that he invented this in order to
19 convict him, which is effectively what you're saying.

20 MR EDWARDS: [15:50:12] Yeah.

21 Q. [15:50:13] Is it the case -- is it the case, Mr Witness, that you've invented saying
22 that you saw Ali Kushayb on the occasions that you've told us about in order to see
23 the man in the dock convicted?

24 A. [15:50:36] What I saw him doing means that he has to be legally convicted. But
25 this is not up to me to do that. I did not invent that. I gave you pieces of

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1 information, confirmed pieces of information. I told you about what I saw with my
2 own eyes.

3 Q. [15:50:57] Thank you, Mr Witness.

4 Those are my questions.

5 PRESIDING JUDGE KORNER: [15:51:00] Yes. Any re-examination?

6 MR SACHITHANANDAN: [15:51:03] No, your Honour.

7 PRESIDING JUDGE KORNER: [15:51:05] Any questions?

8 JUDGE ALAPINI-GANSOU: [15:51:27] (Microphone not activated)

9 THE INTERPRETER: [15:51:30] Microphone, please.

10 JUDGE ALAPINI-GANSOU: [15:51:35] (Interpretation) Thank you very much.

11 I was saying I would like to put two or three questions to the witness for confirmation
12 purposes. My first question has to do with the composition of the people in your
13 village, Mr Witness. Could you tell us whether or not there are other ethnic groups,
14 other than the Fur group, in your village, even (Overlapping speakers)

15 THE WITNESS: [15:52:16](Interpretation) The -- in the village there were only Fur
16 ethnicity.

17 JUDGE ALAPINI-GANSOU: [15:52:23] (Interpretation) Secondly, you mention a
18 number of leaders who had been killed during the attacks or after the attacks. Could
19 you tell us just in a few words why those leaders were killed. Were they just
20 amongst the members of the population or were they targeted?

21 THE WITNESS: [15:52:59](Interpretation) In my viewpoint, they were targeted
22 because they were driven, they were killed because they were all from the Fur tribe.
23 This is a targeting, a targeting of the tribe itself.

24 JUDGE ALAPINI-GANSOU: [15:53:17] (Interpretation) Now, were they with other
25 members of the population who were not leaders as they were being taken away?

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1 THE WITNESS: [15:53:40](Interpretation) All that I know is that there were two
2 people from Arenga tribe who were killed among the others who were killed too.
3 However, they were not leaders.

4 JUDGE ALAPINI-GANSOU: [15:54:00] (Interpretation) One last question and this is
5 about the people whose bodies you found and who had been buried. You
6 said -- and I believe that some people were not buried. What was done with those
7 particular people?

8 THE WITNESS: [15:54:30](Interpretation) Those who were not buried were -- their
9 bones were collected in some caves and they are still there. They still aren't buried
10 and others were not found up until this day.

11 JUDGE ALAPINI-GANSOU: [15:54:57] (Interpretation) I have finished putting my
12 questions, Madam President.

13 PRESIDING JUDGE KORNER: [15:55:04] Yes, sir, I want to ask you a little bit more
14 about the man Torshein that you have been talking about.

15 It was put to you that he was a commissioner in 2003 and you said, no, he was a
16 governor.

17 THE WITNESS: [15:55:30](Interpretation) No, he was a commissioner, a *mu'atamid*.
18 A commissioner is the function of the governor, yes. So a governor.

19 PRESIDING JUDGE KORNER: [15:55:47] Okay. You've said that -- I thought you
20 said earlier that commissioners only came into existence in 2004, later on and that at
21 the time when you had dealings with him, this man was a governor.

22 THE WITNESS: [15:56:12](Interpretation) Yes, yes. But it was the same function.
23 Only the name changed from commissioner to governor.

24 PRESIDING JUDGE KORNER: [15:56:22] Okay. What I want to understand is this:
25 He was the person (Redacted)

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1 (Redacted) Is that right?

2 THE WITNESS: [15:57:04](Interpretation) This is correct. We are talking about the
3 same commissioner, Torshein.

4 PRESIDING JUDGE KORNER: [15:57:13] Right. Did he therefore have powers to
5 order the arrest of anyone who came within his area?

6 THE WITNESS: [15:57:30](Interpretation) Yes, he had such powers because he is the
7 highest-ranking official in the area, politically speaking, that is.

8 PRESIDING JUDGE KORNER: [15:57:41] This is what I want to understand. From
9 your knowledge and dealings with the people that you've mentioned, how did he
10 interact with the military and police? Was he in charge of them? Did he have the
11 power to give orders, or did their chain of -- was their chain of command separate?

12 THE WITNESS: [15:58:23](Interpretation) There is a close relationship between the
13 powers of the governor and those of the military. The governor does not represent
14 the national party. The soldiers are under his leadership. When they want to do
15 something, it has to do with his approval. He is the highest-ranking official in
16 charge of the military.

17 PRESIDING JUDGE KORNER: [15:58:56] For the area?

18 THE WITNESS: [15:59:03](Interpretation) Yes, yes, in charge of the whole area.

19 PRESIDING JUDGE KORNER: [15:59:06] And does he have the same authority over
20 the police forces that you have talked about?

21 THE WITNESS: [15:59:18](Interpretation) All of the police fall under his leadership,
22 they follow his order, yes.

23 PRESIDING JUDGE KORNER: [15:59:26] And to whom would the commissioner or
24 governor Torshein report?

25 THE WITNESS: [15:59:39](Interpretation) He reports to a higher authority under the

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1 name of *al-wali*, the *wali*. The *wali* reports to the president of the republic.

2 PRESIDING JUDGE KORNER: [15:59:53] You told us that Harun, whom you knew
3 or had seen before came to the municipality and had some kind of meeting with
4 Torshein.

5 THE WITNESS: [16:00:16](Interpretation) Yes, yes.

6 PRESIDING JUDGE KORNER: [16:00:22] Did Harun have any authority, as
7 you -- as far as you understood, and please say if you don't know, over Torshein?

8 THE WITNESS: [16:00:39](Interpretation) Yes. Harun at that -- at that time was the
9 minister of interior, the state minister of interior, and he was in charge of the police
10 forces and Torshein was a political appointee, so Harun can coordinate with Torshein
11 together.

12 PRESIDING JUDGE KORNER: [16:01:00] Coordinate is one thing. Could he give
13 orders or not to Torshein?

14 THE WITNESS: [16:01:07](Interpretation) Yes, Harun can give orders to Torshein.

15 PRESIDING JUDGE KORNER: [16:01:15] And as far as authority over the Janjaweed
16 was concerned, you told us that he -- that (Redacted) had sent
17 Ali Kushayb and Al-Dayf Samih to Sindu.

18 THE WITNESS: [16:01:52](Interpretation) (Redacted) had sent
19 Ali Kushayb and Al-Dayf Samih to Sindu, yes.

20 PRESIDING JUDGE KORNER: [16:02:15] And who did you understand he meant
21 by "they" had sent?

22 THE WITNESS: [16:02:23](Interpretation) (Redacted)

23 PRESIDING JUDGE KORNER: [16:02:26] Yes, all right.

24 Yes, sir, thank you very much. That concludes your evidence finally. The Court is
25 very grateful to you for coming to court to give the evidence that you have. Without

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1 the willingness of witnesses to attend court, these trials could not take place. And so

2 we thank you very much for that and we wish you a safe return.

3 THE WITNESS: [16:03:08](Interpretation) Thank you very much.

4 PRESIDING JUDGE KORNER: [16:03:13] If the court officer would like to take the
5 witness out of court, please.

6 (The witness is excused)

7 (Trial Chamber confers)

8 PRESIDING JUDGE KORNER: [16:03:47] Yes, I think, Mr Nicholls, Mr Edwards, we
9 said we'd give you a decision about the -- or our views about the further expert. In
10 fact, we didn't have an opportunity to discuss him, but we will do it now and we'll
11 get back to you tomorrow morning.

12 How long is the next witness anticipated to last?

13 MR NICHOLLS: [16:04:08] I think approximately a full day on direct.

14 PRESIDING JUDGE KORNER: [16:04:14] A full day on direct. Okay.

15 Mr Laucci, welcome back.

16 MR LAUCCI: [16:04:20] Thank you.

17 PRESIDING JUDGE KORNER: [16:04:22] Even if hidden. How long do you think
18 cross-examination is likely to take?

19 MR LAUCCI: [16:04:28] One full day is an absolute minimum and it's likely it will
20 be a little bit more.

21 PRESIDING JUDGE KORNER: [16:04:39] I didn't understand a word of that.

22 MR LAUCCI: [16:04:42] Okay, that's a good test for tomorrow, by the way. I said
23 that one full day of cross-examination was an absolute minimum and it was likely to
24 be longer.

25 PRESIDING JUDGE KORNER: [16:04:50] And tomorrow is Tuesday so we're not

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- 1 likely to get to the next witness until Thursday.
- 2 MR LAUCCI: [16:04:55] Thursday afternoon, yes, I would say.
- 3 PRESIDING JUDGE KORNER: [16:04:59] All right.
- 4 MR NICHOLLS: [16:05:01] Yes, and that witness just -- well, one day on direct for
- 5 that second witness as well approximately, correct?
- 6 PRESIDING JUDGE KORNER: [16:05:11] Tomorrow's witness, however, I'm told, I
- 7 thought he was the first of the Fur speakers, but I gather he's standard Arabic?
- 8 MR NICHOLLS: [16:05:22] He will be Arabic. But the -- again, I turn to my right,
- 9 the following witness after tomorrow's will be in Fur.
- 10 PRESIDING JUDGE KORNER: All right.
- 11 MR NICHOLLS: [16:05:28] And the one after as well.
- 12 PRESIDING JUDGE KORNER: [16:05:33] Well, we're in for a new experience, yes.
- 13 Yes, very well, so 9.30 tomorrow morning. Thank you.
- 14 THE COURT USHER: [16:05:40] All rise.
- 15 (The hearing ends in open session at 4.05 p.m.)