

Trial Hearing
WITNESS: DAR-OTP-P-0919

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Tuesday, 12 July 2022
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:51] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:34:13] Yes, good morning, all.
15 And can we call the case, please.
16 THE COURT OFFICER: [9:34:21] Good morning, Madam President, your Honours.
17 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
18 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
19 And for the record, we're in open session.
20 PRESIDING JUDGE KORNER: [9:34:39] Yes, thank you.
21 Appearances by the Prosecution, please.
22 MR NICHOLLS: [9:34:43] Good morning, Madam President. Good morning,
23 your Honours. Good morning, everyone. Julian Nicholls with
24 Pubudu Sachithanandan, Laura Morris and Claire Sabatini. Thank you.
25 PRESIDING JUDGE KORNER: [9:34:52] Thank you.

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1 Defence.

2 MR LAUCCI: [9:34:55] (Interpretation) Good morning, your Honour. Good
3 morning, colleagues. Beside Mr Abd-Al-Rahman, who is present in the courtroom
4 today, on the Defence team we have Camille Divet, who is assistant evidence
5 reviewer; Mr Ahmad Issa, case manager; my colleague Iain Edwards; and myself,
6 Cyril Laucci, lead counsel.

7 PRESIDING JUDGE KORNER: [9:35:26] Yes, thank you.

8 And finally, the representatives of the victims.

9 MR SHAH: [9:35:32] Good morning, Madam President. Good morning,
10 your Honours. Good morning, colleagues. The participating victims are
11 represented today by Idriss Anbari, case manager, and myself, Anand Shah, associate
12 counsel.

13 And I also want to advise your Honours that Ms von Wistinghausen will be joining
14 us tomorrow, likely for the afternoon session. Thank you.

15 PRESIDING JUDGE KORNER: [9:35:52] Yes. Thank you very much.

16 All right. Before the witness comes in there are a couple of matters. First of all, I
17 think you've all been informed, but this Friday, just so that it's clear, the sitting times
18 are slightly different. We will start at 9.15, sorry, and then break at 10.45, and then
19 we are sitting from half past 2 only. Is that right?

20 Sorry, only as I'm reading out the times, I thought it was somewhat different.

21 Yes, I thought we were sitting at 2, but because of the Fur -- the Fur interpretation, I
22 gather we can't do a two-hour session. So we will be sitting from 2.30 till 4 o'clock as
23 normal. But the morning session will be slightly truncated. I hope everybody has
24 been told about that so that -- from the point of view of witnesses.

25 The second matter really, Mr Laucci, arises from your putting your case last Friday,

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1 and you put to the witness from last Friday what I can only call is a reversion to part
2 of your original defence, namely that nobody called Ali Kushayb actually exists and
3 that he was an invention to cover up the crimes committed by others. But you've not
4 put that to any of the witnesses, if I can put it that way, the crime-base witnesses who
5 have been talking about a man they know as Ali Kushayb. It's not been put to them
6 that no such person exists and nobody gave that name. And I'm raising it now
7 because this is another witness who's going to talk about a man that he calls
8 "Ali Kushayb". So I'm a bit unclear at the moment what -- what that part of your
9 defence is.

10 MR LAUCCI: [9:38:31] Madam President, I will try to answer to the best of my
11 capacity to that question. From -- I mean, the -- the position of the Defence has
12 always been that Ali Kushayb either does not exist or is not Mr Ali Muhammad Ali
13 Abd-Al-Rahman. That's the position.
14 Maybe, but I would like to -- to double-check that, but I fully rely on your recollection.
15 For other witnesses, the case that was put was that they were misled in their
16 identification of Ali Kushayb and this was not Mr Ali Muhammad Ali
17 Abd-Al-Rahman.

18 For this witness, I'm talking about P-643, and I'm cautious because we are in open
19 session, it appeared from his evidence that he had testified, really, and to my
20 recollection that's the first such witness who has testified about -- if Ali Kushayb is an
21 invention, about the making of Ali Kushayb. And that is the fact that he became at
22 some point *agid al-ogada*. First witness explaining how this becoming Ali -- *agid*
23 *al-ogada* took place and existed. Which led me, because of that and because we are at
24 the -- really at the initial, I will say creation, but you can take apparition of
25 Ali Kushayb, which, because of that, that's the reason why the case that I put to that

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1 witness was more about the existence rather than whether Ali Kushayb was
2 Mr Ali Muhammad Ali Abd-Al-Rahman.
3 That's maybe the nuance that I had to make for this specific witness. Because, once
4 again, the evidence of that witness went to really the -- the -- yeah, how Ali Kushayb
5 became Ali Kushayb.
6 PRESIDING JUDGE KORNER: [9:40:36] I perfectly understand that. You're saying
7 that this -- the committee that he talked about didn't exist at all and that, as you said,
8 Ali Kushayb was a -- was an invention to cover up the crimes committed by others,
9 possibly including himself. I mean that was very clear and very proper.
10 But, if that is your case, if that is, as it were, strand number one of your case, then each
11 of the earlier witnesses, the people who were -- witnessed the attacks or were locked
12 up in Mukjar, according to them, have said that a man calling himself "Ali Kushayb"
13 was present and -- and ordering things. Well, the two are not compatible. In other
14 words, you should have been putting to these witnesses that -- that there is no such
15 person called Ali Kushayb at all, that the -- the name never happened at the time.
16 MR LAUCCI: [9:41:50] I will need to -- to double-check that, but in my recollection,
17 the two alternatives have always been presented. Maybe because
18 the witness -- the other witnesses were speaking more about a specific event over
19 the course of the events of the charges, saying there was a person called Ali Kushayb
20 doing that and that, we said, well, your basis for identification or recognition of
21 Ali Kushayb is not there and this is -- we say that you were mistaken. Because these
22 other witness did not speak specifically about the apparition of Ali Kushayb, we focus
23 more on that aspect, it's the wrong person, than Ali Kushayb did not exist. That's
24 the nuance that we have been making, but I'm --
25 PRESIDING JUDGE KORNER: [9:42:38] But the -- sorry, I do apologise for

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1 interrupting, Mr Laucci. But what I want to be quite clear about is, because
2 obviously when we're thinking about writing the judgment, as we are throughout, we
3 have to look at what evidence is challenged and what evidence is not challenged and
4 make -- and when it's not challenged that a man giving the name Ali Kushayb, who
5 we fully appreciate you say is not your client, and -- and you said to the witness who
6 said that he went back to check at the pharmacy that -- that that simply wasn't true,
7 all of that's very clear, but what you're not challenging is that somebody at various
8 locations during the period, really, mid-2003 to mid-2004 is going around committing
9 crimes, in the sense of leading attacks or looting or being present at meetings. I
10 mean, that's not the crime, but -- and so at the moment it's all very unclear.

11 MR LAUCCI: [9:43:50] Yes. Madam President, what I can propose is that I -- I look
12 more at what has been done with the other witness and we can revert to -- to you on
13 that specific point.

14 PRESIDING JUDGE KORNER: [9:44:03] Well --

15 MR LAUCCI: [9:44:03] If -- I mean, maybe we have been too specific in
16 the -- the case that we were making for the previous witnesses, and we will be more
17 careful about that in the future. But, I mean, as I said, from the beginning, the case of
18 the Defence on this specific aspect is Ali Kushayb either does not exist or is not
19 Mr Ali Muhammad Ali Abd-Al-Rahman.

20 PRESIDING JUDGE KORNER: [9:44:32] Yes, all right. And appreciating
21 that -- that this is really exploring matters rather than putting a positive case, because
22 your positive case is that if anybody says it was your client, they're either mistaken or
23 lying. I mean that -- that's very clear. Can I make -- but it's because you
24 resuscitated what I thought had disappeared from your defence that I'm raising it.

25 MR LAUCCI: [9:44:58] Actually, the reason why this was more obviously put to

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1 the last witness is because of his evidence about the making of the *agid al-ogada* and of
2 the head of the Mujahidin subcommittee. That's the only reason why we insisted
3 specifically with that witness more than with others on that aspect.

4 PRESIDING JUDGE KORNER: [9:45:18] All right. Well, I thought I'd raise it before
5 the witness comes.

6 Are you cross-examining this witness, Mr Edwards, or -- yeah, all right. Well, we'll
7 see how we go.

8 Just a reminder to everybody -- oh, Mr Nicholls -- but a reminder to everybody,
9 before I forget, and it's going to be more difficult for me than for almost everybody
10 else, I think, is we're going to have to leave massive pauses between questions and
11 answers. I don't know how the interpretation is being done this morning, but it's
12 obviously going to be trial and error.

13 Yes, sorry, Mr Nicholls, you wanted to raise something.

14 MR NICHOLLS: [9:46:01] Thank you, your Honour, just very briefly. I mean, this
15 was all brought up, the nature of the Defence, with the very -- with the second
16 witness, following the expert, the first fact witness. I put it that the case appears to
17 be that he does not exist. And what our understanding was after that was that not
18 the case, that we were put to the proof of everything, you know, that Sudan -- well,
19 everything that's not in an agreed fact. So I had thought we were over that until
20 the last witness.

21 PRESIDING JUDGE KORNER: [9:46:31] As I say, that's what I thought as well and
22 that's why I raised it, because, as I say, it's really important, both for the Prosecution
23 and for us as the judges, to know what evidence is in dispute and what is not, aside
24 from agreed facts.

25 I was told there was something else that you wanted -- some procedural matter that

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1 you wanted to raise before the witness comes in. Yes.

2 MR SACHITHANANDAN: [9:46:53] Yes, your Honour. Not strictly procedural.

3 From the preparation session, it became evident to us that the witness, in addition to
4 being illiterate, struggles with long sentences, struggles with dates, so I would like to
5 invite parties, participants and the Bench to use as simple language as possible, short
6 sentences, et cetera.

7 And I would like to raise one point in private session, your Honour. It will take -- it
8 will take one minute.

9 PRESIDING JUDGE KORNER: [9:47:24] Yes, all right.

10 Private session, please.

11 (Private session at 9.47 a.m.)

12 THE COURT OFFICER: [9:47:37] We are in private session, Madam President.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Open session at 9.50 a.m.)

19 THE COURT OFFICER: [9:50:16] We are in open session, Madam President.

20 (The witness enters the courtroom)

21 PRESIDING JUDGE KORNER: [9:51:18] Sir, can you hear and understand me?

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23 (The witness speaks Fur)

24 THE WITNESS: [9:51:34](Interpretation) Yes, I can hear you.

25 PRESIDING JUDGE KORNER: [9:51:37] Thank you very much for coming to court.

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- 1 THE WITNESS: [9:51:49](Interpretation) You are most welcome.
- 2 PRESIDING JUDGE KORNER: [9:51:51] In a moment, you will be asked to take
- 3 a declaration to tell the truth.
- 4 THE WITNESS: [9:52:12](Interpretation) God willing.
- 5 PRESIDING JUDGE KORNER: [9:52:15] After that, you will be asked questions by
- 6 lawyers in this case.
- 7 It is very --
- 8 THE WITNESS: [9:52:37](Interpretation) This is good.
- 9 PRESIDING JUDGE KORNER: [9:52:39] It is very important that you say
- 10 straightaway if you do not understand the question so that it can be repeated.
- 11 THE WITNESS: [9:53:07](Interpretation) This is good.
- 12 PRESIDING JUDGE KORNER: [9:53:09] Yes. Would you like now, please, to
- 13 repeat after the court officer the words of the declaration.
- 14 THE WITNESS: [09:53:14] (No interpretation)
- 15 THE COURT OFFICER: [9:53:39] Good morning, Mr Witness. I will first read
- 16 the solemn undertaking to you. Please follow me and repeat what I'm saying.
- 17 THE WITNESS: [9:54:05] (No interpretation)
- 18 THE COURT OFFICER: [9:54:08] I solemnly declare.
- 19 THE WITNESS: [9:54:24](Interpretation) Yes.
- 20 THE COURT OFFICER: [9:54:29] Mr Witness, could you please repeat: I solemnly
- 21 declare.
- 22 THE WITNESS: [09:54:32] (No interpretation)
- 23 THE COURT OFFICER: [09:54:40] I solemnly declare that I will speak the truth,
- 24 the whole truth and nothing but the truth.
- 25 THE WITNESS: [9:55:13](Interpretation) I solemnly declare that I will tell the truth,

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1 the whole truth and nothing but the truth.

2 THE COURT OFFICER: [9:55:20] Thank you, Mr Witness. You are now under
3 oath.

4 THE WITNESS: [9:55:28] (No interpretation)

5 PRESIDING JUDGE KORNER: [9:55:28] Yes, Mr Sachithanandan, good luck.

6 MR SACHITHANANDAN: [9:55:32] Thank you, your Honour. I'm probably going
7 to need it.

8 QUESTIONED BY MR SACHITHANANDAN:

9 Q. [9:55:41] Mr Witness, good morning. You remember meeting me a few days
10 ago?

11 A. [9:55:57] Yes, I do.

12 Q. [9:56:01] And my colleague Laura who's sitting behind me?

13 A. [9:56:14] Yes.

14 Q. [9:56:18] I'm going to ask you a few questions on behalf of the Prosecutor.

15 A. [9:56:37] (No interpretation)

16 Q. [9:56:38] But please let me know if --

17 A. [9:56:40] Yes, thank you.

18 Q. [9:56:44] But please let me know if anything is unclear at any point. All right?

19 A. [9:57:04] Everything is okay. I can hear you very well at this moment.

20 MR SACHITHANANDAN: [9:57:10] Your Honour, can we go into private session to
21 elicit the personal background of the witness.

22 PRESIDING JUDGE KORNER: [9:57:15] (Microphone not activated) Sorry. Yes,
23 certainly.

24 (Private session at 9.57 a.m.)

25 THE COURT OFFICER: [9:57:28] We're in private session, Madam President.

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24 (Open session at 10.05 a.m.)

25 THE COURT OFFICER: [10:05:18] We're back to public session, Madam President.

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1 MR SACHITHANANDAN: [10:05:21]

2 Q. [10:05:26] Mr Witness, it's correct, isn't it, that your village was attacked at one
3 point during the war?

4 A. [10:05:47] Yes, it was attacked once.

5 Q. [10:05:53] Without mentioning the name of your village or your family members,
6 please describe to the Court, briefly, this attack.

7 A. [10:06:53] We were sitting in our town and then we were attacked. It was in
8 the morning. People were on horseback and camelback and in vehicles.

9 Q. [10:07:08] Please continue, but pause every two or three sentences.

10 A. [10:07:46] Following the attack, I fled with my mother and my grandmother,
11 and (Redacted), and (Redacted) to the *wadi*, or the valley. The *wadi* is called
12 Karara.

13 And my grandmother was blind, so she could not walk, so I was helping her. We
14 fled until we got to Mount Karara, and at that time ... after we got to Mount Karara,
15 we stayed there.

16 THE INTERPRETER: [10:09:20] Note from the Fur interpreter: We ask the witness
17 to just give us a break between sentences so we have enough time to interpret.

18 MR SACHITHANANDAN: [10:09:36]

19 Q. [10:09:36] Where did you go from Karara?

20 A. [10:09:48] After Karara we went to the mountain.

21 Q. [10:09:58] Where did you go after going to the mountain?

22 A. [10:10:12] We stayed there.

23 Q. [10:10:18] From the mountain, did you at any point go back to your village?

24 A. [10:10:49] We spent the whole day there and then we returned to the village at
25 night. We could see the village being attacked and fire being set to the village.

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1 Q. [10:11:03] Did you at any point leave the village again?

2 A. [10:11:44] We spent the whole day in the mountain and we could see our village
3 being set on fire. When we went back, we were also able to see in another village
4 called Segederra, we could see the smoke fumes coming out of the village.

5 Q. [10:12:05] Did you at any point head to Mukjar?

6 A. [10:12:51] After having spent the day in the mountain watching our village
7 being attacked by the Janjaweed on horseback and camelback, we came back at night.
8 We saw that the village had been burnt down and so this is when we head to Mukjar.

9 Q. [10:13:12] Thank you, Mr Witness. I notice you're following my hand signals to
10 stop, and that's very helpful.

11 It's because it takes a bit of time for the interpreter to tell me in English what you are
12 saying in Fur.

13 A. [10:13:48] That's good.

14 Q. [10:13:49] Can you tell us, please, what happened when you got to Mukjar.

15 A. [10:14:26] After we went back to the village, we found an old woman called
16 Totoyi dead, and another person called Adam Zakaria, also dead.

17 Q. [10:14:45] Right. But I want to talk about Mukjar now. Can you tell us what
18 happened when you arrived at Mukjar.

19 A. [10:15:17] When we arrived to Mukjar, we found a police checkpoint headed by
20 Haroun Bashir.

21 Q. [10:15:33] What unit or organisation did Haroun Bashir belong to?

22 A. [10:16:11] He was a policeman. When we arrived to Mukjar, he was with other
23 10 policemen at an entry point. At that place, they divided us -- they separated us.
24 My mum and my grandmother, they allowed them to go to Mukjar. Myself, Hassan
25 Abdalla and Adam Jabber (phon), we were taken to the Mukjar police station.

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1 Q. [10:16:48] The person named Adam, what is his full name, the person named
2 Adam who was arrested?

3 A. [10:17:13] His name was Adam Adam.

4 Q. [10:17:25] Do you know Imam Adam Saleh?

5 A. [10:17:45] Yes, I know him. He is the one I went with to the police station,
6 where we met Hassan Carter, who registered our names.

7 Q. [10:18:01] To which group or organisation did Hassan Carter belong to?

8 A. [10:18:28] Adam Saleh was the imam and he was from Abirla. He was
9 a former -- farmer, sorry, and we used to live in the same town.

10 Q. [10:18:39] Right. But I'm talking about Hassan Carter. You mentioned
11 Hassan Carter. Which unit or organisation did he belong to?

12 A. [10:19:11] Hassan Carter was a policeman from the security force. He was
13 wearing a *jallabiya*. When we arrived, he took us into prison.

14 Q. [10:19:27] Was Hassan Carter ordinary or unified police, or was he Popular
15 Police?

16 A. [10:19:49] He was from the Popular Police.

17 Q. [10:19:56] Please tell the Court how Hassan Carter registered you.

18 A. [10:20:31] He was asking us, "What is your name?" And when you tell him
19 your name, he would register it and write it down. He asked all three of us our
20 names, he wrote down our names, and then we were taken into a prison cell.

21 Q. [10:20:49] Was it only the three of you that he asked, or was he also asking other
22 people who were detained?

23 A. [10:21:24] When we arrived, we were only three. The rest of the detainees,
24 I don't know anything about them.

25 Q. [10:21:40] You -- you said you were put in a prison cell. Can you tell us

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1 roughly how many people were in this prison cell.

2 A. [10:22:22] There were two rooms in the prison, with one gate. I estimate that
3 there were more than a hundred persons there.

4 Q. [10:22:45] Can you tell us, please, the names of any people you recognised in
5 the prison cell.

6 A. [10:23:26] The persons that I recognised were Mohammed Abdelkarim,
7 Mohamed Zakaria and Abdu Mini.

8 Q. [10:23:39] Please go on, Mr Witness.

9 A. [10:24:12] I remember also Mohammed Abdelkarim and Mohamed Zakaria,
10 there was *Umdah* Yahya, *Umdah* Doren and *Umdah* Issa.

11 Q. [10:24:26] Please go on, Mr Witness.

12 A. [10:24:56] I also recognised *Sheikh* Jobbor, Abdu Saleh and the son of someone
13 called Abdalla Ibrahim.

14 Q. [10:25:17] Does Abdalla Ibrahim have any other names?

15 A. [10:25:45] All I know is that his name is Abdalla Ibrahim *Singel and that
16 he is from the village of Kodo -- Kodoom, apologies. Kodoom.

17 Q. [10:26:07] Were there any windows in this room?

18 A. [10:26:23] There were no windows.

19 Q. [10:26:27] Did you have enough to eat or drink while detained?

20 A. [10:26:51] There was no food. They were not giving us any food.

21 Q. [10:27:01] Did you have a place to urinate or defecate?

22 A. [10:27:21] We would defecate inside the cell.

23 Q. [10:27:35] Was it easy to breathe in the cell or was it not easy?

24 A. [10:28:05] We didn't have a choice. We didn't have a place to go to and we
25 were overcrowded. Some were standing up, some were sitting.

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1 Q. [10:28:21] Did anyone have a place to lie down to sleep or rest?

2 A. [10:28:51] There wasn't enough space. We were sitting upon each other. If
3 you find a place to stretch your leg, that would be too much. That's more than you
4 can ask for.

5 Q. [10:29:06] What did it feel like to you to be detained in such a place?

6 A. [10:29:31] I didn't have anything to do. I had to be there, and this is where I
7 spent my time.

8 Q. [10:29:42] Did you spend that night in the prison or did you not?

9 A. [10:30:02] Yes, the same night when we arrived, we spent it in prison.

10 Q. [10:30:11] Did you manage to sleep or did you not?

11 A. [10:30:47] There was no place to sleep. We were crowded. We were leaning
12 on each other. If anyone wanted to sleep, they would sleep on top of the others.

13 Q. [10:31:04] The next day, the day after your detention, what happened on that
14 day?

15 A. [10:31:34] The next day, in the afternoon we were sitting inside the prison,
16 Ali Kushayb arrived and he entered into the cell, into the prison.

17 Q. [10:31:48] How did you know that this person was called Ali Kushayb?

18 A. [10:32:10] When the door was opened, Ali Kushayb entered and he said, "I am
19 the head of the Janjaweed and my name is Ali Kushayb."

20 Q. [10:32:30] What language was Ali Kushayb speaking when he said this?

21 A. [10:32:59] He was speaking in Arabic, saying that he was Ali Kushayb, the head
22 of the Janjaweed.

23 Q. [10:33:13] Just a note to the interpreter, the Arabic interpreter. I'm going to ask
24 the witness to say the words in Arabic. And if the Arabic interpreter could just say
25 out the words phonetically in Arabic.

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1 Mr Witness, could you tell us please in Arabic what Ali Kushayb said so that we can
2 hear it.

3 A. [10:33:58] He said, "I am *hakemdar* Janjaweed."

4 PRESIDING JUDGE KORNER: [10:34:11] I have no idea how you think this is going
5 to get on to the transcript.

6 MR SACHITHANANDAN: [10:34:16] Well, it's on the transcript phonetically,
7 your Honour, so at least we have some record. It is the best we can do in terms of
8 having a record of the actual Arabic words.

9 Q. [10:34:34] Mr Witness, what -- what happened after Ali Kushayb introduced
10 himself?

11 A. [10:35:05] He said in Arabic to *Umdah* Yahya, "I detained you in the past and I
12 released you, but this time I am going to kill you."

13 Q. [10:35:25] Mr Witness, I want to understand how far away from Ali Kushayb
14 you were. Were you further than I am to you regarding Ali Kushayb, or were you
15 closer than I am to you in the -- with -- in respect of Ali Kushayb?

16 A. [10:36:08] It was around half a metre between him and I.

17 Q. [10:36:22] What did *Umdah* Yahya do when Ali Kushayb said this to him?

18 A. [10:36:53] *Umdah* Yahya said, "I will die as a martyr, but you will suffer." And
19 then Ali Kushayb hit *Umdah* Yahya on the shoulder and he broke his arm.

20 Q. [10:37:11] With what, if anything, did Ali Kushayb hit *Umdah* Yahya?

21 A. [10:37:44] He hit him with his axe. And some of the men of Ali Kushayb, 10 of
22 the men of Ali Kushayb hit the -- and beat the detainees. They shaved their heads.

23 Q. [10:38:06] Ali Kushayb's axe, please describe to us Ali Kushayb's axe.

24 A. [10:38:40] The axe of Ali Kushayb was made of steel. It had steel in it. It has
25 a handle of steel. And he was holding the axe in his right arm. He was holding

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1 a whip in his left hand.

2 Q. [10:39:02] What was Ali Kushayb wearing?

3 A. [10:39:19] He was wearing *labsa*.

4 Q. [10:39:27] What did Ali Kushayb look like?

5 A. [10:39:48] Ali Kushayb was a dark man. He was tall. He was thin.

6 Q. [10:40:04] When Ali Kushayb hit *Umdah* Yahya, how far were you from *Umdah*

7 Yahya?

8 A. [10:40:30] I was sitting next to *Umdah* Yahya. I was close to him.

9 Q. [10:40:43] When *Umdah* Yahya said he will die as a martyr, what, if anything,

10 did Kushayb say?

11 A. [10:41:21] He told him, "How can you say that?" And Ali Kushayb hit him on

12 the shoulder. He broke his arm. And then Ali Kushayb start whipping the rest of

13 the detainees. Ali Kushayb was hitting, beating and whipping the *umdahs*.

14 Q. [10:41:45] Was Ali Kushayb the only person who was speaking, or did

15 the others with him say anything?

16 A. [10:42:19] We were listening to Ali Kushayb. The other men didn't say

17 anything at first, but then they were saying to the detainees, "You are *abid*" and

18 "*tora bora*."

19 Q. [10:42:39] Please tell the Court what is meant by *abid*.

20 A. [10:43:04] I do not know the meaning of the word. He was saying it to us and

21 he was beating us.

22 Q. [10:43:15] Do you know the meaning of the word "*tora bora*"?

23 A. [10:43:32] No, I don't know what *tora bora* means. I heard it from the people.

24 Q. [10:43:42] Mr Witness, about *abid*, you said "He was -- he was saying it to us and

25 beating us." Who is "he" in this context?

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1 A. [10:44:16] What I mean is Ali Kushayb, he and his men were beating people.

2 Some of his men cut the ears of some of the detainees. Ali Kushayb was standing at
3 that time.

4 Q. [10:44:39] The people who were with Ali Kushayb, were they empty-handed or
5 were they carrying anything?

6 A. [10:45:05] They were wearing a headdress and they had a piece of cloth around
7 their heads.

8 Q. [10:45:21] Right. But I'm asking about their hands. Were they carrying
9 anything or were they not carrying anything?

10 A. [10:45:51] They were holding sticks and rifles. They were wearing amulets on
11 their waists and on their hands. They were holding whips also in their hands.

12 Q. [10:46:12] I think you mentioned at some point that someone was shaved.
13 Please describe to the Court how people were shaved.

14 A. [10:47:04] Ali Kushayb and his men were shaving the heads of the detainees
15 who had long hair. They were shaving the heads until the scalp of the head. So
16 the scalp was shaved. I remember they shaved someone called Abdu Saleh and
17 someone called Ibrahim Abdalla Ibrahim *Singel. And another person who belongs
18 to the Fur, he had also his hair and his scalp shaved.

19 Q. [10:47:46] You also mentioned that some people were cut. Please describe to
20 the Court how people were cut.

21 A. [10:48:27] Ali Kushayb and his men beat and hit people. Ali Kushayb hit me
22 on the head. The beating continued for around one hour.

23 Q. [10:48:48] You mentioned that some people's ears were cut. Please tell
24 the Court how some people's ears were cut.

25 A. [10:49:20] They cut the ears of the people with a knife. They shaved also

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1 the heads of the detainees with a knife too.

2 Q. [10:49:34] Please tell us the names of the persons whose ears were cut.

3 A. [10:50:05] The people whose ears were cut, one of them is Abdu Saleh and
4 the other one is Abdalla Ibrahim *Singel.

5 PRESIDING JUDGE KORNER: [10:50:23] Mr Sachithanandan, you keep asking him
6 about the ears were cut. "Cut" can mean two things.

7 MR SACHITHANANDAN: [10:50:33] I can clarify, your Honour.

8 PRESIDING JUDGE KORNER: [10:50:35] Yes.

9 MR SACHITHANANDAN: [10:50:41]

10 Q. [10:50:42] When you say the ears were cut, does this mean the ears remained --

11 MR EDWARDS: [10:50:49] Your Honour, can this please be asked in a non-leading
12 way.

13 PRESIDING JUDGE KORNER: [10:50:54] Yes, I agree, it is possible to ask it.
14 Describe exactly what happened.

15 MR SACHITHANANDAN: [10:51:01] Very well.

16 Q. [10:51:03] Mr Witness, because we were not there, it's helpful for us to get detail
17 about what happened. Can you please tell us how exactly the ears were cut and
18 what happened.

19 A. [10:52:08] I was looking around me when the men of Ali Kushayb cut the ears of
20 the detainees. Among the detainees whose ears were cut whom I know, one of them
21 is Abdu Saleh and another one is called Abdalla Ibrahim *Singel. And another
22 detainee who had his ear cut, but I do not recall his name.

23 Ali Kushayb was standing, observing what was happening.

24 Q. [10:52:42] When these people's ears were cut, what did the injury look like?

25 Please describe to the Court.

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1 A. [10:53:14] They cut the ears. The person would lose his whole ear. And there
2 was a wound bleeding where the ear was cut. This is what I saw.

3 Q. [10:53:32] You mentioned that one -- one of the persons whose ears were cut was
4 Abdu Saleh. Where -- where was he from?

5 A. [10:54:06] He is an inhabitant from a region called Gosrego (phon).

6 Q. [10:54:16] Can you repeat the village name, please. I don't think we got it
7 correctly.

8 A. [10:54:33] The region is called Gausir.

9 MR SACHITHANANDAN: [10:54:42] Your Honour, can we go into private for one
10 question.

11 PRESIDING JUDGE KORNER: [10:54:45] Yes.

12 (Private session at 10.55 a.m.)

13 THE COURT OFFICER: [10:55:00] We're in private session, Madam President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Open session at 10.56 a.m.)

22 THE COURT OFFICER: [10:56:18] We're back in open session, Madam President.

23 MR SACHITHANANDAN: [10:56:36]

24 Q. [10:56:37] Mr Witness, just so I understand. The people whose hair was shaved,
25 was that the same people whose ears were cut off or were those other people?

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1 A. [10:57:07] They are different people.

2 Q. [10:57:13] Do you -- can you please tell us the names of the persons whose hair
3 was shaved off.

4 A. [10:57:34] The people whose heads were shaved, I do not know them. I only
5 know that they belong to the Fur tribe.

6 Q. [10:57:44] You mentioned that you were also hit. Please describe to the Court
7 how you were hit.

8 A. [10:58:10] I was hit on the head with a stick. I still have a trace of that on my
9 head.

10 MR SACHITHANANDAN: [10:58:23] Can I please ask the court officer to pull
11 up -- actually, your Honour, it might make sense to take the break at this time,
12 because I know that these photos take a while, so ...

13 PRESIDING JUDGE KORNER: [10:58:38] (Microphone not activated)

14 MR SACHITHANANDAN: [10:58:42] All right. Let me just -- let me just go ahead.
15 The ERN is 0217-0444, not for the public.

16 PRESIDING JUDGE KORNER: [10:58:59] (Microphone not activated) Sorry, why
17 can't it be for the public? There's nothing identifying there.

18 MR SACHITHANANDAN: [10:59:05] Well, let me just consult briefly, your Honour.

19 MR EDWARDS: [10:59:11] Your Honour, we -- we agree, for what it's worth. It
20 doesn't identify the witness in the slightest bit.

21 PRESIDING JUDGE KORNER: [10:59:20] In the -- as I said before, I think as much in
22 public as possible and I can't see that this could possibly identify the witness.

23 MR NICHOLLS: [10:59:38] Your Honour, I understand that. I'm looking at it. I
24 would ask that this not be shown to the public. Yes, it likely will not cause any

25 identification, but the -- the public value of this photograph, weighed against any risk

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1 of identification, I -- I think I would --

2 PRESIDING JUDGE KORNER: [11:00:05] All right.

3 MR NICHOLLS: [11:00:06] I think there is enough there that it could be identifying.

4 PRESIDING JUDGE KORNER: [11:00:11] Yes, it's not what I would have thought,
5 somebody measuring somebody's cranium. All right. If you say that, not for public.

6 It's not a particularly useful photograph either way. (Microphone not activated)

7 THE WITNESS: [11:00:39] (No interpretation)

8 MR SACHITHANANDAN: [11:00:42] Yes.

9 Q. [11:00:44] Mr Witness, is this the injury you suffered because of the strike on
10 your head?

11 PRESIDING JUDGE KORNER: [11:00:53](Microphone not activated)

12 THE WITNESS: [11:01:04](Interpretation) Yes, it is the scar of the hit that I sustained
13 in prison.

14 MR SACHITHANANDAN: [11:01:08] Perhaps I should have used the word "scar",
15 your Honour. I mean, there's an obvious indentation in the middle of the head.

16 PRESIDING JUDGE KORNER: [11:01:18] (Microphone not activated) Sorry. You
17 say it's an obvious indentation. It's not a scar, as far as I can see. And the light,
18 the way that the photograph has been taken, I would like him to actually point that
19 out, please, on ...

20 MR SACHITHANANDAN: [11:01:38] We can get a hard copy on the Elmo and he
21 can just mark it.

22 PRESIDING JUDGE KORNER: [11:01:43] Yeah, right.

23 MR SACHITHANANDAN: [11:02:01]

24 Q. [11:02:01] Mr Witness, there's -- this is a -- there is a photo in front of you. Can
25 you -- you mentioned a scar. Can you please mark with a circle the scar that you

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1 mention.

2 PRESIDING JUDGE KORNER: [11:02:52] Yeah, okay. Yes.

3 MR SACHITHANANDAN: [11:03:01] Thank you, your Honour. I think we can
4 break at this point.

5 PRESIDING JUDGE KORNER: [11:03:04] Yes. Very well.

6 Sir, we're going to take a break now for 30 minutes.

7 Please don't talk about the -- what you're telling the Court to anybody during
8 the break.

9 All right. 11 -- 11.35, please, then.

10 THE WITNESS: [11:03:42] (No interpretation)

11 THE COURT USHER: [11:03:42] All rise.

12 THE WITNESS: [11:03:47](Interpretation) I don't have a watch, so I don't know how
13 to identify the time.

14 MR SACHITHANANDAN: [11:04:02] The witness is concerned that he doesn't have
15 a watch, but I'm going to reassure the witness.

16 Mr Witness, someone will come at 11.25 and bring you into the courtroom. So not to
17 worry.

18 PRESIDING JUDGE KORNER: [11:04:13] 11.35. I thought they had a witness
19 support person with them during breaks. They do, yeah, so (Overlapping speakers)

20 MR SACHITHANANDAN: [11:04:22] Yes, so it's fine. Someone will guide you
21 back to the courtroom.

22 PRESIDING JUDGE KORNER: [11:04:27] Because if they didn't, all my warnings
23 about not speaking to anybody would be utterly pointless.

24 THE WITNESS: [11:04:35] (No interpretation)

25 (Recess taken at 11.04 a.m.)

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1 (Upon resuming in open session at 11.37 a.m.)

2 THE COURT USHER: [11:37:34] All rise.

3 Please be seated.

4 PRESIDING JUDGE KORNER: [11:38:20] Yes.

5 MR SACHITHANANDAN: [11:38:24]

6 Q. [11:38:26] Mr Witness, we were describing -- or, rather, you were describing
7 things that were happening in Mukjar prison before the break. And I want to ask
8 you some more questions about the same thing.

9 A. [11:38:56] Okay.

10 Q. [11:39:00] The men whose hair was shaved, what tribe did they belong to?

11 A. [11:39:19] They were all from the Fur tribe.

12 Q. [11:39:27] The men whose ears were cut off, what tribe were they from?

13 A. [11:39:43] They were also Fur.

14 Q. [11:39:52] The men whose hair was shaved, with what implement was their hair
15 shaved?

16 A. [11:40:13] With a knife.

17 Q. [11:40:24] You mentioned that *Umdah* Issa was one of the detainees. What is
18 *Umdah* Issa's full name, please?

19 A. [11:40:58] I know his name is *Umdah* Issa only. When we used to see
20 him -- the only name I know of him is *Umdah* Issa. That's the only name I know of
21 him.

22 Q. [11:41:15] What villages was *Umdah* Issa in charge of?

23 A. [11:41:50] *Umdah* Issa is the *umdah* of (Redacted), of Abirla, Nyerli and some of
24 Korofata, and also a part of Nyerli.

25 Q. [11:42:13] How was *Umdah* Issa treated when he was in detention?

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1 A. [11:42:33] With whom? Dealing with whom?

2 Q. [11:42:42] I'm trying to understand how *Umdah* Issa was treated when he was in
3 detention. What kind of --

4 A. [11:43:17] *Umdah* Issa in prison was being beaten, like the other detainees, by
5 this person. And some of them were wounded.

6 Q. [11:43:37] Who was beating *Umdah* Issa?

7 A. [11:43:52] The Janjaweed, they were beating up *Umdah* Issa.

8 Q. [11:44:02] On what part of *Umdah* Issa's body was he being beaten?

9 A. [11:44:33] *Umdah* Issa was being beaten on his shoulder and his head, because
10 the place was overcrowded. So this was the upper part of the body that was being
11 beaten, the head and the shoulders.

12 Q. [11:44:49] With what was *Umdah* Issa being beaten?

13 A. [11:45:06] He was beaten with sticks and whips.

14 Q. [11:45:17] What, if anything, was Kushayb doing while *Umdah* Issa was being
15 beaten?

16 A. [11:46:01] Ali Kushayb was standing there. He was watching while *Umdah*
17 Issa, Yahya, Jobbor and Doren were being beaten.

18 Q. [11:46:32] Do you know any other names for *Umdah* Doren?

19 A. [11:46:52] I only know him by this name, Doren. That's all, no other name.

20 Q. [11:46:59] What villages was *Umdah* Doren in charge of?

21 A. [11:47:25] *Umdah* Doren was the *umdah* of Artala, part of Sindu and Dimbo and
22 Morol.

23 Q. [11:47:42] On what part of his body was *Umdah* Doren beaten?

24 A. [11:48:09] *Umdah* Doren and *Umdah* Yahya were being beaten by Ali Kushayb
25 with his axe and his whip.

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1 Q. [11:48:27] When Ali Kushayb was beating *Umdah* Doren, which part of
2 *Umdah* Doren's body did Ali Kushayb beat?

3 A. [11:49:01] Ali Kushayb was hitting him on his head and his shoulders, because
4 the place was tight and overcrowded and the only upper part of the body would be
5 beaten because it's showing.

6 Q. [11:49:20] What was the result of Ali Kushayb beating *Umdah* Doren?

7 A. [11:49:51] Ali Kushayb was hitting *Umdah* Yahya and Doren, and his men
8 will -- were also hitting the other detainees, hitting -- cutting the ears off some. And
9 then they left them in the cell after they had left.

10 Q. [11:50:16] You mentioned that *Sheikh* Jobbor was also there. How was
11 *Sheikh* Jobbor treated?

12 A. [11:50:36] The same thing. *Sheikh* Jorein (phon) was being beaten by
13 the Janjaweed.

14 Q. [11:50:46] Sorry, I don't think the name got across. I'm talking about *Sheikh*
15 Jobbor. How was *Sheikh* Jobbor treated?

16 A. [11:51:22] *Sheikh* Jobbor was hit by the men of Ali Kushayb, the Janjaweed.
17 And because the place was very tight, there wasn't enough room. That is why he
18 was being beaten in the other part of the body, I mean the head and the shoulders.

19 Q. [11:51:45] Mr Witness, you use the term "men of Ali Kushayb". Why -- why do
20 you say they were the men of Ali Kushayb?

21 A. [11:52:20] I say Ali Kushayb's men because when Ali Kushayb came into the cell,
22 he was surrounded by about 10 of those that I called his men. They were armed and
23 they were beating people.

24 Q. [11:52:40] You mentioned that Kushayb hit *Umdah* Yahya. Which part of
25 *Umdah* Yahya's body did Kushayb hit?

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1 A. [11:53:12] Ali Kushayb hit *Umdah* Yahya on his neck and he broke the neck's
2 bone and it was swollen.

3 Q. [11:53:37] How long did these beatings continue?

4 A. [11:54:09] The beating endured for about an hour, an hour and a half. And
5 Ali Kushayb's men were shaving the heads of the detainees and hitting them. And
6 Ali Kushayb was there, standing there watching what was happening before his eyes.

7 Q. [11:54:30] And what happened when the beatings stopped?

8 A. [11:55:07] Ali Kushayb went out, went to the market to take people's properties,
9 and we stayed in detention. While we were detained, men came in, they said they
10 were from the Abu Teira men, the Central Reserve Forces men.

11 Q. [11:55:33] How is it that you know that Ali Kushayb went to the market to take
12 people's property?

13 THE INTERPRETER: [11:56:36] Note from the Fur interpreter: We were not
14 hearing the witness clearly.

15 MR SACHITHANANDAN: [11:56:44] Perhaps the court officer could please move
16 the mic closer to the witness's face.

17 Q. [11:57:17] Mr Witness, the -- the interpreter didn't hear your response. Please
18 repeat your response.

19 A. [11:57:51] I heard that Ali Kushayb went to the market to pillage people's
20 property from the guards who were standing guard there. They were talking
21 amongst themselves. They said that Ali Kushayb went to the market to pillage.
22 And they were talking about that amongst themselves.

23 Q. [11:58:17] You said then that the Abu Teira came into the cell. How long after
24 Kushayb left did the Abu Teira come into the cell?

25 A. [11:58:52] Abu Teira men came about three hours after Ali Kushayb had left

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1 the cell.

2 Q. [11:59:03] What did the Abu Teira do?

3 A. [11:59:34] Abu Teira's men had an iron that was plugged to the electricity and
4 they were giving people an alternative. If you are from *tora bora*, they would iron
5 them -- if people would say that they were from the *tora bora*, they would leave them;
6 and if they are not, they would burn them.

7 PRESIDING JUDGE KORNER: [11:59:59] Before you go on, Mr Sachithanandan.

8 Has he explained what Abu Teira is?

9 MR SACHITHANANDAN: [12:00:09] No, your Honour. I can follow up on that.

10 PRESIDING JUDGE KORNER: [12:00:14] Could you. Yes, thank you.

11 MR SACHITHANANDAN: [12:00:18]

12 Q. [12:00:18] Mr Witness, can you please tell us, who are the Abu Teira?

13 A. [12:00:43] Abu Teira are from the military. They used to -- they were holding
14 an iron and they were burning people with iron.

15 Q. [12:00:59] Why -- why are -- testing. Why -- why are they called "Abu Teira"?

16 A. [12:01:28] I do not know why they are called Abu Teira. What we know is that
17 they work in that area and they have a military uniform with dots where birds are
18 drawn.

19 Q. [12:01:50] And where on the uniform is the bird drawn?

20 A. [12:02:17] The bird is drawn all over the uniform. They are called Abu Teira or
21 the Central Reserve.

22 Q. [12:02:42] One final question on that: What -- can you describe the colour of
23 the uniform, please.

24 A. [12:03:05] The uniform was white, camouflaged in red, and birds were drawn on
25 them.

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1 Q. [12:03:20] You said they were burning people with an iron. Please describe to
2 the Court how they were doing this.

3 A. [12:03:58] They would come to us and ask us, "Are you *tora bora*?" If you say
4 no, then they would burn you, or fix the iron on your body for around 10 minutes.
5 People were shouting. And sometimes they would slap us on our faces.

6 Q. [12:04:26] Did this only happen to other people or did it happen to you as well?

7 A. [12:04:52] They burnt many people. I was among those who were burnt.
8 Until now I have three scars on my body as a result of being burnt by the iron.

9 Q. [12:05:12] I'd like to call up a photograph at this point.

10 Again, as -- similar to the previous photograph, can this please be not for the public.
11 It's 0217-0445.

12 Mr Witness, can you see a photograph in front of you?

13 A. [12:06:10] Yes. This picture shows what happened as a result of being burnt by
14 the iron.

15 Q. [12:06:19] Which part of your body is this?

16 A. [12:06:39] Under the knee and above the knee on my right leg.

17 PRESIDING JUDGE KORNER: [12:06:48] You really, really, Mr Sachithanandan,
18 must -- must apply some common sense to this. How on earth could a photograph
19 of his knee possibly identify him to anybody?

20 MR SACHITHANANDAN: [12:07:02] Well, your Honour, it's a combination of
21 things. Not everyone in a village walks around with such injuries. And we are
22 covering all his injuries, as well as a particular narrative related to those injuries. I
23 agree with Mr Nicholls that we should be cautious here considering the profile of
24 the witness.

25 Can we pull up another photograph, please, and take this down. It's 0217-0446.

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1 Q. [12:08:15] Mr Witness, you see this photograph? Can you please tell us what it
2 is.

3 A. [12:08:35] This photograph shows what happened as a result of being burnt by
4 the iron. It shows a part of my (Redacted). And the other photograph shows a part
5 of my (Redacted).

6 Q. [12:08:54] Can we please take the photo down and I'll move on.

7 What happened, Mr Witness, after the Abu Teira were burning you?

8 A. [12:09:46] After burning us, they left us and they went, and we spent the night
9 there. On the second day, Ali Kushayb entered upon us.

10 Q. [12:10:03] Right. But let's -- let's stay on the day that the Abu Teira burned you.
11 Where did you spend the night that night?

12 A. [12:10:30] We spent the night in the prison where we were.

13 Q. [12:10:38] Did you get any treatment for the wounds on your body from
14 burning?

15 A. [12:11:00] We were not provided with any treatment. My leg was swollen.

16 Q. [12:11:20] When you were spending the evening there, were the detainees silent
17 or were they talking amongst each other?

18 A. [12:11:49] Do you mean those who burnt us or the people who were inside
19 the prison?

20 Q. [12:11:56] I mean the people, the detainees who were inside the prison, like you.
21 Were you silent or did you talk amongst yourselves?

22 A. [12:12:26] They were shouting, they were crying, and some of them were
23 reading.

24 Q. [12:12:45] Did you say "reading"? Could you tell us what they were reading.

25 A. [12:13:25] Some were reading quotes and verses from the Koran, some were

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1 saying "*hamdulillah*", some were crying and shouting, and some were whining as a
2 result of their suffering.

3 Q. [12:13:43] Did you manage to sleep that night, or did you not?

4 A. [12:14:12] Sleeping was difficult. However, when you are tired, you need to
5 sleep a little bit. But when I slept, I was not feeling well and I was hurting all over.

6 PRESIDING JUDGE KORNER: [12:14:27] The English translation of whatever
7 the witness said in Fur translated into Arabic translated back into English was
8 "whining as a result of their suffering". I'm not at all sure that that English word
9 encapsulates what he was trying to say, and it may be important.

10 MR SACHITHANANDAN: [12:14:54]

11 Q. [12:14:54] Mr Witness, we have written down that you said people were crying,
12 shouting and whining. Can you explain what you meant by "whining".

13 A. [12:15:47] People were insulted. We were not provided with food or water.
14 We were beaten. We were burnt with iron. So we were hurting. I meant that
15 people were crying.

16 Q. [12:16:08] Mr Witness, the -- the detainees whose ears were cut off, did they
17 receive any treatment or did they not?

18 A. [12:16:30] Kushayb came. He took them. And I -- the second day, and I never
19 saw them again.

20 Q. [12:16:45] All right. So let's come to the next day, then. The day after
21 the burnings. What happened in the morning of that day?

22 A. [12:17:11] The second day, in the morning, they opened the door and
23 Ali Kushayb entered where we were.

24 Q. [12:17:21] Was Ali Kushayb the first person to enter, or did anyone else enter
25 before that?

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1 A. [12:17:43] He was the first to enter. He was followed by his men.

2 Q. [12:17:55] And I'll ask a question that I asked earlier. Why, again, do you call
3 them "his men"?

4 A. [12:18:40] They were called his men because they are armed. Some were
5 wearing normal, ordinary shirts. Some were wearing military trousers and others
6 ordinary trousers. But the military men would wear a complete military uniform.

7 Q. [12:19:05] What was Ali Kushayb wearing?

8 A. [12:19:22] He was wearing a *labasa*, wearing a whip and an axe.

9 THE INTERPRETER: [12:19:33] Excuse me, note from the interpreter: Holding
10 a whip and an axe in his hand.

11 MR SACHITHANANDAN: [12:19:45]

12 Q. [12:19:45] And what happened after he walked in?

13 A. [12:20:20] When he entered, he called upon *Umdah* Yahya, asking him to stand
14 up, and then *Umdah* Doren and then *Umdah* Issa. And afterwards he called upon
15 the men in Arabic. He was saying, "You get up. You get up." And we were
16 moving towards the vehicles. And from the road from the prison to the vehicle, we
17 would be hit and beaten by his men.

18 Q. [12:20:54] How did you recognise Ali Kushayb on this day? How did you
19 know that this was -- this man was Ali Kushayb?

20 A. [12:21:20] I recognised him because he had come a day before in the afternoon
21 and then he came back to -- he came back to us again in the morning.

22 Q. [12:21:42] Right. And, now, without telling us anything about yourself, all
23 right, can you tell us what did the *umdahs* do when Ali Kushayb pointed at them?

24 A. [12:22:22] When they would call you and you would stand up, you would be
25 beaten, so you cannot say anything.

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1 Q. [12:22:40] Was Kushayb just pointing at the *umda*hs or was he also saying
2 anything?

3 A. [12:23:07] Do you mean when he came to us in the morning?

4 Q. [12:23:12] Yes.

5 A. [12:23:33] Yes, yes, that day when he came, he was calling the names. They
6 would stand. And he was calling upon others to get up one after the other.

7 PRESIDING JUDGE KORNER: [12:23:49] He's said all this.

8 THE WITNESS: [12:23:49](Interpretation) When people were called upon, they
9 would be beaten. And then people were taken to the vehicles.

10 PRESIDING JUDGE KORNER: [12:24:05] Mr Sachithanandan, given we've got slow
11 interpretation, he's simply repeated what he already said at page 42, line 5 onwards.

12 MR SACHITHANANDAN: [12:24:21] Very well, your Honour. I thought it wasn't
13 clear. But I can move on.

14 PRESIDING JUDGE KORNER: [12:24:26] Well, it absolutely couldn't have been
15 clearer. He pointed at them and told them to stand up. So why ask him again, "Did
16 he say anything, other than pointing at them", when you just get the same thing
17 repeated.

18 As I say, I think it's really important that we don't ask unnecessary questions.

19 MR SACHITHANANDAN: [12:24:48] Yes. I was just trying to find out whether he
20 was using the names. But we can move on.

21 Q. [12:24:58] You said people were being beaten. Who was being beaten?

22 A. [12:25:28] Anyone who is told by Ali Kushayb "get up", he would be beaten,
23 given 10 lashes, at least.

24 Q. [12:25:42] And who was beating these people?

25 A. [12:25:57] The Janjaweed who entered the prison along with Ali Kushayb.

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1 MR SACHITHANANDAN: [12:26:13] Your Honour, I think now we will have to go
2 into the long private session that I mentioned at the beginning of the day. With
3 apologies to the audience.

4 PRESIDING JUDGE KORNER: [12:26:22] (Microphone not activated) Yes, all right.
5 Yes, sorry.

6 (Private session at 12.26 p.m.)

7 THE COURT OFFICER: [12:26:39] We're in private session, Madam President.

8 (Redacted)

9 (Redacted)

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3 (Recess taken at 1.03 p.m.)

4 (Upon resuming in open session at 2.34 p.m.)

5 THE COURT USHER: [14:34:53] All rise.

6 Please be seated.

7 PRESIDING JUDGE KORNER: [14:35:10] Yes. Just before the witness continues his
8 evidence, we need to put the ERN for the photograph that he marked on -- on
9 the record.

10 THE COURT OFFICER: [14:35:23] Your Honours, the document annotated by
11 Witness P-0919, originally located at tab 7 in the OTP binder, original ERN
12 DAR-OTP-0217-0444, will be assigned the following ERN, DAR-REG-0001-0012, and
13 marked as confidential.

14 PRESIDING JUDGE KORNER: [14:35:54] Yes, thank you.

15 Yes, Mr Sachithanandan.

16 MR SACHITHANANDAN: [14:36:09]

17 Q. [14:36:10] Welcome back, Mr Witness. I hope you had a restful break.

18 A. [14:36:25] (No interpretation)

19 Q. [14:36:25] Now, unlike in the previous session, we are now in public session,
20 which means that even though your voice is distorted, people outside can hear
21 the content of what you're saying. So -- so please don't mention the names of any
22 family members, or your village. All right?

23 We were discussing your second detention, the second time you got arrested.

24 When -- when you were in detention, how was -- what was the status of your wound?

25 What was the condition of your wound?

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1 A. [14:37:49] The same day, it was on the same day.

2 Q. [14:38:03] Yes. When you were in detention, did anybody treat your wound?

3 A. [14:38:38] No, no one helped me. Someone came and he came and put
4 something on -- on my wound so that it can be treated.

5 Q. [14:38:56] Did you know the names of any of the persons detained with you at
6 this time?

7 A. [14:39:16] (No interpretation)

8 Q. [14:39:18] Please tell us the names you know.

9 A. [14:39:48] I came to know Adam Saleh and others, but they have been
10 guaranteed by *Sheikh* Tarjook and *Sheikh* Khalid.

11 Q. [14:40:07] Do you know anyone called Bashari?

12 A. [14:40:33] Yes, I know him and his name is Sadiq Bashar.

13 Q. [14:40:40] No, I don't mean Bashar. Do you know anyone called Bashari from
14 Arada?

15 A. [14:41:08] I don't know Bashar. The name I know is Bashari and not Bashari.
16 Bashari and not Bashari.

17 Q. [14:41:19] At this time when you were detained, where was Bashari?

18 A. [14:41:53] Bashari comes from Arada. I met him inside the cell. And after that
19 we have been guaranteed and we left the cell together.

20 Q. [14:42:14] I'm now going to move to a different topic.

21 A. [14:42:26] (No interpretation)

22 Q. [14:42:27] Mr Witness, do you remember sitting with me and my colleague and
23 making a list of the people who were detained in Mukjar prison?

24 A. [14:42:55] Yes, I remember quite well, yes.

25 Q. [14:43:01] And you remember also adding names of the persons who were

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1 executed near the UNAMID base?

2 A. [14:43:25] Yes, I know their names.

3 Q. [14:43:29] You remember we read this list back to you to make sure that it was
4 accurate.

5 A. [14:43:51] (No interpretation)

6 Q. [14:43:52] All right. Can I please ask the court officer to pull up tab 14, that is
7 to say, 224-0876. Not -- not for the public.

8 And can we please scroll down to the signature page. And just to be sure, not for
9 the public.

10 Mr Witness, you remember, after checking the accuracy of the list, signing this list
11 with your signature?

12 A. [14:44:58] (No interpretation)

13 Q. [14:44:59] And it's correct, isn't it, that that is your signature on this list you see
14 before you?

15 A. [14:45:19] Yes.

16 Q. [14:45:24] Thank you. This list can be taken down.

17 Mr Witness, I apologise, I wanted to ask you a question some time back. You
18 mentioned Al-Sadiq Bashar. Who is Al-Sadiq Bashar?

19 A. [14:46:35] Al-Sadiq Bashar is a soldier from Bindisi. He was asked to get
20 people and bring them to Mukjar to be imprisoned.

21 Q. [14:46:52] During the first time that you were arrested, the first time that you
22 were arrested and detained, where was Al-Sadiq Bashar?

23 A. [14:47:18] At that time I did not know him.

24 Q. [14:47:24] Do you know someone called Korein?

25 A. [14:47:42] Yes, I know Abakar Korein, yes, I know him very, very well,

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1 Abakar Korein.

2 Q. [14:47:50] During the time of your first arrest and detention, where was Korein?

3 A. [14:48:10] I haven't seen him at that time. But I saw him when he was taking
4 people and bringing them to where they are being imprisoned.

5 Q. [14:48:28] Mr Witness, without mentioning the name of your village, can you tell
6 us, after your arrest, did you ever settle back in your village?

7 A. [14:49:10] My village of course was taken by the Arabs, and now we are living
8 (Redacted).

9 Q. [14:49:25] Thank you, Mr Witness.

10 Those -- those are my questions. Thank you, your Honour.

11 PRESIDING JUDGE KORNER: [14:49:29] Thank you.

12 Yes, Mr Shah.

13 MR SHAH: [14:49:35] Thank you, Madam President.

14 QUESTIONED BY MR SHAH:

15 Q. [14:49:38] Good afternoon, Mr Witness. You may recall that we had a short
16 meeting in this courtroom about 10 days ago.

17 A. [14:50:08] Yes, I remember that.

18 Q. [14:50:12] So my name is Anand Shah and I am one of the lawyers representing
19 victims in these proceedings.

20 A. [14:50:35] (No interpretation)

21 Q. [14:50:36] Mr Witness, I will make the same request that the lawyer for
22 the Prosecution made. Please do not mention the name of your village or any
23 persons when answering my questions.

24 A. [14:51:13] (No interpretation)

25 Q. [14:51:13] So, Mr Witness, when your home village was attacked, did

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1 the attackers take away any property or livestock?

2 A. [14:51:51] Yes, they took everything. We had horses and cattle and camels and
3 donkeys. And of course they burned the village down and they took everything we
4 had.

5 Q. [14:52:09] Thank you, Mr Witness. I'd now like to ask you a question about
6 your first detention at the Mukjar police station.

7 Mr Witness, you told us that on the second day of your detention, Ali Kushayb and
8 his men beat and mistreated you and other detainees for around one hour. What
9 was the reaction of the detainees to this mistreatment?

10 PRESIDING JUDGE KORNER: [14:53:05] Do you know, Mr Shah, we've had
11 the answer to that, twice.

12 MR SHAH: [14:53:10] Your Honour, my understanding was that the answer that
13 was given was at the end of the day, after both the incident with Mr Kushayb and his
14 men, and the treatment by the Abu Teira. So I -- I -- I just wanted clarification as
15 to -- a little bit more context as to what was going on during the first incident with
16 Mr Kushayb and his men. That was the intent of my question.

17 PRESIDING JUDGE KORNER: [14:53:36] All right.

18 MR SHAH: [14:53:42]

19 Q. [14:53:44] I'll -- I'll repeat that question. You told us that on the second day of
20 your detention, Ali Kushayb and his men beat and mistreated you and other
21 detainees for around one hour.

22 What was the reaction of the detainees to this mistreatment?

23 A. [14:54:40] We had no choice, of course. We had been hit, because
24 the people with Kushayb carried arms, and we had no other choice that we have to
25 surrender and be hit and be assaulted. We had nothing else to do.

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1 Q. [14:55:02] Mr Witness, today you also told us about the many injuries and burns
2 that you suffered at Mukjar police station. Do these injuries and burns cause you
3 any pain or difficulties today?

4 A. [14:55:54] What I am feeling now, I have problems when I go out in the sun, I
5 feel that there is something on my head and my backs, because they hit me in my
6 chest. And when I sit down, I -- I still feel this pain, up to now.

7 MR SHAH: [14:56:22] Madam President, for my last two questions it may be better if
8 we go into closed session, very briefly.

9 PRESIDING JUDGE KORNER: [14:56:30] Yes, all right.

10 Closed session, please.

11 (Private session at 2.56 p.m.)

12 THE COURT OFFICER: [14:56:43] We're in private session, Madam President.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. [14:57:24] I'm really sad when I remember those events and that place. And
18 when I remember the area which this happened and which people were killed, I
19 started crying and I feel very bad indeed. So I try not to look at that area. I try to
20 avoid that as much as I can.

21 (Redacted)

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2 Q. [14:59:28] Mr Witness, thank you very much for your testimony.

3 Madam President, no further questions. Thank you.

4 PRESIDING JUDGE KORNER: [14:59:35] Yes, thank you, Mr Shah.

5 Mr Edwards. I don't know, Mr Edwards, can you complete this in an hour? I

6 would have thought so.

7 MR EDWARDS: [14:59:54] I'm sorry, your Honour, I didn't have the headphones on.

8 PRESIDING JUDGE KORNER: [14:59:59] I was wondering if you could complete

9 your cross-examination in one hour.

10 MR EDWARDS: [15:00:02] No.

11 PRESIDING JUDGE KORNER: [15:00:04] No. All right.

12 MR EDWARDS: [15:00:06] Sorry.

13 QUESTIONED BY MR EDWARDS:

14 Q. [15:00:13] Good afternoon, Mr Witness. My name is -- oh, are we in private

15 session?

16 PRESIDING JUDGE KORNER: [15:00:19] Can we go back into open? Or have you

17 got some questions that ought to be asked in closed?

18 MR EDWARDS: [15:00:26] I've got questions that ought to be asked in closed and

19 I can do that now and --

20 PRESIDING JUDGE KORNER: [15:00:30] Why don't we do that, and then it saves

21 us having to go in and out.

22 MR EDWARDS: [15:00:36] Thank you.

23 PRESIDING JUDGE KORNER: [15:00:37] We don't appear to have a packed public

24 gallery in any event. Yes, all right, we'll stay in private session.

25 MR EDWARDS: [15:00:46]

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1 Q. [15:00:47] Yes, good afternoon, Mr Witness. I was saying that I'm Iain Edwards
2 and I'm one of the lawyers representing Mr Abd-Al-Rahman.

3 We met briefly last week. And as with the other lawyers who have been asking you
4 questions, if you'd like me to repeat anything, please don't hesitate to ask me.

5 A. [15:01:19] (No interpretation)

6 Q. [15:01:41] Mr Witness, I'm going to just remind you that we are still in private
7 session, so don't worry about any of your answers risking your identification. Okay?

8 A. [15:02:11] (No interpretation)

9 (Redacted)

10 (Redacted)

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14 Q. [15:09:20] Mr Witness -- well, before I ask my next question, I'm going to have to

15 do what the lawyer for the Prosecution was doing. I'm going to put my hand up

16 from time to time to stop you so that the interpreters can do their job. But that is

17 going to require you to keep your head up and to -- to look at me from time to time.

18 Okay?

19 A. [15:10:20] (No interpretation)

20 PRESIDING JUDGE KORNER: [15:10:32] Does this need to be in -- in private

21 session?

22 MR EDWARDS: [15:10:35] I'm now getting on to it.

23 PRESIDING JUDGE KORNER: [15:10:36] All right.

24 (Redacted)

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21 PRESIDING JUDGE KORNER: [15:15:42] Are you referring to a note that

22 the Prosecution gave you of its first -- of its screening notes?

23 MR EDWARDS: [15:15:50] Screening interview, yes.

24 PRESIDING JUDGE KORNER: [15:15:53] Not in your documents. Not in

25 the Prosecution's either.

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1 MR EDWARDS: [15:15:57] It is, it is in the Prosecution's documents. It's item 3, I

2 think. I was --

3 PRESIDING JUDGE KORNER: [15:16:03] Oh, I know what's happened. It's -- yes,

4 it's -- it's not been copied because the Prosecution didn't highlight it as something

5 they were going to use. If you were going to use it, it might have been an idea for

6 you to have highlighted it.

7 MR EDWARDS: [15:16:16] My apologies. Can it --

8 PRESIDING JUDGE KORNER: [15:16:18] Don't worry. I mean, are you

9 going -- well, unless you're going to be asking quite a lot about it.

10 MR EDWARDS: [15:16:23] Well, it might be useful to bring it up so that your

11 Honours can follow --

12 PRESIDING JUDGE KORNER: [15:16:26] Yeah. All right.

13 MR EDWARDS: -- follow me.

14 PRESIDING JUDGE KORNER: [09:04:18] All right. Can we have it up on the

15 screen, then.

16 MR EDWARDS: [15:16:29] I'm sorry, it's DAR-OTP-0215, yes, 8491. Yeah.

17 PRESIDING JUDGE KORNER: [15:16:39] Any other document -- none of this needs

18 to be translated for the witness. Any other document you're going to be using that

19 isn't ...

20 MR EDWARDS: [15:16:50] No, not -- not at all. This --

21 PRESIDING JUDGE KORNER: [15:16:51] Okay, it's just this one. All right.

22 MR EDWARDS: [15:16:53] I hadn't actually been planning to use it, but very well.

23 All right. I just want to remind myself of the last question I asked.

24 (Redacted)

25 (Redacted)

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WITNESS: DAR-OTP-P-0919

(Private Session)

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1 (Redacted)

2 MR SACHITHANANDAN: [15:23:29] I'm sorry to disturb, but this has been -- this
3 has been put to the witness already. And of course the witness has no capacity to
4 know what going -- what dealings the Prosecution has had with various other
5 persons. So I do find this question problematic.

6 MR EDWARDS: [15:23:45] Well --

7 PRESIDING JUDGE KORNER: [15:23:46] I suppose you can have one more go at
8 asking whether he knows this chap. And if he says no, well, then that's it.

9 MR EDWARDS: [15:23:56] Yeah, thank you.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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16 PRESIDING JUDGE KORNER: [15:48:05] I know, but rather than -- no, just

17 a moment, Mr Sachithanandan. Rather than seizing on that, as it were, where it's

18 obvious he -- if the translation is accurate. I mean, I'm not so sure this afternoon

19 the translation has been going quite so well, that's part of the difficulty. But if

20 the translation is accurate, he's the one -- you've got it there, and trying to explore it

21 like this I think is not going to get you very far.

22 MR EDWARDS: [15:48:31] No, all right. Okay. Perhaps I can just --

23 PRESIDING JUDGE KORNER: [15:48:32] Yeah. All right.

24 MR EDWARDS: [15:48:32] -- deal with it in one -- one question. I'll move on.

25 (Redacted)

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7 A. [15:55:00] He was wearing arragi and a -- well, a tikka (phon). Arragi which is
8 less than a jallabiya.

9 Q. [15:55:14] Okay. So he's wearing a jallabiya. I'm not too sure how well it was
10 translated. Was he wearing anything other than a jallabiya?

11 THE INTERPRETER: [15:55:27] It was not a jallabiya, it was a kameez (phon), he said.
12 It's shorter than a jallabiya.

13 THE WITNESS: [15:55:42] (No interpretation)

14 THE INTERPRETER: [15:55:48] The interpreter, Fur interpreter has not heard
15 the answer given by the witness.

16 MR EDWARDS: [15:55:57] Okay. Could the Fur interpreter please interpret the last
17 answer.

18 THE INTERPRETER: [15:56:15] Message from the interpreter: The Fur interpreter
19 did not hear the last reply, so if the question could be put again. Many thanks.

20 MR EDWARDS: [15:56:25] Okay. Thank you.

21 (Redacted)

22 (Redacted)

23 A. [15:56:59] I haven't seen anything else. When I saw him, he was wearing, it's
24 called arragi, which is shorter than jallabiya. It was called abutikka (phon),
25 arragi abutikka, which was shorter than jallabiya.

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1 Q. [15:57:14] Okay. Arragi --

2 THE INTERPRETER: [15:57:16] Abutikka.

3 MR EDWARDS: [15:57:18]

4 Q. [15:57:19] -- abutikka, is that one item of clothing, sir?

5 A. [15:57:45] Well, the -- it looks like loose pantalons, like a trouser is called

6 serwal tikka (phon). And the other part which is shorter than jallabiya is called arragi.

7 So he's wearing arragi and a short (indiscernible) with a tikka.

8 (Redacted)

9 (Redacted)

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19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE KORNER: [16:00:40] Yes, all right.

22 Yes, sir, that concludes your evidence for today. You need to be back here tomorrow

23 morning and arrangements will be made to get you here for the correct time. And

24 your evidence will be concluded tomorrow.

25 Yes, perhaps the court officer can escort him out.

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1 THE WITNESS: [16:01:29] (No interpretation)

2 (The witness exits the courtroom)

3 PRESIDING JUDGE KORNER: [16:01:56] I think, Mr Edwards, I'm going to have

4 some enquiries made and see whether there were more problems with interpretation

5 this afternoon than there were this morning. I know -- I can see the point that you're

6 making, but I -- I think we need to be clear. This is the first day we've had with this

7 sort of interpretation into Fur, and I'm just slightly concerned as to what was going on.

8 But I'll ask for enquiries to be made to see if -- from the interpreters, to see if there is

9 a problem or there was one.

10 Otherwise, I'm afraid it's simply got to be the one-fact questions, and -- and we'll see

11 how we go.

12 MR EDWARDS: [16:02:52] Yes. I've -- I can tell your Honours I've prepared this

13 cross-examination in a slightly more disciplined manner.

14 PRESIDING JUDGE KORNER: [16:03:05] Vulnerable witness style.

15 MR EDWARDS: [16:03:09] Yes. But even so, there have been obvious challenges.

16 If those challenges can be sorted out and if the -- I have to say, it was a pleasant

17 surprise that matters went as smoothly as they did this morning, far smoother than I

18 think any of us had a right --

19 PRESIDING JUDGE KORNER: [16:03:28] Yes.

20 MR EDWARDS: [16:03:28] -- to expect. And if that can be replicated tomorrow,

21 then we can make very good progress. I will certainly, certainly be finished by

22 lunch.

23 PRESIDING JUDGE KORNER: [16:03:37] Yes.

24 MR EDWARDS: [16:03:37] Which means that we can move on to the next witness in

25 the -- in the -- in the third session. So we're making up time. We're getting

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1 ahead -- we're making up time in terms of the schedule. But if it's going to be more
2 of the same, I can't make the same promise, I'm afraid. It was -- it was -- it was
3 tricky.

4 PRESIDING JUDGE KORNER: [16:04:00] (Redacted)

5 (Redacted)

6 (Redacted). And it may well be -- I mean, your point will have
7 been that the witness is trying to avoid it, but the other alternative is that
8 the translation, the interpretation was more difficult. So we'll just have to -- that's
9 why, as I say, I'm going to make some enquiries.

10 Yes, all right. Otherwise, if there's nothing else, 9.30 tomorrow morning, please.

11 THE COURT USHER: [16:04:40] All rise.

12 (The hearing ends in private session at 4.04 p.m.)