

Trial Hearing
WITNESS: DAR-OTP-P-0931

(Open Session)

ICC-02/05-01/20

1 International Criminal Court

2 Trial Chamber I

3 Situation: Darfur, Sudan

4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman

5 ("Ali Kushayb") - ICC-02/05-01/20

6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and

7 Judge Althea Violet Alexis-Windsor

8 Trial Hearing - Courtroom 2

9 Friday, 15 July 2022

10 (The hearing starts in open session at 9.15 a.m.)

11 THE COURT USHER: [9:15:55] All rise.

12 The International Criminal Court is now in session.

13 Please be seated.

14 PRESIDING JUDGE KORNER: [9:16:18] Yes. Could we call the case, please.

15 THE COURT OFFICER: [9:16:21] Good morning, Madam President, your Honours.

16 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus

17 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.

18 And for the record we're in open session.

19 PRESIDING JUDGE KORNER: [9:16:39] Yes, good morning everybody. I

20 apologise for making everybody get up 15 minutes early, but the Judges had to do it

21 as well.

22 Yes. Can we have the appearances for the Defence this morning, please.

23 MR LAUCCI: [9:16:53](Interpretation) Yes. Good morning, your Honours. Good

24 morning, colleagues. Beside Mr Al-Rahman, we have Ms Drusilla Bret-Robertson,

25 our trainee; Ms Nina Guilloux, who is the evidence officer; Mr Ahmad Issa, who is the

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1 case manager; Mr Iain Edwards, and myself.

2 PRESIDING JUDGE KORNER: Yes. Prosecution.

3 MR SACHITHANANDAN: [9:17:22] Good morning, your Honour. Appearing
4 today for the Prosecution, Ms Antonella Giordano, Claire Sabatini, Alison Whitford,
5 and I am Pubudu Sachithanandan.

6 PRESIDING JUDGE KORNER: [9:17:29] And yes, finally the representatives of the
7 victims.

8 MS VON WISTINGHAUSEN: [9:17:34](Interpretation) Yes. Good morning, your
9 Honours. The victims this morning are represented by Anand Shah and myself,
10 Natalie von Wistinghausen. Thank you.

11 PRESIDING JUDGE KORNER: [9:17:43] Yes, thank you very much. Good morning
12 to you, sir. As I say, your evidence will finish today.

13 WITNESS: DAR-OTP-P-0931 (On former oath)
14 (The witness speaks Fur)

15 THE WITNESS: [9:18:06](No interpretation)

16 PRESIDING JUDGE KORNER: [9:18:06] And Mr Edwards is going to continue to
17 asking you questions.

18 MR EDWARDS: [9:18:15] Thank you, your Honours.

19 QUESTIONED BY MR EDWARDS: (Continuing)

20 Q. [9:18:17] And good morning, Mr Witness.

21 A. [9:18:23] Good morning.

22 Q. [9:18:34] I can tell you that we will finish before the next break. My questions
23 won't take too long.

24 THE INTERPRETER: [9:18:44] Your Honour, your microphone.

25 MR EDWARDS: [9:18:50]

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1 Q. [9:18:51] However, please understand that many of my questions that I'm going
2 to ask you can be answered very shortly, usually with a yes or a no answer. So if
3 you can answer with a yes or a no, then my questions, this session will end that much
4 sooner. All right?

5 A. [9:19:52] All right.

6 MR EDWARDS: [9:19:52] Just a few moments in private session, please, Madam
7 President.

8 PRESIDING JUDGE KORNER: [9:19:56] Yes, private session.

9 (Private session at 9.20 a.m.)

10 THE COURT OFFICER: We're in private session, Madam President.

11 MR EDWARDS: [9:20:15]

12 Q. [9:20:16] Mr Witness, did you contact the OTP to tell your story or did they
13 contact you?

14 A. [9:20:58] Concerning talking to whom, exactly?

15 Q. [9:21:00] The Prosecution investigator the first time.

16 A. [9:21:38] They initiated the call to me.

17 MR EDWARDS: [9:21:44] Your Honour, I wonder if the court officer would be good
18 enough to just walk over to where the Elmo is and just lower the arm of the Elmo,
19 because it's right in the way of my view of the witness.

20 PRESIDING JUDGE KORNER: [9:21:55] Yes, could that be done please. Thanks.

21 MR EDWARDS: [9:21:57] I'm very grateful.

22 Q. [9:22:00] Mr Witness, do you know how the Prosecution investigator had your
23 telephone number?

24 Thank you.

25 A. [9:22:48] They did not take my phone number from whomsoever. It is when I

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1 met him that he took note of my phone number.

2 Q. [9:23:02] The very first time you had contact with the Prosecution, it was
3 because they called you, correct?

4 A. [9:23:36] Yes, that is correct.

5 Q. [9:23:39] And did they call you on your own personal telephone number?

6 A. [9:24:10] They did not call me on my personal phone number. When I reached
7 them, it is then that they took note of my number.

8 (Redacted)

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8 Q. [9:40:50] When -- well, the Prosecution say that Mr Abd-Al-Rahman is the same
9 man as Ali Kushayb. When you heard this for the first time, it must have been huge
10 news for you.

11 A. [9:41:52] I only know him as Ali Kushayb. I don't know any other names
12 attributable to him.

13 MR EDWARDS: [9:42:04] Your Honour, we can go into public session.

14 PRESIDING JUDGE KORNER: [9:42:09] Yes.

15 (Open session at 9.42 a.m.)

16 THE COURT OFFICER: [9:42:23] We're back into open session, Madam President.

17 MR EDWARDS: [9:42:27]

18 Q. [9:42:28] Okay. But the news of his surrender to the Court must have been big
19 news in your community, no?

20 A. [9:43:14] Yes. We heard that Ali Kushayb got arrested and of course, this was
21 happy news.

22 Q. [9:43:29] And it must have been a topic of much discussion in your community?

23 A. [9:44:00] Yes, that is correct.

24 Q. [9:44:01] And in your community was it widely known that you had witnessed
25 the execution of these detainees from Mukjar?

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1 A. [9:45:00] I did not share that with anyone from my community. I kept it to
2 myself. When I arrived here, I provided the information to this Court. But no one
3 is aware of me being a witness of that massacre.

4 Q. [9:45:23] In your community, is it common knowledge that Ali Kushayb was
5 responsible for that massacre?

6 A. [9:46:00] Yes.

7 Q. [9:46:03] I want to ask about the man that we have been calling your
8 commander. When did you last have contact with your commander?

9 A. [9:46:51] Since the events and up until I went into prison, I never met him again
10 after that.

11 Q. [9:47:04] Could your commander give orders to Hamdi?

12 A. [9:47:44] I am not sure. I was standing away from them, but he -- they used to
13 meet and they used to talk to each other.

14 Q. [9:48:02] Okay. Even if you never heard your commander give orders to
15 Hamdi, I want to know if your commander could give orders to Hamdi by virtue of
16 his rank?

17 A. [9:48:56] Yes, he could give him orders because he was of a higher rank.

18 Q. [9:49:07] Same question about Hassaballah. By virtue of his rank, could your
19 commander give orders to Hassaballah?

20 A. [9:49:47] All that I know is that -- I didn't know if he was getting orders from
21 Hassaballah, or if Hassaballah was the one giving orders.

22 Q. [9:50:11] The way that's been translated is the same thing. You don't know
23 whether Hassaballah gave him orders or received -- or whether Hassaballah received
24 orders from your commander; is that right?

25 A. [9:51:13] I do not know. All that I know is that he was of a higher rank, and I

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1 don't know whether he could give orders or not, because I haven't heard him giving
2 to Hassaballah.

3 Q. [9:51:32] Okay. And the "he", the person who had the higher rank, was your
4 commander, just to be clear?

5 A. [9:52:14] Yes, we are talking about my commander. My commander had a
6 higher rank than the rest, but I don't know if he was issuing the orders or was it
7 someone else. All I know is that he had a higher rank, a rank that is higher than the
8 people you are speaking about.

9 Q. [9:52:34] Thank you.

10 MR EDWARDS: [9:52:35] Your Honours, could we -- oh, sorry. I have a few more
11 questions, but while I'm getting to it, can the court officer please bring up the
12 annotated map that we looked at yesterday. It's DAR-REG-0001-0013. It should be
13 teed up.

14 Q. [9:52:56] Mr Witness, just to finish off, did you ever hear of a mobile force that
15 was deployed to West Darfur from Khartoum in 2003 or 2004?

16 A. [9:53:43] I've never heard of it.

17 Q. [9:53:47] We're now going to come back to a document, a satellite image that we
18 were looking at yesterday.

19 Do you see it on the screen, sir?

20 This is not for public broadcast.

21 A. [9:54:42] Yes, I see it.

22 Q. [9:54:43] And if the court officer could please zoom in as much as possible to the
23 police station compound in the middle of the -- it's gone.

24 MR EDWARDS: [9:55:05] Madam Court Officer, that was the document I wanted. I
25 just want it zoomed in as closely as possible, please.

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1 THE COURT OFFICER: Apologies, counsel. We're having a problem with
2 zooming in and out in this specific document.

3 MR EDWARDS: [9:55:53]

4 Q. [9:55:53] Okay. Mr Witness, we see the position 1 to the west of one of the
5 police buildings. Can you explain to us what that means?

6 Even more, please. Thank you.

7 Now, do you see underneath where the tent was marked, do you see that there's
8 a -- there's something that indicates the presence of a tree?

9 A. [9:57:29] Something that shows a tree?

10 Q. [9:57:31] Yes. Do you see that there's a tree just south of where the tent is
11 marked? Because it's a satellite image, it's just looks like a green splodge on the map,
12 but it indicates a tree. Was that there when you were there?

13 A. [9:58:28] The question was long. Would you please repeat the question.

14 Q. [9:58:32] Yes, I'm sorry.

15 Perhaps we can zoom in even more, please. And once more. And centre the
16 picture, please. Okay.

17 Mr Witness, on the screen, you see where you marked the location of the tent?

18 A. [9:59:08] Yes, I can see that.

19 Q. [9:59:10] And just below where you made that mark, there's a sort of a darker
20 shadow on the image?

21 A. [9:59:37] Yes, I can see that.

22 Q. [9:59:39] That darker shadow shows where there is a tree, correct?

23 A. [10:00:16] Back then, there were no trees, but maybe they grew, the trees grew
24 after that period. All I know is that there is a tent.

25 MR EDWARDS: [10:00:40] I'll note for the record that this is an image from 2006.

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1 Okay. Let's zoom in even further, please, so that we have a very good close view of
2 the indication at point 1. Thank you.

3 And forgive me, your Honour. There are going to be some questions that I suspect
4 my learned friend would prefer to be in private session because they could identify
5 him.

6 PRESIDING JUDGE KORNER: [10:01:17] Yes, all right. Private session.

7 (Private session at 10.01 a.m.)

8 THE COURT OFFICER: [10:01:28] We're in private session, Madam President.

9 (Redacted)

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15 (Open session at 10.28 a.m.)

16 THE COURT OFFICER: [10:28:24] We're back into open session, Madam President.

17 MR EDWARDS: [10:28:29] And, your Honour, we'll finish this before the break at
18 quarter to.

19 PRESIDING JUDGE KORNER: [10:28:39] I think it depends on whether we have
20 any questions. How much longer do you anticipate this is going to take?

21 MR EDWARDS: [10:28:47] It shouldn't take too long if the answers are (Overlapping
22 speakers)

23 PRESIDING JUDGE KORNER: [10:28:52] If you keep the questions short and he
24 answers yes or no -- all right. Let's hope for the best.

25 MR EDWARDS: [10:28:57] Well, we tried, yes. Okay. All right.

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1 Q. [10:29:03] Your commander wanted to go to the execution site to supervise this
2 operation, correct?

3 A. [10:29:55] I am not aware of that. He just told me to move. When we moved,
4 we arrived there. I stopped the car. He stepped out and went to that group. I
5 don't know more than that.

6 Q. [10:30:07] And yours was the last car in the convoy, yes? Just say yes or no.

7 A. [10:30:37] Yes.

8 Q. [10:30:38] How many cars were ahead of you in that convoy?

9 A. [10:31:03] I did not count the number of vehicles, nor can I remember their
10 number now.

11 Q. [10:31:19] Okay. I understand. But is it likely to be more than two or three?

12 A. [10:31:50] No, they were numerous. They were numerous, but I don't know
13 how many.

14 Q. [10:32:08] Can you remember -- can you remember how many cars ahead of
15 yours Ali Kushayb was in?

16 A. [10:32:55] I cannot specify that. He was in one of the many cars ahead of me.
17 I cannot remember and I cannot specify that.

18 Q. [10:33:08] He was wearing some kind of a uniform, correct?

19 A. [10:33:28] Yes.

20 Q. [10:33:29] But you can't remember the colour of that uniform, correct?

21 A. [10:33:49] Indeed, I don't know that.

22 Q. [10:33:51] When the two vehicles with the detainees arrived, did they stop
23 towards the head of that convoy of vehicles?

24 A. [10:34:35] They stopped behind me near the creek.

25 Q. [10:34:54] Did your observation of -- how far behind you?

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1 A. [10:35:28] It was not a long distance behind me. I can give an estimate. It was
2 a distance similar to the one separating me from the bench here.

3 Q. [10:35:45] Was your observation of the detainees arriving by use of your -- your
4 rear mirror, rearview mirror of the car?

5 A. [10:36:46] I saw him with my own eyes when I turned back. The cars were not
6 far from me. They came one after one near the creek, unloading people.

7 Q. [10:37:05] So you turned in your seat to see what was going on behind you.
8 Have I got that right?

9 A. [10:37:46] I was looking in the Garsila direction, that's what I faced. When
10 those car arrived, they passed in front of me and they were -- they arrived near the
11 creek. I was able to see them. The distance separating me from them was like the
12 distance separating me here from the Judges.

13 Q. [10:38:12] Well, it was -- well, you told the Prosecution in your interview that
14 the distance -- because of distance between you and the prisoners, you could not tell
15 the number of detainees; is that correct?

16 A. [10:39:25] Yes. I was not able to count the detainees. I only saw vehicles
17 coming, stopping behind me, unloading people and taking them to the creek where
18 they killed them. It was the first time in my life to witness an incident like that. I
19 never -- I had never seen before then people being killed in front of me, and at that
20 point I could no longer watch that.

21 Q. [10:39:57] I understand, Mr Witness. And I want you to know that I don't
22 dispute -- we don't dispute that you witnessed this shooting. But it's possible, isn't it,
23 that you're mistaken when you say you saw Ali Kushayb at that scene of the
24 shooting?

25 A. [10:41:26] No, that is not correct. I saw him with my own eyes. He was in

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1 front of me. I saw him when they killed the people.

2 MR EDWARDS: [10:41:35] Thank you. That concludes my questioning.

3 PRESIDING JUDGE KORNER: [10:41:42] Yes. Reexamination.

4 MR SACHITHANANDAN: [10:41:46] Just one or two questions, your Honour.

5 QUESTIONED BY MR SACHITHANANDAN:

6 Q. [10:41:51] Mr Witness, the counsel for the Defence asked you about your time in

7 Garsila, and I want to follow up on that a little bit. How long did you work in --

8 A. [10:42:46] All right.

9 Q. [10:42:47] My apologies. How long did you work in Garsila?

10 A. [10:43:22] I lived for long in Garsila. I was actually born in Garsila, and I

11 worked in Garsila only. I did not work anywhere else. So I did spend a long time

12 there.

13 Q. [10:43:34] So am I right in understanding that in 2001, 2002, 2003, you worked in

14 Garsila?

15 A. [10:44:13] Yes, that is correct. But I was in (Redacted). So I would report for

16 work in Garsila before returning to (Redacted).

17 MR SACHITHANANDAN: [10:44:24] Thank you, your Honour. No further

18 questions.

19 PRESIDING JUDGE KORNER: [10:44:27] Yes, Judge Alexis-Windsor has a question.

20 JUDGE ALEXIS-WINDSOR: [10:44:34] Thank you.

21 Good day, sir. I have only one question.

22 It is unclear to me, when you said that you saw someone named Ali Kushayb in

23 Garsila, whether you saw him once or more than one time.

24 THE WITNESS: [10:45:46](Interpretation) I saw him several times. He owned a

25 pharmacy in Garsila, and he used to live in Garsila in the western neighbourhood. It

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1 was called the neighbourhood of the cafés. He was in the past a soldier and when he
2 retired, he came to Garsila.

3 JUDGE ALAPINI-GANSOU: [10:46:23](Interpretation) I'm going to be quick,
4 Madam President. Just to add to what was already said since yesterday.

5 Mr Witness, yesterday when recounting the facts that unfolded in March 2003, you
6 noted that the population fled and allegedly went to a police station; is that correct?
7 It would have been in Mukjar.

8 THE WITNESS: [10:47:51](Interpretation) Yes, that is correct. When the shooting
9 started happening, the people fled to the police station, but at the police station, they
10 were told that they had to go to the locality office.

11 JUDGE ALAPINI-GANSOU: [10:48:12](Interpretation) Who told them that?

12 THE WITNESS: [10:48:56](Interpretation) Those who told them that was one of the
13 officers of the police. It was someone working at the Mukjar police station. I saw
14 him for the first time. I did not know him. And when the people started coming to
15 the police station to get protection, he told them, "No, go to the locality office."

16 JUDGE ALAPINI-GANSOU: [10:49:18](Interpretation) Very well. Thank you.

17 A question was put to you yesterday when you talked about having seen corpses, but
18 I'm going to -- I think the question was put to you by the OTP.

19 I would like to ask you how you would explain the fact that you worked with a
20 person such as the accused whilst being of Fur ethnicity.

21 THE WITNESS: [10:50:43](Interpretation) Who is the accused?

22 JUDGE ALAPINI-GANSOU: [10:50:48](Interpretation) I'm talking about the
23 individual by the name of Ali Kushayb. You worked with him. What effect does it
24 have upon you being of Fur ethnicity, having worked with that individual?

25 THE WITNESS: [10:51:36](Interpretation) I hate him very much. I don't even want

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1 to look at his face. However, I had to do it because that person forced me to work
2 with him.

3 JUDGE ALAPINI-GANSOU: [10:51:57](Interpretation) One last question. In your
4 opinion, why were you put in prison?

5 THE WITNESS: [10:52:35] The reason is that because I am first and foremost from
6 the Fur tribe. I was accused of belonging to Abd-Al-Wahid group. That is why I
7 was detained.

8 JUDGE ALAPINI-GANSOU: [10:52:57](Interpretation) Thank you very much for
9 answering my questions.

10 There you are, Madam President. I have finished.

11 PRESIDING JUDGE KORNER: [10:53:05] I just have one question.

12 During the time you were with your commander and the man you say was
13 Ali Kushayb, did anybody use his name in your presence?

14 THE WITNESS: [10:54:03](Interpretation) They used to call him Ali. They used to
15 call him Ali. "Ali Kushayb" was used later on, at a later stage.

16 PRESIDING JUDGE KORNER: [10:54:27] What do you mean by "a later stage"?

17 THE WITNESS: [10:54:54](Interpretation) They used to call him Ali. However,
18 people also were calling him Ali Kushayb. So he became famous for being Ali
19 Kushayb. And nowadays, everyone calls him Ali Kushayb.

20 PRESIDING JUDGE KORNER: [10:55:12] At Mukjar, when you were with the
21 commander and the man you recognised and called Ali Kushayb, was he at that stage
22 known as Ali Kushayb?

23 THE WITNESS: [10:56:00](Interpretation) Yes, he was called Ali Kushayb. He is
24 called Ali Kushayb since I knew him.

25 PRESIDING JUDGE KORNER: [10:56:06] Yes, all right.

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1 Sir, that concludes your evidence. Thank you very much, indeed, for coming to
2 court to give that evidence. And we wish you a safe return to your country.

3 THE WITNESS: [10:56:51](Interpretation) Thank you.

4 PRESIDING JUDGE KORNER: [10:57:09] Yes, we'll adjourn now until 2.30. Thank
5 you.

6 THE COURT USHER: [10:57:17] All rise.

7 (Recess taken at 10.57 a.m.)

8 (Upon resuming in open session at 2.38 p.m.)

9 THE COURT USHER: [14:38:00] All rise.

10 Please be seated.

11 PRESIDING JUDGE KORNER: [14:38:14] All right. Before the witness comes in,
12 who is calling him?

13 MS WHITFORD: [14:38:18] I am, your Honour.

14 PRESIDING JUDGE KORNER: [14:38:20] He appears to speak Arabic. It says so on
15 his statement. And when he did the familiarisation it was in Arabic. So I'm
16 proposing to ask him whether he can give evidence in Arabic and if he gets stuck,
17 then we'll change to Fur.

18 MS WHITFORD: [14:38:38] Your Honour, the preparation session was initially
19 planned to be done in Fur, but due to some changes in scheduling, the Fur interpreter
20 was no longer available. We were able to do it successfully in Arabic. I asked the
21 interpreter after the session what did he make of the witness's ability to be
22 understood and understand in Arabic, and his view was that he could understand
23 well, but perhaps could not express himself in Arabic as well as he would be able to
24 in Fur.

25 PRESIDING JUDGE KORNER: [14:39:11] Well, I'm assuming you're not going to ask

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1 him any questions. I mean, he doesn't add anything at all.

2 MS WHITFORD: [14:39:19] Very few, your Honour.

3 PRESIDING JUDGE KORNER: [14:39:22] So what's that, about five minutes?

4 MS WHITFORD: [14:39:23] Around 15 minutes, your Honour.

5 PRESIDING JUDGE KORNER: [14:39:26] Because it seems to me we can get -- if we
6 can use Arabic, we can -- we can get through his evidence in total this afternoon, even
7 if it means sitting, say, 15 minutes later.

8 MS WHITFORD: [14:39:40] I'm content for your Honour to ask him.

9 PRESIDING JUDGE KORNER: [14:39:41] All right.

10 MS WHITFORD: [14:39:41] It was canvassed with him in the session and -- and it
11 was decided to continue with Fur.

12 PRESIDING JUDGE KORNER: [14:39:51] Well, all right. If he says -- obviously I
13 don't want him to be uncomfortable, but it is such a slowing-down process. I mean,
14 you can see quite clearly from the pages of transcript what a slowing-down process it
15 is.

16 All right. Let's have him in.

17 Oh, we better -- we need a summary, don't we.

18 MS WHITFORD: [14:40:14] Yes, your Honour.

19 P-955 is a Fur civilian from Wadi Salih, Darfur. At the time of the conflict in 2003
20 and 2004, he was only a boy.

21 P-955 was in his village when it was attacked by Janjaweed and government forces in
22 December 2003. P-955 fled with members of his family, carrying his younger brother
23 on his back. He saw one man being shot in the back as he tried to escape. When
24 P-955 returned to the village, he saw it had been burnt to the ground. His family
25 home was burned and their possessions taken or destroyed. He saw graves where

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1 several people who had been killed in the attack had been buried by other villagers.

2 As a result of the attack, P-955 sought refuge in the mountains and later in Deleig.

3 * P-955 was present in Deleig during the events of March 2004. He saw Ali Kushayb
4 arrest a member of his family, and he last saw this family member alive in the back of
5 a vehicle in which Ali Kushayb was sitting before it was driven away. Two days
6 later, he was told that the dead body of his family member had been found outside of
7 Deleig.

8 P-955 later went to stay in Garsila where he had a further encounter with Ali Kushayb.

9 While in Garsila, he became familiar with the location of Ali Kushayb's pharmacy and
10 saw Ali Kushayb on several other occasions.

11 That concludes the summary, your Honour.

12 PRESIDING JUDGE KORNER: [14:42:13] Yes, thank you. Let's have the witness.

13 (The witness enters the courtroom)

14 PRESIDING JUDGE KORNER: [14:43:53] Sir, can you hear and understand me?

15 WITNESS: DAR-OTP-P-0955

16 (The witness speaks Fur)

17 THE WITNESS: [14:44:07](Interpretation) Yes.

18 PRESIDING JUDGE KORNER: [14:44:09] First, thank you for coming to court to
19 give evidence.

20 THE WITNESS: [14:44:27](No interpretation)

21 PRESIDING JUDGE KORNER: [14:44:29] Are we getting Fur at the moment? Is
22 this being translated into Fur? Because if so, could it stop, please, for a moment.

23 All right. Sir, before you start your evidence, I understand that you speak Arabic
24 and understand Arabic.

25 I'll start that again. Sir, I understand that you both speak and understand Arabic.

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1 THE WITNESS: [14:45:47](Interpretation) Yes, I speak Arabic, but I find difficulty
2 sometimes in understanding certain words.

3 PRESIDING JUDGE KORNER: [14:45:58] I suppose we're going to spend longer
4 doing this than -- all right. Sorry about this. Go back into Fur. Sorry about this.
5 Okay, sir, in which case, if you prefer to give evidence in Fur, then you may do so.
6 In a moment you will be asked to repeat the solemn declaration.

7 THE WITNESS: [14:47:18](Interpretation) Very well.

8 PRESIDING JUDGE KORNER: [14:47:20] All that I want to say to you is that if when
9 you are questioned you don't understand the question, please say so straightaway.

10 THE WITNESS: [14:47:53](No interpretation)

11 PRESIDING JUDGE KORNER: [14:47:59] All right. Can you just please repeat after
12 the interpreter the oath that is now going to be -- the declaration that is now going to
13 be read to you.

14 THE WITNESS: [14:48:26](No interpretation)

15 THE COURT OFFICER: [14:48:30] Mr Witness, you have first to take the solemn
16 undertaking to tell the truth. I will read it out to you, and please follow me and
17 repeat what I'm saying.

18 THE WITNESS: [14:49:07](No interpretation)

19 THE COURT OFFICER: [14:49:10] I solemnly declare that I will speak the truth, the
20 whole truth and nothing but the truth.

21 THE WITNESS: [14:49:43](Interpretation) I solemnly declare that I will say the truth,
22 the whole truth and nothing but the truth.

23 THE COURT OFFICER: [14:49:46] Thank you, Mr Witness. You are now under
24 oath.

25 PRESIDING JUDGE KORNER: [14:49:56](Microphone not activated)

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1 THE WITNESS: [14:50:03](No interpretation)

2 QUESTIONED BY MS WHITFORD:

3 Q. [14:50:08] Good afternoon, Mr Witness. We have already met, but my name is
4 Alison Whitford and I'll be asking you questions on behalf of the Prosecution.

5 A. [14:50:27] Yes.

6 Q. [14:50:30] You provided a statement to Prosecution investigators in 2021; is that
7 correct?

8 A. [14:50:59] Yes, that's correct.

9 Q. [14:51:00] For the record, this is item DAR-OTP-0220-0620.

10 Now, you reviewed your statement during our preparation session this week and you
11 made some corrections and clarifications; is that right?

12 A. [14:51:41] Yes, correct.

13 Q. [14:51:44] For the record, the document which contains those corrections and
14 clarifications is at DAR-OTP-0225-0053.

15 Having made those corrections and clarifications, do you agree that your statement is
16 true and correct to the best of your knowledge and belief?

17 A. [14:52:35] Yes, yes, it includes everything that I witnessed and I heard.

18 MS WHITFORD: [14:52:48] Your Honour, as I indicated, I will be brief and I only
19 have one topic of questioning. But that topic would identify the witness, so I ask
20 that we go into private session, please.

21 PRESIDING JUDGE KORNER: [14:52:58] Yes, private session.

22 (Private session at 2.53 p.m.)

23 THE COURT OFFICER: [14:53:03] We're in private session, Madam President.

24 (Redacted)

25 (Redacted)

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10 MS WHITFORD: [15:16:59] Your Honour, my impression is that the witness would
11 like to tell more of this story, but I am also aware that it's taking longer than I
12 anticipated.

13 PRESIDING JUDGE KORNER: [15:17:10] It seems to me, in any event, Ms Whitford,
14 that this is the sort of questions that the representatives of the victims should be
15 asking, not -- I have say, not Prosecution counsel. So if -- I mean,

16 Ms von Wistinghausen has an opportunity to ask further questions, so if there's more,
17 I have no doubt she'll adduce it. Is that all you're going to ask?

18 MS WHITFORD: [15:17:44] Yes, your Honour, I'm happy to leave it there. And if
19 there's anything further, Ms von Wistinghausen can cover it, indeed.

20 PRESIDING JUDGE KORNER: [15:17:52] Yeah. Yes.

21 MS WHITFORD: [15:17:54] Thank you, your Honour. No further questions in that
22 case.

23 PRESIDING JUDGE KORNER: [15:17:58] Ms von Wistinghausen, do you want to
24 pursue this with him?

25 MS VON WISTINGHAUSEN: [15:18:05] I have a few questions for the witness of a

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1 more general nature. Given the circumstances, I don't want to put him in too much
2 of a distressing situation, so I don't want to ask him more about the personal impact.

3 As I say, my questions are more of a general nature.

4 I was also wondering if -- if I dropped my question, the Defence were in a position to
5 conclude the testimony today, but the indication I have is that it's not the case. So I
6 may as well ask a few questions (Overlapping speakers)

7 PRESIDING JUDGE KORNER: [15:18:44] No, no. I mean, I'm not stopping you,
8 Ms von Wistinghausen. I had hoped that we could conclude the witness's evidence
9 today because it didn't seem to me that, certainly from the point of view of the
10 Prosecution, there was much that he could add to what he's clearly set out in his
11 statement. Obviously the Defence, given what is in his statement, will have all the
12 time that they need, and so will you, Ms von Wistinghausen.

13 I do think probably, however, to help the witness get through what is clearly, on any
14 showing, and not a -- I don't think a matter of dispute, a traumatic memory for him, it
15 helps much to ask him about that. But it's entirely up to you.

16 MS VON WISTINGHAUSEN: [15:19:32] Well, I think it lies in the nature of these
17 proceedings that we all need to train ourselves a little bit in patience and slower pace.
18 And of course I'm -- you know, I'm taking the situation now into consideration. This
19 is why, you know, I was revisiting the question of asking him at all. But maybe we
20 can move back to open session, and I will just ask him three or four questions.

21 PRESIDING JUDGE KORNER: [15:20:03] Yes, I'm sorry, we should have
22 actually -- I think we should have been in open session for all those questions, all
23 the -- the answers. But yes, let's go back into public session.

24 (Open session at 3.20 p.m.)

25 THE COURT OFFICER: [15:20:22] We're back into open session, Madam President.

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1 MS VON WISTINGHAUSEN: [15:20:35] May I?

2 PRESIDING JUDGE KORNER: [15:20:36] I'm sorry. Off you go.

3 QUESTIONED BY MS VON WISTINGHAUSEN:

4 Q. [15:20:42] Mr Witness, you may be wondering who I am, and we've been talking,
5 and it wasn't properly translated to you. I'm representing the victims in this case.

6 You've met my colleague Mr Shah yesterday. And I just have a few questions of a
7 more general nature to you. As you are a victim of the alleged attacks -- or the
8 attacks allegedly committed by the accused, I'm representing victims who are in the
9 same situation. And I'll stop here. Sorry.

10 A. [15:21:50] Yes, I don't know her, yes, but I thank her because she is defending
11 the victims.

12 Q. [15:22:02] Yes. Mr Witness, I would like to ask you about your life as a child in
13 your home village. And please don't mention your home village because we are
14 now in a public session.

15 Can you tell me what life was like before the attacks? You were quite young at that
16 time.

17 A. [15:23:46] Life was very beautiful in our village. We didn't have the basic
18 services. However, we used to cultivate the land, we had herds. We used to be free.
19 We used to love each other. We were loved. We loved those who were in the
20 village surrounding us. We didn't have any hospitals. There were about seven
21 villages that shared only one school.

22 Q. [15:24:35] Yes.

23 A. [15:25:26] There was only one school for six or seven villages. We had some
24 problems like cows and camels being stolen. Sometimes there were some killings in
25 the neighbouring villages, if you go to the market. And we had only one school, the

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1 Gaba school. *And in the neighbouring villages, when you go to the market, on the
2 way back by evening you could be robbed by Arabs, like in the markets of Deleig,
3 Zaré, and Argoala.

4 Q. [15:26:09] You mentioned the school, and you also mentioned today and we
5 read in your statement that you went to school but that you had to stop going to
6 school after the attacks. Can you tell us what the schooling situation was in general
7 after the attacks, for you, your siblings and other children of your village?

8 A. [15:27:54] When the attack happened, the village was burnt to the ground and
9 we had to be displaced. Some went to Deleig, some to Nyala, some to Garsila and
10 others to Zalingei. During -- at the camp, you need an amount of money to be able
11 to buy the necessary tools to go to school, like stationery and others, so schooling had
12 to stop.

13 When we came to the camp, some didn't go back to school at all. In Deleig, we were
14 staying within the premises of the school so there was no place left for education. It
15 was the Deleig school. I personally interrupted my education for about two years, in
16 2003 and 2004. And when I was in (Redacted), I was at the (Redacted)
17 so I was (Redacted) in one of the examinations.

18 Q. [15:30:15] Please go on and try not to mention any names of places or villages.
19 Thank you.

20 A. [15:31:32] I said that I was ranked the (Redacted). And then after that, I -- a
21 camp was set up, but the population of the camp were most concerned about food
22 and drink. Education was not that important for them. So that's why we spent
23 about two or three years without education at all. And that was in Deleig primary
24 school. I was on my fifth grade, but then I didn't finish my fifth grade, and I thought
25 I would go to the sixth grade but my teacher said no.

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1 Q. [15:32:18] Was the situation the same for most of the children you knew, like
2 your siblings or other children of your village?

3 A. [15:33:05] Yes, it was the same situation for everyone else. Some people were
4 less fortunate than me. They didn't go back to education at all.

5 Q. [15:33:17] Thank you. Thank you very much for answering these questions.

6 MS VON WISTINGHAUSEN: [15:33:21] Thank you.

7 PRESIDING JUDGE KORNER: [15:33:22] Yes, thank you, Ms von Wistinghausen.

8 Yes, Mr Laucci.

9 THE WITNESS: [15:33:23](No interpretation)

10 QUESTIONED BY MR LAUCCI:

11 Q. [15:33:43](Interpretation) Good afternoon, Mr Witness. My name is

12 Cyril Laucci. I am lead counsel for Mr Abd-Al-Rahman.

13 (Speaks English) Why do I get what I say in English?

14 PRESIDING JUDGE KORNER: [15:33:59](Microphone not activated) I was asking

15 why you wanted to add French to this polyglot mix.

16 MR LAUCCI: [15:34:09] Did I speak French?

17 PRESIDING JUDGE KORNER: [15:34:10] You did.

18 MR LAUCCI: [15:34:11] Oh, sorry. My apologies. I start again.

19 Q. [15:34:16] Good afternoon, Mr Witness. I was saying that -- is it English this

20 time? Yeah. I was saying that I am Cyril Laucci, the lead counsel for Mr Ali

21 Muhammad Ali Abd-Al-Rahman. We met yesterday. Thank you for being present

22 with us and appearing before this courtroom.

23 I will have some questions to ask you in order to clarify some aspect of your

24 statement. And I will start, with the permission of Madam President, in private

25 session because this question may identify you.

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1 Just to let I know, Madam President, I anticipate two private sessions over my
2 cross-examination, one at the beginning and one towards the middle.

3 PRESIDING JUDGE KORNER: [15:35:11] Yeah, that's fine. We'll go into private. I
4 hope none of this is being translated. But, Mr Laucci, don't forget, this really is
5 important now, it's got to be short, one-fact questions.

6 MR LAUCCI: [15:35:25] Yes. And fortunately, I don't ask question in French
7 but -- because that would be even more difficult.

8 PRESIDING JUDGE KORNER: [15:35:36] Yes, private session, please.

9 MS VON WISTINGHAUSEN: [15:35:41] I'm sorry, I've got nothing to say here, but
10 nothing of this has been interpreted to the witness. So your --

11 MR LAUCCI: [15:35:47] That was also my impression.

12 MS VON WISTINGHAUSEN: [15:35:48] Your introduction of who you are hasn't
13 been received by him.

14 PRESIDING JUDGE KORNER: [15:35:55] Okay. Well, where are we now, in
15 private session? We're still in public. He wants to be in private.

16 It is Friday afternoon, I can tell.

17 (Private session at 3.36 p.m.)

18 THE COURT OFFICER: [15:36:18] We're in private session, Madam President.

19 THE COURT OFFICER: [15:36:18] We're in private session, Madam President.

20 PRESIDING JUDGE KORNER: [15:36:24](Microphone not activated)

21 THE INTERPRETER: [15:36:30] Microphone, please, your Honour.

22 PRESIDING JUDGE KORNER: [15:36:33] Sorry. I don't even know why that
23 matters either.

24 Yeah, start the whole thing again.

25 MR LAUCCI: [15:36:39] Yes, for the third time.

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1 Q. [15:36:42] Mr Witness, and in the right language, good afternoon. My name is
2 Cyril Laucci. I'm the lead counsel for Mr Ali Muhammad Ali Abd-Al-Rahman.

3 A. [15:37:21] (No interpretation)

4 Q. [15:37:28] I will have to ask questions to clarify some aspects of your statement,
5 and we start in private session so that nobody can hear you from outside.

6 A. [15:37:58] Okay. Very well.

7 Q. [15:38:02] Let's also agree on this sign which is, if your answer gets a bit long, I
8 draw up my hand so that you pause for the interpreters. And then you can carry on
9 once it is interpreted.

10 A. [15:38:35] Very well.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. [15:39:13] Do you have any clue about the number of inhabitants in 2003?

15 A. [15:40:02] I didn't have any statistics or numbers. I know that it's a big village
16 and that there were a lot of people living there, maybe between six and a half and
17 seven thousand people.

18 Q. [15:40:20] Thank you. That's a good indication.

19 Was the majority of the population farming as the main occupation?

20 A. [15:41:03] Yes, most of the people used to work in farming and in shepherding.
21 Some people used to travel and come back as well.

22 Q. [15:41:18] Does that mean that there was a lot -- a lot of cattle in and around the
23 Forgo village?

24 A. [15:42:10] Yes. People had a lot of cattle, such as cows and goats and camels.

25 A reasonable number of cattle, they used to take it to the grazing land and then come

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1 back in the evening to the village. And they used to keep this cattle nearby their

2 houses or in pens in the village.

3 People had cattle. Some of them used to take their cattle and stay outside the village

4 * in a makeshift accommodation called fariq. And some other people used to take

5 their cattle to the grazing lands outside of the village in the morning and come back

6 with the cattle to the village at the end of the day.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. [15:47:04] Thank you. And with this big population that you mentioned and a

23 lot of cattle in (Redacted), how did people do when a cow or whatever animal became

24 sick or wounded? I carry on my question. Was there a local capacity (Redacted) to

25 treat the animals?

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1 A. [15:48:44] We didn't have the capacity to treat our cattle in (Redacted). If one of the
2 cattle falls ill, we would get the medication from Garsila or Deleig. And this
3 medication is called mujmouu, and they are specialised people who are specialised in
4 treating animals. So when we bring the medication, we would call these individuals
5 who would come and give the shot, the special shot to the animal.

6 Q. [15:49:19] Thank you. (Redacted), there was no
7 such specialised people, nobody with capacity?

8 A. [15:50:29] There weren't any persons specialised in treating animals (Redacted)
9 I would like to specify something. In Gaba market, to the east of the market, there
10 are individuals who sell cattle medication. The person who would go to the market
11 can buy this medication and then give it to the sick cattle.

12 Q. [15:51:01] Are these people always there in Gaba market? Is it any day you can
13 go and find them?

14 A. [15:51:50] No. The market in Gaba is only available on Mondays. So those
15 merchants of medication would come from Garsila, some maybe would come from
16 Deleig. So on the day of the market, when you go to the market, you can see them
17 and you can buy whatever you need.

18 Q. [15:52:16] Okay. So if I understand correctly, if your cow is sick and it's
19 Monday, you go to Gaba market. Otherwise, you go to Garsila or Deleig. Is that
20 correct?

21 A. [15:52:53] It was difficult for us. I said we didn't even have hospitals to treat
22 people. So if it wasn't a Monday, we wouldn't be able to go to Garsila to treat the
23 animal, whether a cow or a camel. So we couldn't take them to Garsila. So we
24 would ask people who are in the village. If anybody has the medication available,
25 we would give it to the sick animal. If not, we would wait for the market day in

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- 1 Gaba. Otherwise, maybe the animal would die.
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
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1 (Redacted)

2 (Redacted)

3 Q. [15:59:17] Do you think he can be aware that you are a witness before this
4 Court?

5 A. [15:59:47] How would he know that? We have not been in contact. We never
6 talked about this topic together.

7 Q. [15:59:55] And did you talk about the topics that you mention in your statement,
8 in your testimony, did you discuss of these topics with him?

9 A. [16:00:21] No, I did not speak to him about these topics.

10 MR LAUCCI: [16:00:27] Madam President, I have an eye on the watch. I have a last
11 aspect for closed session. Should I do it now or we restart -- okay.

12 Q. [16:00:40] Mr Witness, what is it that made you wish or decide to become a
13 witness before this Court?

14 A. [16:01:30] I came here because of my country. This is a case related to my
15 country. We have suffered in my country and the suffering is still ongoing and
16 people are still dying. That is why I came here to help in achieving justice and that
17 the things that we have suffered from, we will make sure will not happen to others in
18 the future.

19 Q. [16:01:58] Thank you. Did money play a role in your decision to become a
20 witness before this Court?

21 PRESIDING JUDGE KORNER: [16:02:13] I -- I think you better make that a clearer
22 question. What do you mean?

23 MR LAUCCI: [16:02:20] I rephrase.

24 Q. [16:02:22] Mr Witness, did you believe or expect that you could receive money
25 for being a witness before this Court?

Trial Hearing
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1 A. [16:03:08] (Redacted), I haven't been expecting any financial
2 assistance from anyone. I work with my own hands and I save whatever I need. So
3 I came for this cause, to achieve justice. And even till today I have not received any
4 cent in return for my testimony, and I have no intention to receive any amount of
5 money in return for my testimony.

6 Q. [16:03:43] Did you ever try to obtain or ask money from the Court?

7 A. [16:04:33] I did not ask for any financial assistance from the Court, and I didn't
8 call them over the phone ever to request any money. People are here and you can
9 ask them yourself. They maybe paid some money to facilitate my travel to here.
10 I didn't come here to get any money and I did not ask for any money ever from the
11 Court in order to assist the Court in what they're doing. I only came here for the
12 case. If you remember, we have lost a lot of money already, and no amount of
13 money can compensate me for what I have lost.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0955

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Trial Hearing
WITNESS: DAR-OTP-P-0955

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 PRESIDING JUDGE KORNER: [16:13:53] Yes. Yes. All right.
- 11 Sir, I'm afraid your evidence has not finished today, so you will have to come back on
- 12 Monday morning.
- 13 THE WITNESS: [16:14:23](No interpretation)
- 14 PRESIDING JUDGE KORNER: [16:14:39] So have a nice weekend, and forget about
- 15 the case until Monday.
- 16 And the court officer will now escort you out.
- 17 THE WITNESS: [16:15:17](No interpretation)
- 18 (The witness exits the courtroom)
- 19 PRESIDING JUDGE KORNER: [16:15:21] We're still in closed session. We better go
- 20 back into open session.
- 21 (Open session at 4.15 p.m.)
- 22 THE COURT OFFICER: [16:15:44] We're back into open session, Madam President.
- 23 PRESIDING JUDGE KORNER: [16:15:48] I simply want to know roughly, Mr Laucci,
- 24 one session or more than one tomorrow -- Monday?
- 25 MR LAUCCI: [16:15:55] I do not expect more than one.

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- 1 PRESIDING JUDGE KORNER: [16:15:57] Right. All right. Well, then so the next
- 2 witness should be here for the second session in the morning.
- 3 Yes. Have a good weekend, all. Weather is supposed to be all right.
- 4 THE COURT USHER: [16:16:12] All rise.
- 5 (The hearing ends in open session at 4.16 p.m.)