

Trial Hearing
WITNESS: DAR-OTP-P-0986

(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 Tuesday, 19 July 2022
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:35] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:01] Yes.
15 Can we call the case, please.
16 THE COURT OFFICER: [9:33:05] 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: [9:33:21] Yes. Good morning, all.
21 Appearances, first of all Prosecution.
22 MR JEREMY: [9:33:27] Good morning, Madam President, your Honours, all.
23 The Prosecution are represented today by Ester Kosova, Diana Saba and myself,
24 Edward Jeremy.
25 PRESIDING JUDGE KORNER: [9:33:36] Yes, thank you, Mr Jeremy.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Yes, we'll go around. Victims representatives.

2 MS VON WISTINGHAUSEN: [9:33:41] Yes, good morning, Madam President,
3 your Honours, dear colleagues. The victims today are represented by our case
4 manager Idriss Anbari, associate counsel Anand Shah, and myself, Natalie von
5 Wistinghausen. Thank you.

6 PRESIDING JUDGE KORNER: [9:33:57] Thank you.

7 And the Defence.

8 MR LAUCCI: [9:34:01](Interpretation) Good morning, dear colleagues. Next to
9 the accused this morning in the courtroom I have Madam Eva Kalb, who is case
10 manager; Ahmad Issa, who is a case manager as well; and co-counsel Iain Edwards;
11 and myself, Cyril Laucci, counsel for the Defence. Thank you.

12 PRESIDING JUDGE KORNER: [9:34:22] Yes, thank you very much, Mr Laucci.

13 Any matters before we have the witness summary read and then the witness brought
14 in?

15 No, right.

16 Mr Jeremy, I think it's you, is it, this morning?

17 MR JEREMY: [9:34:33] Yes, Madam President, yes.

18 PRESIDING JUDGE KORNER: [9:34:36] Right.

19 MR JEREMY: [9:34:39] The summary for P-986 is as follows.

20 Witness P-986 was a victim of the attack on Kodoom by GoS Forces and
21 the Militia/Janjaweed on 15 August 2003. The witness saw Militia/Janjaweed burn
22 and pillage Kodoom, commit torture and forcibly displace civilians from Kodoom to
23 Mukjar, among other places. The witness further provides evidence about
24 Mr Abd-Al-Rahman's identity and background, including his ownership of
25 a veterinary shop in Garsila.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 The witness also provides evidence about Mr Abd-Al-Rahman's position of authority
2 within the Militia/Janjaweed, his presence and leadership role during the attack on
3 Kodoom, and later during arrest and detention operations in Mukjar.

4 That concludes the summary.

5 And, Madam President, just for the record, I'll note that during the witness
6 preparation session, the witness agreed that his statement could come in via
7 Rule 68(3). I understand there's no objection from my (Overlapping speakers)

8 PRESIDING JUDGE KORNER: [9:36:06] And does that contain -- sorry.

9 MR JEREMY: [9:36:09] And that is contained in the clarifications document, which
10 he signed.

11 PRESIDING JUDGE KORNER: [9:36:14] Good. That's very helpful. Thank you
12 very much.

13 Let's have the witness in. Can I remind everybody, it seemed to all of us yesterday,
14 particularly yesterday afternoon, that the questions were getting longer. And
15 the interpretation really slowed down. I think it was slower even than it's been. So
16 could I remind everybody, please, to keep the questions short.

17 (The witness enters the courtroom)

18 PRESIDING JUDGE KORNER: [9:37:39] Sir, can you hear and understand me?

19 WITNESS: DAR-OTP-P-0986

20 (The witness speaks Fur)

21 THE WITNESS: [9:37:51](Interpretation) Yes, I can hear you.

22 PRESIDING JUDGE KORNER: [9:37:54] First, can I thank you very much for coming
23 to court today to give evidence.

24 And second, as you have been told, you will be asked a number of questions by
25 the lawyers. If you don't understand a question, please say so straightaway.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 THE WITNESS: [9:38:51](Interpretation) Okay.

2 PRESIDING JUDGE KORNER: [9:38:53] What you're going to do now, please, is
3 repeat after the court officer the solemn declaration.

4 THE COURT OFFICER: [9:39:16] Good morning, Mr Witness. I'm going to read
5 the solemn undertaking to you, so please follow me and repeat what I'm saying.
6 I solemnly declare that I will speak the truth, the whole truth and nothing but
7 the truth.

8 THE WITNESS: [9:40:09](Interpretation) I solemnly declare that I will tell the truth,
9 the whole truth and nothing but the truth.

10 THE COURT OFFICER: [9:40:14](Overlapping speakers) Thank you, Mr Witness.
11 You are now under oath.

12 PRESIDING JUDGE KORNER: [9:40:17] Yes, thank you very much, sir.
13 Yes, Mr Jeremy.

14 MR JEREMY: [9:40:20] Thank you, Madam President.

15 QUESTIONED BY MR JEREMY:

16 Q. [9:40:23] And good morning, sir.

17 A. [9:40:32] Good morning.

18 Q. [9:40:33] Now, sir, we met during the witness preparation session. But for
19 the record, my name is Edward Jeremy and I'll be asking you questions on behalf of
20 the Prosecution.

21 A. [9:41:08] Okay.

22 Q. [9:41:10] Now, just a reminder to you to try and ensure the interpretation
23 process is smooth, I'll ask you to please provide your answers in a few sentences and
24 then I'll ask you to pause.

25 A. [9:41:52] Okay.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Q. [9:41:55] And then once you have paused for a moment, you can then resume
2 with your answer. And if I need to remind you to pause, then I'd ask you to look at
3 me while you're answering and I'll put my hand up, just like -- like this, to remind
4 you to pause before putting my hand like this to ask you to continue.

5 A. [9:42:47] Okay.

6 Q. [9:42:49] Okay. And the last reminder before I begin my questions. We are in
7 open session. The public cannot see your face or hear the sound of your voice, but if
8 you feel your words may identify you, then please let me know and we will go into
9 private session. Is that clear, sir?

10 Okay. So I've explained to you that your statement is submitted into the record of
11 this case, and what I'm going to do today, in the next 30 minutes or so, is to ask a few
12 follow-up questions in relation to your statement. Is that clear?

13 A. [9:44:32] Yes, that is clear.

14 Q. [9:44:37] Okay. And what I'm going to do is focus on your three interactions
15 with Ali Kushayb which you describe in your statement.

16 A. [9:45:10] Good.

17 Q. [9:45:12] Okay. So let's focus on your first interaction with Ali Kushayb, which
18 you describe in paragraphs 24 to 28 of your statement, which is tab 1 of our binders.
19 DAR-OTP-0222-0438.

20 A. [9:45:59] Okay, that's good.

21 Q. [9:46:02] Okay. Now, in paragraph 24 you explain that in Garsila, you and
22 your father were advised by local people to take your injured donkey to Ali Kushayb
23 for medication. Do you recall that?

24 A. [9:46:48] I remember that very well.

25 Q. [9:46:52] Okay. Can you tell us, if you recall, how your donkey became injured,

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 sir?

2 PRESIDING JUDGE KORNER: [9:47:08] Mr Jeffrey, I have to ask, is it necessary?

3 MR JEREMY: [9:47:12] Well, I asked myself this question, your Honour, but I think
4 it goes to the witness's recollection of these events and his -- his memory and
5 therefore his -- his credibility. So it's a -- it's a short question which I did think was
6 worth asking.

7 PRESIDING JUDGE KORNER: [9:47:29] All right. But, I mean, just bear in mind
8 that -- that given the -- the complexities of the interpretation, the less questions
9 the better.

10 MR JEREMY: [9:47:53]

11 Q. [9:47:53] Sir, do you -- do you recall how your donkey became injured that day?

12 THE INTERPRETER: [9:49:13] Please pause for interpretation.

13 PRESIDING JUDGE KORNER: [9:49:15] Mr Jeffrey, you've got to --

14 MR JEREMY: [9:49:20] Okay.

15 Q. [9:49:18] Sir, sir --

16 A. [9:49:29] I remember that very well. It was in June 2001, when my father and I
17 were carrying onion and oil on two donkeys to the Garsila market. When we got to
18 an area known as *Khor Asakir* (phon), our donkey was wounded in the leg because of
19 the stones on the road. We carried on while our donkey was still limping. We got
20 to the area of Mara and the Manga valley. Then we went to Garsila. We arrived to
21 Garsila market and we kept the donkey at a special place for donkeys.

22 Q. [9:50:34] Thank you, sir.

23 And just a reminder, when you provide your answer, please look at me so that if I
24 need to -- to tell you to pause, you will -- you will see me. Is that clear?

25 A. [9:51:05] Yes.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Q. [9:51:07] Okay. So you say in paragraph 24 of your statement that the local
2 people in Garsila advised you to take your injured donkey to Ali Kushayb. Was this
3 the first time you had heard the name Ali Kushayb, sir?

4 A. [9:51:46] Yes, it was the first time.

5 Q. [9:51:53] Now, in paragraph 25 you explain that the locals directed you to
6 the shop and that your father asked the man outside the shop, "Is this your place,
7 Ali Kushayb?" and the man confirmed that it was. Do you recall that, sir?

8 A. [9:53:16] (No interpretation)

9 Q. [9:53:16] Sir --

10 A. [9:53:22] Yes, I remember that very well. When my father and I guided our
11 donkey to Ali Kushayb and my father was dragging the donkey while I was standing
12 behind it. When we got to Ali Kushayb's shop, my father asked him, "Is this
13 the shop of Ali Kushayb?" and Ali Kushayb said, "Yes, this is my store and I am
14 Ali Kushayb." My father told him, "My donkey is wounded in the leg and he needs
15 to be treated." He told him, "Yes, I will check your donkey." So he did check
16 the donkey's leg, and after that he gave him the medication.

17 PRESIDING JUDGE KORNER: [9:54:02] This is all in the statement, Mr Jeremy.

18 MR JEREMY: [9:54:08] I was expecting a yes or no answer, Madam President.

19 PRESIDING JUDGE KORNER: [9:54:11] I know, but --

20 MR JEREMY: [9:54:14] Yeah, okay.

21 PRESIDING JUDGE KORNER: [9:54:15] -- you've got to accept you're not going to
22 get -- this needn't be translated to the witness. You're not going to get that. As I
23 say, extracting information which is already there isn't really going to take us much
24 further.

25 MR JEREMY: [9:54:36]

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Q. [9:54:36] Sir, this conversation that you've described between your father and
2 Ali Kushayb was in Arabic, according to your statement. My question is, could you
3 understand Arabic at that time, sir?

4 A. [9:55:16] I wasn't the one who was talking to Ali Kushayb. It was my father.
5 And I was standing next to them and I was listening to their conversation. But I
6 understand Arabic and I know Arabic.

7 Q. [9:55:32] Do you recall, sir, the approximate day, time of day that this interaction
8 between Ali Kushayb and your father took place?

9 A. [9:56:17] I didn't have a watch at that time, but it was between 1 p.m. and 2 p.m.

10 Q. [9:56:30] Now, you say in your statement, paragraph 25, you spent around 20 to
11 25 minutes in the presence of Ali Kushayb at this time. Did you go inside
12 Ali Kushayb's shop?

13 A. [9:57:18] I did not get inside the shop. I was standing outside the shop with my
14 father. And Ali Kushayb came out and gave us the medication, and then we left.

15 Q. [9:57:32] Sir, even though you did not go inside the shop, is it possible to
16 estimate the approximate size of the shop?

17 A. [9:58:09] The size of the shop is approximately 3 by 3 metres or maybe a little bit
18 less than 3 by 3.

19 Q. [9:58:22] Thank you. Now, sir, I want to move forward in your statement now
20 to your second sighting of Ali Kushayb in Kodoom on 15 August 2003.
21 Paragraphs 34 to 61.

22 A. [9:59:14] Would you like me to start from the beginning? Is that what you're
23 asking me?

24 Q. [9:59:20] No, I'll -- I'll ask you some focused questions, because we have your
25 full account in your statement. And I want to try and stay in public session, so if you

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 think any of your answers may identify you, then please say and we will request to
2 go into private session. Is that clear?

3 A. [10:00:15] That is correct. Please start and if I can recall, I will answer you.

4 Q. [10:00:26] Okay. So in your statement you describe how the attack on Kodoom
5 begins and your movements during that attack. You say that at a certain point you
6 were stabbed. Do you recall that, sir? Just yes or no for now.

7 A. [10:01:17] Yes.

8 Q. [10:01:19] Okay. So I want to focus on what happened next. That's
9 paragraph 49 of your statement, where you describe Ali Kushayb putting his foot on
10 your neck and calling you an *abid* or a slave. Firstly, my question is: Do you -- do
11 you recall that, sir?

12 A. [10:02:05] I remember it very well.

13 Q. [10:02:07] Now, at this point that you are on the floor and Ali Kushayb has his
14 foot on your neck, can you describe your position on the floor. How were you lying?

15 A. [10:03:24] (No interpretation)

16 Q. [10:03:24] Sir.

17 A. [10:03:33] At that moment I was lying on my front, and there were two bodies
18 on the side of the road, but the distance between me and the two bodies was about
19 5 metres. Just before that, I was in my house and I had malaria at the time. I came
20 crawling and I saw people on horsebacks passing by.

21 Q. [10:04:13] And, sir, my -- my question relates to the moment that you are
22 lying -- that you are on the floor and you say that Ali Kushayb has his foot on your
23 neck. And I'd like you to describe your position on the floor, ideally, please, in
24 a short answer.

25 PRESIDING JUDGE KORNER: [10:04:37] Wouldn't the better question be, before

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 this is translated, how were you able to see who had the foot on your neck?

2 MR JEREMY: [10:04:48] Well, that was -- that was my next question.

3 PRESIDING JUDGE KORNER: [10:04:50] I know, but describing his position is
4 how -- I mean that's the real question, isn't it?

5 MR JEREMY: [10:04:58]

6 Q. [10:05:00] Okay. Sir, in your statement you say you're lying on the floor with
7 Ali Kushayb's foot on his neck -- on your neck. How were you able to see that it was
8 Ali Kushayb's foot on your neck?

9 A. [10:06:15] When I was lying on the ground, a group of the Janjaweed came and
10 they stood around me. One of them hit me with the back of a rifle, the metal part of
11 the rifle. And then three vehicles arrived. One of them stopped very close and
12 some person -- someone just got out of the vehicle.

13 Q. [10:06:48] When you were lying on the floor, sir, were you lying with your face
14 facing the ground or facing the sky?

15 A. [10:07:29] My head was on the ground. And the Janjaweed were around me
16 and one of them hit me with the back of the rifle, the *songi* (phon). And during that
17 time, a car stopped nearby and a person came out of it and put his foot on my neck
18 and called me a slave, *abid*.

19 Q. [10:08:02] And when that person put their foot on your neck, could you
20 recognise who it was?

21 A. [10:08:53] When this person walked out of the car and came towards me and put
22 his foot on my neck, my head turned towards the sky, so I managed to see him. And
23 then another person came and hit me with the back of the rifle. I have scars on my
24 face because of that hit.

25 Q. [10:09:27] Thank you. Now, I want to skip forward a little bit, but still in

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 relation to the mistreatment you describe, and I want to focus on some words that
2 you say Ali Kushayb said to you.

3 A. [10:10:05] (No interpretation)

4 Q. [10:10:05] Now, in paragraph 55 you say that following this mistreatment you
5 heard Ali Kushayb tell his men, quote: "If he tells where the people are, then you can
6 kill him." End quote.

7 My question, sir, is: At this point how could you tell it was Ali Kushayb speaking
8 those words?

9 A. [10:11:36] At that moment when I was lying on the ground, I was in so much
10 pain and I was screaming, and they were hitting me. And then I heard one of them.
11 I heard a gunshot and someone was pointing his gun towards me. And then I heard
12 Ali Kushayb telling him to stop and not to kill me.

13 Q. [10:12:14] And my question sir, is: At that moment how could you tell that it
14 was Ali Kushayb who said, "Stop", and not to kill you?

15 A. [10:13:01] At that moment, Ali Kushayb had his foot on my neck already. And
16 when that person pointed his gun towards me, Ali Kushayb told him, "Stop, don't kill
17 him. We have instructions and we have a list of the people that we have to kill, and
18 we haven't found them yet."

19 Q. [10:13:30] Okay. Sir, I want to move forward now to the final part of my
20 questions, and I want to focus on your observations of Ali Kushayb in Mukjar
21 in September 2003. Paragraph 70 to 81 of your statement.

22 Now, in paragraph 71, sir, you say that when you saw Ali Kushayb, Dayf Al Samih
23 and Al-Sadiq Solong in Mukjar on 9 September, you were 10 metres away from them.
24 My question is: Were they able to see you at that point?

25 PRESIDING JUDGE KORNER: [10:14:55] No, stop. How he is he going to answer

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 that? How does he know whether they could see him?

2 MR JEREMY: [10:15:07] Well --

3 PRESIDING JUDGE KORNER: [10:15:10] Wherever he was standing, how is he to
4 know whether or not they could see him. I mean, the best he can say is that he was
5 standing in an exposed place so he was visible to everybody.

6 MR JEREMY: [10:15:23] Well, I think -- I think the answer will -- will answer your
7 question, Madam President (Overlapping speakers)

8 PRESIDING JUDGE KORNER: [10:15:29] Well, it's the way it's phrased.

9 MR JEREMY: [10:15:32] Okay.

10 Q. [10:15:33] Sir, when you saw Ali Kushayb, Dayf Samih and Al-Sadiq Solong,
11 where were you -- where were you located, in Mukjar? Where were you?

12 A. [10:16:33] I saw them in Mukjar when I was in the market. I was under
13 a shaded area near the mosque. There was like a square between the mosque and
14 the market, and this is exactly where I saw them, the three of them.

15 Q. [10:17:01] And during this time you describe that young men were being
16 arrested; is that correct?

17 A. [10:17:26] Yes, correct.

18 Q. [10:17:26] But you were not arrested during this time; is that right?

19 A. [10:17:51] Yes, I wasn't arrested at that time because I was inside and the door
20 was locked.

21 Q. [10:18:06] When you say the door was blocked, sir, that was the interpretation I
22 received, what did you mean? You said that the door was locked.

23 A. [10:18:41] I was inside an area that is shaded and closed, so I hid inside that
24 area.

25 Q. [10:18:59] Now, in paragraph 72 you say that you saw these three men,

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Ali Kushayb, Al-Dayf Samih and Al-Sadiq Solong, arrive in a vehicle with a gun
2 mounted on the back. Do you recall that, sir? Yes or no?

3 A. [10:19:37] Yes, correct.

4 Q. [10:19:39] My question, sir, is: Was this the same vehicle or a different vehicle
5 to the vehicle you saw Ali Kushayb arrive in in Kodoom, which you describe in
6 paragraph 52?

7 A. [10:20:20] I don't know if it was the same vehicle, but it had the same colour. It
8 had the same colour.

9 Q. [10:20:32] And you also say in paragraph 74 that Ali Kushayb was carrying an
10 axe. And my question is: Did you recognise that axe as one you'd seen before?

11 A. [10:21:14] Yes, it was the same axe.

12 Q. [10:21:20] You say "the same axe". When -- when had you seen that axe before,
13 sir?

14 A. [10:21:46] He was carrying the axe with his right hand and he was carrying
15 a walkie-talkie in his other hand.

16 Q. [10:22:04] When you say "he", sir, who are you referring to?

17 A. [10:22:25] I refer to Kushayb.

18 Q. [10:22:29] Thank you. Thank you, sir.

19 Those are my questions, Madam President, your Honours.

20 PRESIDING JUDGE KORNER: [10:22:35] Yes, thank you very much, Mr Jeremy.

21 Yes, Ms von Wistinghausen.

22 QUESTIONED BY MS VON WISTINGHAUSEN:

23 Q. [10:22:57] Good morning, Mr Witness. We have of course met before, with my
24 team, because you're not only a witness in this case, but also a participating victim.

25 A. [10:23:37] (No interpretation)

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Q. [10:23:37] As has been indicated before, all of us have read your witness
2 statement, the Prosecution, the Defence, the Judges, myself. So we know everything
3 that has happened to you at the time. But I still want to ask you some questions
4 about the consequences of the attacks that you've lived, and I would like to give you
5 the opportunity to share some of your views and concerns with the Judges.

6 A. [10:24:46] Very good.

7 Q. [10:24:49] To make sure that everything is well understood, it's very important
8 that the interpreters have the opportunity to translate every word you say, so I will do
9 the same. If your answer gets too long, I will just ask you to pause by doing this.

10 All right?

11 A. [10:25:47] Understand.

12 Q. [10:25:50] First of all, Mr Witness, I would like you to share with us
13 the memory -- your memory of the times before the attacks. And I would like you to
14 tell us what life was like in your home village - and don't mention your home
15 village - when you were a child.

16 A. [10:27:17] Before the war, our life was very normal and we used to farm and
17 cultivate the land, and some of us had livestock. We used to work during
18 the autumn season and rest during summer. Some children used to go to Koranic
19 schools to learn.

20 Q. [10:27:56] I read in your statement that after the harvest,
21 the villages -- the villagers in your home area would have parties and celebrations.
22 Can you describe these celebrations to us, please.

23 A. [10:29:10] We used to have parties in special occasions. So, for example, when
24 a child gets circumcised or if somebody gets married, and we send invitations to
25 everyone in the neighbouring villages, like the five or six villages around us. People

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 used to come and we used to host them in different houses of our villages -- village.

2 And we used to dance and play the drums, and we had a special dance, traditional
3 one called Firagebiya (phon).

4 Q. [10:30:03] You have now been a displaced person since 2004. Do these kind of
5 celebrations still take place in -- in the camps?

6 A. [10:30:35] We didn't organise any celebrations at the camp.

7 Q. [10:30:45] In your statement, Mr Witness, you describe an attack on your father's
8 home village - and please don't mention the name - in March 2003. You had been
9 living there for several years, and working with your father on the family farm.

10 That's paragraph 14 of the statement.

11 Can you tell us what happened to your family's home and property during this
12 attack.

13 A. [10:32:33] At that time, my father and I were at the farm and people were in
14 the village. The distance between the farm and the village is about 20 minutes. We
15 saw people on horseback getting closer. So we heard shots in the village. We were
16 surprised to see people fleeing the village and coming towards us. So the people
17 from the village and ourselves, we all went to Kaba to hide.

18 Q. [10:33:19] What happened to your family's home and property?

19 A. [10:33:59] We were in Kaba, and the people who were on horseback fired shots.
20 And we heard that there were children who were screaming and people shouting and
21 screaming.

22 Q. [10:34:24] Can you say what happened to your family's farm.

23 A. [10:35:11] They first burnt down the village and they looted the village and all
24 the possessions. Then they went to the farm and they also looted the tomatoes,
25 the onions. And they let the cattles walk all over the farm, and the rest of

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

1 the property was looted.

2 Q. [10:35:42] I also - pardon - read in your witness statement that you fled to
3 the mountains after you had to leave your home village and you had to stay there for
4 a few weeks. We also know that you had been severely injured. Did you get any
5 medical treatment during that time?

6 A. [10:36:52] Back then, if you tried to ask for any treatment at the hospital or
7 something like that, you would get arrested.

8 MS VON WISTINGHAUSEN: [10:37:07] Madam President, I would like to go into
9 private session, but very shortly, because of the nature of the injuries. And out of an
10 abundance of caution, I would just like to ask in private.

11 PRESIDING JUDGE KORNER: [10:37:18] Yes, all right.

12 Private session, please.

13 (Private session at 10.37 a.m.)

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

15 MS VON WISTINGHAUSEN: [10:37:43]

16 Q. [10:37:43] We are now in private session, Mr Witness. That means that only
17 those here in the courtroom can hear what you're saying.

18 I would like to ask you a few questions about your injuries. And I know that it's
19 very difficult for you to remember this and to talk about it, so it's for you to decide
20 what you want to tell the judges, and you can stop any time. Do you understand
21 that?

22 A. [10:38:44] Yes.

23 Q. [10:38:47] We read in your witness statement that, due to the mistreatments that
24 you suffered, you were injured (Redacted)

25 (Redacted). Can you tell us, would you like to speak about this and what

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

1 the impact is for you until today?

2 A. [10:39:49] I can tell you about the impact of these wounds on my life and I can
3 clarify the matter to you.

4 Q. [10:40:02] Yes, please say what you want to say.

5 A. [10:40:29] It was a Friday at 11 o'clock on 15 August 2003. I was with my father,
6 my mother, and members of the family, (Redacted). It
7 was during while we were having the meal when the attack happened.
8 (No interpretation).

9 Q. [10:41:58] Mr Witness, I'm very sorry, but we need a pause for the interpreters.

10 A. [10:42:18] On 15 August 2003, it was a Friday, at 11 o'clock, my family members
11 and I, my father, my sister, my younger siblings, we were having a meal. We heard
12 fire shots from the eastern side of the village. And after that, we heard that the fire
13 shots were increasing significantly, (Redacted)
14 (Redacted)

15 PRESIDING JUDGE KORNER: [10:43:03] Okay. Is he finished?

16 MS VON WISTINGHAUSEN: [10:43:07] I'll address it, Madam President.

17 PRESIDING JUDGE KORNER: [10:43:09] But he's just repeating now. He's not
18 actually answering your question at all.

19 MS VON WISTINGHAUSEN: [10:43:14] I know, I know. (Overlapping speakers)

20 PRESIDING JUDGE KORNER: [10:43:15] You actually want him to repeat
21 everything that he's already said in his statement?

22 MS VON WISTINGHAUSEN: [10:43:20] No, no, I just didn't want -- out of respect to
23 him, I just didn't want to stop him. I was just going to tell him that we've read
24 the statement. Don't worry, I'll take (Overlapping speakers)

25 PRESIDING JUDGE KORNER: [10:43:33] All right. (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

1 MS VON WISTINGHAUSEN: [10:43:34]

2 Q. [10:43:34] Mr Witness, we have all read your very detailed account of what has
3 happened on this very specific day. What I would like you to share with us now is
4 the injuries that you had and the consequences, the impact this has on your body and
5 soul, until today. If this is something that you want to share with the judges, please.

6 A. [10:44:40] I asked before if I should talk about a certain thing or not, but you told
7 me, "Talk about whatever you want to tell the judges about", and I was talking in
8 general.

9 Q. [10:44:54] Sorry, my fault. I probably didn't formulate my question very
10 clearly. I would like you to talk about the injuries (Redacted)
11 (Redacted), and explain to us what consequences and impact it has on your life.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE KORNER: [10:49:07] Can we go back into open session?

23 MS VON WISTINGHAUSEN: [10:49:09] Yes, I was just going to say we can go back
24 to -- yeah.

25 (Open session at 10.49 a.m.)

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 THE COURT OFFICER: [10:49:25] We're back into open session, Madam President.

2 MS VON WISTINGHAUSEN: [10:49:31]

3 Q. [10:49:33] Can you describe to us how is your life today in the camp where
4 you are.

5 A. [10:50:31] If I want to describe to you the life in the camps, it would be quite
6 difficult. I can't give you a detailed description of life there. We rely on
7 humanitarian organisations, but these organisations have left the camps and we
8 didn't have any authority to rely to. And now we started relying on some work
9 available.

10 Q. [10:51:02] Can you describe to us the current food situation.

11 A. [10:51:34] We didn't have enough food. We used to rely on humanitarian
12 organisations, but those organisations were expelled, so we don't have enough food.
13 And if you don't find a job for a day or two, then you will be famished and your
14 children will sleep without food.

15 Q. [10:52:00] Do you occasionally find work?

16 A. [10:52:31] The available work is only on daily basis. Sometimes you can find
17 a job. Sometimes you go searching for a job but you cannot find any, because
18 the only thing that's available is working in construction and making the bricks,
19 construction bricks.

20 Q. [10:52:52] And finally, Mr Witness, I would like to ask you a few questions
21 about your decision to become a participating victim in these proceedings. Can you
22 tell us what your expectations or hopes are for this trial, for you personally.

23 A. [10:53:56] What I expect from this Court, I expect that justice will be served and
24 that the leaders of the regime would be prosecuted justly.

25 Q. [10:54:15] And can you say what your hopes are for you personally, and for

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 your family.

2 A. [10:54:53] I cannot tell you what are my aspirations, but what I -- what I hope for
3 is that the leaders of the regime would be prosecuted, and that this would lead to put
4 an end to war and conflict in Darfur.

5 Q. [10:55:11] Thank you, Mr Witness. These are my questions.

6 PRESIDING JUDGE KORNER: [10:55:18] Yes.

7 You've finished, have you, Ms von Wistinghausen? Thank you very much.

8 All right. It is five minutes early, but we may as well take the break before we start,
9 Mr Laucci.

10 Sir, there's going to be a break now for half an hour to enable you to relax. And then
11 you will be questioned by counsel for the Defence -- the lawyer for the Defence.

12 Yes, Mr Jeffrey.

13 MR JEREMY: [10:55:55] Madam President, my assumption based on Mr Laucci's
14 estimate yesterday is that we won't need the next witness until tomorrow morning,
15 but I just wanted to verify that.

16 PRESIDING JUDGE KORNER: [10:56:06] No, Mr Laucci made that quite clear, and
17 indeed from the content of what the statement is.

18 This needn't be translated for the witness.

19 Mr Laucci, I note in your documents we appear to have a report on the effects of
20 malaria. I don't think so. Just for future reference.

21 MR LAUCCI: [10:56:28] Yeah.

22 PRESIDING JUDGE KORNER: [10:56:29] You can call an expert if you want.

23 MR LAUCCI: [10:56:31] Yeah, sure. The report is for the Chamber and I will just
24 discuss the witness symptoms and no more.

25 PRESIDING JUDGE KORNER: [10:56:39] Well, all right, you can ask him about

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

- 1 the symptoms that he suffered, but you can't put forward the effects.
- 2 Yes, thank you very much. 11.30, please.
- 3 THE COURT USHER: [10:56:50] All rise.
- 4 (Recess taken at 10.56 a.m.)
- 5 (Upon resuming in open session at 11.32 a.m.)
- 6 THE COURT USHER: [11:32:31] All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE KORNER: [11:33:11] Yes, Mr Laucci.
- 9 MR LAUCCI: [11:33:15] Thank you, Madam President.
- 10 QUESTIONED BY MR LAUCCI:
- 11 Q. [11:33:20] Good morning, Mr Witness. We meet for the second time. My
- 12 name is Cyril Laucci and I will be in charge of your cross-examination.
- 13 Thank you for appearing. Immediately I would like to establish the same code as
- 14 with my other colleagues, raised hand you stop for the interpretation.
- 15 I forgot the interpretation.
- 16 A. [11:34:22] Very well. I'm hearing you.
- 17 Q. [11:34:24] So raised hand you stop, rolling hand you carry on if you stopped in
- 18 the middle of something.
- 19 We are in public session. I will have, Madam President, to move shortly in closed
- 20 session to ask identifying information to the witness, but I have a first question to ask
- 21 in public, first.
- 22 I want to follow up to the last answer you made to my colleagues, Legal
- 23 Representative of Victims, before the break. I'm at real-time transcript, page 24,
- 24 lines 11 to 13, and 16 to 19.
- 25 A. [11:36:17] (No interpretation)

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

1 Q. [11:36:17] You said that your hope is that the leaders of the Sudanese regime
2 will be prosecuted. Can you tell us which leaders of the Sudanese regime you are
3 thinking about, please.

4 A. [11:37:07] I mean all the Sudanese officials, starting from al-Bashir and
5 everybody who comes under him.

6 Q. [11:37:30] Is it your position that the man you call Ali Kushayb is or has ever
7 been a leader of the Sudanese regime?

8 A. [11:38:10] He's a leader of the militia, but they received their instructions from
9 the presidency.

10 Q. [11:38:26] Thank you, Mr Witness.

11 I would like now to move to the private session, please.

12 PRESIDING JUDGE KORNER: [11:38:31] Yes, private session.

13 (Private session at 11.38 a.m.)

14 THE COURT OFFICER: [11:38:47] We're in private session, Madam President.

15 MR LAUCCI: [11:38:52]

16 Q. [11:38:52] So, Mr Witness, I ask to move to private session so that only
17 the persons in this room and the interpreters can hear what you say, and you can
18 speak freely without fear of being heard from the public.

19 You are born in Kodoom, and you describe Kodoom as the biggest village in
20 the Bindisi area, with a population of 2,000 inhabitants. That is in 2003. And I am
21 at paragraph 21 of the witness statement.

22 You say that the majority of the population in Kodoom were farmers. Did
23 the people have cattle as well?

24 THE INTERPRETER: [11:41:04] Message from the interpreter: I didn't hear
25 the interpretation from the Fur booth.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

1 THE WITNESS: [11:41:36](Interpretation) Yes, some of the people had livestock such
2 as cows, camels, goats and sheep.

3 MR LAUCCI: [11:41:49]

4 Q. [11:41:50] Thank you. Was there a market in Kodoom?

5 A. [11:42:04] No, there was no market in Kodoom. We used to go to the market in
6 Bindisi.

7 Q. [11:42:15] Thank you. You say that Kodoom is located at about one hour to one
8 hour 20 minutes from Bindisi. How far is it from Garsila?

9 A. [11:42:57] I am not very sure about the distance between Kodoom and Garsila,
10 but approximately something around seven hours, or maybe more.

11 Q. [11:43:13] Thank you. I'm not sure you will know the answer, but would
12 the distance between Rasawli and Garsila be about the same?

13 A. [11:43:53] No, the distance between Rasawli and Kodoom is something around
14 six hours, or maybe less.

15 Q. [11:44:09] Okay, you -- you answered with the distance between Rasawli and
16 Kodoom. My question was about the distance between Rasawli and Garsila. Do
17 you know that?

18 A. [11:44:46] Yes. Approximately, the distance between Rasawli and Garsila is
19 about five hours or five hours and 30 minutes, or maybe five hours and 50 minutes.

20 Q. [11:45:02] Thank you.

21 THE INTERPRETER: [11:45:05] Correction from the Fur booth: Six hours. Six
22 hours, not five hours.

23 MR LAUCCI: [11:45:14] Thank you very much to the booth as well.

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

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Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

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Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

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Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

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11 Page redacted – Private session

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17 Q. [12:06:18] (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

1 (Redacted). What do

2 you know about this Korea prison? Is it a special prison for sensitive cases or

3 something like that?

4 A. [12:09:13] Korea prison is one of the most dangerous prisons. A person who

5 commits a small crime would not be transferred to that prison.

6 Q. [12:09:27] When you say it is "one of the most dangerous", is it because it is

7 reserved for serious cases or is it because of the way the detainees are treated in that

8 prison?

9 A. [12:10:31] It's both, both reasons you mentioned. In addition, the prison has

10 a very high outer perimeter that goes up to about 4 metres high. And

11 the government would not transfer a person to this prison unless he had committed

12 a serious crime. And the way they are treated in the prison is very bad.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

1 (Redacted)

2 (Redacted)

3 Q. [12:14:09] Anything else you want to -- you were about to add, or I move to the
4 next question?

5 A. [12:14:26] You can move on, please.

6 Q. [12:14:29] Did you -- is -- no. Did you hear about torture cases in Korea prison?
7 Is it famous for that?

8 A. [12:15:15] I already answered the question. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

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11 PRESIDING JUDGE KORNER: [12:19:35] I don't want to interrupt, Mr Laucci, but

12 we haven't even got near the contents of the statement. Are you going to pursue this

13 much longer? And we're still in closed session.

14 MR LAUCCI: [12:19:47] I'm almost done with that topic, some last aspect and that's

15 over.

16 PRESIDING JUDGE KORNER: [12:19:54] All right.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

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Page redacted – Private session

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

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5 Q. [12:28:09] (Redacted)

6 (Redacted)

7 I thank you for providing this important information.

8 Madam President, we can move back to the public session. At some point, I will

9 have to make some submissions before your Chamber on the information we just

10 received, but the -- the witness doesn't need to be there.

11 PRESIDING JUDGE KORNER: [12:28:40] No, well, I've -- this needn't be translated

12 for the witness.

13 Mr Laucci, I mean, you've spent one hour on a point that -- that really you've made

14 before and -- let me put it this way, none of this is new information. Anyhow --

15 MR LAUCCI: [12:29:07] With your permission, Madam President, I will answer that

16 in the absence of the witness.

17 PRESIDING JUDGE KORNER: [12:29:11] All right. You can deal with this on

18 another occasion. Yes, all right.

19 Yes, let's go into public session.

20 (Open session at 12.29 p.m.)

21 THE COURT OFFICER: [12:29:28] We are back into open session, Madam President.

22 MR LAUCCI: [12:29:36]

23 Q. [12:29:37] Mr Witness, we are back in public, so the public can hear what you

24 say. And I will start with asking you about the events that you have gone through,

25 starting with the attack on Kodoom on 15 August 2003.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 We have your statement, so I will not ask you to repeat in detail the full story. I just
2 have some specific questions for you for clarification. I will start with the first
3 question after interpretation.

4 You mention that Kodoom was attacked by Arab militias which you also call
5 the Janjaweed. Were there members of the Sudanese Armed Forces as well in this
6 attack?

7 A. [12:31:58] No, there were no members of the Sudanese army. But that person
8 who is sitting right behind you, his forces were there and they were in vehicles, as
9 well as the Janjaweed on horsebacks.

10 PRESIDING JUDGE KORNER: [12:32:20] Okay, before you go on, Mr Laucci, I've
11 been asked to remind you - this is clearly a desperate appeal from the interpreters - to
12 shorten your questions. There's a long example of one, but that question could have
13 simply been asked: When Kodoom was attacked, did it include members of
14 the Sudanese Armed Forces. You don't need the lead in. I think I've been -- can I
15 say, you're not the only sinner. We're all like that. But I think it's getting a bit
16 desperate. So just ask the question without the lead in.

17 MR LAUCCI: [12:33:04] Thank you for reminder.

18 Q. [12:33:07] Mr Witness, did you see members of the Central Reserve Forces
19 during the attack?

20 A. [12:33:41] At that time it was difficult for us to distinguish between the forces,
21 because those people were dressed in a different way. But what I knew at the time is
22 that forces that came with the Janjaweed were members of the Popular
23 Defence Forces.

24 So I can say that at the time there were the police, the Central Reserve Forces and
25 the Popular Defence Forces. They all participated.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Q. [12:34:40] Thank you. You mentioned a -- on the trousers, you mentioned
2 a circle that had a picture of a red bird on it.

3 Can we have Defence tab number 3 on the screen, please. Can be shown to
4 the public. And the ERN is DAR-D31-0010-0003.

5 MR JEREMY: [12:35:20] Madam President, not an objection, but it would be helpful
6 if there's any information about just the provenance of this image.

7 MR LAUCCI: [12:35:29] Yes. Ah, okay.

8 PRESIDING JUDGE KORNER: [12:35:32](Microphone not activated)

9 MR JEREMY: [12:35:37] Yes, so no objection with it being shown to the witness, but
10 if there's any information about the provenance of this image, where it comes from,
11 that would be --

12 PRESIDING JUDGE KORNER: [12:35:47](Microphone not activated) it's your
13 document.

14 MR JEREMY: [12:35:51] No, it's not.

15 PRESIDING JUDGE KORNER: [12:35:52](Microphone not activated)

16 THE INTERPRETER: [12:35:53] Mic, your Honour, please.

17 PRESIDING JUDGE KORNER: [12:35:57](Microphone not activated) yes, all right,
18 Mr Laucci, where does this document come from?

19 MR LAUCCI: [12:36:03] Yes, I thought my colleague would ask about the specific
20 paragraph of the -- the statement. It's paragraph 42. And regarding
21 the -- the provenance of that document, it's the result of an open source research on
22 Sudanese Central Reserve Forces.

23 PRESIDING JUDGE KORNER: [12:36:24] Okay.

24 MR LAUCCI: [12:36:25]

25 Q. [12:36:27] Mr Witness, do you see --

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [12:36:28] Sorry, the first question is, "Do you
2 recognise this?" before we go any further.

3 MR LAUCCI: [12:36:35]

4 Q. [12:36:35] Mr Witness, do you see the insignia on the screen?

5 A. [12:36:49] Yes.

6 Q. [12:36:50] Do you recognise it? If so, what is it?

7 A. [12:37:10] This insignia is what we call Abu Teira. It is the insignia of
8 the Central Reserve Forces. And when Al-Dayf Al-Samih was there, he was using
9 the same insignia.

10 Q. [12:37:27] And is it that insignia that you saw on the trousers of some men
11 during the attack?

12 A. [12:38:10] No, it was different. It was made of different colours. But when we
13 arrived in Mukjar, this was the insignia that Al-Dayf Al-Samih had.

14 Q. [12:38:31] Okay. And then there was -- you saw during the attack another
15 insignia different from this one with a red bird?

16 A. [12:39:03] Yes, that's correct. There was a red bird with some blue.

17 Q. [12:39:17] Thank you. I want to talk about the -- the Janjaweed. You use
18 the word "Janjaweed". Do you know any other name or appellation that they had by
19 the time?

20 A. [12:39:58] You mean when they came to Kodoom?

21 PRESIDING JUDGE KORNER: [12:40:02] Do you know -- before you go on.

22 That's simply -- does the Janjaweed have another name? So much shorter.

23 MR LAUCCI: [12:40:15] I follow you, Madam President.

24 Q. [12:40:17] In 2003, not specifically in Kodoom, in 2003, did the Janjaweed bear
25 other names?

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 A. [12:40:53] They used to call them the militia. Then they started calling them
2 the Janjaweed. Then later they were also called the border guards.

3 After they were called the border guards, recently this name was changed again to
4 the Rapid Support Forces.

5 Q. [12:41:41] Thank you. And I think you already said, but I want you to confirm,
6 that, in your understanding, the Janjaweed were members of
7 the Popular Defence Forces; is that your understanding?

8 A. [12:42:20] No, the Popular Defence Forces -- no, the Popular Defence Forces
9 were there already before the war started in Darfur. But after the start of the war,
10 the Janjaweed were added or adjudicated (phon) to the Defence -- the Popular
11 Defence Forces.

12 Q. [12:43:03] They were added, but did they fall under the PDF?

13 A. [12:43:59] Yes, they used to work together. The Janjaweed forces had the upper
14 hand in executing all the crimes. And the Popular Defence Forces were working
15 with them as well. And we can say the members of the Popular Defence Forces, they
16 were mostly from the dark-skinned people.

17 Q. [12:44:34] Can you explain that reference to "dark-skinned people", and its
18 meaning, please.

19 A. [12:45:16] The government came before the war and asked the local population
20 to train the young people as part of the Popular Defence Forces in order to protect
21 their areas.

22 After the young men were trained --

23 THE INTERPRETER: [12:46:16] Message from the interpreter: Sorry for the delay.

24 THE WITNESS: [12:46:24](Interpretation) But after the young men were trained,
25 they left them with their families and they didn't give them any weapons. Every

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 now and then a vehicle would come and take them to go for a special mission. After
2 those people are taken in the vehicle, they would take them to different places in
3 the big cities and they integrated them into the armed forces. The -- they were told
4 that they are under the authority of the armed forces and they had to go to where
5 they are deployed and they didn't have any choice in that.

6 Q. [12:47:37] And so that I understand correctly, these young people you are
7 talking about, were they integrated within the PDF?

8 A. [12:48:07] You mean by that the young men who received the training?

9 Q. [12:48:12] Those you are talking about, yes.

10 A. [12:49:03] I will repeat my answer. The government that -- and I'm talking here
11 about the period before the war. They used to come to the villages and then ask
12 people if they would like to receive training and join the Popular Defence Forces.
13 Those people who agreed received training for 45 days and they used to get an official
14 uniform. I mean by that the PDF uniform. And then they will leave them in their
15 houses with their families without giving them any weapons. And when
16 the government needed them, they would send vehicles to them and then take them
17 to the big cities. And then they are integrated under the authority of the Sudanese
18 army and they were used by the government as it wished.

19 Q. [12:50:00] Thank you. In your statement, paragraph 103, you mentioned
20 the name of the leader of the Popular Defence Forces in Mukjar, Al Sadiq Solong.
21 Was Al-Dayf Samih also a PDF leader in Mukjar?

22 A. [12:51:17] Al-Dayf Al-Samih is not from the PDF. The photo that you showed
23 me just a little while ago that's showing a little bird, this insignia is the insignia of
24 the -- the forces of Al-Dayf Al-Samih.

25 Q. [12:51:44] Thank you. At paragraph 85 of your statement you identify Al-Dayf

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Samih and Al Sadiq Solong as the Janjaweed leaders in Mukjar.

2 PRESIDING JUDGE KORNER: [12:52:06] If you're going to have the lead in, then it's
3 got to be an accurate quote. He doesn't identify them. He is told by this man,
4 Alkaly, they are. So he's not identifying them.

5 MR LAUCCI: [12:52:21] I will rephrase the question.

6 Q. [12:52:24] Mr Witness, in your knowledge, were Al-Dayf Samih and
7 Al Sadiq Solong the Janjaweed leaders in Mukjar?

8 A. [12:52:59] I know that.

9 Q. [12:53:04] So your answer is yes, they were the Janjaweed leaders in Mukjar in
10 2003?

11 A. [12:53:27] Yes.

12 Q. [12:53:42] And -- and you say Al Sadiq Solong was the leader of the PDF. Does
13 that mean that -- what is the difference between being the leader of the PDF and
14 the leader of the Janjaweed? Can you clarify.

15 A. [12:55:01] Before the events, before the start of the war, I mean, Al Sadiq Solong
16 was the leader of the Popular Defence Forces in Mukjar. But after the war started,
17 when the Janjaweed appeared, they all started working together and they were all
18 under the authority of that person.

19 Q. [12:55:26] Thank you. And you -- to -- to complete this questions, you say that
20 in -- as of 2007, the Janjaweed became border guards. This is at paragraph 64.

21 To your knowledge, were the border guards attached to the Sudanese Armed Forces?
22 Did they form part of the Sudanese Armed Forces?

23 A. [12:56:35] They were separate, but they worked upon instructions from
24 the armed forces. Everything that happened was under the supervision of
25 the Sudanese Armed Forces.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 THE INTERPRETER: [12:57:04] The Fur -- the Fur interpreter, message from the Fur
2 interpreter: In the previous answer, when the witness said "this person", he was
3 referring to the person sitting behind the Defence team.

4 MR LAUCCI: [12:57:22] Thank you.

5 Q. [12:57:24] What you say about the border guards working under the instruction
6 of the Sudanese Armed Forces, did that apply as well in 2003 to the Janjaweed?

7 A. [12:58:23] The instructions and the commands came from the armed forces, from
8 the centre. But in Wadi Salih, when somebody comes, regardless of their rank, they
9 had to work under the command of that person.

10 Q. [12:58:52] Thank you. And with the sign of the hand you are referring to
11 the person sitting behind me.

12 Do you know any name of a border guard leader?

13 A. [13:00:03] During the events when I was in my area between 2003 and 2004, all
14 the forces were under the authority of that person. But after that, I left the entire
15 area and I didn't go back to it. So I don't know what happened after I left.

16 Q. [13:00:26] Did you hear about a person named Musa Hilal?

17 A. [13:00:56] Musa Hilal exists in North Darfur, in Kabkabiya, Fasher and
18 Khartoum. He also was armed and he was given many vehicles and equipment.
19 He was their commander.

20 Q. [13:01:16] Thank you, Mr Witness.

21 Madam President, that's a right moment for a break.

22 PRESIDING JUDGE KORNER: [13:01:20] Yes.

23 Sir, there's going to be a break for lunch now. It will be an hour and a half, and you
24 will then be brought back to conclude your evidence, or not, today?

25 MR LAUCCI: [13:01:38] It is still a possibility and I will try to make it a reality.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [13:01:42] All right. All right. Anyhow, there's
2 the break for lunch.

3 Yes, thank you.

4 THE COURT USHER: [13:01:49] All rise.

5 (Recess taken at 1.01 p.m.)

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

7 THE COURT USHER: [14:36:45] All rise.

8 Please be seated.

9 PRESIDING JUDGE KORNER: [14:37:05] Mr Laucci and Mr Jeremy,
10 the -- the witness over lunch expressed disquiet about having to give evidence in
11 the presence of the accused, whom he has twice -- and I make no comment on -- on
12 that -- he has twice identified as the person he says was the leader of the Janjaweed.
13 In order, therefore, for him not to be under pressure, it's been recommended that he
14 be separated, or not be able to see the accused. So that is why, during
15 the adjournment, the screens have been raised and the curtain drawn.
16 There is no jury, so I cannot see that it makes a difference, but of course if you want to
17 raise an objection to this, you're perfectly entitled to do it.

18 MR LAUCCI: [14:38:28] Madam President, if that is a requirement of the witness,
19 the Defence will not object. We have observed that, since the entry of the witness in
20 the courtroom, he has been, on repeated occasion, looking for Mr Ali Muhammad Ali
21 Abd-Al-Rahman himself and not the opposite. But that's his requirement. We
22 understand that the witness is testifying about going through very, very serious and
23 terrible treatment so that has to be respected.

24 PRESIDING JUDGE KORNER: [14:39:02] Right. Well, may I say, I'm very grateful,
25 Mr Laucci, and it's no less than I'd expect from someone of your experience. Thank

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 you very much.

2 I take it that you've got nothing to --

3 MR JEREMY: [14:39:15] No, Madam President. Thank you to Mr Laucci. And just
4 to say that the measure seems consistent with the options available to the Chamber
5 under Rule 88 to, you know, facilitate the testimony of vulnerable witnesses such as
6 this one.

7 PRESIDING JUDGE KORNER: [14:39:32] Yeah. Thank you very much. Yes, well,
8 let's ...

9 (Trial Chamber confer)

10 PRESIDING JUDGE KORNER: [14:40:34] Mr Laucci, regrettably, it appears that,
11 without seeking the Court's approval for this course of action, somebody told
12 the witness that there was a possibility of the screen or the possibility of being in
13 a separate room. Not surprisingly, he's taken the option of the separate room. I
14 think the effect is the same. It's no different as though he were on video link. But
15 unless again you've got any objection, it seems he has decided that's what he wants.

16 MR LAUCCI: [14:41:19] Will that impact on the timing of the session?

17 PRESIDING JUDGE KORNER: [14:41:21] I wouldn't have -- it's been -- how long
18 does it take to set it up?

19 (Court officer and Trial Chamber confer)

20 PRESIDING JUDGE KORNER: [14:41:53] I think I'd better place it on the record. I
21 gather -- I gather that in fact neither remote room is available today. And I want to
22 place on the record that no suggestions are to be made to witnesses about protective
23 measures that are available. They -- they can -- if they say -- particularly in this sort
24 of situation. If they say that they have -- they're uneasy about being in the same
25 place as the accused because they say they recognise him, well, then the application

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 must be made to the Trial Chamber. And I want to make it absolutely clear, if this
2 happens again. However, for today, we don't have a remote room.

3 What I'm going to do is I'm going to ask the court officer, I think, to speak to
4 the witness, explain the situation, explain that the accused cannot see him, he won't
5 be able to see the accused either, and that if he insists he doesn't want to be in
6 the same room, that will cause a delay and he'll be here longer giving testimony.

7 So we'll -- yes, Ms von Wistinghausen.

8 MS VON WISTINGHAUSEN: [14:43:21] Yes, Madam President.

9 PRESIDING JUDGE KORNER: [14:43:22] I'd forgotten that he's --

10 MS VON WISTINGHAUSEN: [14:43:25] At the end of the day, the witness is our
11 client so --

12 PRESIDING JUDGE KORNER: [14:43:27] Yeah, I'd forgotten that, sorry.

13 MS VON WISTINGHAUSEN: [14:43:31] -- my suggestion would be that you give
14 me a moment to speak to him, and I think that's more appropriate than to ask
15 the court officer.

16 PRESIDING JUDGE KORNER: [14:43:37] Well, I do apologise again,
17 Ms von Wistinghausen. There are so few witnesses so far who've been -- yes, we'll
18 do that. We'll adjourn while you speak to him.

19 MR LAUCCI: [14:43:49] And one thing for the record as well, Madam President, we
20 have discovered this new situation when we enter the courtroom. We have received
21 no email from VWU. I think that's totally inappropriate. The Defence team has
22 a presumption of innocence and that should be respected. I'm talking about the
23 Defence team, here. So, yeah, if we could receive proper explanation for that
24 last-minute arrangements and be put on notice, that would be appreciated in
25 the future.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [14:44:20] Yes, I rather think that they feel that they
2 have to place it before the judges, before the judges make a decision before they tell
3 the parties. But I see the force in -- and if a situation like this arises again, VWU
4 should tell all the parties and in -- technically, the witness is in the middle of giving
5 evidence and, as you know, I warn many of them they mustn't talk about the
6 evidence that they're giving. But I take it nobody objects to Ms von Wistinghausen
7 speaking him just about this matter?

8 MR JEREMY: [14:45:00] No objection to that, Madam President. But just to put on
9 the record that we were also not --

10 PRESIDING JUDGE KORNER: [14:45:03] No, I know.

11 MR JEREMY: [14:45:03] -- informed in -- in advance, same situation as Defence and I
12 think same as my colleagues in victims representatives.

13 MS VON WISTINGHAUSEN: [14:45:15] Same here. And actually I would like to
14 stress that as well, because maybe it would have made sense to at least suggest that he
15 have the possibility to speak to us, obviously not about his testimony. But, you
16 know, maybe these situations can be avoided.

17 PRESIDING JUDGE KORNER: [14:45:30] Well, as I say, if this situation does arise
18 again, or anything similar, then the parties should be informed at least of what
19 the situation is, not what the outcome is going to be. All right.

20 MR LAUCCI: [14:45:42] And the intervention of the legal representative is definitely
21 the best solution in our view, too.

22 PRESIDING JUDGE KORNER: [14:45:48] I'm very grateful.

23 All right. We'll adjourn while you speak to him, Ms von Wistinghausen.

24 THE COURT USHER: [14:45:55] All rise.

25 (Recess taken at 2.45 p.m.)

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 (Upon resuming in open session at 3.04 p.m.)

2 THE COURT USHER: [15:04:15] All rise.

3 Please be seated.

4 PRESIDING JUDGE KORNER: [15:04:33] Ms von Wistinghausen, I gather that he's
5 agreed to -- before -- this does not require translation. Before that he's agreed to
6 continue with these measures.

7 MS VON WISTINGHAUSEN: [15:04:51] Yes, he has agreed to continue with these
8 measures and as long as he can't see the accused and the accused can't see him. And
9 I said to him if there was any kind of distress or concern, he should let us know
10 immediately.

11 PRESIDING JUDGE KORNER: [15:05:06] Right.

12 Right, Mr Laucci, your client was taken out whilst the witness came in. He can now
13 of course come back into court. What I'm going to suggest is, as we -- back in my
14 domestic jurisdiction when we have protective measures which are screens,
15 the accused is asked to leave court before the witness leaves, just so that there's no
16 chance. So I think that what we'll do today is ask that he leave the court and then
17 the witness after that.

18 And again, I repeat our gratitude for your understanding in this matter.

19 Yes, all right, can we have the accused back in, please.

20 (Mr Abd-Al-Rahman enters the courtroom)

21 PRESIDING JUDGE KORNER: [15:06:50] Yes. Mr Laucci.

22 MR LAUCCI: [15:07:00] Thank you, Madam President.

23 Q. [15:07:05] Good afternoon, Mr Witness. I hope that you are more comfortable
24 with these arrangements that you have requested.

25 A. [15:07:38] You may continue.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Q. [15:07:41] Thank you. I'm happy that you are with me.

2 Mr Witness, I start again my cross-examination. We stopped talking about the forces
3 present in Kodoom on 15 August 2003. We are done with that.

4 Now I will focus on what happened to you. And the first aspect is, at paragraph 35
5 of your statement you mention that on that day you had malaria. Can you
6 describe -- describe your symptoms on that day, please.

7 A. [15:09:10] The symptoms of malaria are well known. They are nausea,
8 vomiting and severe migraine.

9 Q. [15:09:20] Was it a severe crisis that you had on this day?

10 A. [15:09:49] I was down with malaria for three days. When the attack happened,
11 I was sick for three days that week.

12 Q. [15:10:01] And if I understood correctly your statement, you mention that
13 because of that crisis, you were not able to walk, nor to eat; is that correct?

14 A. [15:10:30] Yes, that is correct.

15 MR LAUCCI: [15:10:40] Madam President, you rightly told me yesterday that there
16 was no point showing the article on malaria to the witness. This was not at all my
17 intention. But I will ask him a question that comes from this article. The question
18 that I am asking, do you want to have it on the screen for benefit of the Chamber, or
19 it's not necessary?

20 PRESIDING JUDGE KORNER: [15:11:03] I don't think it's necessary.

21 MR LAUCCI: [15:11:05] Thank you.

22 Q. [15:11:07] Mr Witness, the -- the scientific literature on malaria mentions some
23 psychiatric effects of malaria, including disorders of personality, mood, memory,
24 attention, thought and behaviour.

25 In your perception, did you experience that kind of symptoms on that day?

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 A. [15:12:28] I did not observe those symptoms at that time. I was vomiting
2 something that's in yellow and I wasn't able to eat anything.

3 Q. [15:12:42] Thank you. So without repeating your statement, at some point you
4 explained that you crawled out of your house, hid behind a fence, and finally you had
5 to hide between the -- the dead bodies, the dead corpses of two persons that you
6 knew.

7 When -- when you were lying there, were you pretending to -- to be dead at that
8 moment?

9 * A. [15:14:25] In the beginning I hid in the walled yard. And when fire started in
10 the bush and in the house, I moved. I was moving on both knees, on my knee, to
11 protect myself from the fire. And I hid there.

12 THE INTERPRETER: [15:14:47] And the Fur interpreter says that the witness did not
13 continue.

14 THE WITNESS: [15:15:08](Interpretation) When I hid, I looked at those people.
15 They were on horseback. I hid among the dead bodies so that they would think that
16 I was dead.

17 MR LAUCCI: [15:15:28]

18 Q. [15:15:30] But when -- where you were lying down between the corpses, were
19 you not taking the chance of being discovered when you were putting your head up
20 to look at what was happening?

21 A. [15:16:26] When they passed by me, I did not lift my head. But when they
22 went closer and they were shouting "*Nuba, Nuba*", one of them stopped. He thought
23 that I was dead. But there was no blood on my shirt.

24 Q. [15:16:47] And from your statement I take that this is the moment when that
25 person has stabbed you on your -- on your leg; is that correct?

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 A. [15:17:29] Yes, he was the same person. He stabbed me with the butt of
2 the rifle and he called the others, telling them, "There's someone alive here." So they
3 all came.

4 Q. [15:17:45] You say "the same person". It's not clear to me, are you talking about
5 a specific person now?

6 A. [15:18:09] I mean those who were on horseback, those who were riding
7 the horses.

8 Q. [15:18:15] Did you turn over when you were stabbed on your right foot?

9 A. [15:18:44] I did not stand up. I only moved my two feet. Of course, I wasn't
10 able to move at that time. I lifted my head.

11 Q. [15:18:57] Okay. But you remained face down, face on the ground; is that
12 correct?

13 A. [15:19:21] Yes. My head was face down. However, I was moving my feet
14 because they were bleeding.

15 Q. [15:19:31] Of course. And I take it there was a lot of pain. You were in agony
16 because of that wound; isn't it?

17 A. [15:20:01] Yes, I screamed.

18 Q. [15:20:04] And when the -- the man -- we'll talk about the identity of that man
19 later, but when a man put his foot on your neck, did you turn over?

20 A. [15:20:46] I did not move, because he was pressing on my foot.

21 Q. [15:20:56] To make sure that there is no interpretation gap, I was talking about
22 the moment when somebody put his feet on your neck, not when you were stabbed in
23 the foot. Does that change your answer?

24 A. [15:21:46] Yes, the one person who put his foot on my neck told me, "You slave,
25 where are the inhabitants of the village? We have a list of the people from Kodoom."

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Q. [15:22:02] At that moment precisely, when the person put his foot on your neck,
2 did you turn over? That's my question. Or did you stay face down?

3 A. [15:22:51] I turned my head sideways and I was looking at him. And he --

4 THE INTERPRETER: Excuse me, I need to listen again to the answer of the Fur
5 interpreter in Arabic, please. Can the Fur interpreter repeat the last sentence, please.

6 THE WITNESS: [15:23:25](Interpretation) I turned a little bit and I was looking at
7 him, and then he hit the one -- the person who was with him hit me with the butt of
8 the rifle.

9 MR LAUCCI: [15:23:40]

10 Q. [15:23:40] Yes. This is what you said during your preparation session with
11 the Office of the Prosecutor. That is tab 20 in the OTP binder, DAR-OTP-0220-5665,
12 and I am in paragraph 9(f), which is between page 5 and 6.

13 And what you describe in this preparation session is that, when you try to -- to turn
14 your head, one of the militiamen immediately hit you on the head -- on your forehead,
15 to be even more precise. So does that mean that you had no real opportunity to see
16 anything, isn't it, if you were immediately hit when you turn your head?

17 A. [15:25:40] When I turned my head, I was looking at the one who was putting his
18 foot on my neck. This is why someone among those who were with him hit me and
19 told me, "What are you looking at?"

20 Q. [15:25:59] Thank you. Did the -- after that, did the militiamen or the -- you call
21 them the Arabs, did they bring you to another place prior to -- to carrying on beating
22 you?

23 A. [15:26:49] I was there, and when he said that, he moved -- he went and he told
24 them, "Don't kill him. Torture him until he tells you where the rest of the villagers
25 are."

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 THE INTERPRETER: [15:27:29] The Fur interpreter is asking the witness to repeat
2 his sentence.

3 THE WITNESS: [15:27:58](Interpretation) The person who was putting his foot on
4 my neck told me and told his people, "Don't kill him. Torture him until he tells us
5 where the rest of the inhabitants were." And he left immediately. And before that I
6 heard his vehicle moving.

7 MR LAUCCI: [15:28:21]

8 Q. [15:28:21] And that precise moment, this is when you were tied and when
9 the militiamen carried on beating you; is that correct?

10 A. [15:28:46] Yes, this is correct.

11 Q. [15:28:49] But did that happen at the same place or were you brought
12 somewhere else before being tied?

13 A. [15:29:13] They did that at the same place.

14 Q. [15:29:19] Thank you. Mr Witness, I will try with brief questions to summarise
15 your condition, which was terrible at this moment. My question will be brief and
16 just ask for a "yes" or "no" answer. Do you follow me?

17 A. [15:30:02] Yes.

18 Q. [15:30:04] Your village was under attack?

19 A. [15:30:16] Yes, this is correct.

20 Q. [15:30:18] You had severe malaria crisis?

21 A. [15:30:33] Yes, correct.

22 Q. [15:30:35] Because you could not walk, your parents had left -- had -- had left
23 the place without you, leaving you alone on your own?

24 A. [15:31:03] Yes, correct.

25 Q. [15:31:05] The village was on fire?

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 A. [15:31:16] Yes, correct.

2 Q. [15:31:18] You could hear gunshots and spot killings all over the place?

3 A. [15:31:43] Yes, I saw that.

4 Q. [15:31:46] You were lying among the corpses of two of your close friends,
5 pretending to be dead?

6 A. [15:32:11] Yes, correct.

7 Q. [15:32:15] You were in agony with pain because you had been stabbed on your
8 foot and you had been beaten?

9 A. [15:32:46] Yes, correct.

10 Q. [15:32:47] And in these terrible circumstances, it is your evidence that you
11 recognised a man that you had seen two years before for 20 minutes in a totally
12 insignificant event; is that your evidence?

13 A. [15:33:44] Yes, that is correct.

14 Q. [15:33:47] Today (Microphone not activated)

15 THE INTERPRETER: [15:33:52] Could counsel use the microphone, please.

16 MR LAUCCI: [15:33:56]

17 Q. [15:33:57] I will refer to page 13, lines 21 to 23 of today's transcript. You
18 mention that the person you call Ali Kushayb said that the -- they, being
19 the militiamen, had instructions on who should be killed. In your understanding, is
20 it the reason why you were not killed at that moment?

21 A. [15:35:32] I don't know why they did not kill me. It is not up to me to
22 determine why they did not kill me. That's something they know. What I
23 understand and what I know, however, is that they asked -- they were -- they were
24 after the villagers.

25 Q. [15:35:54] And was it the villagers on a list, is it what they mentioned at that

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 moment?

2 A. [15:36:24] It was not a list of names. They said that the villages surrounding
3 Kodoom which were burned, the villagers from those villages had been displaced to
4 Kodoom.

5 Q. [15:36:43] Thank you. You also said this morning that at some point a man,
6 a militiaman pointed a gun towards you, and this is where -- this is when you were
7 lying on the ground face down with a foot on your neck. How did you see that
8 a man was pointing a gun at you?

9 A. [15:37:54] I have previously told you, when I tried to look at that person, I was
10 able to lift my head sideways a little bit. So I was hit with a butt stroke of a gun. At
11 that point -- it is at that point that I was able to see him.

12 Q. [15:38:16] Okay. So what you are saying is that you turn your head once,
13 briefly, and you could see both the man with his foot on your neck and another man
14 pointing a gun at you. Did I understand correctly?

15 A. [15:39:32] At that point I only saw the person putting his foot on my neck.
16 However, I could not see the person who prepared his gun to fire at me. I only
17 heard some sound of the gun in preparation for the possibility of firing at me.

18 Q. [15:40:04] But didn't you say that the militiamen were firing their guns all over
19 the place, all around you?

20 A. [15:40:54] They were not firing around me. They were firing inside the village,
21 burning homes. And when they see someone moving, they would fire at him. So
22 most of the firing was inside the village, not around me.

23 Q. [15:41:14] You mention that the man you call Ali Kushayb arrived at this place
24 with a car -- in a car. Did you see the car or did you hear it only?

25 A. [15:42:07] I saw the car with my own eyes. I saw them afar. They were

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 coming along with those on horseback. So when they -- when he approached me
2 and stopped his car, I saw the car which was in the *agbash* (phon) colour. On
3 the back of the car was written "The lion of the mountains".

4 Q. [15:42:32] But when the car arrived, isn't it when you are lying face down with
5 the militiamen beating you all around?

6 A. [15:43:11] That is correct. And when he arrived there he asked, "What is this?"
7 So they answered him by saying, "This person has not died."

8 Q. [15:43:30] So you have just been stabbed. You are lying face down.
9 The militiamen are beating you. And you are able to see the car arriving with
10 the details that you mention. Is that your evidence?

11 A. [15:44:35] I saw the cars before they started beating me. When I saw the cars,
12 I was lying down between the two corpses. The horses were running and
13 the vehicles behind them before they reached me. So at that point I was able to see
14 them all.

15 Q. [15:45:00] Okay. So did I understand well that the car actually arrived before
16 you were spotted by the militiamen and stabbed; is that correct?

17 A. [15:45:58] I would like you to understand what I'm saying. When I was
18 crawling on my legs, I was seeing the horses coming in my direction, the Janjaweed
19 horses, and the vehicles behind them. That is why I felt afraid and I lied down
20 between the two corpses. When they arrived and realised that I was not dead, they
21 started beating me.

22 Q. [15:46:30] Okay. So you saw -- I understand you saw the car coming into your
23 direction and then this is when you crawled between the two corpses and tried to
24 pretend to be dead; is that correct?

25 A. [15:47:10] Yes, that's what I meant to say.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 Q. [15:47:13] How far from you did the car stop, please?

2 A. [15:47:38] I cannot give a specific distance, but approximately it could be 7
3 metres or a little less than that.

4 Q. [15:47:54] Okay. And when the car arrived and stopped 7 metres from you,
5 what side of the car could you see? Did you see the front? Did you see the side?
6 What -- what side of the car did you see?

7 A. [15:48:37] I saw the back of the car.

8 Q. [15:48:43] Did the car make a U-turn at some point?

9 A. [15:49:07] The car was stopped and its rear was facing me.

10 Q. [15:49:26] I move on.

11 Do you confirm that in your recollection -- after the car left, departed, this is when
12 the militiamen are tying you up and start beating you. Do you confirm that they did
13 that without asking you any questions?

14 A. [15:50:36] They did not ask me, they kept -- kept me tied and they kept beating
15 me. At that point some livestock appeared, so they got busy getting the livestock
16 and chasing the livestock. So they went a little far. And before coming back, it
17 started raining. Because of the rain, they were not able to return to me.

18 Q. [15:51:05] Okay. So we are in the middle of the battle. The livestock is going
19 in all directions. They are not asking you any question. But still your evidence is
20 that they spent time with you, tying you up and beating you. Is that your evidence?

21 A. [15:52:00] Yes, that is correct.

22 Q. [15:52:08] The moments that you spent with the militiamen beating you, in your
23 statement you describe that it lasted for about 20 to 25 minutes. This morning,
24 page 22, line 14 of the transcript, you said it lasted from morning till evening.
25 Can you clarify exactly.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 MR JEREMY: [15:53:11] Sorry, Madam President. Sorry.

2 Can we just get some references, so for the statement and for the transcript page. A
3 discrepancy has been put to the witness. I just want to verify it for myself, please.

4 MR LAUCCI: [15:53:31] Sure. For the transcript, I said page 22, line 14. And for
5 the statement, I was referring to paragraph 55, which mentions actually even shorter,
6 between 10 and 15 minutes for the time the man called Ali Kushayb was present.

7 And then the -- the scene carries on, but we understand that with the cattle all around,
8 it cannot have been much longer, unless I'm mistaken.

9 MR JEREMY: [15:54:11] So from what I see from that transcript reference, he's
10 saying:

11 "From the morning till the evening, I was under the rain. And then I saw
12 people -- or the villagers were coming to the village secretly to try and collect some
13 food."

14 Prior to that, he does refer to the beating, but it's not clear to me that he's saying that
15 the beating goes on for that long. So perhaps it's out of fairness to the witness just to
16 clarify that with him.

17 MR LAUCCI: [15:54:53] Okay. I will make the question simpler. Forget
18 the reference.

19 Q. [15:55:00] Mr Witness, this moment that -- very painful moment that you spent
20 with the militiamen, from the moment they discovered you until the moment they left
21 you, roughly how long was it?

22 A. [15:55:59] Those who arrived in a vehicle, they stayed with me for about 10 -- 15
23 to 20 minutes. Those, however, who attacked the village stayed there from 11 a.m.
24 to 1 p.m.

25 Q. [15:56:23] To make sure that I understand, they stayed from 11 a.m. to 1 p.m.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

1 with you, not in the village? Did I understand correctly?

2 A. [15:57:34] I cannot be specific, because at that time I did not have a watch and
3 I was in a bad health condition. What I can say, however, is that those who attacked
4 the village attacked it at 11 a.m. When they arrived the place where I was, I can say
5 in approximate terms that that was at 11.45 a.m. They left me at about 1 p.m.

6 Q. [15:58:09] Thank you.

7 No need to translate what I will say to the witness.

8 Madam President, the cross-examination went much slower than expected, so I need
9 significant time still with the witness.

10 I have an eye on the clock, I would like to know when you intend to stop this
11 afternoon.

12 PRESIDING JUDGE KORNER: [15:58:36] (Microphone not activated) to try and
13 make up some of the time, about 4.15, so another 15 minutes.

14 MR LAUCCI: [15:58:44] Yes, which could allow me to cover one more aspect which
15 is connected to this one. I will need a maximum of one to two minutes private
16 session to ask one question to the witness.

17 PRESIDING JUDGE KORNER: [15:58:57] Yes, all right. We'll go into private.
18 (Private session at 3.59 p.m.)

19 THE COURT OFFICER: [15:59:16] We're in private session, Madam President.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Private Session)

ICC-02/05-01/20

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
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- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)

24 (Open session at 4.02 p.m.)

25 THE COURT OFFICER: [16:02:59] We're back into open session, Madam President.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 MR LAUCCI: [16:03:02] And I will ask to put on the screen, not to be seen by
2 the public, document in Defence tab 5. That is DAR-OTP-0219-5831.

3 Q. [16:03:31] Mr Witness, I want to ask you about an interview that you had in
4 April 2021 with a person called Paolina Massidda, who is working in the Office of the
5 Public Counsel for Victims. Do you remember that interview?

6 A. [16:04:30] Yes, I remember that interview very well.

7 Q. [16:04:36] Thank you. How did that interview go? Did you -- do you
8 remember giving a chronological narrative of what had happened to you to Madam
9 Massidda?

10 A. [16:05:20] I spoke to her over the phone. We had an interpreter with us.
11 The question they put to me, I have answered them all.

12 Q. [16:05:34] And did those answer include recounting the events the same way or
13 so that you did with the Office of the Prosecutor, talking about the attack in Kodoom
14 and what happened then? Is it the way it -- it unfolded?

15 A. [16:06:30] I spoke to her over the phone. Sometimes the voice was not clear.
16 The line was cut on several occasions. We had the phone call halted for several
17 times and the network was bad, and sometimes I did not understand what
18 the interpreter was saying very well.

19 Q. [16:06:58] Thank you. But we can take it that the -- the -- your statement was
20 chronological, you started with Kodoom and developed all the events the way they
21 happened in time; is that correct?

22 A. [16:07:40] Yes.

23 Q. [16:07:40] Thank you. Mr Witness, in your -- in the summary of this interview
24 that was prepared, there is no mention of the person you call Ali Kushayb putting his
25 foot on your neck. Instead --

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 PRESIDING JUDGE KORNER: [16:08:09](Microphone not activated) No, stop.

2 MR LAUCCI: [16:08:11] Yes.

3 Q. [16:08:36] Instead, what we can read in that summary is that the person you call
4 Ali Kushayb ordered the Janjaweed to take you with the others and that you were
5 taken to an open area near the main road.

6 MR JEREMY: [16:09:03] Madam President, I -- I think it's problematic to put to this
7 witness what Mr Laucci considers to be omissions in this statement where -- when we
8 have on record from the witness that there was significant problems with the way
9 that this interview was -- was carried out.

10 PRESIDING JUDGE KORNER: [16:09:25](Microphone not activated) he can still put
11 it. I mean, it's fair enough. It's not in -- there's no mention in -- in this summary.

12 MR LAUCCI: [16:09:36] The point is taken that the line was bad. It's on record.
13 But I wanted just to get the explanation from the witness on this aspect.

14 PRESIDING JUDGE KORNER: [16:09:47] Well, I mean, I'm sorry, the -- the other
15 problem is it's not his summary. It's presumably Ms Massidda's summary. And
16 really she's the one who should be asked about it.

17 MR JEREMY: [16:10:01] And not read back to the witness and not signed.

18 PRESIDING JUDGE KORNER: [16:10:03] But anyhow, the point is -- I think
19 Mr Laucci is entitled to take the point and the witness can ask whether he -- did you
20 tell her about this.

21 MR LAUCCI: [16:10:16] And that's -- that will be in the end a matter of weighing.

22 PRESIDING JUDGE KORNER: [16:10:23] Yeah.

23 So the real question is, sir, when you spoke to Ms Massidda, did you tell her that
24 Ali Kushayb had put his foot on your neck?

25 THE WITNESS: [16:11:16](Interpretation) Yes, I told her. However, I would like

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 you to know, sir, as I told you earlier, that the line was bad and sometimes
2 the interpreter was saying words that I did not understand.

3 MR LAUCCI: [16:11:31]

4 Q. [16:11:32] Mr Witness, it's on record, the line was bad. The -- the judges here
5 have heard you on that. So point taken.

6 Did you say during that interview that the man called Ali Kushayb ordered
7 the Janjaweed to take you with the others to another place?

8 A. [16:12:38] He gave his orders to beat me, but he did not order them to move me
9 to somewhere else.

10 Q. [16:12:49] Thank you. And in the statement it's also -- we can also read
11 that - the summary, sorry - we can also read that you were beaten and questioned by
12 the Janjaweed about where the Fur men were hiding; is that correct?

13 A. [16:13:39] Yes, this is correct. And when he came and when they stabbed my
14 foot, he also asked me. He said, "Where did the inhabitants of this village go?"

15 Q. [16:13:53] Thank you, Mr Witness. During that same interview, you
16 mentioned -- the summary says that you mentioned that some time later, most
17 likely -- well, I ...

18 (Counsel confer)

19 MR LAUCCI: [16:14:29]

20 Q. [16:14:29] Yeah, most likely in January 2004, you were arrested again in
21 a locality called Kabum.

22 A. [16:15:04] This is correct.

23 Q. [16:15:06] And in that locality -- and in that locality, the summary reads that you
24 were arrested, detained, beaten and tortured for one full week.

25 A. [16:15:46] This is correct.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 No, this is incorrect. What I mean by a week, the length of my trip from my village
2 to the end of my trip. I was detained in Kabum only for two hours.

3 Q. [16:16:25] And to be fair with you, Mr Witness, this is what you say at
4 paragraph 108 of your statement to the Office of the Prosecutor.

5 Now --

6 PRESIDING JUDGE KORNER: [16:16:41] That rather makes Mr Jeffrey's case on
7 how accurate that summary is.

8 MR LAUCCI: [16:16:49] I'm not totally done with that, Madam President.

9 Q. [16:16:53] If the -- the way you stated your history to Madam Massidda was
10 chronological, the way you described it, even with a bad telephone connection, how
11 can you explain the difference between being detained in Kabum for two hours and
12 being detained for one full week?

13 PRESIDING JUDGE KORNER: [16:17:40] I don't think that's a proper question.
14 You've got the point. But, I'm afraid, in order to make the point properly, you would
15 have to call Ms Massidda and ask her how she compiled this summary of what was
16 said and whether it is an accurate document. The witness cannot explain.

17 MR LAUCCI: [16:18:04] Thank you. I move on.

18 Q. [16:18:09] So -- yeah, and I have an eye on the clock as well.

19 So to complete on that point, Mr Witness, where is it that you were tortured? Was it
20 in Kodoom on 15 August 2003 or was it in Kabum in January 2004?

21 THE INTERPRETER: [16:19:22] It seems that the Fur --

22 THE WITNESS: [16:19:27](Interpretation) I was tortured in Kodoom. However, I
23 would like to explain something that happened between me and Massidda. I
24 wanted to explain to her the tragedies that I went through on my way from my
25 village to Nyala. However, she told me that that was not of her responsibility, it was

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 that of other people. This is why we ended that conversation. I wanted to explain
2 about what I suffered while travelling from my village to Nyala, which took around
3 one week.

4 MR LAUCCI: [16:20:08]

5 Q. [16:20:08] Thank you. And that will end my cross-examination for today,
6 Mr Witness. I put to you that the true story about what happened in Kodoom is that
7 your parents never left you behind with your malaria, that they helped you to escape
8 the attack on Kodoom and that nothing happened to you there, that the place where
9 you were tortured was Kabum in January 2004.

10 A. [16:21:33] My parents did not help me. My parents did not help me when
11 Kodoom was attacked. They rather told me that I had to help myself and I had to
12 find a hiding place. They took my little brothers and they fled with them.

13 As to where I was detained, it was Kabum only for two hours.

14 PRESIDING JUDGE KORNER: [16:22:07] Right. We'll leave it there for today.

15 Actually, I think I will ask the witness to -- sir, I'm afraid you'll have to come back
16 tomorrow. I don't -- are we talking about one more session, maximum, or more than
17 that?

18 MR LAUCCI: [16:22:32] I will try one session, but I'm not 100 per cent sure.

19 PRESIDING JUDGE KORNER: [16:22:36] Well, I'm sorry, sir, but your will be
20 completed tomorrow. So if you'd like to go with the court officer now, please.

21 Yeah -- I was going -- I want to raise something.

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

23 (The witness exits the courtroom)

24 PRESIDING JUDGE KORNER: [16:23:27] Mr Laucci, that's a positive case you've
25 put. You've actually positively put to him that he never was left behind, that he was

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

1 effectively never there in Kodoom when he says he was. And I am not clear how
2 you can be doing that. Unless you've got instructions to that effect. And
3 as -- unless your client is accepting that he is one of the people who was there.
4 MR LAUCCI: [16:24:03] No, that is certainly not the -- the answer to that question.
5 PRESIDING JUDGE KORNER: [16:24:07] But then you cannot put a positive case.
6 You can query it, given the two accounts, and ask him whether it really happened.
7 But you can only do it as a query, you can't assert. Do you understand the difference?
8 You cannot say, "You're actually not telling the truth", unless you've got instructions
9 to that effect. All you can do, and then you can, at the end of the day, draw our
10 attention to it, is -- is suggest to him that because there is a difference in the two
11 accounts, is he sure that he really was tortured there. But that's the highest you can
12 put it. And it does make a difference.
13 MR LAUCCI: [16:24:48] My conclusion will be, Madam President, that today I took
14 another lecture in this mystery thing that is to me putting my case.
15 PRESIDING JUDGE KORNER: [16:24:59] Yes. Okay. But I think we have said
16 that it -- you can, if you have instructions -- let's say, for the sake of argument, you
17 had a witness you were going to call who would say, "I was there at that incident and
18 I can tell the Court that this never happened or he was never there". That that's one
19 thing. That's what instructions are based on. It's evidence that you will be able to
20 call. What you can't put is -- is a positive case unless you've got something like that.
21 But anyhow, I mean --
22 MR LAUCCI: [16:25:29] No, I should have done it in a way of a query.
23 PRESIDING JUDGE KORNER: [16:25:33] Yeah. Okay. All right. Yes. Thank
24 you very much.
25 All right. 9.30 tomorrow morning, please.

Trial Hearing
WITNESS: DAR-OTP-P-0986

(Open Session)

ICC-02/05-01/20

- 1 THE COURT USHER: [16:25:39] All rise.
- 2 (The hearing ends in open session at 4.25 p.m.)