

Trial Hearing
WITNESS: DAR-OTP-P-0932

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Friday, 22 July 2022
10 (The hearing starts in open session at 9.06 a.m.)
11 THE COURT USHER: [9:06:24] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:06:43] Yes. Could we have the case called,
15 please.
16 THE COURT OFFICER: [9:07:04] Apologies, your Honour.
17 Good morning, Madam President. Good morning, your Honours.
18 This is the situation in Darfur, Sudan, in the case of Ali Muhammad Ali
19 Abd-Al-Rahman. Case reference is ICC-02/05-01/20.
20 And for the record, we're in open session.
21 PRESIDING JUDGE KORNER: [9:07:24] Yes, good morning, all.
22 Appearances, Prosecution, please.
23 MR JEREMY: [9:07:28] Good morning, Madam President. Good morning,
24 your Honours. Prosecution appearances today, Melissa Simms, Antonella Giordano,
25 Claire Sabatini and myself, Edward Jeremy.

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1 PRESIDING JUDGE KORNER: [9:07:39] Yes, thank you, Mr Jeremy.

2 Yes, the Defence.

3 MR LAUCCI: [9:07:46](Interpretation) Good morning, your Honours. Good
4 morning, colleagues. Alongside the accused who's present in the room today, I've
5 got Eva Kalb, who is the evidence reviewer; Ahmad Issa, case manager; my colleague
6 Iain Edwards; and myself, lead counsel, Cyril Laucci.

7 PRESIDING JUDGE KORNER: [9:08:07] Thank you very much.

8 And representatives of the victims.

9 MS VON WISTINGHAUSEN: [9:08:11] Yes. Good morning, Madam President,
10 your Honours. Good morning to everyone in and around the courtroom.
11 The victims this morning are represented by our case manager Idriss Anbari and
12 myself, Natalie von Wistinghausen. Thank you.

13 PRESIDING JUDGE KORNER: [9:08:24] Thank you very much,
14 Ms von Wistinghausen.

15 Yes. Before you read the summary, Ms Simms, two matters. First of all, I'm told
16 because we're sitting for a two-hour stint, there has to be a five-minute break. This is
17 a Fur interpreter -- a Fur speaker, is it?

18 MS SIMMS: [9:08:44] (Microphone not activated)

19 PRESIDING JUDGE KORNER: [9:08:45] Yeah, all right. Well, that makes it, I
20 suppose, even more important that we have a break. It is obviously vital that we
21 finish this witness today, so please can everybody keep their questions short as
22 possible.

23 Second thing is this, that for some unknown reason we have discovered, and I'm very
24 grateful to Ms von Wistinghausen who brought it to our attention, that this case is not
25 listed as sitting in August again. It doesn't appear on the court calendar. Take it

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1 from me, we are starting, as we indicated, on Thursday, 25 August, and then sitting
2 through, as shown on the -- I think the original email that was sent around, till I think
3 it's about 12 September for the first stint.

4 Yes, all right, Ms Simms, do you want to read the summary and then we'll get going.

5 MS SIMMS: [9:09:55] Yes, your Honours. And just to indicate, your Honours, that
6 the Prosecution has canvassed with the Defence and they're not disputing that
7 the -- P-932 has produced the witness statement, the annotated satellite image of
8 Mukjar, the corrections, clarifications log and the list of victims. So what I will do is
9 to proceed to read the summary and make reference to the particular section of
10 the clarifications and corrections log, where he accepts that the documents can be
11 introduced via Rule 68, and then take my seat. If it pleases you.

12 PRESIDING JUDGE KORNER: [9:10:31] It pleases me greatly. Thank you,
13 Ms Simms.

14 MS SIMMS: [9:10:35] Very well.

15 MR EDWARDS: [9:10:36] And before my learned friend starts, perhaps
16 the witness -- either the feed cut to the witness while the summary is being --

17 PRESIDING JUDGE KORNER: [9:10:44] It is cut.

18 MR EDWARDS: [9:10:45] Oh, it is?

19 PRESIDING JUDGE KORNER: [9:10:47] Yes. I arranged that while that was
20 happening, that there should be no feed.

21 MR EDWARDS: [9:10:51] I am grateful.

22 MS SIMMS: [9:10:53] In relation to P-932, your Honours, his statement and
23 associated material have been approved for Rule 68(3) in decision 711, and his
24 statement is at DAR-OTP-0222-0602.

25 And P-932 is a Fur civilian who provides evidence on life in Kodoom before it was

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1 attacked, including the size of its population. He provides evidence that he saw
2 the accused in Kodoom during the charged attack and that the accused was known to
3 him as Ali Kushayb and Ali Mohamed Ali. He also provides evidence that
4 Ali Kushayb was a leader of the Janjaweed and that the Government of Sudan forces
5 worked together with the Janjaweed.
6 P-932 provides further evidence of the GoS Forces and Janjaweed attacking Kodoom
7 on or about 15 August 2003, which caused him to flee that village, and the attack
8 resulted in destruction to the village and the murder of civilians.
9 The witness's evidence is that, having fled Kodoom, he describes seeking refuge in
10 Mukjar, where he was present at a meeting where he heard Ahmad Harun, then
11 Minister of Interior, telling the Janjaweed, and I quote, "Deliver the land without
12 a single Fur on it." End of quote.
13 P-932 also states that the Janjaweed arrested him and others in Bindisi in February of
14 2004, where he was detained and beaten and later transferred with others to Mukjar,
15 to the Mukjar police station, where he was again beaten and locked away with others.
16 P-932's evidence is that, while detained in Mukjar, at the police station, he saw
17 Ali Kushayb use an axe to beat prisoners. He also witnessed the removal of
18 prisoners in batches from the police station and provides biographical details of some
19 of the victims, which is set out in the list of victims at DAR-OTP-0220-5723, which is
20 found at tab 11.
21 In relation to his clarifications, your Honour, and corrections, this is found at
22 DAR-OTP-0220-5720, and he also marked a -- an aerial overhead -- an aerial image of
23 the Mukjar police station, which is found at DAR-OTP-0220-5726.
24 And if one is to look at the clarifications and corrections log, in particular at page 5722,
25 the Court will see that the witness signed twice: One, attesting that the

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1 evidence -- the statement is true; and secondly, consenting to all the documents

2 referenced earlier being introduced into evidence via Rule 68(3).

3 Your Honours, I thank you. I have no -- nothing further to say at this time.

4 PRESIDING JUDGE KORNER: [9:14:43] Yes, thank you very much, Ms Simms.

5 Can I commend both parties for agreeing to have the corrections and all the rest done

6 in writing. It saves a great deal of time.

7 Right. Can we start the feed with the witness.

8 Good morning, sir. Can you hear and understand me?

9 WITNESS: DAR-OTP-P-0932

10 (The witness speaks Fur)

11 (The witness gives evidence via video link)

12 THE WITNESS: [9:15:40](Interpretation) Yes.

13 PRESIDING JUDGE KORNER: [9:15:42] I'm afraid you'll have to take your mask off,

14 yes.

15 Thank you for attending to give evidence in this case.

16 Two things --

17 THE WITNESS: [9:16:06](No interpretation)

18 PRESIDING JUDGE KORNER: [9:16:08] Okay. Do we have a translation of

19 whatever he said?

20 THE WITNESS: [9:16:20](Interpretation) Okay.

21 PRESIDING JUDGE KORNER: [9:16:21] Right.

22 Two things. First, we will have breaks in your testimony, but if you need a break at

23 any time, just raise your hand.

24 Second, if you don't under --

25 THE WITNESS: [9:17:04](Interpretation) Okay.

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1 PRESIDING JUDGE KORNER: [9:17:06] Second, if you don't understand a question
2 that you're asked in this -- by one of the lawyers in this case, then say so straightaway
3 so that it can be repeated.

4 THE WITNESS: [9:17:42](Interpretation) Okay.

5 PRESIDING JUDGE KORNER: [9:17:43] And now would you be kind enough,
6 please, to repeat after the court officer the solemn declaration.

7 THE WITNESS: [9:18:10](Interpretation) Okay.

8 THE COURT OFFICER: [9:18:12] Good morning, Mr Witness. I will read now
9 the solemn undertaking to you, so please repeat what I'm saying.

10 THE WITNESS: [9:18:31](Interpretation) Okay.

11 THE COURT OFFICER: [9:18:35] I solemnly declare that I will speak the truth,
12 the whole truth and nothing but the truth.

13 THE WITNESS: [9:18:56](Interpretation) I solemnly declare that I will tell the truth,
14 the whole truth and nothing but the truth.

15 THE COURT OFFICER: [9:19:04] Thank you, Mr Witness. You're now under oath.

16 PRESIDING JUDGE KORNER: [9:19:06] Yes. Ms Simms.

17 QUESTIONED BY MS SIMMS:

18 Q. [9:19:10] Good morning, sir. We meet again.

19 And just to remind you, my name is Melissa Simms. And the documents that you
20 have given us, your statement, have all been put on the record and it is before
21 the Court.

22 A. [9:19:55] Okay, this is good.

23 Q. [9:19:57] So as a result of that, sir, I won't be asking you any questions today.

24 However, other lawyers in the courtroom will be asking you questions, and I'm going
25 to ask you to just listen to the questions and answer them, if you're able to. And

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1 remember to speak loudly and clearly.

2 So *shukran*.

3 A. [9:20:51] Yes. Okay, God willing.

4 PRESIDING JUDGE KORNER: [9:20:55] Thank you, Ms Simms.

5 Ms von Wistinghausen.

6 QUESTIONED BY MS VON WISTINGHAUSEN:

7 Q. [9:21:03] Yes. *Salaam alaikum*. Good morning, Mr Witness.

8 We have met like this, on the screen, a few days ago. You may remember that my
9 name is Natalie von Wistinghausen and I represent, together with my team,
10 the participating victims in this case.

11 A. [9:21:40] Okay.

12 Q. [9:21:43] As Ms Simms from the Office of the Prosecutor has just said, we have
13 all seen and very carefully read your statement, so all of us here know what you have
14 seen and what you have lived through in the years 2003 and 2004. And I only have
15 a few additional questions.

16 A. [9:22:30] Okay. God willing. Go ahead.

17 Q. [9:22:35] You speak in your statement about an attack on your village on 15 and
18 16 August 2003. And you explain what happened on that day and you say
19 "the attackers took all of the money from the village."

20 My question is: Do you mean that the attackers took money from the home of
21 the villagers, and how did they do that?

22 A. [9:23:53] This is correct. The village was attacked on 15 August in 2003. This
23 is correct.

24 Q. [9:24:07] Were the houses looted? Was money taken away from the villagers,
25 and how did the attackers do that?

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1 A. [9:25:15] They took money by force. Some people were killed with weapons,
2 and villages were burned. Some children were kidnapped. And they left.
3 Nothing was left in our villages.

4 Q. [9:25:34] You speak of people who were injured and killed, and later also buried.
5 Can you tell us, or do you know, how many people died in your village as
6 a consequence of this attack?

7 A. [9:26:33] Many were killed. Many villagers were killed. What I remember is
8 that someone called Issa Ahmad Bekhit and Yacoub Omar Musa, I saw them with my
9 own eyes.

10 Q. [9:26:56] There was a second attack on your village on 30 August, and after that
11 many people were displaced, like you and your family as well. Can you tell us in
12 what conditions you displaced families were living in Mukjar at that time?

13 A. [9:28:28] Upon the attack that happened on 30 August, our conditions were very
14 bad. We did not have food. And sometimes we went back secretly to the village to
15 look for food, but we only found a little bit of food, until *Médecins sans Frontières* came
16 after several days and they saved us, and they provided treatment for the injured
17 children and the children that were suffering from diarrhoea.

18 Q. [9:29:15] Thank you. Lastly, I would like to ask you about the impact of
19 the severe mistreatment that you suffered in Mukjar police station. As I said, we
20 have all read the terrible conditions in which you were detained, and I'm referring to
21 paragraph 120 and 122 of your statement.

22 So we know that this detention has had severe consequences for you. Can you tell
23 us how it is today. Do you have any physical or psychological problems that still
24 arise from the detention in Mukjar in 2003? Yeah, sorry, 2004.

25 A. [9:31:48] I was tortured severely. I suffer to this day with skin allergy. I also

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1 have kidney pain up to this day. When I go to work I need money to buy medicine.

2 I also still have pain in my right hand.

3 Q. [9:32:14] Thank you, Mr Witness. Thank you for answering my questions.

4 PRESIDING JUDGE KORNER: [9:32:21] Yes, thank you very much,

5 Ms von Wistinghausen.

6 Mr Edwards.

7 THE WITNESS: [9:32:32](Interpretation) All right.

8 MR EDWARDS: [9:32:37] Thank you, your Honour.

9 QUESTIONED BY MR EDWARDS:

10 Q. [9:32:42] *Salaam alaikum.*

11 A. [9:32:48] (No interpretation)

12 Q. [9:32:49] We met just a couple of days ago in this setting. I'll remind you, my
13 name is Iain Edwards and I will ask you now for the rest of the day some questions.

14 I represent Mr Ali Muhammad Ali Abd-Al-Rahman.

15 A. [9:33:43] All right.

16 Q. [9:33:43] Mr Witness, let me start by asking where you were when you first
17 heard the -- about the arrest warrant against Mr Abd-Al-Rahman, who
18 the Prosecution say is Ali Kushayb?

19 PRESIDING JUDGE KORNER: [9:34:24] We're in public session. I mean, I don't
20 know ...

21 MR EDWARDS: [9:34:32] The -- the --

22 PRESIDING JUDGE KORNER: [9:34:33] Are you asking him for where -- for
23 the place where he was?

24 MR EDWARDS: [9:34:39] Yes. Yes, that was -- that was contained in the
25 Prosecution's summary, I believe.

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1 PRESIDING JUDGE KORNER: [9:34:47] Oh, it was, was it. Well, I don't know, is
2 there a problem?

3 Ms Simms, does it -- is it something that he can answer in open session?

4 Don't bother to interpret all of this to the witness.

5 MS SIMMS: [9:34:59] I am not sure, your Honours. So perhaps it's better to go into
6 private session.

7 MR EDWARDS: [9:35:03] Can I start again.

8 Q. [9:35:06] Mr Witness, were you in your home village when you first heard about
9 the arrest warrant against Mr Abd-Al-Rahman?

10 A. [9:36:02] I was in Mukjar. When the war erupted I went to Mukjar.

11 Q. [9:36:15] Okay. Do you recall hearing about an arrest warrant from this Court
12 for Mr Abd-Al-Rahman?

13 A. [9:37:05] No one told me about this.

14 Q. [9:37:13] Do you remember hearing that Mr Abd-Al-Rahman was in the custody
15 of this Court?

16 A. [9:37:49] I heard so over the radio.

17 Q. [9:37:58] Was that about two years ago, sir?

18 A. [9:38:14] Yes, two years ago.

19 Q. [9:38:19] And that was about a -- that was over a year before you were -- you
20 gave your statement to the Prosecution, correct?

21 A. [9:39:06] Yes, correct, over a year.

22 Q. [9:39:12] And it was clear, wasn't it, when you heard on the radio that
23 Ali Kushayb was also said to be known by the name Abd-Al-Rahman?

24 A. [9:40:14] His name is Ali Muhammad Ali Abd-Al-Rahman. However, we
25 know him as Ali Kushayb. And we are aware that he was arrested.

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1 Q. [9:40:35] You mention in your statement that there was a time when the police
2 in your area suddenly became less interested in investigating crimes. That's what I
3 want to ask you about now.

4 PRESIDING JUDGE KORNER: [9:41:05] Paragraph?

5 MR EDWARDS: [9:41:09] Nineteen, your Honour.

6 PRESIDING JUDGE KORNER: [9:41:10] Thank you.

7 MR EDWARDS: [9:41:21]

8 Q. [9:41:24] Now, you reported the theft of some cattle once, didn't you?

9 A. [9:41:53] Yes.

10 Q. [9:41:56] And you were aggrieved because the police didn't respond
11 immediately?

12 A. [9:42:29] Again, please.

13 Q. [9:42:34] You were -- you were upset because the police hadn't responded
14 immediately.

15 A. [9:43:06] Yes, correct.

16 Q. [9:43:09] Had you witnessed the theft of your cattle, or was it something that
17 happened at night when you were asleep?

18 A. [9:43:45] You're still talking about our village, right?

19 Q. [9:43:51] Yes, I'm talking about the time when you reported to the police
20 the theft of your cattle. Did you witness the theft of your cattle yourself or did it
21 happen at night whilst you were asleep?

22 A. [9:44:44] It happened in broad daylight. The theft happened in broad daylight.

23 Q. [9:44:50] Did you know the identity of the thieves?

24 A. [9:45:19] They were just Janjaweed. I don't know the names.

25 Q. [9:45:25] Did you know what village or settlement they came from?

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1 A. [9:45:55] Those who stole the cattle are still there in the village, even now.

2 Q. [9:46:09] Well, sorry, you say that you don't know their names. Are these
3 unnamed people still in your home village?

4 A. [9:46:50] Yes, they are still in Kodoom, in the village. When the village
5 got -- the village got attacked and the Arabs are there in the village now.

6 Q. [9:47:05] Mr Witness, let's -- I want it to be very clear, I'm talking about the theft
7 of cattle in the year 2000, so three years before the attack on your home village. Is
8 that -- is that clear?

9 A. [9:47:51] (No interpretation)

10 Q. [9:47:54] Okay. Well --

11 A. [9:47:59] Yes, I remember that.

12 Q. [9:48:06] In the 22 years between the theft of your cattle and today, have you
13 ever found out the names of those thieves?

14 A. [9:49:39] Those who stole the cattle were from the Fallata. They came from
15 Korofata, Abirla and Nyerli. We informed the police, but the police failed to take
16 action. A little while afterwards the police did take action and the thieves of cattle
17 were caught. And there were negotiations between Muhammad Ahmad Harun,
18 Abakar Adam --

19 THE INTERPRETER: [9:50:08] And another name that the Fur interpreter does not
20 remember.

21 It is Ali Kushayb actually.

22 THE WITNESS: [9:50:15](Interpretation) So there were negotiations regarding
23 the case in question.

24 MR EDWARDS: [9:50:21]

25 Q. [9:50:23] Okay, thank you. Mr Witness, I'm going to say this right now. It is

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1 helpful for the interpreters if you break down your answers in short sentences.

2 A. [9:51:06] All right.

3 Q. [9:51:11] If it seems that your answers are too long, and that this might be
4 a problem for the interpreters, I'm going to go like this on your screen, okay? I'm
5 going to raise my hand.

6 A. [9:51:54] All right.

7 Q. [9:51:55] I certainly don't mean any disrespect if I raise my hand. It just means
8 that I want you to stop and pause and then, of course, you will be able to continue.

9 A. [9:52:28] All right.

10 Q. [9:52:33] I'll make a sign like this, and that means you can continue. Okay.

11 A. [9:52:58] Fine.

12 Q. [9:53:00] I want to ask you now about the first time you met the man you call
13 Ali Kushayb.

14 Your Honours, paragraph 24.

15 What were you -- what were you doing in Garsila on that occasion?

16 A. [9:54:22] I was travelling to Zalingei. I had a headache because of the long
17 travel by road in the vehicle. The person accompanying me advised me to go to
18 the pharmacy to get some medicine, and he told me that the pharmacy to go to was
19 that of Ali Kushayb.

20 Q. [9:55:07] Did you have a cough?

21 A. [9:55:22] Yes.

22 Q. [9:55:30] Had you ever been to Garsila before?

23 A. [9:56:14] No, I had not gone there. I was in Zalingei.

24 THE INTERPRETER: [9:56:24] Correction: I was heading to Zalingei and I passed
25 by Garsila.

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1 THE WITNESS: [9:56:31](Interpretation) On the way I had a headache, so I was told
2 that I should go to that pharmacy to get some medication. When I went to
3 the pharmacy I found Ali Kushayb, who told me that he had no medicine for humans
4 and that he only sold medicine for cattle.

5 MR EDWARDS: [9:56:55]

6 Q. [9:56:56] So the person who suggested you go to this pharmacy seemed to
7 believe that he had medication for humans; is that right?

8 A. [9:57:55] Yes. And when I went there I asked about the pharmacy, so I went to
9 the pharmacy and I asked about the medication. So he said, "No medication for
10 humans here." So he didn't give me any medication.

11 Q. [9:58:16] So it sounds like it was a very short interaction with the owner of this
12 pharmacy; is that fair?

13 A. [9:58:59] I did not speak with him for long. I only asked about the medicine.
14 He said he had no medicine for humans. And I went back to the vehicle and
15 continued my course to Zalingei, my path to Zalingei.

16 Q. [9:59:16] Yeah. And you didn't address him by name and he didn't introduce
17 himself by name, correct?

18 A. [10:00:08] I did not speak with him for long. That's what I'm saying. That
19 indeed is what happened.

20 Q. [10:00:19] Was he wearing some sort of a turban on this occasion?

21 A. [10:01:12] I don't remember. It was in the evening when I stood up and I went
22 to the pharmacy. After asking about it, I was told that it was Ali Kushayb's
23 pharmacy. I found him inside and asked him about the medication, and he told me,
24 "No, I don't have medication for people."

25 Q. [10:01:43] Okay. I'm going to come back to the issue of turbans in a short

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1 while.

2 You -- you explain that his pharmacy contained shelving. This was floor-to-ceiling
3 shelving or just a few shelves? Can you help us with that.

4 A. [10:02:51] I am not sure. I did not go into the pharmacy. I only asked him
5 while I was standing at the door. I do not know if the shelves were from the ceiling
6 down. I don't remember that.

7 Q. [10:03:09] Did the man you speak to have any facial hair?

8 THE INTERPRETER: [10:03:38] The Fur interpreter is requesting to repeat
9 the question, please.

10 MR EDWARDS: [10:03:50] Sorry.

11 Q. [10:03:51] Did the man you spoke to have a beard or a moustache, or facial hair
12 like that?

13 A. [10:04:34] It was the Maghrib time. When we moved from Bindisi market, and
14 when we reached that place it was around the Maghrib time.

15 Q. [10:04:47] I think there's been a problem with the translation. I'm going to ask
16 the question again.

17 Did the man who you spoke to in the pharmacy have a beard or a moustache, or any
18 kind of facial hair?

19 A. [10:05:51] I did not see any facial hair.

20 MR EDWARDS: [10:06:01] Perhaps before we have a five-minute break,
21 your Honour, because I see the time.

22 Q. [10:06:08] Mr Witness, was there anything else noteworthy? Was there
23 anything else you noticed about this man's face?

24 A. [10:06:58] I did not see any special feature on his face -- face. I know that he
25 was of a medium height. And we were busy.

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1 Q. [10:07:10] Yes. I'm going to come on to your second and third interactions with
2 Ali Kushayb, but maybe after the five --

3 PRESIDING JUDGE KORNER: [10:07:23] I don't think we need a break -- I'm not
4 quite clear when we need a break, but I don't think it's after one hour, which is what
5 we've been sitting. I think -- is that what I said?

6 MR LAUCCI: [10:07:37] Well, I understood that because we are sitting for a
7 two-hour, rather than a one-and-a-half-hour slot, there's a requirement of a
8 five-minute break.

9 PRESIDING JUDGE KORNER: [10:07:48] Okay. Well, I don't know. I'll wait and
10 be told what -- what break is required now.

11 You're right, Mr Edwards, it makes more sense. I'm a little concerned that it took
12 three goes to get a fairly straightforward question translated properly.

13 MR EDWARDS: [10:08:09] Yeah.

14 PRESIDING JUDGE KORNER: [10:08:11] All right. Again, I think I emphasise,
15 Mr Edwards, I appreciate, obviously, it's an important witness, but if we can stick to
16 topics that, you know, really, really are important.

17 MR EDWARDS: [10:08:24] Yeah. Everything that this witness says about his
18 identification of the man that he thinks is Ali Kushayb is important.

19 PRESIDING JUDGE KORNER: [10:08:33] Yeah. No, I can see that.

20 All right, yes. We'll have a five-minute break then. So no later than quarter past 10,
21 please. Thank you.

22 THE COURT USHER: [10:08:50] All rise.

23 (Recess taken at 10.08 a.m.)

24 (Upon resuming in open session at 10.21 a.m.)

25 THE COURT USHER: [10:21:44] All rise.

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1 Please be seated.

2 MR EDWARDS: [10:22:05]

3 Q. [10:22:06] Mr Witness, I'm now going to ask you about the second and third
4 times you saw Ali Kushayb.

5 Were any of the cows that were subject of these negotiations your cows?

6 A. [10:23:02] The cows were to -- the cows of other people, but I was present during
7 the negotiations meeting.

8 Q. [10:23:14] Mr Witness, many of my questions can be answered with a "yes" or
9 a "no" answer. Can you please try, where possible, to answer with a "yes" or a "no"
10 answer, to do so.

11 Thank you.

12 This --

13 A. [10:23:47] (No interpretation)

14 Q. [10:23:48] Yes. This was a high-level meeting dealing with a prominent local
15 issue, correct?

16 A. [10:24:17] Yes, this is correct.

17 Q. [10:24:20] And I don't mean any disrespect, but at the time you were only
18 27 years old, correct?

19 A. [10:24:45] Yes, that is correct.

20 Q. [10:24:49] And you had no particular status as a leader in your community at
21 this time; that's right?

22 A. [10:25:24] I was married at that time.

23 Q. [10:25:29] Okay. You were married. Apart from the fact that you were
24 married at the time, what was your interest in taking part in these negotiations?

25 A. [10:26:19] I was one of the inhabitants of Kodoom. I was called upon by

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1 the *sheikh* to attend that meeting. So I -- I was there.

2 Q. [10:26:30] But why were you called upon by the *sheikh* to take part in this
3 meeting? You're not a local leader, you're 27 years old.

4 A. [10:27:17] There were some younger people who went and attended those
5 negotiations and meetings. And usually in our local meetings, all age categories
6 would attend, the children, the young people, and the elderly too.

7 Q. [10:27:38] How many people in total were there at this high-level meeting
8 dealing with a prominent local issue?

9 A. [10:28:10] I cannot specify the number. However, it was a large number.

10 Q. [10:28:16] Okay. Well, more than 20 or less than 20?

11 A. [10:28:40] The participants were more than 20.

12 Q. [10:28:44] More than a hundred or less than a hundred?

13 A. [10:29:06] Around 60 people.

14 Q. [10:29:12] And did the negotiations, did the meeting happen outdoors or
15 indoors?

16 A. [10:29:37] It took place in a small *wadi*, in a *khore*, close to the village.

17 Q. [10:30:04] On these two days, your second and third times you met Ali Kushayb,
18 was he wearing some kind of a turban?

19 A. [10:30:40] He had a turban on his head and he also wore a regular sort of
20 *jallabiya*.

21 Q. [10:30:48] I'm only interested in the turban for now. Is it a kind of a turban
22 called an *ema* (phon)?

23 A. [10:31:31] Yes, he had a turban on.

24 Q. [10:31:35] Can we have up on the screen, please, the document at tab 4 in
25 the Defence list of materials. It's an unmarked headdress board.

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1 DAR-OTP-0220-5649.

2 MR EDWARDS: [10:32:08] Your Honour, it didn't seem particularly advantageous
3 to suggest that this be printed out for your Honours.

4 PRESIDING JUDGE KORNER: [10:32:18] (Microphone not activated) strangely
5 enough that on this occasion it has been.

6 MR EDWARDS: [10:32:25]

7 Q. [10:32:25] Do you see the document on the screen, sir, with nine images of
8 headwear?

9 A. [10:32:49] (No interpretation)

10 Q. [10:32:49] Right. Well, I think I heard a "yes" coming from the witness.

11 Is the turban that the man was wearing at these meetings similar to image 7?

12 Of course, this could be publicly broadcast, of course.

13 A. [10:33:56] The shawl that he had on his head is not represented by any of these
14 images I see in front of me. The shawl he had on his head in the Juguma area was a
15 wide shawl. These images do not represent that.

16 Q. [10:34:23] Was it a shawl that covered the lower part of his face, though?

17 A. [10:34:52] It only covered the upper part of the head. Even the ears were not
18 covered. Neither the ears nor the remaining parts of the head were covered.

19 Q. [10:35:09] Okay. We're going to come back to this in a moment.

20 That can be taken off the screen.

21 You were 27 at the time. Roughly how old was Ali Kushayb at the time of these
22 negotiations?

23 A. [10:35:56] I never saw his birth certificate, but I noticed that he was of a senior
24 age.

25 Q. [10:36:06] And when you spoke with him, did you want to be respectful or

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1 disrespectful towards him?

2 A. [10:36:45] At that time, I thought he was a nice person who was there to resolve
3 the dispute. That was my assumption.

4 Q. [10:36:58] But to come back to my question, did you want to speak with him
5 with respect or disrespect?

6 A. [10:37:40] There was no anger in that meeting, in that setting. The whole point
7 was to resolve the dispute and to reach a settlement. Nothing more.

8 Q. [10:37:53] In Sudanese culture, it's normal, isn't it, for younger men to refer to
9 older men as "uncle", "*am*" (phon)?

10 A. [10:38:30] Yes, correct.

11 Q. [10:38:31] So you would have addressed this man using the honorific, using
12 the -- you would have addressed him as "uncle", right?

13 A. [10:39:04] I just addressed him as "Uncle Ali Kushayb". As did everybody who
14 addressed him.

15 Q. [10:39:14] Are you sure you didn't refer to him as "Uncle Ali", "*Am* Ali"?

16 A. [10:39:49] Even if I see him now I would address him as "Uncle Ali". He is
17 more elderly than me. That is the custom in our culture.

18 Q. [10:40:02] Quite so.

19 PRESIDING JUDGE KORNER: [10:40:07] I think this need -- it's obviously important
20 from everybody's point of view.

21 MR EDWARDS: [10:40:11] Okay. Can I -- can I follow up, then?

22 PRESIDING JUDGE KORNER: [10:40:12] Just ask the question again and we'll ...

23 MR EDWARDS: [10:40:14] Yeah, yeah.

24 Q. [10:40:17] So in fact you'd addressed him at these negotiations as
25 "Uncle Ali"?

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1 A. [10:40:58] No. I addressed him as "Ali Kushayb", because *Sheikh* Mohammed
2 bin Jugma (phon) addressed him with those same names.

3 Q. [10:41:24] And who is *Sheikh* Mohammed bin Jugma (phon)? You don't
4 mention him in your statement.

5 Forgive me. I'm sorry. I'm sorry. Is that *Sheikh* Mohammed Abdallah?

6 A. [10:41:59] Yes, I'm referring to *Sheikh* Mohammed Abdallah.

7 Q. [10:42:06] I want to now ask you about what you say is Ali Kushayb's real name.
8 Your Honours, paragraph 23.

9 You told the investigator, sir, that Ali Kushayb's real name was Ali Mohammed
10 Ahmed. Do you remember saying that?

11 A. [10:43:14] Yes, I told the investigators that his name is Ali Mohammed Ahmed.
12 However, in our region this person is known as Ali Kushayb. Everyone addresses
13 him like that.

14 Q. [10:43:35] Mr Witness, I'm going to ask you, please, to just answer the questions
15 that I ask you. I've read your statement. We will proceed much faster if you just
16 focus on the questions I ask you.

17 Who told you that his name was Ali Mohammed Ahmed?

18 A. [10:44:46] I'm not sure of his name being Ali Mohammed Ahmed. What I
19 know is that he is addressed as Ali Kushayb, which is what I heard from
20 *Sheikh* Mohamed Abdul Karim (phon).

21 Q. [10:45:04] Mr Witness, please listen to my question. I'm going to ask it again:
22 Who told you that his name was Ali Mohammed Ahmed? Just give me the name of
23 that person, please.

24 A. [10:46:14] *Sheikh* Mohammed Abdallah, the *sheikh* of Juguma, used to address
25 him with that, Ali Mohammed Ahmed. And at the time he referred to him as

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1 Ali Kushayb. So I told him I'm going to address him also as Ali Kushayb because it
2 was the commonly known name.

3 Q. [10:46:35] Now, the investigator who took your statement less than a year ago
4 then asked you if you had ever heard him being referred to as Abd-Al-Rahman,
5 correct?

6 A. [10:47:35] Yes.

7 Q. [10:47:35] You didn't volunteer that information?

8 A. [10:48:04] Yes, I provided that information because that is what I knew.

9 Q. [10:48:16] And by the time you gave your statement in the tenth month of last
10 year, 2021, you had known for a long time that Mr Abd-Al-Rahman was detained by
11 this Court, correct?

12 A. [10:49:07] Yes, that is correct.

13 Q. [10:49:14] Is it the case that you told the investigator that Ali Kushayb was also
14 called Abd-Al-Rahman because you thought that's what the investigator wanted to
15 hear?

16 A. [10:50:03] Yes, I told the investigators that I've been hearing this person being
17 called with that name. But his real name is Ali Kushayb.

18 Q. [10:50:21] And then you saw Ali Kushayb again during the attack on your home
19 village. That's what I want to talk about now. Do you understand?

20 A. [10:50:52] (No interpretation)

21 Q. [10:50:53] I don't want you, sir, to name your home village. Just refer to it as
22 "my village". Do you understand?

23 A. [10:51:16] All right.

24 Q. [10:51:19] Your Honours, paragraph 35, please.

25 "The attack started from east and triangulated from north-east and south," you say in

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1 your statement. What do you mean by the word "triangulate", sir?

2 A. [10:52:41] When the village was attacked, it was attacked from three directions,
3 north, south and east. We fled the village and headed west, which was the only
4 possible route out of the village.

5 Q. [10:53:03] In your language, is "triangulate" a word you often -- is "triangulate"
6 a word that you use?

7 It's so obviously a word that's been introduced by the investigator, which I'm --

8 PRESIDING JUDGE KORNER: [10:53:35] I don't think you need trouble -- I agree.

9 This is clearly -- I very much doubt, particularly if the witness was speaking Arabic
10 when making the statement, which apparently he was, which is not a language which
11 he is fluent, that "triangulated" is a word that he used in whatever language.

12 MR EDWARDS: [10:53:54] And your Honour will understand the concerns that we
13 have, especially given the highly leading nature of the name question.

14 PRESIDING JUDGE KORNER: [10:54:03] Yes, all right.

15 MR EDWARDS: [10:54:04] Okay. I'll move on, then, your Honours.

16 PRESIDING JUDGE KORNER: [10:54:05] Yes.

17 MR EDWARDS: [10:54:06]

18 Q. [10:54:08] Okay. Never mind that, Mr Witness. I'm going to ask a different
19 question.

20 Actually, I'm going to have to do the next few questions in private session, because
21 there's some geography that needs to be dealt with, your Honours.

22 PRESIDING JUDGE KORNER: [10:54:27] Yes, private session, please.

23 MR EDWARDS: [10:54:29] And this will take us to 11 o'clock, so perhaps ...

24 PRESIDING JUDGE KORNER: [10:54:32] Well, the public gallery will have heard
25 that.

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1 (Private session at 10.54 a.m.)

2 THE COURT OFFICER: [10:54:51] We're in private session, Madam President.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. [10:59:15] And so when you heard of this imminent attack (Redacted) you

9 (Redacted)immediately fled (Redacted), did you?

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. [11:00:31] Well, the reality is you hung around, according to your

15 statement -- sorry, let me start again.

16 In your statement you say that you hung around at home for another hour to an hour

17 and a half.

18 Your Honours, paragraph 38.

19 A. [11:01:17] When the attack happened, I did not wait. I fled, (Redacted)

20 (Redacted). And that was immediately.

21 Q. [11:01:27] Okay. We'll explore that after the break.

22 Your Honour, I see the time.

23 PRESIDING JUDGE KORNER: [11:01:32] Yes, do you -- do you think you can

24 conclude the part in private session before the -- I mean, if I were to sit for a further

25 five minutes?

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1 MR EDWARDS: [11:01:42] Actually, the part that has to be in private session has
2 now been dealt with. The rest can be done in public.

3 PRESIDING JUDGE KORNER: [11:01:52] All right (Microphone not activated)

4 Sir, we're going to have a break now of half an hour, which will give you a chance to
5 relax. And we'll start again at 11.35, as I see, as we need the full 30 minutes. Right.

6 MR EDWARDS: [11:02:12] Can I just say, for your Honours' benefit, and my learned
7 friends, that we're making good progress. There's -- I don't have the same concerns
8 that I did at 7 o'clock this morning.

9 PRESIDING JUDGE KORNER: [11:02:23] Yes, I think the only question that we've
10 got really is -- is whether you think you'll be concluding by the lunch break. No, I
11 thought not.

12 MR EDWARDS: [11:02:36] Your Honour asks much too much.

13 PRESIDING JUDGE KORNER: [11:02:38] I'm always an optimist, Mr Edwards.

14 Yes, all right, 11.35, please.

15 THE COURT USHER: [11:02:46] All rise.

16 (Recess taken at 11.02 a.m.)

17 (Upon resuming in open session at 11.35 a.m.)

18 THE COURT USHER: [11:35:22] All rise.

19 Please be seated.

20 MR EDWARDS: [11:35:58]

21 Q. [11:35:59] You're -- you're a responsible family man, aren't you, sir?

22 A. [11:36:19] Yes, that is correct.

23 Q. [11:36:26] So as soon as you hear of the attack coming at 8 o'clock in the morning,
24 you take your children, your wife and you flee from where you live, heading west;
25 correct?

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- 1 A. [11:37:02] Yes, that is correct.
- 2 Q. [11:37:05] Obviously fleeing away from danger, not towards danger.
- 3 A. [11:37:28] Yes, that is correct.
- 4 Q. [11:37:34] That morning from 8 o'clock, the situation must have been quite
- 5 terrifying.
- 6 A. [11:37:55] Yes, that is correct.
- 7 Q. [11:38:02] Your priority was to get your family out of danger.
- 8 A. [11:38:18] Yes, that is correct.
- 9 Q. [11:38:34] And fleeing west, you were heading towards what you describe
- 10 as -- is it the forest?
- 11 Your Honours, paragraph 38.
- 12 A. [11:38:54] Yes, that is correct.
- 13 Q. [11:39:03] Whilst in your statement you say that Ali Kushayb arrived in a white
- 14 car and stopped in the centre of your home village.
- 15 A. [11:39:31] Yes, this is correct.
- 16 Q. [11:39:33] But, of course, the centre of your home village is east, isn't it, it's
- 17 behind you as you're fleeing to the forest?
- 18 A. [11:40:00] Yes, that is correct.
- 19 Q. [11:40:04] And your priority is to put as much distance between the attackers
- 20 and your family.
- 21 A. [11:40:31] Yes, this is correct.
- 22 Q. [11:40:35] And then after the attack dies down, do you and your family return to
- 23 your home village all together?
- 24 A. [11:41:03] Yes, after the attack stopped, we came back to the village.
- 25 Q. [11:41:14] And as a family, did you all return to your home -- your -- your

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1 actual home?

2 A. [11:41:47] I came back with my wife. However, I left my children behind me
3 there.

4 Q. [11:41:57] Is that in the town of Merly?

5 A. [11:42:14] Would you repeat the question, please.

6 Q. [11:42:17] Did you leave your children in the village of Merly?

7 A. [11:42:30] Yes, I left them in Merly.

8 Q. [11:42:34] Why didn't you all stay together in Merly?

9 A. [11:43:08] We got separated because of war. This is why each took a different
10 direction. My children stayed in Merly and they moved or headed towards Garsila.

11 THE INTERPRETER: [11:43:22] Correction: Towards Gausir.

12 MR EDWARDS: [11:43:32]

13 Q. [11:43:32] Well, I just want to be clear about this. You've agreed with me that
14 you left your children in Merly. Are you suggesting that you did not leave them in
15 Merly deliberately?

16 A. [11:44:28] I did not mean that. I went to Merly to tell people that there is an
17 attack coming from Kodoom. I left my children there as a result.

18 Q. [11:44:40] Exactly. You left them there -- well, this is what I want to
19 understand: Did you leave them there on purpose because you thought it was
20 a place of safety, or did you lose contact with them because of the chaotic situation?

21 A. [11:45:33] Because of the war we got separated, my children and I. I never met
22 them later.

23 Q. [11:45:44] But the last place you knew where they were was Merly; correct?

24 A. [11:46:16] I found my children in Mukjar. But they were in Merly.

25 Q. [11:46:24] All right. Okay.

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1 Your Honours, paragraphs 56 and 57 is where I'm moving on to now.

2 There comes a point when you and your wife go to Mukjar after this attack on your
3 home village. Yes?

4 A. [11:47:11] (No interpretation)

5 Q. [11:47:12] Okay. There was -- there was a nod of head and something that
6 sounded like a "yes". If the Fur interpreter can confirm that, please.

7 A. [11:47:34] Yes.

8 Q. [11:47:49] Villagers were being told in Mukjar that the Janjaweed were not going
9 to come back; is that your evidence?

10 A. [11:48:19] Yes, this is correct.

11 Q. [11:48:21] But you weren't sure. You thought maybe they would come back.

12 A. [11:48:39] Yes, that is correct.

13 Q. [11:48:42] And that's why you personally wanted to stay in -- or decided to
14 remain in Mukjar; correct?

15 A. [11:49:00] Yes, that is correct.

16 Q. [11:49:04] But even though you thought the Janjaweed might come back, you
17 were content for your wife and children to return to your home village?

18 A. [11:49:44] Yes, that is correct.

19 Q. [11:49:47] You were content for your wife and children to return to a place
20 where they were in grave danger?

21 A. [11:50:18] Yes, I was content for that, because everyone had gone back to
22 their -- the village.

23 Q. [11:50:29] Is it the case that in fact you returned to your home village with your
24 wife and children because you thought the danger had passed?

25 A. [11:51:12] We were told to go back to the village, so we went back. However,

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1 on the 30th there was another attack against us.

2 Q. [11:51:24] Yes, I'm -- Mr Witness, I'm not at the 30th yet. We're getting there.

3 But I just want to be very clear that you and your wife and children returned to your
4 home village because you were told in Mukjar, that's it, the danger is past.

5 A. [11:52:13] Yes, this is correct.

6 Q. [11:52:34] But about two weeks later there was another attack.

7 A. [11:52:49] Yes.

8 Q. [11:52:57] And it was then that you decided to -- to leave your home village for
9 good.

10 A. [11:53:16] Yes, that is correct.

11 Q. [11:53:21] And that's when you all, as a family, moved to Mukjar.

12 A. [11:53:38] Yes, this is correct.

13 Q. [11:53:43] In your statement, sir, you -- you discuss what you heard about
14 women having been raped in your home village.

15 Paragraph 49, your Honour.

16 We're just going to spend a few moments talking about that for a moment.

17 Sorry, bear with me.

18 Now, what -- what you had been told about women being raped is what you'd heard
19 from two old women in your village; correct?

20 A. [11:55:20] Yes, this is correct.

21 Q. [11:55:24] Did these two old women tell you this directly, or was this something
22 that was reported to you by someone else?

23 A. [11:55:55] I heard that from them directly.

24 Q. [11:56:11] Now, I think this is right, none of the rape victims were members of
25 your family.

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1 A. [11:56:35] Yes, this is true.

2 Q. [11:56:39] These were other inhabitants of your village.

3 A. [11:57:02] Yes, that is correct.

4 Q. [11:57:05] And we know that in your culture the issue of rape is a matter of great
5 sensitivity.

6 A. [11:57:29] Yes, that is correct.

7 Q. [11:57:36] This is very much because a victim of rape will not want other men to
8 know that they are victims of rape.

9 A. [11:58:14] Yes, this is correct.

10 Q. [11:58:21] From your understanding of your community, a woman disclosing
11 that she's been raped to another woman, that that would be a matter of real secrecy, of
12 confidence; is that fair?

13 A. [11:58:57] Yes, this is correct.

14 Q. [11:59:03] And would it therefore be a real breach of that confidence for
15 a woman who has been told of rape to then pass that on to others?

16 A. [12:00:00] Yes, that is correct.

17 Q. [12:00:03] And it would be a special, a particular, a very grave breach of any
18 such confidence if that information was passed on to a man.

19 A. [12:00:38] Yes, this is correct.

20 Q. [12:00:39] And especially a man who wasn't even a family member of the victim
21 of rape.

22 A. [12:01:07] Yes, correct.

23 Q. [12:01:24] Okay. Let's -- let's move on then to your period in Mukjar and what
24 you say at paragraphs -- at paragraph 79 of your statement.

25 Sir, you told the investigators that you saw Ali Kushayb in the market of Mukjar after

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1 the attacks. Let's focus on that for a moment.

2 Were his fighters guarding him, from what you could see?

3 A. [12:02:39] Yes, they were guarding him.

4 Q. [12:02:43] Were they standing around him whilst he was sitting there in
5 the market?

6 A. [12:03:01] Yes, they were standing.

7 Q. [12:03:07] And what was Ali Kushayb doing? Was he -- was he shopping, was
8 he eating, was he drinking?

9 A. [12:03:38] I just saw him sitting on a chair, in the shadow of a tree.

10 Q. [12:03:50] Was this in the middle of the day?

11 A. [12:04:05] Yes, it was in the middle of the day.

12 Q. [12:04:13] The light is very bright, isn't it, in Darfur in the middle of the day?

13 A. [12:04:42] Yes, correct.

14 Q. [12:04:48] Do you happen to remember whether on this particular day it was
15 a market day?

16 A. [12:05:12] The place where we were was a marketplace.

17 Q. [12:05:18] Yes. And was it actually a market day in that marketplace? In
18 other words, was it a particularly busy market day that day?

19 A. [12:05:50] Yes, it was a market day.

20 Q. [12:06:03] With lots of shoppers mingling around and coming and going all over
21 the market, right?

22 A. [12:06:28] Yes, correct.

23 Q. [12:06:30] Now, you say in your statement that you didn't approach

24 Ali Kushayb. Is that because you didn't want him to see you?

25 A. [12:07:08] Yes.

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1 Q. [12:07:12] You wouldn't have wanted Ali Kushayb to notice you staring at him?

2 A. [12:07:46] Yes. I wouldn't have wanted him to notice me.

3 Q. [12:07:53] And that's why you wanted to -- to keep a certain distance from him,
4 right?

5 A. [12:08:12] Yes, correct.

6 Q. [12:08:17] On this occasion was he wearing some kind of a turban, did you
7 notice?

8 A. [12:08:49] He had a cap similar to a headwear that you've shown earlier on
9 the screen and it was green.

10 Q. [12:09:04] Yes. To be entirely fair to you, let's bring that back up so that
11 we -- we're all aware of what you're referring to.

12 Can we have back up, please, the document -- yes, tab 4 of our list of materials,
13 the Defence list of materials, please. 0220. Excellent.

14 Mr Witness, could you please tell us the number of the headgear that most closely
15 resembles what you saw Ali Kushayb wearing that day.

16 A. [12:10:04] I don't see anything on the screen yet.

17 Q. [12:10:09] It may be that the officer at the remote location needs to switch to
18 the evidence channel. Evidence 1 I think it will be. There we are.

19 Which number, sir?

20 THE COURT OFFICER: [12:10:46](Via video link) Middle row, extreme left.

21 MR EDWARDS: [12:10:51]

22 Q. [12:10:52] Okay. Is that number 4?

23 THE COURT OFFICER: [12:10:55](Via video link) Yes (inaudible)

24 MR EDWARDS: [12:10:57] Yeah, I think I need to hear it -- I think I need to hear that
25 from the witness, please.

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1 Q. [12:10:59] Is it number 4, sir?

2 A. [12:11:18] Yes, it is number 4.

3 Q. [12:11:21] Thank you.

4 All right, well, this -- this may be an appropriate time to deal with it.

5 The next time you see Ali Kushayb is at Mukjar police station; is that what you say?

6 A. [12:12:08] Yes, correct.

7 Q. [12:12:13] And if I can summarise your evidence so far, at no time had you ever
8 seen Ali Kushayb wearing a turban that covered his face. Do I understand you
9 correctly?

10 A. [12:12:50] Yes, correct.

11 Q. [12:12:54] If we can remove this exhibit from the screen and bring back up
12 the witness's statement. And I'd like to see paragraph 102, please, which is at
13 ERN 0619. It's PDF page 18.

14 When you see Ali Kushayb at Mukjar police station, you describe what he's wearing
15 in your statement. And I'm going to read it out to you, sir:

16 "Ali Kushayb arrived with his axe, he was wearing his military cap and had the holes
17 in [his] ears, his face was not covered like when I saw him before and he was wearing
18 a turban."

19 So I stop there.

20 Weren't you suggesting to the investigator that when you had seen Ali Kushayb
21 the times before Mukjar police station he was wearing some sort of a turban that
22 covered his face?

23 A. [12:15:22] I did not say that he wore a turban that covered his face. I only said
24 he wore a military cap as I have described when I pointed at number 4 on the screen.
25 That covered the face. That's what I meant.

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1 Q. [12:15:48] I'm not interested in what kind of cap he was wearing when you saw
2 him at Mukjar police station.

3 If that can be interpreted first, please.

4 What I'm interested in is what you say to the investigator about what you could see of
5 his face on the earlier occasions you had seen Ali Kushayb.

6 You're saying to the investigator in this paragraph that when you had seen
7 Ali Kushayb in the past he was wearing a turban that covered his face, unlike what he
8 was wearing when you saw him at Mukjar police station.

9 And that's right, isn't it? That's what you were telling the investigator?

10 A. [12:17:53] Could you please repeat the question.

11 Q. [12:17:59] Well, essentially you were drawing a distinction between what he was
12 wearing when you saw him in Mukjar police station and the sort of headgear you had
13 seen him in in the past.

14 A. [12:18:49] Yes, I was able to make the distinction.

15 Q. [12:18:57] And you were able to see that at Mukjar police station he had pierced
16 ears.

17 A. [12:19:20] Yes, correct.

18 Q. [12:19:23] And you hadn't been able to see his ears on the earlier occasions you
19 had seen him.

20 A. [12:19:45] Yes, correct.

21 Q. [12:19:56] All right. Now, I'm going to ask now about your arrest in Bindisi by
22 the Janjaweed.

23 Were the people who arrested you on horseback or camelback?

24 This is from paragraph 81 onwards, your Honour.

25 A. [12:20:49] Are you asking me about those who came to arrest me?

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1 Q. [12:20:54] Yes. Your -- your arrest when at the market in Bindisi. Were
2 the people who arrested you on horseback or camelback, or something else?

3 A. [12:21:29] No, they were not on horseback or camelback. They came by foot.

4 Q. [12:21:38] And can you remember what the men who arrested you were
5 wearing?

6 A. [12:22:00] They were in plain clothes.

7 Q. [12:22:04] What colour? If you remember.

8 A. [12:22:28] Those who arrested me were in plain clothes.

9 Q. [12:22:33] But what colour were those plain clothes, sir, if you remember? If
10 you don't remember, just tell us.

11 A. [12:23:19] Some of them wore regular *jallabiyas*. Others wore shirts and
12 trousers, just like I am dressed now. But I can't remember the exact colours of these
13 clothes.

14 Q. [12:23:41] Were any of them wearing khakis?

15 A. [12:24:01] No.

16 Q. [12:24:06] But you were very quickly then placed into the custody of
17 the -- the military, right, the Central Reserve Forces?

18 A. [12:24:27] Yes, correct.

19 Q. [12:24:31] And the hospital that you were taken to was controlled by
20 the Central Reserve Forces.

21 A. [12:24:50] Yes, correct.

22 Q. [12:24:56] And, Mr Witness, I want to reassure you that I don't take issue with
23 what you say occurred to you at Bindisi hospital. All right?

24 Okay. If that's been translated, I want to move on now to your subsequent
25 transport -- transportation to Mukjar police station.

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1 This is from, your Honours, paragraph 94.

2 Let me ask you this: When you arrived at Mukjar police station, was your name
3 written down by anyone?

4 A. [12:26:20] No.

5 Q. [12:26:30] Did the single cell at the police station that you talk about have any
6 kind of window?

7 A. [12:27:00] No, it did not have a window. It just had a door.

8 Q. [12:27:08] Was there any kind of electric source of light in that single cell?

9 A. [12:27:32] No, there wasn't a light.

10 Q. [12:27:37] And the door that you have just mentioned, is this the door that
11 opened out on to the veranda?

12 A. [12:28:01] Yes, it is that door.

13 Q. [12:28:04] And is this the door that had bars in it which allowed you to see out
14 into the -- the courtyard?

15 A. [12:28:38] It was the only door. There was no other door. Yes.

16 Q. [12:28:47] Okay. No, I understand that. But in your statement, you talk about
17 a door with bars and you were able to see through the bars. We're talking about this
18 door, aren't we?

19 A. [12:29:20] Yes.

20 Q. [12:29:23] Did this door open into the cell, or when the door was open, did
21 the door open out on to the veranda?

22 A. [12:29:52] It opened to the outside, to the veranda.

23 Q. [12:30:01] And as far as you know, when the door was closed, how was it locked?
24 How was it secured?

25 A. [12:30:35] They would push it and then lock it.

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1 Q. [12:30:39] And how was it locked, sir?

2 A. [12:31:13] It would be pulled towards the west and it had joints. And when
3 you would pull it towards the west, it would lock automatically.

4 Q. [12:31:29] I see. Did you ever see it being secured by use of a chain?

5 A. [12:32:03] No. It was never locked with chains. It was closed with locks.

6 Q. [12:32:17] Now, if I understand your evidence, you recognised some of the other
7 detainees, but most you did not recognise; is that right?

8 A. [12:32:45] Yes, correct.

9 Q. [12:32:53] And within the cell, the single cell, were the detainees talking
10 amongst themselves or was it generally fairly silent?

11 A. [12:33:28] They sometimes talked to each other, and sometimes the torture was
12 severe. They used to remain silent as a result of torture.

13 Q. [12:33:44] Yes. Did you notice any of the detainees trying to find out the names
14 of the others in the cell?

15 A. [12:34:29] I was able to recognise those that I found in the cell and those who
16 came after me.

17 Q. [12:34:42] Yes. I think my question was a little different. Did you ever notice
18 any of the detainees in that cell asking the others their names or what village they
19 were from?

20 A. [12:35:27] No, I never noticed that.

21 Q. [12:35:34] Did you ever notice any of the detainees writing in the cell?

22 A. [12:35:58] No.

23 Q. [12:36:12] You state that it was -- it was clear that the only people in the cell
24 were people from the Fur tribes. How do you know that, sir?

25 A. [12:36:48] They were all speaking in Fur. No one was speaking in Arabic.

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1 Q. [12:37:04] So I touched on it earlier, you say you saw Ali Kushayb arrive, his
2 face this time uncovered. And again, to be very clear, he never came into the cell,
3 correct?

4 A. [12:37:47] Yes, this is correct.

5 Q. [12:37:50] He never introduced himself to the detainees, correct?

6 A. [12:38:05] Yes, this is correct.

7 Q. [12:38:10] If at any time you saw Ali Kushayb beating the detainees, it was only
8 once the detainees had left the single cell, right?

9 A. [12:38:44] Yes, correct.

10 Q. [12:38:48] And if you saw detainees being beaten by Ali Kushayb, it was
11 through the bars in that --

12 MS SIMMS: [12:38:56] Your Honours, if I may --

13 MR EDWARDS: [12:38:59] But can -- can -- yeah.

14 PRESIDING JUDGE KORNER: [12:39:00] (Microphone not activated)

15 MR EDWARDS: [12:39:02] Well, if there's an objection, can the sound be cut, please.

16 PRESIDING JUDGE KORNER: [12:39:07] Ms Simms, you must wait and not
17 interrupt. That throws all interpretations. I think that's -- stop interpreting for
18 the witness now.

19 And do you want the feed cut, Mr Edwards? If he doesn't get interpretation, he's not
20 likely to understand what's ...

21 MR EDWARDS: [12:39:32] No. Provided it's not interpreted, yeah.

22 PRESIDING JUDGE KORNER: [12:39:32] No. Right. Because no interpretation --

23 MR EDWARDS: [12:39:33] I just don't -- I just don't want the objections
24 (Overlapping speakers)

25 PRESIDING JUDGE KORNER: [12:39:38] Right. Well, your question was

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1 interrupted.

2 What -- what's the -- Ms Simms, you must absolutely, when there's

3 inter -- particularly consecutive interpretation, wait and then get up. Right. What's
4 the objection?

5 MS SIMMS: [12:39:50] Your Honour, it relates to the framing by Defence counsel in
6 terms of his opportunity to have seen the accused, given the statement and
7 the clarification, in particular paragraphs 102 and 104 of the statement, and
8 paragraphs 15 to 17 of the clarification, that perhaps Defence counsel --

9 PRESIDING JUDGE KORNER: [12:40:21] Well, wait a minute, the --
10 "If at any time you saw Ali Kushayb beating the detainees, it was only once the
11 detainees had left the single cell ...?"

12 "Yes ..."

13 "And if you saw the detainees being beaten by Ali Kushayb, it was through
14 the bars --", and then you interrupted.

15 But why isn't he entitled to put that?

16 MS SIMMS: [12:40:49] Your Honours, because in light of paragraph 102, where
17 the ending paragraph is, "The vehicle left and the cell door was closed," which
18 indicates that his sighting then was through an open door. And then there are other
19 instances of the identification of the accused relating to other persons being beaten at
20 paragraph 104.

21 So perhaps, to be fair to the witness, he may need to (Overlapping speakers)

22 PRESIDING JUDGE KORNER: [12:41:23] All right. Well, you do get a chance to
23 re-examine, but -- where are we? Where does he say it in his -- corrections and
24 clarifications, where do you say -- paragraph (Overlapping speakers)

25 MS SIMMS: [12:41:40] Paragraph 15, your Honours.

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1 PRESIDING JUDGE KORNER: [12:41:42] Yeah, I've got it.

2 Yeah, I mean the suggestion, I suppose, Mr Edwards, is it -- it is that the door was
3 open.

4 MR EDWARDS: [12:41:58] Yeah. It's -- it's a fair point that my learned friend
5 makes, and I don't want to take an unfair point. So I'm very happy to rephrase my
6 question.

7 PRESIDING JUDGE KORNER: [12:42:08] Yes. Okay.

8 Well, there you are, Ms Simms. Thank you.

9 Right. Can we re-establish the link with the -- sorry, no, we're still on the link. Let's
10 restart interpretation and ask the question again, Mr Edwards.

11 MR EDWARDS: [12:42:51] Okay.

12 Q. [12:42:52] Well, I will ask it in a very straightforward way.

13 Mr Witness, how did you see Ali Kushayb beating the detainees once they were out
14 of the cell?

15 A. [12:43:22] Yes, I saw him.

16 Q. [12:43:26] Yes, but how?

17 A. [12:44:10] I saw him when the vehicle of Ali Kushayb came and he went
18 towards the south and the back of the vehicle was towards the door of the cell.
19 The detainees were going out, and he was holding -- he was holding an axe in his
20 right hand and he was leaning towards the Dushka and his -- with his other hand and
21 he was beating the detainees.

22 Q. [12:44:43] Okay. Now, a moment ago you explained that after you first arrived
23 at Mukjar police station, some other detainees were brought into the cell. Have I got
24 that right, sir?

25 A. [12:45:21] Yes, that is correct.

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1 Q. [12:45:24] Now even before this additional group of detainees was placed into
2 the single cell, the cell was extremely overcrowded, correct?

3 A. [12:46:01] Yes, that is correct.

4 Q. [12:46:14] Was there standing room only or were some detainees able to sit or
5 squat down on the floor?

6 A. [12:46:49] They put them on top of each other.

7 Q. [12:46:53] So when the new group of detainees were brought in, they were sort
8 of on top of you, were they?

9 A. [12:47:18] Yes, that is correct.

10 Q. [12:47:23] When detainees were being taken out of the cell, to be placed on
11 the vehicles outside, were they called out by name?

12 A. [12:47:58] No, they were not called out by name.

13 Q. [12:48:09] Was it the detainees who were closest to the door then who were
14 taken out?

15 A. [12:48:40] No, they were chosen randomly. And when one vehicle would be
16 filled, they would close the door and take off.

17 Q. [12:49:11] I want to come back to the lighting -- the light conditions in the cell,
18 please. When the door was closed, how much light was able to come into the cell
19 through the bars on the door?

20 A. [12:49:54] Do you mean the size of the cell or the size of the door? I didn't quite
21 understand.

22 Q. [12:50:05] No, I apologise. That's -- that's my fault. It wasn't a very good
23 question.

24 Did the light that came into the cell through the bars of the cell door, was it enough
25 for you to be able to see fairly clearly the interior of the cell, and the detainees in

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1 the cell?

2 A. [12:51:13] There was not enough light. Only those who were close to the door
3 could be seen.

4 Q. [12:51:25] You were not one of those close to the door.

5 A. [12:51:50] I was close to the door from the northern part.

6 Q. [12:52:10] Was there a door to the north of the -- was there a door to the north in
7 the police station?

8 A. [12:52:42] No, there was no door to the north.

9 Q. [12:52:53] Okay. Just explain what you mean then when you say, "I was close
10 to the door from the northern part."

11 A. [12:53:26] I was sick, therefore I was sitting close to the door.

12 Q. [12:53:42] Is this because other detainees, as it were, took -- took pity on you?

13 A. [12:54:03] Yes, this is correct.

14 Q. [12:54:09] Your condition, you were in great pain because of the injuries you had
15 received at Bindisi hospital, right?

16 A. [12:54:41] Yes. I was sick and this is why the detainees took pity on me and
17 they put me close to the door.

18 Q. [12:54:57] Okay. All right. Let's just break that down. I understand that you
19 were injured. Apart from those injuries, were you sick in any other way?

20 A. [12:55:36] Yes, I had injuries and I was suffering from sickness, from illnesses.
21 And up until now I am still not cured.

22 Q. [12:55:52] During the time when you were in the cell, do you remember if you
23 had a fever, for example?

24 A. [12:56:26] Before going into the detention, I was healthy. But after going out of
25 the detention centre, I wasn't able to walk under the sun.

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1 Q. [12:56:38] No, I understand that. But please just try and -- just try and focus on
2 my question. During the time when you were in the cell at Mukjar police station,
3 did you have some kind of a fever?

4 A. [12:57:36] Yes. Yes, I had a high fever. Sometimes I lost consciousness, even.

5 Q. [12:57:52] You were also, I imagine, very hungry because you weren't given
6 enough food.

7 A. [12:58:18] Yes. We did not have enough food.

8 Q. [12:58:24] And very thirsty because you weren't given enough water.

9 A. [12:58:41] Yes, this is correct.

10 Q. [12:58:44] And you weren't able to -- to sleep properly because of
11 the overcrowded conditions.

12 A. [12:59:12] Yes, this is correct.

13 Q. [12:59:16] And you must also have been in a permanent state of fear, not
14 knowing what was going to happen to you.

15 A. [12:59:42] Yes, correct.

16 Q. [12:59:51] Were you burned at any point whilst at Mukjar police station?

17 A. [13:00:19] No, no, I wasn't burnt.

18 Q. [13:00:28] Mr --

19 PRESIDING JUDGE KORNER: [13:00:28] Is that an appropriate moment?

20 MR EDWARDS: [13:00:30] I'm actually -- if your Honours --

21 PRESIDING JUDGE KORNER: [13:00:36] I can't actually. I've got to rise at 1.

22 MR EDWARDS: [13:00:39] Okay. All right. I imagine your Honours may have
23 questions. There may be some re-examination.

24 PRESIDING JUDGE KORNER: [13:00:44] Yeah. So I think there's going to be a --

25 MR EDWARDS: [13:00:46] Yeah. Your Honour actually had good grounds to be

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1 optimistic because we're very close.

2 PRESIDING JUDGE KORNER: [13:00:52] Well, I rather thought that you were
3 making very good progress, but we've still got -- I've got to adjourn now. And we'll
4 sit again at the normal 2.30.

5 MR EDWARDS: [13:01:00] Fifteen, 20 minutes, I should think, and we'll be done.

6 PRESIDING JUDGE KORNER: [13:01:05] Right. Well, that's very helpful. Thank
7 you very much, Mr Edwards. Yes.

8 Sir, we're going to have a break now for lunch, and you'll be back concluding your
9 evidence at half past 2 this afternoon. Yes, thank you.

10 THE COURT USHER: [13:01:16] All rise.

11 (Recess taken at 1.01 p.m.)

12 (Upon resuming in open session at 2.31 p.m.)

13 THE COURT USHER: [14:31:03] All rise.

14 Please be seated.

15 MR EDWARDS: [14:31:34] Paragraph 40 of your Honours' statement, please.

16 Q. [14:31:46] Good afternoon, Mr Witness. I hope you feel refreshed after
17 the break. I promise you I won't be detaining you very much longer. Just a couple
18 more issues I want to touch on briefly.

19 A. [14:32:19] God willing.

20 Q. [14:32:23] You talk about seeing a person called Solonga distributing
21 the contents of certain boxes to the Janjaweed at the police station in Mukjar.
22 Al-Sadiq Solonga or Solonga.

23 The aircraft that you saw coming to Mukjar numerous times, where would that
24 aircraft land?

25 A. [14:33:41] To the north side of the police checkpoint.

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1 Q. [14:33:47] And was this a fixed-wing aircraft or a helicopter?

2 A. [14:34:19] It was an aircraft that was multicoloured that was similar to
3 the colours of the government officers.

4 Q. [14:34:32] Okay. Do you know what a helicopter is, sir?

5 A. [14:34:55] What I understood is that it was a multicoloured aircraft and it had
6 a rudder above it that used to move.

7 Q. [14:35:06] Yes. And you saw the unloading from this aircraft; is that right?

8 A. [14:35:30] Yes, correct.

9 Q. [14:35:34] Can I be clear, when you say, "To the north side of the police
10 checkpoint," do you mean to the north side of Mukjar police station?

11 A. [14:35:58] Yes.

12 Q. [14:36:03] And the place where the aircraft landed, was that further away from
13 Mukjar market than the police station or closer to Mukjar market than the police
14 station?

15 THE INTERPRETER: [14:36:55] Note from the Fur interpreter: They did not
16 understand the answer of the witness.

17 MR EDWARDS: [14:37:05]

18 Q. [14:37:05] Mr Witness, could you repeat your answer, please. Was the place
19 where the aircraft landed further away from the market than the police station or
20 closer to the market?

21 A. [14:37:46] It was closer to the police station than the market. But if you were in
22 the market, you could see the helicopter.

23 Q. [14:37:57] It was at least -- well, the police station itself is at least two football
24 pitches away from the market, isn't it?

25 THE INTERPRETER: [14:38:33] Note from the Fur interpreter: Could you please

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1 repeat the question. It's not clear for us.

2 PRESIDING JUDGE KORNER: [14:38:40] It may be the two football pitches.

3 MR EDWARDS: [14:38:47] Yeah. Okay.

4 Q. [14:38:49] Mukjar market is at least 200 metres away from Mukjar police station,
5 correct?

6 A. [14:39:05] Yes.

7 Q. [14:39:08] And where the aircraft landed was further still, wasn't it, from
8 the market?

9 A. [14:39:37] Yes, that is correct, because the aircraft landed to the north of
10 the police station and the souk was to the east side.

11 Q. [14:39:51] And the landing of the aircraft and the unloading of the aircraft all
12 happened in the hours of darkness, right, after sunset? Or at least usually in
13 the hours of darkness after sunset.

14 A. [14:40:44] Sometimes it was at night and sometimes it was in the morning, but
15 they wouldn't let people to get too close to see what they were doing.

16 Q. [14:40:54] And if there was any distribution of the contents of these boxes or
17 crates, was that done indoors or outdoors at the police station?

18 A. [14:41:37] They didn't distribute the content outside. It would be inside
19 the police station.

20 Q. [14:41:44] Okay. So that obviously wasn't anything that you could see with
21 your own eyes from the market?

22 A. [14:42:11] That is correct.

23 MR EDWARDS: [14:42:18] Your Honour, for the very last topic, I'm afraid we have
24 to go into private session. I'll then be able to put my case in open session.

25 PRESIDING JUDGE KORNER: [14:42:27] Yes, private session, please.

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1 (Private session at 2.42 p.m.)

2 THE COURT OFFICER: [14:42:48] We're in private session, Madam President.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

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19 (Open session at 3.07 p.m.)

20 THE COURT OFFICER: [15:07:32] We're back into open session, Madam President.

21 MR EDWARDS: [15:07:38]

22 Q. [15:07:39] Mr Witness, my last few questions.

23 I suggest you didn't see anyone at Mukjar police station that you could identify as

24 Ali Kushayb. Do you agree or disagree with me?

25 A. [15:08:18] I did see him. I did see him. I agree I did see him.

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1 Q. [15:08:24] When you gave your statement in October 2021 to investigators of this
2 Court, it was common knowledge that Ali Kushayb, the man called Ali Kushayb, was
3 in detention at the ICC. Do you agree?

4 A. [15:09:25] Yes, I agree.

5 Q. [15:09:32] But you have not told the truth about seeing Ali Kushayb at
6 a pharmacy in Garsila.

7 A. [15:10:05] I did see him in Garsila inside the pharmacy.

8 Q. [15:10:10] And you have not told the truth about seeing Ali Kushayb at the cattle
9 negotiations.

10 A. [15:10:41] That is correct.

11 PRESIDING JUDGE KORNER: [15:10:46](Microphone not activated)

12 MR EDWARDS: [15:10:47] Yeah, yeah.

13 Q. [15:10:50] Well, did you tell the truth about seeing Ali Kushayb at the cattle
14 negotiations, yes or no?

15 A. [15:11:17] I did say the truth.

16 Q. [15:11:23] And you did not tell the truth about the earlier sightings in order for
17 you to enhance your identification of Ali Kushayb at Mukjar police station.

18 PRESIDING JUDGE KORNER: [15:11:48](Microphone not activated) does that
19 include, therefore, what he said at paragraph 39, because you haven't put that in
20 terms? I made a note about that.

21 MR EDWARDS: [15:12:05] Could I -- could I get a -- could I deal with that in
22 a moment, your Honour?

23 Q. [15:12:23] Yes, Mr Witness, sorry. You can -- you can answer that, please.

24 THE INTERPRETER: [15:12:26] Sorry, note from the Fur interpreter: Could you
25 please repeat the question.

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1 MR EDWARDS: [15:12:36]

2 Q. [15:12:37] You've invented a story about seeing Ali Kushayb on earlier occasions
3 in order to enhance your identification of Ali Kushayb at Mukjar police station.

4 A. [15:13:22] That is not correct. The truth is I did see him.

5 Q. [15:13:27] Yeah.

6 Your Honour, if -- if -- if your Honour would be kind enough to direct that the
7 following not be transmitted to the witness, I can deal with your Honour's last point.

8 PRESIDING JUDGE KORNER: [15:13:38] Yes. Could no -- no interpretation, please,
9 for the next -- until I say so again.

10 Just, sir, we're going to discuss a matter of law, that's why we're cutting
11 the interpretation off to you for the moment.

12 MR EDWARDS: [15:13:57] The -- the -- I can certainly put paragraph 39, if
13 your Honour so directs, but my submission would be that that's not necessary, given
14 the answers he gave about his flight from his home village, which he states, in terms,
15 was, as it were, away from where that vehicle would -- parked up. I -- I --

16 PRESIDING JUDGE KORNER: [15:14:35] They stopped at the mill.

17 MR EDWARDS: [15:14:41] Yeah. Which was --

18 PRESIDING JUDGE KORNER: [15:14:43] Yeah. Yeah, I got -- I got that part.

19 MR EDWARDS: [15:14:44] I'll put it, if you like, but I decided not to ask, you know,
20 that question --

21 PRESIDING JUDGE KORNER: [15:14:51] Well, I suppose, in any event -- yes, you'd
22 be entitled to leave that because -- well, except it's part of the sightings. It's part of
23 his -- it's the one -- so it would be the fourth or fifth sighting before we get to Mukjar
24 police station. But, I mean, you've put that globally.

25 MR EDWARDS: [15:15:19] I've put it globally, I hope. And his answers will form

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1 the basis of our submissions in due course.

2 PRESIDING JUDGE KORNER: [15:15:29] Yeah.

3 MR EDWARDS: [15:15:29] But if your Honour thinks that it's unfair to
4 the witness, then --

5 PRESIDING JUDGE KORNER: [15:15:34] No -- well, I -- unless anybody thinks -- I
6 think that's probably covered.

7 (Trial Chamber confer)

8 PRESIDING JUDGE KORNER: [15:15:57] No, we're content with that, Mr Edwards.
9 However, there is this added wrinkle to this. Given that part of your case is -- is -- I
10 had this discussion with Mr Laucci yesterday, if there is no such person at the time
11 called Ali Kushayb and that he is a subsequent invention to cover up the crimes of
12 others, it is very difficult to see how you put that. But this witness, as so many other
13 witnesses -- and I'm raising it now before we break because it is concerning me at the
14 moment. To none of the witnesses in this position has it been put that either as a
15 result of some conspiracy between the witnesses, or, if you like, because, as you put
16 properly to each witness, they know that there is somebody on trial here for these
17 crimes called Ali Kushayb, that's why they're naming him. But that hasn't actually
18 been really properly put to anybody. And at some stage, as you will appreciate,
19 we've got to come to a conclusion about that part of your defence. And if
20 you're -- that part is -- is -- is part of your defence, well, then in some form or another,
21 as I've already made clear -- Mr Laucci, I think in his answer, thinks you can split it
22 between witnesses who give the overview, if you like, of -- or at a higher level, and
23 those who are the victims.

24 I -- I personally don't think that is possible, because if that defence is one that is
25 runnable, well, then all of these witnesses should -- should have had put to them that

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1 there never was anybody called Ali Kushayb until later on.

2 MR EDWARDS: [15:18:12] Your Honour, the short -- the short answer to that is that,
3 by the very nature of Mr Abd-Al-Rahman's case, he is not Ali Kushayb.

4 It's rather difficult to put a positive case in respect of what an Ali Kushayb, if he ever
5 existed, did or didn't do, or where he was or where he wasn't. But by -- by virtue of
6 our client's very defence, the nature of it.

7 But -- but if I may, I think we have been very clear from the outset that we are -- we
8 are putting the Prosecution to proof not simply in relation to the coincidence of
9 Ali Kushayb and Abd-Al-Rahman. We're taking it a step further and we're putting
10 the Prosecution to proof that an Ali Kushayb even existed, as opposed to a -- a sort of,
11 a collective vehicle for blame.

12 Now that -- it serves no purpose, in my respectful submission, for that to be put to
13 a crime base witness, because what -- what can he say? The best that we can do, and
14 I think that's what we've been doing so far, is to test, up hill and down dale,
15 the circumstances of any identification -- of any identification at a crime scene and
16 any subsequent and any consequent identification in order to test the safety of any
17 such identification.

18 But in terms of putting to a witness such as this witness a -- I know that you didn't
19 use the word "global conspiracy" but -- because I don't think that is our case, but -- but
20 something which has been nurtured even subconsciously over time is not really going
21 to take us anywhere. The best that we can do is to get into the nuts and bolts of an
22 individual witness's identification or recognition of a person that they think is
23 Ali Kushayb.

24 PRESIDING JUDGE KORNER: [15:21:06] (Microphone not activated)

25 THE INTERPRETER: [15:21:19] Microphone, Madam President.

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- 1 PRESIDING JUDGE KORNER: [15:21:22] I suppose that the only aspect of this
2 that -- of putting the Prosecution to proof and -- and I see that, is to say to each of
3 these witnesses, it should have been said, I think, in my judgment, "Are you sure that
4 the person you're talking about was actually called Ali Kushayb?"
5 But I think, on balance, and I think it's something we'll -- that's why I wanted to raise
6 it now before we broke, A, to give you an opportunity to perhaps work it out -- I'm
7 not saying you haven't already, but to see if you can see how our minds are working,
8 and for us to consider whether that the -- whether the aspect of the Defence case,
9 which is can this Trial Chamber be sure that such a person ever existed at the time, or
10 is he someone that has been subsequently put forward to cover other people's crimes?
11 Quite a complicated -- it's quite a complicated defence, if I may say, Mr Edwards.
12 MR EDWARDS: [15:22:44] Yes. And it's -- yes. Well, and it's -- can I make it
13 clear --
14 PRESIDING JUDGE KORNER: [15:22:50] All right. Can --
15 MR EDWARDS: [15:22:51] I was just checking a note that I -- that I sent to
16 Mr Laucci.
17 It is part and parcel of the putting the Prosecution to proof. Once all of the evidence
18 is out, that may inform submissions that we ultimately make or not, but at the
19 moment we are taking, as it were, a broad-based approach whilst not -- can I make it
20 very clear, I am -- we are not suggesting, because, frankly, it would be ludicrous to do
21 so, we recognise that, a wide-ranging conspiracy of every single witness that
22 the Prosecution has brought to testify. That -- that would not be -- well, it would be
23 neither sensible nor realistic. We're not suggesting that. We're suggesting
24 something rather more subtle (Overlapping speakers)
25 PRESIDING JUDGE KORNER: [15:23:50] No, I -- yeah, I think, and it may just be me,

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1 but the penny's being dropped slightly on that. So it's not that you're putting
2 forward a positive, you're saying the Prosecution must satisfy us that such a person
3 actually existed. And then go on to stage 2, which is, have they proved to the
4 required standard, at whatever stage it is, that there's evidence that your lay client is
5 Ali Kushayb.

6 MR EDWARDS: [15:24:21] Yes.

7 PRESIDING JUDGE KORNER: [15:24:21] All right. Yes, all right, I follow that.

8 Sorry, where -- yes.

9 MR EDWARDS: [15:24:26] Those are my questions.

10 PRESIDING JUDGE KORNER: [15:24:27] Yes. Right.

11 Any -- right, yes, can we bring -- sorry, can we start translating again to the witness.

12 Sir, I'm sorry about the slight delay. Mr Edwards has finished asking you questions.

13 MR EDWARDS: [15:24:45] And might I just thank the witness for answering my
14 questions so patiently.

15 PRESIDING JUDGE KORNER: [15:24:49] Yes, thank you very much, Mr Edwards.

16 THE WITNESS: [15:25:03](No interpretation)

17 PRESIDING JUDGE KORNER: [15:25:04] Right. Ms Simms, any re-examination?

18 MS SIMMS: [15:25:07] Yes, your Honours. And I just ask for the witness's
19 translation to be cut, to just leave a basis for me asking -- probing one area which was
20 the subject of the discussion earlier in relation to --

21 PRESIDING JUDGE KORNER: [15:25:21] Do you want to ask the witness questions
22 in re-examination?

23 MS SIMMS: [15:25:25] Yes, your Honour.

24 PRESIDING JUDGE KORNER: [15:25:27] But you want to discuss beforehand what?

25 MS SIMMS: [15:25:34] Your Honours, I essentially wanted to just point out

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1 the relevant sections in the transcript which relate to the issue of the accused and

2 Kodoom. Or --

3 PRESIDING JUDGE KORNER: [15:25:47] I'm sorry, you've lost me. If you want to
4 ask the witness questions in re-examination, can you do that. And if you want to
5 discuss anything else, then we can do it when he's finished.

6 MS SIMMS: [15:26:02] Very well, your Honours. I'll proceed to ask the questions.

7 PRESIDING JUDGE KORNER: [15:26:04] Yes, you go ahead and ask the questions.

8 MS SIMMS: [15:26:07] Thank you.

9 THE INTERPRETER: [15:26:09] Message from the interpreter: Can Ms Simms
10 please speak closer to the mic.

11 MS SIMMS: [15:26:17] I will do. Thank you.

12 Can you place for me paragraph 39 on the -- on the screen.

13 PRESIDING JUDGE KORNER: [15:26:26] Of the witness statement?

14 MS SIMMS: [15:26:29] Of the witness statement, your Honours.

15 QUESTIONED BY MS SIMMS:

16 Q. [15:27:04] In relation to -- Mr Witness, please listen to my question very
17 carefully. You state in your statement --

18 MR EDWARDS: [15:27:12] No, I -- a question in re-examination can't start like that,
19 your Honour.

20 PRESIDING JUDGE KORNER: [15:27:20] (Microphone not activated) Sorry. I think
21 what Ms Simms is doing is going back over the -- the questions you asked about
22 the mill and all the rest of it. Is that right? But, Ms Simms, you can't -- I don't think
23 you can do that by just showing him his witness -- or reading him his witness
24 statement.

25 MS SIMMS: [15:27:44] Very well, your Honours. I'll -- I'll proceed to ask

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1 the question.

2 PRESIDING JUDGE KORNER: [15:27:49] Yeah.

3 MS SIMMS: [15:27:49]

4 Q. [15:27:50] Sir, listen very carefully. You told Defence earlier that you saw
5 Ali Kushayb in a white car which stopped in -- at the mill, which is at the centre of
6 Ronga Tass.

7 MR EDWARDS: [15:28:16] Could we have a transcript --

8 PRESIDING JUDGE KORNER: [15:28:20](Microphone not activated)

9 THE INTERPRETER: [15:28:22] Mic, please, your Honour.

10 MR EDWARDS: [15:28:25] Well --

11 PRESIDING JUDGE KORNER: [15:28:27] This is the thing about Rule 68, isn't it,

12 Mr -- please don't translate this to the witness, otherwise we'll be here forever.

13 He did tell the Court, through his witness statement which has gone in, that he saw

14 Mr Ali Kushayb at the mill in the centre of the village. You then cross-examined him
15 about where the mill was in relation to where he was going.

16 MR EDWARDS: [15:28:57] Yes, but I certainly didn't cross-examine him about
17 the arrival of Ali Kushayb in a white vehicle that stopped at the mill.

18 So if my learned friend wants to re-examine him on that on the basis of, and I'm
19 quoting, "You told the Defence that" --

20 PRESIDING JUDGE KORNER: [15:29:16] No. Yes (Overlapping speakers)

21 MR EDWARDS: [15:29:17] -- that's not a question arising out of cross-examination.

22 PRESIDING JUDGE KORNER: [15:29:21] Yes, because she's entitled -- I knew it was
23 too much to hope for we're going to have an early afternoon.

24 She's entitled to deal with the fact that he says in his statement that he saw

25 Ali Kushayb at the mill, whereas you have him going into the opposite

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1 direction -- yeah, effectively. She's therefore entitled to ask, given those -- those
2 questions that you have established from him, how he came to tell the Court in his
3 witness statement that he saw Ali Kushayb at the mill. That she's entitled to ask.

4 MR EDWARDS: [15:30:08] Certainly. But she can't -- sorry, my learned friend can't
5 ask a question starting, "You told the Defence that" --

6 PRESIDING JUDGE KORNER: [15:30:15] No.

7 MR EDWARDS: [15:30:15] -- because that -- that runs the risk of misleading
8 the witness as to a question I asked (Overlapping speakers)

9 PRESIDING JUDGE KORNER: [15:30:24] Yeah. Okay, yeah. I think -- I
10 think she -- I'm sorry, I'm doing it now. Ms Simms has got the point.
11 Right, Ms Simms, start this one again. You're entitled to ask the questions, just be
12 careful how you phrase them.

13 MS SIMMS: [15:30:38] Very well, your Honours. In terms of the references in
14 the transcript, page 26, lines 21 to 24, where the witness speaks about seeing
15 Ali Kushayb in his home village after he was asked by Defence counsel. And
16 page 29, lines 12 to 22, where he speaks about the location of the mill in relation to his
17 home and the distance between the two points. And lastly, page 32, lines 14 to 24,
18 your Honours, where he speaks about moving away from that area.

19 PRESIDING JUDGE KORNER: [15:31:22] (Microphone not activated)

20 MS SIMMS: [15:31:23] Very well.

21 Q. [15:31:26] Mr Witness, can you explain to the Court where you were when you
22 saw Ali Kushayb at the mill which is in the centre of your home village?

23 A. [15:32:12] I arrived at the same place, and then he arrived in his vehicle and he
24 stopped there. And that's how I saw him.

25 Q. [15:32:27] And just to be clear, sir, the -- what place are you talking about, "at the

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1 same place"? Could you name it for us, please.

2 A. [15:32:51] The place of the mill.

3 Q. [15:32:54] Thank you. Now, if you're able to, sir, when you saw Ali Kushayb at
4 the mill, can you tell us how far you were from him at that point when you saw him?

5 A. [15:33:36] Approximately 15 metres. I can't obviously give you the exact
6 distance, but I think it's something around 15 metres. I was on my bike and he was
7 inside his vehicle.

8 Q. [15:33:58] If you're able to, sir, are you able to say how long you saw
9 Ali Kushayb for at the mill when you saw him that day?

10 THE INTERPRETER: [15:35:21] Apologies from the Fur, we couldn't hear
11 the witness.

12 MS SIMMS: [15:35:38] Do I need to repeat the question?

13 PRESIDING JUDGE KORNER: [15:35:50] (Microphone not activated) that the
14 witness is receiving interpretation.

15 THE INTERPRETER: [15:36:00] Yes, please, can we repeat the question, please.

16 MS SIMMS: [15:36:05] Thank you.

17 Q. [15:36:06] Sir, if you're able to, can you tell us how long you looked at
18 Ali Kushayb on the day that you saw him at the mill.

19 A. [15:36:49] I am not sure how long exactly, but he was there with his men. His
20 men were on the back of the vehicle. But I can say approximately about one minute
21 or a minute and a half.

22 Q. [15:37:05] Sir, where did you go after seeing Ali Kushayb at the mill in
23 Ronga Tass?

24 A. [15:37:38] I went to my kids. And when I arrived where they were, I started
25 hearing the shooting. So I escaped with my kids and we left the village.

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1 Q. [15:37:52] Sir, I have no further questions for you. Thank you.

2 PRESIDING JUDGE KORNER: [15:38:02] Yes, thank you, Ms Simms. The Bench
3 has no questions of the witness.

4 Sir, that concludes your evidence. We want to thank you again for attending to give
5 that evidence. Although --

6 THE WITNESS: [15:38:45](No interpretation)

7 PRESIDING JUDGE KORNER: [15:38:56] I'm not sure what you said because we
8 didn't get a translation of it.

9 But can I just tell you that your evidence, and all those who have already come to give
10 evidence, is of importance. And everybody in this court, and I include in that, as
11 you've heard from Mr Edwards, the Defence, appreciates the fact that witnesses are
12 coming to court. And we wish you a safe return to your own country.

13 THE WITNESS: [15:40:23](Interpretation) I thank you too, and I appreciate all your
14 efforts here. And I hope that God grants us success, all of us.

15 PRESIDING JUDGE KORNER: [15:40:34] Yes, thank you very much, sir.

16 Yes, and you can now leave the room.

17 We can cut the feed.

18 (The witness is excused)

19 PRESIDING JUDGE KORNER: [15:40:57] Right. I'll just reconfirm then, if I may,
20 the fact that 25 August is in fact the first sitting day after the summer break. I wish
21 everyone a good break and weather that is not quite so cold as yesterday and not so
22 quite hot as Monday and Tuesday, somewhere in the middle.

23 And also, I also wish to thank, first of all, the Fur interpreters. I know that from time
24 to time my remarks have been somewhat less than complimentary, but we appreciate
25 this is the first time that you've done it. And we also appreciate that, without you,

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- 1 we couldn't be hearing any of this evidence. So we really are grateful.
- 2 Also to the Court staff, and also to all counsel in this case representing all parties who
- 3 have cooperated in what I can only say is the best tradition of making sure that these
- 4 trials, which we all know are long and complex and difficult, but proceed with really
- 5 remarkable efficiency, and for the cooperation between all sides. So we thank you
- 6 very much, wish you all a good summer and see you in August.
- 7 THE COURT USHER: [15:42:31] All rise.
- 8 (The hearing ends in open session at 3.42 p.m.)