

Trial Hearing
WITNESS: DAR-OTP-P-0990

(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 1
9 Wednesday, 11 May 2022
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:06] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:30:32] I keep forgetting to have the case called.
15 I suppose you ought to call the case.
16 THE COURT OFFICER: [9:30:38] Good morning, Madam President. Good
17 morning, your Honours.
18 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus Ali
19 Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
20 And for the record, we're in open session.
21 PRESIDING JUDGE KORNER: [9:30:56] Yes, thank you.
22 Appearances this morning, we'll start with the Defence.
23 MR LAUCCI: [9:31:05] Good morning, Madam President, your Honours. This
24 morning in the courtroom, together with Mr Ali Muhammad Ali Abd-Al-Rahman,
25 Madam Drusilla Bret-Cunynghame-Robertson, our intern in the team;

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1 Madam Eva Kalb, who is our assistant in charge of evidence review; case manager,
2 Mr Ahmad Issa; and myself Cyril Laucci, lead counsel.

3 PRESIDING JUDGE KORNER: [9:31:32] Yes, thank you, Mr Laucci.

4 Then we'll have the representatives for the victims next.

5 MS VON WISTINGHAUSEN: [9:31:40] Good morning, Madam President,
6 your Honours, dear colleagues. The victims this morning are represented by my
7 associate counsel Anand Shah, and myself Natalie von Wistinghausen. Thank you.

8 PRESIDING JUDGE KORNER: [9:31:51] Thank you very much.

9 And the Prosecution.

10 MR NICHOLLS: [9:31:53] Good morning, Madam President, your Honours.

11 Pubudu Sachithanandan, Claire Sabatini, Mohanad Elkholy and I'm Julian Nicholls.

12 Thank you.

13 PRESIDING JUDGE KORNER: [9:32:02] This is said to try my ability to pronounce
14 Mr Sachithanandan's name.

15 Right, before we start, there is one matter.

16 Mr Laucci, yesterday, in the course of discussion about how long this witness was
17 going to take, you said that you were able to cross-examine, but added, "Even though
18 the conditions for the preparation of cross-examination were not optimal".

19 Now, I know this is a witness you objected to on the principle that statements taken
20 after confirmation should be excluded, and, as you know, we've ruled against you.

21 But I'm not quite clear what you're referring to in conditions not being optimal. As I
22 understood it, you agreed this witness could be called.

23 MR LAUCCI: [9:33:00] Well, we had tried to oppose him being called. No, the only
24 thing is that that's what was submitted in our written submissions, that's a very late
25 witness. And when your Chamber ruled on other witnesses in a similar situation,

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1 you, I think, and that's very much appreciated, you rule as well that those late -- other
2 late witnesses would be called towards the end, at a much later stage of the trial. We
3 are at the beginning of the trial. I believe for, purely for language reasons, this
4 witness is called now, which, as has the -- as a mechanic consequence that the witness
5 is late and the Defence had very little time and no possibility at all to investigate and
6 make additional verification.

7 So I will cross-examine with what I have. But, yeah, I -- I just wanted to emphasise
8 that the conditions are really not optimal. Nothing else.

9 PRESIDING JUDGE KORNER: [9:34:11] But -- but is your -- I understand your
10 complaint -- what on earth was that? -- but you did agree -- I appreciate that it was
11 generally said that those witnesses would be called later. But you agreed, and very
12 helpfully and properly, if I may say so, Mr Laucci, that the Prosecution could call this
13 witness because he speaks normal Arabic, if I can put it that way, and not Sudanese
14 Arabic.

15 But are you saying now that there is anything that you would have liked to have done
16 which you have not been able to do, in terms of being able to cross-examine?

17 MR LAUCCI: [9:35:04] Yes, definitely. I mean, once the Defence will be in
18 a position to go to Sudan and investigate, we will also investigate for the purpose of
19 the preparation of cross-examination. It's not only about finding Defence witnesses,
20 it's also collecting information to try to -- to see and cross-check what the witnesses
21 are saying. This has not been possible. As you -- you rightly mentioned, this entire
22 courtroom, yourself and the parties and participants, are working under various
23 constraints, including the language one. We need to move on. Yeah, I just mention
24 that for -- for the record.

25 If later on, once we have investigated and we identify serious reasons that may justify

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1 that witness to be recalled, we will apply before you -- your Honours.

2 PRESIDING JUDGE KORNER: [9:36:10] Yes, all right. But, I mean, the main reason,
3 obviously, this witness is being called is that he says he knows your client. And on
4 that, presumably, you have instructions from your client?

5 MR LAUCCI: [9:36:23] Of course.

6 PRESIDING JUDGE KORNER: [9:36:23] Yeah. All right.

7 Yes, all right. Well, let's have the witness in then.

8 (Microphone not activated) coming in, I've been reminded, helpfully, that you did get
9 his statement in December of last year, so you -- you've had it for some time.

10 MR LAUCCI: [9:37:07] But no chance to go to Sudan in the meantime.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE KORNER: [9:37:51] Yes. Good morning, sir. Can you hear
13 and understand me?

14 WITNESS: DAR-OTP-P-0990

15 (The witness speaks Arabic)

16 THE WITNESS: [9:37:59](Interpretation) I hear you.

17 PRESIDING JUDGE KORNER: [9:38:02] All right. Thank you very much for
18 coming to court. As you -- has been explained to you, you're going to be asked
19 questions by the lawyers for the various parties in this case. And in a moment I'm
20 going to ask you to read or repeat.

21 MR NICHOLLS: [9:38:26] I think repeat, your Honour.

22 PRESIDING JUDGE KORNER: [9:38:36] I'm going to ask you to repeat after
23 the court officer the solemn declaration that all witnesses make.

24 The first session will last until 11 o'clock, when we'll have a break, and then we break
25 for an hour and a half over lunch.

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- 1 However, if at any stage you feel you need a break, then don't hesitate to ask.
- 2 Everybody understands that it's not easy to give evidence. All right.
- 3 So in a moment the court officer will ask you to repeat after him what he's going to
- 4 say to you.
- 5 THE COURT OFFICER: [9:39:19] Good morning, Mr Witness.
- 6 On behalf of the Chamber I'd like to welcome you to the courtroom.
- 7 Witness, you have first to take the solemn undertaking to tell the truth, so I will repeat
- 8 it out to you. If you could repeat what I say: I solemnly declare.
- 9 THE WITNESS: [9:39:50](Interpretation) I solemnly declare. I solemnly declare.
- 10 THE COURT OFFICER: [9:39:57] Mr Witness, do you hear me?
- 11 PRESIDING JUDGE KORNER: [9:39:59] Yeah, he said it.
- 12 THE COURT OFFICER: [9:40:01] Thank you.
- 13 That I will speak the truth.
- 14 THE WITNESS: [9:40:07](Interpretation) That I will say the truth.
- 15 THE COURT OFFICER: [9:40:11] The whole truth and nothing but the truth.
- 16 THE WITNESS: [9:40:17](Interpretation) The whole truth and nothing but the truth.
- 17 THE COURT OFFICER: [9:40:22] Thank you, Witness. You are now under oath.
- 18 PRESIDING JUDGE KORNER: [9:40:24] Yes, Mr Nicholls.
- 19 QUESTIONED BY MR NICHOLLS:
- 20 Q. [9:40:29] Good morning, Mr Witness.
- 21 A. [9:40:34] I am well. Thank you.
- 22 Q. [9:40:37] Thank you for coming today.
- 23 As I said when we met for the first time last week, if I ask you any question that you
- 24 don't understand, it's not clear, just please let me know and I'll ask it in a better way.
- 25 A. [9:40:56] That's fine.

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1 MR NICHOLLS: [9:40:58] Thank you.

2 Your Honours, could we please go into private session just for the initial background.

3 PRESIDING JUDGE KORNER: [9:41:05] Yes.

4 Private session, please.

5 (Private session at 9.41 a.m.)

6 THE COURT OFFICER: [9:41:14] We're in private session, Madam President.

7 (Redacted)

8 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Open session at 9.51 a.m.)

5 THE COURT OFFICER: [9:51:25] We're back in open session, Madam President.

6 PRESIDING JUDGE KORNER: [9:51:28] Thank you.

7 MR NICHOLLS: [9:51:31]

8 Q. [9:51:31] Okay, sir, what I want to ask you about now is the town of Arada
9 before the conflict. We're talking about before 2003, 2004, all right?

10 A. [9:51:55] Fine. Before 2003, 2004. (Redacted).

11 MR NICHOLLS: [9:52:01] And could we please show the witness

12 DAR-OTP-0224-0548, which is tab 16 in the witness's binder.

13 And, your Honours, if we may, so that this can be broadcast, we have a version of this
14 aerial with the redactions made to it.

15 PRESIDING JUDGE KORNER: [9:52:28] Thank you very much, Mr Nicholls. May I
16 say that I got an email yesterday from the same person who'd watched last week,
17 saying how much easier it was to follow when the map was on the screen. But very
18 helpful. Thank you.

19 MR NICHOLLS: [9:52:44] So if I could ask for assistance for that redacted map to be
20 placed on the Elmo, which is tab 16 in the binder next to the witness.

21 THE WITNESS: [9:53:17](Interpretation) Am I supposed to place a mark here or
22 something?

23 MR NICHOLLS: [9:53:22]

24 Q. [9:53:23] No, you don't need to do anything, Mr Witness. Thank you.

25 Just -- just wait a minute and I'll catch up to you.

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1 A. [9:53:33] Fine.

2 THE COURT OFFICER: [9:53:38] Your Honours, shortly, the document, the redacted
3 version will be placed on the document camera and it will be broadcast to the public.

4 The confidential version is available on evidence 1.

5 PRESIDING JUDGE KORNER: [9:53:50] Thank you very much.

6 THE WITNESS: [9:54:17](Interpretation) Should I place marks on villages here?

7 MR NICHOLLS: [9:54:25]

8 Q. [9:54:25] No, thank you, Mr Witness. Just wait a sec and I'll ask you a question.

9 Now you see the image before you? Or, if it's easier, you can look at the hard copy
10 that's to your right just on the -- just to your right, if that's easier for you.

11 Okay. Sorry, your Honours, we have different, a different visual on the Elmo than
12 (Overlapping speakers)

13 A. [9:54:55] I have it on the screen.

14 MR NICHOLLS: [9:55:12] It's behind tab 16. Or, if it helps, I have a copy right here.

15 A. [9:55:27] I have it on my screen. I can see it.

16 Q. [9:55:32] That's right, Mr Witness. We're just putting up another version as
17 well.

18 Okay, there we go.

19 Now, this is an aerial image and we looked at this together last week; is that right?

20 A. [9:55:58] Certainly.

21 Q. [9:55:59] And we can see to the left, or west, "Mukjar" is marked on this aerial
22 image, right?

23 A. [9:56:17] Yes, "Mukjar" is marked.

24 Q. [9:56:23] And I asked you to please mark two towns, the first one being Arada,
25 and you marked that with a circle and the number "1"; is that right -- correct?

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1 A. [9:56:42] The one under number 1 is Arada. As to number 2, it's Sigigir.

2 Q. [9:56:52] Okay. Perfect. Thank you. And that is just to orient us as to where
3 Arada is in relation to Mukjar.

4 And to help us understand the distance, how long does it take, approximately, to
5 walk from Arada to Mukjar?

6 A. [9:57:18] An elder person could take an hour. But a younger person could take
7 half an hour, 45 minutes to arrive there. It depends on the pace of the person.

8 Q. [9:57:34] Yes, thank you very much. And again, talking about before, you
9 know, shortly before 2003, so around '99, 2000, what was the size of the village of
10 Arada? How -- and in terms of how many people lived there?

11 A. [9:58:00] Over 500 -- approximately 500 people lived there. It's two villages,
12 but they're like one village. Sigigir and Arada are separated by one creek. Sigigir is
13 to the south, Arada is towards the north, and that's why they have different names,
14 but in a way they're also one village.

15 Q. [9:58:35] Okay. Thank you very much. And, in general, what kind of work
16 did the people in Arada and Sigigir do? What kind of -- were they farming? What
17 did they do for a living?

18 A. [9:58:52] Well, certainly we worked in farming in the winter and in the summer.
19 Those who are capable could engage in other businesses. The others just have to
20 wait and have to live off their savings. We also had livestock that we herded. We
21 also had plantations in the fall *and we waited from fall to fall for harvests.

22 Q. [9:59:23] Thank you. And which -- people from which tribes lived in Arada?

23 A. [9:59:37] Certainly the Fur are the largest tribe. But second, there's also
24 the Borgo, the Tama and the Masalit.

25 Q. [9:59:51] Thank you.

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1 And in 2003 and 2004, as far as you know, were there any rebels, any rebel presence,
2 JEM, SLM/A, any rebels of any kind that were based in Arada or Sigigir?

3 A. [10:00:20] No, there were only citizens who had no weapons.

4 Q. [10:00:32] And did you hear about any rebel presence in the region, in
5 Wadi Salih, Mukjar, or in this area, during 2003 and '04? In other words, did you
6 hear that there were any rebels elsewhere?

7 A. [10:00:54] Yes, I have heard in 2003 there were rebels in Sindu. I heard that
8 from the *sheikh* of the village.

9 Q. [10:01:06] Thank you.

10 PRESIDING JUDGE KORNER: [10:01:09] Which village? Sindu or his own?

11 MR NICHOLLS: [10:01:13] I was going to ask that.

12 Q. [10:01:16] Which -- which -- was that from the *sheikh* of your village, or
13 the *sheikh* of Sindu, or a different place?

14 A. [10:01:26] I heard that from the *sheikh* of my village.

15 Q. [10:01:33] Thank you.

16 I'm now just going to switch to a different topic, that might seem a bit strange for me
17 to ask you about, but it's about nicknames in your area of Darfur around the Mukjar
18 area.

19 Did people in Arada and other areas around there generally use nicknames?

20 A. [10:02:04] Yes. This is the thing that we used most, i.e., the nickname.

21 Q. [10:02:14] And don't say it, but you have a nickname. Do more people know
22 you by your nickname, or your real name that's in official documents?

23 A. In Mukjar I was *not known by my name as in my documents, but known by my nickname.

24 Q. [10:02:47] And if you could just explain a bit, if you know, why is it that, where
25 you're from, the use of nicknames is so common?

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1 THE INTERPRETER: [10:03:10] The witness is asking to repeat the question.

2 MR NICHOLLS: [10:03:13] Yes. I'm sorry.

3 Q. [10:03:16] You've explained that many people use nicknames where you're from
4 in Darfur. And my question was, if you can explain, why is that? Why is it that
5 people in the Mukjar area and in Darfur use nicknames?

6 A. [10:03:43] Do you mean my nickname specifically?

7 Q. [10:03:48] No. I mean in -- in general, why is this such a common practice, if
8 you know. If you don't know it's okay, we'll move on.

9 A. [10:04:04] (Redacted).

10 Q. [10:04:16] I'll move on.

11 PRESIDING JUDGE KORNER: [10:04:17] I think, yeah. Good effort, but no,
12 Mr Nicholls.

13 MR NICHOLLS: [10:04:22]

14 Q. [10:04:22] Okay. Now I'm going to move to another topic, okay? And if
15 you -- if you can, if you could try to speak up just a little bit more, I think it might
16 help the interpreters.

17 I now want you to focus on 1999, when you were studying in a place, okay? That's
18 the time I'm going to talk about. Okay?

19 A. *First, when I went to school, I went to three schools. I was young *when I was sent to the
20 first one. In 1996 I was sent to Bindisi, to the western part of Bindisi. In the second part of my
21 study in *1999, I was sent to *Um Dukhun. And between 1996 and 1999 I was in Nyerli.

22 Q. [10:06:05] Okay. Thank you.

23 And -- I don't think there's an objection, I'll lead a tiny bit here, unless there is one.

24 In 1999, when you were studying, you sometimes sold things in the market in Garsila;
25 is that right?

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1 A. [10:06:24] Yes, this is correct.

2 Q. [10:06:32] Now, have you heard of a person named Ali Kushayb?

3 A. [10:06:42] Yes, I have heard of him.

4 Q. [10:06:43] When did you first hear of him and learn about this person named
5 Ali Kushayb?

6 A. [10:07:04] In Darfur, when someone new comes to town, he is usually known there.

7 *Everybody would know that person, what they do and when they came. I -- while
8 walking in the market and when we see someone new, we ask about him. When we

9 know about that person, *when we came and what his profession is, we get to know him.

10 So I knew that that person was new and that he was known in that area.

11 Q. [10:07:47] Did you ever meet Ali Kushayb in person?

12 A. [10:07:55] Yes.

13 Q. [10:07:58] All right. I'm going to ask you about the first time that you met

14 Ali Kushayb, okay? That's what I'm going to ask about now, okay?

15 When was the very first time that you met Ali Kushayb?

16 A. [10:08:24] The first time was in 1999. Of course, while walking the market

17 I was ill, I found Ali Kushayb in a shop there. I didn't know his name. I wanted to
18 buy medicine and I found his shop there.

19 Q. [10:08:54] Okay. Let's take it slowly.

20 What -- I don't need to know what kind of medicine, but you were feeling ill so you
21 needed to buy medicine; is that right?

22 A. [10:09:12] Yes, this is correct.

23 Q. [10:09:15] And what type of shop was it that you went to buy medicine?

24 A. [10:09:29] *His shop was to the west-south of the Agricultural Bank. The shop
25 was there.

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1 Q. [10:09:49] Okay. And you were walking in the market when you felt ill and
2 went to this shop to buy medicine near the Agricultural Bank?

3 A. [10:10:03] Yes, correct.

4 Q. [10:10:05] And what town was that in? What city? You said -- where you
5 sold things in the market?

6 A. [10:10:20] In the city of Garsila.

7 Q. [10:10:26] All right. And now describe -- I know this is not particularly
8 complicated, you may think, what happened. But tell us what happens when you go
9 into the pharmacy. Who do you see there when you're buying this medicine?
10 What happens?

11 A. [10:10:54] I was walking and I was looking for a pharmacy to buy medicine. I
12 went to a well-known pharmacy, but there wasn't a sign where "pharmacy" was written.
13 So I was asking about a pharmacy, about a close pharmacy, and they showed me
14 a pharmacy where medicine was cheap. So I went into the pharmacy and I entered it
15 *and the man there told me that he is the owner of the pharmacy. I told the person that I
16 had a problem -- a problem in the stomach, so I wanted medicine to feel better. *He told
17 me that the medicine was cheap and asked me about my illness. I said I had a problem
18 in my stomach, so he said that he had a medicine called Panadol.

19 Q. [10:11:55] Okay. Thank you. And thank you for explaining that in those steps
20 very clearly.

21 Now, when you say the person who sold you this medicine, who is that person?
22 What's the name of the person who sold you the medicine in the pharmacy?

23 A. [10:12:16] *He gave me the medication and told me that the pharmacy was well known.
24 Each person looking for it is told to go to the west-south of the bank. I told him that he
25 seems like a good man and I will tell people to come to him if they need a pharmacy. I

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1 asked him about his name and he said "I am Ali Abd-Al-Rahman, Ali Kushayb." He said
2 that the nickname was Ali Kushayb and he was known in Garsila and in other places.

3 Q. [10:13:07] Thank you.

4 And how long did you talk to Ali Kushayb, Ali Abd-Al-Rahman, Ali Kushayb?
5 How long did you talk to that man when you were buying the medicine in his
6 pharmacy?

7 A. [10:13:40] I -- it was -- it was around 10, it was around 10.

8 Q. [10:13:45] Thank you.

9 But what I'm asking you is, when you were buying this medicine and Ali Kushayb
10 introduced himself and you told him that you had a stomach problem and he
11 recommended a medicine, how long did this all take while you were talking to
12 Ali Kushayb that day?

13 A. [10:14:19] Of course, I went there two times to the pharmacy. The first time
14 I was walking all the market of Garsila. I was looking for a pharmacy. Because I
15 used to go to the market to sell the oil and then come back home, and then I would go
16 back to the market again in maybe one *month or two weeks.

17 Q. [10:14:51] Yeah. Thank you.

18 Let me ask it this way: The very first time that you went to the pharmacy, and you
19 met Ali Kushayb and bought medicine, how long did that take, that interaction
20 between you and Ali Kushayb?

21 A. [10:15:22] Of course, around 15 days. When I came the first time I saw him, he
22 gave me the medication. The second time I went back to the pharmacy it was two
23 weeks later, it was 15 days later. He gave me another medicine.

24 PRESIDING JUDGE KORNER: [10:15:48] Okay. Can I try, Mr Nicholls.

25 MR NICHOLLS: [10:15:50] Well, okay.

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1 PRESIDING JUDGE KORNER: [10:15:52] Sir, just concentrate on the first time you
2 were in the shop when your stomach was upset and you spoke to Ali Kushayb.
3 How long, that first time, did you speak to him for?

4 THE WITNESS: [10:16:20](Interpretation) The first time I entered the pharmacy
5 in 1999.

6 MR NICHOLLS: [10:16:30]

7 Q. [10:16:31] It's okay. So let me -- let me ask this: When you spoke with
8 Ali Kushayb the first time, only talking about the first time that you went to his
9 pharmacy, did he tell you anything else about himself, other than his nickname and
10 the name Ali Abd-Al-Rahman Ali? Did he tell you anything else about himself?

11 A. [10:16:59] Yes. Yes, he told me.

12 Q. [10:17:01] And what did he tell you? What did he say?

13 A. [10:17:09] He told me first that he was a military man in the town of Garsila. And
14 after that he left his job *took his money and he came to buy the shop in the market, *and
15 he is selling the medicine for a cheaper price than other pharmacies. In other pharmacies
16 the medicine costs two pounds and we was selling it for 1.5 pounds in order to get clients.

17 Q. [10:17:56] Thank you.

18 And if you remember, talking about that meeting, the first meeting where you first
19 went to the pharmacy, when Ali Kushayb was speaking to you, what was he like?
20 What was his demeanour? Was he friendly? Was he talkative? Just describe what
21 kind of person he seemed to you when you met him that first time.

22 A. [10:18:36] When I came, he greeted me, he welcomed me *warmly. He told me,
23 "Come in, my brother." He asked me what I had and I said I was ill and tired. I
24 said that the oil caused me pain in the stomach and I asked him if I was able to buy
25 medicine from him. So he welcomed me nicely. And there there is a small bed

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1 where I can *sit and there he gave me the *treatment.

2 MR NICHOLLS: [10:19:15]

3 Q. [10:19:15] Okay. Thank you.

4 And I just, I think, the last question about this first time that you met Ali Kushayb.

5 Did he try to sort of get you to come back to his pharmacy again? Did he talk about

6 why his was a good pharmacy to go to or anything like that? Was he kind of

7 a salesman?

8 A. [10:19:50] He told me that if my stomach wasn't well I can always come back again. *I

9 told him that I was staying in a school accommodation that is ten hours away so I cannot

10 come every day, but once per week. So he told me that I can come back on Thursday if my

11 stomach doesn't get better and he will give me another medication. I told him that I live far

12 from the pharmacy and I cannot come, and if I know someone who is coming, I can tell them

13 about the pharmacy and give them money so they bring me the medication.

14 Q. [10:20:35] All right. Thank you.

15 Now, as best you can, can you describe Ali Kushayb, what he looked like when you

16 met him this first time in the pharmacy. How tall was he, approximately?

17 A. [10:21:02] He is a very tall person. He is a dark person.

18 THE INTERPRETER: [10:21:09] The interpreter didn't get the second part of

19 the witness's answer.

20 MR NICHOLLS: [10:21:14]

21 Q. [10:21:14] Sir, you were explaining what Ali Kushayb looked like when you met

22 him, and you kind of touched your forehead, and I think the interpreter didn't hear

23 what you were saying. Were you saying something about Ali Kushayb's hair?

24 A. [10:21:37] Ali Kushayb is a tall person. He is dark. He had a *bald spot

25 between his eyes and * in his hair *that is not similar to the one I have.

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1 PRESIDING JUDGE KORNER: [10:22:07] A question for the interpreter: I'm sorry,
2 what's a "void between"?

3 MR NICHOLLS: [10:22:11] I think, if I can follow up, your Honour.

4 PRESIDING JUDGE KORNER: [10:22:13] Yeah.

5 MR NICHOLLS: [10:22:13]

6 Q. [10:22:14] Do you mean that he had a -- kind of like me unfortunately at the
7 moment, did he have a high receding hairline?

8 A. [10:22:34] *No, he is not bald, but there is distance ...
9 bald spots.

10 Q. [10:22:45] Thank you.

11 Now, very briefly, you've already discussed it a bit, but I'm going to ask you about
12 the next time, the second time that you went to Ali Kushayb's pharmacy in Garsila.
13 And you've already said that was a couple weeks later.

14 So why did you go back to the pharmacy of Ali Kushayb the second time?

15 A. The second time, after 15 days, I *went and I wanted to take the same medicine as a prevention in
16 case I had the same *pain in my stomach *I would take the same tablets. Because the pharmacy was far and
17 I *used to move around a lot and was only able to find the medicine only in the market in Garsila I had
18 the first time in that pharmacy. So it was as a prevention. I wanted to buy the medicine again *so when I am
19 moving around and something happens to me, I would take the tablets and feel better.

20 Q. [10:24:02] (Microphone not activated)

21 THE INTERPRETER: [10:24:06] Microphone, please, for the Prosecution.

22 MR NICHOLLS: [10:24:09] I apologise.

23 Q. [10:24:10] The second time you went to the pharmacy, was Ali Kushayb there?

24 A. [10:24:21] Yes, he was there. It was in 1999 again, after 15 days. He was there.

25 Q. [10:24:35] And when you bought the medicine the second time, did you have

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1 any more conversation with Ali Kushayb or did you just buy the medicine and leave?

2 What happened?

3 A. [10:24:52] I took the medicine, and that was it. I said "thank you", and he told
4 me, "This is your place. *You're welcome here. You can always come to buy
5 the medicine *for a cheaper price." So I took the medicine and I went (Redacted).

6 Q. [10:25:19] Thank you.

7 Now after that second time you were at the pharmacy, when was the next time that
8 you saw Ali Kushayb, that you saw him in person?

9 A. [10:25:54] There are *other modern pharmacies in that place *and they have fans so you
10 can sit inside, but he was outside and he had a bed where he was sitting. When you come, he
11 greets you and brings you inside, he gives you what you want and you would leave.

12 PRESIDING JUDGE KORNER: [10:26:17] Mr Nicholls, are you satisfied -- you met
13 him with an interpreter, are you satisfied that -- that he understands the language?

14 MR NICHOLLS: [10:26:26] Your Honour, I -- I think there may be an issue. I think
15 the witness is -- is -- no criticism at all -- I don't know. The interpreter we had was
16 very familiar with Sudanese Arabic, and we had no issues, so ...

17 PRESIDING JUDGE KORNER: [10:26:56] Sir, could you just -- would you mind
18 taking your headphones off for a moment. Yeah, off. I just want it speak to
19 counsel.

20 Well, I mean, Mr Nicholls, it's clear that something's not right. I mean, none of
21 the questions are particularly difficult and you spoke to him yesterday. Were you
22 having this difficulty yesterday?

23 MR NICHOLLS: [10:27:28](Overlapping speakers)

24 PRESIDING JUDGE KORNER: [10:27:29] Not yesterday, whenever it was.

25 MR NICHOLLS: [10:27:32] Yeah, yesterday didn't speak really. No, we did not

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1 have these difficulties.

2 And -- and as I say, I could hear the interpreter speaking with the witness in Arabic.

3 I can't tell the difference, so I don't know how the interpreter modified the -- his
4 interpretation to fit the Sudanese dialect.

5 And, again, we've -- did our best to assess which witnesses would be able to -- to
6 speak standard Arabic is the term we use, based on investigators and interpreters
7 calling them and speaking with them. But I -- I think this -- this is not representative.
8 It's not the same as the way we were able to speak more easily when we met.

9 PRESIDING JUDGE KORNER: [10:28:35] All right.

10 I don't think -- perhaps it's better -- what I am going to suggest is that we'll adjourn
11 very briefly and can -- can somebody find out from the interpreters in the booth
12 whether there's a problem. I don't think it's something we ought to discuss this way.

13 MR NICHOLLS: [10:28:53] No, I agree. And I don't want the witness to feel bad in
14 any way.

15 PRESIDING JUDGE KORNER: No.

16 MR NICHOLLS: [10:28:54] But -- because if that is an issue it's not his fault at all.

17 PRESIDING JUDGE KORNER: No.

18 MR NICHOLLS: [10:29:01] But he did say as well, your Honour, that he wondered
19 if -- if it would be in Fur or Arabic when he testified, and I told him it would have to
20 be Arabic, unfortunately, because we did not have Fur interpreters. So he -- he was
21 willing to go ahead, but I think it's a good idea to check.

22 PRESIDING JUDGE KORNER: [10:29:25] I think somebody, perhaps -- Mr Laucci,
23 there seems, on the face of it anyhow, to be a real problem.

24 MR LAUCCI: [10:29:34] Well, I'm in your hands, your Honour. I have no expertise
25 to say if the problem is the level of understanding of Arabic, if it is because of emotion,

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1 which can also be a factor, so ...

2 PRESIDING JUDGE KORNER: [10:29:48] I know.

3 Well, what I'm proposing to do, I think, is to ask one of the court interpreters to speak
4 to him and just work out whether there is a problem. If there isn't, then we'll just
5 carry on. If there is, then -- then we'll just have to think about what's happening.

6 MR LAUCCI: [10:30:10] Makes full sense to me.

7 PRESIDING JUDGE KORNER: [10:30:13] Yes. All right.

8 Well, I think what we'll do is -- do you want to put the headphones on, sir. Thank
9 you.

10 Sir, I'm just going to take a break now, which you may be quite pleased about, and
11 I'm just going to ask that one of the interpreters speaks to you. I want to make sure
12 that there is no problem in you understanding them and them understanding you.
13 Do you follow?

14 THE WITNESS: [10:30:46](Interpretation) Yes, I do understand.

15 PRESIDING JUDGE KORNER: [10:30:48] All right.

16 I'm just wondering whether to take the full break now and come back at 11. Yeah.

17 Yes, what we'll do is we'll take an early break, come back at 11, and then sit through
18 till 1 o'clock.

19 Yes. Thank you very much.

20 THE COURT USHER: [10:31:07] All rise.

21 (Recess taken at 10.31 a.m.)

22 (Upon resuming in open session at 11.03 a.m.)

23 THE COURT USHER: [11:03:41] All rise.

24 Please be seated.

25 PRESIDING JUDGE KORNER: [11:04:04] Yes. Mr Nicholls and Mr Laucci, I

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1 assume you've had a discussion with the interpreters where the problem seems to be
2 lying at the moment. As I understand it, the only way where we're going to get
3 anywhere, really, is if the questions are short and simple, one fact per question, using
4 simple language as well. So let's see that we can get on.

5 Thank you very much, Witness. I hope you had a relaxing break. And we're now
6 going to carry on with Mr Nicholls asking more questions.

7 MR NICHOLLS: [11:04:58]

8 Q. [11:04:59] Thank you, sir.

9 Now I'm going to talk - excuse me - about a different topic. I'm going to ask you
10 about what happened on the 12th day of the second month 2004. So
11 12 February 2004. Okay?

12 A. (No interpretation)

13 Q. [11:05:27] And that was the day that there was an attack on Arada that you talk
14 about in your statement. Just wait.

15 Can you please tell the Court what happened when there was an attack on Arada in
16 2004.

17 A. [11:06:02] In 2004, on February 12, we were armless -- unarmed citizens in
18 Arada. An aircraft -- an Antonov aircraft came at night at 9 p.m. and attacked
19 the village and the mountain in Arada, the distance of 2 kilometres. All citizens left,
20 we left and saw the aircraft. The *umdah* and *sheikh* decided that all citizens walk to
21 the southern mountains south of the village and south of the villages. So we all went
22 together at the same time to the south of the village.

23 For this, we walked for a distance of 2 kilometres in order to cover ourselves from
24 the bombardment.

25 Q. [11:07:16] Thank you. Thank you. How long did you stay in the mountains?

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1 A. [11:07:36] We walked from 12th, 13th, 14th, 15th until the 16th and 17th, so it
2 took us five days in the mountains. Afterwards the *umdah*, Yahya Ahmad Zarruq,
3 came to us and told us that Omar Ahmad Zarruq, the *shartay*, instructs all citizens to
4 come back to the -- to town *immediately.

5 Q. [11:08:10](Microphone not activated)

6 THE INTERPRETER: [11:08:16] Microphone, please, Mr Nicholls.

7 MR NICHOLLS: [11:08:19]

8 Q. [11:08:20] What was there to eat while you were in the mountains?

9 A. [11:08:34] On the same day we took with us millet, corn, and we took water
10 supplies with us as well. Of course, the elderly and the children cannot stand thirst
11 and hunger, so each half an hour we would hand them out some of this corn and
12 water for them to drink and be able -- and eat and be able to stand the hunger.

13 Q. [11:09:12] And did anybody from the village die while they were in
14 the mountains?

15 A. [11:09:29] Yes.

16 Q. [11:09:30] Can you explain that, please.

17 A. [11:09:46] We ran out of the food, the corn and the water. So the *umdah* told us
18 to go fetch some water. We left our livestock in the village and we had to go there to
19 get -- to fetch water and supplies, specifically corn. It took us a long time. It took
20 us until 4. And by the time we came back, we found that Uncle Moussa Al Sounissi
21 had passed away.

22 Q. [11:10:39] Now after *Umdah* Zarruq and *Sheikh* Ishaq instructed the villagers to
23 leave the mountains, where did you go, you and the other villagers?

24 A. [11:11:09] From the village we went to the mountain, and we stayed there.

25 And the *umdah* came to us five days afterwards, *Umdah* Yahya came to us and told us

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1 that the *shartay* instructs all citizens to come back to town, to Mukjar, to the town of
2 Mukjar. So the next day, on the 18th, we set for the town.

3 Q. [11:11:39] Thank you. And how many villagers from Arada were walking to
4 Mukjar that day?

5 A. [11:12:00] They were 500 people, women, children -- women, men and children.

6 Q. [11:12:07] Were there citizens from other villages also going to Mukjar?

7 A. [11:12:23] I did not see such people. When we arrived -- when we went there,
8 we just went there, we did not check if there were other people from elsewhere.

9 And as soon as we arrived they took us to prison. They -- it was not possible for us
10 to see if people from other villages had also arrived. So I did not see that.

11 Q. [11:12:51] Now I'm going to ask you about what happened when you arrived in
12 Mukjar, when you got to Mukjar. So the first question, if you can explain to
13 the judges, please, what happened to the villagers from Arada when they got to
14 Mukjar.

15 A. [11:13:22] First, when we arrived, we arrived at the checkpoint, the gate, where
16 we found officers of the police and the Popular Defence. And they shouted to us,
17 "All citizens should come here." So we all walked over. And we had our livestock,
18 composed of camels, horses, donkeys, cows, sheep, goats, pigeons and --

19 THE INTERPRETER: [11:14:19] Inaudible.

20 THE WITNESS: [11:14:20](Interpretation) The government took over all of that
21 livestock and took it to the commissioner of the police. We stayed there. They told
22 us that the young males should be separated from the elder males. Also -- also
23 the women and children should be separated.

24 So we were divided into three groups. The women and children and the elderly
25 men should go *to the locality. As to the young males, the young males should stay

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1 here and should have their names recorded to be taken and they would be taken
2 elsewhere.

3 MR NICHOLLS: [11:15:17]

4 Q. [11:15:17] When you were stopped at this checkpoint, did you recognise any of
5 the police officers or PDF officers who stopped you?

6 A. [11:15:35] I did. I recognised six among them: Hassan Muhammad Joma,
7 who had a register -- a ledger recording citizens' names. Then Ibrahim
8 Sharaf-Al-Din Ibrahim was giving instructions to the troops, "You should do this, you
9 should do that", and so forth. So he was giving instructions. He had already -- he
10 was relaying those instructions to the soldiers for them to carry out.

11 Then there was Hassan -- hold on, I recognised six people:

12 Hassan Muhammad Joma, Abaker Salih Issa, Ibrahim Sharaf-Al-Din Ibrahim and Ali
13 Osman Ahmed and Ali Al Najar, and also Al-Sadiq Uthman and Al-Sadiq Bashar too.
14 These people were controlling the checkpoints around the town around Mukjar,
15 providing security in general.

16 Q. [11:17:01] And what happened to you personally? Which group were you put
17 in of the women and children, elderly men and young males?

18 A. [11:17:21] I was put with the young males.

19 Q. [11:17:25] And what happened to that group of young males you were with?
20 What happened next?

21 A. [11:17:41] First, they told us if anyone had anything in their pocket they should
22 take that out and put it in front of them. People who had *hijabat* (phon), knives,
23 coins, documents, should take them all out and put them before them.

24 Afterwards, Ibrahim Sharaf-Al-Din Ibrahim, who was controlling the checkpoint, told
25 Hassan Muhammad Joma, "Go and register every person's name, his village or his

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1 town, his *umdah* and his *sheikh*. Record all the information related to that person and
2 then move to the next person."

3 Then Sadiq Bashar would inspect these people, whether they had anything on them, and
4 then Al Sadiq told us to stand up, to be frisked, starting from the head. Some people
5 had hats or traditional head covers. They would remove that and then they would go
6 on searching the rest of the body, for example, the shoulders, *the right shoulder and then
7 the left shoulder. And if you had any mark, it would mean that you are carrying
8 a weapon. If you had no mark, then you're not someone who is carrying a weapon.
9 And they recorded every person, including myself, and they did not find anything.

10 So Al Sadiq Bashar went back to Ibrahim Sharaf-Al-Din and told him, "Well, these are
11 just citizens, they don't have any marks showing that they carry weapons." So he
12 told them, "Well, as long as they have no such traces, they can be taken to the officer."

13 Q. [11:20:13] Then -- then what happened -- then what happened next after it was
14 said they can be taken to the officer? What happened next to you and the men you
15 were with?

16 A. [11:20:29] When we went to the officer, Ibrahim Sharaf-Al-Din took the ledger
17 from Hassan Muhammad Joma and told him that these citizens should line up in
18 lines of 10. We ended up having eight lines of people. Ibrahim Sharaf-Al-Din took
19 the notebook in his left hand and went to the officer, whom he saluted like this, and
20 when he -- after he saluted him, he told him: "Mr Officer, these citizens came from
21 Sigigir and Arada villages where a bombardment took place and where a *shartay*
22 instructed them to come to town. And here they are. We have separated
23 the elderly women and children from the rest. The elderly women and children
24 went to the locality. As to the young men, further to your instructions, here they are
25 brought. We brought them to you, sir, further to your instructions. Their number

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1 is 81 persons."

2 Q. [11:21:57] And then what happened next? Where did you go?

3 A. [11:22:08] Afterwards, the man -- the soldiers who brought us, the officer told
4 them to go back to their positions in their checkpoints. So they did that. We stayed
5 there. There was an officer called -- there was a lieutenant colonel called Mustafa
6 Ahmad Tayyib. There was a soldier sitting next to the prison. He called on him, he
7 called him John Koj, "John Koj, come and put on record these citizens' names and
8 count their number. Afterwards, put them inside the prison until *the morning till
9 we get a report about them, after which we would release them."

10 Q. [11:23:04] (Microphone not activated)

11 THE INTERPRETER: [11:23:04] Microphone, please.

12 MR NICHOLLS: [11:23:06]

13 Q. [11:23:07] When you say this is happening at the prison with John Koj and
14 Al-Tayyib, by the "prison" do you mean the police station in Mukjar?

15 A. [11:23:26] No, I am referring to a cell. In Sudan we call it a prison, but here you
16 call it a cell.

17 Q. [11:23:38] And is that cell inside the police station?

18 A. [11:23:44] Yes.

19 Q. [11:23:55] Now you mentioned Mustafa Ahmad Al-Tayyib. Who was that
20 man?

21 A. [11:24:09] He was an officer commanding the Central Reserve Force, police, in
22 addition to the Mohada (phon) police. He was commanding the two centres. So he
23 was the commander of Mukjar.

24 Q. [11:24:35] Thank you. And did you know him before this day when you were
25 put in the cell?

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1 A. [11:24:44] Yes, I knew him from before.

2 Q. [11:24:50] And who is John Koj, Koj?

3 A. [11:24:57] John Koj is a military service member from the south and he was in
4 charge of the prison.

5 Q. [11:25:08] Thank you.

6 What I'd like to do now, sir, is show you a photo of some buildings, same photo we
7 looked at last week, okay. So we'll bring that up in a minute.

8 That is DAR-OTP-0224-0547. And if we can use the Elmo, it looks like it's working,
9 then if we could have the document from tab 15 on the Elmo, please, for the public.

10 So we need to physically put the document on the Elmo.

11 I think while we're waiting for that, can you see the picture on the screen in front of
12 you, Mr Witness?

13 A. [11:27:15] Yes, I have it here.

14 Q. [11:27:18] And you remember we looked at this picture last week and you
15 marked two points on this picture, right?

16 A. [11:27:34] Yes, correct.

17 Q. [11:27:38] And after you marked them with "1" and "2", I wrote down what you
18 had marked and read it back to you in your language, right?

19 A. [11:27:57] Yes.

20 Q. [11:27:58] And what you marked as building 1 is the building in the police
21 station that you said you were held in. And you marked number 2 as
22 the roundabout; is that right?

23 A. [11:28:16] Correct, yes.

24 Q. [11:28:20] When you were talking just now about the prison and the cell in
25 the police station, can you look at this picture and tell us anything about building 1,

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1 that you marked as the building you were held in.

2 A. [11:28:50] Yes.

3 Q. [11:28:55] And number 2, this little circle, you called it a roundabout.

4 What -- what is that? What was the roundabout?

5 A. [11:29:09] The roundabout, it's a big plate with the Sudanese flag hoisted over it
6 at the police station, right in the middle.

7 Q. [11:29:30] Thank you.

8 Now you talked a minute ago about how all the names of the 81 prisoners were
9 written down and then they went into the prison. Can you -- or cell 1, or
10 the -- the police station building. I'll start that again.

11 Tell us about what happened when you were put into the police station.

12 A. [11:30:12] When they brought us to prison or to the cell, on day one John Koj
13 brought us a breakfast and he told us that he was going to the market and that, if you
14 had any acquaintance in the market, "I could go to that person to fetch you some food
15 or anything else you need."

16 (Redacted), he used to sell food in the market, so I told him to fetch me dates,
17 medames, juice, because there was no sufficient food in the cell. It was not
18 enough -- there wasn't enough food in the cell.

19 So John Koj went to the -- (Redacted)-- of yours back in the cell needs sugar, dates,
20 medames and juice. So he brought me all of that and I realised that he got in touch
21 with him.

22 So that's how we got this arrangement and we -- we got to know this man John Koj
23 from the south. He's a soldier and he was working there. This was on day one,
24 which is February 18 of 2004.

25 Q. [11:32:20] Okay. Thank you.

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1 What I'd like to do now is show you another picture. This is a drawing.

2 It's DAR-OTP-0223-0232 and I actually think it may be safest to use this redacted
3 version I have here, if that is all right, for the public.

4 PRESIDING JUDGE KORNER: [11:32:52] Yes, that's fine.

5 MR NICHOLLS: [11:34:12] Okay. Thank you. Thank you for putting that up.

6 Q. [11:34:16] Mr Witness, can you just take a look at this drawing for a moment and
7 take a look at it, see if you recognise it.

8 A. [11:34:27] Yes.

9 Q. [11:34:30] And when you were interviewed by the investigators, did you draw
10 this sketch for them?

11 A. [11:34:44] Yes, I drew this sketch.

12 Q. [11:34:50] And is this sketch, the diagram that you drew, does this show
13 the same building that you circled in the photograph?

14 A. [11:35:09] Yes, yes.

15 Q. [11:35:13] Okay. Thank you.

16 Now, we've got here you have marked "cell 1" and "cell 2" and you've drawn a door.
17 Can you tell us which cell you were in, cell 1 or cell 2?

18 A. [11:35:41] The first day when we were put in the cell we were in cell number 1.

19 Q. [11:35:49] How many men were put in cell number 1, including you?

20 A. [11:36:05] There were 81 persons there in the cell.

21 Q. [11:36:16] Now before the 81 persons were put in the cell, did anybody write
22 down the names of all these persons?

23 A. [11:36:31] Yes, there was.

24 Q. [11:36:34] And can you tell us who did that.

25 A. [11:36:46] Of course. John Koj was writing down the names.

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1 Q. [11:36:56] Thank you. I'm now going to ask you some questions about what it
2 was like staying in that cell, okay?

3 For the first question, approximately how big was cell 1? How many metres by how
4 many metres, if you can tell us?

5 A. [11:37:35] The cell, the first cell or cell number 1 was about 5 metres by 4 metres.

6 Q. [11:37:50] And was there any way, when you were in the cell, to look outside of
7 the cell, outside?

8 A. [11:38:01] *Yes.

9 Q. [11:38:05] And how could you do that? How could you look outside of
10 the cell?

11 A. The door of the cell was made in a certain way not to allow people to see what
12 was outside. *But there were bars with space between them, which allowed us to see
13 outside, and if there was someone walking outside we could see them directly.

14 Q. [11:38:45] Were there bars on the door of the cell?

15 A. [11:38:57] Bars, what do you mean by "bars"? Can you explain further, sir.

16 MR NICHOLLS: [11:39:14]

17 Q. [11:39:14] Yes. Was there a part of the door of the cell you could see through?

18 A. [11:39:22] Yes, yes, I was able to see *directly outside.

19 Q. [11:39:30] Now I'd like you to tell us what it was like for you in that cell with 80
20 other men. And first, how much space was there for you? Did you have enough
21 room?

22 A. [11:40:11] Yes, I was able to move a little bit. I was able to look outside. I was
23 sitting, I was able to sit.

24 Q. [11:40:34] Let me ask it this way. What -- was -- I'll leave that.

25 Was there enough food provided for the 81 men in that room?

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1 A. No, the food was not enough. Half a loaf was given to every man and only a glass of
2 water. *We would get two glasses of water per day, one in the morning with breakfast and
3 the other with lunch. This was not sufficient so we ended up just sitting down in the cell.

4 Q. [11:41:27] And what about when somebody had to use a toilet, was there a toilet
5 in the cell?

6 THE INTERPRETER: [11:41:48] The gentleman is having a problem with
7 understanding the word "toilet" in Arabic. I'll have to use another word for him.

8 MR NICHOLLS: [11:42:18](Microphone not activated)

9 PRESIDING JUDGE KORNER: [11:42:20](Overlapping speakers)

10 MR NICHOLLS: [11:42:20] I'll try to ask it a different way.

11 PRESIDING JUDGE KORNER: [11:42:24] Yeah. I don't know whether "urinate"
12 comes into it. Yes.

13 MR NICHOLLS: [11:42:30] That's what I was going to ask, your Honour.

14 Q. [11:42:32] Mr Witness, when you were in that cell, if you had to urinate, where
15 would you go?

16 A. [11:42:47] In the eastern and southern part of the cell there was a big bucket and
17 we were able to urinate there. There was -- there was a bucket and John Koj
18 sometimes would open the door and take some people to the toilets.

19 Q. [11:43:26] And what was the air like in that cell to breathe?

20 A. There wasn't air at all, *no air conditioning and no ventilator. There was no light, even,
21 to be able to see each other. At night we weren't able to see each other up until the morning.
22 And during the day, with the light of the sun, we were able to see each other. *We could only
23 see with the sunlight.

24 Q. [11:44:10] Okay. Thank you. And I'm going to move on now and ask you
25 about some of the other men who were in the cell with you.

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1 PRESIDING JUDGE KORNER: [11:44:29](Microphone not activated) just before you
2 do -- just before you move on.

3 At night, how did you sleep? Did you lie down? Were you standing up? Were
4 you sitting?

5 THE WITNESS: [11:44:55](Interpretation) I -- I used to stand during the day, but
6 during the night I used to *lie down to sleep. During the day, I could sit down, just
7 like am sitting down now on the chair.

8 PRESIDING JUDGE KORNER: [11:45:09] So you had to stand during the day, but
9 you could sit down at night?

10 THE WITNESS: [11:45:21](Interpretation) *I used to lie down, just like when you
11 sleep at night in bed. During the day I could sit down.

12 PRESIDING JUDGE KORNER: [11:45:47] Yes, sorry, just one more question,
13 Mr Nicholls. When you sat down during the night, were you given a mattress or did
14 you lie -- did you sit on the ground?

15 THE WITNESS: [11:46:17](Interpretation) There was no mattress. I used to sit on the floor
16 *with nothing to sit on. And then there were fleas in our beards. My beard grew and became
17 approximately one inch long. We spent around 20 to 30 days without showering.

18 PRESIDING JUDGE KORNER: [11:47:04] Was there any kind of window in the cell?
19 Yeah, in the cell.

20 THE WITNESS: [11:47:16](Interpretation) Yes, there were two windows. In every
21 cell there were two windows and one door.

22 PRESIDING JUDGE KORNER: [11:47:34] Were you able -- were the windows open
23 or closed?

24 THE WITNESS: [11:47:43](Interpretation) The windows were closed. They were
25 open during the day and they were closed during the night.

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1 PRESIDING JUDGE KORNER: [11:47:55] This was February. Is that summer in
2 the Sudan?

3 THE WITNESS: [11:48:09](Interpretation) Yes, the second month is like summer in
4 Sudan. The sun was very hot.

5 PRESIDING JUDGE KORNER: [11:48:21] Yes. Sorry, Mr Nicholls, I just thought
6 while we were on that.

7 MR NICHOLLS: [11:48:28] No, not at all. Thank you. Thank you, your Honour.

8 Q. [11:48:31] And I'll ask you some more questions about what happened in
9 the prison, but just since where we are now, how many days did you spend locked up
10 in that prison?

11 A. [11:48:50] I spent there from 18/02/2004 until 16/03 or March 2004. Around one
12 month and a half, that is, 19 days.

13 Q. [11:49:12] Nineteen or 29?

14 THE INTERPRETER: [11:49:16] Overlapping.

15 MR NICHOLLS: [11:49:20](Overlapping speakers)

16 PRESIDING JUDGE KORNER: [11:49:21](Microphone not activated)

17 MR NICHOLLS: [11:49:22] I know, your Honour, but they --

18 Q. [11:49:25] Sir, did you say "19" or "29"?

19 A. [11:49:35] It was from 18 February to 16 March 2004. Nineteen *-- no, 29 days.

20 THE INTERPRETER: [11:49:49] The witness is saying -- excuse me, the witness is
21 correcting himself, 29 days.

22 MR NICHOLLS: [11:49:56] Thank you.

23 Q. [11:49:56] Now, I forgot to ask you, you talked to -- you told us very well about
24 cell 1. Were there prisoners in other cells in that building?

25 A. [11:50:18] In the other cells I -- I only saw *the cell where I was and there were

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1 people in it. But I did not see whether there were any people in other cells.

2 Q. [11:50:38] Okay. But if you could not see them, were you able to tell if there
3 were other prisoners in that building in addition to your cell in any way? Could you
4 hear them in any other way?

5 A. [11:51:05] At the time I was there I did not see people in the other cells. But
6 later on, after the genocide, we were sent to another cell and there I saw people.

7 Q. [11:51:30] Okay. I'll move on. Thank you.

8 Now while you were in cell number 1, did you know some of the other prisoners?
9 Did you know who they were?

10 A. [11:51:54] Yes, I knew them. I know, first, the *umdah* Issa Harun Nour,
11 the *umdah* of Arada. **Umdah* Omar Ahmad Zarruq. Yahya Ahmad Zarruq,
12 the *umdah* of Tendy. *Umdah* Adam Husayn Abdelm Mahmoud, *umdah* of Kirarow.
13 *Umdah* Ahmed Mohamed Gantour, the *umdah* of Artala. *Sheikh* Issa Mohamed Ishaq,
14 *sheikh* of Arada. These are the people I knew, and I recognised also some people
15 there *during the registration.

16 Q. [11:52:54] All right. Thank you.

17 I would now like to please show the witness OTP-DAR-0224-0544. And a hard copy
18 version that can be broadcast to the public is at tab 17 of his binder.

19 Now, Mr Witness, I know it's not in your language, but do you remember when we
20 met last week we wrote down all the names on a piece of paper from your witness
21 statement that you remembered being in the cell with you? Do you remember that?

22 A. [11:55:11] Yes, these are the *umdah*, the *sheikh* and the persons who *were later killed in
23 the genocide in three locations, location number 1, location number 2 and location number 3.

24 Q. [11:55:32] Thank you very much. And we'll get to that in a minute.

25 And while we were speaking you remembered one other name of a person in -- in cell

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1 1 with you, *Umdah* Ahmed Mohamed Gantour, *umdah* of Artala, and we wrote that
2 down on the piece of paper, right?

3 A. [11:56:12] Yes.

4 Q. [11:56:13] And can you tell the Court, please, how were you able to keep track of
5 the names of these men who were in the cell with you in the Mukjar police station?
6 How did you keep track of these names?

7 Let me ask it another way. Were you able to write down any of these names
8 somehow to remember them?

9 A. [11:57:04] I recorded the names of these people on the *insole of my -- both my
10 shoes, left and right, and I registered, I wrote down the names and the villages that
11 they belonged to. And then I was able to put my shoes on. I had a pen *and a watch
12 that allowed me to write down the names on both my *shoe insoles, left and right.

13 Q. [11:57:50] Thank you. And did you also have a watch at this time?

14 A. [11:58:02] Yes, I had a watch and a -- I had a pen. I had them both in a small
15 bag and I tied them to my private part so that no one was able to see them. I had to
16 keep them with me so that I would be able to record and register everything that
17 happened with me so that I would be able to remember all that later.

18 Q. [11:58:35] Thank you.

19 And could we please bring up, not broadcast, DAR-OTP-0223-0236.

20 PRESIDING JUDGE KORNER: [11:59:01](Microphone not activated) Sorry. Is
21 there a reason why it can't be broadcast? There's nothing identifying on it, is there?

22 MR NICHOLLS: [11:59:08] Can I go into private session for -- just to answer that
23 (Overlapping speakers)

24 PRESIDING JUDGE KORNER: [11:59:14](Overlapping speakers) Well then, don't
25 worry. Don't worry.

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1 MR NICHOLLS: [11:59:21] I agree it's not apparent.

2 Q. [11:59:35] And while it's coming up -- well, I'll wait. That will be clearer.

3 Now, thank you, sir.

4 Can you just tell us what's in this picture that you brought to your interview, in order
5 to explain things to the investigators? Let me -- sorry, let me ask that again. What
6 is in this picture?

7 A. [12:00:33] This is a watch I wore in my left hand. And it had a belt, so I took
8 the belt away, I separated that from the watch because the watch is small and you can
9 keep it anywhere you want until I arrive in town. The pen was long, and I cut it in
10 half so it became a small pen, in order to be kept anywhere I wanted and not to be
11 discovered. I did not want the pen or the watch to be discovered.

12 Q. [12:01:08] Thank you. And so this watch that we see before you is the same
13 kind of watch that you had in the prison in Mukjar?

14 A. [12:01:21] It's not the same watch, but it looks similar, *and the pens as well. I
15 mean, it's been *19 years and you cannot keep a pen and a watch for 19 years.

16 THE INTERPRETER: [12:01:39] If the gentleman can be asked to repeat the answer.

17 MR NICHOLLS: [12:01:43] No, I think -- let me ask it again.

18 Q. [12:01:46] This is not the same watch? The watch you had was very similar?
19 It was like this watch?

20 A. [12:01:57] Yes, yes.

21 Q. [12:02:14] Thank you. And after you were -- well, I'll just continue, sorry.

22 Let me go now a few days forward to the 21, 21st of month two. So 21 February,
23 three days later. Do you remember John Koj telling the prisoners in cell 1 anything
24 that day?

25 A. [12:03:05] John Koj came to us in the morning. He would come every

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1 morning -- I mean every morning and every afternoon he would submit a report
2 about the citizens detained in the cell. He would submit that report to
3 the high-ranking commander of the region. So he came to us and then he left to
4 meet the officers. He brought his report about us. John Koj said that we received
5 the news this evening that tomorrow the government and government forces will
6 come and will be led by Colonel Abdullah Himeidan. And these are Popular Defence
7 Forces, popular police forces led by the leader of militias, the leader of the other
8 colonels of the Janjaweed, and that's *Ali Abd-Al-Rahman Ali Kushayb. They were
9 all coming from Mukjar and from Mukjar to Sindu where the rebels are stationed.

10 Q. [12:04:46] How do you know that every day John Koj would make a report to
11 his superior about the prisoners?

12 A. [12:05:07] In the morning when I -- when he comes, he has a notebook, he calls
13 people's names, and says, yes, or puts a "yes" mark after every name until he finishes
14 all the 81 names. Then he leaves, locks the prison and goes to the other officers there.
15 And I see him saluting the officers with his right hand and opening the notebook. So
16 I figured, and I could hear him talking loudly and saying that all prisoners, all citizens,
17 the 81 people are all there.

18 Q. [12:05:53] And what happened next after John Koj told you this? Did you see
19 whether any of these persons he named, Himeidan, Ali Kushayb, whether any of
20 them came to Mukjar?

21 A. [12:06:22] This occurred on February 20, 2004. This is when John Koj told us
22 that. He told us that on the 21st these forces will arrive. And on the 21st, in
23 the morning, before breakfast, they -- we heard people coming. They were shouting,
24 "Gowa, gowa. Mukjar gowa", or "inside", and then "Gowa, gowa. Sindu gowa", or
25 "Inside, inside Sindu". And we saw there were so many in these forces. They were

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1 dressed in military uniform. * The color is similar to the color of the floor here, a
2 color we call tea with milk, and these were forces from the Central Reserve Force.
3 Their uniform was in that colour. As to the police, they had a green uniform, or
4 similar to green, and also with a white *colour. This is the united police force. So
5 they were shouting, "Gowa, gowa, Mukjar. Gowa, gowa, Sindu." They kept
6 shouting that until they arrived. The commander in the region is Lieutenant Colonel
7 Mustafa Ahmad Tayyib. They -- when they reached him, they told him,
8 "Mr Lieutenant Colonel, we've come from the governorate and we're heading to
9 Sindu where the rebels are stationed." So the lieutenant colonel said, "Fine, go ahead,
10 go to the state-run schools, suit yourselves there, have a breakfast and then head
11 where you're heading." So he took -- took them to the schools and then he came
12 back to his original post at the police station.
13 Afterwards, more forces came. They were shouting, "Gowa, gowa, Mukjar. Gowa,
14 gowa Sindu", and realised, well, it's the same group divided into two forces. This
15 second group had a uniform similar to that of the officers who -- whom we found at
16 the checkpoint, the Defence forces and the unified police force.
17 So they arrived and we saw them. They got off the cars. And it's the same -- I
18 recognised the same person I had met in Garsila, and that's Ali Abd-Al-Rahman,
19 Ali Kushayb. And the colonel of the Janjaweed, Al-Dayf Samih, I recognised these
20 two individuals.

21 Q. [12:09:17](Microphone not activated)

22 THE INTERPRETER: [12:09:22] Microphone, please.

23 MR NICHOLLS: [12:09:24] Thank you.

24 Q. [12:09:24] Let me ask some more questions now about what you've just said.

25 Who's Al-Dayf Samih? How did you know him?

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1 A. [12:09:39] Al-Dayf Samih is known as an inhabitant of the -- Kobu in
2 South Darfur. Every time the market -- there was a market, he would come to buy
3 livestock, specifically cows. He is a merchant. He would have a large amount of
4 money and he would buy male cows, whom he took to their -- to those who placed an
5 order for those cows in Kuju, and he pockets a commission of that trade. So every
6 Saturday -- this is how I recognised him -- this is how I knew him, every Saturday he
7 would come to the market to buy these cows before going back to Kuju.

8 Q. [12:10:43] And you would see him in the market?

9 A. [12:10:47] I always -- I frequently went to the market, because you need to.
10 Every Saturday you need to buy the market to provide for yourself. If you are
11 staying in the Koranic school or the *khalwa*, you're studying, you need to have your
12 food supply with you. So that's why I needed to be in the market every Saturday.

13 PRESIDING JUDGE KORNER: [12:11:12] And which market are we talking about?

14 MR NICHOLLS: [12:11:15]

15 Q. [12:11:17] Can you tell us the market in which town?

16 A. [12:11:26] It's the Mukjar market.

17 Q. [12:11:29] Thank you. Now, of these forces and the people you're describing
18 who came to Mukjar that day, how could you see them? You said, "we could see
19 them." How could you see these people you're talking about?

20 A. [12:11:57] The door of the prison was -- had an opening. It was not completely
21 covered. There were bars, so it was possible to see people, aircraft, cars. You could
22 see anything.

23 Q. [12:12:27] And how -- how far away was -- you say you saw Ali Kushayb on
24 that day before the -- when the troops were talking about going to Sindu?

25 A. [12:12:55] When they arrived -- you know the drawing we saw earlier, we were

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1 separated by that thing in the roundabout. So I was in this -- in the first cell, they
2 were in the second cell. That was the only separation between us.

3 Q. [12:13:25] All right. And how long did these people you've described that you
4 saw, Ali Kushayb, Al-Dayf Samih and these different persons, how long did they stay
5 there outside of the -- outside of your cell?

6 A. [12:13:57] Well, when they arrived they were many and they stopped on
7 the main road. The police station was open, it was not locked to people. It's just
8 the cell that was locked, but the police -- and there was a police office next to that, but
9 there was no wall not allowing people to come in. It was an open area. So anyone
10 could walk in, in all directions, towards the west, north, south, or southeast, people
11 could come in, walk in from all directions, there were no barriers.

12 Q. [12:14:54] Okay. And you've described what happened when the people, these
13 forces you said under the -- that Ali Kushayb was a colonel of colonel, that they came
14 to Mukjar, you said they were talking about Sindu. What happened next?

15 A. [12:15:19] Next, from there the officer took them to the *wadi*. All the force was
16 taken to an open area that belongs to the government, we call it *jenane* (phon) *or
17 gardens. He told them, "We're going to bring you a breakfast before you head to
18 Sindu *to the rebels."

19 Q. [12:15:53] And did they go to Sindu? Or did they leave, I should say?

20 A. [12:16:02] From there they were taken to a *garden of mango trees that belonged
21 to the government. So they went there. I don't know if they actually had their
22 breakfast. But John Koj gave an instruction that they be provided with breakfast
23 before heading to Sindu. Two hours afterwards - well, I don't know if they had
24 breakfast in the meantime - the officer of the region, Mustafa Al-Tayyib, in addition to
25 *commissioner Abdullah Tayib Torshein, said they're heading now to Sindu. So

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1 Mustafa Al-Tayyib said -- and the other officers said, "Fine. Okay, you can go ahead
2 now. And we also have our own officers who can accompany you, to help you on
3 the road to know the direction towards Sindu." And that's where they headed.

4 Q. [12:17:09] And who's Abdullah Torshein? Who is Abdullah Torshein you just
5 mentioned?

6 A. [12:17:26] Al-Tayyib Abdullah Torshein is in charge. In addition to his
7 administration of the *locality -- in his position at the local administration he was also
8 a *mu'atamid*, or a local sort of mayor. He was a *mu'atamid*.

9 Q. [12:17:56] And where were Torshein and Al-Tayyib when you heard this
10 conversation?

11 A. [12:18:10] They were then in the south of the building where the cell was, in
12 the veranda.

13 Q. [12:18:30] Okay. Just one minute.

14 Okay. Thank you, sir. I'm going to move on now.

15 At some point did you hear that Ali Kushayb had come back to Mukjar?

16 A. [12:19:29] Yes, I heard so.

17 Q. [12:19:32] And when was that?

18 A. [12:19:46] I saw him myself when he came back from Sindu, dressed in the same
19 uniform and saying the same thing, shouting, "Gowa, gowa Mukjar. Gowa, gowa,
20 Sindu. And we'll crush all the rebels." The *mu'atamid*, along with the officers,
21 received him. He told them go have your breakfast and go to the mango forest.
22 And he also instructed that they be provided with breakfast.

23 Q. [12:20:38] Okay. When ...

24 Okay, you said you saw Ali Kushayb yourself again when he came back to Sindu.

25 How many days after he went to Sindu was that? If you remember. One day, two

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1 days, three days, longer?

2 A. [12:21:20] Three days. He left on the 21st, came back on the 23rd at around
3 9 a.m.

4 Q. [12:21:33] And did you hear before he returned that day at 9 a.m. that he was
5 coming back?

6 A. [12:21:59] Again, please.

7 Q. [12:22:01] Let me -- let me -- let me move on.

8 Tell me about that day when he returned three days later at 9 a.m. What did you see
9 at the beginning of that day? What happened that day?

10 A. [12:22:21] First, so again he left on 21 February 2004, after *breakfast. He left,
11 went to Sindu. Before he left he informed the officers that he was heading to Sindu
12 to deal with the rebellion. The *mu'atamid* and the lieutenant colonel told him "We
13 have people who can accompany you." And he told them that those who are
14 mobilised can have their breakfast before heading to Sindu and that we can send
15 officers who know the itinerary, who know the road, to help you along the way.
16 Half an hour afterwards we saw the officers *moving.

17 THE INTERPRETER: Inaudible.

18 THE WITNESS: (Interpretation) We were seeing this happening. He said there's
19 a lot of burning, there's a lot of smoke, the villages had been burnt.

20 John Koj came to us afterwards and told us the Janjaweed militias have left and burnt
21 the Hilal villages, and then the next villages, and they are continuing to burn more
22 villages. And he told it -- he said it's our right to burn these villages and to carry on
23 that *until they get to Sindu.

24 The forces led by Abdullah Himeidan, in addition to the local forces, followed them
25 behind. I don't know if they were able to reach them or not *in Sindu, but that was

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1 on the 21st and the 22nd. And on the 23rd they came back to our area.

2 MR NICHOLLS: [12:24:55] Thank you.

3 Your Honour, I'm not sure when -- is the next break at 12.30? We started at 11, I
4 think.

5 PRESIDING JUDGE KORNER: [12:25:07](Microphone not activated)

6 THE INTERPRETER: [12:25:08] Microphone, please.

7 PRESIDING JUDGE KORNER: [12:25:13] 12.30 to 2? Okay. Well, does it make
8 any difference?

9 Okay, it does make a difference. All right, 1 o'clock.

10 MR NICHOLLS: [12:25:28] 1 o'clock.

11 PRESIDING JUDGE KORNER: Yeah.

12 MR NICHOLLS: We're continuing. Okay.

13 Q. [12:25:31] Witness, thank you. Now I want to talk about, just about
14 23 February when these forces came back from Sindu, okay?

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

16 Q. [12:25:46] Okay. What happened that day, 23 February, that you could see and
17 hear from the police station, from your cell? Take me through that -- take me
18 through that morning, 23 February, when these forces returned from Sindu.

19 PRESIDING JUDGE KORNER: [12:26:24] Forgive me. I mean, are you trying to get
20 the information from paragraphs 31 to 32 onwards, because the date is not the date
21 you're giving him, in the statement?

22 MR NICHOLLS: [12:26:36] Your Honour, in the preparation session --

23 PRESIDING JUDGE KORNER: [12:26:40](Overlapping speakers) He changed it, did
24 he?

25 MR NICHOLLS: [12:26:41](Overlapping speakers) and as he has said today, it's

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1 23 February.

2 PRESIDING JUDGE KORNER: [12:26:44] I see. All right.

3 MR NICHOLLS: [12:26:45] And I thought it might be easier to let him narrate this
4 (Overlapping speakers).

5 PRESIDING JUDGE KORNER: [12:26:50] No, I understand that. But would it not
6 be easier to ask did anything happen to him that day?

7 MR NICHOLLS: [12:26:58] Yes, your Honour.

8 Q. [12:27:01] What happened to you on 23 February, the day that these forces came
9 back from Sindu?

10 A. [12:27:22] The forces that when they came from -- that came from Sindu were
11 the forces led by Abdullah Himeidan. They arrived first in Mukjar at the police post
12 and they said we were in Sindu, we drove out all the rebels and the leader of
13 the rebels left on an aircraft. And so they came back to Mukjar.
14 They also said that we've gone through a lot of trouble. We lost ammunition, we lost
15 vehicles, and some soldiers also died. I did not hear the number of the soldiers who
16 died, but they said that a number of soldiers had died. This is the first group.
17 The second group was the one of Ali Abd-Al-Rahman, Ali Kushayb. He also said
18 that they -- that they had moved from Mukjar to Sindu to deal with the rebels and
19 that they -- and that they found at the first location -- at the second location people
20 dressed in royal uniform, and that these people ran away when they saw them and
21 that they shot them as they were running away.
22 He continued saying that in the next locations they did not find any inhabitants,
23 homes were empty, and so they burned those homes all the way until they reached
24 Sindu. They -- he said that they burned everything along the way *and did not leave
25 a piece of straw behind and that in Sindu we kicked out the rebels and that we -- that

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- 1 they went to the leader of the rebels. An aircraft landed to take Abd-Al-Wahid,
2 the leader of the rebels, away. And from there they came back to Mukjar.
3 When they arrived, Ali Kushayb, I saw him, that he got off the vehicle. And a lady
4 also got off the vehicle behind him and he handed that lady to the officer. He told
5 him that we found this lady among the rebels and -- and he considered that woman to
6 be a *hakamia* (phon) *of rebels. So he went to the forest by the *wadi*. Again, this was
7 on the 23rd. When they went there, they reached the forest. Half an hour
8 afterwards an aircraft -- two aircrafts, military aircrafts - helicopters, actually, we call
9 them helicopters - you know, they have these big fans on top of them. So they
10 arrived next to the police post. There was no airport there, but there was a field
11 where soldiers usually play soccer.
12 So the two helicopters landed and from the window we could see that these were two
13 helicopters. And they had military signs on them. And the soldiers got off the aircrafts
14 and stood next to each other. The aircraft that was westward, aircraft -- soldiers got off
15 that aircraft. As to the other aircraft, the people who got off the aircraft were in plain
16 clothes, *not military uniform but regular clothing, so they were dressed differently.
17 Q. [12:32:26] Okay. Now you told us just now about Ali Kushayb talking about or
18 giving a speech, or something, about what had happened in Sindu. How were you
19 able to hear him say those things you just told us that he said?
20 A. There, there was no movement *of vehicles and aircrafts or ships at all and there were
21 not a lot of people so you can hear people talk at a distance of 300 metres or 200 metres.
22 Q. [12:33:31] Okay. So when Ali Kushayb is making this speech, you are in cell 1,
23 correct?
24 A. [12:33:45] Yes, correct.
25 Q. [12:33:51] Can we please bring up DAR-OTP-0224-0547. And for the public we

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1 could put tab 15 on the Elmo.

2 Mr Witness, if you look at this image again, can you see this picture in front of you?

3 A. [12:35:55] Yes.

4 Q. [12:35:56] Would you be able to show on this picture approximately where

5 Ali Kushayb was when he was making this speech about what happened in Sindu.

6 If you're -- are you able to?

7 Do you understand my question?

8 A. [12:36:47] Yes. Yes, I understood.

9 Q. [12:36:50] So - excuse me - would you be able to mark approximately where

10 Ali Kushayb was when you heard him saying these things about Sindu?

11 And for, your Honours, whether this is electronic or on the Elmo, whichever is easier

12 for the witness is -- is fine.

13 PRESIDING JUDGE KORNER: [12:37:50] Is that hovering dot the marking by

14 the roundabout?

15 MR NICHOLLS: [12:38:11] Yeah. As I say, if it's not working we can just use a pen

16 on the hard copy. It may be easier for the witness as well.

17 Q. [12:39:08] And we can't see it, Mr Witness, but have you been able to mark

18 the spot where Ali Kushayb was when he made that speech?

19 Okay, thank you. So just to the west of the roundabout.

20 A. [12:39:51] Yes.

21 Q. [12:39:58] Now, in addition to Ali Kushayb, can you tell me what other persons

22 you saw who visited the police station that day that you recognised or knew from

23 the government?

24 A. [12:40:32] There were the government forces. They arrived -- they were

25 the first to arrive to the area. And then came the forces of Ali Kushayb. They came

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1 right after them.

2 Q. [12:40:51] And you said earlier that there were some -- that some helicopters
3 arrived. Do you know who came on those helicopters?

4 A. [12:41:10] Yes.

5 Q. [12:41:13] Please explain who came on the helicopters.

6 A. [12:41:24] First there was a minister, the minister of interior, Ahmad
7 Muhammad Harun. And after that there was a minister, the minister of health in Geneina,
8 Ja'afar Abd-Al-Hakam -- Abd-Al-Hakam Ishaq, he was the minister of health in Geneina,
9 West Darfur. There was a cameraman also from Sudan TV, he was there. There was also
10 people from the police. There was a *major general from the police and a major general
11 of the armed forces, I recognised him. There were some officers. They all came to
12 where I drew the circle. When they came, they -- the people started greeting the minister,
13 saying "Hello, hello, Mr Minister Ja'afar *Abd-Al-Hakam . Hello, Mr Minister
14 Ahmad *Muhammad Harun. Hello, hello, Major General *of the police. Hello, hello,
15 major general of the armed forces " And then we were able to see that from the door of
16 the cell. And they went out, everyone -- everybody went out from the aircraft.

17 Q. [12:43:39] Okay. Thank you. Let's stick at the moment with Minister Harun.
18 When did you first see him that day? What was he doing when you first saw him?

19 A. [12:44:09] Harun is not a minister. *Ahmad Muhammad Harun, state minister of
20 the Ministry of Interior. When he came, he was there with the officers, he was with
21 Ali Kushayb, and he was with the *mu'atamid* or the police commander. They were
22 talking to each other but we were unable to hear what they were saying. *They spoke,
23 and half an hour later an officer, Mustafa Ahmad Al-Tayyib, *came and talked to
24 John Koj. He told him to open the door and that the ministers are coming and that
25 the people there are coming to see the citizens. John Koj opened the window, he

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1 opened the door, and when the door was opened *the commander Mustafa was there,
2 followed by Ali Kushayb came later and we saw them all coming towards the cell.
3 He had an axe. Ali Kushayb had an axe. And the rest had what we call a *whip that
4 they used to hit livestock. Others had an *okas* (phon), which is a stick. And they
5 entered the prison, they entered the cell, and they started asking about the *umdah* –
6 the *umdahs*. The *umdahs* raised their hands. There were four *umdahs* and there was one
7 *sheikh*. They started asking about the names of the *sheikh*. The *sheikh* said, "I am
8 Issa Mohamed Ishaq." They asked him about the village he was from. He said, "I was
9 from Arada." They asked *umdah*, *Umdah* *Ahmed Mohamed Gantour, and they asked
10 him what village was he from. He said, "I am the *umdah* of Artala." **Umdah* Adam
11 Husayn Abdelmahmoud was the *umdah* of Kirarow region. *Umdah* Yahya Ahmad
12 Zarruq was also asked about which region he was from. He answered, "I am
13 the *umdah* of Tendency." *Umdah* Issa Harun Nour, they asked Issa Harun Nour of which
14 area he was. He said I was -- "I am from Arada."
15 Ali Kushayb was standing in front of us and he was talking or asking about the *umdahs* and
16 the *sheikh*. He did not say anything to the rest of the people there. He only spoke to the *umdahs* and
17 *sheikh* and he was accusing them of bringing the rebels and of supporting the rebels. And he was
18 saying to them, "You are the reason behind what is happening. *You are giving them to eat and
19 drink. You brought the rebels to our region. *You turned citizens to *assakir* (soldiers)."
20 *Sheikh* Issa, *Umdah* Issa Harun Nour, said to Mr Ali Kushayb, "We are *umdahs* of local
21 administration only. We have nothing to do with the *opposition at all. We are
22 responsible for the unarmed civilians only." Ali Kushayb raised his axe and hit Issa
23 Harun Nour on his right upper chest and shoulder area *and threw him on the floor.
24 I lift my head and I saw what was happening. I saw Ali Kushayb. Ali Kushayb said to
25 me, "You are a *tora bora*. You are a rebel." And I said I was not a rebel, "I am not

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1 a rebel." He immediately brought his axe and *told me to put my head down and I did. He pushed me
2 and I fell, then he hit me on my right leg and it went through to the muscle. I still have the scars. At
3 that time I was injured because of the strike of the axe. And he was insulting us and he *was beating
4 everyone, including the *umdahs* and *sheikhs*, then he asked everyone to go out towards the place that
5 was between the roundabout and the cell number 1.
6 All the 81 people left the cell. All together we were out. We were all, 81 persons, we all got out *while
7 being beaten, tortured and insulted until we reached the square. We were standing towards
8 the *south-north. The ministers were sitting outside on chairs *in the square. Someone called
9 the minister to come and see the rebels who are fighting them. The minister came and a cameraman
10 was *filming them until they reached us, the citizens. We are citizens. They were calling us rebels and
11 not citizens. They filmed us. We were filmed by the cameraman. The person who was holding
12 the camera was *to our north-west doing that, was holding the camera on his right shoulder and he
13 was *using his left hand to focus the camera taking pictures and filming the ministers, *the
14 commissioners and commanders of the Janjaweed. And he was filming all the people there, the officers,
15 the major general, and the other *major general, in addition to all the people who were there.
16 So they were all sitting there on the one side and we, the prisoners, were on the other side. The minister
17 was calling *us *tora bora*. They were calling us rebels. He was saying, "*You are fighting against the
18 government and today and tonight I am going to destroy you all *and your families." Minister Ahmad
19 Harun was saying this. We were hearing all that talk, people were there, * many were crying and
20 others were unable to say anything or to -- to reply. *Umdah* Yahya lifted his hand, he raised his hand
21 and said, "Mr Minister, we are not rebels. We are citizens. Unarmed citizens. *We are the *umdahs* of the
22 civil administration. We only work in our villages. We have nothing to do with the rebels. We have
23 nothing to do with the *tora bora*." The minister Ja'afar Abd-Al-Hakam spoke to *Umdah* Yahya and told
24 him, "Shut up. Don't speak again." So the *umdah* never spoke again.
25 *At that point Al-Tayyib Torshein spoke and said, "I'd rather have my son die than see my country

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1 destroyed. I'd rather have my son die than see my country destroyed." He said it twice. He meant that
2 he prefers the death of his son over the destruction of the country. At that point, again, we cried as
3 result and we didn't say anything.
4 The minister also spoke to an officer by the name of Major General *Mustafa Ahmad Tayyib. He *asked
5 him how many rebels there are. He opened a notebook and *said that there are 81 rebels. And the
6 minister told Major General Mustafa Ahmad Al-Tayyib, he said to him, "Bring all the rebels inside
7 the cell and tomorrow morning bring them to Ali Kushayb. *Take them to prison and tomorrow
8 morning hand them over to Ali Kushayb. We all heard this." So Ali Kushayb brought us back inside
9 and he started whipping some of us and striking some of us *and torturing us until we were all in
10 the cell again. When we entered the prison they *stayed there for around half an hour. Half an hour
11 later they *saluted each other, went into the different vehicles and then they left. The minister went into
12 the commissioner's car, the *assakirs* went into military vehicles, and some left by air. Ten minutes later
13 we were able to hear the helicopters, so they left in the two helicopters that were there.
14 *When the helicopters left, the commissioner and the officer returned. They were the
15 only people who left the vehicle. The officer and commissioner Al-Tayyib stayed
16 there, they sat on the chairs. *The major general and Ali Kushayb went with some
17 people to the mango gardens to have their meal. *The convoy was under the
18 command of Abdullah Himeidan, who told them to take their time when they went
19 for their meal and then he wanted to see the final report. Then they left. I don't know
20 whether they were given food or not. I didn't see that.
21 *Two to three hours later, we saw Ali Kushayb returning. He was with his forces.
22 And he said to *the commissioner there that they were going to Garsila *and then to
23 the wiliya. So he said that several people have died, that they *had a lot of losses, lost
24 a lot of lives, a lot of vehicles, they have lost *large and small ammunition, they have
25 lost in Sindu. *And they wanted to take the cows and livestock first. He said that they

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1 will go raid the market to get compensated for all their losses. *At that moment Abdullah
2 Torshein told him, "We cannot give you the property or the belongings of the citizens, because
3 the people cannot give their property to the government. *If you had incurred any losses, you
4 have to make a request to the *wilaya* or the government. You count your losses, for instance 20, 30,
5 40 people and two or three vehicles... if you had lost 100 weapons... you go and say that you lost
6 even 200 or 1,000 pieces of ammunition, and you make your request to the *wilaya* or the
7 government, and they would compensate for you through wages, weapons and ammunition, but
8 we cannot give you the belongings of the citizens." The major general said that there were -- these
9 were his instructions. The instructions were not to give the livestock *and raid the market of
10 the citizens to them because these were the livelihood of the citizens and the people, the villagers
11 depended on them *to eat and drink. It is not possible to give that belongs to the people. And
12 the government of course would not accept that. So Ali Kushayb *took out the Thuraya phone
13 from his pocket and called someone immediately. I don't know if he called the *minister who was
14 with him, the president of the republic or the deputy president. So he called someone, but I don't
15 know who he called. But at that time he gave the phone to the *commissioner and the latter spoke
16 to someone *for 10 minutes and then he gave the phone to the major general who spoke on the
17 phone for 20 minutes and then returned the Thuraya phone back to Ali Kushayb.
18 Ali Kushayb put the phone back in his pocket and he said, "Tonight, either we take the livestock
19 and the cattle, or we *kill the citizens and burn down the whole village." The major general said,
20 "Of course I have to follow the instructions. As long as you say that your instructions come from
21 an upper authority, I cannot allow you to burn the village and to kill the citizens. But as long as
22 you have the instructions to remove or to take any livestock or *raid the market, then I can't do
23 anything." So he left -- he left. *He took the livestock and left. He left the city and returned with
24 his forces. They went to the market and they started looting it. They started raiding the market at
25 3 a.m. till 4 in the morning. I didn't sleep at all and I was watching them. They stayed in the city in

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1 the market and in the city for 14 hours. They took all the livestock. They took everything. And
2 they went into the locality where there were numerous citizens and then they went to
3 surrounding areas and villages.

4 Q. [13:01:10] Thank you.

5 THE INTERPRETER: [13:01:12] Microphone, please.

6 MR NICHOLLS: [13:01:14]

7 Q. Thank you. I was just saying stop there, Witness, because I think we're at a break time now.

8 PRESIDING JUDGE KORNER: [13:01:20] Yes. Well, I think the interpreter has
9 been going full blast for the last two hours, so we'll take the break now until 2.30.
10 Sir, there's going to be a longer break now for you have to lunch and relax. Don't
11 discuss what you're -- you're telling us with anybody else. It's just -- you just wait
12 until you get back into court. Okay.

13 Yes, Mr Laucci.

14 MR LAUCCI: [13:01:47] Yes, there is something I would like to -- to mention
15 without the presence or without interpretation to the -- to the witness, please.

16 PRESIDING JUDGE KORNER: [13:01:55] Certainly.

17 Yes, if the court officer can escort the witness out, please.

18 (The witness exits the courtroom)

19 PRESIDING JUDGE KORNER: [13:02:55] Yes. Sorry, Mr Laucci.

20 MR LAUCCI: [13:02:58] Yes, very briefly. And I didn't want to -- to intervene
21 earlier and make an objection, because I didn't want to put additional emphasis
22 on -- on that. But I would like to ask my learned colleague to be more careful,
23 because at one point, and that's on the transcript page 53, line 9 to 10, real-time, you
24 use yourself the expression "colonel of colonels" for Ali Kushayb, whereas this has
25 never been mentioned by the witness. The only title or rank that the witness used

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1 was colonel and it was related to Al-Dayf Samih only, not at all to Ali Kushayb.

2 So I'm sure it's just a mistake, but I want to raise that we should be more careful in
3 order not to put words into the mouth of the witness.

4 PRESIDING JUDGE KORNER: [13:03:57] Funnily enough, I remember Mr Nicholls
5 saying it and I had the same -- I had the same reaction as you, Mr Laucci. I didn't
6 remember the witness mentioning a colonel of colonels, but that's not to say
7 that -- that I'm -- would have got it right.

8 MR NICHOLLS: [13:04:11] I'm sorry. I'll check. I thought he said that.

9 PRESIDING JUDGE KORNER: Yeah. I didn't --

10 MR LAUCCI: [13:04:10] I may have got it wrong, but I thought he did say that, so I
11 apologise (Overlapping speakers)

12 PRESIDING JUDGE KORNER: [13:04:16](Overlapping speakers).

13 Well, I think -- no, no, I think Mr Laucci is right, be a bit careful. But I certainly
14 remember you saying it, Mr Nicholls. And like Mr Laucci, I didn't remember
15 the witness saying it, however, as it was all rather complicated then.

16 Yes. Very well, it seems to be going -- can I thank the interpreters very much. It
17 seems to be going better this afternoon, and possibly -- this morning. And possibly,
18 Mr Nicholls, because your questions are the ones I always tell people not to ask,
19 "What happened next?"

20 Yes, thank you, 2.30, please.

21 THE COURT USHER: [13:04:55] All rise.

22 (Recess taken at 1.04 p.m.)

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

24 THE COURT USHER: [14:31:25] All rise.

25 Please be seated.

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- 1 PRESIDING JUDGE KORNER: [14:31:54] Yes, is there a problem, Mr Nicholls?
- 2 MR NICHOLLS: [14:31:58] No, not a problem, your Honours. Just before
- 3 the witness comes in, about the colonel of colonel reference --
- 4 PRESIDING JUDGE KORNER: Yeah.
- 5 MR NICHOLLS: [14:32:04] -- that I made, I just want to say, no, that exact phrase
- 6 was not said by the witness. I checked. But what the witness did say, at page 49,
- 7 lines 3 to 4, is "... the leader of the other colonels of the Janjaweed, and that's
- 8 Ali Kushayb." He had said --
- 9 PRESIDING JUDGE KORNER: [14:32:26] Yes, it was -- I remember that as well. I
- 10 remember the reference to colonels, but -- if I were you, Mr Nicholls, I think I'd go
- 11 back and clarify, not at this stage, let him carry on, but at some stage try and get him
- 12 to clarify that -- the one thing he said, what he means by that.
- 13 Yeah, because I just heard it was one of -- I heard one of a number of colonels.
- 14 I didn't realise that it was -- that you were taking it that he meant the colonel of
- 15 the colonels.
- 16 MR NICHOLLS: [14:33:00] Well, what he says in the transcript is "... the leader of
- 17 the other colonels of the Janjaweed, and that's Ali Kushayb."
- 18 PRESIDING JUDGE KORNER: [14:33:07] All right.
- 19 MR LAUCCI: [14:33:08] May I suggest, if a clarification is asked, that
- 20 the clarification should be what did he mean by this leader of the blah, blah, blah
- 21 and --
- 22 PRESIDING JUDGE KORNER: [14:33:17] Absolutely. I'm sure Mr --
- 23 MR LAUCCI: [14:33:19] Without putting the -- the --
- 24 MR NICHOLLS: No, of course.
- 25 MR LAUCCI: [14:33:20] -- the phrase once again.

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1 MR NICHOLLS: [14:33:21] Of course.

2 MR LAUCCI: [14:33:22] Thank you.

3 PRESIDING JUDGE KORNER: [14:33:23] Yes, all right. Let's have the witness in.

4 How long do you think you are going to be, Mr Nicholls, with him? Okay, I know
5 it's not a great question.

6 MR NICHOLLS: [14:33:36] No, I will finish today. I'm -- I'm going to try to
7 stay -- I'm going to try to quickly finish off the rest of his information about what
8 happened to the prisoners in his cell, so I think probably about an hour, but it is very
9 hard to go short question, short answer. But I'll --

10 PRESIDING JUDGE KORNER: [14:34:02] Well, I think that, I'm afraid to say, as we
11 were saying, the "what happened next" question is at the moment appearing to be
12 the most effective.

13 MR NICHOLLS: [14:34:12] Yeah. So I will finish today, I'm quite certain.

14 MR LAUCCI: [14:34:15] And even though that may be useless, whatever the time
15 when my colleagues finish today, I will ask the authorisation of the Court to start
16 the cross-examination only tomorrow morning, because with the flow of new
17 information that we received this morning, I need some time.

18 PRESIDING JUDGE KORNER: [14:34:30] I've every sympathy, there has been a lot
19 of information which we -- isn't in the statement. Yes, we'll say -- I'll say you can
20 start tomorrow morning.

21 MR NICHOLLS: [14:34:41] And certainly no objection to that.

22 PRESIDING JUDGE KORNER: [14:34:43] Thank you, Mr Nicholls.

23 (The witness enters the courtroom)

24 PRESIDING JUDGE KORNER: [14:34:49] Yes, welcome back, sir. I hope you've
25 had a good break. And Mr Nicholls is going to carry on asking you what happened.

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1 MR NICHOLLS: [14:35:07]

2 Q. [14:35:07] Okay, can we continue?

3 Okay.

4 A. [14:35:13] Yes.

5 Q. [14:35:14] Now what I want to talk about now, just to focus on this topic, is what
6 happened to you and the other 81 prisoners in cell 1, okay, at the time that they were
7 taken out of cell 1 and into the courtyard.

8 Now, you had told us that Ali Kushayb hit you with an axe. Do you remember
9 saying that before the break?

10 A. [14:35:59] Yes.

11 Q. [14:36:01] Could we please have DAR-OTP-0223-0235 broadcast. And that can
12 be public. Is it possible to make it any bigger? Thank you.

13 Witness, can you please tell us what this photograph is of.

14 A. [14:37:06] This is a picture showing that Ali Kushayb had -- had hit me with an
15 axe.

16 Q. [14:37:20] And just so it's clear, what part of your body is this photo on? Where
17 do you have this scar?

18 A. [14:37:37] This is the scar, *the long scar. It is on my right leg.

19 Q. [14:37:48] Thank you. I'm done with that image. It doesn't need to stay up.
20 You also said that before Ali Kushayb hit you with his axe, he hit *Umdah* Issa Nour
21 with the axe. Can you describe again, you started to a bit, but how did you -- how
22 did he hit *Umdah* Issa Harun Nour and what did you see when this happened?

23 A. [14:38:11] He hit him on the shoulder, on the right shoulder. He hit him. We were taken
24 outside and then we were taken inside. *I was looking at his wound and I saw that there was a
25 fracture in the bone. The bone was broken. It was bleeding. My -- I saw the blood coming out of

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1 my leg. I saw the blood coming out, and then I sat -- I sat next to him, while he was also bleeding.

2 Q. [14:39:15] When you say you sat next to him, that's sat next to *Umdah*

3 Issa Harun Nour?

4 A. [14:39:26] Yes.

5 Q. [14:39:27] Now my question is, besides you and *Umdah* Issa Harun Nour, did

6 you see if Ali Kushayb hit or mistreated any other prisoners as they were being -- that

7 day?

8 A. [14:39:51] Yes, there were other prisoners who were hit. He hit them. I did not

9 see that happening. But there were people *lying down and I asked them what

10 happened and they said that they were whipped and beaten with a stick. There are

11 people who were hit who were unable to stand and who stayed in the cell.

12 Q. [14:40:32] Okay. Now I think you just said it, to be clear, besides Ali Kushayb,

13 did anybody else hit, whip prisoners, that you saw that day?

14 A. [14:40:55] Yes, there were people from the Janjaweed *under the command of

15 Ali Kushayb and Al-Dayf Al-Samih who entered the cell and hit the people, hit

16 the citizens. *I saw them hitting people with the whip and he had an axe. The rest of

17 the soldiers or the fighters had *sticks. *They were stepping on us and saying you are tora

18 bora and you are opposition. I said that I wasn't in the opposition and they hit me.

19 Q. [14:41:47] Now when you were outside in the courtyard with the other prisoners,

20 was anybody -- were any of the prisoners hit or mistreated in front of Ahmad Harun?

21 In other words, my question is could Ahmad Harun see any of the prisoners being hit

22 or whipped?

23 A. When we were in the cell first, we were tortured, we were hit. *All the ministers,

24 including Ahmad Harun, could see that, in addition to Ja'afar and the commissioner

25 outside and the soldiers and they were all able to see what was happening to us.

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1 Q. [14:43:04] Now, you discussed how later all of the 81 prisoners were brought
2 back to your cell. What I want to talk about now is the next day. The very next day.
3 Okay?

4 So let's talk about that day. What happened in the morning the very next day?

5 A. [14:43:46] The second day in the morning the same people, the -- the Janjaweed
6 militia leader Ali Abd-Al-Rahman, Ali Kushayb came, he stepped out from the vehicle.
7 *He came in a convoy of five vehicles. There were other three vehicles too *without
8 dushkas. He was with his own guards and there were guards in the other three vehicles.
9 They all stood to the *south-west of the prison. He stepped out of the car. He walked
10 towards the officer *Mustafa Omar Al-Tayyib and he said to him, "We are here to bring
11 the prisoners out from the cell, to bring them to Garsila, to take them to Garsila."

12 Q. [14:44:53] Did you see and hear that yourself?

13 A. [14:45:02] Yes, I heard that. I saw that myself.

14 Q. [14:45:10] And when Ali Kushayb said, "We are here to bring the prisoners out
15 from the cell, to bring them to Garsila," how far away from you was he,
16 approximately? And was he closer to you than I am or was he farther away from
17 you than I am?

18 A. Around 5 metres. *It is like from here to here, 5 metres. He was 5 metres far, approximately.

19 Q. [14:45:49] Okay, so is that closer than me or farther away from me?

20 A. [14:46:01] Five metres, right where you are, the same distance. *5 metres.

21 Q. [14:46:06] Thank you. And then what happened after Ali Kushayb said "We
22 are here to take the prisoners to Garsila"? What happened next that you saw and
23 heard?

24 A. [14:46:31] They stood there by their vehicles. There were three Land Cruisers.
25 And I don't know what was inside. I don't know if there was *corpses or people.

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1 They were covered, these Land Cruisers, they were covered in white plastic. And
2 the three Land Cruisers were all covered by plastic covers. *He walked towards
3 the officer. He said that we need to go to Garsila, *so hand over the prisoners, and
4 the officer came and talked to John Koj. He told him, "Deliver and bring out all
5 the prisoners." We -- and he started calling them out. He started calling their
6 names. When the one who hears his name would immediately go outside the cell,
7 he then was delivered to Kushayb and he was driving them like animals.

8 Q. [14:47:50] And what happened to you personally? Did you leave the cell?
9 What happened?

10 A. [14:48:05] John Koj said, "You are not going" -- told me, "You are not going to
11 leave the cell, you are going to stay here." And when I heard that, and of course I
12 did not hear my name being called. He said, that is John Koj, he said "You are going
13 to remain here *so stay in the cell."
14 We were hearing the names of all the prisoners, all the other prisoners. Those whose
15 names were called were sent out of the cells and driven away.

16 Q. [14:48:42] And besides you, were any of those other 80 prisoners left in the cell
17 with you or were you alone, the last one?

18 A. [14:49:02] I was alone in the cell.

19 Q. [14:49:08] And did John Koj tell you why your name had not been called out,
20 why you had not been put on a vehicle?

21 A. [14:49:25] I really don't know. *Earlier I said that I dealt with the man who was in the
22 market. Even the officer deals with him. He used to provide them with material and give
23 them cash. He used to bring them their money or their salary. They used to call him *ustaz*, or
24 sir. (Redacted).

25 Q. [14:50:10] Okay. I think that's a little bit later. So let me ask another question.

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1 Of the 80 men who were taken out of your cell, cell 1, that day by Ali Kushayb, do
2 you follow me? Of those 80 men, have you ever seen one of them alive since then?

3 A. [14:50:47] *When they took them, he said that he was taking them to Garsila. They -- they
4 put the 80 people in the three vehicles. As I said, John Koj would call upon their names and those
5 whose names are called upon, they are -- left and they would get into the vehicles. *When you go
6 to the vehicle, the driver would tell you where to enter. When one vehicle would be full,
7 the others are sent to another vehicle. Those who would find a place would sit, and whenever
8 a vehicle is full, the remainder of the persons and the prisoners would be sent to another Land
9 Cruiser where they would be put. *The driver of the next vehicle would be in charge of the
10 prisoners and how they board the vehicle. So 80 people and three Land -- Land Cruisers. He had
11 only one car for him. He had one guard in the front and one guard in the back. *Then they left,
12 and that was it. That time I don't know if they were going to Garsila or not, but *I
13 heard them say that they were going to Garsila. John Koj opened the *door of the and
14 took me to the second cell and he brought me inside. When I was introduced in
15 the cell number 2, he said to me that "You are going to stay here for now."

16 Q. [14:52:28] Okay. We'll talk about cell number 2 in a minute. But my question
17 is, of those 80 men who were taken away that day on those vehicles, did you ever see
18 any of them again alive?

19 A. [14:53:01] *Afterwards, in the morning, once they had left, we never *received
20 any news on whether they died, or were taken to Garsila. *Only between 8 and 9
21 o'clock, they brought two persons and took them into cell number 2. When they were
22 put in cell number 2, *I greeted them and recognised them. Then I asked them: Aren't
23 you X and Y? And they said yes. I asked: Didn't they register your names and take
24 you to Garsila? Why did they bring you back here? They said: No, they did not take
25 us to Garsila, but they killed some people in three locations... one of them, (Redacted)

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1 said that they hit the man who was next to him who fell on top of him and bled all
2 over me. I stayed still for some time and they did not kill me.

3 The second man, who (Redacted), he told me that *when they went to the last *khor* or creek that was
4 between the mountains, there was a large tree called *murray (phon). *He said: when we arrived there,
5 we were asked to step down, to go down and start running.*They started to shoot at them and while he
6 was running, he tripped and fell down, so he pretended to be dead. When they checked, they thought
7 what he was dead, so they left.

8 *When they left, half an hour to one hour later, he saw that there was nobody
9 around anymore, he went to the mountain and returned to the village. When he got
10 there, some *assakirs* saw him at the gate and brought him back to the cell.

11 Q. [14:55:24] Okay. Let me ask you, do you know a person with the nickname
12 (Redacted)?

13 A. [14:55:32] Yes.

14 Q. [14:55:37] How do you know him -- how did you know him? How do you
15 know him?

16 A. [14:55:45] His name is (Redacted)

17 (Redacted)

18 (Redacted). And this is why I knew him. I saw him, I asked
19 him about his car, he said his car was burned down and now he was left without any car.

20 Q. [14:56:38] Thank you. And did you see (Redacted) in cell 2 at some point?

21 A. [14:56:54] When they brought him, they brought him between 8 and 9.

22 Q. [14:57:04] At night or in the day, in the morning?

23 A. [14:57:12] Evening, in the evening. At 9 in the evening.

24 Q. [14:57:17] And what did he -- did you speak to (Redacted)?

25 A. [14:57:26] Yes, I spoke to him.

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1 Q. [14:57:29] And then just, just briefly, what did he tell you?

2 A. [14:57:40] He told me that Ali Kushayb when he took him out of the prison, of the cell,
3 they *drove for around 1 kilometre. *He said that some people in front of him in the car were
4 taken out of the vehicles, blindfolded, and some were bleeding... Then they went to the next
5 creek. They tied them down and blindfolded them by using white cloths that were covering
6 their heads like a bag. Then they started shooting at them and people died there. He was the
7 only one who did not die among these people. All the others died and he survived.

8 Q. [14:58:45] And just very quickly, when you saw (Redacted) in cell 2, how did he
9 look to you, his clothes, his appearance?

10 A. He wore a *jallabiya*. It was covered in bloodstains. *I asked him, how did you get all this
11 blood since he was neither killed nor hit. He said that the guy who was with him was hit. "We
12 were running and my colleague who was behind me was shot with ammunition, so he jumped
13 and fell on me, on my back, and started bleeding on me." When they came to check, they thought
14 that he was shot and dead, so they went into their vehicles and left. He pretended to be dead.

15 Q. [15:00:03] Before we finish, Mr Witness, let me ask you to clarify one point you
16 made earlier. What you had said in the transcript, and I'll read it out to you, is you
17 said, talking about forces coming and arriving, "... the leader of the other colonels of
18 the Janjaweed, and that's Ali Kushayb." What did you mean by Ali Kushayb as
19 the leader of the other colonels of the Janjaweed?

20 A. [15:00:58] The question is not clear. I did not understand your question.

21 Q. [15:01:02] Thank you.

22 Let me ask it this way, then. What was Ali Kushayb's position in relation -- and
23 we're talking about at this time in 2004, what was his position in relation to colonels
24 of the Janjaweed? What was Ali Kushayb's position in 2004?

25 PRESIDING JUDGE KORNER: [15:01:43](Microphone not activated)

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1 MR NICHOLLS: [15:01:45] Yeah.

2 Q. [15:01:47] His military position. You said he was the leader. Who was he
3 the leader of?

4 MR LAUCCI: [15:01:53] I don't want to be difficult, but before --

5 PRESIDING JUDGE KORNER: [15:01:57] Well, I think we'll take the answer and
6 then (Overlapping speakers)

7 MR LAUCCI: [15:02:03] Yeah.

8 THE WITNESS: [15:02:10](Interpretation) Ali Kushayb, first of all, his rank, you
9 couldn't see any insignia in order to identify his rank. But John Koj told us that he was
10 the *colonel, the highest leader of the Janjaweed. He didn't have any insignia in order
11 to identify whether he was a lieutenant or lieutenant colonel or colonel. We didn't
12 know that, because he didn't have any insignia on his uniform to identify his rank.

13 MR NICHOLLS: [15:02:43] Thank you.

14 PRESIDING JUDGE KORNER: [15:02:50] (Microphone not activated) Mr Laucci,
15 I -- you can deal with any objection you wanted to -- to raise, sorry, when this is
16 finished.

17 MR LAUCCI: [15:03:01] No, I'm happy with the answer. My -- I was about to say
18 that, before asking which rank he had, it would have been useful to say whether he
19 had any rank, but the answer has been made.

20 PRESIDING JUDGE KORNER: [15:03:14] Yeah. All right. Thank you very much,
21 Mr Laucci. All right.

22 Yes, sorry, Mr Nicholls, on you go.

23 MR NICHOLLS: [15:03:25] Just one moment, please.

24 (Counsel confer)

25 MR NICHOLLS: [15:04:07] My apologies.

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1 Q. [15:04:08] Sir, can you now tell us how you ended up being released from
2 the police station in Mukjar?

3 A. [15:04:31] First of all, from the 25th, 26th, 27th, 28th, 29th, 30th, the *Sheikh*
4 Mohamed, Mohamed Torjok came and he said all the prisoners -- and here the officer
5 said that -- so he said to the officer "We are going to provide a financial guarantee to
6 release all the prisoners. We don't have enough money, 50 *pounds, to release these
7 prisoners." So he wrote down our names, the *sheikh*, the *umdah* wrote the names and
8 they asked for all the prisoners to be released from that prison. He said, "I will go to
9 the families and I will ask for them to provide the £50 or *jineh* to release the men."

10 And when the money was provided, the money would be paid and then the person
11 would be released.

12 If the money was not provided for the release of the person, then the person would
13 not be released.

14 And (Redacted) at that time were released and they were able to go back to their
15 family.

16 Q. [15:05:56](Microphone not activated)

17 THE INTERPRETER: [15:05:57] Microphone.

18 MR NICHOLLS: [15:06:01]

19 Q. [15:06:01] And how were you released, sir?

20 A. [15:06:09] Me, since the 30th until the 16th, I was in prison. I wasn't released.

21 And then, on the 16th, in March 2004, the organisation of *Médecins sans Frontières* and
22 the International Red Cross came with their vehicles. They went and talked to
23 the officer in charge. They met with him for about two hours, and after two hours
24 Joe -- John Koj was there. And then later on he came with them, he came to the cell
25 and he said to the officer, "Release them all." And so they called our names, John Koj

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1 opened the door of the cell and we *went out.
2 When we were taken outside we were about 40 or 50 men. When we all went
3 outside they registered our names. I mean by that the Red Cross organisation
4 people, the staff, also the *sheikh* and the *umdah*, and they said "Any person who is
5 really tired or in really bad situation please raise your hand." So I raised my hand.
6 I said, "I'm in really bad state" and they said that we -- I said that I was sick in the cell.
7 And so they registered all our names, we were about 12 individuals, and they
8 released us and we were able to leave on 16 March 2004.

9 Q. [15:08:01] Thank you very much.

10 And this is the last topic I'm going to ask you about, just very briefly.

11 After your release, did you ever visit any places in Mukjar where prisoners were said
12 to have been murdered? Did you ever visit any execution sites?

13 A. [15:08:39] Before we were released, I went to the locality. I met my family and
14 my parents there. I saluted them. And there was a woman there, (Redacted).
15 This individual was also brought by Ali Kushayb from Sindu, and so I called *her and
16 I asked *her about what happened to *her, and *she said that Ali Kushayb brought
17 *her in his car and *she was brought to this point. *She said Ali Kushayb took
18 me -- sorry, the woman said that "(Redacted)
19 (Redacted)." And she -- she said that she was accused of being -- helping the rebels.
20 She said that I was not helping the rebels, (Redacted)
21 (Redacted).

22 Q. [15:09:54] Thank you. I -- I don't think my question got through.

23 My question is, did you ever go and visit a place where prisoners had been killed?
24 Do you understand the question?

25 A. [15:10:28] Yes. I went there with the *organisations, a UNAMID mission.

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1 They invited us into a big room where we met. They invited me. I went with them
2 and they told them -- sorry, they told us we are going to visit a place. They all talked
3 to them and told -- they told us all that we are going to have a field visit, we're going
4 to visit places and identify the places. And this is what happened.

5 We went with them. There were guards there, guards in the front and in the back.

6 We stopped at the first site. We were standing in places where there were stones or remains,
7 or traces. It is to say that this signifies a burial place. So we found a lot of these stones, a lot of
8 these places, and when we asked about what was going on, they told us this is the place of
9 a mass massacre *or genocide and they said this is the first place where such a mass massacre
10 was committed. *That was near Nyerli. And so we went into different places and the last one
11 was next to a creek between two mountains. They took pictures of those places. They talked
12 to the *sheikhs* in those areas. So we went to the first place *with the UNAMID mission,
13 approximately it was about like 300 metres away.

14 Q. [15:12:21] Thank you. I'm not going to ask you to mark on a map or anything
15 like that, but can you just describe as best you can where these places are, the three
16 sites.

17 The first one you said it was about 300 metres away, 300 metres away from what?

18 A. [15:12:56] 300 metres to the north-west side of the UNAMID building.
19 UNAMID building.

20 Q. [15:13:10] And the other two, only if you can, can you describe where those sites
21 were, roughly?

22 A. [15:13:25] I don't know in kilometres, but I can tell you that it was, let's say, 1
23 kilometre or 2 kilometres away. I don't usually use kilometres, I use metres, but let's
24 say it's about 2 kilometres away.

25 Q. [15:13:47] And just away from where, from which town or village?

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1 A. [15:13:59] From the main street, you leave Mukjar towards Garsila, there's a *khor*
2 with gardens and a location known as Nyerli -- Nyerli.

3 Q. [15:14:18] All right. I will leave it there. I have no more questions for you at
4 this time, sir. Thank you very much. My colleagues may have some questions for
5 you, I don't know.

6 PRESIDING JUDGE KORNER: [15:14:27] Yes, thank you, Mr Nicholls.
7 Ms von Wistinghausen.

8 MS VON WISTINGHAUSEN: [15:14:32] I just have one question for the witness.

9 QUESTIONED BY MS VON WISTINGHAUSEN:

10 Q. [15:14:43] Mr Witness, my name is Natalie von Wistinghausen and I'm
11 representing, together with my colleagues, the victims who are participating in these
12 proceedings. And I apologise, I didn't have the possibility or the time, actually,
13 yesterday to meet you and to introduce myself before.
14 I only have one question for you. We have heard a lot about the attack on your
15 village and how you had to flee to the mountains with your family and after coming
16 back being imprisoned and being tortured and going through very, very difficult
17 moments.

18 What I would like to know from you is how would -- what you have witnessed and
19 experienced has impacted your life, at the time and until today? Do you understand
20 this question?

21 A. [15:15:49] I did not quite understand your question.

22 Q. [15:15:51] I apologise. It was too long.
23 You have explained to the judges and to all of us everything that you have lived
24 through in 2003 and 2004. And you had to leave your village and you've been in
25 detention for a long time, and you have been tortured; is that correct?

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1 Can you tell us how this has impacted your life, the way you feel and the way you
2 think, at the time when it happened and maybe until today.
3 And please, if -- if my question is not clear, do let me know.
4 A. [15:16:59] Things didn't change much. What happened was that the events that
5 took place changed things. There were a lot of international organisations that came.
6 A lot of things happened. We don't think much about what happened. Maybe an
7 organisation would come and would try to maybe investigate what happened and
8 you try to remember what happened. I -- the important thing is we were able to stop
9 the problems and I was able to go back to school. But unfortunately I don't have
10 a living, a source of income to continue my education, to finance my -- or support my
11 family. I wasn't able to follow my education and I don't have the finances to also
12 follow up my education even now.
13 And so I have a problem with *studying. I wasn't able to improve my reading skills.
14 And there are still a lot of problems happening even now. There are still
15 displacement. And last Ramadan, I don't know if you heard about the incident that
16 happened in West Darfur, specifically in the IDP camps in Geneina and Kreinik, that
17 was about 15 years ago, they expelled everyone -- 15 days ago, sorry, that was
18 everyone was expelled. All the children, all the women, they were expelled by
19 the Arabs, what were known as the new settlers in Darfur.
20 There's a lot of corruption, a lot of bad behaviours. Women are being raped, people
21 are being aggressed and beaten, whether they're in the souk or in the fields, they
22 could attack you in the market and take all your money. So even now this is
23 happening. Once UNAMID left, things got really worse in the camps and it is still
24 really bad even now. Food is not available. Also education. In the past
25 international organisations would provide education, but right now there is no

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1 government to follow up on that. If you try to find a job to provide food for yourself
2 and for your family, it will be the basics that you can provide. And this is what's
3 happening to all of us.

4 Thank you. And God bless you.

5 Q. [15:20:12] Thank you, Mr Witness, for sharing this with us and for coming to
6 testify in this courtroom.

7 PRESIDING JUDGE KORNER: [15:20:18] Yes.

8 Mr Laucci, it's slightly earlier than I anticipated. Is your difficulty that, in order to
9 get time to speak to your client, you need to break now?

10 MR LAUCCI: [15:20:33] It's not only to speak to my client, Madam President.

11 Especially this morning there has been a lot of new information which were not at all
12 in the statement and I really need to reframe in depth the cross-examination.

13 PRESIDING JUDGE KORNER: [15:20:51] All right. Well, in that case -- I mean, I
14 accept that certainly, as I said, there's a lot of new information that came this morning.
15 All right.

16 Sir, I'm afraid your evidence isn't quite finished, but we're going to finish for today
17 now and tomorrow you will be asked questions by the Defence lawyer and possibly
18 by the judges.

19 I'd just like to remind you that overnight, just relax, try not to -- to think about
20 the case, and don't discuss the case and what you've been saying with anybody. I
21 hope -- I hope you understand that.

22 So, yes, thank you very much. If you'd like to go with the court official, we'll see you
23 tomorrow morning at half past 9.

24 (The witness exits the courtroom)

25 MR LAUCCI: [15:22:24] Yes, and for the purpose of scheduling, I anticipated no

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1 more than one session. I'm not quite sure, I may go over -- a little bit over the second
2 session tomorrow morning, but definitely we can, I believe, start the next witness
3 tomorrow, afternoon at the latest.

4 PRESIDING JUDGE KORNER: [15:22:46] Well, that's very helpful, Mr Laucci.

5 Is there -- is there going to be any problem with that?

6 MR NICHOLLS: [15:22:50] No. The next witness will be ready to go. We don't
7 have another witness, if we finish early on Friday.

8 PRESIDING JUDGE KORNER: [15:22:56] No, well, I don't suppose anybody is
9 going to weep buckets if we do. Although, as I was pointing out, we do have an
10 exceedingly long break now until the next session.

11 Yes, all right. Very well, tomorrow morning at 9.30, please.

12 MR NICHOLLS: [15:23:14] Your Honour, excuse me. Sorry for coughing. And
13 just thinking out loud, and sorry to spring this now, but I wonder if we could again
14 enquire and ensure that we are having Fur interpreters from 1 July. That is, I
15 understand, the plan, but it would be good to get some real confirmation of that.
16 Because I think, although things did progress today, I think there was a - through no
17 fault of anybody here - an interpretation issue that complicated things.

18 So I think it's -- we really need to know, because if we -- we're going to try to -- we're
19 going to get through June, but for witnesses coming in July we really need to know
20 we're going to have Fur, otherwise we will have gaps and we will have problems.
21 Sorry to raise this at the last minute.

22 PRESIDING JUDGE KORNER: [15:24:12] Well, I don't know whether you heard my
23 conversation, I think the mics were off, with the court officer earlier today.

24 Apparently some of the people in the public gallery were Fur interpreters.

25 MR NICHOLLS: [15:24:25] I did not hear that, no.

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- 1 PRESIDING JUDGE KORNER: [15:24:26] So, which heartened me somewhat. This
- 2 morning, not -- not this afternoon. We've heard -- I have no doubt at all that
- 3 the Registry will have enough sense to tell us if there's going to be a problem well in
- 4 advance, but at the moment, as I say, I was heartened to hear that.
- 5 MR NICHOLLS: [15:24:48] Thank you.
- 6 PRESIDING JUDGE KORNER: [15:24:48] Yes, very well. Right, 9.30 tomorrow
- 7 morning, please.
- 8 THE COURT USHER: [15:24:54] All rise.
- 9 (The hearing ends in open session at 3.24 p.m.)