

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 Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 1
9 Thursday, 12 May 2022
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:21] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:48] Yes. Can we call the case, please.
15 THE COURT OFFICER: [9:33:51] Good morning, Madam President. Good
16 morning, your Honours.
17 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
18 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE KORNER: [9:34:08] Yes, thank you.
21 Yes, good morning, all.
22 Can we have the appearances. Prosecution first.
23 MR NICHOLLS: [9:34:15] Good morning, your Honours. Good morning,
24 everyone.
25 Same as yesterday; Pubudu Sachithanandan, Claire Sabatini, and Mohanad Elkholy.

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1 Thank you very much.

2 PRESIDING JUDGE KORNER: [9:34:24] Yes, Defence.

3 MR LAUCCI: [9:34:27] Good morning, Madam President. Good morning,
4 your Honours.

5 This morning, in addition to Mr Ali Muhammad Ali Abd-Al-Rahman, present in the
6 courtroom, Madam Drusilla Bret-Robertson, the intern in our team; Madam Eva Kalb,
7 assistant in charge of the analysis of reviewing the evidence; Mr Ahmad Issa, case
8 manager; Madam Vanessa Grée, legal adviser; and myself, Cyril Laucci, lead counsel.

9 PRESIDING JUDGE KORNER: [9:34:56] Yes, thank you, Mr Laucci.

10 And, finally, Mr Shah, for the victims, I see.

11 MR SHAH: [9:35:02] Yes. Thank you, Madam President.

12 Good morning, your Honours. Good morning, colleagues.

13 Anand Shah, associate counsel for the victims today. Thank you.

14 PRESIDING JUDGE KORNER: [9:35:08] Yes, thank you very much.

15 Yes. Sir, good morning to you.

16 WITNESS: DAR-OTP-P-0990 (On former oath)

17 (The witness speaks Arabic)

18 THE WITNESS: [9:35:23](Interpretation) Hello.

19 PRESIDING JUDGE KORNER: [9:35:23] You will finish giving your evidence today.

20 I have no doubt you'll be very happy to hear that. And you're going to be asked
21 questions now by Mr Laucci, who is counsel for the accused in this case.

22 If there's any problem, again, if you don't understand the question, as I'm sure

23 Mr Laucci will explain to you, then say so straightaway, and I'm sure Mr Laucci will
24 rephrase it.

25 Right. Mr Laucci.

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1 MR LAUCCI: [9:36:08] Thank you, Madam President.

2 QUESTIONED BY MR LAUCCI:

3 Q. [9:36:13] Good morning, Mr Witness. We met briefly two days ago now. I

4 introduce myself. So I'm Cyril Laucci, the lead counsel for the Defence of

5 Mr Ali Muhammad Ali Abd-Al-Rahman.

6 I want to thank you for appearing today and yesterday before this Court, and I want

7 to insist that this appearance is an important moment for you because that is your sole

8 opportunity to contribute to the establishment of the truth in the present case. So

9 thank you for that.

10 And my apologies to the public because I have to start with a closed session. I

11 would say 15 to 20 minutes. I have to ask questions which are related to the identity

12 of the witness.

13 PRESIDING JUDGE KORNER: [9:37:06] Yes, very well. We'll go into private

14 session.

15 (Private session at 9.37 a.m.)

16 THE COURT OFFICER: [9:37:22] We're in private session, Madam President.

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18 A. [9:44:49] First *the Quranic schools were not working -- well, I didn't have much

19 to do. *So, every morning before I have my morning tea, there was no one around. I

20 did not have my wife around me. I did not have anyone else. So every morning I

21 would look at the papers before breakfast and read and *memorise it by heart.

22 After breakfast, I could have neighbours stopping by and visiting me *and my

23 children come to talk to me. Of course, I would not show any papers *to them.

24 Otherwise, they would know about what I have, and I don't want that to happen. So

25 what I did was to *memorise these things by heart every day before *the morning tea.

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1 Q. [9:45:26] Yeah, sure. And I can confirm that you did well not to mention to

2 anybody else that you -- you are appearing as a witness. Which papers are you talking about?

3 A. [9:46:00] (Redacted)

4 (Redacted). It's information about the events. So I copied those writings on paper,
5 including events and dates.

6 Q. [9:46:20] Okay. So what you are clarifying is that the information on this paper
7 was the information that you had collected?

8 A. [9:46:36] Yes, the exact same information.

9 Q. [9:46:40] Thank you.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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20 THE WITNESS: [9:53:50](Interpretation) When I arrived here, I provided them all
21 the information I had. They told me, "Well, is that everything? If it's everything,
22 then we're good. We will set a date when you appear in a court hearing to tell the
23 Court about what happened to you and about what you witnessed with your own
24 eyes and what happened to a family and to all people, the things you've witnessed
25 and that you would tell to the Court."

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16 Q. [9:55:25] So, Mr Witness, it is mentioned in your statement, at paragraph 12, that
17 you were given -- you were given an opportunity to review your statement after
18 making it and make any corrections or additions you wanted to do.

19 Do you remember that?

20 A. [9:55:55] Yes, I remember that.

21 Q. [9:55:57] And you signed your statement after reviewing it and without adding
22 anything to add to what was in?

23 A. [9:56:10] Indeed, I signed it as it is.

24 Q. [9:56:18] So the fact that you signed, does that mean that you were satisfied with
25 what was written and that you had nothing to add?

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1 A. [9:56:40] Certainly. It's things that I *memorised by heart or things that I
2 witnessed and recorded. But things I did not see, I could not testify about. I
3 wouldn't mention things that I did not witness. As a witness, you can't claim
4 something, then deny it afterwards. Otherwise, you would be a liar.

5 Q. [9:57:06] Thank you, Mr Witness. So I fully understand what you say. So
6 what is in your written statement is everything you feel authorised to testify on
7 because you had witnessed it?

8 A. [9:57:36] Yes, exactly. What is written is what happened to all of us and to me
9 personally. It's an account of all that happened. That's what you find on paper,
10 and that's also what I have explained to you in person.
11 Again, it is what I saw with my own eyes and heard with my own ears. That's what
12 I wrote.

13 Q. [9:58:16] Thank you, Mr Witness. But then how should we consider the
14 information that you provided yesterday for the first time and which are not in your
15 written statements?

16 PRESIDING JUDGE KORNER: [9:58:31] Mr Laucci, I really don't know how
17 would -- you're asking him a rhetorical question, "how would we consider". I think
18 you've just got to --

19 MR LAUCCI: [9:58:43] I'll rephrase. I'll rephrase.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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3 Q. [10:18:21] Thank you. And if a witness says that the --

4 MR NICHOLLS: [10:18:32] Your Honour -- sorry, your Honour.

5 PRESIDING JUDGE KORNER: [10:18:42] Yes.

6 MR NICHOLLS: [10:18:43] I also object to "if a witness says that" as part of the -- as
7 part of the question.

8 I mean, I think he --

9 PRESIDING JUDGE KORNER: [10:18:45] Sorry, just a moment, I was getting Arabic
10 interpretation which doesn't help much.

11 THE INTERPRETER: [10:18:47] Sorry. The interpreter apologises because -- well,
12 the interpreter are very sorry because they had to switch channels. Okay. Sorry for
13 that.

14 PRESIDING JUDGE KORNER: [10:18:50] Okay. Start again, would you,
15 Mr Nicholls.

16 We're still getting Arabic. Can we just change ...

17 MR LAUCCI: [10:19:07] We still receive Arabic on the English channel.

18 PRESIDING JUDGE KORNER: [10:19:14] Okay. Try again, Mr Nicholls.

19 MR NICHOLLS: [10:19:15] I'm sorry to object, but I do object to, in the form of the
20 question, "if a witness says" being embedded into it. That is still adding this element
21 that is completely unnecessary, that puts in the witness's mind that another witness is
22 contradicting him.

23 I think the proposition gets to be put as "if I told you" or if -- if -- "I put it to you that
24 this axe, is that correct or not." I think "if a witness says" adds this element which is
25 unnecessary. Sorry. And I don't have the case law in front of me, but even without

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1 naming the witness, it's the same problem.

2 PRESIDING JUDGE KORNER: [10:19:54] Well, I think, as I explained it, Mr Laucci,
3 you can't say that somebody is going to come long and say this. That's pure
4 comment. As Mr Nicholls says, the way to do is simply to say -- put to him, so it
5 would be wrong to say.

6 MR LAUCCI: [10:20:12] I'm happy to follow that route.

7 PRESIDING JUDGE KORNER: [10:20:15] Right. Thank you.

8 MR NICHOLLS: [10:20:15] Sorry to object.

9 PRESIDING JUDGE KORNER: [10:20:16] No, no. Well, I think I've been trying to
10 steer Mr Laucci away from the comment aspect, but it's fair enough.

11 MR LAUCCI: [10:20:25] Welcome, colleague.

12 (Redacted)

13 (Redacted)

14 (Redacted)

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21 (Open session at 10.24 a.m.)

22 THE COURT OFFICER: [10:24:44] We're back in open session, Madam President.

23 MR LAUCCI: [10:24:48] And my apologies to the public.

24 Q. [10:24:49] Mr Witness, we are not back in public session, so everybody can hear

25 what you say. So if you identify something that you don't want the public to know,

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1 that you would need to say in answer to my questions, just say, "I cannot answer that
2 question because ..." Okay?

3 So the first -- the next topic and the first topic I want to explore with you is these
4 events in 1999, when you say you first met a person who introduced himself as Ali
5 Kushayb and also as Ali Abd-Al-Rahman Ali.

6 It's not yet the question, but I just repeat, including for the public. So you say this
7 was in Garsila market, in 1999, you went two times to that person's pharmacy to buy
8 medicine for yourself. And the first time you went there, you had like a friendly
9 chat. He introduced himself. He specified that he was known under the nickname
10 "Ali Kushayb". He specified that this nickname came from his great, great
11 grandfather. He mentioned to you that he was a former master sergeant in the army,
12 and he kindly asked you to make some advertisement to promote his pharmacy and
13 that he would offer you discount for that.

14 Is that summary of this first interaction correct? Do you have anything to change to
15 what I just said?

16 A. [10:27:25] No, that is correct. This is what he said and what happened, as I
17 said.

18 Q. [10:27:32] Thank you. Did that man mention to you any other occupation he
19 had by the time, in addition to being a pharmacist?

20 A. [10:27:52] No. No, I did not say another profession or a job, but I heard that
21 from some people, who said that he worked in a union of those who are taking care of
22 horses. Of course, as I said, I only write down what I heard. But, of course, I did
23 not write down anything else, only the facts which I see as facts. And I keep those in
24 my mind, of course.

25 Q. [10:28:28] Thank you. Actually, I was about to ask you because, during your

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1 preparation session, you mentioned for the first time this Horse Union. So you just
2 said, the information that the pharmacist was also the head of the Horse Union was
3 given to you by someone else, not the pharmacist, right?

4 A. [10:29:00] Yes, that is correct.

5 Q. [10:29:11] Do you remember who gave you that information about the Horse
6 Union?

7 A. [10:29:27] Yes, I remember his name. His name is (Redacted)
8 Taha. He works in the forestry -- well, farming and forestry, and he told me that this
9 person used to work in the union of these horses. Of course, this *horse race
10 happens only once *a year, but he said that he works only once a year, when he goes
11 there and puts down the names of those who will be taking part in the event. And
12 the citizens, of course, will come because that will -- the winner of that race, of course,
13 will be given a prize. So this is the other person who told me all this information.

14 Q. [10:30:30] Do you know anything about the membership of this Horse Union?
15 Who are the members of that union?

16 A. [10:30:49] I don't know about that, but I heard from others that that person
17 worked there. I did not work there. And I hear a great deal from people, and I
18 don't keep everything in mind, and I don't record everything on paper. All I record
19 is what I see with my own eyes or hear with my own ears.

20 Q. [10:31:15] Fair enough. Thank you. Last question: When would that
21 pharmacist have been the head of the Horse Union, according to your information?

22 A. [10:31:49] As I've told you, I did not *memorise by heart the things they told me,
23 but he spoke to me in the same year, which is 1999.

24 I heard from (Redacted)

25 what he said by heart. I wasn't aware that I would be asked

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1 about this after some time, so I'm not in command of that information. And should I
2 give an answer anyway, I would be lying.

3 Q. [10:32:24] Mr Witness, no need to apologise. That's totally fair. We fully
4 understand. Just to say, "I don't know," and that's simple.

5 What you just said is that the information, that the pharmacist was the head of the
6 Horse Union, was given to you in 1999. If you confirm so, that's enough.

7 A. [10:33:00] That is correct.

8 Q. [10:33:04] Thank you. Do you know what "kushayb" means?

9 A. [10:33:22] "Kushayb" is a reference to an old ancestor. Your forefathers, when
10 you go to a drugstore or to a public space, you don't find "the sons of Mr X". The
11 reference, for the person to be recognisable, should be to "the persons of forefather".
12 So when you go to a shop to buy something, that's how you recognise a person.
13 Also, if you conduct business yourself, if you're selling something, people will
14 recognise you based on your fourth ancestor or fifth great-grandfather, and so forth.
15 That's how people get acquainted with each other, and that's how people are
16 reassured about each other.

17 If you recognise a person's father or a grandfather, and so forth, then you would
18 find -- fill -- you're familiar with that person, and he would be at ease with you. He
19 would treat you nicely, be hospitable, get you tea, even. So that's how people get
20 acquainted and are reassured about each other.

21 PRESIDING JUDGE KORNER: [10:34:37] I think the question was meant to ask you,
22 what does the word "kushayb" mean? Does it have a meaning, the actual word?

23 THE WITNESS: [10:35:05] The word "kushayb" is a family name.

24 MR LAUCCI: [10:35:14] Thank you, Madam President. And thank you,

25 Mr Witness.

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1 Q. [10:35:19] This Court has already heard about another meaning of the word
2 "kushayb", which I submit to you, and tell us if you are aware about. This word
3 refers to a local -- a local alcohol that is brewed in Sudan.

4 Did you ever hear about that?

5 A. [10:35:55] I've never heard of such thing. I've never heard that there was a
6 drink called "Kushayb". Not once in my lifetime.

7 Q. [10:36:14] Okay. Well, this was described as something very well-known and a
8 fact of common knowledge that "kushayb" could be, could be --

9 PRESIDING JUDGE KORNER: [10:36:24] It's a comment. You can even make it
10 later, Mr Laucci.

11 MR LAUCCI: [10:36:30] Point taken.

12 Q. [10:36:33] So for you, "kushayb", as of itself, has no pejorative meaning, like
13 meaning someone who would be addicted to alcohol?

14 A. [10:37:04] First of all, I only speak the truth. I have never heard of an alcoholic
15 beverage called "Kushayb".

16 Second, in Sudan, you need a nickname to be recognisable, regardless of your real
17 name. Your real name is known, but your nickname is what people recognise you
18 by. If you have a nickname, then it's what people use to refer to your shop, to your
19 line of business, to your attire. Even you would have a nickname written in front of
20 your shop or place. So the nickname is what matters.

21 Q. [10:37:59] And when that nickname is not a nice one, is one that has a pejorative
22 meaning, is the person obliged to accept that nickname?

23 A. [10:38:33] Yes, because it sticks with you. It's what people recognise you with
24 continuously. It's how you get acquainted with knew people, and that's how people
25 introduce you to others. And if somebody fails to recognise you in other terms, you

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1 would use your nickname to introduce yourself. The nickname is how people are
2 known around back home.

3 Q. [10:39:02] And cannot people with the bad luck of not having a nice nickname,
4 do they have the possibility to change it and say, "No. Now my nickname is this
5 other name. I don't want to be called that way any longer"?

6 A. [10:39:42] You don't make a nickname for yourself. It is the family, it is the
7 family that gives you a nickname. Nobody ever attributes a nickname to hisself.

8 Q. [10:40:01] So, in your case, Mr Witness, if you had had the bad luck to receive
9 the nickname "drunk", you would accept that?

10 A. [10:40:37] If the nickname were to be changed, it's the family that makes this
11 change. Unless you use force. * For example, *you use a knife, or another weapon
12 to frighten people, to tell them, "If you ever use that nickname to call me, I'm going to
13 use force against you."

14 But people are known by their nicknames. People do not refer to each other by their
15 official names as found in official IDs.

16 Q. [10:41:20] So someone who would be ready to use force, who have no hesitation
17 to be violent, may force people to call them by a name that is not ridiculous; is that
18 correct?

19 PRESIDING JUDGE KORNER: [10:41:40] Yes, Mr Nicholls.

20 MR NICHOLLS: [10:41:41] I think it's really getting into speculation and argument.
21 A hypothetical person could force somebody to do something, but ...

22 PRESIDING JUDGE KORNER: [10:41:53] Well, I mean, at the moment, I don't see
23 it's objectionable.

24 I don't see where it's getting you, Mr Laucci, at the moment, but if you want to carry
25 on, I'm not going to stop you.

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1 MR LAUCCI: [10:42:06] Thank you, Madam President. It was the last question on
2 this changing nickname issue.

3 Q. But, yeah, so basically what you've just said is that someone who is ready to use
4 force can force people to change their nickname if they don't like it?

5 A. [10:42:37] They wouldn't call you that nickname in front of you, but they would
6 use it behind your back, because that's how you're known around.

7 Q. [10:42:46] I see. Thank you.

8 You explained that, in the case of the pharmacist, Kushayb was like the great
9 great-grandfather. This Court is aware about the way Sudanese names are
10 composed, with a series of first names, one after the other, corresponding to
11 generations. So you're given name, the name of your father, of your grandfather, of
12 your great-grandfather.

13 PRESIDING JUDGE KORNER: [10:43:28] Well, wait a minute. Sorry, Mr Laucci,
14 you may be aware, but I don't think we've heard evidence about that. So let's find
15 out whether the witness agrees with you.

16 MR LAUCCI: [10:43:38] In my recollection, we have already received evidence, but I
17 can ask the witness to confirm if he agrees with that presentation.

18 Q. [10:43:53] So do you confirm, Mr Witness, that it is the way Sudanese names are
19 composed, usually, what I described?

20 A. [10:44:09] That's how it's written, yes. But the nickname is something that you
21 would write in front of your shop. It could be a reference to a great-grandfather. It
22 is what people use to refer to your family in general.

23 Q. [10:44:33] Thank you. You say it would be written in front of the shop. Was it
24 written "Ali Kushayb" in front of the pharmacy?

25 A. [10:44:56] The local pharmacy or a pharmacy in a village don't have any

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1 writings, but you would know personally that it's Dr X specialised in treating certain
2 diseases, and it could be a general practitioner or a surgeon. So you know the
3 person's name already and his field of medical specialty already. And based on that
4 knowledge, you go to that person. And this applies to pharmacies as well.
5 However, it is not the case when it comes to the government's facilities.

6 Q. [10:45:44] Thank you. I come back to this composition of names by generation.
7 Do you agree that -- or are you aware that, in addition to these four first names
8 corresponding to the four generations, one name that Sudanese people may use or
9 like to use is the name of the person who founded their tribe, the founding father of
10 the tribe?

11 A. [10:46:42] I did not understand the question.

12 Q. [10:46:45] I go step by step. Most people in Sudan belong to a tribe; is that
13 correct?

14 A. [10:47:02] Correct.

15 Q. [10:47:03] Most tribes have in their history a famous character who is identified
16 as the one who founded, created the tribe; is that correct?

17 A. [10:47:38] I wasn't present in those historical times *of the Sultanate, but what I
18 know is that the *shartay* is the highest ranking person in the village. For example,
19 our *shartay* is also responsible in -- is also in charge in Mukjar. I hear about sultans
20 in the past, but I was not present in those times, so I cannot confirm in that regard.

21 Q. [10:48:16] No, of course, witness. By definition, you could not be present
22 because I'm talking about sometimes ancient time, can be 19th century, 18th century.
23 So neither you nor I were present to witness that.

24 I move on just to say that -- well, no. Once again, are you familiar with people
25 having the knowledge of who is their ancestor who founded the tribe?

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1 A. [10:49:22] In Sudan, in general, you can't identify that person, but in Darfur, you
2 can. You could ask. And if you don't know, you could go to the *shartay*. He
3 would give you the information. The *shartay* knows about that.

4 Q. [10:49:44] Thank you. Could you identify or did the pharmacist tell you what
5 was his tribe?

6 A. [10:50:09] He did not tell me what his tribe is, but he told me what his
7 occupation had been and that he left it and he was then working as a pharmacist
8 instead.

9 Q. [10:50:40] Okay. How old was the pharmacist?

10 A. [10:51:01] I did not ask about his age, his religion, or his history. I did not ask
11 about any of that.

12 Q. [10:51:09] But in your perception, what category of age may he have been?

13 A. [10:51:30] I can't say specifically how old he was, unless -- you can only tell if
14 he -- you can only tell if you see his ID or if he shows you some document, otherwise
15 you'd be lying.

16 THE INTERPRETER: [10:51:47] Mr Laucci, if you wish, we can ask it differently and
17 hope that you will elicit the answer.

18 MR LAUCCI: [10:51:55]

19 Q. [10:51:55] Mr Witness, let me reassure you that, giving your impression, even if
20 that does not correspond to the truth, is not considered a lie. So relax. I'm just
21 asking you if what would be the age of the pharmacist that you had in front of you in
22 1999 and you may be wrong, but just what was your perception of his age?

23 A. [10:52:47] I'd be happy to answer, but it could be far from the truth. When I
24 saw him, he was around the age of 45 to 50, but only God knows if I'm telling the
25 truth.

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1 Q. [10:53:13] Thank you. How many pharmacies were there in Garsila in 1999?

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. [10:54:12] Without a specific number, did you know about any other pharmacy
8 than the one where you went in 1999, in Garsila.

9 A. [10:54:44] I did not see any other pharmacy because I did not seek to go to
10 another pharmacy. The one that was nearby was that of Ali Kushayb. I did not
11 seek to go to another pharmacy.

12 Q. [10:54:59] Thank you, Mr Witness.

13 I'm moving forward to 2004. And in your written statement - no need to put it on
14 the screen, but for the record, it's in tab OTP number 3, DAR-OTP-0223-0217, at 0223,
15 paragraph 27 - you explain that in February 2004, when you first heard the name "Ali
16 Kushayb", you immediately established the link with that pharmacist you had chatted
17 with five years earlier in 1999.

18 Is it your evidence that you had kept such a vivid memory of that conversation that
19 you have had five years earlier?

20 A. [10:56:55] Back then, I was a young man, but I wasn't 100 per cent sure. You
21 have to see the person. And there could be a mark from which you recognise if it's
22 the same person. So at that point in time, problems happened. I'm referring to 2004.
23 And I saw him at the police station in 2004.

24 Q. [10:57:32] Thank you. But in 2004, you fully remember the name of the
25 pharmacist you discussed with once in 1999.

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1 PRESIDING JUDGE KORNER: [10:57:52] To be fair to the witness, it's twice he says
2 he saw him.

3 MR LAUCCI: [10:57:57] Twice in 1999, yeah, it's correct.

4 THE WITNESS: [10:58:15](Interpretation) Yesterday, I said, it was when I had a
5 stomach problem that I met him, and he told me about his occupation and work.
6 That was the first instance.

7 The second instance happened the same month of the same year, when I met Al
8 Kushayb. So I met him twice, a month in the same -- twice in the same month of the
9 same year.

10 MR LAUCCI: [10:58:48]

11 Q. [10:58:50] Yes, but this pharmacist that you met twice five years earlier, in
12 February 2004, you have a very clear memory of his name; is that what you say?

13 A. [10:59:12] He was sitting outside, and I was seeing him clearly. So I figured it's
14 the same person who was -- who had been working at the pharmacy in Garsila, with
15 whom I got acquainted and I had a talk and who told me about his past job and his
16 then current job at the market. And then he introduced his -- his -- himself with his
17 full name in front of Lieutenant Colonel Mustafa Al-Tayyib. He said, "I am
18 Ali Abd-Al-Rahman Ali Kushayb." And he said that, "I came from the governorate,
19 heading to Sindu to face the rebels." He said himself that he was Ali Kushayb.

20 Q. [10:59:59] Okay. But in your statement, Mr Witness, you say that, even before
21 you saw the man who introduced himself as Ali Kushayb in 2004, you had heard his
22 name, and when you heard his name, without seeing him, you immediately made the
23 link with the pharmacist of 1999.

24 MR NICHOLLS: [11:00:34] Your Honour, I think it would be fair at this point to just
25 read that short paragraph of the statement to the witness to maybe make it clearer,

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1 because "you heard the name in 2004" is not as precise as being put to him what he
2 said in the statement. So I think --

3 MR LAUCCI: [11:00:51] Very good suggestion.

4 PRESIDING JUDGE KORNER: [11:00:53] I think what we'll do is - in any event, it's
5 11 o'clock - we'll take the break.

6 MR LAUCCI: [11:00:56] Can we just complete that tiny item? And after that will be
7 a nice moment for the break, with your permission.

8 PRESIDING JUDGE KORNER: [11:01:07] Yes.

9 MR LAUCCI: [11:01:11]

10 Q. [11:01:12] Okay. So I read paragraph 27 of your statement: "On
11 21 February 2004, I heard John Koj say to us through the cell door that" --

12 PRESIDING JUDGE KORNER: [11:01:26] Slow down.

13 MR LAUCCI: [11:01:29] Sorry. I start again slower.

14 Q. [11:01:32] "On 21 February 2004, I heard John Koj say to us through the cell door
15 that Ali Kushayb was soon to arrive to Mukjar from Garsila and that he will go to
16 Sindu."

17 I pass -- the next sentence is not important.

18 "When I heard the name Ali Kushayb, I understood it to be the person who had sold
19 medicine to me in 1999."

20 So do you confirm what is written here, that even without seeing the man called Ali
21 Kushayb in 2004, when John Koj told you the name, you immediately said, "Oh, that's
22 my pharmacist of 1999?"

23 A. [11:02:58] I was --

24 THE INTERPRETER: [11:03:03] If the gentleman can be asked to start his answer
25 over.

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1 MR LAUCCI: [11:03:08]

2 Q. [11:03:08] Witness, witness, sorry. The interpreter did not get you. Can you
3 start again your answer, please.

4 A. [11:03:22] I am 82 years old. I've never heard the name Ali Kushayb in the
5 Kobra locality. I only heard his name in Garsila.

6 MR LAUCCI: [11:03:43] Okay. We are facing the problem of interpretation here,
7 I'm afraid. Let's take the break and come back to that after.

8 PRESIDING JUDGE KORNER: [11:03:50] Yes. We'll take the break until 11.35.

9 THE COURT USHER: [11:03:56] All rise.

10 (Recess taken at 11.03 a.m.)

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

12 THE COURT USHER: [11:37:03] All rise.

13 Please be seated.

14 PRESIDING JUDGE KORNER: [11:37:31] Mr Laucci, I gather you think you can
15 finish by the next break.

16 MR LAUCCI: [11:37:36] And I did a lot of cuts in order to achieve that.

17 PRESIDING JUDGE KORNER: [11:37:40] Thank you. Right. Yes, yes.

18 MR LAUCCI: [11:37:46] Thank you, Madam President.

19 Q. [11:37:50] Mr Witness, are you well? Refreshed?

20 A. [11:37:55] Praise be to God.

21 Q. [11:37:58] So we will move on. I will not come back to the last question I asked
22 you before the break, no need. Just one last thing about what we discussed before
23 the break. At some point you mentioned that you actually recognised the
24 pharmacist when you saw him in Mukjar in 2004 and I would like you to clarify, you
25 say if there is a mark that helps to identify that person, what -- did you refer -- what

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1 was this mark? Is it something -- did you see a mark that made that you could
2 recognise the pharmacist of 1999?

3 A. [11:39:00] You first asked me: How could you recognise the person? I said to
4 recognise a person, maybe the person has a mark, a particular feature, if he's tall, if
5 he's white, if he's a redhead, if he's black, if he's short. So if he has any -- if the
6 person has any mark that you recognise, then you would say, well, I don't recognise
7 any of this person's features and I don't recognise this person.

8 Q. [11:39:36] And so was it the case? Did the person had a mark that made you
9 recognise him?

10 A. [11:39:52] He did not have any mark, but he was tall and black.

11 Q. [11:40:00] Thank you.

12 PRESIDING JUDGE KORNER: [11:40:02] I think, Mr Laucci, we better find out
13 (Overlapping speakers)

14 THE WITNESS: [11:40:05](Interpretation) As I have told you before.

15 THE INTERPRETER: [11:40:08] Continues the witness.

16 PRESIDING JUDGE KORNER: [11:40:14] Why did you recognise him then?

17 THE WITNESS: [11:40:26](Interpretation) When I saw the man, he is a known
18 person, a well-known person. If somebody new shows up in the area, he would be
19 noticed. Everybody would notice him. He wasn't frequently visiting our area, but
20 when he came, he was known to some. Those who recognised him said so. Those
21 who did not said they did not know him. And he was among those we recognised.
22 But if we -- even if we recognised him, we would not be talking about it. And even
23 if we did not talk about it, we recognised the person anyway.

24 PRESIDING JUDGE KORNER: [11:41:23] Okay. When you say "If he shows up in
25 the area", do you mean Mukjar, at the police station?

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1 THE WITNESS: [11:41:48](Interpretation) What I meant specifically is (Redacted).

2 In Mukjar, if somebody new shows up, he would be introduced to the people like
3 where he's from and what the person's occupation is, people would get to know about
4 the person in the marketplace.

5 PRESIDING JUDGE KORNER: [11:42:18] So when he showed up at Mukjar, you
6 told us that everybody would notice him and he was known to those would
7 recognised him.

8 Are you saying to the Court that other people in the prison with you
9 said -- recognised him.

10 THE WITNESS: [11:43:00](Interpretation) I'm not referring specifically to Ali
11 Kushayb. I'm referring to any person who shows up in Mukjar. If we fail to
12 recognise the person, certainly the *sheikh*, the *umdah*, the high officials would
13 recognise -- or would have to be acquainted with this person. We rely on a
14 community management of affairs. If someone new shows up, his presence should
15 be recognised by the community managers through the *sheikh*, through the *umdah*,
16 also through the *shartay*, he seeks some form of recognition and acknowledgment
17 from these people. So he seeks recognition from the community managers before
18 recognition from the government representatives.

19 PRESIDING JUDGE KORNER: [11:43:53] Yes, all right. Thank you.

20 MR LAUCCI: [11:43:58] And just to follow up to your question, Madam President,
21 and to be fair to the witness.

22 Q. [11:44:04] Actually, Mr Witness, in your written statement, you say that it was
23 actually John Koj who told you that that person that -- who was coming was Ali
24 Kushayb; is that correct?

25 A. [11:44:28] I did not understand the question.

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1 Q. [11:44:31] Question is, when you were detained in Mukjar, is it John Koj who
2 told you first that Ali Kushayb was coming?

3 A. [11:44:56] Yes, John Koj was the first person to speak and when he said so, I
4 recognised who the person was because there was no other Ali Kushayb. The only
5 Ali Kushayb is -- was the one I had met in Garsila. And I wasn't sure if indeed it
6 would turn out to be the exact same person. When he showed up, I then realised,
7 well, certainly it is the same person.

8 Q. [11:45:27] Thank you. And actually, yesterday you -- you added, and this was
9 something that my learned colleague in the Prosecution reacted, that John Koj
10 actually is -- even said that Ali Kushayb was, I quote, "the highest leader of the
11 Janjaweed."

12 I'm referring to real-time transcript page 81, line 5 to 6.

13 So that information, again, that Ali Kushayb was coming and that he was the leader
14 of the Janjaweed, you got it from John Koj?

15 A. [11:46:19] Yes, correct.

16 Q. Thank you.

17 MR LAUCCI: [11:46:19] Madam President, are you happy with that clarification?

18 PRESIDING JUDGE KORNER: [11:46:23] Thank you very much, Mr Laucci. That's
19 very helpful.

20 MR LAUCCI: [11:46:26] Thank you.

21 Q. [11:46:30] So now, Mr Witness, my questions will be related to your detention in
22 Mukjar.

23 So you described this cell number 1 at the police station in Mukjar where you were
24 detained with 80 other people. You said that the dimensions of the room was
25 approximately 5 metres by 5 metres. So this must have been, I assume, extremely

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1 crowded. Yesterday, you even explained that you had to stand the full day and that
2 you could only sit at night to try to find some sleep.

3 For the record, it's the real-time transcript of yesterday page 42, lines 18 to 20.

4 In such crowded conditions, it must have been very difficult to move within the cell.

5 Did you -- in your recollection, did you always stay at the same place within the cell,
6 or were you about to -- were you able to circulate?

7 A. [11:48:32] When I was put in prison, I stayed in the north-western corner of the
8 room facing the south.

9 Q. [11:49:02] So you say you were standing and sitting close to one corner, the
10 corner that you put in the north-west. So you were next to two walls, actually.

11 A. [11:49:24] Between two doors. There -- there were two doors and one of the
12 doors could be opened.

13 Q. [11:49:36] Could we please have the sketch of the cell that we had yesterday.
14 The -- the reference number is DAR-OTP-0223-0232. It was displayed yesterday, if
15 we can see it again, please. It's tab 4 on OTP list.

16 Do you see the sketch of the -- of the cell in front of you, Mr Witness?

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

18 Q. [11:50:29] So you just said you were standing, sitting in the north-west corner.
19 Is it the corner that is at the top left of the -- of the sketch, of the -- of the room in the
20 sketch?

21 A. [11:51:00] Should I put a mark on using the pen I have here or how exactly
22 would you like me to point this to you?

23 Q. [11:51:06] That would be extremely useful if you can.

24 So what you are pointing at is top right of the cell number 1.

25 I do not exactly remember how this is oriented.

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- 1 PRESIDING JUDGE KORNER: [11:51:52] Are the windows the things we can see on
2 the left, Mr Nicholls? I see you're on your feet.
- 3 MR NICHOLLS: [11:51:59] I don't know if my colleague wants me to say anything,
4 but the -- the left of the image as we look at it is north.
- 5 PRESIDING JUDGE KORNER: [11:52:11] Right.
- 6 MR NICHOLLS: [11:52:11] And so the top is east, I suppose. They have the other
7 sketch, which might -- the aerial which might help.
- 8 PRESIDING JUDGE KORNER: [11:52:26] Right.
- 9 MR LAUCCI: [11:52:28] Okay. Maybe then the right way to do it, yes, would be to
10 put for the record that the witness pointed at the top right corner of the cell.
- 11 PRESIDING JUDGE KORNER: [11:52:45] Yeah.
- 12 MR NICHOLLS: But --
- 13 PRESIDING JUDGE KORNER: [11:52:45] Well, that's where he -- at least the circle
14 that he seemed to be. Have we got a paper copy he can mark?
- 15 MR NICHOLLS: [11:52:53] He can mark that one, I think, but I do have a paper
16 copy.
- 17 PRESIDING JUDGE KORNER: [11:52:57] Well, can he mark -- okay, can he mark --
- 18 MR NICHOLLS: [11:52:58] I was just going to say --
- 19 MR LAUCCI: [11:53:00] We have one here.
- 20 PRESIDING JUDGE KORNER: [11:53:02] Well, apparently he can mark it on the
21 screen.
- 22 MR NICHOLLS: [11:53:20] I see it's marked with a red dot, your Honour.
- 23 PRESIDING JUDGE KORNER: [11:53:24] Oh, I see.
- 24 MR NICHOLLS: [11:53:24] Small, but we can see it.
- 25 PRESIDING JUDGE KORNER: [11:53:33] Well, are you -- are you indicating, sir,

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1 near the door then? If that is the door. There seems to be an opening.

2 MR NICHOLLS: [11:53:45] Yes, your Honour, it's very small, but it's written "Door"
3 there.

4 THE WITNESS: [11:53:48](Interpretation) Yes, next to the door, yes.

5 THE COURT OFFICER: [11:54:04] And, your Honours, the hard copy version is on
6 the evidence 2 channel.

7 MR LAUCCI: [11:54:12]

8 Q. [11:54:12] Okay. And do I take it, Witness, that you stayed approximately at
9 this location the full time?

10 A. [11:54:31] Yes.

11 Q. [11:54:34] Thank you. When -- when you -- when you saw the man
12 Ali Kushayb in -- in Mukjar and you recognised him as your pharmacist of 1999, did
13 you try to identify yourself to him?

14 A. [11:55:23] I did not understand the question.

15 Q. [11:55:25] I'll repeat it. You are in Mukjar, you are in detention, terrible
16 conditions. You follow me? There is one person that comes who has been
17 described to you as a person with some authority and you happen to recognise that
18 person as being the pharmacist you met earlier and with whom you had established a
19 kind of friendly customer/seller relationship.

20 My question is, did you try to identify yourself because -- oh, I stop here.

21 A. [11:56:41] As a citizen, you could not talk at all, only the *umdahs* and *sheikhs*
22 could talk. But even then they are not allowed to speak for long, they only utter two
23 or three words. And it was only *Umdah* Yayha who spoke in front of the minister.
24 But the -- a regular person can't talk. Only an *umdah* or a *sheikh* can talk. The only
25 thing you do is to answer "no" when -- when you're called a rebel or a *tora bora*. You

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1 can't even look these people in the eye. You have to look down because they would
2 be upset if you look them in the eye. You have to face -- put your -- I mean look
3 down and look at the ground and your head down.

4 Q. [11:57:46] Okay, Mr Witness, but did you not have the -- the feeling or hope that
5 if that person had recognised you the same way as you did, he may have remembered
6 you and realised that you had nothing to do in this jail, you were not a rebel?

7 A. [11:58:32] Had he recognised me, he would have asked me: Aren't you Mr X?
8 He did not recognise me. It was only the *umdaqs* and *sheikhs* who tried to speak and
9 who tried to introduce themselves. The *sheikhs* and *umdaqs* introduced themselves,
10 and consequently, he instructed that we all be taken out of the prison. *He hit us and
11 got us out. But he did not recognise me so I did not introduce myself either.

12 Q. [11:59:01] And you did not try to refresh his memory?

13 A. [11:59:22] Had I said "I know you," you'd get in trouble, because they came
14 under the claim that we were all rebels, *being a rebel means you are sent to death
15 straightaway.

16 Q. [11:59:41] Thank you. So you explained that at some point you are struck with
17 an axe by the person you identify as Ali Kushayb. You are struck in the lower part,
18 that is the calf, of your right leg.

19 My first question is, where exactly did that happen? Where were you when you
20 were struck with the axe?

21 A. [12:00:33] I was inside the cell when he came. He spoke and said, "Who are the
22 *umdaqs* here?" The *umdaqs* raised their hands, introduced themselves, their towns
23 and the places they are in charge of. And after the introduction of all the *umdaqs*, he
24 asked about the *sheikhs*. The *sheikhs* also introduced themselves, the towns they
25 came from and the areas under their responsibility. He then said that all *umdaqs* are

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1 rebels. *Umdah* Issa replied by saying "I am not a rebel. We're here because the
2 *shartay* instructed us to.

3 Q. [12:01:23] Witness, we will try to save time. So you say you were in the cell.

4 Let me read you paragraph 32, an abstract of paragraph 32 of your written statement
5 to the Prosecution.

6 "Our names were" -- yes, paragraph 32 at DAR-OTP-0223-0224. I don't think it's
7 necessary to put it on the screen.

8 "Our names were called out by John Koj to exit the cell. I was called out after *Umdah*
9 Issa Harun Nour. I walked behind him as he exited the cell. I saw Ali Kushayb
10 strike Issa Harun Nour with an axe that he was holding as *Umdah*" -- I hope I'm not
11 too fast. I will slow down. Realised. I start again the last sentence:

12 "I saw Ali Kushayb strike Issa Harun Nour with an axe that he was holding as *Umdah*
13 Issa Harun Nour exited the cell."

14 I pass the next sentence.

15 Then: "*Umdah* Issa Harun Nour kept moving out onto the yard despite being struck.

16 I followed ... him and when I was at the door, Ali Kushayb swung the axe in an
17 underarm motion and it struck me near the right inner calf muscle of my leg. I kept
18 moving and exited the cell onto the outside area."

19 So, Mr Witness, I understand from what I just read that actually you were hit when
20 exiting the cell, not inside the cell. Can you clarify?

21 A. [12:04:06] Myself and *Umdah* Issa, we were hit inside the cell. Both of us were
22 hit inside the cell.

23 Q. [12:04:16] So how do you explain that you described something different in your
24 written statement?

25 MR NICHOLLS: [12:04:21] Objection.

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1 PRESIDING JUDGE KORNER: [12:04:25] Well, it's a matter of -- he says it's different.

2 "Exiting" can mean any number of things, Mr Laucci, sorry.

3 MR NICHOLLS: [12:04:39] But, your Honour, if you read the paragraph,

4 "... Ali Kushayb swung the axe in an underarm motion and it struck me ..." I won't
5 read the rest of the sentence. "I kept moving and exited the cell ..."

6 MR LAUCCI: [12:04:56] Okay.

7 Q. [12:04:59] Okay. Clarification: Were you hit while you were still in the cell
8 but moving towards the exit to go outside?

9 Is that okay, learned colleague?

10 A. [12:05:29] I said I was hit inside the cell. When we were hit inside the cell, he
11 said all -- he said that all the rebels get out and go to the space. When we started
12 moving until we reached the square and those who are inside or outside have been
13 hit and this continued for some time.

14 Q. [12:06:05] So do I understand correctly that the instruction to exit the cell was
15 given after you were hit?

16 A. [12:06:25] The question, please. Can you repeat the question, sir?

17 Q. [12:06:28] The instruction to exit the cell, was it given before or after you were
18 hit by the axe?

19 A. [12:06:46] What do you mean by "instructions"?

20 PRESIDING JUDGE KORNER: [12:06:48] Ordered.

21 MR LAUCCI: [12:06:50]

22 Q. [12:06:50] When you were ordered to exit the cell, you mentioned that, were
23 you -- step by step.

24 Have you been ordered to exit the cell?

25 A. [12:07:12] Yes, he said you have to leave the cell, yes, all of us.

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1 Q. [12:07:15] Was it said before you were struck?

2 A. [12:07:26] No. As I said, when he entered the cell, he said any one of you are
3 *umdah* should raise their hands. That is the first sentence he said when he entered
4 the cell. After the four *umdahs*, well, of course, they put their hands *up, he -- and he
5 was there, there were four *umdahs*. And then he said any *sheikh*, well, should raise
6 their hand. One was *Sheikh* Issa, he raised his hand, and he knew of course the four
7 *umdah* and the one *sheikh*.

8 Then, "You are a *sheikh* for which village?" I am just trying to tell you what
9 happened exactly so that you can understand the situation I'm trying to describe.

10 *Sheikh* Issa said, "I am the *sheikh* of one of the village, Arada." And the *umdah*,

11 Ahmad Zarruq, he said, "I am the *umdah* of Artala." And Adam Husayn

12 Abdelmahmoud said, "I am *umdah*, Kirraow." And Yahya Ahmad Zarruq said, "I am

13 *umdah*, Tendy." And Issa Harun Nour said, "I am *umdah* of Arada." These are the

14 four *umdahs* and the one *sheikh*, so five of them said that.

15 Ali Kushayb said, "All of you are rebels and so you are the cause of what's happening

16 in your area. *Umdah* Issa Harun put his hand up and said, "No, we are not rebels.

17 We are citizens. We have nothing to do with the rebellion." *Straight after that, he

18 started hitting -- he hit Issa on his shoulder.

19 This is what happened exactly. I'm describing the situation.

20 Q. [12:09:25] And after that, only, after that, after these persons were hit with the
21 axe, then you were ordered to exit the cell. Did I understand correctly?

22 A. [12:09:47] Yes, he said, "All of you should leave the cell" after he hit the *umdahs*
23 and the *sheikh*, and he continued of course hitting the other people in the cell. He
24 said, "You have to leave the cell and go outside in the court."

25 Q. [12:10:10] And you said the reason why you were hit yourself was because

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1 you -- you raised your head when Ali Kushayb struck *Umdah* Issa Harun Nour. Is
2 that -- is that correct?

3 A. [12:10:39] When he hit *Umdah* Issa Harun Nour, I raised my head and I saw
4 Ali Kushayb. When I put my head up to see Ali Kushayb, he said, "Why are you
5 looking at me? *You are a rebel." *I said that I am not a rebel. And then he used
6 his axe in order to hit me *on my head and I -- I fell *to the ground. And of course he
7 was using his axe and so he hit me on my * right leg *.

8 THE INTERPRETER: [12:11:20] Mr Laucci, just a correction from the interpreters.
9 At 11.59, instead of the utterance of "'I know you' [...]" would have put us in a great
10 deal of trouble," the gentleman actually said "would have led to -- straight to death."
11 So just that.

12 MR LAUCCI: [12:11:33] Thank you.

13 Q. [12:11:45] Yesterday we saw a picture of your scar. No need to display it again.
14 It was very -- a very impressive scar. Must have been a severe wound. Could you
15 still walk after that?

16 A. [12:12:14] When I was hit, as I said, in my right leg and it was not *on the bone,
17 so I was able to walk. But if you are hit *on the bone, you would be unable to walk.
18 If you walk for 5 metre -- or 5 metres, so you can -- so I was hit in the leg, but it was
19 not in *bone.

20 Q. [12:12:49] Okay. And could you still move your -- your leg, your foot? Was
21 it -- I mean, when you were moving your foot or your leg after that wound, was
22 it -- was it painful?

23 A. [12:13:13] Of course you -- they will not let you, of course, to -- to sit down, they
24 would ask you to walk, and of course they can hit you with the sticks and with
25 anything else so that you * move, so you cannot stay, so that you can go to the area

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1 where you had been ordered to go.

2 Q. [12:13:41] Were you bleeding abundantly?

3 A. [12:13:50] Yes, bleeding, but when I reached, I put my leg on the -- on the
4 ground, so that *it bleeds, it will be of course on the ground and not on my clothes.

5 Q. [12:14:10] Thank you. And then you explained that after that wound, while
6 you were still in detention, you -- this is when you started compiling information with
7 a hidden pen that you had on you on the sole of your feet, and we clarify -- clarified
8 earlier this morning that it was on the skin, really, that you wrote. And you started,
9 you said, you started with your right foot, right foot. Do you confirm so?

10 A. [12:15:04] Yes, on my foot, but inside, but not outside, *inside the core, so no
11 other person can see what I'm writing. So it was -- was inside. So nobody can see that.

12 Q. [12:15:15] Yeah, yeah, of course. But to write on the sole of your foot, is ...

13 PRESIDING JUDGE KORNER: [12:15:31] Yeah, Mr Nicholls.

14 MR NICHOLLS: [12:15:35] Sorry, just asking for the reference where the witness
15 said that it was after the wound that he started to make these notes.

16 MR LAUCCI: [12:15:57] Let me clarify with the witness.

17 Q. [12:16:00] Mr Witness, did you write on your foot after having received that hit with the axe?

18 A. [12:16:24] I do the writing during the night. But if I do that during the day,
19 maybe John Koj or other *soldier can see that. *They would have known that I had a
20 pen and a [Saa'] and would have taken them away. So I -- I started writing in the
21 evening. *These are what I used to write of course the dates and the days, so -- and
22 what happened on each day all the details and what I write, the date and which day,
23 well, and the time, if possible.

24 Q. [12:17:00] But my question is, did you start or continue writing on your foot the
25 way you describe after receiving this wound that you had on the leg?

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1 PRESIDING JUDGE KORNER: [12:17:17] (Microphone not activated)

2 When did you start writing on your foot, before or after you were hit with the axe?

3 THE WITNESS: [12:17:38](Interpretation) It started after we were asked to go

4 outside and when we went back again, I started writing all the events that took place

5 on that day. And the day I started writing, I wrote down all the events. And this

6 was on the -- I write of course the dates and what happened exactly to me and to

7 other people, I write that on my foot and I put the pen back *and the [Saa'] back, so

8 that nobody can see it.

9 PRESIDING JUDGE KORNER: [12:18:41] Yeah, I think you -- sorry, Mr Laucci, I

10 think you got your answer there. He says it started after.

11 MR LAUCCI: [12:18:45] Thank you.

12 Q. [12:18:49] To write on one's own sole of the foot is a little bit acrobatic. How

13 did you -- how did you do that?

14 A. [12:19:18] Well, of course I can reach, of course, my foot in order to write. And

15 the pen was not heavy at all, so I can take it very easily and start writing on my foot.

16 So for me, well, it was -- well, there was no problem at all.

17 Q. [12:19:31] Are you left-handed or right-handed?

18 A. [12:19:42] I started with the right *foot and when it *was full, well, I -- I went to

19 the other one, the left.

20 Q. [12:19:51] Yes, my question was not about the foot. But did you write with the

21 right hand or the left hand, the way I do?

22 A. [12:20:10] My -- well, when I write on my right foot, I use my left hand. And

23 when I write on the left foot, I use my right hand. *I was writing just as normal.

24 Q. [12:20:22] Okay. So I understand that you are comfortable to write with both

25 hands?

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1 A. [12:20:33] Yes, when I am forced to do that, yes. Well, I am not writing big
2 things, very small, so I can do that. But if it is more, I use my right hand.

3 Q. [12:20:46] Okay. So with your left hand, you are writing on your right foot,
4 and could you describe or show us maybe in which position you were to -- to do that?

5 PRESIDING JUDGE KORNER: [12:21:04] I think, really, Mr Laucci, this is going a
6 bit far. Are you asking the witness to get up and demonstrate?

7 MR LAUCCI: [12:21:14] That could be an option.

8 PRESIDING JUDGE KORNER: [12:21:16] But are you suggesting that he never did
9 this? Is that part of your -- that he never made these notes?

10 MR LAUCCI: [12:21:22] My questioning is to see how with the wound that he had
11 on the -- on his calf on the right side he was able to reach the sole of his right foot to
12 write down.

13 PRESIDING JUDGE KORNER: [12:21:39] Well, I think given the difference in age
14 ask -- that he was then and he is now, ask him if he still thinks he can still do it first.

15 (Redacted)

16 MR LAUCCI: [12:21:55] So are you suggesting that I ask him if he is still -- he would
17 be still able to do this?

18 PRESIDING JUDGE KORNER: [12:22:01] Yes, before -- before you ask him to do this
19 demonstration, Mr Laucci.

20 MR LAUCCI: [12:22:04] I was not yet to the -- to the demonstration, but let's try
21 with --

22 PRESIDING JUDGE KORNER: [12:22:13] Just ask him to demonstrate how he did it.

23 MR LAUCCI: [12:22:15] No, to describe. Can we start with the description.

24 PRESIDING JUDGE KORNER: [12:22:20] I see, sorry. I misheard you then, sorry.

25 MR LAUCCI: [12:22:22]

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1 Q. [12:22:23] Yes, Witness, could you describe, for the moment, how concretely in
2 which position you were to write on your right foot?

3 A. [12:22:48] When we went back into the cell, the pen and *[Saa'], I -- of course I
4 did not put them in a place where some people can see. I put them in well-hidden
5 area. That when I start writing, I put the date and the day and what happened
6 exactly. When I write that, of course, on my right -- my right foot and I will be
7 sitting and I will put *it so that I can see it, I can be able to write on this right foot with
8 my pen.

9 Q. [12:23:32] Okay. But to reach the sole of your right foot, you must have really
10 managed to bend your leg which was wounded. Wasn't that a problem with your
11 wound?

12 A. [12:24:01] Well, I wrapped my -- my leg. There was no bleeding. When I
13 went back in the cell, there was -- this was not bleeding. And I lied down and I
14 was -- put my leg and started writing on my right foot with my left hand, as I said, I
15 start writing the date and what happened exactly. Well, of course, I think that in my
16 mind, I put the date and of course I can learn that by heart. I know exactly what
17 happened and this I will keep in my mind, of course.

18 Q. [12:24:50] So despite the -- the wound, despite the pain, you chose to start
19 writing on your right foot. Fine.

20 The conditions of your detention were a bit extreme. You explained yesterday that it
21 was summer. It was very hot. You were crowded, 81 persons in 25 metres square.
22 You must have been sweating abundantly, and you were bleeding from your wound.
23 If I tell you -- if I put to you that not a single ink in the world would have resisted
24 these extreme conditions, even admitting that your statement about writing on the
25 sole of your foot is correct, what would you say?

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1 PRESIDING JUDGE KORNER: [12:26:02] I don't know what he'd say to that, nor do
2 I know what anybody else would say to that, Mr Laucci, because at the moment we
3 haven't got any evidence one way or another. If you want to call evidence at a later
4 stage, but at this stage you've made the point and you can address us on that later
5 that he did this writing in those sorts of conditions.

6 MR LAUCCI: [12:26:28] Yes, but I'm slowly moving to another point, which is that
7 even if he did, the ink would not have resisted.

8 PRESIDING JUDGE KORNER: [12:26:41] Well, but if you're going to -- if you're
9 telling us that you've got evidence that you're going to call at a later stage that will
10 say there is no way that this could have happened or that the writing could have
11 survived, that's one thing. Otherwise you cannot make an assertion like that.

12 MR LAUCCI: [12:27:03] Thank you, Madam President.

13 Q. [12:27:06] Mr Witness, were you sweating?

14 A. [12:27:16] Of course I was sweating, but when a lot of sweat, of course I take off
15 my *jalabiya* so that you get rid of the sweat, and you take off your *jalabiya*. And of
16 course if you are asked to leave the cell, so you put your clothes on and you go
17 outside. But when you are inside, you can take your clothes off, *jalabiya*, of course.

18 Q. [12:27:47] And yesterday you mentioned that you kept your shoes, right?

19 A. [12:28:05] No. The shoes I put outside. And you only put your shoes on
20 when you are cold. But the shoes are put outside anyway.

21 Q. [12:28:13] So you wear bare feet in the cell when you were not going out?

22 A. [12:28:27] Yes, that is correct because it is -- because of the heat, of course. And
23 of course I was trying to take care of *writings so it doesn't fade, so I put, of course,
24 my -- put my clothes off or my *jalabiya* off and with bare feet, of course.

25 Q. [12:28:51] What was the ground of the cell made of? Was it earth?

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1 A. [12:29:06] It's cement, yes. It's cement, not ceramic. It's cement.

2 Q. [12:29:14] Do I describe the -- your condition correctly when I say that you are in
3 this crowded jail with 80 other people, sweating, bleeding?

4 A. [12:29:45] Of course, it was very hot and people were sweating, but when you're
5 sweating, you take off your *jalabiya* and your wipe yourself and then it will be less
6 hot.

7 Q. [12:30:03] Thank you. I'll move on. I think I made my point.

8 I move to the point when the prisoners in the cell are called to -- to be loaded on truck
9 allegedly to go to Garsila. You see what I mean?

10 A. [12:30:42] I understand, yeah.

11 Q. [12:30:42] You said that the -- John Koj was reading the names from the register
12 book where he had written down the names of the detainees at their arrival; is that
13 correct?

14 A. [12:31:08] Yes, he did write the names.

15 Q. [12:31:13] In the notes that were taken by the Office of the Prosecutor prior to
16 your written statements when you had the first discussion most likely on the phone,
17 the reference is tab 1 in OTP list, DAR-OTP-0219-6997, and I'm at page 6999. No
18 need to put it on the screen, I believe.

19 So in this -- in this first discussion that you had with the Prosecution, you mentioned
20 that the list of names was actually handed over to the Mukjar commander by an
21 officer of the national intelligence services, the NISS. Do you remember that?

22 A. [12:32:20] Yes.

23 Q. [12:32:22] Do you know who was that officer from the national intelligence?

24 A. [12:32:39] The intelligence officer --

25 THE INTERPRETER: [12:32:49] Not understood to us what he said, if he can be

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1 asked to repeat.

2 MR LAUCCI: [12:32:53]

3 Q. [12:32:54] I think you need to repeat that. The interpreters did not get you.

4 MR NICHOLLS: [12:32:59] I also saw, your Honours, the witness had his hand up.

5 PRESIDING JUDGE KORNER: [12:33:04] Sorry, yes, do you want a break?

6 THE WITNESS: [12:33:15](Interpretation) I wish to explain that the soldiers

7 who -- would you like me to talk about the soldiers who brought us from the

8 checkpoint to the cell or what happened with the soldiers while we were in detention?

9 Again, those who took us from the checkpoint to the officer, or -- or the officer who

10 took us to prison? What exactly the name you're asking me about?

11 MR LAUCCI: [12:34:03]

12 Q. [12:34:04] No, Mr Witness, I'm not asking about those who arrested you. Not

13 asking about those who detained you. I'm asking specifically about if you know,

14 you may not know, but if you know the identity of this officer of the national

15 intelligence services who brought the list that was used to call the prisoners to be

16 loaded on the trucks.

17 A. [12:34:59] His name is Ibrahim Sharaf-Al-Din Ibrahim.

18 Q. [12:35:14] Did -- did you see that person play any other role in -- no, let me

19 rephrase it.

20 Did that person did anything else than bringing the list?

21 A. [12:35:43] When he brought us, he had a notebook and he told us to stand in

22 lines of ten. He took the note -- he took the notebook to the officer, he saluted the

23 officer with his right hand. And after he saluted him, the officer told him, "Who are

24 these people? He replied, "These are villagers. They came from the mountains

25 because of an aerial bombardment. They fled the bombardment by going to the

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1 mountain."

2 Q. [12:36:29] Mr Witness, I realise that you may be mistaken in my question and I
3 apologise for that. The person you are referring to is, according to your statement,
4 one of those who arrested you at your arrival in Mukjar. This is not what I am
5 asking for. I'm asking about -- and once again, I will be specific. On the day when
6 the prisoners in your cell were loaded on the trucks, do you remember that day?

7 A. [12:37:13] I remember that day, yes.

8 Q. [12:37:21] You said in your statement that the list of persons that was read to call
9 the prisoners to go on the truck was brought by an officer from the national
10 intelligence. Do you remember that?

11 A. [12:37:54] The person who wrote the names was John Koj and he spoke about
12 those in front of the officer who told him to review the names, count the number of
13 the people before taking them to prison *.

14 Q. [12:38:14] Okay. Well, we cannot move forward and it's not so important so I
15 move on. Thank you. I give up with this topic.

16 After the prisoners were loaded on the trucks and departed, you say that you were
17 the only person left within cell number 1. Do you stand by your account?

18 A. [12:38:56] Correct, yes.

19 Q. [12:38:57] Okay. So if other persons say that they were also detained in cell
20 number 1 and were not loaded on the trucks, that -- that -- that means that it's not
21 correct, what they are saying.

22 A. [12:39:42] If the other witnesses, if other names, including certain names
23 identified in my statement, if other people testify otherwise, if they say this did not
24 happen, then in that case I am a liar.

25 Q. [12:40:04] I'm not saying so, I'm just trying to understand what exactly

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- 1 happened. But I move on. I move on to another topic. Thank you.
- 2 I come back to the writing of the notes on your feet when you were in detention.
- 3 Yesterday, there was a picture that was displayed with a pen of the same model.
- 4 If we can have it again, that's the document DAR-OTP-0223-0236. And it's tab 7, I
- 5 think. Tab 7 in the OTP folder.
- 6 Do you see it on the screen, the picture?
- 7 We understand that the pen that is on this picture is not the same pen that you had
- 8 with you in Mukjar, but do you confirm that the pen that you used was of the same
- 9 model?
- 10 A. [12:41:37] Yes, correct.
- 11 Q. [12:41:40] And you explained that in order to hide this pen on yourself, you
- 12 found a way to shorten it. Do you confirm so?
- 13 A. [12:42:02] Yes, correct.
- 14 Q. [12:42:04] Can you explain how did you do to shorten it?
- 15 A. [12:42:19] *This pen, I shortened this while we were in the wilderness, not while
- 16 in town. We spent five days in the wilderness, and we -- and the *umdah* came to us
- 17 then and instructed us to go to town. And then we came to town, we arrived at the
- 18 *wadi* called Wadi Salih. When we arrived at the *wadi*, we stopped and we drank
- 19 water. The *umdah* told me to return to tell the people to go together to meet the
- 20 *shartay* together. Then he told me to count the number of all of these people and to
- 21 bring me the names -- to bring him the names.
- 22 Q. [12:43:11] Thank you. I'm not asking why you did that but how you did. So
- 23 you explained that you did it while you were in the wilderness. Fully understood.
- 24 And concretely, how did you do it? Did you cut it with a tool? Did you break it?
- 25 How did you do?

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1 A. [12:43:49] When we were in the wilderness we had all tools, we had knives, big
2 knives, spears. Other people had other things, documents, gadgets and so forth. So
3 I had knives and I thought that this pen could be confiscated on the road or at
4 checkpoints and I knew that at checkpoints there were soldiers who were frisking
5 citizens when you enter. If you had anything prohibited, they would take it away
6 from you, and otherwise they would let you go. And eventually when we went
7 there, they were taking all belongings of citizens, so I chopped it into two halves. I
8 threw one away and took the other half with me to town *with the [Saa'].

9 Q. [12:44:46] (Overlapping speakers) did with your knife?

10 THE INTERPRETER: [12:44:53] Mr Laucci, we did not hear your question.

11 MR LAUCCI: [12:44:55]

12 Q. [12:44:55] My question was, so you say you cut this pen into two with your
13 knife; is that correct?

14 A. [12:45:12] Yes.

15 Q. [12:45:12] So you are -- you are explaining to us that while you are in the
16 wilderness and decide to go to Mukjar, you are anticipating that you may be arrested,
17 searched, detained, et cetera; is that correct?

18 A. [12:45:48] Yes, yes.

19 Q. [12:45:50] But why did you go to Mukjar then? You were going straight into
20 the jaw of the lion.

21 A. [12:46:18] We did not just go like that. The *shartay*, the person in charge of all
22 people in Dar Kobra (phon), an area that has 107 villages. *Shartay* Omar Ahmed
23 Zarruq is in charge and he sent us an *umdah* instructing us to come immediately to
24 town, so we were following his instructions.

25 Q. [12:46:54] Even if you were anticipating that you would put yourself in trouble

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1 by getting there?

2 A. [12:47:13] I wasn't aware that trouble awaited us. When the *umdah* instructed
3 us to go to town, he did not tell us that there would be trouble there. Once he
4 came and spoke to us, we just followed his lead. Straightaway, all citizens went to
5 *shartay* and awaited the *shartay* to decide whether we should go to a certain locality, to
6 the marketplace or elsewhere. It was up to the *shartay* to decide this.

7 Q. [12:47:55] But, Witness, you just told us that you took the care to cut that pen
8 into two pieces and hide it on yourself because you were expecting to be arrested.

9 PRESIDING JUDGE KORNER: [12:48:08] I'm sorry, Mr Laucci, that's a misquote.
10 He said if -- at lines -- page 63, line, whatever it is, 10 or 11, "If you had anything
11 prohibited, they would take it away from you." He didn't say that he'd cut it in two
12 because he expected to be arrested.

13 MR LAUCCI: [12:48:29] Thank you, Madam President.

14 Q. [12:48:34] Is a pen on the -- on the list of prohibited items in Sudan?

15 A. [12:48:56] A pen is not something prohibited, but you're coming from the
16 wilderness to town, you're coming to enter town. The government *searches you to
17 make sure you're good to enter. If you give them all that you had in the wilderness,
18 you give it over to them, then you're good to come in. There are no worries about
19 you. But the -- if they realise that you're hiding something, *they may take you to
20 prison, they would investigate why are you -- why you're refusing to give them what
21 you have. But if you hand over what you have, they would let you go to the *shartay*
22 or to your community members and so forth. So that's the logic of
23 it.

24 PRESIDING JUDGE KORNER: [12:49:52] Okay, Mr Laucci, you've done this topic to
25 death.

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1 MR LAUCCI: [12:49:56] I did it, as you say, and I move to my last topic.

2 Q. [12:49:59] But just to summarise, Mr Witness, you explained that you wanted to
3 hide this pen on you in order to be able to keep a track, a written track of what would
4 happen to you once in Mukjar. I cannot prevent from saying that you were
5 assuming that what would happen in Mukjar would not be nice, but I stop here.

6 My last topic is about this place, these execution sites that you also mention in your
7 written statement. At paragraph 50 of your written statement - no need to put it on
8 the screen again, but that's on page, for the record, DAR-OTP-0223-0228 - you say, I
9 read from your statement, "In 2006 I visited three sites that were where males from
10 Mukjar prison were executed."

11 Do you confirm that statement?

12 A. [12:51:42] I do.

13 Q. [12:51:42] And yesterday you explained that -- and I'm talking about real-time
14 transcript of yesterday, page 85 -- 85, lines 4 to 12. You explained that when you
15 went there, the execution place was located 300 to 400 metres away from the
16 UNAMID building. Do you stand by that statement?

17 A. [12:52:31] Yes, I do. Correct.

18 Q. [12:52:33] Thank you, Mr Witness. What if I tell you that UNAMID did not
19 even exist in 2006, it was created on 31 July 2007?

20 PRESIDING JUDGE KORNER: [12:52:48] Well, all right. I think we've been
21 through this one before. But was there a predecessor of some -- of some kind to
22 UNAMID present in the area?

23 MR LAUCCI: [12:53:04] I don't know. The witness is referring to UNAMID.

24 MR NICHOLLS: [12:53:10] I don't know about this specific building at this point,
25 but there was UNMIS before UNAMID.

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1 PRESIDING JUDGE KORNER: [12:53:17] I mean, you've put this to another witness
2 in exactly the same way. This is -- you've got the answer, and if you can show that
3 there was no such building with no such organisation, well, then you've got the -- the
4 evidence you want. You don't have to put it to him.

5 MR LAUCCI: [12:53:38] Do I understand that your Chamber is not interested in
6 corroboration?

7 PRESIDING JUDGE KORNER: [12:53:43] Well, all right, it -- what do you mean
8 corroboration? I'm sorry, I don't follow that, Mr Laucci. What do you mean
9 corroboration?

10 MR LAUCCI: [12:53:51] As you said, another witness already testified that when he
11 visited --

12 PRESIDING JUDGE KORNER: [12:53:58] Well, don't worry about what the other
13 witness said. I know you've put this before. Are you -- all right. Are you
14 suggesting to the witness that he did not pay this visit? Because if that's the ultimate
15 suggestion --

16 MR LAUCCI: [12:54:14] The ultimate suggestion is that he cannot have visited a site
17 that was three to 400 metres away from a UNAMID building in 2006.

18 PRESIDING JUDGE KORNER: [12:54:26] All right. Okay. Well, he can certainly
19 answer that.

20 MR LAUCCI:

21 Q. [12:54:36] Mr Witness, I repeat. You visited the site in 2006. In 2006,
22 UNAMID did not exist. It was created on 31 July 2007. So do you stand by your
23 statement that the execution site was located nearby UNAMID site?

24 A. [12:55:22] The description or the identification of the location we visited, what I
25 can say now regarding UNAMID and the execution site, there is a distance of 300

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1 metres between them *right now. And I am -- I'm giving you a * description *of the
2 location now so that you may *understand.

3 Of course in 2006 there was no UNAMID, but like I showed yesterday on the map,
4 there is a police station and *the wadi of Mukjar. But you can see a map of Mukjar.
5 You can have a aerial picture. You can send someone from here to identify the exact
6 distance. It could be 200 metres, it could be 500 metres too. This is an approximate
7 estimate that I'm giving.

8 In my view, from the execution site to UNAMID is 300 metres. And this is north of
9 Mukjar. I was not specific where exactly north of Mukjar, but the first execution site
10 was 300 metres away from UNAMID. Here you can find out for yourselves. You
11 can send somebody to inspect that because it's a well-known location and with that
12 you can check the validity of what I'm saying. Other witnesses can also provide
13 information if you ask them about that. If they contradict what I'm saying, in that
14 case I am not saying the truth.

15 Q. [12:57:23] Whatever the other --

16 PRESIDING JUDGE KORNER: [12:57:27] (Microphone not activated)

17 THE INTERPRETER: [12:57:29] Microphone.

18 PRESIDING JUDGE KORNER: [12:57:29] (Microphone not activated) is the answer
19 you've got. I don't think you can take this any further, and we're certainly not going
20 to hear what other witnesses may or may not say.

21 MR LAUCCI: [12:57:36] No, no, I was about to conclude, Madam President.
22 Nothing else.

23 Q. [12:57:43] Well, Mr Witness, what I was about to say is that irrespective of what
24 other witnesses said or did not say, you cannot have visited this execution site three
25 to 400 metres away from UNAMID in 2006 for the reason that UNAMID did not exist

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1 at the time, which led us to -- which leads me, me, to the conclusion that you made up
2 that full story about your visit of the execution site. What do you have to say to this?

3 PRESIDING JUDGE KORNER: [12:58:27] Okay, the only question in that before
4 there is translated is: Did you make up the story?

5 MR LAUCCI: [12:58:35] In short.

6 Q. [12:58:35] Did you make up that story about the visit of execution site in 2006?

7 A. [12:59:05] When we conducted this visit, we did it with NGOs, *sheikhs* and
8 *umdahs*, the ones who were present. And we went all the way to the first execution
9 site located north of Mukjar on the main road that leads straight to Garsila. There,
10 there is a *Khor coming from east to the west. The creek had a big jameza (phon)
11 tree. West of the tree is the first site of execution.

12 Q. [12:59:49] Mr Witness, and it's just to save time, we already heard that story.
13 I'm just saying that UNAMID did not exist at the time you say --

14 PRESIDING JUDGE KORNER: [12:59:58] It's not -- no, no, stop. This is just going
15 to start the whole thing over again. I think the answer to your question is, no, he
16 didn't -- he is saying to you he did not make it up.

17 MR LAUCCI: [13:00:08] Clear enough.

18 Q. [13:00:10] Mr Witness, that brings me to the conclusion of my cross-examination,
19 and I will conclude by making some -- yeah, conclusive statements of what I retain
20 from your --

21 PRESIDING JUDGE KORNER: [13:00:29] No, you don't have -- this is what
22 happened last time. That's not putting your case, you just summarise his evidence, it
23 isn't. There are two matters, Mr Laucci, on which really you have to put to him if
24 that is your case. First is, does he -- is it accepted that he visited your client's
25 admitted pharmacy in Garsila in 1999, or does your client not know one way or

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1 another, which -- because if that's the case, it doesn't -- you don't have to put that.

2 But more importantly, do you accept his account of your client's appearance in

3 Mukjar and what happened. Because that is what you've got to put to him.

4 MR LAUCCI: [13:01:21] Thank you, Madam President.

5 Q. [13:01:21] So what I say is that the story about your prior interaction with a

6 person named Ali Kushayb in 1999 is not credible and was made up for the sole

7 purpose of providing a basis for your alleged identification of that person in Mukjar

8 in 2004. Do you agree with that?

9 A. [13:02:07] I understand. *What did you say? He's never been there or he

10 never had a pharmacy there or?

11 Q. [13:02:21] Mr Witness, it's a yes or no answer to -- when I say what I said. Do

12 you agree? It's yes or no. It's just your opinion.

13 A. [13:02:39] Will you please repeat step by step so I can understand it. Well, it's

14 very important what you're saying and I'm interested in following.

15 Q. [13:02:45] The story about your prior interaction with Ali Kushayb in 1999 was

16 made up for the sole purpose of providing you a basis for identifying him in Mukjar

17 in 2004.

18 A. [13:03:38] I assert my claim. I'm sure of what I said with great -- with absolute

19 certainty. I have it -- I know this by heart and I'm not in any way lying.

20 Q. [13:04:00] Thank you. Without that first interaction in 1999, you have no basis

21 to identify --

22 PRESIDING JUDGE KORNER: [13:04:10] (Microphone not activated)

23 THE INTERPRETER: [13:04:15] Microphone, please.

24 PRESIDING JUDGE KORNER: [13:04:16] Sorry. That is an argument, Mr Laucci.

25 The only matter that you have to put to him, which is a factual one, is whether or not

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1 he is telling the truth when he says Ali Kushayb was in Mukjar police station in
2 February 2004, really your client, Mr Al-Rahman, rather.

3 MR NICHOLLS: [13:04:48]

4 Q. [13:04:49] Mr Witness, I'm saying that you have no basis to assert that the man
5 that was mentioned to you as Ali Kushayb in 2004 in Mukjar was Mr Ali Muhammad
6 Ali Abd-Al-Rahman.

7 A. [13:05:20] The same person, Ali Abd-Al-Rahman, Ali Kushayb, the same person
8 who came to Mukjar, and I saw him *with my own eyes, was all -- and I heard what he said.

9 Q. [13:05:36] Thank you. I'm saying that you cannot have written on your feet
10 while in detention in 2004 because you were wounded, and even if you had, the ink
11 would not have resisted so you would have lost what you had written.

12 A. [13:06:10] The pen of course can last a whole year, so it can last the whole year.
13 It's a very good pen, and it could last a long time. What I am writing in my foot,
14 nobody will come close to it and *I was very careful so that it will still not be wiped
15 out so that I will lose all the information. So that I was very careful to keep that.

16 Q. [13:06:47] Thank you. And lastly, I'm saying that your statement of the events
17 that occurred in Mukjar in 2004 contains several inconsistencies like the presence of
18 Ja'afar Abd-Al-Hakam, the absence of other officials --

19 PRESIDING JUDGE KORNER: [13:07:07] Again, that's an argument which you can
20 make to us, Mr Laucci, at the end or in your written submissions.

21 MR LAUCCI: [13:07:13] Yes. And for all these reasons is -- he's not --

22 PRESIDING JUDGE KORNER: [13:07:20] You're saying because --

23 MR LAUCCI: [13:07:21] -- cannot correspond to the truth. Yes, I'm done.

24 PRESIDING JUDGE KORNER: [13:07:24] Well, sir, if you answer that, the
25 suggestion is that you have made up your entire account of what happened in Mukjar

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1 prison. Have you lied about that?

2 THE WITNESS: [13:08:11] (Interpretation) What I saw and what I heard are the
3 same things that I put down on paper. I did not invent anything about these events.

4 I was referring to events. Any witness who have seen those, well, of course,
5 *they can talk about these events, the *mass murder and the * money that was stolen.

6 And what I said was true and I am quite sure *of what happened. And I am not
7 crazy. I have no intellectual problem, well, so I was aware of what I said. So for me
8 what I said was what happened exactly and that's what I said to you.

9 MR LAUCCI: [13:09:11] I'm done, Madam President.

10 PRESIDING JUDGE KORNER: [13:09:15] (Microphone not activated) Mr Laucci.
11 Any re-examination, Mr Nicholls?

12 MR NICHOLLS: [13:09:17] Yes, I'll try to be very brief.

13 PRESIDING JUDGE KORNER: [13:09:21] Well, I think can we try and finish the
14 witness before we break? It would be helpful. How many questions have you
15 actually got?

16 MR NICHOLLS: [13:09:28] Three or four, I think.

17 (Trial Chamber confers)

18 PRESIDING JUDGE KORNER: [13:09:37] I'm afraid, Mr -- it's not going to work. I
19 understand that the Judges also have questions. And there comes a point where we
20 can't keep the interpreters.

21 MR NICHOLLS: [13:09:50] I don't know how long your questions are, your Honour.
22 I can even cut mine down to two, basically.

23 (Trial Chamber confers)

24 THE INTERPRETER: [13:10:06] The Presiding Judge may wish to turn off her
25 microphone.

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1 PRESIDING JUDGE KORNER: [13:10:10] All right. Well, let's see if we can finish.

2 QUESTIONED BY MR NICHOLLS:

3 Q. [13:10:17] Thank you very much, Mr Witness. Only a couple questions for you.

4 When you gave your statement to the investigators last year, was there a UNAMID
5 base or former UNAMID base outside Mukjar?

6 A. [13:10:46] Last year, of course, UNAMID was -- was no longer in Sudan, from
7 last year. *The government kicked them out. And *there is no security in the refugee
8 camps and the -- well, the government cannot be able to provide security in these
9 refugee camps.

10 MR NICHOLLS: [13:11:14] Let me just --

11 PRESIDING JUDGE KORNER: [13:11:15] I think the point -- he did actually make
12 the point earlier, Mr Nicholls, and what he explained was, as I understood it, is at the
13 time that he -- as you say, when he's making the statement, he was trying to explain
14 where the execution site was.

15 MR NICHOLLS: [13:11:29] Yeah, I was -- just to make that very clear.

16 PRESIDING JUDGE KORNER: [13:11:31] But I think that's more or less what he said before.

17 MR NICHOLLS: [13:11:33] All right. And I will -- I will forgo my other question.

18 PRESIDING JUDGE KORNER: [13:11:45] Yes.

19 JUDGE ALAPINI-GANSOU: [13:11:54] (Interpretation) I would have liked to have
20 spoken in English, Madam President, but I fear making some silly mistakes. I'm still
21 going to school. But in any event I will speak in French.

22 Mr Witness, yesterday you said something about the execution sites. You spoke
23 about a woman. Was that correct? You did speak about a woman?

24 THE WITNESS: [13:12:49] (Interpretation) No, no, the woman was not in the area
25 where the executions took place. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted). And I put that on my notes.

10 JUDGE ALAPINI-GANSOU: [13:14:09] (Interpretation) A question about women
11 and girls. Were there women amongst the people who had been detained? Were
12 there women amongst them, amongst these people?

13 THE WITNESS: [13:14:31](Interpretation) No, no, I have never seen, well, a lady in
14 the cell or in the prison. *

15 JUDGE ALAPINI-GANSOU: [13:14:51] (Interpretation) So there were no women
16 amongst these prisoners detained during these events.

17 THE WITNESS: [13:15:13] (No interpretation) *Repeat please.

18 JUDGE ALAPINI-GANSOU: [13:15:15] (Interpretation) The Chamber understands
19 that there were no women amongst the people who were chased after and detained.
20 There were only men.

21 THE WITNESS: [13:15:27](Interpretation) Yes, only men. Only men.

22 JUDGE ALAPINI-GANSOU: [13:15:30] (Interpretation) Another concern is the axe.
23 I understood that during these events the axe was used multiple times. What does
24 the axe represent in all of that? Is it a weapon? Is it a tool for doing work? What
25 is it exactly?

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- 1 THE WITNESS: [13:16:07](Interpretation) *The axe, he used it as a weapon.
2 He wanted to scare the citizens so they would tell you the information they have.
3 In the police station, the government officers cannot threaten the people with
4 weapons.
5 They may use a baton or a whip, but not a weapon. It is forbidden.
6 So a whip or a baton or an axe is used to make you confess, "Are you a rebel?"
7 If you get scared and say yes, that's it they take you away.
8 So this is how the axe was used as I told you before.
9 It was for threatening the people.
10 JUDGE ALAPINI-GANSOU: [13:17:20] (Interpretation) But sometimes it was used.
11 Was it used often?
12 THE WITNESS: [13:17:30](Interpretation) *I saw him using the axe only on the first
13 occasion I saw him. Not on the other occasion.
14 JUDGE ALAPINI-GANSOU: [13:17:41] (Interpretation) One last question:
15 Yesterday, the LRV asked you a question about your personal feelings. Today I'd
16 like to put the question to you differently. As a citizen of Sudan, how do you
17 explain what happened during that period of time?
18 THE WITNESS: [13:18:25](Interpretation) Can you repeat the question, please.
19 JUDGE ALAPINI-GANSOU: [13:18:26] (Interpretation) You are a Sudanese citizen.
20 Are you a Sudanese citizen?
21 As a Sudanese citizen, how would you explain what happened during that period,
22 2003 and 2004?
23 THE WITNESS: [13:19:07] (Interpretation) You mean that a Sudanese citizen can
24 explain what happened? Do you want me to say what happened in 2003 and 2004?
25 Do you mean I have to explain why that happened and what are the reasons? Well, I

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1 have not really understood the question.

2 JUDGE ALAPINI-GANSOU: [13:19:28] (Interpretation) You have already provided
3 enough information, isn't that so?

4 THE WITNESS: [13:19:46] (No interpretation)

5 JUDGE ALAPINI-GANSOU: [13:19:46] (Interpretation) If you were asked, well,
6 what happened in Sudan during that period, how would you explain it in a few
7 words?

8 THE WITNESS: [13:20:09](Interpretation) I still -- I still don't understand -- I don't
9 really understand the question.

10 JUDGE ALAPINI-GANSOU: [13:20:18] (Interpretation) We'll drop it. That was the
11 last question. Thank you.

12 JUDGE ALEXIS-WINDSOR: [13:20:28] Thank you.

13 Witness, I have a few questions. Firstly, the first time you said you saw Ali Kushayb
14 in 1999, what time of day was it?

15 THE WITNESS: [13:21:00] (Interpretation) At ten -- well, ten in the morning.

16 JUDGE ALEXIS-WINDSOR: [13:21:03] How much time did you spend in the
17 pharmacy on that first occasion?

18 THE WITNESS: [13:21:19] (Interpretation) I cannot remember of course exactly the
19 time I spent there, but I went at 10 a.m. and I talked with him not for a long time
20 because I have other things to do and I have to, well, (Redacted)

21 So I don't know exactly the time I spent there.

22 JUDGE ALEXIS-WINDSOR: [13:21:38] Very well.

23 On the second occasion that you went to that pharmacy in Garsila, approximately
24 around what time of day did you go?

25 THE WITNESS: [13:22:02] (Interpretation) In the morning *also on Thursday because this

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1 is the day of the market.

2 So I went back *after 15 days because, well, the market is held every Thursday so I -- I
3 go there on Thursdays.

4 JUDGE ALEXIS-WINDSOR: [13:22:23] On both occasions, the first and second, was
5 there anyone standing between you and Ali Kushayb?

6 THE WITNESS: [13:22:43](Interpretation) *The person who works in a pharmacy
7 back there is also the person who works as a general practitioner or even a surgeon.
8 If you have a wound, they clean it for you.

9 They ask you what is wrong with you, you say, "I have malaria,
10 diarrhea, pain in the stomach, fever", they give you medicines for the problem you
11 have.

12 JUDGE ALEXIS-WINDSOR: [13:23:36] Okay. Witness, in Mukjar, when you were
13 in detention, you told us the number of persons.

14 Did you know the tribes of the persons detained in the cell?

15 THE WITNESS: [13:23:59](Interpretation) Yes, yes, I know the tribes.

16 The tribes, the biggest tribe is the Fur tribe, followed with Tama tribe, and then Borgo,
17 and fourth Masalit tribe.

18 These are the four biggest tribes.

19 JUDGE ALEXIS-WINDSOR: [13:24:26] Thank you. Two more questions.

20 According to you, when Ali Kushayb came to Mukjar, did he give any orders to
21 John Koj?

22 THE WITNESS: [13:24:47](Interpretation) Ali Kushayb cannot of course give orders
23 to another soldier.

24 He can only give orders to the people who work with him.

25 John Koj *reports to Ahmed Al-Tayyib *directly.

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1 JUDGE ALEXIS-WINDSOR: Thank you.

2 PRESIDING JUDGE KORNER: [13:25:12] Yes, sir, that finally concludes your
3 evidence. I'm sorry you've had rather a long morning of it, but as you will have
4 gathered, your evidence was important evidence.

5 So we thank you for coming to court. We wish for you a better future that you will
6 be able to resume your studies of the Koran and we wish you a safe return to your
7 home. So thank you very much.

8 THE WITNESS: [13:25:48] (No interpretation) *God willing.

9 PRESIDING JUDGE KORNER: [13:25:50] Yes, if the court officer could escort the
10 witness out. There's just one matter I want to raise.
11 (The witness is excused)

12 PRESIDING JUDGE KORNER: [13:26:39] Just before we adjourn, Mr Laucci, in the
13 documents that the Defence have listed for the next witness, P-20, there appears to be,
14 which I've never seen before, a French report on your client's health containing a
15 number of other documents. Are you proposing to ask the witness about them?
16 Because if you are, then I'm afraid you're going to have to produce English
17 translations of everything.

18 MR LAUCCI: [13:27:09] That's a very good point, Madam President, and we have
19 asked at least two times before the confirmation hearing, when this report was used
20 for the first time, and before the appearance of the next witness, to have that report
21 translated by the language services, and this request has been denied twice.

22 PRESIDING JUDGE KORNER: [13:27:31] But it's not just -- it's not just French.
23 There's -- I think all -- all of us can read French, but there's Dutch stuff as well.

24 MR LAUCCI: [13:27:42] The medical -- the medical reports are in Dutch, indeed.
25 But -- well, be in Dutch or French or whatever languages, we have requested

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1 translation in English, translation in Arabic, and this has been denied.

2 PRESIDING JUDGE KORNER: [13:28:01] All right. Well, I think we'll wait and see
3 because I think it's unlikely now you're going to get to cross-examination today of the
4 witness, because we'll now rise until 3 o'clock. But I think you're also going to
5 have to explain how Witness P-20 is going to answer questions about documents
6 he's never seen before and undoubtedly can't read.

7 MR LAUCCI: [13:28:33] No, no, no, that's -- that's for sure. There will be some
8 questions about the meaning of Kushayb and the relation with alcohol and his -- the
9 reputation of Ali Kushayb as -- as a drunk. And we thought that this was the right
10 opportunity, there will be others, but this could be the right opportunity to present for
11 the first time this report that was prepared and admitted for the confirmation hearing
12 before your Chamber.

13 PRESIDING JUDGE KORNER: [13:29:03] Well, all right. I think we'll just have to
14 see how things play out, Mr Laucci.

15 Yes, Mr Nicholls.

16 MR NICHOLLS: [13:29:09] Just to say that very well may get to cross in the next
17 session. We'll be under an hour.

18 PRESIDING JUDGE KORNER: [13:29:17] Well, yes, I know, but we're sitting at 3
19 o'clock and finishing at 4.

20 MR NICHOLLS: [13:29:21] We may finish at 3:30.

21 PRESIDING JUDGE KORNER: [13:29:23] Oh, I see what you mean. Right, okay.

22 Yes. Thank you.

23 We'll adjourn then till 3 o'clock.

24 THE COURT USHER: [13:29:32] All rise.

25 (Recess taken at 1.29 p.m.)

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1 (Upon resuming in open session at 3.05 p.m.)

2 THE COURT USHER: [15:05:10] All rise.

3 Please be seated.

4 PRESIDING JUDGE KORNER: [15:05:36] Yeah, we're going to start with the
5 summary of the witness. I suppose he needs to be out.

6 But, Mr Nicholls, can I ask, did he ask for protective measures, or was he just given
7 them?

8 MR NICHOLLS: [15:05:48] Good afternoon, your Honours.

9 PRESIDING JUDGE KORNER: [15:05:51] Leaving aside the niceties.

10 MR NICHOLLS: [15:05:55] I'll ask Ms Whitford because Ms Whitford will be leading
11 the witness.

12 PRESIDING JUDGE KORNER: [15:05:59] Okay. I simply want to know, on the face
13 of it, I'm not sure why he's got protective measures.

14 MS WHITFORD: [15:06:05] Your Honour, he was included in the protective
15 measures application that was made prior to trial, rather than the set of witnesses that
16 we've had more recently, where the protective measures were assessed and then
17 granted directly before testimony. So he's in a different category in that his
18 protective measures were already granted some time ago, and the reason is --

19 PRESIDING JUDGE KORNER: [15:06:27] Does he want them, still?

20 MS WHITFORD: [15:06:29] Sorry, your Honour?

21 PRESIDING JUDGE KORNER: [15:06:31] Did anybody ask him whether he actually
22 wants protective measures?

23 MS WHITFORD: [15:06:34] I would have to confirm that, your Honour, but it is
24 based on his current location of residence.

25 PRESIDING JUDGE KORNER: [15:06:39] Well, I know that, but -- effectively,

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1 anything he says or he's asked about, I think this whole thing -- if protective measures
2 are granted, the whole thing is going to have to be in private session.

3 MS WHITFORD: [15:06:52] With respect to that, your Honour, the questions that I
4 will be asking him are quite limited. And it is my intention that they can be asked in
5 public session, given the general nature of the questions. *Granted, in
6 cross-examination, it may be necessary to do quite a lot of the session in private,
7 depending on the topics covered.

8 MR LAUCCI: [15:07:11] I may be totally wrong, but I identified a tiny portion of my
9 cross-examination for closed session, and that's precisely on the issue of protective
10 measures.

11 PRESIDING JUDGE KORNER: [15:07:27] All right. Well, I think we're all just
12 wasting time. We'll see how we get on with all of this. But can I ask, for future
13 reference, please, that it is always checked when the witnesses are seen, that they're
14 still asking for protective measures, particularly witnesses of this nature.

15 MR NICHOLLS: [15:07:45] Yes, we will do that.

16 PRESIDING JUDGE KORNER: [15:07:47] Thank you. All right.

17 MS WHITFORD: [15:07:48] I can confirm, your Honour, that during the preparation
18 session, this was raised with him, and he was very much insistent on having
19 protective measures and was concerned about the concealment of his identity.

20 PRESIDING JUDGE KORNER: [15:08:00] All right. Well, in that case, Mr Laucci,
21 you really will have to tread very, very carefully. And if there's the slightest danger
22 that what you ask him will reveal his role, then we'll have to go into private session.

23 MR LAUCCI: [15:08:17] Yes. But I can say already that I have no question on his
24 role. It's more about his knowledge, which is general aspects.

25 PRESIDING JUDGE KORNER: [15:08:26] All right. Okay.

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1 Yes, well, let's have the summary of what he's going to tell us about.

2 MS WHITFORD: [15:08:31] Thank you, your Honour.

3 Witness P-0020 is a Fur civilian from Darfur. He provides *background to the armed
4 conflict in Darfur dating back to the 1980s, and he describes the political situation in
5 Sudan in 2003 and 2004.

6 P-0020 provides evidence in relation to the creation and objectives of the Sudan
7 Liberation Army. He describes the National Security Council and the Security
8 Committee structure in Sudan, and provides evidence in relation to visits by Ahmed
9 Harun to Darfur in 2003, in Harun's capacity as state minister for the ministry of the
10 interior.

11 P-0020 describes the destruction of villages in West Darfur in 2003, including the
12 village of Tanako.

13 And, finally, P-0020 provides evidence about the identity of Ali Kushayb.

14 That concludes the summary, your Honour.

15 PRESIDING JUDGE KORNER: [15:09:57] Yes.

16 Have him brought into court, please.

17 I can tell from the interviewers, Mr Nicholls, that this is a really early statement.

18 (The witness enters the courtroom)

19 PRESIDING JUDGE KORNER: [15:11:14] Sir, thank you very much for coming to
20 court. I understand you speak English, as well as Arabic, but you'll be giving your
21 evidence in Arabic.

22 Perhaps you'd be good enough to take the solemn declaration, which I think you'll
23 find in front of you.

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25 (The witness speaks Arabic)

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1 THE WITNESS: [15:11:40](Interpretation) Yes, the paper is here in front of me. So
2 the solemn declaration:

3 I solemnly declare that I will tell the truth, the whole truth, and nothing but the truth.

4 PRESIDING JUDGE KORNER: [15:11:58] Thank you very much, indeed, sir. As
5 you know, you're going to be asked questions, first of all, by the Prosecution,
6 potentially, but I doubt it, by the representative of victims, and then the Defence.

7 MS WHITFORD: [15:12:18] Thank you, your Honour.

8 QUESTIONED BY MS WHITFORD:

9 Q. [15:12:21] Good afternoon, Mr Witness. We have already met, but for the
10 record, my name is Alison Whitford, and I'll be asking you questions on behalf the
11 Prosecution.

12 If at any stage you don't understand any of my questions, please say so, and I'll do
13 *my best to clarify.

14 At the moment, we are in open session, and that means that the public can hear you.

15 I will not be asking you questions that will elicit from you identifying information,
16 but as we discussed last week, if you feel that in order to answer the question you
17 need to say something that might identify you, please say so, and we can ask to move
18 into private session.

19 Mr Witness, you provided a statement to Prosecution investigators in 2006; is that
20 correct?

21 A. [15:13:19] Yes, that is correct.

22 Q. [15:13:28] And just for the record, this is item DAR-OTP-0095-0002.

23 Now, you had the opportunity to review your statement last week, and you made
24 some corrections and clarifications; is that correct?

25 A. [15:13:54] Yes, that is correct.

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1 MS WHITFORD: [15:13:56] Your Honours, those corrections and clarifications were
2 put into a document, which was read back to the witness in Arabic and signed by him
3 during the session. And our colleagues from the Defence have kindly agreed for
4 that document to be introduced into evidence. And so I'll simply put the ERN of
5 that document on the record, which is DAR-OTP-0224-0551.

6 PRESIDING JUDGE KORNER: [15:14:26] Yes, thank you, Ms Whitford.

7 I cannot tell you what a blessed relief it is.

8 MS WHITFORD: [15:14:34] Thank you, your Honour.

9 Q. [15:14:34] Mr Witness, after making those corrections and clarifications, you
10 agreed that your statement is true and correct, to the best of your knowledge and
11 belief; is that correct?

12 A. [15:14:45] Yes, that is correct.

13 Q. [15:14:49] And you also agreed that your statement could be introduced into
14 evidence in this case; is that right?

15 A. [15:15:03] Yes, that is correct.

16 Q. [15:15:05] I will now ask you a few additional questions about some of the topics
17 that are covered in your statement. First of all, going to paragraph 63 of your
18 statement, here you talk about the time that you were introduced to Ali Kushayb in
19 Garsila in 2003.

20 Now, there's one additional clarification here that you made during the preparation
21 session, and that is that this meeting occurred in October 2003; is that correct?

22 A. [15:15:49] Yes.

23 Q. [15:15:51] And it's your understanding that the name "Ali Kushayb" is a
24 nickname rather than an official name; is that correct?

25 A. [15:16:03] Yes, that is correct.

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1 Q. [15:16:08] Is it common in your region of Darfur to refer to people by
2 nicknames?

3 A. [15:16:22] Yes.

4 Q. [15:16:23] Can you explain a little about that to the Judges.

5 A. [15:16:36] Can you clarify what you mean.

6 Q. [15:16:40] What kind of nicknames are commonly used in Darfur, to your
7 knowledge?

8 A. [15:16:56] You can give the person a name that is reflecting an animal, material,
9 let's say a lion, a camel, a horse, and also food. For example, yoghourt or drinks, like
10 kushayb, or anything of the sort.

11 Q. [15:17:16] To your knowledge, is the nickname "Kushayb" common in your
12 region of Darfur?

13 A. [15:17:29] Yes, it is common.

14 Q. [15:17:39] I'll move to another topic now. In paragraph 64 of your statement,
15 you speak about an attack on Tanako in 2003.

16 And at this stage, I'd ask that the map at DAR-OTP-0219-3235 be displayed on the
17 screen. And this can be broadcast publicly. This is a map of West Darfur. And if
18 we could please zoom in on the area of this map which shows Zalingei, Habilah and
19 Garsila. If we could go a little bit closer, please.

20 Mr Witness, do you see that on your screen?

21 A. [15:18:53] Yes, can I see it in front of me.

22 Q. [15:18:58] And we see the town of Tanako to the southeast of Habilah; is that
23 correct?

24 A. [15:19:23] Southeast of Habilah.

25 Q. [15:19:25] Thank you. Now, Mr Witness, during the preparation session, you

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1 said that, in addition to this attack (Redacted) on Tanako, you also saw the
2 destruction of villages between Tanako and Zalingei. Using this map, could you
3 explain where you saw that destruction, please.

4 A. [15:20:00] Can you zoom in, please.

5 Q. [15:20:14] Is that sufficient? Please go on.

6 A. [15:20:18] No, I cannot see all the details about the different towns and villages
7 that I have seen.

8 Q. [15:20:30] Can you explain to us, then, without using the map, if the map is not
9 helpful to you, where you saw this destruction.

10 A. [15:20:42] On the road to Tanako, there are *Sullu next to Wadi Azum, and other
11 towns and villages, such as Djiri. It is written here Djiri, but we pronounce it
12 Giri (phon). There are other towns or villages. Beja on the road to Garsila. Then
13 *Kojabariy and then to Tanako. But also the last town is not here on the map.

14 THE INTERPRETER: [15:21:19] The interpreter did not hear the last town.

15 MS WHITFORD:

16 Q. [15:21:23] Could you repeat the last town that you mentioned, please.

17 A. [15:21:33] Mindo.

18 Q. [15:21:35] And could you explain what you saw was destroyed in that area.

19 A. [15:21:46] There everything was scorched down, totally burned down. The
20 villagers had fled the place. You could see smoke coming out as the remainder of
21 the fire was still be seen.

22 Q. [15:22:03] Could you tell the Judges what kind of land is in this area.

23 A. [15:22:17] These are land with clay, land that is suitable for agriculture and for
24 farmers, and farming.

25 Q. [15:22:35] And when did you see this destruction?

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1 A. [15:22:42] *When I was travelling from Zalingei through Garsila to Tanako.

2 Q. [15:22:52] And which months of which year are you speaking about?

3 A. [15:22:59] Early 2003.

4 Q. [15:23:08] Thank you, Mr Witness. I'll move on to another topic now. I'd like
5 to ask you some questions about the topic of sexual violence during the armed
6 conflict.

7 Now, at paragraph 108 of your statement, you speak about interactions that you had
8 with victims of rape from the Fur community. What I would like to ask you is to
9 explain on the basis of all of your knowledge and experience, what is the social
10 impact on a person from the Fur community if they are a victim of rape during the
11 armed conflict in 2003 and 2004?

12 A. [15:24:00] (Redacted)
13 (Redacted), where their villages had been burned
14 down and the villagers had fled.

15 Rape is a very complex issue for the victim and for the family of the victim, as well as
16 the community. The girl that is a victim of rape may not have the chance to have a
17 good marriage.

18 In the Fur community, to some extent, there is some tolerance, some empathy and
19 sympathy towards the victim. And she might end up finding a husband or being
20 married, but not in the normal circumstances that a normal girl would be able to find
21 a suitable husband.

22 Q. [15:25:09] When you say "not in the normal circumstances", Could you explain a
23 little further for us, please.

24 A. [15:25:21] I mean by that a girl that has not been raped, because the rape will be
25 a kind of stigma that will be clinging to the girl, and so she will be victim to some -- of

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1 some sort of bad reputation, if I can say. But with time, of course, this could
2 improve, the situation could improve, and she could find a husband.

3 Q. [15:25:48] And would there be any impact on the family of the victim, to your
4 knowledge?

5 A. [15:25:57] Yes. Because if a girl in a local community is not married, this is a
6 problem for the family. And also the victim of rape, the stigma of the victim could
7 also follow their children.

8 MS WHITFORD: [15:26:25] Your Honour, I just need one moment. There's an issue
9 with an interpretation topic. I just need to confer with my colleague.

10 (Counsel confers)

11 MS WHITFORD: [15:27:01] Your Honour, I would like to put a question again that I
12 put in the first topic in relation to the name of Ali Kushayb. I'm informed by my
13 Arabic-speaking colleagues that there may have been an issue with the interpretation
14 in terms of the witness's answer being correctly interpreted. So, with your leave, I'd
15 like to ask that question again.

16 PRESIDING JUDGE KORNER: [15:27:21] Yes.

17 MS WHITFORD: [15:27:22]

18 Q. [15:27:23] Mr Witness, the question I asked you before, and which I'd like you to
19 repeat your answer, please, is whether the name "Kushayb" is common, not known,
20 but common in your region of Darfur?

21 PRESIDING JUDGE KORNER: [15:27:43] I wonder if you ought to define "common".
22 I mean, I know the witness speaks English and probably understood, but just for the
23 purposes of it, what do you actually mean by the word "common".

24 MS WHITFORD: [15:27:55] Certainly, your Honour.

25 Q. [15:27:57] And by "common" I mean, are there many people, to your knowledge,

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1 who have the nickname "Kushayb"?

2 A. [15:28:16] It is a known nickname. There are some people who carry this
3 nickname. But to say it's widespread, that is different. But there are people who
4 are being nicknamed "Kushayb".

5 Q. [15:28:33] Thank you for giving that clarification, Mr Witness.

6 A. [15:28:39] Thank you. Thank you very much.

7 Q. [15:28:43] What I'd like to ask you about now is the impact of the armed conflict
8 in 2003 and 2004 on the Fur population in West Darfur. Could you explain to the
9 Judges how that armed conflict changed the lives of the Fur population in West
10 Darfur.

11 A. [15:29:18] The conflict in West Darfur impacted the Fur community
12 economically, socially, culturally, even emotionally and psychologically. If you can
13 imagine, a small child is being asked at school to make a drawing. He or she would
14 draw a plane or someone on back horse or riding a camel and firing at people, or they
15 would draw, for example, houses that are being burning and burned down.
16 Economically, the Fur community lost all its resources. Even the fields and the
17 agricultural lands were destroyed. The people had to leave their regions, and they
18 are now living in the suburbs of cities, or they are refugees in the neighbouring
19 countries.

20 If the -- I would like to also add --

21 THE INTERPRETER: [15:30:34] In English, the witness said "uprooted".

22 THE WITNESS: [15:30:38] (Interpretation) So the Fur community lost their identity
23 and their historic features.

24 MS WHITFORD: [15:30:48]

25 Q. [15:30:49] When you say the Fur community was uprooted, what happened to

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1 the land that they lived on before?

2 A. [15:31:02] The villages were burnt down. All the villages who were there,
3 between Zalingei to Garsila, for around 80 kilometres, have been totally burned down.
4 They were all -- they have all disappeared. And there was no village left. All that
5 land was highly populated. All the villages were densely populated. The villages
6 from Zalingei to Jebel Marra have all been burned down. There was only one village
7 left, Habilah. And the villages from Kass to Nyala, for the distance of 86 kilometres,
8 have all disappeared. Only two villages were left, Muranja (phon), and another
9 one --

10 THE INTERPRETER: [15:31:58] Which the interpreter didn't hear the name.

11 THE WITNESS: [15:32:04](Interpretation) The villages were then the camps of the
12 displaced. Next to Zalingei, Kass. And the schools were occupied in those areas.
13 And this is happening until now. People there are living off the assistance and the
14 help offered by the non-governmental organisations. This is what I wanted to
15 clarify.

16 MS WHITFORD:

17 Q. [15:32:33] And until today, are the people who were displaced by the armed
18 conflict still living in displaced persons camps?

19 A. [15:32:51] Yes, yes. Yes, they are still living in the IDPs camps, and sometimes
20 in camps outside the country.

21 Q. [15:33:05] And in terms of the livelihoods of the Fur community of West Darfur,
22 what happened to the ability of people to make a livelihood?

23 A. [15:33:23] They are still depending on the assistance offered by the
24 non-governmental organisations. We will never be able to talk about their
25 livelihoods. Their education institutions have been destroyed. Their businesses

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1 have been destroyed. It is the whole cycle of life that has been destroyed. They
2 have nothing left.

3 Q. [15:33:55] Of all the ways that you mentioned that their lives have changed, one
4 of them was socially. Could you explain the social impact, for example, the
5 relationship between the tribes, how was that impacted by the armed conflict?

6 A. [15:34:21] There was a great social divide that broke down the social fabric.
7 People no longer trusted each other, as was the case in the past. There was doubt
8 among and between people.

9 Socially speaking, the families, the families even within the same tribe, have been
10 dispersed. Some went to a region, others went to another region, and they have lost
11 connection with each other. Even families in the same displaced area
12 have -- saw -- have seen their behaviour changed.

13 You can only imagine that the family of ten members lives in space of 5 to 6 square
14 metres, and this is a very, very big problem when it comes to education, when it
15 comes to the relationship between the family members, and at several levels as well.

16 Q. [15:35:36] Thank you, Mr Witness, for answering my questions.

17 MS WHITFORD: [15:35:40] Your Honour, that concludes my examination.

18 PRESIDING JUDGE KORNER: [15:35:43] Thank you very much.

19 Yes, Mr Shah.

20 MR SHAH: [15:35:46] Thank you, Madam President.

21 Good afternoon, Mr Witness.

22 Following Ms Whitford's questions and the testimony that the witness has given
23 today, we have no questions for the witness. We think his testimony today is
24 certainly very important and relevant to our clients, who are the victims in these
25 proceedings, and we simply thank him for his willingness to come and testify before

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1 your Honours.

2 PRESIDING JUDGE KORNER: [15:36:24] Sorry, I was distracted, Mr Shah. Did
3 you say you weren't going to ask any questions?

4 MR SHAH: [15:36:30] Yeah, that is the short of it, following Ms Whitford's questions
5 and the testimony of the witness.

6 PRESIDING JUDGE KORNER: [15:36:34] Right. Thank you.

7 Mr Laucci, I'm assuming that you can't conclude today, but can you make a start.

8 MR LAUCCI: [15:36:40] Sure. I'm happy to do so.

9 PRESIDING JUDGE KORNER: [15:36:45] Right.

10 QUESTIONED BY MR LAUCCI:

11 Q. [15:36:50] Good afternoon, Mr Witness. My name is Cyril Laucci. I'm the lead
12 counsel for Mr Ali Muhammad Ali Abd-Al-Rahman. And we met briefly yesterday
13 during your induction session. I hope you are fine. And if you agree, I will start
14 your cross examination now. We will continue tomorrow morning.

15 A. [15:37:19] Thank you.

16 Q. [15:37:20] Well, first of all, I want to thank you for appearing before this Court
17 and contributing to the manifestation of the truth by your testimony.

18 My cross-examination will essentially focus on trying to rely, to the best of my
19 capacity, on your knowledge of the Sudanese system and the situation there, which I
20 understand is to be extensive, and how things did work and go in Sudan, especially in
21 the time of 2003 and 2004. But we can also speak about other periods, including now,
22 if you think that is relevant at some point.

23 A. [15:38:29] I think that this is a general question. Please, sir, do ask very specific
24 questions, and I am very willing to answer it.

25 Q. [15:38:39] It was not even a question. It was an introduction.

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1 The first topic that I will try to cover with you - and we will try to cover this this
2 afternoon, if possible - is precisely the overall context of Sudan at the time. And I
3 will start with what you mentioned at paragraph 18 of your written statement, but
4 there is no need to put it on the screen. This is the creation of the Popular Defence
5 Forces.

6 You date that creation in 1989 or soon after. That's something that you can clarify.
7 So, yeah, my first question: Can you clarify when exactly the PDF was created,
8 please.

9 A. [15:39:42] The Popular Defence Forces were created after the coup of the
10 salvation, the salvation movement. It is a party movement. They were called the
11 Popular Defence Forces. But before that, there were a group called Muraheel, but
12 they were not in Darfur. The mission of these forces is to be additional -- is to be
13 additional forces to the regular army forces. This is what I wanted to clarify.

14 Q. [15:40:28] So you say they come in addition to regular forces. Can I ask you
15 how different they are from the Sudanese Armed Forces, first aspect of my question,
16 and I will follow up after.

17 A. [15:40:52] The Sudanese Armed Forces is a national institution. This *
18 institution has laws. It has ranks when it comes to the command, when it comes to
19 the control. This unit involves or recruits people from Sudan.
20 The Popular Defence Forces mostly follow a movement that initiated a coup in Sudan,
21 the National Islamic Front, that is. The coup was in 1989.

22 Q. [15:41:45] Thank you. What about the recruitment in the PDF? How does
23 that work?

24 A. [15:41:59] Recruitment in the Popular Defence Forces is selective. What I mean
25 by this is that the recruit has to -- has to be affiliated to the National Islamic Front

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1 because it's a party militia.

2 Q. [15:42:29] Yes. So now I think I understand that this relationship between the

3 PDF and the National Islamic Front is -- is essential to understand what the PDF is.

4 Do I understand that the PDF is like the armed wing of the National Islamic Front?

5 A. [15:42:57] Not really. These are forces that were created to be paramilitary for

6 the armed forces, and they serve the agenda of the National Islamic Front.

7 Sometimes they do missions that cannot be carried out by the armed forces, because

8 the armed forces are ruled by a clearer law and they are *professional, too. This is

9 why some missions, some operations are given to the Popular Defence Forces.

10 Q. [15:43:39] Can you give example of the kind of missions that would be given by

11 priority to the PDF, please.

12 A. [15:43:52] What happened in Darfur, burning down the villages. The armed

13 forces do not burn down the villages, but the Popular Defence Forces can do that.

14 Q. [15:44:04] Are you talking now about the burning of villages in 2003-2004?

15 A. [15:44:16] I am speaking about burning the villages, yes, in these two years and

16 the following years too.

17 Q. [15:44:34] Thank you. Okay, I will come back to that aspect in many a small

18 moment.

19 Talking still about the PDF, was it, according to you, a permanent structure, or was it

20 more like something dormant that could be mobilised from time to time in case of

21 need?

22 A. [15:45:10] I did not get your question.

23 Q. [15:45:12] I try differently. The members of the PDF, were they permanently

24 full-time attached to the PDF, or would they do something else in parallel?

25 A. [15:45:43] I didn't get your question.

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1 Q. [15:45:44] Okay.

2 PRESIDING JUDGE KORNER: [15:45:46] I'm not sure what you mean by

3 "something else in parallel" either Mr Laucci.

4 MR LAUCCI: [15:45:50] Okay, yeah.

5 Q. [15:45:51] Do you agree with me that when we talk about the Sudanese Armed

6 Forces, the soldiers are full-time soldiers? That's their job, their occupation, and this

7 is what they are doing. Do you follow me?

8 A. [15:46:12] Yes, I understand what you mean by the armed forces. The

9 Sudanese Armed Forces have been created before the English, British got out of

10 Sudan. The PDF were created by the salvation movement. The salvation

11 movement have benefited from recruiting them.

12 Those who have been also retiring from the armed forces have been also recruited,

13 but this was done on an ideological level or base. This is why these forces have been

14 used in missions that the Sudanese Armed Forces cannot accomplish or carry out.

15 Q. [15:47:02] Okay. Thank you. But -- and please focus on this parallel that I am

16 making between the Sudanese Armed Forces and the PDF. The same way as the

17 members of the armed forces have full -- I mean, do their career and that is their

18 occupation, to be members of the Sudanese Armed Forces, does that apply as well to

19 the members of the PDF? That is, is there occupation, business, being a member of

20 the PDF the same way as they would be soldiers in the Sudanese Armed Forces?

21 PRESIDING JUDGE KORNER: [15:47:44] You mean they're part-time, don't you, the

22 PDF?

23 MR LAUCCI: [15:47:47] Actually, more than part-time. I'm trying to clarify

24 whether this is -- the PDF is a permanent structure that is in existence at all times or

25 whether the members come and go, depending on when they are called to, for

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1 instance, participate in a specific mission.

2 PRESIDING JUDGE KORNER: [15:48:10] All right. See if the witness can answer
3 that.

4 THE WITNESS: [15:48:20](Interpretation) I cannot answer this question because I
5 am not a recruit, neither in the PDF nor in the armed forces. I only see them in the
6 street. This is what I know about them.

7 MR LAUCCI:

8 Q. [15:48:38] Totally fair. And I do not insist, Mr Witness. Thank you.

9 What do you know about the organisation of the PDF? Do they have grades and
10 ranks?

11 A. [15:48:54] As I said, I am not closely connected to them. I only see them in the
12 streets. I know the ranks and the grades of the armed forces. They are formed of
13 generals, of lieutenants, but I know nothing about the Popular Defence Forces.

14 Q. [15:49:13] But these PDF members that you can come across in the streets, do
15 they have ranks, *galons*, or something that would make a difference between them?

16 A. [15:49:31] They have a clear and well-known uniform. It is a well-known
17 colour uniform. They have vehicles. They have different weapons. However,
18 their ranks and grades are no -- of no importance for me. I have never dealt with
19 them.

20 Q. [15:49:54] Okay. I do not insist anymore.

21 At a certain moment in time, did you hear about a call that was made by the
22 government of Sudan to raise militias to join into what we can call a
23 counterinsurgency and fight the rebellion?

24 A. [15:50:34] (No interpretation)

25 MR LAUCCI: [15:50:38] We did not get the interpretation.

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1 THE INTERPRETER: [15:51:00] The witness is asking you, sir, to repeat the question.

2 I'm sorry. I was on the other channel.

3 MR LAUCCI: [15:51:03] No problem. I'll repeat the question.

4 Q. [15:51:07] Mr Witness, if I tell you that at some point in time the government of
5 Sudan called upon militias to participate into a counterinsurgency to fight against a
6 rebellion that was taking place in Darfur, does that ring a bell to you?

7 A. [15:51:42] What happened is that the government of Sudan has mobilised
8 individuals to fight the rebellion in Darfur, and this happened in 2002. I was in the
9 south of Darfur, and there was an order to mobilise and recruit individuals to join the
10 counterinsurgency.

11 Q. [15:52:17] You said this happened in 2002. Are you -- are you sure about this
12 date?

13 A. [15:52:35] I do not recall the exact date. But after there were some calls against
14 the rebels, the government called *for recruits to fight the insurgency. This is what I
15 remember and what I know.

16 Q. [15:52:59] Do you remember or identify like a triggering event that prompted
17 the government to make this call to the militias? For instance, an attack by the
18 rebellion or a victory of the rebellion in a certain place.

19 A. [15:53:26] Yes. The rebels attacked Golo and Thur, those two villages. After
20 that, the government had declared a general mobilisation to fight rebellion.

21 Q. [15:53:45] When was the attack on Golo and Thur, please?

22 A. [15:53:55] The attack happened in the second half of 2002.

23 Q. [15:54:05] Mr Witness, I will use the fact that I am cross-examining you to
24 answer more leading questions and ask you specifically about the attack on the
25 airport of Al Fasher, which happened in April 2003.

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1 Do you recall that event?

2 A. [15:54:29] Yes, yes, I do remember it.

3 Q. [15:54:35] And if I suggest to you that this attack on the airport of Al Fasher was
4 the events -- maybe in addition to other attacks but was decisive in the call that was
5 made by the government of Sudan to the militia to join and form the
6 counterinsurgency.

7 A. [15:55:09] It is not so, because the government felt the danger emanating from
8 the rebellion in Darfur, and it thought that it will impact -- impact it's effort in the
9 south of Sudan. Because it would have then two fronts, Darfur and the south Sudan,
10 knowing that the fighters from the armed forces are mostly in Darfur, and therefore,
11 the government will find difficulty in how to use members from the armed forces,
12 and most of them from Darfur, to fight the insurgency in Darfur. Secondly, the
13 government has exploited the tribal conflicts that were happening in the region, using
14 one tribe against another, and this was happening while using people against each
15 other in the society in Darfur at that time. And, therefore, the Al Fasher attack was
16 the height of the military actions that happened.

17 Some fighters from the army have failed in several places, and therefore, Al Fasher
18 attack was as a result of that. There were -- the air commander has been imprisoned
19 during the attack on Al Fasher. This is why the government felt that it was then
20 weak in front of the insurgency, and therefore, it had to recruit and call upon more
21 individuals, and it had to exploit the already existing tribal conflicts. And after that,
22 it capitalised on what happened by recruiting several individuals and fighters.
23 Thank you.

24 Q. [15:57:25] So I repeat again my question with all that information and
25 mentioning to you the attack on Al Fasher. According to you, when did the

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1 government of Sudan call to mobilise the Arab militia to fight against the Fur
2 rebellion -- the rebellion in Darfur? Sorry.

3 A. [15:57:59] Before the attack on Al Fasher, I remember that (Redacted)
4 (Redacted), or the government of Khartoum asked the *wali* of South Darfur at that
5 time to mobilise a set of tribes to face the insurgency and to exclude other tribes from
6 this mobilisation. This happened before the Al Fasher attack.

7 Q. [15:58:36] And before the Al Fasher attack, I take your point. Was it in 2003
8 then or, earlier even, in 2002?

9 A. [15:58:48] Before that. Before the attack on Al Fasher.

10 Q. [15:58:56] Okay. Thank you.

11 And could be a good time to stop, Madam President, if you like.

12 PRESIDING JUDGE KORNER: [15:59:06] Yes, if you come to the end of this topic.

13 MR LAUCCI: [15:59:08] Yes. The big topic of the overall context will continue
14 tomorrow, but on this, the calling of the militias, I'm done.

15 PRESIDING JUDGE KORNER: [15:59:19] All right. And do you -- are you -- do
16 you anticipate concluding your cross examination tomorrow morning, or are you
17 going to be all day?

18 MR LAUCCI: [15:59:29] No. We will be done before the lunch break.

19 PRESIDING JUDGE KORNER: [15:59:33] Right. Yes.

20 Yes, well, there are you, sir. Thank you very much. We'll break now until
21 tomorrow morning. And if you'd be kind enough to be back at 9:30 in the morning.
22 And please don't discuss the evidence that you're giving with anybody overnight.
23 It's very important that all the evidence you give is your own. Yes, thank you very
24 much. Yes, if you'd like to go with the court officer and then be back tomorrow
25 morning. Thank you.

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1 (The witness exits the courtroom)

2 PRESIDING JUDGE KORNER: [16:00:31] Yes, Mr Nicholls.

3 MR NICHOLLS: [16:00:34] Thank you, your Honours.

4 I just wanted to raise the same topic I raised earlier about -- for interpreters in July. I
5 haven't had a chance to read it *carefully, but I've just read the email that was
6 distributed. Thank you to the Chamber for sending it on. Have not yet had a
7 chance to talk to my colleagues. But just on the first reading, it seems very
8 ambiguous, and it's not clear to me, from reading it, if the training * has
9 started.

10 So, again, reinforced for me by the experience this morning and the contrast in
11 working the interpreter we had during the prep, with here - and, again, not a
12 criticism - it's really vital, because we will be looking at this. And it has a true
13 impact on scheduling of witnesses, which will come up quite -- it may seem far off,
14 but it needs to be done well in advance.

15 So I just raise that. I will -- we will talk together, but it doesn't appear that there is a
16 firm answer of where we will be on 1 July or before.

17 PRESIDING JUDGE KORNER: [16:01:47] No. Well, like you, we were -- well, we
18 were sent the email this morning, and I instructed the officers to let the parties know.
19 What appears to be a suggestion is that there will be interpreters in July, but it won't
20 be simultaneous translation. That, as I understand it, is what the Registry is
21 suggesting.

22 MR NICHOLLS: [16:02:24] Again, I'm sorry to raise this, it's just very important and
23 it was reinforced by this morning, but what I read is that they hope to be there, some
24 form of interpretation, by July 1, but it's an aspiration at the moment.

25 PRESIDING JUDGE KORNER: [16:02:40] Well, that brings me on to another matter.

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1 There is a possibility when we break tomorrow, instead of breaking until 6 June -- and
2 we've got to do some checks. It's because one of the cases is not going to be sitting as
3 anticipated. There's a possibility that we could sit an extra week, which would be
4 30 May until 6 June.

5 Now, I appreciate, you've had great difficulty with witnesses, and at the moment it's
6 not confirmed. I hope it will be confirmed by tomorrow, but I'm giving both sides a
7 heads up, as it were, that it's a possibility.

8 If it's not possible to get witnesses here, the other thing that struck me that we could
9 use the time for is for dealing with any outstanding overarching matters of law. We
10 still have the question of the video to which the Defence take objection. And it
11 seems to me that that is a matter that really is better done in oral submissions
12 than -- and, indeed, with evidence being heard, if required, on a voir dire, than in
13 writing. And so it did strike me - that's why I'm also giving advance warning - that
14 if we can't get witnesses - obviously, it would be *preferable if we could, but we have
15 the interpretation problem - then we might deal with that as a discrete topic
16 over -- however long it's likely to take. Even if it's only a couple of days. And any
17 other outstanding overarching legal matters, as opposed to individual witnesses.

18 But it does seem to me that that one is a case where there may well have to be a
19 voir dire of sorts. Although, I suppose, in a way, having the Judges having a
20 voir dire first is -- but -- I mean, I suppose *the same happens in magistrates' cases.
21 Anyhow, so that's the situation.

22 Firstly, I know, Mr Nicholls, you will have to go back and consider that.

23 But, Mr Laucci, given that you -- your mission now is not likely, you say, to be this
24 month.

25 MR LAUCCI: [16:05:27] Correct.

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1 PRESIDING JUDGE KORNER: [16:05:30] And I presume you're going to use, if your
2 visa for six months comes through --

3 MR LAUCCI: [16:05:37] We'll use the next useful opportunity.

4 PRESIDING JUDGE KORNER: [16:05:41] Yeah, all right.

5 Well, I mean, there is -- there's a couple of weeks in June, aren't there? We'll see.

6 Anyhow, so that's the situation, if you'd like, and we can discuss it tomorrow.

7 MR LAUCCI: [16:05:58] Yes. But definitely, this issue that you just mentioned and
8 the cooperation issue that goes together could also form a good topic for -- I don't
9 want to a status conference because we already started the trial, but sort of.

10 PRESIDING JUDGE KORNER: [16:06:18] Well, all right. Well, first of all, we've got
11 to confirm. It's not altogether. I thought it had been confirmed, but I'm not entirely
12 sure that it has. But we will let you know tomorrow. All right?

13 MR NICHOLLS: [16:06:29] Thank you. And just for the planning, I may be overly
14 optimistic on my side, but I don't think the video issue in and of itself may take that
15 long when we start discussing it. It -- I don't think it's a two-day hearing, no matter
16 what happens.

17 MR LAUCCI: [16:06:49] No. This is something that we thought we would cover in
18 writing, but we are happy to do it orally. But, I mean, the submissions will not be
19 that long.

20 PRESIDING JUDGE KORNER: [16:07:02] It strikes me that this is one of the few
21 arguments, legal submissions, which *there will be things the Judges will want to
22 know, which you may not -- and rather than going back and forth writing it, it is so
23 much simpler to do it in open court.

24 MR NICHOLLS: [16:07:18] No. I agree. I just don't think it will -- it will take
25 more than a --

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- 1 PRESIDING JUDGE KORNER: [16:07:24] Half a day. All right.
- 2 Well, perhaps, Mr Nicholls, overnight you could make some inquiries, if we do get
- 3 the extra week, whether there's any possibility of getting any witnesses here.
- 4 MR NICHOLLS: [16:07:35] I will see, your Honour. I'm not making excuses. It's
- 5 just much more complex than previous experience, and we do try to work with the
- 6 Defence, because, obviously, it impacts them as well which witness -- which witnesses
- 7 are coming. So we will take a look at that tonight.
- 8 PRESIDING JUDGE KORNER: [16:07:57] All right. Yes. Thank you very much.
- 9 All right. 9:30, tomorrow morning then, please.
- 10 THE COURT USHER: [16:08:02] All rise.
- 11 (The hearing ends in open session at 4.08 p.m.)