

Trial Hearing
WITNESS: DAR-OTP-P-0903

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 3
9 Wednesday, 13 April 2022
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:44] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:01] Yes, good morning, all.
15 Could we have the case called, please.
16 THE COURT OFFICER: [9:33:06] Good morning, Madam President.
17 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
18 Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), case reference ICC-02/05-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE KORNER: [9:33:23] Thank you very much.
21 Yes, appearances. Prosecution first, please.
22 MR NICHOLLS: [9:33:29] Good morning, Madam President. Good morning,
23 your Honours, everybody in the courtroom and watching. I'm Julian Nicholls. I'm
24 joined today with Claire Sabatini, Pubudu Sachithanandan, Laura Morris and
25 Mohanad Elkholy. Thank you.

1 PRESIDING JUDGE KORNER: [9:33:45] Defence.

2 MR LAUCCI: [9:33:49](Interpretation) Good morning, your Honour, your Honours,
3 dear colleagues. This morning, alongside Mr Abd-Al-Rahman, present in
4 the courtroom, Camille Divet, assistant responsible for evidence analysis; Ahmad Issa,
5 case manager; my colleague, Iain Edwards, associate counsel; and myself,
6 Cyril Laucci, lead counsel.

7 PRESIDING JUDGE KORNER: [9:34:12] And finally, victims' represents.

8 MS VON WISTINGHAUSEN: [9:34:15] Good morning, Madam President,
9 your Honours. Good morning to everyone in and around the courtroom.
10 The victims are represented this morning by my colleague Nasser Amin Abdalla; to
11 my right, associate counsel Anand Shah; behind me, our case manager Idriss Anbari;
12 and myself, Natalie von Wistinghausen. Thank you.

13 PRESIDING JUDGE KORNER: [9:34:38] Yes.

14 Now, Mr Sachithanandan, I think you're calling the next witness and you wanted to
15 raise something.

16 I've got one matter arising out of yesterday that I just want to deal with very quickly,
17 and that relates to Mr Choudhry suggested at the end of cross-examination,

18 Mr -- because you were there, I don't know whether Mr Sachithanandan was, that
19 the case hadn't been properly put. And when I was reflecting on it, I realised that
20 I -- or I imagine that what Mr Choudhry was -- was saying was that the case that no
21 such person as Ali Kushayb exists had not been put.

22 But I went back and checked what Mr Laucci said yesterday when I raised that, and
23 what Mr Laucci said then was, whether a person named Ali Kushayb did exist at
24 some point in time or not, we have no position.

25 So I'm taking it from that, that that part of the Pre-Trial Brief, which seemed to

1 suggest to all of us this part of the case, is no longer being pursued.

2 And for the last time - and I'm not going to raise this again, Mr Laucci - that is right, is
3 it? You have no positive case to put that no such person with the name
4 "Ali Kushayb" actually existed?

5 MR LAUCCI: [9:36:20](Interpretation) I think that it was clear in the brief, and I
6 confirm it, yes.

7 PRESIDING JUDGE KORNER: [9:36:26] I hope that clears the matter.

8 MR NICHOLLS: [9:36:28] Thank you.

9 PRESIDING JUDGE KORNER: [9:36:29] Because I wanted to double-check that
10 myself.

11 Yes. Now, yes, Mr Sachithanandan, I gather you want to raise something in respect
12 of the witness.

13 MR SACHITHANANDAN: [9:36:38] Nothing substantive, your Honour. Just to
14 say that, considering the level of literacy, I'll be adopting extremely simple language
15 during questioning, and I invite the interpreters and the parties, et cetera, to take
16 a similar approach with regard to simplicity of language.

17 The other point, which is a very minor point, is that we are using a -- we passed
18 around some binders with a glossary and some annexes from the Trial Brief, so I will
19 attempt, whenever possible, to mention which number in the glossary I'm using for
20 purposes of clarity of transcript.

21 PRESIDING JUDGE KORNER: [9:37:15] Thank you very much. That's very
22 helpful.

23 Is that what I raised with the Prosecution last week? Is that -- is that the list of terms,
24 as it were?

25 MR NICHOLLS: [9:37:27] No, your Honour, not the complete list, because we are

1 still working on that and we were going to consult with the Defence as well on those
2 terms. So there's a broader list coming.

3 PRESIDING JUDGE KORNER: [9:37:38] I see. All right.

4 On the question of language, I was going to mention something. I think it's
5 incumbent on all sides to use simple language, particularly for witnesses whose
6 second language is in fact Arabic and who are the only witnesses that the Prosecution
7 can call at the moment. And I think questions containing double negatives, and the
8 like, should be avoided. It really becomes difficult.

9 Also, and this comes from previous experience, reminding witnesses of what they
10 have said before as a lead-in to the actual question you want to put also contains an
11 inbuilt risk that the witness is going to start thinking that he's got to repeat everything
12 that he's already said. So I know it's classical advocacy to -- to start with "you told
13 the Court yesterday or the day before this, now I want to put this to you", but all it
14 does is confuse the witness.

15 And finally, before I -- can I also thank the interpreters, and indeed the people who
16 are taking the note of what's being said, because there's been a dramatic improvement,
17 I think we all feel this week, from what happened last week.

18 Yes, Mr Nicholls.

19 MR NICHOLLS: [9:39:26] We'd just join in that thanks, your Honour, and meant to
20 say so at the end of the hearing yesterday and I forgot. But thank you.

21 PRESIDING JUDGE KORNER: [9:39:33] Well I -- I, likewise. I've been meaning to
22 say it for the last two days and also forgot.

23 Yes, thank you very much.

24 If the witness can come into court then, please.

25 (The witness enters the courtroom)

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1 PRESIDING JUDGE KORNER: [9:41:05] Yes, sir. Thank you for coming to Court.

2 I hope you understand me.

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4 (The witness speaks Arabic)

5 THE WITNESS: [9:41:18](Interpretation) Thank you, Madam President. I'm here at
6 the Court.

7 THE INTERPRETER: [9:41:31] The witness is -- you need to listen to the English
8 channel, Madam. And the witness is speaking very softly, so I would need
9 the witness to speak up.

10 I am testing the English channel, says the interpreter. Testing the English channel.

11 I am testing the English channel, so other people can hear it in the Court.

12 Testing the English channel. Testing the English channel. Okay.

13 PRESIDING JUDGE KORNER: [9:42:18](Overlapping speakers) what's he doing?

14 Okay. Sir -- sorry, sir, can you hear and understand me?

15 THE WITNESS: [9:42:38](Interpretation) Yes, I can hear you.

16 PRESIDING JUDGE KORNER: [9:42:42] It's important, I know it's difficult, but to
17 keep your voice up, even though there's a microphone, because there's interpretation.

18 THE WITNESS: [9:42:56](Interpretation) Okay, that is fine.

19 PRESIDING JUDGE KORNER: [9:42:59] What I'm going to ask you now to do, sir, is
20 to take the solemn declaration, which I understand you wish to read yourself.

21 THE WITNESS: [9:43:14](Interpretation) Yes.

22 Is it the same -- the same sheet of paper?

23 PRESIDING JUDGE KORNER: [9:43:24] It is, yes.

24 THE WITNESS: [9:43:27](Interpretation) I solemnly -- solemnly swear that I will say
25 the truth, the whole truth and nothing but the truth.

1 PRESIDING JUDGE KORNER: [9:43:51] Is that what -- yes, thank you very much,
2 sir.

3 THE WITNESS: [9:44:07](Interpretation) Thank you to you.

4 PRESIDING JUDGE KORNER: [9:44:11] Thank you for coming to Court. As
5 I believe has already been explained to you, you will be asked questions, first of all,
6 by the -- the Prosecution, then possibly by the representative of victims, and finally
7 the Defence.

8 THE WITNESS: [9:44:38](Interpretation) Okay. Yeah, that is fine.

9 PRESIDING JUDGE KORNER: [9:44:39] It is very important that if you don't
10 understand the question, you say so straightaway.

11 THE WITNESS: [9:44:50](Interpretation) Okay, that is fine.

12 PRESIDING JUDGE KORNER: [9:44:52] And if at any time you want to have
13 a break, we will be having regular breaks, but if you want a break at any stage, just
14 say so and you will get one.

15 THE WITNESS: [9:45:13](Interpretation) Okay, that is fine.

16 PRESIDING JUDGE KORNER: [9:45:16] Thank you very much. And
17 Mr Sachithanandan will now ask you questions.

18 MR SACHITHANANDAN: [9:45:18] Well done on the pronunciation, your Honour.

19 PRESIDING JUDGE KORNER: [9:45:23] I'm trying. I really am trying.

20 MR SACHITHANANDAN: [9:45:25] On average, it takes a Presiding Judge about
21 a few weeks and then it works out, yes.

22 Your Honour, could we go into private session to elicit personal details.

23 THE WITNESS: (Overlapping speakers)

24 PRESIDING JUDGE KORNER: [9:45:38] Yes, private session.

25 (Private session at 9.45 a.m.)

1 THE COURT OFFICER: [9:45:47] We're in private session, Madam President.
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- 15 (Open session at 9.52 a.m.)
- 16 THE COURT OFFICER: [9:52:13] We're back in open session, Madam President.
- 17 MR SACHITHANANDAN: [9:52:19]
- 18 Q. [9:52:20] Mr Witness, could you please tell us where Tendy is located.
- 19 A. [9:52:32] Tendy is in the north. It is in the north.
- 20 Q. [9:52:47] Okay.
- 21 A. [9:52:47] It is in the north.
- 22 Q. [9:52:48] How long does it take to walk from Tendy to Mukjar?
- 23 A. [9:53:00] From Tendy to Mukjar it is about three hours on foot. And if you go
- 24 by car, it's about an hour and a half or maybe slightly less.
- 25 Q. [9:53:12] The people who lived in Tendy, what tribe did they belong to?

1 A. [9:53:24] They were all from the Fur, but maybe there were some Masalit, but
2 the majority is Fur.

3 Q. [9:53:36] How long did you live in Tendy?

4 A. [9:53:46] All this time I lived in Tendy. I was born there and I was raised there.

5 Q. [9:53:53] Did you ever have to leave Tendy?

6 A. [9:54:04] No, I never really left. I maybe went to go to *masiq* (phon), I'm not
7 sure, like to the mosque. But I'm not sure if --

8 THE INTERPRETER: [9:54:19] The interpreter is saying not I'm sure what *masiq* is,
9 the word that he used.

10 THE WITNESS: [9:54:25] But I would go there and I would come back.

11 MR SACHITHANANDAN: [9:54:28]

12 Q. [9:54:29] Did you ever hear of an attack that took place on Tendy?

13 A. [9:54:39] The first time or some other time? The first time I was inside. It was
14 in August when the attack took place.

15 Q. [9:54:51] Okay. Was that the only time -- the attack in August, was that
16 the only time it was attacked or was there another attack?

17 A. [9:55:05] The first attack was in August and then the next one was in March.

18 Q. [9:55:15] So focusing on the March attack, do you remember which year that
19 took place?

20 A. [9:55:28] The last one in March?

21 Q. [9:55:32] Correct.

22 A. [9:55:39] *Maris* (phon), March, which month is this? Which month is March?

23 Q. [9:55:50] The third month of the year. I'm referring to the third month of
24 the year. The attack that took place on the third month of the year, do you
25 remember which year it was?

1 A. [9:56:05] I cannot remember, but it may have been March, the third month of
2 2004.

3 Q. [9:56:19] Could you please describe to the Court the attack that took place in
4 March.

5 A. [9:56:33] In the third month, on 25th or 24th.

6 Q. [9:56:53] Please keep going, Mr Witness. Just tell us what happened at the
7 attack, like a story, and then I will ask you some questions about it.

8 A. [9:57:04] Okay. We were at the village and the -- there was an attack in
9 the third month. It was either the 24th or the 25th. And our friends from
10 the mountain Nabga and Soru went -- our friends went to this -- to the mountains and
11 at the time there were four hours of attacks and bombings by plane. And then after
12 that the vehicles arrived and the Janjaweed came on the backs of camels and horses,
13 so we went to the mountains and we stayed there. The vehicles arrived close to
14 the Nabga mountain. And we were up in the mountain, we could see the cars from
15 up there, and the soldiers got out of the cars. Ali Kushayb also got out of the car and
16 he gave instructions to the soldiers and he was pointing with his hands. The army
17 would go in the directions that he pointed to.

18 After that we went to Sindu, and when he got out of the car he had a black stick in his
19 hand. So we went to Sindu. They were the whole of Wednesday and Thursday in
20 Tendy. And on Friday they moved and went to Sindu as well.

21 And when they arrived in Sindu we left Sindu, we went to Tendy, and from Tendy to
22 Mukjar.

23 Q. [9:59:19] I'm so sorry to interrupt you, Mr Witness, but I wanted to stop you at
24 the end of your discussion of Tendy so we can -- so I can ask you a few more
25 questions about Tendy, the attack on Tendy.

1 A. [9:59:33] Okay.

2 Q. [9:59:35] Once in a while you will see me raise my hand like this and I just mean
3 stop for a second and I just want to ask you some questions.

4 So you mentioned that the attack took place on 25 March.

5 Can you tell us how do you know it was the 25th.

6 A. [10:00:02] On that day I wanted to go to Mukjar and the attack took place on that
7 day. That's why I could remember the date.

8 Q. [10:00:18] And is this something you knew yourself, or is this something you
9 learned from somebody else, the date?

10 A. [10:00:34] I remember that I was planning to go to Mukjar to get my nationality
11 ID and I remember that the official told me to come on a specific date and that's why I
12 remember that date.

13 Q. [10:00:52] Okay. So you said you were watching the attack from the mountain.
14 Can you tell us how far from Tendy you were walking to the -- sorry, let me rephrase
15 that question.

16 The place where you were watching the attack from, how far was it from Tendy
17 village?

18 A. [10:01:22] From where I was watching the attack it wasn't too far, but I can't
19 really tell exactly how many metres or kilometres, but maximum 1 kilometre. I was
20 on the top of the mountain and they were underneath. It's a very high mountain.

21 Q. [10:01:48] Were you watching there alone, or were you with other people?

22 A. [10:01:56] I was with other people, Adam Nahid Numan, Ahmad Issa and
23 Abakar. And there is somebody else that I forgot his name, but I -- there was
24 somebody else with us.

25 Q. [10:02:17] That's fine. And it's very helpful for us when you say you can't

1 remember. So whenever you don't remember something, just say that.

2 A. [10:02:34] (Speaks English) Okay.

3 Q. [10:02:34] You said that you saw Ali Kushayb. How do you know

4 Ali Kushayb?

5 A. [10:02:42] I saw him before and that's why I knew him at that time. And when
6 he came he got out of the car. I immediately knew it was him.

7 Q. [10:02:59] Can you tell us where did you see him before this attack?

8 A. [10:03:07] Before the attack I met him in Garsila. I used to carry oil on my
9 donkeys and transport it to Garsila.

10 Q. [10:03:23] Could you describe to the Court, like a story, how you saw
11 Ali Kushayb in Garsila.

12 A. [10:03:37] When I go to the market I used to see him there. He used to sit and
13 drink tea with his friends and I remember the people calling him "Ali Kushayb".
14 And I heard that he's got a pharmacy in Garsila. I didn't see that pharmacy myself,
15 but that's what I heard from other people.

16 Q. [10:04:08] When you saw him in Garsila, how far away from him were you?

17 A. [10:04:18] He was very close, not far at all. Maybe 15 to 20 metres.

18 Q. [10:04:30] Do you remember who told you that this was Ali Kushayb?

19 A. [10:04:38] No, I don't remember, but people used to call him this is "Ali Kushayb,
20 Ali Kushayb". But I can't remember exactly who told me that this is Ali Kushayb,
21 but I remember that this is what I was told in the market.

22 Q. [10:05:03] And just so we understand, is it that somebody told you this was
23 Ali Kushayb, or somebody called him Ali Kushayb?

24 A. [10:05:18] No, somebody called him Ali Kushayb and another person told me
25 that this is Ali Kushayb. Because he was quite a famous person. He had this

1 pharmacy and also he was a civilian defence coordinator, so he had a position in
2 the government. That's why people knew him.

3 Q. [10:05:46] And is it only one time that you saw him in Garsila, or more than one
4 time?

5 A. [10:05:56] No, after the war I met him again in the hospital of Garsila. That was
6 in October. Oh, no, I'm sorry, I mean 2010.

7 Q. [10:06:11] Right. And we'll definitely come to that point, Mr Witness, but I
8 want to take things one by one. So let's finish discussing the attack on Tendy on
9 the third month of 2004 first.

10 A. [10:06:32] That's fine.

11 Q. [10:06:42] (Microphone not activated) Sorry, sorry, is my mic working? Okay,
12 very good.

13 I just want to go back to Garsila for a second.

14 When you say you saw Ali Kushayb in Garsila, could you indicate, for example, using
15 this courtroom, how far Ali Kushayb was from you.

16 A. [10:07:09] The distance was very close, about 10 metres or 15 metres.

17 Q. [10:07:16] Okay. So, for example, if we take where the judges are sitting in
18 relation to you, was it closer than the judges or further than the judges?

19 A. [10:07:30] Almost the same distance.

20 Q. [10:07:38] Okay. So now I want to go back to Tendy. You said you saw
21 Ali Kushayb in Tendy. Could you please explain to us what he was doing.

22 A. [10:07:55] Well, exactly, I saw him when he arrived. We were at the top of
23 the mountain. He got out of the car and he was holding a black stick. And -- and
24 he was pointing, stretching his arm to different directions. When he points to
25 a certain direction, the army go in that direction. So he was giving commands to

1 the forces, either this is the army or the Janjaweed.

2 Q. [10:08:35] And when you saw him, was he facing -- which direction was he
3 facing? Was he facing towards you, away from you, some other direction?

4 A. [10:08:55] In -- in all directions. We were all towards the east, and then he was
5 pointing to the right and to the left.

6 Q. [10:09:10] Okay. Please continue. So when -- so he was pointing, people were
7 moving. How long did you stay there watching this?

8 A. [10:09:29] I am not really sure how long. I'm not sure.

9 Q. [10:09:39] At some point you said you started moving. Why did you leave
10 the mountain?

11 A. [10:09:53] Because of the attacks. It was getting heavier and heavier. So that's
12 why we left.

13 Q. [10:10:04] So the attack, was it only on Tendy village or was it also were you
14 were?

15 A. [10:10:20] Yes, they attacked the area where we were there. They went out --

16 THE INTERPRETER: [10:10:36] Apologies, the witness is using a word *karakir*, and
17 interpreter is not sure what he means by that.

18 MR SACHITHANANDAN: [10:10:45]

19 Q. [10:10:46] Mr Witness, you used the word *karakir*, could you explain to us what
20 that word means.

21 A. [10:11:06] In our language it means -- it means a *khore*. We usually use the word
22 *khore* for it. But in modern standard Arabic I can't tell you exactly what it means, but
23 this is what we call it, a *khore*.

24 PRESIDING JUDGE KORNER: [10:11:29] Mr Sachithanandan, before we go on, are
25 there any maps of this area? At the moment I'm not clear where the witness is in

1 relation to the attack that's going on.

2 MR SACHITHANANDAN: [10:11:53] If we look at tab 4 of the hastily prepared
3 binder that we passed around, you will see the location of Tendy and location of
4 surrounding towns, tab 4.

5 And I can certainly ask the witness a few questions to orient him in terms of where he
6 is in relation to Tendy.

7 PRESIDING JUDGE KORNER: [10:12:28] Yes, I mean, I think that he needs -- having
8 managed to take the oath, I take it he can -- he can actually read some aspect of this.

9 MR SACHITHANANDAN: [10:12:42] I -- I --

10 PRESIDING JUDGE KORNER: [10:12:43] Or you're not sure he can deal with
11 a map?

12 MR SACHITHANANDAN: [10:12:48] I've been advised by the VWU not to show
13 text necessarily, but I can elicit this orally in a few minutes.

14 PRESIDING JUDGE KORNER: All right.

15 THE COURT OFFICER: [10:12:57] Would counsel have the ERN for that map?

16 MR SACHITHANANDAN: [10:13:01] No, these are merely visual aids for
17 the judges. These -- this is not to be shown to the witness.

18 Q. [10:13:07] Mr Witness, just so we understand, the mountain you were on while
19 watching the attack, what -- what was the name of the mountain?

20 A. [10:13:26] Napka (phon), Napka mountain.

21 PRESIDING JUDGE KORNER: [10:13:34] I don't think it's the name so much as
22 where is it in relation to what he was -- how far away is it from what he was -- he's
23 describing to us about seeing.

24 MR SACHITHANANDAN: [10:13:44]

25 Q. [10:13:44] And if you can assess for us, how long would it take to walk from

1 where you were watching to Tendy village?

2 A. [10:14:05] It is not that far, but I can't tell you exactly how many metres or how
3 many kilometres. We were on the top of the mountain and they were underneath.
4 It's a very high mountain and they were at the foot of the mountain. But I can't tell
5 you how many metres. I can't tell you if it's 1 kilometre, 1 and a half kilometres, or
6 maybe less than 1 kilometre. I can't really estimate it accurately.

7 Q. [10:14:40] That's fine. We don't need to deal in metres or kilometres.

8 Can you tell me how long it would take for you to walk, just so that we know. Is it
9 a few minutes, 10 minutes? You know, how long would it take you to walk from
10 where you were watching this attack to Tendy village?

11 A. [10:15:07] From the foot of the mountain, maybe 15 or 20 minutes to go up
12 the mountain. From the village to the top of the mountain.

13 Q. [10:15:30] You mentioned that Mr Kushayb was pointing in certain directions
14 and then people were moving. Can you describe what were the attackers wearing,
15 what clothes were they wearing?

16 A. [10:15:55] Military, military and police, and *Abu Tera* and Janjaweed.

17 The government -- the government forces were -- were wearing khaki uniforms and
18 then the rest were wearing different clothes.

19 THE INTERPRETER: [10:16:21] The interpreter didn't get the last part. And
20 the witness is using "*Abu Tera*", a term called "*Abu Tera*" that I don't understand.

21 MR SACHITHANANDAN: [10:16:34] For the benefit of the persons in
22 the courtroom, *Abu Tera* can be found at entry 54 of the glossary. And I'll make sure
23 that the interpreters get it as soon as we break.

24 PRESIDING JUDGE KORNER: [10:16:45] All right.

25 Judge Alexis-Windsor was -- was offering her volume, if that's the quickest way of

1 doing it. I thought you could just email one.

2 THE COURT OFFICER: [10:16:54] The interpreters have been provided with
3 the glossary.

4 MR SACHITHANANDAN: [10:17:00] I see an interpreter showing me the glossary,
5 so I'm rather pleased at this.

6 Q. [10:17:08] Okay, Mr Witness, we'll take each one of those separately. What is
7 *Abu Tera*?

8 A. [10:17:31] Okay. The *Abu Tera* forces wear khaki uniforms similar to the colour
9 of milky tea.

10 Q. [10:17:46] And when you say you saw police, what were they wearing?

11 A. [10:17:52] They wear khaki *bergait* and normal khaki.

12 Q. [10:18:04] Can you explain to us what *bergait* means?

13 A. [10:18:13] It's a khaki uniform, but it has different colours; green and black, and
14 different colours.

15 Q. [10:18:24] And what was the military wearing?

16 A. [10:18:33] *Bergait* as well.

17 Q. [10:18:38] And how do you know these different uniforms belong to these
18 different forces?

19 A. [10:18:56] I knew that a long time ago. Well, we had problems in the country
20 a long time ago and we -- we saw these forces, so I knew the difference between
21 the military and the police and *Abu Tera*.

22 Q. [10:19:22] Thank you, Mr Witness. So now we'll move forward again in time.
23 Can you please tell us where you went from your position on Nagba mountain.

24 A. [10:19:37] I went to Sindu.

25 Q. [10:19:43] Could you -- could you describe to us, like a story, your journey to

1 Sindu.

2 A. [10:19:57] From the mountain Nabga to Sindu, we -- I -- I went to my mother
3 and -- with my mother and my sisters to Sindu. It was quite late when we arrived in
4 Sindu, maybe nearly sunset time.

5 Q. [10:20:24] You mentioned hiding -- or, rather, being on the mountain with
6 Adam Nahid Numan. When you were going to Sindu, where was
7 Adam Nahid Numan?

8 A. [10:20:43] He went with me all the way to Sindu.

9 MR SACHITHANANDAN: [10:20:54] Your Honour, can we go into private session
10 for just two questions.

11 PRESIDING JUDGE KORNER: [10:20:59] Yes.

12 (Private session at 10.21 a.m.)

13 THE COURT OFFICER: [10:21:09] We're in private session, Madam President.

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- 24 (Open session at 10.24 a.m.)
- 25 THE COURT OFFICER: [10:24:39] We're back in open session, Madam President.

1 MR SACHITHANANDAN: [10:24:44]

2 Q. [10:24:46] Mr Witness, when you got to Sindu, how long did you stay in Sindu?

3 A. [10:24:59] It took us about three or four hours to arrive in Sindu. We were
4 walking through the mountains. It's a very mountainous area.

5 Q. [10:25:14] And when you got to Sindu, how long did you stay in Sindu?

6 A. [10:25:25] I arrived about late afternoon or maybe sunset time. It was quite
7 late.

8 Q. [10:25:41] And did you stay in Sindu, or did you leave Sindu?

9 A. [10:25:54] We stayed in Sindu two days, Wednesday and Thursday.

10 Q. [10:26:03] Why did you leave Sindu?

11 A. [10:26:11] We were attacked again.

12 Q. [10:26:18] Could you tell the judges, like a story, how this attack happened?

13 A. [10:26:30] When the attack took place, (Redacted) said that it's in
14 Kirarow, and then from Dina and then Gorolla, so we had to go back to Tendy and
15 then from Tendy we went to Mukjar.

16 Q. [10:27:04] Do you know -- do you know who attacked Sindu?

17 A. [10:27:13] It was Ali Kushayb and his forces.

18 Q. [10:27:21] And why do you think that it was Ali Kushayb?

19 A. [10:27:33] I didn't see him, but Yousef Ibrahim told me that it was Ali Kushayb
20 and his forces that attacked Sindu and the surrounding area.

21 MR SACHITHANANDAN: [10:27:55] Your Honour, can we go into private session
22 just for me to ask the witness to do something.

23 PRESIDING JUDGE KORNER: [10:28:00] Yes, all right.

24 (Private session at 10.28 a.m.)

25 THE COURT OFFICER: [10:28:13] We're in private session, Madam President.

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9 (Open session at 10.29 a.m.)

10 THE COURT OFFICER: [10:29:02] We're back in open session, Madam President.

11 MR SACHITHANANDAN: [10:29:07]

12 Q. [10:29:10] Mr Witness, you said you went from Sindu to Mukjar. Could you
13 please -- could you please describe, like a story, how you went to Mukjar.

14 A. [10:29:30] When the attack happened, myself, my mother and my siblings and
15 the rest of the people, we all just travelled to Mukjar. That's what happened.

16 Q. [10:29:53] And can you tell us what happened when you arrived in Mukjar.

17 A. [10:30:00] When I arrived at Mukjar the police caught us and put us in prison.

18 Q. [10:30:16] Okay. Now I want to get some detail about how that happened.
19 Can you describe to us, like a story, how the police caught you.

20 A. [10:30:33] Yes, the police.

21 Q. [10:30:39] Okay. Where did the police catch you? Where in Mukjar did
22 the police catch you?

23 A. [10:30:53] The police, it's a popular police. They were distributed around
24 the whole city. And someone called Abakar Korin and Hassan Juma, they are
25 the ones who arrest people and put them in jail.

1 Q. [10:31:25] Okay. Could you tell us who Abakar Korin is?

2 A. [10:31:34] Abakar Korin is from the popular police.

3 Q. [10:31:40] And are you saying -- am I understanding you correctly that he
4 arrested you?

5 A. [10:31:53] No, he is not the one who arrested me. But the instructions come
6 from him to the police to catch people and put them in jail.

7 Q. [10:32:08] And how do you know that?

8 A. [10:32:17] Everybody who works at the gate of the city, they work under him, so
9 they work according to his instructions.

10 Q. [10:32:31] You mentioned Hassan Juma. Who is Hassan Juma?

11 A. [10:32:43] Hassan Juma is the same. He also gives instructions to arrest people.

12 Q. [10:32:54] Was he present at the time of your arrest or was he not?

13 A. [10:33:01] Yes, he was present.

14 Q. [10:33:06] How did you recognise this person as Hassan Juma?

15 A. [10:33:20] It's because I have known Hassan Juma for a long time before
16 the troubles started and I've known him for quite some time.

17 Q. [10:33:38] Can you tell us, please, where you met Hassan Juma before you were
18 arrested in Mukjar.

19 A. [10:33:52] Hassan Juma came to us in Tendy more than five or six times before
20 the troubles started.

21 Q. [10:34:09] Did you know anyone else amongst the people arresting you?

22 A. [10:34:21] No, I do not know the people who arrested me. There is somebody
23 whose face I could recognise, but I do not know his name.

24 Q. [10:34:37] Was it only you who was arrested or were other people also arrested?

25 A. [10:34:50] Other people were arrested, and two of my brothers as well.

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1 Q. [10:35:04] Was it both men and women who were being arrested?

2 A. [10:35:16] No, women were not arrested, they were just searched.

3 Q. [10:35:26] Do you know why only men were arrested?

4 A. [10:35:36] No, I don't know why. But they put them all in jail.

5 Q. [10:35:48] Right. And I'm definitely going to come to the -- your experience in
6 the jail, but I just want to ask a few more questions about your arrest. Okay.

7 Other than members of your family, who else was arrested?

8 A. [10:36:21] Salah Suliman and also Adam Suliman were among those arrested.

9 Q. [10:36:32] Okay. Who else was arrested?

10 THE INTERPRETER: [10:36:47] Could the witness please repeat, asks
11 the interpreter.

12 MR SACHITHANANDAN: [10:36:51]

13 Q. [10:36:52] Sorry, Mr Witness, interpreter didn't hear you.

14 Could you just repeat what you just said.

15 A. [10:37:00] The police arrested people.

16 Q. [10:37:10] Do you know the names -- your Honour, I think it's just safer if we go
17 into private session.

18 Apologies. One minute.

19 PRESIDING JUDGE KORNER: [10:37:20] Yes, all right. If you could try and deal
20 with these sort of details in one go, even if it's slightly out of kilter.

21 Yes, all right. Back in private session.

22 (Private session at 10.37 a.m.)

23 THE COURT OFFICER: [10:37:44] We're in private session, Madam President.

24 (Redacted)

25 (Redacted)

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- 11 (Open session at 10.42 a.m.)
- 12 THE COURT OFFICER: [10:42:00] We're back in open session, Madam President.
- 13 MR SACHITHANANDAN: [10:42:11]
- 14 Q. [10:42:12] Mr Witness, you said that women were searched. What, if anything,
- 15 happened to the belongings that the women had?
- 16 A. [10:42:31] They just searched them and let them go.
- 17 Q. [10:42:41] When you came to Mukjar, did you have any belongings with you?
- 18 A. [10:42:54] What do you mean with "belongings"?
- 19 Q. [10:43:00] For example, did you have any animals with you?
- 20 A. [10:43:06] The donkeys, the sheep, and the cows. And there are people who
- 21 had camels.
- 22 Q. [10:43:17] And what happened to these animals when people were arrested?
- 23 A. [10:43:27] They took all the animals.
- 24 Q. [10:43:33] Who -- who took the animals?
- 25 A. [10:43:46] We were sent to jail and we were told that the Janjaweed took

1 the animals.

2 Q. [10:43:57] Can you please tell us, like a story, what happened after you were
3 arrested by people including Hassan Juma.

4 A. [10:44:16] They sent us to prison and put us in a cell and we stayed in the cell for
5 a long time. This was on Monday, and then on Wednesday people were sent to
6 Garsila.

7 THE INTERPRETER: [10:44:53] And a note from the interpreter: I don't
8 understand the last bit.

9 MR SACHITHANANDAN: [10:44:59]

10 Q. [10:44:59] Mr Witness, we understood you until you said "people were sent to
11 Garsila". What did you say after that?

12 A. [10:45:19] The people who were sent to Garsila, they were killed, they were
13 killed on the street.

14 Q. [10:45:29] You said you were taken to a prison. Where in Mukjar was this
15 prison?

16 A. [10:45:44] It is a jail next to the police. It is the eastern jail.

17 Q. [10:46:02] Can you explain what you mean by it was "next to the police".

18 A. [10:46:19] It is next to the police in the northern direction and the door opens to
19 the west.

20 Q. [10:46:32] Can you describe to the judges, in detail, what this prison looked like.

21 A. [10:46:44] What it looked like. Well, the prison is there, and there is an office
22 there. And I was in the prison over there.

23 Q. [10:47:00] Okay. We'll take it step by step.

24 PRESIDING JUDGE KORNER: [10:47:07] There is a photograph of this that
25 (Overlapping speakers)

- 1 THE WITNESS: [10:47:11](Interpretation) The prison is over there.
- 2 PRESIDING JUDGE KORNER: [10:47:14](Overlapping speakers) just it's an actual
- 3 photograph.
- 4 MR SACHITHANANDAN: [10:47:18] Yes, your Honour, but that is a visual aid
- 5 produced by the Prosecution, so I'm hesitant to use it.
- 6 PRESIDING JUDGE KORNER: [10:47:24] Why?
- 7 MR SACHITHANANDAN: [10:47:26] I mean, I'm in your Honours' hands. I'm
- 8 happy to use it.
- 9 PRESIDING JUDGE KORNER: [10:47:32] I see Mr Edwards shrugging.
- 10 Mr Laucci, do you have any objection?
- 11 MR LAUCCI: [10:47:38] The thing is that this document, this photograph was not on
- 12 the list for the -- for the witness, so ...
- 13 PRESIDING JUDGE KORNER: [10:47:44] Oh, I see. All right.
- 14 Well, I mean, it was on -- it was yours yesterday, so that's why I've still got it here.
- 15 Rather than -- if you've got a photograph, which is different from a map because it
- 16 doesn't -- isn't it easier to show the photograph to the witness?
- 17 MR LAUCCI: [10:48:01] Madam President, even though it was not on the list, I want
- 18 to be clear, there is no objection.
- 19 PRESIDING JUDGE KORNER: [10:48:07] All right.
- 20 MR LAUCCI: [10:48:09] But maybe it would have to be added in the list of
- 21 the evidence introduced through the witness.
- 22 PRESIDING JUDGE KORNER: [10:48:16] All right. Well, I mean, it just seemed to
- 23 me that rather than talking about east, west and whatever, it was easier if we could
- 24 look at the photograph and say that's where we were.
- 25 MR SACHITHANANDAN: [10:48:26] Your Honour, let me do this. Let me have

1 a think about how I can do that. Meanwhile, I'll go forward in time for the next
2 10 minutes.

3 PRESIDING JUDGE KORNER: [10:48:36] All right.

4 MR SACHITHANANDAN: [10:48:37] Yeah.

5 Q. [10:48:40] Mr Witness, when you were taken inside the prison, were you alone
6 or were you with other people?

7 A. [10:48:55] I had other people with me, a lot of people.

8 Q. [10:49:07] Is it possible to guess -- to estimate how many? For example, more
9 than 10, less than 10? More than 50, less than 50?

10 A. [10:49:24] The people in the prison, they were more than a hundred people.
11 Maybe 200 people were there.

12 Q. [10:49:34] And was there enough space for a hundred people, or not?

13 A. [10:49:42] No, no, there wasn't enough space. People were on top of each
14 other.

15 Q. [10:49:53] When people wanted to go to the toilet, where did they go?

16 THE INTERPRETER: [10:50:16] Note from the interpreter: The witness did not
17 understand the word "bathroom". In Arabic it includes the word water and now he
18 understood that when water was distributed for drinking. So I will repeat that in
19 Arabic.

20 THE WITNESS: [10:50:45](Interpretation) There was no bathroom. People
21 were -- people were urinating in a corner. There was -- there was no bathroom.

22 MR SACHITHANANDAN: [10:51:04]

23 Q. [10:51:05] And what did it smell like in the prison?

24 A. [10:51:13] For example? I did not understand.

25 Q. [10:51:21] Was it easy to breathe in the prison, or was it difficult to breathe in

1 the prison?

2 A. [10:51:31] We could barely breathe. There were so many people and the space
3 was very small.

4 Q. [10:51:44] How hot was it in the prison?

5 A. [10:51:51] It was very hot.

6 Q. [10:51:58] Were you given things to eat and drink regularly in the prison?

7 A. [10:52:15] Very little. It was not sufficient, the amounts were very small.

8 Q. [10:52:31] When you were brought to the prison - and please don't mention any
9 names from your family - did you see anyone else that you recognised in the prison?

10 A. [10:52:52] Yes, there were people I knew.

11 Q. [10:52:57] Please tell us their names.

12 A. [10:53:09] There were people I knew. (Redacted). *Umdah*

13 Yahya -- *Umdah* Yahya and *Umdah* Issa Harun Nour. *Umdah* Adam Husayn.

14 *Sheikh* Abdallah. (Redacted)

15 (Redacted)

16 (Redacted).

17 All these people I met in prison and all were known to me.

18 Q. [10:54:35] Who is *Umdah* Yahya?

19 A. [10:54:45] *Umdah* Yahya, he was the mayor of Tendy.

20 Q. [10:54:59] Which area was *Umdah* Adam Husayn in charge of?

21 A. [10:55:12] He was the mayor of the Kirarow village.

22 Q. [10:55:22] Which area was *Sheikh* Abdallah in charge of?

23 A. [10:55:31] He was also from Tendy.

24 MR SACHITHANANDAN: [10:55:46] Your Honour, I'm at a logical stopping point.

25 Perhaps we take the break now.

1 PRESIDING JUDGE KORNER: [10:55:52] Yes.

2 Sir, we're going to have a break now. It should give you a chance to relax. It's very
3 important, as I'm sure was explained to you, but I'm going to repeat, that you don't
4 talk about the evidence you're giving, what you're saying at the moment, to anybody
5 during any breaks. I'm sure you -- that's been explained to you.

6 Yes, thank you very much. We'll sit again at 11.30.

7 THE COURT USHER: [10:56:21] All rise.

8 (Recess taken at 10.56 a.m.)

9 (Upon resuming in open session at 11.33 a.m.)

10 THE COURT USHER: [11:33:08] All rise.

11 Please be seated.

12 PRESIDING JUDGE KORNER: [11:33:41] Yes.

13 MR SACHITHANANDAN: [11:33:43]

14 Q. [11:33:46] Mr Witness, we were talking about your stay in Mukjar -- in prison in
15 Mukjar, and we were talking about the people who were there that you knew. I'm
16 going to mention another name, and maybe you can tell me whether you saw this
17 person or not.

18 Have you heard of someone called Muhammad Umar Zarruq?

19 A. [11:34:24] Yes. Muhammad Umar, yes, yes.

20 Q. [11:34:28] When you were in prison, where was Muhammad Umar Zarruq?

21 A. [11:34:38] He was in prison as well, Muhammad Umar Zarruq.

22 Q. [11:34:44] Please -- please tell the Court who he is.

23 A. [11:34:53] He was a pharmacist, a doctor.

24 Q. [11:35:01] Do you know of any family members of Muhammad Umar Zarruq?

25 A. [11:35:13] Muhammad Umar Zarruq, from the family of *Umdah* Yahya. That's

1 his brother.

2 Q. [11:35:28] Who was the father of Muhammad Umar Zarruq?

3 A. [11:35:36] Omar Anar Zarruq, an officer.

4 Q. [11:35:45] When you say "an officer", what was the job of the father of
5 Muhammad Umar Zarruq?

6 A. [11:35:54] The father of Muhammad Umar Zarruq, he was not an officer, he was
7 a *shartay*.

8 Q. [11:36:11] The -- the people that you saw in -- in prison with you, do you know
9 which villages they came from?

10 A. [11:36:25] You mean Muhammad Umar?

11 Q. [11:36:31] No. Let me -- let me -- let me rephrase. Okay.

12 A. [11:36:37] Muhammad Umar is from Sindu.

13 Q. [11:36:39] Just one point, Mr Witness. Because the interpreters are interpreting
14 between you and me, just give a few seconds of a break between me asking a question
15 and you responding, okay?

16 Okay. So now I'm going to ask a question. The people in prison with you, all these
17 people - you said there were some hundred or 200 people - do you know which
18 villages they came from?

19 A. [11:37:14] From different villages in different neighbourhoods. Some from
20 Bindisi, some from Kodoom, some from Garlay (phon), Adula, Sidikala (phon), Tendency,
21 Dinbukandi (phon), Arada, Sereger (phon), Endrai (phon), Ardala, Balda, Rumaliya,
22 Karraro, Dine, Zoro, Gurlo (phon), Sinda (phon), Alamata, Balabang (phon), Baladepi
23 (phon), Korojore (phon) and Atala (phon), and Morow or Momo (phon), Amshali
24 (phon), and some were from Bergei, Naikossey (phon), Ngozur (phon), Burgo. From
25 all the different areas that were close to Mukjar.

1 Q. [11:38:28] And could you tell us what tribe did these people belong to?

2 A. [11:38:40] Most of them were Fur, but some of them were Tama, Borgo and
3 Masalit, and some from Zaghawa as well.

4 Q. [11:38:56] On the day that you were taken to prison, how did the police treat
5 you and other prisoners?

6 A. [11:39:12] It was really bad treatment.

7 Q. [11:39:20] Now, Mr Witness, as I mentioned earlier, it's very important to have
8 detail, so could you please tell us in detail how the police treated you and your fellow
9 prisoners on the first day of your arrest.

10 A. [11:39:40] On the first day they -- there was a lot of beating up. They beat up
11 people and kicked them. That's what happened on the first day.

12 Q. [11:39:57] Can you remember who amongst the prisoners was beaten up?

13 A. [11:40:25] Okay. It was the police that was beating people. I don't remember
14 the names of the people who did that.

15 Q. [11:40:35] You mentioned that *Umdah* Yahya was in the prison with you.

16 How --

17 A. [11:40:44] (No interpretation)

18 Q. [11:40:44] How was *Umdah* Yahya treated by the people who had imprisoned
19 you?

20 A. [11:40:52] The police was treating all the prisoners really badly and beating
21 them up.

22 Q. [11:41:06] Right. But let's -- let's go back to *Umdah* Yahya. How was *Umdah*
23 Yahya treated in the prison?

24 A. [11:41:23] I can't tell because there was a lot of people, so I can't tell how he was
25 treated. But I -- I saw that the treatment with all the prisoners was really bad, and all

1 of them were beaten up and kicked.

2 Q. [11:41:49] And how were the prisoners behaving when they were being beaten
3 and kicked?

4 A. [11:42:09] People were just falling underneath each other and trying to escape
5 from the beating.

6 Q. [11:42:22] And how were you treated when you were in the prison on your first
7 day?

8 A. [11:42:29] Very bad treatment. Very bad treatment.

9 After they let some people out, it was -- it got much worse. They cut my hands and
10 my right leg and my back with -- and they throw hot plastic on me as well.

11 Q. [11:43:04] Okay. And I just want to understand when this happened. Did this
12 happen on the day you were arrested or later?

13 A. [11:43:17] No, later. Later.

14 Q. [11:43:27] How were you treated on the first day of your arrest?

15 A. [11:43:37] On the first day they just put me in prison. That was it. But then
16 the next day they started beating people up and kicking them.

17 Q. [11:43:49] Okay. So the day after you were put in prison, can you tell us who
18 was beaten.

19 A. [11:44:06] I don't know the names.

20 Q. [11:44:13] You mentioned earlier that Hassan Juma was near where you were
21 arrested.

22 A. [11:44:26] That was outside. But that --

23 Q. [11:44:33] One minute, Mr Witness. Let me just finish my question and I'll
24 definitely give you time to answer.

25 At the time that you were in prison, do you know where Hassan Juma was?

1 A. [11:44:53] He was the one who held me on the gate and put me in prison.

2 Q. [11:45:01] Right. But when you were in prison, do you know where
3 Hassan Juma was?

4 A. [11:45:18] He was outside, not inside.

5 Q. [11:45:31] You mentioned someone called Korin, who was in the popular police.
6 At the time you were in prison, where was Korin?

7 A. [11:45:50] He was outside as well. He takes people from the gate and put them
8 in prison.

9 Q. [11:46:01] Do you know the names of any of the persons who were carrying out
10 these beatings?

11 A. [11:46:16] No, I don't know that. Because there are so many people in
12 the police and in the military, and they were not from the village, they were from
13 outside our village, but I don't know. They are from different areas.

14 Q. [11:46:34] The people who were beating you, please describe their uniforms for
15 us.

16 A. [11:46:46] Military uniform and police uniform.

17 Q. [11:46:57] You mentioned *Umdah* Adam Husayn. Can you please tell us how
18 *Umdah* Adam Husayn was treated.

19 A. [11:47:15] The same treatment, same treatment that all the prisoners had.

20 Q. [11:47:28] You mentioned that other people were beaten. When you say "same
21 treatment", do you mean that *Umdah* Adam Husayn was beaten, or not?

22 A. [11:47:48] Yes, he was beaten. All the prisoners got beaten in prison.

23 Q. [11:47:58] You mentioned Adam Nahid Numan -- and I'm sorry that this sounds
24 a bit repetitive, but how was Adam Nahid Numan treated in prison?

25 A. [11:48:11] The same treatment again. No one escaped this treatment. All

1 the prisoners treated the -- were treated the same.

2 Q. [11:48:23] And what was the result of this -- these beatings and kickings? Did
3 people remain healthy, or were they injured in some way?

4 A. [11:48:36] Some people got injured, yes.

5 Q. [11:48:42] Please tell us who got injured.

6 A. [11:48:50] I don't know the names, but I remember there was somebody called
7 Hassan. After we went out of prison, I met him a couple of times.

8 Q. [11:49:06] The injuries that you suffered, can you tell us roughly which day it
9 was that you suffered these injuries.

10 A. [11:49:24] I can't tell really. I can't tell exactly, because people -- I was very ill,
11 so I can't tell. I can't tell.

12 Q. [11:49:39] I understand, Mr Witness. But just because we were not there, can
13 you explain to us what you mean by you were "very ill".

14 A. [11:49:54] I was tortured a lot, and that's why I was very ill.

15 Q. [11:50:07] Mr Witness, you mentioned being injured on your back. Could you
16 tell us how you were injured on your back.

17 A. [11:50:17] Because of all the beating and the hot plastic. And that's why I got
18 injured on my back.

19 Q. [11:50:28] What happened with the hot plastic? What did people do to you
20 with the hot plastic?

21 A. [11:50:43] To torture us. To torture us.

22 Q. [11:50:52] And did they ask you anything while you were being tortured, or
23 not?

24 A. [11:51:03] No, they didn't ask me about anything.

25 Q. [11:51:13] Can you explain to us -- and I'm sorry, I understand that this is not

1 very easy for you. Can you explain to us how the hot plastic was used on your
2 body.

3 A. [11:51:31] They were beating me up. I don't know what happened exactly, but
4 they used hot plastic. I don't know how they used it exactly. I don't know what's
5 the reason -- exact reason for my injury.

6 Q. [11:51:57] Could I please ask the court officer to pull up a document. It's
7 DAR-OTP-0219-5104. Confidential, please, not to the public.
8 Mr Witness, can you please look at the screen in front of you. Do you see
9 a photograph on the screen in front of you?

10 A. [11:52:59] Yes, I can see it.

11 Q. [11:53:04] Can you please tell us what this photograph is.

12 A. [11:53:13] This is my right leg.

13 Q. [11:53:25] Please explain to the Court ...

14 A. [11:53:40] (No interpretation)

15 Q. [11:53:41] Please explain to the Court how you got this injury.

16 A. [11:53:50] I was beaten with hot plastic.

17 PRESIDING JUDGE KORNER: [11:54:00] Could we have the date of
18 the photograph.

19 MR SACHITHANANDAN: [11:54:04] Yes.

20 Q. [11:54:07] Mr Witness, do you remember when this photograph was taken?

21 A. [11:54:21] I remember this photo being taken, but I don't remember the date.

22 Q. [11:54:28] Yeah. You remember people from the Office of the Prosecutor
23 interviewing you?

24 PRESIDING JUDGE KORNER: [11:54:35] I'm assuming that they took
25 the photograph, or is this a photograph that he handed over?

Trial Hearing
WITNESS: DAR-OTP-P-0903

(Open Session)

ICC-02/05-01/20

- 1 MR SACHITHANANDAN: [11:54:43] We took this photo, your Honour.
- 2 PRESIDING JUDGE KORNER: [11:54:46] Yes. Well, then don't ask him for the date.
- 3 You just give the date.
- 4 MR SACHITHANANDAN: [11:54:50] Very well, your Honour.
- 5 MR LAUCCI: [11:54:56] Madam President and dear colleagues, if that can save you
- 6 time, I want to say that we do not dispute the date.
- 7 PRESIDING JUDGE KORNER: [11:55:03] I rather assumed you didn't, that's what I
- 8 said go ahead and give the date.
- 9 I assume, Mr Laucci, you would object if there was something to object to.
- 10 MR SACHITHANANDAN: [11:55:17] Yes. The photograph was taken on
- 11 13 August 2021, as -- and is mentioned in the statement.
- 12 If the court officer could pull up another photograph. It's DAR-OTP-0219-5103.
- 13 Q. [11:56:17] Mr Witness, do you see this photo in front of you?
- 14 A. [11:56:23] Yes, I can see it.
- 15 Q. [11:56:26] Can you tell us what this photo is.
- 16 A. [11:56:33] This is my back. My back here.
- 17 Q. [11:56:38] Can you tell us how you got this injury.
- 18 A. [11:56:46] In the same way, hot plastic.
- 19 MR SACHITHANANDAN: [11:56:55] Your Honour, just a correction. The photo
- 20 was taken on 17 August 2021. Prior photo and this photo as well. Thank you.
- 21 This can be -- this can be taken down.
- 22 Q. [11:57:17] Mr Witness, when you were in prison, do you recall any attack taking
- 23 place on Mukjar?
- 24 A. [11:57:34] Attack on Mukjar happened approximately on the 1st, 1 April, I -- I
- 25 think, in the afternoon.

1 Q. [11:57:51] And why do you think it was 1 April?

2 A. [11:58:07] After I went out of prison, I knew or I learnt about that.

3 Q. [11:58:13] Please describe what you heard -- sorry, please describe what you
4 know of this attack on Mukjar.

5 A. [11:58:26] People in the market talked about this attack. They said that it was
6 a Tuesday, 1 April. A lot of people were talking about it. But during the time of
7 the attack itself, I was in prison.

8 PRESIDING JUDGE KORNER: [11:58:44] Mr Sachithanandan, I think this is
9 a witness where you really need to help with questions. It's the opposite of
10 the witness we had yesterday.

11 MR SACHITHANANDAN: [11:58:53] Indeed, your Honour. I'm trying to fight
12 a lifetime of training in not leading, so -- but, yeah, I take the point.

13 PRESIDING JUDGE KORNER: [11:59:01] Well, no, it isn't leading, but just I think
14 you're going to have to ask more questions than -- I think he's probably a witness who
15 finds questions more helpful than being asked to tell his story.

16 MR SACHITHANANDAN: [11:59:12] Indeed, your Honour. Point taken.

17 Q. [11:59:18] Mr Witness, when you were in the prison - and you said you were in
18 prison when the Mukjar attack happened - could can you see or hear anything of this
19 attack?

20 A. [11:59:38] I was in prison, but I could hear the ammunition, heavy ammunition.

21 Q. [11:59:52] Do you mean shooting, Mr Witness?

22 A. [11:59:58] Yes, firing bullets.

23 Q. [12:00:04] Now, you mentioned earlier that some people were taken to Garsila
24 and killed.

25 A. [12:00:14] Yes.

1 Q. [12:00:16] Do you remember how long it took from the -- from the attack on
2 Mukjar, after the attack, how long it took from the attack on Mukjar until these people
3 were taken?

4 A. [12:00:39] The attack was on the 1st and the people were taken and killed on
5 the 2nd.

6 Q. [12:00:55] So I want to now talk about the day on which people were taken and
7 killed. On that day, how were people treated --

8 A. [12:01:08] That was the second of the fourth month.

9 Q. [12:01:14] Okay. And I will come to that in detail.
10 On that day, on the day that people were taken out to be killed, how were
11 the prisoners treated by the people running the prison?

12 A. [12:01:40] The treatment, as I told you, was very bad.

13 THE INTERPRETER: [12:01:48] And a note from the interpreter: Can the witness
14 please repeat the last sentence after he's saying -- after saying that the treatment was
15 very bad.

16 MR SACHITHANANDAN: [12:01:57]

17 Q. [12:01:57] Mr Witness, the interpreter didn't hear what you said after you said
18 the treatment was very bad. Could you repeat.

19 A. [12:02:08] The treatment that we all received was very bad.

20 Q. [12:02:18] Please describe to us how the prisoners were taken out of the prison
21 to go to Garsila.

22 A. [12:02:34] The prisoners were taken by the people of Ali Kushayb and
23 Abdullah Torshein, and other officers. They came and stood in front of the prison
24 and said, "These prisoners are to be taken to Garsila."

25 Q. [12:03:09] How is it that you could see Ali Kushayb?

1 A. [12:03:20] What do you mean?

2 Q. [12:03:23] Sorry, that was a bad question.

3 How do you know that it was Ali Kushayb who came to take the prisoners?

4 A. [12:03:40] I could see that people were taken out of prison and loaded on
5 vehicles.

6 Q. [12:03:54] Right. But how do you know that Ali Kushayb was there?

7 A. [12:04:04] He was there because he was standing in front of the prison's gate.
8 And we could see him with our own eyes.

9 Q. [12:04:16] Now, in the same way we did earlier, using this courtroom, can you
10 tell us, roughly speaking, was Ali Kushayb, let's say, where the judges are
11 sitting -- one second -- where the judges are sitting, beyond them, or closer than
12 where the judges are sitting?

13 A. [12:04:45] He was closer to me than the judges. He was in the middle, standing
14 in the middle.

15 PRESIDING JUDGE KORNER: [12:04:54] Do you want to give an estimate? I mean,
16 you have got the measurements of the court.

17 MR SACHITHANANDAN: [12:04:59] For the record, the witness indicates the very
18 middle of the courtroom. I'm sure we can -- we have -- we have the measurements
19 of the courtroom, so ...

20 PRESIDING JUDGE KORNER: [12:05:08] (Microphone not activated)

21 MR SACHITHANANDAN: [12:05:14] The mic, your Honour.

22 PRESIDING JUDGE KORNER: [12:05:16] Sorry. As a guess, I'd say that was about
23 roughly a metre.

24 MR LAUCCI: [12:05:28] According -- if I can assist. According to the
25 measurements that we received, there should be 10 metres between the witness and

1 yourself, Madam President, which means that the middle should be about 5 metres.

2 PRESIDING JUDGE KORNER: [12:05:39] Thank you very much, Mr Laucci.

3 MR SACHITHANANDAN: [12:05:43] Thank you, Mr Laucci.

4 Q. [12:05:46] Can you tell us, please -- can you describe to us what Ali Kushayb
5 looked like.

6 A. [12:05:59] Do you mean what he was wearing, or do you want me to describe
7 his character?

8 Q. [12:06:05] Okay. Let's start with his height. Was he a short man, a tall man,
9 a medium height man?

10 A. [12:06:17] He is in the middle. He is not too tall or too short. He's middle
11 height.

12 Q. [12:06:29] Yes. And keep describing. What I want to know is what he looked
13 like physically. If you can keep describing.

14 A. [12:06:46] He is a slim man. He is not fat.

15 Q. [12:06:55] Right. And what was he wearing?

16 A. [12:07:01] He was wearing civilian clothes.

17 Q. [12:07:09] Okay. Let's describe -- what about his head? Did he have -- was he
18 wearing anything on his head or was he not?

19 A. [12:07:24] No, he did not have any headwear.

20 Q. [12:07:30] Let's focus on his hands. Was he holding anything in his hands, or
21 not?

22 A. [12:07:42] He was holding an axe.

23 Q. [12:07:50] Okay. Can you tell us what this axe looked like.

24 A. [12:08:00] It was a very regular axe made of wood and metal.

25 Q. [12:08:10] You said he was wearing civilian clothes. Can you tell us what

1 civilian clothes he was wearing.

2 A. [12:08:25] He was wearing grey clothes.

3 Q. [12:08:31] Okay. So the top he was wearing, is there a name you have for
4 the top he was wearing?

5 A. [12:08:46] What do you mean?

6 Q. [12:08:50] Okay. So the -- the clothing he was wearing on the top of his body,
7 what word -- do you have any word that describes the clothing that he was wearing
8 on the upper part of his body?

9 A. [12:09:08] He was wearing a *lapsa* (phon).

10 Q. [12:09:14] Now I want you to focus on the lower part of his body, that is, the
11 waist downwards. What was he wearing on his body, waist downwards.

12 A. [12:09:32] I'm not sure I understood.

13 Q. [12:09:35] Okay. Now, you said he was wearing a *lapsa* on his upper part of the
14 body. So that's useful. That's a name for an item of clothing.

15 Do you have a name for what he was wearing, the clothing he was wearing on
16 the lower part of his body?

17 A. [12:10:02] Do you mean that you want me to describe his -- his body, if he was
18 tall or short?

19 Q. [12:10:11] No, the clothing, clothing. Right. What clothing, like a trousers --

20 A. [12:10:20] As I said, he was wearing a regular grey *lapsa*.

21 Q. [12:10:27] That's helpful. I'll move on.

22 When you could see him at the distance that you mentioned, what was Ali Kushayb
23 doing?

24 A. [12:10:44] He was giving instructions with his hands and people were moving
25 according to the directions he was giving.

1 Q. [12:10:57] Can you tell us what instructions he was giving.

2 A. [12:11:12] I could see him talking and pointing, and I could not hear exactly
3 what he was saying. But I could see him talking and giving directions with his
4 hands.

5 Q. [12:11:26] And when he was giving directions with his hands, what did
6 the people do -- did the people around him do in response to that?

7 A. [12:11:42] They were calling names of people and getting them out of prison.

8 Q. [12:11:51] Okay. Who was calling out the names?

9 A. [12:12:03] I am not sure, but there was somebody calling the names. And there
10 was somebody called *Sheikh* Muhammad Turgo (phon), he was signing the names of
11 people.

12 Q. [12:12:22] Okay. Do you know someone called Torshein?
13 Entry 4 on the glossary.

14 A. [12:12:33] Abdullah Torshein, he was in Mukjar, and I --

15 THE INTERPRETER: [12:12:42] A note from the interpreter: I did not hear
16 the description that he gave to Torshein.

17 MR SACHITHANANDAN: [12:12:48]

18 Q. [12:12:50] Mr Witness, the interpreter didn't hear you. Could you please repeat
19 your answer.

20 A. [12:12:58] Abdullah Al-Tayyib Torshein, he was a governor in the Mukjar
21 municipality or locality.

22 Q. [12:13:09] And at the time that Kushayb was in front of you giving instructions
23 with his hands, where was Abdullah Torshein?

24 A. [12:13:27] Torshein was next to him. They were standing together.

25 Q. [12:13:32] And how do you know that it was Torshein?

1 A. [12:13:45] Torshein was a governor at the Mukjar locality, and he was a leader in
2 that area, and anybody would know him.

3 Q. [12:13:57] You mentioned a person calling out names. Please tell us which
4 names were called out.

5 A. [12:14:17] The names are *Umdah* Yahya, Adam Yahya Sharaf Al-Din, Ibrahim,
6 Adam Issa, Ishaq Adam Isa, Haroun Adam, *Sheikh* Abdallah, Adam Husayn, *Umdah*
7 Issa Harun Nour, Muhammad Umar. These are the names that I heard him calling.

8 Q. [12:15:02] You mentioned that Adam Nahid Numan was with you in the prison.
9 Did he remain in the prison, or did he not remain in the prison?

10 A. [12:15:21] You mean Adam Nahid?

11 Q. [12:15:24] Yes.

12 A. [12:15:26] No, Adam Nahid did not stay in prison. He was taken out.

13 Q. [12:15:34] Okay. So you mentioned that these people's names were called out.
14 What happened when these names were called out?

15 A. [12:15:52] I'm not really sure exactly what happened.

16 Q. [12:16:01] Okay. So, for example, they called out *Umdah* Yahya's name. What
17 did *Umdah* Yahya do when his name was called out?

18 A. [12:16:16] He didn't do anything. He -- he just heard his name being called.

19 Q. [12:16:25] Okay. So you said that at some point people were taken away
20 towards Garsila to be killed. At what point did that happen?

21 A. [12:16:41] They took them out of prison, loaded them on cars and on vehicles,
22 and they said that they will bring them to Garsila, but they never really made it to
23 Garsila. They were killed at a brook, a *khore*.

24 Q. [12:16:57] Okay. Now, again, because we were not there, please describe to us
25 how they were taken out of prison, these prisoners.

1 A. [12:17:12] They took them out of prison and they loaded them on vehicles.

2 People at the prison said to them, "Get out", and they loaded them on vehicles.

3 Q. [12:17:28] When these prisoners were being taken out of the prison, where was

4 Ali Kushayb?

5 A. [12:17:39] Ali Kushayb was standing in front of the prison.

6 Q. [12:17:44] And when these prisoners were being taken out, what was

7 Ali Kushayb doing?

8 A. [12:17:54] He hit *Umdah* Yahya with an axe on the head and threw him on
9 the ground.

10 Q. [12:18:08] And how do you know -- sorry, I know that some of these questions
11 will sound repetitive, but it's just because it's very important for us to understand
12 the truth of what happened.

13 A. [12:18:18] That is not a problem.

14 Q. [12:18:20] How -- very good. How do you know that Ali Kushayb struck
15 *Umdah* Yahya?

16 A. [12:18:34] The prison's gate is right in front of me, and the minute that *Umdah*
17 Yahya left through the gate, he -- he hit him.

18 Q. [12:18:47] Okay. Just so I understand, is this something you saw, or is this
19 something -- is this something you saw, or not?

20 A. [12:18:59] I was inside the prison, but I could see him through the gate.

21 PRESIDING JUDGE KORNER: [12:19:17] I'm sorry to repeat myself, but is there
22 a reason why we can't use the photograph? Is it that it's completely different now?
23 I mean, the photograph was taken. I appreciate it's not a -- an exhibit with an ERN
24 because it's an annex, but would it not be simpler for the witness to be shown it and
25 indicate what he's talking about?

1 MR SACHITHANANDAN: [12:19:43] Fair enough, your Honour.

2 PRESIDING JUDGE KORNER: [12:19:44] I mean, I don't know what gate he -- I
3 mean, he's referring to a gate. What gate is he actually talking about?

4 MR SACHITHANANDAN: [12:19:51] Right. We've discussed this with
5 the court officer. Perhaps the court officer could pull up the clean image of that
6 annex. The image of the prison that we are talking about.

7 THE COURT OFFICER: [12:20:04] I have not received any -- any image that I can
8 pull up. I don't have the clean version that you would like me to pull up. So if you
9 provide that to us, then we can do that.

10 MR SACHITHANANDAN: [12:20:15] Right. I'll ask -- (Overlapping speakers)

11 PRESIDING JUDGE KORNER: [12:20:16] All right. Why don't you -- you're
12 obviously going to go past the adjournment. Can we try and sort this out over
13 the adjournment. Yes.

14 MR SACHITHANANDAN: [12:20:24] But I will ask some clarifying questions about
15 the -- the gate, et cetera, because I think it's useful to get on the record.

16 Q. [12:20:34] Mr Witness, when you say you saw Ali Kushayb, was he at this time
17 inside the police station, or was he standing outside the police station, just so we
18 understand?

19 A. [12:20:54] He was inside the police station.

20 Q. [12:21:07] Right. So when you say you could see him past the gate, am I correct
21 in understanding that this gate is inside the police station?

22 A. [12:21:24] He was standing at the gate or the door to the prison.

23 Q. [12:21:31] And inside the prison; is that correct?

24 A. [12:21:44] Yes, that was inside the prison's gate, and there was also the head
25 office of the police.

1 Q. [12:21:56] When *Umdah* Yahya was struck by Ali Kushayb, what did *Umdah*
2 Yahya do?

3 A. [12:22:13] I don't know what *Umdah* Yahya did, but what I know is that he was
4 in the prison, he was taken out of prison, he was hit on the head and he fell.

5 Q. [12:22:26] Okay. So what did anyone else do to *Umdah* Yahya when he was on
6 the ground?

7 A. [12:22:44] The soldiers took him and loaded him on the vehicle.

8 Q. [12:22:57] And is this something you could see, or -- or how do you know that
9 happened?

10 A. [12:23:09] I could see that with my own eyes. I was inside and they were
11 outside, and I could see through the prison door. It had openings and I could see
12 through them.

13 Q. [12:23:25] Was *Umdah* Yahya the only person who was loaded on to a vehicle, or
14 was anyone else loaded on to a vehicle?

15 A. [12:23:40] There were many more people.

16 Q. [12:23:46] And was it only one vehicle, or was there more than one vehicle?

17 A. [12:23:53] There were many vehicles, not just one.

18 Q. [12:24:01] While these prisoners were being loaded on to the vehicle, what was
19 Ali Kushayb doing?

20 A. [12:24:17] He -- he just hit some of them -- sorry, he just hit *Umdah* Yahya. And
21 then after that he didn't do anything. They were loaded on the vehicles and
22 the vehicles moved away.

23 Q. [12:24:33] Were people only taken from the room in which you were, or were
24 people taken from any other room?

25 A. [12:24:51] They took people from the place where I was imprisoned, from the

1 same prison where I was, and from another prison.

2 Q. [12:25:04] And how can you -- how do you know that people were taken, not
3 just from your room, but from another room?

4 A. [12:25:22] I was in the same room as these people. So when they called names
5 of people and they took them out, of course, I could see that they were leaving.

6 There were some names that were called and there were names that were not called.

7 Q. [12:25:40] Right. But I'm not talking about the room in which you were. I'm
8 talking -- you have said that people were also taken from another room. Is that
9 something you saw?

10 A. [12:25:58] I saw this with my own eyes.

11 Q. [12:26:07] When all the prisoners that you saw were loaded, what happened
12 then? When everyone was loaded into the vehicles.

13 A. [12:26:21] They moved towards Garsila after having been loaded on
14 the vehicles.

15 Q. [12:26:31] When the vehicles were moving, what was Ali Kushayb doing?

16 A. [12:26:44] He got into a car and left as well.

17 Q. [12:26:53] And is this something you saw with your own eyes, or not?

18 A. [12:27:02] You mean when he got into the car?

19 Q. [12:27:05] Yes.

20 A. [12:27:11] I could see him getting into the car.

21 Q. [12:27:17] And at the time that Ali Kushayb was getting into the car, what was
22 Torshein doing?

23 A. [12:27:36] I don't know. So after I saw him at the prison door, I don't know
24 what happened after that.

25 Q. [12:27:49] Did he leave with the other vehicles, or did he not leave with the other

1 vehicles? That's what I'm trying to find out.

2 A. [12:28:03] Whom do you mean? Torshein?

3 Q. [12:28:08] Yes.

4 A. [12:28:13] No, he -- he stayed in -- in Mukjar. He did not leave.

5 Q. [12:28:19] And how do you know that? How do you know that Torshein
6 stayed and did not leave?

7 A. [12:28:33] He is a responsible man in Mukjar, so he did not leave.

8 Q. [12:28:48] Mr Witness, when the names of people were being called out and
9 people were walking -- being taken out of the prison, how long did that take, roughly
10 speaking? Five minutes, 10 minutes? If you can just estimate for us.

11 A. [12:29:15] I cannot really give you an accurate estimate because I did not have
12 a watch, so I could not really specify how many minutes that took.

13 Q. [12:29:30] I understand. Thank you, Mr Witness.

14 I hear -- I'm told that the image is now available to the court officer. For the record,
15 this is annex 15 to the Prosecution trial brief with all Prosecution annotations
16 removed so as to not lead the witness.

17 Mr Laucci has kindly agreed that I can just put to the witness that this is the police
18 station and ask a few questions.

19 PRESIDING JUDGE KORNER: [12:30:10] (Microphone not activated)

20 MR SACHITHANANDAN: [12:30:14]

21 Q. [12:30:14] Mr Witness, do you see a photo in front of you?

22 A. [12:30:23] Yes, I can see it.

23 Q. [12:30:25] This is a photo of Mukjar police station taken from high above. And
24 north is upwards, south is downwards, and that is how this photo is aligned. So
25 if -- if, as I say, this is Mukjar police station, were you kept in the upper building or

1 the northern building, or were you kept in the lower or southern building?

2 A. [12:31:05] I was in the eastern building.

3 Q. [12:31:08] Okay. So does that mean, looking at this photo, the building that's
4 below, the building that's on the lower and slightly eastern side, is that what you
5 mean?

6 A. [12:31:30] The one on the eastern side, this is the one that I was in.

7 PRESIDING JUDGE KORNER: [12:31:37] (Microphone not activated)

8 MR SACHITHANANDAN: [12:31:43] Why not, your Honour.

9 PRESIDING JUDGE KORNER: [12:31:45] (Microphone not activated)

10 MR SACHITHANANDAN: [12:31:48] Yes, yes.

11 Q. [12:31:49] Mr Witness --

12 PRESIDING JUDGE KORNER: [12:31:50] (Microphone not activated)

13 I'm sorry. My microphone.

14 MR SACHITHANANDAN: [12:31:53] Yes.

15 Q. [12:31:54] Mr Witness, the court officer is going to help you mark this photo.

16 So if you can just circle which building you were in.

17 A. [12:32:03] (No interpretation)

18 MR SACHITHANANDAN: [12:32:52] It's fine, your Honour. I'll try to clarify
19 using -- using questions. It looks like the pen isn't working.

20 PRESIDING JUDGE KORNER: [12:32:59] (Microphone not activated) I'm sorry. I
21 keep forgetting.

22 What's the problem? He can't -- he can't do it?

23 THE COURT OFFICER: [12:33:06] Madam President, it's technologically possible,
24 but it appears that it's malfunctioning. So I can request technical assistance in the
25 break and then we can run the exercise again after the lunch break. Alternatively,

1 we would have to have a hard copy of the map and then make a physical marking
2 with a pen.

3 PRESIDING JUDGE KORNER: [12:33:30] Yes, Mr Laucci.

4 MR LAUCCI: [12:33:31] Yes, Madam President, I would have suggested to do
5 without technology. That could be with a pen. Or maybe the court officer could
6 tell us which building the witness is pointing at on his screen.

7 PRESIDING JUDGE KORNER: [12:33:43] (Microphone not activated) I think,
8 Mr Laucci, it's probably better that he mark it himself, rather than we get
9 the court officer in the position of having to give evidence. Thank you.

10 MR SACHITHANANDAN: [12:33:55] Your Honour, one more question on this, and
11 then I'll move on. And we'll figure out how to do it on paper, perhaps.

12 Q. [12:34:03] Now looking at this picture, Mr Witness, you can see that there's one
13 square building to the upper side of this photo and one building to the lower side of
14 this photo. Can you tell me, were you in the upper side building or the lower side
15 building?

16 A. [12:34:35] What do you mean upper side and lower side? I don't understand
17 what you're saying.

18 PRESIDING JUDGE KORNER: [12:34:41] Part of the difficulty also,
19 Mr Sachithanandan, is that you haven't asked him if he -- if this photograph which
20 was taken, what, 17 years later or thereabouts, if the -- if it looked like -- if the police
21 station looked like that when he was there. And if it didn't, well then the whole
22 thing is a wasted exercise and I'm sorry I started this here.

23 MR SACHITHANANDAN: [12:35:10] Indeed, your Honour. I think the problem is
24 more a question of perspective, because obviously he's not viewed it from this
25 vantage point before. Shall I suggest I move on, and we come back with a piece of

1 paper. Yeah.

2 Q. [12:35:39] Mr Witness, I'm going to ask you about a number of people now and I
3 want to know what happened to them after they were taken from Mukjar prison.

4 A. [12:35:58] When I was in the prison in Mukjar, those people were taken and they
5 were taken -- we were told that they were taken to Garsila, but they took them to
6 a *khor*, and they were all killed there.

7 THE INTERPRETER: [12:36:14] Message from the interpreter: The witness
8 mentioned the name of the *khor*, but I didn't get it.

9 MR SACHITHANANDAN: [12:36:22]

10 Q. [12:36:22] Mr Witness, can you repeat for us the name of the *khor* you
11 mentioned.

12 A. [12:36:32] *Khor* Talaba, or *khor* Talaba.

13 Q. [12:36:39] Is that the only name for *khor* -- that *khor*, or did it have any other
14 names?

15 A. [12:36:45] No, the only name is *khor* Talaba, but now it is called *khor* Kushef
16 (phon). Now they call -- they name it now *khor* Kushef after the people were killed.

17 Q. [12:37:03] I'm not entirely sure whether the transcript reflects the answer.
18 Mr Witness, what is the other name? Could you repeat slowly.

19 A. [12:37:15] *Khor* Kushef.

20 Q. [12:37:21] Do you know why it's called *khor* Kushef?

21 A. [12:37:34] After the people were killed in that *khor*, the name was changed. It
22 was *khor* Talaba before.

23 Q. [12:37:46] Sorry, one final question on that. Why was the name changed after
24 those people were killed?

25 A. [12:37:58] Because the people were killed in that *khor*.

1 Q. [12:38:06] How do you know that people were killed at that *khor*?

2 A. [12:38:14] After the people were killed, and maybe after a month or over
3 a month, I went to this *khor* myself and I saw the corpses.

4 Q. [12:38:36] How long did it take for you to walk to the *khor*, *khor* Talaba -- yeah,
5 *khor* Talaba?

6 A. [12:38:57] After I left the prison?

7 Q. [12:39:04] You said that you walked to this *khor* and saw bodies. From Mukjar,
8 how long did it take to get to *khor* Talaba?

9 A. [12:39:27] It was around 11 or 12, and they asked the civilians to go and clean
10 the airport. So we went and we cleaned the airport, and then we went to the *khor*
11 and we found the corpses.

12 Q. [12:39:54] Right. Right. I don't think I was clear enough. When you walked
13 from Mukjar to *khor* Talaba, how long -- how much time did it take you to walk? For
14 example, 10 minutes, 15 minutes, 30 minutes, et cetera.

15 A. [12:40:19] No, it was -- it was close. It's really close. Maximum half an hour
16 from Mukjar.

17 Q. [12:40:29] When you said you went to clean the airport, do you know to whom
18 this airport belonged to?

19 A. [12:40:43] For the UNAMID.

20 Q. [12:40:51] And -- and how many minutes does it take to walk from the airport,
21 the UNAMID airport to *khor* Talaba?

22 A. [12:41:10] About 10 minutes, 10 minutes maximum. Maybe five even. Very
23 close.

24 Q. [12:41:22] Mr Witness, you know that there is a road from Mukjar to Garsila.
25 You know that, right?

1 A. [12:41:30] Yes, I know that.

2 Q. [12:41:35] How -- how long does it take to walk from *khor* Talaba to
3 the Mukjar-Garsila road?

4 A. [12:41:54] In a small car, maybe two hours. But if you are going in a big car, it
5 might take four hours. So in a small car, like a Land Cruiser or something like that,
6 will take only two hours, but big cars, in four hours.

7 Q. [12:42:19] I don't think I was very clear. I don't mean how long does it take to
8 go from Mukjar to Garsila. That's not what I mean.

9 Let me ask it this way: Is there a road -- is there a road near *khor* Talaba?

10 A. [12:42:49] What direction? There are some in directions that are close and some
11 directions that are far.

12 Q. [12:42:59] No, I'm going to move on.

13 When you got to *khor* Talaba, you said you saw bodies. Please describe to the Court
14 what you saw at *khor* Talaba.

15 A. [12:43:17] It's to the left of Mukjar.

16 Q. [12:43:24] All right. Now, you said you saw bodies at *khor* Talaba. What did
17 the bodies look like?

18 A. [12:43:38] The bodies, there was a very big tree in the *khor* and people were
19 killed next to this tree. And then they cut the tree and they threw it on top of
20 the bodies. And then it -- it rained and the bodies were partially buried. So we
21 found these bodies there, and they were all rotten.

22 Q. [12:44:14] Can you estimate for the Court how many bodies there were. Were
23 there, for example, like 5, 10, 15? How many do you think there were?

24 A. [12:44:31] A lot. Maybe around 20 to 30 bodies.

25 THE INTERPRETER: [12:44:44] I'm sorry, the interpreter didn't get that last part.

1 MR SACHITHANANDAN: [12:44:50]

2 Q. [12:44:51] Mr Witness, the interpreter didn't hear you. Could you repeat your
3 answer, please.

4 A. [12:45:04] So -- right. So some -- some of these bodies were washed away and
5 buried already by the rain and the stream. And some bodies we found. So the ones
6 that we found were about 20 to 30, as I said.

7 Q. [12:45:29] The 20 or 30 bodies you found, did you recognise any of them, or did
8 you not?

9 A. [12:45:41] No. The bodies were rotten and we couldn't identify any of them.

10 Q. [12:45:55] Mr Witness, how do you know, if you couldn't identify them, that
11 these were the people who were taken from Mukjar prison?

12 A. [12:46:18] Because the place is not -- is not far. It's very close. And some
13 people who were outside saw them, saw the people being killed. And one person
14 survived and told about what happened.

15 Q. [12:46:42] Okay. Okay. We'll come to that. But one question before that.
16 When you went to *khore* Talaba, were you alone or were you with anyone else?

17 A. [12:46:57] No. There were a lot of people there, a lot of people from the area.
18 Maybe around a hundred people. Maybe more than a hundred.

19 Q. [12:47:09] Okay. But when you went there, do you know the name of anyone
20 who was nearby to you at *khore* Talaba?

21 A. [12:47:23] Many, many people. Some of them I knew. So there was somebody
22 called Yousef, Ismail. And *Sheikh* Suliman was with us, actually, and Abakar
23 Mohamed. But as I said, there were a lot of people there.

24 MR SACHITHANANDAN: [12:47:48] Okay. Your Honour, could we go into
25 private session for -- for two questions.

- 1 PRESIDING JUDGE KORNER: [12:47:55] Yes.
- 2 (Private session at 12.48 p.m.)
- 3 THE COURT OFFICER: [12:48:06] We're in private session, Madam President.
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Open session at 12.49 p.m.)
- 16 THE COURT OFFICER: [12:49:19] We're back in open session, Madam President.
- 17 MR SACHITHANANDAN: [12:49:32]
- 18 Q. [12:49:32] Mr Witness, after the day where *Umdah* Yahya was -- and others were
- 19 taken away from Mukjar prison, as you watched, did you ever see *Umdah* Yahya
- 20 again?
- 21 A. [12:49:49] I didn't see him again.
- 22 Q. [12:49:53] What about *Umdah* Adam Husayn, did you ever see him again?
- 23 A. [12:50:00] I didn't see him again.
- 24 Q. [12:50:05] *Umdah* Issa Nour, did you ever see him again?
- 25 A. [12:50:12] Didn't see him ever again.

- 1 Q. [12:50:16] Muhammad Umar Zarruq, the medical man?
- 2 A. [12:50:22] Didn't see him ever again either.
- 3 Q. [12:50:25] Adam Nahid Numan, did you see him again?
- 4 A. [12:50:31] I didn't see him either.
- 5 Q. [12:50:35] Ibrahim Adam Ishaq, did you see him again?
- 6 A. [12:50:40] No, I didn't see him again.
- 7 Q. [12:50:45] Yahya Sharaf Al-Din Abdallah, did you ever see him again?
- 8 A. [12:50:52] No, I didn't see him ever again.
- 9 Q. [12:50:55] *Sheikh* Abdallah from Tendy, did you ever see him again?
- 10 A. [12:51:01] No, I didn't see him again.
- 11 Q. [12:51:06] Ishaq -- Ishaq Adam Ishaq, did you ever see him again?
- 12 A. [12:51:15] No, I didn't see him ever again either.
- 13 Q. [12:51:20] Ibrahim Adam Ishaq, did you ever see him again?
- 14 A. [12:51:25] No, I didn't.
- 15 Q. [12:51:29] And finally, Haroun Adam, did you ever see him again?
- 16 A. [12:51:38] No, I didn't see him.
- 17 MR SACHITHANANDAN: [12:51:43] Your Honour, I'm more or less -- I'm almost
- 18 done. I think it might be useful if we took the break a little early, and then I'll
- 19 literally just have a few questions after the break. It will help me gather my thoughts
- 20 as well.
- 21 PRESIDING JUDGE KORNER: [12:51:56] sorry. Yes, all right. We'll do that.
- 22 Sir, we're going to take the break now. And as I reminded you, you mustn't discuss
- 23 your evidence over the break. And we'll sit again at 25 past 2.
- 24 If the witness goes with the usher -- the court officer.
- 25 (The witness exits the courtroom)

1 PRESIDING JUDGE KORNER: [12:52:51] Two things, Mr Sachithanandan. I've lost
2 it again.

3 I really do want to discuss at the end of the day why we're going into private session
4 for some lists of names but not for others. At the moment it doesn't seem to be
5 making much sense. But, as I said, I won't trouble you now.

6 Ms von Wistinghausen, could you at the end of the day tell us how many hours you
7 want in total, so that we can consider that.

8 MS VON WISTINGHAUSEN: [12:53:23] I can tell you now, I can tell you at the end
9 of the day.

10 PRESIDING JUDGE KORNER: [12:53:27] Tell us now then, yes.

11 MS VON WISTINGHAUSEN: [12:53:29] Yes. Well, we've calculated this, looking
12 at, of course, the Prosecution witness list and all the viva voce or 68(3) witnesses, and
13 we've counted 107. And if we work on the assumption that we will need an average
14 of 30 minutes, probably less, sometimes a little bit more, we calculated 53.5 hours.
15 And I think if we say, or if we ask you to allocate 50 hours to us, I think this should be
16 fair and sufficient.

17 PRESIDING JUDGE KORNER: [12:54:05] Yes. Well, we've been taking soundings
18 from other Trial Chambers as to how much time has been used. We'll consider your
19 request and come back to you at the end of the afternoon.

20 MS VON WISTINGHAUSEN: [12:54:24] All right. Thank you very much.

21 PRESIDING JUDGE KORNER: [12:54:25] Yes, thank you. 25 past 2 then.

22 THE COURT USHER: [12:54:29] All rise.

23 (Recess taken at 12.54 p.m.)

24 (Upon resuming in open session at 2.27 p.m.)

25 THE COURT USHER: [14:27:13] All rise.

Trial Hearing
WITNESS: DAR-OTP-P-0903

(Open Session)

ICC-02/05-01/20

1 Please be seated.

2 PRESIDING JUDGE KORNER: [14:27:38] Just before you continue with the witness,
3 Mr Sachithanandan, Ms von Wistinghausen, we've given the same careful
4 consideration to your request for hours as we gave to both the Prosecution and
5 the Defence, and we've come to the conclusion that the appropriate number in
6 the case of the victims representatives would be 40 hours.

7 Thank you.

8 MS VON WISTINGHAUSEN: [14:28:07] That's well noted. Thank you.

9 PRESIDING JUDGE KORNER: [14:28:10] Yes.

10 MR SACHITHANANDAN: [14:28:20] One minute, your Honour. My transcript
11 has had an identity crisis, I'm just trying to fix it right now.

12 Q. [14:29:00] Good afternoon, Mr Witness.

13 Can you hear me?

14 A. [14:29:12] I do.

15 Q. [14:29:14] We were discussing people being removed from Mukjar prison to be
16 taken and killed. And I want to ask some questions relating to that period.

17 You mentioned that someone called Ahmad Issa was arrested. Can you tell us what
18 happened to Ahmad Issa.

19 A. [14:29:56] You're asking me about Ahmad Issa. Ahmad Issa --

20 THE INTERPRETER: [14:30:12] Inaudible.

21 MR SACHITHANANDAN:

22 Q. [14:30:14] Could you -- could you repeat your answer, Mr Witness.
23 The interpreter didn't hear you.

24 A. [14:30:22] Ahmad Issa, he died. I was with him in Tina. He was not arrested.
25 He died while he was not arrested.

1 Q. [14:30:37] I'm going to move on. You mention that Abakar Mohamed Adam
2 was arrested. What happened to Abakar Mohamed Adam?

3 A. [14:30:52] Abakar Mohamed Adam, I was with him in Tendy, and he too died
4 unarrested. He did not go to prison.

5 Q. [14:31:10] My apologies, that's my error then.

6 You mentioned Abd-Al-Khalik Yahya, what happened to Abd-Al-Khalik Yahya?

7 A. [14:31:25] Abd-Al-Khalik Yahya came from Tendy and when he arrived at the
8 checkpoint they took him to prison.

9 Q. [14:31:35] What happened to him after he was taken to the prison?

10 A. [14:31:44] They took him from prison to Garsila and they killed him at the creek.

11 Q. [14:31:54] And how do you know that they took him out of the prison?

12 A. [14:32:04] They took him along with others from prison and was not seen
13 afterwards.

14 Q. [14:32:11] Right. What I'm trying to say is is this something you saw with your
15 own eyes or do you know it in some other way?

16 A. [14:32:23] I saw it with my own eyes. I was there. They took him -- they
17 brought him to prison and then they took him out of prison and others were still in
18 prison at that point.

19 Q. [14:32:44] And was he taken out on the same day that you were describing
20 earlier today -- with the other people you were describing earlier today, or not?

21 A. [14:32:59] On the same day, likewise.

22 Q. [14:33:11] What about Ali Yahya, what happened to Ali Yahya?

23 A. [14:33:19] Ali Yahya was also from Tendy, he came from there to Mukjar. He
24 was taken to prison and was then taken out of prison like the others.

25 Q. [14:33:34] And is this something you saw with your own eyes or do you know it

1 some other way?

2 A. [14:33:44] Are you asking me regarding Ali Yahya?

3 Q. [14:33:47] Yes.

4 A. [14:33:50] Ali Yahya also was in prison and was taken out of prison along with
5 others.

6 Q. [14:34:02] What about Bahr-al-Din Idris, Bahr-al-Din Idris, what happened to
7 him?

8 A. [14:34:11] Bahr-al-Din Idris was also with us in prison and he was taken with
9 the others out of prison as well.

10 Q. [14:34:21] Did you see him being taken out or did you learn of this in some other
11 way?

12 A. [14:34:31] I was with him in prison and he was taken with others, loaded onto
13 vehicles and was not seen afterwards.

14 Q. [14:34:45] Ali Mohammed, what happened to Ali Mohammed?

15 A. [14:34:51] Ali Mohammed, the same thing happened to him, he was with us in
16 prison. They took him out of the prison and faced the same fate.

17 Q. [14:35:05] What village did Ali Mohammed come from?

18 A. [14:35:12] Ali Mohammed, I don't know what village he came from, could be
19 Korofata or Nyerli, but I heard his name, I heard the name Ali Yahya.

20 Q. [14:35:29] Sorry, just to be clear, Ali, are you talking about Ali Mohammed?

21 A. [14:35:36] Ali Mohammed? Ali Mohammed? Ali Mohammed is from Tendy
22 as well and he came with us to Mukjar. He was arrested at the checkpoint, taken to
23 prison and from prison loaded along with others as described.

24 Q. [14:35:58] Sorry, one thing I forgot to ask about Bahr-al-Din Idris, what village
25 did Bahr-al-Din Idris come from?

1 A. [14:36:10] Bahr-al-Din Idris is from Tendy.

2 Q. [14:36:14] Musa Adam, what happened to Musa Adam?

3 A. [14:36:23] Musa Adam is also from Tendy. He went to Mukjar, was taken to
4 prison, and from the prison he was taken along with the other prisoners to face that
5 fate.

6 Q. [14:36:38] Usman Yahya, what happened to Usman Yahya?

7 A. [14:36:47] Usman Yahya is from Tendy, he arrived in Mukjar, was arrested,
8 taken to prison and was loaded along with the others and was taken away and was
9 killed.

10 Q. [14:36:59] Mr Witness, these men that you described being taken away and
11 killed, what tribe did they belong to?

12 A. [14:37:12] They were all Fur, the Fur tribe.

13 Q. [14:37:23] *Sheikh* Muhammad Ali Bolot, what happened to him, *Sheikh*
14 Muhammad Ali Bolot?

15 A. [14:37:38] He was also in prison, and he was taken out of prison along with
16 the others.

17 THE INTERPRETER: [14:37:45] Last part of the answer is inaudible.

18 MR SACHITHANANDAN: [14:37:48]

19 Q. [14:37:49] Mr Witness, the interpreter didn't hear you. Could you please repeat
20 your answer about *Sheikh* Bolot?

21 A. [14:37:58] This man was also in prison, he had been arrested, was loaded onto
22 vehicles, taken to Garsila, killed at the creek.

23 Q. [14:38:18] I want to ask about two people you mentioned earlier. Ibrahim
24 Adam Ishaq, how old was he when you were in prison together?

25 A. [14:38:37] Ibrahim Adam Ishaq was around 20 years old.

1 Q. [14:38:45] And Ishaq Adam Ishaq, how old was Ishaq Adam Ishaq when --

2 A. [14:38:53] Ishaq Adam Ishaq was around 15 or 16 years old.

3 Q. [14:39:07] Mr Witness, I'm going to move forward in time a little bit. How long
4 did you stay in Mukjar prison?

5 A. [14:39:23] Again, please. Are you asking about me or about the others?

6 Q. [14:39:35] You. I'm now asking only about you. How long did you stay
7 imprisoned in Mukjar police station?

8 A. [14:39:47] In prison I spent two or three weeks, approximately. Roughly
9 a month's time.

10 Q. [14:40:01] Now when you -- you said you saw -- you said you saw the vehicles
11 taking prisoners away to be killed. Do you know what happened to those vehicles?

12 A. [14:40:19] Regarding the vehicles, I don't know how many vehicles there were.
13 They belonged to the police, the army, and the *Abu Tera* forces. They -- all together
14 they owned these vehicles.

15 Q. [14:40:35] Right. But my question is, you saw them leave, did you ever see
16 those vehicles again or not?

17 A. [14:40:50] I saw some and I didn't see others. The ones that came to the visible
18 front, I saw. The ones that didn't come, I did not see.

19 Q. [14:41:06] Okay. So after the vehicles left with the prisoners, how long did it
20 take before you saw those vehicles again?

21 A. [14:41:30] Are you asking me about the number of vehicles?

22 Q. [14:41:33] No, sorry. Let me try again.

23 You saw these vehicles go away with prisoners. Did you see the vehicles come back
24 or not?

25 A. [14:41:49] I did not see them coming back. I did not see them coming back.

1 MR SACHITHANANDAN: [14:42:07] Your Honour, may I refresh using
2 the statement, refresh his memory, on this point?

3 PRESIDING JUDGE KORNER: [14:42:13] Yes.

4 MR SACHITHANANDAN: [14:42:14]

5 Q. [14:42:15] Mr Witness, I want to go to your statement that you gave to
6 the Office of the Prosecutor.

7 And for the record, the statement is DAR-OTP-0221 at -- sorry, 0221-0436. And I
8 want to go to paragraph 45.

9 Mr Witness, I'm going to read a part of your statement. I quote: "After less than an
10 hour, I saw the above convoy returning to the courtyard of the police headquarters,
11 without prisoners."

12 Does that help you remember, Mr Witness?

13 A. [14:43:11] The vehicles that went, they were loaded with vehicles. But then
14 they came back with no people loaded on them. There were no people in
15 the vehicles when they came back.

16 Q. [14:43:30] Thank you, Mr Witness. I'm going to move on.

17 Mr Witness, earlier today you said that you had seen Ali Kushayb at a hospital once.
18 Please tell the Court about seeing him at the hospital.

19 A. [14:44:07] I saw him at the Garsila hospital wearing a *jalabya* and a turban.

20 Q. [14:44:19] Do you remember roughly when this was?

21 A. [14:44:28] Roughly, roughly the distance or what exactly?

22 Q. [14:44:35] Do you remember which year you saw Ali Kushayb in the hospital?

23 A. [14:44:43] I saw him wearing a *jalabya* and a turban at the Garsila hospital in
24 2010.

25 Q. [14:44:58] Now again using this courtroom as a way of measuring distance,

1 when you saw Ali Kushayb, was he closer than, for example, the judges, or beyond
2 the judges, or at the same distance as the judges?

3 A. [14:45:22] He was very close, five or six metres away.

4 Q. [14:45:34] Right. And when you saw him at the hospital, what was
5 Ali Kushayb doing?

6 A. [14:45:45] I don't know exactly. He might have been sick. He might have
7 been visiting someone sick. I don't know. I just saw him there. He recognised
8 someone called Abu Helwa (phon), but I don't know what the motive of his visit is.

9 Q. [14:46:03] Sorry, you said he recognised someone. Can you tell us the name of
10 that person again.

11 A. [14:46:18] You mean at the hospital?

12 Q. [14:46:21] Yes. I thought you said Ali Kushayb recognised someone. Can you
13 please explain what you mean.

14 A. [14:46:34] I saw him talking to someone. He called him
15 Abu Hawa -- Abu Helwa. And they greeted each other and they had a talk. But
16 I didn't stay there long, I left a little while afterwards.

17 Q. [14:46:56] Mr Witness, does Ali Kushayb have any other names?

18 A. [14:47:06] Ali Muhammad Abd-al-Rahman.

19 Q. [14:47:14] And how do you know that that is his full name?

20 A. [14:47:22] He is an official in Garsila. He has a drugstore and he was
21 coordinating the Popular Defence Forces. Given that he is an official, everyone
22 knows him.

23 Q. [14:47:41] How do you know that he was coordinating
24 the Popular Defence Forces?

25 A. [14:47:49] I heard that from people. People were saying that he is

1 the coordinator of the Popular Defence Forces in Garsila.

2 Q. [14:48:00] How do you know he has -- or he has a drugstore in Garsila?

3 A. [14:48:09] I heard that from people as well. They said he has a drugstore in
4 Garsila. I did not see that drugstore myself.

5 Q. [14:48:40] My apologies, Mr Witness. I wanted to go back to one thing related
6 to your time in Mukjar prison.

7 Your Honour, I know this is not your favourite thing, but could we go into private
8 session for a few minutes. For the benefit of the audience, it will be perhaps five,
9 five minutes.

10 PRESIDING JUDGE KORNER: [14:49:07] All right. Until we've discussed this, I
11 will accede to the request.

12 All right, we go to private session.

13 MR SACHITHANANDAN:

14 Q. [14:49:21] Mr Witness, you mentioned --

15 (Private session at 2.49 p.m.)

16 THE COURT OFFICER: [14:49:23] We're in private session, Madam President.

17 (Redacted)

18 (Redacted)

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Trial Hearing
WITNESS: DAR-OTP-P-0903

(Private Session)

ICC-02/05-01/20

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- 19 (Open session at 2.52 p.m.)
- 20 THE COURT OFFICER: [14:52:18] We're back in open session, Madam President.
- 21 MR SACHITHANANDAN: [14:52:23]
- 22 Q. [14:52:24] Mr Witness, do you know someone called -- or have you heard of
- 23 someone called Ahmad Harun?
- 24 A. [14:52:37] Yes, Ahmad Harun, yes.
- 25 Q. [14:52:40] Have you ever seen him?

1 A. [14:52:46] Not beforehand.

2 Q. [14:52:52] Have you ever seen Minister Ahmad Harun in public or not?

3 A. [14:53:03] I saw him on the same day he arrived in Mukjar.

4 Q. [14:53:10] Do you remember which year he arrived in Mukjar?

5 A. [14:53:20] I can't be sure precisely, but approximately in 2003, roughly speaking.

6 But I can't be certain about that.

7 MR SACHITHANANDAN: [14:53:31] Your Honour, may I refresh from

8 the statement?

9 PRESIDING JUDGE KORNER: [14:53:36] (Microphone not activated)

10 MR SACHITHANANDAN: [14:53:37]

11 Q. [14:53:38] Making reference to the statement you gave to the

12 Office of the Prosecutor, the details of which I already gave on the record, if we can

13 turn to para 59.

14 Mr Witness, I'm going to read out para 59 of your statement. I quote:

15 "Ahmed Haroun. I believe it was about a month, or less, before my above arrest and

16 detention, that, when I was visiting the local market in Mukjar, I saw a military ...

17 helicopter landing in Mukjar."

18 A. [14:54:15] (Speaks English) Yeah.

19 Q. [14:54:16] Does that refresh your memory about my question, Mr Witness?

20 A. [14:54:25] I do remember that.

21 Q. [14:54:29] Please tell us what you saw of Minister Ahmad Harun?

22 A. [14:54:39] I was in the market, I went to the Mukjar market and I heard

23 the sound of a helicopter. It turned out it's a military helicopter and people got off

24 the helicopter and got into cars and came to the southern part of the market. They

25 stopped there. And he said that the Fur and their money are booties.

1 THE INTERPRETER: [14:55:20] Correction: Unlike what the transcript shows, it's
2 booties, not duties.

3 MR SACHITHANANDAN: [14:55:34]

4 Q. [14:55:34] Do you remember anything else that Minister Ahmad Harun said?

5 A. [14:55:38] He said the Fur and the money of the Fur are booties and you may
6 target anything you want in -- on their land, including trees.

7 Q. [14:55:54] Now when Minister Ahmad Harun was making this speech, were
8 you - using this courtroom again - closer than you are to the judges, further than
9 you are to the judges, or the same distance?

10 A. [14:56:13] Longer than this distance. And when I heard what he said, I didn't
11 stay there, I left immediately. I rode my donkey and left immediately.

12 Q. [14:56:26] Why did you leave immediately when you heard this?

13 A. [14:56:35] Because what he said is dangerous and I was afraid, and so I left.

14 Q. [14:56:51] Mr Witness, I'm almost at the end of your examination. I just have
15 a few questions related to an earlier time. You remember this morning you
16 mentioned the first attack on Tendy in 2003. Do you remember that?

17 A. [14:57:13] I remember that.

18 Q. [14:57:23] Do you remember having heard of an attack on Kodoom or Bindisi
19 around this time?

20 A. [14:57:36] I heard about it around the same time, in August of 2003.

21 Q. [14:57:43] Please tell this Court what you heard about Kodoom and Bindisi.

22 A. [14:57:55] Regarding Kodoom and Bindisi, after our attack -- the attack on us,
23 we went to the mountains and we met people who had fled Kodoom and Bindisi.
24 One person I met told me about what happened regarding the attacks on Kodoom
25 and Bindisi.

1 Q. [14:58:23] What was this person's name?

2 A. [14:58:29] The person is called Omar Mohamed Saleh and he is from Kodoom.

3 Q. [14:58:37] Please tell this Court what he told you about the attack on Kodoom.

4 A. [14:58:46] I met him in Tendy and we got to talk and he told me about
5 the burning of Kodoom and Bindisi. He told me that people came in vehicles and
6 told the citizens no one leaves home because the *zakat* office folks are coming to -- for
7 that purpose and therefore no one should leave home. And so people stayed home,
8 in their homes. No longer than five minutes afterwards did the attack happen.

9 Q. [14:59:30] Right. Thank you, Mr Witness.

10 Now I want to move a little forward in time, again to the second attack on Tendy,
11 the attack you mentioned that you thought happened in the third month of 2004.
12 You remember mentioning that in the morning?

13 A. [14:59:52] I remember.

14 Q. [14:59:59] You mentioned that you fled Tendy and that as you were running
15 away from Tendy you met various victims; is that correct?

16 A. [15:00:15] Correct.

17 Q. [15:00:16] Do you recall meeting any women who had suffered during
18 the attack?

19 A. [15:00:28] I met women, children and elderly people, many of them.

20 Q. [15:00:37] Without mentioning any names, can you tell us whether you met any
21 victims of sexual crimes or not.

22 A. [15:00:51] They include four who were beaten and raped.

23 Q. [15:01:04] Again, without mentioning their names, please tell us who had done
24 that to them.

25 A. [15:01:18] The Janjaweed.

1 Q. [15:01:26] Were they only suffer -- did they only suffer from beatings and rape
2 or did they suffer from any other kind of injury?

3 A. [15:01:39] No other injuries. One of them wasn't injured at all, was arrested,
4 raped and taken to Mukjar.

5 MR SACHITHANANDAN: [15:01:52] Your Honour, can we go into private session
6 for one question, to mention some names?

7 PRESIDING JUDGE KORNER: [15:02:02] (Microphone not activated)

8 THE INTERPRETER: [15:02:06] Microphone, please, your Honour.

9 PRESIDING JUDGE KORNER: [15:02:09] It can't be on the basis that mentioning
10 those names will disclose his identity. So is this simply to keep the names of
11 the alleged victims out of the public?

12 MR SACHITHANANDAN: [15:02:22] That's correct, your Honour.

13 PRESIDING JUDGE KORNER: [15:02:24] All right. Yes, all right.

14 (Private session at 3.02 p.m.)

15 THE COURT OFFICER: [15:02:37] We're in private session, Madam President.

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2 (Open session at 3.03 p.m.)

3 THE COURT OFFICER: [15:03:57] We're back in open session, Madam President.

4 MR SACHITHANANDAN: [15:04:00] Your Honour, I'm at the end of my questions.

5 Why not take a shot at annotating that map, since we have the time.

6 PRESIDING JUDGE KORNER: [15:04:10] Well, I was going to ask, are we ever - it's

7 not a map, it's a photograph, as far as I can tell - are we ever going to get to it? We

8 are, are we now?

9 MR SACHITHANANDAN: [15:04:19] That's the only thing left on the menu,

10 your Honour.

11 PRESIDING JUDGE KORNER: [15:04:21] All right. Well, shall we -- I gather it's

12 now uploaded or will be on the Elmo. We're back to very old methods of -- yeah.

13 And so if the witness can have the hard copy and if he could mark, I think, first of all

14 where he was kept. Is that right, Mr Sachithanandan? Which -- which part he was

15 kept in.

16 MR SACHITHANANDAN: [15:04:45] That's correct, your Honour, and a few

17 questions built on that.

18 PRESIDING JUDGE KORNER: [15:04:50] Yeah.

19 MR SACHITHANANDAN:

20 Q. [15:05:26] Mr Witness, please don't write anything on the piece of paper until I

21 ask the question, all right?

22 Okay, you see the ...

23 I think that this image can actually be --

24 PRESIDING JUDGE KORNER: [15:06:03] I've been pressing various buttons but

25 without seeing it.

1 MR SACHITHANANDAN: [15:06:07] I'm afraid I'm in the same -- same boat.

2 THE COURT OFFICER: [15:06:12] Your Honours, the Elmo will be -- the document
3 will be on evidence channel 2 via the Elmo, once the witness has annotated the map.
4 But for the purposes of annotation, it would be easier if the witness can do it on
5 the table in front of him.

6 PRESIDING JUDGE KORNER: Yes, then. Yeah.

7 MR SACHITHANANDAN: [15:06:26]

8 Q. [15:06:27] Right, Mr Witness, you see this photograph in front of you. As I told
9 you earlier, this is a photograph of Mukjar police station taken from above. So think
10 of -- think of it as if the photo was taken from a plane, you know, from high above.
11 And this photo was taken in 2006, so not exactly when you were there.

12 Right. So looking at this where you can see two -- two buildings, roughly squares or
13 oblongs (Overlapping speakers)

14 A. [15:07:05] I was in this prison. Is this in the east or to the west? I was in this
15 prison.

16 Q. [15:07:12] Okay. Can you mark the room that you were in, or the building you
17 were in and then please let that lady show it on the machine.

18 A. [15:07:31] It's this prison. I was in this prison.

19 Q. [15:07:41] Right. So you -- maybe draw a circle around that prison.

20 Right, but now you've marked both buildings. Can you please draw a round circle
21 around the building in which you were.

22 Now you said -- you said that vehicles were being loaded with prisoners. Can you
23 mark with an "X" where the vehicles were, with an "X".

24 THE INTERPRETER: [15:08:29] Inaudible.

25 MR SACHITHANANDAN: [15:08:48]

1 Q. [15:08:49] Right. Mr Witness, now you drew a big circle on the left of
2 the image. Please tell the Court what -- this big circle that you just drew,
3 what -- what that is.

4 A. [15:09:11] The circle is too big.

5 Q. [15:09:21] No. Let's stop. Let's stop. Right. So you've marked one building
6 where you were kept. Now I want you to show with the pen where the vehicles
7 were being loaded. Can you show where the vehicles were being loaded, just mark
8 it with your pen with ...

9 A. [15:09:47] The vehicles were getting loaded in -- at this location. All over this
10 place.

11 Q. [15:09:59] Okay.

12 So for the record, the witness has indicated the left side of the image and drawn
13 a broad circle there.

14 Can you -- one final question, Mr Witness. Can you show with an arrow
15 the direction of Garsila, the direction of Garsila with an arrow.

16 A. [15:10:23] Here's the arrow pointing to Garsila in that direction.

17 MR SACHITHANANDAN: [15:10:33] For the record, the witness has drawn
18 a line heading roughly upwards from the police station indicating the direction of
19 Garsila.

20 Your Honour ...

21 MR LAUCCI: [15:10:46] Just for the precision of the records, I assume you will agree
22 that the arrow goes, I would say, if the north is up, it goes north-east.

23 MR SACHITHANANDAN: [15:10:57] Indeed, that's correct. A line drawn roughly
24 heading north-east from the police station.

25 Your Honour, this -- I think this brings me to the end of questions I can usefully ask

1 about this image. I'm in your hands.

2 PRESIDING JUDGE KORNER: [15:11:17] If the witness can say where he -- indicate
3 where he was when he says he saw Ali Kushayb ordering the prisoners to get in
4 the vans or whatever, to get it accurately, whatever he said -- sorry. He said, yeah,
5 that he was talking and gesticulating I think was what he said.

6 MR SACHITHANANDAN: [15:11:52]

7 Q. [15:11:52] Mr Witness, I asked you where you were in the prison and you circled
8 one of the two buildings. Can you please tell us --

9 A. [15:12:05] I was in this prison. This one. That's where I was. This is
10 the second prison. And they were standing here in the middle. That's where they
11 were loaded -- loading people. The vehicles were here.

12 Q. [15:12:26] Now you mentioned earlier today -- you mentioned earlier today that
13 Ali Kushayb was in the police station. Can you show, of these two buildings, which
14 building was Ali Kushayb in?

15 A. [15:12:47] This building hosts an office and there was a building hosting
16 the -- there was a building hosting the prison. The building hosting a police office
17 doesn't have a prison. This is where the prison is.

18 I -- I never drew a sketch like this. This is bigger than the one I'm familiar with.

19 MR SACHITHANANDAN: [15:13:32] Your Honour, with your permission, I'm
20 going to leave this image and ask about two questions. I think that's going to be
21 a more useful exercise.

22 PRESIDING JUDGE KORNER: [15:13:40] Yes. He drew some plans didn't he,
23 himself, I seem to recall, which has not been shown.

24 MR SACHITHANANDAN: [15:13:50] Yes, your Honour, I re-looked at them and I
25 decided they were not useful.

1 Q. [15:13:57] Mr Witness, you can ignore -- you can ignore the document now.

2 You can leave aside --

3 PRESIDING JUDGE KORNER: [15:14:04] Yes, but you can't, I'm afraid to say.

4 You've got to give it a number of some kind or another.

5 MR SACHITHANANDAN: [15:14:13] Indeed. Excellent point, your Honour.

6 This is a new situation because we don't have an ERN for this document. Perhaps

7 the court officer can guide us on how to mark this.

8 THE COURT OFFICER: [15:14:19] Thank you, Madam President. Since this item

9 was marked in court, we will give it an REG ERN number. So this annotated

10 document will bear the ERN number DAR-REG-001-0001, so 0001-0001. Thank you.

11 MR SACHITHANANDAN: [15:14:42]

12 Q. [15:14:43] Mr Witness, you can leave the image aside now and the court officer

13 can -- can take the image away.

14 You said this afternoon that you were in a room in the prison and that Ali Kushayb

15 was outside the door of that room; is that correct?

16 A. [15:15:21] Correct.

17 Q. [15:15:26] Have I understood you correctly that Ali Kushayb was also inside

18 the police building, or is that not correct?

19 A. [15:15:37] Inside the prison building there was a police presence.

20 Q. [15:15:48] Right. But I'm asking about Ali Kushayb. Is it correct that

21 Ali Kushayb was inside the police building, inside the prison building, or was he

22 outside?

23 A. [15:16:05] When they came to take the prisoners out, he was standing at the door

24 of the prison.

25 Q. [15:16:17] Right. I think the problem is -- as far as I understand, I think

1 the problem is between the words "prison" and "room".

2 So you are in one room and Ali Kushayb is outside the door of that room; is that
3 correct?

4 A. [15:16:42] What exactly do you mean by "room"? I do not understand "room"?
5 You mean a room within the prison? He was standing at the door of the prison.

6 Q. [15:16:57] Right. I think I understand. Let me ask it a different way.

7 PRESIDING JUDGE KORNER: [15:16:59] Well, let me try it to see.

8 If Ali Kushayb stepped backwards from where he was standing, would he have been
9 in the open air or still inside a building?

10 THE WITNESS: [15:17:17](Interpretation) As I said, he was not inside the prison.
11 He was in front of the building at the door.

12 PRESIDING JUDGE KORNER: [15:17:31] I think he's made that clear because my
13 impression throughout has been that he's talking about him being outside the prison
14 in the yard, as it were.

15 MR SACHITHANANDAN: [15:17:39] All right, your Honour. Would you mind if
16 I asked one question --

17 PRESIDING JUDGE KORNER: [15:17:43] (Overlapping speakers)

18 MR SACHITHANANDAN: [15:17:43] Yes. You understand we're all struggling
19 with the language.

20 Q. [15:17:48] Mr Witness, when you saw Ali Kushayb was there a roof over him or
21 was he outdoors in the open air?

22 A. [15:18:01] There is something not understandable in the language, the way this
23 is pronounced. I need to understand this better.

24 Q. [15:18:15] Was Mr Kushayb -- you know what, your Honour, I don't think I can
25 actually get more specificity. We have the distance and I think we'll let it be.

1 PRESIDING JUDGE KORNER: [15:18:26] (Microphone not activated)

2 THE INTERPRETER: [15:18:27] Microphone, please, your Honour.

3 PRESIDING JUDGE KORNER: [15:18:29] Unless the suggestion is going to be

4 otherwise, he's made it absolutely clear he saw him from the distance he saw him and

5 he was gathering the prisoners.

6 MR SACHITHANANDAN: [15:18:42] That's fine, your Honour. I think we're on

7 the same page and I'll end my questioning there.

8 PRESIDING JUDGE KORNER: [15:18:48] Yes, thank you very much,

9 Mr Sachithanandan.

10 Yes, so next you're going to be asked questions by one of the representatives from

11 the victims in this case.

12 Yes, Ms von Wistinghausen.

13 QUESTIONED BY MS VON WISTINGHAUSEN:

14 Q. [15:19:07] Yes, Mr Witness, my name is Natalie von Wistinghausen and,

15 together with my colleague, who you see on the screen next to you because he can't be

16 with us in the courtroom today, and the two gentlemen here next to me, we are

17 representing the victims in this case. And our clients, just like you, were impacted

18 by the events that you have testified about before the judges.

19 So I would just like to ask you a few questions, and I promise it's not going to be long,

20 to assist the judges in better understanding what happened to the people of Mukjar

21 municipality, like you.

22 So I would like to start by asking you about your village, about Tendy. And I would

23 like to know what it looked after the attack. Had houses burned or was there

24 destruction? Could you describe this to the judges, please.

25 A. [15:20:12] Yes, certainly. There was burning of places.

1 Q. [15:20:24] Had many houses burned, or a few? Or what about your house?

2 A. [15:20:38] All homes in the village of Tendy, they were all burned and destroyed.
3 Not a single home was left standing.

4 Q. [15:20:50] Can you tell us if the attackers took away property? Was there
5 looting? Is this something you saw?

6 A. [15:21:07] They took away everything. There was looting, pillaging, burning,
7 rape, and so forth. They did not leave anything that they did not target.

8 Q. [15:21:25] Can you tell us what happened to the animals.

9 A. [15:21:32] Regarding the animals, they were all pillaged. Not one was left.
10 They were all taken away.

11 Q. [15:21:46] You have described to us, Mr Witness, the conditions of detention at
12 the police headquarters prison in Mukjar, the prison that we have just seen on
13 the screen a minute ago, and you have described to the judges that you have been
14 mistreated by police officers and you said that they cut your hands and your right leg
15 and that hot plastic was thrown at you.

16 Can you tell us if you received any medical care or treatment after this happened to
17 you?

18 A. [15:22:39] I had some -- my own treatment, basic treatment that I managed to get
19 myself when I went home. But there was no medication. There was no
20 transportation to get anything moved --

21 THE COURT OFFICER: [15:22:55] Excuse me, could --

22 THE WITNESS: [15:22:55](Interpretation) -- from one place to the other.

23 THE COURT OFFICER: [15:22:59] -- counsel please turn off her microphone.

24 Thank you.

25 MS VON WISTINGHAUSEN: [15:23:05]

1 Q. [15:23:06] We have seen today pictures of -- of the scars that you have from this
2 mistreatment. Can you tell us if these injuries still cause any discomfort today.

3 A. [15:23:28] Nothing to report. It's fine.

4 Q. [15:23:34] That's good to hear.

5 A few more questions, actually, only two or three more.

6 And, Madam President, for those, out of caution, I prefer to go into private session,
7 please.

8 PRESIDING JUDGE KORNER: [15:23:47] Yes.

9 (Private session at 3.24 p.m.)

10 THE COURT OFFICER: [15:24:00] We're in private session, Madam President.

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Trial Hearing
WITNESS: DAR-OTP-P-0903

(Private Session)

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Trial Hearing
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Trial Hearing
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Trial Hearing
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Trial Hearing
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Trial Hearing
WITNESS: DAR-OTP-P-0903

(Private Session)

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17 (Open session at 3.52 p.m.)
18 THE COURT OFFICER: [15:52:47] We're back in open session, Madam President.
19 (The witness exits the courtroom)
20 PRESIDING JUDGE KORNER: [15:53:06] Mr Laucci, before we come to closed and
21 open session, I didn't stop you, but -- but perhaps you could just explain what
22 the relevance of all the questions were? A good 10 minutes' worth, if not more,
23 about how many children he's got, and so on and so forth, not to mention what he
24 tells people when he's applying for jobs.
25 MR LAUCCI: [15:53:38] How far do you want me to go in your -- in the explanation,

1 Madam President? I can go very far.

2 PRESIDING JUDGE KORNER: [15:53:43] Well, does it have a relevance -- does it
3 have relevance -- let me put it this way: Does it have relevance to an issue in
4 the case?

5 MR LAUCCI: [15:53:51] Absolutely. Every single question.

6 PRESIDING JUDGE KORNER: [15:53:53] All right. Well, as you told me I think
7 last week, you may surprise me.

8 All right, the whole point, as I expressed at the beginning, of having trials like this is
9 that as much as possible they should be in public session.

10 The purpose of private session is to avoid details being given for protected witnesses,
11 or obviously those who the allegation is -- were the subject of sexual assault from
12 identification.

13 But with today's witness we've had lists of names of people that he was in prison with,
14 some in open session, some in private session, without on the face of it there being
15 any rhyme or reason. And it does not strike me that it's going to identify a witness.
16 And particularly if he's asked: Who were the people who were in prison with you?
17 Which is required, obviously, for the purposes of names on the indictment, I take it.
18 Identifying details such as obviously if he says somebody was my brother-in-law or
19 this is my wife, or whatever, that is different. But just a long list of names, why does
20 that require private session?

21 So, Mr Sachithanandan or Mr Nicholls, whichever, why?

22 MR NICHOLLS: [15:55:36] Could we go into private session for one --

23 PRESIDING JUDGE KORNER: [15:55:42] Do we -- do we have to have -- do we have
24 to have private session for the explanation of why?

25 MR NICHOLLS: [15:55:48] I would -- I would prefer it, your Honour. I would

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1 request it very briefly.

2 PRESIDING JUDGE KORNER: [15:55:52] All right. Well, all right. Anybody who
3 has stayed hopefully in the public gallery, give it up and go home.

4 Yes, all right, private session.

5 (Private session at 3.56 p.m.)

6 THE COURT OFFICER: [15:56:15] We're in private session, Madam President.

7 (Redacted)

8 (Redacted)

9 (Redacted)

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16 (Redacted)

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15 (Open session at 4.01 p.m.)

16 THE COURT OFFICER: [16:01:36] We're back in open session, Madam President.

17 PRESIDING JUDGE KORNER: [16:01:39] Yes, thank you.

18 Yes, Mr Nicholls, if you can just give me, my fellow judges and maybe the public who
19 attend this some reassurance about what's going to happen from here on in.

20 MR NICHOLLS: [16:01:55] Yes. Thank you, your Honour. We take the comments
21 on board. We will look again at this practice and -- and try to tighten it up, and we
22 will try to do our best to group any matters that truly need to be in private session as
23 much as possible into one brief chapter so that we can remain open for the remainder.
24 Thank you.

25 PRESIDING JUDGE KORNER: [16:02:18] Yes. Well, thank you, Mr Nicholls.

1 And, Mr Laucci, I have no doubt you will do the same.

2 And indeed the representatives for victims. Yes.

3 Very well. All right. Do you, Mr Laucci -- two things then before we rise, sorry.

4 Firstly, how long do you think you're going to be with this witness?

5 MR LAUCCI: [16:02:38] Well, actually, I thought I would need no more than three
6 hours, but the last series of questions that were asked this afternoon addressed totally
7 new chapters which -- on which I will have, unfortunately, to cross-examine
8 the witness, which makes that I think I will have the -- need the full day tomorrow.

9 PRESIDING JUDGE KORNER: [16:02:58] Yes. Right.

10 Can I just say something about your opening to this witness. If your suggestion is
11 going to be that -- that he is mistaken, or possibly not telling the truth about what he
12 said, then I don't think it's particularly helpful to -- to start off thanking him very
13 much for coming to court. It could be said to -- it might sound a little bit hypocritical
14 when you put your case.

15 MR LAUCCI: [16:03:39] I'm very sorry if it was perceived like this. It was genuine.
16 I think -- I mean, we could speak for hours about the various dimensions of the truth
17 and about a witness who may be considering that he's telling the truth even though
18 he is assuming things or deducting things or whatever, the list is long. You know it
19 better than I do.

20 But I think, as a -- as a starter we need to acknowledge that those persons who appear
21 as witnesses, whatever the party calling them, are making an effort and in this case
22 and situation, because of the security situation, that's really an effort that needs to be
23 acknowledged.

24 Of course, I will have to -- to test the witness and I will not do this halfway, but at
25 least for the beginning it's -- it's -- I think it was fair to -- to acknowledge the -- that

1 their contribution is important for the Court.

2 PRESIDING JUDGE KORNER: [16:04:40] Yes. Well, all right. We'll see how -- I

3 merely float this past you, Mr Laucci, for you -- for you to think about it slightly.

4 All right, then, in which case, you would certainly take the morning. I was just

5 wondering whether there are any matters, if we have time left over tomorrow

6 afternoon, that could be dealt with tomorrow afternoon orally in terms of

7 procedural --

8 MR LAUCCI: [16:05:09] Madam President, my current expectation is that I will take

9 the full day.

10 PRESIDING JUDGE KORNER: [16:05:12] Oh, you'll take the full day. All right.

11 Yes, very well.

12 In that case, 9.30 tomorrow morning, please.

13 MR EDWARDS: [16:05:20] Excuse me, your Honour.

14 Your Honour, excuse me.

15 PRESIDING JUDGE KORNER: [16:05:27] Oh, sorry. Mr Edwards.

16 MR EDWARDS: [16:05:28] Just before you leave, there's a small conference room

17 just behind the court into which normally we're not allowed to take laptops, they

18 need the Court's authority. I just want to take instructions on one small point that

19 necessarily involves me bringing the laptop in. Could I ask your Honours to direct

20 that I be allowed to do so.

21 PRESIDING JUDGE KORNER: [16:05:50] Yes, this is to talk to Mr Al-Rahman in that

22 room with a laptop?

23 MR EDWARDS: [16:05:56] With a laptop, exactly.

24 PRESIDING JUDGE KORNER: [16:05:58] Yes. Well, unless I'm told there's some

25 rule that says I can't give you permission, I do give you permission.

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- 1 MR EDWARDS: [16:06:04] Thank you very much. Thank you, your Honour.
- 2 THE COURT USHER: [16:06:09] All rise.
- 3 (The hearing ends in open session at 4.06 p.m.)