

Trial Hearing
WITNESS: DAR-OTP-P-0651

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 3
9 Monday, 25 April 2022
10 (The hearing starts in open session at 9.36 am)
11 THE COURT USHER: [9:36:56] All rise. The International Criminal Court is now
12 in session. Please be seated.
13 THE COURT OFFICER: [9:37:25] Good morning, Madam President, good morning,
14 your Honours. This is the situation in Darfur, Sudan, in the case of The Prosecutor
15 versus Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
16 And for the record, we are in open session.
17 PRESIDING JUDGE KORNER: [9:37:41] (Microphone not activated).
18 MR NICHOLLS: [9:37:51] Good morning, your Honours, good morning, everybody
19 in the courtroom. I'm Julian Nicholls with Alison Whitford, Ester Kosova, Claire
20 Sabatini, Hesham Mourad and Mohanad Elkholy. Thank you.
21 PRESIDING JUDGE KORNER: [9:38:04] (Microphone not activated) Defence.
22 MR LAUCCI: [9:38:09] (Interpretation) Good morning, Madam President, good
23 morning, your Honours, Christos Anesti! For the interpreters I shall be translating,
24 explaining to you that I'd like to wish to you a happy Easter because today is Easter
25 Monday for me.

1 Now, in addition to Mr Abd-Al-Rahman today present at the hearing, for the Defence
2 we have Madam Drusilla Bret-Cunynghame-Robertson, our new intern;
3 Mr Mohammad El Rahi, who is in charge of evidence; my colleague, Iain Edwards,
4 who is co-counsel; and myself, lead counsel, Mr Cyril Laucci.

5 PRESIDING JUDGE KORNER: [9:38:55] Well, I have to say, Mr Laucci, it's a long
6 time since I have heard that. I thought that -- about this being Easter Monday on the
7 basis that the ICTY, it was of course the orthodox Easter.

8 Yes, finally, could we have the appearances for the victims, thank you.

9 MR SHAH: [9:39:16] Yes, good morning, Madam President, good morning,
10 your Honours, good morning, colleagues. The victims are represented today by
11 Mr Nasser Amin Abdalla, appearing by video link. I have been told he is connected,
12 even if he's not appearing on the screen; Idriss Anbari; and myself, Anand Shah,
13 associate counsel. Thank you.

14 PRESIDING JUDGE KORNER: [9:39:35] Thank you.

15 Before we move to today's witness, Mr Laucci, I have been told or the Prosecution
16 informed us that -- or Mr Edwards, I don't know who's going to deal with this, that
17 you're objecting to video link for the witness on Thursday.

18 Now could you possibly tell us the basis for that objection.

19 MR LAUCCI: [9:40:00] (Interpretation) Very briefly, Madam President, I thank you
20 for allowing me to express myself on this matter.

21 The objection rests on the basic premise, which is that the witness should, by principle,
22 appear in the courtroom; that is the fact that witnesses should be here, heard in
23 person during a hearing. The only exceptions that are envisaged to this principle are
24 associated with the imperatives associated with the protection of witnesses, Article 68,
25 that is, and the reasons being that we request for the appearance of 0712 - having been

1 requested to testify via video link - has nothing to do with his protection.

2 So by principle -- or on principle, they should be appearing in person and you,

3 yourself, the Chamber, Madam President, and your Honours, and the participants in

4 the courtroom and the parties, and Mr Abd-Al-Rahman, are in a position to

5 appreciate and examine the witness when they appear.

6 I'm going to cite some jurisprudence, which is ancient in nature but has not lost

7 nothing in its value, the decision of the ICTY in the Tadić case, dated 24 June 1996.

8 I'm going to quote it in English for the interpreters:

9 (Speaks English) Decision on the Defence motions to summon and protect Defence

10 witnesses and on the giving of evidence via video link.

11 (Interpretation) The Chamber in this decision affirms the principle:

12 (Speaks English) "[...] the general rule is that a witness must physically be present at

13 the seat of the International Tribunal".

14 "[...] the evidentiary value of testimony provided by video-link, although weightier

15 than that of testimony by deposition, is not as weighty as" witness evidence "[...] in

16 the courtroom".

17 "[...] the physical presence of a witness [...] enables the Judges to evaluate the

18 credibility of a person giving evidence [...]."

19 And, "Moreover" -- in addition to that -- "the physical presence" of the witness "[...]

20 may help discourage the witness from giving false testimony".

21 (Interpretation) I finished with the English part.

22 And I would like to remind you that in this case, Mr Abd-Al-Rahman *pleads not

23 guilty, which means that those witnesses being called for the Prosecution are either in

24 the wrong or accept to take the risk that they will have an innocent man convicted.

25 And in the case of those witnesses who are mistaken and who are appearing in good

1 faith, whether they appear in the courtroom or not, has little impact. However, we
2 should hope that those who envisage the conviction of an innocent man would or
3 might - once in the presence of the innocent man in question - think again.
4 So to sum up, in this instant case there is no valid reason to move away from this
5 principle. There is no imperative of security or safety and the only reason being
6 submitted for this video link is that the witness does not have a document to travel
7 with. And the texts of the Court provide the perfect solution for this person to travel
8 to The Hague. I shan't cite the country of origin in question, but the witness is to be
9 found in a country that is a party to the privileges and immunities agreement of the
10 Court. Article 19(1)(f) of this agreement allows or provides on one part, the
11 exemption of any restrictions to immigration or any formalities with the registration
12 of foreigners when they're travelling with a view to testifying, and enables the Court
13 to issue a document to the individual for them to travel in order to testify.
14 They need to come to the seat of the Court, the Netherlands - which is, of course,
15 a party to this agreement to be found in 26(1)(f) and 26(2) of this agreement - of the
16 seat of the Court, and there are no real motives and no real reason to bring an
17 exception to this rule.
18 So this is the first time, Madam President, that we are discussing the appearance of
19 a witness via video link or whether they should appear physically. There will be
20 a further discussion with further data associated with this instance, but in the instant
21 case, no security imperative or any other problem that is insurmountable would mean
22 that there is no reason to make an exception in this situation.

23 PRESIDING JUDGE KORNER: [9:45:57] Mr Laucci, the Trial Chamber in
24 Tadić - over 20 years ago now - obviously wasn't aware of recent investigations into
25 credibility of witnesses and how misleading physical presence can be. But equally,

1 the Trial Chamber in Tadić has not spent the last two years as a result of a pandemic
2 watching nothing but witnesses on video link.

3 It seems in our view that the fact that the witness is unable to travel - for whatever
4 reason, does not have travel documents - is a valid and good reason why he should
5 give his evidence by video link, which, as I say, has these days become so common
6 and so used to it are all parties to criminal cases that it does not seem to me that it
7 causes you or Mr Al-Rahman any prejudice at all.

8 Accordingly, we grant the application for video link.

9 Yes.

10 MR NICHOLLS: [9:47:24] Thank you, your Honour.

11 MR LAUCCI: [9:47:26] (Interpretation) I thank you, Madam President.

12 PRESIDING JUDGE KORNER: [9:47:31] Yes, who's calling the next witness,
13 Mr Nicholls.

14 MR NICHOLLS: [9:47:37] Ms Whitford, your Honour.

15 PRESIDING JUDGE KORNER: [9:47:39] All right. Yes, thank you very much.

16 Ms Whitford --

17 The witness may be brought into court.

18 -- while he's being brought into court, given that his statement is going to be his
19 evidence-in-chief, it doesn't seem to me that there's any need to go into private
20 session to establish any details because it's all there and it's not going to be said.

21 MS WHITFORD: [9:47:56] Your Honour, it was my intention to ask him to put on
22 the record just the very most basic details of his name, date of birth and place of birth.

23 PRESIDING JUDGE KORNER: [9:48:02] Why? It's in the written statement, which
24 we have.

25 MS WHITFORD: [9:48:07] As your Honour pleases.

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1 PRESIDING JUDGE KORNER: Well, if you want to establish his age at the time of
2 these events, that's one thing, but the rest I don't think matters.

3 MS WHITFORD: [9:48:15] Thank you for the guidance, your Honour, I will omit
4 that part of the examination.

5 PRESIDING JUDGE KORNER: [9:48:20] Right.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE KORNER: [9:48:45] Is the court officer going to administer the
8 affirmation.

9 THE COURT OFFICER: [9:49:11] Your Honours, the witness has the solemn
10 undertaking in front of him in Arabic.

11 PRESIDING JUDGE KORNER: [9:49:17] Somebody's got to explain to him that he's
12 got to read it out. Can he read?

13 MS WHITFORD: [9:49:25] Yes, he is able to read in Arabic, your Honour.

14 PRESIDING JUDGE KORNER: [9:49:27] Right. Would the court officer perhaps
15 like to ask him to read the affirmation, please.

16 THE COURT OFFICER: [9:49:37] Mr Witness, you will find in front of you a solemn
17 undertaking. Can you confirm that you see it?

18 WITNESS: DAR-OTP-P-0651

19 (The witness speaks Arabic)

20 THE WITNESS: [9:49:48](Interpretation) I declare that I am going to say the truth,
21 the whole truth and nothing but the truth.

22 THE COURT OFFICER: [9:50:09] Thank you, Mr Witness.

23 PRESIDING JUDGE KORNER: [9:50:10] Yes.

24 QUESTIONED BY MS WHITFORD:

25 Q. [9:50:19] Good morning, Mr Witness. We've already met, but for the record my

1 name is Alison Whitford, and I'll be asking you questions on behalf of the Prosecution.

2 If any of my questions are not clear, please let me know and I'll do my best to clarify.

3 Also, as we spoke about last week, if you would like to take a break at any time,

4 please do say so.

5 Mr Witness, I would like to start by asking you about the statement that you provided
6 to investigators in 2017.

7 Do you recall meeting with Prosecution investigators in 2017 and giving a statement
8 in relation to this case?

9 A. [9:51:09] Yes.

10 Q. [9:51:14] I would like to show you a copy of that statement. In the binder in
11 front of you, if you open that and go to tab 1, please. For the record, this is item
12 DAR-OTP-0205-0015-R02, and this item is confidential and should not be publicly
13 broadcast.

14 Mr Witness, if you could please turn to page 24 of that document, which is page 0038.

15 Mr Witness, just to clarify, the first document that we are looking at is the document
16 that's behind tab 1. Can you find that document for me.

17 MS WHITFORD: [9:52:40] It may be, your Honour, that the court officer might need
18 to assist.

19 PRESIDING JUDGE KORNER: [9:52:36] Yes.

20 MS WHITFORD: [9:53:01]

21 Q. [9:53:01] Mr Witness, do you see on that page above the date of 17 of month 6,
22 2017, your signature?

23 A. [9:53:23] Yes. This is my signature.

24 Q. [9:53:27] And do you recall that during our preparation session two weeks ago,
25 you made a number of corrections and clarifications to this statement?

1 A. [9:53:39] Yes.

2 Q. [9:53:49] What I would like to do now is to go through those corrections and
3 clarifications with you one by one, so that you can explain them to the judges.

4 First, I would like to go to the part of your statement where you speak about an attack
5 on Fere village in month 9 of 2003, and I refer to page 0021, paragraph 20.

6 In this paragraph, you say that during the attack on Fere village, you saw a Land
7 Cruiser with a red flag.

8 Do you recall that during the preparation session, you clarified that the type of
9 vehicle that you saw was a Land Cruiser Defender?

10 A. [9:54:45] Yes, that's correct. The vehicle that had a red flag was a Land Cruiser
11 Defender and not a Toyota.

12 PRESIDING JUDGE KORNER: [9:55:18] As it neither says "Defender" nor "Toyota"
13 in the statement, what are we actually correcting?

14 MS WHITFORD: [9:55:26] Your Honour, during the preparation session, the witness
15 indicated that he would like to correct the type of vehicle, from Land Cruiser to Land
16 Cruiser Defender. This is the point that I was asking to ascertain from him.

17 PRESIDING JUDGE KORNER: [9:55:43] Okay.

18 MS WHITFORD: [9:55:51]

19 Q. [9:55:51] Mr Witness, now moving to page 0022, paragraph 24 of your statement,
20 in this paragraph you say that the villages of Kolnye, Mindo and Douro are on the
21 west of Fere in a mountain range.

22 Do you recall that in the preparation session, you made a correction to this
23 information and you explained that these villages are not in the mountain range, but
24 alongside the mountain range?

25 A. [9:56:29] Yes, of course, that's what I said.

1 Q. [9:56:42] And do you recall that during the session you drew a sketch in order to
2 explain the location of those villages relative to the mountain range?

3 A. [9:57:02] Yes.

4 Q. [9:57:02] I would like to show you that sketch now. If you could turn in the
5 binder to tab 8.

6 MS WHITFORD: [9:57:16] Your Honour, the court officer may need to assist again.
7 I think this time we may have identified the correct document. For the record, this is
8 item DAR-OTP-0224-0495-R01, and the item is confidential.

9 THE INTERPRETER: [9:57:50] Message from the interpreter: Can Ms Whitford
10 speak closer to the mic please because she's very quiet.

11 THE WITNESS: [9:58:07](Interpretation) Yes, that is correct. This is the sketch that
12 I drew and I signed.

13 MS WHITFORD: [9:58:14]

14 Q. [9:58:15] Could you very briefly explain please, what this sketch shows?

15 A. [9:58:24] This wide line that I drew is a mountain range. Starting from the
16 villages located closer to the wide range, starts from the east, Kankoule, and then Beja,
17 then Taringa. Then closer to the mountain range there is Soja, and then Fere, and
18 then Mindo, and then Douro, and, to the west, Kolnye.

19 Q. [9:59:36] (Overlapping microphones) And is this mountain range known by any
20 name?

21 Is this mountain range known by any name?

22 A. [10:00:00] The only thing that has a name is the mountain -- is the highest
23 mountain close to Soja, and it's called the mountain of Soja.

24 Q. [10:00:18] Thank you, Mr Witness.

25 I would like to return now to your statement and I will move to the part of your

1 statement where you speak about seeing a person who you identify as Ali Kushayb in
2 Deleig market about one week after the attack on Fere village.

3 And I refer to pages 0022 to 0023, paragraph 26.

4 In this paragraph, you say that the person who you identify as Ali Kushayb was
5 holding a ceremonial military baton.

6 Could you explain?

7 PRESIDING JUDGE KORNER: [10:01:10] Would you pause, please, it looks like we
8 have a problem again.

9 MR LAUCCI: [10:01:16] Yeah, I think we have a technical problem; it's being fixed.

10 (Pause in proceedings)

11 PRESIDING JUDGE KORNER: [10:01:23] Are we all right?

12 MR LAUCCI: [10:01:25] I think so, yes.

13 MS WHITFORD: [10:01:31]

14 Q. [10:01:31] Mr Witness, in this paragraph, you say that the person who you
15 identify as Ali Kushayb was holding a ceremonial military baton. Could you explain
16 please, what is meant by a ceremonial military baton here?

17 A. [10:01:50] It is a ceremonial military baton that is only held by those who have
18 reached a specific grade, that is, the assistant grade, the grade of an assistant.

19 Q. [10:02:27](Overlapping microphones) How do you know this information?

20 A. [10:02:37] Through my studies, there was the so-called course on military jargon.
21 So in the Sudanese curriculum and the Sudanese books, there is a course on military
22 jargon and terminology.

23 PRESIDING JUDGE KORNER: [10:03:06] Well, assistant is not something that I
24 think most of us are familiar with, other than a captain, a lieutenant or whatever. So
25 can we try and establish how high ranked that is.

1 MS WHITFORD: [10:03:20]

2 Q. [10:03:20] Could you explain what the rank of "assistant" is to your knowledge?

3 A. [10:03:37] The assistant is a grade previous to the officer's grade. We start with
4 a soldier, the warrant officer, the first lieutenant and the assistant. And then we
5 have a lieutenant with one star, a first lieutenant, two stars, a major and so on. So
6 these are military ranks used in Sudan. So he has the position of assistant before
7 getting a star, so this is what we call an assistant.

8 PRESIDING JUDGE KORNER: [10:04:35] Do you understand the rank "sergeant"?
9 Do you know what that is? Is it equivalent to that?

10 MR EDWARDS: [10:04:47] Your Honour, we're content for the -- because in the
11 proofing notes are the Arabic terms.

12 PRESIDING JUDGE KORNER: [10:04:55] Yes.

13 MR EDWARDS: [10:04:55] But it may be of assistance if the witness just gives the
14 Arabic terms and then we try and agree it later, yeah.

15 PRESIDING JUDGE KORNER: [10:05:00] Yes, that sounds quite sensible, Mr
16 Edwards.

17 All right, can we just have the Arabic term recorded, if that's possible.

18 MS WHITFORD: [10:05:14]

19 Q. [10:05:14] Mr Witness, could you tell us please again the Arabic term for the
20 rank that you were mentioning of "assistant"?

21 A. [10:05:33] It is the word *Musaid* in Arabic. In the Sudanese dialect, we say
22 "Udarusol" (phon). So it is the rank previous to lieutenant.

23 Q. [10:05:55] (Overlapping microphones) And in relation to this ceremonial
24 military baton, approximately how long was this baton, if you can recall?

25 A. [10:06:09] Between 50-to-60 centimetres long. That was the length of this baton.

1 Q. [10:06:26] (Overlapping microphones) I would like to move forward in your
2 statement now to the part where you speak about an attack on Taringa village at the
3 end of month 11 in 2003, and this at page 0023 to 0024, paragraph 30.

4 In this paragraph, you say that you returned near Taringa village several weeks after
5 the attack and you could see that the village had been completely destroyed.

6 Do you recall that during the preparation session, you drew a sketch to explain where
7 you were when you saw that Taringa had been destroyed?

8 A. [10:07:29] Yes, I do.

9 Q. [10:07:34] I'd now like to show you that sketch. If you can please turn to tab 9
10 in the binder, and this is item DAR-OTP-0224-0496-R01, the item is confidential.

11 THE INTERPRETER: [10:07:59] Message from the English booth: Could Ms
12 Whitford please observe a pause between the question and the answer session
13 because the French booth is missing the beginning of your utterance due to the
14 channel still being engaged by the Arabic interpreter. Thank you.

15 MS WHITFORD: [10:08:19] Thank you to the interpreters. I'll endeavour to do so.

16 Q. [10:08:25] Mr Witness, do you have that document in front of you, the sketch?

17 A. [10:08:32] Yes, it is.

18 Q. [10:08:35] Could you explain, please, what we see in that sketch?

19 A. [10:08:54] This sketch showcases the Taringa village that was destroyed.

20 Taringa village is divided into three neighbourhoods. We have Ardeba, on the
21 eastern side where we have the main street, then Tauringa, and followed by Taringa.
22 So we have three neighbourhoods. On the east, we have a valley and gardens.

23 Q. [10:10:04] Mr Witness, can you explain by reference to this sketch where you
24 were when you saw that the village of Taringa had been destroyed?

25 A. [10:10:26] Yes. I was in the neighbourhood where there is the main street next

1 to the gardens of Ardeba. It is -- it goes down from Ardeba, gradually towards
2 Tauringa and Taringa. So if you stand in Ardeba neighbourhood, that is next to the
3 main street, and you look straight before you, you can see the whole landscape.
4 What I saw is a completely destroyed village in the three neighbourhoods of Taringa.
5 It was completely destroyed and burnt down.

6 Q. [10:11:52] Can you tell us what you saw was burnt down?

7 A. [10:12:12] All the people of Taringa village live in units or traditional
8 dwellings and units. All the buildings were burnt down. Even the so-called units
9 that are built from fig leaves, they were completely burnt down.

10 Q. [10:12:58] Did you see if anything else was burnt down in Taringa at that time?

11 A. [10:13:12] I did not focus on something specific, I was looking -- having
12 a general look at the village. It was all black, burnt down.

13 Q. [10:13:46] I would now like to move forward in your statement to the part
14 where you talk about seeing displaced people in Deleig, and I refer now to page 0025,
15 paragraph 34. In this paragraph, you speak about villages being displaced to Deleig
16 from the Kobra area.

17 Could you clarify what is meant by the "Kobra" area, please.

18 A. [10:14:27] "Kobra" is an administrative unit, it's a *quatre hakura* that was divided
19 into four provinces: Koli, Kobra, Zaminbaya, Zamintoya. According to the new
20 regime, it became a different unit, such as Garsila, Bindisi, Muger (phon). Kobra is
21 the region in Garsila neighbourhood. It is surrounded by mountains starting from
22 Arawala. From Arawala, through to Narafattah, Zarey, to Jameina, to Garila (phon),
23 Gaba, Forgo, Massa, Tege. It is surrounded by these neighbourhoods where people
24 fled to Deleig and Borongo.

25 So these were the so-called regimes known as "Kobra" and whose population fled to

1 Deleig.

2 Q. [10:16:52] Can you tell us where the Kobra area is in relation to the town of
3 Deleig?

4 A. [10:17:14] Kobra is located south Deleig.

5 PRESIDING JUDGE KORNER: [10:17:24] Ms Whitford, are you going to show him
6 a map of any kind?

7 MS WHITFORD: [10:17:27] I will come to a sketch, your Honour.

8 PRESIDING JUDGE KORNER: [10:17:29] No, not a sketch. A proper map of the
9 area so we can see where all this is.

10 MS WHITFORD: [10:17:36] I can do so, your Honour, yes.

11 PRESIDING JUDGE KORNER: [10:17:38] Yes.

12 MS WHITFORD: [10:17:39]

13 Q. [10:17:39] Thank you, Mr Witness. I would now like to move to the part of
14 your statement where you speak about the arrests in Deleig on 5 of month 3, 2004,
15 and I refer now to page 0027, paragraph 41.

16 In this paragraph, you say that --

17 "[...] many farmers attempted to leave Deleig to tend their crops in the surrounding
18 areas. They were prevented from doing so as the access route had been blocked by
19 the Janjaweed."

20 Could you please explain how you came to know this information?

21 A. [10:18:33] Indeed, I had access to this information because early in the morning,
22 people used to walk to the farms to get their crops. People who went early in the
23 morning came back to us and told us that the routes were blocked and they could not
24 move. The region is linked to Janjaweed, and we came to know that the routes were
25 blocked and we could not get out.

1 Q. [10:19:43] Remaining now on the topic of the arrests in Deleig, but moving now
2 to paragraph 43 on page 0027, in this paragraph, you say that when you went to the
3 mosque, you carried your student card with you in case the Janjaweed thought you
4 were an adult and tried to arrest you.

5 Can you explain why you thought the Janjaweed might arrest you if you were an
6 adult?

7 A. [10:20:36] Yes, indeed. The same day they were targeting young
8 people -- they were targeting young people and adult people, age 25 years or so, so I
9 had my student card with me because I live in Deleig and I tried to show that I was
10 a student living there and not coming from somewhere else, so that they do not think
11 that I'm a *toro boro*.

12 Q. [10:21:24] Could you explain what you mean by the term "*toro boro*" please?

13 A. [10:21:44] They used to call the rebels by this name, that is, the people who are
14 against the government and were fighting the Janjaweed, so the opposition. That is
15 those coming from Kobra or the displaced, so we used to consider that the *toro*
16 *boro* are the opposition people.

17 Q. [10:22:23] Now in this same paragraph, you say that you went to one of two
18 mosques in Deleig. Could you tell us the name of the mosque that you went to?

19 A. [10:22:44] Sure. I went to the Ansar Al-Sunna mosque located in the market
20 and which was close to the Al Kabir mosque.

21 Q. [10:23:01] Is the Ansar Al-Sunna mosque known by any other name?

22 THE INTERPRETER: [10:23:07] Could counsel please leave a longer pause before
23 starting so the Arabic interpreting can finish. Thank you very much.

24 THE WITNESS: [10:23:17](Interpretation) As I already said, it is the Ansar Al-Sunna
25 mosque or also called as the souk mosque.

1 Q. [10:23:32] Do you know who was the imam of Ansar Al-Sunna mosque in
2 2003-2004?

3 A. [10:23:47] Which mosque? Do you mean the Al Kabir mosque or the souk
4 mosque? Can you please specify.

5 Q. [10:24:11] The market mosque.

6 A. [10:24:18] Sheikh Idris, Idris Kuse.

7 Q. [10:24:37] You told us the name of the second mosque in Deleig was Masjid Al
8 Kabir or the big mosque. Do you know who was the imam of that mosque in
9 2003-2004?

10 A. [10:24:55] Yes, it was Sheikh Sharif, may he rest in peace.

11 Q. [10:25:16] I would like to move now to the part of your statement where you
12 speak about persons who you personally knew who were killed in Deleig, and I refer
13 to page 0032, paragraph 60.

14 Your Honour, my questions in relation to these persons might identify him and I
15 would ask that we go briefly into private session.

16 PRESIDING JUDGE KORNER: [10:25:44] Yes, all right.

17 (Private session at 10.25 a.m.)

18 THE COURT OFFICER: [10:25:48] We are in private session, Madam President.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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19 (Open session at 10.32 a.m.)
20 THE COURT OFFICER: [10:32:37] We're back in open session, Madam President.
21 MS WHITFORD: [10:32:39]
22 Q. [10:32:41] Mr Witness, I would like to move now to the part of your statement
23 where you speak about seeing a person who you identify as Ali Kushayb in
24 Khartoum in 2015, and I refer now to page 0036, paragraph 73.
25 In this paragraph you say that after seeing the person who you identify as Ali

1 Kushayb, you were told that he had been wounded in an attack.

2 Could you explain what you were told about this attack.

3 A. [10:33:41] Yes, when I saw him in Khartoum, during that time I was a student, I
4 was a student in Khartoum, and I was living in a shared accommodation with other
5 students. It was like a campus, and then when we went back to our accommodation,
6 we started talking, and my colleagues told me that Ali Kushayb was brought to
7 Khartoum because he was attacked. There was an assassination attempt in Nyala,
8 and that's why he was brought to Khartoum for treatment -- for medical treatment.

9 Q. [10:34:45] Mr Witness, what I would like to do now is to show you some
10 sketches and images in which you identified some locations relevant to your
11 statement, and I will start with a sketch that you drew during your interview with
12 investigators in 2017. Could you please go to tab 2 of the binder. This is item
13 DAR-OTP-0205-0040. The item is confidential.

14 Mr Witness, if you could please open tab 2 in the binder in front of you.

15 Could I ask the court officer, please, to assist.

16 A. [10:36:00] I have it here, on the screen.

17 MS WHITFORD: [10:36:12] Your Honours, for your reference, a translation of this
18 item is on the list of materials at number 3 and I understand you may also have
19 a printed copy.

20 PRESIDING JUDGE KORNER: [10:36:22] Well, I was just having a look to see what
21 we have got and I don't think we were given (indiscernible) but don't worry about it.

22 MS WHITFORD: [10:36:46] The ERN of the translation is DAR-OTP-0219-1684.

23 PRESIDING JUDGE KORNER: [10:36:54] Yes. Don't worry, Ms Whitford, rather
24 than waste time, let's carry on. I'm sure we can live with what's on the screen.

25 MS WHITFORD: [10:37:10]

1 Q. [10:37:10] Mr Witness, do you recognise that as the sketch that you drew in 2017,
2 showing several relevant locations in Deleig?

3 A. [10:37:25] Yes.

4 Q. [10:37:33] I would like to ask you to clarify just a couple of aspects of this sketch.
5 If we look at the sketch, we see a line drawn from the police station, going through
6 the square and then up towards the top of the page and we see text saying, "Traffic
7 direction", "Apprehended individuals being transported".

8 Can you explain what this represents?

9 A. [10:38:12] Yes. The police station or police unit, here, it says arrestees that were
10 laying on the ground. These are the people that were arrested by the Janjaweed and
11 put them on the floor -- on the ground. And then the line that's going up towards
12 the top of the page, this is a direction where the arrested people were loaded into cars
13 and taken to -- some of them were taken to the northwest side.

14 On the northwest side, there is the road going out of the market. And the
15 south-west is between the neighbourhood and the school leading south, and all of
16 these roads lead to Garsila. The south-west goes through a village called Koska and
17 then Korku (phon) and Bela, towards Garsila. And then the other road going from
18 the northwest, this one goes towards the west and leads to Garsila, and the one to the
19 east goes to Zalingei.

20 Q. [10:40:31] Thank you, Mr Witness. In a moment, the judges will have the
21 opportunity to see those directions on another sketch, so we leave this sketch there
22 and I'll move on now to another image, which is at tab 16 of the binder and this is
23 item DAR-OTP-0224-0498, and this item is confidential. This is a satellite image of
24 the town of Deleig from October 2006.

25 Mr Witness, do you recall that I showed you this image in the preparation session last

1 week?

2 A. [10:41:31] Yes.

3 Q. [10:41:35] And do you agree that you marked on this image a number of
4 locations that are relevant to your statement?

5 A. [10:41:45] Yes, I agree.

6 Q. [10:41:54] I would like to go through those locations now. If we could start
7 with the number 1, what is that location?

8 A. [10:42:08] Number 1 is the location where the apprehended citizens were
9 gathered near the police station.

10 MR EDWARDS: [10:42:32] Your Honour, if it moves things along, I'm happy for it to
11 be led that this is what he's marked. I make no concession about the accuracy of it,
12 but that part, at least, can be lead if it moves things along.

13 PRESIDING JUDGE KORNER: [10:42:49] Well, as it's all written by the side of it
14 anyhow, it doesn't seem to me that getting him to say it in Arabic is going to help
15 much.

16 MS WHITFORD: [10:43:01] Your Honour, then what I'll do is only clarify what I
17 think needs to be clarified and the rest is self-explanatory as you've pointed out.

18 Q. [10:43:10] Mr Witness, where we see the number 2, which is marked as the
19 school, we see some black lines drawn on either side of the school. Could you tell us
20 what those lines are?

21 A. [10:43:32] These are the gates. There are two gates from the west and from the
22 east to the school. These are the main gates.

23 Q. [10:43:45] And there are two numbers on this image that are not written on the
24 side of the image, so I will ask you about those. Firstly, we see the number 9, and
25 that is written alongside a line that is running from the police station down towards

1 the top of the page.

2 Could you tell us what that line is, please.

3 A. [10:44:17] Number 9 is a road going to the south and leading to Garsila.

4 Q. [10:44:42] And we see another line with the number 10 beside it. If you could
5 locate that line and tell me what that line represents?

6 A. [10:44:58] This is the main road, which goes towards the north, northwest
7 towards Garsila and north-east towards Zalingei.

8 PRESIDING JUDGE KORNER: [10:45:28] Could somebody move the map up the
9 screen, please, as we can't -- so that we can see. Where's number 10?

10 MS WHITFORD: [10:45:42] Number 10 is just above number 4, your Honour.

11 Although number 4 is -- number 4 is twice on the image, so it's both next to and
12 above.

13 PRESIDING JUDGE KORNER: [10:45:58] All right, and there's no legend by
14 the -- on the right-hand side listed 10. There's 1 through to 8.

15 MS WHITFORD: [10:46:07] That's correct, your Honour. Number 9 and number 10
16 are not contained in the legend.

17 PRESIDING JUDGE KORNER: [10:46:13] Okay. All right.

18 MS WHITFORD: [10:46:15]

19 Q. [10:46:16] Now Mr Witness, this satellite image is from October 2006. Do you
20 see anything in this image that was not there in 2004?

21 A. [10:46:43] The camps. The camps located near the hospital, which is close to
22 the police station as well, these camps were not there at that time. The
23 camps -- these camps.

24 Q. [10:47:04] And to make sure we're looking at the same building, are you
25 referring to the white buildings directly north of the police station?

1 A. [10:47:23] Exactly.

2 Q. [10:47:27] I would like to move to another image now, which is at tab 17 of the
3 binder, and the ERN is DAR-OTP-0224-0499 and the item is confidential. This is
4 a photograph taken of Deleig in January 2005. And do you recall that I showed you
5 this photograph during the preparation session last week?

6 A. [10:48:14] Yes.

7 Q. [10:48:17] And do you agree that you marked on that image the locations that
8 you were able to recognise?

9 A. [10:48:31] Yes.

10 Q. [10:48:36] Again, I will not go through each one, but in relation to where we see
11 the number 4, which represents the market, can you see all of the market or only part
12 of the market in this photo?

13 A. [10:48:55] Part. Only part of the market. Not the whole thing.

14 Q. [10:49:06] And where we see the number 7, which is noted as the
15 "orchard/farming area", could you just briefly explain what that area is.

16 A. [10:49:22] These are orchard and farms for guava and mango, and there is also
17 a location for water-storage tanks and there is a place where they make bricks as well
18 for construction.

19 Q. [10:50:02] Moving now to another image, which is at tab 18 or the ERN
20 DAR-OTP-0224-0500, and the item is confidential. Now, this is a zoomed-out
21 version of the same satellite image of Deleig that we saw previously that was taken in
22 October 2006. And do you recall that I showed you this image during our
23 preparation session last week?

24 PRESIDING JUDGE KORNER: [10:50:43] Saving time, you can leave that bit out as
25 well.

1 MS WHITFORD: [10:50:47] Certainly, your Honour.

2 Q. [10:50:55] If I could direct your attention to where you have marked the number
3 3 on the image. We may need to zoom in please on the number 3, as it might be
4 difficult to see. This is marked as the house of Ja'afar Abd-Al-Hakam. Could you
5 explain what you know about the position of that house?

6 A. [10:51:41] Yes, this house is located to the north of the market. There are two
7 houses here, one to the left and one to the right, and they were owned by Ja'afar
8 Abd-Al-Hakam, who was a governor of the state at the time and he was an
9 accomplice in the ethnic-cleansing case and then he escaped later.
10 He was working with the Janjaweed and Ali Kushayb, and I know him very well. I
11 know who Ja'afar Abd-Al-Hakam is. He is from my tribe, from the Fur, but he was
12 the only one in Deleig who participated in these crimes. The only person was Ja'afar
13 Abd-Al-Hakam.

14 Q. [10:53:01] Am I correct that in relation to the market, which is labelled number 4,
15 if we could move to that part of the image. So number 4, it's -- we'll need to move
16 down on the image, please.

17 Am I correct --

18 Thank you.

19 -- am I correct that you have drawn a line around the periphery of the market and
20 that it includes different sections?

21 A. [10:54:08] Yes, this is correct. The entire market carries the numbers 4 and 6.
22 This is the market of Deleig.

23 Q. [10:54:24] And am I correct then that where we see the number 5, which is the
24 restaurants, this forms part of the market?

25 A. [10:54:35] Yes. The restaurants, a number of restaurants, it wasn't just one

1 restaurant.

2 Q. [10:54:56] And finally, if you could explain what is to be found at number 6,
3 which is labelled the "barbecue area", what does that mean?

4 A. [10:55:14] Yes. Number 6 is the western side of the market and it's called the
5 "barbecue market", and this means -- it's close to a butcher and people go there to eat
6 barbecued meat. That's what we call it.

7 MS WHITFORD: [10:55:46] Your Honour, at this juncture, I was planning to show
8 the witness a sketch that will require some explanation from him, and I look at the
9 time and I wonder if we could finish five minutes' early and come back five minutes'
10 early so as not to interrupt that section.

11 PRESIDING JUDGE KORNER: [10:56:08] Yes, I'm not sure we can do that, I think
12 that would be 11.30, but wasn't your timing for this one hour?

13 MS WHITFORD: [10:56:17] Indeed, it was, your Honour, and I see that it has taken
14 longer than I anticipated, but I will try to speed through the --

15 PRESIDING JUDGE KORNER: [10:56:25] (Microphone not activated)

16 THE INTERPRETER: [10:56:26] Microphone.

17 PRESIDING JUDGE KORNER: [10:56:26] Sorry. As we said, when we were
18 allowing you that -- or giving you the timings for this part of the case, it's up to you
19 how you use it, but I think this is becoming slightly protracted.

20 Sir, we are going to have a break now until 11.30. It will give you a chance to relax,
21 and, could I just say to you though, you are in the middle of giving your evidence and
22 you mustn't discuss your evidence during the course of the break or the later break
23 for lunch. I hope that's clear.

24 THE WITNESS: [10:57:13](Interpretation) Yes.

25 PRESIDING JUDGE KORNER: [10:57:16] Thank you very much. If you would like

1 to go with the court officer, please.

2 (Witness exits the courtroom)

3 MR EDWARDS: [10:57:34] There was some hope that we might get to the next
4 witness this afternoon. I don't think that's a realistic hope on going forward.

5 PRESIDING JUDGE KORNER: [10:57:42] Well, it's -- one of the things, Mr Nicholls,
6 it didn't seem to me when I read the statement that the witness was going to take that
7 long, but it's taking longer getting the extra information.

8 Can I mention two things please.

9 We printed out the documents that the OTP told us were the ones that were going to
10 be shown from the list. It did not include any of these photographs. So we haven't
11 got them, and, they are more helpful, can I say, Ms Whitford and everybody else from
12 the OTP, that some of the sketch plans that these witnesses draw because they really
13 don't show the exact area.

14 The second thing is this, as I think I said last week, I know that the OTP and indeed
15 the Defence are thoroughly familiar through a long study of the areas and where all
16 these places are. We are not. And it really would help with each witness if we
17 could establish where, through a map, where these villages -- and, I mean, a map like,
18 for example, I looked up annex 3 to the Prosecution brief and that does at least show
19 Taringa and Fere, which we have established. But it just so happens I kept them.
20 But I really think for all of us, it would help if, right at the beginning of the evidence,
21 we could see where we're talking about.

22 And finally, I did say you could establish his age in open court at the time and you
23 haven't done that, Ms Whitford.

24 Yes, is there anything else?

25 Mr Nicholls.

1 MR NICHOLLS: [10:59:35] No. Just very briefly, your Honour, I'm sorry about the
2 photos. I hope that won't happen again. We're still working on this. We have the
3 five-day deadline and we try to meet the witness sooner to their testimony as well,
4 but we will work that out. And just to let you know - I apologise for not having it
5 ready already - but we will work on a map book that will have different maps of all
6 the areas we think are important as a stand-alone product that maybe the Chamber
7 would bring into the courtroom. And I can't promise a date for that yet, but I'll try to
8 get that made as soon as possible so that whenever we have -- whenever this comes
9 up, there's a map book that will cover that area we can direct your Honours to the
10 page of the map book. So that is my plan, and I'm sorry it's not been completed yet.

11 PRESIDING JUDGE KORNER: [11:00:36] That's fine, Mr Nicholls, it's very helpful.
12 And by the way, has the glossary got anywhere because I noted that in this witness's
13 statement, there was a word he used to do with the hierarchy, which was not one that
14 I recall we've had before. Sorry, just a moment. Yes, at paragraph 14, the tribal
15 administrative division, I didn't recall the word *hakura* before.

16 Right, but I just wondered how that was getting on.

17 MR NICHOLLS: [11:01:15] We're working on it, your Honour, and I'm sorry, I'll
18 check on that as well. We're making it for each witness, but we'll try to make that
19 complete as soon as we can.

20 PRESIDING JUDGE KORNER: [11:01:30] Well, quite obviously, I think particularly
21 when we're dealing with the Rule 68(3) witnesses, if, when we're reading statements
22 ourselves and we're not sure what a word means, we could check. So if we could
23 have the glossary before we break at the end of this week, that would be really
24 helpful.

25 MR NICHOLLS: [11:01:45] Yes, your Honour, and if I can, I mean, I think maybe

1 we've been trying to get to the final glossary, which -- which may not exist as we go
2 along during the case. So if we can -- we will provide one by the end of this week
3 with everything that we can, but we may need to update it possibly as we continue
4 with the witnesses.

5 PRESIDING JUDGE KORNER: [11:02:00] Well, I mean, an electronic version is fine
6 and that means you can just update it.

7 MR NICHOLLS: [11:02:05] Yes.

8 PRESIDING JUDGE KORNER: [11:02:06] Yes. Very well.

9 Sorry, Mr Edwards.

10 MR EDWARDS: [11:02:11] Sorry, just a very short matter of housekeeping. If
11 your Honours's -- your legal officers are going to be doing any printing out over the
12 break, might I suggest -- I'm sorry, I meant to send an email to this effect, but might I
13 suggest that they print out the pages that have been highlighted on the Prosecution's
14 list of materials, the item at tab 15. I won't say what that item is, but your Honour
15 will see the point.

16 PRESIDING JUDGE KORNER: [11:02:43] Yes.

17 MR EDWARDS: [11:02:44] Thank you.

18 PRESIDING JUDGE KORNER: [11:02:47] Mr Shah, you're in charge there. Are you
19 going to be asking any questions?

20 MR SHAH: [11:02:57] I will have a few questions, Madam President, I imagine no
21 more than 10 minutes.

22 PRESIDING JUDGE KORNER: [11:03:01] Right. Yes, thank you. Yes, very well,
23 we'll say 11.35 now.

24 THE COURT USHER: [11:03:06] All rise.

25 (Recess taken at 11.03 a.m.)

1 (Upon resuming in open session at 11.38 a.m.)

2 THE COURT USHER: [11:38:16] All rise. Please be seated.

3 MS WHITFORD: [11:38:25]

4 Q. [11:38:39] Mr Witness, I would first like to clarify with you the age that you
5 were in 2003 and 2004. Now you were born in 1989, am I correct that you would've
6 been 14 or 15 years old in those years?

7 A. [11:39:13] I was born in 1989 and not in 1994.

8 Q. [11:39:27] Thank you, Mr Witness, we have your date of birth recorded as 1989.
9 I would like to now show you a sketch that you drew during your interview with
10 investigators in 2017, and you have it already in front of you at tab 5, and the item is
11 DAR-OTP-0205-0042 and the item is confidential.

12 MS WHITFORD: [11:39:59] Your Honours, during the break, we had printed some
13 maps, and what we thought might be the most efficient way, is if you had reference to
14 that map at the same time that we clarify a couple of aspects of this sketch.

15 Q. [11:40:16] Mr Witness, in your statement you talk about finding between 40
16 and 42 dead bodies near Tolda Mountain on the 6th of month 3 in 2004, and, for the
17 record, this is described at pages 0031 to 0032 at paragraphs 56 to 59.

18 Looking at your sketch to the south of Deleig, we see a drawing of some mountains
19 and we some text saying "Tolda hills" and some text saying "the corpses".

20 Am I correct that this shows the approximate location where you found those 40 to 42
21 dead bodies?

22 A. [11:41:26] Yes, correct.

23 Q. [11:41:34] Could you explain where you found those bodies relative to the
24 layout of this mountain range?

25 A. [11:41:45] We went out from the region and were heading on the donkeys to

1 bring grass and crops. The Tolda Mountain was the closest town, it was located at
2 the south of Deleig together with Wadi Bookla. It crosses through a valley and a big
3 water stream known as Wadi Bookla. Then, we were headed towards the mountain
4 range, and, there, there was an intersection known as Tolda Mountain. So we
5 headed there, and we found out that people, who had been moved to the southern
6 part initially, and whom we thought had been evacuated to Garsila, but we saw cars
7 crossing the valley and, there, we found their corpses, 40-to-more corpses. I
8 assumed it was 40.

9 But due to the fear and the stress, we decided to go back from where we came. And
10 we notified our families about these corpses that were thrown on the floor -- on the
11 ground, and they were, amongst other corpses, including my neighbours,
12 (Redacted).

13 Q. [11:44:34] Do I understand correctly that this mountain range is divided in two
14 parts by a valley?

15 A. [11:44:45] Yes, correct. It is the Sukret (phon) valley and it goes through up to
16 the Bookla valley.

17 Q. [11:45:03] And the part of the mountain range, which is near to Koska Village,
18 what is that part of the mountain range known as?

19 A. [11:45:25] The one located near Koska Village has no special denomination or
20 name. We just call it the Koska Mountain or hills.

21 Q. [11:45:42] Am I correct that the other part of the mountain range is then called
22 Tolda Mountain?

23 A. [11:45:59] Tolda Mountain is located east, far east, at eastern part of the
24 intersection of the valley that goes through to Bookla Valley and the other part is
25 known as Tolda Mountain. However, it is facing what we know as the Koska

1 Mountain.

2 Q. [11:46:35] And in relation to those two parts of the mountain range, could you
3 clarify which part is where you found those dead bodies?

4 A. [11:46:58] In Tolda Mountain, in the western part. Along the water stream that
5 goes through to the Bookla Valley, on its extremity. This is where we found the
6 dead bodies.

7 Q. [11:47:18] On the sketch we see to the north of Deleig that you've drawn a wadi.
8 Is it correct that the correct name of that wadi is Wadi Dabaray?

9 A. [11:47:44] Yes, correct. It is called Dabaray Valley. It goes from Narwaro
10 (phon), Bala, Beregi, until it reaches Deleig and Bela and so on. It is called Dabaray,
11 valley of Dabaray.

12 Q. [11:48:21] Looking again at this sketch, we see a location marked "Fere" and we
13 see text that reads "the corpses". In your statement you say that on the same day that
14 you found the bodies near Tolda Mountain, some villagers found other bodies near
15 Fere - this is at page 0032, paragraph 60.

16 Can you tell us what you heard about bodies being found near Fere?

17 A. [11:48:57] Yes. In Fere, the same dead bodies that we thought were found in
18 the western part -- in the north and western street going through to Garsila, so people
19 thought that these persons had been displaced to Garsila, but it turned out that they
20 had killed them in that location. Just as we found the vehicles and the cars, the dead
21 bodies were also found in that location.

22 Q. [11:50:17] Did you ever go to that location near Fere yourself?

23 A. [11:50:40] No, not the same day, but later on we went there and we found
24 a mass grave, whereby these dead bodies had been buried there. We could not
25 identify the exact number of dead bodies, but we found a mass grave in that form.

1 Q. [11:51:13] When approximately did you go to that location and see this mass
2 grave?

3 A. [11:51:20] After the second day, after the funeral, we went there.

4 Q. [11:51:39] Can you explain what you mean by "after the second day"?

5 A. [11:51:49] After the burial or the funerals immediately. I cannot recall the exact
6 date.

7 Q. [11:52:13] And when you speak about burials or funerals, which burials or
8 funerals are you referring to?

9 A. [11:52:34] Funerals are a religious tradition as per which we have to bury dead
10 people just to honour them. So funerals is a form of honouring dead people because
11 we cannot leave dead people left like animals, a dead animal.

12 Q. [11:53:13] And do I understand correctly that when you talk about these
13 funerals, you're talking about the funeral for the persons buried in the mass grave?

14 A. [11:53:37] Exactly. The mass grave is the equivalent of the burial or the
15 funerals. This is what I mean by funerals, it is the grave.

16 Q. [11:53:50] When approximately did this funeral take place?

17 A. [11:54:13] There was no funeral ceremony as such as we normally do. These
18 dead bodies were buried very quickly under pressure, fear, and the situation was not
19 appropriate for a big number of people to attend. I did not go there because I was
20 still under the shock of what I've seen the day before, because that was the first time I
21 saw such a big number of dead people, so I cannot recall -- I cannot remember the
22 number of people who attended the funerals. But on the next day, after the funerals,
23 we went there, and we found a bigger hole with sand over it. So there was no other
24 ceremony.

25 Q. [11:55:33] When you say you saw a big hole with sand over it, could you explain

1 please, further, what you saw at that location.

2 A. [11:55:43] I saw that some dead bodies were not buried in an appropriate way.

3 Some bodies were partly buried because the burial had occurred in a speedy manner

4 and some dead bodies were not completely buried, some bodies were in part outside

5 and we could see blood around them. This is what we've seen.

6 Q. [11:56:46] Did you observe anything else that led you to believe that bodies were

7 buried in that location?

8 A. [11:57:09] Yes. First, those who were at the police station and were displaced,

9 initially we thought that they had been displaced or sent to Garsila, which is at

10 a 30-minute distance from Deleig. However, it turned out that the distance was

11 shorter than this, so it was the time factor since the displacement.

12 Second, the traces of cars. We saw that cars was going and coming back at a quicker

13 time and we found them there at the same location.

14 Third element. People saw some of them who had been buried and came back to tell

15 us. Some of them were executed in Fere, but one could escape death and he came

16 back to the village. I did not see him personally, but some villagers said that one of

17 the Kobra region, who was from Forgo, could escape this genocide, and then he left.

18 So all these are evidence showing that the people who had been expelled from the

19 police station did not reach Garsila, but were executed in that location as we found

20 them at the southern part of Deleig, next to the Tolda Mountain.

21 Q. [11:59:51] When you went to the place near Fere, where you say there was

22 a mass grave, did you notice any smell in the area?

23 A. [12:00:09] Yes, of course, the smell of dead people. After 24 hours, a dead body

24 starts smelling. Of course, there was the smell of dead people.

25 Q. [12:00:40] This big hole with sand over it that you described, could you

1 approximate the size of that hole?

2 A. [12:01:07] I wasn't really sure how big the hole was, but approximately, it was
3 maybe 4 by 4, I think, approximately. I can't really give you an exact size. But it
4 was a big hole.

5 Q. [12:01:34] Thank you, Mr Witness. I would now like to move on and show you
6 one final sketch that you drew during the interview with the investigators in 2017.
7 This is at tab 6 of the binder, which is at DAR-OTP-0205-0044, the item is confidential.
8 If you could go to the second page of that item. Mr Witness. Do you recall drawing
9 this sketch during the interview to explain where you were when you saw the person
10 who you identify as Ali Kushayb in Khartoum in 2015?

11 A. [12:02:38] Yes.

12 Q. [12:02:53] Mr Witness, we've now come to the end of all of the corrections and
13 clarifications to the statement. Having made those corrections and clarifications, do
14 you confirm that your statement is true and correct to the best of your knowledge?

15 PRESIDING JUDGE KORNER: [12:03:13] And belief.

16 MS WHITFORD: [12:03:16]

17 Q. [12:03:16] Best of your knowledge and belief?

18 A. [12:03:22] Yes, yes, with my full knowledge and belief, yes.

19 Q. [12:03:33] And a procedural question, do you agree to your statement and
20 annexes being introduced into evidence in this case?

21 A. [12:03:44] Yes, I agree.

22 PRESIDING JUDGE KORNER: [12:03:57] Someone ought to look at that rule.

23 MS WHITFORD: [12:04:01] Your Honour, I have one main topic now in terms of
24 additional questioning, but it would require us to go into private session.

25 PRESIDING JUDGE KORNER: [12:04:12] Yes, all right. How long do you think it's

1 going to take you?

2 MS WHITFORD: [12:04:17] Five minutes, your Honour.

3 (Private session at 12.04 p.m.)

4 THE COURT OFFICER: [12:04:21] We are in private session, Madam President.

5 (Redacted)

6 (Redacted)

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Trial Hearing
WITNESS: DAR-OTP-P-0651

(Private Session)

ICC-02/05-01/20

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11 (Open session at 12.13 p.m.)

12 THE COURT OFFICER: [12:13:15] We are back in open session, Madam President.

13 MS WHITFORD: [12:13:21]

14 Q. [12:13:23] Mr Witness, the last thing that I would like to ask you about is the

15 impact of the events that you experienced in Darfur on you. But I'd just like to

16 remind you, we are in public session, so please don't say anything that would identify

17 where you are currently living or your family members.

18 Could you tell us please about the effect - of the events that you saw and experienced

19 in Darfur - on your life?

20 A. [12:14:01] The impact on me, personally, I was harmed psychologically. I had

21 to leave my country and all my dreams were destroyed. My entire life. I was

22 trying to get my university degree, but I didn't manage to do so. I had only six

23 months to get my degree, but I couldn't do it. My family was destroyed completely.

24 I'm married, but I didn't meet my wife until now. It's such a sad thing.

25 PRESIDING JUDGE KORNER: [12:15:30] Sir, we'll give you a break if you would

1 like it obviously, but it's probably better that you try and continue.

2 (Pause in proceedings)

3 THE WITNESS: [12:15:46](Interpretation) I will continue. I will continue.

4 What I experienced is pain with all what the word means. That's what I experienced
5 in my life and I still experience until now and my family is still experiencing. All our
6 assets were destroyed or stolen. I tried to help my family, but I can't. And some of
7 our belongings were pillaged about a year ago and I'm still trying to help them -- still
8 striving.

9 MS WHITFORD: [12:17:05]

10 Q. [12:17:07] Thank you, Mr Witness, for patiently answering all of my questions.

11 MS WHITFORD: [12:17:17] Madam President, that concludes my
12 examination-in-chief.

13 PRESIDING JUDGE KORNER: [12:17:26] Thank you very much.

14 Yes, Mr Shah.

15 Sir, you're now going to be asked questions by the lawyer for -- who represents the
16 victims in this case.

17 MR SHAH: [12:17:33] Thank you, Madam President.

18 QUESTIONED BY MR SHAH:

19 Q. [12:17:38] Good morning, Mr Witness, as mentioned by the presiding judge, my
20 name is Anand Shah. I'm one of the lawyers representing the victims who have been
21 admitted to participate in these proceedings. Just like you, our clients have been
22 impacted by the events that you have testified about and I would like to ask you just
23 a few questions today.

24 A. [12:18:21] Go ahead, please.

25 Q. [12:18:26] And I will be referring to the witness's statement, for the record that's

1 DAR-OTP-0205-0015.

2 Mr Witness, at paragraph 14 of your statement, you state that Wadi Salih was rich in
3 minerals and fertile for farming. You've also mentioned farming activities in your
4 testimony this morning.

5 Was farming an important activity for the Fur people in Wadi Salih?

6 A. [12:19:17] Yes. Farming was the main source of living, and then, obviously, the
7 cattle, and the third source was just traditional trading.

8 Q. [12:19:34] And after the events that you have described that took place in 2003
9 and 2004, do you know whether the Fur people in Wadi Salih were still able to use
10 their land for farming?

11 A. [12:20:04] In the past, all the people who used to live in Wadi Salih, they were
12 either farming or looking after livestock. But after the events, they managed to do that
13 in a -- very few places around Deleig, to the west of Deleig, about 2, 3 or
14 4 kilometres away from Deleig.

15 And in the area surrounding Garsila, but around the area of Kobra, the -- all the lands
16 were seized by the new settlers, by that I mean the Janjaweed and their families.
17 They burnt down all the villages and pillaged all the livestock and the farming land.

18 Q. [12:21:10] Mr Witness, I now want to turn to the attack on Fere village, which
19 you said took place in the ninth month of 2003. During this attack, did you see the
20 attackers taking away any property from the village?

21 A. [12:21:32] No. On the same day, I didn't see anything being stolen, but I saw
22 belongings being burnt. Not stolen.

23 Q. [12:22:04] And I have the same question in relation to the attack you described
24 on Taringa village. At paragraph 28 of your statement, you said that attack took
25 place during the 11th month of 2003. Did you see -- or were you informed that the

1 attackers took property away from Taringa Village during the attack?

2 A. [12:22:35] Yes. In Taringa, because I have family members there who died -- or
3 some of the members died there, I heard that they had cows and these cows were
4 seized by the Janjaweed who came and burnt down the town. They also told us
5 about the details of the attack and how they burnt down Taringa. They said that the
6 people were riding camels and horses and vehicles as well. They pillaged all the
7 people's belongings and, whatever was left, they burnt it down.

8 This is the account that I heard from my family members who used to live in Taringa
9 Village.

10 Q. [12:23:58] Thank you, Mr Witness. I now want to turn to your time in Deleig in
11 February and March of 2004. At paragraph 38 of your statement you say that you
12 heard talk amongst the people that some women had been raped by the Janjaweed.
13 Could you please give us some more information about what you heard.

14 A. [12:24:28] Yes. What I heard a lot is that there was rape, and amongst the
15 families that we found, the family members, I mean by that, one of them was raped,
16 and I don't want to mention the name.

17 Q. [12:25:10] And Mr Witness, were the people talking about where these assaults
18 took place? Did they take place in Deleig or outside of Deleig?

19 A. [12:25:31] Outside Deleig, outside the Deleig region. But then more rape
20 episodes happened on the day that Deleig was seized and when the people were
21 taken to the police station, we know that a lot of rape accounts happened.

22 Q. [12:26:05] Mr Witness, could you tell us a bit more about the rapes that you have
23 now mentioned took place in Deleig. At the time of the siege, where did these rapes
24 take place? What were you told about that?

25 MR EDWARDS: [12:26:30] Your Honour, please?

1 PRESIDING JUDGE KORNER: [12:26:34] (Microphone not activated)

2 MR EDWARDS: [12:26:38] Yes, this was not adduced by the Prosecution during
3 their supplementary questions and I simply --

4 PRESIDING JUDGE KORNER: [12:26:53] It is contained in the statement.

5 MR EDWARDS: [12:26:57] Well, the bare bones are. It's all hearsay; that may be
6 why -- I don't know, that may be why supplementary examination didn't -- didn't
7 take place. And I mean, I hesitate to use the word, but it seems to me that my
8 learned friend for the victims is straying into an area that the CLRV should not be
9 straying into as in a --

10 PRESIDING JUDGE KORNER: [12:27:31] Becoming a prosecution --

11 MR EDWARDS: [12:27:36] Yes.

12 PRESIDING JUDGE KORNER: [12:27:38](Microphone not activated)

13 THE INTERPRETER: [12:27:39] Microphone, please, your Honour.

14 PRESIDING JUDGE KORNER: [12:27:40] Mr Shah, I tend to agree, this is such
15 a sensitive area, that at the moment I'm not at all clear what its relevance is to your
16 case. And, as I say, because it's all hearsay evidence, it isn't exactly what you might
17 call the most persuasive.

18 So unless you want to continue on this line, I'm rather minded to say that Mr
19 Edwards's objection is a proper one.

20 MR SHAH: [12:28:24] Yes, Madam President, I can leave my questioning on that
21 particular topic. I would note that in our view, allegations of rape in this case are
22 certainly of interest to our clients, some of them have allegedly suffered from rape are
23 aware of rape having taken place during the events that are relevant to this case. So
24 generally speaking on that particular point, I do think it is relevant, but I'm happy to
25 leave the questioning where it is.

1 Q. [12:28:57] And just one final question for you, Mr Witness, as you've indicated
2 to us earlier today, you were 14 or 15 years old at the time that these events took place
3 and you've already told us how these events have impacted your life.

4 Would you like to return to Darfur one day?

5 A. [12:29:32] Yes. When things settle there, and the criminals are prosecuted,
6 then -- and security and safety happens in my country, I will go back.

7 Q. [12:29:58] Thank you, Mr Witness. On behalf of our clients, we appreciate your
8 coming to give your testimony before the judges.

9 MR SHAH: [12:30:09] That's the end of our questioning, Madam President.

10 PRESIDING JUDGE KORNER: [12:30:13] Yes, thank you, Mr Shah. Yes,
11 Mr Edwards.

12 QUESTIONED BY MR EDWARDS:

13 MR EDWARDS: [12:30:20]

14 Q. [12:30:21] Good afternoon, Mr Witness. Do you remember we met a couple of
15 weeks ago and I introduced myself?

16 A. [12:30:31] (No interpretation)

17 Q. [12:30:33] My name is Iain Edwards, I'm one of the lawyers for
18 Mr Abd-Al-Rahman, and I'm going to be asking you questions over the course of the
19 rest of day, all right?

20 As I said to you last week, if, at any point you'd like me to repeat my questions,
21 please don't hesitate to ask me.

22 A. [12:30:57] (No interpretation)

23 THE INTERPRETER: [12:31:01] Could counsel pause for the interpreting please.

24 MR EDWARDS: [12:31:07]

25 Q. [12:31:07] It is not my purpose to ask you to repeat your evidence. The

1 Trial Chamber and all the parties have read your witness statement, okay. So I'm
2 going to just ask you some very specific questions that require specific answers, and
3 many of my questions can be answered with a simple yes or no.

4 Is that clear?

5 A. [12:31:35] Yes.

6 Q. [12:31:41] I'm going to start by asking about what - according to your
7 statement - was the first attack on the village of your birth in May or June of 2003, but
8 we won't mention the name of that village. All right?

9 PRESIDING JUDGE KORNER: [12:32:12] Mr Edwards, could you establish because
10 it's not on the map, how far away it is from any of the ones that are shown -- that he's
11 mentioned, Taringa, Fere and so on.

12 MR EDWARDS: [12:32:29] Yes, I'll be led by my learned friend as to whether
13 pinpointing the village of his birth would require moving into private session for one
14 minute.

15 MS WHITFORD: [12:32:39] Your Honour, there is another item on the list of
16 materials which could be of assistance, which is item 14, and I believe this item would
17 show the relevant place for reference.

18 PRESIDING JUDGE KORNER: [12:32:51] All right. Well, then, fine. Don't worry.
19 Yes, thank you.

20 MR EDWARDS: [12:32:54] Thank you.

21 Q. [12:32:58] So we know you were about 14 years old at the time, right?

22 A. [12:33:18] I did not get the question. Could you please repeat it.

23 THE INTERPRETER: [12:33:26] Says the witness.

24 MR EDWARDS: [12:33:27]

25 Q. [12:33:28] Okay. The attack that you describe in your witness

1 statement - paragraph 15, your Honour - sometime in May or June of 2003, you were
2 about 14 years old at the time, correct?

3 A. [12:33:44] Correct.

4 Q. [12:33:47] And reading your statement, it seems clear that there were no vehicles
5 involved in that attack, correct?

6 A. [12:34:00] In what region or locality?

7 Q. [12:34:13] Mr Witness, this is the first attack in the summer of 2003, in the
8 middle of 2003, on the village of your birth, where you saw 7 to 10 persons on horse
9 and camelback attack the village. Are you with me?

10 A. [12:34:45] No, not -- not this, not correct. The village where I was born is (Redacted).
11 And, at that time, myself, my uncle -- maternal uncle and paternal uncle were
12 breeding livestock. On the same day, they pillaged the cattle and they did not burn
13 (Redacted), the village of (Redacted).

14 Q. [12:35:19] Yes. So focusing on that incident, do you agree that no vehicles were
15 involved in that attack?

16 A. [12:35:34] In the pillaging event, yes, no vehicles participated in the attack. So
17 that was the pillaging event and not the -- setting fire to the region.

18 Q. [12:35:58] Well, I'm reading your statement and your statement - I hope you'll
19 take it from me - mentions pillaging by 7 to 10 persons on horse and camelbacks, but
20 there is no mention of any vehicles being involved.

21 A. [12:36:29] Yes, correct.

22 Q. [12:36:31] Thank you.

23 Did you recognise any of these persons on horse or camelback?

24 A. [12:36:58] No. No.

25 Q. [12:37:02] It was your impression they were Arabs, though, correct?

1 A. [12:37:15] Yes, they were from an Arab tribe.

2 Q. [12:37:19] Can you help us with which Arab tribe?

3 A. [12:37:37] Not a specific tribe, but a group of tribes. We said a number of Arab
4 tribes were against the Zurgha tribe. We did not specify a tribe, an Arab tribe.

5 Q. [12:38:03] Okay. Is it the case that, in fact, all Arab nomads on horse or
6 camelback at the time were considered by Fur villagers to be Janjaweed?

7 A. [12:38:32] Yes, correct. From the Janjaweed.

8 Q. [12:38:38] This incident in which there was pillaging by 7 to 10 Arabs on horse
9 and camelback, well, it sounds like it was very frightening and a great loss to your
10 family, but in essence, would you agree that this was an incident of common
11 criminality, common banditry?

12 A. [12:39:11] No, it's not a common criminal act. It was a pillaging act whereby
13 the assets and resources of the region were stolen. So this is a crime and not
14 a common act -- a common criminal act.

15 Q. [12:39:33] Okay. So I'm going to move on. You witnessed that attack and
16 then you happened to witness the attack on Fere Village three-to-four months later,
17 right? That's what I want to move on to now. You follow?

18 A. [12:39:51] Yes, correct.

19 Q. [12:39:59] How long would it take to walk from Fere Village to the plantation
20 that you mention in your statement?

21 A. [12:40:19] Less than one kilometre.

22 Q. [12:40:33] So, what, about five, six-minute walk, would you say? Does that
23 sound fair? Five-to-10 minutes? Does that sound about right?

24 A. [12:40:50] These lands can be seen. However, the way that attack was
25 conducted, it came -- Fere village shows that they are quite close. They came from

1 the main street, from the western part, towards the eastern part from Garsila to
2 Zalingei. We were next to the vehicle passage, and the Janjaweed attacked Fere.

3 Q. [12:41:50] I'm just going to repeat. It's not necessary to just repeat your account,
4 okay? What I wanted to know is, how long would it take to walk the approximate
5 one kilometre from Fere village to the plantation that you mentioned in your
6 statement. Just focus on that for a moment, please.

7 A. [12:42:13] A few minutes, indeed.

8 Q. [12:42:23] Now is it true that you first realised something bad was happening
9 when you heard the gunfire?

10 A. [12:42:44] We heard the gunfire and, then, we saw the car of the suspect Ali
11 Kushayb who -- which was holding a red flag.

12 Q. [12:43:02] Okay. Now I didn't ask you about the car of Mr Kushayb, I asked
13 you about gunfire.

14 A. [12:43:13] Yes, I heard the gunfire, the gunshots.

15 Q. [12:43:18] And then you saw men on horseback and camel and you also saw
16 vehicles, is that how it happened?

17 A. [12:43:33] Yes.

18 Q. [12:43:36] Did you recognise any of the men on horse or camelback?

19 A. [12:43:49] They were from the Janjaweed.

20 Q. [12:43:58] Okay. Is your answer the same as it was to my previous question,
21 you couldn't tell particularly what tribes they came from?

22 A. [12:44:25] The problem is not about the tribes. Most tribes affiliated to the
23 Janjaweed do not belong to one single tribe. If you want me to mention the names of
24 some tribes, I can do so. However, I cannot specify one single tribe. They were
25 affiliated to the government of Sudan and to the Janjaweed.

1 Q. [12:45:08] Now, were the cars and the men on horseback and camelback close to
2 the village of Fere when you first saw them?

3 A. [12:45:38] Yes, they were close to the village of Fere.

4 Q. [12:45:46] And, in fact, they were riding into the village when you first saw them,
5 correct?

6 A. [12:45:52] Yes, correct.

7 Q. [12:45:57] And the villagers were obviously running away from the men on
8 horse and camelback and away from the vehicles, correct?

9 A. [12:46:08] I refrain from answering this question.

10 Q. [12:46:30] Why?

11 A. [12:46:33] At that time, they came from the west-southern part to the village of
12 Fere. Our farm is located southern of Fere, and at the southern part of the street
13 from where the Janjaweed came. At that time, we fled to escape and we did
14 not -- we did not focus on who was in the village and fled through what street.

15 Q. [12:47:34] No, because what you were focusing on was getting away yourself,
16 right? Are you happy to answer that question?

17 A. [12:47:52] After we were sure that the Janjaweed were attacking our village, we
18 got ready to escape to a safer place.

19 Q. [12:48:07] Okay. So let's just take that step by step. Your attention is first
20 drawn to this attack because you hear gunfire. You then look over, and you see men
21 on horseback and camelback, in vehicles, riding into the village. So is it fair to say
22 that you knew immediately that Fere was under attack?

23 A. [12:48:34] Yes, it is because it wasn't far from us.

24 Q. [12:48:49] Yeah. Less than a kilometre away, okay. You saw --

25 A. [12:49:00] Correct.

1 Q. [12:49:01] Now you see villagers fleeing, yes?

2 A. [12:49:08] I didn't focus on those villagers escaping or fleeing, but we were
3 trying to escape and -- and to preserve our lives at that time.

4 Q. [12:49:22] Exactly. Exactly. You were looking to save your life, so you ran
5 away from the attack on the village. I know it sounds like a silly question, but that --

6 A. [12:49:41] Correct.

7 Q. [12:49:43] You were scared?

8 A. [12:49:53] After we were sure that that was an attack targeting the village, of
9 course, we're scared. And we tried to find a way to escape, to flee to a secure place.

10 Q. [12:50:13] Well, you've pre-empted my next question. Were you hoping to
11 outrun the attackers or were you hoping to find somewhere to hide?

12 A. [12:50:42] No. I was trying to find refuge to go to a secure place.

13 Q. [12:50:52] And did you know when you started to run where you were going to
14 go to hide? Or were you hoping to find somewhere to hide at some point in the very
15 near future?

16 A. [12:51:13] Yes, I knew a safe location. I knew that I was going to Deleig and not
17 to Fere.

18 Q. [12:51:25] Okay. So -- sorry, from Fere, your plan was to run all the way to
19 Deleig, is that right, to escape the attack?

20 A. [12:51:40] I was not in the Fere village, I was in a valley located close to Fere and
21 heading to Deleig. I was not within Fere -- in the Fere village. I was next to the
22 main street coming from Garsila and heading towards the east, where the Janjaweed
23 came on horses, camels and in cars.

24 Q. [12:52:10] Okay, that's my fault, the question wasn't as precise as it could have
25 been.

1 As you're running away from Fere, is your plan to make it all the way -- sorry, let me
2 start again. As you're running away from the plantation near Fere, was it your plan
3 to make it all the way to Deleig as you were trying to escape?

4 A. [12:52:39] I live in Deleig. I was close to Fere where I have a farm. I did not
5 live in Fere and I was not trying to go somewhere else.
6 I didn't get it clearly --

7 THE INTERPRETER: [12:53:13] Says the witness.

8 MR EDWARDS: [12:53:14] No, I think that's probably right. I'll try again and see
9 if I can phrase it differently for the interpreters.

10 Q. [12:53:25] At the moment when you were fleeing the attackers, when you were
11 just outside of Fere, you turn and you run away from the attack towards Deleig. So
12 far, is that right?

13 A. [12:53:45] Yes.

14 Q. [12:53:47] Was it your plan to run all the way to Deleig to find safety there on
15 the -- at the moment of this attack?

16 A. [12:54:06] I was going to Deleig because I live there and in order to tell my
17 families about the attack against Fere.

18 Q. [12:54:21] Okay. Yes, thank you, I think I now know what you mean.
19 You - I anticipate - are concentrating on getting away from the attack at Fere as fast as
20 possible to save your life. That must be right, yeah?

21 A. [12:55:03] After I became sure that the Janjaweed were conducting an attack
22 against Fere, correct.

23 Q. [12:55:21] You see, I'm going to suggest that in those circumstances, you could
24 not have seen any particular detail about any of the vehicles that was attacking Fere.
25 What do you have to say about that?

1 A. [12:55:48] The -- if the attack was coming from behind, I could not be able to
2 identify the attackers, but since I was next to the main street of Fere, the forces were in
3 front of me and started their attack. I could see them, I could identify them. I could
4 identify the attackers. And then, I withdrew. I -- I saw the Janjaweed attacking the
5 village and I fled. I was -- I did not flee only because I heard the gunshots or the
6 gunfire.

7 Q. [12:56:55] Well, I thought that's exactly what we had established. You hear the
8 gunfire, you turn to see what's happening, you see the men on horseback and
9 camelback. You see maybe vehicles. You turn and you runaway instantly because
10 you know that there is an attack going on. It all happened, didn't it, in a matter of
11 milliseconds.

12 Isn't that the fact of -- the fact of the matter?

13 A. [12:57:27] No, sir. This is not correct. What is correct is that I could see men
14 coming to attack the village. I was in the southern part of the village and there was
15 a street between where my location and the village -- the street from where the
16 attackers came. Before I fled and before the intensification of the gunshots and
17 attacks against the village, I could identify them, I could identify the attackers. It is
18 not that I was attacked by them and I fled. No, no. I knew who were the attackers
19 against the village and I escaped, I fled.

20 Q. [12:58:35] How far away then do you say the vehicle with the red flag was when
21 you first saw it?

22 A. [12:59:02] (No interpretation)

23 PRESIDING JUDGE KORNER: [12:59:07] Didn't get translation.

24 THE INTERPRETER: [12:59:14] The interpreter could not hear the witness.

25 MR EDWARDS: [12:59:17]

1 Q. [12:59:20] Mr Witness, can you repeat your answer, please.

2 A. [12:59:23] On that attack ...

3 Q. [12:59:32] Okay, I'm going to start again.

4 A. [12:59:41] Could you please repeat the question --

5 THE INTERPRETER: [12:59:43] -- says the witness.

6 MR EDWARDS: [12:59:47]

7 Q. [12:59:47] How far away do you say the vehicle with the red flag was when you
8 first saw it?

9 A. [13:00:06] It was within the attack conducted against the Fere village, a few
10 metres away.

11 PRESIDING JUDGE KORNER: [13:00:16] Can you --

12 I'm sorry, Mr Edwards, but we could go on for some time.

13 Can you, by using this courtroom, sir, tell us where you were in relation to the vehicle.

14 Was the vehicle the same distance between yourself and the judges or the court door
15 or further away?

16 THE WITNESS: [13:00:49](Interpretation) Further away, further than the door.

17 MR EDWARDS: [13:01:01] Okay.

18 Q. [13:01:02] It was a couple of minutes' walk away, right, in terms of distance.

19 Not as far as a kilometre, but a couple of minutes' walk away, is that fair?

20 A. [13:01:20] Correct.

21 Q. [13:01:22] All right. You say something about a flag. Did you notice anything
22 about the licence plate, the number plate of that vehicle? Anything in particular at
23 all?

24 A. [13:01:41] No.

25 Q. [13:01:50] Right. Paragraph 24, you say that you later learnt that a number of

1 other villages to the west of Fere were also attacked on the same day. Do you
2 follow?

3 A. [13:02:08] Yes.

4 Q. [13:02:11] Do you know if other vehicles were used in those attacks?

5 A. [13:02:19] No, it's something that I only heard. It's not something that I saw
6 myself.

7 Q. [13:02:32] So you don't know if any other vehicles involved in those attacks
8 might have had red flags as well?

9 PRESIDING JUDGE KORNER: [13:02:43] I think it follows, doesn't it, Mr Edwards.

10 MR EDWARDS: [13:02:50] Just hammering the point, yes.

11 PRESIDING JUDGE KORNER: [13:02:52] And that's (Overlapping microphones)

12 THE WITNESS: [13:02:56](Interpretation) In this area, Deleig and the surrounding
13 area, the only vehicle that had a car -- that had a red flag is -- is only one, it's only one.

14 MR EDWARDS: [13:03:16]

15 Q. [13:03:16] How can you possibly know that, sir?

16 A. [13:03:25] We grew up in Deleig and the forces that used to come to this area at
17 the time - and especially the ones coming in vehicles - were very few and we knew all
18 of them.

19 Q. [13:03:46] You know -- you knew all the vehicles in west Darfur, did you? Is
20 that your evidence?

21 PRESIDING JUDGE KORNER: [13:03:56] I think the time has come, Mr Edwards,
22 for a break, and I think you brought all this on yourself by asking an unnecessary
23 question.

24 But in any event, sir, we're going to have another break until 2.30, half past two,
25 and -- when you'll come back.

- 1 And conclude this afternoon?
- 2 MR EDWARDS: [13:04:24] I very much hope so, yes.
- 3 PRESIDING JUDGE KORNER: [13:04:27] Yes. All right.
- 4 Yes, thank you very much.
- 5 THE COURT USHER: [13:04:32] All rise.
- 6 (Recess taken at 1.04 p.m.)
- 7 (Upon resuming in open session at 2.30 p.m.)
- 8 THE COURT USHER: [14:30:11] All rise. Please be seated.
- 9 PRESIDING JUDGE KORNER: [14:30:39] Yes, Mr Edwards.
- 10 MR EDWARDS: [14:30:42] Thank you, your Honour.
- 11 Q. [14:30:43] Mr Witness, please don't say the boy's name, but there was a boy who
- 12 told you that he thought the vehicle belonged to Ali Kushayb, that's right, isn't it?
- 13 A. [14:30:59] Not that he own -- own it, but it's the car that he usually uses and goes
- 14 by in it.
- 15 Q. [14:31:16] And it was a friend of yours, a boy who told you that information,
- 16 correct?
- 17 A. [14:31:21] Yes, my friend.
- 18 Q. [14:31:26] Okay. Now slightly older than you this friend, I think.
- 19 A. [14:31:33] Yes.
- 20 Q. [14:31:35] Was he more than 12 months? Or was he more than a year older
- 21 than you? Or more or less your age, but just a few months older, say?
- 22 A. [14:31:54] More than a year older.
- 23 Q. [14:31:55] All right.
- 24 And he never told you how he knew that the vehicle belonged to -- or was used by
- 25 Ali Kushayb, is that right?

1 A. [14:32:10] The first time he showed me that car and he told me about Ali
2 Kushayb, he's the one who gave me that information before I gave this information
3 later and got to know him better.

4 Q. [14:32:28] Okay. Thank you.

5 Now we dealt with the attack on your village, on your home village and also the
6 village of Fere and also -- well, and now I just want to ask very briefly about what you
7 saw at the village of Taringa two months after the Fere incident in the 11th month of
8 2003. All right? Can I ask you some questions about that?

9 A. [14:33:02] Please go ahead.

10 Q. [14:33:10] Thank you. Now you were there to see friends to help them tend to
11 some crops around Taringa, is that right?

12 A. [14:33:31] Not friends, but members of my family who were living there in
13 Taringa.

14 Q. [14:33:40] Thank you very much. And where -- and how far from the village
15 itself were you tending the crops with these people?

16 A. [14:33:54] Can you repeat the question, please.

17 Q. [14:34:05] Yes, of course. Well, in your witness statement you say:

18 "When we were near Taringa village, I heard a large number of vehicles coming in
19 our direction."

20 So that's directly from your statement. I just want to know how far were you from
21 Taringa village when you heard the vehicles coming in terms of distance or in terms
22 or how long it will take to walk?

23 A. [14:34:34] Less than 100 metres from Ardeba and Taringa.

24 Q. [14:34:57] Excuse me, just bear with me for a second.

25 Can you just explain to me what you mean by "Ardeba", please. Is that another

1 village in the area? Another village close to Taringa, is that right?

2 A. [14:35:36] Ardeba is one of the neighbourhoods of Taringa. Taringa has
3 Ardeba, Tauringa and Taringa in the same area, so it's one of the three
4 neighbourhoods.

5 Q. [14:35:49] Got it. Thank you very much. And once again, having seen what
6 happened at your home village and having seen what had happened in Fere before,
7 you knew what was happening, didn't you, when you saw the vehicles. You knew
8 that there was an attack happening straightaway?

9 A. [14:36:17] In my home town in Taringa or Fere, what do you mean? Which one
10 of these three exactly?

11 Q. [14:36:28] So you're near to Taringa, 100 metres from Taringa, you see the
12 vehicles, you have the previous experience of what happened in your home village
13 and in Fere and you knew you were in danger straightaway, is that right?

14 A. [14:36:48] At the beginning, I didn't know it was an attack on Taringa because
15 the cars were regular cars. Ali Kushayb was in his car, and usually Ali Kushayb and
16 his escort, they come to the market in Deleig, they go through the market usually, and
17 the Janjaweed used to come also for their shopping because it is the biggest market
18 there. So they used to go to that market.

19 Q. [14:37:25] Okay. Let me -- sorry, let me stop you for a moment, because I think
20 you're talking here about Deleig. I'm talking about Taringa. This particular attack
21 that you witnessed in Taringa, not Deleig. Okay?

22 A. [14:37:42] You asked me if, at the time, when I saw the forces coming and I
23 expected it to be an attack. This was your question. My answer is, I didn't expect it
24 or didn't think that it was an attack. When the fire shots were heard, this is what I
25 expected it to be an attack or I thought it was an attack.

1 Q. [14:38:08] All right. When you saw -- when you heard the vehicles coming, did
2 you turn to look at the vehicles?

3 A. [14:38:18] They were close to the plantation next to the main street. This is
4 where the cars used to go by.

5 Q. [14:38:36] And as well as the cars, you saw men on horseback and on camelback
6 at the same time, is that right?

7 A. [14:38:47] Yes, following the car convoy, we saw the men on back of
8 horse -- sorry, on horseback and camelback, yes.

9 Q. [14:39:00] So the moment you see the vehicles and the men on horseback and the
10 men on camelback, you had no doubt, did you, that there was an attack happening on
11 Taringa village?

12 A. [14:39:18] Yes, correct, on Taringa.

13 Q. [14:39:22] And, once again, your immediate reaction must have been to turn and
14 to get away as quickly as possible, is that right?

15 A. [14:39:35] Yes.

16 Q. [14:39:38] Again, were you looking to just runaway generally or were you
17 looking specifically for a place to hide?

18 A. [14:39:48] What do you mean exactly? What's the difference between running
19 and hiding? Running away and hiding, can you explain it to me.

20 Q. [14:40:07] Well, when I mean "running away", I suppose I mean just running
21 and not stopping in order to get away -- to get as far away as possible. That's what I
22 mean by running away. Whereas hiding, what I mean is, you're looking for a place
23 where you can hide in order to avoid being seen.

24 Does that help you to understand the difference?

25 A. [14:40:36] Yes.

1 Q. [14:40:41] Okay. So when you're running away, away from the village of
2 Taringa, are you looking to run away, get away as fast as possible, as far away as
3 possible?

4 A. [14:40:56] Yes. I was heading to Deleig.

5 Q. [14:41:01] Yes, I see, okay, right.

6 And once again, you turn and you runaway as soon as you realise that there's an
7 attack on the village, correct? There's not any hanging around, you turn and you
8 run. Is that about right?

9 A. [14:41:28] Yes.

10 Q. [14:41:33] Now I just want to pick up on something you said a moment
11 ago -- bear with me.

12 You said just now, page 66, line 22, you said:

13 "[..] I didn't know -- "

14 "At the beginning I didn't know it was an attack" in "Taringa because the cars were
15 regular cars. Ali Kushayb was in his car, and usually Ali Kushayb and his escort,
16 they come to the market in Deleig [...]"

17 Just to be very clear, you didn't actually see Ali Kushayb at the scene of the Taringa
18 attack?

19 A. [14:42:34] I was in the same place, as I said, where the car that is usually used by
20 Ali Kushayb was there. It is the only car that we know. And I've heard from others,
21 and that we know from the brand and from the flag on it that it's his car.

22 Q. [14:43:09] And what distance were you from the car that you believed was Ali
23 Kushayb's car when you first saw it?

24 A. [14:43:27] You mean, the first time I saw the car or in Taringa?

25 Q. [14:43:37] When you first saw it at Taringa on this day?

1 A. [14:43:42] It wasn't the first time that I see it in Taringa.

2 Q. [14:43:55] No, I'm focusing on this particular day, this particular attack. How
3 far were you from the vehicle that you thought was Ali Kushayb's vehicle?

4 A. [14:44:07] Yes, yes, now I understand your question. But it wasn't the first time
5 that I see the car of Ali Kushayb that he usually uses. It was about 100-to-200 metres
6 away from me.

7 Q. [14:44:28] Thank you.

8 Now elsewhere in your statement you make reference to Ja'afar Abd-Al-Hakam, the
9 Al Geneina commissioner, you follow? Paragraph 40 (Overlapping speakers)

10 A. [14:44:57] (No interpretation)(Overlapping speakers)

11 Q. [14:44:57] -- for the record. And he was essentially the highest authority in the
12 region, wasn't he?

13 A. [14:45:11] Yes.

14 Q. [14:45:12] Thank you. Now I want to move on, I'm missing a few bits of your
15 statement out, but I'm going to move on to something that's important. March, the
16 third month of 2004, in Deleig, okay, that's what I want to focus on now. Are you
17 with me?

18 A. [14:45:36] Yes.

19 Q. [14:45:39] Are you sure you were in Deleig on the 5th of March 2004?

20 A. [14:46:02] I was in Deleig.

21 Q. [14:46:04] Okay. You certainly weren't in your home village, no?

22 A. [14:46:11] You mean, (Redacted)?

23 Q. [14:46:22] Yes.

24 A. [14:46:26] I said at that time I wasn't in (Redacted), I was in Deleig.

25 Q. [14:46:39] Okay. We'll come back to that a bit later.

1 On the 5th of the third month of 2004, we have a situation where, for example,
2 farmers are unable to leave the town. Correct?

3 A. [14:47:02] On a Friday, yes.

4 Q. [14:47:12] Yes. And that was an unusual situation, farmers being forced to stay
5 within Deleig by the Janjaweed, is that right?

6 A. [14:47:28] Yes.

7 Q. [14:47:30] Did that create tension in Deleig?

8 A. [14:47:36] It was a strange situation. It had never happened before in Deleig
9 where militias and armed forces on camels and horses - and in their vehicles - to circle
10 and besiege the town that way. It had never happened before.

11 Q. [14:48:05] So the population of Deleig, I imagine, became very concerned, is that
12 right?

13 A. [14:48:14] Yes, that's correct.

14 Q. [14:48:17] And your family was concerned?

15 A. [14:48:21] Exactly.

16 Q. [14:48:26] And, in fact, your father was so concerned that he decided that it
17 would be better for him to stay indoors, right?

18 A. [14:48:38] Yes.

19 Q. [14:48:45] And your mother wanted your father to stay indoors as well, would
20 that be right?

21 A. [14:48:53] Yes.

22 Q. [14:48:57] There was a fear of violence among the population, is that right?

23 A. [14:49:10] Yes, correct.

24 Q. [14:49:18] Nobody knew what was going to happen. The situation was very
25 unpredictable, is that fair?

1 A. [14:49:28] Yes, Deleig was overtaken by armed men - sorry, besieged by men,
2 and then nobody left the village, and, later on, these armed forces entered into the
3 neighbourhoods -- within the neighbourhoods of the town.

4 Q. [14:49:58] And the experience of the population was that when it comes to the
5 Janjaweed, if violence breaks out, that violence is brutal, is that fair?

6 A. [14:50:15] Yes.

7 Q. [14:50:18] And this is why your father and your mother felt it better for him to
8 stay indoors, because of the situation of unpredictability and of violence, right?

9 A. [14:50:33] Yes.

10 Q. [14:50:41] And yet in this environment, your parents are perfectly happy for you
11 to walk around Deleig, is that right?

12 A. [14:50:59] First of all, on that day, in the morning, once they ascertained that
13 these forces were Janjaweed men and they were with Ali Kushayb and they had
14 surrounded the area, before -- that was -- it was on a Friday, about 3 p.m. -- sorry,
15 around noon. It was the time of the noon prayer within the Al Kabir mosque and
16 the souk mosque. So I went to the prayer, the Friday prayer at that time.

17 Q. [14:51:44] Yes. So that's what I'm saying. There's this situation -- this
18 unpredictable situation, this situation of impend- -- or potential violence and you
19 don't stay at home with your parents. You go off to the mosque.

20 Is that the situation? You, a 14- or 15-year-old boy, have I got that right?

21 A. [14:52:14] Yes, I went to the mosque, and then my father later on also went to
22 the mosque.

23 Q. [14:52:25] Is that right?

24 A. [14:52:31] I went to the mosque and my father also followed me to the mosque
25 later on.

1 Q. [14:52:40] Well, when was that then?

2 A. [14:52:45] I didn't check the time, he didn't go with me to the mosque, but
3 following the Friday noon -- sorry, the Friday prayers, I saw my father at the mosque.

4 Q. [14:53:05] But just a few moments -- a couple of hours earlier - I don't know - he
5 was deciding to stay at home for his own safety and your mother wanted him to stay
6 at home for his own safety. Have I got that right?

7 A. [14:53:32] On that morning, when the news spread around the area that no one
8 can leave the town -- the place -- the town, at that time, once we have all been aware
9 that nobody could leave the village, this was in the morning, after that, people went
10 to the prayer. And I was in my house -- in my home, sorry, and it is quite normal for
11 people to leave their house.

12 Those living in Deleig also normally would go out in order to buy feed for their cattle,
13 their animals, and also to get some wood to burn. So this is what happened. This
14 was in the morning.

15 The Friday prayer is different. Everybody during the time for the prayer would go
16 to the mosque.

17 Q. [14:54:41] Okay. Well, two things, first thing is I'm just going to read
18 something from your statement.

19 This is paragraph 43, your Honours.

20 You talk about going off to the mosque near the police station and the market, you
21 say this:

22 "I made sure I carried my card showing I was a student in case the Janjaweed thought
23 I was an adult and tried to arrest me."

24 Now, that was the danger, wasn't it, for adult males walking around Deleig, that the
25 Janjaweed could just arrest them for no reason.

1 A. [14:55:32] Yes, it was dangerous.

2 Q. [14:55:40] It's perfectly acceptable, isn't it, for Muslims to pray at home rather
3 than go to the mosque to pray on a Friday?

4 A. [14:56:04] No. The only prayer where people will leave everything -- all their
5 work and will go to the mosque to pray, is for the Friday prayer. For us in Darfur,
6 this is our religion, this is our faith, our teachings.

7 Q. [14:56:29] So at the mosque on this day, it was full of men, young men, children,
8 adults, older men. Is that your evidence?

9 A. [14:56:45] Not like a usual prayer on a Friday prayer, there weren't that many
10 people at the mosque. There were a number of people there.

11 Q. [14:57:09] Why were there fewer people on that Friday than normal?

12 A. [14:57:19] Some people were afraid and they didn't go to the mosque. Some
13 were arrested. Others were forbidden from going there.

14 Q. [14:57:48] Is it haram to not go to the mosque for Friday prayers?

15 A. [14:57:56] Could you please repeat the question.

16 Q. [14:58:13] In Islam, is it haram, is it forbidden to not go the mosque for Friday
17 prayers?

18 A. [14:58:24] No, it is not. It is not haram. But this is our faith, you may not go to
19 the Friday prayer if the mosque, let's say, is far, you may not go there. However, on
20 Fridays, the Friday prayer is essential. You need to go to the mosque to pray at the
21 mosque. There are also some small mosques within the neighbourhoods where
22 people can go and pray during the other days of the week.

23 Q. [14:59:02] In your statement -- I hope you can accept this as -- I hope you can
24 accept it from me, in your statement you don't mention that your father later joined
25 you at the mosque. Is there any reason why that detail is omitted in your statement?

1 A. [14:59:31] I found him there. He didn't follow me or -- I just saw him there
2 later on.

3 Q. [14:59:42] Yes, and that detail isn't in your statement. Why not?

4 A. [14:59:48] In the statement, there is indication that there will be parts that will be
5 elaborated on later, so not everything was mentioned in detail.

6 Q. [15:00:27] Could we please have up on the screen, it's item at tab 11 in the
7 Prosecutor's list of material, DAR-OTP-0220-3737, and perhaps someone could assist
8 the witness in finding that at tab 11 of the bundle in front of him.

9 There is an image that we've already looked at that's going to be shown to you again.
10 So once again, DAR-OTP-0220-3737.

11 Okay, that's going to come up in a moment.

12 To get to the market and to get to the mosque, it's possible to get there from your
13 home by walking behind the school, correct?

14 A. [15:02:33] What do you mean with -- behind the school? Are you referring to
15 the north of the school or the south of the school?

16 Q. [15:02:41] Yeah, the south of the school. I (Overlapping speakers)

17 A. [15:02:48] No, I did not go via the south of the school. I went via the north of
18 the school.

19 Q. [15:02:56] Yes.

20 MR EDWARDS: [15:02:57] I'm very sorry, your Honour, it probably makes more
21 sense for us to have the annotated version up and that's at tab --

22 PRESIDING JUDGE KORNER: [15:03:04] (Microphone not activated)

23 MR EDWARDS: [15:03:05] Yes, yes. Forgive me, it's tab 16, please, of the
24 Prosecution list, yes.

25 That's a different ERN, 0224-0498.

1 Q. [15:03:26] I'm sorry, Mr Witness, I called up the wrong version of the map.

2 MR EDWARDS: [15:03:38] So yes, certainly not for broadcast, please.

3 Q. [15:03:49] So Mr Witness, in the map that's in front of you, the image that's in
4 front of you, you see where your home is?

5 A. [15:03:59] Yes.

6 Q. [15:04:00] And to get from your home to the mosque or to the market, it's
7 possible for you to head towards the school and go south of the school, correct? It's
8 possible?

9 A. [15:04:20] Yes, this is possible.

10 Q. [15:04:22] Okay.

11 A. [15:04:23] However, the main road --

12 Q. [15:04:24] Sorry, please continue.

13 A. [15:04:25] From my house, I can go via the south of the school or north of the
14 school to the mosque. This is possible. However, I went through the north of the
15 school and the police station.

16 Q. [15:04:54] Well, exactly. If you could have gone south of the school, that would
17 have avoided you having to potentially come into contact with the Janjaweed, who
18 are at the police station, correct?

19 A. [15:05:16] I would expect so. However, nobody asked me anything.

20 Q. [15:05:31] Well, you didn't know that when you set off to the mosque -- to the
21 market, you didn't know if there might be trouble if you had taken the northern route,
22 did you?

23 A. [15:05:44] I expected it because after the town was surrounded, they spread in
24 the area, and before I reached the police station, I came across Janjaweed on the backs
25 of horses and camels. They were walking around in the neighbourhood and that

1 was before I reached the police station.

2 Q. [15:06:21] And was that intimidating to have the Janjaweed on horseback and so
3 on, walking around the area?

4 A. [15:06:34] Naturally. I could see at the market in Deleig that I could walk there
5 normally, but this was not the case.

6 Q. [15:06:59] Mm. So at paragraph 45 of your statement - that doesn't have to be
7 brought up, your Honours - you say -- you mention seeing Ali Kushayb's Land
8 Cruiser near the police station as you're walking to the mosque -- to the market, you
9 say this:

10 "I did not see him whilst walking past because I avoided looking in the direction of
11 the prisoners for long periods to avoid the Janjaweed interacting with me."

12 As you were walking to the mosque, you're trying to minimise your interaction with
13 the Janjaweed, aren't you?

14 A. [15:07:47] Yes, I was cautious and I was trying to avoid looking in their
15 direction.

16 Q. [15:08:03] See, what I don't understand is, why you didn't take the southern
17 route around the school because that would have avoided you entirely walking past
18 the Janjaweed who were all congregated outside the police station.

19 A. [15:08:26] I did not think of this.

20 Q. [15:08:33] But you thought to make sure to have your student ID on you, didn't
21 you?

22 A. [15:08:49] Yes.

23 Q. [15:08:52] Did you notice -- were there any checkpoints in the centre of Deleig at
24 this time?

25 A. [15:09:01] Would you please clarify. Were -- do you mean, were they in the

1 centre of Deleig or that there were checkpoints in the -- in the town?

2 Q. [15:09:27] Was there a checkpoint manned by the Janjaweed to the east of the
3 mosque of the market that you noticed?

4 A. [15:09:42] No.

5 Q. [15:09:47] If there had been one, do you think you would've noticed it?

6 A. [15:09:55] There was no checkpoint there for Janjaweed. Deleig had one police
7 station and this is the same police station where they stationed their vehicles, so there
8 was no other station in that area.

9 Q. [15:10:22] Okay. But just to be very clear, I'm not talking about the police
10 station, I'm talking about a checkpoint where, for example, the Janjaweed would stop
11 people and prevent them from moving around.

12 A. [15:10:47] This was in the neighbourhoods and not in the mosque.

13 Q. [15:10:54] And was there one of these such neighbourhood checkpoints to the
14 east of the mosque in the centre of Deleig?

15 A. [15:11:05] No checkpoints. But they would enter people's homes to inspect
16 men and if they had any suspicions about any man, they would take him to the police
17 station. So the checkpoints were not just on the street -- or the checking was not only
18 on the street, they would go into people's homes.

19 Q. [15:11:36] Okay. Now you've mentioned what it is that you saw from the
20 mosque - let's be very clear, from about 1.30 in the afternoon until sunset, is it your
21 evidence that you were inside the mosque the whole time?

22 A. [15:12:07] Yes, I was at the mosque.

23 Q. [15:12:12] No, not at the mosque. I mean, inside the mosque as inside the
24 building?

25 A. [15:12:19] Yes.

1 Q. [15:12:22] Thank you very much. And when men are praying in the mosque, is
2 that something that can be seen from the outside?

3 A. [15:12:33] Yes, it's possible.

4 Q. [15:12:44] And can you explain how it's possible, What's the mosque like?
5 How would people be able to see from outside in?

6 A. [15:12:56] The mosque, the people inside the mosque -- or the people who are
7 inside the mosque who are looking outside or the people outside looking at those
8 inside? Can you please repeat the question.

9 Q. [15:13:23] People who are outside, how is it that they're able to see inside the
10 mosque?

11 A. [15:13:38] They can see because the outside wall of the mosque is less than one
12 metre high. So it is possible for those outside to be able to see those inside and the
13 other way around. However, those inside the mosque cannot really see outside.

14 Q. [15:14:16] Why is it that the people inside can't see outside?

15 A. [15:14:22] The wall surrounding the mosque is less than a metre high. So you
16 can see what's outside, and those outside can see you if you are inside the area of the
17 mosque.

18 Q. [15:14:54] Could we please have the document at tab 17, please. It's 0224-0499.
19 So this is at tab 17 in your bundle, sir, do you think you can find that?

20 MR EDWARDS: [15:15:26] Perhaps, he can be assisted, please.

21 THE WITNESS: [15:15:33] (Interpretation) Yes.

22 MR EDWARDS: [15:15:45] Okay, while that's being done, could I please ask the
23 court officer to do the best you can to zoom in on the mosque, which is over on the
24 right-hand side of the image as we're looking at it, about halfway up. Now I fear
25 this might get a bit grainy.

1 Q. [15:16:08] All right. Now do you see the building that has the number 3 on it?
2 The market mosque.

3 A. [15:16:27] This is the mosque.

4 Q. [15:16:30] Now, I don't know, it looks to me like a building with surrounding
5 walls holding up a roof. Is that what it looks like, the mosque?

6 A. [15:16:59] That's what I said to you, there is the mosque and the area
7 surrounding it, and the walls surrounding it is less than a metre high.

8 Q. [15:17:15] Okay. But if you're inside the mosque -- well, okay, let me put it this
9 way. Are there windows around the walls of the mosque or is it all enclosed?

10 A. [15:17:30] Do you mean the windows in the wall surrounding the mosque or the
11 building of the mosque?

12 Q. [15:17:52] The building of the mosque.

13 A. [15:17:56] Yes, the building of the mosque has windows, every side has
14 windows. However, the outside wall has doors or gates, but there are no windows
15 there and it is less than a metre high.

16 Q. [15:18:22] Yes, okay, you said that several times now. I'm not interested in the
17 wall. I'm interested in the mosque itself.

18 MR EDWARDS: [15:18:34] Now there's no dispute between the parties,
19 your Honour, that the distance from the mosque to the police station is about 200
20 metres, according to the scale that we have.

21 My learned friend is helpfully nodding. Thank you.

22 MS WHITFORD: [15:18:55] That's correct, your Honour.

23 MR EDWARDS: [15:18:59]

24 Q. [15:18:59] So there we are, 200 metres from the mosque to the police station. It
25 sound about right to you?

1 A. [15:19:09] Yes, approximately.

2 Q. [15:19:13] When you go to Friday prayers, is it your habit to stay at the mosque
3 for the entire afternoon, from midday, one o'clock in the afternoon, all the way till
4 sunset?

5 A. [15:19:34] No, never. I would pray the Friday prayer, listen to the sermon, and
6 then pray and then leave. But that day, we had to stay in the mosque and that is
7 because people were taken and gathered at the camp, and this is something that never
8 happened in Deleig before. So this was scary.

9 And we were all scared and we were praying to God that no harm befalls these
10 people.

11 Q. [15:20:27] Now we've already established that people inside the mosque can see
12 out, equally people outside the mosque can see in. The Janjaweed --

13 A. [15:20:43] Inside the area around the mosque.

14 Q. [15:20:52] No. Let's be very clear. You say that there are windows in the
15 walls of the mosque that allow people to see out. Those windows allow people from
16 the outside to see in equally, no?

17 A. [15:21:17] To clarify, those who are inside the mosque are not necessarily only
18 inside the building of the mosque. There is also an area around the mosque within
19 the walls that is covered, that is, to the north of the mosque, there are trees there, and
20 there is shadow there, it is cooler there and people can also be there. So people can
21 also be there. There are more people under that canopy or under that covered area
22 outside the mosque, but within the walls.

23 PRESIDING JUDGE KORNER: [15:22:15] I'm sorry, we are taking a very long time
24 about this, Mr Edwards, I may say, but can we zoom in and see where this police
25 station is, please, because I can't see one on the screen nor on the hard copy.

- 1 MR EDWARDS: [15:22:34] Yes, we need to scroll down from the image, and the
2 police station will be over to the left of the screen in a moment, there.
- 3 PRESIDING JUDGE KORNER: [15:22:40] The one that says "7" over the top of --
- 4 MR EDWARDS: [15:22:45] Yes.
- 5 PRESIDING JUDGE KORNER: [15:22:45] -- the building that looks as though it's
6 a "7"?
- 7 MR EDWARDS: [15:22:49] Yes.
- 8 PRESIDING JUDGE KORNER: [15:22:49] That's the police station. All right.
9 Thank you.
- 10 And just so that we understand the evidence that you've given, sir, you say there's
11 a covered area at the back of the mosque where the trees are?
- 12 THE WITNESS: [15:23:05](Interpretation) At the south of the mosque, there are trees
13 and there is a covered area where there is shadow and people can sit there and
14 they -- there will be more people usually in that place than inside the mosque because
15 of the heat.
- 16 PRESIDING JUDGE KORNER: [15:23:32] Yes, but that is -- you wouldn't be able see
17 the police station from that -- from the covered area, would you?
- 18 THE WITNESS: [15:23:54](Interpretation) Yes.
- 19 MR EDWARDS: [15:23:59] I've got a lot to get through.
- 20 PRESIDING JUDGE KORNER: [15:24:03] All right, Mr Edwards, but I do think you
21 could get to the point of your cross-examination.
- 22 MR EDWARDS: [15:24:13] Well, I --
- 23 PRESIDING JUDGE KORNER: [15:24:13] What you're actually suggesting to him.
- 24 MR EDWARDS: [15:24:15] My actual suggestion will come at --
- 25 PRESIDING JUDGE KORNER: [15:24:16] At the end.

1 MR EDWARDS: [15:24:16] -- the back of -- yes.

2 PRESIDING JUDGE KORNER: [15:24:18] I know that, but we're taking a very long
3 time to get there.

4 MR EDWARDS: [15:24:23] Yes, bear with me. Thank you.

5 Q. [15:24:42] Now I just want to move on to paragraph 62 of your statement
6 because here, you talk about seeing, you say, Ali Kushayb at Deleig market the
7 following days. The day after you say the prisoners have been taken away, how
8 were you feeling? Were you feeling shocked?

9 A. [15:25:35] Would you please repeat the question.

10 Q. [15:25:40] You say that you see the prisoners being taken away on the Friday,
11 the next day is Saturday. Were you feeling shocked by what you had seen on the
12 Friday?

13 A. [15:25:52] Yes, after I have seen the corpses, I felt shocked and I felt fear.

14 Q. [15:26:10] Actually I'm not going to dwell on the Saturday, I'm going to focus on
15 the Sunday. You say in your statement that you saw Ali Kushayb's vehicle at the
16 market between the Dhur and Asar afternoon prayer times.
17 Do you remember saying that in your statement?

18 A. [15:26:41] Yes.

19 Q. [15:26:44] Do you remember why you went to the market that Sunday?

20 A. [15:26:53] As young men, we went to the market to buy what we needed, and
21 Sunday was the big market day. So that is the day where everybody was there, so it
22 was important to go to the market on that day.

23 Q. [15:27:30] You had no fear of being arrested by the Janjaweed that day?

24 A. [15:27:41] At that time, on Sunday, we were expecting that anyone would be
25 arrested at any moment. At your home, at the market, you could expect anything to

1 happen, so I was not afraid to go to the market or to go outside because getting
2 arrested could happen anywhere.

3 Q. [15:28:16] You saw Ali Kushayb's vehicle and looked into the vehicle as you
4 walked by, is that right?

5 A. [15:28:28] Yes, exactly.

6 Q. [15:28:35] As you were walking by quickly?

7 A. [15:28:39] I was walking by quickly, but I saw him in his car.

8 Q. [15:28:49] Now you don't say in the witness statement that you saw him
9 through the front windscreen. You saw him through an open-side window, have I
10 got that right?

11 A. [15:29:02] I did not see frontal image, I saw side image.

12 Q. [15:29:18] And he may have been sitting in the seat furthest from you in the car,
13 right?

14 A. [15:29:30] He was inside the car and there was a distance between me and him,
15 so I was not immediately by the car.

16 Q. [15:29:45] Mm. And well, this is the point, you say:

17 I don't know which side of the vehicle he was seated on or if there was another person
18 in the vehicle with him at that time.

19 Is that the case?

20 A. [15:30:01] I saw him inside the car. This is what I can confirm.

21 Q. [15:30:11] Okay. I want to go back a little bit in time, I'm afraid - paragraph 25,
22 your Honours - and I want to ask you about the first time you ever saw Ali Kushayb.
23 Do you follow?

24 A. [15:30:37] Yes.

25 Q. [15:30:39] And this was in, you say, Deleig, about one week after the Fere attack,

- 1 September 2003, does that sound right?
- 2 A. [15:30:51] Yes.
- 3 Q. [15:30:57] Now, you didn't know this man when you first saw him, did you?
- 4 A. [15:31:05] Before that, no.
- 5 Q. [15:31:10] You see the man getting out of the vehicle. Was he getting out of the
- 6 driver's side of the vehicle?
- 7 A. [15:31:27] I wasn't sure. I don't know.
- 8 Q. [15:31:38] And how -- how far away do you say you were from the vehicle when
- 9 you saw the man getting out of the vehicle?
- 10 A. [15:31:48] About 10 metres.
- 11 Q. [15:31:57] And your friend pointed to him?
- 12 A. [15:32:04] Yes.
- 13 Q. [15:32:06] Just show us, how did he point at him?
- 14 A. [15:32:26] By looking at him.
- 15 Q. [15:32:27] Well --
- 16 A. [15:32:28] By looking at him. By looking towards him.
- 17 Q. [15:32:31] Okay, so your friend didn't point at him, he looked at him?
- 18 A. [15:32:40] Before we got to the car, when we first saw the car, we focused on it,
- 19 he told me pay attention. After we got closer to the car, we looked at the car and he
- 20 confirmed to me, "This is the guy known as Ali Kushayb."
- 21 Q. [15:33:06] But he only knew that because he had been told this by some other
- 22 person, is that correct?
- 23 A. [15:33:20] He was told that the so-called Ali Kushayb, the head of the Janjaweed,
- 24 is this guy.
- 25 Q. [15:33:32] But you don't know -- let's take it carefully. You don't know who

1 told your friend that that was Ali Kushayb, correct?

2 A. [15:33:51] I didn't ask him who told him, but from what he told me, he had told
3 me that, "This is Ali Kushayb."

4 Q. [15:34:01] Okay.

5 A. [15:34:01] And later on, I was able to confirm that, ascertain that he is Ali
6 Kushayb.

7 Q. [15:34:07] And how old was Ali Kushayb when you saw him on this day in
8 Deleig?

9 A. [15:34:18] I didn't know how old he was.

10 Q. [15:34:25] Well, have a guess. Roughly, how old was he?

11 A. [15:34:31] I don't know.

12 Q. [15:34:34] Older or younger than your father?

13 A. [15:34:44] I don't know.

14 Q. [15:34:51] Did you notice anything distinctive about his face?

15 A. [15:34:57] Back then, if I would see him anywhere, I would recognise him, I'd
16 recognise his face. There wasn't one particular thing or feature, but I would
17 recognise him, who -- he is the one who killed and raped.

18 Q. [15:35:24] Did you notice anything about his ears?

19 A. [15:35:28] That's how I recognised him. I didn't know any particular feature of
20 him.

21 MR EDWARDS: [15:35:44] Your Honours, at paragraph 27 there's reference to the
22 height of an investigator. Perhaps that can be brought up. And the Prosecution
23 and ourselves have been in email communication about this, and the height of the
24 investigator is 190 centimetres or 6 foot 2 inches.

25 PRESIDING JUDGE KORNER: [15:36:24] It's not the most helpful of paragraphs to

1 put on an identification issue - to say, "I have stood next to Investigator A" - without
2 anybody indicating what his height is. I think the OTP might take that into account.

3 MR EDWARDS: [15:36:42]

4 Q. [15:36:43] And on that point, Mr Witness, is it true that at no point were you
5 ever shown by the Prosecution a photo or photos apparently of Ali Kushayb?

6 A. [15:36:59] When was that?

7 Q. [15:37:10] No, I'm just confirming that that has never happened. You've never
8 been asked to look at a photo or an array of photos?

9 PRESIDING JUDGE KORNER: [15:37:20] If the OTP would like to confirm that, if
10 they're able to.

11 MS WHITFORD: [15:37:26] No such photo or photos have been shown,
12 your Honour.

13 PRESIDING JUDGE KORNER: [15:37:30] Thank you.

14 MR EDWARDS: [15:37:31] Nice to have it on the record.

15 Q. [15:37:34] Now, looking at paragraph 11 of your statement - and I don't think
16 this creates any difficulties - you were in Garsila in 2007, correct?

17 A. [15:37:57] Yes, I was studying there.

18 Q. [15:38:02] The first warrant of arrest for Mr Abd-Al-Rahman, who the
19 Prosecution says is Ali Kushayb, was published on the 27th of April 2007, when you
20 were in Garsila. Do you remember that news?

21 A. [15:38:23] I did not hear of that at that time.

22 Q. [15:38:31] When did you first hear of the arrest warrant for the person that the
23 Prosecution say is Ali Kushayb?

24 A. [15:38:48] I can't remember the date. I don't know the exact date, but that was
25 before I went to the university.

1 Q. [15:39:00] The university in Khartoum?

2 A. [15:39:07] Yes.

3 Q. [15:39:09] Okay, thank you very much.

4 And that must have been huge news amongst you and your friends and your family,
5 hearing of the arrest warrant?

6 A. [15:39:33] We didn't believe it that a person like Ali Kushayb would be arrested
7 or would be put on trial or -- and be referred to the ICC - or, in Sudan, before the
8 Sudanese tribunals. We didn't believe that.

9 Q. [15:39:54] Maybe you didn't believe it, but nevertheless it was huge news at the
10 time, wasn't it?

11 A. [15:40:08] For other people, yes, it was very important, but for me and my
12 friends, those who were close to me, we were brought up together, we couldn't
13 believe that after all that he's committed and done, that he would be put on trial.

14 Q. [15:40:31] Now in 2015, you're in Khartoum and there is a point when you're in
15 the area of Kalakla, right?

16 A. [15:40:46] Yes.

17 Q. [15:40:50] You're waiting for a bus and it's late afternoon, correct?

18 A. [15:41:11] Yes.

19 Q. [15:41:14] The road that is served by this bus route, it's quite a main road, isn't
20 it?

21 A. [15:41:25] Yes, the main road linking Khartoum to Kalakla and to Jebel Aulia,
22 yes.

23 Q. [15:41:44] And late afternoon, I mean, would it be fair to say that this was sort of
24 rush hour? People going home from work?

25 A. [15:41:55] Yes. However, on that day, it was a holiday and not a working day.

1 Q. [15:42:09] What was the day?

2 A. [15:42:17] It was a Friday. A day off.

3 MR EDWARDS: [15:42:22] Can we have on the screen, please, and it's the version
4 with the English annotation -- or the English translations of the annotation, it is
5 0219-1690, and it is at tab 7, please.

6 Q. [15:42:52] Can you have look at the document at tab 7, please, sir.

7 PRESIDING JUDGE KORNER: [15:43:11] (Microphone not activated).

8 MR EDWARDS: [15:43:13] Well, it's -- yes, thank you.

9 Q. [15:43:14] Right, thank you. So if north is to the left, you're west of the
10 headquarters of the Central Reserve Forces, right?

11 A. [15:43:43] Yes.

12 Q. [15:43:45] And the way it looks in the -- in your sketch, is it the case that you see
13 the vehicle or vehicles coming down the road towards you and then turning right to
14 pull up in front of the headquarters? Is that what those arrows mean, yeah?

15 A. [15:44:13] Yes, yes.

16 Q. [15:44:15] And were all of the -- are we talking about one vehicle or several
17 vehicles? Is it a convoy or is it just one car?

18 A. [15:44:27] Many cars, not one car.

19 Q. [15:44:31] All right. But the car with the person that you say is -- that you say
20 you recognise as Ali Kushayb, pulls up and stops. Now looking at this
21 image -- looking at this image, is there a sort of a strip of land, sort of like a dirt -- like
22 a strip of dirt between the road and the front of the Central Reserve Forces'
23 headquarters? Is that what that sort of strip signifies?

24 A. [15:45:19] Yes, there is such a surface, in the front side of the main road -- or
25 overlooking the main road.

1 Q. [15:45:33] Yes. And is it right to say that that strip of land between the road
2 and the headquarters is about twice the width of the actual road?

3 A. [15:45:51] No.

4 Q. [15:45:56] Now we see you and your friends on the west side of the road. In
5 this sketch, it looks like you're slightly off to the right of the entrance to the
6 headquarters. Is that -- is that right?

7 A. [15:46:20] The three of us, we were opposite the Central Reserve Force
8 compound. We were closer to the roundabout.

9 Q. [15:46:45] Yeah, right. So you're -- so how many metres to your left would you
10 have to walk in order to be directly opposite the front entrance of the headquarters?
11 Do you understand the question?

12 A. [15:47:06] I understand the question, but I cannot tell you how many metres.
13 The street was a dual carriageway, plus the space between the street and the Central
14 Reserve Force compound and -- that space is less wide than the street.

15 Q. [15:47:40] Okay. Well, let's just explore that for a second. Can we please
16 bring up on the screen the document at our tab 9, please, DAR-D31-0007-0001.

17 MR EDWARDS: [15:48:02] And your Honours, it's the -- it should be ...

18 PRESIDING JUDGE KORNER: [15:48:19] It's the (Overlapping speakers) this
19 morning.

20 MR EDWARDS: [15:48:23] Yes. It should be the second of the three, I hope you
21 should have it in A3 size. Yes. Your Honours, it's a zoomed-in version, and if you
22 look in the top left-hand corner, you'll see sort of a sliding scale and the one I'm
23 interested in is the one that says 8, 2015, August 2015. Okay, that's the one that I'm
24 interested in.

25 PRESIDING JUDGE KORNER: [15:49:02] (Microphone not activated)...we're

- 1 looking at the mosque again, are we? No, we are --
- 2 MR EDWARDS: [15:49:07] No, your Honour.
- 3 PRESIDING JUDGE KORNER: [15:49:08] Sorry, we are looking at the central reserve,
- 4 yes.
- 5 MR EDWARDS: [15:49:18] Yes. Just so -- just to get it on the -- oh, no, that's not the
- 6 right one. Sorry. Can we start again please. Could we have on the screen, yes, I'm
- 7 sorry, it's should be number 9 -- it's number 9 on our list, 31 -- D31-0007-0001, I'm
- 8 sorry if I got that wrong earlier.
- 9 I'm terribly sorry.
- 10 I've got a copy for the witness, actually. Could this be passed on to the witness.
- 11 PRESIDING JUDGE KORNER: [15:50:05] Can you just hold it up, which one are you
- 12 actually showing him?
- 13 MR EDWARDS: [15:50:11] It's the one from August 2015.
- 14 PRESIDING JUDGE KORNER: [15:50:15] 8, 2015 in the sliding scale?
- 15 MR EDWARDS: [15:50:16] Yes.
- 16 PRESIDING JUDGE KORNER: [15:50:17] Which is showing us, what?
- 17 MR EDWARDS: [15:50:18] Well --
- 18 PRESIDING JUDGE KORNER: [15:50:19] Or do you want him to tell us?
- 19 MR EDWARDS: [15:50:23] Yes, because it's in Arabic, I think, he's -- just to get it on
- 20 the record, I'm going to ask him to read the label and then it will be translated.
- 21 PRESIDING JUDGE KORNER: [15:50:34] And this is something you downloaded
- 22 from Google Earth recently?
- 23 MR EDWARDS: [15:50:40] Yes.
- 24 PRESIDING JUDGE KORNER: [15:50:41] Right.
- 25 MR EDWARDS: [15:50:42] The advantage of Google Earth -- I hesitate to give

1 evidence, but it has the facility, your Honour, to (Overlapping speakers)

2 MR NICHOLLS: [15:50:45] Sorry, could we -- sorry, could we see just -- I'm not
3 totally sure exactly which one he's going to. If we could just take a look, I mean,
4 because our -- at the moment, don't have ERN numbers. I'm --

5 MR EDWARDS: [15:51:00] Yes --

6 MR NICHOLLS: [15:51:00] -- sure they've been sent, but --

7 MR EDWARDS: [15:51:03] -- that's the one, but it needs to be... That's it, yeah.
8 Thank you.

9 It's -- your Honour, I'm afraid it's such a large file that it -- we were having difficulties
10 loading it into -- onto Ringtail, it's the whole thing, but we'll get there I'm sure.

11 Q. [15:51:23] Now, Mr Witness, on top of that -- this is a bird's-eye view of
12 a building in Khartoum in Kalakla, okay? Can you read, please, the Arabic words
13 next to the little grey teardrop on top of the building. Can you read that out to us,
14 please.

15 A. [15:51:55] This picture has on it the Central Reserve Forces, but the Central
16 Reserve Forces has several buildings, so I do not know what picture this is. It needs
17 to be zoomed in because it's not clear. So I would -- I do not know what's
18 surrounding this building, I'm not sure I understand.

19 Q. [15:52:24] Okay, well, we can facilitate that.

20 MR EDWARDS: [15:52:27] Can this be passed to the witness, please. In which case,
21 can we have brought up onto the screen, the zoomed-out version, which is tab 10,
22 D-31-0007-0002.

23 Q. [15:52:52] Just have a look at that, sir, and familiarise yourself with the map.
24 Does that assist in locating the Central Reserve Forces' headquarters in Kalakla?

25 A. [15:53:18] I do not understand how things are set out. I do not understand yet.

1 PRESIDING JUDGE KORNER: [15:53:37] I'm afraid, Mr Edwards, of the three that
2 we've got --

3 MR EDWARDS: [15:53:40] Yes.

4 PRESIDING JUDGE KORNER: [15:53:40] -- I'm not sure because none of these have
5 been marked with Defence exhibit numbers.

6 MR EDWARDS: [15:53:45] No, no, and that's right. Look, there's a zoom-in version
7 from August 2015, which is the first one I showed you. There's a zoomed-out
8 version, which I'm trying to get up on the screen from August 2015, to be fair to the
9 witness, because of the date that he says he (Overlapping speakers)

10 PRESIDING JUDGE KORNER: [15:54:03] Now I see --

11 MR EDWARDS: [15:54:03] -- observed what he saw. And then there's
12 a higher-quality version from March of this year, in case we need to look at it with a
13 greater resolution.

14 All right, I'm going to try again. Zoomed out, it's tab 10 of the Defence list. That's it.
15 Excellent. Thank you very much.

16 Q. [15:54:29] All right. Now, you've got -- you've now got the zoomed-out
17 version, does that help you to locate the Central Reserve Forces' headquarters in
18 Al-Kalakla?

19 A. [15:54:52] No. This picture says that this is the Central Reserve Forces'
20 building, but they have several buildings in Khartoum and I'm not a resident of
21 Khartoum that I know all the streets and -- and buildings in Khartoum, so ...

22 Q. [15:55:23] Well, that's -- that's not right, is it, sir. You stated during your
23 preparation session with the Prosecution, DAR-OTP-0224-0485, paragraph 37 b.,
24 you've -- you know or certainly you've been told that there's only one CRF building in
25 Khartoum. That's what you told the Prosecutor just last week, isn't it?

1 A. [15:56:20] The central office or the central building is in Kalakla. However, the
2 central reserves has several commands within Khartoum. In Omdurman, Khartoum
3 Bahri, which is north Khartoum, different areas.

4 Q. [15:56:42] But I'm not talking about the one in Omdurman. I'm talking about
5 the one in Kalakla, and there's only one, isn't there, in Kalakla.

6 A. [15:56:57] I don't know. I do not remember if this is the building in Kalakla or
7 not. This satellite picture ...

8 Q. [15:57:05] Okay.

9 A. [15:57.06] I don't know.

10 Q. [15:57:12] We'll put that to one side and we'll try a different way.

11 So you see the cars come around the corner and stop, and they pull off the road, don't
12 they, onto that dirt strip just in front of the headquarters' building, correct?

13 A. [15:57:35] Yes, that's correct.

14 Q. [15:57:39] Okay. From which side do you see the man that you say you
15 identify as Ali Kushayb getting out? From what side of the car do you say he's
16 getting out?

17 A. [15:58:03] He got out of the car and he was not the driver. He got out of the car
18 and he went in the direction of the headquarters.

19 Q. [15:58:28] So did he -- he exited from the passenger side of the car? Is that the
20 situation?

21 A. [15:58:38] Yes.

22 Q. [15:58:41] And did he stand around chatting or did he get out of the car and go
23 straight into the headquarters?

24 A. [15:58:48] After he got out of the car, he greeted some people. Then he went
25 into the headquarters.

- 1 Q. [15:59:10] And were the people that he was greeting --
- 2 PRESIDING JUDGE KORNER: [15:59:16] (Overlapping microphones) ... I've been
- 3 asked to check with you --
- 4 MR EDWARDS: [15:59:17] Yes.
- 5 PRESIDING JUDGE KORNER: [15:59:17] -- whether you can finish in the next
- 6 15-to-20 minutes?
- 7 MR EDWARDS: [15:59:26] Yes.
- 8 PRESIDING JUDGE KORNER: [15:59:28] Right. Thank you.
- 9 MR EDWARDS: [15:59:29]
- 10 Q. [15:59:29] Is he greeting people who are coming from the headquarters'
- 11 building?
- 12 A. [15:59:40] There were people at the gate and these are the people he greeted.
- 13 Nobody came out of the headquarters.
- 14 Q. [15:59:48] Okay. But his back is to you when he's greeting the people from the
- 15 headquarters, obviously, yeah?
- 16 A. [16:00:00] Okay, he was not greeting them. He was actually shaking their
- 17 hands.
- 18 Q. [16:00:10] Yeah, but he's facing them. They're coming from the building, so his
- 19 back is to you, logically, correct?
- 20 A. [16:00:20] No, but what I can confirm is that I knew that this is -- or this was Ali
- 21 Kushayb. His back, his head -- that's not the point. I -- I did not take a picture of
- 22 him, but I was able to ascertain that this was Ali Kushayb and he came to the CRF.
- 23 Q. [16:00:51] In fact, it was one of your friends who suggested to you that it was Ali
- 24 Kushayb, no?
- 25 A. [16:00:57] We were three guys, and the three of us confirmed that this is Ali

1 Kushayb, yes, and, after that, we went to -- to some friends in the region and that was
2 a few days later. They did confirm to us that there was an incident in Nyala and that
3 he was brought to Khartoum for treatment. So you can ask him if this had happened
4 or not.

5 Q. [16:01:40] I'm moving on to the last topic now.

6 MR EDWARDS: [16:01:42] And I will be able to deal with this in 15, 20 minutes.
7 My learned friend and I discussed this and it's probably better that we go to private
8 session.

9 PRESIDING JUDGE KORNER: [16:01:55] Yes, all right.

10 MR EDWARDS: [16:01:57] And I think I'm going to be in private session for the rest
11 of the session.

12 PRESIDING JUDGE KORNER: [16:02:07] Yes, well, let's see how we go.

13 MR EDWARDS: [16:02:10] Okay.

14 PRESIDING JUDGE KORNER: [16:02:14] Before you leave us, are you going to put
15 any specifics to him on the topic -- the two topics that you've just covered?

16 MR EDWARDS: [16:02:22] I absolutely will, but (Overlapping speakers)

17 PRESIDING JUDGE KORNER: [16:02:23] (Overlapping speakers)...be done in open
18 session because all of this has been in open session.

19 MR EDWARDS: [16:02:28] Well --

20 PRESIDING JUDGE KORNER: [16:02:31] All right --

21 MR EDWARDS: [16:02:32] Okay, I need to do it at the end of this next session.

22 PRESIDING JUDGE KORNER: [16:02:34] All right, okay.

23 MR EDWARDS: [16:02:35] But I'll do it in open session, certainly when I do it.

24 (Private session at 4.02 p.m.)

25 THE COURT OFFICER: [16:02:41] Your Honours, for the record, we are in private

1 session.
2 (Redacted)
3 (Redacted)
4 (Redacted)
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(Private Session)

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5 (Redacted)

6 (Redacted)

7 (Open session at 4.18 p.m.)

8 THE COURT OFFICER: [16:18:48] We are back in open session, Madam President.

9 MR EDWARDS: [16:18:56]

10 Q. [16:18:58] I suggest you were concerned that your claim for asylum in -- in the

11 country now, would not be enough for you to secure refugee status. You had no

12 wish to return to Sudan, and you made up the story of Ali Kushayb to ICC

13 Prosecutors as a sort of an insurance policy. Isn't that the reality?

14 A. [16:19:36] No, not at all.

15 Q. [16:19:42] In the hope that if your asylum claim did fail, then at least the ICC

16 might be able to assist you in some way so that you wouldn't have to return to Sudan.

17 That's the reality, isn't it?

18 A. [16:20:01] No, not at all. At that time I didn't know who is the ICC. And what

19 I did in (Redacted) was giving my statement, what I knew was that people from my

20 side in another city from my area, they said that people here needed our statements.

21 That was all. But getting -- getting here, and Ali Kushayb being -- getting arrested,

22 that -- that was not something that I thought of and these two things were not

23 connected. (Redacted)

24 (Redacted)

25 Q. [16:21:20] Your interview with the authorities in your country took place within

1 six days of your Prosecution screening interview. Correct?

2 A. [16:21:41] What happened? What do you mean?

3 Q. [16:21:47] Well, I'm going to suggest that you did not see Ali Kushayb or the
4 person that you refer to as "Ali Kushayb" at any point in Darfur. What do you say
5 about that?

6 A. [16:22:04] I totally disagree with you. What you are saying is that I never saw
7 Ali Kushayb. I saw him and his image is printed in my memory. What you're
8 saying about me not having seen him at all, that's a lie. I know him. I know him
9 well.

10 MR EDWARDS: [16:22:40] Your Honour, I'm satisfied I've put my cases --

11 PRESIDING JUDGE KORNER: [16:22:44] I'm sorry, but the only thing I'm not clear
12 is what's your case on the mosque on which we spent a great deal of time?

13 MR EDWARDS: [16:22:50] Well, my case on the mosque is that he, on the 5th of
14 March --

15 PRESIDING JUDGE KORNER: [16:22:55] Wasn't there at all.

16 MR EDWARDS: [16:22:55] -- he wasn't in Deleig --

17 PRESIDING JUDGE KORNER: [16:22:55] Yes. All right.

18 MR EDWARDS: [16:22:56] -- he was in the place that he says he was in when he
19 gave his first account to the immigration authorities in that country.

20 PRESIDING JUDGE KORNER: [16:23:02] Yes. All right. Yes. Thank you.

21 MR EDWARDS: [16:23:05] Those are my questions.

22 PRESIDING JUDGE KORNER: [16:23:07] Yes, thank you, Mr Edwards.

23 Yes, re-examination?

24 MS WHITFORD: [16:23:10] Yes, your Honour, I'm very much aware of the time and
25 I'll be very brief.

1 QUESTIONED BY MS WHITFORD:

2 MS WHITFORD: [16:23:12]

3 Q. [16:23:16] Mr Witness, you were asked a series of questions today about where
4 you were in the mosque when you were watching the events outside the police
5 station.

6 I'd like to show you a document now, which is at DAR-OTP-0219-1684. It's number
7 3 on the list of items, if that assists, and if we could go to page 1686 of that item.

8 Mr Witness, this is your sketch of Deleig that you drew during the interview in 2017.

9 And we see there marked on the sketch the location of the mosque and we see written
10 there the words, "This is me."

11 Could you explain where you were in relation to the compound of the mosque when
12 you were watching the events outside the police station?

13 A. [16:25:46] Yes. Inside the mosque area I was under the shade, under the
14 canopy, and I was looking towards the police station and this is the place where the
15 people were arrested. So this was my location here, on this sketch. This is the
16 location where I was.

17 Q. [16:26:36] Do I understand correctly that you were within the outside wall of the
18 mosque that you described, but not inside the mosque building itself, is that correct?

19 A. [16:26:54] Exactly. And that is what I was trying to clarify before, that we were
20 inside the area of the mosque but not inside the building of the mosque.

21 Q. [16:27:15] Thank you, Mr Witness.

22 MS WHITFORD: [16:27:16] I have no further questions, your Honour.

23 PRESIDING JUDGE KORNER: [16:27:19] Yes.

24 I just have one question, sir, which goes back to the -- I'm sorry, not only is this court
25 overheated but the air is too dry. It's the first attack that took place in your village,

1 which you were asked about at page 54 of the transcript, line 9.

2 Before the conflict in Darfur, was your village raided by Arabs on camels and horses,
3 which had nothing to do with the conflict? Just simple crime.

4 THE WITNESS: [16:28:32](Interpretation) My village was exposed to robberies, theft
5 of our cattle, the cows, the camels et cetera, and this was done by Arab groups. And,
6 at that time, they were called the "*Nahab*", which translates into "armed robbery."

7 And when (Redacted), that was the beginning of the conflict that was done at the
8 hands of what was called the Janjaweed. And on their heads, they wore

9 turbans - *koodamor*, it's called - and they spoke Arabic and there were no people from
10 other tribes with them. They only spoke Arabic.

11 However, we had other languages and we had our dialects.

12 And our tribe falls under the original people, the black people. That is how we were
13 categorised.

14 PRESIDING JUDGE KORNER: [16:30:28] I understand that, but are you saying that
15 the attack on your village in, roughly, I think, you said May or June of 2003, was
16 different from other attacks carried out where your livestock was stolen because the
17 people who you knew as the Janjaweed were all dressed the same?

18 THE WITNESS: [16:31:03](Interpretation) Yes, yes.

19 PRESIDING JUDGE KORNER: [16:31:10] Yes, all right. Thank you very much
20 indeed.

21 Sir, thank you very much for coming to give evidence. I know it's been a long day
22 for you, but your evidence is important, and so we thank you very much, and you are
23 now free to leave to return to the country from which you came. Sir, thank you.

24 THE WITNESS: [16:31:35](Interpretation) Thank you very much.

25 (Witness excused.)

1 (Witness exits the courtroom.)

2 PRESIDING JUDGE KORNER: [16:32:05] Yes, for tomorrow's witness, how long are
3 you going to be, and who's calling the witness tomorrow?

4 MR NICHOLLS: [16:32:11] Your Honour, I'm going to try to do it in about an hour.

5 PRESIDING JUDGE KORNER: [16:32:15] All right, it's going to be you, Mr Nicholls,
6 is it?

7 MR NICHOLLS: [16:32:24] It's going to be me.

8 PRESIDING JUDGE KORNER: [16:32:27] All right. One hour.

9 And any idea? Mr Edwards, is it you again?

10 MR EDWARDS: [16:32:28] Yes, I'm afraid so. Tomorrow's witness is, in some
11 respects -- many respects more straightforward than this witness. So I'm confident
12 we'll finish tomorrow, even with the slightly extended break for which I thank the
13 Trial Chamber.

14 PRESIDING JUDGE KORNER: [16:32:43] Yes, but all I was wondering is I know that
15 your witness -- actually, I suppose it (indiscernible) it doesn't help because the day's
16 break anyhow --

17 MR EDWARDS: [16:32:50] Yes, I mean --

18 PRESIDING JUDGE KORNER: [16:32:54] -- so I was just wondering whether the
19 witness, because you say Friday's witness you think is going to take longer.

20 MR EDWARDS: [16:33:04] Yes, that's right. So there's a short witness on Thursday
21 that Mr Laucci's taking and then --

22 PRESIDING JUDGE KORNER: [16:33:12] Mr Laucci is shaking his head about
23 whether it's short.

24 MR LAUCCI: [16:33:18] Well, I was hoping, Colleague, that you would say that it is
25 the witness of tomorrow who is short.

1 PRESIDING JUDGE KORNER: [16:33:25] Well, I mean, I'm just wondering whether
2 because obviously - if it is at all possible - if we can get in more than one witness
3 tomorrow, then we should, or start them even if there's a day's gap, that doesn't
4 matter so much. It's the week -- the three-weeks' gap.

5 MR NICHOLLS: [16:33:41] The only problem, your Honour, is the witness
6 following is --

7 PRESIDING JUDGE KORNER: [16:33:46] Is the video link, I know.

8 MR NICHOLLS: [16:33:48] -- it's the video link, so I don't know that they can change
9 that to tomorrow at this stage, and for whatever reasons, which I won't go into, it was
10 quite complicated for that to be set up and we weren't even sure if it was going to be
11 done by today. Now it appears to be confirmed. So I can enquire, but I'm not sure
12 we can change that.

13 PRESIDING JUDGE KORNER: [16:34:12] If that's the situation, I mean, I appreciate
14 it because he is on video link that --

15 MR LAUCCI: [16:34:20] Maybe, Madam President, can we explore the option of
16 bringing witness P-120 before P-1712?

17 MR NICHOLLS: [16:34:31] No, again, because of the video link has been very -- not
18 straightforward, put it that way.

19 PRESIDING JUDGE KORNER: [16:34:39] (Microphone not activated) Sorry. All
20 right, we'll just have to hope that Friday, I'm just wondering whether we shouldn't try
21 and sit, if you're genuinely -- sorry, I'll finish the sentence, we shouldn't try and sit
22 maybe earlier on Friday morning.

23 MR LAUCCI: [16:34:59] I'm happy to explore every possibility.

24 PRESIDING JUDGE KORNER: [16:35:02] Yes. All right. Well, we'll discuss that
25 on Thursday.

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(Open Session)

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- 1 All right. Yes. Very well, so 9.30 tomorrow morning.
- 2 THE COURT USHER: [16:35:11] All rise.
- 3 (The hearing ends in open session at 4.35 p.m.)