

Trial Hearing  
WITNESS: DAR-OTP-P-0980

(Open Session)

ICC-02/05-01/20

1 International Criminal Court  
2 Trial Chamber I  
3 Situation: Darfur, Sudan  
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman  
5 ("Ali Kushayb") - ICC-02/05-01/20  
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and  
7 Judge Althea Violet Alexis-Windsor  
8 Trial Hearing - Courtroom 2  
9 Tuesday, 7 June 2022  
10 (The hearing starts in open session at 9.32 a.m.)  
11 THE COURT USHER: [9:32:13] All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE KORNER: [9:32:58] Yes.  
15 Good morning, sir. Before you continue with your evidence, we just have to go  
16 through some formalities.  
17 I suppose you'd better call the case again.  
18 THE COURT OFFICER: [9:33:10] Good morning, Madam President. Good  
19 morning, your Honours.  
20 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus Ali  
21 Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.  
22 And for the record, we're in open session.  
23 PRESIDING JUDGE KORNER: [9:33:28] Yes. Thank you.  
24 Appearances for the Prosecution. Anybody different from yesterday?  
25 MR NICHOLLS: [9:33:34] Yes, your Honour. Good morning.

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1 Julian Nicholls, I'm here again. Pubudu Sachithanandan, Ester Kosova,  
2 Alison Whitford, Claire Sabatini and Mohanad Elkholy. Thank you very much.  
3 PRESIDING JUDGE KORNER: [9:33:46] Thank you, yes.  
4 Victims.  
5 MR SHAH: [9:33:48] The same as yesterday, your Honour.  
6 I would just note for the record that Ms von Wistinghausen will be joining us at the  
7 afternoon session. Thank you.  
8 PRESIDING JUDGE KORNER: [9:33:57] Yes, thank you.  
9 Defence, the same as yesterday, Mr Laucci?  
10 MR LAUCCI: [9:34:04](Interpretation) Yes, good morning. We have one extra  
11 person, and that is Ms Drusilla Bret-Cunynghame-Robertson, who is our trainee.  
12 PRESIDING JUDGE KORNER: [9:34:13] Right. Yes, thank you very much,  
13 Mr Laucci.  
14 Yes, well, Mr Shah, you were in the middle of questioning yesterday afternoon when  
15 we broke. So if you'd like to complete your examination.  
16 MR SHAH: [9:34:26] Thank you, your Honour.  
17 WITNESS: DAR-OTP-P-0980 (On former oath)  
18 (The witness speaks Arabic)  
19 QUESTIONED BY MR SHAH: (Continuing)  
20 Q. [9:34:29] Good morning, Mr Witness. I hope you're doing well.  
21 I will just have maybe one or two more questions for you, and these are questions that  
22 I hope we can ask and have answered in public.  
23 And, Mr Witness, because we are in public session, please don't use the names of any  
24 individuals when you answer my questions. Thank you.  
25 Mr Witness, in your statement you describe how your brother and your nephew, who

1 was a teenager, both of whom were detained with you at Deleig police station, that  
2 they were taken away in vehicles and that you never saw them again. You also  
3 included both of them on your list of deceased victims that you provided to  
4 the Prosecution.

5 How did the disappearance and apparent death of your brother and your nephew  
6 impact your family?

7 A. [9:36:07] It impacted on my family massively. We've lost a brother and  
8 a nephew. Of course, my family got badly affected by that and we are still affected  
9 by what happened until this moment.

10 Q. [9:36:28] Mr Witness, was your family able to hold some sort of funeral  
11 ceremony for your brother and your nephew?

12 A. [9:36:41] No.

13 Q. [9:36:44] And why were you not able to hold a funeral ceremony?

14 A. [9:36:53] Because the situation was very difficult in the area. It didn't allow us  
15 to go outside of the area. The whole area was besieged by the militia. We were not  
16 able to get outside.

17 Q. [9:37:11] Thank you, Mr Witness. We have no more questions for you. And  
18 on behalf of our clients, we just want to thank you for your willingness to come and  
19 testify before their honours.

20 That's all our questions, your Honour.

21 PRESIDING JUDGE KORNER: [9:37:30] Yes. Thank you very much, Mr Shah.

22 Yes, Mr Edwards.

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

24 QUESTIONED BY MR EDWARDS:

25 Q. [9:37:40] Good morning, Mr Witness. Just bear with me for a second while I

1 organise myself.

2 Mr Witness, my name is Iain Edwards. I'm one of the lawyers representing Mr Ali  
3 Muhammad Ali Abd-Al-Rahman. Good morning.

4 A. [9:38:22] Good morning.

5 Q. [9:38:25] We didn't have an opportunity to meet last week, I'm afraid, but you  
6 met colleagues of mine on the Defence team. And I'm going to repeat one or two of  
7 the things that they mentioned to you last week, okay?

8 If at any point I ask you questions which you'd like me to repeat or which you don't  
9 understand, please don't hesitate to ask me to rephrase my question. Is that all right?  
10 Yeah.

11 The other thing is this: We have your witness statement, so your account is set out  
12 in a document that we've already read. It's not necessary for you to simply repeat  
13 what is in your statement. Do you understand?

14 A. [9:39:25] I understand.

15 Q. [9:39:29] Thank you. Many of my questions are very specific. They relate to  
16 very specific issues. And indeed many of my questions can be answered with  
17 a simple "yes" or "no" answer. So if we remember that, we -- we will be able to get  
18 through your evidence fairly quickly, I -- I hope. All right.

19 Your Honour --

20 A. [9:39:53] No problem at all.

21 MR EDWARDS: [9:39:56] Your Honour, I tried to collect those questions that require  
22 going into private session at the beginning. So can we get that out of the way now  
23 and then the rest of his evidence can be in public session?

24 PRESIDING JUDGE KORNER: [9:40:09] Yes.

25 Let's go into private session then, please.

- 1 (Private session at 9.40 a.m.)
- 2 THE COURT OFFICER: [9:40:21] We're in private session, Madam President.
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8 (Open session at 9.50 a.m.)

9 THE COURT OFFICER: [9:50:04] We're back in public session, Madam President.

10 MR EDWARDS: [9:50:12]

11 Q. [9:50:13] Now, yesterday you were asked some questions about what are called  
12 screening interviews that you provided to the Prosecution. A screening interview is  
13 a relatively short introductory interview that the Prosecution conducts to see if  
14 a potential witness might be able to provide more detailed evidence of interest to  
15 the Prosecution. Do you follow?

16 A. [9:50:53] Yes.

17 Q. [9:50:54] How did you first meet with anyone from the Prosecution?

18 A. [9:51:15] I met the investigator (Redacted)

19 (Redacted)

20 Q. [9:51:31] Were you put in -- how did you come to be put in touch with those  
21 people? Don't tell me any names for now. Just explain how you came to be put in  
22 touch with them.

23 A. [9:51:46] I -- it was a very good way of communication. It was really good.

24 Q. [9:51:54] Okay. It may be that my question wasn't clear or wasn't interpreted in  
25 a way that you understand.



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1 Did someone put you in touch with the Prosecution? Or did you make contact with  
2 the Prosecution yourself? Or did the Prosecution contact you?

3 A. [9:52:40] They contacted me directly.

4 Q. [9:52:42] Do you know how they got your contact details?

5 A. [9:52:57] I don't know.

6 Q. [9:53:08] You didn't ask them?

7 A. [9:53:13] I didn't ask them.

8 Q. [9:53:17] Weren't you curious?

9 MR SACHITHANANDAN: [9:53:22] Witness has answered the question,  
10 your Honour.

11 MR EDWARDS: [9:53:25] I'm asking a different question, your Honour.

12 PRESIDING JUDGE KORNER: [9:53:31](Microphone not activated)

13 MR EDWARDS: [9:53:32]

14 Q. [9:53:32] Weren't you curious?

15 A. [9:53:42] No.

16 Q. [9:53:47] In fact, for whatever reason -- I'm not suggesting it's -- it's your fault or  
17 anything like that. But, in fact, you were -- you underwent two screening interviews  
18 about a month apart. Correct? Or about -- about six weeks apart; is that right?

19 A. [9:54:16] No.

20 MR EDWARDS: [9:54:20] Your Honour, the first screening interview is  
21 DAR-OTP-0219-4793 and the second is 0219-4718. Sorry, 4716. They're  
22 about -- about six weeks apart.

23 Q. [9:54:57] When did you first -- we know about your educational background  
24 and we know about higher education studies that you have undertaken, okay.

25 When did you first hear about the person that the Prosecution call Ali Kushayb being

1 wanted by the ICC?

2 A. [9:55:44] I heard it on social media and media in general. I heard that  
3 the person called Ali Kushayb has handed himself in to the ICC.

4 Q. [9:56:08] Was that the very first time that you were aware that the person called  
5 Ali Kushayb had --

6 A. [9:56:22] That was the first time.

7 Q. [9:56:24] That was -- all right. Okay.

8 And it was at that point that you understood that the ICC accused him or  
9 the Prosecution of the ICC accused him of being responsible for crimes committed in  
10 Deleig, amongst other places, right?

11 A. [9:56:50] Yes, correct. He is responsible for the crimes committed in the entire  
12 area and specifically in Deleig. Full responsibility.

13 Q. [9:57:03] And being convinced that he is responsible for these crimes, you must  
14 have been very pleased to hear that he was finally in the hands of the ICC in  
15 The Hague, right?

16 A. [9:57:24] Yes, that's correct. And he has to take responsibility of everything  
17 that happened in Deleig. It's his full responsibility what happened in Deleig and  
18 the surrounding area. He was the leader of the militia, and he is well known to be  
19 the leader of the militia. And the militia was working with the support of  
20 the government. The militia are not organised, and they don't follow any law, but  
21 they gave them money, they gave them arms, they gave them vehicle and they told  
22 them "go".

23 Q. [9:58:08] Now, Mr Witness, I want it to be very clear that I don't dispute that you  
24 genuinely believe that.

25 Now, if I understand your evidence from your witness statement and from your

1 testimony yesterday, you were detained outside the police station in Deleig, correct?

2 You were never inside the police station.

3 A. [9:58:43] That's correct.

4 Q. [9:58:46] Did you ever in your life see the inside of the police station at Deleig?

5 A. [9:59:01] Yes.

6 Q. [9:59:03] When was that?

7 A. [9:59:10] I entered the police station at Deleig before the events, when I was at  
8 school, when I was at Deleig secondary school.

9 Q. [9:59:24] Oh, I see. Okay. All right.

10 But focusing on March 2004, were you ever aware of anyone detained inside  
11 the police station in Deleig?

12 A. [9:59:43] Yes, there were people detained inside the police station.

13 Q. [9:59:47] Who was detained inside Deleig police station in March 2004?

14 A. [10:00:00] (Redacted)

15 (Redacted)

16 THE INTERPRETER: [10:00:16] Inaudible last name.

17 (Redacted) And some other people that I don't know

18 or I didn't know their names.

19 MR EDWARDS:

20 Q. [10:00:27] There's -- there's one name that the interpreters didn't quite catch.

21 I'm sorry, it might -- it's probably going to be necessary for you to repeat those names

22 so that they are properly on the record, so that they're caught by the interpreters.

23 Can you run through that list of names again please, very slowly.

24 MR SACHITHANANDAN: [10:00:53] I'm so sorry. Is it possible to do this in -- this  
25 question in private session?

1 PRESIDING JUDGE KORNER: [10:01:02](Microphone not activated)

2 THE INTERPRETER: [10:01:05] Microphone, please.

3 PRESIDING JUDGE KORNER: [10:01:22] Why does he need to -- he's just being  
4 asked whom he knew to be detained at the police station without giving any details.  
5 He's just being asked for names.

6 MR SACHITHANANDAN: [10:01:34] Right. Not all of these individuals are  
7 deceased, which is why I thought, perhaps, if we're going into detail, we -- we might  
8 want to do that in private session.

9 PRESIDING JUDGE KORNER: [10:01:47] Well, all right.  
10 Mr Edwards, I mean, I suppose.

11 MR EDWARDS: [10:01:52] Yeah.

12 PRESIDING JUDGE KORNER: [10:01:54] Let's go into private session, then, and he  
13 can repeat the names.

14 (Private session at 10.02 a.m.)

15 THE COURT OFFICER: [10:02:10] We're in private session, Madam President.

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16 (Open session at 10.05 a.m.)  
17 THE COURT OFFICER: [10:05:03] We're back in public session, Madam President.  
18 MR EDWARDS: [10:05:11]  
19 Q. [10:05:13] All right. I don't want to spend too much time on this. You've told  
20 us you were never detained inside the police station.  
21 Did you ever tell anyone that you were detained in the police -- in the police station?  
22 A. [10:05:39] When I was detained in the area in the Deleig police station, and in  
23 particular the director of the secondary Deleig school whose house was in  
24 the south -- in the southern part of the police station. He saw me inside the police  
25 station and he was not able to come so that to -- well, take me or -- so that the militia

1 forces will not take me. He was the head of the school or the director of the school.

2 Q. [10:06:27] Okay. So why were you inside the police station, if that's where  
3 the director saw you? How did that happen?

4 A. [10:06:44] I was in the square, the square between the police station and a tree.  
5 I was there in that area and a lot of people were there in that area, maybe 130 people  
6 were in that area. I was not inside the police station. I was outside that area.

7 Q. [10:07:06] Okay. All right. So I'm going to ask my question again. My  
8 question is this: Have you ever told anyone that you were detained inside the police  
9 station itself, inside the building?

10 A. [10:07:27] I was in a difficult situation. And also the people who were there  
11 were in a difficult situation, so we were not able to talk to each other because we were  
12 lying on the ground.

13 Q. [10:07:46] Now, have you ever told anyone -- I'm focusing on the word "ever"  
14 here, have you ever told anyone that you were detained inside the police station?

15 A. [10:08:03] No.

16 Q. [10:08:05] All right. That's fine.

17 Can we bring up the statement, please, DAR-OTP-0221-0553. This is not for  
18 broadcast. This is at -- and behind tab 1 of the Prosecution's list of materials, please.  
19 And what I'd like to focus on, please, once it's up, is the -- sort of the bottom third of  
20 the document.

21 Yes, okay.

22 Now, Mr Witness, I'm not going to -- I'm not going to say the dates, but do you see  
23 the document on the screen there?

24 A. [10:09:53] Yes, I do.

25 Q. [10:09:54] So we see that your statement was taken over the course of five days,

1 but not five consecutive days. Those five days were over a period of nine days.

2 You were advised not to tell other people that you were providing a witness  
3 statement to the Prosecution, do you remember that, by the interviewers?

4 A. [10:10:27] No.

5 Q. [10:10:30] All right. Well, if you weren't given that advice, did you speak to  
6 others that you were in the process of providing a witness statement to the  
7 Prosecution during this nine-day period?

8 A. [10:10:53] No.

9 Q. [10:10:55] Well, even if you didn't tell others that you were providing  
10 a statement to the Prosecution, did you discuss with anyone other this nine-day  
11 period the events of 2003, 2004 in Darfur and what you say you experienced?

12 A. [10:11:20] No.

13 Q. [10:11:29] If we could please go over to the -- it's the third page of the PDF. It's  
14 paragraph 13 of the statement. Again, not for broadcast, please.

15 While that comes up on to the screen, I'm just going to read a sentence from  
16 paragraph 13 of your statement, okay. So listen carefully, please. You said this:  
17 "Between September to December 2003, there was a widespread attack in the eastern  
18 part of Arawala ..." and then you provide a number of other locations, okay. Do you  
19 follow?

20 A. [10:12:30] Yes, I'm following.

21 Q. [10:12:32] Now, what I'm interested in focusing on is the use of the words  
22 "widespread attack". Do you -- I know that it was some time ago that you gave this  
23 statement, but do you recall what the question was from the interviewer that caused  
24 you to give that answer and to use the words "widespread attack"?

25 A. [10:13:08] No.

1 Q. [10:13:11] Now, the words "widespread attack" are being translated to you into  
2 Arabic. Were these words that you used or were these words that the interviewer  
3 used?

4 A. [10:13:33] Well, yes, I used this term "widespread attack". Yes, I used this term.

5 Q. [10:13:42] And why did you use those words in particular?

6 A. [10:13:56] I used these terms because I was present when they used these attacks  
7 in an intensive manner. That's why I used this phrase.

8 Q. [10:14:13] Because the reason I ask the question is because "widespread attack"  
9 has a very particular meaning in international criminal law. So I want to know if  
10 you chose those words knowing that they have a particular meaning in international  
11 criminal law or not.

12 A. [10:14:42] A lot of attacks were carried out that time and they were repeated so  
13 many times and they were in an intensive manner.

14 Q. [10:15:00] I see. Thank you. Now I want to move on to something that you  
15 say in paragraph 14.

16 Can we just scroll, scroll up a bit? Yes, all right.

17 So I want to -- I want to ask you a few questions about what you heard about an  
18 attack in Masa, okay.

19 A. [10:15:29] (No Interpretation)

20 Q. [10:15:30] Now, it -- it wasn't led by -- by the Prosecution, but it -- this attack is  
21 mentioned in your statement and I need to deal with it.

22 First of all, you can confirm that - and I just want to get the words correct - that you  
23 yourself are not an expert in identifying the result of a chemical attack or chemical  
24 poisoning.

25 A. [10:16:23] I am not a specialist in this field, of course. But what happened to



1 the victims can make you reach this conclusion, but I am not an expert in this field.

2 Q. [10:16:44] No. All right.

3 And the people -- you didn't see this, but the people who spoke to you about what  
4 they saw, they themselves weren't expert -- experts in being able to assess the effects  
5 of a chemical attack or poisoning, right?

6 A. [10:17:07] No, they are not expert in this field. And the experts were not able,  
7 of course, to reach the area so that they can write their reports about what happened.  
8 There were 40 people and they were unable, of course, to do their work.

9 Q. [10:17:25] Are you aware that there are certain high explosives that can cause  
10 what's called blast overpressure that result in internal injuries that can kill people  
11 without there being external -- externally visible injuries?

12 A. [10:17:45] No, I don't know.

13 Q. [10:17:47] Are you aware that there's no credible evidence at all that chemical  
14 weapons were used in Darfur in 2003, 2004?

15 A. [10:18:04] If experts, of course, were allowed to do their work they must have  
16 reached that conclusion. But there were no experts in this field so that they can  
17 ascertain that chemical weapons were used. So investigators and the experts were  
18 not allowed to do that. And because nobody was able to know exactly what  
19 happened, and this was a problem, of course, they said the situation was extremely  
20 difficult.

21 PRESIDING JUDGE KORNER: [10:18:39] Mr Edwards, I mean, I don't know why  
22 you're pursuing this. I don't think for one moment - I haven't consulted my  
23 colleagues - that we would be -- might draw a conclusion from this that there was  
24 chemical weapons.

25 MR EDWARDS: [10:18:55] No, no. Your Honour will understand that it is such

1 a serious and sensitive allegation to make -- to be made, to find its way into the trial  
2 record. And I just needed to deal with it for that -- for that reason.

3 PRESIDING JUDGE KORNER: [10:19:12] Yes, well he says straightaway. I mean,  
4 this is -- they -- all he can say is that it was -- it was suspected, but there's absolutely  
5 no evidence.

6 MR EDWARDS: [10:19:21] Yes. I'm going to move on.

7 Q. [10:19:26] Now, what I want to move on to now is to understand about your  
8 movements between your home village and Deleig. I'm not going to say the name of  
9 your home village. I don't want you to say the name of your home village either.  
10 All right? Do you understand?

11 A. [10:20:05] (No interpretation)

12 Q. [10:20:06] Okay. Before that's translated, right, I'm not going to say the name  
13 of your home village and I ask you, please, do not pronounce the name of your home  
14 village.

15 Do you understand?

16 A. [10:20:41] (No interpretation)

17 Q. [10:20:41] Yes, can we have a translation of that last answer from the witness,  
18 please.

19 A. [10:20:50] Yes, now we can hear. Thank you. Yes, I can hear now.

20 Q. [10:20:57] Right.

21 Paragraph 15, please. Thank you.

22 Look at the screen. You understand a bit of English, don't you?

23 A. [10:21:37] Well, I understand English, but I'm not very -- very good at that.

24 Q. [10:21:44] Yeah. That's fine. Okay. All right.

25 Well, look, this says that your village was attacked during the month of

1 September 2003 and that there were several attacks after that period until the week  
2 prior to your arrest in Deleig in March 2004. I want to ask you a few questions about  
3 that period, okay.

4 After the first attack of September 2003, where did you go?

5 A. [10:22:31] Can you repeat the question, please.

6 Q. [10:22:33] After the first attack against your home village in September 2003,  
7 the ninth month of 2003, where did you go?

8 A. [10:22:50] I went to some hills to the south of Gaba.

9 Q. [10:23:00] And how long did you stay in those hills after that first attack  
10 in September 2003?

11 A. [10:23:18] Seven days. Seven days without food or water.

12 Q. [10:23:24] And after those seven days did you return to your home village, or  
13 did you go somewhere else?

14 A. [10:23:39] We tried to go to Deleig, but the situation was extremely difficult and  
15 it was impossible to go during the day. But during the night maybe I can, because  
16 there are lots of militias spread in that area and the armed forces as well.

17 We tried to go to Deleig, but it was, as I said, extremely difficult. We tried to go  
18 through Sindu. We went to Sindu, but we also found out that everything was closed,  
19 and so that we came back to the hills.

20 After that, we tried to go to Deleig. Because the nearest area to us was Deleig, and  
21 this, of course, would take around four hours, and the other way will take eight hours.  
22 So we said we can use this short route to Deleig and to some other areas.

23 Q. [10:24:47] Now, if you spent about a week in the mountains after the first attack  
24 on your home village, for about a week, and then going maybe to Sindu, trying to get  
25 to Deleig and so on, when was it that you finally managed, when you finally

1 succeeded to get into Deleig? Was it still September 2003?

2 A. [10:25:22] Yes.

3 Q. [10:25:23] And then from 2003 until March of 2004, you remained living in  
4 Deleig; is that correct?

5 A. [10:25:38] Can you please repeat the question.

6 Q. [10:25:40] So from September 2003, the ninth month of 2003, until the third  
7 month of 2004, you continued to live in Deleig; have I got that right?

8 A. [10:26:04] Yes, that's correct.

9 Q. [10:26:15] Now, just again, so I want to be very clear, is it the case that you  
10 would occasionally return to your home village during that period of September 2003  
11 to March 2004?

12 A. [10:26:43] No, I -- no. Until this moment, I did not go back to my village.

13 Q. [10:26:54] Paragraph 17 then, please.

14 The first sentence of paragraph 17 says this, sir: "We reached Deleig on Friday  
15 5 March 2004, early in the morning around 04:00 a.m." And you went to the house of  
16 your father's stepbrother. I want to ask you about that.

17 A. [10:27:37] (No interpretation)

18 Q. [10:27:37] Okay. So you reached Deleig, having travelled from where?

19 A. [10:27:47] From the hills to the south of Gaba, the Kaskildo mountains or hills.  
20 Gaba and Kaskildo, they are to the south. So I came from those hills and mountains,  
21 and it took me around four hours.

22 Q. [10:28:09] But why were you in the hills and the mountains in the days before  
23 5 March 2004?

24 A. [10:28:27] I was in those hills or mountains because, well, the villages were  
25 burnt out and all the wells could not be used. We -- when we went to the mountains,

1 of course, it was for protection for ourselves. When there were attacks, of course, we  
2 always go to the mountains and the hills. And, of course, there are hiding places in  
3 these hills, so we use them when there are attacks against the village.

4 Q. [10:29:06] But the thing is, you were based in Deleig during that time, between  
5 September 2003 and March 2004, weren't you?

6 A. [10:29:24] Yeah, as I was in Deleig, but I was a student. So I came back to take  
7 a few things, and things -- problems happened, so I had to leave.

8 Q. [10:29:36] No, that's not my question.

9 From September 2003 until March of 2004 you have told us you were in Deleig, safe  
10 with your family. So why are you going into the mountains and the hills where  
11 there's insecurity during that period?

12 A. [10:30:07] Can you please repeat the question.

13 PRESIDING JUDGE KORNER: [10:30:12] I think, Mr Edwards, this is going to go on  
14 for some time, and I think the real question is how come, on what he's saying today,  
15 did he tell the investigators that he didn't get there till March 2004.

16 MR EDWARDS: [10:30:28] Well --

17 PRESIDING JUDGE KORNER: [10:30:30] Whichever your case is, whichever way  
18 around it is. Your case, as I understand it, is that he was there all the time.

19 MR EDWARDS: [10:30:39] Based on his own evidence.

20 PRESIDING JUDGE KORNER: [10:30:41] Absolutely. Okay. But, I mean, one  
21 way or another, I think that this could go on for some time, unless you simply ask  
22 him how it is that he came apparently to tell the investigators he was in the hills for  
23 six months.

24 MR EDWARDS: [10:30:54] Yes, okay. Can I -- I'll do that. There's just one little  
25 snippet I want to ask him about first.

1 Q. [10:31:03] Paragraph 18 of your statement, sir, you say, at 7.00 a.m. on 5 March,  
2 after you've arrived in Deleig, you're getting yourself ready, and you say: "Despite  
3 the attacks in [...] the rest of the eastern region, life in Deleig was normal, markets and  
4 schools were open, all businesses were functioning ..."

5 Do you remember telling the investigator that?

6 A. [10:31:55] But after we arrived -- so it's correct that when we arrived the schools  
7 were open and the market was open, but on the 5th, exactly, an attack happened on  
8 the area and a search operation started. And that's why people started escaping to  
9 the mountains.

10 Q. [10:32:25] So you heard her Honour's question to me, and I'm going to put  
11 that -- I'm going to ask that question to you.

12 Why did you tell the investigator that you reached Deleig on Friday, 5 March 2004, if  
13 you had been living in Deleig since September of 2003?

14 Can we have an answer, please.

15 A. [10:33:36] Yeah, I heard the question. I want to clarify this. When I went to  
16 the school in Deleig, I was -- I was a student there. Sometimes we used to go and get  
17 money for -- for my living in Deleig, so I used to go back to the village to get that  
18 money.

19 So when I went to the area, an attack happened in Gaba, and that's why I went to  
20 the mountains. And after I went to the mountains I went back to Deleig.

21 So I was in the mountains for a week, and then after that I went to Deleig and  
22 a problem happened. I entered on 5 March. It was a Friday. In the house of  
23 (Redacted), I found the family, the family; the father and the mother and all my  
24 siblings.

25 Q. [10:35:11] Okay. Mr Witness, you can stop there for a second. So I just

1 wanted to know about your travel from your home village to Deleig. We'll come on  
2 to what you found in Deleig in a moment, okay.

3 Was your home -- your home village had been attacked since September of 2003.  
4 Were there still people living in your home village after that attack, or was it  
5 completely pillaged, completely abandoned?

6 A. [10:36:01] From September until December many attacks happened, so people  
7 escaped to the mountains and then go back and so on and so forth, until December.

8 Q. [10:36:13] After December, what was the situation like?

9 A. [10:36:21] I'm saying from September until December, many, many attacks  
10 happened. But then the last attack happened in December.

11 Q. [10:36:30] Okay. And then after --

12 A. [10:36:32] The last attack happened in December and then nobody went back to  
13 the village.

14 Q. [10:36:43] So when you go back to the village in March of 2004 or maybe the end  
15 of February 2004, you're returning to a completely abandoned village in order to get  
16 money.

17 Is that your evidence, sir?

18 A. [10:37:03] Correct.

19 Q. [10:37:09] Why hadn't you brought your money from that village to Deleig  
20 months and months earlier?

21 A. [10:37:32] Because there was no security, how can I go back?

22 Q. [10:37:37] There was more security for your money in a completely abandoned  
23 village, was there?

24 A. [10:37:59] Yes, nobody went back to the village after that. Until today, people  
25 are all in the refugee camps until today.

1 Q. [10:38:21] And who did you -- don't give me a name. You can refer to anyone  
2 by your relationship with them, perhaps. Who did you travel back to your home  
3 village with from Deleig in order to get this money? Or did you just travel by  
4 yourself?

5 A. [10:39:01] Sometimes people go to the village because we need something, so if  
6 we need something from there we'll go back, we'll get it and come back to Deleig.

7 Q. [10:39:16] Yeah. I don't want to know about what normally was the situation.  
8 On this occasion, at the end of February 2004, who did you travel back to your home  
9 village with in order to get money?

10 A. [10:39:38] No, I didn't go. I didn't go back to the village at all. Since 2004 until  
11 now, I didn't go back to my village.

12 Q. [10:39:57] I'm going to move on.

13 Now, you talk about what happened to you on 5 March 2004 from paragraph 17  
14 onwards in your statement. You were ...

15 Your Honour, I'm going to ask about what he was wearing. I don't think it's  
16 a problem, but I turn to my learned friend to see if this is going to create any  
17 difficulties.

18 PRESIDING JUDGE KORNER: [10:40:36] (Microphone not activated).

19 MR EDWARDS: [10:40:37] Thank you.

20 Q. [10:40:38] You were -- you were wearing a school uniform, right? If I  
21 understand your evidence.

22 A. [10:40:48] Correct.

23 Q. [10:40:51] It would have been obvious to anyone with a pair of eyes that you  
24 were a school student on the morning of 5 March 2004, correct?

25 A. [10:41:08] Yes, I was wearing the school uniform, which means black trousers



1 and white shirt. And that is the school uniform of the secondary school in Deleig,  
2 yes.

3 Q. [10:41:24] And when the militia were bringing out the males from the house that  
4 you were at, were you asked for any form of ID?

5 A. [10:41:53] Of course the members of the militia don't know the school uniform.  
6 They don't know the difference between the different outfits people wear and they  
7 didn't ask me for an ID card or anything else. They just took us from the house to  
8 the police station. But a person from the military and the intelligence services, one of  
9 them was dressed was in a military uniform and the other was in civilian clothing.  
10 Those are the people who asked me my name and where I study and other questions.

11 Q. [10:42:43] Okay. And that was in the afternoon of 5 March just before you  
12 were released, correct?

13 A. [10:42:53] Correct.

14 Q. [10:42:55] We'll come on to that, I promise. But at the moment I'm focusing on  
15 what happened early in the morning.

16 PRESIDING JUDGE KORNER: [10:43:01] Mr Edwards, before you move on, sorry, I  
17 think we'd really like to know.

18 You say the militia don't know the school uniform. Why not? Why aren't  
19 the militia aware what a school uniform looks like?

20 THE WITNESS: [10:43:31](Interpretation) They don't know it because those groups  
21 are people that were given vehicles and arms, but they don't have a lot of information  
22 really. They don't know the difference between a school student or a normal citizen.  
23 But the military knew, of course. They know that the school uniform is black  
24 trousers and white shirts. Everyone knows that. The members of the militia would  
25 have asked me if they knew what kind of uniform I was wearing. They would have

1 asked my name and the name of my school, but they didn't. It was only a member  
2 of the military and the intelligence service that asked me about this. They noticed, of  
3 course, that I was dressed in black trousers and a white shirt and I had pens with me.  
4 And that's why they asked me about my school, my head teacher. I answered all  
5 their questions and then I were released -- I was released. But the militia members  
6 didn't ask me anything about that.

7 PRESIDING JUDGE KORNER: [10:44:52] Okay. You said all that. I -- are  
8 you -- when you say the militia members didn't ask you or know that, I repeat  
9 the question: Why didn't they know that if they come from an area where  
10 everybody goes to school in the same clothes?

11 THE WITNESS: [10:45:28](Interpretation) No, not all the students wear the black  
12 trousers and the white shirt. The primary schools, for example, they wear *jallabiya*,  
13 but it's only one secondary school in the whole district as -- the secondary school in  
14 Deleig, and we used to wear black trousers and white shirts. But primary schools,  
15 no, the students they wear *jallabiya*.

16 MR EDWARDS: [10:46:02]

17 Q. [10:46:03] Okay. And, Mr Witness, there's absolutely no way you would have  
18 been identified as a primary school student. We can agree that, I suppose.

19 A. [10:46:22] No.

20 Q. [10:46:23] So it's because the militia didn't recognise school uniforms.

21 Could we have a look at paragraph 19. First line of paragraph 19.

22 I'm going to read out a couple of sentences from this paragraph of your account, sir:  
23 "Many armed men arrived in front of our house at 7:00 a.m. They were militias and  
24 military all together. I differentiate the militias from the military from the way they  
25 dress. The military wear uniforms".

1 So, 7 a.m., 5 March 2004, there were men there to detain people, young men, and  
2 some of these men were military who would have recognised your school uniform,  
3 right?

4 A. [10:47:51] Okay. The members who entered the house were from the militia.  
5 But there were other members obviously in Land Cruiser vehicles that were outside  
6 the house. And when they took me, they took me from the house to the police  
7 station. Even the soldier asked me, "Who brought you here? Who brought you  
8 here?" And I said I was brought here by those guys.

9 Q. [10:48:25] Okay. But again, that on your evidence is later. That's at about  
10 5 p.m., 5.30 p.m. on 5 March, right?

11 A. [10:48:41] Correct.

12 Q. [10:48:44] You were, you've told us, beaten and pushed from your home to  
13 the police station. How long did that take? How long did it take for you to walk or  
14 to be walked from that house to the police station? Just approximately.

15 A. [10:49:11] From the house to the police station, it was approximately 10 minutes.  
16 Ten minutes. It's quite close.

17 Q. [10:49:24] So 10 minutes to walk there. I mean, the point is you're arriving  
18 outside the police station a pretty short time after you're brought out of your home,  
19 right?

20 A. [10:49:50] I said the time from the house to the police station is approximately  
21 10 minutes, but from 7 a.m. until about 5 p.m. I was --

22 THE INTERPRETER: [10:50:09] Inaudible.

23 MR EDWARDS: [10:50:14]

24 Q. [10:50:14] You were detained outside the police station, is that what you said?

25 A. [10:50:22] Correct.

1 Q. [10:50:24] And when you arrived you already saw about a hundred other people  
2 outside the Deleig police station, a hundred other detainees at the police station,  
3 correct?

4 A. [10:50:45] No, the people detained outside the police station were over 120, 130,  
5 more than that. But the people who were detained inside the police station, I only  
6 know three of them and I don't know the rest.

7 Q. [10:51:01] Yeah. No, fair enough.

8 The point I just want to clarify is that, when you arrived outside the police station,  
9 there were already a large number of detainees there, correct?

10 A. [10:51:18] Correct. More than 130.

11 Q. [10:51:21] Okay. And as far as you know, were you the last group of men to  
12 arrive outside the police station, or did other men -- were other men brought to that  
13 place over the course of the morning?

14 A. [10:51:47] We found a large number of people there. And after we arrived  
15 outside the police station, those members that went to search the houses brought  
16 more people to the police station.

17 Q. [10:52:04] Thank you. Now, you stated yesterday that all the detained persons  
18 were Fur. Do you remember giving that evidence?

19 A. [10:52:14] Yes.

20 Q. [10:52:15] Did you know -- I just want to be clear. Did you know every single  
21 one of the detainees that were outside of the police station? Did you recognise every  
22 single one of them?

23 A. [10:52:34] Yeah, I knew them.

24 Q. [10:52:36] Every single one of these detainees you knew?

25 A. [10:52:42] No, not every single one, but I knew a lot of people, and I can

1 remember their names.

2 Q. [10:52:49] Okay. There were some that you recognised who were Fur and, I  
3 suggest to you, many that you didn't recognise. Does that accurately sum up  
4 the situation?

5 A. [10:53:03] No, I knew all of them. I knew where they were from and I know  
6 that they were all from the Fur ethnicity.

7 Q. [10:53:11] Did the militia that brought you to outside the police station, did they  
8 permit you to -- to chat amongst yourselves, or were they trying to keep some sort of  
9 order?

10 A. [10:53:36] No, they didn't allow anyone to -- to chat, speak to other people. It  
11 was just torture, beating, kicking, and people were not talking to each other.

12 Q. [10:54:04] Paragraph 27 of your statement, you state -- this is at page 7, the last,  
13 the penultimate sentence, paragraph 27, this is at 0559: "... we were not allowed to  
14 lift our heads to look around." Is that the situation?

15 A. [10:54:42] Correct.

16 PRESIDING JUDGE KORNER: [10:54:43] Sorry, Mr Edwards, I want to go back just  
17 for a moment to yesterday. I just want it clear.

18 Were you lying on the ground with your face down or your face up?

19 THE WITNESS: [10:55:01](Interpretation) I was like this, on my belly. That's how  
20 we were lying.

21 MR EDWARDS: [10:55:12]

22 Q. [10:55:13] And, well, just -- we'll follow on from that for a moment.

23 Paragraph 29, in fact you say at the -- in the afternoon when you were -- just before  
24 you were allowed to go, you stood up and you say, you say this, halfway through  
25 paragraph 29: "My brow was burned because the ground was so hot ..."

1 Yeah. Is that true?

2 A. [10:55:51] That's correct.

3 Q. [10:56:01] Now, the -- just coming back to what you say about not being allowed  
4 to lift your head to look around. Was that an order that was expressly given, or was  
5 it an implicit, something that you understood implicitly?

6 A. [10:56:29] No, there was an order for people to not lift their heads. And if  
7 people -- if people lift their heads, they would be beaten and kicked. And that was  
8 a case between 7 o'clock in the morning until 5 o'clock in the evening. People got  
9 really tired. I personally got extremely tired. My shirt got torn and my face. It  
10 was a real problem.

11 Q. [10:56:59] Okay. This might sound like a silly question, but just bear with me.  
12 Were you even allowed to rest your hands or rest your forehead, rest your brow on  
13 your hands, or was that not allowed either?

14 A. [10:57:29] No. I had to put my head forward like that and my arms to the back  
15 like this.

16 Q. [10:57:35] But were you allowed to turn your head so that you could rest your  
17 cheek on the ground?

18 A. [10:57:49] No. But in the last few minutes, a person came. He was dressed in  
19 khaki. And I think another person from the intelligence service. He asked me to  
20 get up, and he asked me what's my question, and he asked me which school I go to.  
21 I told him in Deleig secondary school, and he asked which year, and I said the first  
22 year. And then he asked me about my head teacher, and he asked me, "Where does  
23 he live?" And I said, "In that house." And he said, "Okay, that's fine. Get up."

24 Q. [10:58:30] Okay. Thank you. All right.

25 But, again, that's at the very end of the day. I'm focusing on the conditions during

1 the course of the day, up until about 5 p.m.

2 One last question. What -- you've told us what would have happened if you had  
3 raised your head. What would have happened if you had turned onto your back to  
4 relieve the pressure on your forehead or just to change position?

5 A. [10:59:21] It was a very long time, and the ground was really hot. And,  
6 actually, at the time I thought that death would be better than torture.

7 Q. [10:59:35] Okay. If you had taken -- if had you decided, "This is too  
8 uncomfortable. I'm going to turn over to lie on my back," would that have got you  
9 into trouble?

10 A. [10:59:52] Of course. I would have been beaten and kicked.

11 Q. [10:59:58] Thank you.

12 Your Honour, I see the time. I'm making very good progress. A bit -- a bit longer  
13 on this. And I'll certainly be done before lunch.

14 PRESIDING JUDGE KORNER: [11:00:10](Microphone not activated)

15 THE INTERPRETER: [11:00:16] Microphone, please.

16 PRESIDING JUDGE KORNER: [11:00:19](Microphone not activated)

17 THE INTERPRETER: [11:00:21] Mic, please, your Honour.

18 PRESIDING JUDGE KORNER: [11:00:27] I'll start that again.

19 Sir, we're going to have a break now until 11.30, to give you a chance to relax and  
20 have a cup of coffee, and your evidence will be finished before lunch today.

21 So, yes, 11.30, please.

22 THE COURT USHER: [11:00:46] All rise.

23 (Recess taken at 11.00 a.m.)

24 (Upon resuming in open session at 11.34 a.m.)

25 THE COURT USHER: [11:34:57] All rise.

Trial Hearing  
WITNESS: DAR-OTP-P-0980

(Open Session)

ICC-02/05-01/20

1 Please be seated.

2 MR EDWARDS: [11:35:43]

3 Q. [11:35:44] Welcome back, Mr Witness.

4 I think we have a document teed up. It's OTP -- OTP-0224-0633, redacted version,  
5 please. It's the satellite image.

6 So, yeah, okay. Thank you.

7 Mr Witness, at paragraph 23 of your statement, you say that, lying down on your  
8 front outside the police station, you were "first in the row". I'd like to ask you a little  
9 bit about that. Okay?

10 A. [11:36:42] (Speaks English) Yeah.

11 Q. [11:36:46] When you say "first in the row", do you mean -- well, let me ask it this  
12 way: Was there anyone lying to your right?

13 A. [11:37:04] Yes.

14 Q. [11:37:05] Was there anyone lying to your left?

15 A. [11:37:10] Yes.

16 Q. [11:37:11] And was there anyone lying in front of you?

17 A. [11:37:21] Yes.

18 Q. [11:37:22] And there were people lying behind you as well?

19 A. [11:37:29] No, no, no.

20 Q. [11:37:31] Oh, I see. Okay. All right.

21 So as -- well, let me put it this way: As more and more detainees were being brought  
22 to outside the police station, where were those detainees made to lie down, behind  
23 you or more in front of you?

24 A. [11:38:05] To the south.

25 Q. [11:38:06] Yeah. Okay.



1 A. [11:38:12] Well -- yes, well, just facing south on our feet on the -- on the northern  
2 side.

3 MR EDWARDS: [11:38:26] May I ask the interpreter to just repeat the very last part  
4 of that sentence, because it's not been picked up by the stenographer.

5 THE INTERPRETER: [11:38:36] Okay. What he said, he is lying down with his face  
6 and feet to the south.

7 You can maybe ask the question again (indiscernible).

8 MR EDWARDS:

9 Q. [11:38:51] We're coming back to what we were talking about yesterday. And I  
10 apologise, it might be slightly annoying, but we'll just do this.

11 As I understand from your evidence, your head is facing south towards where  
12 the teacher's premises is marked, right?

13 A. [11:39:13] Yes.

14 Q. [11:39:14] So to your right is where we have the -- the square, the open space of  
15 Deleig, right?

16 A. [11:39:24] Yes, yes.

17 Q. [11:39:26] To your left would be where the police station is.

18 A. [11:39:36] No, to the north. Well, to the east, according to the -- well, to  
19 the map, yeah.

20 Q. [11:39:48] Yeah, east is your left. Do you follow?

21 A. [11:39:51] Yes.

22 Q. [11:39:52] All right. So as more detainees are being brought to the police  
23 station, are they being lined up and made to lie down ahead of you or behind you?

24 A. [11:40:13] Behind us.

25 Q. [11:40:33] Yeah. Okay. Just answer the next question "yes" or "no". Do you

1 know the person who was lying immediately to your right?

2 A. [11:40:46] Yes.

3 Q. [11:40:47] And do you know the person who was lying immediately to your  
4 left?

5 A. [11:40:52] Yes.

6 Q. [11:40:54] If -- yeah, okay.

7 Now, we've got the -- the image up on the screen there. And you see that over to  
8 the west, on the other side of the square, that's where the mosque is, or it's where  
9 the market mosque is, correct?

10 A. [11:41:18] That's correct.

11 Q. [11:41:23] Was that a mosque that you ever prayed at?

12 A. [11:41:30] Yes.

13 Q. [11:41:33] Would someone in the mosque have been able to see the police station  
14 and what was going on outside the police station?

15 A. [11:41:49] Yes.

16 Q. [11:41:54] We know that the mosque is contained within a compound, but what  
17 I want to ask you about is the mosque building itself. Not the wall around  
18 the compound, but the mosque building itself, okay. Are you with me?

19 A. [11:42:13] Well, there was a wall, and to the west of the mosque is the market.  
20 To the west and to the north is the market.

21 Q. [11:42:22] Yeah. Thank you.

22 There is -- well, one of the four walls of the mosque faces on to the -- the square,  
23 correct?

24 A. [11:42:38] Yes, that is correct.

25 Q. [11:42:40] Does that wall -- does that wall have any windows in it?

1 A. [11:42:54] Which -- which wall are you talking about? The mosque or  
2 the market?

3 Q. [11:43:03] Yeah -- well, no, the mosque. So I'm asking you about the mosque,  
4 and we see from the image that there is one of the walls of the mosque that faces on to  
5 the square. Are you with me? Okay.

6 A. [11:43:22] Yes, there's the wall and there are windows in the mosque and  
7 the road is to the east.

8 Q. [11:43:33] Okay. Now, whilst you were lying on the ground, forehead on the  
9 ground, arms behind you, we haven't yet explored how noisy or how quiet it was.  
10 Can you tell us something about that.

11 A. [11:44:02] No, there were no noise. But, of course, the militias are just moving  
12 around. Some of the militias are moving around. Moving a lot. Using camels and  
13 horses and cars. Where there was no movement of the people, everybody's at their  
14 home.

15 Q. [11:44:27] Yeah, okay. So the detainees obviously themselves are not speaking,  
16 but there are militia walking around, animals and cars. Okay.

17 And you say that you heard people being beaten, have I got that right?

18 A. [11:44:45] Yes, that's correct.

19 Q. [11:44:55] And you've told us yesterday that you were beaten yourself.

20 A. [11:45:03] Yes.

21 Q. [11:45:04] Beaten when you were being taken from your home to the police  
22 station, first.

23 A. [11:45:15] Yes.

24 Q. [11:45:16] And then beaten when you were lying on the ground outside  
25 the police station.

1 A. [11:45:23] Yes.

2 Q. [11:45:25] Where on your body were you beaten?

3 A. [11:45:33] Well, my back. In my back, yes.

4 Q. [11:45:44] Okay. With canes, with sticks, you told us yesterday.

5 A. [11:45:53] Yes, a stick. It's a very heavy stick, of course, which is very, very,  
6 very big stick. Very, very big stick.

7 Q. [11:46:08] Okay. And did this result in any broken bones, broken ribs, broken  
8 shoulder blade? Anything like that?

9 A. [11:46:23] No, no, nothing happened like that.

10 Q. [11:46:27] Was the skin broken?

11 A. [11:46:33] No. But my face was really affected because I said it was very, very  
12 hot because we were lying on our faces down. So it was very hot, so my face was  
13 burnt.

14 Q. [11:46:49] Let's just focus on your back, though, for a moment. Bruising to  
15 your back?

16 A. [11:47:00] We were, of course, beaten on the back, but we were lying on our  
17 faces. And as I said, it was very hot, so my face was affected by this heat.

18 Q. [11:47:15] Yeah. Any bruising on your back?

19 A. [11:47:20] No.

20 Q. [11:47:23] Any scarring at all on your back? Any signs at all today resulting  
21 from the beating?

22 A. [11:47:35] No, no.

23 Q. [11:47:38] Now, yesterday my learned friend was asking you questions about  
24 your screening interviews. Okay. So, once again, the screening interviews are  
25 the interviews that are given before you give your main witness statement. Do you

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1 follow?

2 A. [11:48:02] Yes.

3 Q. [11:48:04] And it's entirely accepted, these are obviously shorter, briefer  
4 statements than your main witness statement.

5 A. [11:48:19] Yes.

6 Q. [11:48:20] And on numerous occasions, my learned friend underscored  
7 the fact -- he was at great pains to point out that your screening interviews were brief.  
8 We don't dispute that.

9 But even though your screening interviews were brief, did you tell the truth when  
10 you answered questions during the screening interviews?

11 A. [11:48:45] Yes, I said -- yes, I said all the facts.

12 Q. [11:48:51] Okay. All right. Because -- of course, just because a screening  
13 interview is brief, that's not a reason for you to not tell the truth, is it?

14 A. [11:49:10] I stated all the facts I know.

15 Q. [11:49:13] Yeah, okay. So let's start with the first one, because it's -- it's agreed  
16 between the Defence and the Prosecution, you see, that there were two screening  
17 interviews. So let's have a look at the first one.

18 OTP-0219-4793, please.

19 This is at position or behind tab 7 of the Prosecution list of materials, your Honour.

20 Let's take it step by step.

21 And, Mr Court Officer, once -- what I'd like to do is have brought up on the screen, of  
22 course, not for broadcast, but page 3 of the document at ERN 4795. And I want to  
23 focus right at the bottom of that page, please.

24 While that's being brought up, Mr Witness, I'm going to read to you what the note of  
25 the investigator says. The note is that you said -- well, I'll read it out verbatim.

1 "P-0980 said," that's you, "said that he wasn't beaten" --

2 PRESIDING JUDGE KORNER: [11:50:55] Can you just wait. It's still not on  
3 the screen.

4 MR EDWARDS: [11:51:00] Oh, I'm sorry.

5 PRESIDING JUDGE KORNER: [11:51:46] I don't want to waste any time.

6 MR EDWARDS: [11:51:50] Yeah. Oh, there we are.

7 PRESIDING JUDGE KORNER: [11:51:51] Something seems to be happening.

8 MR EDWARDS: [11:51:53] Third page, right at the bottom of the page, please.

9 Yeah. Right at the bottom, please.

10 Zoom in more, please. That's it. Right.

11 Q. [11:52:04] Okay: "P-0980 said that he wasn't beaten and the only injury he  
12 sustained was on his forehead from lying face down all day."

13 I appreciate this may not have been read back to you. I appreciate you didn't sign  
14 this document, but can you explain why that detail is in your screening interview,  
15 where you tell the investigator that you weren't beaten and that the only injury you  
16 sustained was on your forehead from lying face down?

17 A. [11:52:55] I talked about this matter and I said to the investigator that anybody  
18 who was in that area was beaten, and I have been beaten as well. I did not say that  
19 I was not beaten. I was beaten.

20 If there is a mistake, maybe there was some misunderstanding, because, well, my  
21 Arabic is not maybe that good.

22 Q. [11:53:34] Okay. Because not only do you say that you weren't beaten, you  
23 then provide a bit of an explanation, you provide a bit of context. You say,  
24 "but" -- or "and" the only injury you sustained was to your forehead. You're not only  
25 giving -- you're not only stating that you weren't beaten, but you talk about the one

1 and only injury that you sustained. Do you follow?

2 A. [11:54:18] I said that I have been beaten, that when I was lying on my head, this  
3 is the only injury I had sustained after that period.

4 Q. [11:54:36] All right. Well, then let's move on to the second screening interview.  
5 This, your Honour, is at tab 8, DAR-OTP-0219-4716. And your Honour will recall  
6 this is the second one, about six weeks after the first.

7 Again, page 3 of 3, Mr Court Officer.

8 Your Honour, perhaps I can just move on and start to quote the ...

9 All right. You say this. Again, this is a short interview, not read back to you, not  
10 signed, I accept that. And the note of the investigator says this: "He was initially  
11 taken to the outside open area where they were holding detainees."

12 PRESIDING JUDGE KORNER: [11:56:03] The document is up now, Mr Edwards.  
13 So what page is that?

14 MR EDWARDS: [11:56:07] So it's page 3 of 3, ERN finishing 4718.

15 Q. [11:56:13] Halfway through that paragraph, that top paragraph: "He was  
16 initially taken to the outside open area where they were holding detainees.

17 The open area was on the western side of the police station and there was a large tree.  
18 He was beaten and tortured and had his hand[s] tied."

19 In fact, it says "hand tied", singular. But okay.

20 Now here you say you were beaten. (Overlapping speakers)

21 A. [11:56:55] What do you mean by my hands were together? Can you explain  
22 that to me, my hands were tied.

23 Q. [11:57:01] Well, you see, Mr Witness, no, I can't explain this at all. These are  
24 your words as noted down by an investigator. So, no, I can't explain it.

25 I'm going to ask you to explain why you said or why there is a note that you said that

1 your hands are tied. Is that another mistake by the interpreter or by the interviewer?

2 A. [11:57:29] No.

3 Q. [11:57:37] Did you talk about anyone having their hands tied? Could that be  
4 the explanation for the confusion?

5 A. [11:57:48] No, I did not talk about anybody whose hands were tied. I said  
6 about the people who are found in that area at that moment in time.

7 Q. [11:58:01] Do you recall if the interviewer prompted you, asked you if your  
8 hands were tied?

9 A. [11:58:19] No. No, no, my hands were not tied, no.

10 Q. [11:58:22] Because I'm going to suggest, this detail could only have come from  
11 you, couldn't it?

12 A. [11:58:32] No.

13 Q. [11:58:35] And then we move on to your statement, your witness statement,  
14 paragraph 22 -- paragraph 22.

15 Now, of course, this wasn't a brief statement. You were interviewed over the course  
16 of five days, and you had the opportunity -- and the statement was read back to you  
17 at the conclusion of that process, correct?

18 A. [11:59:11] Yes, that's correct.

19 Q. [11:59:13] And you were told that you had the opportunity to make any changes  
20 or correct any inaccuracies in your statement, correct?

21 A. [11:59:24] Yes, that's correct.

22 Q. [11:59:29] Paragraph 22: "The militia men told us to lie face down on  
23 the ground in rows. They beat people with canes, gun buttstocks. I personally was  
24 not hit."

25 That's inaccurate, is it?



1 A. [11:59:53] No. I said all the people who were found were hit, including myself.

2 So I was hit, including myself. I said I was beaten like the others.

3 Q. [12:00:08] So why doesn't it say "they beat 'us' with canes, gun buttstocks"?

4 A. [12:00:29] I think this is understood here, because I said everyone was beaten up,  
5 so that includes myself. That's what the Arabic sentence would mean.

6 Q. [12:00:41] Yeah. Well, until we get to the next sentence, which is: "I  
7 personally was not hit."

8 Is that another error by the interpreter or by the interviewer?

9 A. [12:01:05] I mentioned a lot of things. And during the interviews -- or  
10 the following interviews, I did say that I was beaten. That's what I said. The fact  
11 that this one says that I wasn't beaten, no, no. I am saying the truth. I'm telling you  
12 the facts.

13 Q. [12:01:34] Well, that's right. You did testify yesterday that after all you were  
14 beaten.

15 I'm going to suggest to you that your account changes every time you tell it.

16 A. [12:01:56] I said that yesterday. I said that in the session here. I said the same  
17 things that I say now, and I can repeat it again now. I was beaten.

18 Q. [12:02:08] You arrived at the police station in your uniform. Even if you didn't  
19 have the opportunity to tell anyone when you were arrested at your home that you're  
20 a student, why didn't you tell anyone on arrival at the police station that you're  
21 a student and say, "Look, I'm even wearing my school uniform"?

22 A. [12:02:57] If I had the opportunity to say anything or do anything, I wouldn't  
23 have been in that place at all. But the situation was very, very difficult. We were  
24 not able to move at all. Even people who were in the square were not allowed to  
25 even talk. They didn't allow us to even open our mouth. If you do, you get beaten.

1 Who am I supposed to speak to? Who am I supposed to inform? And there is  
2 nobody to protect us. We didn't have any kind of protection.

3 Q. [12:03:45] Between 7 in the morning -- or a little after 7 in the morning and  
4 5 p.m., did anyone ask you who you were and where you were from? Did anyone  
5 try to identify you?

6 A. [12:04:05] From 7 a.m. until the evening, until the people were taken in  
7 the Land Cruisers, one from the intelligence security services and another person who  
8 was dressed in a military uniform, they asked me a question. They asked me what's  
9 your name, where do you live, what is your school, and who is your head teacher.  
10 These are the questions that were asked.

11 Q. [12:04:38] That was right at the end. That was -- that was when you were  
12 the last one outside the police station immediately before you were released, correct?

13 A. [12:04:55] Correct.

14 Q. [12:04:57] Up to that point, no one asked you to identify yourself; is that your  
15 evidence?

16 A. [12:05:10] No, nobody asked me. Just these two people.

17 Q. [12:05:17] Now, paragraph -- let me just ask you about a couple of interesting  
18 features of your -- your account.

19 Paragraph -- paragraph 32 of your statement, please. You talk about what you see  
20 the next day, 6 March 2004.

21 Paragraph 32, ERN ending 0560. Yeah.

22 Okay. You reference *Umdah* Yahya.

23 A. [12:06:01] *Umdah* Yahya is the one who was in charge of the west of Garsila, or  
24 an area to the west of Garsila. I don't know the area exactly, but I know him. I  
25 know that it's somewhere to the west of Garsila.

1 Q. [12:06:23] Okay. Have you ever been to Mukjar?

2 A. [12:06:32] No, I didn't go to Mukjar.

3 Q. [12:06:36] You were never detained at Mukjar?

4 A. [12:06:43] No, never. I've never seen Mukjar, never seen Mukjar with my own  
5 eye.

6 Q. [12:06:50] Mr Witness, who told you about *Umdah* Yahya?

7 A. [12:06:59] That was on Saturday and people were detained. He was detained  
8 with *Umdah* Adam Adam, *Umdah* Yahya and *Umdah* Jiddo Khamis. They were  
9 detained in the Deleig police station. And when they got released, they took them in  
10 vehicles. During that time I was on my way to the house. I passed by the market  
11 and I saw them. I saw *Umdah* Yahya and *Umdah* Adam Adam and *Umdah* Jiddo  
12 Khamis.

13 Q. [12:07:48] Okay. And you had a good look at *Umdah* Yahya. You recognised  
14 him because you knew him from before?

15 A. [12:07:54] Yes.

16 Q. [12:07:56] Mr Witness, I'm going to tell you that the Prosecution's case is that  
17 *Umdah* Yahya was detained at Mukjar and executed shortly thereafter. No  
18 connection with Deleig at all. So my question is: Who first spoke to you about  
19 *Umdah* Yahya having something to do with Deleig?

20 MR SACHITHANANDAN: [12:08:26] My apologies.

21 Could counsel put the -- could counsel put the -- (Overlapping speakers)

22 I'm sorry. I'm just checking if my mic is working. Perhaps counsel could put  
23 the full name of the *Umdah* Yahya that's related to the Prosecution case because, of  
24 course, there could very well be many *Umdah* Yahyas.

25 MR EDWARDS: [12:08:54] I think the difficulty with that, your Honour, is that in

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1 the Prosecution -- in the witness's own statement he says he doesn't know *Umdah*

2 Yahya's full name. So that's not going to help.

3 MR SACHITHANANDAN: [12:09:11] Very well. But as long as it's clear that

4 the Prosecution is not saying anything in particular about this particular *Umdah*

5 Yahya. The Prosecution case relates to the *Umdah* Yahya that was detained in -- in

6 Mukjar, not necessarily the same individual.

7 MR EDWARDS: [12:09:31] The Prosecution is --

8 PRESIDING JUDGE KORNER: [12:09:35] I don't know how it arises at all at the

9 moment. I hadn't appreciated that. I thought there was only one. We've only  
10 heard about one so far.

11 MR EDWARDS: [12:09:46] Yeah. There's no *Umdah* Yahya that has anything to do  
12 with Deleig.

13 PRESIDING JUDGE KORNER: [12:09:50] Well, all right. Can we -- I think,  
14 Mr Edwards, I'll just try.

15 Do you know what the other names of *Umdah* Yahya were?

16 THE WITNESS: [12:10:05](Interpretation) No. I don't know the full name.

17 MR EDWARDS: [12:10:11] Yeah. Okay.

18 Q. [12:10:13] All right. Well, let's try this then.

19 Paragraph 25, please.

20 I'm going to ask you about the -- the visit of Ahmad Harun, Mr Witness.

21 "At 5:00 p.m., after the torture and beating, an aircraft flew over us and landed at  
22 Garsila airport."

23 Do you remember talking about that to the Prosecution when you gave your witness  
24 statement, sir?

25 A. [12:11:06] Yes.

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1 Q. [12:11:20] Can we please have up the document behind tab 2,

2 DAR-OTP-0221-0565.

3 There's a document that's going to come up that you -- if -- this should probably not  
4 be broadcast, because I don't think there's a redacted version redacting the witness's  
5 signature. But I can describe it for the public.

6 PRESIDING JUDGE KORNER: [12:11:55](Microphone not activated)

7 MR EDWARDS: [12:11:57] Page 3 of the document, yes.

8 Q. [12:11:59] Do you remember you were asked during your witness statement  
9 about this aircraft and you identified the silhouette and the profile of a helicopter and  
10 signed it?

11 A. [12:12:27] No, not the same map that I signed.

12 Q. [12:12:32] Yeah, no -- sorry, page 3 of the document, please.

13 PRESIDING JUDGE KORNER: [12:12:36] Microphone not activated)

14 MR EDWARDS: [12:12:37] Yeah.

15 THE WITNESS: [12:12:39](Interpretation) Yes, yes, yes, yes.

16 MR EDWARDS: [12:12:41] We're getting the "yes", all right.

17 PRESIDING JUDGE KORNER: [12:12:44](Microphone not activated)

18 MR EDWARDS: [12:12:47] No, okay.

19 Q. [12:12:48] Now, do you say that you observed this vehicle flying overhead  
20 whilst you were detained?

21 A. [12:13:04] Yes.

22 Q. [12:13:05] I see. And then -- and then you say that Ahmad Harun arrived on  
23 a Land Cruiser about 30 minutes afterwards, yeah?

24 A. [12:13:18] Yes.

25 Q. [12:13:19] Okay. Mr Witness, you're the only witness --

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1 PRESIDING JUDGE KORNER: [12:13:24](Microphone not activated)

2 MR EDWARDS: [12:13:25] Well ...

3 THE INTERPRETER: [12:13:41] Message from the interpreter: Can mics be used,  
4 please.

5 MR EDWARDS: [12:13:46] Oh, I'm -- I haven't spoken yet.

6 Q. [12:13:52] Is it the case, Mr Witness, that somebody told you about an incident  
7 when Ahmad Harun arrived somewhere where there were detainees lying on the  
8 ground?

9 A. [12:14:18] Yes.

10 Q. [12:14:20] Okay. In a moment -- well, do you know that person's name? Just  
11 say "yes" or "no" for now.

12 A. [12:14:33] His name is Ahmad Harun.

13 Q. [12:14:39] Yeah, okay. Somebody --

14 PRESIDING JUDGE KORNER: [12:14:41] I'm going to try because I want to try ...

15 Sir, you told us you were lying with your face down on the ground. How were you  
16 able to see, therefore, who the person was who'd arrived by helicopter?

17 THE WITNESS: [12:15:02](Interpretation) Because I saw him. He was dressed in  
18 khaki and military uniform. He had an insignia that -- with two -- two swords.  
19 And nobody else had such insignia. And he had a stick in his hand, or a staff.  
20 In 2002 I saw him on our national TV in -- when I was in Khartoum and he was  
21 dressed in the same uniform and that's why when he arrived in Deleig I recognised  
22 him.

23 PRESIDING JUDGE KORNER: [12:15:45] But, sorry, sir, that's not quite an answer  
24 to the question that I asked.

25 You told the Court, you've told Mr Edwards, you've told everybody else that you're

1 lying on the ground with your face down towards the ground, so much so that you  
2 burnt your face. If you were lying face down on the ground, how were you able to  
3 see who the person was who had arrived by helicopter?

4 THE WITNESS: [12:16:31](Interpretation) Well, first, we heard the noise of  
5 the aircraft. We all heard the noise. And then he went to the Garsila airport and  
6 came back in a Land Cruiser. All the militia members gathered around and they  
7 were around the people who were lying down on the floor. And then Ali Kushayb,  
8 the leader of the militia, said -- that said, "go and start searching." They talked to  
9 him and after 5 minutes he got into the vehicle and went back to Garsila and then  
10 went to Khartoum. But any aircraft that landed in Garsila meant that one of  
11 the high-level officials arrived, or there is a big problem in the area. That's the own  
12 reasons the aircrafts landed in Garsila airport. And Ali Kushayb, I saw him. I  
13 know that I saw him. I saw him before on TV and I knew that that was him.  
14 Yes, I was lying on the floor, but I managed to see him.

15 PRESIDING JUDGE KORNER: [12:18:10] Yes, all right.

16 MR EDWARDS: [12:18:13]

17 Q. [12:18:14] Mr Witness, I'm going to suggest you never saw Ali Kushayb, you  
18 never saw Mr Harun in Deleig. And, in fact, I'm going to suggest that you were not  
19 even detained.

20 A. [12:18:42] I was detained.

21 Q. [12:18:45] And I'm going to suggest --

22 PRESIDING JUDGE KORNER: [12:18:49] Are you putting that as a positive  
23 assertion, or are you simply asking were you ever detained?

24 MR EDWARDS: [12:18:52] Your Honour, I have -- I have a basis -- on the basis of his  
25 own evidence, I have grounds to suggest that he's not telling the truth about

1 the detention.

2 PRESIDING JUDGE KORNER: [12:19:01] No, but you're putting a positive case as  
3 opposed to one which is are you really telling us the truth? Do you see what I mean?  
4 In other words, if you were able to say he was seen elsewhere, that's one thing.

5 MR EDWARDS: [12:19:20] Okay.

6 Q. [12:19:21] Is it not the -- it's the case that even this story about you wearing  
7 a school uniform is untrue because it's the justification that you can give for having  
8 been released.

9 A. [12:19:49] I can prove that I was in the square. I -- there were many  
10 eyewitnesses around the area of Deleig and I can prove that by asking the head  
11 teacher, the head teacher can say that this student was detained in the Deleig police  
12 station. He knows that and he can testify.

13 Q. [12:20:18] To be very clear, isn't it the case that, as a 20-year-old, the only  
14 justification you can give for saying that you were detained and released is by  
15 inventing a story about you being in a school uniform?

16 A. [12:20:50] I was in my school uniform. These are facts.

17 MR EDWARDS: [12:21:17] Yes. Thank you, your Honour.

18 It's not found its way on the transcript. I said "Thank you, your Honour." I've  
19 finished.

20 PRESIDING JUDGE KORNER: [12:21:23](Overlapping speakers) And I'm waiting to  
21 see whether there's any re-examination.

22 MR SACHITHANANDAN: [12:21:27] Yes. Yes, your Honour, just one or two  
23 questions, yes.

24 QUESTIONED BY MR SACHITHANANDAN:

25 Q. [12:21:31] Mr Witness, I won't be very long. Just a few questions to get some



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1 clarifications about what you have been saying yesterday and today. And I want  
2 you to take your memory back to when you were lying down on the ground in front  
3 of Deleig police station, because I'm going to ask you some questions about that,  
4 okay.

5 You said yesterday -- and for the record, it's from yesterday's transcript, that is,  
6 transcript T-043, at line 22 -- sorry, 2503.

7 Mr Witness, you said yesterday that you were about a metre away from Mr Kushayb.  
8 Do you remember that?

9 A. [12:22:28] Yes.

10 Q. [12:22:30] And you said today that you were lying face down, face down.

11 That's right? For most -- at least today you said you were lying face down; is that  
12 correct?

13 PRESIDING JUDGE KORNER: [12:22:41] Well, it's not just today (Overlapping  
14 speakers)

15 THE WITNESS: [12:22:45](Overlapping speakers)

16 PRESIDING JUDGE KORNER: (Overlapping speakers) statement.

17 MR SACHITHANANDAN: [12:22:46]

18 Q. [12:22:46] And in your statement.

19 And if you could help us understand, because it's quite important that we do  
20 understand, how you could see Mr Kushayb while lying down. If you could help  
21 the Court understand.

22 PRESIDING JUDGE KORNER: [12:23:05](Microphone not activated)

23 MR EDWARDS: [12:23:10] And, your Honour, I'm sorry, I --

24 PRESIDING JUDGE KORNER: [12:23:13] He's entitled to explore this (Microphone  
25 not activated)

1 THE INTERPRETER: [12:23:16] Mic, please, your Honour.

2 MR EDWARDS: [12:23:19] My submission is that this is such an obvious point it  
3 ought to have been done in chief.

4 PRESIDING JUDGE KORNER: [12:23:26] Oh, he did do it in chief. We all tried to  
5 do it in chief, but nobody I think really understood what it was he was saying. As a  
6 result of your cross-examination, it's quite clear what he's saying, in my view. But I  
7 think that this does -- these questions directly arise from your cross-examination.  
8 And, quite honestly, we've really got to know what the final version of all of this is.  
9 Yes.

10 MR SACHITHANANDAN: [12:23:50] Thank you.

11 Q. [12:23:52] Mr Witness, I'm just going to repeat the question. Could you please  
12 explain to us, as you were lying down, how you could see Mr Kushayb.

13 A. [12:24:14] Very good. This is a very good question.

14 Before I was lying down, there was a woman, a woman with four children. Two  
15 died in the mountains and the other two were detained and brought to the square.  
16 This woman was -- went crazy. She was screaming because she wanted to take her  
17 children back.

18 When they saw the woman screaming like that, and that was before I was lying on  
19 the floor, she was there. And the person who gave the order for us to lie down was  
20 Ali Kushayb. He was there. He is the one who gave the order. He was about 1  
21 metre away from me.

22 Q. [12:25:19] Okay. So just so I understand, this is in the morning when you're  
23 brought to the -- brought to the square; is that correct?

24 A. [12:25:36] In the morning, from 7 o'clock in the morning until 5 p.m., they  
25 gathered us all together in the square. But even before the -- we were made to lie

1 down, he was there. He was in the square. And he stayed there, Ali Kushayb  
2 and Muni'm. And I saw them even before I lied down. And they are the ones  
3 who --

4 THE INTERPRETER: [12:26:07] Inaudible.

5 THE WITNESS: [12:26:08](Interpretation) There was another person who also was  
6 beating people with a really thick staff. His name is Adam Mousa. Yes. And I  
7 saw them even before I lie down.  
8 And after we were lying down on the floor I still saw him. He was there from  
9 7 o'clock in the morning until 5 p.m. in the afternoon. He was there in the square in  
10 front of everybody.

11 MR SACHITHANANDAN: [12:26:46]

12 Q. [12:26:46] Okay. So let's take that step by step.

13 Now I want you to focus on the period before you were lying down. All right.  
14 How long did you see Mr Kushayb before you were lying down?

15 A. [12:27:16] Maybe around two hours. But then after we -- we -- we went on  
16 the floor he was still there. He was still there and he was ordering people to go in  
17 the Land Cruisers. He stayed there.

18 Q. [12:27:40] Right. And when you were standing, how far away from you was  
19 Mr Kushayb?

20 MR EDWARDS: [12:27:51] He's given that evidence already.

21 THE WITNESS: [12:27:57](No interpretation)

22 MR SACHITHANANDAN:

23 Q. [12:27:58] Right. So now I want you to focus on when you were lying down.

24 A. [12:27:59] One metre.

25 THE INTERPRETER: [12:28:00] The witness says 1 metre.

1 MR SACHITHANANDAN: [12:28:05]

2 Q. [12:28:06] Right. So now I want you to focus on when you were lying down.

3 How far away from Mr Kushayb were you when you were lying down?

4 A. [12:28:18] One metre. Just 1 metre ahead of me.

5 Q. [12:28:31] Okay. So -- and you have to understand, you were there, but we  
6 were not there, right. So we have to -- so that's why I'm trying to ask you these  
7 details.

8 So when you were on the ground, how is it that you could see with your eyes

9 Mr Kushayb? If you can just please explain in a way that we can understand.

10 A. [12:29:05] I saw him before I was lying down on the floor. We were all  
11 standing like this, facing towards the north, and he was right in front of us. And  
12 then after a while, maybe an hour or two hours, he gave the order for us to lie down.  
13 And we did lie on the floor, and he was in front of us again. So even before I lie  
14 down, I saw him. This is my answer.

15 PRESIDING JUDGE KORNER: [12:29:52] I'm sorry. Are you now saying that he  
16 moved from behind you to stand in front of you when you were lying down?

17 THE WITNESS: [12:30:18](Interpretation) I really want to clarify the directions here.  
18 We were looking towards the north. You know, look here, this TV screen, he was  
19 like close to the -- or next to the TV screen here. And we were here, standing here.  
20 And then he told us, "Lie down facing that direction."

21 MR SACHITHANANDAN: [12:30:55] Those are my questions, your Honour.

22 PRESIDING JUDGE KORNER: [12:30:58](Microphone not activated) Can we have  
23 the photograph up again, please, whatever its number was.

24 MR EDWARDS: [12:31:09] Your Honour, I think that would be

25 DAR-OTP-0219-548 -- oh.

- 1 PRESIDING JUDGE KORNER: [12:31:21] Thank you very much, yes.
- 2 And can we bring it up so that we can see the witness's markings. All the way.
- 3 Thank you. Stop.
- 4 Right. Witness, you were asked in detail by Mr Edwards about how -- what your
- 5 position was, because it was not clear. But you said, when you were lying down on
- 6 the ground the police station, which you marked, was to your left. Do you agree?
- 7 THE WITNESS: [12:31:58](Interpretation) I agree.
- 8 PRESIDING JUDGE KORNER: [12:32:04] Which means you were facing
- 9 towards -- well, you marked your position -- towards the top of the photograph.
- 10 That's where your face is, in the ground, facing towards the top.
- 11 THE WITNESS: [12:32:24](Interpretation) Yes.
- 12 PRESIDING JUDGE KORNER: [12:32:25] And you marked the position of the man
- 13 you say is Ali Kushayb at "8".
- 14 THE WITNESS: [12:32:43](Interpretation) The two circles that I drew, these two
- 15 circles that I drew, one is Ali Kushayb and the other was Abdel Muni'm. I put these
- 16 two circles.
- 17 PRESIDING JUDGE KORNER: [12:33:03] So -- I'm sorry, so where we can see -- do
- 18 you mean 8 -- well, no. Sorry, no. It's 5. I'm sorry. I'm utterly failing to follow
- 19 this one.
- 20 MR SACHITHANANDAN: [12:33:16] Your Honour, I could assist. If you look at
- 21 the arrow that leads from 8 to the two circles, I think the witness's point becomes
- 22 clear.
- 23 PRESIDING JUDGE KORNER: [12:33:25] Right. But either way, the two men are
- 24 standing behind him.
- 25 Sir, do you see? If you're where the "X" is, because you're right at the front,

1 the police station is on your left and the two men are behind you, they are behind  
2 you.

3 THE WITNESS: [12:33:52](Interpretation) This photo is clear.

4 PRESIDING JUDGE KORNER: [12:34:03] All right. It is your final evidence, is it,  
5 on this somewhat protracted topic that Ali Kushayb, that the man you call  
6 Ali Kushayb, was in front of you?

7 THE WITNESS: [12:34:25](Interpretation) Yes.

8 PRESIDING JUDGE KORNER: [12:34:26] So the circles do not represent two men  
9 standing behind you. They are meant to represent --

10 THE WITNESS: [12:34:42](Interpretation) Represent them. I put an arrow here.  
11 These two circles represent Ali Kushayb and Abdel Muni'm. And the cross is me  
12 and they were in front of me.

13 PRESIDING JUDGE KORNER: [12:35:01] In which case, the police station would  
14 have been on your right as you lay on the ground, because you're ahead of them.

15 THE WITNESS: [12:35:13](Interpretation) Right.

16 PRESIDING JUDGE KORNER: [12:35:15] And finally this, as far as I'm  
17 concerned - it may be my colleagues have some questions, but I'm only concerned  
18 with this - is it now your evidence that you were made to stand for two hours before  
19 you were told to lie down on the ground?

20 THE WITNESS: [12:35:43](Interpretation) That's correct.

21 PRESIDING JUDGE KORNER: [12:35:44] All right. Yes.

22 JUDGE ALEXIS-WINDSOR: [12:35:51] Thank you. I have two questions.  
23 Good day, sir. On 5 March 2004, when you said you saw someone called  
24 Ali Kushayb, was that the first time you had seen that person?

25 THE WITNESS: [12:36:12](Interpretation) Yes, the first time I saw Ali Kushayb.

1 JUDGE ALEXIS-WINDSOR: [12:36:16] So when you testified, unless I'm wrong, that  
2 you saw him on TV, when was that? Was it before or after 5 March 2004?

3 THE WITNESS: [12:36:35](Interpretation) No, no, I am talking about Ahmad Harun.  
4 I saw Ahmad Harun on television, not Ali Kushayb on TV.

5 JUDGE ALEXIS-WINDSOR: [12:36:42] Okay. So it is your evidence (Overlapping  
6 speakers)

7 Sorry. Sorry, interpreter. I started too early.

8 So then is it your evidence that at no time did you ever see Ali Kushayb on the TV.

9 THE WITNESS: [12:36:53](Interpretation) No, I haven't seen him on the TV.

10 JUDGE ALEXIS-WINDSOR: [12:36:57] All right. Thank you.

11 PRESIDING JUDGE KORNER: [12:36:59] Yes. Any -- no questions, no.

12 Just -- just continuing one further part. So the only way you knew that was

13 Ali Kushayb, you're saying, are you, is because you heard the men call him that,  
14 the militia?

15 THE WITNESS: [12:37:29](Interpretation) I have never seen him before, but in  
16 the area I heard that some -- the militias are calling him Ali Kushayb. And at that  
17 time while he's standing before me, so I heard the militia calling him Ali Kushayb.

18 PRESIDING JUDGE KORNER: [12:37:46] Yes. All right.

19 Yes, very well, sir, that concludes your evidence. Thank you very much for coming  
20 to court to give that evidence. And we wish you a safe return to your own country.

21 So if you'd like to go with the usher now -- usher, if you'd like to go with  
22 the court officer, please.

23 THE WITNESS: [12:38:08](Interpretation) Thank you very much.

24 (The witness is excused)

25 PRESIDING JUDGE KORNER: [12:38:40] So the next witness will be ready for

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1 2 o'clock, will they? I don't know whether the message got to the rule -- as there's no  
2 objection, we granted the protective measures sought.

3 Yes, all right. We'll sit again at 2 o'clock.

4 THE COURT OFFICER: [12:38:58] All rise.

5 (Recess taken at 12.39 p.m.)

6 (Upon resuming in open session at 2.08 p.m.)

7 THE COURT USHER: [14:08:38] All rise.

8 Please be seated.

9 PRESIDING JUDGE KORNER: [14:09:05] Yes. First, everybody, may I apologise  
10 for keeping the Court waiting. I went on automatic mode before the adjournment  
11 and said the time that I would normally have sat in England, which was 2 o'clock, but  
12 I hadn't realised I said that. So I'm sorry you've all been kept waiting.

13 Mr Laucci, we've heard the news about your client. We understand he'd prefer not  
14 to be here, and of course we understand, and we're grateful that he's given consent  
15 that the trial can continue in his absence.

16 MR LAUCCI: [14:09:42] It is actually his willingness, his wish that the trial may  
17 continue.

18 PRESIDING JUDGE KORNER: [14:09:45] The next witness is also Rule 68(3). And  
19 who's taking the witness?

20 MR NICHOLLS: [14:09:51] Good afternoon, your Honours. That's Laura Morris  
21 who has joined us after this session.

22 PRESIDING JUDGE KORNER: [14:09:57] All right.

23 So before the witness comes in, Ms Morris, perhaps you could just read the summary.

24 MS MORRIS: [14:10:02] Yes. Thank you, your Honour.

25 Witness P-850 is a Fur civilian from Wadi Salih, Darfur. He was present during an



1 attack on his village by government forces and the Janjaweed in late 2003 or early  
2 2004. Following the attack, P-850 saw more than 32 dead bodies in the village,  
3 including young children and the elderly. P-850 saw that the entire village was  
4 burned down, including the mosque and his own home. Crops and livestock were  
5 also pillaged.

6 As a result of the attack, P-850 was displaced to Deleig.

7 In early March 2004, while the Janjaweed and government forces searched -- searched  
8 for and arrested Fur males in Deleig, P-850 hid in terror. He heard the forces using  
9 derogatory language against the Fur tribe, such as "Kill the slaves". The following  
10 day, P-850 visited an execution survivor in Deleig and saw that his intestines were  
11 spilling out and there was soil mixed in with his wound. This survivor told P-850  
12 that the males who had been taken prisoner with him had all been killed.

13 Finally, P-850 provides evidence about the identity of Ali Kushayb, who he used to  
14 see regularly at local markets prior to 2003. In the days following the arrests in  
15 Deleig, P-850 saw Ali Kushayb on two occasions in Deleig market.

16 Thank you, your Honour.

17 PRESIDING JUDGE KORNER: [14:11:44] Yes.

18 Let's have the witness in then, please.

19 MS MORRIS: [14:12:13] And, your Honours, we would be grateful if a court officer  
20 could have -- read the oath and have Mr Witness read (Overlapping speakers)

21 PRESIDING JUDGE KORNER: [14:12:20] Oh, yes. I saw that on the application,  
22 yeah.

23 MS MORRIS: [14:12:22] Thank you.

24 (The witness enters the courtroom)

25 PRESIDING JUDGE KORNER: [14:12:51] Yes, sir, can you hear and understand me?

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1 WITNESS: DAR-OTP-P-0850  
2 (The witness speaks Arabic)  
3 THE WITNESS: [14:13:05](Interpretation) I can hear you clearly. Thank you.  
4 PRESIDING JUDGE KORNER: [14:13:07] Yes, thank you.  
5 Thank you for coming to court to give evidence. In a moment you will be asked to  
6 repeat the solemn declaration after the court officer.  
7 I'm not sure whether your evidence will be completed this afternoon, probably not.  
8 MR LAUCCI: [14:13:38] According to what we exchanged with the Prosecution,  
9 there is a possibility.  
10 PRESIDING JUDGE KORNER: [14:13:46] Right.  
11 In which case, sir, all I'm going to say to you is you'll be asked questions by each of  
12 the lawyers in turn. If you don't understand the question, it's very important that  
13 you say so straightaway and the lawyer will repeat it.  
14 Do you understand that?  
15 THE WITNESS: [14:14:13](Interpretation) I do.  
16 PRESIDING JUDGE KORNER: [14:14:13] Then the court officer will come over, and  
17 if you could just repeat -- or stand in front of you, whichever, and if you could just  
18 repeat the declaration after him.  
19 THE WITNESS: [14:14:29](Interpretation) Fine, thank you.  
20 THE COURT OFFICER: [14:14:31] Good afternoon, Mr Witness. Once again, on  
21 behalf of the Chamber, I would like to welcome you to the courtroom.  
22 Witness, you have to first take a solemn undertaking to tell the truth. I will read it  
23 out to you, so please follow and repeat what I say: I solemnly declare.  
24 THE WITNESS: [14:14:52](Interpretation) I solemnly declare.  
25 THE COURT OFFICER: [14:14:55] That I will speak the truth.

1 THE WITNESS: [14:14:59](Interpretation) That I will speak the truth.

2 THE COURT OFFICER: [14:15:02] The whole truth and nothing but the truth.

3 THE WITNESS: [14:15:08](Interpretation) The whole truth and nothing but  
4 the truth.

5 THE COURT OFFICER: [14:15:11] Thank you, Witness. You are now under oath.

6 PRESIDING JUDGE KORNER: [14:15:14] Yes, Ms Morris.

7 MS MORRIS: [14:15:17] Thank you, your Honour.

8 QUESTIONED BY MS MORRIS:

9 Q. [14:15:19] Good afternoon, Mr Witness.

10 We have met before. But for the record, my name is Laura Morris and I will be  
11 asking you questions on behalf of the Prosecution. If you do not understand any of  
12 my questions, please let me know and I will clarify. And I will remind you,  
13 you are -- you have been granted protective measures, so you have face and voice  
14 distortion and a pseudonym.

15 Mr Witness, we are currently in open session, which means the public can hear your  
16 words, so please do not give any information which may reveal your identity, unless  
17 we go into private session.

18 Mr Witness, you provided a statement to the Office of the Prosecutor in February 2020;  
19 is that correct?

20 A. [14:16:24] Yes.

21 Q. [14:16:27] For the record, this is item DAR-OTP-0216-0002.

22 Mr Witness, your statement was read back to you during our witness preparation on  
23 Sunday, and you made some corrections and clarifications; is that correct?

24 A. [14:16:50] Yes.

25 Q. [14:16:54] For the record, the list of clarifications and corrections is

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1 DAR-OTP-0224-0642.

2 Mr Witness, after making those corrections and clarifications, you agreed that your  
3 statement is true and correct to the best of your knowledge and belief; is that right?

4 A. [14:17:25] Yes.

5 Q. [14:17:28] You also agreed that your statement and the related documents can be  
6 introduced into evidence in this case, correct?

7 A. [14:17:48] I did.

8 Q. [14:17:50] Thank you.

9 Now, Mr Witness, I will ask you a few questions on some of the topics that we have  
10 covered already in your statement.

11 During the preparation session on Sunday, you provided information about males  
12 from your village and from Kirila that were killed during the executions in Deleig; is  
13 that correct?

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

15 Q. [14:18:21] You also provided some information about two men who survived  
16 the executions; is that correct?

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

18 Q. [14:18:36] And the information that you provided about these victims was put  
19 into a document and that was read back to you in Arabic and then signed by you; is  
20 that correct?

21 A. [14:18:49] Yes.

22 MS MORRIS: [14:18:52] Your Honours, for the record, this is item  
23 DAR-OTP-0224-0644.

24 Q. [14:19:03] Moving on. Mr Witness, on Sunday, in witness preparation, we  
25 spoke about the telephone call that you had with an ICC investigator in 2019, correct?

1 A. [14:19:22] Yes.

2 Q. [14:19:24] And we told you that we have a note of what was discussed in  
3 the telephone call; correct?

4 A. [14:19:37] Yes.

5 Q. [14:19:42] I would like to go over those differences in the note from that call.  
6 And the note is DAR-OTP-0214-0528.

7 Mr Witness, regarding the attack on your village, in the note about the telephone call  
8 from 2019 the investigator wrote down that this is what you said about the attack on  
9 your village, and I quote: "He saw Ali Kushayb in a car in front of the arriving  
10 vehicles. He knows Ali Kushayb from before the attack and recognised an image of  
11 a tiger on the door of Ali Kushayb's car."

12 Mr Witness, is this information that you provided over the telephone correct?

13 A. [14:20:52] Incorrect. I don't know who the person -- I don't know the person  
14 who called me over the phone. I did not tell him the truth.

15 Q. [14:21:11] And, Mr Witness, can you explain why you did not tell them the truth,  
16 please?

17 A. [14:21:24] Certainly the main problem is that it's challenging to tell the truth to  
18 someone you don't know. I did not recognise the person as from the ICC. You  
19 can't trust someone who calls you over the phone who tells you: "Well, tell me about  
20 what happened in Darfur. Tell me about the problems. Tell me your account." So  
21 I did not tell the truth.

22 However, when the Prosecutor reached out, my account and my version of the truth,  
23 what happened in my village, I shared all of that then.

24 Q. [14:22:04] Thank you, Mr Witness. And when -- you mean when  
25 the Prosecutor reached out, do you mean that when you were -- when you had

1 a statement taken later on in 2020?

2 A. [14:22:26] Beforehand someone called me by phone and I did not believe who  
3 that person was. It -- I was new in Europe and I could not trust the identity of  
4 the person who called me by phone. That is why I did not tell the truth then.  
5 However, in 2020, when the Prosecutor visited me (Redacted) told all  
6 the truth I knew.

7 PRESIDING JUDGE KORNER: [14:23:00] Sorry, Ms Morris, are you going to ask  
8 him what was not true?

9 MS MORRIS: [14:23:06] Sorry, your Honour. The -- the question I put to him was  
10 from the screening note.

11 PRESIDING JUDGE KORNER: [14:23:14](Overlapping speakers) I know it was, but  
12 he's saying it's not true, but what's not true?

13 MS MORRIS: [14:23:30]

14 Q. [14:23:30] Mr Witness, I'd like to read a paragraph from your statement and then  
15 ask you a question.

16 In your statement, this is DAR-OTP-0216-0002 at paragraph 28, quote -- this is about  
17 the attack on your village. Paragraph 28: "We heard loud gunshots coming from  
18 many directions. My family was taken by surprise; we immediately started running.  
19 I saw the Janjaweed on horse and camel coming into (Redacted)."

20 I'm not reading the name of the village, your Honour.

21 "This was the first time I saw Janjaweed come into the village and attack."

22 Mr Witness, my question is, is this an accurate reflection of what happened?

23 A. [14:24:31] Yes, that is the truth.

24 PRESIDING JUDGE KORNER: [14:24:39] Ms Morris, you may think that it clarifies;  
25 it doesn't. He doesn't mention that he saw in his statement Ali Kushayb in a car on

1 the -- at the attack. You read out the paragraph from the note that was made of  
2 the telephone call, but I think you must spell -- he must spell out what is it he is  
3 saying is not true.

4 MS MORRIS: [14:25:15]

5 Q. [14:25:16] Mr Witness, I'd like -- I'd like to ask you whether this is true or not.

6 Sorry, there's a ...

7 Sorry. Mr Witness, I'll read this part from the screening note again and ask you  
8 whether it is true or untrue.

9 "He saw Ali Kushayb in a car in front of the arriving vehicles." Is that true or  
10 untrue?

11 PRESIDING JUDGE KORNER: [14:25:52] Now, Mr Laucci, what do you want to  
12 object to?

13 MR LAUCCI: [14:25:56] It's not an objection, but the quote is given without saying  
14 where this event happened, according to the screening notes. A little bit of context  
15 would help to answer the question, I believe.

16 PRESIDING JUDGE KORNER: [14:26:11] I'm -- I'm sorry, today I'm going to deal  
17 with this.

18 Sir, when you told the -- when you said to the person who rang you up from -- saying  
19 he was from the ICC, that you had seen Ali Kushayb in a car when your village was  
20 attacked, was that a lie?

21 THE WITNESS: [14:26:48](Interpretation) No, your Honour, when I saw the man, I  
22 did not see him in my village. I saw him way before the events. Once the events  
23 happened, I saw him in Deleig. But beforehand, I saw him in many markets.

24 PRESIDING JUDGE KORNER: [14:27:08] Was the man that you know to be -- that  
25 you say you know to be Ali Kushayb leading the attack on your village?

1 THE WITNESS: [14:27:23](Interpretation) No. At that time, no, I did not see him  
2 then. But I saw him in Deleig when the events of Deleig happened. But I knew him  
3 from before.

4 PRESIDING JUDGE KORNER: [14:27:36] You -- you told the Court a moment ago  
5 that you didn't tell the truth because you didn't know who this person was who  
6 telephoned you.

7 THE WITNESS: [14:27:54](Interpretation) Yes, that's correct.

8 PRESIDING JUDGE KORNER: [14:27:57] But why did you invent something about  
9 Ali Kushayb at that stage?

10 THE WITNESS: [14:28:13](Interpretation) It wasn't out of my -- it wasn't something I  
11 invented. I was not safe and I had no safeguards. I could not share everything  
12 with someone else. But I was aware that things happened in Deleig, not in my  
13 village.

14 PRESIDING JUDGE KORNER: [14:28:35] All right. Thank you.  
15 Yes, Ms Morris.

16 MS MORRIS: [14:28:40] Thank you, your Honour.

17 Q. [14:28:42] Mr Witness, I have an additional question about the 2019 telephone  
18 call, the note of that call.

19 On the same page -- well, I'll read the ERN. At DAR-OTP-0214-0528 at page 0530,  
20 you talk about being in Deleig and seeing Ali Kushayb in Deleig. My question is:  
21 When you told the investigators that you saw Ali Kushayb driving around Deleig  
22 early in the morning, shouting "God is great. Where is your God now to help you?"  
23 was that a lie?

24 A. [14:29:36] No. I was in my home in Deleig when these things happened. I did  
25 not say that it was Ali Kushayb, but the folks with him, they were shouting "God is



1 the greatest. Kill the slaves." Those were the words.

2 Q. [14:30:14] Okay, I think I actually have no further questions, your Honour.

3 Thank you.

4 Thank you, Mr Witness.

5 PRESIDING JUDGE KORNER: [14:30:21] Thank you, Ms Morris.

6 Yes, Mr Shah.

7 I see Ms von Wistinghausen has not joined us this afternoon.

8 MR SHAH: [14:30:30] Yes, your Honour, I think she was -- she was intending to  
9 arrive exactly at 2.30 on the dot. I believe she's here. So her -- apologies on her  
10 behalf.

11 PRESIDING JUDGE KORNER: [14:30:41] I'm sure you can cope.

12 QUESTIONED BY MR SHAH:

13 Q. [14:30:44] Good afternoon, Mr Witness. You may recall we met yesterday in  
14 this courtroom, but let me introduce myself again. My name is Anand Shah and  
15 I am one of the lawyers representing victims in these proceedings and I would like to  
16 ask you just a few questions on behalf of our clients.

17 A. [14:31:11] Yes, sure.

18 Q. [14:31:15] Mr Witness, at paragraphs 66 to 68 of your statement you describe  
19 what happened to you at your relative's house in Deleig after you fled from your  
20 home village. And in particular you describe very difficult circumstances hiding in  
21 a small *dabanga* or container with four other persons. You said that while hiding you  
22 heard slurs being yelled against the Fur people and that your relative would  
23 sometimes whisper that people were being arrested and that you could hear  
24 screaming from nearby houses.

25 Mr Witness, has that experience impacted you in any way? Do you still think about

1 that event?

2 A. [14:32:21] Yes, it impacted me a lot and I -- when I think about it I'm really  
3 impacted, even though some time has elapsed since then. It was very difficult at that  
4 time. The circumstances were really difficult.

5 Q. [14:32:43] Thank you, Mr Witness.

6 I'd now like to ask you about the list of victims that you provided to the Prosecution  
7 two days ago.

8 And for reference, that's DAR-OTP-0224-0644.

9 Now, Mr Witness, I don't want you to mention the name of your home village or  
10 the name of any person on the list, but on that list you note that three of the persons  
11 who you say were killed were relatives from your home village who are related to  
12 you by blood, including a boy who was 12 years old.

13 You also included two persons who were related to you through marriage. How did  
14 the disappearance and apparent killing of these five family members impact you and  
15 your family?

16 A. [14:34:03] Yes, this is true, it impacted me a lot. When I remember this or  
17 someone mentions them to me, I'm really impacted.

18 In our family, there are no males at all anymore. All of this happened in a week.

19 And all my relatives, even the husband of my sister, they were all died. They  
20 disappeared on the same day, as well as our neighbours. On a Friday, they all died.

21 I was raised there. And as a matter of fact, whenever I remember them, I cry, I weep.

22 And I'm really very much impacted and impressed when someone talks about them.

23 Q. [14:35:09] Thank you, Mr Witness.

24 I'd now like to ask you what happened to your surviving family members after

25 the events in Deleig. Were they able to return to your home village, or did they have

1 to go somewhere else? And please don't use their names or any specific locations.

2 A. [14:35:39] Yes. Some of them travelled, and they are all scattered in different  
3 places.

4 Q. [14:35:58] And how has this impacted you, this scattering of your family?

5 A. [14:36:11] It impacted me a lot. It is really very difficult to only have one  
6 member of the family remain and have -- some of them had two to three children, and  
7 we do not know how to ensure their survival and their living. Our life was difficult  
8 because some of us did not have any belongings remaining. When we see  
9 the children before us, we are really impressed and impacted.

10 Q. [14:36:55] Thank you, Mr Witness.

11 Madam President, for just this last question, I'd like to go into private session, please.

12 Closed session.

13 PRESIDING JUDGE KORNER: [14:37:04] Yes.

14 (Private session at 2.37 p.m.)

15 THE COURT OFFICER: [14:37:19] We're in private session, Madam President.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

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12 (Open session at 2.39 p.m.)

13 THE COURT OFFICER: [14:39:37] We are back in public session, Madam President.

14 PRESIDING JUDGE KORNER: [14:39:42] Yes.

15 QUESTIONED BY MR LAUCCI:

16 Q. [14:39:46] Good afternoon, Mr Witness. We met briefly yesterday. My name  
17 is Cyril Laucci. I'm the lead counsel of Mr Ali Muhammad Ali Abd-Al-Rahman.

18 And so now I will ask you some questions to get some clarification on some aspects of  
19 your statement.

20 If my question is not clear, you want me to repeat it, I will be most happy to do so.

21 You just have to tell me.

22 The questions I will ask you will be asked in open session, so the public can hear what  
23 you say. If you think that to answer my question you need to go to private session,  
24 just let us know. And I have kept for the very end of my cross-examination  
25 the questions that would require to go briefly on a private session.

1 So we can start in public session. And, actually, I will start immediately by what  
2 you -- you explained to the -- the Office of the Prosecutor this afternoon, that because  
3 you -- you were not confident when you were contacted on the phone, you -- you told  
4 the story which did not correspond to the truth.

5 And my question is: What is it that made you so suspicious when you were  
6 contacted by the Office of the Prosecutor on the phone?

7 A. [14:41:33] Thank you so much.

8 The issue is that, whenever anyone in the world is a witness, in this case or such  
9 a case of massacre, this is not easy at all. It's not easy to give the accurate  
10 information to anyone who just calls you by phone.

11 In Sudan, this happened to some people. They were witnesses, in fact, they were  
12 eyewitnesses of the events and they got killed, for many reasons.

13 So just getting a phone call by someone discussing the Darfur events, I wasn't ready  
14 to tell the truth to them. No, not at all. So I wasn't sure about that person.

15 Q. [14:42:34] Thank you, Mr Witness.

16 The precedents that you mentioned of witnesses getting killed, all these precedents,  
17 are they only taking place in Sudan, or have you in mind some precedents that may  
18 have taken place in other countries?

19 A. [14:43:04] I cannot tell what happened in the world, around the world, but I  
20 know what happened in Darfur, in Deleig and Mukjar. But I cannot tell about other  
21 parts of the world. I'm so sorry.

22 Q. [14:43:17] And in your -- for the events that you know about that made you so  
23 suspicious, so the events that you had in mind, what -- what happened? How come  
24 these witness were -- were killed? Who killed them?

25 A. [14:43:39] We know that there is no security for the witnesses in Sudan. And

1 the accused knows the identity of the witnesses. So in Deleig and in (Redacted)  
2 the government killed those people. This is why I was suspicious. And I did not  
3 know the identity of that person who pretended that he was calling from the ICC and  
4 I did not believe him, unfortunately.

5 And then I apologised, and I said, "I did not tell the truth because I did not know  
6 you." That is the truth, in fact.

7 Q. [14:44:31] Mr Witness, I want to reassure you, there is no judgment, in particular,  
8 no adverse judgment that is put on you. I mean, you had a reaction which can be  
9 understood if you had those precedents in mind, so don't see any criticism in my  
10 question in the first -- in the first place.

11 A. [14:45:04] Unfortunately, yes, of course, I do not think that you are judging me.  
12 What I said is the truth, and it happened in Deleig. But I did not tell them that this  
13 happened in my village. And I said that Ali Kushayb was in Deleig.  
14 So this fault is theirs and not mine. It's not my responsibility.

15 Q. [14:45:42] Sorry, I stopped you because there was an issue with  
16 the interpretation.

17 But did the interpreter get everything that you said? I think you will not repeat.

18 PRESIDING JUDGE KORNER: [14:45:56] Mr Laucci, I'm sorry, I'm going -- I'm  
19 going to interrupt because he's just said, I didn't know whether you noticed,  
20 "[The] fault is theirs and not mine."

21 Are you talking about interpretation, sir?

22 THE WITNESS: [14:46:21](Interpretation) I said that I saw Ali Kushayb, but not as  
23 it -- it is mentioned in my village, but, rather, in -- with the Janjaweed in the vehicles.  
24 I saw Ali Kushayb in Deleig in a vehicle, in a government vehicle in Zoufri, and with  
25 many people that I knew who used to patrol in the region and say, "God is

1 the greatest. *Allahu Akbar*."

2 PRESIDING JUDGE KORNER: [14:46:56] Yeah, but when you said, it's -- that  
3 "[the] fault is theirs, not mine", are you saying they misinterpreted what you said,  
4 they misunderstood what you said, rather than you telling a deliberate lie to blame  
5 Ali Kushayb?

6 THE WITNESS: [14:47:29](Interpretation) Could you kindly repeat the question.

7 PRESIDING JUDGE KORNER: [14:47:32] Yeah. Are you saying now that the entry  
8 in the investigator's note of the telephone call, which suggests that you told him that  
9 Ali -- you saw Ali Kushayb lead the attack on your village, that that came about as  
10 a misunderstanding of what you said, rather than a deliberate lie?

11 THE WITNESS: [14:48:16](Interpretation) Ma'am, your Honour, I did not know  
12 the identity of the person who called me. Yes, I saw Ali Kushayb in Deleig in  
13 a vehicle. This is what I said. I saw him in Deleig, and I can confirm this.

14 PRESIDING JUDGE KORNER: [14:48:40] Yes. All right.

15 THE INTERPRETER: [14:48:43] He was in a military uniform, carrying weapons.

16 MR LAUCCI: [14:48:52]

17 Q. [14:48:52] Thank you for that clarification, Mr Witness.

18 When you say that you know about precedents where witnesses got killed, can you  
19 be more -- can you be a little bit clearer. What happened to them? Is it that these  
20 witnesses were somehow assassinated? Did they disappear? Or did that follow  
21 another way of doing?

22 A. [14:49:32] When a massacre happened, there was someone called Juma and he  
23 knew the names of all the people involved in the killings.

24 Q. [14:49:53] I'm not sure the interpretation got you. If you can start again, please,  
25 your answer. I'm sorry for that.

1 A. [14:50:00] His name is Juma. He's a policeman. He was the head of the police  
2 station. He was in Deleig. And Juma was the head of the police station at that time  
3 when the massacres, the killings happened. He's from the Arab tribe and he was  
4 killed in Ordo or Koska. He was a witness of the events.

5 Q. [14:50:51] Do you remember when that happened?

6 A. [14:50:58] Unfortunately, I do not remember the day. Unfortunately not.

7 Q. [14:51:02] And when you say he was killed, is it just he was shot on the street?  
8 Do you have any more details about what happened?

9 A. [14:51:13] The gentleman Al-Juma, he was killed in the street. He was coming  
10 from Garsila to Deleig. And on the street he was attacked by people and hit by  
11 people just like that. But I don't remember the exact date when that happened,  
12 unfortunately.

13 Q. [14:51:42] Okay. That's -- that's one precedent. Do you have others in mind?

14 A. [14:51:46] I do not.

15 Q. [14:51:50] Okay. So it's based on the -- this precedent with the man you called  
16 Juma who was, as you -- as far as you know, a witness and who was executed that  
17 you become so suspicious that you preferred not to be straightforward in your  
18 responses on the phone.

19 Did I understand correctly?

20 A. [14:52:20] Certainly. Certainly, because anything could happen. I was in fear.

21 Q. [14:52:33] So it's reasonable to -- to conclude that the version you consider to be  
22 the truth is the one that is in your written statement?

23 A. [14:52:47] Yes.

24 Q. [14:52:48] So now I can turn to your written statement. Thank you.

25 Actually, Mr Witness, all my questions are related to your identification of the man



1 you call Ali Kushayb. At paragraph 18 to 20 of your written statement, that's tab 1 in  
2 the OTP binder, DAR-OTP-0216-0002, and I'm talking about pages 0006, 0007, you  
3 mention how you came to know a man called Ali Kushayb many years before  
4 the events of 2003, 2004.

5 You explain that this man was selling medicines for animals on stands on various  
6 markets in your region, and in particular you name four localities. I think -- well,  
7 I can quote them because they do not identify you, unless -- okay, I proceed.

8 The localities of Zarey, Garsila, Gaba and Arawala.

9 Although you were young by the time, you met regularly with the man you call  
10 Ali Kushayb on the market because you were going there with your father and your  
11 brother - I do not say the name - no, sorry, you went there with your father and your  
12 brother used to purchase medicine for animals for Mr Ali Kushayb. Is this summary  
13 of your statement correct?

14 A. [14:54:58] Correct. I might add few things to you.

15 Q. [14:55:03] Are these things that are in your written statement?

16 A. [14:55:10] Yes, yes.

17 Q. [14:55:11] Okay. So they are on record. If you need to mention them to  
18 answer specific question, you will have the opportunity to do so. But don't worry,  
19 the other elements which I did not -- this is a summary for the basis of our discussion.  
20 My first question is: Can you please describe the stands where the man you call  
21 Ali Kushayb used to sell medicine for animals on the markets.

22 A. [14:55:48] I wouldn't call it a stand, but I would describe it as a table. A table  
23 like this one, perhaps. And he would have something in which he wraps all  
24 the medication and then move around on a vehicle or something like that.

25 Q. [14:56:11] But was it a table that was staying permanently on each market and

1 he was just putting his -- his medicine on the table, or was he coming with the table?

2 A. [14:56:32] I do not know. Usually in the market the person who -- a vendor  
3 there would take it elsewhere because he was a weekly market. No one is there  
4 permanently. They gather there to do business, then they go somewhere else and so  
5 forth.

6 Q. [14:56:52] So that means that he had to bring the table along with him?

7 A. [14:57:04] I did not say so. I -- I don't know whether he kept it there or whether  
8 he brought it with him, but certainly, like all the peddlers, they would come to  
9 the marketplace, they would lay out all their products. That's how it worked  
10 throughout the market.

11 Q. [14:57:21] Okay. Thank you.

12 And you say that you saw the man you call Ali Kushayb arrive to the -- these various  
13 markets with other traders on -- in a vehicle. Do you know where they were coming  
14 from?

15 A. [14:57:44] They would come from Garsila. They are the towns folk of Garsila.

16 Q. [14:57:56] Thank you. And at what time of the morning did the traders arrive  
17 to the market?

18 A. [14:58:10] It's different. We were in villages. When exactly didn't really  
19 matter. They just came in the morning.

20 Q. [14:58:29] I suppose that's early morning, usually the time when the markets just  
21 install themselves. Is that correct or ...

22 A. [14:58:40] Yes.

23 Q. [14:58:40] And this vehicle that was bringing the man you call Ali Kushayb  
24 together with the other traders, was it owned by one of them, or was it like a public  
25 transport they were using?

1 A. [14:59:00] The vehicles that came from Garsila were numerous. It wasn't one  
2 vehicle. And they belonged to traders. There were not public transportation. It  
3 could be one vehicle also and people would be piled on it. And in the evening those  
4 vehicles would go back.

5 Q. [14:59:26] When you say that the people were piled on it, it means that it was  
6 crowded, there were a lot of people on the same vehicle to -- to arrive on the market?

7 A. [14:59:43] In Darfur we call this *umdawarwar* in reference to the vehicle. I don't  
8 know what to call it in standard Arabic. But many people recognise what  
9 an *umdawarwar* is. They would come in daytime to the marketplace and by evening  
10 time they would go back to town.

11 Q. [15:00:08] Thank you. Your father was a farmer. And did he happen to tell  
12 his product. I don't want to say the name of the product in order to make sure that  
13 there is no identification, but the product that -- of his farm, did he used to sell it on  
14 the market?

15 A. [15:00:39] Could you please repeat the question.

16 Q. [15:00:42] Yes. I refrain from naming the specific product that your father was  
17 producing in his farm, but if you want me to be more specific I can do so maybe in  
18 10-second private session. But when I speak about a specific product that is  
19 mentioned in your written statement, do you see what I'm talking about without  
20 naming it?

21 A. [15:01:20] Certainly. My father had -- was a farmer and was selling goods in  
22 the market. That is true, yes.

23 Q. [15:01:36] Thank you. That answers my -- my question. And -- so imagine,  
24 you were young, you were going with him, does that mean that you were helping  
25 him on the -- on the market?

1 A. [15:01:53] I wasn't too young. I was fixing -- I was herding bees. I wasn't that  
2 young. I was a little grown up by then.

3 Q. [15:02:16] Okay, thank you. And -- but you mention in your written statement  
4 that you were going with -- with your father on the market; is that right?

5 A. [15:02:30] Sure. I could ride a donkey with my father. I mean, family  
6 members help each other. So as a young man, that would happen.

7 Q. [15:02:43] So can you tell us out of your experience, how is it to be a trader on  
8 the market. Is it -- is it a difficult job? Is it -- yeah, how is it?

9 PRESIDING JUDGE KORNER: [15:03:03] Just a moment before you answer it.  
10 Really, Mr Laucci, I mean, that's such a general, broad question. Can we stick to  
11 some of the issues in this case.

12 MR LAUCCI: [15:03:16] I move to the next question, Madam President.

13 Q. [15:03:23] In your experience or knowledge, can someone selling products on  
14 the market become a rich man?

15 A. [15:03:37] Well, it's in God's hands. I cannot speak with certainty about that.  
16 But in -- back in town it could happen. If you're -- if you really manage to sell a lot to  
17 people, certainly things would work out for you fine. But I cannot give you  
18 a definitive answer on that. If you're selling medication, if you are a merchant, you  
19 could work yourself -- or -- or succeed in business, but if you are completely without  
20 means, then things would not work out for you.

21 Q. [15:04:14] Okay. And then if you become rich, would you then carry on this - I  
22 would say even though you did not answer my question - difficult business of going  
23 every day on a different market, settling early in the morning and everything we  
24 described, if you have become, yourself, wealthier, would you carry on that job?

25 A. [15:04:46] It depends on the person. In my opinion, well, I don't know, some

1 people would work once in a year, or work one year only, or once in their lifetime.

2 Others could have trade in and of itself as a purpose of theirs that they are chasing all  
3 the time.

4 Q. [15:05:14] Okay. Going back to -- to the man you call Ali Kushayb. You  
5 describe him as a wealthy man. You say that he would sometimes wear a *labsa*  
6 which you describe -- you describe as a garment for people of importance or people of  
7 wealth. That's paragraph 19 of your statement.

8 My question is: Does that description match with a modest itinerant seller on local  
9 markets?

10 A. [15:05:59] Certainly. This applied to many villagers. If you wore such clothes,  
11 you were either a merchant or someone who worked for the government. So that is  
12 true.

13 Q. [15:06:17] Are there many traders on the market who are working for  
14 the government?

15 A. [15:06:31] No, not many. Few people only. But I didn't know whether they  
16 all worked for the government or not. What I knew is that every villager during that  
17 time during the events, during the problems, anyone who wore *labsa* was poor,  
18 unable to afford good clothes.

19 Q. [15:07:00] Okay. And the man you saw two times on Deleig market in 2004  
20 was -- and which -- the one you call Ali Kushayb, was wearing a full military  
21 camouflage uniform, right?

22 A. [15:07:25] Yes.

23 Q. [15:07:26] And your statement is that you, I quote, "immediately recognised"  
24 that man who used to sell, according to you, veterinary medication on local markets  
25 when you saw him in military uniform on Deleig market in 2004?

1 A. [15:07:52] Yes.

2 Q. [15:07:57] You say that the man was in a car with military camouflage as well,  
3 military camouflage pattern, and a tiger emblem on its door. On which door was it?

4 A. [15:08:22] The front door that he needs to open to get in the car. That door.

5 Q. [15:08:31] On the wheel side or the other side?

6 A. [15:08:48] I don't remember precisely. It's been a long while.

7 Q. [15:08:55] When you saw that car, do you remember if it was going in the right  
8 direction or in the left direction?

9 A. [15:09:12] He was by the door of the car to get in. I'm not sure whether it was  
10 heading right or left. He was standing. The car was stopped at that point, so I  
11 wasn't sure.

12 Q. [15:09:27] What was the colour of the emblem?

13 A. [15:09:40] It was a tiger. Of course, a tiger exists in the wilderness. So they  
14 had a picture of that animal, the tiger, on that vehicle.

15 Q. [15:10:03] Was it just the head of the tiger or the full body?

16 A. [15:10:10] Just the head.

17 Q. [15:10:16] And the -- was the head like painted in the natural colour of a tiger?  
18 I would say predominantly yellow and black. Or another colour?

19 A. [15:10:39] The same colour as an actual tiger.

20 Q. [15:10:44] And on which -- did the background of the tiger had -- have a specific  
21 colour?

22 A. [15:11:08] Unfortunately, I am not able to ascertain such information. Given  
23 the circumstances of that time, we were in hiding, we did not want him to see us. It  
24 was not a situation where we could talk like I am able to talk now. Unfortunately,  
25 so.

1 Q. [15:11:31] Okay, so you are telling us that this time you saw this car you were in  
2 hiding so it was really a very short spot and nothing else?

3 A. [15:11:50] Maybe there was enough time to look, but you -- you couldn't use all  
4 that time, because everyone was worried about that person. We were in a very  
5 difficult time then.

6 Q. [15:12:07] What was the distance, if I may ask?

7 A. [15:12:15] Unfortunately, it might have been a few metres, but I'm not sure. It's  
8 been a long time since.

9 Q. [15:12:26] Can you compare -- compare it maybe with the -- the dimensions of  
10 this courtroom? Closer than -- closer than me, for instance?

11 A. [15:12:47] He was farther than you, but I can't be specific as to how many metres,  
12 unfortunately.

13 Q. [15:12:57] Would that fit in this courtroom or it would be outside  
14 more -- farther?

15 A. [15:13:13] I would say within this courtroom, but I couldn't be specific. It  
16 might have been even beyond this courtroom. I am not sure how far exactly that  
17 was. But approximately it was within the boundaries of this courtroom.

18 Q. [15:13:33] Okay. Did you ever see that emblem of the tiger after anywhere else,  
19 or before?

20 A. [15:13:49] No.

21 Q. [15:13:51] Do you know what was the rank of the man you call Ali Kushayb?

22 A. [15:14:02] No.

23 Q. [15:14:04] Or do you know to which forces he belonged?

24 A. [15:14:12] No. When I knew him I didn't know that he worked for  
25 the government or that he had a rank. What I knew is that he was a medication

1 vendor, but I didn't know if he did work for the government.

2 Q. [15:14:39] But the fact that he was in a military uniform, wasn't that  
3 a sufficiently strong clue that he may be attached to any force?

4 A. [15:15:03] Unfortunately, I did not know the military khaki uniform of  
5 the government. In that countryside, we did not recognise such uniforms at that  
6 time.

7 Q. [15:15:23] Okay. So you saw this man that you had seen on the market some  
8 years before several times, wearing a totally different garment and having a totally  
9 different occupation by the time. And you saw this man once again very briefly at  
10 some distance on the market of Deleig when you are hiding and you immediately  
11 connect the two persons. Is that your statement?

12 A. [15:16:03] Yes, very much. That is correct.

13 Q. [15:16:10] Okay. And on both occasions that you -- you saw this man you call  
14 Ali Kushayb, you were accompanied by another man, I will not say his name, unless  
15 you need it, but I will try not to say his name, and who was coming from the same  
16 village as yours.

17 No, sorry, I -- I start again. I start again my question.

18 No, it was not you who were together with that man, but the man you call  
19 Ali Kushayb was together with another man coming from your village whom you  
20 knew and who you were afraid could recognise you as a Fur from your village.

21 So this is confirming that on both occasions you did not want to be recognised and  
22 you had to -- to hide, right?

23 A. [15:17:22] Yes, but that man was not a Fur. The man accompanying him was  
24 not a Fur. So maybe you could rephrase your question on that basis, that the other  
25 man was not a Fur.



1 Q. [15:17:37] No, you are correct. The first time I asked my question it was badly  
2 asked. The man could have recognised you as a Fur, this is what I meant.

3 A. [15:17:54] Certainly, yes, because I knew this man from when I was young. He  
4 visited us in our home, he was a well-known person and he knew us very well.

5 Q. [15:18:11] And apart from being on the market, did you see or hear that the man  
6 you call Ali Kushayb had done anything else in Deleig?

7 A. [15:18:33] When we were in hiding, after things happened, someone would  
8 come to our home and say, well, Ali Kushayb has done so-and-so. And I knew him  
9 from before. The situation then was dominated by the Janjaweed and the  
10 government. It was a difficult situation. So it is true that, amid such difficult  
11 situation, you depend on what people tell you. And we were afraid. And he was  
12 well known and he was able to move around; the only one who could.

13 Q. [15:19:24] Correct. That's what you have been told after. But before you saw  
14 him, are you -- did you hear that Ali Kushayb was in the -- in Deleig or in  
15 the neighbourhood doing something? Before seeing him yourself.

16 A. [15:19:47] No.

17 Q. [15:19:50] Okay. So now I will talk about another person who -- whose name is  
18 Mr Ali Muhammad Ali Abd-Al-Rahman, who is accused before this Court of being  
19 Ali Kushayb.

20 What if I tell you that this man, Mr Ali Muhammad Ali Abd-Al-Rahman, never held  
21 stands on various markets -- on the various markets you mentioned, would you agree  
22 that the man you used to see on the local markets was a different person?

23 A. [15:20:47] No. It was the same man. Probably he claims that he didn't have  
24 a shop there. He might deny these things.

25 Q. [15:21:02] Can I ask you, Mr Witness, to take the binder, the Defence binder that

1 is next to you. Ah, okay. No need to take it. We will have on the screen some  
2 documents shown. We will show it in English, and I will explain to you what these  
3 documents are.

4 So can we have, please -- actually, do we have the English version somewhere with  
5 a quote? Because I have it in French here, but the reference in English.

6 Okay. Can we have first the document DAR-D31-0001-0007.

7 Okay, maybe the next page.

8 Yeah, this document, Mr Witness, is a translation. Unfortunately, you cannot read it.

9 But -- yeah.

10 This document is a certificate attesting that Mr Ali Muhammad Ali Abd-Al-Rahman  
11 is a general medical assistant from the military hospital in Nyala, and he -- it is  
12 dated 1984.

13 Can we have the second document, please, which is under the ERN  
14 DAR-D31-0001-0009.

15 Okay. This is again a translation. And my apologies if you cannot read it, but I will  
16 describe this document. This document is a pharmacy licence delivered to Mr Ali  
17 Muhammad Ali Abd-Al-Rahman on 10 April 2012.

18 PRESIDING JUDGE KORNER: [15:23:54] Mr Laucci --

19 MR LAUCCI: Yes.

20 PRESIDING JUDGE KORNER: -- where do you see that? It's delivered to  
21 somebody called Ali Mohammad Alid -- sorry, Ali Mohammad Ali.

22 MR LAUCCI: [15:24:10] This is correct. For the English translation --

23 PRESIDING JUDGE KORNER: [15:24:16] What does the original -- is it in Arabic?  
24 Presumably, it is.

25 MR LAUCCI: [15:24:21] Okay. No, same in Arabic, Ali Mohammad Ali. I can

1 confirm.

2 PRESIDING JUDGE KORNER: [15:24:25] Well, then, where's this getting you? Is it  
3 the same -- is this -- is this supposed to be your client?

4 MR LAUCCI: [15:24:32] It is supposed to be my client, yes, indeed. With -- who is  
5 designated by his three first names, as that can happen. You know that the names  
6 in -- in Sudan are sometimes made of two, three, four, depending on the practice in  
7 the documents. And that is for sure his three first names that are -- that do appear  
8 on this page, "Ali Mohammad Ali".

9 PRESIDING JUDGE KORNER: [15:25:01] Do you -- do you not -- I don't know. Is  
10 there no identification -- well, what's called a -- in Bosnia, I think a personal  
11 identification number, which each citizen has? You don't have that in the Sudan? I  
12 mean, is there anything to connect this with your client is what I'm asking? I'm  
13 assuming it was disclosed to you by the Defence -- by the Prosecution, sorry.

14 MR LAUCCI: [15:25:29](Microphone not activated)

15 THE INTERPRETER: Microphone.

16 PRESIDING JUDGE KORNER: [15:25:36] Microphone.

17 MR LAUCCI: [15:25:37] Yeah, I'm told that the original version of the first document,  
18 which I have shown before, bears a picture of Mr Ali Muhammad Ali  
19 Abd-Al-Rahman, but not -- not this one, unfortunately, not the one of the 2012.  
20 But this --

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

22 THE INTERPRETER: [15:26:02] Microphone, please.

23 PRESIDING JUDGE KORNER: [15:26:05](Microphone not activated) Thank you.

24 There's a document which is in Arabic which is your second document. Is that -- is  
25 that supposed to be the Arabic version of the first -- yes, it must be.

- 1 MR LAUCCI: [15:26:24] The one dated 1984.
- 2 PRESIDING JUDGE KORNER: [15:26:27] Yeah. So there's no photograph there.
- 3 But you're saying there's a photograph on the second one, as I see it.
- 4 MR LAUCCI: [15:26:37] Yes.
- 5 PRESIDING JUDGE KORNER: [15:26:38] All right.
- 6 MR LAUCCI: [15:26:56] Well, Madam President, what I propose to move forward is
- 7 to agree that the name on the second document is "Ali Mohammad Ali",
- 8 Abd-Al-Rahman is missing, and to proceed on that basis.
- 9 PRESIDING JUDGE KORNER: [15:27:10] But what is it you're asking -- what are
- 10 your asking the witness to say about this? He's never seen them before.
- 11 MR LAUCCI: [15:27:19] No, I know. But I am about to -- let me describe this
- 12 document and then I will explain why these documents are relevant and I will ask my
- 13 question to the witness.
- 14 PRESIDING JUDGE KORNER: [15:27:32] I don't think you can give a speech about
- 15 why they're relevant. The question is the witness has not seen them before, therefore
- 16 those -- all he can do is comment on them, which is not what a witness is supposed to
- 17 do. So what is the actual question?
- 18 MR LAUCCI: [15:27:51] The actual question, Madam President, Mr Witness, is that,
- 19 based on these two documents of -- of 1984 and 2012, these document establish that
- 20 Mr Ali Muhammad Ali Abd-Al-Rahman was licensed and authorised to sell
- 21 medication, but not veterinary medication. We are talking about medication for men
- 22 and women. It is not --
- 23 PRESIDING JUDGE KORNER: [15:28:33] Sorry. No, stop. Where does it say
- 24 that?
- 25 MR LAUCCI: [15:28:40] A simple -- simple pharmacy licence is something that is

1 related to a normal pharmacy. And if it was veterinary pharmacy, that would be  
2 specified.

3 PRESIDING JUDGE KORNER: [15:28:54] Are you going -- well, you can assert that,  
4 Mr Laucci, but are you going to produce some evidence to that effect?

5 MR LAUCCI: [15:29:04] My answer is not today.

6 PRESIDING JUDGE KORNER: [15:29:06] Well, no, I know that not today. But at  
7 some stage is it your intention -- Mr Laucci, if you're going to say that a witness has  
8 clearly got something wrong and you've got documents that will show it, that's one  
9 thing. But the witness can't really deal with them. That's something you can call as  
10 part of your own evidence.

11 MR LAUCCI: [15:29:30] I was very --

12 PRESIDING JUDGE KORNER: [15:29:31] What the witness -- it may be that  
13 the witness can help you, if he was a market trader at some stage, is whether that  
14 what you just asserted is correct. If he was selling veterinary products, would he  
15 have a veterinary licence?

16 MR LAUCCI: [15:29:45] I'm not sure the witness is qualified to answer, but I can ask  
17 this question.

18 PRESIDING JUDGE KORNER: [15:29:49] Well, no, he's not qualified to answer any  
19 of these questions.

20 MR LAUCCI: [15:29:53] No. But -- yes, the evidence of what you are asking, that is,  
21 were to sell veterinary medication would require a specific licence different from  
22 the one that we have on the screen, that is something that the -- the Defence will at  
23 some point try its best to produce, obviously.

24 PRESIDING JUDGE KORNER: [15:30:17] Okay. But put your case to him very  
25 nicely and fairly --

1 MR LAUCCI: Yes.

2 PRESIDING JUDGE KORNER: [15:30:16] -- that you say that whoever he is calling  
3 Ali Kushayb in the other markets other than Garsila, is somebody not your client.  
4 And he doesn't agree with you at the moment.

5 MR LAUCCI: [15:30:33] Yes -- no. Actually, I was very close to the -- to the  
6 conclusion just before the closed session part.

7 Q. [15:30:46] Which is to say that, Mr Witness, I put to you that your recollection of  
8 a man called Ali Kushayb and selling medication for animals on the local markets of  
9 Zarey, Garsila, Gaba and Arawala cannot correspond to Mr Ali Muhammad Ali  
10 Abd-Al-Rahman, and that you must be talking about another person or being  
11 mistaken.

12 A. [15:31:17] Are you putting that question to me?

13 Q. [15:31:21] Yes, sir.

14 A. [15:31:28] Unfortunately, my command of Arabic does not allow me to  
15 understand the entire exchange that has been going on here.

16 I know this man very well. He was well known. Let me tell you that in  
17 Darfur -- we may not be able to tell about all that happens everywhere, but if  
18 someone has a nickname, everyone would recognise that person with that nickname.  
19 In Wadi Salih, Ali Kushayb was well known. Many people would recognise Ali  
20 Abd-Al-Rahman, but he was well known as Ali Kushayb.

21 So if you say that he was selling medication for humans and not veterinary, back then  
22 I didn't know about that and I didn't go to school. I am a villager. I am not able to  
23 make a distinction between veterinary medicine and human medicine. That's too  
24 much to ask for me. I've never been to school. I didn't study Arabic. I didn't  
25 study English. I didn't study anything. So you may as well wholly disregard this

1 aspect.

2 Q. [15:32:53] Witness, by the way, you are talking about this nickname "Kushayb".

3 Do you know what does that mean?

4 A. [15:33:04] I do not.

5 Quite often, you don't know what a nickname means. But "Ali Kushayb" is just  
6 a nickname like my own nickname. People wouldn't call you by your father's name  
7 or your mother's name, but with your nickname. That's how you're recognised  
8 around. That's how things were in Darfur very often.

9 But if you're called by your parent's name, that might be in a governmental building  
10 or in a services facility, and this -- so this is how things were in Darfur.

11 What I'm saying here doesn't apply to Sudan entirely, but to Darfur.

12 Q. [15:33:46] Thank you.

13 Did you ever hear about some form of alcohol called Kushayb?

14 A. [15:34:01] No. Unfortunately not.

15 Q. [15:34:05] Thank you.

16 My last questions have to be asked in closed session.

17 PRESIDING JUDGE KORNER: [15:34:11] Yes.

18 (Private session at 3.34 p.m.)

19 THE COURT OFFICER: [15:34:27] We are in private session, Madam President.

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21 (Redacted)

22 (Redacted)

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WITNESS: DAR-OTP-P-0850

(Private Session)

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Trial Hearing  
WITNESS: DAR-OTP-P-0850

(Private Session)

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11 (Open session at 3.41 p.m.)

12 THE COURT OFFICER: [15:41:06] We're back in public session, Madam President.

13 JUDGE ALAPINI-GANSOU: [15:41:17](Interpretation) Thank you, your Honour.

14 Following the same line of argument which we had just now on the question linked to

15 the telephone call, I would like to know, going beyond to what was said already,

16 could we conclude that you preferred to have a deliberate lie rather than speak

17 the truth? And I would like to ask you whether it might not have been better to

18 refuse having the interview rather than lying. Could you not have declined having

19 the interview because you didn't know who your spokesperson was? Because that

20 might have also been a solution. Why didn't you think of that option?

21 THE WITNESS: [15:42:34](Interpretation) Unfortunately, this is someone who spoke

22 to me in my language, yet I did not trust him. I wasn't sure whether he was from

23 the Court. I didn't believe that he was from the Court. So that's the problem.

24 However, when I was approached in person, I told them about what happened in

25 detail. I shared the truth. And I spoke to them very frankly and I told them that I

1 could not provide information to someone talking to me by phone.

2 JUDGE ALAPINI-GANSOU: [15:43:10](Interpretation) So you didn't know who it  
3 was on the telephone? You didn't know whether the call -- the call came from  
4 the ICC? But a solution could have been simply refusing to have an interview  
5 because you didn't know who the other party was. Because, generally, lying is not  
6 a good remedy. Lying is not a good thing. So you could have refused to have an  
7 interview, but you didn't do that.

8 THE WITNESS: [15:43:51](Interpretation) Unfortunately, it wasn't lying, it was for  
9 protecting myself. I didn't know who the person was. It was a case where lives are  
10 on stake. It's difficult to tell the truth. Many people call you on phone and claim to  
11 be whomsoever, and there is danger there. And I didn't know how the system  
12 functioned here. So I didn't know about that, unfortunately.

13 JUDGE ALEXIS-WINDSOR: [15:44:21] Thank you, Madam President.  
14 Witness, I have a few questions for you.

15 So let's begin with Garsila. You said that you saw someone called Ali Kushayb on  
16 several occasions in the market. Is that so?

17 THE WITNESS: [15:44:46](Interpretation) It is.

18 JUDGE ALEXIS-WINDSOR: [15:44:48] Can you tell us which year this was,  
19 approximately?

20 THE WITNESS: [15:44:59](Interpretation) Unfortunately, I do not remember the year.  
21 To mention the year, I need to connect that to someone else in the village. But it was  
22 before the Darfur events. That was the time when I saw this man.

23 JUDGE ALEXIS-WINDSOR: [15:45:18] All right.

24 Do you remember how many times you saw this man? Was it twice? You said it  
25 was more than one, but was it twice? Was it 10? Can you give us some kind of

1 approximation.

2 THE WITNESS: [15:45:34](Interpretation) When I went to the village in Gaba or  
3 Arawala or in Garsila, I would see him. But if he didn't come, I wouldn't see him. I  
4 might miss him when he came. But it was several times, three or four times.

5 JUDGE ALEXIS-WINDSOR: [15:45:56] On those occasions, if you recall, and if you  
6 do not, that's fine, but if you can assist, on those occasions, what was the closest that  
7 you came to him?

8 THE WITNESS: [15:46:16](Interpretation) It was very close in the market.  
9 Sometimes I would have my products and he would be this far, just this far. Very  
10 close.

11 JUDGE ALEXIS-WINDSOR: [15:46:27] Okay, Witness. You said "this far" and you  
12 pointed. But can you, just for the record, tell us if he was where you are, where were  
13 you? Were you -- were you closer to him than I am to you?

14 THE WITNESS: [15:46:53](Interpretation) Sometimes I would have my products laid  
15 down and if I look on the other side, I would see him. And so did he. So it wasn't  
16 total absolute proximity because you would have those selling products and those  
17 who are selling medication. It was possible to see him at a close range.

18 JUDGE ALEXIS-WINDSOR: [15:47:22] So to understand you, it was possible that he  
19 would be -- that person Ali Kushayb would be selling products and you also would  
20 have a sort of stall at the market also selling products at the same time?

21 THE WITNESS: [15:47:47](Interpretation) You probably misunderstood me. In  
22 Darfur anyone selling medication requires a governmental permission. If you're not  
23 connected in the government, you can never get permission to sell medication. And  
24 if you're not a doctor, you cannot sell medication. I did not have a stand, but I had  
25 my products on the ground. (Redacted). That's different from a stand.

1 So that's what the matter is about. He had his medications presented. I could come,  
2 stop by to buy, someone else could also drop by and buy, and so forth. That's how it  
3 worked. That's how things were back in Darfur.

4 JUDGE ALEXIS-WINDSOR: [15:48:41] And on those occasions, the three or four  
5 times that you saw this person called Ali Kushayb, did you see him for a short time or  
6 for a long time? Or can you give us any approximate time?

7 THE WITNESS: [15:49:09](Interpretation) Do you mean before the events or  
8 afterwards?

9 JUDGE ALEXIS-WINDSOR: [15:49:12] Before. In the market.

10 THE WITNESS: [15:49:20](Interpretation) I don't know when exactly before  
11 the events. I apologise I can't provide that piece of information, because it's been too  
12 long since then, over 20 years, or approximately 20 years. So I don't know when,  
13 exactly.

14 JUDGE ALEXIS-WINDSOR: [15:49:33] No problem, Witness.

15 THE WITNESS: [15:49:34](Interpretation) But I saw him.

16 JUDGE ALEXIS-WINDSOR: [15:49:36] On those occasions -- sorry. On those  
17 occasions when you saw the person called Ali Kushayb in the different markets  
18 before the incidents in Darfur, was he wearing military uniform or was he wearing  
19 civilian clothes?

20 THE WITNESS: [15:50:01](Interpretation) When I saw him in the markets, as I said,  
21 in Gaba, Zarey and Arawala and also in Garsila, I never saw him in uniform back  
22 then. He was dressed in plain clothes. Sometimes a *labsa* and other times a *jallabiya*,  
23 but never in military uniform during that time.

24 JUDGE ALEXIS-WINDSOR: [15:50:24] All right. So now let us -- I'm finished with  
25 that. Thank you. I'm now going to the events in Deleig.

1 Did you see -- did I understand you to be saying that you saw the person called

2 Ali Kushayb I think twice in Deleig?

3 THE WITNESS: [15:50:47](Interpretation) Yes, I saw him twice.

4 JUDGE ALEXIS-WINDSOR: [15:50:49] Did I understand you that on both occasions

5 Ali Kushayb was in a vehicle?

6 THE WITNESS: [15:51:02](Interpretation) Yes.

7 JUDGE ALEXIS-WINDSOR: [15:51:06] On both occasions, can you tell us, if you

8 recall, around what time of day it was.

9 THE WITNESS: [15:51:21](Interpretation) Unfortunately, I don't remember. I was  
10 in fear then. I don't remember the hour.

11 When you're in fear, you can't remember the exact hour. But approximately, it was  
12 in the morning. I can't remember the exact hour.

13 JUDGE ALEXIS-WINDSOR: [15:51:36] My apologies, Witness. I should have  
14 specified that I did not mean the exact time. So in the morning is of assistance to me.  
15 I meant whether it was in the night or in the day, midday, generally. So you've  
16 answered my question.

17 All right. So that -- one more question. I'm sorry. I'm going back. In the times  
18 before, when you saw Ali Kushayb in the different markets, around what time was it?  
19 Was it night? Was it morning? Lunchtime? Evening? Very approximate, very  
20 general.

21 THE WITNESS: [15:52:19](Interpretation) It was in the morning in Deleig.

22 JUDGE ALEXIS-WINDSOR: [15:52:23] No, not in Deleig. Before. I'm sorry, I'm  
23 going back a bit. Before, when you saw him in different markets, around what time  
24 would you have seen him? Very approximate times.

25 THE WITNESS: [15:52:43](Interpretation) Unfortunately, when I head to

1 the drugstore to buy medication, maybe then I would see him. It could be in  
2 the morning time, around noon, when I am around in the market, moving around, or  
3 when he moved around, maybe to go to somewhere where people sell a meat, meal.  
4 So times were different. This happened at different times.

5 JUDGE ALEXIS-WINDSOR: [15:53:10] Very well. Thank you, sir. Those are all  
6 my questions.

7 PRESIDING JUDGE KORNER: [15:53:15] Did you -- you told the Court that  
8 Ali Kushayb was a nickname, and you described that in Sudan people are known by  
9 nicknames, and we've heard that one many times. Did you ever know at that stage,  
10 or indeed, when you say that you saw him in Deleig in the -- in the motor car, did you  
11 know what his real name was?

12 THE WITNESS: [15:53:53](Interpretation) Unfortunately not, your Honour. I did  
13 not know his real name. I only knew him as Ali Kushayb.

14 PRESIDING JUDGE KORNER: [15:54:00] Was there anybody else in the market at  
15 Garsila, or any of the other markets, who sold medication who had the same  
16 nickname?

17 THE WITNESS: [15:54:23](Interpretation) No, your Honour. Not in Garsila and  
18 not in Deleig. Not in any market. It was just him.

19 PRESIDING JUDGE KORNER: [15:54:31] Yes.

20 Yes. Well, sir, thank you very much for coming to give your evidence. And  
21 we -- we're sorry that we cannot allow you to express your feelings about matters  
22 which are outside the issues in this case. I know that you wanted to talk about other  
23 matters. But we thank you very much for giving the evidence that you did and we  
24 wish you a safe return to your own country. So thank you. And if you'd like to go  
25 with the court officer now.

1 THE WITNESS: [15:55:10](Interpretation) Thank you, your Honour.

2 (The witness is excused)

3 PRESIDING JUDGE KORNER: [15:55:38] Yes, Mr Nicholls, the witness tomorrow  
4 is -- is it P-12?

5 MR NICHOLLS: [15:55:45] Yes, your Honour.

6 PRESIDING JUDGE KORNER: [15:55:47] Is he the last witness you've got lined up  
7 for this week, have you got one more?

8 MR NICHOLLS: [15:56:02] It looks like he is the last at the moment, your Honour.

9 PRESIDING JUDGE KORNER: [15:56:05] All right.  
10 Are you taking him in chief or is -- is -- is somebody else?

11 MR NICHOLLS: [15:56:13] It's Mr Jeremy.

12 PRESIDING JUDGE KORNER: [15:56:15] Mr Jeremy, okay. Do you know how  
13 much time Mr Jeremy is going to spend with him?

14 MR NICHOLLS: [15:56:21] He's still going to have a fair amount of time. I believe  
15 a session, approximately. Possibly a little bit more or less. So I mean an hour and  
16 a half. And I believe the -- there's a fair amount of cross-examination as well, but I --

17 PRESIDING JUDGE KORNER: [15:56:36] Well, I'm rather assuming there would.  
18 And as I -- as we said in our ruling, we'll give the Defence as much time. I'm just  
19 trying to work out roughly, even though -- I suppose the question is whether even if it  
20 were possible for you to get another witness here for Friday, but how long he's going  
21 to be.

22 Are you cross-examining, Mr Edwards?

23 MR EDWARDS: [15:56:57] Yes, I'm -- it's a witness that's going to take a good two  
24 days.

25 PRESIDING JUDGE KORNER: [15:57:05] Yeah. All right. Well, then, I won't -- I



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- 1 won't say then you need to find somebody else. If we finish earlier on Friday or late
- 2 Thursday afternoon, fine.
- 3 MR NICHOLLS: [15:57:16] Thank you, your Honour.
- 4 PRESIDING JUDGE KORNER: [15:57:17] Yes, Very well.
- 5 So 9.30 tomorrow morning.
- 6 THE COURT OFFICER: [15:57:22] All rise.
- 7 (The hearing ends in open session at 3.57 p.m.)