

Trial Hearing  
DAR-OTP-P-0892

(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 ("Ali  
5 Kushayb") - ICC-02/05-01/20  
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet  
7 Alexis-Windsor  
8 Trial Hearing - Courtroom 2  
9 Monday, 13 June 2022  
10 (The hearing starts in open session at 10.08 a.m.)  
11 THE COURT USHER: [10:08:50] All rise.  
12 The International Criminal Court is now in session. Please be seated.  
13 PRESIDING JUDGE KORNER: [10:09:16] Yes. Good morning, all.  
14 Can we call the case, please.  
15 THE COURT OFFICER: [10:09:22] Good morning, Madam President. Good  
16 morning, your Honours.  
17 This is The situation in Darfur, Sudan, in the case of The Prosecutor versus Ali  
18 Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.  
19 For the record, we're in open session.  
20 PRESIDING JUDGE KORNER: [10:09:40] Yes. Appearances for the Prosecution,  
21 please.  
22 MR JEREMY: [10:09:46] Good morning, Madam President, your Honours.  
23 Mr Nicholls sends his apologies. He will not be present today.  
24 On the Prosecution side today, we have Pubudu Sachithanandan, Laura Morris,  
25 Claire Sabatini, and myself, Edward Jeremy.

1 Thank you.

2 PRESIDING JUDGE KORNER: [10:10:03] Yes, thank you, Mr Jeremy.

3 Yes, let's have the appearances for the victims' representatives next.

4 MR SHAH: [10:10:09] Good morning, Madam President. Good morning, your  
5 Honours. Good morning, colleagues.

6 The participating victims are represented today by Mr Idriss Anbari, and myself,  
7 Anand Shah. Thank you.

8 PRESIDING JUDGE KORNER: [10:10:18] Sorry, who was the first person?

9 MR SHAH: [10:10:21] Idriss Anbari.

10 PRESIDING JUDGE KORNER: [10:10:24] All right. New?

11 MR SHAH: [10:10:24] Our case manager. No.

12 PRESIDING JUDGE KORNER: [10:10:26] Case manager, sorry. All right. Thank  
13 you.

14 Yes, the Defence, please.

15 MR EDWARDS: [10:10:31] Good morning, your Honours. Mr Ali Muhammad Ali  
16 Abd-Al-Rahman is back with us in court this morning. Representing him is Paola  
17 Pallot, to my right; Ahmad Issa, behind me; our intern, Drussila Bret-Robertson, and  
18 Mr Laucci conveys his apologies for not being with us today. He'll be back in court  
19 on Wednesday.

20 PRESIDING JUDGE KORNER: [10:10:58] All right. I see that both leaders have  
21 deserted us this morning.

22 Right. Mr Jeremy, this witness doesn't seem he's going to take any time at all. Is  
23 the next witness lined up? Is it P -- it's P-718, this afternoon, necessary.

24 MR JEREMY: [10:11:18] The next witness is -- is lined up, but I understand from  
25 when colleagues that we may well take the day with the present witness.

1 PRESIDING JUDGE KORNER: [10:11:30] Really, Mr Edwards?

2 MR EDWARDS: [10:11:35] I mean, we'll see how it goes.

3 PRESIDING JUDGE KORNER: [10:11:38] I mean, he doesn't actually -- anything he  
4 really knows about your client, apart from one sighting, is hearsay. I appreciate it's  
5 admissible, but ...

6 MR EDWARDS: [10:11:50] And that's going to -- that's going to be explored.

7 PRESIDING JUDGE KORNER: [10:11:55] Yes. All right. I mean, we'll see how we  
8 go.

9 MR EDWARDS: [10:11:55] If things move quickly, then, yes, we're certainly ready to  
10 start the next witness, but out of an abundance of caution, I advised my learned  
11 friends that it may be that we are certainly well into the afternoon session. After  
12 then your Honours' questions, then if there's any time left over, it may not be very  
13 much time.

14 PRESIDING JUDGE KORNER: [10:12:17] All right. Well, let's see how we go.  
15 Yes. Who's calling the witness? It's you, Mr Sachithanandan, is it?

16 MR SACHITHANANDAN: [10:12:23] That's correct, your Honour.

17 PRESIDING JUDGE KORNER: [10:12:29] Let's deal with the summary then.

18 MR SACHITHANANDAN: [10:12:34] P-892 is a Fur civilian from Darfur. He  
19 provides information about the attack on his village by Government of Sudan Forces  
20 and Janjaweed in February 2004. He was displaced to Mukjar as a result of this  
21 attack, alongside other relatives and villagers.

22 He names several males of the Fur ethnicity from his village who were arrested at  
23 checkpoints at entrances at Mukjar, and during house to house arrests, and then  
24 imprisoned at Mukjar police station and later executed near the location -- near the  
25 future location of a UNAMID base outside Mukjar. P-892 also provides information

1 about the government of Sudan and Janjaweed forces using derogatory terms, such as  
2 *tora bora* and slaves against people of, inter alia, the Fur ethnicity.

3 Upon arriving at the -- at a checkpoint in Mukjar, the witness was told by PPF officers  
4 to go to the locality building, alongside other villagers. On that day, he saw Ali  
5 Kushayb and describes the actions in statements of Ali Kushayb.

6 In March-April 2004, the witness saw two bodies of execution victims near one of the  
7 execution sites, one of which he believed to be a -- the corpse of somebody he knew  
8 due to the appearance of the dead body.

9 PRESIDING JUDGE KORNER: [10:13:59] Yes, all right. Let's have the witness in.  
10 He can read, apparently, this witness.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE KORNER: [10:14:58] Yes. Good morning, sir. Can you hear  
13 and understand me?

14 WITNESS: DAR-OTP-P-0892

15 (The witness speaks Arabic)

16 THE WITNESS: [10:15:08](Interpretation) I can.

17 PRESIDING JUDGE KORNER: [10:15:08] Thank you very much for coming to court  
18 to give your evidence. In a moment, you will be asked to read the solemn  
19 undertaking, which is on a card in front of you. And after that, you'll be asked  
20 questions by the various parties in this case.

21 Just two things. First of all, we'll be taking a break -- I think we'll take the break at  
22 11.15, so that -- there's about an hour. And during that time, you'll have a chance to  
23 relax. There's a break, and then an hour and a bit for lunch.

24 If -- it's very important, two things. If you don't understand any of the questions,  
25 then say so straightaway. Sometimes it's difficult with the interpretation.

1 Second, it's very important that when there's a break, I anticipate your evidence will  
2 be concluded today, that you don't talk about that evidence to anybody who's with  
3 you. All right.

4 Yes. All right. Mr Sachithanandan.

5 Oh, sorry, can you -- yes, sorry.

6 Can you -- could you read -- very kindly read the solemn undertaking, first of all.

7 THE WITNESS: [10:16:43](Interpretation) I solemnly undertake to speak the truth,  
8 the whole truth and nothing but the truth.

9 QUESTIONED BY MR SACHITHANANDAN:

10 MR SACHITHANANDAN:

11 Q. [10:16:58] Good morning Mr Witness.

12 A. [10:17:00] Good morning.

13 Q. [10:17:00] You remember meeting to me last Friday and Saturday, together with  
14 Laura, my colleague, who's sitting behind me?

15 A. [10:17:11] Yes.

16 Q. [10:17:12] So I will be ask you some questions today. And we are in open or  
17 public session, right, which means, even though people will not recognise your voice,  
18 they can hear your voice, so please don't say your name or anything identifying.

19 You remember providing a statement to the Office of the Prosecutor  
20 in 20 -- in 2000 -- sorry, 2001?

21 Sorry. Please say "yes" or "no", yeah.

22 A. [10:17:56] Yes.

23 Q. [10:17:56] And for the record, the number of the statement, the evidence  
24 registration number is DAR-OTP-0217-0384.

25 Mr Witness, you remember you had an opportunity to read your statement and check

1 whether there were any errors in the statement, correct?

2 A. [10:18:31] (No interpretation)

3 Q. [10:18:31] And you made a limited number of corrections which you listed in a  
4 document, read over and signed, that's right?

5 A. [10:18:45] Yes.

6 Q. [10:18:45] And for the record, that's document DAR-OTP-0224-0658.

7 Having made those corrections, you agreed that your statement as  
8 corrected was true and correct to the best of your knowledge and  
9 belief, right?

10 A. [10:19:16] Yes.

11 Q. [10:19:17] Now, based on a reading of your statement, you also prepared a list of  
12 victims who were detained at Mukjar police station and later killed, correct?

13 A. [10:19:26] Yes.

14 Q. [10:19:35] For the record, the ERN of that is 0224-0653.

15 You had a chance to check that list for accuracy and then you signed it, correct?

16 A. [10:19:56] Yes.

17 Q. [10:19:56] And you agree that that list is accurate to the best of your knowledge  
18 and belief?

19 A. [10:20:07] Yes.

20 Q. [10:20:09] And do you agree to have your statement as corrected and this list of  
21 victims to be introduced into evidence in this case?

22 A. [10:20:33] I agree to that.

23 Q. [10:20:38] Thank you.

24 PRESIDING JUDGE KORNER: [10:20:39] Do you think we have to go on asking this?  
25 I know this is what the statute says, but it's so obvious.

1 MR SACHITHANANDAN: [10:20:46] Your Honour, one option would be to just  
2 have the witness sign a document confirming that.

3 PRESIDING JUDGE KORNER: [10:20:52] I just think -- I just -- this is the oddest part  
4 of the statute that I can think of, but anyhow, I think, as so much is now being done  
5 on paper, let's have that one as well. It just sounds mad.

6 MR SACHITHANANDAN: [10:21:05] Thank you, your Honour. That makes  
7 perfect sense to me.

8 PRESIDING JUDGE KORNER: [10:21:07] Right.

9 MR SACHITHANANDAN:

10 Q. [10:21:08] Mr Witness, now that those formalities are over, I want to ask you a  
11 few -- a few other questions about what you told us in your statement.

12 When your village was attacked in 2004, you fled to Mukjar, correct?

13 A. [10:21:27] Yes.

14 Q. [10:21:36] And you were stopped at -- at the -- one of the eastern checkpoints of  
15 Mukjar, correct?

16 A. [10:21:46] Yes.

17 Q. [10:21:48] And at the checkpoint, some people were arrested and taken to the  
18 police station, and some people were sent to the locality, correct?

19 A. [10:22:06] (No Interpretation)

20 Q. [10:22:05] Sorry, just for the record, Mr Witness, always say "yes" or "no", okay?

21 A. [10:22:17] Yes.

22 Q. [10:22:18] Can you tell us, please, who were the people being selected to be  
23 arrested?

24 A. [10:22:39] I did not understand the question. Could you please clarify further.

25 Q. [10:22:45] Now, you said that some people were sent to the locality and other

1 people were sent -- were being arrested.

2 What I want to know is on -- why were some people being arrested?

3 A. [10:23:08] The ones who were arrested and taken to the police station, it was on  
4 the basis of their age group from 20 to 25 to 30 and even over that age. These people  
5 were arrested and taken to the police station. Those who are outside this category,  
6 women, the elderly and the young, were taken to the locality. If I got your question  
7 correctly.

8 Q. [10:23:46] And what tribes were the people being arrested from?

9 A. [10:24:01] Mostly Fur. Some of them were from the Aranga tribe, including in  
10 part the Masalit, Tama who were living with us in the village.

11 Q. [10:24:16] And as you say in your statement, it's the Popular Police that were  
12 arresting these people, correct?

13 A. [10:24:26] Yes.

14 Q. [10:24:27] When they were arresting these Fur and other people, what were the  
15 Popular Police saying?

16 A. [10:24:45] The PPF was telling them that these were groups that that followed  
17 the Abd-Al-Wahid's movement, the SLA led by Abd-Al-Wahid.

18 Q. [10:25:05] I want to move forward now to the time where you were at the  
19 locality premises.

20 Can the court officer please pull up the redacted version of 0224-0652.

21 Mr Witness, do you see an image in front of you?

22 A. [10:25:52] I do, very clearly.

23 Q. [10:25:54] You remember marking up this image on Friday with me and my  
24 colleague?

25 A. [10:26:05] Yes.



1 Q. [10:26:07] You've marked here with an "X" yourself and with a zero or circle  
2 Kushayb; is that correct?

3 A. [10:26:24] Yes.

4 Q. [10:26:25] And at the top of the image, a bit to the left, you've written "direction  
5 of the mass graves", that's correct?

6 A. [10:26:39] Yes.

7 Q. [10:26:44] Mr Witness, you -- you said in your statement that when you were at  
8 the locality that you could see Kushayb; is that correct?

9 A. [10:27:00] Yes.

10 Q. [10:27:01] Please describe to the court what Kushayb was doing?

11 PRESIDING JUDGE KORNER: [10:27:12] (Microphone not activated) Sorry. Isn't  
12 that paragraph 55?

13 MR SACHITHANANDAN: [10:27:17] Your Honour, there was a bit of additional  
14 detail that came out in prep, so I think it will be useful.

15 PRESIDING JUDGE KORNER: [10:27:28] Okay.

16 MR SACHITHANANDAN:

17 Q. [10:27:28] I'm sorry, Mr Witness, could you please tell the Court what Kushayb  
18 was doing when you saw him.

19 A. [10:27:44] He was talking with his troops, but I was a little far. I was not at first  
20 able to hear clearly. He was talking to his troops and he held his stick as per the  
21 description. The next step was when we left the locality. He was still with his  
22 troops and he was riding a Land Cruiser vehicle with his troops and he was also  
23 talking and saying that they were targeting the eastern areas, in particular, the Sindu  
24 area where the rebellion has found its way.

25 That's what I understood, but I was a little far because at that point, it is not

1 possible -- it was not possible to approach the location where his soldiers were to hear  
2 everything. It was a very difficult -- it was a difficult situation. Thank you.

3 Q. [10:29:03] Right. So I understand you saw Kushayb on two separate occasions:  
4 First when you were in the locality; second, when he left the locality. And I just  
5 want to clear up what was happening while you were in the locality, okay? So I'm  
6 going to ask you one or two questions about that.

7 A. [10:29:25] Yes, when we were in the locality, there was -- there were his PDF  
8 soldiers whom -- to whom we referred to as the Janjaweed. They were stationed  
9 inside the locality. They were terrifying the people there, beating them, using whips  
10 and outside there was gunfire. I mean outside the locality.

11 Q. [10:30:08] You said that Kushayb was gesturing with a stick to his troops.  
12 What, if anything, were his troops doing?

13 A. [10:30:32] They were beating people. The soldiers were beating people. They  
14 were on their horses surrounding people, citizens, so it was a terrifying situation.

15 Q. [10:30:47] What, if anything, were his soldiers saying?

16 A. [10:30:58] Yes, they were saying "slaves" and "*tora bora*".

17 Q. [10:31:13] Why do you think they were calling you slaves?

18 MR EDWARDS: [10:31:18] Your Honour, the witness can't answer that. He  
19 can -- he can give evidence about what he heard. He can't give evidence of what was  
20 in the minds of those allegedly speaking these words.

21 MR SACHITHANANDAN: [10:31:28] That's entirely correct, your Honour, but I  
22 think that the witness's assessment of the context would still be useful for the Court.

23 PRESIDING JUDGE KORNER: [10:31:37] (Microphone not activated)

24 THE WITNESS: [10:31:47] I would like to answer this question.

25 MR EDWARDS: [10:31:51] I'm sorry, I didn't hear your Honour's comment.

1 PRESIDING JUDGE KORNER: [10:31:54] I think -- I was about to say you will have  
2 to rephrase the question, but the witness wants to answer it as it stands.

3 MR EDWARDS: [10:32:00] Well, that may very well be right, but --

4 PRESIDING JUDGE KORNER: [10:32:03] Well, I'm not going to stop him. I don't  
5 think it's -- it should have been better phrased, I think, but, if the witness says he  
6 would like to answer that, then -- then I'm going to let him.

7 So if you'd like to tell us or answer the question.

8 THE WITNESS: [10:32:34](Interpretation) Yes. They were using "slaves", "*tora bora*",  
9 they were calling every Fur these names or every person from a Negro tribe. This is  
10 an age-old conflict between the Arab tribes and the Negro tribes. The Arab tribes to  
11 whom your accused person belongs and there were the other tribes which was in  
12 reference to *tora bora* and to -- belonging to Abd-Al-Rahad Noor because he was a Fur.  
13 Therefore, everyone who was a member of the Fur tribe was considered a *tora bora*.  
14 Thank you very much.

15 MR SACHITHANANDAN: [10:33:25]

16 Q. [10:33:26] Mr Witness, you mentioned already that at some point you left the  
17 locality, correct?

18 A. [10:33:44] I believe I have already answered that.

19 Q. [10:33:46] And you were at some point between the -- you left the locality and  
20 you were in between the police station and the locality building; is that correct?

21 A. [10:34:00] Yes, I believe I have answered your question. When he left with his  
22 soldiers, he was talking to them. So I have already provided an answer to that.

23 Q. [10:34:28] Indeed.

24 Can the court officer please pull up the redacted version of 0224-0661.

25 Mr Witness, do you see an image in front of you?

1 A. [10:35:06] I do.

2 Q. [10:35:09] Do you remember marking this up this Saturday in the presence of  
3 me and my colleague?

4 A. [10:35:22] Yes.

5 Q. [10:35:23] You've written at the top of this image, "location of Kushayb while  
6 talking about Sindu", correct?

7 A. [10:35:36] Yes.

8 Q. [10:35:37] And you've marked with an "X" yourself and a zero or circle Kushayb,  
9 correct?

10 A. [10:35:49] Yes.

11 Q. [10:35:49] Could you tell us, please, I know you touched on this briefly, but  
12 could you tell us please what Kushayb was saying at this point.

13 A. [10:36:08] I believe I've provided an answer on that. He was telling his soldiers  
14 that he was heading to Sindu to crush the rebellion there.

15 Q. [10:36:27] And I know you might find some of this repetitive, but it's important.  
16 Is this something you heard with your own ears or is this somebody -- something  
17 somebody else told you?

18 A. [10:36:42] I heard this myself when he was with his soldiers as we were leaving  
19 the locality and walking and passing by the market. I -- I was living in the eastern  
20 neighbourhood, after I had come from the village. I was able to ascertain this further  
21 from people. I asked them what was meant by those words and, who that person  
22 was, so they confirmed to me that that person was Ali Kushayb.

23 Q. [10:37:25] I'm going to move on now to a few days ...

24 Sorry, yeah, I'm just checking if my mic is working.

25 I'm going to move on a little bit forward a few days.

1 It's correct, isn't it, that at some point, you went out to collect hay and  
2 found some bodies?

3 A. [10:37:52] Yes.

4 Q. [10:37:53] And this was one -- one or two minutes' walk from where the  
5 UNAMID base was later built; is that correct?

6 A. [10:38:18] Yes.

7 Q. [10:38:19] And you visited with (Redacted) is that right?

8 A. [10:38:26] Yes.

9 Q. [10:38:27] You found two bodies. Please describe to the court these two bodies.

10 A. [10:38:44] Specifically, UNAMID was two minutes' away. However, UNAMID  
11 had not been established yet back then because this was in 2004, and UNAMID was  
12 created only later on, either in 2006 or 2005. So UNAMID came later and set up shop  
13 there, near the villages --

14 THE INTERPRETER: [10:39:09] Correction --

15 THE WITNESS: [10:39:09] -- near the creek, which we call the "Kushayb creek". We  
16 went to fetch hay for our livestock and we found two dead bodies on the bank of the  
17 creek, not inside the creek, and there was a number of other bodies inside the creek.

18 And, as previously said, we found two bodies and we found other bodies buried  
19 under the sand in the creek.

20 MR SACHITHANANDAN: [10:39:52]

21 Q. [10:39:52] Do you know who these two bodies were or did you not recognise  
22 them?

23 A. [10:40:06] The two bodies, I was particularly suspecting one of them to be  
24 belonging to *umdah* Issa Haroun Noor, the very *umdah* of my own village; that was the  
25 only corpse I suspected -- as identifiable, but not the other one. But this was a dead

1 body, so I could not be 100 per cent sure to whom it belonged.

2 Q. [10:40:40] Please explain to the Court why you thought it might be *umdah*  
3 Haroun's body?

4 A. [10:40:57] I suspected this to be *umdah* Issa Haroun Noor's body because he had  
5 a distinctive attire, he wore a *ansariya jallabiya*, that's how it's called. That's the first  
6 reason why I suspected it was him. It was his habit to wear the *ansariya jallabiya*.  
7 Second, he was skinny. So those features, since they were visible in the dead body,  
8 we suspected the body to belong to Issa Haroun Noor.

9 Q. [10:41:49] This location where the bodies were, you also visited the same  
10 location in 2020, correct?

11 A. [10:41:57] Yes.

12 Q. [10:42:02] I'd like the court officer to pull up a video. I'm going to play it in two  
13 clips. The first can be public and then we may need to go private, I'll mention it to  
14 the court officer, but I'll mention the ERN, it's DAR-OTP-0217-0278.

15 PRESIDING JUDGE KORNER: [10:42:25] Do we need to go into private session  
16 because something reveals the identity of the witness?

17 MR SACHITHANANDAN: [10:42:36] This witness and potentially other  
18 individuals as well.

19 PRESIDING JUDGE KORNER: [10:42:39] Okay.

20 MR SACHITHANANDAN: [10:42:44] But just to be clear, at this -- at this point, we  
21 don't need to go into private yet.

22 We can please play the first 25 seconds.

23 (Viewing of the video excerpt)

24 MR SACHITHANANDAN: [10:43:57]

25 Q. [10:43:57] Mr Witness, you recognise this location?

1 A. [10:44:01] Yes.

2 Q. [10:44:02] Please tell the Court what this location is.

3 A. [10:44:11] This is the same creek called the Kushayb creek, the graves are right  
4 west of this creek. This road takes to the police station and also to Garsila. The  
5 upper part of the land used to host UNAMID, but after UNAMID left, they handed  
6 that over to the Zalingei --

7 THE INTERPRETER: [10:44:44] Inaudible.

8 THE WITNESS: [10:44:45] I am familiar with this place and I've been there twice in  
9 2020.

10 PRESIDING JUDGE KORNER: [10:44:49] Sorry, is the creek the sort of mud bit?

11 THE WITNESS: [10:45:08](Interpretation) It's the place where there's sand, that's the  
12 *khor*/creek. The white sand, that's what I'm referring to. West of that are the graves,  
13 right west of that.

14 PRESIDING JUDGE KORNER: [10:45:21] And what time of year was this video shot  
15 because you found the bodies in May, I think, didn't you say, March, April. What  
16 time of year was this video taken?

17 THE WITNESS: [10:45:54](Interpretation) This was shot in 2020.

18 PRESIDING JUDGE KORNER: [10:45:55] Yeah, in -- can you remember -- well, I  
19 mean, I assume there's a record of the month.

20 MR SACHITHANANDAN: [10:46:00] There's other evidence, but perhaps can I ask  
21 the witness.

22 Q. [10:46:04] Mr Witness, which season was it when this video was shot, if you can  
23 tell us the season. Is it rainy season or dry season?

24 A. [10:46:22] This was shot in the fall, between August and September. I was  
25 present at that location that was shot.

1 PRESIDING JUDGE KORNER: [10:46:35] At the time that you found the bodies in  
2 March, April, was there more water that we can see there in the creek or less?

3 THE WITNESS: [10:46:57](Interpretation) I cannot hear clearly.

4 PRESIDING JUDGE KORNER: [10:47:02] When you actually found the bodies in  
5 April -- March, April of 2004, was there more water in the creek, the *chor*, than we can  
6 see in this video?

7 THE WITNESS: [10:47:34](Interpretation) I cannot get the question.

8 MR SACHITHANANDAN: [10:47:35] I can take one shot.

9 PRESIDING JUDGE KORNER: [10:47:37] Well, is it translation or what?  
10 At the time when you actually found the bodies, was the creek full? In other words,  
11 was there a lot of water? There seems to be very little water in September.

12 THE WITNESS: [10:48:16](Interpretation) Is the question addressed to me?

13 MR SACHITHANANDAN: [10:48:18] Yes, yes.

14 THE WITNESS: [10:48:23](Interpretation) Okay. That was in summer and there  
15 was no water. The dead bodies were buried under the sand and there was no water  
16 at that time.

17 MR SACHITHANANDAN: [10:48:51]

18 Q. [10:48:51] Just so the Court understands, the two bodies you found, was  
19 that -- when you're looking at this screen, at this image, is it to your right, to your left,  
20 or some other direction?

21 A. [10:49:10] They were on the right direction of the creek, west side, right hand.

22 MR SACHITHANANDAN: [10:49:25] Your Honour, I'm going to move forward,  
23 unless you have any ...? Okay.

24 PRESIDING JUDGE KORNER: [10:49:32] No, thank you.

25 MR SACHITHANANDAN: [10:49:33] Can we -- your Honour, for the reasons



1 discussed previously, perhaps we could go into private session for a few minutes.

2 PRESIDING JUDGE KORNER: [10:49:39] Private session, please.

3 (Private session at 10.49 a.m.)

4 THE COURT OFFICER: [10:49:48] We're in private session, Madam President.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Open session at 10.54 a.m.)

17 THE COURT OFFICER: [10:54:58] We're back in public session, Madam President.

18 MR SACHITHANANDAN: [10:55:01]

19 Q. [10:55:02] Mr Witness, you mentioned earlier that this creek was called Khor

20 Kushayb. Please tell the Court why it is called Khor Kushayb.

21 A. [10:55:18] All the community there knows that creek as Khor Kushayb because

22 of the killings that happened there, and people who were killed and they were left in

23 their creek. This is why it was called Kushayb creek, because he removed people

24 from the police station and took them there where they were executed. So ever since

25 it is called Khor Kushayb or the creek of Kushayb.

1 Q. [10:56:00] Thank you. Without mentioning how you know this person, can you  
2 please tell me whether you know someone called Shukry (phon).

3 A. [10:56:19] Yes, I do.

4 Q. [10:56:19] At the time of the arrests and killings in Mukjar in 2004, where was  
5 Shukry?

6 A. [10:56:32] We fled from Arada into Mukjar, and he was in -- during the killings.

7 MR SACHITHANANDAN: [10:56:46] Thank you, your Honour. No further  
8 questions from me.

9 PRESIDING JUDGE KORNER: [10:56:48] Yes. Thank you very much yes, Mr Shah.

10 MR SHAH: [10:56:55] Thank you, Madam President.

11 QUESTIONED BY MR SHAH:

12 BY MR SHAH:

13 Q. [10:57:04] Good morning, Mr Witness. We met earlier today, but I'll introduce  
14 myself again for the record. My name is Anand Shah, and I'm one of the lawyers  
15 representing the victims in these proceedings. And on behalf of our clients, I would  
16 like to ask you just a few questions.

17 A. [10:57:21] Yes, please go ahead.

18 Q. [10:57:23] Mr Witness, I'm just going to repeat what -- what counsel for the  
19 Prosecution had mentioned. We are in public session, so please don't mention the  
20 name of your home village, your home area, or the names of any individuals. Is that  
21 fine?

22 A. [10:57:45] Perfect.

23 Q. [10:57:47] Firstly, can you describe to the Judges what was -- what was life like  
24 in your home village before the conflict started in 2003.

25 A. [10:58:04] Sure, yes. It was a very simple life in my native village from where I

1 was displaced. We had a good living conditions whereby people were mainly  
2 dependent on herding and agriculture for self-sufficiency, and they were also herd  
3 livestock, such as sheep, cows, cattle. That was the main livestock available in my  
4 village.

5 We also had religious teaching, and students would leave their village to study  
6 religious signs in Mukjar. And people would move to Mukjar very often. That was  
7 the situation in our village.

8 Q. [10:59:33] Thank you, Mr Witness.

9 I'd now like to ask you about the first attack on your home village, which you said  
10 took place in August 2003, and you describe seeing your house being burned and  
11 looted, and you also say that you fled the village with your grandmother, who was  
12 blind, and also one of your brothers.

13 Now, I know this may be difficult to --

14 A. [11:00:04] Yes.

15 Q. [11:00:05] I know this may be difficult to speak about, but can you describe to  
16 the Court what it was like, what was the situation like as you were fleeing your home  
17 village after the first attack.

18 A. [11:00:24] It was very difficult. We never thought that this would happen one  
19 day, what happened in 2008 would happen, especially in the Fall season. We heard  
20 gunfire, we left the village, and we kept behind us all of our belongings. We  
21 couldn't take with us anything. I left with my maternal grandfather, my younger  
22 brother. We took the northern street in front of the mountain, where we were raised  
23 and grew up. It was the Gambita mountain. Then from Gambita we went to  
24 another mountain. We passed through the two mountains, and we went along the  
25 Khor or the creek until we reached Mukjar. But it was a very tough situation.

1 Q. [11:02:06] Thank you, Mr Witness.

2 In your statement, at paragraph 93, you also mentioned, during the February 2004  
3 attack on your village, this is the second attack, that you were told that there were two  
4 children who were related to you who fled the village and were never seen again.  
5 Do you know what happened to these children? And please don't mention any  
6 names.

7 A. [11:02:44] Those two children fled with their mother. One was a boy and  
8 another a girl. Their mother was my relative. When they fled, they took another  
9 direction.

10 After everybody arrived to Mukjar, they didn't join them. They didn't arrive them.  
11 And until now, we do not know about their fate. Of course, they must have been  
12 killed because there was no food where they were. So, of course, they should have  
13 been dead in the wilderness. But until now, we didn't find their dead bodies, and  
14 we do not know if they are elsewhere. So we have no information whatsoever about  
15 their whereabouts.

16 Q. [11:03:52] And, Mr Witness, did you ever hear of any other children during this  
17 time who were fleeing their villages and who went missing? Did you ever hear  
18 anything about that?

19 A. [11:04:12] Yes. Many children, especially in our village, took the same route  
20 and weren't found later on. But I specifically mention these two children because  
21 they were members of my family, and there are other people I knew -- I knew who  
22 had the same fate or the same issue. There was a lady, an elderly person, who is still  
23 missing.

24 Q. [11:04:47] Okay. Thank you, Mr Witness.

25 Now, I'd like to ask you about the very difficult day that you spent at the courtyard of

1 the locality building in Mukjar. You've already described to their Honours today  
2 that it was a terrifying situation. This was in Mukjar in February 2004. Can you  
3 estimate how many other people were in the courtyard with you.

4 A. [11:05:28] Well, they -- there were many, many people. Most of them came  
5 from eastern regions and from northern regions, and most of them were in the locality  
6 of Mukjar. Some of them left their homes and came to the locality because they were  
7 afraid because of the gunfire and the shootings, so they decided to leave. Some of  
8 them decided to leave the locality because the situation was not good. Some others  
9 came voluntarily to that place because they feared terrorism. Some of them brought  
10 with them their livestock to the locality. So the situation was quite difficult with  
11 many, many, people. We cannot estimate their numbers because we hadn't seen this  
12 for 20 years. So this happened 20 years ago or maybe 19 years and a half.

13 Q. [11:06:46] Thank you, Mr Witness.

14 Now, all the events that you describe in 2003 and 2004, you were around 16 or 17  
15 years old at this time. How did these events, what you -- what you experienced and  
16 what you saw, how did they impact your life?

17 A. [11:07:22] Of course, I was 16 to 17 years old, or precisely 17 years old. Of  
18 course, war can impact us a lot because I used to live in a village, in a small village.  
19 We had a simple life. And I moved to Mukjar, and my change -- my life changed as I  
20 became a displaced person. And we had to cope with people coming from different  
21 areas and regions. It was really difficult to wait for relief and aid from organisations.  
22 We were waiting for aid from the organisations. And a number of people who were  
23 there was such that the situation was a bit difficult. They were all in a very small  
24 area, which led to many illnesses, among other problems.  
25 I also had skin -- a skin illness for a long period of time. I recently recovered from

1 that illness, but I still have some traces. On another hand, we were determined to  
2 continue our life regardless of the situation and the pressure. So I moved to the  
3 university later on.

4 Q. [11:09:05] Thank you, Mr Witness. Maybe just one or two more questions for  
5 you.

6 We understand from your statement that you were raised by your grandmother from  
7 a young age, and I imagine she was an older person when these events took place in  
8 2003 and 2004.

9 Could you tell us how these events impacted her, having to flee your home village.

10 A. [11:09:42] She was a blind person, and we had to accompany her because of this.  
11 Her brother was with her, but he was -- he wasn't young. So we walked until we  
12 reached that location, and she lost hope. But with time, she got sick until she passed  
13 away.

14 Q. [11:10:28] Sorry to hear that, Mr Witness.

15 A. [11:10:30] She had a heart condition.

16 Q. [11:10:32] Okay. Mr Witness, I don't have any more questions for you. I just  
17 want to thank you on behalf of our clients for your willingness to come and testify  
18 before their Honours.

19 No further questions, Madam President.

20 PRESIDING JUDGE KORNER: [11:10:50] Yes, thank you, Mr Shah. I don't think,  
21 Mr Edwards, there's a point in you starting five minutes. We'll take the break now  
22 until 20 to 12.

23 (Microphone not activated)

24 THE INTERPRETER: [11:11:01] Microphone, please.

25 PRESIDING JUDGE KORNER: [11:11:07] Thank you.

- 1 Sir, there's going to be a half-hour break for you to relax and have a cup of coffee.
- 2 Twenty to 12.
- 3 THE COURT USHER: [11:11:19] All rise.
- 4 (Recess taken at 11.11 a.m.)
- 5 (Upon resuming in open session at 11.44 a.m.)
- 6 THE COURT USHER: [11:44:06] All rise.
- 7 Please be seated.
- 8 MR SACHITHANANDAN: [11:44:29] Just before the cross-examination commences,
- 9 your Honours, I'd like to place Mr -- mention that Mr Zakaria Abdalmomen is also in
- 10 the courtroom.
- 11 PRESIDING JUDGE KORNER: [11:44:39] Yes, Mr Edwards, whenever you're ready.
- 12 MR EDWARDS: [11:44:45] Thank you, your Honour.
- 13 QUESTIONED BY MR EDWARDS:
- 14 MR EDWARDS:
- 15 Q. [11:44:50] Good morning, Mr Witness.
- 16 My name is Iain Edwards. I'm one of the lawyers representing Mr Ali Muhammad
- 17 Ali Abd-Al-Rahman who sits behind me. We met briefly this morning, and I'm just
- 18 going to reiterate what I said this morning and what others have said already in the
- 19 court. If you ever want me to repeat a question or rephrase a question, don't hesitate
- 20 to ask, all right?
- 21 Okay. I'm going to assume that you understand. Another thing that's very
- 22 important is that -- yeah ...
- 23 A. [11:45:45] I understood, certainly.
- 24 Q. [11:45:48] And for the remainder of your evidence, please do try to remember to
- 25 either answer with the word yes or the word no rather than just nod your head or



1 shake your head, okay? It's important for the record.

2 A. [11:46:11] Fine.

3 Q. [11:46:12] The only other thing I'm going to say is that there is a purpose to all of  
4 the questions I have to ask you, so even if you think that you've answered a question  
5 before, can I please ask you to just bear with me. And even if it might seem a bit  
6 irritating, just answer the question anyway, all right? This is when you say yes, all  
7 right?

8 A. [11:46:54] Yes, yes.

9 Q. [11:46:57] Excellent.

10 When you first met the investigators, you had an expired passport, correct?

11 A. [11:47:18] Yes.

12 Q. [11:47:20] Do you remember either when you first applied for that passport, or if  
13 you don't remember that, what the validity of that passport was?

14 A. [11:47:47] That passport, I obtained roughly in 2015. It's -- it was valid for five  
15 years as per the norm in Sudan. Approximately, it was supposed to expire in 2020  
16 or 2021 in the month of November because I got it issued on November 15 and I  
17 didn't use it. For five years, I had that passport, then it expired.

18 Q. [11:48:29] Was that the first passport you had ever applied for?

19 A. [11:48:39] The first -- the very first passport was obtained in 2015. I never had  
20 another passport beforehand.

21 Q. [11:48:46] Did you need a birth certificate to apply for that passport?

22 A. [11:48:59] I used the national ID to obtain the passport. That's what you use in  
23 Sudan to obtain a passport. It's called a national ID number.

24 Q. [11:49:12] And when did you first apply for your national ID?

25 A. [11:49:26] That happened when I graduated from a Sudanese institution. It

1 was required for that purpose to obtain a national number or national ID.

2 Q. [11:49:47] Was that Sudanese institution - don't tell us where - but was that a  
3 secondary school or was it a university?

4 A. [11:50:07] Well, it was high school, not university.

5 Well, you have to follow the process, elementary school, high school, then university.

6 So it is required, to obtain official certificates and documents, to have a national ID.

7 You can't enrol at university without an ID. And also, at university they ask you to  
8 have a national ID and a birth certificate. In the absence of a birth certificate, people  
9 in Sudan issue another document --

10 THE INTERPRETER: [11:50:44] Inaudible.

11 THE WITNESS: [11:50:45](Interpretation) -- because we always -- we all come from  
12 villages and from creeks. People just mention their names and have -- have  
13 documents issued. There was a document called *tesnin* (phon), not a birth certificate.  
14 And the translation of *tesnin* is an estimate, a certificate of estimate.

15 Q. [11:51:13] And whichever document it is, your documents have your age as  
16 1989 -- the year of your birth as 1989, correct?

17 A. [11:51:29] Yes.

18 Q. [11:51:30] But that's not true, is it? Your year of birth, according -- well, you  
19 saw your birth is 1987?

20 A. [11:51:40] Yes.

21 Q. [11:51:41] If your date -- if your year of birth was in fact 1989 that would have  
22 made you -- that would have made you 14 in 2003, do we agree?

23 A. [11:52:04] Had I been born in '89, yes, but I was not born in '89. The logical  
24 question that you ought to put here is why did I need to have '89 as my year of birth  
25 in the documents. That's the question that should be put in such context.

1 Q. [11:52:25] Believe me, we're getting there.

2 Do you have any evidence, other than your word, to support what you say about you  
3 being in fact born in 1987 rather than 1989?

4 A. [11:52:54] I was born in 1987. I obtained documents proving that I was born in  
5 '89 because I needed to have a younger age to obtain the degree.

6 Q. [11:53:14] Mr Witness -- please stop. That wasn't my question.

7 I'm getting on to the why in a minute. I will repeat my question.

8 Other than your word, do you have any documentation or any proof at all that  
9 supports your account that you were born in 1987, yes or no?

10 A. [11:54:04] Yes.

11 Q. [11:54:16] What documentation is that? What documentation is that?

12 A. [11:54:23] Had there been documents where the time of birth was recorded, I  
13 would -- there wouldn't have been an estimate certificate system. We were born in  
14 villages where there was no registration, but our ages can be confirmed by reference  
15 to major events occurring in certain years. On the basis of that, people can identify  
16 your year of birth, or those who were born in the city, they can equate you with that  
17 other person. Your father can -- your parent can tell you, you were born the same  
18 year as Mr X was also born, and Mr X happens to be in a city where there is a  
19 registration system. My maternal cousin was born in Nyala.

20 Q. [11:55:25] Okay.

21 A. [11:55:31] My father told me that I was born in 1987, the same year this other  
22 person was born. And this other person was in a city, so he had a document proving  
23 his year of birth. Thank you.

24 Q. [11:55:51] When you started university, you had already done your national  
25 service, correct?

1 A. [11:56:10] Yes.

2 Q. [11:56:13] At the time when you were applying for university, you were in fact  
3 23 years old, 22, 23 years old, but you were trying to show that you were 20 or 21  
4 years old.

5 Does that summarise the situation?

6 A. [11:56:42] Yes, I presented myself as a younger person for the purpose of the  
7 degree only.

8 Q. [11:56:50] Why did reducing your age by two years increase your chances of  
9 being admitted into university?

10 A. [11:57:08] The people of the civil registration department would visit areas  
11 during the period of examination. When they do that, they identify those who are in  
12 the age category of 14 or 15, and that those above that category be in need of a birth  
13 certificate. Prior to that age category, you don't need a birth certificate. Things are  
14 facilitated to you otherwise. Because I did not have a birth certificate, I tried to  
15 obtain -- to follow a simpler arrangement.

16 Q. [11:58:00] Mr Witness, again, thank you for your answer, but it was an answer  
17 to a question which I didn't ask. My question was, why didn't it increase your  
18 chances of admission to university by pretending you were two years younger than  
19 you really were.

20 Answer that question, please.

21 A. [11:58:33] When I went to enrol in college, I did not choose to make myself look  
22 younger out of my own choice. Not -- I didn't wish to make myself younger or look  
23 younger or anything like that. But if you follow me, I'm able to explain. The  
24 purpose of that was for me to be able to obtain the document, nothings else.

25 Q. [11:59:05] Were there limited numbers available for students on your course at

1 university.

2 A. [11:59:24] Do you mean a limitation on age or a limitation in those who can  
3 enrol?

4 Q. [11:59:33] A limitation on numbers of those who could be admitted to your  
5 university course?

6 A. [11:59:50] The number of those who can be accepted to be in college, right?  
7 That's what you're asking me about. Did I get that right?

8 Q. [11:59:59] Yes, but specifically your university course?

9 A. [12:00:13] In my -- in my major, the number was 80 maximum. We had -- I  
10 had -- a major and a minor. With regards to the major, which is the (Redacted) subject,  
11 the limitation on the number was 80, those who can be admitted into the programme.

12 Q. [12:00:42] Thank you. And did the fact that you didn't tell the truth about your  
13 age in fact increase your chances of getting on that course?

14 A. I was not asked about the age afterwards. They would just ask you, do you  
15 have the document necessary to register for this course? If you had the document,  
16 you can register, but the age thing was not invoked. All they ask you is to provide  
17 the appropriate document that allows you to register, to enrol.

18 Q. [12:01:27] Okay. So it's lucky that you weren't asked for the document, but you  
19 had prepared the untruthful document just in case?

20 A. [12:01:49] I provided the document because they requested the document, but,  
21 yes, they did not ask for the age.

22 Q. [12:01:58] Do you find it easy to not -- do you find it easy to lie when it's  
23 advantageous to you to lie?

24 A. [12:02:20] Well, it is the duty of the government to provide the appropriate  
25 document. I ended up in that situation because of the government in action and

1 marginalisation of certain villages and towns. The government should provide civil  
2 registration. I am not to blame for that lying. The blame should apply to the  
3 government because the governemnt is responsible for providing registration and all  
4 documentation that citizens may need.

5 MR EDWARDS: [12:02:54] Your Honour, could we please have on the screen the  
6 document at OTP list of material tab 3. This is DAR-OTP-0219-9789.

7 Mr Witness, we're moving on now to the subject of the headgear worn by the men  
8 who you say attacked your home village on the first occasion in August 2003.

9 THE COURT OFFICER: [12:03:43] Could counsel kindly repeat the ERN of the  
10 document?

11 MR EDWARDS: [12:03:48] Yes, of courses. It's DAR-OTP-0217-0406. Yes, I'm  
12 sorry. I gave you completely the wrong ERN a moment ago. The document at tab  
13 3, in any event, annex A, Headdress Board.

14 Mr Witness, do you remember that you were asked by the Prosecution when they  
15 took your statement to describe the headgear - there we are - the headgear that looked  
16 like the headgear worn by the men who attacked your home village in August 2003?

17 A. [12:04:42] Yes.

18 Q. [12:04:43] Now, I appreciate you -- you modified your answer a little later, but  
19 I'm just going to stick with your first answer.

20 Initially, you chose the -- the picture at number seven as representing the headgear  
21 that the attackers wore.

22 Do you agree?

23 A. [12:05:18] Yes.

24 Q. [12:05:18] And then last week, you said to the Prosecution, oh, actually, no, it  
25 wasn't that one. It was the headgear at image 8 that better represents what you saw

1 the men wearing, right?

2 A. [12:05:38] Sure.

3 Q. [12:05:39] Thank you.

4 Now, let's take that off, please. What you say in paragraph 24 of your statement is  
5 the following:

6 "The men had covered their faces with some headgear which looks like headgear  
7 number seven on the headdress board."

8 Now, do you agree with me, Mr Witness, that the only headgear that represents -- or  
9 the only image that represents headgear that covers faces is the one at number seven  
10 of that board?

11 A. [12:06:46] Could the image be put back on the screen?

12 Q. [12:06:51] Yes, of course. So once again, tab 3, DAR-OTP-0217-0406.

13 So the question is, the only headdress, the only headgear that shows anyone's face  
14 being covered, as you state in paragraph 24, is the one at image 7, correct?

15 A. [12:07:36] Yes, yes.

16 Q. [12:07:39] And the reason why you picked out image number seven in your  
17 statement from last year is because that was in fact the headgear that you saw the  
18 attackers wearing covering their faces, correct?

19 A. [12:08:15] Yes.

20 Q. [12:08:16] During this first attack on your home village, August 2003, you saw  
21 the attackers being transported on camels and horses but not vehicles, correct?

22 A. [12:08:40] Yes.

23 Q. [12:08:44] Now, at paragraphs 20 -- yes, can we go back to the witness statement  
24 and can we focus on paragraphs 22 and 23, which is ERN 0389, please.

25 I ought to ask, sir, are you able to read English, or would you be more comfortable to

1 look at your statement in -- in Arabic?

2 A. [12:09:28] Arabic, not English.

3 Q. [12:09:30] Yes, of courses.

4 MR EDWARDS: Can I just confirm with my learned friend that an Arabic language  
5 version is with the -- the witness in front of him?

6 MR SACHITHANANDAN: [12:09:48] It should be tab 2. I'm just checking whether  
7 the binder is with the witness.

8 MR EDWARDS: [12:09:55] Do you have a -- yes, okay. Thank you. There's a  
9 folder in front of you.

10 Could I ask you, please, to turn to tab 2 and there will be an Arabic version of the  
11 witness statement. Of course, it's important that you are able to understand what  
12 I'm asking you about.

13 Perhaps the court officer could assist?

14 MR SACHITHANANDAN: [12:10:29] And we might have to exercise some care if  
15 this is being broadcast. I'm just raising the point.

16 MR EDWARDS: [12:10:37] Thank you.

17 Yes, I'm afraid for that very reason, the standing instruction, as it were, should be that  
18 the statement ought not to be broadcast publicly.

19 PRESIDING JUDGE KORNER: [12:10:51] Yes, well, I think that's right.

20 MR EDWARDS: [12:10:53] Thank you.

21 Q. [12:10:58] So, Mr Witness, you see the statement in front of you and the  
22 statement is -- comprises a number of paragraphs. And I'd like you to turn, please,  
23 to paragraph 22 and paragraph 23 in the statement.

24 Do you have it?

25 A. [12:11:19] Yes.



1 Q. [12:11:19] Thank you. Now, the name Ali Kushayb pops up in your statement.

2 I want to ask you about that.

3 Did you mention the name Ali Kushayb because the investigators asked you about

4 Ali Kushayb when you were giving your statement?

5 A. [12:12:13] Yes.

6 Q. [12:12:14] Thank you. And can you remember, I appreciate that might be

7 difficult because it was some time ago, but do you remember what the question was

8 that resulted in what you say in your statement that in August 2003 you heard

9 government forces had arrived in Mukjar with Ali Kushayb and his men? Do you

10 remember the precise question of the investigator?

11 A. [12:13:15] The question from the investigators was about the attack on Mukjar in

12 2003, who led that attack.

13 Q. [12:13:36] And you say that -- and you told them that Ali Kushayb arrived with

14 his men.

15 Who was the first person to tell you that Ali Kushayb arrived in Mukjar in

16 August 2003 with his men?

17 A. [12:14:08] I do not remember twenty years ago, but back then, this was a talked

18 about subject in the community. It is not possible for me to identify who the first

19 person told me so and so. If information spreads across society, everybody starts

20 talking and hearing about it. I do not remember a particular person who told me the

21 man who led the militias was Ali Kushayb.

22 Q. [12:14:52] Okay. If you can't remember who told you about this, does it follow

23 that you don't know what the basis of that person's knowledge was?

24 A. [12:15:10] As I already mentioned, he was well-known in Mukjar because people

25 in our community, the whole community talked about it, that he arrived in Mukjar,

1 that Ali Kushayb arrived in Mukjar. The whole community was talking about it.

2 Q. [12:15:33] Thank you. And, again, when the investigators were asking you  
3 questions and taking your information, did they ask you whether you knew that Ali  
4 Kushayb had been arrested?

5 A. [12:16:02] Yes.

6 Q. [12:16:04] And did they tell you that he was in ICC custody?

7 A. [12:16:20] They asked me the following: "Did you hear that Ali Kushayb  
8 submitted himself or what?" I can't recall if they did so, but they asked me, "Did you  
9 know what happened to Ali Kushayb?" I told them, "Yes, I heard about it."

10 Q. [12:17:03] Without telling us the location, would you agree that it was big news  
11 when it was revealed that Ali Kushayb had -- was this ICC custody?

12 A. [12:17:26] Yes, it was an important news for us, for all of us, the the whole  
13 Mukjar community. Especially the community of my village, the village that I fled,  
14 because we have left behind many people.

15 Q. [12:17:48] And was the arrest of Ali Kushayb an important topic of conversation  
16 among your friends and family?

17 A. [12:18:08] That was a topic of issue for the whole community, and they knew  
18 about it through the social media, the TV channels. That was broadcast on all media  
19 and TV channels, including the local ones.

20 Q. [12:18:30] Yes. And -- well, there's no dispute that that -- that all happened.  
21 His arrest was in June 2020.

22 Now, I just want to ask you about something that you say in paragraph 94 of your  
23 statement.

24 Can we -- can we fast forward through to page 20 of 22. This is ERN 0403,  
25 paragraph 94. Thank you.

1 You state that international NGOs were ordered out of Sudan after the decision of the  
2 ICC in 2009. Just in a couple of words, can you tell us what you mean by that  
3 decision of the ICC in 2009?

4 A. [12:19:47] Yes, the decision of the ICC in 2009 was about the arrest of the  
5 president of the republic, Omar Al-Bashir. This had -- or also the announcement of  
6 people who are wanted by the ICC. In fact, that led to ordering out of Sudan all the  
7 NGOs working in the humanitarian field because they considered that they would  
8 provide information to the ICC. This is what I meant.

9 Q. [12:20:30] Thank you. And, I mean, the fact that you mention this decision in  
10 your witness statement, was that also very big news in your community?

11 A. [12:20:51] The ordering out of these organisations was something really bad.  
12 Since 2004 everything happened through the organisations. We could not grow  
13 plans or get food or beverage without these international organisations. When -- so  
14 when they were ordered out, this would mean that this would lead to many problems  
15 in the community and that was really bad news for us.

16 Q. [12:21:38] Did you know that at the time of Mr Abd-Al-Rahman's arrest and  
17 transfer to the ICC, that the Prosecution alleged that he ran a pharmacy?

18 A. [12:22:14] Please, could you repeat the question?

19 Q. [12:22:17] Yeah. At the time of Mr Abd-Al-Rahman's arrest in 2020, you knew  
20 that the Prosecution alleged that he ran a pharmacy; is that correct?

21 A. [12:22:52] I didn't hear this from the court, but rather from our local community.  
22 He was said to have a veterinarian pharmacy in Garsila. I didn't hear that in the  
23 newspaper or the media. I rather heard it by word of mouth in my community.

24 Q. [12:23:23] And can you remember when you first heard this?

25 A. [12:23:35] I heard this in 2020, more or less.

1 Q. [12:23:50] Thank you.

2 A. [12:23:50] 2020.

3 Q. [12:23:50] And it may be that you can't help, but do you remember who you first  
4 heard it from?

5 A. [12:24:07] Could you kindly repeat the question?

6 Q. [12:24:08] Can you remember who you first heard it from that Ali Kushayb had  
7 a pharmacy in Garsila?

8 A. [12:24:25] Yes, I heard that from the head of the refugees. He said that he had a  
9 pharmacy in Garsila, a veterinarian pharmacy there.

10 Q. [12:24:40] Okay. Thank you very much for not telling us his name. We'll

11 come back to that a little bit later on towards the end of your testimony, okay?

12 Thank you. So what I'd like to do then is go back to your account of the first attack  
13 on your home village, August 2003.

14 In your -- in your statement, that's at ERN 0389.

15 So, let me just get this clear. You heard from people within your community that it  
16 was in fact Ali Kushayb and his men, right?

17 A. [12:26:02] Yes.

18 Q. [12:26:03] When the attack happened, the first attack, August 2003, what was it  
19 that first made you fear for your safety and leave your home village? Was it the  
20 sound of gunfire?

21 A. [12:26:37] Yes.

22 Q. [12:26:37] And I think that you -- you headed towards a particular mountain,  
23 you don't have to tell us the name of that mountain, but that was to the north of your  
24 home village; is that right?

25 A. [12:26:52] Yes.

1 Q. [12:26:53] And heading towards that mountain, you were obviously heading  
2 away from your home village.

3 Tell us, from what direction were the attackers coming to attack your village?

4 A. [12:27:16] To the west side of my village, home village.

5 Q. [12:27:20] Okay. Were any of the attackers coming from the north?

6 A. [12:27:31] No, not at all. I didn't see anyone coming from the north. And  
7 there were no gunfire or shooting from the north.

8 Q. [12:27:46] Did you -- when you reached -- when you reached the mountain, did  
9 you stay at the base of the mountain or did you climb the mountain?

10 A. [12:28:03] I knew those mountains because I previously lived there. I also  
11 knew the routes that could lead me up and down the mountains.

12 Q. [12:28:16] Can we understand from your answer, then, that you didn't stay at  
13 the base of the mountain, you made your way up the mountain and away from  
14 Mukjar -- I'm sorry, and away from your home village?

15 A. [12:28:34] Yes, I was -- it was away from my home village, but it wasn't a long  
16 distance between the mountains and my home village. It was nearby. It was close.

17 Q. [12:28:42] And did you take shelter within the mountains? Did you stop and  
18 take shelter and hide, or did you just keep running towards Mukjar?

19 A. [12:29:05] The purpose wasn't to hide, but to reach Mukjar.

20 Q. [12:29:13] And so your focus wasn't to stop and turn around and watch what  
21 was happening, it was to get away as quickly as possible.

22 Have I got that right?

23 A. [12:29:32] No, I turned around and looked at what was happening. I was  
24 looking in the direction because I thought that maybe some attackers might be  
25 coming from the back.

1 Q. [12:29:46] And when you turned to see if anyone was coming, did you notice  
2 that anyone was coming from the back?

3 A. [12:30:03] I saw that homes or houses were being burned in my village. They  
4 were in flame.

5 Q. [12:30:13] Yes, thank you very much. But when you turned to see if anyone  
6 was pursuing you, did you notice if anyone was in fact pursuing you?

7 A. [12:30:30] Well, I can't tell. I can't remember, but I could see houses and fire,  
8 the smoke going up and people trying to remove things from there.

9 Q. [12:30:47] Okay. Yes, thank you very much. The reason I'm pursuing this is  
10 because you said yourself, "I turned around and looked at what was happening. I  
11 was looking in the direction because I thought that maybe some attackers might be  
12 coming from the back."

13 When you turned around to see if anyone was coming, I take it from your answer that  
14 in fact no one was pursuing you?

15 A. [12:31:38] At that time, villages were being burned out. If we had stayed there,  
16 we would have been killed and died. They didn't follow us because they didn't see  
17 us, but had they seen us, they would have done so.

18 Q. [12:31:59] Okay. And when you turned around to see if anyone was pursuing  
19 you, what was the distance between you, at that point, and the village?

20 A. [12:32:20] I can't tell you the distance. In fact, we were in fall, and since that  
21 was the -- the period of harvesting and plants were high in growth, it was difficult to  
22 see through. But it wasn't very far, but I cannot define or determine the exact  
23 distance.

24 Q. [12:32:52] Okay. Let me then move on to the second attack of February 2004.  
25 And that requires us to move on to paragraph 32, please, your Honour.

1 Just turn to paragraph 32 in the Arabic version in front of you.

2 So I've got a few questions to ask you about a someone called Al-Dayf Samih.

3 Had -- as of February 2004, had you ever seen or met Al-Dayf Samih?

4 A. [12:33:49] In 2004?

5 Q. [12:33:50] In February 2004, at the time of the second attack on your home  
6 village. So as of that time, had you ever before seen Samih?

7 A. [12:34:09] No, not at all. I never met him before.

8 Q. [12:34:17] You say that he was the leader of the PDF in Mukjar.

9 How do you know that?

10 A. [12:34:37] The news was spreading among people. They used to say that they  
11 felt Samih was leading the PDF and he was in Mukjar. That was by word of mouth.  
12 They were saying that he was in Mukjar with his troops.

13 Q. [12:34:57] And when you say in paragraph 33 that the PDF and the Janjaweed  
14 are the same group, again, is that just what the locals were saying?

15 A. [12:35:19] Yes.

16 Q. [12:35:24] Okay. So just going back, paragraph 32, you describe hearing about  
17 a fight between the rebels and Samih's men. That's what I want to ask about for the  
18 next couple of minutes.

19 Are you with me?

20 A. [12:35:45] Yes.

21 Q. [12:35:47] Now, according to what you were told, how far from your village did  
22 this ambush or interception or this fight between the rebels and Samih's men take  
23 place?

24 A. [12:36:11] It happened in the north. This is where the fight happened,  
25 north-west my village, to the north-west of my village. But I -- but specifying the

1 distance is difficult. At that time, as if -- you would be expecting that someday you  
2 would be at the court and making your statement. We never thought that one day  
3 we would come to the court. Had we thought about this, we would have notebooks  
4 where we would recorded -- we would have recorded everything concerning that  
5 attack. But we never thought that one day we would be before the court. Therefore,  
6 specifying dates and distances was not important to us at that time.

7 Q. [12:37:16] I understand. I understand a hundred per cent. Let me -- let me try  
8 this way.

9 Do you know now where that interception took place? Do you know where that  
10 spot was? Has anyone told you?

11 A. [12:37:44] I've already answered this question and I said that the fight happened  
12 in the north-west part of Mukjar.

13 Q. [12:37:58] If you were to walk from your home village to the place where that  
14 interception took place in the north-west part of Mukjar, roughly how long would  
15 that take you on foot?

16 A. [12:38:44] So between my hometown, my home village and Mukjar, we would  
17 need 30 to 40 minutes by foot.

18 Q. [12:38:53] Yes, thank you very much.

19 But when you say -- I understand where Mukjar is. What I'm asking about is the  
20 place where this interception took place, where the fight between the rebels and  
21 Samih's forces took place?

22 A. [12:39:13] The fighting, well, I think that I have replied twice to this question  
23 and said that it happened to the north-west of Mukjar -- I'm sorry, it was west-south.

24 Q. [12:39:55] All right. Paragraph 33, you make reference to Samih's horse in  
25 Mukjar, which was decorated differently from everyone else's.



1 When you saw Samih's horse in Mukjar, was that the first time you had seen it?

2 A. [12:40:20] Yes. His horse was known because it was decorated with specific  
3 garment, with a silk garment. That was a silk garment it was wrapped with. But  
4 after 2004, I've seen him several times. I can't recall specifically the first time, but  
5 later on I saw him several times because he lived for a long period of time in Mukjar.

6 Q. [12:41:05] Thank you. So you explained that it was decorated differently from  
7 everyone else's horse in the PDF. What colour was the silk garment?

8 A. [12:41:29] Well, the silk garment had two or three colours together, but the main  
9 colour was red, the predominant one, but there were also other colours.

10 Q. [12:41:50] This may be important for the future, okay, so please give us as much  
11 detail as possible.

12 What were the other colours that made up this silk garment. You talked about red.

13 What are the others?

14 A. [12:42:08] There was another colour in this silk garment. It was white. This is  
15 approximate, but I cannot confirm 100 per cent.

16 Q. [12:42:24] And was the --

17 A. [12:42:31] But red -- the red colour was the predominant and most visible colour  
18 I could see.

19 Q. [12:42:35] And was it Samih's use of this silk garment that set his horse apart  
20 from every else's, or were there other things that set it apart?

21 A. [12:43:00] No, not at all. I could see him not because of his horse, but because  
22 the emblem showing that he was an *agid*, an colonel or a *Fursan*. That was the  
23 denomination people used at that time. He was an *agid*, a colonel.

24 Q. [12:43:24] Thank you, Mr Witness. You're talking about Samih now, but I want  
25 to -- just for another one or two minutes, I just want to focus on the horse because

1 what you say is the horse was decorated differently from everyone else's. One of the  
2 things that sets the horse apart is this silk garment.

3 Was there anything apart from that silk garment that set the horse apart?

4 A. [12:43:59] I didn't really focus on this, but his horse was decorated with a silk  
5 garment, but I didn't really focus on the appearance of his horse.

6 Q. [12:44:18] All right. Paragraph 34, moving away from Samih and coming back  
7 to Ali Kushayb, you state that he mobilised people from his tribe to join the  
8 Janjaweed.

9 What tribe was that, sir?

10 A. [12:44:52] Do you mean Al-Dayf Samih?

11 Q. [12:44:58] No, I mean Ali Kushayb?

12 A. [12:45:10] I did not say his own tribe, a specific tribe, but I said that he used to  
13 mobilise people from Arab tribes, but I didn't say that he belonged to a specific tribe  
14 where -- from which he used to mobilise people.

15 Q. [12:45:33] Can you find paragraph 34 in your statement there, please. And  
16 once you found paragraph 34, just read the first sentence, please.

17 In paragraph 34, you say, "I heard that Kushayb mobilised people from his tribe to  
18 join the Janjaweed.

19 Well, let me take it shortly.

20 Do you know what tribe Ali Kushayb belonged to? Just say yes or no for now?

21 A. [12:46:49] I cannot answer the question in such fashion.

22 Q. [12:46:54] Okay.

23 THE INTERPRETER: [12:46:55] Interpreter's observation: He might have meant  
24 something else as well in what he just said, so your call, Counsel.

25 MR EDWARDS: [12:47:02] Okay. Thank you. There may be a difficulty in the

1 interpretation.

2 Q. [12:47:02] Do you know what tribe Ali Kushayb belonged to?

3 A. [12:47:24] You're asking me to answer with yes or no. It might be an answer  
4 requiring elaboration. I heard. I perhaps heard from someone else who told me  
5 that he belonged to another -- to some tribe. I am not able to answer with a  
6 simple yes or no.

7 Q. [12:47:51] Okay. And then -- now, that's fine. If you've only -- if it's only  
8 because you've heard it from someone else that's fine. You also say in paragraph 34,  
9 "I learnt that Kushayb was once a member of the Sudanese Armed Forces, in the  
10 medical section of the Sudanese Armed Forces."

11 Do you remember who told you this information or was it just common knowledge  
12 within the community?

13 A. [12:48:33] The fact that he used to be an armed forces service member is  
14 something I heard about. After he was arrested, whether he got arrested or whether  
15 he surrendered himself willingly, that is something I don't know about. But after he  
16 was arrested and after he appeared in court, I heard about it because people in media  
17 outlets talk about it, analyse the matter, they talk about his past, what he worked, his  
18 work for the government. I can realise that he used to work for the armed forces.  
19 Regarding his belonging to the medical department, that is something I corrected  
20 afterwards. Therefore, I am not responsible for such assertion. I am responsible for  
21 the corrections introduced later on.

22 Q. [12:49:28] Now, that's fine. I'm not criticising you at all for that correction.  
23 But just tell us, is that also something that you heard after his arrest and transfer to  
24 the ICC?

25 A. [12:49:50] Yes.

1 Q. [12:49:51] Okay. Now, focusing on the second attack on your home village of  
2 February 2004, once again, did the attackers come from the west of your home village  
3 or from a different direction?

4 A. [12:50:23] They came from the same direction.

5 Q. [12:50:25] And did you flee in the same direction?

6 A. [12:50:39] Yes, we fled that way.

7 Q. [12:50:44] And you -- you say that at the time of -- you say that at the time of the  
8 first attack it was the --

9 MR SACHITHANANDAN: [12:50:59] I apologise. I think the witness was raising  
10 his hand.

11 MR EDWARDS: [12:51:06] Yes, you wanted to say something? Would you like a  
12 break, sir?

13 THE WITNESS: [12:51:14](Interpretation) I'd like to go the restroom, please.

14 MR EDWARDS: [11:29:04] Your Honour, I see the time. I see the time.

15 PRESIDING JUDGE KORNER: [12:51:20] (Microphone not activated) Of course you  
16 can go, but I think what we'll do is we'll adjourn now and come back at -- we'll say  
17 2 o'clock anyhow. So we'll cut the lunch break a little shorter. It's ten to 1, so  
18 instead of an hour and a half we'll have an hour and ten minutes. All right. Yes.  
19 Thank you.

20 MR EDWARDS: [11:29:04] Thank you.

21 THE COURT USHER: [12:51:46] All rise.

22 (Recess taken at 12.51 p.m.)

23 (Upon resuming in open session at 2.03 p.m.)

24 THE COURT USHER: [14:03:03] All rise.

25 Please be seated.

1 MR EDWARDS: [14:03:30]

2 Q. [14:03:31] Good afternoon, Mr Witness.

3 Just so that you understand, I'm going to finish off by asking a few -- I'm going to  
4 finish off asking a few questions about the second attack on your home village, and  
5 I'm then going to ask you about what happened at Mukjar, firstly at the locality  
6 building, and then later after you left the locality building, and then I'll have a few  
7 final questions. All right? That's the road map about where we're going this  
8 afternoon.

9 Right. So just before the lunch, you were explaining how the attackers came from  
10 the same direction on the second attack against your home village from the west and  
11 that you fled in the same direction as before towards the mountain. Is that right?

12 A. [14:04:47] Yes.

13 Q. [14:04:51] And, again, your -- your priority, of course, was to get away as far as  
14 possible rather than to hide; is that right?

15 A. [14:05:19] On the second attack, it was during summer, which means there was  
16 no bushes and long grass. So the second time was different from the first time.

17 Q. [14:05:39] And because there were no grasses and no bushes, did that mean that  
18 the opportunities to hide were fewer?

19 A. [14:05:56] In the mountains, there are hiding places and rocks, and it was  
20 possible to hide there. You can go there and find the hiding -- hiding place where  
21 you cannot be seen when you are in these places.

22 Q. [14:06:18] Okay. But -- but focussing not on what generally could be done but  
23 focussing on what in fact you did during the second attack on your home village, you  
24 went into the mountain and continued to make your way to Mukjar as quickly as  
25 possible. Is that right?

1 A. [14:06:49] Yes.

2 Q. [14:06:55] And at any point, did you turn around to watch what was happening,  
3 or did you just carrying on running as far as you could as fast as you could?

4 A. [14:07:18] Well, in order to answer this question, I want to say that  
5 sometimes -- when you are extremely scared, sometimes you can't remember, you  
6 can't remember how you travelled. (Redacted)

7 (Redacted) he carried some of his belongings and

8 he went to the mountain. I'm talking about the same time here. And then he tried  
9 to go to Mukjar. He took his belongings and carried it for an entire day, but he can't  
10 remember how he carried all of these things on his back for that long until he reached  
11 the mountain.

12 What I'm trying to say is in -- when you are in extreme difficulty, you don't remember,  
13 really, the details, and you don't know how you did what you did because you're just  
14 escaping. So I did everything I can to reach Mukjar, but I can't remember which  
15 road I took or how I did it. Thank you.

16 Q. [14:08:52] Yes, thank you very much.

17 Your Honour, can we go into private session for literally 10 seconds.

18 PRESIDING JUDGE KORNER: [14:09:00] Yes.

19 (Private session at 2.09 p.m.)

20 THE COURT OFFICER: [14:09:04] We're in private session, Madam President.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing  
DAR-OTP-P-0892

(Open Session)

ICC-02/05-01/20

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Open session at 2.09 p.m.)

6 THE COURT OFFICER: [14:09:57] We're back in public session, Madam President.

7 MR EDWARDS: [14:10:07] Thank you.

8 Q. [14:10:09] Can we please turn to paragraph 44 of your statement. There's just  
9 something I'm not sure about that I want clearing up, please.

10 About two thirds of way down, paragraph 44, in the English, at least. I don't know  
11 how it's translated into the Arabic. But there's a sentence that just needs clarification,  
12 please.

13 You talk about someone called Haroun. You say this: "There was also Haroun; he  
14 was one of the leaders; he was a sol."

15 Was Haroun a soldier, sir?

16 A. [14:11:05] He was a member of the police forces with the rank \* hadrat  
17 al-sol.

18 THE INTERPRETER: [14:11:22] The interpreter is not sure of the meaning.

19 PRESIDING JUDGE KORNER: [14:11:25] Must be the rank then, as opposed to  
20 normal abbreviation.

21 MR EDWARDS: [14:11:30] Yes. That's very helpful. Thank you very much. The  
22 parties will figure it out in due course, your Honour. All right.

23 Q. [14:11:41] Now, Mukjar was about two hours away on foot from your home  
24 village, correct?

25 A. [14:12:02] In the back mountainous roads, yes, it can take something like that, or

1 even more.

2 Q. [14:12:10] Thank you.

3 A. [14:12:11] But in other roads, you can get there in about half an hour to  
4 40 minutes maximum.

5 Q. [14:12:18] Yes, thank you.

6 A. [14:12:19] When I mentioned the two-hours journey, it's because we took really  
7 rough roads through the mountains.

8 Q. [14:12:31] Okay. And are you able to give us any more detail about the date  
9 you arrived in Mukjar? We know you say February 2004. Are you able to provide  
10 any further detail, even a day of the week?

11 A. [14:13:02] I don't remember. I don't remember which day of the week it was.  
12 It was 2004.

13 Q. [14:13:11] Thank you. In answer to I think questions from the legal  
14 representative of victims, you said that there were many, many people in the locality  
15 building compound. I just want to explore that for a moment.

16 Was there, for example, room for people to lie down on the ground within the  
17 compound?

18 A. [14:14:15] It was a big building. It -- there were so many people, so people  
19 were sat down. They were there in the locality building. And some of them were  
20 outside the locality building.

21 Q. [14:14:32] Okay. And were you personally inside or outside the locality  
22 building?

23 A. [14:14:40] I was inside.

24 Q. [14:14:41] Okay. And, again, it's a matter of translation perhaps. When you  
25 say inside the building, was there a roof over your head? Or were you inside the



1 compound but in the open air?

2 A. [14:14:59] I was in open air. There was no roof. There were some small trees  
3 there, and I was sat under one of those trees. Small trees, really.

4 Q. [14:15:28] Thank you. And by inside, do you mean that you were on the inside?  
5 There was -- there was -- the compound itself had a short wall around it, correct?

6 A. [14:15:45] Yes. A short wall, yes.

7 Q. [14:15:50] It was a mud wall, correct?

8 A. [14:15:57] No. Red bricks.

9 Q. [14:16:01] Okay. All right. Red bricks. And about one and a half metres in  
10 height?

11 A. [14:16:18] I can't tell exactly, but maybe one metre or maybe a little bit more, but  
12 I can't tell exactly how high it was.

13 Q. [14:16:27] Thank you very much. And people were sitting on the ground  
14 inside the compound and were essentially told not to raise their heads, correct?

15 A. [14:16:51] People were sat down, yes. Some of them were standing above, but  
16 the majority of the people there were sat down.

17 Q. [14:17:07] Okay. Can we -- can we scroll down to paragraph 52, ERN 0395,  
18 please.

19 So the conditions inside the locality building compound were very poor, correct? It  
20 was overcrowded, and there wasn't any food or water.

21 A. [14:17:40] Yes.

22 Q. [14:17:41] And even if you were in the shade of a tree for some of that time, I  
23 anticipate it was very hot with the sun beating down on you?

24 A. [14:17:58] Yes.

25 Q. [14:18:00] Just say yes or no for now. Were you there with other members of

1 your family who had all fled from your home village?

2 A. [14:18:10] I said yes. I said yes.

3 Q. [14:18:14] Yes. Sorry. I'll just try again. Were you there with members of  
4 your family who had fled with you from your home village?

5 A. [14:18:30] There were other people from my village there, yes.

6 Q. [14:18:36] What about your mother and your siblings, were they with you in the  
7 locality building compound or were they at your grandmother's house?

8 A. [14:18:55] My mother died long time before that. She was not present during  
9 the events. But my father, Mohamed, was there.

10 (Overlapping speakers)

11 Q. [14:19:08] Okay. And any siblings with you?

12 (Overlapping speakers)

13 MR EDWARDS: [14:19:18] Sorry, that came through on the English channel, Madam  
14 Interpreter.

15 THE WITNESS: [14:19:29](Interpretation) I don't have any full siblings. I have one  
16 half-sister from my father and she was where -- she was with her mother's family.

17 MR EDWARDS: [14:19:42]

18 Q. [14:19:45] This may be important, which is why I'm pursuing it. Did you -- did  
19 you understand that there were other members of your family at your grandmother's  
20 house whilst you and your father were in detention?

21 A. [14:20:16] I didn't mention my father in the investigations. He was not with me.  
22 As I said, I was brought up with my mother's family. But everybody that was there  
23 were relatives. People there are all related to each other. So I can consider that  
24 I had family with me and I sat down and I chatted to them.

25 Q. [14:20:48] All right. Let me ask it a different way. Who was staying at your

1 grandmother's home during the time when you were held at the locality building  
2 compound?

3 A. [14:21:27] People, people. Some of them are from the family and they were in  
4 that house.

5 Q. [14:21:33] Okay.

6 (Overlapping speakers)

7 MR SACHITHANANDAN: [14:21:35] I was just thinking, if we're going to mention  
8 names, perhaps --

9 MR EDWARDS: [14:21:39] No, but (Overlapping speakers)

10 THE WITNESS: [14:21:42](Interpretation) The grandmother, who was owner of the  
11 house, she didn't go to the locality compound. She was in the house.

12 MR EDWARDS: [14:21:52]

13 Q. [14:21:53] No, that's fine.

14 That's as far as I want to take it, your Honour.

15 A. [14:21:58] I mentioned the name before. I mentioned the name.

16 Q. [14:22:02] Don't mention any names now, sir, okay?

17 A. [14:22:07] Okay. Because I mentioned it already.

18 Q. [14:22:11] And also within the compound building, is it right that there were  
19 militia on horseback?

20 A. [14:22:26] Yes.

21 Q. [14:22:30] Thank you. Paragraph 52 has been brought up. Just have a look at  
22 paragraph 52 in the -- in your statement in front of you. And at the -- at the end of  
23 paragraph 52, it's the second-from-last sentence, you say:

24 "We were beaten with a whip every time we raised our heads."

25 Do you see that?

1 A. [14:23:12] Yeah, the beating was quite barbaric because anyone who wanted to  
2 beat us did so.

3 Q. [14:23:25] And had people -- had the people who were beating you, had they  
4 told you not to raise your -- raise your heads?

5 A. [14:23:42] I answered that question as well. It wasn't organised and I can't say  
6 exactly how they beat us, but anyone who wanted to beat us did so. Nobody  
7 stopped them. They had everything in their hands, they can beat us, they can take  
8 our cattle. They can do whatever they want.

9 Q. [14:24:06] I understand that and I'm going to repeat something I said earlier.  
10 Even if you think you've answered my question before, please just try your best to  
11 answer the questions as I ask them, okay?  
12 What I want to focus on is this aspect of your statement relating to raising your heads.  
13 Do you understand? Are you with me?

14 A. [14:24:34] Yes, yes, I understand.

15 Q. [14:24:36] So you say "We were beaten with a whip every time we raised our  
16 heads."

17 Does that mean that those who were being held at the locality building had been told  
18 to keep their heads down?

19 A. [14:25:05] I answered this question. I said it wasn't organised in any way. It  
20 wasn't like they took one by one and beat them up and then flogged them. Any of  
21 the militia members were just going round beating people and they always said "put  
22 your head down".

23 Q. [14:25:34] Yes, okay. So if you didn't want to attract this sort of violence, you  
24 kept your head down, you were looking at the ground; is that right?

25 A. [14:26:05] You can sometimes put your head up, but as soon as people come

1 towards you, you just put your head back down.

2 Q. [14:26:16] Thank you. Presumably, so we've got the compound, we've got this  
3 red brick wall around the periphery -- around the outside of the compound, there  
4 must have been a way in and out through the wall. Was there just one entry/exit or  
5 several entry/exits?

6 A. [14:26:54] I remember that there was a gate towards the west side. This is  
7 where people came in and out.

8 Q. [14:27:17] Thank you. And is -- and presumably then, that is the gate that you  
9 used to go in and out?

10 A. [14:27:35] (No interpretation)

11 Q. [14:27:41] Yes, I think you said "yes" then.

12 A. [14:27:43] Yes, yes.

13 Q. [14:27:45] All right. Let's just pause there for a moment because I want to ask  
14 you a little bit about the police compound that was north of the locality building, all  
15 right? Let's focus on that for a second.

16 Was there a similar wall around the police station compound?

17 A. [14:28:19] No. The police compound did not have a wall surrounding it. It  
18 was a set of buildings, but there was no wall. I think they started building the wall  
19 later, but I don't think that it's finished yet. But at that time we're referring to, there  
20 was no wall.

21 Q. [14:28:42] Thank you very much.

22 Your Honour, can we now please have up on the screen it's -- it's one of the maps that  
23 the witness has annotated, so can we have up, please, the public redacted version of  
24 the map at tab 17, DAR-OTP-0224-0652. Thank you.

25 And please, could we zoom in, Mr Court Officer, to the locality building that is sort of

1 in the centre of the image. Yeah, thank you. And perhaps zoom in one more time.

2 I just want to focus on the location of the witness rather than the location of

3 Ali Kushayb. Thank you.

4 Do you see that on the screen, the zoomed-in image of the locality building and where  
5 you were?

6 A. [14:30:17] (No interpretation)

7 Q. [14:30:20] Now, you're over towards the west side of the locality building  
8 compound?

9 A. [14:30:27] Yes.

10 Q. [14:30:30] And in the top left-hand corner there's -- there's some shading. Does  
11 that represent a tree, sir, in the top left-hand corner? Left hand -- yeah.

12 A. [14:30:50] Yes. Yes, the trees that are found inside the locality, yes.

13 Q. [14:30:57] Yes. But -- but more specifically, there's -- you see a tree, it's a  
14 bit -- it's a bit fuzzy, but there's a dark, dark-shaded bit in the top left-hand corner of  
15 the locality building, that's a tree, right?

16 A. [14:31:19] Yes.

17 Q. [14:31:22] Now, let us please scroll down a little bit so that we can see where the  
18 zero is or the circle indicating where you saw Ali Kushayb. Sorry, opposite direction,  
19 please. That's it. Right. Maybe a little bit, a little bit more, please. Okay.

20 Thank you.

21 And here now we see the -- the circle that indicates where Ali Kushayb was just to the  
22 south of the police station, right?

23 A. [14:32:17] Yes, in order to be more specific, yes. This is what I understood.

24 Maybe that requires someone who is very good at... But in my opinion, this is what I  
25 thought at that time.

1 Q. [14:32:37] Yeah. Well, let's have a look at what you -- well, we'll have a look at  
2 what you say in your statement in just a second, but I just want to be clear that  
3 someone whose name you don't know stated to you that the person over there by the  
4 police station was Ali Kushayb?

5 A. [14:33:21] Yes, when we were in the locality building, he was a bit far and I said  
6 I do not remember the name of this person. That person told me that the man  
7 standing there is Ali Kushayb.

8 Q. [14:33:45] Okay. And he was standing with four other men close to him, right?

9 A. [14:34:01] Yes.

10 Q. [14:34:04] And we see that sort of -- we see that distance there.

11 Now, in your statement you say that: "He [Ali Kushayb] stood outside the short  
12 fence of the locality building, between the police station and the locality building,  
13 about 20 metres away from where I was."

14 To be fair to you, in your corrections a few days ago, you said it's probably about  
15 30 metres, not 20 metres away, okay? So I acknowledge that you made that  
16 correction.

17 So far are you with me?

18 A. [14:34:57] Yes, I'm following you. It was just an estimate. Of course this  
19 happened 20 years ago, so I had to make an estimate of that. And it is extremely  
20 difficult to be more specific and precise in -- this person who is standing from you,  
21 and that's 20 years ago so you can hardly say specifically how far is that person.

22 Q. [14:35:30] I understand.

23 A. [14:35:30] Well, I said what I remembered, well ...

24 Q. [14:35:39] No, we all understand that. Absolutely. Don't worry, we  
25 understand that. But nevertheless, your recollection is that Ali Kushayb was just

1 south of the police station compound, as you indicate on the map, yeah?

2 A. [14:36:06] Yes.

3 Q. [14:36:07] Yes. Okay.

4 A. [14:36:11] South -- inside the station, was in the southern part of the police  
5 station.

6 Q. [14:36:17] Yes. Mr Witness, there is no dispute between the Prosecution and  
7 the Defence that the distance between where you indicate you were in the locality  
8 building and the place where Ali Kushayb was standing, according to you, is about  
9 175 metres. Nearly the length of two football pitches.

10 A. [14:36:56] I say this is an estimate, as I said and I repeated many times. I gave  
11 an example when the situation was very difficult, everybody was trying of course to  
12 hide so that he could not be seen by the militias. So you would do your best that you  
13 are not going to look at these people. So we were -- it was very scary, but of course it  
14 was difficult in this kind of situation, well, to say exactly how far that person. It is  
15 extremely difficult in this case, of course.

16 Q. [14:37:47] Understood. And again, just so that we're very clear, what you say  
17 in your statement about what you heard Ali Kushayb saying is in paragraph 55. Can  
18 we go back to paragraph 55 of the statement, please.

19 Now, about a third way down that paragraph you say this: "I did not hear what he  
20 said word for word."

21 In fact, isn't it right to say that last week when you were discussing this with the  
22 Prosecution, you said that you could not hear what Kushayb was saying, not just  
23 word for word, but you just couldn't hear what he was saying?

24 A. [14:39:15] Yes. I said this twice. The first time when was in the courtyard of  
25 the locality, I said I have not seen him personally but he was using his stick and I saw



1 him using his stick. And the second time I said, when we go out of the locality and  
2 we go back to our homes -- well, I think this is what I said as an answer your previous  
3 questions.

4 Q. [14:39:58] Yeah. In a moment I'm going to move on to when you leave the  
5 locality building and you make your way towards your grandmother's home. But  
6 before I do that, I just want to pick up on something that you say in paragraph 54:  
7 "The investigators asked me if I know another name for Ali Kushayb. I did not  
8 know any other names during the conflict, however after 2004, I learned that he is  
9 also known as Ali Abd-Al-Rahman." Do you see that, sir?

10 A. [14:40:37] Yes.

11 Q. [14:40:42] Did you learn that in 2009?

12 A. [14:40:58] I don't remember exactly, but at the end of that difficult period I heard  
13 this other name. I also heard that before 2009, Abd-Al-Rahman.

14 In 2009 I became sure that his name was Ali Abd-Al-Rahman when, of course, an  
15 arrest warrant was ordered for him. He's one of the names of the persons referred to  
16 by the (unclear).

17 Q. [14:41:48] Now the Prosecution didn't ask you about this, but I'm going to ask  
18 you about it. Where did you hear -- from whom did you hear that Ali Kushayb also  
19 had the name Ali Abd-Al-Rahman?

20 A. [14:42:11] Well, the name Ali Kushayb might not be fit to just one person in  
21 particular. In that area this is a well-known name. People talk about Ali Kushayb  
22 and they say, people say, that he is the one behind all these problems and he is the  
23 one who had committed these problems. So his name was well known. So you  
24 don't need really to say specifically to this person or that person, or ...

25 And I also like to add the following: Some of the people of that area, there is

1 someone who is an evildoer, well they call him "Kushayb" as well, they refer to him as  
2 "Kushayb".

3 Q. [14:43:06] So Kushayb is a derogatory nickname, is it?

4 A. [14:43:21] Before the events, nobody was referring to this, but after the events of  
5 course people said "Kushayb", and "Kushayb" and they said this name is -- was linked  
6 to -- well, not a good person, a bad person.

7 Q. [14:43:45] Did it become a general term for bad people?

8 A. [14:43:55] Yes.

9 Q. [14:43:58] And what is it about the word Kushayb that has this negative  
10 connotation? What does it mean?

11 A. [14:44:15] Well, I did not try to know the meaning of the word "Kushayb", but as  
12 it is well known in the area and in my village, Kushayb refers to the person who  
13 committed all these crimes. And the person who committed these problems was a  
14 bad person. But I did not try to understand what the word Kushayb really means.

15 Q. [14:44:48] Okay. But as -- as an educated person from this part of Darfur, had  
16 you ever heard of the word "Kushayb" in some other context. For example, in the  
17 context of a local alcohol. Does that ring any bells?

18 A. [14:45:16] If it's the name of a drink in the area, we as Fur, we do not refer to,  
19 well, drinks as "Kushayb". Maybe before I knew Kushayb. But I know the names  
20 of drinks, but I don't find a drink that is called "Kushayb" in the Fur language.

21 Maybe in other language in Darfur. And there are so many tribes, maybe in one of  
22 the tribes they call Kushayb -- they call Kushayb to a -- the name of a drink.

23 Q. [14:45:56] Okay. Just sticking with the topic of derogatory names, you've  
24 referred to *tora bora* in your evidence and it was -- and you were asked by the  
25 Prosecutor about the derogatory sense of the word *tora bora*. I'm just going to ask

1 you about that for a moment, okay?

2 A. [14:46:20] Yes.

3 Q. [14:46:23] Are you aware that there was a network of caves in Afghanistan  
4 where Taliban and Al-Qaeda took refuge many years ago?

5 A. [14:46:48] Yes, yes.

6 Q. [14:46:51] And that was a network of caves, tunnels it was an area called  
7 Tora Bora, right?

8 A. [14:47:03] Yes. I heard that, yes.

9 Q. [14:47:06] Okay. Have you -- have you ever heard of some sort of a connection  
10 between that network of caves and tunnels and the name of the rebels in Darfur?  
11 Have you ever made that connection yourself?

12 A. [14:47:35] Maybe, maybe that is the reason why people used *tora bora*. Darfur  
13 of course has mountains. And as you said, in Afghanistan there were mountains  
14 and people there were using of course, these caves in Pakistan. Maybe -- or in  
15 Afghanistan. Maybe, maybe that came from there. Maybe.

16 Q. [14:48:05] And, in fact -- well, do you know that in fact it was the rebels who  
17 adopted the nickname *tora bora* rather than it being a nickname that was imposed on  
18 them by the government?

19 A. [14:48:25] I do not really know what they used *tora bora* for -- or the government  
20 used to call them *tora bora*. I do not -- I do not know exactly.

21 Q. [14:48:43] Thank you. Now, there comes a time in the afternoon or  
22 evening -- I'm coming back to Mukjar in the locality, in the locality compound, okay?  
23 And there comes a time when you're released. That's what I want to ask about now,  
24 okay?

25 A. [14:49:06] Yes.

1 Q. [14:49:09] You -- you wanted to make your way to your grandmother's home as  
2 quickly as possible, right?

3 A. [14:49:25] Yes.

4 Q. [14:49:27] And she lived in the eastern neighbourhood you've told us of Mukjar,  
5 right?

6 A. [14:49:38] Yes, yes.

7 Q. [14:49:47] Your Honour, there's a raised hand.

8 Yes, sir?

9 PRESIDING JUDGE KORNER: [14:49:57] Needs a break.

10 THE WITNESS: [14:49:59](Interpretation) I am asking for a break, yeah. I'm asking  
11 for a break. Can I go to the toilet?

12 PRESIDING JUDGE KORNER: [14:50:05] Yes, all right. We'll take a 10-minute  
13 break, and then --

14 How much longer do you think you're going to be, Mr Edwards?

15 MR EDWARDS: [14:50:14] Less than 15 minutes.

16 PRESIDING JUDGE KORNER: [14:50:17] All right. We'll take a break now.  
17 3 o'clock, please.

18 THE COURT USHER: [14:50:22] All rise.

19 (Recess taken at 2.50 p.m.)

20 (Upon resuming in open session at 3.02 p.m.)

21 THE COURT USHER: [15:02:40] All rise.

22 Please be seated.

23 MR EDWARDS: [15:03:14] Your Honour, can I just turn my back for a moment,  
24 please.

25 (Counsel confers)

1 MR EDWARDS: [15:03:44] Thank you.

2 Q. [15:03:48] We're just going to put up a map, sir, of -- another map of Mukjar, one  
3 that you annotated.

4 Your Honour, it's teed up, I know. 0224-0661, which is at -- behind tab 18 of the  
5 Prosecution list. And there's a public redacted version that can be broadcast.

6 So, without zooming in, Mr Witness, you see -- you see where the market is, Mukjar  
7 market, which is to the north-east of the locality building compound?

8 A. [15:04:41] Yes.

9 Q. [15:04:43] Okay. Well, the -- the Court, the Trial Chamber has heard evidence  
10 that this is the market. And I don't want you to point, or anything like that, but  
11 where was your grandmother's house in relation to the market? Was it north, south,  
12 east or west of the market?

13 A. [15:05:16] In the east.

14 Q. [15:05:23] Focussing on the locality building compound, do you see that  
15 immediately to the right of the compound, there's a sort of a diagonal yellow line that  
16 represents a road that goes from south-west to north-east? Up towards the market.  
17 Do you see that yellow road?

18 A. [15:06:03] The one that I put a mark on? I think that's what you are speaking  
19 about.

20 Q. [15:06:13] No. First of all, find the -- find the locality building compound,  
21 please. Do you see that on the screen?

22 A. [15:06:20] Yes.

23 Q. [15:06:22] Now, immediately to the right of it, there's a diagonal yellow line,  
24 which is a road, heading up towards the market. Do you see that?

25 A. [15:06:40] To the north of the locality compound.

1 Q. [15:06:43] Well, no, it's to the -- it's to the -- it's immediately to the east of the  
2 locality compound, to the right of the locality compound, and it's a road that runs  
3 from the south-west heading north-east towards the market. Do you see that  
4 diagonal yellow road?

5 A. [15:07:07] I can see the line, but I have a real problem with reading maps. I  
6 can't really tell for sure which road is which. But the point is that I marked out the  
7 ones that I was sure of.

8 Q. [15:07:36] All right. Okay. In any event, to get from the locality compound to  
9 your grandmother's house as quickly as possible, you would walk towards the  
10 market and then further east, right?

11 A. [15:07:58] Yes. This road is -- it goes right through the market. It splits the  
12 market into two, a northern part and a southern part.

13 Q. [15:08:20] Okay. And you presumably were anxious to get back to your  
14 grandmother's house as quickly as possible to tell your family that you had been  
15 released; is that fair?

16 A. [15:08:42] Yes. When they let you go, you just try to leave this miserable place  
17 as soon as possible.

18 Q. [15:08:52] Yes, naturally enough. And in paragraph 66 of your statement, you  
19 actually say: "We were not allowed to move around in Mukjar at the time."

20 What would happen to -- do you know what happened to young men who were  
21 walking around Mukjar -- sorry, let me put it another way.

22 Was there a risk for young men who were just walking around Mukjar to get  
23 arrested?

24 A. [15:09:29] I mentioned that young men of a certain age were arrested, not just  
25 because they were roaming around the streets, but actually, they were arrested from

1 their homes. Because they searched people's homes, and some young men were  
2 arrested from their own houses.

3 Q. [15:09:53] But, certainly, a young man who was out of doors, not at home,  
4 placed themselves at some risk of being arrested, right?

5 A. [15:10:10] Yes. If that person is coming from the eastern areas and a big group  
6 of people were like that, those people got arrested. They were arrested where they  
7 carried out their searches and in other places.

8 Q. [15:10:33] Okay. Now, recognising that it was a long time ago, are you able to  
9 give us some -- are you able to give the Court some idea of the distance between  
10 where you were and where Ali Kushayb was when you heard him talking about the  
11 Sindu operation?

12 A. [15:11:01] I can't really tell you the exact distance, because as I told you, this  
13 happened over 20 years ago, which is double my age at that time. But he was there,  
14 and I heard him speaking about Sindu.

15 Q. [15:11:33] Was he using a megaphone or a microphone or some kind of  
16 amplification to make his voice louder, or was he just talking to his men who were  
17 around him?

18 A. [15:11:53] I don't remember that he had a megaphone, but he was with  
19 his -- with his men, and he was holding a staff in his hand.

20 Q. [15:12:05] Okay. And he was certainly within the compound of the police  
21 station, as you've indicated in your map, right?

22 A. [15:12:17] With his forces, but not inside the compound. He was at the police  
23 station. He was not speaking inside the compound.

24 Q. [15:12:34] Well, Mr Witness -- then let's have that map up again, please.  
25 Behind tab 18 on the Prosecution list. Thank you.

1 Can you we zoom in, please, to the -- towards the top left. Yes. A little more,  
2 please. Thank you.

3 So where the zero or the circle is marked, that's within the police compound, right?

4 A. [15:13:16] This is the detention. At the time there was no pictures of the police  
5 station.

6 THE INTERPRETER: [15:13:28] Inaudible.

7 THE WITNESS: [15:13:31](Interpretation) And there were bases, certain gathering  
8 points for the soldiers.

9 MR EDWARDS: [15:13:37]

10 Q. [15:13:37] Okay. Well, let's -- let's not worry too much about certain gathering  
11 points for soldiers. Let's focus on the Mukjar police station that was made up of  
12 these two buildings that face each other. Do you see that?

13 Could we zoom in a little bit more, please, Mr Court Officer.

14 So you've got -- you've got those -- a bit more, please. Thank you.

15 So we've got the two buildings facing each other, and then around those two  
16 buildings we've got a line that represents the boundary of the police station  
17 compound, right?

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

19 Q. [15:14:41] Now, from where you've marked your position on the road north of  
20 the locality building to Ali Kushayb's position, it's a hundred metres. There's no  
21 dispute between the Prosecution and the Defence that that's a distance of a hundred  
22 metres, all right? Do you follow?

23 A. [15:15:17] Yes, I understand.

24 What I want to say is, this distance issue, I really can't tell exactly how far he was. I  
25 only gave you an approximate distance. I can't say for sure that this is his location.



1 I just want to repeat this.

2 We -- it was a very terrifying situation, and there was fire shooting and lots of  
3 horrible things happening. I didn't know ever that I will be a witness here and I will  
4 have to answer these questions. And all the people in Mukjar never even dreamt of  
5 any kind of justice and -- or accountability for those who committed these crimes.  
6 Nobody ever thought about that. I never thought that I will stand before this Court,  
7 and that's why I don't want to answer any questions about distances, really, because I  
8 can't tell you how far he was. I don't want to responsible for these answers.

9 Q. [15:16:37] Okay. And I'm going to suggest that if you were exiting from the  
10 locality building compound to the west, the west entry/exit gate, to get back to your  
11 grandmother's house, which is east of the market, a far more natural route for you to  
12 have taken would have been around the locality building to get to the diagonal road,  
13 which is east of the locality building, and straight up to the market. Wouldn't you  
14 agree?

15 A. [15:17:51] You can't tell, really, which road to go.  
16 It's -- it was all because of the circumstances and the situation at the time that I made  
17 my choice.

18 You are suggesting that I should have gone through this road because it was easier.  
19 But this is when we're sitting in the living room and we're talking about a normal  
20 situation and we have fans and good circumstances, we can say these things.

21 Q. [15:18:33] Well, if what you say is that you took the route from the locality  
22 building heading north to meet up with that -- the yellow road that you mark yourself  
23 on, doesn't that necessarily mean that you were walking from the locality building  
24 towards the police station and all the militia who were there? Not away from them,  
25 but towards them.

1 A. [15:19:24] The militia were in Mukjar, everywhere in Mukjar, whether in the  
2 police station or the locality building or the agriculture building that was close to the  
3 locality building, and it was actually a police station at certain point, the militia  
4 members were everywhere. You can't say that they were in a specific area or the  
5 other.

6 Q. [15:19:56] No. But according to your statement, paragraph 60, Ali Kushayb  
7 was telling his men that they were going to finish the areas of Sindu, and they were at  
8 the police station compound, according to you.

9 A. [15:20:18] Yes, yes.

10 MR EDWARDS: [15:20:22] Just to mop up a few matters that do need to be dealt  
11 with in private session, and then I'll be finished.

12 PRESIDING JUDGE KORNER: [15:20:33] Yes.

13 Into private session, please.

14 (Private session at 3.20 p.m.)

15 THE COURT OFFICER: [15:20:43] 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)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted – Private session

1 (Redacted)

2 (Redacted)

3 (Open session at 3.29 p.m.)

4 THE COURT OFFICER: [15:29:49] We're back in public session, Madam President.

5 MR EDWARDS: [15:29:54]

6 Q. [15:29:55] Mr Witness, just very briefly, I suggest to you that it's not correct that  
7 you saw Ali Kushayb in Mukjar. What do you say about that?

8 A. [15:30:20] Personally, I say that I saw him and he was -- of course, you can say  
9 that, but I saw him, as I said. I saw this person. Yes, I saw this person. I confirm  
10 that.

11 Q. [15:30:41] And, similarly, I suggest that you didn't hear anything that  
12 Ali Kushayb said in Mukjar.

13 A. [15:30:59] I say I heard him and I saw him. I repeat that I saw him and I heard  
14 him.

15 Q. [15:31:08] Thank you, Mr Witness.

16 Thank you, your Honour.

17 PRESIDING JUDGE KORNER: [15:31:10] Just so we get this clear, you say that you  
18 saw a man in Mukjar making a speech who somebody said to you was Ali Kushayb?

19 THE WITNESS: [15:31:33](Interpretation) Yes. That is when we're within the  
20 locality. I did not hear what he was saying, but I saw him. He was giving this  
21 speech. And someone next to me said: "That's Ali Kushayb." This is when we're  
22 inside, of course, the locality.

23 PRESIDING JUDGE KORNER: [15:31:56] But you had never seen him before that  
24 day?

25 THE WITNESS: [15:32:05](Interpretation) No, I haven't seen him. In 2004, I heard

1 about him.

2 PRESIDING JUDGE KORNER: [15:32:13] Yes. All right.

3 MR EDWARDS: [15:32:14] Excuse me, your Honour. I just want to make it very,  
4 very clear, in case there's any doubt whatsoever, I put my case higher than that.

5 PRESIDING JUDGE KORNER: [15:32:26] Oh, you are putting it higher than that.

6 Well, I wondered, you are saying actually -- you are saying this is witnesses getting  
7 together.

8 MR EDWARDS: [15:32:33] Your Honour will recall how I cross-examined the  
9 witness in terms of the circumstances inside the locality, sitting down, wall, people  
10 around, et cetera, et cetera. I do not put my case purely on the basis that someone  
11 else may have got it wrong, or what have you. I put it higher than that, and that is  
12 why --

13 PRESIDING JUDGE KORNER: [15:32:56] Yes, I see it. All right. That's  
14 why -- that's why I thought I'd see where we're going with this.

15 MR EDWARDS: [15:32:58] Yes, yes.

16 PRESIDING JUDGE KORNER: [15:33:00] All right.

17 MR EDWARDS: [15:33:01] And that's why I -- I put my case on the basis of it is not  
18 correct that.

19 PRESIDING JUDGE KORNER: [15:33:07] Yes, but what you've -- you have been  
20 asking him about other people.

21 MR EDWARDS: [15:33:14] Yes.

22 PRESIDING JUDGE KORNER: [15:33:16] Is it also part of the suggestion, although  
23 obviously you can't say one way or another, that people put your heads together  
24 about this?

25 MR EDWARDS: [15:33:28] It is certainly a door that we are keeping very

1 widely -- wide -- wide open. Yeah.

2 PRESIDING JUDGE KORNER: [15:33:32] All right. Yes. Thank you.

3 Yes, sorry, Mr Jeremy, I just thought I'd get this cleared up before we went back to

4 you. Do you want to re-examine.

5 Oh, sorry, it's you. Sorry, Mr Sachithanandan. Do you want to re-examine?

6 MR SACHITHANANDAN: [15:33:46] We are remarkably similar in appearance.

7 PRESIDING JUDGE KORNER: Oh, absolutely.

8 MR SACHITHANANDAN: Yes. No, your Honour. No.

9 PRESIDING JUDGE KORNER: [15:33:53] No.

10 And I don't think the judges have any other -- any questions. No, we don't.

11 So, sir, thank you very much for coming to give evidence at this Court, although you

12 will have noticed that not all of your evidence is accepted, nonetheless it's really

13 important that people like you who were there come to court, say what their account

14 is, and then the judges have the ability to assess what actually happened, because

15 none of were there.

16 So I thank you again and I wish you a safe return to your own country.

17 THE WITNESS: [15:34:35](Interpretation) Thank you very much, Madam.

18 PRESIDING JUDGE KORNER: [15:34:37] If you'd like to go with the court officer,

19 then.

20 (The witness is excused)

21 PRESIDING JUDGE KORNER: [15:35:08] Tomorrow's witness, I understand -- I was

22 reminded is the one who was originally going to be video link but is now coming; is

23 that right? And has he had his court familiarisation?

24 MR JEREMY: [15:35:20] Yes, all the -- all the formalities have been met, as I

25 understand it.



1 PRESIDING JUDGE KORNER: [15:35:24] Right. So we can sit at 9.30 tomorrow  
2 morning?

3 MR JEREMY: [15:35:27] Yes, Madam President.

4 PRESIDING JUDGE KORNER: [15:35:31] How long do you think that  
5 witness -- again, it looks to me, on the face of it, like a very short witness, but ...

6 MR EDWARDS: [15:35:35] Your Honour, appearances can be deceptive. I'm  
7 not -- you know, with hearsay witnesses and so on, I'm not merely relying on the fact  
8 of hearsay.

9 PRESIDING JUDGE KORNER: [15:35:47] No, I can see that.

10 MR EDWARDS: [15:35:49] Yeah. I can come back (Overlapping speakers)

11 PRESIDING JUDGE KORNER: [15:35:53] Well, this is slightly more than -- I mean,  
12 there's slightly more to this witness than I would have said to the last witness.

13 MR EDWARDS: [15:35:58] Yes, yes. I think even this was a witness that at some  
14 point might have been viva voce - I'm not too sure - but I may be wrong about that.  
15 In any event, yes, there's a little bit more to it.

16 PRESIDING JUDGE KORNER: [15:36:11] All right. So -- and then Wednesday's  
17 witness, well, I mean can he start tomorrow? Is Wednesday's witness here? Yeah.

18 MR JEREMY: [15:36:21] Yes, Madam President, he's -- he's here. I'm not sure how  
19 long Mr Edwards will take with 718 tomorrow. I think the plan was to start 547 on  
20 Wednesday. That was the aim.

21 PRESIDING JUDGE KORNER: [15:36:37] No, well, I mean -- I mean, if we can -- if  
22 he's here and we can start him, because he, on the face of it, is a lengthy witness.

23 MR EDWARDS: [15:36:45] He is. Mr Laucci's taking care of that witness.  
24 On the face of it, he's scheduled for Thursday and Friday. I think there's -- there's a  
25 very good chance that we'll start him (Overlapping speakers)

1 PRESIDING JUDGE KORNER: [15:37:01] Oh, I'm sorry, have I missed a -- I thought  
2 he was the next witness.

3 MR EDWARDS: [15:37:04] No, no, no, 718 is the next witness.

4 PRESIDING JUDGE KORNER: [15:37:07] No, 718 is the next witness. That's  
5 tomorrow. So that's still making --

6 MR EDWARDS: [15:37:11] Yeah, well down for two days. Scheduled -- slated for  
7 two days, in fact.

8 PRESIDING JUDGE KORNER: [15:37:14] 718?

9 MR EDWARDS: [15:37:16] Yes. I'm not suggesting it's going to take the full two  
10 days at all, but what I'm saying is that --

11 PRESIDING JUDGE KORNER: Well, I --

12 MR EDWARDS: [15:37:18] -- on the face of it 547 is slated to start on Thursday.  
13 Could well start (Overlapping speakers)

14 PRESIDING JUDGE KORNER: [15:37:26](Overlapping speakers) Yes. I know.  
15 Well, I think 547 should work on the basis he's going to start on Wednesday.

16 I've just got one final question, Mr Edwards. My own curiosity. What was the  
17 relevance of what the horse looked like?

18 MR EDWARDS: [15:37:39] It's to -- it's to create a foundation for evidence that we  
19 know is coming in the future. There's -- there are witnesses (Overlapping speakers)

20 PRESIDING JUDGE KORNER: [15:37:49] There's going to be evidence about horses,  
21 or the horse belonging to Mr What's-his-name?

22 MR EDWARDS: [15:37:54] Yes. It's -- it's -- there are -- there are witnesses who, if  
23 my memory serves - I can't think of them off the top of my head - who identify the  
24 individual by virtue of the --

25 PRESIDING JUDGE KORNER: [15:38:06] Oh, I see, of the horse.

Trial Hearing  
DAR-OTP-P-0892

(Open Session)

ICC-02/05-01/20

- 1 MR EDWARDS: [15:38:08] -- distinctive -- yes.
- 2 PRESIDING JUDGE KORNER: [15:38:09] I've got you. Yes.
- 3 Right. Well, thank you very much for that explanation.
- 4 Yes, unless there's -- if there's nothing else, tomorrow morning, 9.30, please.
- 5 THE COURT USHER: [15:38:21] All rise.
- 6 (The hearing ends in open session at 3.38 p.m.)